

AGENDA

Meeting: Southern Area Planning Committee
Place: Sarum Academy, Westwood Road, Salisbury, Wiltshire, SP2 9HS
Date: Thursday 6 April 2017
Time: 6.00 pm

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

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

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

Membership:

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

Substitutes:

Cllr Trevor Carbin	Cllr Leo Randall
Cllr Terry Chivers	Cllr Ricky Rogers
Cllr Ernie Clark	Cllr John Smale
Cllr Tony Deane	Cllr John Walsh
Cllr Dennis Drewett	Cllr Bridget Wayman
Cllr Peter Edge	Cllr Graham Wright
Cllr Magnus Macdonald	

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Public Participation

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

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

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

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

AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 16*)

To approve and sign as a correct record the minutes of the meeting held on Thursday 16 March 2017.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

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

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

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

Questions

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

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Thursday 30 March 2017**, in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Monday 3 April 2017**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **Salisbury Footpath No.9 - Definitive Map and Statement Modification Order 2016" Parish of Idmiston**
(Pages 17 - 208)

To consider objections and representations of support received following the making and advertisement of "The Wiltshire Council (Parish of Idmiston) Path No. 9 Definitive Map and Statement Modification Order 2016", under Section 53 of the Wildlife and Countryside Act 1981.

Recommendation:

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

7 **Salisbury Footpath No.6 - Diversion order and definitive map and statement modification order 2016. Stratford sub Castle** *(Pages 209 - 280)*

To consider the eighteen representations and one objection received to the making of The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury Footpath No. 6 Diversion Order 2016 and Definitive Map Modification Order 2016 and The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016.

Recommendation:

That the Orders be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the notification that Wiltshire Council supports the confirmation of both Orders as made.

8 **Planning Appeals and Updates** (*Pages 281 - 282*)

To receive details of completed and pending appeals and other updates as appropriate for the period of 03/03/2017 to 24/03/2017.

9 **Planning Applications**

To consider and determine planning applications in the attached schedule.

9a **16/09919/FUI & 16/10183/LBC - Old Ship Hotel, Castle Street, Mere, BA12 6JE** (*Pages 283 - 300*)

Conversion and renovation of the existing Grade II* Listed Old Ship Inn into 7 Apartments and 2 x three bed cottages. To include the demolition of outbuildings and construction of an additional new build two bed cottage to the rear (10 dwellings in total).

9b **17/00444/FUL - Florance House, Romsey Road, Witeparish, SP5 2SD** (*Pages 301 - 308*)

Erection of 2 bay garage to front of property.

10 **16/12123/FUL - Land at Whitsbury Road, Witsbury Road, Odstock, Salisbury** (*Pages 309 - 320*)

Construction of two residential dwellings.

11 **Urgent Items**

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

Part II

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

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SOUTHERN AREA PLANNING COMMITTEE

MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 16 MARCH 2017 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

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

Also Present:

145 **Apologies**

There were none.

146 **Minutes of the Previous Meeting**

The minutes of the meeting held on Thursday 23 February 2017 were presented.

Resolved:

To approve as a correct record and sign the minutes.

147 **Declarations of Interest**

There were none.

148 **Chairman's Announcements**

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

149 **Public Participation**

The committee noted the rules on public participation.

150 **Planning Appeals and Updates**

The committee received details of the appeal decisions as detailed in the agenda for the period 19/01/2017 to 03/03/2017.

Resolved:

That the report be noted.

151 **Planning Applications**

152 **16/11929/FUL: Nadder Centre - APPLICATION WITHDRAWN**

This application had been withdrawn and therefore not considered by the Committee at this meeting.

153 **16/11803/FUL: Forest View, Clay Street, Whiteparish, Salisbury, Wiltshire, SP5 2ST**

Public Participation

Jenny Harrison spoke in objection to the application

Sara Webb spoke in objection to the application

Dan Roycroft (Agent) spoke in support of the application

The Planning Officer noted that a site visit had taken place earlier in the day and drew attention to the late correspondence circulated at the meeting. He introduced the application for the demolition of existing bungalow and erection of two new chalet bungalows. It was noted that improved access for units will be created off Clay Street, with hard and soft landscaping and associated works. This application was a resubmission of a previous application 16/07647/FUL. It was recommended that the application be APPROVED with conditions.

The Committee had the opportunity to ask technical questions of the Officer, where it was noted that the definition of a chalet bungalow was typically a bungalow that had some dormer windows in the roof. It was estimated that the retaining wall on the site would be approximately 2m high. Previous objections from Highways had been changed following further discussions which had taken place with the planning agent. The cost to repair the damage to the road caused by construction traffic could not be imposed on the developer as a planning condition as this was a civil matter.

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

The Unitary Division Member Cllr Richard Britton noted that the photographs did not give a proper impression of the extent that this site sloped back to the tree line. To gouge out all the earth was a major excavation and would create an alien feature. Clay street itself was a footpath, the site was in a rural setting, not far from New Forest. There were a range of buildings along Clay Street but nothing like what was being proposed here. He felt that the scheme could be attractive in an appropriate setting, but felt that it was not right for this unique setting.

Adding that the impact of the construction process would be detrimental to the neighbouring amenity during construction. Going from 3 beds to 10 on this site

was a massive increase. Incongruous effect of levelling this site. The houses themselves are out of keeping with the surroundings.

Cllr Britton moved for REFUSAL against Officer's recommendation. This was seconded by Cllr West.

The Committee then discussed the application. It was noted that the proposals were 2-storey houses and not chalet bungalows. Digging out a vast amount of soil to facilitate building a 2-storey property made no sense, as it would damage the landscape.

It was felt that the proposed design did not fit with the other properties along Clay Street. It was noted that the effect of a development of this scale on neighbours during construction was a material consideration.

Given the layout of the street, it was noted that there would be difficulty for lorries to turn and manoeuvre taking away the spoil. Further discussion and conditions could be added to minimalise the disruption caused, however it was noted that any disruption would be for a short period.

The Committee felt that the application was a massive over development of the site.

The Committee then voted on the motion of REFUSAL.

Resolved

That application 16/11803/FUL; Forest View, Clay Street, Whiteparish, Salisbury, Wiltshire, SP5 2ST, be REFUSED against Officer's recommendation for the following reasons:

The site currently contained a modest single storey dwelling, set within a sloping and verdant plot, and was accessed via Clay Street, an unmade and poorly surfaced private track, which also served as a public footpath.

In order to mitigate against the prominence of the development, the proposed creation of two five bedroom dwelling houses and parking and turning areas would require the lowering of the site's ground level, and would involve a significant amount of excavation and retaining structures. The resulting development would be of a far more prominent urban character and, in combination with the large scale of the two dwellings and their contemporary character, the development was likely to be unsympathetic to and out of keeping with the more rural character of the area, and the development of the site in the manner proposed was also likely to have a significant impact on residential amenities during construction works.

The scheme was therefore considered to be contrary to the aims of Core Policy 57 of the Wiltshire Core Strategy and paragraph 17 of the National Planning Policy Framework.

154 **17/00342/FUL: Land adjacent to Wilwyn Lane, West Winterslow, Wiltshire, SP5 1RQ**

Public Participation

Karen Chalmers (Applicant) spoke in support of the application.

Cllr Brown, vice chair of NHP steering cmmtt and Winterslow Parish Councillor spoke in Support of the application.

The Planning Officer drew attention to the late correspondence circulated at the meeting and introduced the application for erection of two new dwellings including garaging with office over and new pedestrian and vehicular access. The application was recommended for REFUSAL as it was sited outside of the housing policy boundary, however it has been identified as a possible site for development on the emerging West Winterslow Neighbourhood Plan (NHP).

The Committee had the opportunity to ask technical questions of the Officer, where it was noted that the development proposal was for 2 houses only and no further development on the site plan.

The Core Policy stated that there was sufficient housing in Winterslow at this present time.

The emerging NHP had 10 sites marked for development, which included three priority sites, and seven further sites in not order of preference. The NHP was yet to be adopted.

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

The Unitary Division Member Cllr Chris Devine noted that this was a justifiable exemption under CP2. Communities grow, the NHP steering group had achieved balance here, with sites across Winterslow. The proposal would create 2 modest family homes to enable the owners to keep the family together in the Village, and would release a modest family house on to the market.

Cllr Devine moved APPROVAL against Officers recommendation.

This was seconded by Cllr Hewitt. On the grounds that this was a justifiable exception to CP2.

The Committee then discussed the application. It was noted that the site was suitable for a development of two houses, however the NHP was in draft plan, and although it had the support of the parish council, the Committee should consider what was best for the community as a whole, and whether the application should wait until after the referendum, to adopt the NHP.

The Committee then voted on the motion of APPROVAL

Resolved

That application 17/00342/FUL; Land adjacent to Wilwyn Lane, West Winterslow, Wiltshire, SP5 1RQ be APPROVED against Officer's recommendation, with 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:

DWG No: CW/P/10 Site Location Plan, Proposed Block and Roof Plan Sections, Proposed Ground Floor and First Floor Plan Plot 1 Date Received 13.01.17

DWG No: CW/P/12 Proposed Sectional Elevation Date Received 13.01.17

DWG No: CW/P/13 Proposed Garage Elevations, Proposed Elevations for Plot 2, Proposed Roof Plan, Ground and First Floor Plans Date Received 13.01.17

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

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

REASON: In the interests of highway safety.

4. Any gate(s) shall be set back 4.5 metres from the edge of the carriageway, such gates to open inwards only.

REASON: In the interests of highway safety.

5. No part of the development hereby permitted shall be first occupied until the accesses, turning areas 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.

6. The development hereby permitted shall not be first occupied until a 2 metre wide pedestrian footway (to be dedicated as public highway) has been constructed across the entire site frontage and should link with adjacent existing dedicated highway land in front of Wilwyn.

REASON: In the interests of highway safety.

7. No development shall commence on site until details of the external materials to be used for the walls and roof of the development 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

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 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.

9. 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 any to be retained, together with measures for their protection in the course of development;**
- a detailed planting specification showing all plant and hedgerow species, supply and planting sizes and planting densities;**
- means of enclosure;**
- all hard and soft surfacing materials;**

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission

10. 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(s) 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.

11. Construction works shall take place only between the hours of 0800hrs to 1700hrs, Monday to Friday, and only between 0800hrs to 1pm Saturdays. No construction works shall take place on Sundays or Public Holidays.

INFORMATION

With regards condition 06 and the provision of a footpath, part of this footway would be within highway verge, the remainder would need to be dedicated as public highway. The developer should then contact the Council's Highways department to discuss the provision of this footpath and any dedication/adoption process.

155 17/00526/FUL: Duchy Cottages, 2 North Road, Mere, Wiltshire, BA12 6HG

Cllr Green left the meeting at this point and did not vote on this application.

Public Participation

Robert Pearce spoke in objection to the application

Roger Pitts spoke in objection to the application

Mr Sheldon spoke in objection to the application

Miss Hyde spoke in support of the application

Cllr Bret Norris spoke on behalf of Mere Town Council

The Planning Officer introduced the application for a two-storey extension to the rear of the property and proposed garage to the side of the terrace. The application was recommended for APPROVAL with conditions.

The Committee had the opportunity to ask technical questions of the Officer, where it was noted that both of the neighbouring properties either side of the site had single storey extensions. The Duchy had no objection to the changes.

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

The Unitary Division Member Cllr George Jeans noted for transparency, that one of the objectors was on the Mere Town Council, which he was a member

of. However, as this did not constitute an interest he took part in the discussion and voted on the application.

He also noted that the houses by character had single storey extensions. The main contention here was that there was a patio at the rear of the neighbouring property, which was used regularly by the residents to enjoy the outside light when they came home from work. He had visited the site and felt that the proposed development was too large and would block the light coming in to the neighbouring properties.

Cllr Jeans moved for REFUSAL against Officers recommendation, this was seconded by Cllr Devine.

The Committee then discussed the application. It was noted that the combination of a 2-storey extension with a wrap around and a vast garage make an unpleasant proposal, and was felt to be out keeping with the four terraced cottages.

It was noted that development to terraced houses was often difficult to find a balance. It was felt that the proposed development would affect 2 neighbours quite heavily, and that there was over development on this site, with the planned garage also being too large. The Character of the terraced houses would need to be retained.

The Committee then voted on the motion of REFUSAL

Resolved:

That application 17/00526/FUL; Duchy Cottages, 2 North Road, Mere, Wiltshire, BA12 6HG be REFUSED against Officer's recommendation, for the following reasons:

- 1. The property is located within a terrace of dwellings, and the rear garden of the property extends behind No.1 Duchy Cottages. The proposed two storey extension, by reason of its excessive length and height and its siting within close proximity to No. 1 Duchy Cottages, and the side boundary of no3 Duchy Cottages, would introduce a large and oppressive built form that would unduly affect the amenities of the adjoining neighbouring properties by its dominating effect, and by the likely overshadowing of the rear windows of No. 1 Duchy cottages, and the patio area to the immediate rear of No. 3 Duchy Cottages.**

The proposed development is therefore considered contrary to the aims and objectives of CP57 of the Wiltshire Core Strategy and the aims and objectives of the National Planning Policy Framework.

2. The proposal site in relation to the garage directly abuts the side garden area serving No. 1 Duchy Cottages, and the site itself is readily visible in the surrounding street scene, being positioned closer to the road than the existing dwellings. The proposed garage, by reason of its excessive scale and mass and siting would have a detrimental impact on the character and setting of the street scene, and would have an overbearing impact on the amenities of neighbouring property No1 Duchy Cottages.

The proposed development is therefore considered contrary to the aims and objectives of CP57 of the Wiltshire Core Strategy and the aims and objectives of the National Planning Policy Framework.

156 **Urgent Items**

There were no urgent items

(Duration of meeting: 6.00 - 8.25 pm)

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

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

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WILTSHIRE COUNCIL

AGENDA ITEM NO. 6

SOUTHERN AREA PLANNING COMMITTEE

6 APRIL 2017

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

THE WILTSHIRE COUNCIL (PARISH OF IDMISTON) PATH NO.9 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2016

Purpose of Report

1. To:
 - (i) Consider objections and representations of support received following the making and advertisement of “The Wiltshire Council (Parish of Idmiston) Path No. 9 Definitive Map and Statement Modification Order 2016”, under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council’s Business Plan

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

Background

3. Wiltshire Council received an application dated 3 November 2015 and made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Idmiston. The application is made by Mrs V Creswell on behalf of Porton Neighbourhood Plan Group, on the grounds that public footpath rights can be reasonably alleged to subsist or subsist over the claimed route, based on user evidence and should be recorded within the definitive map and statement of public rights of way, as such.
4. The claimed route is located in the village of Porton, in the parish of Idmiston, which lies to the north-east of Salisbury and the south-west of Amesbury (please see location plan at **Appendix A**). The claimed route forms a link between Porton High Street and the recreation ground, leading from its junction with the High Street in a generally north-north-westerly direction and split into three identifiable sections: (i) leading from the High Street over a grassed area for approximately 30 metres, (ii) through Bourne Close, an unadopted road with no footway, for approximately 46 metres and (iii) leading between the gardens of the properties 1A and 2 Bourne Close, to its junction with the recreation ground

via an enclosed section 6 metres in width, having a central metalled section 3.15 metres wide. There are concrete bollards at the southern end of the section between the gardens to prevent vehicular access to the recreation ground, with a litter bin provided at this point. Please see Order plan included at **Appendix C**.

5. The southern section of the route, laid to grass, is privately owned by Mr A Jones and the route through Bourne Close is over an area of unregistered land, which forms the Bourne Close roadway (including the section of the route between the gardens). This roadway is not publicly maintainable and officers consider that the common law belief that adjoining property owners own the land to the centre of the track, is likely to apply here and the road is therefore in the joint ownership/maintenance of the residents of Bourne Close to enable them to access their properties (including with vehicles). There are presently no recorded public rights over Bourne Close or the grass area and therefore members of the public cannot rely on public rights over this land to access the recreation ground.
6. The land in the ownership of Mr Jones, the grassed area A-B on the order plan (attached at **Appendix C**), has been the subject of three planning applications, as follows:
 - (i) 14/10638/FUL – Application registered 14/11/14 to erect new three bed detached dwelling – withdrawn.
 - (ii) 15/04079/FUL – Application registered 13/05/15, proposed two bed bungalow – withdrawn.
 - (iii) 15/10963/FUL – Application registered 08/01/16, proposed bungalow (resubmission of 15/04079/FUL). Refused 29/02/16 on the grounds of the footpath application and the adverse effect on the setting of the adjacent listed building Rose Cottage and the character and appearance of the conservation area.
7. Wiltshire Council commenced an initial consultation regarding the proposals to add a public footpath to the definitive map and statement of public rights of way in the parish of Idmiston, on 29 December 2015. The objections and representations received are summarised at Appendix 1 of the decision report attached at **Appendix B**.
8. Following its investigation of the available evidence, officers of Wiltshire Council produced a decision report in which a recommendation was made to senior officers that a footpath should be added to the definitive map and statement of public rights of way, on the grounds that a right for the public on foot can be reasonably alleged to subsist (please see decision report at **Appendix B**). Senior officers approved this recommendation on 17 November 2016.
9. 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. 9 Idmiston (please see definitive map modification order at **Appendix C**). Notice of the making of the Order was duly advertised, served on interested parties (including landowners) and posted on site.

10. Following the making of the Order, Wiltshire Council received 23 objections to the making of the Order and 5 representations of support, as follows:

Objections:

- (1) Mr Steve Ayling – Correspondence dated 16 January 2017
- (2) Mrs Sue Ayling - Correspondence dated 16 January 2017
- (3) Mr and Mrs W Baker – Correspondence dated 29 December 2016
- (4) Mr Paul Chivers – E-mail correspondence dated 12 January 2017
- (5) Gess Cuthbert – E-mail correspondence dated 17 January 2017
- (6) Mr M Dawson – E-mail correspondence dated 7 January 2017
- (7) Mr Steven Duffin – E-mail correspondence dated 23 January 2017
- (8) Mr R Gould – E-mail correspondence dated 22 January 2017
- (9) Mr Richard Green and Mrs Gillian Green – E-mail correspondence dated 7 January 2017
- (10) Mr Roly Grimshaw – Correspondence dated 16 January 2017
- (11) Mr Owen Harry – E-mail correspondence dated 16 January 2017
- (12) Sally Harry – E-mail correspondence dated 17 January 2017
- (13) Mr Dudley Humphreys – E-mail correspondence dated 16 January 2017
- (14) Idmiston Parish Council – E-mail correspondence dated 17 December 2016
- (15) Mr Mark Jones – Correspondence dated 23 January 2017
- (16) Mr C Joy – Correspondence dated 15 January 2017
- (17) Mr and Mrs Maher – Correspondence dated 13 January 2017
- (18) Mrs Pope – E-mail correspondence dated 12 December 2016
- (19) Mrs Janet Slater – E-mail correspondence dated 20 January 2017
- (20) Mr G Thomas – E-mail correspondence dated 12 January 2017
- (21) Mr Andrew Tidd – Correspondence dated 23 January 2017
- (22) Mrs Jan Tidd – Correspondence dated 23 January 2017
- (23) Mrs B Tooze – E-mail correspondence dated 15 January 2017

Representations of Support:

- (1) Mr Mark Adams – Correspondence dated 15 January 2017
- (2) Dr Patricia Appleyard – E-mail correspondence dated 23 January 2017
- (3) Mr K Bradley – E-mail correspondence dated 17 December 2016
- (4) Dr Matthew Brookes – Undated correspondence received within the formal objection period (acknowledged by Wiltshire Council 11 January 2017)
- (5) Mr D Creswell – Correspondence dated 2 January 2017

11. The objections and representations are included in full at **Appendix D** and officers' comments on the objections are set out at paragraphs 17 to 54 of this report.
12. Due to the objections outstanding, the Order now falls to be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are requested to consider (i) the objections and representations received in response to the making of the order, (ii) the evidence already before the Council in this case, and (iii) the legal tests for making a definitive map and statement modification order, under Section 53 of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for decision.

Main Considerations for the Council

13. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act and Section 31 of the Highways Act 1980, which refers to the dedication of a way as a highway presumed after public user of 20 years, are outlined at part 8 (pages 10-15) of the decision report attached at **Appendix B**.
14. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:

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

(i) that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”
15. Under Section 31(1) of the Highways Act 1980 *“where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been 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.”*
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 Objections

No evidence of use of the grass area and a footpath cannot be reasonably assumed to subsist when there is no evidence of it:

17. Gess Cuthbert states that whilst serving two separate periods on the Parish Council, on both occasions involved with the Amenities Committee which dealt with footpaths in the parish, *“the footpaths would be walked once a year by members of the committee and I have no recollection of the area in question being used as a footpath.”*

Mr and Mrs Maher state that in 7 years of living in Bourne Close, *“...we rarely saw anyone walk across path A to B, you’d occasionally see a child or dog take a short cut but never adults.”*

Additionally, 7 objectors claim to have accessed the recreation ground via the Bourne Close roadway and state that during their use they never saw anyone using the route across the grass.

18. This evidence must be viewed on balance with the 27 user evidence forms already before the Council, 26 of which outline the individual witness' use of the claimed route over the grass and through Bourne Close.
19. The Council cannot take into account the number of objections but must consider the evidence contained within those objections against the evidence contained within the representations of support and the evidence already before the Council, as outlined within the decision report attached at **Appendix B**. There will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, the order has been made based on a reasonable allegation that a right of way for the public on foot subsists, which is a lower test than the balance of probabilities. Where there is no incontrovertible evidence against this, it is in the public interest for a local authority to support the Order.
20. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen's Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective county councils for Orders to add public rights of way to the definitive maps and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the Councils should not be directed to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:
"(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied."
21. Owen J also held that:
"(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry."

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

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

23. Even in a case with only limited supporting evidence and a large number of objections, Owen J held that an Order would seem appropriate. When this case law is applied to the Idmiston case, where there are 27 completed user evidence forms, it suggests that the making of a definitive map modification order is appropriate.
24. In such a case concerning the balancing test to be applied to the evidence, the authority is correct in making the Order on the grounds that it is reasonable to allege that a right of way for the public on foot subsists. Where the objectors have not submitted incontrovertible evidence to defeat that reasonable allegation, the Committee should recommend to the Secretary of State that the Order be confirmed without modification. The only way to properly determine the Order is to see the witnesses at a public inquiry where they may give evidence in chief and their evidence may be tested through the process of cross-examination.

Footpath claimed to block planning applications, also preventing a much needed affordable house being provided in the area:

25. The landowner Mr Mark Jones states that the application to add a footpath was submitted by Mrs Creswell who is also leading a group of objectors to the planning application. He notes that no one submitted a footpath application before the planning application was known. Many of the witnesses are also objectors to the planning application and are aware that the implementation of a footpath will reduce the size of the plot sufficiently to prevent a house being built. Mr Jones suggests that the credibility of witnesses must therefore be brought into question.

Mrs Pope, who through Pope Plan and Build has provided architectural services and is representing Mr Jones in the planning process, states that *“the footpath application will not stop my client from applying for an application as the proposed dwelling can still fit on the land (slightly shifted towards Bourne Close) even if the footpath gets a go ahead, and vice versa if the footpath gets turned down that doesn’t necessarily mean that my client will get the permission to build.”*

Mr Geoff Thomas points out that *“at present there are more planning issues affecting his ability to gain planning permission than just the alleged footpath on his land.”*

“The fact that there was a planning application to erect a 2 bedroom property on the site is highly relevant to this application but the Council does not appear to have taken this into consideration when assessing the quality and reliability of the evidence submitted”

Mr Thomas also notes that the evidence in this case is *“...mainly written evidence from 27 users, of whom roughly half have previously objected to the planning applications.”*

Mr Thomas also points out that at the time of the first planning application, (for a three bedroom dwelling) and second planning application, (for a two bed bungalow), the objection letters make little reference to a footpath over Mr Jones' land, however by the third application objectors are referring to use of the land as a footpath.

26. Once Wiltshire Council receives an application to add a public right of way, it has a statutory duty to investigate and determine the application. As part of its investigations the Council may consider only the evidence before it. Whatever the motives of the applicant, the Council is in receipt of 27 witness evidence forms, which provide evidence of use of the claimed route over the grassed area and through Bourne Close for a period beginning in 1960, before the recent planning applications were submitted for this site.
27. Although planning issues are not relevant to the decision to make a definitive map modification order, it is noted that the claimed footpath is not the only reason for the refusal of the planning application to build a bungalow on the site, 15/10963/FUL. The application was also refused on the grounds that the proposal would have an adverse effect upon the setting of the adjacent listed building, Rose Cottage, and the character and appearance of the conservation area with no public benefits arising from the proposal which would outweigh this harm. The Council pointed out that it has a supply of specific deliverable sites sufficient to provide five years worth of housing against the housing requirements, the provision of housing is therefore not a material consideration which outweighs the adverse effects upon the listed building and the conservation area.

The route A-C along the Bourne Close road without crossing Mr Jones' land is the obvious route:

28. Mr and Mrs Baker state *“While out walking our dogs, we would always use the roadway of Bourne Close to go to the park, as many other people do...”*

Gess Cuthbert states *“I have lived in the village for over thirty-four years in that time [I] have walked my daughters and latterly my grandchildren from the High Street to the playing fields using the road through Bourne Close, especially pushing a pushchair never using the grassed area, in fact, I cannot recall seeing anybody else using it.”*

Mr Steven Duffin states *“I often visit the play park with my son and until now have always used the tarmac road on Bourne Close to gain access to the park, which quite clearly is a better option than walking across wet grass. It is obvious to me that I am not the only local resident with this view as I can't remember ever seeing anyone else not using the tarmac road for access.”*

Mr Roy Gould as a member of Idmiston Parish Council for 50 years states that *“During this period I have made countless visits to Porton Play Park (PPP) via the Bourne Close entrance in order to carry out hundreds of inspection and maintenance tasks in my role as parish councillor. Also, accompanying my children and later their children on twice weekly visits to the park. Throughout the 62 years I have lived in the parish of Idmiston, I have never ever witnessed any trespassers on the land at the junction of High Street and Bourne Close now belonging to Mr Mark Jones...The road linking PPP with the High Street, i.e. Bourne Close, is unrestricted to pedestrians and cyclists.”*

Mr and Mrs Green state *“There is certainly evidence available that many non residents of Bourne Close (including ourselves) have walked on the roadway from the High Street to the recreation ground during the period between when Bourne Close was built and the present day and this is the usual route taken, not the route across the privately owned piece of grass.”*

Mr R Grimshaw *“I live in Porton, with my wife and disabled mother-in-law. We walk our dogs daily and often access the playground from the High Street. We would not dream of crossing the usually damp and messy patch...”*

Mr Owen Harry writes *“Myself and my family regularly walk in this area and have done so for many years now and see no issue using the tarmac road for this route, using the grassland as the path seems completely unnecessary.”*

Sally Harry writes *“I regularly walk in this area with my granddaughter on our way to the recreation ground and have no issue with the current route. I consider a footpath on the grassland at that point unnecessary...”*

Mr D Humphreys states *“I am a resident of Porton and have lived in the village since 1998. During this time, I have used the footpath to and from the park. The majority of people that I have observed, over the various date and times, like me, have used the tarmac road rather than use the grass triangle.”*

The landowner Mr Mark Jones suggests that *“There is a perfectly good level and safe route for pedestrians from A to C on the little used tarmac road.”*

Mr C Joy writes *“My brother and I walk to the local shop everyday. We regularly continue up the High Street, walk into Bourne Close on the tarmac road through the park and back home. We have lived in this village over 70 years and do not see any point having a footpath over the grass area when there is a perfectly good tarmac road to use.”*

Mr and Mrs Maher state that part of the *“Path A to B is across private land and there is already a tarmac path in the same direction next to it that is already used constantly. Path B to C has always been used as a route to the park anyway.”*

Mrs Slater states that *“Anyone wishing to access Porton playing field from the High Street would normally walk on the nearby tarmac roadway...I have lived in the village, close to the area concerned for nearly 40 years and have never understood there to be a footpath over this green area, and have always walked on the tarmac.”*

Mr and Mrs Tidd state that they always walked their dogs *“through the playing field by the entrance on Winterslow road and then through and out down Bourne Close. We have never walked on the grass verge as it does not join the pathway to the playing field and it is a very very quiet road with hardly any traffic movements, except for access to the houses, therefore there was no necessity to walk anywhere other than on the roadway.”* To their knowledge and recollections, they have never seen anyone walking along the grass and everyone that they are aware of uses the roadway.

Mrs Barbara Tooze considers the order route to be in the wrong place where *“People walk to the recreation ground along the roadway of Bourne Close from the High St...perhaps the order should place the footpath along the route taken by so many people, including myself in the past, and follow the line of the roadway rather than across the piece of open land.”*

29. There may be evidence that the public used a route over the tarmac route of Bourne Close, and there is certainly evidence of this provided by the objectors. However, this must also be balanced against the 27 witness evidence forms provided from users of the grass area and it is significant that witnesses refer to their use being brought into question by the erection of a fence around the land in March 2015. The application for the addition of a footpath followed in November 2015, after the public were physically prevented from using the order route. If users had not been using the grass area, but were using the roadway instead, the claim may not have occurred where public use of a route on the roadway, was not brought into question.
30. Supporters of the application suggest that path users walked the grass area as a safer alternative to the Bourne Close roadway. Mr Mark Adams, in his representation of support, advises that *“Until March 2015, this land has not been fenced off for more than 25 years, and has been used by village residents and children for walking dogs and specifically for safe access to the recreation ground in Bourne Close. The shape of the Close produces a blind corner and, as there is no pavement, this puts pedestrians, especially children, at risk from oncoming traffic in either direction. As such access across this small parcel of land has been treated by default as a ‘right of way’ and has become a community asset, which helps justify formal establishment of a public right of way.”*
31. Mr Ken Bradley used the order route as an access to the playing field, avoiding the busy Winterslow Road. In his representation of support he states that *“During the time I have lived in Porton I have used this footpath myself and also been aware of others using it for the purpose of gaining access to the playing field, walking dogs or using it as an alternative to the path running alongside the main road (Winterslow Road). You will be aware that Winterslow Road carries a high volume of traffic including heavy vehicles and buses. When these pass each other, and due to the width of the road, they are very close to the associated pavement with their wing mirrors overhanging the pavement risking injury to pedestrians.
The value of this footpath is that it provides a safe passage for children on their way to the playing field away from the dangers of the busy Winterslow Road.”*

What Law or Byelaw allows a Council to confiscate land from a private landowner without any definitive reasons and without the use of compulsory purchase:

32. Section 53 of the Wildlife and Countryside Act 1981 allows any party to make an application to amend the definitive map and statement of public rights of way, in this case adding a footpath. It also places the Council under a duty to investigate and determine the application and where it fails to do so, the Council is liable to complaints, potentially leading to a complaint to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

The route A-B (the grass area) is over private land:

33. All recorded public rights of way are public rights over private land (unless the land is unregistered).
34. There are presently no recorded public rights of way over Bourne Close and therefore no public right of access from the High Street to the recreation ground via the Bourne Close roadway.
35. When the land registry index map is examined it shows that the Bourne Close roadway does not have a title number and appears to be unregistered land, however it is assumed that the common law position applies whereby adjoining property owners (in Bourne Close) are said to own to the centre point of the road and are jointly responsible for maintaining the road in order to access their properties, including with vehicles. It has been suggested by two of the objectors that the Parish Council owns and maintains this road as an access to the recreation ground, Officers have requested further evidence of this from the Parish Council, but no evidence of this has been forthcoming.

The application and the investigation and determination of the application is a waste of taxpayers money:

36. Where a definitive map modification order application is made, the Council is placed under a statutory duty to investigate and determine the application. Where the Council fails to make a decision within 12 months of the application the applicant may apply to the Secretary of State for the Authority to be given a deadline for determination of the application.

Mr Jones has owned the land for 12 years and during that time nobody has previously applied for a footpath across it:

37. Claims to add public rights of way are usually not made until the right of the public to use the way is brought into question. Officers consider it quite reasonable that the public would continue to use this route without a claim being made until the fence was erected around the whole of the grassed area in March 2015, which physically prevented the public from using the route at this time. The application is dated 3 November 2015 which presents a reasonable time between the physical obstruction of the claimed route and the application being made, including the gathering of evidence from witnesses. The witnesses and the landowner do not make any reference to an earlier action by the landowner to prevent the public using the route which would have brought public use of the

right of way into question. If Mr Jones, as the landowner, had taken action prior to 2015 to prevent public use of the claimed route, we may have received an application to add a footpath at that time.

Only a few local houses opposite stand to benefit:

38. Where a public right of way is added to the definitive map and statement of public rights of way, the public as a whole stand to benefit and at present there are no recorded public rights of way to access the recreation ground through Bourne Close.

No need for the path:

39. Mr M Dawson states *“it would save only 10 metres maximum in walking distance it obviously is not needed.”* and points out that if the footpath were installed *“the land would be fenced off and a fenced walkway for the footpath created with a stile at either end who is ever going to use it nobody”*

Others have pointed out that there is a suitable alternative route available on the Bourne Close roadway.

Mr R Grimshaw objects to the application, the principal reason being the lack of disabled access, and suggests that a route wholly on the Bourne Close tarmaced road area would be accessible.

40. The “need” for the path is not a matter which the Council may consider in its determination of the application. It may only consider the available evidence of use and any documentary evidence, although it is useful supporting evidence to know where users were going and how and why they used the path. The Council must consider the evidence before it, rather than the need for the claimed route, for example where there is a suitable alternative route.
41. There are no recorded public rights over the Bourne Close roadway and if the footpath were added to the definitive map and statement of public rights of way and subsequently fenced out of the field, stiles could not be included where they are not present on the claimed route; it is not the policy of Wiltshire Council to provide stiles which are the most restrictive access option for public rights of way (pedestrian gates being less restrictive and a gap being the least restrictive) and gates on a public right of way may only be authorised where they are necessary for the purposes of stock control.
42. In his letter of support Dr Matthew Brookes states that *“Cllr Mike Hewitt...appears to be ignorant of the fact that Bourne Close is a Private Road. Therefore his comment that there is ‘no justification’ for formalizing the access to the playpark because there is access via the road (Bourne Close) is incorrect; both ‘A to B’ and ‘walking a short distance along the road’ are ‘over private land’, and clarification of a Right of Way is therefore desirable. His suggestion that walkers use the road in preference to the ‘A to B’ route puts walkers, particularly children, at risk from traffic at the junction because there is no pavement on the Private Road...We have three young children and have found traffic turning into and out of Bourne Close a hazard because of the lack of pavement. The fact that*

the junction is not busy actually increases the risk because it reduces both driver and pedestrian vigilance.”

43. In his letter of support, Mr David Creswell states that *“Such a right of way will give the public a right of access to the Recreation Ground from the High Street without being dependent upon the good offices of the owners of Bourne Close, a private road. The new path will considerably enhance the safety of pedestrians seeking access to the Recreation Ground form the High Street by separating them from the road traffic on Bourne Close.”*

It would seem that rights of way officers are working with the Neighbourhood Planning Group and are trying to use their powers incorrectly, working outside their remit:

44. Officers have assessed the evidence in this case independently and case law within the Norton and Bagshaw judgement would suggest that Wiltshire Council was correct to make the Idmiston Footpath No. 9 definitive map modification order. The Council is not working outside its remit as once an application to amend the definitive map and statement of public rights of way is received, the Council is placed under a duty to investigate and determine the application and where it fails to do so it is liable to challenge with associated costs against the Council.

Incorrect right of representation:

45. Mr Mark Jones notes that the decision report states that the application *“is made by Mrs Creswell on behalf of Porton Neighbourhood Plan Group”*. *The Neighbourhood Plan is in draft form only and has not been ratified by Idmiston Parish Council and this group is not a representative body, it is misleading to make that claim.”*
46. The application to Wiltshire Council is made by the “Porton Neighbourhood Plan Group”, this cannot now be amended by Wiltshire Council. Wiltshire Council has subsequently received a letter of objection from Idmiston Parish Council. The Council is only entitled to consider the evidence before it and the applications submission in the name of the “Neighbourhood Plan Group” is not a material factor in the determination of the application.

Inaccurate witness statements:

47. The landowner claims that the witness statements are in many cases blatantly inaccurate and need to be verified before a decision is taken. Where there is dispute within the evidence the Order will be forwarded to the Secretary of State, for determination. In a witness evidence case, it is likely to be determined by an Inspector appointed on behalf of the Secretary of State holding a local public inquiry, at which all parties will have opportunity to give their evidence. The evidence will then be tested through cross-examination, which will highlight areas of inaccuracy within the evidence.

The Parish Council has objected:

48. Idmiston Parish Council has objected on the grounds that it believes the application to modify the definitive map is unnecessary and stating *“Section B to C on the proposed definitive map modification order has long been under the jurisdiction of Idmiston Parish Council, as a recognised way of entering Porton Playing Fields. There would be no objection to this section becoming a public footpath, although the change is felt to be unnecessary. In contrast, the proposed Section A to B is over a piece of privately owned grassland which provides little or no advantage to pedestrians over the existing access via the tarmac part of Bourne Close. Making section A-B part of the definitive footpath map would disadvantage the landowner and provide no sensible advantage to parishioners.”*
49. Mr Andrew Tidd was Chair of Idmiston Parish Council from April 2008 – May 2012, he had also worked as a Parish Councillor for over six years and it was his understanding that the Bourne Close roadway belonged to the Parish Council and it was the Parish Council’s responsibility to maintain it. Mrs Jan Tidd, who was Chair from May 2012 to July 2014 and Parish Councillor for over six years, also held this view.
50. No evidence that the Parish Council owns or maintains the Bourne Close roadway has been received by the Council and there are no recorded public rights of way over Bourne Close to access the recreation ground, not even over the section which the Parish Council claims to own and maintain.
51. Whilst the Parish Council does object to the application, this must be balanced against the evidence already before the Council in the form of 27 completed witness evidence forms.

Conclusion:

52. In conclusion, the Order has been made on a reasonable allegation that a right of way for the public on foot, subsists over the land in question and this is a lower test than the balance of probabilities. Where the objections offer no incontrovertible evidence against this, it is in the public interest for a local authority to support the Order.
53. Members of the Committee should now consider the objections and representations 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 decision and Members of the Committee are required to determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State.
54. Please note that all references to the available evidence, now include the submissions made at the formal objection period (please see correspondence at **Appendix D**), as well as the evidence considered within the decision report dated 22 June 2016, (included at **Appendix B**). Members should note that the evidence in full is available to be viewed at Wiltshire Council’s Offices at Ascot Court, Trowbridge.

Overview and Scrutiny Engagement

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

Safeguarding Considerations

56. 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

57. 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

58. Where an Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 62-65 of this report.

Environmental and Climate Change Impact of the Proposal

59. 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

60. 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

61. 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 of public rights of way 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 complaints to the Local Government 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

62. 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.
63. 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.
64. 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).
65. Where the Council makes an Order in respect of which it receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

66. Where the Council no longer supports the making of the Order, clear evidential reasons for this must be given, as the applicant may seek judicial review of the Council's decision if this is seen by them to be incorrect or unjust.
67. The determination of an Order, in respect of which the Council 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

68. The options are:
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;

- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
- (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear evidential reasons given for this resolution.

Reason for Proposal

- 69. 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.
- 70. Officers have fully considered the evidence submitted within the objections; however, where the Order has been made based on a reasonable allegation, nothing within the objections causes officers to consider that the Order has been incorrectly made (particularly where the Norton and Bagshaw judgement is applied), or that the order is incapable of confirmation.
- 71. There is conflicting evidence in this case; however, officers consider that the Council is correct in making the Order and it should now be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification. Witness evidence may then be presented in chief at the public inquiry and tested through the process of cross-examination.

Proposal

- 72. That “The Wiltshire Council (Parish of Idmiston) Path No. 9 Definitive Map and Statement Modification Order 2016”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Janice Green

Rights of Way Officer

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

Witness evidence forms

Correspondence received as part of the initial consultation

(The above-mentioned documents are available to be viewed at the offices of Rights of Way and Countryside, Wiltshire Council, Unit 9, Ascot Court, Trowbridge.)

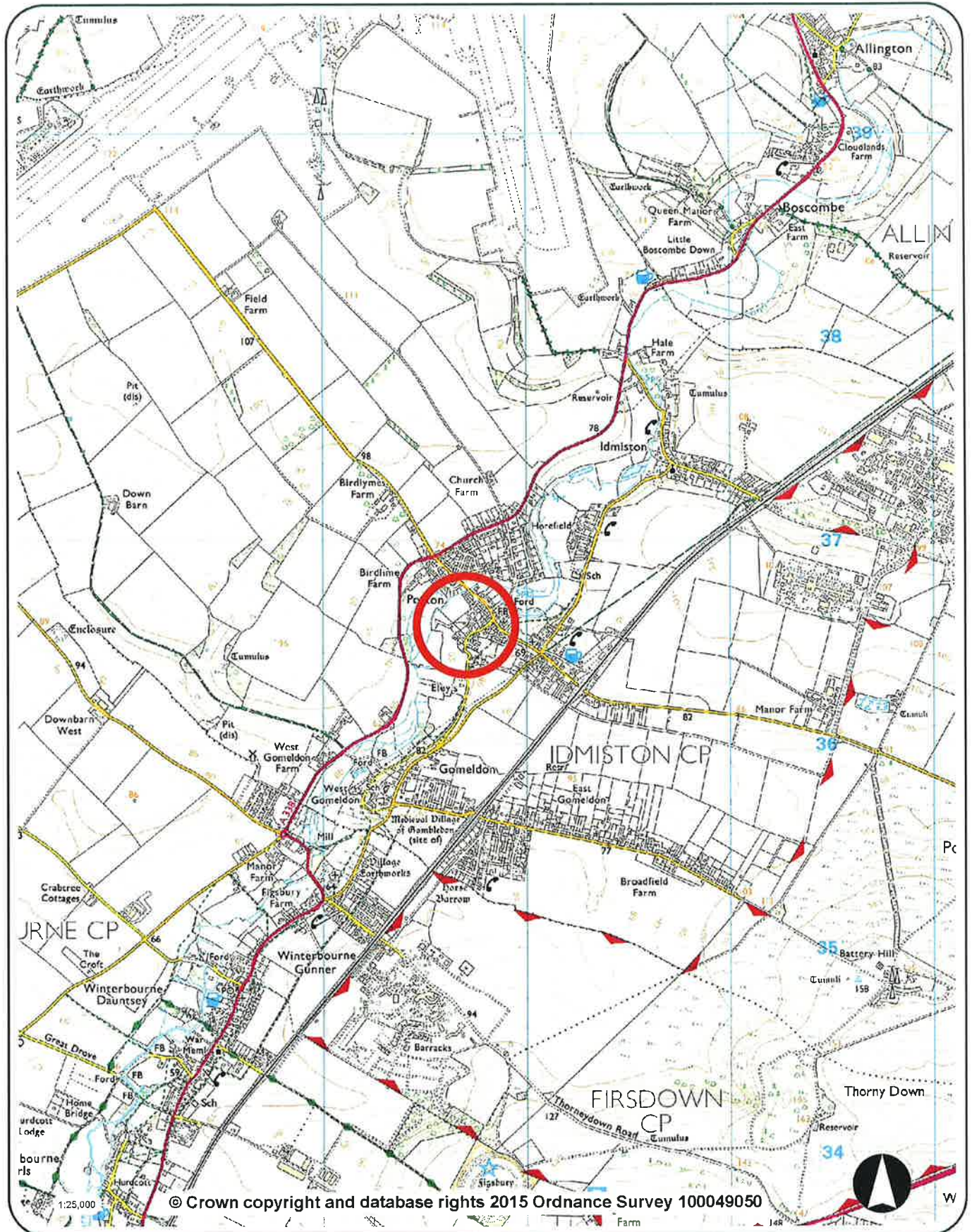
Appendices:

- Appendix A** – Location Plan
- Appendix B** – Decision Report (22 June 2016)
- Appendix C** – “The Wiltshire Council (Parish of Idmiston) Path No. 9 Definitive Map and Statement Modification Order 2016”
- Appendix D** – Correspondence received in the formal objection period:
 - (i) Representations of objection
 - (ii) Representations of support
- Appendix E** – Correspondence from Mr David Adams dated 22 March 2017 – Received outside the formal objection period of 8 December 2016 – 25 January 2017

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APPENDIX A – LOCATION PLAN

Location Plan Application to Add a Footpath - Idmiston

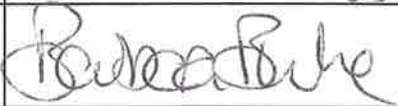





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APPENDIX B – DECISION REPORT (22 JUNE 2016)

COVERING PAGE FOR DECISION REPORT ON APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – IDMISTON (PORTON)

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sarah Marshall (Solicitor – Highways)	N/A	—
	Barbara Burke (Definitive Map and Highway Records Team Leader)		27.06.2016
	Richard Broadhead (Rights of Way and Countryside Manager)		13/07/2016
	Ian Brown (Head of Environment Services)		21/7/16
	Tracy Carter (Associate Director – Waste and Environment)		7.11.16
From:	Janice Green		
Date of report:	22 nd June 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 3rd November 2015, to add a footpath to the definitive map and statement of public rights of way, in the parish of Idmiston, leading from Porton High Street, (adjacent to the property Rose Cottage), in a generally north-north-westerly direction, through Bourne Close, to the recreation ground. The application is supported by 27 completed user evidence forms and photographic evidence.

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 dedicate the land 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 Idmiston, leading from Porton High Street, in a generally north-north-westerly direction, through Bourne Close, to the recreation ground 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 – IDMISTON (PORTON)

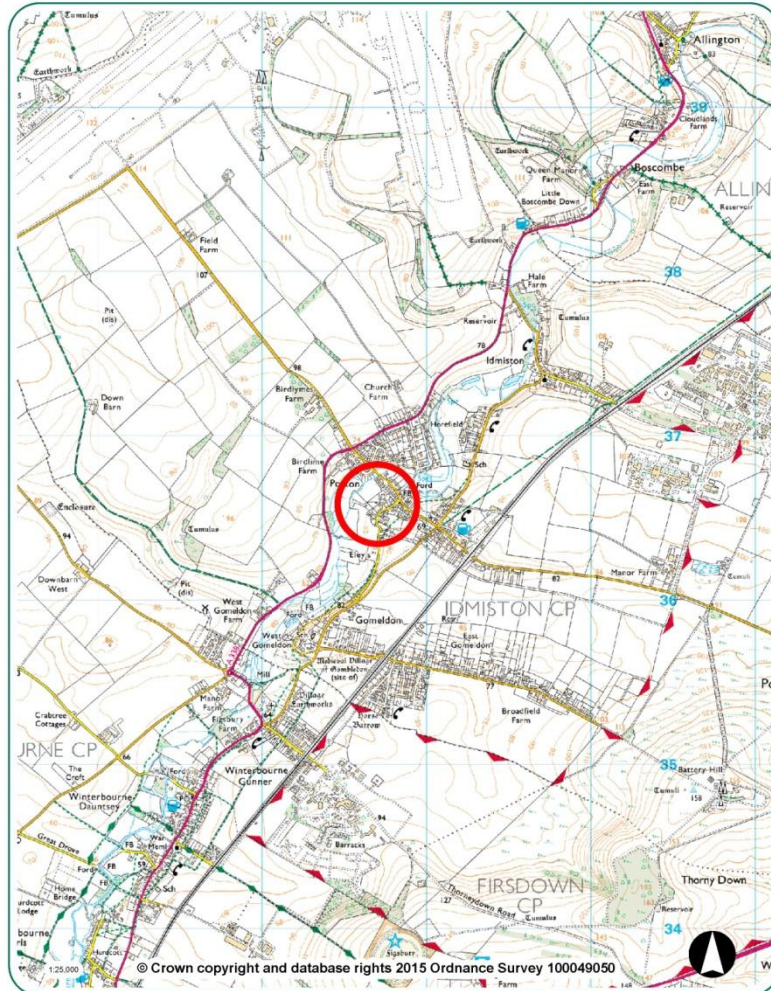
1. Purpose of Report

- 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 Idmiston, between Porton High Street and the recreation ground.

2. Relevance to Council's Business Plan

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

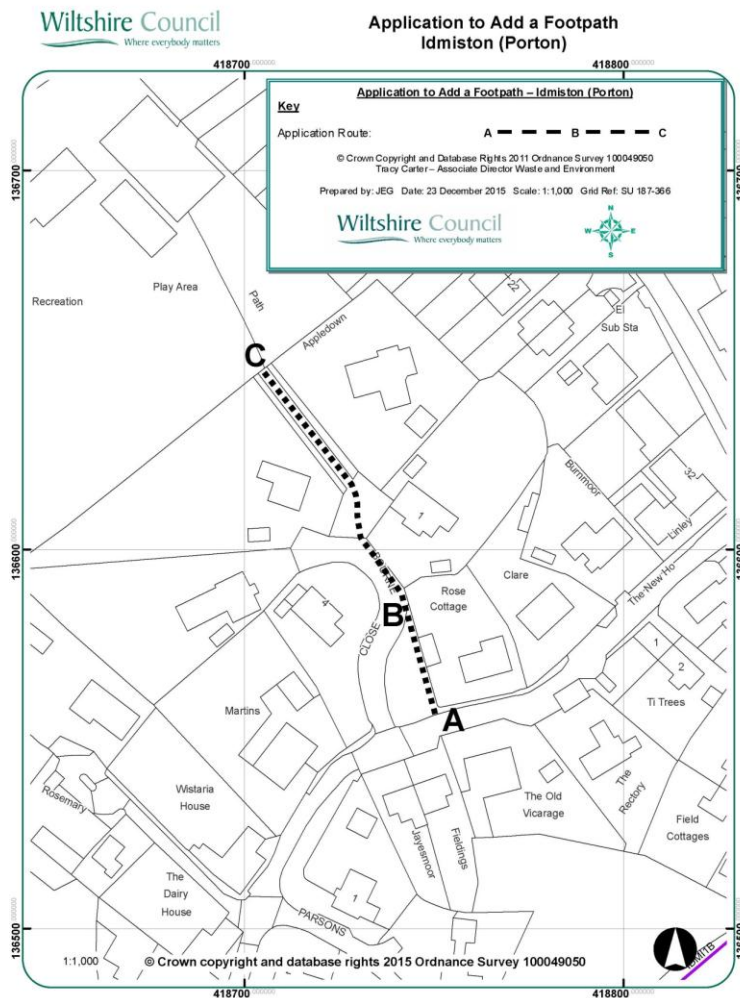
3. Location Plan



Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way in the
Parish of Idmiston (Porton)

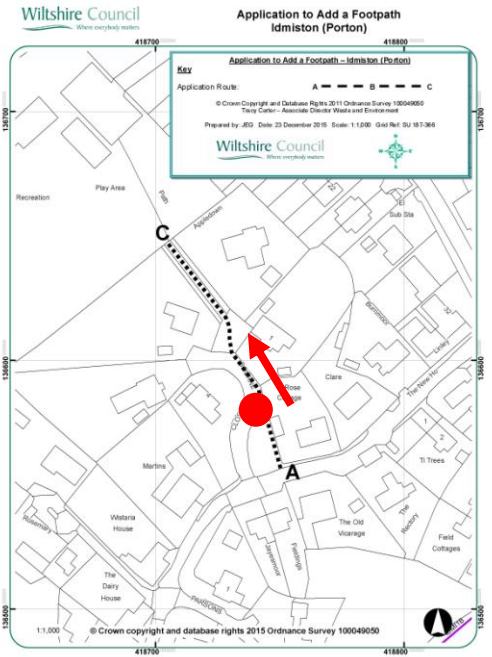
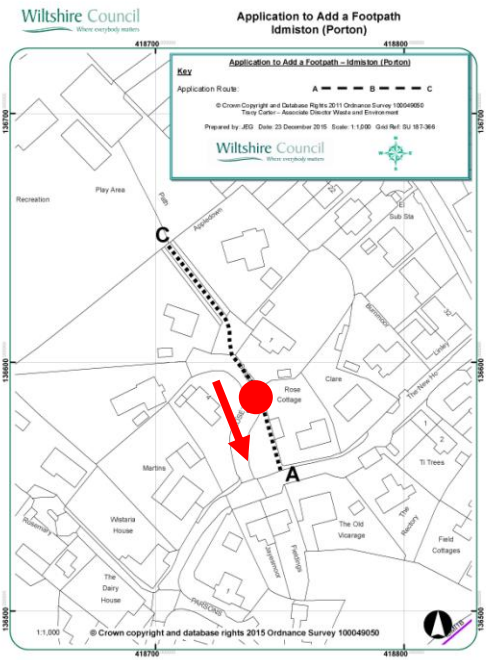
4. Claimed Footpath Route

Date: 23/12/2015

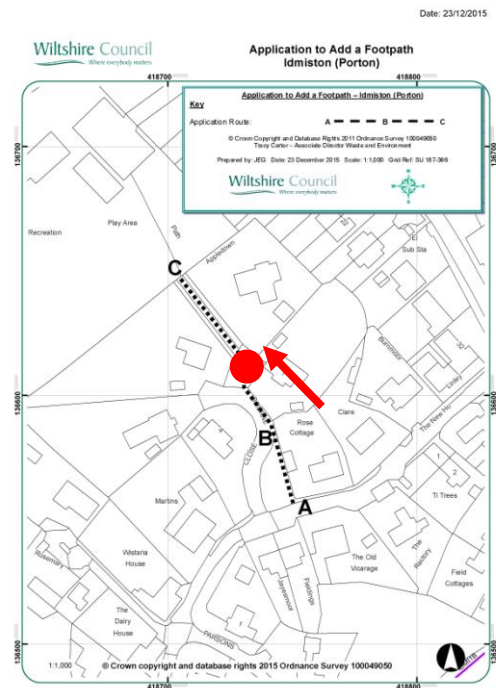
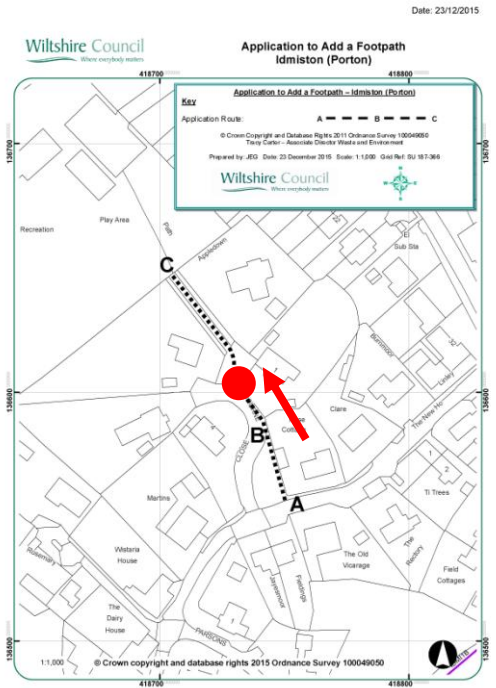


- 4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the Parish of Idmiston, leading from Porton High Street in a generally north-north-westerly direction to the recreation ground.

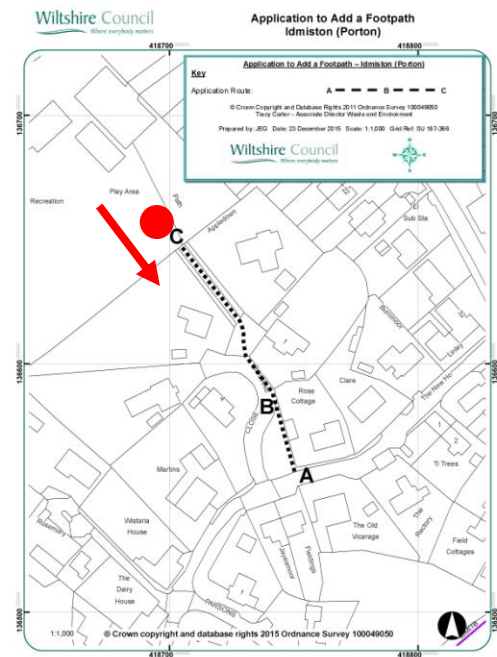
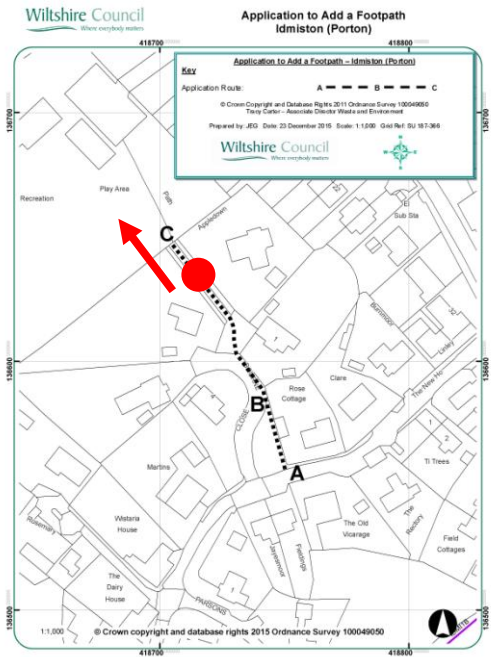
Decision Report: Wildlife and Countryside Act 1981 – Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way in the Parish of Idmiston (Porton)



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 in the
 Parish of Idmiston (Porton)



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 in the
Parish of Idmiston (Porton)



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 in the
 Parish of Idmiston (Porton)

6. Registered Landowners

Mr A Jones
159 East Gomeldon Road
Gomeldon
Salisbury
Wiltshire
SP4 6NB

Mr and Mrs W Maher
1 Bourne Close
Porton
Salisbury
Wiltshire
SP4 0LL

Dr's G & A Appleyard
1A Bourne Close
Porton
Salisbury
Wiltshire
SP4 0LL

Lt Col & Mrs A Lee
2 Bourne Close
Porton
Salisbury
Wiltshire
SP4 0LL

Mrs J Hoddinott
3 Bourne Close
Porton
Salisbury
Wiltshire
SP4 0LL

Mr & Mrs R Bray
4 Bourne Close
Porton
Salisbury
Wiltshire
SP4 0LL

7. Background

- 7.1. Wiltshire Council are 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 Idmiston (Porton), leading in a generally north-north-westerly direction from Porton High Street, alongside Rose Cottage and through Bourne Close to the recreation ground (an area of

land owned by Porton Parish Council and to which the public are allowed full access during its opening hours). The application is dated 3rd November 2015 and is made by Mrs V Creswell on behalf of Porton Neighbourhood Plan Group, on the grounds that public footpath rights can be reasonably alleged to subsist over the claimed route 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. The application form (which consists of forms 1 and 3) is accompanied by a plan drawn at a scale of 1:1,500 highlighting the claimed route and 2 completed user evidence forms. A further 25 user evidence forms were submitted following the application date.

- 7.2. The claimed route is located in the village of Porton, in the parish of Idmiston, (which lies to the north-east of Salisbury and the south-west of Amesbury) and forms a link between the High Street and the recreation ground. From its junction with the High Street the claimed route leads generally north-north-west, over a grassed area in the private ownership of Mr A Jones, for approximately 30m and then through Bourne Close, a private road with a made up surface with no footway and which is in multiple ownership, for approximately 46m. The last 38m of the route to the recreation ground, leads between the gardens of the properties 1A and 2 Bourne Close, having a total width of approximately 6 metres between the hedges and fences of the gardens and a central surfaced area which has a total width of approximately 3.15m with curb stones. There are concrete bollards erected at the southern end of this section to prevent vehicular access to the recreation ground, (there is an alternative vehicular access to the recreation ground off Winterslow Road. A litter bin is also provided at this point).
- 7.3. The claimed route terminates at the double gates of the recreation ground. The gates have public notices from Idmiston Parish Council who own the land requesting that members of the public clean up after their dogs and setting out other prohibitions on the land. One of the notices states that: “*Access and use*”

of this playing field shall not be permitted during the hours of darkness or when the gates are locked by the parish council.” The Parish Council have confirmed to Wiltshire Council that whilst they own and maintain the land, giving full public access, they employ a gatekeeper to lock and unlock the field each day so that it is open from around 8:30am until just before dark, which was found necessary to prevent vandalism and antisocial behaviour during the late evenings.

- 7.4. Wiltshire Council undertook an initial consultation regarding the proposals on 29th December 2015. The objections and representations received are summarised at **Appendix 1**, (please note that all correspondence is available to be viewed in full with the Rights of Way and Countryside Team, Unit 9 Ascot Court, Trowbridge, Wiltshire, BA14 8JN).

8. Main Considerations for the Council

- 8.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, (excluding the borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.

- 8.2. The Wildlife and Countryside Act 1981 section 53(2)(b) applies:

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

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on

or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”

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

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

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

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

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

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

“Form of applications

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

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

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

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

8.6. The application to add a right of way to the definitive map and statement of public rights of way in the Parish of Idmiston (Porton), has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:1,500 and 2 completed witness evidence forms (plus an additional 25 witness evidence forms submitted after the application date).

8.7. 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...

- 8.8. Section 32 of the Highways Act 1980, states that the authority should consider a range of historical documents and their provenance in relation to the claim:

“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 2** to this report.

- 9.2. The tithe award map 1841; Map of the Common Fields and Village of Porton c.1845 and Bonakers Farm Sale Particulars 1866, suggest a route corresponding with the location of the claimed route, off Porton High Street. The 1845 Map of the Common Fields and Village of Porton shows this route gated from the High Street. These maps do not record a continuation of the route past the Manor Farm buildings, on the claimed route or indeed any other route. This can be seen particularly on the 1845 Map of the Common Fields and Village of Porton, where there are gates off the High Street into the Manor Farm yard and then a second gate into what appears to be another part of the yard or a separate field. There are then gates to the south-east and south-west of this yard / field. The gates to the south-east simply lead back into the first yard and the gate to the south-west leads into the field beyond to the west, but there is no path continuation recorded through the field and no gate is provided in the north-west of the Manor Farm complex to access the claimed route.
- 9.3. When looking at these documents alongside other historical documents, it seems that the route which they record leading off the High Street is more likely to be a private route leading into the Manor Farm buildings complex, (which is now mostly demolished and Bourne Close built on the site), with no connection to other public highways. The Porton Inclosure Award (1850), does not record the claimed route either on the map or within the award document itself as a new public highway to be set out, or as an ancient public highway to be retained, (the Commissioners did have the power to set out public footways). Additionally the historic Ordnance Survey maps, which are topographical in nature and accurately record features visible to the surveyor on the ground at the time of survey, do not record a footpath at this location.
- 9.4. This does not mean that public rights over the claimed route do not exist and we must now consider the available user evidence in this case.

10. User Evidence

- 10.1. The application is accompanied by 27 witness evidence forms with maps attached. Landowner evidence forms have also been submitted by Mr A Jones (owner of the green area adjacent to the High Street); Dr's Patricia and Geoffrey Appleyard (1A Bourne Close); Mr Wayne Maher (1 Bourne Close) and Mr Raymond Bray (4 Bourne Close).
- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to 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 public 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 and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in 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 Idmiston case, 19 of the 27 witnesses make reference to the erection of fencing around the green area off the High Street. They refer to their use of the path ending when it was obstructed by the fencing or note the fencing as an obstruction to the claimed route. The following references to the date of obstruction of the route are made:

User	Date of Obstruction
1	Last used 2005. Now there is a metal builders fence obstructing the route (witness evidence form dated 18/11/15).
2	Since March 2015 there has been a fence obstructing the way.
4	Used until late March 2015 after which it was obstructed by fencing between points A and B (please see plan at 4). The section of the route across the grass was blocked by fencing on 30 March 2015 (between points A and B).

	No obstructions until 30 March 2015 when the section from A to B was completely blocked by the erection of temporary fencing.
8	Last used early 2015 before it was fenced off. A fence has been erected during 2015.
10	Last used March 2015. Metal fencing was erected on 30 th March 2015 obstructing the path.
11	Last used March 2015. No obstructions of the route until temporary metal fencing appeared in March 2015.
12	Last used Spring 2014 before it was fenced. Fencing has been up since late spring 2014. I don't understand why the fencing has gone up, stopping access.
14	In recent months a wire fence has been erected which stops any entry to the path (witness evidence form dated 20/11/15).
16	Used until 2015, last used earlier this year before it was fenced off (witness evidence form dated 03/11/15). This land until recently was not fenced off and was open for public use.
17	Used until about April 2015 when a fence was erected. Unable to recall exact day when last used but approximately April 2015. Currently obstructed by metal fence (witness evidence form dated 28/11/15). Told by the owner of the land that it was private and he did not want the public to walk on his land on the day / morning that he was putting up his metal fence in April 2015.
19	Used until 2015 when it was closed off, last used summer 2015.
20	Last used 2015. A fence has been recently erected (witness evidence form dated 22/11/2015).
21	Last used 2013. Fence created round the circular green. High Street fence erected around the green in 2013.
22	Used until present day, until it was fenced off. Not sure of last use but probably Easter 2015. No obstruction of the route until earlier this year (2015), when it was totally fenced off (witness evidence form dated 25/11/15).

23	Used until the present day, last used April / May (witness evidence form dated 25/11/15). No obstructions of the route until the grass area was recently fenced.
24	Last used Spring 2015. The route obstructed only in recent months by Harras fencing (witness evidence form dated 11/12/15).
25	Last used February 2015. Obstructed only by the fencing erected at the corner of Bourne Close in March 2015.
26	Last used October 2015. Route obstructed recently (March 30 2015), by moveable, temporary fencing.
27	Last used 2015. Route not obstructed until 2015 when the owner ceased mowing the grass and erected metal temporary fencing, as he is trying to get planning permission on the small area of grass.

10.7. The landowner of the grassed area, Mr A Jones, confirms that he fenced in the whole plot in 2015 and this is supported by 16 witnesses who appear to support a date around spring 2015 and 3 witnesses are able to give a specific date of 30th March 2015. This fencing prevented the public from using the claimed route in full and serves to bring the public right to use the way into question, therefore the 20 year user period should be calculated retrospectively from the date of the obstruction on 30th March 2015 and the user period in question is 30th March 1995 – 30th March 2015.

10.8. Within the completed landowner evidence forms received by Wiltshire Council, the landowners do not make reference to any previous action which would bring the right of the public into question at an earlier date:

- 1) Mr Jones, as owner of the green area of land for the last 12 years, does not believe the way to be public and has held this belief for over 35 years. He has not seen members of the public using the way and

would expect members of the public to ask permission before using the land as it is private land. He has not deposited a plan and statement with Wiltshire Council under Section 31(6) of the Highways Act 1980, to indicate his non-intention to dedicate the land as a highway. He has never turned back or stopped anyone from using the way, or told anyone using the way that it was not public, as he has not seen members of the public using the claimed route. If he had been aware of people walking on the land, he would have asked them to stop doing so. There has often been dog fouling of the land caused by dog owners allowing their dogs loose on the land whilst walking in Bourne Close or the High Street. He has on occasion asked people not to do this and has also asked people who have parked cars without permission on the land to remove their vehicles. He has never erected notices or signs stating that the way was not public as this was not necessary and there have never been any stiles or gates over the land. He has now obstructed the claimed route (A-B), as shown on the plan attached at 4, by fencing this plot of land.

- 2) Dr's Patricia and Geoffrey Appleyard of 1A Bourne Close ("Appledown"), have owned their property and with it joint ownership of the private road in Bourne Close, for 11 years and 10 months. They have made the following comments and observations regarding the claimed path. They do believe the claimed route to be a public footpath. Dr Patricia Appleyard has held this view since 2004 (i.e. since moving to Bourne Close) and Dr Geoffrey Appleyard has held this view since 1989 when he moved back to Porton. They have observed many members of the public walking to and from the recreation ground, walking dogs etc. on a daily basis since living at "Appledown", such that they assumed that the route was a right of way. They have never asked anyone to seek permission before using the way and have not deposited with Wiltshire Council a plan and statement under Section

31(6) of the Highways Act 1980. They have never turned back or stopped anyone using the way and have never told anyone using the way that it was not public. They have never erected notices or signs stating that the way was not public and there has only ever been a gate at point C into the recreation ground (see plan at 4), with no stiles on the route. They have never obstructed the way themselves but they note that the section of path A-B (see plan at 4), was in regular use until it was obstructed by fencing in late March 2015. Mr A Jones purchased the grass area in 2004, at which time he lived opposite in Jayesmoor and could not have failed to be aware that members of the public were using the claimed route, both before and after he acquired it. He made no attempts to stop them and voiced no objections to the use, the only concern he expressed was that some people had parked vehicles on the land without his permission. Prior to 2004 this part of the land was owned by Mr Pike, who previously lived at "Appledown". Neither Mr Pike nor the first owners of "Appledown" made any attempt to fence the land to prevent access.

- 3) Mr Wayne Maher of 1 Bourne Close states that he has owned the property for 8 years and he believes the status of the way to be private. He has only ever seen, on the odd occasion, a child running across the land, it is very boggy on the grass area. He has never required people to ask permission before using the way and he has not deposited with Wiltshire Council a plan and statement under Section 31(6) of the Highways Act 1980. He has never turned back or stopped people from using the way and he has never told anyone using the path that the way was not public. There have never been stiles or gates on the route and he has never obstructed the way. Mrs Laura Maher confirms that living next door to the green, the public rarely walk across it, particularly in winter as there is no footpath and it is muddy. Occasionally in the warmer months they would see a child or a dog

take a short cut across the green but this would only happen if the landowner had cut the grass. Most other members of the public would walk along Bourne Close.

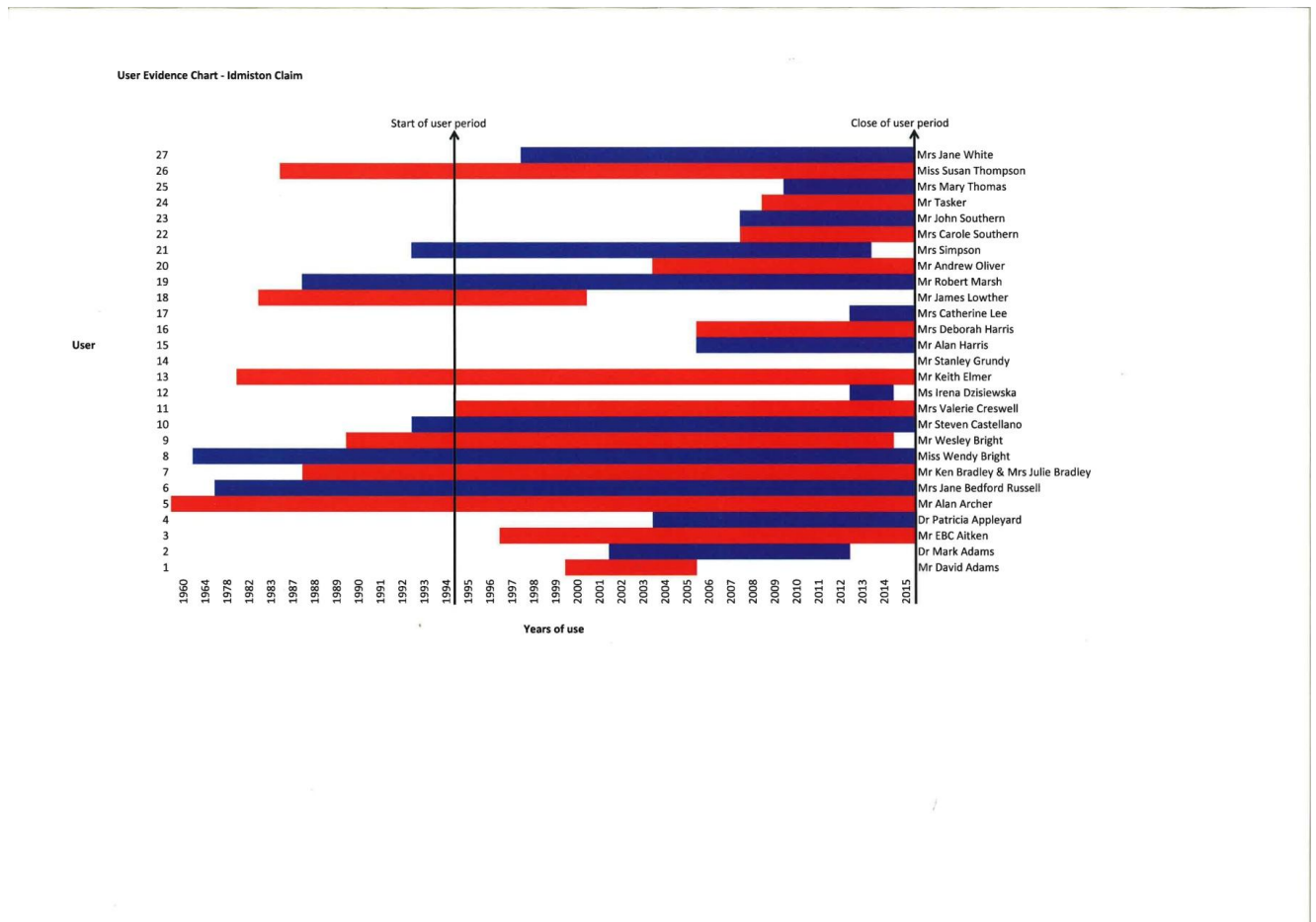
- 4) Mr Raymond Bray of 4 Bourne Close, confirms that he has owned the property for 18 years and the claimed route has been used daily over that time. He has never required people to ask permission before using the way and has not deposited with Wiltshire Council a plan and statement under Section 31 (6) of the Highways Act 1980. There have never been any gates or stiles on the way.
- 5) Mr Pike, the previous landowner of the green area, has written to confirm that he owned the green area of land and the adjacent property, "Appledown", from July 1998 to March 2004. At no time during his ownership was there a footpath across the land and neither did he give permission for the public to walk across the land. He sold the land to Mr Jones.
- 6) Although we do not have personal testimony from Mr Ray Stockton, whom Officers believe owned the green area of land and "Appledown" prior to Mr Pike, i.e. before July 1998, Mr James Lowther who has completed a user evidence form for his period of user dating from 1983 to 2000, recalls that when the land was owned by Mr Stockton, he knew people used the claimed route and was quite happy about it.

10.9. In addition, none of the witnesses make any reference to previous challenge; prohibitory notice, or obstruction sufficient to bring the public's right to use the way into question, until the fencing was erected around the green area adjacent to the High Street in 2015.

10.10. The erection of the fencing has triggered the application to add a footpath to the definitive map and statement of public rights of way. The public have not acquiesced in the closure of the path, which, according to Denning L.J's words in the Fairey case, leads us to believe that the witnesses consider that they do have a public right of way over the land.

Twenty Year User

10.11. Please see chart below which shows the dates and level of user outlined within the 27 witness evidence forms:



10.12. For the period of user in question, i.e. 30th March 1995 – 30th March 2015, of the 27 user evidence forms submitted, (Mr and Mrs Bradley have completed a witness evidence form jointly and are counted as one), 26 witnesses have

used the route during this time period and 9 witnesses have used the route for the full period of 20 years.

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

User	Used with others	Others seen
1	With children.	All the time until it was partly fenced.
2	No information provided.	Many people, often children and teenagers using it as a safe footpath to recreation ground in Bourne Close, daily use.
3	No information provided.	Yes – walking and some young cyclists.
4	No information provided.	Frequently saw other people walking the path.
5	Recreation and walking with grandchildren.	Saw others walking with dogs.
6	No information provided.	Yes.
7	Form completed jointly.	Fellow walkers and those exercising their dogs.
8	Used as a child, possibly with family/friends?	Dog walkers, people going to playing fields.
9	Recreation with grandson.	Others walking.
10	No information provided.	Many people use the path daily for walking.
11	Taking firstly my children and now my grandchildren to the play park in the recreation ground.	Very frequently, I could see the path from my house.
12	No information provided.	Families and people with dogs, on foot.
13	No information provided.	Many times – usually walkers but sometimes with children with bikes / trikes.
14	No information provided.	Many, many times, the path is invaluable as a way for people with children going to/from the playground (the alternative being the road). It has been an accepted route during my time living in Porton (24 years).
15	No information provided.	Many other dog walkers and children travelling to park and school.
16	Taking our dog for a walk or going to recreation ground with children.	Other dog walkers.
17	No information provided.	Yes walking.
18	Recreation with my two boys, friend.	Often, dog walking.

19	First used walking with my 2 children to the recreation centre.	Walking to and from the park area.
20	Walking my two children to the recreation ground.	Regularly.
21	No information provided.	Dog walkers.
22	To village shop, via playpark with grandchildren as part of a circular route.	Occasionally other people, some dogs, all walking.
23	My wife and I first used it in 2008 when finding our way round the village after we moved here. Now used with grandchildren from playpark to shops and then home.	Sometimes, all walking, some with dogs.
24	No information provided.	Yes, also walking.
25	No information provided.	Yes – walking, cycling, playing.
26	No information provided.	Yes, walking.
27	No information provided.	Yes, walking.

10.14. 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* UKSC 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.”

10.15. All of the witnesses are resident of Porton, however use wholly or largely by local people may be sufficient to show use by the public. The Planning Inspectorate’s Definitive Map Orders: 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.”

10.16. Officers conclude that there is sufficient evidence to support, on the balance of probabilities, public user for a period of 20 years or more without interruption and that this level of user during the relevant 20 year period of 30th March 1995 – 30th March 2015, was sufficient to bring home to the landowners that a right for the public was being asserted against them.

As of Right

10.17. In order to establish a right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission. In conclusion, Officers are satisfied that public use of the claimed route has been “as of right”, as follows:

Without force

10.18. 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.

10.19. From the witness evidence provided in the Idmiston case, it would appear that users did not use force to enter the land over which the claimed route passes. It is the Officers opinion that users would not have been required to use force to enter the land as there are no barriers to access (prior to the erection of the fencing in 2015). Mrs Creswell states that young people are now beginning to vandalise and climb over sections of the fencing, but Officers consider that this is not related to use of the claimed route to pass and repass and that this is occurring outside the user period in question, i.e. after the erection of the fencing and the obstruction of the path, which brought public use of the route into question on 30th March 2015.

10.20. 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 user 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 contexts 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.”

10.21. In the Idmiston case there is no evidence before the Council that prohibitory notices, have ever been erected on the claimed route and the public have not been prevented from using the way, or otherwise challenged whilst using the way, prior to the obstruction of the route by fencing in 2015 and therefore use is not deemed contentious.

Without secrecy

10.22. It would appear that witnesses used the route in an open manner and witnesses consider that the landowner was aware of use:

User	Do you believe the owner or occupier was aware of the public using the way
1	Because he told me and he lived opposite and would have known that people were using it.
2	The current owner used to live in a property on the High Street which directly overlooked the way in question, so will have seen the public using the way daily.
3	Yes, the path is/was clearly visible. It must have been obvious to any owner, as indeed it was to the general public, that a footpath had been created by general usage across the grass area.
4	Yes, in respect of the section A-B (the green area) the owner used to live at Jayesmoor opposite the piece of grass and must have been aware that people were using it. As a resident of Bourne Close (and an affected landowner), I have been aware of the public using the path ever since I moved to our property.
5	Yes, used extensively to my knowledge for the last 55 years.
6	Yes.
7	Yes, it would have been obvious to the owner due to the line of sight that the public were using this path.
8	Yes, he used to live opposite in Jayesmoor directly overlooking the land.
9	Yes, he lived in the house opposite the land for many years.
10	Yes, because the owner lived in Jayesmoor which is opposite the path and was witness to a steady stream of people using the path on a daily basis.
11	Yes, the owner lived in Jayesmoor just across the High Street. There is full visibility from there. Additionally trees were planted to mark the millennium, he has removed them without planning permission.
12	I don't know but I also don't understand why the fencing has gone up stopping access.

13	Yes – used by locals for decades.
14	Yes, the mere presence of a well worn path for many years makes me believe that the owner would have had to be either blind or to have not cared about the use of the path. As the grass was cut fairly regularly by the owner, he must, one presumes, have not been at all worried about the path, certainly for the past 24 years. This area of grass including the path, was looked upon as being our village green and was much appreciated as a pleasant change from the built up area of the village. The fencing has changed the entire outlook.
15	Yes, there is a clearly visible path made through flattened grass, obviously made by frequent use.
16	Yes, clearly visible path, trodden down grass, made by the public walking over the area.
17	Yes, he used to live in a house opposite this land and I assume would have noticed the public using the route.
18	Yes, he bought it as an investment and offered it to myself and others, he had no uses for it other than its future sales value.
19	Do not know.
20	Local knowledge and regular usage of the pathway.
21	Yes.
22	I assumed this was common land with no owner as there were no indications that it was owned.
23	Yes, because I assumed the grass area belonged to the Council.
24	Yes, custom and practise for many years.
25	Yes, no signs erected to state otherwise, I was never approached or stopped; nor witnessed anyone else being so. The right of way was not inhibited.
26	Yes, he lived within sight.
27	Yes, he used to live opposite the area at Jayesmoor, so would have seen people walk across. He has always cut the grass until recently.

10.23. The land ownership in this case is split between the grass area and the private road of Bourne Close. The grassed area is owned by Mr A Jones, now residing in Gomeldon and the private road is owned by the 5 property owners in Bourne Close. Dr Appleyard and Mrs Catherine Lee who are part owners of

Bourne Close, have also completed witness evidence forms in support of the application. Dr Appleyard has marked the whole of the claimed route on the map and confirms that as a landowner she was aware of public use and has been since she moved to the property. She also considers that the owner of the grass area would have been aware of public use as he used to live opposite the land. Mrs Lee has completed the evidence form map with only the claimed route over the grassed area, excluding Bourne Close. She makes no reference to her own knowledge of use of the area of Bourne Close, but states that she believes the owner of the grassed area to be aware of public use as he lived in a house opposite this land and assumes he would have noticed the public using the route.

10.24. The landowner evidence provided by Mr A Jones, the present owner of the green, who has owned the land for 12 years, states that he does not believe the route to be public. He has never seen members of the public using the route and has therefore not been in a position to tell path users that the path was not public and it was not necessary to erect notices stating that the way was not public. He notes that there is often dog fouling of the land, caused by dog owners letting their dogs loose on the land whilst walking in Bourne Close or the High Street. He has on occasion asked them not to do this. He has also asked people who have parked their cars on the land without his permission to remove their vehicles, (this is supported by the evidence of Dr Patricia Appleyard who states that *"The only concern he expressed to us was that some people occasionally parked vehicles on it without permission."*) Mr Jones confirms that if he had been aware of anyone walking on the land, he would have asked them to stop doing so.

10.25. The previous owner of the green area, Mr Geoffrey Pike, who owned the land from July 1998 to March 2004 confirms that at no point during his ownership, was there a footpath across the land. However, in his witness evidence form Mr James Lowther, who used the route between 1983 and 2000, confirms that

when the land was owned by Mr Ray Stockton, he knew that people used the claimed route and was quite happy about it, (Officers believe Mr Stockton to be the previous owner of the green area and “Appledown”, prior to Mr Pike’s ownership which began in 1998. It appears that Mr Stockton’s ownership of the land covers the first part of the relevant user period). Dr Patricia Appleyard confirms in her evidence that Mr Pike and the previous owners of “Appledown” and the grassed area, did not make any attempt to fence the land to prevent access.

10.26. Mr Maher of 1 Bourne Close, has owned the land for 8 years, he considers the land to be private and has only ever seen a child run across on the odd occasion, it is very boggy on the grass. Mrs Maher (1 Bourne Close) confirms that living next door to the green area, the public rarely walk across it, particularly in the winter months as it is muddy. Occasionally in the warmer months they would see a child or dog take a short cut across the green, but this would only happen if the landowner had cut the grass. Most other members of the public would walk along the Bourne Close road.

10.27. Turning to the landowner evidence and their knowledge of public user of the route over Bourne Close, Dr’s Patricia and Geoffrey Appelyard of 1A Bourne Close, “Appledown”, have owned the land for 11 years and 10 months. They believe the route to be a public footpath and they have observed many members of the public walking to and from the recreation ground on a daily basis, such that they assumed that the route was a right of way. Mr Bray of 4 Bourne Close has owned the land for 18 years, he does not state whether or not he considers the path to be public, but he has observed members of the public using the way on a daily basis over 18 years.

10.28. Additionally, in evidence Mr Richard and Mrs Gillian Green confirm that on no occasion have they seen people walking over the land A-B (please see plan at 4), and there was no sign of any footpath or regular walking over the land.

However, they have seen other people, who like themselves were walking on the road through Bourne Close, probably preferring this route, as they do, for the safety of the smooth surface of the road and the fact that they do not have to avoid dog fouling on the land. Mr Roly Grimshaw confirms that he and his wife are regular walkers and they have never seen anyone use the route A-B. Access round the land into the cul-de-sac of Bourne Close is so easy, with minimal traffic. There has never been a footpath here and indeed most people would not wish to venture over the land where dogs have made a mess. Mr W G Baker confirms that he has lived in Gomeldon for over 40 years and has never known this to be a footpath, this is private property and he has never seen anybody walk across the land. Mr P Jay confirms that he has lived in the village for 70 years, there has never been a footpath between A and B. He has never seen people walking between A and B in all the time he has lived in the village. Mr T C Lodge had some involvement in the design of the dwellings in Bourne Close and does not believe that there was ever a “bona fide” right of way. Certainly residents took a shortcut across the grass instead of using the nearby roadway and used the area as a dog fouling spot. To his certain knowledge there was never a way marker or finger post indicating a “public footway”.

10.29. The evidence is contradictory as to whether or not landowners were aware of use and of course there are factors which could affect this, such as where the landowners’ live; their view of the route in question and the amount of time spent at their property/on the land. For example, Dr Patricia Appleyard confirms that *“We can see much of the footpath from ‘Appledown’ and can confirm that it is well-used by members of the public.”*, whereas an absentee landowner may not be in a position to observe such use, particularly in the Idmiston case where it is confirmed that the gate to the recreation ground at point C (please see plan at 4), where the path terminates, is locked during the hours of darkness. Officers would therefore expect the claimed route to

receive most of its use during daylight hours as a link between the High Street and the recreation ground.

10.30. Mr Jones, present owner of the green area, currently lives in Gomeldon and it would be understandable that an absent landowner may not have observed and be aware of public use. However, 23 of the 27 witnesses refer to Mr Jones' previous residence at a property known as "Jayesmoor", located on the High Street, directly opposite the land in question and from which his land could be seen. The witnesses suggest that at the start of his period of ownership, Mr Jones would have been aware of public user.

10.31. When looking at the user evidence chart at 10.11. it can be seen that 17 of the witnesses were using the route at the start of Mr Jones' ownership in 2003/04. As well as their own use of the way, witnesses also refer to seeing others using the claimed route, (please see table at 10.13), which amounts to a substantial level of user.

10.32. Taking into account the frequency of user, it also suggests a level of user sufficient to make landowners aware of use:

User	Frequency of user
1	Not stated.
2	Weekly.
3	Probably once a month.
4	Several times a week until 2014, then daily.
5	3-4 times a month.
6	Once a week.
7	Used regularly as one of our walks around the village.
8	Several times a year.
9	4 times per year.
10	Weekly.

11	2-3 times per week.
12	Weekly.
13	20-30 times a year.
14	N/A – route not used.
15	Daily.
16	Daily.
17	2 – 3 times a week depending on time of year, footwear and whether grass wet or dry.
18	Weekend and evenings.
19	About 20 times per year.
20	Monthly (at least) when the children were younger.
21	Daily.
22	5 or 6 times a year with visiting grandchildren.
23	About 6/7 times per year.
24	Once or twice a month.
25	Daily.
26	10-20 times per year.
27	About twice a year as the normal route from home to the playground takes us along the road of Bourne Close (which is not a highway and not a public footpath).

10.33. A photograph has been provided with the application, taken by Mr Castellano who lives at The Fieldings, High Street, in approximately 1993, (outside the user period in question). The property “Fieldings” is adjacent to “Jayesmoor” and the photograph gives an idea of the view of the land which Mr Jones would have had from his property:



View of the green area taken from “Fieldings” – approx 1993 (pre-1995)

10.34. It is also claimed that the photograph shows a well trodden path across the land, which would have been obvious to the landowners and Officers agree that there appears to be a track over the land, as shown highlighted on the photograph.

10.35. Witnesses have also submitted an aerial photograph with the application, taken in 1980, which it is claimed shows a well trodden path and which would make public user obvious to the landowners.



Aerial view of the area, August 1980

10.36. Officers would agree that this photograph appears to show a track over the green area, leading adjacent to the boundary of Rose Cottage, as highlighted above. However, Mr Jones has submitted that the photograph shows a variation in the grass, with clumps of grass near Rose Cottage and smoother

grass over the remainder of the site. Mr Jones also claims that this rougher grass and variation in soil levels is also shown in the “Fieldings” photograph taken in approximately 1993, although he suggests that in this photograph much of the area is obscured in the shade. Mr Jones has submitted a Google image of the area taken in 2009, which he claims also shows the unevenness of the ground and the variation in the grass near the wall, rather than indicating a path. When the same area in this photograph is viewed from different angles (a further 4 Google images dated 2009, viewing the area from different angles are submitted with Mr Jones’ evidence), he claims that the photographs do not show a footpath but do reveal compaction and tyre marks due to vehicles driving over the land. He also submits a Google aerial view of the area (2001) and a recent photograph taken by the estate agent selling “Jayesmoor”, the house opposite the plot of land. Mr Jones suggests that if the footfall was as suggested by the respondents, there would be a clear and worn footpath in evidence on the estate agents photograph. Officers have concluded that the Google images and estate agents photograph do not show a well trodden path over the green area.

10.37. Officers have examined aerial photographs held by Wiltshire Council, taken in 2005/06 and 2014, within the relevant user period of 30th March 1995 – 30th March 2015 (please see below). There is no worn track visible on the 2005/06 photograph and the area in question is in part obscured in shade. The 2014 photograph appears to show a very straight feature across the land (as highlighted below), but it is not clear whether this is a track created by path users. It is located further west on the land than the claimed route and is very straight, as if it were created by a mower or vehicle. Overall the photographic evidence of a well trodden track is inconclusive in this case and cannot be relied upon to support the existence of public rights.



Aerial photographs held by Wiltshire Council - 2005/06 and 2014

10.38. In conclusion, as Lord Hoffman states in the Sunningwell case, 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 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.”*

10.39. Overall, Officers consider on the balance of probabilities that if members of the public had used the claimed route, at the levels and frequency suggested by the evidence, it is likely that the landowners would have been aware of use and had opportunity to challenge this use, had they wished to do so.

Without permission

10.40. 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 out as if it were by right – hence “as of right.”

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

“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land

covenants, suffering), does not stop it being trespass. The point was well made by Dillon L J in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive rights can be acquired if the user...has been tolerated without objection by the servient owner” as it would be fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p.281, “mere acquiescence in or tolerance of the user... cannot prevent the user being user as of right for the purposes of prescription.”

10.42. 2 of the witnesses are joint owners of the private road in Bourne Close over which the claimed route passes (Dr Appleyard and Mrs Lee), whilst this gives them a private right over Bourne Close, it does not give them a right over the area of land which they do not own, i.e. the grassed area. It would appear that none of the witnesses sought or were granted permission to use the land, nor were they related to, or tenants of any of the landowners, (excluding Dr Appleyard and Mrs Lee whose use of Bourne Close only, as landowners, is not qualifying user):

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, did not know it was needed.
2	No.	No.	No.
3	No.	No.	No – never.
4	No.	Not in respect of the grassed area.	No.

		My husband and I as joint owners of "Appledown" have a shared interest in the private road Bourne Close, with other residents.	
5	No.	No information provided.	No, always assumed it was a public footpath.
6	No.	No.	No.
7	No – not at any time.	No relationship with any past or present owner.	No, we have always assumed that it was a public right of way.
8	No.	No.	No.
9	No.	No.	No.
10	No.	No.	No.
11	No.	No.	No.
12	No.	No.	No.
13	No.	N/A.	No, never necessary.
14	No.	No.	No.
15	No.	No.	No.
16	No.	No.	No.
17	No.	No.	No.
18	No.	No.	When the land was owned by Ray Stockton he knew people used the footpath and was quite happy about it.
19	No.	No.	No.
20	No.	No.	No.
21	No.	No.	This has always been treated as common land by villagers and there have been no

			objections.
22	No.	No.	No.
23	No.	No.	No.
24	No.	No.	No.
25	No.	No.	No.
26	No.	No.	No.
27	No.	No.	No.

10.43. The landowner evidence shows that none of the landowners have ever required people to ask permission before using the way, but as Mr Pike; Mr Jones and Mr Maher suggest, perhaps they were not aware of public use and saw no reason to grant permission. Mr Jones states that *“20 respondents cite that they have not been given permission to use the land. One says that a previous owner had known that people walk on it, but the owner he cites is 2 owners previous to me. Many appear to be unaware that it is private land.”* He also states it is private land, so he would expect anyone to ask permission before using the way. User “as of right” is without permission.

10.44. The evidence supports public use of the claimed route without permission.

The Claimed Route

10.45. The claimed route leads from the High Street, Porton, alongside Rose Cottage and then over the private road of Bourne Close, to the recreation ground. The claimed route terminates at the entrance to the recreation ground. The witnesses describe their own use of the claimed route as follows:

Witness	Route shown on map	Have you always followed the same route
1	As claimed, plus a spur at the southern end joining the claimed	Yes, because from my house we entered the path from a different

	route over the green from the property "Martins" to the west.	direction.
2	Only the section of the claimed route over the grassed area (i.e. A – B) is shown.	Yes, when accessing Bourne Close. I deviate from the way to provide direct access to my boundary wall and hedges for routine maintenance. For this purpose I usually access the way via an access gate in my boundary wall.
3	As claimed.	Probably yes.
4	As claimed.	Only changed route when the route on the grassed area was obstructed by fencing (30 th March 2015).
5	As claimed.	Yes.
6	As claimed.	Yes.
7	As claimed.	No – one of a number of walks we do depending on path conditions and for variation.
8	As claimed.	Yes.
9	As claimed.	Yes.
10	As claimed.	Yes.
11	As claimed.	Yes. Not willingly changed route, but when temporary fencing was erected, it was necessary to use the roadway in Bourne Close.
12	As claimed.	Yes, until the route was blocked. Since being blocked I walk around the area on the main road.
13	As claimed.	No, walked many different routes around the village.
14	As claimed.	Not used the route as my approach to the path is from the south and the

		entrance into Bourne Gardens (which I have used many times), is the more convenient way to reach the houses and playground, but I walk past the path virtually every day.
15	As claimed.	Yes.
16	As claimed.	Yes.
17	Only the southern section of the claimed route over the grassed area (A – B) is shown.	Yes same route across grass under certain conditions, i.e. depending on time of year; footwear worn and whether the grass was wet or dry. Otherwise I have used the tarmac route of Bourne Close.
18	As claimed.	Yes.
19	As claimed, plus extension of the route into the recreation ground with a spur leading west.	Yes.
20	As claimed.	Yes.
21	Two routes marked on map: a route in red around the Bourne Close road way from the High Street marked “Todays route” and the claimed route in blue (although slight deviation into front garden of no.1 Bourne Close), marked “The previous route before houses were built marked in blue. The previous route in fact is still used but has been wired off.”	Yes.
22	As claimed.	Yes, except used the longer, less safe roadway if the grass was long/wet or if the grandchildren were cycling.
23	As claimed.	Yes, if the grass was wet we would

		sometimes use the Bourne Close roadway.
24	As claimed.	Yes, route is unrestricted but desire line is clearly visible.
25	Route following the High Street from home and then wholly on the road section of Bourne Close to the recreation ground. The grass area is not used.	Yes.
26	Only the southern section of the claimed route across the grassed area (A – B), is shown.	Yes.
27	As claimed.	Yes, if going to or from the playground, friends house and to the shop or village centre. Not used if going to Bourne Close or the recreation ground, directly from Parsons Close. I use the road of Bourne Close although it is not a public right of way.

10.46. 13 of the witnesses have used the route as claimed and not altered this route, until the time of its obstruction in 2015, (Mr Marsh has used the claimed route including an extension into the recreation ground with a spur leading west). 3 witnesses have used the claimed route, but altered their route to use the road way of Bourne Close when the grass (on the area of green adjacent to the High Street), was long, wet or depending on where they were going. 3 users have used only the southern section of the route A-B, i.e. the grassed area, (please see plan at 4). One of these users is Mrs Lee who is part owner of the private road, Bourne Close and she would not be relying upon public rights to use that part of the claimed route over Bourne Close. Miss Thompson has used the southern section of the route (A – B) only to access Bourne Close for

the purposes of delivering publications. Officers consider that she would have used the private road of Bourne Close, but then gone in many different directions to deliver to the houses, rather than following the direct route of the claimed route to the recreation ground. Mr Mark Adams lives at Rose Cottage and appears to have used only the southern section of the route to access the other side of his boundary wall for the purposes of maintenance. Mr David Adams has used the whole route, but mainly uses the northern section of the claimed route (B - C) through Bourne Close as he lives to the west of Bourne Close and uses a spur over the green to the west of the claimed route, which meets the claimed route on the Bourne Close road and on which Mr Adams continues his journey. Mr Grundy has not used the claimed route at all but has marked on the map his proposal for a dedicated path, given his observations of the route.

10.47. Officers note that the termination point of the path at point C (see plan at 4), is the gate to the recreation ground, which is owned by the Parish Council and to which the public are allowed full access during its opening hours. The claimed footpath is a cul-de-sac path, i.e. it does not junction with another public highway and in order to use the path the public would need to return using the route which they had already used, however in this case the recreation ground, which has full public access, forms a place of popular resort which the public would legitimately wish to reach and 18 of the 27 witnesses state that they used the path to reach the recreation ground / playpark. The public may walk freely across the recreation ground, which itself links to another public highway, i.e. Winterslow Road. The notices on the gate at Bourne Close state that this access to the recreation ground is locked during the hours of darkness and opened again in the morning by 8:30am, which is confirmed by the parish council.

10.48. In the case of *Asgar Ali v Secretary of State for Environment, Food and Rural Affairs; Essex County Council and Frinton and Walton Town Council 2015*,

the High Court considered a case where a definitive map modification order was made, adding a public footpath to the definitive map and statement of public right of way in Essex, between 59 and 61 Connaught Avenue, Frinton-on Sea. The footpath ran along an alleyway between the two properties, with a door at the western end of the passage which had been present since the building was first constructed, with evidence provided that this door was on occasion closed and locked. In this case Rhodri Price Lewis QC, sitting as Deputy High Court Judge, examined the decision of the Inspector in this case and the effect of the locked door as an interruption to public user and the landowner's non-intention to dedicate the land as a public highway. The Inspector states *"I reach the conclusion that, even if the door had been locked on several occasions, this did not come to the attention of most users of the passageway and therefore did not bring into question the public's right to walk through."* Mr Price Lewis concludes that *"The evidence in all its forms "clearly demonstrated" to her (the Inspector) "regular use...without interruption throughout the twenty year period." It seems to me that she is finding on the totality of the evidence that any locking of the door at Christmas did not in fact interrupt the public's use of the alleyway."*

10.49. On the issue of landowner intention Mr Price Lewis concludes:

"In my judgement here the Inspector was deciding on the facts of this particular case that use of the path was for the purpose of getting to the local shops and businesses and so a locking of the door at Christmas when those shops and businesses were closed was not effective to provide "sufficient evidence" that there was no intention to dedicate because such acts on the part of the landowner would not be sufficiently overt to bring to the attention of the public who used the way that the landowner had no such intention."

10.50. Comparisons may be drawn in this case and the Idmiston case, in that although the gate to the recreation ground is locked during the hours of

darkness, there is sufficient evidence of long and regular public user, without interruption. Witnesses appear to be using the route to reach the recreation ground, which is only open during the hours of daylight, therefore it follows that the main use of the way would be during the hours of daylight and the locking of the gate at night would not be sufficient to bring home to users that their right was being challenged.

10.51. Additionally the gate to the recreation ground is not on the land in question and is not erected by the owners of the land over which the claimed route passes, therefore the locking of the gate is not sufficient evidence of the landowners' non-intention to dedicate a right of way over the claimed route. The Parish Council have confirmed that it was found necessary to lock the gate to prevent vandalism and anti-social behaviour taking place on the recreation ground, during the late evenings.

10.52. In this case there has been some confusion regarding the claimed route as the application plan appeared to show the claimed route leading across the front garden of the property no.1 Bourne Close, which has caused the residents of 1 Bourne Close some concern. However, the applicant has confirmed that it was not her intention to claim part of the route through the property no.1 Bourne Close, the claimed route is on the private road of Bourne Close and Officers consider that it would be physically impossible for members of the public to have used a route through the garden, as the property has a boundary wall and there is a large willow tree in the front garden. Also, on the balance of probabilities, the evidence does not support a route through the garden. 15 witnesses record a route entirely on the private road of Bourne Close on the evidence form maps, whilst 9 witnesses record a route through the garden on their maps, but the written description given by these witnesses does not make reference to the claimed route leading through the garden of 1 Bourne Close, in fact Mrs Simpson confirms that *“Within Bourne Close there are houses and gardens to the right and left”*, (of

the claimed route) and Mrs Southern confirms that the path runs *“From the playpark entrance...between garden fences, then directly across Bourne Close to the grassed area.”* The base map produced by Wiltshire Council shows the word *“Bourne”* written through the boundary of no.1 Bourne Close and Officers consider that this may have made it unclear where the boundary of the property was located and witnesses may have inadvertently shown a line within the boundary of this property. From their investigation of the available evidence, Officers are satisfied, on the balance of probabilities, that there is no right of way through the garden of the property 1 Bourne Close.

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

Width

10.54. In making an order to add a new footpath to the definitive map of public rights of way, a width must be recorded within the definitive statement, based on evidence. There is no width recorded in documentary evidence as the claimed route is not recorded in documents examined by Wiltshire Council (please see **Appendix 2**). The northern part of the route which passes between the gardens of 1A Bourne Close (Appledown) and 2 Bourne Close, is enclosed between garden fences and hedges to the east and west. It is therefore possible to take a measurement of the width available for public use, of 3.15 metres between OS Grid Reference SU 1870-3664 and OS Grid Reference SU 1872-3661, to be recorded if a definitive map modification order is made.

10.55. There is no such enclosure on the southern part of the route which leads through Bourne Close and over the green area, therefore the recorded width on this part of the route must be based upon evidence of the actual used width of the path. Witnesses have recorded to following path widths:

Witness	Width	Witness	Width
1	1m width access as a path	15	Approx 80 – 100cms
2	Approx 1m	16	Path approx 1m wide
3	Probably less than 1m	17	Approx 1m
4	1m	18	1.5 – 2m
5	1 - 1.5m	19	About 1m
6	1m	20	Max width 4 – 5m
7	1 - 4.5m (variable)	21	Fence created around the circular green
8	1m	22	On a previously open piece of ground, a path wide enough to walk through
9	1m	23	My wife and I normally walk side by side
10	Approx 1m	24	Can't say specifically noticed – maybe 2m?
11	1m	25	1 – 1.5m
12	1m	26	1m
13	Would not take much notice of any changes – a walk was a walk	27	About 1m
14	Approx 3 – 4ft (0.91 – 1.22m)		

10.56. The witnesses have given varying path widths. Officers have therefore used an average width from those witnesses who provided width evidence (based on the maximum extent given), giving an average width of 1.46 metres to be recorded as a definitive width of the footpath over Bourne Close and the green area (i.e. between OS Grid Reference SU 1872-3661 and OS Grid Reference SU 1875-3655), if a definitive map modification order is made.

Landowners Intention

10.57. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public user of a route for a period of 20 years or more “as of right”, unless during that period there was in fact no intention on the landowners part to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the

authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the *Fairey* case, 1956:

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

10.58. 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.”*

10.59. 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.”

10.60. In the Idmiston 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, until the fencing of the green area adjacent to the High Street in 2015, which serves to bring the public’s right to use the way, into question. Whilst Mr Jones, the present owner of the area of green, states that he has asked people not to allow their dogs loose to foul on the land whilst walking in Bourne Close and the High Street and he has challenged those who park on the land without permission, he makes no reference to challenging path users whilst on the land, claiming that he was not aware of use. Dr Appleyard in her evidence states that Mr Jones purchased the land in 2004, *“At this time he lived at Jayesmoor, one of the two semi-detached properties opposite and he cannot have failed to be aware that members of the public walked over it both before and after he acquired it. He made no attempt to stop them and voiced no objections to this use. The only concern he expressed to us was that some people occasionally parked vehicles on it without permission.”* In her evidence form Mrs Catherine Lee states that she spoke with the owner of the green area of land on the day on which he erected the fencing which obstructed the route and brought the public right to use the way into question, at which time he advised her that the land was private and that he did not want members of the public to walk on his land, however witnesses make no reference to cases of challenge prior to the obstruction of the route by fencing in 2015 and agree that landowners were aware of the use.

10.61. The witnesses and the landowners do not refer to notices being erected advising the public that the route was not public and the landowners have not completed and lodged with Wiltshire Council a statement with plan and subsequent statutory declarations under Section 31 (6) of the Highways Act

1980, to demonstrate the landowners non-intention to dedicate a public right of way.

10.62. It is concluded that the landowners' non-intention to dedicate the land as a highway has not been demonstrated.

Common Law Dedication

10.63. 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.

10.64. 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.

10.65. 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 evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.

10.66. Relatively few highways can be shown to have been expressly dedicated and in the Idmiston 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

10.67. Having considered the evidence submitted in support of the claim and that submitted by landowners and objectors, Officers have concluded that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot subsists over the land in question, on the balance of probabilities based on public user for a period of 20 years 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. Procurement Implications

14.1. The determination of a definitive map modification order application and modifying the definitive map and statement of public rights of way accordingly are statutory duties for the Council. The financial implications are discussed at 18.

15. Environmental Impact of the Proposal

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

16. Equalities Impact of the Proposal

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

17. Risk Assessment

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

17.2. 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 within 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. Where the Council fails to pursue its duty to determine the application (within 12 months of the application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

18. Financial Implications

18.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council, 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.

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

19. Legal Considerations

- 19.1. 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 a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

20. Options Considered

20.1. To:

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

21. Reasons for Proposal

21.1. 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 Idmiston, leading from Porton High Street, through Bourne Close to the recreation ground, based on evidence of public user for a period of 20 years.

21.2. Additionally, there is insufficient evidence of the landowners' non-intention to dedicate the way as a public right of way, during the relevant user period of 30th March 1995 – 30th March 2015. Path users do not refer to any incident of challenge, prohibitory signage or obstruction, prior to the erection of the fencing around the green area in 2015, which serves to bring public user of

the claimed route into question and there is no evidence before the Council that the landowners in Bourne Close have taken any action to demonstrate their non-intention to dedicate the land as a public highway.

- 21.3. Whilst Mr Jones (owner of the green area) has confirmed that he has previously challenged those walking in the High Street and Bourne Close who allow their dogs to foul on the green area and those parking on the green area, without permission, there is no evidence before the Council that Mr Jones, or any previous owner of the green area, have taken any action to demonstrate their non-intention to dedicate the land as a public highway, prior to 2015.

22. Proposal

- 22.1. That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Idmiston, leading from Porton High Street, in a generally north-north-westerly direction, through Bourne Close, to the recreation ground, having a width of 3.15 metres on that section between OS Grid Reference SU 1870-3664 and OS Grid Reference SU 1872-3661 and 1.46 metres on that section between OS Grid Reference SU 1872 – 3661 and OS Grid Reference SU 1875-3655 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: 22nd June 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 – Idmiston (Porton)

Appendix 1 – Summary of Representations and Objections Received at Initial Consultation

1. Mr Adrian Jones (Owner of the green area of land) – letter dated 4th February 2016 and landowner evidence form dated 6th February 2016:

- Owned the land for 12 years
- Do not believe the way to be public, have held this belief for over 35 years.
- Never seen members of the public using the claimed route.
- It is private land so I would expect anyone to ask permission before using the way, but I have not seen anyone use it.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- Never stopped or turned anyone back.
- I haven't seen anyone use the way to tell them that it was not public.
- It was not necessary to erect signs or notices stating that the way was not public.
- No stiles or gates on the claimed route.
- I have obstructed the line A – B by fencing in the whole plot.
- Between 1999 and 2006 I lived opposite this piece of land and maintained it, I also used it to park vehicles and machinery including tractors.
- There is presently a planning application for the plot of land over which section A to B passes (i.e. over the green area).
- The application is an attempt to stall and prevent the planning application.
- The land was subject to an application to register the land as an Asset of Community Value by the Porton Conservation Group which was rejected on the grounds that the land is privately owned and it is therefore not considered to further the social wellbeing of the community, nor is it likely to do so in the future.

- 21 witness statements from 19 different households. 17 of the 21 people who have sent in witness forms were also members of the Porton Conservation Group. 14 of the people who sent statements have made objections to the building proposals.
- There has never been a footpath over the land. In 2000 Idmiston Parish Council wrote the Porton, Idmiston and Gomeldon Community Plan in which they list footpaths in the parish including path no.7 which is only 33m long, but there is no path listed from the High Street, through Bourne Close to the recreation ground.
- One of the respondents has not walked the path.
- There is great variation in the position of the footpath on the maps and the width.
- People do walk from the High Street, through Bourne Close to the recreation ground. The main entrance to the recreation ground is on Winterslow Road, which is safer and more direct for the respondents who live in The Avenue: Nalhasen Close; Buller Park; Bonaker Close; Winterslow Road and Parkland Way. There are only 3 respondents who live in the High Street whose walk would be shortened by the claimed footpath. Those living in Bourne Close would have their walk to the High Street shortened by approximately 10m by the claimed footpath.
- 20 respondents cite that they have not been given permission to use the land, many appear to be unaware this is private land.
- There has often been dog fouling of the land caused by dog owners letting their dogs loose on the land whilst walking in Bourne Close or High Street and I have on occasion asked people not to do this. I have also asked people who have parked without permission on this land to remove their vehicles.
- If I had been aware of anyone walking on the land, I would have asked them to stop doing so.
- My wife lived opposite the land from 1985 and she also is not aware of people using the section A-B, however, according to the statements they have walked a total of 948 times a year, which equates to 2/3 people every day. With this footfall there would be an obvious well worn pathway, this has never been apparent.

- Photographic evidence has been shared amongst witnesses.
- If you zoom in on the aerial photographs from 1980 purporting to show the claimed route, it can be seen that this is just a variation in the grass, with clumps close to Rose Cottage and smoother grass elsewhere (over the green area). This rougher grass and variation in soil levels is also shown in later photographs such as the 1993 photograph from Fieldings and the 2009 Google photograph. When viewed from different angles, there is no path shown, but it does show compaction and tyre marks due to vehicles driving over the land. A Google aerial view (2001) and a more recent the estate agents photograph taken from Jayesmoor, (the house opposite the green area), show no evidence of a right of way.
- I believe that there is no historic evidence for a path between A and B and people use the road in Bourne Close to get to the recreation ground.
- There are no advantages for the residents of Porton, either in distance walked or safety.
- If a footpath is recorded it should follow the road in Bourne Close from the High Street to the recreation ground.

2. Dr's Patricia and Geoffrey Appleyard (owners of 1A Bourne Close

(Appledown) and part owners of the private road, Bourne Close) – Letter dated 4th February 2016 and landowner evidence form dated 3rd February 2016:

- We have owned the land for 11 years and 10 months. Bourne Close is unadopted and I believe that we are jointly responsible for any necessary repairs and have a right of access to our property.
- Believe the claimed route to be a public footpath and we have held this belief since April 2004 (Patricia Appleyard) and since 1989 (Geoffrey Appleyard).
- Aware of members of the public using the route, have observed many people walking to and from the recreation ground and walking dogs etc. on a daily basis as long as we have lived at Appledown, such that we assumed it was a right of way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.

- We have not stopped or turned anyone back, we have never told anyone using the way that it is not public, we have not erected notices or signs stating that the way was not public.
- There is a gate at the recreation ground which is locked at night by the Parish Council to deter anti-social behaviour. The gate is open during daylight hours.
- Never obstructed the way, the section between A and B was in regular use until it was obstructed by fencing in late March 2015, we support the designation of the proposed footpath as a right of way.
- I am a frequent user of the proposed path since April 2004, my husband has also used the path and known it for longer as a resident of Porton since 1989. We use it from our property to access the shop; post office; doctors surgery and other parts of the village, until the route A-B was blocked by fencing in late March 2015. We have also used the section in the other direction from our property to the recreation ground on numerous occasions.
- When we purchased the property we knew about the path between 2 and 1A Bourne Close and assumed that this access to the recreation ground and the section through Bourne Close and across the grass to the High Street was already an established right of way. There was a clear well worn path from A-B across the grass at this time, this is supported by photographic evidence (i.e. photograph taken from Fieldings opposite the piece of ground, by Mr S Castellano over 20 years ago and aerial photograph dated 1980).
- Appledown was built in 1995.
- We can see much of the footpath from Appledown and confirm that it is well used by members of the public.
- Mr A M Jones purchased the grass area in 2004, at this time he lived at Jayesmoor opposite the land and could not have failed to be aware that members of the public walked over it both before and after he acquired it. He made no attempts to stop them and voiced no objections to the use. The only concern he expressed to us was that some people had parked vehicles on it without permission.
- Prior to 2004 the land was owned by Mr Pike at Appledown from whom we bought our property. Neither Mr Pike nor the first owners of Appledown made any attempt to fence the land to prevent access.

3. Mr Wayne Maher (owner of 1 Bourne Close and part owner of the private road, Bourne Close) returned a completed landowner evidence form, dated 5th January 2016:

- Owned the land for 8 years.
- Do not believe it to be a public right of way, it is private.
- Only on odd occasion saw child running across the child running across, very boggy on the grass.
- Never required people to ask permission before using the way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- Never stopped or turned back anyone using the way.
- Never told anyone it was not public.
- Never erected notices or signs stating that the way was not public.
- No stiles or gates on the way.
- Never obstructed the way.

4. Mrs Laura Maher (owner of 1 Bourne Close, part owner of the private road, Bourne Close) e-mail correspondence:

19th January 2016:

I have recently been informed that this footpath is believed to go through our front garden at 1 Bourne Close. We cannot allow a footpath through our garden and this is causing us great concern. The drawing we had sent appeared to show the footpath going along the road and not through our garden.

20th January 2016:

When I filled out the form, because of the planning permission they are trying to get on the green next to our house, I assumed the form was all in relation to the green and not anything on my property.

The public cannot and do not walk through our garden. When we purchased the property 7 years ago there was and still is a boundary wall, so the public have always walked along the Bourne Close road. There is also a very large willow

tree which was there when we bought the property, the footpath line marked on your map would go directly through this large tree. So I would find it hard to believe that the public would say they take this route.

The people requesting the footpath are possibly doing it to prevent the planning application on the green and for no other reason. There seems to be a lot of upset with the locals with regards to this planning permission on the green. Walking along Bourne Close road is quiet and I see no reason for an additional footpath.

I can confirm living next door to the green, that the public rarely walk across it, particularly in winter as there is no footpath and it is muddy. Occasionally in the warmer months we would see a child or dog take a shortcut across the green, but this would only happen if the land owner had cut the grass. Most other members of the public would walk along the Bourne Close road.

2nd February 2016:

My husband saw Valerie yesterday, I believe it is Valerie who is proposing the footpath. My husband informed her that her diagram isn't correct as it is drawn through our front garden. She agreed and said it was an error and she should be contacting you today to sort this out.

5. Mr Raymond Bray (owner of 4 Bourne Close and part owner of the private road, Bourne Close) returned a completed landowner evidence form, dated 20th January 2016:

- Owned the land for 18 years.
- Seen it being used daily over 18 years.
- Never required people to ask permission before using the way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- No gates or stiles on the way.

6. Gillian and Richard Green – E-mail dated 7 February 2016:

We walk frequently up the High Street past this land and at times walk through Bourne Close when walking to, or from the recreation ground. We have paid

regular visits to this area of the High Street between 1985 and 2006 to visit my sister and her family. On no occasion have we seen people walking over the land between A and B and there was no sign of any footpath or regular walking over the land.

Between 2006 and the present we have continued to walk in these areas, either on our own or with our grandchildren. During this time we have not seen people walking on the land or signs of it being used as a footpath. However, when we have been in this area we have seen other people who, like ourselves, were walking on the road through Bourne Close. I should imagine that like ourselves they prefer the safety of the smooth surface of the road and the fact that they do not have to avoid the dog fouling on the land.

We can see no advantage in putting a footpath across this land as there is a perfectly good road with minimal traffic that takes everyone to the same place.

7. Roly Grimshaw – E-mail dated 5 February 2016:

I strongly object to the application.

I have lived in Winterslow Road, adjoining the High Street for nearly 15 years. I have 2 dogs and when we first came here, small children who used the playground. My wife and I are regular walkers and have never seen anyone use the route A to B described on the application. Access round the land into the cul-de-sac of Bourne Close is so easy with minimal traffic to the 4 or 5 houses in the close.

There has never been a footpath there and indeed most people would not wish to venture over the land on which dogs have made a mess.

I am also well aware of the planning application to build on the land. It is not surprising to hear that most of the supporters of the footpath are using this application as a means of blocking the planning. Indeed I am a strong supporter of our public rights of way and it is irritating to find that such an application is being used as a political tool, not for the benefit of walkers.

I hope this application will be rejected.

8. Mr W G Baker – Letter undated:

I have lived here (Fairview, Gomeldon) for over 40 years. I have never known a footpath to go over this land, A to B. This is private property. I have never seen anybody walk across the land.

I have also done a lot of building works in the area, I am a builder by trade, but now retired.

9. Mr Geoffrey Pike – E-mail dated 3rd February 2016:

I owned the relevant piece of land in Bourne Close, Porton, along with the adjacent property, Appledown, from July 1998 to March 2004. At no time during my ownership was there a footpath across the land and neither did I give anyone permission to use or walk across the land. I sold the land to Mark Jones.

10. Mr P Jay – Letter undated:

I have lived in this village for 70 years, there has never been a footpath between A to B. Also I have never seen people walking between A to B in all the time I have been living in this village.

11. Mr T C Lodge – E-mail dated 16th March 2016

For many years I have lived in the parish of Idmiston and served on the Parish Council, as such I have some historical knowledge of the Porton area in particular, however I now live in Winterbourne.

The area in question is a relatively small plot of grassland, owned by Mr Jones, adjacent to Bourne Close and I had some involvement in the design of the dwellings therein. I do not believe that there was ever a “bona fide” right of way. Certainly residents took a short cut across the grass instead of using the nearby roadway and many used the area as a dog fouling spot. To my certain knowledge there was or is not a “way marker” or finger post indicating a “public footway”.

I have no material connection with the applicant or the objectors but I do believe that there is a “head of steam” being generated quite unjustifiably by some newcomers to the village.

12. Councillor Mike Hewitt, Bourne and Woodford Valley – E-mail dated 3rd

January 2016:

I have no problem with the footpath from B to C although I see no justification in formalising the access to the Playpark. As for A to B, this is over private land and the access from A to B is easily obtained by walking a short distance along the road where there has always been access to the Playpark.

The only reason this has been asked for at the moment is because of a potential planning application that 2 neighbours disagree with. The area between A and B was requested to become Community Land but has been rejected by the Council out of hand.

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Decision Report

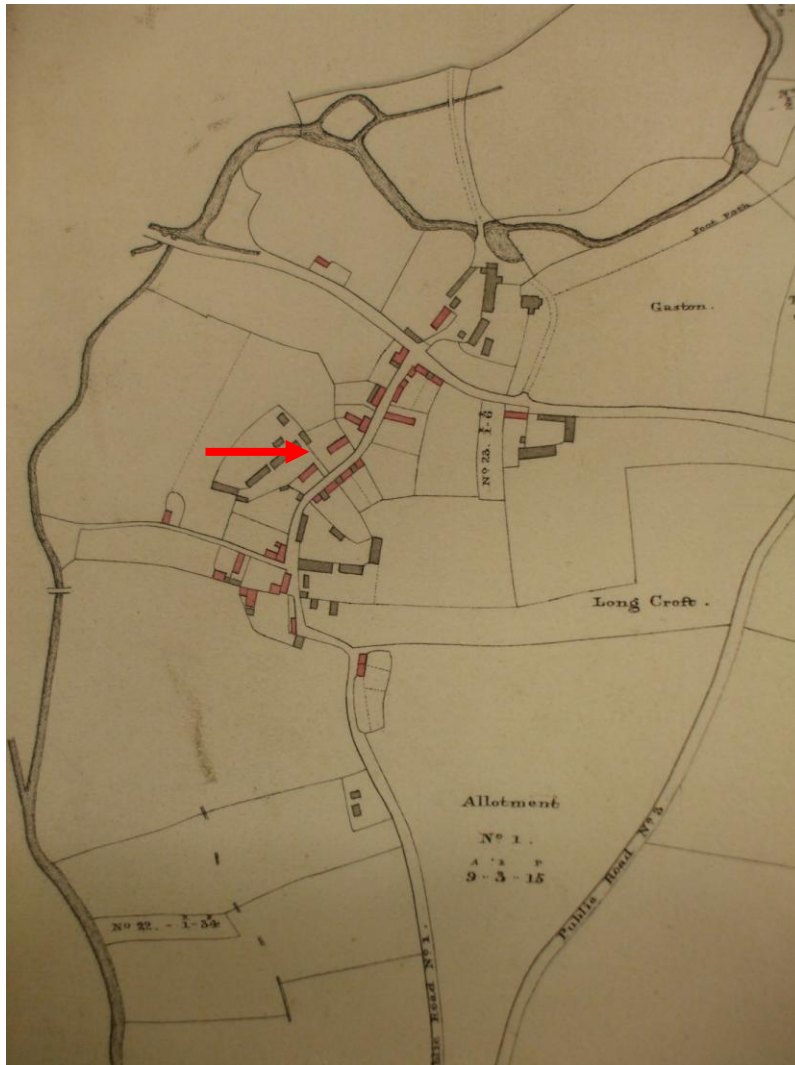
Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – Idmiston (Porton)

Appendix 2 – Historical Evidence Summary

Document	Porton Inclosure Award (E/A 170)
Date	1850
Relevant Documents	Award Map Award
Size and scale	Map size – 88cm x 44cm (approx) Scale of Map – 1” = 6 Chains
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.</p> <p>Inclosure Commissioners had the power to change the highway network of the parish, they were authorised and required to set out and appoint public and private highways, including bridleways and footways. Being a legal document, the highways appointed still exist to this day unless a legal event has taken place to stop up that highway.</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 the burden upon them as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly</p>

	<p>set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>The Porton Inclosure Award of 1850 post-dates the Tithe Award. The Inclosure Award Map is produced by James Combes Jr. Surveyor, Fonthill, Wilts and the map is signed by the Commissioners Francis Attwood and Thomas Waters.</p>
<p>Conclusion</p>	<p>On the map of the lands to be inclosed, there is the suggestion of an access into the Manor Farm buildings complex, in the corresponding location of the claimed footpath, (this location for the claimed route can be identified by comparing the detail of the Inclosure Award Map to historic and present day Ordnance Survey (OS) mapping. Rose Cottage which still exists today, adjacent to the claimed route, is present on these maps).</p> <p>The boundary of the highway, awarded as “<i>Public Road no.1</i>”, is shown as a solid line at this point, which leads Officers to believe that this access is private, forming part of Manor Farm, rather than being part of the highway network. Manor Farm itself is not awarded, possibly being subject to previous inclosure, (in its study of the Porton Inclosure Award of 1850, the Bourne Valley Historical Society observes that the Inclosure Award refers to the owners of the lands, all of whom were either the trustees of wills or of marriage settlements and that the agreement of the owners to inclosure had been given in 1842, but because of the death of one or more of the principals there had been a delay), therefore there is no description of the property included within the apportionment document.</p> <p>In contrast, there is another route leading west off “<i>Public Road no.1</i>”, located further south of Manor Farm, now known as The Lane and it can be seen that on this route there is no solid line, suggesting that it might be a route available to the public, leading directly off the awarded public road.</p> <p>Officers conclude from the Inclosure Award map that there was no recognised public footway existing over the land in question at the time of inclosure and no public footway to be set out and appointed by the Commissioners for public use.</p>



Porton Inclosure Award – 1850

Document	Parish Claim
Date	Survey Date - 1950
Relevant Documents	Parish Claim Map Parish Record Cards
Scale	Map scale – 6” to 1 mile
Significance	The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map. Following this instruction to authorities, Wiltshire County Council sent 6” 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>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's "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.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
Conclusion	<p>The claimed route is not recorded on the OS base map and it is not identified as a route to be claimed by the Parish Council. As a result there is no record card to accompany the map for this particular route.</p>



Idmiston Parish Claim map – 1950

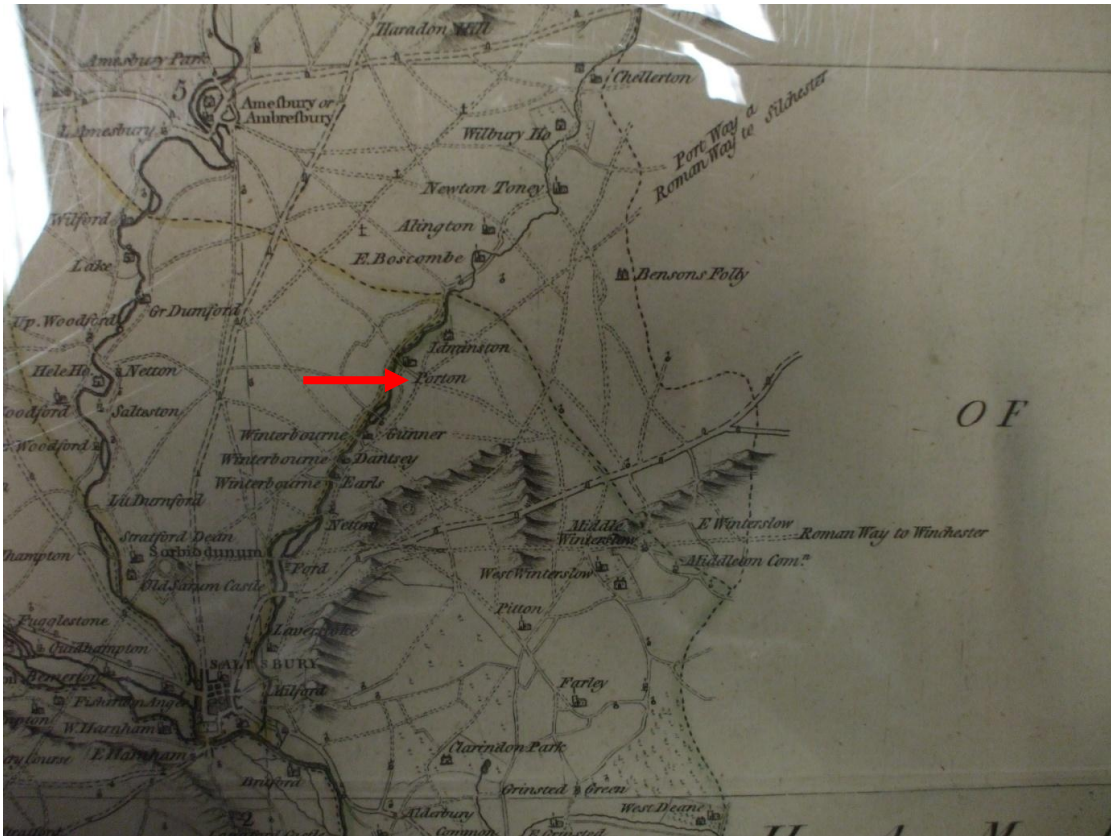
Document	Idmiston Tithe Award (T/A Idmiston)
Date	1841
Relevant Documents	Tithe Apportionment Tithe Award Map
Scale	Map Scale – 1" = 6 Chains
Significance	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain comprising an agreed proportion of 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.</p> <p>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</p>

	<p>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>It is considered that the claimed route would be located to the south-west of plot no.414, (awarded as “<i>Two Tenements & Gardens</i>”, which Officers believe to be the present day Rose Cottage), leading over plot no.415 which is described as “<i>House Farm Buildings & Yards</i>”.</p> <p>There appears to be a route off the main highway (the main highway is shaded sienna), in the corresponding location of the claimed route. It is open to the highway, but there is no continuation of the route in a westerly direction recorded on the map and is not coloured sienna as the part of the parish road network, (given the previous observations on the recording of The Lane in the Inclosure Award, it should be noted that The Lane is coloured sienna on the Tithe Award map).</p> <p>Officers consider that the Tithe Award records the private entrance to a complex of farm buildings, now removed, formerly part of Manor Farm.</p>

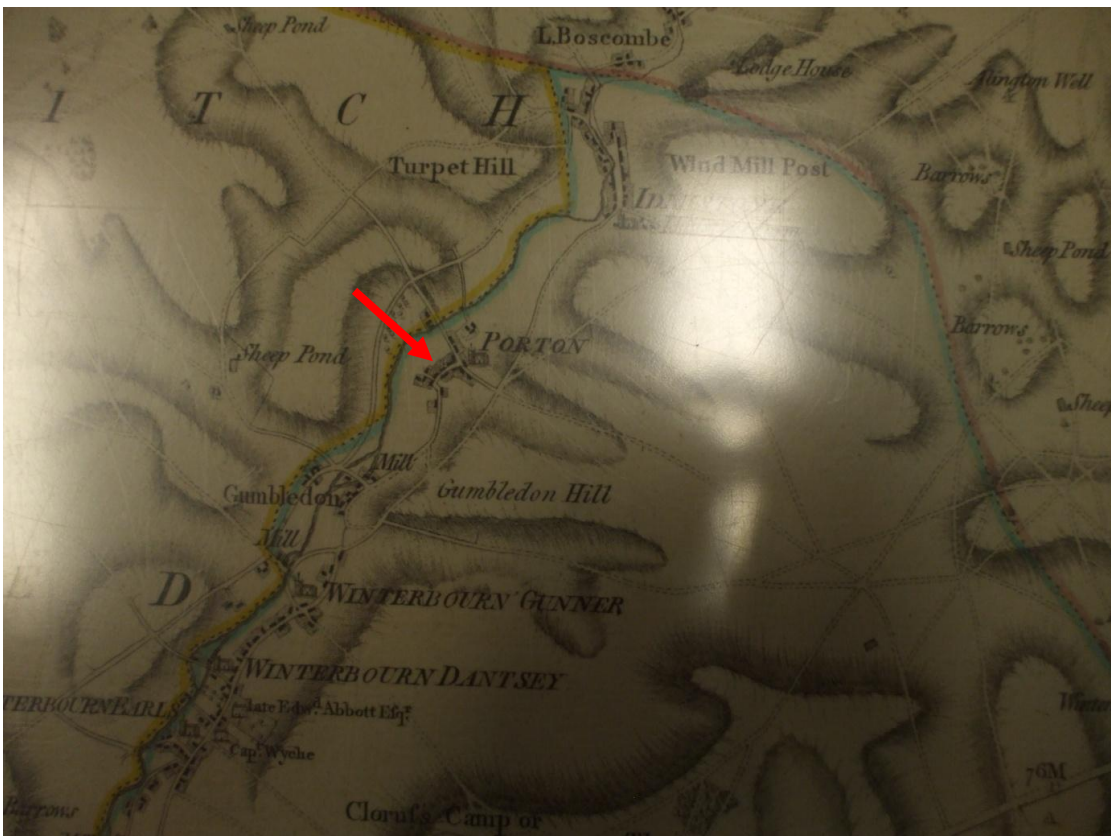


Idmiston Tithe Award Map - 1841

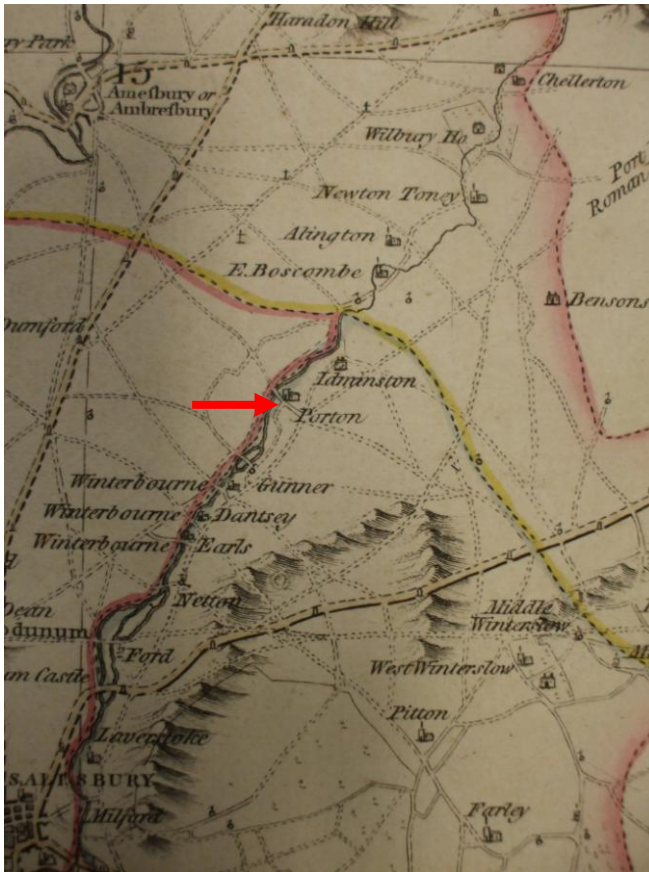
Document	Andrews' and Dury's Map of Wiltshire
Date	1773 & 1810
Relevant Documents	1773 Index Map 1773 Map Plate no.6 (of 18 plates) 1810 Index Map 1810 Map Plate no.15 (of 18 plates)
Scale	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
Significance	<p>Commercial maps were produced for profit and 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>Due to the constraints of small scale mapping, it is unlikely that footpaths and bridleways would be recorded on these maps.</p> <p>Additionally, being for sale to the whole of the travelling public, 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 their subscriptions.</p>
Conclusion	The claimed route is not recorded on the 1773 map or the 1810 revised edition, perhaps for the reasons given above and therefore these documents are inconclusive.



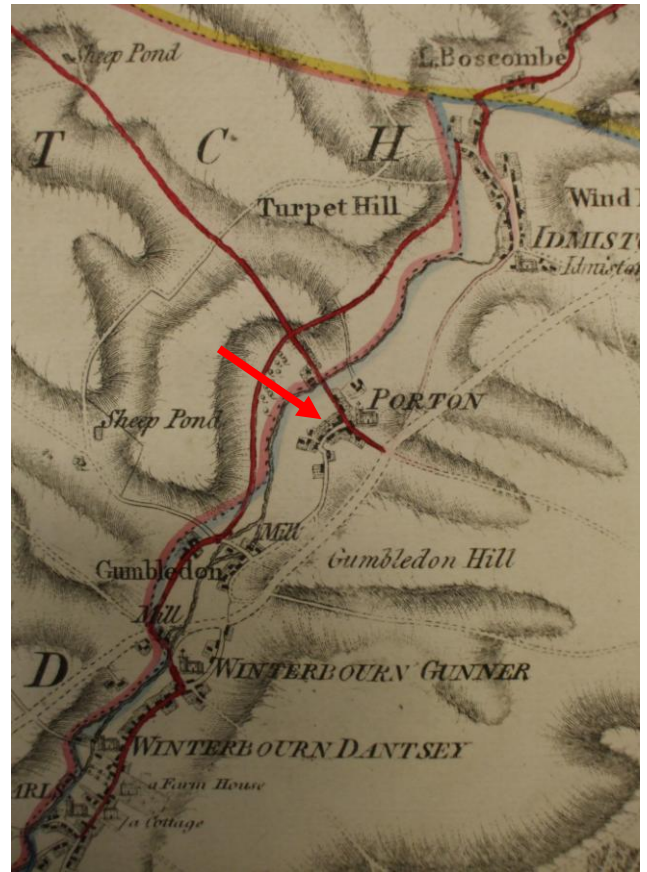
Andrews' and Dury's Map of Wiltshire (Index Map) – 1773



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



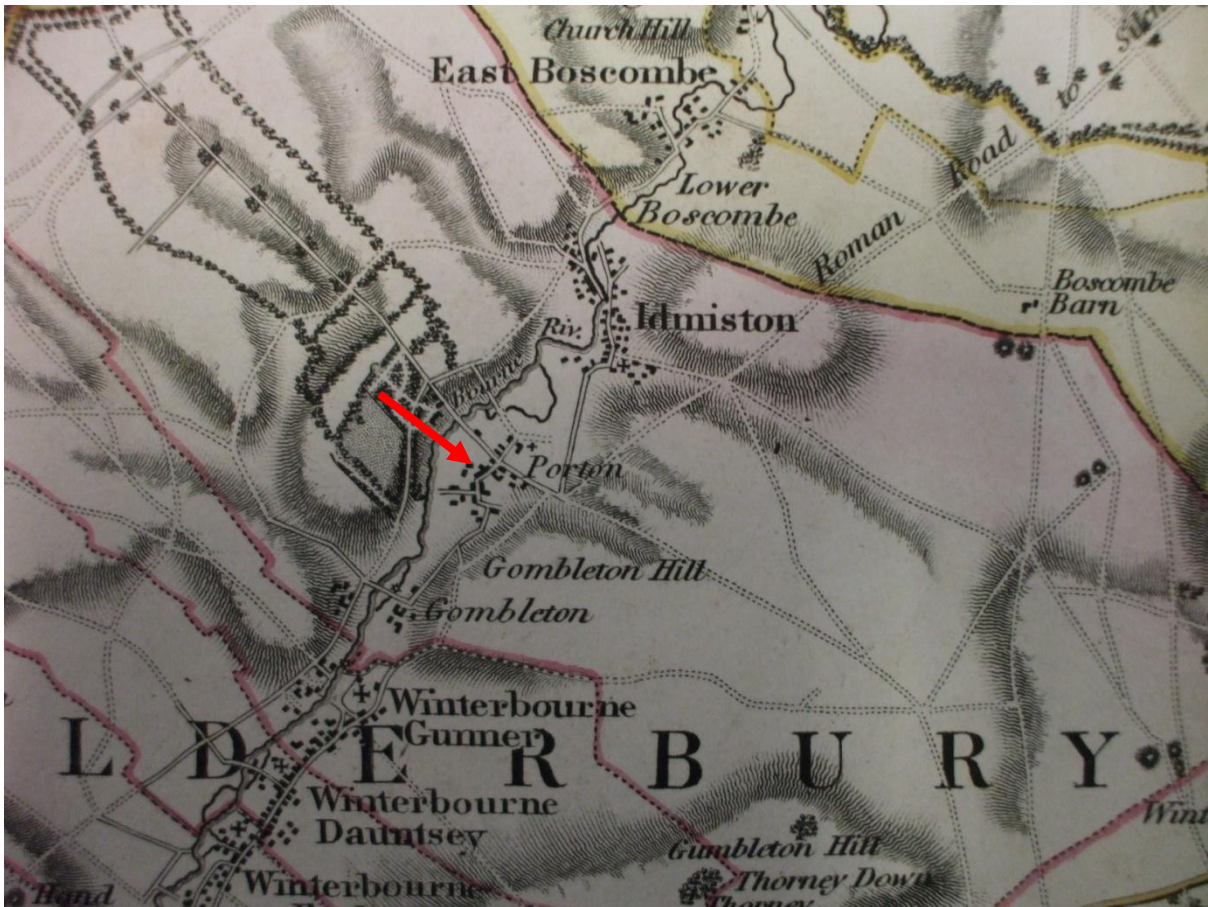
Andrews' and Dury's Map of
Wiltshire (Index Map) – 1810



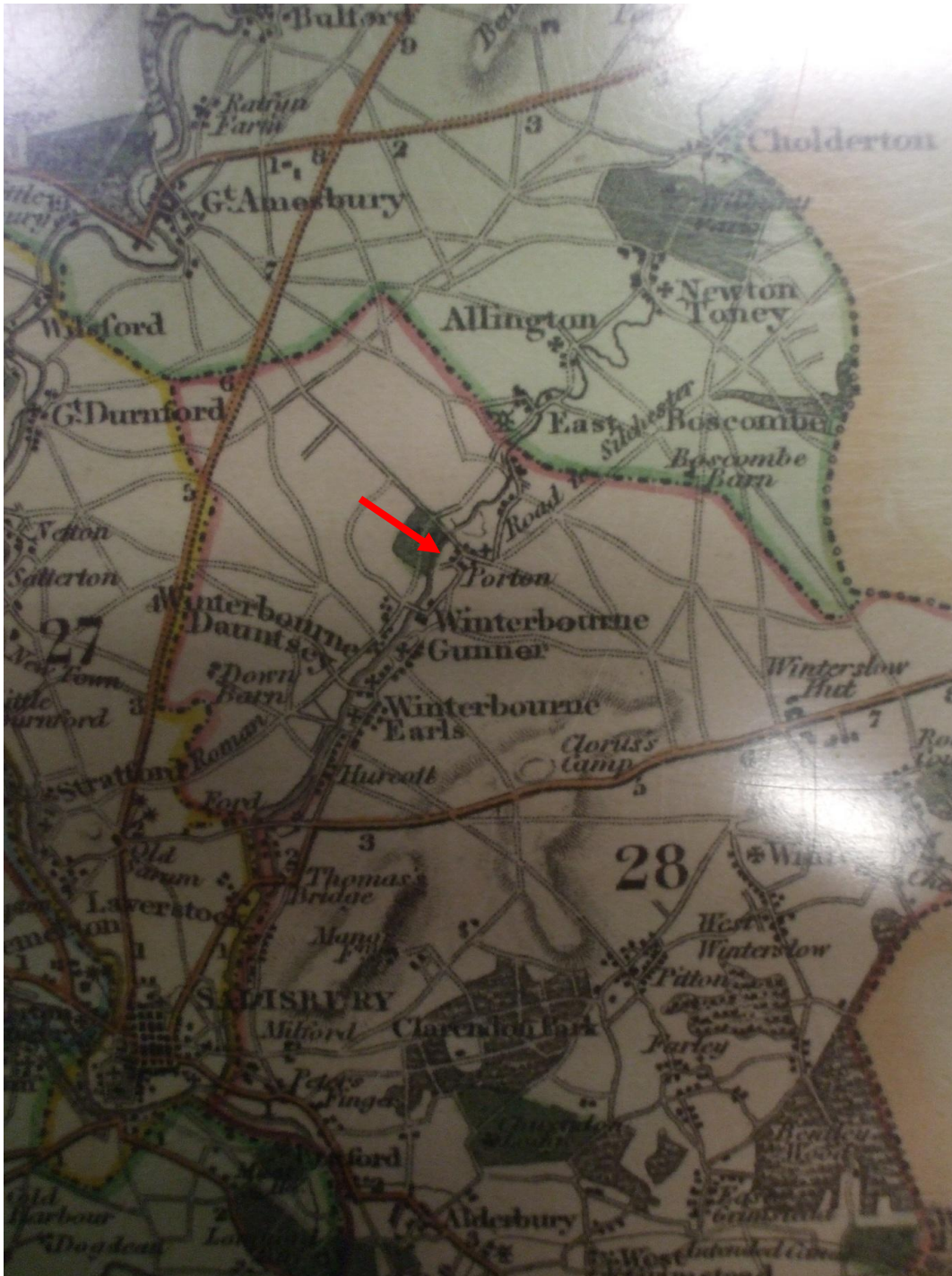
Andrews' and Dury's Map of
Wiltshire - 1810

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 (SE 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. Greenwoods first edition “Map of the County of Wilts from Actual Survey”, dated 1820 is a commercial map, produced for the travelling

	<p>nobility who contributed to its production. The inscription reads <i>“To the Nobility Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors”</i>.</p> <p>Greenwood produced a revised and corrected map of Wiltshire in 1829.</p>
Conclusion	<p>The claimed footpath is not recorded in Greenwoods Map of 1820 and the revised version of 1829, perhaps due to the constraints of small scale mapping.</p>



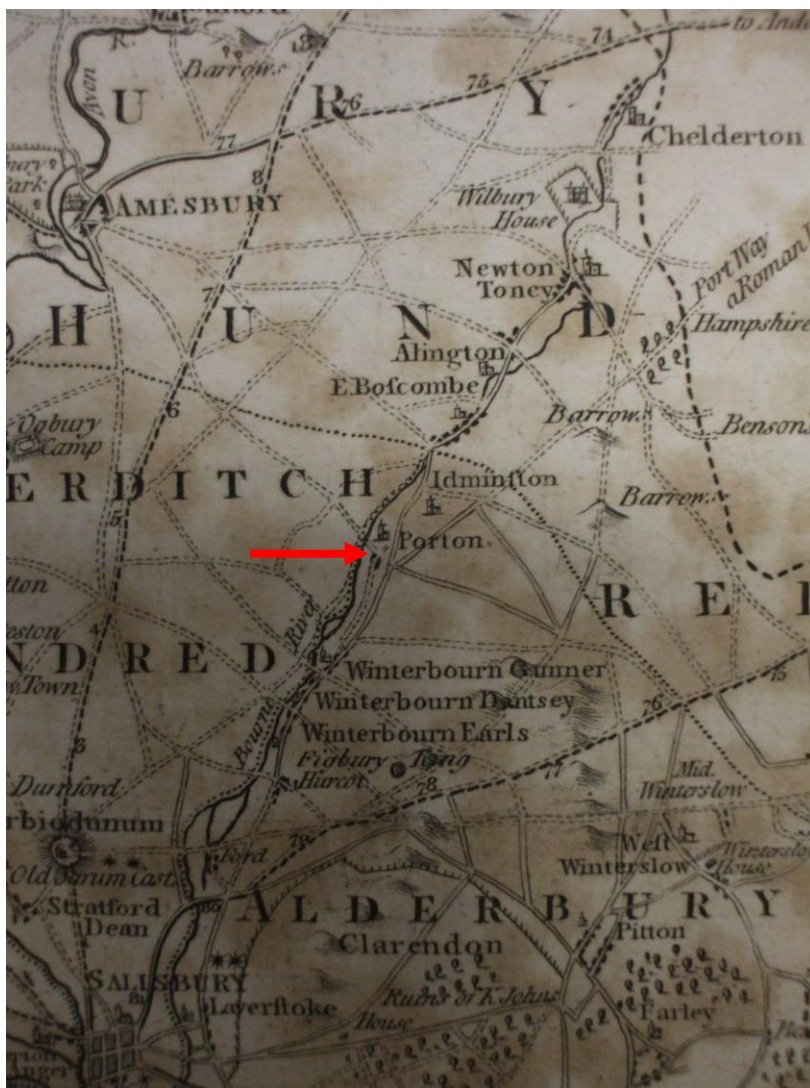
Greenwoods Map of Wiltshire - 1820



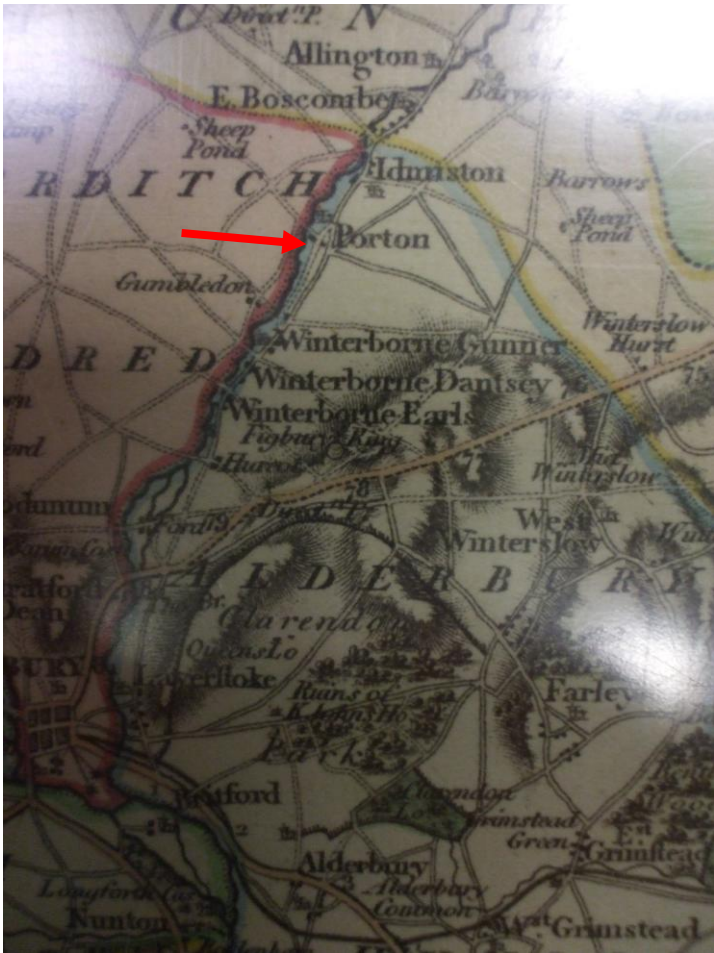
Greenwoods Map of Wiltshire - 1829

Document	Cary's Maps (1789 – 1390/141; 1801 – Map Folder 3.2; 1823 – Map Folder 3.2A; 1832 – Map Folder 3.4)
Date	1789, 1801, 1823, 1832
Relevant Documents	1789 – Map of Wiltshire 1801 – Map of Wiltshire 1823 – Sheet 28

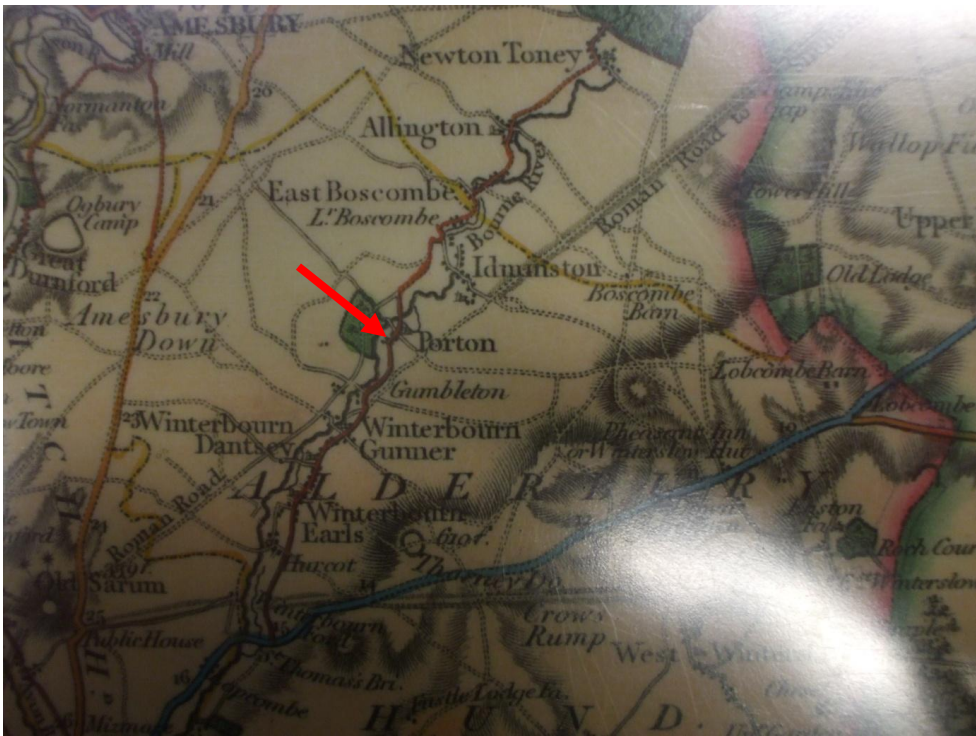
	1832 – Sheet 11
Size and Scale	1789 – 54cm x 41.8cm (approx), Scale – 2.5 miles to 1 inch 1801 – 55cm x 68cm (approx), Scale – 2.5 miles to 1 inch 1823 – Sheet size 54.1cm x 67.3cm (approx), Scale – 2 miles to 1 inch 1832 – Sheet size 56cm x 67.6cm (approx), Scale – 2 miles to 1 inch
Significance	John 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 Cary's maps, perhaps due to the constraints of small scale mapping.



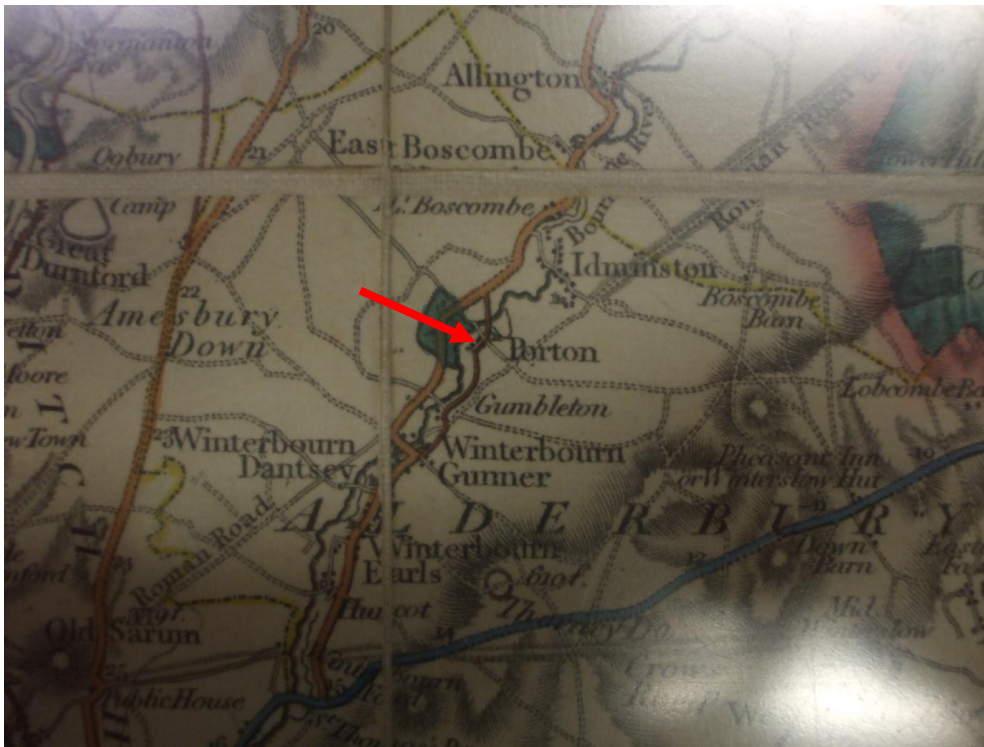
Cary's Map of Wiltshire - 1789



Cary's Map of Wiltshire - 1801



Cary's Map - 1823



Cary's Map - 1832

Document	Ordnance Survey Map
Date	Wiltshire portion surveyed 1876-77, Contoured 1882, Engraved 1882, Published 1883
Relevant Documents	OS Map Sheet no.61
Size and scale	Map Sheet Size 67cm x 98.5cm (approx), Scale - 6 inches to 1 mile
Significance	<p>The Ordnance Survey was founded in 1791 due to demand from the military for accurate maps of southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country.</p> <p>The maps are based on original survey with revisions and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added. Therefore, these maps individually can give little evidence of the status of a route shown, but when viewed alongside other documents, they can provide useful supporting information.</p>

Conclusion	The claimed route is not recorded on the map, which suggests that there was no footpath visible on the ground, at the time of survey.
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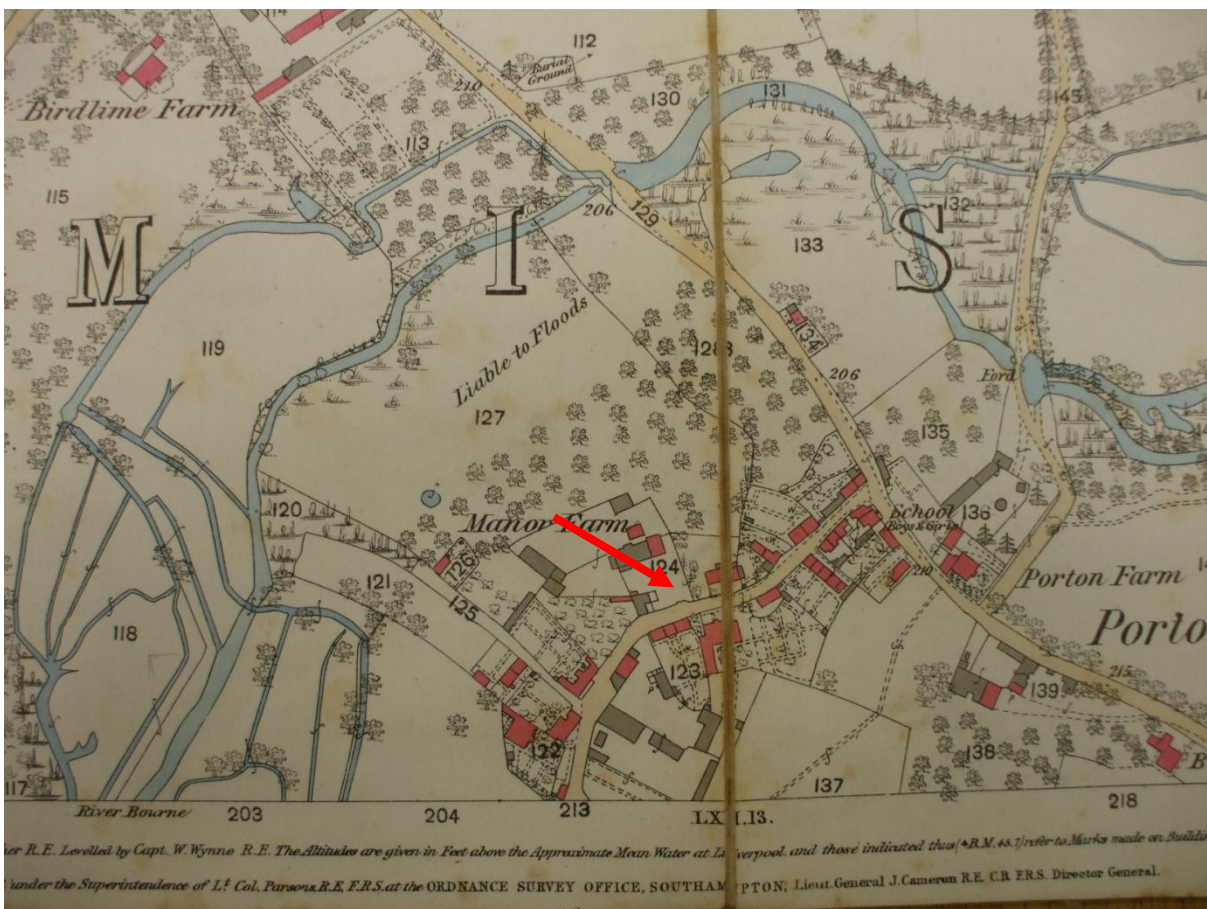
Ordnance Survey Map 1877 – 6 inches to 1 mile

Document	Ordnance Survey Map
Date	1877
Relevant Documents	Map Sheet 61/9 OS book of reference relevant to the 1:2,500 parish plans (first editions only) and the 6" to 1 mile county plans
Size and scale	Map sheet size 64cm x 96.5cm (approx), Scale - 25 inches to 1 mile.
Significance	As above (please see entry for 1877 Ordnance Survey 6" map)
Conclusion	The claimed route is not recorded on the map. When the 1877 map is overlaid with modern mapping, it shows that the claimed route would lead through the Manor Farm complex, plot no.124, with the present Rose Cottage adjacent to the east. The OS book of reference, shows plot no.124 in the parish of Idmiston to be "Houses, gardens and yards" and the fields to the north, plot no.s 128

and 127 to be “Pasture, & c”. After 1879 land use information was omitted and from around 1884 onwards area information appears on the maps).

The book of reference makes no reference to a public route through the Manor Farm complex, which supports the route shown on the Tithe Award Map 1841; the Map of the Common Fields and Village of Porton c.1845 and Bonakers Farm Sale Particulars 1866, being a private access to the Manor Farm complex.

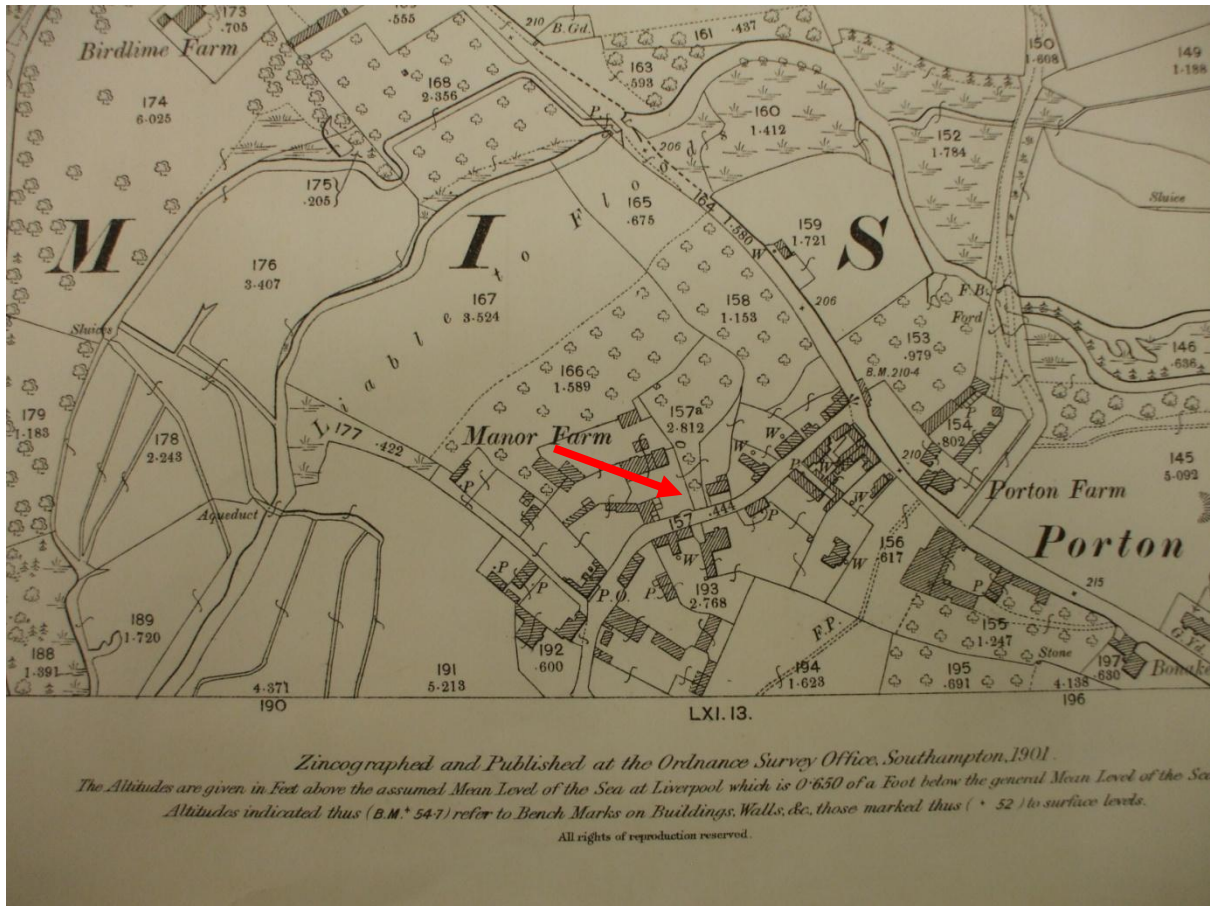
It is interesting to note that “The Lane” is plot no.125 which is recorded as “Road”.



Ordnance Survey Map 1877 – 25 inches to 1 mile

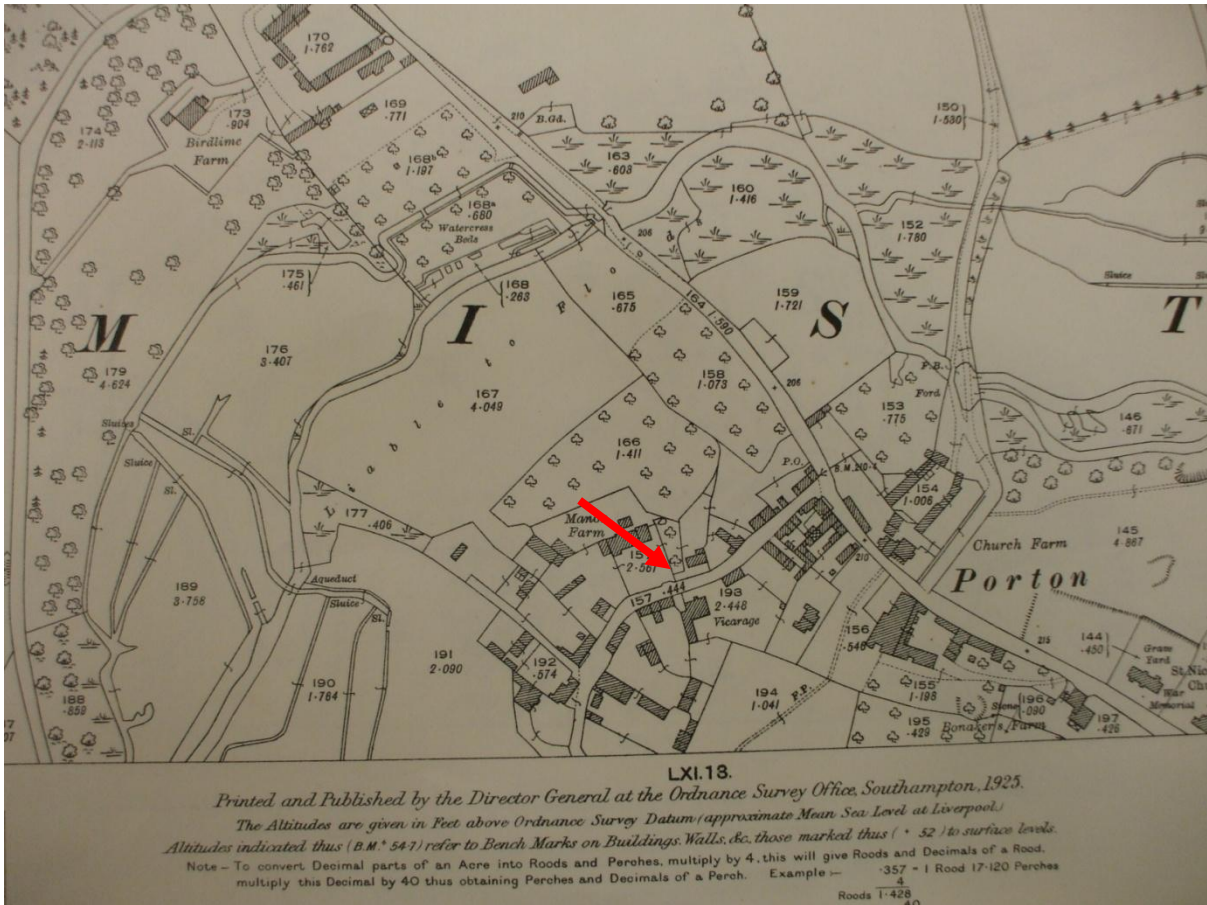
Document	Ordnance Survey Map
Date	1901
Relevant Documents	Map Sheet 61/9
Size	Sheet size 64cm x 96.5cm (approx), Scale - 25 inches to 1 mile

Significance	As above (please see entry for 1883 Ordnance Survey 6" map)
Conclusion	The claimed route is not recorded on this map. The Manor Farm buildings and pasture over which Bourne Close is now built, remain, with some variations to the boundary of Rose Cottage.



Ordnance Survey Map 1901 – 25 inches to 1 mile

Document	Ordnance Survey Map
Date	1925
Relevant Documents	Map Sheet 61/9
Size	Sheet size 64cm x 96.5cm (approx), Scale - 25 inches to 1 mile.
Significance	As above (please see entry for 1883 Ordnance Survey 6" map)
Conclusion	The claimed route is not recorded on this map.



Ordnance Survey Map 1925 – 25 inches to 1 mile

Document	Ordnance Survey Map
Date	1939
Relevant Documents	Map Sheet 61/9
Size	Sheet size 64cm x 96.5cm (approx), Scale - 25 inches to 1 mile.
Significance	As above (please see entry for 1883 Ordnance Survey 6" map)
Conclusion	The claimed route is not recorded on this map. The Manor Farm building complex is now removed.



Ordnance Survey Map 1939 - 25 inches to one mile

Document	Map of the Common Fields and Village of Porton (1236/16 MS)
Date	c.1845
Relevant Documents	Map of the Common Fields and Village of Porton
Size and scale	Map size 75.5cm x 174cm (approx), no scale included
Significance	This map dates from around the time of the Tithe Award and reflects the Porton Inclosure Award map, certainly the roads are numbered as per the Inclosure Award, which it pre-dates. It appears to show new allotments to the Trustees of Messrs Evans's Estate; Bonakers Estate; Late Lawrences Estate and the Trustees of Miss Isabella Bowles Estate. In its study of the Porton Inclosure Award of 1850, the Bourne Valley Historical Society observes that the Inclosure Award refers to the owners of the lands, all of whom were either the trustees of wills or of marriage settlements and that the agreement of the owners to inclosure had been given in 1842, but because of the death of one or more of the principals, there had been a delay.

Conclusion

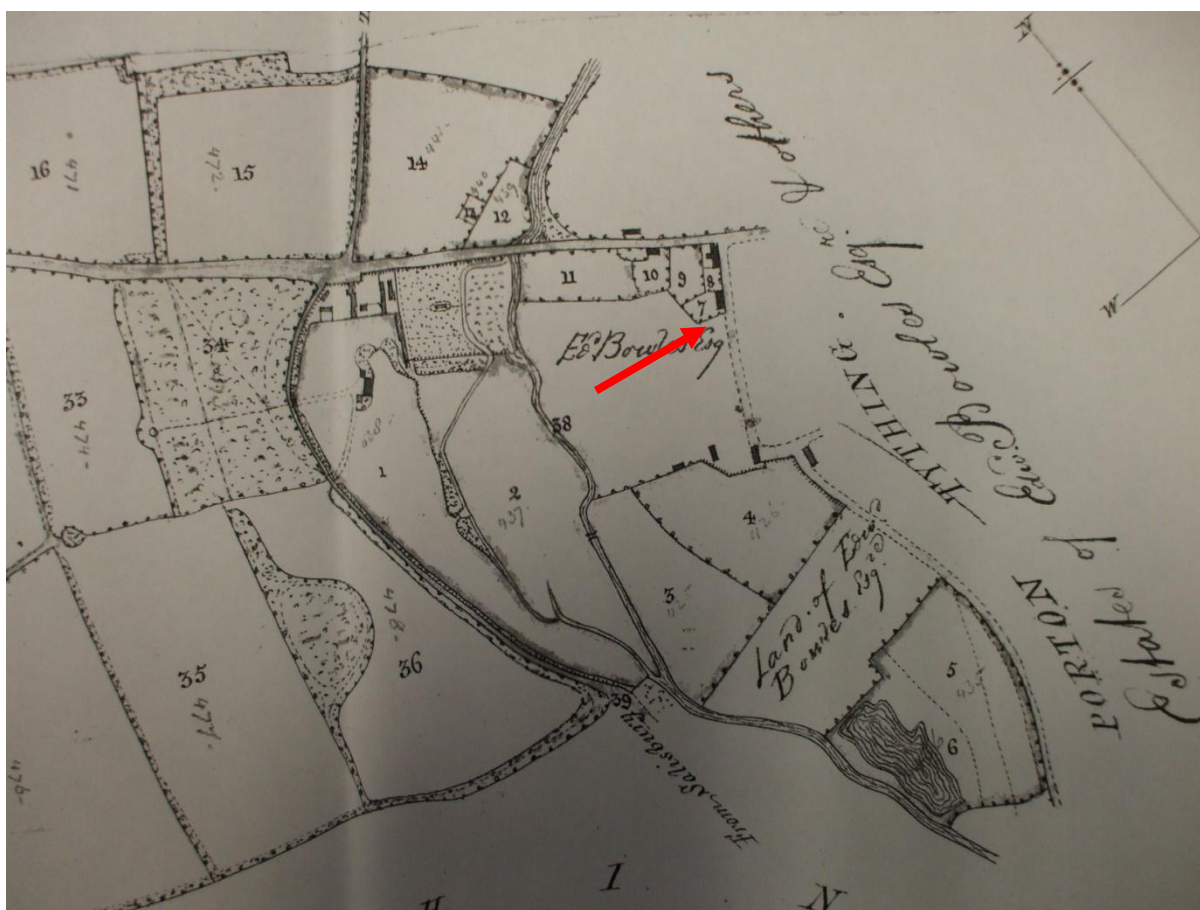
The Manor Farm complex over which the claimed route would pass is recorded as per the Inclosure Award and the Tithe Award. It is interesting to note that at the entrance to the Manor Farm complex, there is a gate off of the main highway (Public Carriage Road no.1) and a further gate located north-west of this, between the buildings, leading into a second yard / field. There are 2 gates to the south of this yard / field, one leading into the field beyond and the other leading back into the first yard. It is possible that the public did walk through the gates, however there is no route recorded in the field beyond, towards the river Bourne.

Perhaps a more plausible explanation is that the gates were part of a private access forming part of the Manor Farm buildings complex, which was then much larger than it is now. The other available mapping evidence supports this view, i.e. the Inclosure Award does not record a public footway at this location and none of the maps record a continuation of the route outside the Manor Farm complex, linking to other public highways.



Map of the Common Fields and Village of Porton – c. 1845

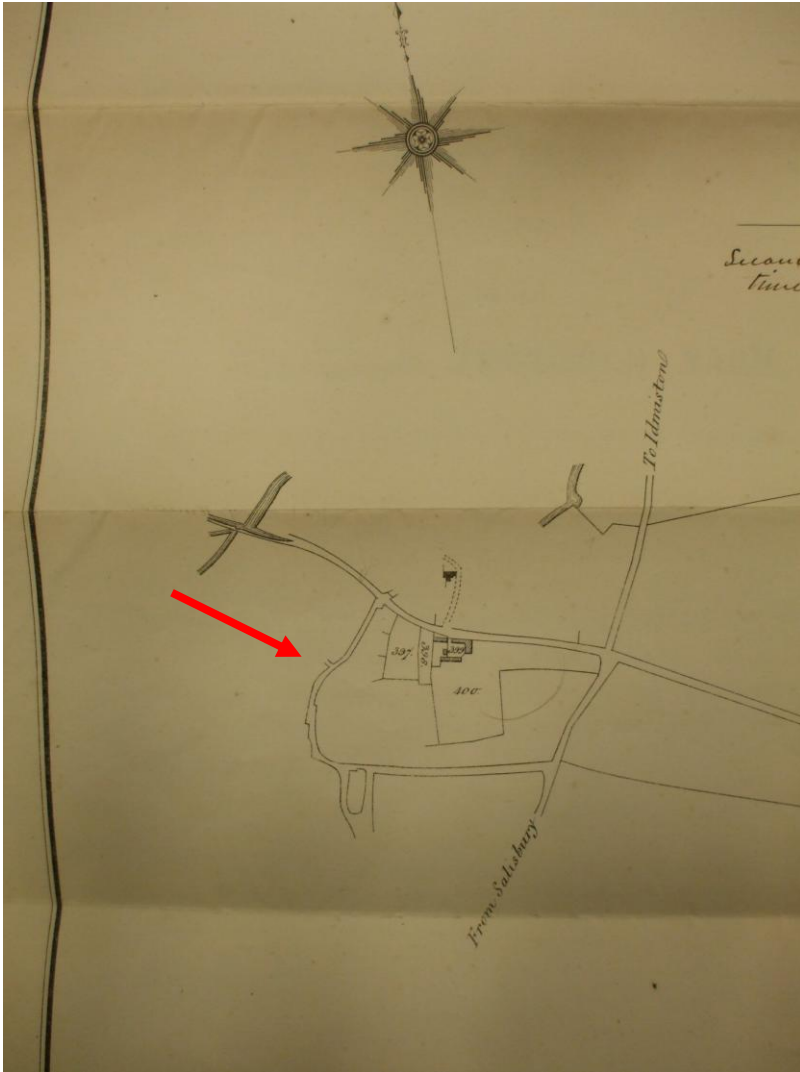
Document	Map of Manor Farm Porton (Reproduction) (X3/100)
Date	1813
Relevant Documents	Map of Manor Farm Porton
Size and scale	Map size 70.4cm x 24.6cm (approx), Scale – 1 inch to 1 mile
Significance	“A Map of the Manor Farm in the Tything of Porton in the Parish of Idmiston in the County of Wilts The Property of John D’eyly Hutchens Esq May 1813” with the later annotation “Purchased by James Morrison Esq of William Dowden April 1831”. The plan appears to show the extent of the Manor Farm Estate, Porton.
Conclusion	The claimed footpath route is not recorded on this plan.



Map of Manor Farm, Porton - 1813

Document	Porton, Bonakers Farm Sale Particulars
Date	1866, 1872
Relevant Documents	Sale Particulars and Map 1866
Documents	Sale Particulars and Map 1872

Size and scale	1866 – Map size 39cm x 50.7cm (approx), Scale 2.5” to 15 chains 1872 – Map size 27.2cm x 46.3cm (approx), Scale not given
Significance	Sale particulars can give useful information regarding the presence of public highways over the land, which proposed purchasers would need to be made aware of. The maps will be based on ordnance survey mapping.
Conclusion	<p>The 1866 map, records the High Street, but does not record any of the buildings. When comparing this map against other mapping evidence it appears to show a spur off the High Street into the Manor Farm buildings complex, in a location corresponding with the claimed footpath route. However, this map cannot provide any other information on whether this is public or private route and given that the High Street is outside the area being sold, no additional information is provided within the sale particulars themselves.</p> <p>When considering the route shown on this map it is useful to look at the additional mapping evidence which supports the existence of a private access track to Manor Farm at this location.</p> <p>The 1872 sale map records the northern junction of the High Street with the Winterslow Road, Officers consider for the purposes of map orientation and location, but it does not record the High Street southwards to such an extent as to include the claimed route. Therefore no conclusions can be drawn from this map and the accompanying sale particulars.</p>

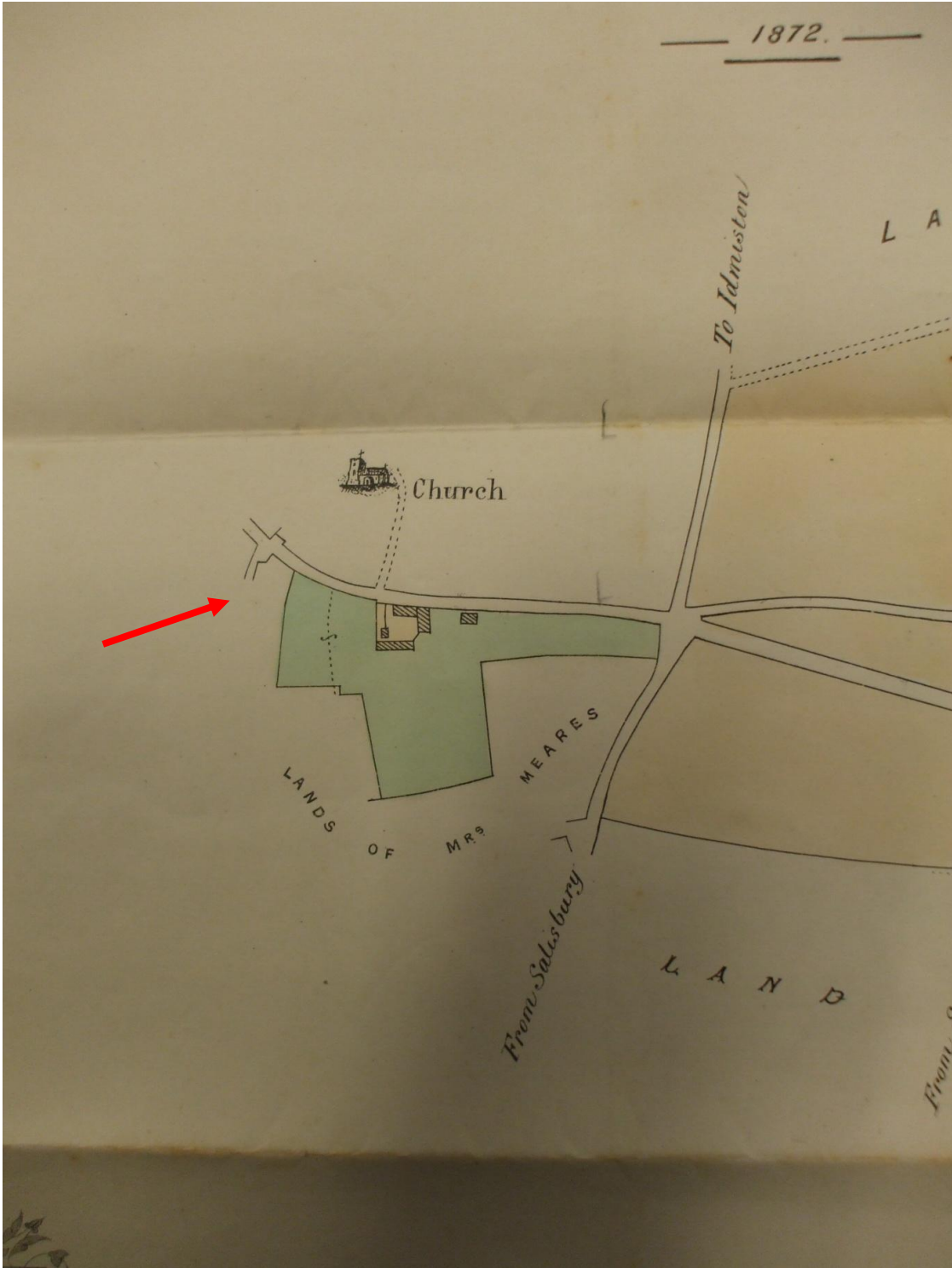


Bonakers Farm Sale Particulars Map -1866

REFERENCE.

Nos.	Description.	State.	Quantity.		
			A.	R.	P.
397	Goldings	Pasture	"	2	28
398	Ditto	Ditto	"	1	6
399	Farm House, Barns, Yard, & Garden	"	"	1	18
400	Orchard	Orchard	2	3	30
5	Allotment	Arable	1	1	11
7	Ditto	"	45	1	2
8	Ditto	"	82	2	39
14	Ditto	"	"	3	24
			134	1	38

Bonakers Farm Sale Particulars Map Reference - 1866



Bonakers Farm Sale Particulars Map – 1872

**APPENDIX C – “THE WILTSHIRE COUNCIL (PARISH OF IDMISTON) PATH NO.9
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
2016”**

WILDLIFE AND COUNTRYSIDE ACT 1981

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

**THE WILTSHIRE COUNCIL (PARISH OF IDMISTON) PATH NO.9 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 Amesbury 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 28th November 2016.
2. The Amesbury Rural District Council Area definitive map and statement dated 1952 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016.

SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

That length of footpath as shown by a broken black line with short intervals on the attached plan, leading from point A at OS Grid Reference SU 1875-3655, at its junction with High Street, Porton, in a north-north-westerly direction for approximately 28 metres, to point B at OS Grid Reference SU 1874-3658 and then leading generally north-west through Bourne Close for approximately 76 metres to point C at OS Grid Reference SU 1870-3664, at its junction with the recreation ground, having a width of 1.46 metres on that section between OS Grid Reference SU 1875-3655 and OS Grid Reference SU 1872-3661 and 3.15 metres on that section between OS Grid Reference SU 1872-3661 and OS Grid Reference SU 1870-3664 .

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>
Idmiston	9	<u>FOOTPATH.</u> From its junction with High Street, Porton at OS Grid Reference SU 1875-3655, leading north-north-west for approximately 28 metres and then generally north-west through Bourne Close for approximately 76 metres, to the recreation ground entrance at OS Grid Reference SU 1870-3664. Approximate length: 104 metres Width: 1.46 metres on that section between OS Grid Reference SU 1875-3655 and OS Grid Reference	53(3)(c)(i)

SU 1872-3661.
3.15 metres on that section between
OS Grid Reference SU 1872-3661
and OS Grid Reference SU 1870-
3664.

THE COMMON SEAL OF
THE WILTSHIRE COUNCIL
was hereunto affixed this
28th day of November 2016
in the presence of:

}
}
}
}

Elben Cundy.
Senior Solicitor



84578

The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016

The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016


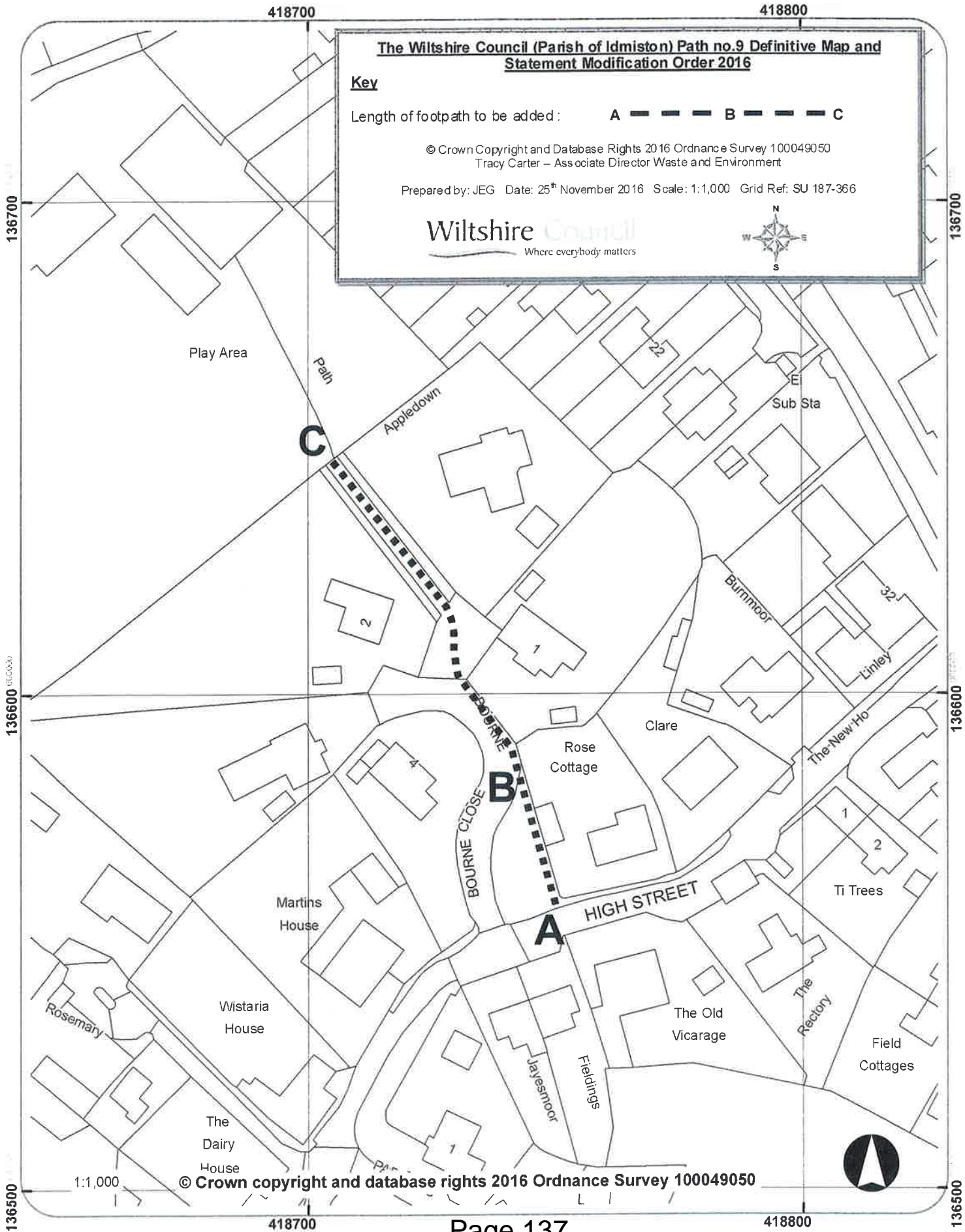
Key

Length of footpath to be added : **A** - - - - **B** - - - - **C**

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Tracy Carter – Associate Director Waste and Environment

Prepared by: JEG Date: 25th November 2016 Scale: 1:1,000 Grid Ref: SU 187-366

Wiltshire Council
Where everybody matters

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APPENDIX D – CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION PERIOD:

(i) REPRESENTATIONS OF OBJECTION

- (1) Mr Steve Ayling – Correspondence dated 16th January 2017
- (2) Mrs Sue Ayling - Correspondence dated 16th January 2017
- (3) Mr and Mrs W Baker – Correspondence dated 29th December 2016
- (4) Mr Paul Chivers – E-mail correspondence dated 12th January 2017
- (5) Gess Cuthbert – E-mail correspondence dated 17th January 2017
- (6) Mr M Dawson – E-mail correspondence dated 7th January 2017
- (7) Mr Steven Duffin – E-mail correspondence dated 23rd January 2017
- (8) Mr R Gould – E-mail correspondence dated 22nd January 2017
- (9) Mr Richard Green and Mrs Gillian Green – E-mail correspondence dated 7th January 2017
- (10) Mr Roly Grimshaw – Correspondence dated 16th January 2017
- (11) Mr Owen Harry – E-mail correspondence dated 16th January 2017
- (12) Sally Harry – E-mail correspondence dated 17th January 2017
- (13) Mr Dudley Humphreys – E-mail correspondence dated 16th January 2017
- (14) Idmiston Parish Council – E-mail correspondence dated 17th December 2016
- (15) Mr Mark Jones – Correspondence dated 23rd January 2017
- (16) Mr C Joy – Correspondence dated 15th January 2017
- (17) Mr and Mrs Maher – Correspondence dated 13th January 2017
- (18) Mrs Pope – E-mail correspondence dated 12th December 2016
- (19) Mrs Janet Slater – E-mail correspondence dated 20th January 2017
- (20) Mr G Thomas – E-mail correspondence dated 12th January 2017
- (21) Mr Andrew Tidd – Correspondence dated 23rd January 2017
- (22) Mrs Jan Tidd – Correspondence dated 23rd January 2017
- (23) Mrs B Tooze – E-mail correspondence dated 15th January 2017

Green, Janice

From: Sue Ayling
Sent: 20 January 2017 09:58
To: Green, Janice
Subject: Porton footpath letter of opposition
Attachments: Porton footpath letter of opposition ref Jones.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

Please see the attached letter regarding the proposed footpath at Bourne Close, Porton.

Regards

Steve Ayling

157 East Gomeldon Rd
Gomeldon
Salisbury
SP4 6NB

16/01/20

Ms J Green
Rights of Way and Countryside team
County Hall
Trowbridge BA14 8JN

janice.green@wiltshire.gov.uk

Dear Ms Green

A letter of opposition to the application for a footpath between Porton High Street and the Recreation Ground.

I am a resident of the Idmiston, Porton, Gomeldon parish and would like to make certain observations regarding the footpath application at Bourne Close, Porton, a proposal to which I am opposed.

To my knowledge, in the 22 years that I have lived in the parish, the land in Bourne Close belonging to Mr Jones has never had evidence of use as a footpath. Until last year it has never been fenced and so people could have walked over it but only a few would, on a dry day.

Had Mr Jones erected a smart fence around his land, when he purchased it, the situation of imposing a public right of way across it would never have arisen. He didn't erect a fence and he didn't complain when people occasionally walked across the land, or more frequently allowed their dogs to defecate on it. There is a world of difference between a landowner not complaining if the occasional person wanders across his grass, to having it dedicated as a footpath.

To invent a footpath to block the outcome of a planning application which was all but granted flies in the eye of part of our democratic process.

When residing in my previous residence, protected land to the rear of our property had consistently been refused planning permission. Government policy then changed and the Council approached the landowner and encouraged him to submit plans. I visited Salisbury District Council offices to find out how to object. I was told by Stephen Thorne (then head of planning) that as my only grounds for objection was that I would lose my view, if I wanted to protect my view I must buy it. So, we moved house. My point is that if the residents in the immediate vicinity of Mr Jones's land do not want the land to be developed, according to Mr Thorne they should club together and buy the land. With their benefit of hindsight I am sure we would very soon see a sign similar to:

This is Private Land
The owners give permission for occasional use by the public for recreational purposes
No Public Right of Way
No dog fouling

The route from A to C along the road, without crossing Mr Jones's ground, is the obvious route to walk from Porton High Street to the recreation ground. My issue is not with the residents trying to stop the development, as anyone would do 'in their back yard', but with the Council for allowing this absurd footpath application to get this far and at such tax payers' expense.

Mr S P Ayling

Green, Janice

From: Sue Ayling
Sent: 15 January 2017 23:32
To: Green, Janice
Subject: Letter of opposition to Porton footpath proposal
Attachments: Porton footpath proposal letter of opposition.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

Please see the attached representation regarding The Wiltshire Council Path No. 9 Definitive Map and Statement Modification Order 2016.

Regards

Sue Ayling

157 East Gomeldon Rd
Gomeldon
Salisbury
SP4 6NB

16/01/2017

Janice Green
Rights of Way and Countryside team
County Hall
Trowbridge BA14 8JN

janice.green@wiltshire.gov.uk

Dear Ms Green

Letter of opposition to the application for a footpath between Porton High Street and the Recreation Ground via Bourne Close.

Whilst I have no personal interest in the footpath proposal or the land in question, as a resident of the IPG parish and a believer in 'fair play' in all walks of life, I feel compelled to comment on this case. Being a neighbour in Gomeldon, Mr Jones brought the situation to my attention and as I am interested in the parish in which I live I went to look at the site.

My initial thought was why would anyone want to walk that very short distance across Mr Jones's private land, on wet grass, when they could walk a few more metres on dry tarmac (unless it is so their dog can deposit its waste on Mr Jones's land – which seems to be OK on private land but carries a severe fine if on Council land). It is a very quiet cul-de-sac, not a dangerous road and it seems unlikely that parents are wishing to drag pushchairs across that piece of rough ground to get to the playground. Just beyond Mr Jones's ground they would be walking on the road, in fact 30m of the proposed path is on grass and 46m is on the road in Bourne Close.

It seemed to me like a perfectly reasonable site for a small affordable bungalow, ideal as a starter home or for elderly people, being so close to the amenities and shops in Porton. So I enquired further and found that planning permission had been agreed in principal in 2015, but was then stopped by members of the Porton Neighbourhood Plan Group (presumably a sub group of the parish council) raising the footpath proposal. It seems extremely likely that this has been done to prevent the development - Mr Jones has owned the land for 12 years and during that time nobody has previously applied for a footpath across it.

I have since learnt that a 60 page report has been written by the Rights of Way Officer, Wiltshire Council, regarding this 114m footpath. There is no question about 84m of the footpath which follows Bourne Close and the made-up path to the recreation ground. The issue is simply the 30m across the grass. I think anyone with common sense, looking at the proposed route of this section of the footpath, would see the futility of this situation and quite frankly be enraged at the waste of tax-payers money in producing this report and all the associated work.

A large part of the report refers to the witness statements, and the witnesses all seem to have surprisingly similar recollections of long term heavy use of the ground as a footpath. This is followed by the sections referring to photographic evidence of the site and Council officers conclude that the photographs do not show a well trodden path (which would be the case if the witness statements were to be believed). It is telling that paragraph 10.37 states that

evidence of the path is 'inconclusive', when actually evidence of a path is 'non-existent'. A footpath can't be 'reasonably assumed to subsist' when there is no evidence of it.

As for the statement 'there is insufficient evidence of the land-owners non-intention to dedicate the land as a public right-of-way' – equally there is insufficient evidence that the landowner did intend to dedicate it!

There is a perfectly adequate route from A to C already in existence along Bourne Close, without encroaching on an individual's private grassland. To do so should only be considered in exceptional circumstances when there is no reasonable alternative, which is clearly not the case here.

Based on my observations above and my belief that a person has a right to protect and enclose their own property, I oppose the order. My objection isn't with the residents of Porton trying to stop the development, which anyone within the vicinity of a proposed development will try to do; it is with the Council supporting their farcical case.

Mrs S Ayling,

157 East Gomeldon Rd, Gomeldon SP4 6NB

Mr & Mrs W Baker
Fairview
Gomeldon Road
SP4 6JZ

29th December 2016

Reference JG/PC/272015/11

Dear Ms Green

We would like to object to a footpath going across the grass at Bourne Close, Porton. While out walking our dogs, we would always use the roadway of Bourne Close to go to the park, as many other people do including Mum's with pushchairs and young children on bikes which we often see. Why would anyone want to struggle trying to push bikes or pushchairs across grass when they can use the Bourne Close road. We see no point in wasting time or money on a footpath that is not needed.

Yours sincerely

Mr & Mrs W Baker



Green, Janice

From: Paul Chivers
Sent: 17 January 2017 19:14
To: Green, Janice
Subject: Ref JG/PC/27 2015/11
Attachments: Dear Ms Green.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green
Please find attached my letter of concern in reference to you proposed pathway JG/PC/27 2015/11.

Paul Chivers
Group Manager
Reading Group



City Electrical Factors Limited



City Electrical Factors Limited are registered in England, no. 336408
Registered office: 141 Farmer Ward Road, Kenilworth, Warwickshire, CV8 2SU

12th January 2017

Mr P. Chivers
97 East Gomeldon Road
Gomeldon
Salisbury
Wiltshire
SP4 6LZ

Dear Ms Green,

I am writing to you regarding my concerns in reference to a proposed public footpath on the piece of land on Bourne Close, Porton job ref; JG/PC/27 2015/11.

My family and I often walk and ride around the surrounding area and we have never experienced any issues with either access or traffic, I simply cannot understand the reasoning for the proposed pathway.

As I understand it, once installed, only a few local houses opposite stand to benefit , why would you even consider the expense of installing a foot path for the possible benefit of a few chosen households ,from my point of view this is total waste of time and even more a complete waste of money , as a tax payer I must admit I am greatly concerned that the local authority would come to such a conclusion or forward such a proposal, the fact is there is no need for the proposed path as people naturally walk along the roadside.

As it is such a small patch of land there is absolutely no need for a 'short cut'.

Once again I must express my concern of the cost of a pointless installation when there are far more pressing issues like pot holes in the roads.

I do hope you take note of my comments and reconsider this ridiculous proposal.

Yours Sincerley

Paul Chivers

Green, Janice

From: Gess Cuthbert
Sent: 17 January 2017 16:21
To: Green, Janice
Cc: [Redacted]
Subject: Public footpath Porton

Follow Up Flag: Follow up
Flag Status: Flagged

Sorry sent before I checked it, I apologise for the spelling errors, the email was sent with emotion.

Green, Janice

From: Gess Cuthbert
Sent: 17 January 2017 16:11
To: Green, Janice
Cc:
Subject: Public footpath Porton

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms. Green, I understand that it is the intention of Wiltshire Council to designate a footpath between Porton High Street through Bourne Close to the playing fields, I have lived in the village for over thirty-four years in that time have walked my daughters and laterly my grandchildred from the high street to the playing fields using the road through Bourne Close,especially pushing a pushchair never using the grassed area, in fact , I cannot recall seeing anybody else using it.

In my time in Porton I have had two seperately spells on the Parish Council, (although would point out at this moment in time I am not a councillor sending this email as a concerned parishioner), both times I was involved with the amenities committee which dealt with footpaths in the parish, rthe footpaiths would be walked once a year by members of the committee and I have no recollection of the area in question being used as a footpath.

I cannot understand why time and money has been spent on this, surely it could be spent better, elsewhere, there is absolutely no need for this footpath, I also cannot understand how, or why a request for a footpath was made.

Green, Janice

From: Vanessa Dawson
Sent: 09 January 2017 08:58
To: Green, Janice
Subject: Fwd: Re footpath

Follow Up Flag: Follow up
Flag Status: Completed

Sent from my iPhone

Begin forwarded message:

From: DEBBIE JONES
Date: 7 January 2017 at 21:20:14 GMT
To:
Subject: FW: Re footpath

Sent from my Windows Phone

From: Vanessa Dawson
Sent: 07/01/2017 20:30
To:
Subject: Re footpath

Janice green
Rights of way officer
Rights of way & countryside team
Wiltshire council
County hall
By the sea road
Trowbridge
BA 14 8 JN

7.1.2017

Ref JG/ PC/272015/11

Mr m dawson
7 mude gardens
Mundeford
Christchurch
Dorset
Bh234ar 4 at

To who this may concern

I have lived in gomeldon / Porton are for twenty plus years and have known of the parcel of land at Porton referred to as (land at bourne close) this has always been private land and has never had a footpath on it for its entire existence ,so it perplexes me to why you are seeking to put a footpath there now it would seem that rights of way officers are working with the neighbourhood planning group and feel they are trying to use their powers incorrectly as this proposed path that you are seeking to impose upon the owner of the land is to stop a planning application

For a much needed affordable house in the area points to be considered are as follows

- 1 is this proposed footpath just a means to try and stop a planning application for a much needed property
- 2 is the Porton neighbourhood planning group (previous opposers of a property planning application along with rights of way officers working outside their remit
- 3 it has already been established that there never has been a footpath on the land

4 the parish council do not think it is necessary and have rejected it

5 there is already a existing route that has been used for a long time which is bourne close road which is quite acceptable

6 all surrounding roads do not have pavements

7 it would only save maybe 10 metres max in walking distance it obviously is not needed

8 we as rate payers are paying for this proposal and I am sure if I was the owner of this land I would fight this to the highest level and the rate payer will be paying the bill

9 in the very unlikely event after a long battle of appeals etc which is very unlikely that the footpath had to be installed naturally the land would be fenced off and a fenced walkway for the footpath created with a stile at either end who is ever going to use it nobody

10 the landowner could easily re design any property development on this land to take the path into account

When all of these points are considered it is obvious it is a complete waste of money and time that we as rate payers pay for it it is a disgrace that this proposal has come this far

Sent from my iPhone

Green, Janice

From: steven duffin new
Sent: 23 January 2017 21:20
To: Green, Janice
Subject: Wildlife and Countryside Act 1981 - Section 53 Application to add a footpath to the definitive map and statement of public rights of way in the Parish of Idmiston (Porton)

Follow Up Flag: Follow up
Flag Status: Flagged

23 January 2017

Janice Green
Rights of Way Officer
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Ref: JG/PC/27 2015/11

Dear Ms Green

I strongly object to this said footpath A and B at Bourne Close, Porton. I often visit the play park with my son and until now have always used the tarmac road on Bourne Close to gain access to the park, which quite clearly is a better option than walking across wet grass. It is also obvious to me that I am not the only local resident with this view as I can't remember ever seeing anyone else not using the tarmac road for access.

I think this footpath A to B is a waste of time, money and effort which could be used on other parts of Porton Village where needed.

Many thanks

Steven Duffin
Ashlea
Horefield
Porton
SP4 0LE

Green, Janice

From: ROY GOULD |
Sent: 22 January 2017 18:00
To: Green, Janice
Subject: Footpath Objection: Porton Village
Attachments: Footpath Objection.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green,
Please find attached my objection to the proposed footpath in the village of Porton, for your perusal and consideration.

Yours Faithfully
Roy Gould

Footpath Objection

Ref: JG/PC/27 2015/11

Roy Gould
5 Church Road
Idmiston
Salisbury
Wiltshire
SP4 0AZ

21st January 2107

Ms Janice Green
Rights of Way Officer
Wiltshire Council
County Hall
Trowbrige
BA14 8JN

Dear Ms Green

Application to add a footpath to the definitive map and statement of public rights of way in the parish of Idmiston (Porton) - OBJECTION

I wish to object most strongly to this application which is nothing more than a circuitous attempt orchestrated by small group of relatively new incoming NIMBY (Not In My Back Yard) residents to block the construction of a desperately needed affordable dwelling within Porton Village; thus providing an opportunity for a small sized family to remain in the village where their roots are firmly established.

I have been a member of Idmiston Parish Council (IPC) with an unbroken service of 50 years come May 2017. During this period, I have made countless visits to Porton Play Park (PPP) via the Bourne Close entrance in order to carry out hundreds of inspection and maintenance tasks in my role as a parish councillor. Also, accompanying my children and later their children on twice weekly visits to the park. Throughout the 62 years that I have lived in the parish of Idmiston, I have never ever witnessed any trespassers on the land at the junction of High Street and Bourne Close now belonging to Mr Mark Jones.

Footpath Objection

Ref: JG/PC/27 2015/11

Whilst serving on IPC I was the council's elected Chairman of the Amenities Committee for a period of 41 years. A small part of the committee's remit was tree planting within the parish. Occasionally the Council would respond to national tree planting and commemorative schemes such as HM Queen Elizabeth's silver and golden jubilee and VE & VJ celebrations. During approximately thirty years of the foregoing period, Mr Raymond Stockton of Rosemoor High Street Porton was also an elected member of IPC and owner of the area of grass land at the centre of the application and interestingly I do recall distinctly asking if he would grant the council permission to plant some trees on his land. I received a polite but curt NO to my enquiry, followed by an explanation that it was private land and would remain so because he had development plans for the site. Latterly and after two changes of ownership I the put the same question to the present owner, Mr Mark Jones who politely refused and stated it was still private land and he was exploring the construction of a small size dwelling on the site

The road linking PPP with the High Street Porton i.e. Bourne Close, is unrestricted to pedestrians and cyclists. Who would walk or attempt to cycle across an area contaminated with dog excrement, has long grass which is wet and muddy when it rains or snows, when there is a far superior metalled surface only eight to ten paces further away if approached from one direction or no change if joined from the opposite direction?

All in all, this application is totally **unnecessary** and would:

- Be wasteful of council taxpayers funding to Wiltshire Council in implementing this change to the definitive map.
- Create maintenance costs
- Provide **NO** advantages to persons proceeding to or from PPP.
- Disadvantage the land owner.
- Cancel the possibility of providing an affordable home within Porton.

I submit that this application is totally unwarranted, riddled with very questionable information and should be refused forthwith.

Yours Faithfully

Roy Gould

Green, Janice

From: Richard Green
Sent: 11 January 2017 13:21
To: Green, Janice
Subject: Re: Ref JG/PC/27 2015/11

Dear Ms Green,

Thank you for your reply. I believe that the plan for part of the footpath does in fact go along the roadway of Bourne Close as well as the plan to go across a piece of land. There is certainly evidence available that many non residents of Bourne Close(including ourselves) have walked the roadway from the High Street to the recreation ground during the period between when Bourne Close was built and the present day and that this is the usual route taken, not the route across the also privately owned piece of grass.

Our dispute is that the council should not be making the order to place the footpath across the grassland when it would be less costly to use the already made up (and frequently used) road . If this needs to be formalised, the order should provide the whole of the footpath along the roadway.

Richard and Gillian Green

From: Green, Janice
Sent: Wednesday, January 11, 2017 12:51 PM
To: Richard Green
Subject: RE: Ref JG/PC/27 2015/11

Dear Mr and Mrs Green,

Wildlife and Countryside Act 1981 – Section 53
The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016

Thank you for your e-mail dated 7th January, I note your objections to the above-mentioned order. I would comment that the roadway of Bourne Close which you refer to as a suitable alternative route between the High Street and the recreation ground, is not an adopted highway, it is a private road and as such it does not carry any recorded public rights. When making its decision on whether or not to add a footpath to the definitive map and statement of public rights of way, Wiltshire Council is only entitled to take into account the “evidence” regarding whether or not the public have acquired a right of way over the land and we are not able to consider other matters such as the requirement for the footpath.

We have now received a number of objections, as well as representations of support, for the making of the order, which will now be fully considered in a report to the Wiltshire Council Southern Area Planning Committee. Where the order is opposed, it falls to be determined by the Secretary of State and I anticipate in this case that the order will be determined by an independent Inspector, appointed by the Secretary of State, holding a local public inquiry at which witnesses from both sides will have opportunity to give their evidence in chief and be cross-examined on their evidence. Again in determining the order, the Inspector will take into account only the “evidence” regarding public rights.

Members of the Southern Area Planning Committee will consider the representations and objections to the making of the order against the evidence already before the Council and the legal tests for adding a footpath, in order to decide the Wiltshire Council recommendation which is attached to the order when it is sent to the Secretary of State for decision, i.e. that the order be confirmed without modification; confirmed with modification; or not confirmed.

Please be assured that your objections will receive full consideration and I will of course be advising all interested parties of the Southern Area Planning Committee date, once the formal consultation period is ended and the case has been timetabled into the schedule of meetings. It is a public meeting and there is opportunity for public participation.

I hope this information is helpful.

Kind regards,

Janice Green

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

Web: www.wiltshire.gov.uk

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Follow Wiltshire Countryside



From: Richard Green
Sent: 07 January 2017 17:11
To: Green, Janice
Subject: Ref JG/PC/27 2015/11

Dear Ms Green,

My husband and I are aware that the council has decided to make an order to make a public right of way across a piece of land in the High St, Porton. Ref JG/PC/27 2015/11.

We would like to make an objection to this plan as we believe that this footpath is not required as there is already a perfectly good roadway that joins the High St to the footpath that goes between buildings in Bourne Close and into the recreation grounds. There is no advantage to making a footpath across this privately owned piece of land. We are also concerned that this order to make a footpath will result in significant costs to the village and county council for a footpath that is not required.

Gillian and Richard Green.

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Green, Janice

From: Roly Grimshaw [redacted]
Sent: 16 January 2017 08:35
To: Green, Janice
Subject: Ref JG/PC/27 2015/11
Attachments: Wiltshire Council Letter 16 Jan 17.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

I attach a letter of objection to the above application. I have sent a signed copy in the post today.

Many thanks

Roly

Roly Grimshaw

[redacted]

**Chalk House
Winterslow Road
Porton
Salisbury
SP4 0LF**

16 January 2017

Janice Green
Rights of Way Officer
Waste and Environment
Wiltshire Council
Bythesea Road
Trowbridge BA14 8JN

Dear Ms Green

Ref JG/PC/27 2015/11

Objection to the application to add a footpath to the definitive map and statement of public rights of way in the Parish of Idmiston (Porton)

Lack of Disabled Access

I object strongly to this application for several reasons, the principal one being the lack of disabled access. The solution is simple, inexpensive and should satisfy all parties.

The ground between Points B and C is fine for wheelchairs, but between Points A and B, across the rough ground, it is totally unsuitable. If the proposed path went from A to B via the existing tarmac road it would be completely suitable for wheelchair users.

The route from the High Street through the tarmac road in Bourne Close, through the playground and on to Winterslow Road is good for the disabled, except for this small strip across the rough ground. As there is no pavement in the High Street anyway, and no room to add one, pavement access on this short strip of tarmac is not relevant.

An Obvious Solution

The wish of a few people in Porton is for a right of way from the High Street to the village playground. In my opinion that is a fair wish. The only contention in this application is over the private land between Points A and B. If the route of the footpath was directed from Point A, around this piece of private land to Point B and then continuing as shown on the application to Point C, the local community's wish would be met and it would be unlikely that there would be any objections.

I live in Porton, with my wife and disabled mother-in-law. We walk our dogs daily and often access the playground from the High Street. We would not dream of crossing this usually damp and messy patch and can see clearly that the application is a backdoor means of defeating another planning application for a building on the site and so a total misuse of the Council's time.

Yours sincerely

Roly Grimshaw

Green, Janice

From: owenharry1380gt
Sent: 16 January 2017 20:08
To: Green, Janice
Subject: JG/PC/272015/11
Attachments: Footpath objection.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

Please find attached my objection to the footpath in Poron.

Owen Harry

Sent from Samsung Mobile

Mr Owen Harry

1 North End

Allington

Salisbury

Sp4 Obs

16 Jan 2017

Reference: JG/PC/272015/11

Dear Ms Green

I would like to object to the footpath going across the land at Bourne close, Porton. Myself and my family regularly walk in this area and have done for many years now and see no issue using the tarmac road for this route, using the grassland as a path seems completely unnecessary.

Yours sincerely



Owen Harry

Green, Janice

From: [Redacted]
Sent: 17 January 2017 16:04
To: Green, Janice
Subject: Ref. JG/PC/27 2015/11
Attachments: Image (4).jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Please see attached letter.
S Harry

5 Bonaker Close
Porton
Salisbury
SP4 0LG


17th January 2017

Your ref: JG/PC/27 2015/11

Dear Ms Green

I am writing with regard to the proposed footpath across land at Bourne Close, Porton. I regularly walk in this area with my granddaughter on our way to the recreation ground and have no issue with the current route. I consider a footpath on the grassland at that point unnecessary and a waste of the council's already over stretched resources.

Yours sincerely



Sally Harry

Green, Janice

From: Green, Janice
Sent: 02 February 2017 12:53
To: 'DUDLEY HUMPHREYS'
Subject: RE: Ref:JG/PC/272015/11 - Bourne Close, Porton.

Dear Mr Humphreys,

Thank you for your e-mail dated 23rd January, with many apologies for the delay in getting back to you.

In answer to your query regarding the Bourne Close road way, I can confirm that there are presently no public rights recorded over Bourne Close (the surfaced road). It is a private road and is not an adopted road. If the order adding a footpath is successful, only rights for the public on foot will be added over the private road and there will be no public vehicular rights over Bourne Close.

I hope this is helpful,

Kind regards,

Janice

Janice Green

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

Web: www.wiltshire.gov.uk

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From: DUDLEY HUMPHREYS [mailto:dudley.humphreys@wiltshire.gov.uk]
Sent: 23 January 2017 16:52
To: Green, Janice
Subject: Re: Ref:JG/PC/272015/11 - Bourne Close, Porton.

Dear MS Green,

Many thanks for your response. Clear and instructive. Again, many thanks.

I will reiterate my earlier comments. I believe that the majority of people using this access (including me) , will continue to use the Tarmac Road rather than cross a grass verge due to ease

I notice that you quote the Highways Act 1980. I assume that Bourne Close is an Adopted Road. If this Right of Way is agreed, as a driver is there any special conditions that I should be aware of, Please advise.

Yours sincerely,
 Dudley Humphreys

On Friday, 20 January 2017, 16:18, "Green, Janice" <janice.green@wiltshire.gov.uk> wrote:

Dear Mr Humphreys,

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016

Thank you for your e-mail dated 16th January, with many apologies for the delay in getting back to you. I acknowledge safe receipt of your objection to the making of the above-mentioned order adding a footpath in the parish of Idmiston (Porton), within the formal objection period which ends on 25th January 2017.

This order is made under Section 53 of the Wildlife and Countryside Act 1981, which allows any party (under subsection (5)), to apply to the authority to amend the definitive map and statement of public rights of way, and Section 31 of the Highways Act 1980 which relates to dedication of a highway presumed after public user, as of right and without interruption, for a period of 20 years or more i.e.

“(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 actually been 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.”

The decision to make the order adding a footpath in this case, has been made at Wiltshire Council Associate Director level, based upon the available evidence of public user. However the making of an order is just the start of the process and where we have now received a number of objections to the making of the order, the order must be forwarded to the Secretary of State for determination.

All the objections will now be fully considered in a report to the Southern Area Planning Committee whose Members will consider the evidence contained within the objections and representations received following the making of the order, against the evidence already before the Council and the legal tests for making a definitive map modification order, as set out under Section 53 of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980, in order to determine the Wiltshire Council recommendation which is attached to the order when it is sent to the Secretary of State for determination. Where Members of the Committee continue to support the making of the order, the Council will recommend that the order is confirmed with or without modification and where the Committee resolves that the Council no longer supports the making of the order, it will recommend that the order is not confirmed.

Please be assured that your objections will receive full consideration within the Committee report and I will of course be advising all interested parties of the Southern Area Planning Committee date, once the formal objection period is closed and the case has been timetabled into the schedule of meetings. It is a public meeting and there is opportunity for public participation, details of which will be provided.

I hope this is helpful, but please do let me know if you should require any further information.

Kind regards,

Janice Green

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

Web: www.wiltshire.gov.uk

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From: DUDLEY HUMPHREYS [mailto:]
Sent: 16 January 2017 12:12
To: Green, Janice
Subject: Ref:JG/PC/272015/11 - Bourne Close, Porton.

Dear Ms Green,

I am a resident of this Parish and have lived in the village since 1998. During this time, I have used the footpath to and from the park. The majority of people that I have observed, over various dates and times, like me, have used the tarmac road rather than use the grass triangle. There has never been a noticeable pathway across this grass so footfall must have been low.

My major concern regarding this decision is that it seems to have been taken without any historical evidence or any details of any future increase in footfall or traffic. Please advise who (Position not name) and details of the Law or Byelaw that allows a Council to confiscate land from a Private Landowner without any definitive reasons and without the use of compulsory purchase. Has French Law been allowed to enter this country without us knowing?

I look forward to receiving your comments.

Yours sincerely

Dudley Humphreys
115 East Gomeldon Road
Gomeldon
Salisbury
Wiltshire
SP4 6LZ

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Green, Janice

From: Parish Clerk
Sent: 17 December 2016 12:51
To: Green, Janice
Subject: Proposal for definitive map modification
Attachments: Letter to Janice Green, Rights of Way 2035 on 17th December.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Janice

In relation to your letter ref: JG/PC/27 2015/11 proposing to add a public footpath in Idmiston Parish, please find the attached letter containing Idmiston Parish Council's agreed representations relating to the proposed order. I would be grateful for your confirmation of receipt.

Best regards

Jim

Jim Slater

Clerk to Idmiston Parish Council





IDMISTON PARISH COUNCIL
Memorial Hall
Idmiston Road, Porton,
Salisbury SP4 0LB
Clerk: Jim Slater

17 December 2016

Janice Green
Rights of Way Officer
Rights of Way & Countryside Team
Wiltshire Council
County Hall, Bythesea Road
Trowbridge BA14 8JN

Your ref: JG/PC/27 2015/11

Dear Janice

Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016.

Idmiston Parish Council considered in detail the documents that you sent advising that you are proposing to make a definitive map modification order.

Idmiston Parish Council wishes to object to this order as it is not required.

Idmiston Parish Council believes that the application to modify the definitive map is unnecessary.

Section B to C on the proposed definitive map modification order has long been under the jurisdiction of Idmiston Parish Council, as a recognised way of entering Porton Playing Fields. There would be no objection to this section becoming a public footpath, although the change is felt to be unnecessary. In contrast, the proposed Section A to B is over a piece of privately owned grassland which provides little or no advantage to pedestrians over the existing access via the tarmac part of Bourne Close. Making section A-B part of the definitive footpath map would disadvantage the landowner and provide no sensible advantage to parishioners.

Idmiston Parish Council objects to this application and would like it to be dismissed.

Best regards

Jim Slater
Clerk to Idmiston Parish Council

Green, Janice

From: DEBBIE JONES
Sent: 23 January 2017 18:05
To: Green, Janice
Subject: JG?PC27 2015/11
Attachments: Wiltshire council objection letter.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Please find enclosed my objection

**Rogues Roost
East Gomeldon Road
Salisbury Wilts
SP4 6NB**

23 January 2017

Janice Green
Rights of Way Officer
Waste and Environment
Wiltshire Council
Bythesea Road
Trowbridge BA14 8JN

Dear Ms Green

Ref JG/PC/27 2015/11

Objection to the application to add a footpath to the definitive map and statement of public rights of way in the Parish of Idmiston (Porton)

As you are aware I am the owner of the piece of land on the map between A and B, over which the footpath application is being made.

I have many objections to the proposal, but would like to highlight three:

1. Conflict of Interest

A planning application (14/10638/FUL) was submitted on 14 November 2014. During that process of consultation, the application for a footpath was submitted on 3 November 2015 by Mrs Creswell, who is also leading group of objectors to the planning application. It is of note that no one had submitted an application for a footpath before the planning application was known.

Many of the witnesses in your document are also objectors to the planning application. They know that the implementation of this footpath will reduce the size of the plot sufficiently to prevent a house being built.

In the Decision Report at para 10.14 it is stated that "the quality of evidence, i.e. its honesty, accuracy, credibility and consistency, is of much greater importance than the number of witnesses."

The credibility of witnesses must therefore be drawn into question. It is clear that the application for a footpath is not being made in the interests of walkers, but to prevent a house being built on the site.

2. Incorrect Right of Representation

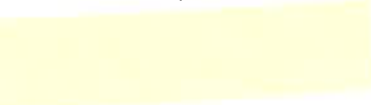
In the Decision Report at para 7.1 it is stated that the application "is made by Mrs Creswell on behalf of Porton Neighbourhood Plan Group." The Neighbourhood Plan is in draft form only and has not been ratified by Idmiston Parish Council. The Porton Neighbourhood Plan Group is therefore not a representative body and it is misleading to make that claim.

3. Inaccurate Witness Statements

The witness statements are in many cases blatantly inaccurate and need to be verified before a decision is taken. I can give many examples, but for purposes of brevity, here is one: in para 10.29 it states that Dr Patricia Appleyard confirms that “we can see much of the footpath from Appledown and can confirm that it is well-used by members of the public.” A quick inspection of the site will show that the route over my land between A and B cannot be seen from Appledown.

Finally, as a local resident, I am embarrassed by the time and effort wasted by all those involved, particularly at County Council level. It has been obvious to all locals that this application was submitted to damage a planning application. There is a perfectly good level and safe route for pedestrians from A to C on the little used tarmac road.

Yours sincerely

A rectangular area of the document is redacted with a solid yellow background, obscuring the signature of Mark Jones.

Mark Jones

Mr C Joy
2 Avenue Cottage
Porton
Salisbury
SP4 0NR

15th January 2017

Reference JG/PC/272015/11

Dear Ms Green

We would like to object to the footpath going across grass land at Bourne Close, Porton, which is privately owned. My brother and I walk to the local shop everyday. We regularly continue up the High Street, walk into Bourne Close on the tarmac road through the park and back home.

We have lived in this village over 70 years and do not see any point having a footpath over the grass area when there is a perfectly good tarmac road to use.

Yours sincerely

Mr C Joy



Mr & Mrs Maher
1 Bourne Close
Porton
Salisbury
Wilts
SP4 0LL

Janice Green
Rights of Way & Countryside Team
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Ref JG/PC/272015/11

Path no.9 Definitive Map Modification

13.01.17

Dear Janice

We would like to object to the above modification.

Our reasons for the above objection are as follows,

Path A to B is across private land and there is already tarmac path in the same direction next to it that is already used constantly.

Path B to C has always been used as a route to the park anyway.

In our years of living in Bourne Close (7 years) we rarely saw anyone walk across path A to B, you'd occasionally see a child or dog take a short cut but never adults.

We also feel like this would be a waste of the councils money, having young children we'd much rather the council spent money on safe crossing for the local school.

Yours Sincerely


Wayne and Laura Maher

Green, Janice

From: Rita and Bob Pope
Sent: 12 December 2016 09:42
To: Green, Janice
Subject: JG/PC/27 2015/11

Dear Janice Green

I am writing in regards of the proposed footpath between High Street and Bourne Close, Porton.

I wish to declare that I have an interest in this as Pope Plan and Build provided the architectural services and have been representing Mr Jones through the planning process.

However I wish to object to the footpath on a personal level as I live on High Street only a few meters from the site. I feel this proposal is the tax payers (such as myself) waste of money. Creating a foot path that has been proven never existing in the past and the ongoing cost on its maintenance is an unnecessary expense to the parish council. There is no foot path leading from High Street to the land in question and no footpath leading from the land to the bottom of Bourne Close, where the play park is located.

Therefore I cannot see a logical reason to spend money and create a footpath here when the taxpayer money could be used much more efficiently, for necessary works in the parish (such as renovating bus shelter or cutting down dangerous trees etc).

I would question how many people who live the far end of High Street (such as myself) would use a footpath instead of walking down the road, which actually a short cut in comparison.

I would like to point out that although I have an interest as declared above, the footpath application will not stop my client from applying for an application as the proposed dwelling can still fit on the land (slightly shifted towards Bourne Close) even if the footpath gets a go ahead, and vice versa if the footpath gets turned down that doesn't necessarily mean that my client will get the permission to build.

Yours sincerely,

Rita Pope

Pope Plan and Build Limited

Boxhedge Cottage
High Street
Porton
Salisbury
Wiltshire
SP4 0LH

Green, Janice

From: Jim Slater
Sent: 26 January 2017 16:34
To: Green, Janice
Subject: FW: Objection to proposal for new footpath
Attachments: Bourne Close footpath letter.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Janice

I would be grateful for your confirmation that you received my earlier email before the deadline for submissions.
Thanks and best regards
Jim

From: Jim Slater
Sent: Friday, January 20, 2017 9:24 PM
To: janice.green@wiltshire.gov.uk
Subject: Objection to proposal for new footpath

Hello Ms Green

Please find attached my letter of objection to the proposal for a new footpath (No.9) between High Street and Bourne Close, Porton.

I would be grateful for confirmation of receipt.

Best regards

Janet Slater (Mrs)

17 Winterslow Road, Porton
SALISBURY, Wiltshire
SP4 0LW United Kingdom



17 Winterslow Road, Porton, Salisbury, Wiltshire, SP4 0LW UK

Janice Green
Rights of Way Officer
Rights of Way & Countryside Team
Wiltshire Council
County Hall, Bythesea Road
Trowbridge BA 14 8JN

20 January 2017

Dear Ms Green

Wiltshire Council (Parish of Idmiston) Path No.9 Definitive Map and Statement Modification Order 2016

I wish to object to the proposal to add a footpath over the green area on the corner of Porton High Street and Bourne Close.

Anyone wishing to access Porton playing field from the High Street would normally walk on the nearby tarmac roadway. There is very little traffic along Bourne Close and no need to create an extra footpath.

I have lived in the village, close to the area concerned, for nearly 40 years and have never understood there to be a footpath over this green area, and have always walked on the tarmac. If public money is to be spent on extra footpaths for the village, this would certainly not be one to prioritise.

I have concerns that this application for a new footpath is being put forward by a small group of people whose primary purpose is not in fact to get a new footpath, but rather to prevent a potential planning application for a house on the same land from being successful. This should not be a reason for granting a new footpath.

I only know of this footpath application from my regular attendance at Parish Council meetings, and have concerns that the official application notice Ref 2015/11 on the Wiltshire Council Website (attached to this letter) shows virtually no information – why are there no attachments to show letters of objection or support?

I re-iterate that I object to this application for a new footpath on the grounds that it is unnecessary and a waste of public money at a time when Wiltshire budgets are being cut back.

Yours sincerely,


Janet Slater (Mrs)

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Rights of Way Information

Reference Number	2015/11
Parish	Idmiston
Date Application	03/11/2015
Intended Effect	FP
Location	From The High Street to the recreation ground via Bourne Close
Grid Start	SU187366
Grid End	SU187367
RoW ID	
Applicant	Porton Neighbourhood Plan Group
Evidence	user
WCC Decision	
WCC Decision Date	
Appeal	
SoS Directives	
Order Made Date	
Objections	
Committee Date	
Date Sent to SoS	
Order Confirmed	
Date of Confirmation	
Officer	
Archive?	No

[Scanned image of Application 2015/11](#)

Green, Janice

From: geoff thomas
Sent: 12 January 2017 17:44
To: Green, Janice
Subject: Re: Footpath no.9 Idmiston (Bourne Close, Porton)
Attachments: Mark Jones letter 12 Jan.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Miss Green

Please find attached pdf copy of letter I've posted to you today.

Will follow events with interest.

Yours sincerely

Geoff Thomas

On Mon, Dec 5, 2016 at 2:58 PM, Green, Janice <janice.green@wiltshire.gov.uk> wrote:

Dear Mr Thomas

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order

Thank you for your e-mail regarding the above-mentioned definitive map modification order, made by Wiltshire Council on 28th November 2016.

For your information I have attached a copy of the Wiltshire Council decision report, which sets out the reasons for Wiltshire Council's decision to make an order in this case; a copy of the definitive map modification order and a copy of the notice of the making of an order, giving interested parties opportunity to make representations or objections to the order, (this formal objection period closes on Wednesday 25th January 2017). Notice of the making of the order will also appear in the Salisbury Journal on Thursday 8th December and notice will also be posted on site.

The making of the order is just the start of the process of formally adding a footpath to the map and statement and the case will now proceed as follows:

- 1) A definitive map modification order is made and notice of the order is forwarded to all interested parties including the landowners; applicant; Parish Council; user groups and the Wiltshire Councillor. Notice of the order is also advertised in a local newspaper and posted on site and is followed by a statutory objection period of 6 weeks, during which time any party may submit objections or representations regarding the order, in writing to Wiltshire Council.

- 2) Where no objections to the making of the order are received, the order may be confirmed as a unopposed order by Wiltshire Council and the definitive map and statement of public rights of way are amended accordingly.

- 3) Where the Council does receive objections to the order which are not withdrawn, the order must be forwarded to the Secretary of State for determination and it cannot simply be withdrawn or amended by the Council. Before the order is submitted to the Secretary of State, it is considered by the Southern Area Planning Committee, whose Members will consider the evidence already before the Council and the representations and objections received during the objection period, against the legal tests for adding a public footpath as set out under Section 53 of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980, in order to determine whether or not Wiltshire Council continues to support the making of the order in the light of the further evidence received and the Wiltshire Council recommendation which is attached to the order when it is forwarded to the Secretary of State for determination. Members of the Committee may resolve either to support the making of the order, in which case they will recommend that the order be confirmed with or without modification, or where Wiltshire Council no longer supports the making of the order, Members will recommend that the order is not confirmed.

- 4) Following the submission of the order to the Secretary of State, including Wiltshire Council's recommendation and all of the evidence before the Council, an Inspector appointed on behalf of the Secretary of State will determine the application through the written representations procedure, or by holding a local hearing, or local public inquiry. In the experience of Officers, witness evidence cases are usually determined by the holding of a local public inquiry at which witnesses on both sides may give their evidence in chief and be cross-examined on their evidence.

- 5) The Inspector will determine to confirm the order without modification; confirm the order with modification; or not confirm the order, based upon the evidence before them. Where the order is confirmed the definitive map and statement of public rights of way are amended accordingly. The decision of the Inspector is open to legal challenge.

I hope this is helpful, but please do let me know if you should require any further information at this time.

Kind regards,

Janice Green

Rights of Way Officer

Wiltshire Council Waste and Environment

Ascot Court Trowbridge BA14 0XA

Telephone: Internal 13345 External: [+44 \(0\)1225 713345](tel:+44(0)1225713345)

Email: janice.green@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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143 East Gomeldon Road
East Gomeldon
Salisbury
SP4 6NB
12 January 2017

Janice Green
Rights of Way Officer
Waste and Environment
Wiltshire Council
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Miss Green

Reference: JG/PC/27 2015/11

Application to add a footpath to the definitive map and statement of public rights of way in the parish of Idmiston (Porton).

Ignorance is bliss and hindsight is a wonderful thing. I've reviewed the decision report for the above application. For Mark Jones hindsight would have been very useful and his apparent ignorance of the rights of way process could have a significant impact for him and his family. Had Mark knocked two signs into the ground at the north and south end of his private land saying something like "Private property – not a public right of way" 12 years ago he would not be in the unfortunate position he is facing now.

I am a resident of Idmiston Parish and live near Mark. I am aware of 3 planning applications he has made to construct a 3 bedroom and latterly a 2 bedroom property on the land affected by the application to add a footpath. I'm not siding either way in respect of any future planning application on this land, at present there are more planning issues affecting his ability to gain planning permission than just the alleged footpath on his land.

However I am writing to object to the proposed right of way on this land. I consider that the Council's report is fundamentally flawed and would not stand up to scrutiny under appeal. A sign off sheet showing that the report had been approved by 4 people. The report was dated 22 June 2016, the initial application being dated 3 November 2015 but there was a shocking gap of over 3 months before the Associate Director signed the report off. Clearly a path of circa 114m metres isn't the highest priority for the Council but I think the excessive turnaround time would have added to stress for people affected by the planning application.

As I mentioned earlier had Mark been better advised when he purchased the land he would have erected signs warning people that the property was private property and that people did not have any right to use it without his permission. The affected land is circa 30 metres long and 10 metres wide and in the absence of permission people could simply walk a few more metres on the road. I'm

guessing that in the absence of a pending planning application the local response would probably have been indifference. The fact that there was a planning application to erect a 2 bedroom property on the site is highly relevant to this application but the Council does not appear to have taken this into consideration when assessing the quality and reliability of the evidence submitted.

In the 60 page report you assessed a number of factors and explained some of the precedents and cases of English common law. In your study of the historical evidence supporting the alleged footpath you find no conclusive evidence to support the alleged footpath.

The proposed public right of way is marked A to B over the land owned by Mark Jones, with the remainder of the route ending at the gate of the recreation field. I do not consider that there is any contention over the remaining section of the path and the report notes that the 20 year clock for assessing the validity of the public right of way is started at the point when the fence was erected by Mark Jones.

Mark Jones claims that he had not seen any members of the public using his private land and would have asked anyone he had seen not to do so. A neighbour believed that it was private land, they had seen a few children crossing the land but the land was boggy and wet in winter, there was no footpath and the majority of people would walk around the road. The previous owner, Mr Pike, sold the land to Mark Jones and in his period of ownership (1998 – 2004) there was not a footpath and he did not give permission for the public to walk across the land. The previous owner in the 20 year period is believed to be Mr Ray Stockton. You quote one person who apparently knew the owner, the owner knew people were using the claimed route and was quite happy about it. In my professional career I deal with hard facts and evidence, the Council really do not have any solid evidence for this period that can be independently substantiated and including this statement as evidence that the owner at the time actively supported the alleged use of his land is thoroughly unprofessional. The whole basis of English law is that evidence has to be substantiated. The Council appear to be biased in attributing the opinion of a third party to the beliefs of a landowner.

The piece of land in question would be a natural short cut for people coming from the direction of Porton Nisa or heading back from the recreation field in the direction of the Porton Nisa. I can certainly see that in good weather and in the absence of any notice indicating the property was private land people would walk across the land. It may be that Mark or previous owners have seen occasional use but did not necessarily remember it in their initial submission of evidence. It may also be that any occasional use may have gone unnoticed or was not considered sufficiently significant to be an issue. This is clearly a mistake from his position as he should have been more active, whether there was any evidence of trespass or not.

The actual evidence of trespass appears to amount to mainly written evidence from 27 users, of whom roughly half have previously objected to the planning applications. In the report the Council note the contradictory nature of this evidence. Clearly there are some people who have never seen the area walked over and used as a footpath by the public and there are some people who appear to consider the alleged footpath to be well used. Given that Mark Jones is a self-employed person and works in agriculture it is perfectly reasonable to assume that he is unlikely to see many trespassers during weekday working hours or often weekends when he was working. As the alleged footpath leads to the recreation ground, which is locked during the night, he would most probably have missed physically seeing the majority of any alleged users trespassing over his land. This would cover

the period that he was living near the land and if the use was less frequent than indicated by the user evidence submissions he may have not had many trespassers to actually spot. Living away from Porton restricted his ability to have caught anybody in the act of trespassing over his land. Realistically apart from a friendly local resident Mark would need to rely on physical evidence to indicate a problem with trespassing. You might expect that the regular use of a grassed area would quickly lead to an established path physically obvious to the naked eye. There are various photographs of the alleged path in the report and also in documents lodged at Wiltshire Council in connection with the planning applications for the proposed development. None of these conclusively evidence a defined and well used path on this land, in fact most evidence a lack of any path.

The application is for a footpath that follows in a straight line along the line of the neighbouring Rose Cottage. It's interesting that in the photograph taken from "Fieldings" circa 1993 a red arrow shows an apparent path that curves in a completely different line from the proposed route. However as this is not in a line running parallel to the wall it would appear that this cannot be a footpath, its' not in the right place and doesn't follow a logical line for walkers to follow. Paragraph 10.35 refers to a picture taken in 1980, this appears to contain a possible path along the line of the proposed right of way, Mark Jones has various alternative reasons for this. The report then states that Google images and other photos were submitted and reviewed and "Officers have concluded that the Google images and estate agents photograph do not show a well trodden path over the green area". Officers also viewed aerial photographs held by Wiltshire Council and could only see a line that was in the wrong place and had probably been created by a mower or a vehicle. "Overall the photographic evidence of a well trodden track is inconclusive in this case and cannot be relied upon to support the existence of public rights".

In short there is no historical evidence to support the footpath and photographic evidence cannot be relied upon. This then leaves the user evidence forms. It is perfectly possible that these users have an alternative motive for supporting the application for the footpath and this motive may lead to a degree of exaggeration over the use of the alleged footpath. None of the user evidence statements are sworn under oath and I question the validity and reliability of evidence that has been given in the knowledge that a public right of way would torpedo the then current planning application and any future applications. I believe that the Council has been naïve and effectively adopted a numerical approach to the review. In the absence of any conclusive proof of the existence of the footpath the Council has accepted the user evidence supporting the footpath application and ignored the views of anyone holding the opposite view. I'm sure that people would have walked over the land at some point but this user evidence is biased and is not sufficient evidence to justify making the order.

It is interesting looking back at the initial objection letters for the 3 bedroom building originally applied for by Mark Jones. There were a few objections that mentioned the use of the land as a footpath but the majority of the objections failed to mention this initially. Some of the objection letters do not follow a logical argument that would support the existence of a footpath that could be a public right of way.

Jeremy Harris raised a number of concerns regarding the development including access issues around the tight bend if the property was built. He included a photograph of the area with a sign to the close knocked over. The photo does not show any conclusive evidence of the alleged footpath.

Ms Wendy Bright raised similar concerns but no mention of a footpath.

Steven Castellano lives in Fieldings and he numbered his concerns and had 10 points. Point 9 was that children and walkers regularly use Bourne Close to enter and exit the playing field. They need good visibility to safely approach the junction. Surely if there was a regular and well used footpath, which would be clearly visible to him as a local resident, the argument would be that the children and walkers have always been able to access the playing field safely by walking across the green and the proposed development would instead force children to use the road.

He submitted a further letter with 2 photos (one the view from Fieldings referred to above, showing a possible path in the wrong place and the same photograph that Jeremy Harris submitted). Again no mention of the actual footpath.

Mr and Mrs Bray have similar concerns, the open space provides a good line of sight for children. Again the logical argument would be that the existing footpath would be lost and children would be forced to use the road instead. The letter doesn't refer to any footpath at all.

Even Valerie Cresswell, who submitted the application for the right of way does not refer to any footpath or possible right of way in her first letter of objection, an unusual omission considering her later application.

Jane White included 7 concerns, one being that the development would obscure visibility, a common theme but again no mention that the green area was actually contained an existing footpath.

However a couple of objectors, Wesley Bright and Mark Adams did refer to use of the land as a right of way. I think it is significant that a number of the public have therefore recognised that the planning application registered in November 2014 is actually a clear challenge to any public use of the land. Planning to erect a residence on private land is a clear indication to any member of the public that this is not public land and there is no express or implied intention to allow the general public access to this land. Therefore I think it is also possible that the 20 year timescale used by the Council is not started from the point when public use is first called into question.

Moving on to the next application by this stage Mark Jones had submitted a new application for a two bedroom house. Most objection letters are very similar and are probably mainly simply saved on a computer and redated after minor changes. However I think that now a head of steam had been generated and people opposed to any development on the site had worked out that the existence of a public right of way would scupper any possibility of a future development, the site is too small to support a public right of way through the back garden.

Wendy Bright still doesn't refer to the footpath, Steven Castellano says that people have used the site as a footpath for 22 years and can provide photographic evidence to support this assertion. Mr & Mrs Bray don't really change their objections and make no reference to a footpath. Valerie Cresswell writes an expanded letter but makes no mention of a footpath, just loss of an informal open space and Clifford White submitted a letter (assume his wife is Jane at the same address) which refers to the loss of the footpath.

For the most recent planning application Wendy Bright now points out the green has been used for many years as a safe walking area. Mr & Mrs Bright also refer to the public use for the past 30 years.

Mr & Mrs Bray still raise safety concerns but make no reference to the loss of the footpath. Valerie Cresswell now refers to the use of the land by the public for as long as anyone can remember and that the Porton Neighbourhood Plan Group had begun the process of claiming the existence of a public right of way.

The Council report contains evidence from users (often the same objectors to the planning application) recording their use of the land and their view of how often and how wide the alleged footpath was. There are significant variations in the perceived width of the footpath over the Mark Jones land. The council have somehow arrived at a width of 1.46 metres. Given that the majority of users submitted a width of about 1m it seems odd that the Council has arrived at 1.46m. This seems to be an average approach based on the mean average of the answers including one of 4-5 metres. One thing that would be certain if the footpath was 1.46 metres wide, it would show up on the aerial photographs or other photographic evidence but no such evidence has been provided for any footpath.

In paragraph 10.60 the Council state that "none of the landowners claim to have carried out any overt acts to bring home to the public that the right of way was being challenged". However they have not been able to discuss this with the owner before Mr Pike, though they accept the word of a third party on his behalf! The Council seem very willing to accept the user evidence without viewing the evidence in the context that that it has been given and the planning application is probably the main driver for the right of way application. In the summary of representations and objections received at the time of the initial proposal Councillor Mike Hewitt sums it up perfectly. No problem with section from B to C, A to B is over private land and access can be easily obtained by walking around the road, where there has always been access. The only reason it is being asked for is because of the potential planning application. The Idmiston Parish Council minutes for their meeting dated 12 December 2016 have objected to the proposed footpath.

There is no adequate physical evidence of any well used footpath across the land and this is a concerted attempt by a minority of villagers to prevent any future planning permission being obtained. The proposed footpath is unnecessary and the likely use of the right of way will be minimal. There are plenty of valid reasons for a public rights of way to be established but this case is not one of them. The motives for the application are negative rather than positive, the public right of way application does not appear to have been made in good faith but is a blocking mechanism for any future planning applications.

The Council has made a poor effort at assessing the available evidence and have accepted user evidence from those claiming user, ignored the lack of supporting evidence and lack of physical evidence of any footpath. It seems to me that any public use would have been very light and their alleged trespassing over the land has not produced any physical evidence of the path. It's probable that Mark's failure to remember seeing any trespassers, to actually catch anyone in the act or actively do anything to prevent trespassing is more likely to be because there was such light use of the land that a footpath was never physically created and he had no reason to act.

The Council has also failed to take account of the views of the landowners or others who deny the existence of the footpath (apart from the one that they could not contact but were told by one witness that he was perfectly happy for people to use the land). The user evidence is not consistent with earlier objections to the planning applications. These inconsistencies are relevant to the

subsequent user evidence submissions as they demonstrate that there is a clear bias in the evidence submitted and they are not consistent with the earlier objections. If the alleged public right of way had been public knowledge at the time of these objections then it would be an obvious point to raise. It's inconsistent to refer to safety concerns without referring to the loss of the "right of way".

Overall I think there is really a lack of evidence to demonstrate that the alleged path exists and this application will fail when reviewed by an independent third party.

Yours sincerely

Geoff Thomas

Farleys Malone 108
Winterslow Road
Porton
Salisbury, Wiltshire
SP4 0JX

For the Attention of Janice Green
Rights of Way Officer
Rights of Way Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

23rd January 2017

Dear Janice

REF : JG/PC/27 2015/11

**Wildlife and Countryside Act 1981 – Section 53
The Wiltshire Council (Parish of Idmiston) Path No9 Definitive Map and
Statement Modification Order 2016**

I write in response to the above matter as an Ex Chair of Idmiston Parish Council.

I held the office of Chair of Idmiston Parish Council from April 2008 until May 2012.

I had worked as a Parish Councillor for over six years and it was my understanding that Bourne Close roadway belonged to the Parish Council and it was the Parish Councils responsibility to maintain it.

I always walked my dogs through the playing field by the entrance on Winterslow road and then through and out down Bourne Close. We have never walked on the grass verge as it does not join the pathway to the playing field and it is a very very quiet road with hardly any traffic movements, except for access to the houses, therefore there was no necessity to walk anywhere other than on the roadway.

To my knowledge and recollections, I have never seen anyone walking along the grass nor was there any evidence of a worn pathway of any description to identify a pathway on this grassed area. It was widely known that this was a privately owned piece of land and not Council owned.

As a Parish Council we were never asked to provide a pathway across that piece of land, as everyone that we are aware of uses the roadway.

I personally would consider it to be a complete waste of Council funding to put a pathway where we do not need one and as a resident of Porton am completely opposed to this pathway as it is totally unnecessary.

Andrew Tidd

Farleys Malone 108
Winterslow Road
Porton
Salisbury, Wiltshire
SP4 0JX

For the Attention of Janice Green
Rights of Way Officer
Rights of Way Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

23rd January 2017

Dear Janice

**Wildlife and Countryside Act 1981 – Section 53
The Wiltshire Council (Parish of Idmiston) Path No9 Definitive Map and
Statement Modification Order 2016**

I write in response to the above matter as an Ex Chair of Idmiston Parish Council.

I held the office of Chair of Idmiston Parish Council from May 2012 until July 2014 when due to family commitments I took a sabbatical from the Parish Council and then subsequently resigned as Chair and as a Parish Councillor, in the Autumn of 2014.

I had worked as a Parish Councillor for over six years and it was my understanding that Bourne Close roadway belonged to the Parish Council and it was the Parish Councils responsibility to maintain it.

We have always walked our dogs through the playing field by the entrance on Winterslow road and then through and out down Bourne Close. We have never walked on the grass verge as it does not join the pathway to the playing field and it is a very very quiet road with hardly any traffic movements, except for access to the houses, therefore there was no necessity to walk anywhere other than on the roadway.

To my knowledge and recollections, I have never seen anyone walking along the grass nor was there a worn pathway of any description to identify a pathway on this grassed area. It was widely know that this was a privately owned piece of land and not Council owned.

As a Parish Council we were never asked to provide a pathway across that piece of land, as everyone that we are aware of uses the roadway.

I personally would consider it to be a complete waste of Council funding to put a pathway where we do not need one and as a resident of Porton am completely opposed to this pathway as it is totally unnecessary.

Jan Tidd

Green, Janice

From: BARBARA TOOZE
Sent: 15 January 2017 10:48
To: Green, Janice
Subject: Ref JG/PC/27 2015/11

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms Green,

I am aware that the council has decided to make an order to make a public right of way across a piece of land in the High St, Porton. Ref JG/PC/27 2015/11.

I would like to make an objection to this plan as I believe that this footpath is in the wrong place. People walk to the recreation ground along the roadway of Bourne Close from the High St. I am concerned that the order to put the footpath across a private piece of land will result in significant costs to the village and county council for a footpath that is not required. Rather than make a new footpath across this piece of land, perhaps the order should place the footpath along the route taken by so many people, including myself in the past, and follow the line of the roadway rather than across the piece of open land.

Mrs Barbara Tooze
Merrymeet
Green Lane
Ford

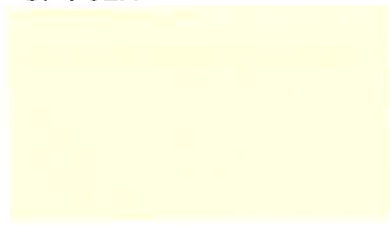
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APPENDIX D – CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION PERIOD:

(ii) REPRESENTATIONS OF SUPPORT

- (1) Mr Mark Adams – Correspondence dated 15th January 2017
- (2) Dr Patricia Appleyard – E-mail correspondence dated 23rd January 2017
- (3) Mr K Bradley – E-mail correspondence dated 17th December 2016
- (4) Dr Matthew Brookes – Undated correspondence received within the formal objection period (acknowledged by Wiltshire Council 11th January 2017)
- (5) Mr D Creswell – Correspondence dated 2nd January 2017

Mark Adams
Rose Cottage
High Street
Porton
Salisbury
SP4 0LH



Your ref: JG/PC/27 2015/11

15 January 2017

J Green
Rights of Way Officer
Rights of Way & Countryside Team
County Hall
Bythsea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Ms Porter

**Reference: The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement
Modification Order 2016**

Thank you for your consultation on the proposed footpath. I am the owner of Rose Cottage, the property adjacent to the proposed site and fully support the establishment of a public footpath.

General comments

1. This proposed development is on an informal open space within the Porton Conservation Area, inside the Special Landscape Area and inside an area of Special Archaeological Significance. It is immediately adjacent to my property Rose Cottage, High Street, Porton, a Grade II listed building (Listing reference: 1313159). It is also within 100m of two further Grade II listed buildings along the High Street. It is believed to be the last remaining undeveloped open green space in the Porton Village conservation area in the heart of the old village, and a footpath on this land will help preserve it.

2. Until March 2015, this land had not been fenced off for more than 25 years, and has been used by village residents and children for walking dogs and specifically for safe access to the recreation ground in Bourne Close. The shape of the Close produces a blind corner and, as there is no pavement, this puts pedestrians, especially children, at risk from oncoming traffic in either direction. As such, access across this small parcel of land has been treated by default as a 'right of way' and has become a community asset, which helps justify formal establishment of a public right of way.

3. The establishment of a public footpath on this land will limit the possibility of development on this land that would result in its loss to the community. As such preserving this open space will be consistent with various local planning and conservation policies:

- a. Porton Housing Policy H16: a public footpath here will prevent development that would result in the loss of an open area which makes a positive contribution towards the character of the settlement". As this open area does make a positive contribution towards the character of the settlement, it should be preserved.
- b. Saved Conservation Area policies CN 8,9,10 and 11 and the Local Plan: preserving this open space will enhance the character of the area, safeguard views into the conservation area, and not detract from the setting of my property.

Many thanks for your efforts to establish this right of way.

Yours faithfully
Mark Adams



Green, Janice

From: [Redacted]
Sent: 23 January 2017 15:12
To: Green, Janice
Subject: Support for Porton footpath
Attachments: Footpath support letter.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms Green

Please find attached a letter in support of the modification of the Definitive Map to include the footpath from High Street Porton to the Recreation Ground.

Regards

Anne Appleyard

(Dr P.A. Appleyard)

Appledown
1A Bourne Close
Porton
SALISBURY
SP4 0LL

23rd January 2017

Your ref: JG/PC/27 2015/11

Janice Green
Rights of Way Officer
Rights of Way and Countryside Team
Waste and Environment
County Hall
Bythesea Road
TROWBRIDGE
Wiltshire
BA14 8JN

Dear Ms Green

**Wildlife and Countryside Act 1981 – Section 53
Definitive Map and Statement for the Amesbury Rural District Council Area dated 1952
The Wiltshire Council (Parish of Idmiston) Path No.9
Definitive Map and Statement Modification Order 2016**

I am writing on behalf of my husband Dr Geoffrey Appleyard and myself, in support of the proposed modification of the Definitive Map to include the footpath from High Street Porton to the Recreation Ground via Bourne Close, including the section marked A to B alongside the boundary of Rose Cottage.

As you will be aware, I have previously submitted a witness form as a user of the path, a Landowner Evidence form as a resident of Bourne Close, which is a private road, and a representation letter dated 4th February 2016 with some additional evidence in support of use of the footpath over a period in excess of thirty five years.

I commend the very thorough report in which the basis for the decision on the footpath is documented, which we read with interest.

Yours sincerely

P.A. Appleyard (Dr)

Green, Janice

From: Green, Janice
Sent: 06 January 2017 16:44
To: 'Ken Bradley'
Subject: RE: Footpath Addition to the Register of Footpaths

Dear Mr Bradley,

Thank you for your e-mail, with apologies for the delay in getting back to you.

Thank you for your comments regarding the confidentiality of your letter supporting proposals to add a footpath in the parish of Idmiston, between Porton High Street and the recreation ground. Removing the confidentiality of your letter allows me to include your representations within the report which will go forward to the Southern Area Planning Committee, following the close of the formal objection period, and allow me to make comment on the points raised within your letter and I will now proceed on this basis. All correspondence included within the Committee report will be publicly available.

Thank you for your help in this matter, I will of course keep you updated on progress,

Kind regards,

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

Web: www.wiltshire.gov.uk

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From: Ken Bradley
Sent: 22 December 2016 23:01
To: Green, Janice
Subject: Re: Footpath Addition to the Register of Footpaths

Janice,

Thank you for your response. If my E-Mail of 17 December 2016 will not be taken into account or the case for the path is weakened then I am content that the confidentiality of my letter is removed.

Regards,

Ken Bradley

On 22 Dec 2016, at 13:37, Green, Janice <janice.green@wiltshire.gov.uk> wrote:

Dear Mr Bradley

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Idmiston) Path no.9 Definitive Map and Statement Modification Order 2016

Thank you for your e-mail dated 17th December, I note your support for the above-mentioned order.

We have now received a number of objections, as well as your support for the order. As a result of the objections the order now falls to be determined by the Secretary of State and I anticipate in this case that the order will be determined by an independent Inspector, appointed by the Secretary of State, holding a local public inquiry at which witnesses from both sides will have opportunity to give their evidence in chief and be cross-examined on their evidence. Before the order is forwarded to the Secretary of State, Members of the Southern Area Planning Committee will consider the representations and objections to the making of the order, against the evidence already before the Council and the legal tests for adding a footpath, in order to decide the Wiltshire Council recommendation which is attached to the order when it is sent to the Secretary of State for decision, i.e. that the order be confirmed without modification; confirmed with modification; or not confirmed.

All representations will therefore be fully considered within a report to the Southern Area Committee and I will of course be advising all interested parties of the Southern Area Planning Committee date, once the formal consultation period is ended and the case has been timetabled into the schedule of meetings. It is a public meeting and there is opportunity for public participation. I note that your representation is marked confidential and I wondered if you would be willing for me to take your representation forward for consideration as once it is before the Committee, it is fully within the public domain. You may of course withdraw your representation if you would not wish your correspondence to be made public.

I thank you for your help in this matter and I look forward to hearing from you regarding your confidential correspondence, (please note that after today, I will be away from the office until 3rd January 2017).

Kind regards,

Janice Green

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

Web: www.wiltshire.gov.uk

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Follow Wiltshire Countryside
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From: Ken Bradley
Sent: 17 December 2016 13:01
To: Green, Janice
Subject: Footpath Addition to the Register of Footpaths

CONFIDENTIAL

Rights of Way and Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire

Addition of a New Footpath to the Register of Footpaths

Reference:

Wildlife and Countryside Act - Section 53

The Wiltshire Council (Parish of Idmiston Path No. 9 Definitive Map and Statement Modification Order 2016

I understand that at the Idmiston Parish Council meeting on Monday 12 December 2016 those present, by majority vote, agreed to object to the granting of the order for the addition of a new footpath to the register of footpaths (the provisional grant of the footpath). The land that this footpath crosses is owned by Councillor Jones and is situated on the corner of High Street and Bourne Close, Porton.

The purpose of this letter is to support the granting of the order for the addition of a new footpath to the register of footpaths. I have been a resident of Porton for some thirty years but do not live in close proximity to this footpath nor have any interest in this issue that might result in a material gain by myself, therefore, I am able to offer an impartial view.

During the time I have lived in Porton I have used this footpath myself and also been aware of others using it for the purpose of gaining access to the playing field, walking dogs or using it as an alternative to the path running alongside the main road (Winterslow Road). You will be aware that Winterslow Road carries a high volume of traffic including heavy vehicles and buses. When these pass each other, and due to the width of the road, they are very close to the associated pavement with their wing mirrors overhanging the pavement risking injury to pedestrians.

The value of this footpath is that it provides a safe passage for children on their way to the playing field away from the dangers of the busy Winterslow Road. I would also add that this footpath has always been used by those living in Porton and its addition to the register of footpaths would protect it as a right of way for us to enjoy in the future when so many green spaces are being built on.

I do hope that you will take this letter into account when considering other evidence and would be grateful if you could acknowledge the receipt of this letter, thank you.

Regards,

K. Bradley (Porton Resident)

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not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

Janice Green,
Rights of Way Officer,
Rights of Way & Countryside Team,
Waste and Environment,
County Hall,
Bythesea Road,
Trowbridge,
Wilts BA14 8JN

Dear Janice,

Re: Wiltshire Council (Parish of Idmiston) Path no. 9 Definitive Map and Statement Modification Order 2016, Your Ref: JG/PC/27 2015/11

Thank you for your recent letter, dated 1st December 2016, regarding the above. I would like to make the following points:

1. You state that my wife and I have 'very recently' taken ownership of 3 Bourne Close. In fact we purchased the property on 13th April 2016. The date of the Decision Report is 22nd June 2016, some two months after we became the Registered Landowners of the land referred to, yet your report lists the previous owner, Mrs J. Hoddinott. Please ensure your report is corrected and ask your staff to check these important details in future.
2. Councillor Mike Hewitt (Appendix 1, Ref 12) appears to be ignorant of the fact that Bourne Close is a Private Road. Therefore his comment that there is 'no justification' for formalizing the access to the playpark because there is access via the road (Bourne Close) is incorrect; both 'A to B' and 'walking a short distance along the road' are 'over private land', and clarification of a Right of Way is therefore desirable. His suggestion that walkers use the road in preference to the 'A to B' route puts walkers, particularly children, at risk from traffic at the junction because there is no pavement on the Private Road.
3. My wife and I support the Decision on the proposed footpath as a logical step, which provides access to the playpark and safeguards pedestrians, and especially children, from traffic at the junction of the High Street and Bourne Close. We have three young children and have found traffic turning into and out of Bourne Close a hazard because of the lack of a pavement. The fact that the junction is not busy actually increases the risk because it reduces both driver and pedestrian vigilance.

Yours sincerely,

Dr Matthew Brookes

From DHC Creswell

5.

The Old Vicarage
High Street
Porton
Salisbury SP4 0LH

J Green
Rights of Way and Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

2 January 2017

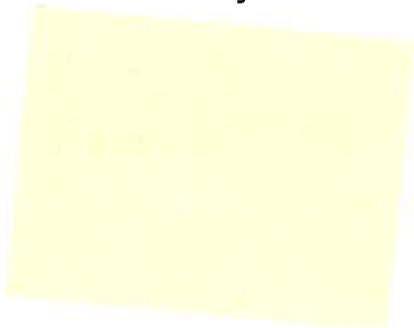
Dear Mrs Green

I write in support of the right of way Path 9 in the parish of Idmiston Parish. Your reference is JG/PC/27 2015/11 where you propose a modification to the Definitive Map.

My grounds for support are:

- Such a right of way will give the public a right of access to the Recreation Ground from the High Street without being dependent upon the good offices of the owners of Bourne Close, a private road.
- The new path will considerably enhance the safety of pedestrians seeking access to the Recreation Ground from the High Street by separating them from the road traffic on Bourne Close.

Yours sincerely



APPENDIX E

**CORRESPONDENCE FROM MR DAVID ADAMS DATED 22 MARCH 2017 –
RECEIVED OUTSIDE THE FORMAL OBJECTION PERIOD OF 8 DECEMBER
2016 – 25 JANUARY 2017**

Green, Janice

From: David Adams
Sent: 22 March 2017 16:09
To: Valerie Wilkinson; Green, Janice
Subject: Definitive Map Modification Order - Footpath no.9 Idmiston
Attachments: Scan Sigs.pdf; Scan Sigs 2.pdf; Parcel of Land High Street.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice

My name is David Adams and although a member of the Idmiston Parish Neighbourhood Plan Steering group, I have stayed away from the Footpath/Right of Way debate until now.

As a Steering Group member, at the last meeting, under general information, Valerie (our chair) mentioned that the County Council hearing was on the 6 April and included the redacted letters of resistance and support, including one from the Parish Council. Having read these, I am writing to you as I believe 2 important items of information have been omitted that should be shared with decision makers.

My wife and I are keen walkers and often we walk along rights of way, many at the very edge of domestic dwellings and for short distances. This made me think that this is probably more about right of way, rather than a footpath. We have owned a property very close to this parcel of land since 2000 and therefore would like to make the 2 points below, about which I have first hand knowledge. I would like to raise with you that for some reason the following information has not been shared with you by the Parish Council.

1. During the Millennium tree planting celebrations, 2 trees were planted on this parcel of land by the Parish Council. To me this indicates that the landowner and the Parish Council saw this as a piece of land that could be used "without challenge" by the owners and that movement across it was "always free and took place openly". Subsequently the millennium trees were cut down - I believe, by the new owner who has owned the land for about 12 years. A fence was only erected at the time planning permission and right of way was initiated within the last 2 years. Beforehand the current owner cut the grass, maintained the land and we even discussed having a bench on the the grass. In addition, there is no pavement around this land, which is probably why it was always a cut across for people.

2. Before the Parish Council wrote to you objecting to the footpath, they had received a petition from 35 people complaining about a fence that had been erected preventing access across the land that had previously been enjoyed. This land, within the conservation area was also left to become overgrown. I am surprised that this information was not also passed as evidence for the hearing. I enclose a photocopy (the Parish Council have the original) of the complaint to the Parish Council, including the 35 petitioners.

I hope this is useful and adds some balance to the proceedings.

Best Wishes

David Adams

NEIGHBOURHOOD COMPLAINT ABOUT PARCEL OF LAND ADJOINING BOURNE CLOSE AND THE HIGH STREET PORTON



We are all residents living along the High Street and within Bourne Close. For decades this small piece of land has been well kept and provided safe access for children, elderly and all pedestrians wishing to gain access to Bourne Close, the recreation ground and to and from the shop and surgery. As there are no pavements along the High Street and Bourne Close, this well established path across this land made it safer for everyone on foot.

It is now over 12 months since these 2 fences were erected, restricting pedestrian access across the land and creating an unsightly wasteland frequently seen to be used as a car park for tradesmen and others. We have all waited patiently while the planning process has been undertaken and now, many months later, the land looks awful and unsightly. We feel that it is depressing the neighbourhood, preventing families with children (2 families have moved into the neighbourhood with young children in the last 6 months) from using this route and is a depressing feature for us all.

Over the last 8 months, the owner (Mr Mark Jones) has been politely contacted twice and asked to remove, at least the larger fence and to please maintain the area, cutting the grass etc. Recently he was asked again and informed that if nothing was done it would be raised with the Parish Council. As there has been no response and nothing has happened re the requests, we the undersigned would collectively appreciate support from the Parish Council to formally ask the owner:

- To reinstate access across the land for public use
- To remove the larger fence and if a fence is necessary, please to erect just one that is less unsightly and more in keeping with the surrounding area
- To maintain the grass and keep the parcel of land's appearance in harmony with the neighbourhood
- To not allow vehicles to use the land for parking

**NEIGHBOURHOOD COMPLAINT ABOUT PARCEL OF LAND ADJOINING
BOURNE CLOSE AND THE HIGH STREET PORTON**

NAME	SIGNATURE
J.P.W. SIMPSON	
<i>Mr & Mrs M Simpson</i>	
MR & MRS W BRIGHT	
Strat and Cabr McCormack	
Stan & Ann Curran	
Gina Liddiard	
John Liddiard	
S. THOMPSON	
A. CASEY	
<i>D Parker</i>	
SEEN CASTELLANO	
JUNE CASTELLANO	
ANGELA JADES	
COLIN THOMAS	
MARY THOMAS	
DAVID CRESWELL	
JACQUELINE CRESWELL	
MARK ADAMS	
IRENA DZISIEWSKA	
BARRY AITKEN	
Lee Bates	

**NEIGHBOURHOOD COMPLAINT ABOUT PARCEL OF LAND ADJOINING
BOURNE CLOSE AND THE HIGH STREET PORTON**

NAME	SIGNATURE
TRACCY BATES	
Ray and Maureen BRAY	
MAUREEN BRAY	
REBECCA ADAMS	
Doreen Adams	
Penny Brookes	
CATHERINE LEE	
ANDREW LEE	
ANNE APPLEBYARD	
GEOFFREY APPLEBYARD	
WAYNE MATHER	

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WILTSHIRE COUNCIL

AGENDA ITEM NO.7

SOUTHERN AREA PLANNING COMMITTEE

6 April 2017

HIGHWAYS ACT 1980 and WILDLIFE AND COUNTRYSIDE ACT 1981

**THE WILTSHIRE COUNCIL CITY OF SALISBURY (STRATFORD SUB CASTLE)
SALISBURY FOOTPATH NO. 6 DIVERSION ORDER 2016 AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2016**

**THE WILTSHIRE COUNCIL STRATFORD SUB CASTLE FOOTPATH LINKING
SALISBURY 24 WITH SALISBURY 6 EXTINGUISHMENT ORDER 2016**

Purpose of Report

1. To:
 - (i) Consider the eighteen representations and one objection received to the making of The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury Footpath No. 6 Diversion Order 2016 and Definitive Map Modification Order 2016 and The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016
 - (ii) Recommend that the Orders be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the notification that Wiltshire Council supports the confirmation of both Orders as made.

The Orders have been made concurrently and must be considered together.
The Orders are appended at **Appendix A**.

Relevance to Council's Business Plan

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

Background

3. On 25 October 2016 Wiltshire Council received an application to divert part of footpath Salisbury 6 at Stratford sub Castle.
4. Part of footpath Salisbury 6 is affected by planning permission that has been granted (16/00743/FUL) for the replacement of a garage, alteration of vehicular access and a new boundary wall at Parsonage Farm House and the footpath would need to be diverted to enable the consented development to proceed.

5. However, the recorded route of footpath Salisbury 6 in this area has been obstructed since 1960 (it now passes through two buildings and the gardens of three properties) and since that time the public have used an alternative path which passes broadly parallel to the recorded line but further to the north. The Council has no record of any complaints relating to this situation.
6. This used path passes through the curtilage of a number of properties and a barn area and has two stiles and one gate along its route.
7. The applicant has obtained the agreement of four other landowners affected by both routes to provide just one alternative route which leads north of all the property gardens and along the edge of an adjoining field.
8. The new alternative route has been provided and is in daily use by the public who, almost exclusively, appear to prefer the new route to the old routes (either the definitive line or the unrecorded used route).
9. To protect the landowners from this third route acquiring public rights before the other routes are extinguished the route has been signed as a permissive route. This has the effect of preventing a dedication by statute or at common law.
10. If the Orders are confirmed the route would be re-signed as a public footpath and would no longer be subject to a revocable permission. Copies of the Orders and Order plans are appended here at **Appendix A**.
11. Two Orders were duly advertised, one to divert Salisbury 6 onto the new route and the other to extinguish the unrecorded route. They have attracted one objection that has not been withdrawn. Eighteen representations in support have also been received.
12. A copy of the decision to make the Orders is appended at **Appendix B**.
13. Wiltshire Council may not confirm any Orders that have been objected to and must now consider whether it supports the Orders or not. As the making of Orders under Sections 118 and 119 are a power of the Council and not a duty, if the Council no longer supports the Orders the Orders may be abandoned.

Main Considerations for the Council

14. The law relating to these Orders is fully laid out in Section 6.0 of **Appendix B**. The legal tests contained within Sections 118 and 119 of the Highways Act 1980 must now be re-considered with regard to the representations and objection received.

15. Representations

(1) Mr and Mrs R Winson, Stratford sub Castle

"We are writing to you in connection with an application to divert a local footpath that is currently being considered by Wiltshire Council.

We have lived at Stratford sub Castle for 3 years and being keen walkers have explored all of the local footpaths. Last year we noted that an application had

been submitted to divert the nearest footpath to our home, the one that runs from behind Dairy Cottage towards St Lawrence Church. The landowners have opened up a permissive path on the line of the proposed route so it very easy to see what an improvement over the old route it would be.

In our opinion the main benefits will be:

- *The proposed path will be more open than the old narrower path that gave one a sense of being 'hemmed in' between fences, houses, a barn and stabling;*
- *an improved walking surface on a higher elevation that will be better drained than the old path that was frequently muddy/water logged;*
- *improved views across the fields to Old Sarum Iron Age Fort and towards St Lawrence Church;*
- *there will not be any stiles on the proposed route, which our young grandson finds difficult to climb;*
- *the footpath will be further away from Stratford Road and any resulting traffic noise.*

We therefore fully support the current proposal to divert the footpath."

(2) Wiltshire Councillor Mary Douglas

"As the Wiltshire Councillor for this area, I would like to formally put on record my support for the proposed footpath alteration."

(3) Tamsin Gray, Stratford sub Castle

"I am writing in favour of the amended footpath below Old Sarum – footpath Salisbury 6.

We live in Stratford sub castle and often take the kids out walking in the local area, especially up and around Old Sarum. The revised path is so much more pleasant to walk now this runs on the field side of the farm buildings with open views of Old Sarum, instead of down a narrow, muddy path. It is also easier to access with a buggy as there are no gates or stiles.

I hope that the application is approved, as this will benefit all walkers using this path."

(4) Mr B Richardson, Salisbury

"As a recent resident of Stratford sub Castle, I write in support of the above application to confirm the revised pathway. This has been in use for some time and is supported by County officials, the Ramblers Association and residents alike. Situated on the field side of the buildings with clear views of Old Sarum and free from styles or gates, it is in every way more satisfactory than the pathway shown on the map which snakes through private gardens."

(5) Pam Roquette, Co-ordinator Salisbury Walking for Health

“Cllr. John Walsh has asked me to write to you in support of the diversion of footpath SALS6. The reason for my involvement is that I am the Co-ordinator for Salisbury Walking for Health which leads walks in the Salisbury area for groups, with a particular emphasis on keeping people active into older life. Many of them have some mobility difficulties and stiles are a particular problem.

The original route of SALS6 had a number of stiles which had fallen into disrepair and so was no longer suitable for our group of walkers. When I raised the issue with Nick Cowen about the possibility of replacing the stiles with kissing gates he informed me of the planned diversion which I supported as it solved the problem of the stiles and provided a pleasant alternative route with views of Old Sarum.

I understand that the ‘Permissive Path’ designation is purely temporary until such time as the legal process of path diversion has been completed after which it will become the new Right of Way. Is this still the case?

The correspondence with the objector, Ms Penny Fulton, is somewhat confusing but I do have one query which she has raised and concerns the wording used on the Council website relating to this path diversion. It says under ‘Reasons... the definitive line has not been available since 1960, the proposed line has been the used route.’ Where can I read the full advertisement?

I remain fully supportive of this diversion but as this lady is going to challenge it I wanted to be sure that this statement is in fact correct before it goes any further. Perhaps you could explain exactly what is meant. As far as I am aware the definitive path passed on the SW side of the barn not to the NE side which is the line of the new permissive path.”

Officers responded to explain that the Permissive Path signage would only be relevant to the point when the Orders were confirmed and the route certified, that the full advertisement could be found in the Salisbury Journal and on site (and a copy was sent to Ms Roquette) and that the definitive line was a line further south west of the used route but that in any event both routes passed on the SW side of the barn with the ‘new’ route passing on the NE side.

(6) Mr and Mrs B Weatherley

“We write in strong support of the proposed diversion to widen the footpath to benefit the entire village of Stratford sub Castle. It would make it more family friendly, open up the beautiful views and would avoid gates and styles.”

(7) Mr and Mrs B Sammons, Stratford sub Castle

“I am writing to express our support for the changes to the above footpath. As dog walkers we have regularly used the ‘old’ path but find the proposed new one to be much more accessible since it is so much wider and also more easy to navigate because there isn’t a stile; as we get old climbing becomes more hazardous! There is also the added advantage that the widened footpath is more accessible for disabled people.”

(8) Ms M Yeung, Stratford sub Castle

"I would like to say how pleased I am that this footpath has been moved and now continues behind the barn at Stratford sub Castle. The new position allows much easier access as there are no styles, does not suffer from mud as the farmyard does and there is no danger of my dogs running onto the road. It is also better for the people using the barn and stables as they are no longer inconvenienced by walkers and dogs."

(9) Janet Brownlie – walker and tenant of the barn, stables and fields

19 January 2017 "As a regular user of the above footpath I strongly support the proposal to divert it. The new one is a huge improvement on the existing one, being wider, straighter and without the stile (also being wider it affords wheelchair access, and is much better for dog walkers, especially those with numerous pooches!)."

30 January 2017 "Further to my email of 19th January, I would like to augment my reasons for supporting the diversion of the existing footpath to the new one in my capacity as tenant of Mr and Mrs Harrison and Mr Nick Croome.

I have rented the 9 acre field from them since 2005 for grazing my ponies, but have kept ponies at Parsonage Farm for over 60 years (intermittently). This field is bordered by two footpaths, one leading to Old Sarum and the other which has currently been in use for many years and is now being proposed for diversion.

The proposed diversion has my full support and will be of benefit to me in several ways. Firstly, the creation of the proposed footpath has resulted in the splitting of the field into a smaller lower paddock and a larger field. This will be invaluable in controlling the weight of the ponies, especially in the summer when too much grass can cause laminitis, which is a painful condition of the feet.

Secondly, my ponies are stabled at night which entails turning them out in the morning and bringing them in at night. To access the fields from the stables I use the unnumbered footpath, and although this is of the correct width it is certainly not wide enough for a pony, their handler and a walker, especially if they have dogs with them, as many do. (All concerned become understandably nervous in this situation) Also with so many users of this rather narrow path it becomes very muddy, poached up and uneven, leading to justifiable complaints. It is far better for walkers to use the new proposed route. Mr and Mrs Harrison do not intend to close off to me the part of the unnumbered footpath affected by the poaching and this access to the stabling will continue to be available to me.

Thirdly, there is a certain amount of vehicular traffic in the farmyard which is currently crossed by the unnumbered footpath. This traffic is associated with my ponies, other farm use and by the joint owners of the farm, so consequently it would be much safer if walkers were kept away from this area and used the proposed route.

Finally, although a minor point, I have occasionally suffered from theft of equipment from the barn adjoining the footpath and use of the proposed route is likely to lessen this in that visual access to the barn is restricted.

I hope these points will be taken into consideration."

(10) Mr S Brown, Stratford sub Castle

"I write to support the re-routing of the footpath Sal 6 in Stratford sub Castle to the new alignment as currently fenced. We have lived in Stratford sub Castle since 1985 and regularly use the path."

(11) Dr and Mrs K O'Connor, Stratford sub Castle

"We have lived across the road from this footpath for 30 years and fully support the wish of the landowners to make the footpath that is actually used the officially recognised route."

(12) Mr and Mrs N James, Stratford sub Castle

Originally submitted an objection but withdrew it as follows:

"We (Noel and I) are now very happy to say "we withdraw our objections to this change as we see the change is in fact exactly what we wanted for the people of Salisbury going forward, the permissive way to become a permanent and much nicer right of way."

(13) Ms S Peto Bostick, Dorset (parents live in Stratford sub Castle)

"I write in strong support of the proposed diversion that is planned to widen the footpath. This is an excellent plan that would benefit the entire village of Stratford sub Castle making it more family friendly, avoiding gates and stiles and encouraging the use and appreciation of the Wiltshire Countryside."

(14) Mr and Mrs J Hobson, Salisbury

"I am writing in support of the revised footpath 6 Stratford sub Castle. My husband and I are regular walkers on this path and find this route a great improvement. There are no stiles or gates to negotiate which makes the path a much more relaxed proposition for us. We are both in our mid to late sixties and walking is our main exercise and this route currently is a pleasure. Please bring these comments to the relevant authority."

(15) Ms L Pender, Stratford sub Castle

"I am writing to support the diversion of footpath Sal 1 (sic). As well as being an improvement on the present footpath it is also very wheelchair and disability friendly as there are no stiles or gates."

(16) Mr and Mrs D Pullen, Stratford sub Castle

"We are writing to support the application to amend the route of this footpath through Stratford sub Castle. As residents of Stratford, my wife and I have used this footpath on a daily basis for decades. The revised route gives many benefits to users. It is straighter and more logical and avoids the unnecessary dog-leg around a barn, giving uninterrupted views of Old Sarum. The path is much wider as its most narrow part and therefore far less muddy at this time of

year. It also removes 2 stiles from the path which will be welcomed by elderly walkers and those using buggies.

With these benefits in mind, we hope the new route will be accepted without too much delay.”

(17) Ms C Weatherley

“I write in strong support of the proposed diversion to widen the footpath to benefit the entire village of Stratford sub Castle. It would make it more family friendly, open up the beautiful vista and would avoid gates and stiles.”

(18) Mr and Mrs. Potter, Stratford sub Castle

“I am writing to say I am very happy with the deviation to this footpath. Indeed it is actually safer as there is no stile to get over!”

“The new route for Footpath Sal 6 is a great improvement as the route is now more accessible”.

16. Objections

Two objections were duly made but subsequently withdrawn. These were from Mr and Mrs N James (who subsequently made a representation in support) and Dr A Baxter who wrote on 31 January 2017:

“Having read the decision report in detail, I can see that the issues raised in my original email have either been addressed or will be addressed shortly. As such, I am withdrawing my objection to the removal of footpath No. 6 Stratford sub Castle.”

17. One objection remains. This is from Ms P Fulton of Salisbury. Ms Fulton has sent a number of e-mails and a postal submission, all of which are attached here at **Appendix C**. Her points of objection are wide ranging and various.

Comments on the representations and objection

18. Members of the Committee are now required to consider the representations and objection received.
19. Members are asked to bear in mind the legal tests associated with s.118 (extinguishment) and s.119 (diversion) of the Highways Act 1980. The tests in s.118 require the Council to consider whether the path is needed or likely to be needed for public use and the effects of any closure of the way on any land served by the right of way. The s.118 Order has been made concurrently with the s.119 Order but the Council must also consider the effects of the extinguishment apart from the diversion. The Council must also consider any provisions in the Rights of Way Improvement Plan.
20. The tests within s.119 (diversion) in relation to the confirmation of the Order require the Council to be satisfied that the diversion is expedient as detailed in s.119(1) and (2) i.e. relating to interest of the landowner and whether any new

termination point is substantially as convenient and whether the new path or way will not be substantially less convenient for the public. Further, that it is expedient to confirm the Order having regard to the effect which the diversion will have on public enjoyment of the path or way, the effect on land affected by the removal of the 'old' path and the effect on land affected by the addition of the 'new' path.

21. In the Council's Decision Report to make the Orders (**Appendix B**) all of these considerations were made and can be found at Section 7.
22. The representations serve to confirm the view of officers in that report, especially with regard to the convenience of the new route and the improved enjoyment of the route as a whole when the 'new' path is used as a part of it.
23. The objection (**Appendix C**) raises almost no matters that are relevant to the confirmation of either Order. Although Ms Fulton prefers the used route (as proposed for extinguishment in the s.118 Order) to the 'new' route it is clear that the majority of respondents prefer the 'new' route for a variety of reasons. The provision of the 'new' route means the public do not need to use either the old used route or the definitive line (both of which suffer from reduced accessibility and less enjoyable views) and accordingly it is considered that the public will not need to use either the used or definitive routes in the future. Although Ms Fulton raises concerns over the tenant's (Ms Brownlie) access to the stables and barn as a result of the 'used' route being extinguished, it is clear from Ms Brownlie's response that she very much approves of the proposals and can see great advantages in them both as a tenant and as a walker.
24. Officers highlighted the irrelevancies of the objections in a letter to Ms Fulton dated 3 February 2017 (see below) and invited her to withdraw her objection, however no response was received.

"Further to the advertisement of the above Orders the Council has received one objection (from yourself) to the Orders and 15 representations in support of the Orders. Unless the objection is withdrawn the Order may only be confirmed by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA).

It is the usual practice of the Council, in the interests of preserving public funds, where objections to an Order are either irrelevant to the law being applied or are clearly outweighed by other evidence, to seek the withdrawal of the objections and this letter asks you consider withdrawing your objection after consideration of the points outlined below.

*(i) **Costs** The applicant for the Orders pays all associated costs related to the making and confirmation of an Order. Hence there is no expenditure of public funds where the Order receives no objections or any received are withdrawn. Where an objection is received and sustained the Council may not re-charge costs related to the process of determination SoSEFRA. These costs may be as high as £3,000 and must be funded from public funds.*

*(ii) **Planning and Development Concerns** While officers have sympathies with your concerns relating to the spread of development in rural areas these matters are not relevant to these Orders and will not be considered by SoSEFRA. The*

forum for objection to such matters is the public consultation stage of the planning application process and, in the case of the garage at this site, this has passed.

(iii) **Permissive routes** Although the proposed diversion route is currently signed as a permissive path in the event that the Orders are confirmed these signs will be removed and the way will become a public right of way giving the public a right to pass and repass that may only be changed by another legal Order. Had the landowner not put these signs in place while allowing the public to use the route he would have risked another public right of way being formed giving the properties three rights of way all within a few metres of each other.

(iv) **Motivation of the applicant** This matter is irrelevant for the purposes of s.119 and s.118 of the Highways Act 1980 and would be disregarded by SoSEFRA. What is important is whether the legal tests contained in Sections 118 and 119 are met. It is both the officers' view and that of the fifteen people who made representations that they are more than adequately met.

(v) **Duplicity** Two Orders have been made as this is the only way to address the issues at this location. One Order diverts the definitive line to the proposed new path and the other Order extinguishes any rights that may have been acquired over the unrecorded route the public have used in the past. It is appreciated that this may appear confusing but this is the correct approach.

(vi) **The View of the Tenant** The tenant of the land has written to the Council expressing support for the Order which improves the way she may manage the grazing and improves her ability to control access and the security of the barn and stables that she uses.

(vii) **Consultation** The Council can ably demonstrate that it has consulted not only in accordance with the legislation but far wider than is required by law. Any view that a more extensive consultation is required may be valid in the wider context but is not a matter that can be addressed by SoSEFRA who will only work within the existing statutory framework.

If you are minded to withdraw your objection I would be pleased to hear from you within 14 days of the date of this letter. However, if I do not hear from you I will commence the unfunded part of the process and refer the matter to the Southern Area Planning Committee who will consider the Orders at a public meeting. I will of course keep you informed as to the date and venue."

Safeguarding Considerations

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

Public Health Implications

26. There are no identified public health implications which arise from the confirmation of the making of this Order.

Corporate Procurement Implications

27. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 31 to 34 of this report.

Environmental and Climate Change Considerations

28. There are no environmental or climate change concerns associated with the confirmation of the making of this Order.

Equalities Impact of the Proposal

29. The new route is more accessible than the definitive line or the route to be extinguished and would therefore be more accessible for walkers with mobility or sight impairments.

Risk Assessment

30. There are no identified risks which arise from the confirmation of the making of these Orders. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

31. The applicant has agreed to pay all of the Council’s costs associated with the making of the Order, with the advertisement of the confirmed Order and with the creation of the new path. However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the Secretary of State for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets.
32. Where there are outstanding objections to the making of Orders, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Orders. The Orders will then be determined by the Planning Inspectorate by way of 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 negligible; however, where a local hearing is held the costs to the Council are estimated to be around £200 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£200 without).
33. There are no costs associated with the Council resolving to abandon the Orders though the Council may be liable to Judicial Review and associated costs as a result of that action (see paragraph 34 below).

Legal Implications

34. Where the Council does not support confirmation of the making of the Orders and resolves to abandon them, clear reasons for this must be given and must relate to the legal tests contained within s.118 and s.119 of the Highways Act 1980. The applicant may seek judicial review of the Council’s decision if this is seen as incorrect by them. The cost for this may be up to £50,000.

Options Considered

35. Members may resolve that:
- (i) The Orders are forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made.
 - (ii) The Orders are forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation with modifications.
 - (iii) The Orders are revoked and abandoned.

Reason for Proposal

36. Officers consider that the proposal to divert the definitive line to the 'new' route offers the public a greatly improved route that is more accessible for a greater range of people, wider, easier to locate and use and with improved views of Old Sarum. The definitive line has been obstructed for more than fifty years and although the route must be viewed as available when considering the legal tests it is clear that the public had no desire to use it during that time and used an alternative route close by (the 'used' route).
37. The 'used' route, being just a few metres from both the definitive line and the 'new' route is not needed and will not be needed in future. The public have expressed a clear preference for the 'new' route as witnessed by their use of it and the representations of support contained within this report.
38. It is considered that all of the legal tests have been met with regard to the two Orders and that they should be confirmed. It is highly likely that with such a low level of objection the Planning Inspectorate would choose to determine the Orders either by written representations (at no additional cost to the Council) or, if the objector wishes to be heard, at a local public hearing (at a cost of around £200). It is therefore considered that even if expenditure from public funds is incurred the resolution of matters on the ground at this location will greatly enhance both the public's experience and also the Council's ability to assert and protect the rights in the future.

Proposal

39. That The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury Footpath No. 6 Diversion Order 2016 and Definitive Map Modification Order 2016 and The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016 are forwarded to the Secretary of State for the Environment, Food and Rural affairs with the recommendation that they 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 A - Orders

Appendix B - Decision Report

Appendix C – Objection from Ms Fulton

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER**HIGHWAYS ACT 1980****WILDLIFE AND COUNTRYSIDE ACT 1981****WILTSHIRE COUNCIL****The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury footpath no. 6
Diversion Order 2016 and Definitive Map and Statement Modification Order 2016**

This Order is made by Wiltshire Council ("the authority") under section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that in the interests of the owner of the land crossed by the footpath described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the City of Salisbury Area definitive map and statement dated 1953 as modified under the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.

Salisbury City Council have been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER

1. The public footpath over the land situate at Stratford sub Castle and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order shall be stopped up after 7 days from the date of confirmation of this order, and thereupon the City of Salisbury area definitive map dated 1953 shall be modified by deleting from it that public right of way.
2. There shall be at the end of 7 days from the date of confirmation of this order be a public footpath over the land situate at Stratford sub Castle and as described in Part 2 of the Schedule and shown by a broken line on the map contained in this order, and thereupon the City of Salisbury area definitive map dated 1953 shall be modified by adding that path to it.
3. The City of Salisbury area definitive statement shall be modified as described in part 3 of the Schedule to this Order.

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

Part of Salisbury path no. 6 leading from its junction with Salisbury path no. 24 at Dairy Cottage leading in a north westerly direction to OS Grid reference SU 1320 3248 and as shown by a bold black line leading from point B to point A on the plan attached hereto.

Width: 2 metres to 2.14 metres

Approximate length: 321 metres

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

Path as shown by a black broken line on the plan attached hereto leading from point C at OS Grid reference SU 1339 3223 leading in a north westerly and north easterly direction to point A at OS Grid reference SU 1320 3248.

Width: 3 metres

Approximate length: 326 metres

PART 3

MODIFICATION OF DEFINITIVE STATEMENT


VARIATION OF PARTICULARS OF PATH OR WAY

Parish	Number	Details	Section
Salisbury	6	<u>FOOTPATH</u> From the Portway, path no. 3, south west of Portway Cottage, leading north – west past Parsonage Farm and across Grabbage Lane to road C.1, south of Dean's Farm. Approximate length 1194 metres Width 2 metres to 2.14 metres except from OS Grid reference. SU 1320 3248 to SU 1339 3223 where 3 metres	53(3)(a)(i)

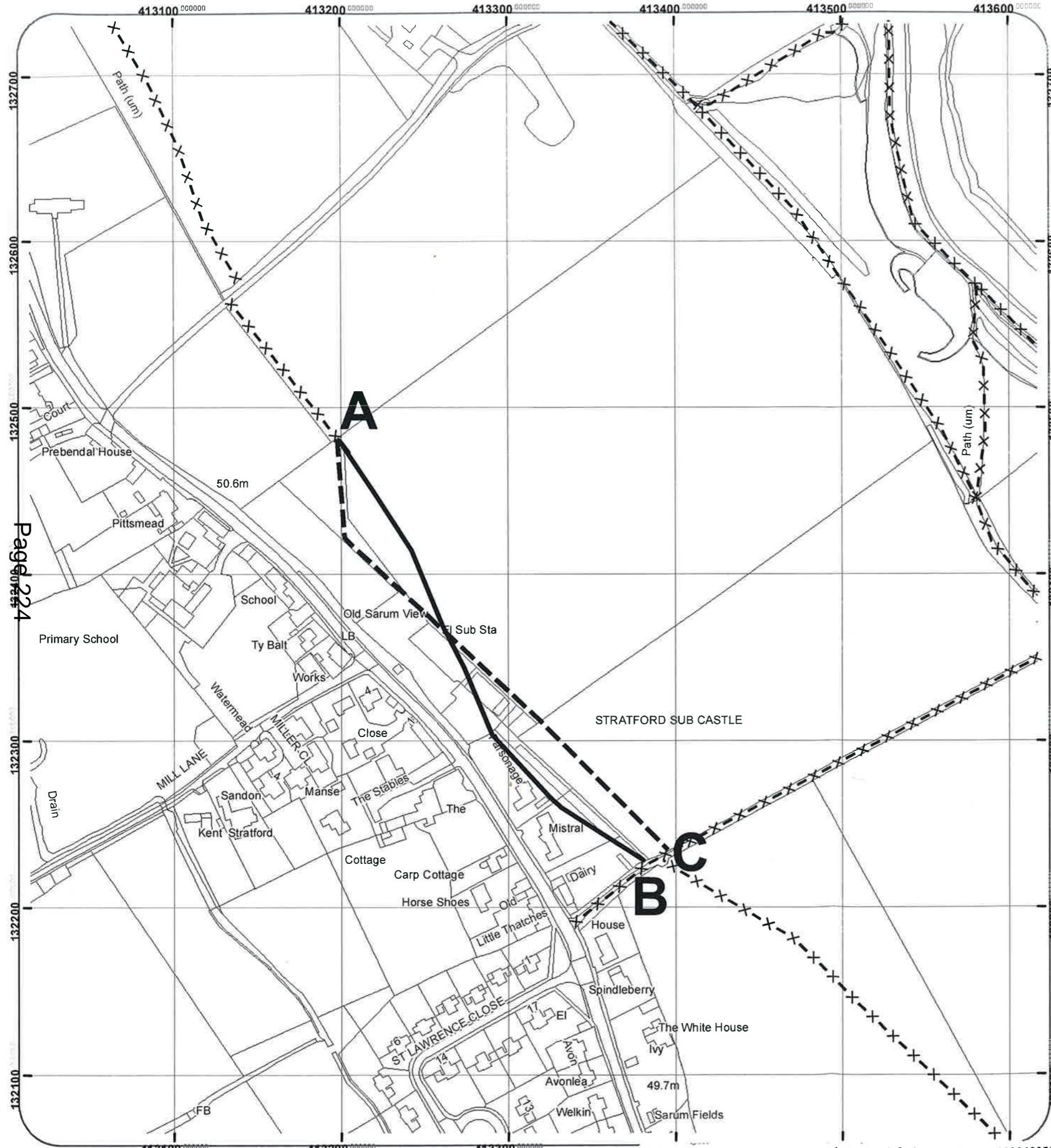
THE COMMON SEAL of
WILTSHIRE COUNCIL
was hereunto affixed this
12th day of December 2016



In the presence of : -


G.W. GATERS

Team Leader (Legal)



ORDER PLAN

Diversion of Part of Salisbury Footpath no. 6

Salisbury 6 to be extinguished **A** ————— **E**
 Footpath to be created **A** - - - - - **C**
 Unaffected rights of way x - x - x - x - x - x -

1:2,500 at A3

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PUBLIC PATH EXTINGUISHMENT ORDER
HIGHWAYS ACT 1980
WILTSHIRE COUNCIL

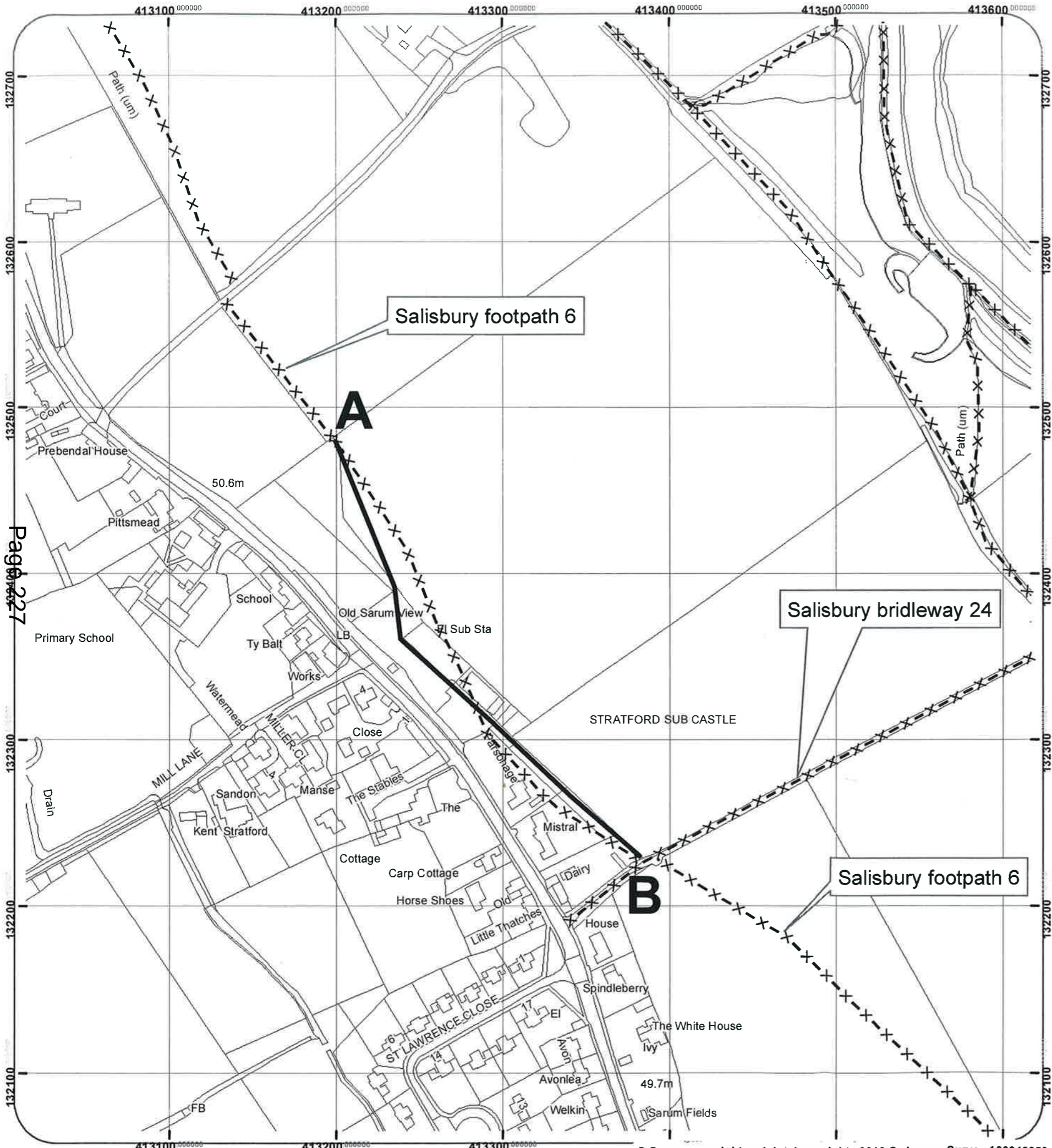
**The Wiltshire Council Stratford sub Castle footpath linking
Salisbury 24 with Salisbury 6**

This order is made by Wiltshire Council ('the authority') under section 118 of the Highways Act 1980 because it appears to the authority that the footpath described in paragraph 1 below is not needed for public use.

Salisbury City Council have been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER

1. The public right of way over the land situated at Stratford sub Castle and shown by a continuous bold line on the map from point A to Point B attached to this order and described in the Schedule to this order shall be extinguished after 1 day from the date of confirmation of this order.



ORDER PLAN

**Extinguishment of Unrecorded
footpath at Stratford sub Castle
Salisbury**

Footpath to be extinguished **A** ————— **B**
Unaffected rights of way x-x-x-x-x-x-x-x

1:2,500 at A3

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SCHEDULE

Length of footpath shown as a bold black line leading from point A at OS Grid reference SU 1320 3248 to Point B at OS Grid reference SU 1338 3223 on the Order plan attached hereto.

Width 2metres

Approximate length 323 metres

THE COMMON SEAL of }
WILTSHIRE COUNCIL was }
hereunto affixed this 12th day }
of December 2016 }



in the presence of: 
S.W. SLATER

Team Leader (Legal)

DECISION REPORT**HIGHWAYS ACT 1980 S.119 and S.118****PROPOSED DIVERSION OF PART OF SALISBURY FOOTPATH No. 6 AND
EXTINGUISHMENT OF AN UNRECORDED LENGTH OF PATH AT
STRATFORD SUB CASTLE****1.0 Purpose of Report**

- (i) To consider an application to divert part of Salisbury footpath no. 6 and a length of unrecorded path at Stratford Sub Castle, Salisbury.
- (ii) To recommend that Wiltshire Council makes orders under s.119 and s.118 of the Highways Act 1980 (HA80) and s.53 of the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

2.0 Background

- 2.1 On the 25th October 2016 Wiltshire Council received an application to divert footpaths at Stratford sub Castle to enable a permitted development to proceed.
- 2.2 Planning consent had been granted (16/00743/FUL) for the replacement of an existing garage, the alteration of vehicular access and a new boundary wall at Parsonage Farm House, Stratford Road, Stratford sub Castle, SP1 3LH.
- 2.3 The permitted development obstructs the line of footpath Salisbury no. 6 which would need to be diverted to allow the development to proceed.
- 2.4 It would be usual to achieve this under s.257 of the Town and Country Planning Act 1990, however, matters relating to the right of way at this site (and at neighbouring properties) are complicated by existing obstructions to Salisbury path no. 6 and of an additional but unrecorded path that the public have used instead of Salisbury path no. 6 for a period exceeding 20 years.
- 2.5 It is not just Parsonage Farm House that is affected by this alternative route. In total the anomaly affects the following landowners:
 - i) Mr and Mrs Harrison, The Parsonage, Stratford sub Castle (the applicant)
 - ii) Mr and Mrs Griffiths, The Stables, Stratford sub Castle
 - iii) Mr and Mrs Winders, Mistral, Stratford sub Castle
 - iv) Ms Steer, Parsonage Close, Stratford sub Castle
 - v) Mr Groom, Dairy Cottage, Stratford sub Castle
- 2.6 All parties have agreed to the diversions proposed in the application.
The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

- 2.7 It is an agreed point between all parties (including officers of the Council) that the unrecorded alternative route may, on the balance of probability and based on public use for at least 20 years, be a public footpath in addition to the one adjacent to it, Salisbury path no. 6.
- 2.8 The application seeks to resolve this anomaly by diverting both the walked route and the definitive line to a new route a few metres to the north.
- 2.9 It is therefore recognised that whilst this application offers an excellent opportunity to not only divert a path to enable a development to proceed but also to resolve an anomaly, it goes beyond the extent of the boundaries of the permitted development and accordingly, s.257 of the Town and Country Planning Act may not be used.
- 2.10 It is therefore proposed that the application is considered under s.118 and s.119 of the Highways Act 1980 with the proposed new route being an alternative for Salisbury footpath 6 under s.119 and with the used route being extinguished by s.118. Any Orders made to achieve this would be made concurrently.
- 2.11 **Application plan**



The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

- 2.12 The existing route of Salisbury no. 6 crosses 4 property boundaries and is shown by the solid black line in the plan above. One stile and two gates are provided near to the definitive line. The route is currently obstructed but the Council must consider it as if it were open and available for use.
- 2.13 The route that the public have used for at least 20 years (as shown by a solid green line in the plan above) has been indicated by signs and provided for. It uses one stile and two gates and leads along the northern boundaries of the residential enclosures that are Dairy Cottage, Mistral and Parsonage Farm before leading south west of field buildings to enter the field and to rejoin the existing route.
- 2.14 The proposed new route (as shown by a pecked line in the plan above) is approximately 12 metres further to the north east and leads along a defined fenced track bisecting the fields. It has already been constructed and is in clear use by the public. It provides a well defined straight line route with excellent views of Old Sarum to the north east. There are no gates or stiles along it and it has a uniform width of 3 metres.

3.0 Consultation

- 3.1 The following letter and plan were circulated:

Highways Act 1980 s.118 and s.119

Application to divert part of footpath Salisbury no. 6 at Stratford sub Castle, SP1 3LH

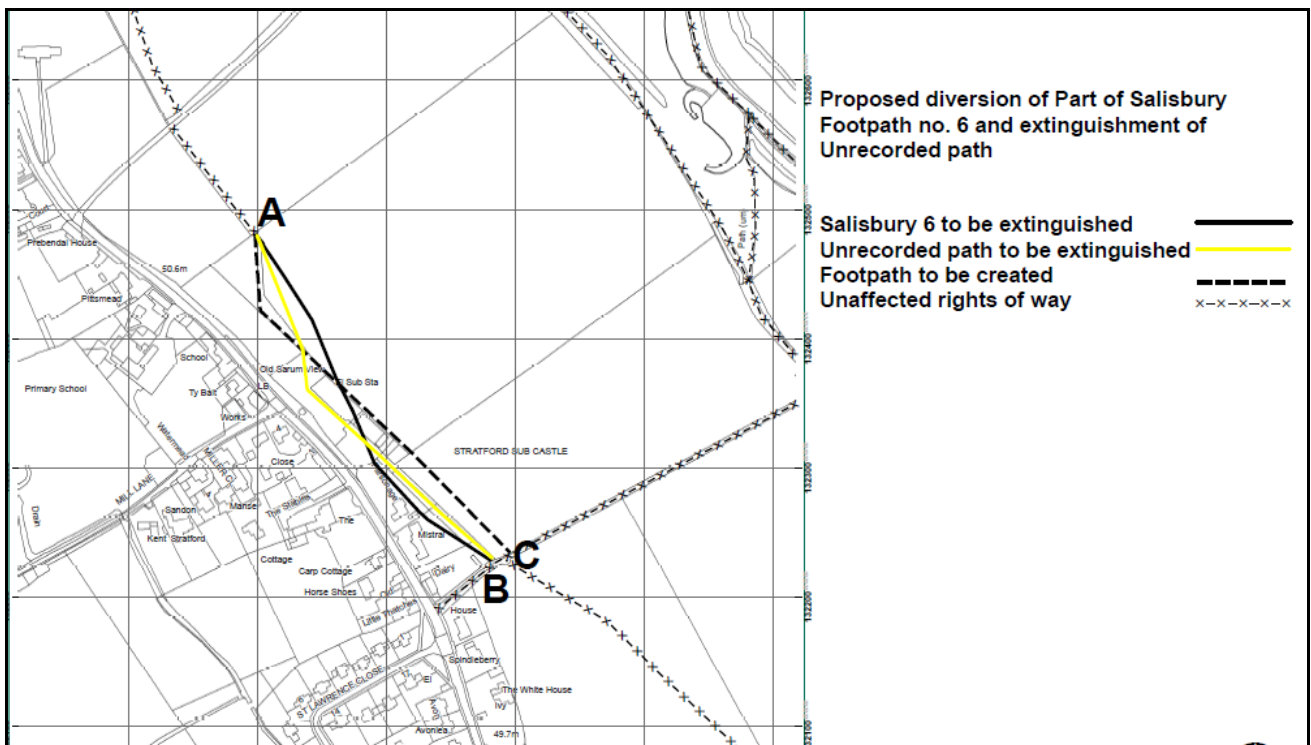
Wiltshire Council has received an application to divert part of footpath Salisbury no. 6 at Stratford sub Castle. Although part of the path will need to be diverted to enable a permitted development to proceed (the erection of a garage as permitted by application 16/00743/FUL) it is clear that where the footpath passes through a number of adjacent properties the definitive line (shown from A to B as a solid black line) is not followed by the public who have, since c.1960, used a slightly different line (shown from A to B in yellow on the attached plan).

It is proposed that an improved line for the path may be provided (shown from A to C as a black pecked line on the attached plan) which removes the path from the residential curtilage of several properties while offering the public better views of Old Sarum, less stiles and gates and an improved width of between 2 and 3 metres. The route is very slightly shorter than either of the existing routes.

It is proposed that the definitive line is diverted to the new route (pecked line A to C) under the powers of s.119 of the 1980 Act and that the unrecorded route (the used route) is extinguished under s.118 of the 1980 Act. If you have any comments or

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

observations on the proposal I will be pleased to receive them by the 2nd December 2016.



3.2 This was circulated to the following:

- | | |
|--|-------------------------------------|
| The Auto Cycle Union | Open Spaces and Footpaths Society |
| Wiltshire Bridleways Association | Wiltshire Cycling Touring Club |
| British Horse Society | Salisbury City Council |
| Wiltshire Councillor M Douglas | Wiltshire British Horse Society |
| Byways and Bridleways Trust | British Driving Society |
| Wiltshire Council Rights of Way Warden | |
| Ramblers (Wiltshire) | Ramblers (South Wiltshire) |
| Wiltshire Council County Ecologist | |
| Trail Riders Fellowship | Mr and Mrs A Harrison (applicant) |
| Mr and Mrs R Griffiths (landowner) | |
| Mr and Mrs J Winders (landowner) | |
| Ms Y Steer (landowner) | Mr N Croom (landowner) |
| Wessex Water | Scottish and Southern Electric |
| Wales and West Utilities | National Grid (gas and electricity) |
| BT Openreach | Virgin Media |
| Linsearch beforeUdig | Digdat |

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4.0 Consultation Responses

- 4.1 Linesearch before Udig 27 October 2016**
 - Virgin Media 27 October 2016**
 - BT Openreach 27 October 2016**
 - National Grid 27 October 2016**

No apparatus affected.

- 4.2 Wiltshire Councillor Mary Douglas 01 November 2016**

"I am happy with the application to divert part of Salisbury no. 6 at Stratford sub Castle SP1 3LH."

- 4.3 Mr and Mrs R Griffiths 02 November 2016**

"We are simply writing to record that we are both very much in agreement with the application to divert the footpath as indicated in those plans."

What you haven't mentioned is that, when there is a lot of rain, the existing footpath because it is narrower and is churned up by horses, becomes like a First World War battlefield and the diversion proposed would avoid that in addition to the other advantages you mention."

Case officer's comment: Part of the unrecorded route leads through fields that are used for horse grazing. The proposed new route would not and would lead along a path fenced away from the field.

5.0 Existing Records : Definitive Map and Statement

Footpath Salisbury no. 5 was added to the definitive map and statement in 1953 and has not been affected by any legal events since that time. The definitive statement records:

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

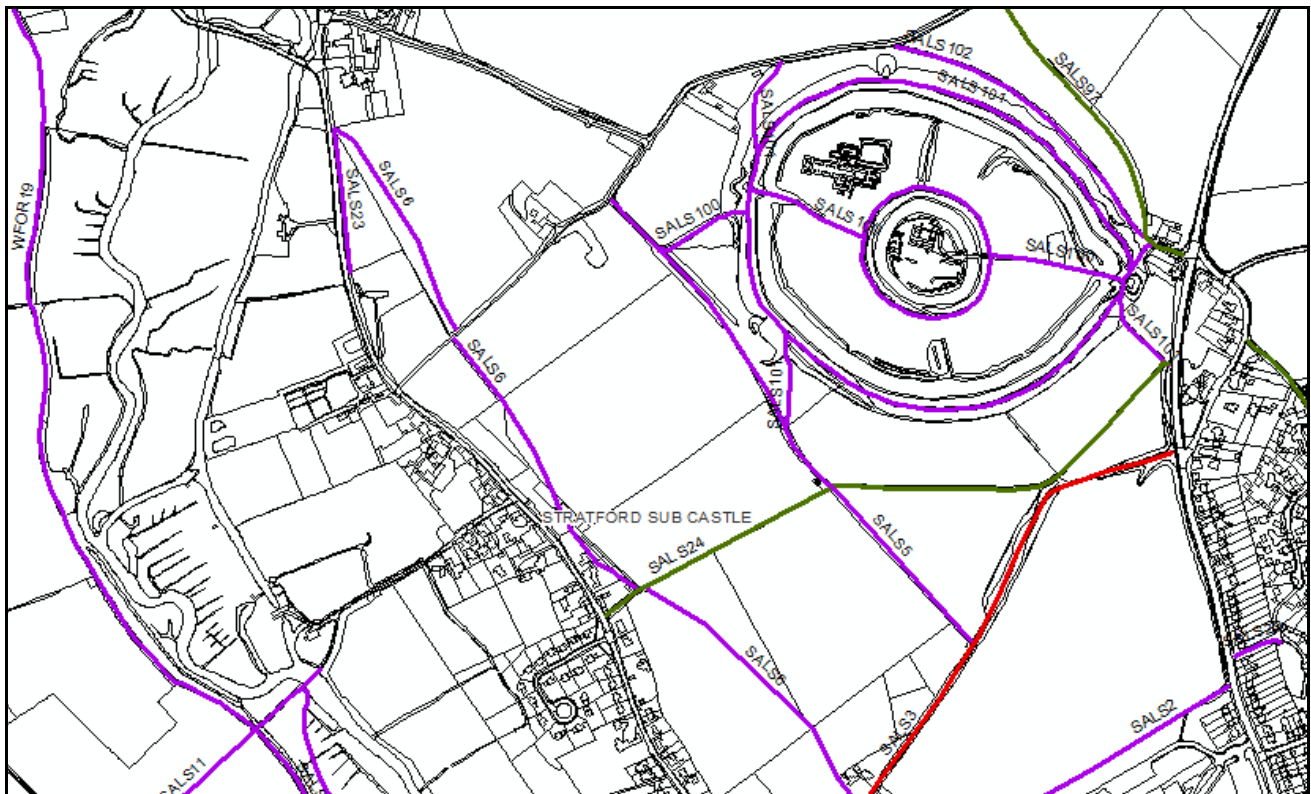
Salisbury 6 FOOTPATH. From the Portway, path No.3, south-west of Portway Cottage, leading north-west through Parsonage Farm and across Grabbage Lane to road C.1, south of Dean's Farm.

relevant date

Subject to ploughing

Approximate length 1189 m.

Width 2 m - 2.14 m.



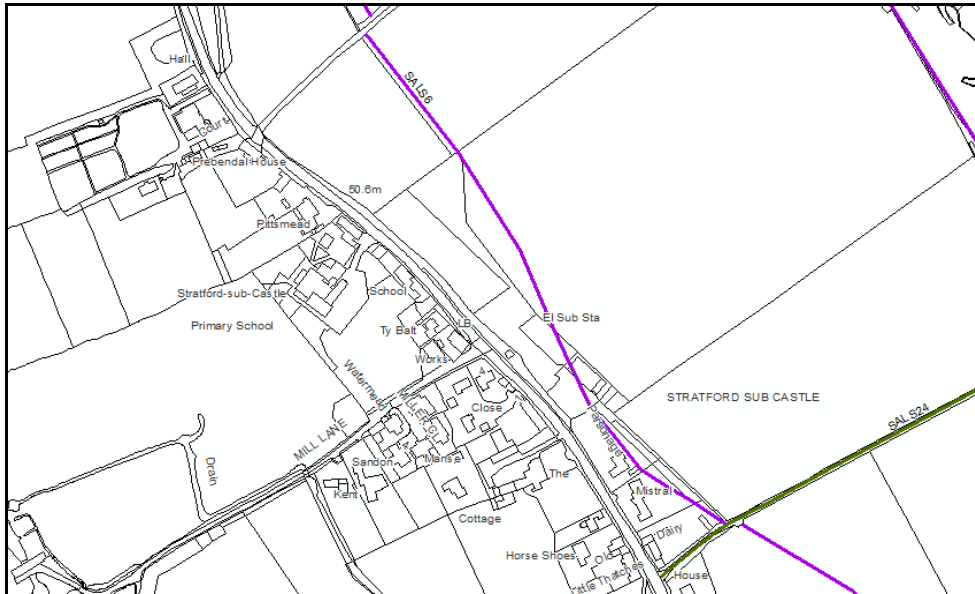
Extract from the working copy of the definitive map showing:

Footpaths = purple

Bridleways = green

Restricted byways = red

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path



Extract showing affected section of Salisbury 6

6.0 Considerations for the Council

- 6.1 Wiltshire Council has the power to make orders for the diversion of public paths under s.119 of the Highways Act 1980.
- 6.2 **Section 119(1)** of the Highways Act 1980 states that:

“Where it appears to a Council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.

- 6.3 Section 119(2) of the Highways Act 1980 states:

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“A public path diversion order shall not alter a point of termination of the path or way:

(a) if that point is not on a highway; or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public”.

6.4 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

6.5 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schieman L.J. stated that:

“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”

6.6 Subsection (6) of s.119 sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Schieman L.J. held that:

“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”

6.7 After making an order, if the order is objected to, the Council should also again consider the second test under Section 119(6) which must be met at the Order confirmation stage.

“The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in Sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:

(a) the diversion would have on public enjoyment of the path or way as a whole;

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- (b) *the coming into operation of the Order would have as respects other land served by the existing public right of way; and*
- (c) *any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it*

6.8 The Council must have regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

6.9 These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

6.10 The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

6.11 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council’s duty to have regard to the Equality Act 2010 and to consider the least restrictive option.

6.12 At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:

“..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).”

6.13 At 7.4 page 32 the Council recognises the following:

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“The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5.”

Conclusion 5 states:

“If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children.”

6.14 At 2-5 page 38 the Council recognises opportunities for improving access:

- Make routes more accessible, undertake surface improvements and improve maintenance
- Work within the framework of Wiltshire Council’s Gaps, Gates and Stiles Policy
- Encourage landowners to follow best practice for furniture design as set out in the above mentioned policy
- Work in partnership to promote and create accessible trails
- Improve surfacing to byways open to all traffic where there is a demand for those with mobility impairments to be able to access remote locations

6.15 ROWIP 2 refers to the Council’s Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2.

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

6.16 Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to the use and enjoyment of a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

those functions as others would do or to show that there are good reasons for not doing so.

6.17 Where a route is being diverted Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the Council and any Order made comes into force.

6.18 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

6.19 **S.118 Highways Act 1980 for the extinguishment of a public path**

118. Stopping up of footpaths, bridleways and restricted byways.

(1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.*

An order under this section is referred to in this Act as a 'public path extinguishment order.'

(2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.*

(3) *A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*

(4) *Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

(5) *Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering –*

(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or

(b) under subsection (2) above to what extent (if any) that the path or way would apart from the order be likely to be used by the public;

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

(6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*

(6A) *The considerations to which-*

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

Include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

6.20 The Council is also empowered to make a 'combined order' under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a 'legal event order' or an 'unadvertised order').

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

7.0 Comments on the Considerations

S.119 - Diversion

- 7.1 S.119(1) HA80 states that the Council may make an order to divert a path if it is satisfied it is in the interest of the landowner and/or the public to do so. The landowners' interests are demonstrated by the making of the application itself. It is clearly in their interest to move the line of the path away from the residential curtilage of their properties as this will benefit their privacy and security. The diversion of the path would also enable Mr and Mrs Harrison to proceed with their permitted development. I can see no disadvantage to the landowners in moving a public path to a well defined route a short distance away from their houses and gardens. S.119(1) is therefore satisfied.
- 7.2 S.119(2) HA80 says that the Council shall not alter the termination point to one that is not on a highway or to one that is not substantially as convenient to the public. The point at which the public join this leg of Salisbury 6 from bridleway Salisbury 24 would be moved approximately 12 metres to the north east. This brings the path closer to the ongoing leg of path Salisbury no 6, in fact, it is virtually opposite it giving a much better sense of direction and purpose to the route. Additionally the proposed new access point does not involve passing through a gate and gateway onto what is part of the residential curtilage of The Dairy. It is considered that the new termination point is more convenient rather than less and accordingly S.119(2) is amply satisfied.
- 7.3 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 6.6 and 6.7 it is also appropriate to consider S.119(6) at this stage.
- 7.4 S.119(6) says that the new path must not be substantially less convenient to the public. The new path will be 3 metres longer than the existing path but follows a clearer, straighter route. There are no stiles or gates on the new route and because the route is fenced away from the field there is no potential conflict with horses or of passing over muddy and poached land. The proposed new route would be more convenient to use.
- 7.5 The Council must also have regard to the effect on the public enjoyment of the path as a whole. Salisbury 6 is along path made up essentially of three legs. The first leg crosses fields and links restricted byway Salisbury 3 with bridleway Salisbury 24, the second leg (which is affected by this application) leads through some residential gardens and across a field to link bridleway Salisbury 24 with the unclassified road to Old Sarum (Grabbage Lane). The third leg links Grabbage Lane with the Stratford sub Castle road (the C.1) itself. This legs leads across a field.

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

- 7.6 Whether the public use Salisbury 6 as a whole or whether they include the various legs of it in various circular walks is not known, however, whichever way it is used the improved accessibility of the proposed diversion will make the route more purposeful and easier to follow. The views of Old Sarum are improved from the proposed diversion route and it is generally considered that the enjoyment of the path would be enhanced by the diversion rather than impaired by it.
- 7.7 It is considered that s.119(6) is therefore satisfied and that any order so made would be capable of being confirmed
- 7.8 The Council must also consider the effect on the land served by the existing path. The existing path has no utility beyond recreational access for the public and its removal from the land would allow the land to be fenced for greater privacy and security.
- 7.9 The Council must also consider the effect on the land served by the new route. The new route has already been created by post and wire thus creating an additional paddock which gives greater flexibility to livestock management.
- 7.10 The Council must also consider the effect on agriculture, forestry and diversity of fauna and flora. No comments have been received from Wiltshire Council's County Ecologist. The area over which the new path will go is not managed for forestry or agriculture. It is considered that there is no effect.
- 7.11 **S.118 Highways Act 1980**
- Section 118 of the Highways Act 1980 enables Wiltshire Council as Highway Authority to extinguish a footpath where it appears to the council that the path should be stopped up on the ground that it is not needed for public use or likely to be needed for public use. The Council may make an Order under s.118 concurrently with an Order under s.119.
- 7.12 Clearly there is no need for two public footpaths so close together at this location and in the event that an Order made under s.119 were to be confirmed it is considered that the new route created by that order would be so advantageous to the public that any other route just metres away requiring the use of two gates and one stile would simply never be used.
- 7.13 Before confirming an order made under section 118 of the Highways Act 1980, the Council must also have
- (1) regard to the extent to which the path would be used by the public, and
 - (2) regard to the effect which the extinguishment would have in respect of the land served by the path.

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

There is no anticipated adverse effect on the land served by the path and no claims for compensation are expected as a result of the extinguishment.

- 7.14 Section 6A of the Highways Act 1980 also requires the Council when determining whether or not to confirm an extinguishment order to consider any material provision of a rights of way improvement plan prepared by the Council. In the Action Plan of the Wiltshire Countryside Access Improvement Plan 2015 – 2025, the opportunity to create a more coherent network to make the network easier for the public to use was identified. The alternative path provides a readily accessible path making it a more useable path for the community in this attractive and popular rural setting.

8.0 Environmental Impact of the Recommendation

- 8.1 There is no environmental impact associated with the recommendation.

9.0 Risk Assessment of the Recommendation

- 9.1 Risks to the Council are covered at 10.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil, in fact the new route is likely to present a lower risk to users as they will be separated from livestock and will not have stiles and gates to negotiate.

10.0 Legal and Financial Implications

- 10.1 Actual costs associated with making an order will be paid by the applicant.
- 10.2 If significant objection is received the Council may abandon the Order at no further cost to either the applicant to the Council.
- 10.3 If the Council refuses to make the order the applicant may seek judicial review against the Council's decision and may succeed if the Council has been unreasonable. Costs can be high for this (c.£50000).
- 10.4 If the Council makes the order and objections or representations are made the Council will consider the matter at a meeting of the Area Planning Committee. That Committee may decide to abandon the order or may decide to support its confirmation. If the Council supports the Order it will be forwarded to the Secretary of State (SoS) to determine and the Council will pay costs relating to this. This may be negligible if the case is determined by written representations (a few hours of officer time), around £200 to £500 if determined at a local hearing or between £1000 and £2500 if determined at a public inquiry.

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

10.5 It is considered that there is a very low risk of objection to this Order and an even lower risk that in the event of an objection being made and the Order being sent to the SoS that a public inquiry would be held. It is usual to determine Orders such as this by way of written representations or a local hearing.

11.0 Equality Impact

11.1 The new route is more accessible than the definitive line or the route to be extinguished and would therefore be more accessible for walkers with mobility or sight impairments.

12.0 Relevance to Council's Business Plan

12.1 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.

13.0 Safeguarding Considerations

13.1 DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."

13.2 If an order to divert a right of way at Stratford sub Castle is made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so the Council will fulfil its safeguarding responsibilities.

14.0 Public Health Implications

14.1 No public health implications have been identified in the diversion of Salisbury 6 or the extinguishment of the route used for at least 20 years.

15.0 Options to Consider

- 15.1 i) To refuse the application
- ii) To allow the application and make an order under s.119 and s.118 HA80 and s.53A(2) WCA81.

The Diversion of part of Salisbury 6 and extinguishment of a length of unrecorded path

16.0 Reasons for Recommendation

- 16.1 Officers consider that the proposed changes to the network contained within this application have strong advantages for all parties. By extinguishing the unrecorded public rights as well as addressing the definitive line this application seeks to avoid later complications for landowners and for the Council. It is considered that all legal tests are met and that Orders should be made and advertised to effect the changes proposed in the application.
- 16.2 No objections or alternative suggestions to the proposals have been given to the Council and it is considered unlikely that any would be received. However, in the event that objections or representations to the Orders are duly made and not withdrawn, the Orders will have to be considered by the Southern Area Planning Committee who may decide to abandon it or to send it to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) for determination. In the event that an objection is received to only one Order, because they have been made concurrently they would both have to be considered by SoSEFRA for confirmation at the same time. Wiltshire Council would not proceed with the confirmation of just the Order that had not been objected to.

17.0 Recommendation

That an Order is made under s.119 Highways Act 1980 and s.53 Wildlife and Countryside Act 1981 to divert the line of Salisbury 6 at Stratford sub Castle and an Order is made under s.118 Highways Act 1980 to extinguish the unrecorded footpath that leads broadly alongside the definitive live. In the event that no objections or representations are received then the Orders should be confirmed.

Sally Madgwick
Rights of Way Officer

05 December 2016

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1) 02 January 2017

"I write in objection to two cases of landowner attempts to mislead the public by installing gates and notices , illegally disclaiming public rights of way by usage and claiming instead " permissive access only " .

The first case is the one in Stratford sub castle (I think it is on council notice of relocation ref: 24) . going north and meeting the lane which goes to both a footpath to Old Sarum and the road at the top of the lane , via a stile .

First , the landowner allowed a hedge to grow across the former right of way , making it impassable and at the same time installed a gate at the other end , permanently locked . Then the landowner created a different pathway , with the legend , " permissive access only " . In which case , of course , being a NEW PATH , it could thus accurately and legally be described , potentially .

The second case is the path that goes from the same access point , but in a south-easterly direction , and where it turns east up to Old Sarum , diagonally across a field , without gates or restrictions for as long as I remember (40 years approx) .

Where , the year before last , the landowner installed notices claiming " permissive access only " followed mid last year by a multiplicity of elaborate unnecessarily sturdy gates , restricting access to the junction of directions , formerly totally left open . These gates are now equipped with notices claiming permissive access and protected behind elaborate chicken wire construction of the gates .

Apart from these landowners' blatant abuse of their privilege and the law , there can be no practical reason for their deviousness , apart from preparing their way to sell the land to developers in the near future , which the existence of a public right of way across its middle would negate .

The new planning laws facilitate the exploitation of prime sites commanding the greatest profits for landowners and developers in formerly protected areas and it might be expected that the council would be expected to be vigilant in guarding against the destruction of our uniquely beautiful , rural city and the county , in exchange for short term private profits .

Existing homes can only be devalued by such careless lack of foresight and it is extremely negligent of the council in their duty to protect the public first , not corporate development interests , to be seen to be leaving it up to the already overworked , ill equipped and ill informed public to struggle against the extraneous interests constantly bombarding their rights to peaceful security and quality of life .

In many other cities and towns historic monuments have long been reduced to mounds forming the centre of traffic roundabouts ; the roundabouts surrounded by housing estates and industrial complexes .

Salisbury is rapidly becoming a town identical to the others en route from London to the west country , before it , nightmare clones , where over-development is IN FACT creating THE MARKET FOR ; not quote " a housing shortage " at all , for people escaping the noise and chaos of over-development elsewhere .

Corporate planning policies have not led to wealth , but massive , undeclared National Debt :

The IFS 2013, " Total National Debt in PPFs ; PPIs ; corporate subsidies and pension liabilities , are not required to be submitted for public audit purposes . Economists estimate the true figure to be at least £ 10 tr " .

Property developers are financed by loans from tax-payers ; subsidized by gov. grants ; and both , in turn guaranteed by tax-payer's pension funds as THE UNDECLARED GREATER PORTION of National Debt .

Wiltshire Council can use the vestiges of the little remaining , existing public rights to reduce the impact of gov. unsustainable policies ; the destruction of the environment and protect Wiltshire resident's rights and current quality of life , little as they may already be .

At present Wiltshire Council is bending over backwards to facilitate mass destruction and mass enslavement policies through its planning dept. "

2) Wiltshire Council's response:

"Thank you for your e.mail which has been forwarded to me to respond to. I am unclear as to whether you are referring to the case I am dealing with and accordingly have also forwarded your e.mail to the rights of way warden for the area, Nick Cowen.

I am the case officer for an application to divert a short section of Salisbury 6 (Dairy Cottage to Parsonage Farm) and to extinguish a section of the used path. The public have not been able to walk the definitive line of Salisbury 6 at this location since at least 1960 and the two Orders that have been made seek to correct this anomaly and to move part of the path to enable a permitted development to proceed. Please find attached a copy of the Council's decision report as this explains the situation here, and what is it is hoped to achieve with the two published Orders.

If you would like to object to either Order then you must follow the prescribed method as detailed in the public notices, please note the timescale. These are on site, were published in the Salisbury Journal on the 22nd December or are attached here.

If, having read the report, you have any queries, please do not hesitate to contact me."

3) Ms Fulton 04 January 2017

"I am unsure why you appear to say that my objection is not valid , the only thing I can deduce is that perhaps it must be sent in the post ? I am sending a copy in the post on that basis .

Please note that I fail to see your reference to" a path not having been used since the 1960s " , since the path which is the subject of the notice has been the ONLY one in existence for at least the past 15 years , to my own knowledge .

Please note also that I am claiming that the landowner effectively closed the path informally almost a year by active obstruction , then more recently constructing A BRAND NEW PATH.

I would say , that by complicity with legitimizing the new path IN FACT ILLEGALLY , the council are taking upon itself to ignore public rights of way legislation , by leaving it up to the public to object and prove right of way , which is NOT up to the public to prove usage , when clearly the fact of historical usage , is not capable of dispute .

The council is acting complicitly with landowners in allowing them to close public paths at will , through slightly altering their position , thus altering their legal status from " a public right of way " , to " a permissive path , whose access may legally be withdrawn at will and at whim by privilege "

Further the council are deliberately misleading the public , by publishing a one sided case for endorsement of a new path , as though it was a matter of a trivial alteration , not a fundamental illegality and of potentially devastating consequence to the environment ; devaluation of existing homes and the city as a whole ; and by a gross overriding of both the law and actively abolishing , the little rights remaining to the public against industrialization of the environment and enslavement as an ideological goal .

I also object , that you have ignored my complaint against another identical and illegal practice nearby , of which I am sre the council is already aware , but can easily check out if they are so inclined , I have perfectly adequately detailed the location of this second criminal offence of " obstructing a public highway " .

Please note , that I am reporting two cases of criminal activity , not simply objecting to illegal behaviour of the council in trying to provide cover and propaganda to facilitate crime .

The public are already abandoned by the council to fight development of meadows across the other side of town and the same is proposed around Old Sarum .

Clearly , even if the bogus 'reason' of 'homes shortage' is accepted , THE NEED to provide necessarily highly lucrative developments in historic and formerly protected countryside areas for those privileged to afford to buy it for their own private use , is NOT credibly covered by it . "

4) Wiltshire Council's response

"I can only advise that your objection makes it very clear to which Order you are objecting, since the Council has made 2 and the legal arguments are distinct in each.

The process is very strictly prescribed by the law and the Council is obliged to follow it. Accordingly, and to avoid confusion at a later date (the matter is likely to be considered by the Secretary of State) I would urge you to be sure that the terms of the notice are adhered to."

5) Ms Fulton 04 January 2017

"Thank you for your prompt reply .

However in point of fact there are no" restrictions on the 'order' " , (to quote you) notice of the 24/6 path :

I quote (approx.) " The use of the new (illegal) path is recommended , since using the (legal) old path entails climbing over the gate " .

Please note also , that the second path , I am attempting to draw your attention to is in quite another location altogether , although it may be the same landowner for all I know. .

There is no COUNCIL made order or notice of any kind .

But somewhat identically to the first path and the one from meade bridge , before that , elaborate gates have been constructed, which obstruct a number of former junction of public pathways and which each contain notices made by the landowner ONLY .

These notices , attempt to deny laws of public rights of way by usage and attempt to legally reverse the public right of way , by claiming access is "permissive only ,(and furthermore)permission is given to keep to the edge of the field only " .

The junction of pathways has been open for centuries and the diagonal path across the field ditto is clearly and indelibly marked in the landscape as testimony to many generations of native and tourist's feet .

Apart from illegally obstructing a public right of way ,and putting up illegal notices , there is no possible gain for land that has NEVER been used either for crops or grazing .

The only possible purpose of this criminal activity , is to try to deceive the public into giving the owner the right to close the path dissecting the land , currently preventing its desirability to sell for building on .

I contend that in both cases the council , far from turning a blind eye to illegal practices and assisting in public deception , the council should be serving the landowners notices to take down illegal constructions and notices or be criminally prosecuted with obstructing the public highway .

I have very clearly described the location of the second instance of illegalities on public rights of way in my first letter of complaint and I would be grateful for its acknowledgement , please ."

6) Ms Fulton 05 January 2017

"The council's documentation , justifying the consideration of this application , erroneously declares the application as Quote :

" A diversion of part of the footpath " : NO, it is an EXTINGUISHING of a public RIGHT of way of the ENTIRE footpath .

The entirety of the councils procedure is therefore duplicitous : It describes an order to " extinguish a footpath "as (unstated , being an order) " DIVERTING PART of a footpath" .

The fact that the 'diverted part ' is acting as diversion ! from the fact that public acceptance of the diversion equals the NEW right of the owner to close its entirety at will and the public loses the right to object , is totally ignored throughout the council's public communications on this matter .

The council is PUBLICLY owned and funded and has no right to be acting as instrument to fool the public , in the interests of a few people to make money selling off and building on, not only land currently effectively in public trust , but a major precious remaining , historic and beautiful environment surrounding Old Sarum , which should contrarily have an preservation order made on the entire Stratford Sub Castle and its meadows MADE .

The council furthermore describes the new, shortly-due-for-closure-footpath-in any-case as " an enhancement to public enjoyment "

On the contrary the present footpath is extremely charming as a 'secret' winding way , over styles and through orchards and by barns and horses , which is essential to the experience of THE COUNTRYSIDE for children and adults alike .

The councils suggestion that " its replacement" by a fenced in sterile rigidly parallel path complete with NOTICE stating the servile position of the public 'using it , along with the owner's (NEW) right to close it at whim (perhaps the public could tug their forelock too in salute as they cross) " would be an ENHANCEMENT of the public's experience " , is preposterously ill disguised contempt for anything of value that isn't money . AND ignores its status as a non-existent entity in any case !

The council state that " we are obliged to take into account private interests in our deliberations as well as the interests of the public " hahaha :

NO , on the contrary , the PUBLIC interest ALWAYS . The Council are PUBLIC servants : Not the public's master , and where private interest conflicts with the interests of the public as a whole as well as the ENVIRONMENT and the unique CHARACTER that IS Wiltshire , THAT PUBLIC interest ALWAYS PREVAILS . "

7) Ms P Fulton 09 January 2017

"Please forward all three of my emails to date to the formal objection process .

My address is: 31 Primrose Road

Salisbury

Thankyou

Sincerely P. Fulton .

8) Wiltshire Council to Ms Fulton 23 January 2017

"Highways Act 1980 s.118 and s.119 and Wildlife and Countryside Act 1981

The Wiltshire Council Stratford sub Castle footpath linking Salisbury 24 with Salisbury 6

The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury footpath no. 6 Diversion Order 2016 and Definitive Map and Statement Modification Order 2016

I acknowledge receipt of your objection to the above orders. Unless withdrawn these will be carried forward to be considered by the Southern Area Planning Committee at a public meeting. You will be advised of the date and venue in due course.

I am concerned that you have misunderstood the purpose of the Orders. If confirmed the path that is currently marked as a permissive path would become the definitive line of the right of way and would be recorded in the definitive map and statement and offered the same protection in law as any other duly recorded public footpath. It would not be permissive."

9) Ms P Fulton 23 January 2017

"Can you let me know please ,if you have received my written objection , which was sent by special delivery , supposed to be guaranteed to be delivered before 1pm today .

The point about the permissivew path is FAR from being the main objection , but as a matter of fact NOWHERE in the documentation is the status of any new path written as a statement ogfguarantee to the public . in itself that is not proper and legal procedure ,

Indeed it is a symptom of the contempt which the council holds for public interests and indeed the historic county of Wiltshire ,, contrasted with the public money being spent on behalf of the applicant in its acquisition for private profit , to concrete over the greenbelt .

THAT is my fundamental objection.

The creeping development of the landscape around Old Sarum is rapidly turning what was the ' landscape of Old Sarum into an industrial complex and vast housing estates with a (BARE !) mound in the middle of it .

ALL building 'development MUST have a strict line drawn , thus far and NO further . The people who live in the area are privileged to have the entire landscape on their doorstep , if they want money instead and a nd views of their own garden , there are plenty of other places to do that , where the country is already poisoned with concrete and noise ' and houses for cars to live in ., which don't involve poisoning the preciously rare , rural and historic environment, that is Wiltshire :

That is the real job , the council are entrusted to do .: Represent the interests of the many , not the few , because in the end all people suffer , when the council acts in the interests of making a fast buck , irretrievably concreting over the green powering the earth and ALL QUALITY of life for the sake of corporate welfare ."

Composition of e-mails to 17 February 2017.

Plus the following submission sent by post:

Please find enclosed my objection to SHREA43 , extinguishing of a Public Right of Way at Stratford Sub Castle path 24-6 , for the purpose of facilitating a private development on, in effect landscape protected by a public Right Of Way.

And the right of the applicant to legalize a new path , already constructed , as a PERMISSIVE path only , which can be closed without right of public objection at the whim of the applicant .

AND to it's being portrayed in the councils' literature as a matter of parity , bY OMISSION OF THE SUBJECT OF PARITY ALTOGETHER .

Please find my objection in 3 parts : 1. OVERVIEW

2. Generalpages 1-3
3. By The Decision Reportpages 1-7
4. By Consultation ProcedureA summary, with 7 pages of exemplary copies of emails as evidential of improper practice. .

Sincerely

Penny Fulton

31 Primrose Road,

Salisbury SP2 9JR

19th January 2017

OVERVIEW

Please note that the entire ostensible Raison d'être for the vast expenditure of public funds involved in the extinguishing of a Public Right Of Way is:

SO THAT, applicant's can, QUOTE : "build a NEW garage over the site of an EXISTING OLD ONE...." :

Which does NOT require ANY changes whatsoever , affecting existing rights of way , obviously .

" ...AND build a new boundary wall... " , UNQUOTE . ."...over historic countryside "

IE , "The applicant wishes to acquire a public right Of Way , to expand their property , for monetary gain ."

As can be seen from the council's report , not only have they invested huge amounts of public funds in the procedures already involved for the purpose of the monetary enrichment of one person , but they are prepared to spend at least a further £ 2, 500 on defending a public inquiry , in the interest of a single person's monetary gain at PUBLIC expense and at the expense of the interests of the environment , historic landscapes , and public enjoyment of the rapidly SHRINKING countryside .

This represents corruption of a 'public ' body in extremis and is a total disgrace .

Please do not endorse such practices, involving the gross misuse of public funds and resources , and misconduct in public office .

**Completed objection to “ Diversion of part of a footpath
“and extinguishment of (a public highway by usage, as
common knowledge and council acknowledgement from
living memory up to the present day)”.**

REF: SHRE43

The Generalized part

OF REASON FOR THE STRONGEST POSSIBLE OBJECTION
ON THE GROUNDS OF:

IMPROPER PROCEDURE AND A LACK OF ALL
CONSIDERATION OF THE INTERESTS OF THE PUBLIC IN
GENERAL ;
IGNORING THE HISTORIC SENSITIVITY OF THE SUBJECT AND
IN THE CONTEXT OF ITS HISTORIC ENVIRONMENT ;
IGNORING OF THE QUESTION OF FUNDAMENTAL CHANGE
IN STATUS OF PUBLIC RIGHTS AND THE RISK OF CLOSURE
OF THE PATH ALTOGETHER AS REPRESENTED BY PUBLIC
FAILURE TO OBJECT TO THE PROPOSED ORDER ;
ALSO FAILURE TO INFORM THE PUBLIC OF THEIR EXISTING
RIGHTS AS WELL AS THE UNCERTAINTIES INHERENT IN THE
DRAFTING OF THE ORDER .

In Addition ; active promotion of private monetary gain;
and at the expense of not only turning a blind eye to illegal behaviour by
landowners , but having total disregard for quality of life for all; ,,
as its entire focus is on ensuring that landowners “can build a garage
over a beautiful public and environmental asset ;
the council demonstrate here that they have no concept of their duty to
prioritize PUBLIC interest over private short term monetary gain ,
throughout the documentation on this matter .

The above said principles which the Council operate on as stated, would find endorsement in the approval of this order. And that would be very wrong and against the public interest.

IN PARTICULAR:

1, There is neither one reference in all documentation or public notices, as to the change in status implications for public right of way in the making of this order, nor explanation of the right or otherwise of the applicant to claim permissive access ONLY on the NEW 'diverted' path .

Neither, necessarily, any undertaking to guarantee or otherwise the same public rights would be transferred if the order were to be approved.

2. The Council gave no details in its advance notice to the Ramblers and the Open Spaces and Footpath society, most notably concerning the fact that the new path, already constructed by the applicant ! complete with "permissive access only notice", fundamentally changes the legal status to being subject to closure, as of right of the applicant at any time, with loss of public right to object, IF no objections are made and the order should be approved .

Related to that omission, the applicants had been allowed to illegally obstruct the public highway, for the past year and half, by allowing a hedge to grow across it and installing a locked gate to prevent access. As the council; were aware.

At that time, a year ago or so, the applicants fenced in a NEW path with a notice stating "permissive path only(, along with a list of conditions by which the public would be permitted to pass)".

This was illegal behaviour and underhand action designed to mislead the public and 'prime' them to believe that they had no ACTUAL: RIGHT to use the obstructed path, in the first place .

I have asked other walkers since the order notice was put *in situ* letting the PUBLIC know at the last possible moment and when people are either AWAY for, or extremely busy OVER, CHRISTMAS ! : they

have not even an inkling of knowledge on matters of public rights of way law nor what constitutes” criminal obstruction of a public highway. These activities being perpetrated over the entire area in question, by other landowners , identically to this case , with the collusion of the council .

The council have deliberately ensured that the public are kept ignorant of their rights and have actively misled the public .

3. The council have and are actively promoting the interests of a private individual to expand their property by acquiring LAND HELD IN PUBLIC TRUST, by deception, quote, approx . “ to remove the obstructions ie the existence of public rights of way, in order to implement the planning permission already granted , to build on the existing public highway” .(Page 1. at 2.4)

The council is not entitled to actively promote the private interests of monetary gain by expanding their property ; by collusion in illegality; by disinformation given out to the public and contrivances by omission and manipulation of who is misinformed and when .

The council is supposed by the public, to be neutral . This order and all its documentation prove, that far from the council prioritizing PUBLIC interest , the quality of the environment , and the preservation of the character and historic nature of the county and those qualities as ASSETS , when in conflict with private profit , the council include no regard whatever to those PUBLIC assets in its official deliberations .

This order is a fundamental matter of the question of ‘what is the proper PUBLIC expectation of the nature and function of public representation by the council ?‘.

Its approval would declare the answer, “to drive forward corporate and property developer’s interests by any means fair or foul and no other ”:

The order is an icon of all the corruption of planning currently being administered , using the council as its apparently willing puppet .

THE DECISION REPORT

OBJECTIONS BY IMPROPER DETAILS , ACCEPTED IN THE REPORT.

Page 1. at 1.0 : (1) “ An application to divert part of Salisbury footpath “

Nb only.

The other actions at (ii) are purely in the interests of (i)

CONSTITUTING DUPLICITY :

**IE. One public notice says, “the extinguishment of a footpath” :
One public notice says, “ Diversion of a footpath “**

**IT cannot be BOTH “an extinguishment” AND “a diversion “
OF, IN ACTUALITY WHAT IS PURPORTING TO BE THE
SAME PATH.**

The phrasing is deceptive and both unites AND separates the two paths .

There is also duplicity in not addressing the fact that the only remaining bit of the right of way, would go nowhere when the new permissive path closes .

**Although it is not explained in any text, the diagrams at Pages 2.11 and page 4. 3.1 both show a (DIFFERENT) ‘pathway’ (STATUS UNSPECIFIED)
joining up with a short ‘ other’ path described and illustrated as
“AN UNAFFECTED RIGHT OF WAY “.**

Proving that the NEW path is permissive : what would be left of the old path would be a public right of way : IE MORE DUPLICITY .

THE ORDER MUST BE EXTINGUISHED BY REASON OF DUPLICITY .

Page 1. at 2.2 :OMITS LISTING : The demolition of a bungalow ; The building of an entire new house .

Why , is anyone's guess :

mine is that it is more deception, to try to minimize the fact that the applicants want to extend a house over ancient green belt associated with a historic site so they can sell it at a higher price , rather than to “ replace a dilapidated garage “ , as the council try to claim .

As the misleading report states .

Neither does the report attempt to define the precise proposed boundaries of the building over of the public footpath .

A vital question for the interests of the preservation of the character of the area and the environment, which the public might have wished to be informed , that their present public highway, acts as a preservation order over .

As would the elderly tenants , who have kept horses there for many years . I have spoken to them and they do not know where the proposed new boundaries are to be , nor whether they will be able to use the old path , a matter that they had taken for granted that they would be so and that it would not be built over

Page 1. at 2.5 There is no reference to the said tenants having been informed or asked for their opinion .

The more privileged, inc. the beneficiaries of the' diversion ' also gaining land held in public trust, were informed of it, at a far earlier date , months in advance of 'the public who actually hold the land in trust on behalf of ALL .'

Page 1. at 2.7 Acknowledges the status of the old path as a public right of way by usage of many more than 20 years .

Yet the council are fully aware, not least by their having received n no objection to the obstructions of the same path and others ,from the public over the past, more than a year !

That for one thing the public are not aware of their rights , and for another, have already been fooled by evidence of acceptance of the new permissive path over a year , that they had also walked the old path in the belief that it was by courtesy of the same private patronage .

The duty to inform the public of their rights should be a MAJOR function of the council; , especially when pretending to fulfil their obligation to " carry out public consultations ".

Page 2 at 2.9 "an excellent opportunity , not only to divert a path... "

Not of itself , any opportunity at all

"to enable a development to proceed..... "

Oh joy of joys ! for one person making more money , than they otherwise would , by acquisition of green-belt, formerly held in public trust , top build on it .

“...but also to resolve an anomaly”

The ‘anomaly ‘ referred to, being a made up ‘existence ‘of yet another path (in yellow) which does not exist IN FACT OF LAW , by reason of “not having been used since the 1960s”, to quote the report .

The reason for this pretended existence is to add a bogus ‘reason to extinguish a public right of way ;

to create confusion ;

and to associate the existence of the actual right of way , with “ anomalies “ IE ‘quaint old fashioned technicalities , OBSTRUCTING the modern world in its BUILDING OVER THE EQUALLY Quaint AND IRRELEVANT GREENBELT , PROGRESS .

PAGE 2. at 2.12 Is proof of the previous point .Here the matters of the non-existent path and the existing public highway , are muddled up and combined here to most incomprehensible effect. AND

“The ‘route’ is currently obstructed , but the council must consider it as if it were open for use “

The ‘route’, being disguisespeak for “ the solid black line “ IE THE IN FACT AND STILL BEING IN FACT , A PUBLIC HIGHWAY .

PROOF That the council knew it (was at the time obstructed ILLEGALLY ! by a locked gate and hedge overgrowth) , Which OBSTRUCTION TO A PUBNLIC HIGHWAY CRIMINAL OFFENCE , THE COUNCIL MUST POROSECUTE :

NOT : " treat it as if it was open and available "

Someone noticed the work of this idiot after the report was indelibly in the public domain and went to work , instructing the applicant to cut the hedge and open the gate , to comply with the law in retrospect . Approximately a week or so ago .

WHAT UTTER NONSENSE .

Page. 4 at 3.1 and 2

Describes " the (new) footpath to be created : it was created more than a year ago , and in use for all of that time by reason of the obstruction of the right of way , by the applicant .

**The actual " ANOMALIES " ! obvious in the diagrams of rights of way, joined to new , non- rights of way ;
No mention of the notice put up by the applicant , (which would confirm the disparity in legal status of the 'diverted' and 'undiverted' parts of the' whole ' / now 2 different paths ;
as well as the total nonsense above in this part from page 2. 12 to page 4 ;**

CONSTITUTE REASON TO EXTINGUISH THE ORDER BY ITS "ANOMALOUS" ! DRAFTING .

LEAVING ALL MATTERS UNCLARIFIED AND UP TO PUBLIC SPECULATION IS REASON IN ITSELF TO EXTINGUISH THE ORDER

THESE ARE SERIOUS MATTERS REQUIRING THAT ANY BENEFIT OF THE DOUBT BE GIVEN TO THE STATUS QUO BY DISMISSING THIS ORDER .

Page 5. at 4.3 I went across the NEW path yesterday 9th Dec. After moderate rain the previous day , The (soil path) was churned up into mud by horses hooves , evidenced by their shoe prints .

The points made in the report are nonsense .

A soil path is a soil path is a soil path ! especially within yards of each other on the same level plane .

Page 13 at 7.11 “ The footpath is not NEEDED for public use “:

The public USED it up until the applicant illegally obstructed it !

In addition , the current tenants use it to access their horses' grazing paddocks and their housing .

Building on the path or its closure would greatly obstruct the elderly tenants .

I can't be bothered to explain the council's neanderthal interpretation of 'NEED' and

Page 11. at 7.8 goes so far as to describe the existing public path ~~path~~ as having :

“ No use apart from recreational “ !!!!

.....as opposed to if the order was granted being A PRIVATE garden for, ahemRECREATION ! Assuming ie. that isn't built on , to sell for MORE MONEY , which is contrarily , a laudable 'NEED' :not a frivolous PUBLIC ASSET . ' ~~~

--- to paraphrase the council . ---

In addition Public rights of way act as preservation orders on precious green belt ; the green powering the earth ; the green processing the poisons we produce in the favoured council industrial production in buildings and road creation and industrial estates , turning its noxious products into the air we ” NEED “ to breath .

We all NEED to enjoy the countryside , whether we know it or not and the council would be better employed encouraging people to use the rights of way , instead of spending all its time and resources , (“£2,500 if necessary”) , i addition to all the administration equipment and wages costs , the public have already spent for the benefit of these bewilderingly privileged private people to get ‘even more profit’ by the sale of public assets .

Finally the existing path is a winding strip of grass and wildflowers and hedgerows , a ‘secret path’ of surprizes , of charming stiles and characterful old barns , orchards and animals .

I most ardently hope that those who review this application have more sensitivity and insight into what really matters , than whoever compiled this report and all its associated shenanigans .

My apologies, I must write by hand, as my internet connection is v. poor.

PAGE 1

OBJECTION BY CONSULTATION IMPROPRIETIES -

At Page 4 of 17 of the Decision Report:

There are 22 approx. "consultants" who might reasonably be expected to support a "wider path" (open to horses etc);

allies of the Council;

Applicants and landowners;

And a number of uninterested bodies either way, eg utilities and hole digging entities; since the "NEW PATH" has already been constructed, holes dug, and is complete. [was completed ONE YEAR + AGO]

Briefly - Horse and carriage riding societies and cycling societies -
IE: 6 in number.

uninterested bodies & utilities IE:
8 in number.

private individuals with a vested interest in the "NEW PATH" being approved.
5 in number.

Council officials & council bodies.
3 in number.

There ~~is~~ approx. a grand TOTAL OF 5 ONLY
Altogether, consultants who might be expected

to support the preservation of Public Rights of Way and the country landscape as a precious resource and necessity of life -

AN IMBALANCE OF MORE THAN 4 to 1
in favour of the 'new path'.

I have written to 3 out of the 5 consultees. in the 1 ratio, 2 have refused to reply to my email asking whether or not they were consulted -

One replied saying that they "did not know whether or not they were consulted. AND had no remit as a consultant at all in Wiltshire" - [DITTO LATER REPLY BYWAYS AND BRIDLEWAYS]

SEE:
Emails attached, which elaborate on the points of law breached in the procedure and practice in my view as demonstrable by the 4 to 1 ratio and the emails I did receive in reply to those matters from: Kate Ashbrook and Sally Madgwick.
as hereby enclosed.

I have unable to find any reference whatsoever in the council's documentation to the matter of the status in public rights consequent to the order being accepted .

Finally " Ramblers " are listed on your website , are you able to answer the same questions on their behalf to save time ?

Thanking you in anticipation
Sincerely
P. Fulton

Kate Ashbrook <hq@oss.org.uk>
To: penny fulton <~~penny.fulton@gmail.com~~>

Wed, Jan 11, 2017 at 12:23 PM

Dear Ms Fulton

Thank you for your email. Wilts Council may have sent or emailed us something but as we have no local correspondent in Wiltshire we would not have kept it.

You will need to contact the Ramblers separately.

I am sorry I cannot be of more help.

Yours sincerely

Kate Ashbrook

General Secretary

The Open Spaces Society

25a Bell Street

Henley-on-Thames RG9 2BA

tel 01491 573535, mob 07771 655694

email: hq@oss.org.uk

website www.oss.org.uk

The Open Spaces Society is a registered charity (no 1144840) and a company limited by guarantee, registered in England & Wales (no 7846516).

Gmail

M

COMPOSE

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penny fulton <~~pennyfulton9@gmail.com~~>
to Kate

Dear Kate
You are listed as having been consulted with ref. to SHREA43. Perhaps you wouldn't mind writing an email to : sally.madgwick@witshire.gov.uk, the officer concerned , objecti in the council's documentation .
Thanking you in anticipation .
sincerely
P.Fulton

Make a call

Also try our mobile apps for [Android](#) and [iOS](#)



Kate Ashbrook <hq@oss.org.uk>
to me

As I said, we probably were consulted but we didn't respond.
Kate



From: penny fulton <pennyfulton9@gmail.com>



penny fulton <pennyfulton9@gmail.com>

Re: Information request Re letter to you from Wilts council (reply asap please)

penny fulton <pennyfulton9@gmail.com>

Fri, Jan 13, 2017 at 2:48 PM

To: Kate Ashbrook <hq@oss.org.uk>

Dear Kate ,

That is an evasive and sad reply , especially considering the seriousness of the matters in question ,

The legal status you enjoy as a public representative is trivialized in your response. It can only be concluded that any confidence the public may have in the Open Spaces Society , as a body representing the interests of keeping them, is misplaced .

You cannot claim to " have been consulted" , by reason of " HAVING BEEN SENT AN EMAIL" , IE does not constitute ' consultation' in any case AND Which you do not even claim, to HAVE BEEN SENT !.

Either you were or were not sent an email by Wilts Council and it is rubbish to say that you do not know if you were or not . Did you get an expert in to bury all trace of it from your computers !?

OFFICIAL EMAILS OF LEGAL SIGNIFICANCE ARE NOT ONES THAT SHOULD BE UNACCOUNTABLY , NEUTRAL IN WHETHER THEY EXIST OR DO NOT EXIST , OR DID AND DID NOT EXIST .

If this is the expectation from your secretaryship , it is a disgraceful , odious one . Very sad that you are prepared to be involved .

Sincerely
P.Fulton

[Quoted text hidden]

QUESTIONING AND EXAMINATION of the 'information they receive ' BY REASON OF AND CONTAINED BY THEIR : **WRITTEN REPLY** .

THE FACT THAT THE COUNCIL EXPECT NO ACKNOWLEDGEMENT OF even having received a notification ! from these alleged 'consultants' is a disgrace in ITSELF .

Sincerely appalled
P.Fulton

[Quoted text hidden]



From: penny fulton [mailto:~~XXXXXXXXXX@XXXXXX.com~~]
Sent: 13 January 2017 14:20
To: Madgwick, Sally
Subject: Re: request for information :Ref; SHREA43 Open Spaces etc.

[Quoted text hidden]

[Quoted text hidden]

penny fulton <~~XXXXXXXXXX@XXXXXX.com~~>
 To: "Madgwick, Sally" <Sally.Madgwick@wiltshire.gov.uk>

Fri, Jan 13, 2017 at 3:45 PM

Dear Sally Madgwick

It is not ME saying that the Open Spaces Society have no remit in Wiltshire : It is the Open Spaces secretary saying so . Whether they are saying that it applies in this particular case or not , doesn't alter the fact of it .

The fact of council procedure in this case is not in question ; neither is its improper function by FACT : AND the UNDISPUTED FACT that alleged ' consultants ' on your list , QUALIFY as such :

" WHO DO NOT EVEN INPUT ANY QUERY!!! , on the content of material sent AND which would appear to constitute scant 'information' indeed , from your report 's description . Treating matters as necessarily 'inconsequential formalities' for their disregard .

CANNOT CONSTITUTE " CONSULTATION " BY ANY EVERYDAY , USUAL UNDERSTANDING OF WHAT THAT WOULD BE EXPECTED TO DESCRIBE :

THE ONE WAY, (UNACCOUNTABLE IN ANY CASE ALLEGED) . NOTIFICATION , (WHICH HAS NO MECHANISM FOR CONFIRMATION THAT, EVEN THAT , WAS RECEIVED !) IS : "NOTIFICATION" .

"CONSULTATION " IS A TWO WAY , BACK AND FORTH DISCUSSION PROCESS , WHICH IN TERMS OF A PUBLIC STATUTORY ACCOUNTABILITY , MUST ENSURE THAT SUCH 'CONSULTANTS' DO , ACCOUNTABLY , NOT ONLY CONSIDER , BUT SCRUTINIZE , ON BEHALF OF THE PUBLIC THEY ARE SUPPOSED TO REPRESENT , AT THE VERY LEAST BY THE QUALITY OF

The claimed "initial,informal email from the council" , being ostensibly , without ANY reply or even acknowledgment ! , an extraordinary phenomenon, even by everyday standards , but , if true a reason for a follow-up inquiry as to WHY,would be the least expected action by the council, considering statutory " CONSULTATION " obligation under duty to the PUBLIC interest . This organization represents one of the MINORITY , BY FAR , with NO intrinsic interest in the listed consultants and therefore ,of more than passing importance .

Notwithstanding no inquiry , which would have elicited the information that the Open Spaces Society HAD NO REMIT in Wiltshire, thus providing the opportunity to consult an alternative to fulfill minimal in this case ' fair quota of diverse interests ' , the council proceeded with the formal sending of another email ,as if there had been no alarm bells and having received NO REPLY AGAIN , listed this farcical nonsense of their policy of " NO REPLY = NO OBJECTION " . APPROVAL .
IE in effect , the " Open Spaces Society have been informed (the " information" itself being fundamentally erroneous in any case) and (IMPLIED ,POSITIVELY :not by default) have (implied) STATED IN WRITING that they have no objection to the order being approved .

I would appreciate any comment you may be able to make in this matter .

Sincerely
P.Fulton

[Quoted text hidden]

Madgwick, Sally <Sally.Madgwick@wiltshire.gov.uk> Fri, Jan 13, 2017 at 2:33 PM
To: penny fulton <penny.fulton@wiltshire.gov.uk>
Cc: Kate Ashbrook <hq@oss.org.uk>

Dear Ms Fulton,

The Open Spaces Society have been consulted in this manner since at least 1993 and bearing in mind that they receive consultations and notices from every order making authority in England and Wales it is perhaps not surprising that only occasionally respond. As it happens they did respond to a consultation to another application *

I was dealing with on the 6th October 2016 so I am assured that letters are not only received by them but are also

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even worse, since they are not remitted to do so !!

considered. If they had a Wiltshire correspondent we would be happy to include them in initial consultations but as you have established, they do not.

I have copied the Open Spaces Society into this e.mail as I would not like them to think they had not been consulted or that we didn't value their contributions.

Best regards

Sally

Sally Madgwick

Rights of Way and Countryside

Waste and Environment

Wiltshire Council

County Hall

Bythesea Road

Trowbridge

Wiltshire

BA14 8JN

Tel. 01225 713392

sally.madgwick@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



penny fulton <[REDACTED]@gmail.com>

no reply to my email 5 days ago , urgent matter

2 messages

penny fulton <[REDACTED]@gmail.com>

Tue, Jan 17, 2017 at 9:56 AM

To: notices <notices@bywayandbridleway.net>

Dear Sir / Madam

Please will you confirm or deny receiving a consultation from Wiltshire Council , re the following :

" Extinguishing a public right of way at Salisbury , Stratford Sub Castle , grid ref : SU131 323 to SU 131 234 .

I am objecting to the extinguishing , and as you are listed as " having been consulted ", it is important for the sake of accountability in acting as as a public body in this instance that :

You acknowledge or deny BEING a consultant (if nothing else !) ;
Clarify what you were told;
Why you did not reply to the consultation .

In consideration of the fact that " no reply = approval in the council procedure and practice ; I am surprized that apparently all the supposed bodies acting to protect public rights of way and therefore the greenbelt , COMPLY with this practice and do not even question notices of closure .

In effect therefore acting as a rubber stamp of approval for rights of way closures .

Sincerely
P.Fulton

Robert Halstead <roberthalstead@live.co.uk>

Fri, Jan 20, 2017 at 10:53 AM

To: penny fulton <[REDACTED]@gmail.com>

Thank you for your email.

Please could you supply some further details regarding the consultation as we receive scores every day from the whole of England and Wales:

- The date of the consultation letter

- E mail or letter
- The heading used in the consultation letter [usually the description of the order]

Please note we often do not reply to what are considered to be local issues or where it solely affects a public footpath – our primary interest is in bridleways and byways.

We are selective about what we object to and tend only to object where there are issues of principle or on technical grounds.

In the case of the Wiltshire area we do know that there are active people in that area who are able to take on such cases, so we tend to focus our efforts in other areas, for example, I cover the whole of Wales and certain English Counties.

Robert Halstead

Byways and Bridleways Trust

From: penny fulton [mailto:~~redacted~~@gmail.com]

Sent: 17 January 2017 09:57



penny fulton <[REDACTED]@gmail.com>

**Inquiry RE; information received from Wilts. Council ref;
SHRE43**

1 message

penny fulton <[REDACTED]@gmail.com>

Thu, Jan 12, 2017 at 1:34 PM

To: notices@bywayandbridleway.net

Dear Sir /Madam

The Wilts council report on ' diversion of a footpath and extinguishing of 2 footpaths at Stratford Sub Castle , lists " BYWAYS AND BRIDLEWAYS TRUST as part of consultation .

If this was the case will you give me any information on the following :

Were you given to understand that the application, if approved would not alter the current status of access by a Public Right of Way ?

Were You informed that the applicant had already obstructed the existing right of way and installed a new route , with a notice of " permissive access only " on it ?

Were you made aware of the environmental sensitivity of the area as part of the historic landscape of Old Sarum Castle , and that the sole reason for the application, according to the official report itself , was to enable planning permission to be implemented to facilitate the building of a garage over the former charm of a 'secret ' winding path of grass, wildflower and hedgerow passing by a characterful orchard , barn and horses , preserved from the 'building on the green belt blight ' by the existence of the PUBLIC RIGHT OF WAY , to be extinguished ?

If the answer is 'no ' to any or all questions , it is not too late to make an official objection , possibly , eg on the basis of having been misinformed and /or NOT having BEEN consulted in any case ; the procedure and information given to the public , should invalidate the application , environmental and public interest would not be served by itetc

Thanking you in anticipation

sincerely
P.Fulton



penny fulton <[redacted]@gmail.com>

Inquiry re: Wiltshire council listing of Ramblers South Wiltshire as part of consultation

5 messages

penny fulton <[redacted]@gmail.com>


Thu, Jan 12, 2017 at 12:59 PM

To: ramblers@ramblers.org.uk

Dear Sir/ Madam

Having visited the S, Wilts site it appears to say that it would not be the appropriate one for my general/official inquiry . Which in turn, would in itself indicate that the listing of it in Wilts council documents were erroneously included .

Therefore rather than ask for some of the details of information you received , perhaps you will let me know if S. Wilts Ramblers or any other, received any consultation , or as in the case of The Open Spaces and Footpath Society , had no valid mechanism to process such consultation .

 The ref. is : SHREA43 ...'diversion of a footpath and extinguishing of 2 footpaths at Stratford Sub Castle '.

Thanking you in anticipation

P.Fulton

Lindsay Walker (Ramblers)

Mon, Jan 16, 2017 at 12:04

<membership@ramblers.zendesk.com>

PM

Reply-To: Ramblers <membership+id36786@ramblers.zendesk.com>

To: penny fulton <[redacted]@gmail.com>

##- Please type your reply above this line -##

Please see the response to your message (36786) below. To add further comments, reply to this email.

Lindsay Walker (Ramblers)

Jan 16, 12:04 GMT

Dear P.Fulton,

Many thanks for your email, I appreciate you contacting the Ramblers.

To better assist you, I was wondering if you would be able to provide location details?

So that I can forward your request to the correct local Ramblers representative.

Many thanks,

Lindsay

Dr Lindsay Walker
Policy and Advocacy Support Officer
Ramblers

This email is a service from Ramblers. Delivered by Zendesk

[N8EEZ9-OWOJ]

penny fulton <[REDACTED]@gmail.com>

Mon, Jan 16, 2017 at 12:45 PM

To: Ramblers <membership+id36786@ramblers.zendesk.com>

Dear Lindsay Walker

Thankyou very much . The path is referred to as Stratford Sub Castle 24-6 (or sometimes just 6) .

The ref. is SHREA43 .

Apparently Wilts council wrote in October informally , and formally in December .

The deadline for objections is 23rd Jan . so I would be grateful asap .

I can't think that , given proper information , Ramblers would not have at least had questions : the council say they "did not reply" , and that in itself is taken as approval . A practice which I consider to be a fundamental corruption of the TERM ' consultation' .

This practice is 'notification' only and with no obligation to reply is neither accountable nor even confirmed 'notification' . And this is a question for the raison d'etre of the Ramblers as an organization as whole , being used in this manner to rubber-stamp rights of way closures .

Sincerely
P. Fulton

[Quoted text hidden]

Lindsay Walker (Ramblers)

Mon, Jan 16, 2017 at 12:47

<membership@ramblers.zendesk.com>

PM

Reply-To: Ramblers <membership+id36786@ramblers.zendesk.com>

To: penny fulton <[REDACTED]@gmail.com>

##- Please type your reply above this line -##

Please see the response to your message (36786) below. To add further comments, reply to this email.

Lindsay Walker (Ramblers)

Jan 16, 12:47 GMT

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Dear P. Fulton,

Many thanks for your quick reply, I appreciate the further information.

So that I can tell who is the closest Ramblers representative to the issue, I would appreciate if you would please send through geographical information such as a grid reference, post code, nearby town or parish. I can then send your email to our local Ramblers representative.



Many thanks,
Lindsay

Dr Lindsay Walker
Policy and Advocacy Support Officer
Ramblers

This email is a service from Ramblers. Delivered by Zendesk

[N8EEZ9-OWOJ]

penny fulton <[redacted]@ramblers.com>
To: Ramblers <membership+id36786@ramblers.zendesk.com>

Mon, Jan 16, 2017 at 2:06 PM

Dear Lindsay Walker

The path is in distinctive location beneath old sarum castle itself at grid reference : SU131 323 to SU 131 324 , running parallel to the Stratford Sub Casltle road from south to north approx .at the castle itself side of the road , ie the east side of the road



I hope that is sufficient , as I am working very hard on this , I only saw the notice of it after being away for christmas , after the new year and have only a couple of weeks to try to raise awareness of the only possible reason for the clandestine closures of rights of way , going on in the area , namely to take advantage of new planning law which allow carte blanche on, building anywhere at all in the green belt eg SSSI, AONBs , historic meadows , historic landscapes , ancient woodlands etc by " extinguishing the only ' preservation orders on its pursuit : EXISTENTIAL " PUBLIC RIGHTS OF WAY " .

All of the listed sites being the most lucrative for selling to the ' privileged ' few , 'homes with exclusive views ' .

Sincerely
P. Fulton .

[Quoted text hidden]

TO DATE 20th Jan. NO REPLY received.

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Wiltshire Council
Southern Area Planning Committee
6th April 2017

Planning Appeals Received between 03/03/2017 and 24/03/2017

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
16/03437/FUL	32 Greenwich Fonthill Gifford, Tisbury SP3 6QL	FONTHILL GIFFORD	Retrospective application to retain roof structure "as built" on two storey extension (approved under 15/00875/FUL).	DEL	Written Representations	Refuse	10/03/2017	No
16/03440/LBC	32 Greenwich Fonthill Gifford, Tisbury SP3 6QL	FONTHILL GIFFORD	Retrospective application to retain roof structure "as built" on two storey extension (approved under 15/00878/LBC).	DEL	Written Representations	Refuse	10/03/2017	No
16/05911/LBC	1-3 Castle Street Salisbury, Wiltshire SP1 1TT	SALISBURY CITY	2 no. non-illuminated text signs, 1 no. externally illuminated projecting sign, 2 no. internally illuminated menu's, internal window blind with logo, vinyls applied to inside of ground floor glazing, painting of existing front elevation	DEL	Written Representations	Refuse	10/03/2017	No
16/07558/FUL	Land opposite May Cottage, Homington Salisbury, SP5 4NG	COOMBE BISSETT	Erection of a Hay Barn	DEL	Written Representations	Refuse	17/03/2017	No

There are no Planning Appeals Decided between 03/03/2017 and 24/03/2017

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SOUTHERN AREA PLANNING COMMITTEE

Report No. 1

Date of Meeting	06 April 2017
Application Number	16/09919/FUL & 16/10183/LBC
Site Address	Old Ship Hotel Castle Street Mere BA12 6JE
Proposal	Conversion and renovation of the existing Grade II* Listed Old Ship Inn into 7 Apartments and 2 x three bed cottages. To include the demolition of outbuildings and construction of an additional new build two bed cottage to the rear (10 dwellings in total).
Applicant	Havenbrae Property
Town/Parish Council	MERE
Electoral Division	MERE – Cllr Jeans
Grid Ref	381220 132404
Type of application	Full Planning & Listed Building Consent
Case Officer	Warren Simmonds

Reason for the application being considered by Committee

Councillor Jeans has called the application to Committee following concerns in respect of whether the proposal would make suitable provision for parking and in respect of the impact of the proposed development on the character and setting of the listed building and surrounding conservation area.

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 subject to the Conditions set out at the conclusion of this report.

2. Report Summary

1. Principle of the proposed development
2. Design and impact on listed building(s)
3. Impact on the designated Conservation area
4. Impact on the amenity of neighbours
5. Highways and parking issues
6. Archaeology
7. Ecology

8. Affordable housing provision and CIL

Mere Town Council: Object on grounds including cramped overdevelopment of the site, detrimental impact on the integrity of the GII* listed building, inadequate parking provision, inadequacy of submitted plans and statements.

Neighbourhood responses: Six representations from third parties were received. Two were in support of the proposal, one was neither in support or opposition, three were opposed to the development on grounds including loss of the public house, loss of tourism accommodation, parking and access/Highway safety issues, impact on the listed building and conservation area.

3. Site Description

The application relates to the Old Ship Hotel, located on Castle Street in Mere. The building is set over three stories and has a large yard at the rear (accessed off Manor Road). The building is GII* listed, was previously used as an 11 bedroom hotel, with associated bar, restaurant and kitchen facilities and is located within the designated conservation area of Mere.

4. Planning History

S/1984/0188	FORMATION OF CAR PARK FOR FOUR CARS
S/1998/0261	ALTERATIONS TO PART OF WALTON BUILDING TO PERMIT CONVERSION OF ADJACENT BUILDING TO NINE FLATS
S/1998/0260	PARTIAL DEMOLITION AND CONVERSION OF WAREHOUSE TO FORM 5 x TWO BEDROOMED FLATS AND 4 x ONE BEDROOMED FLATS
S/1987/0356	ALTERATIONS AND ADDITION OF COVERED WAY
S/2005/0481	SHOP REFURBISHMENT AND CONVERSION OF EXISTING BUILDINGS TO FORM SEVEN DWELLINGS
S/2005/0475	SHOP REFURBISHMENT AND CONVERSION OF EXISTING BUILDING TO FORM SEVEN DWELLINGS
S/2007/0683	NEW BANK SIGNAGE
S/1984/0807	L/B APPLICATION - FORMATION OF EN-SUITE BATHROOMS TO EXISTING BEDROOMS. REFURBISHMENT OF MANAGEMENT SUITES
S/2006/0994	REINSTATE COTTAGE TO HABITABLE CONDITION - REPAIR ROOF - GUTTERING - SASH WINDOWS REPAIR IF POSSIBLE OR REPLACE LIKE FOR LIKE. REPLACE KITCHEN AND STAIRS, UPGRADE ELECTRICAL / PLUMBING SYSTEMS - REDECORATE / REPAIR WALLS AND CEILING
S/1984/1202	CHANGE OF USE OF OUTBUILDINGS TO FORM 1 NO. RESIDENTIAL UNIT
S/2004/1902	ERECTION OF THREE TWO BEDROOM DWELLINGS WITHIN THE CURTILAGE AND CREATION OF FOUR ONE BED FLATS WITHIN EXISTING ANNEXE INCLUDING DEMOLITION OF EXTENSIONS THERETO AND ASSOCIATED PARKING
S/2004/2013	SHOP REFURBISHMENT AND CONVERSION OF EXISTING BUILDING TO FORM SEVEN DWELLINGS
S/1999/2202	NEW ENTRANCE / RECEPTION AREA INTERNAL ALTERATIONS INCLUDING EN-SUITE BATHROOMS TO EXISTING GUEST ROOMS DEMOLITION OF OUTBUILDING AND EXTENSION OF

	CAR PARK
S/2004/2452	REVISION OF S/2003/2457 - EXTEND GROUND FLOOR FLAT IN EXISTING DEVELOPMENT CURRENTLY UNDER CONSTRUCTION TO CREATE LARGER LIVING ROOM BATHROOM DRESSING ROOM AND THREE STORES WITHIN EXISTING WAREHOUSE BUILDING
S/2003/2482	PARTIAL DEMOLITION. EXTENSION AND CONVERSION OF EXISTING BUILDING TO FORM EIGHT FLATS.
S/2003/2483	DEMOLITION OF VACANT GARAGE (PRIOR TO THE ERECTION OF 3 BEDROOMED COTTAGE AND CONVERSION OF THE WALTON BUILDING TO 8 FLATS) DEMOLITION OF BOUNDARY WALL
S/2003/2457	PARTIAL DEMOLITION, EXTENSION AND CONVERSION OF EXISTING BUILDING, TO FROM 8 FLATS AND ERECTION OF DETACHED 3 BEDROOM COTTAGE
S/2003/2552	PARTIAL REMOVAL OF INTERNAL WALLS AT GROUND FLOOR LEVEL TO OPEN UP EXISTING RETAIL UNIT
S/2004/2701	SHOP REFURBISHMENT & CONVERSION OF EXISTING BUILDING TO FORM SEVEN DWELLINGS
S/2004/2615	AMENDMENTS TO PREVIOUS LISTED BUILDING CONSENT S/2003/2482 (DATED 3.3.04) WITH REGARD TO LIFT SHAFT TO PROVIDE REQUIRED HEADROOM AND REMOVAL OF BRICK FLUES ON EAST ELEVATION.
16/10183/LBC	Conversion and renovation of the existing Grade II* Listed Old Ship Inn into 7 Apartments and 2 x 3 bed cottages. To include the demolition of outbuildings and construction of a new build 2 bed cottage to the rear.

5. The Proposal

The applications propose the conversion and renovation of the existing Grade II* Listed Old Ship Inn into 7 Apartments and 2 x three bed cottages. Also proposed is the demolition of outbuildings and construction of an additional new build two bed cottage attached to the rear (10 dwellings in total).

6. Local Planning Policy

Wiltshire Core Strategy Core Policies CP1, CP2, CP17, CP35, CP39, CP40, CP45, CP49, CP50, CP57, CP58 & CP64
NPPF & NPPG

7. Summary of consultation responses

WC Highways – No Highway objection

Historic England – Support in principle, with comments

Conservation officer – Support subject to Conditions

Salisbury Civic Society – Conversion acceptable in principle, comments re heritage information submitted and the availability of natural stone materials

WC Ecology – No objections

WC Archaeology – Support, subject to Conditions

WC Housing officer – Confirms no requirement for affordable housing provision

WC Education – No developer contributions required
Economic Development & Tourism – Objects to loss of visitor accommodation
WC Waste Services – Support, subject to Conditions
Drainage officer – Further information requested
Public protection officer – No objection, subject to Conditions
Wessex Water – Standard letter of advice and infrastructure plan received
Wilts Fire & Rescue – Standard letter of advice received
Mere Town Council – Object on grounds including cramped overdevelopment of the site, detrimental impact on the integrity of the GII* listed building, inadequate parking provision, inadequacy of submitted plans and statements.

8. Publicity

The application was publicised via neighbour notification letters, press notices and by site notices displayed at the front of the building.

Neighbourhood responses: Six representations from third parties were received. Two were in support of the proposal, one was neither in support or opposition, three were opposed to the development on grounds including loss of the public house, loss of tourism accommodation, parking and access/Highway safety issues, impact on the listed building and conservation area.

9. Planning Considerations

9.1 Principle of the proposed development

The existing authorised use of the building is a public house. The building is located within the settlement boundary of the city of Mere (defined within the WCS as a Local Service Centre) where residential development and redevelopment is considered acceptable in principle, as set out within Core Policies CP1, CP2 & CP17 of the adopted Wiltshire Core Strategy.

The application building last traded as a public house, restaurant and 11 bedroom hotel known as 'The Old Ship Inn' and is set out as a bar/restaurant and kitchen at ground floor level, with bedrooms and a function room at first floor level, and further bedrooms at second floor level.

It is understood from the applicant that the former public house/hotel ceased trading in late 2013. The property has since been offered for sale and marketed by estate agents for several years, with no interest from pub operators, companies or individuals looking to run a pub, restaurant or hotel/tourism use, or any other community facility or use (see Marketing Report produced by Aspire Architects, submitted by the applicant).

9.1.1 Loss of the use of the building as a public house

In respect of the loss of the use of the building as a public house, Core Policy CP49 deals with the protection of community facilities (and rural services). Within CP49 there are policy measures to prevent/resist the unwarranted loss of public houses outside of settlements,

which includes safeguards and measures to ensure that there is no demand or viability for the continuing use of the building as a public house or as an alternative community facility.

However, the applicant has provided a Marketing report produced by Aspire Architects (as published on the Council's website), which shows that the public house (which ceased trading approximately 3.5 years ago) has been offered for sale and marketed by estate agents over the intervening years, with no interest from pub operators, companies or individuals looking to run a pub, restaurant or hotel/tourism use, or any other community facility or use.

In these respects it is considered the proposal has been demonstrated as being accordant with this policy.

The application site/building is not listed as an Asset of Community Value, and has not been nominated for consideration for listing as an Asset of Community Value.

9.1.2 Loss of the use of the building as an employment use

In respect of the loss of the use of the building as an employment use, Core Policy CP35 deals with existing employment sites. CP35 relates only to the retention of B1, B2 and B8 employment uses and is not considered relevant to this application (public houses fall within Use Class A4, hotels are C1). Therefore the change of use of the former public house and consequent loss of the use of the site as an employment use is not considered discordant with the Core Strategy's policy stance on employment.

9.1.3 Loss of tourism accommodation

The Economic Development & Tourism officer has objected to the proposal on the basis of the loss of tourism accommodation. Core Policy CP39 of the WCS deals with Tourism Development and seeks to achieve growth in Wiltshire's tourism sector. The policy is supportive of new tourist development. Core Policy CP40 deals with Hotels, bed and breakfasts, guest houses and conference facilities and is accordingly supportive of new development. CP40 also seeks to resist the change of use of existing bed spaces provided in hotels or public houses to alternative uses, unless it can be clearly demonstrated there is no longer a need for such a facility in either its current use, or in any other form of tourism, leisure, arts, entertainment or cultural use.

In respect of the above, it is an important material consideration that the premises ceased trading as a pub and hotel accommodation more than three years ago (following a succession of unsuccessful attempts to run it as a pub/restaurant and hotel) and has been marketed since without success. Additionally, the marketing evidence put forward by the applicant informs that each of the three tenants who had operated the property since 2008 had vacated or disappeared before the end of their lease, *"In most cases owing rent."*

In these respects it is considered it has been adequately and satisfactorily demonstrated that there is no longer a need for the facility in its former use or in any other appropriate tourism, arts, entertainment or cultural use.

9.1.4 Summary of Section 9.1

Taking into account the policy context set out within the adopted Wiltshire Council Core Strategy, saved local plan policies and the guidance provided by the NPPF & NPPG the proposed change of use of the former public house/hotel to residential dwellings (and the construction of an additional dwelling) are considered accordant with the relevant local and national planning policy context and is considered acceptable in principle.

9.2 Design and impact on listed building(s)

The existing building is GII* listed and located within the designated conservation area of Mere. Consequently much consideration and assessment has been given to the impacts of the proposed development on the character, setting and historic fabric of the building, and to the impact(s) of the proposal on the existing character of the surrounding conservation area.

The conservation officer has advised/been involved in the evolution of the scheme from pre-application to the submitted scheme and has no objection in principle to the proposed residential conversion and new cottage, subject to Conditions (as set out at the conclusion of this report).

Concerns had been raised as to whether the existing wrought iron hanging bracket on the front of the main building would be retained – it has been confirmed that this will be the case and revised drawings provided detailing its retention.

Additionally, concerns had been expressed about the prospect of putting glazed doors in the main front archway/entrance – this proposal has been changed and the glass doors are no longer proposed. Instead the existing timber doors are to be retained (with revised drawings provided to detail their retention).

Historic England were consulted and have provided a generally supportive response, including:

“Historic England welcomes the sensitive re-use of historic buildings, and we will be pleased to see this important building in Mere brought back in to use. The conversion to residential use seems achievable without causing undue damage to the significance of the building, however it is of great importance that the level of subdivision required to accommodate such a use is not so intensive as to cause harm to the building, and we would advise that this be carefully considered. We recognise that the building has seen many alterations over the years; this presents an opportunity to look to reinstate some of the building's historic layout. Where new partitions are proposed, it is essential that the details of these and their relationship to existing fabric is appropriate.”

The Consultation response concludes with the following recommendation:

“...recommend that this application be determined in accordance with national and local policy guidance, and on the basis of your expert conservation advice.”

It is therefore considered the proposed development can be undertaken without detriment to the character, setting or historic fabric of the GII* listed building, and without adversely affecting the existing character of the surrounding conservation area.

9.3 Impact on the designated Conservation area

As previously mentioned, alterations to the front of the building are limited – the existing wrought iron hanging bracket is to be retained, as are the existing timber doors to arched entranceway.

The new build cottage is at the rear of the property and set reasonably well back from the public highway and footway. The use of appropriate natural (Midhurst) stone materials for the walls.

Taking into consideration the limited external alterations proposed, and the use of sensitive and appropriate materials where proposed, it is considered the proposed development can be undertaken without adversely affecting the existing character of the surrounding conservation area.

9.4 Impact on the amenity of neighbours

The application proposes the residential conversion of the main building into 7 apartments, the conversion of the rear projecting element to create 2 x cottages and the construction of a new cottage adjoining the rear projecting element.

The immediate surrounding area is predominantly residential. The change of use from public house/restaurant and hotel accommodation to residential accommodation is considered a compatible form of development within the existing predominantly residential area.

The amount of new build for the proposal is relatively small (limited to the construction of an adjoined, modest two bedroom cottage), the remainder of the development is the conversion of the existing building.

Taking into consideration the separation distances, orientation and general relationship between the proposed apartments and cottages and the closest existing neighbouring properties on all sides, and taking into consideration the positions of windows and doors (both existing and proposed) relative to existing neighbouring properties, it is considered the proposed development would not result in the undue overlooking or overshadowing, or otherwise unduly conflict with the amenity of neighbouring residents or uses.

9.5 Highways and parking issues

The hard surfaced land to the rear of the building provides off-street parking for the proposed development and for several adjoining/surrounding properties.

It is understood that parking is currently being provided for:

- Ostlers Cottage (S/2006/0994 – Listed Building consent only to re-establish use of the building as a dwelling, no parking provided)
- Three existing (two bed) dwellings and four existing (one bed) flats – Approved under S/2004/1901 with 7 covered parking spaces (no Conditions re parking provision imposed):



(Approved plan for S/2004/1901)

And as a result of the proposed development, parking will be additionally required for:

- Seven proposed apartments
- Two proposed three bed cottages
- One proposed two bed cottage
- Visitors for the above

The applicant has provided a revised parking plan which has labelled spaces provided as follows:

- 18 spaces to serve the proposed apartments and cottages
- 7 spaces to serve existing surrounding properties
- 2 spaces for visitors

The Highways officer (following in-depth liaison with officers and the applicant) has assessed the application and provides the following comments:

“I am aware of the local concern regarding the parking pressures in the vicinity of The Old Ship site. I have reviewed the parking associated with the existing properties at the site for which planning approval was gained in early 2005. At that time parking for 7 vehicles for the 7 residential units was considered to be appropriate and met with the relevant parking standards. I am therefore not in a position to request additional parking for these properties.

The parking for the proposed residential units should meet the current parking standards (as contained within Wiltshire Local Transport Plan 2011-2026). This equates to a total of 20 spaces including a provision of 2 visitor spaces based on 0.2 per dwelling. Given that the proposal meets the parking requirements as set out in the parking strategy, a need for additional parking, over and above that shown, cannot be justified.

It is also necessary to consider the former use of the site which would have had a level of parking need and which is far harder to predict as it depends on the success of the hotel / pub business.

I have carefully considered the proposal and I wish to raise no highway objection. I recommend that the following conditions are applied should permission be granted...”

The applicant remains to owner of the land and it is understood negotiates individually with users of the car parking spaces in respect of their continued availability and use. Whilst the

planning process cannot be used to control ownership of land (the parking spaces), it is considered that a Condition can be imposed to identify the parking spaces set out within the submitted plans and require them to be laid out in accordance with the approved details and be maintained and remain available for this use at all times thereafter.

Taking into consideration the above, it is considered the proposal makes suitable and sufficient provision for off-street parking to serve the development and to continue to serve related neighbouring developments.

9.6 Archaeology

The Assistant County Archaeologist has assessed the proposal and recommends that a phased programme of archaeological works should be conditioned on any planning permission. The Assistant County Archaeologist supports the proposed development, subject to Conditions.

9.7 Ecology

The applicant has submitted a protected species survey report for the buildings on the site. The survey report concluded that the property does not hold a bat roost and the proposed works are unlikely to effect on any bats.

The Council's Ecologist has assessed the proposal and raises no objections.

9.8 Affordable housing provision and CIL

The Council's Housing Development Officer has assessed the proposal. She confirms that Core Policy 43 of Wiltshire Council's Core Strategy sets out when affordable housing will be required and indicates the proportion which will be sought from open market housing development. The affordable housing requirement would constitute a 30% provision for the area in which the site is located. She goes on to state:

"However it has been confirmed that Vacant Buildings Credit will be applicable to this development. After the application of the Vacant Buildings Credit, there will be no requirement for affordable housing provision in relation to the proposals for this development."

Therefore the proposed development is not required to make provision in respect of affordable housing.

In terms of the Community Infrastructure Levy (CIL), the proposed development is CIL liable.

10. S106 contributions

None required

11. Conclusion

The proposed development is considered accordant with the policies of the Development Plan and local and national planning policy guidance.

RECOMMENDATION

The planning and listed building applications are recommended for approval, subject to the following Conditions:

In respect of 16/09919/FUL (the planning application):

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:

Drawing number ASP.14.067.002 Revision D, dated 01.03.17, as deposited with the local planning authority on 01.03.17, and
Drawing number ASP.14.067.100 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
Drawing number ASP.14.067.101, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
Drawing number ASP.14.067.102, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
Drawing number ASP.14.067.103, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
Drawing number ASP.14.067.200 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
Drawing number ASP.14.067.300, dated 'Feb 2017', as deposited with the local planning authority on 02.02.17, and
Drawing number ASP.14.067.301, dated 'Feb 2017', as deposited with the local planning authority on 02.02.17, and
Drawing number ASP.14.067.201 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
Drawing number ASP.14.067.202, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
Drawing number ASP.14.067.203, dated 'June 2016', as deposited with the local planning authority on 07.11.16.

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

3. Notwithstanding the approved drawings, no works shall commence until details of the following matters have been submitted to and approved in writing by the Local Planning Authority:
 - (i) Large scale details of all new external joinery (1:5 elevation, 1:2 section) including vertical and horizontal cross-sections through openings to show the positions of joinery within openings, depth of reveal, heads, sills and lintels;
 - (ii) Large scale details of all proposed new internal joinery (1:5 elevation, 1:2 section);
 - (iii) Full details of proposed rooflights, which shall be set in plane with the roof covering;
 - (iv) Full details of the routes of all proposed ventilation ducts and pipework to be incorporated within the existing building(s), to include details of how they access/exit the building;

- (v) Full details of the proposed treatment of fireplaces, panelling, overmantles, ornate corncing and historic wide floorboards;
- (vi) Length and width wise sections of the proposed new staircase(s) for units 1 and 2;
- (vii) Full details of proposed internal service routes;
- (viii) A full schedule of internal finishes to walls, ceilings and floors; and
- (ix) Full details and samples of external materials.

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

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

4. No development shall commence on site until a scheme for the discharge of surface water from the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use/occupied until surface water drainage has been constructed in accordance with the approved scheme.

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

5. No development shall commence on site until details of the works/methodology for the disposal of sewerage have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.

REASON: To ensure that the proposal is provided with a satisfactory means of drainage.

6. No part of the development hereby approved shall be first occupied until the parking areas 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. The secondary glazing described in the section: 'Recommended Noise Mitigation – Front Façade of the submitted ISVR Consulting Noise Assessment Reference 9813 – R01' dated August 2016 shall be implemented in full prior to the occupation of the dwelling(s) and shall be maintained in that way at all times thereafter.

Reason: To mitigate the impacts of road noise, in the interests of amenity.

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

Reason: In the interests of amenity.

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

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

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

Further Recommendations in respect of Condition 9: The work should be conducted by a professional archaeological contractor in accordance with a Written Scheme of Investigation agreed by this office. There will be a financial implication for the applicant.

In respect of 16/10183/LBC (the planning application):

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) 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:

Drawing number ASP.14.067.002 Revision D, dated 01.03.17, as deposited with the local planning authority on 01.03.17, and
 Drawing number ASP.14.067.100 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
 Drawing number ASP.14.067.101, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
 Drawing number ASP.14.067.102, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
 Drawing number ASP.14.067.103, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
 Drawing number ASP.14.067.200 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
 Drawing number ASP.14.067.300, dated 'Feb 2017', as deposited with the local planning authority on 02.02.17, and
 Drawing number ASP.14.067.301, dated 'Feb 2017', as deposited with the local planning authority on 02.02.17, and
 Drawing number ASP.14.067.201 Revision B, dated 02.02.17, as deposited with the local planning authority on 02.02.17, and
 Drawing number ASP.14.067.202, dated 'June 2016', as deposited with the local planning authority on 07.11.16, and
 Drawing number ASP.14.067.203, dated 'June 2016', as deposited with the local planning authority on 07.11.16.

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

3. Notwithstanding the approved drawings, no works shall commence until details of the following matters have been submitted to and approved in writing by the Local Planning Authority:

- (i) Large scale details of all new external joinery (1:5 elevation, 1:2 section) including vertical and horizontal cross-sections through openings to show the positions of joinery within openings, depth of reveal, heads, sills and lintels;
- (ii) Large scale details of all proposed new internal joinery (1:5 elevation, 1:2 section);
- (iii) Full details of proposed rooflights, which shall be set in plane with the roof covering;
- (iv) Full details of the routes of all proposed ventilation ducts and pipework to be incorporated within the existing building(s), to include details of how they access/exit the building;
- (v) Full details of the proposed treatment of fireplaces, panelling, overmantles, ornate corncing and historic wide floorboards;
- (vi) Length and width wise sections of the proposed new staircase(s) for units 1 and 2;
- (vii) Full details of proposed internal service routes;
- (viii) A full schedule of internal finishes to walls, ceilings and floors; and
- (ix) Full details and samples of external materials.

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

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

End of Conditions.

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16/09919/FUL & 16/10183/LBC
Old Ship Hotel
Castle Street
Mere
BA12 6JE

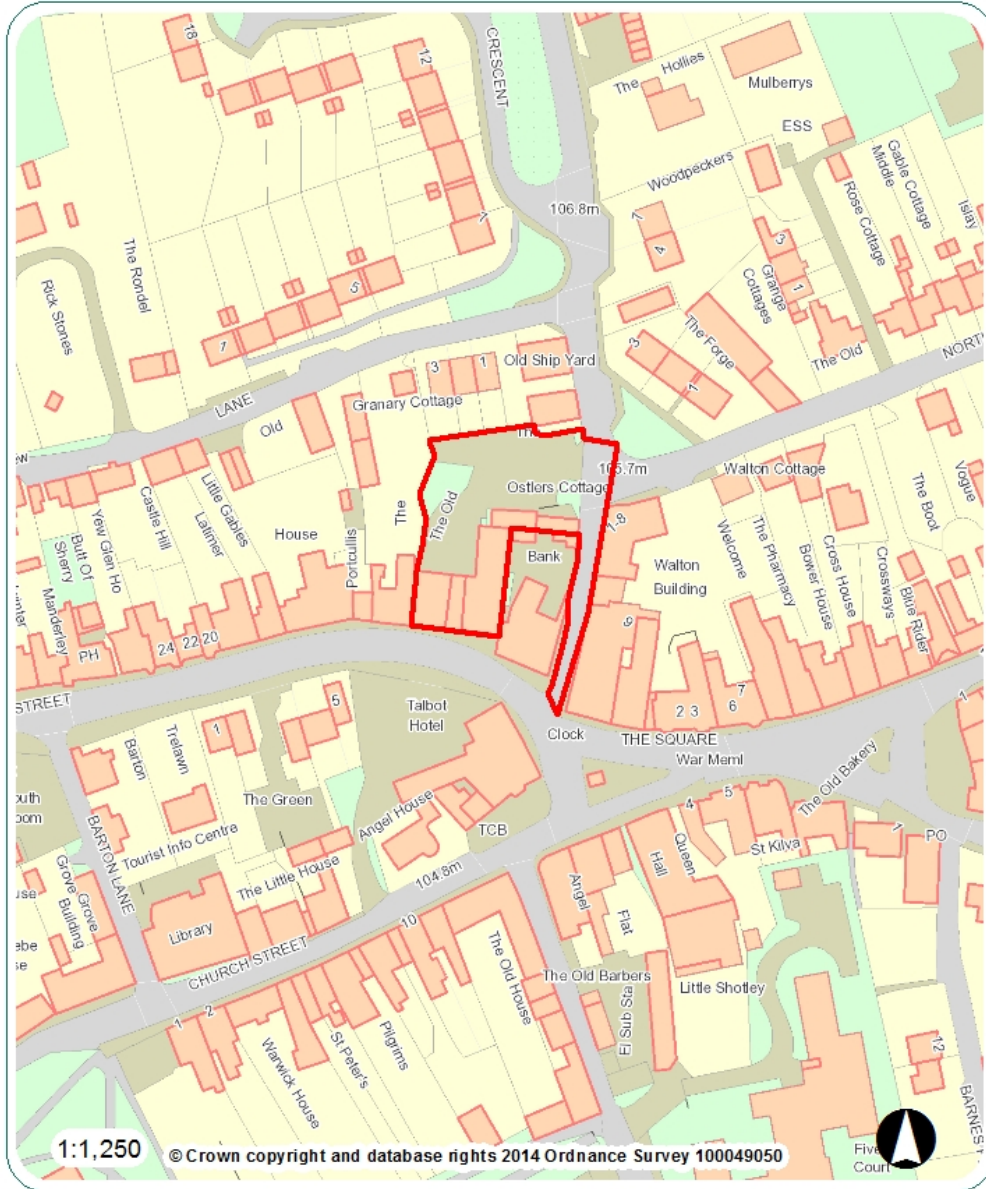


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16/09919/FUL & 16/10183/LBC

Old Ship Hotel
Castle Street

Mere
BA12 6JE



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 2

Date of Meeting	6 th April 2017
Application Number	17/00444/FUL
Site Address	Florence House, Romsey Road, Whiteparish, SP5 2SD
Proposal	Erection of 2 bay garage to front of property.
Applicant	Mr Simon Kulas
Town/Parish Council	WHITEPARISH
Electoral Division	ALDERBURY AND WHITEPARISH – Richard Britton
Grid Ref	424888 123809
Type of application	Full Planning
Case Officer	Christos Chrysanthou

Reason for the application being considered by Committee

The application has been called-in to Committee by Cllr Britton citing concerns in respect of the design of the development, visual impact upon the surrounding area and relationship to adjoining properties.

1. Purpose of Report

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

2. Report Summary

The main issues which are considered to be material in the determination of this application are listed below:

- Scale and design
- Impact on amenity
- Highways

The Parish Council have made an Objection (scale of development, proximity and visual impact to neighbouring properties and street scene). In addition 1 letter of objection and 2 third party letters have been received by the Neighbour/third parties.

3. Site Description

The application site is a detached dwellinghouse situated within an established residential area in Whiteparish. The site is accessed off Romsey Road and is situated within an adopted housing policy boundary.

9. Planning Considerations

Scale and design

Core Policy 57 states a high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality.

Planning permission was originally sought for a three bay garage consisting of two car parking spaces and a store. Following objections from the neighbour and the parish council, revised plans have been received to address the concerns raised. The store has been omitted and the proposal now consists of a two bay garage.

The roof pitch has been dropped to 38° which has reduced the overall height of the garage to 4.1m (from 4.4m). The proposed garage would have a depth of 5.8m (reduced from 6.1m) and a width of 6.1m (reduced from 8m).

The proposed garage would be sited in front of the dwellinghouse at a distance of 6.8m to the principle elevation and 40cm to the eastern boundary.

The proposed garage is of a typical design and would be constructed in timber. Clay roof tiles are proposed and the exterior walls are proposed to be cladded with horizontal timber weatherboarding above a brick plinth.

The proposal has been significantly reduced in scale and mass in response to the objections received. Officers consider that the revised plans represent an improvement to the original plans and consider the scale and design of the proposal to be acceptable.

Impact on amenity

Core Policy 57 requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF's Core Planning Principles (paragraph 17) includes that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.'

Officers note the content of the objection letter submitted by the immediate neighbour to the east, Mulberry House.

The proposed garage would be set away from the front window serving the neighbours study/tv room by 10.5m. Having visited the site and assessed the proposal in light of the trajectory of the sun which rises in the east, moves southwards and sets in the west, officers consider that the majority of shading that may occur during the day would be experienced within the application site. Officers note that some shading to the neighbour's access/turning area may occur during the later hours of the day however this would not significantly impact the amenities of the neighbour to warrant refusal.

Whilst the garage would be visible at an oblique angle from the neighbour's front window, the proposed garage would be single storey and set away at an acceptable distance from the neighbouring property to not unduly impact amenity.

For the above reasons, officers consider that a refusal on amenity grounds would be difficult to sustain.

Highways/parking

Criteria (ix) of Core Policy 57 aims to ensure that the public realm, including new roads and other rights of way, are designed to create places of character which are legible, safe and accessible.

WC Highways have considered the proposed development and have responded with no objection. The proposal is therefore considered to be acceptable in terms of highway safety including visibility.

10. Conclusion

The proposed garage conforms to the objectives of core policy 57 of the Wiltshire Core Strategy and the aims of the NPPF. Therefore, officers consider that planning permission should be granted.

RECOMMENDATION

It is recommended the application be approved, 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 and documents:

Application Form

Site Location Plan Date rec. 16/01/17

Site Plan Date rec. 08/03/17

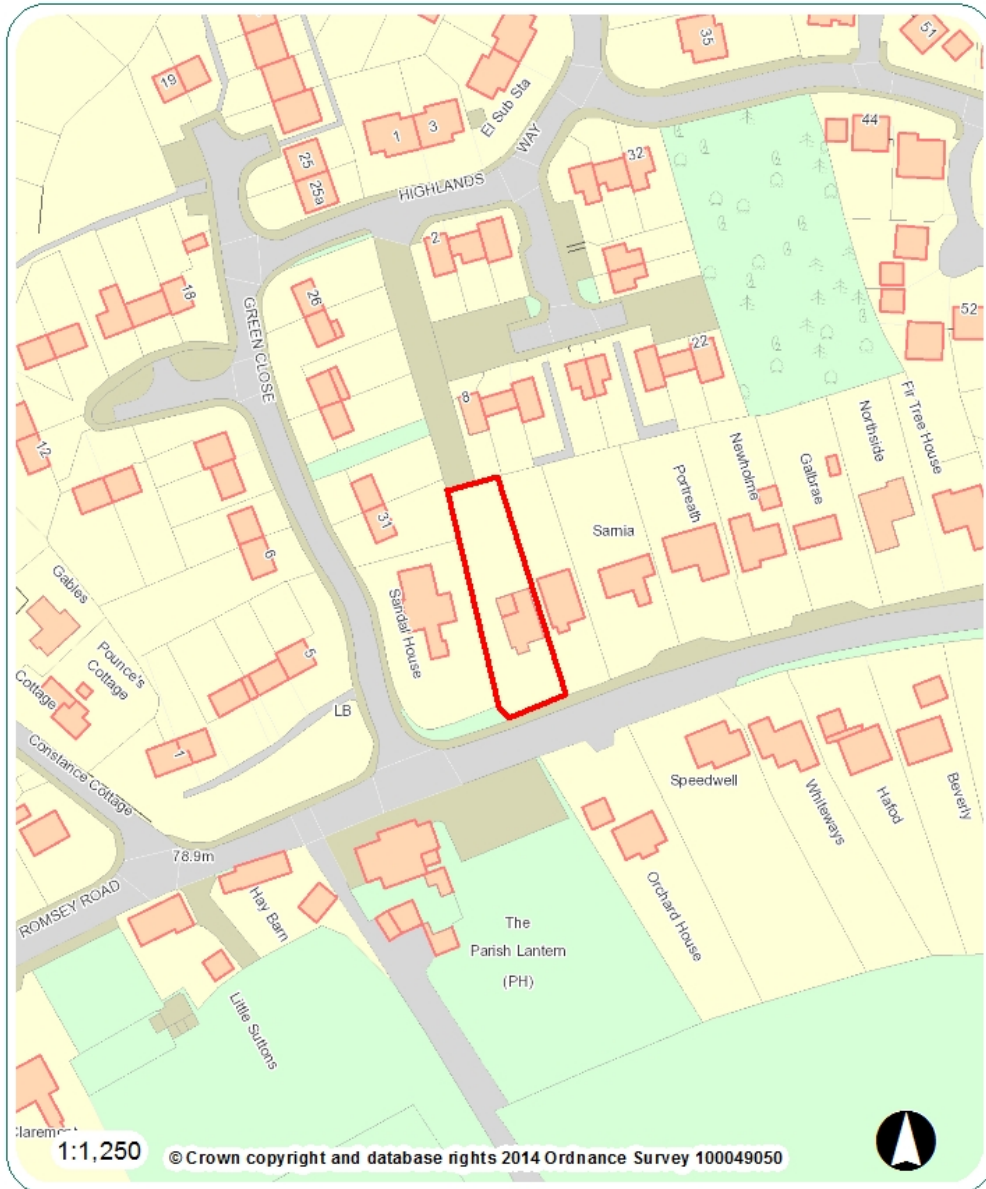
Drg. no. 1 R2 Proposed Elevations Date rec. 08/03/17

Drg. no. 2 R2 Proposed Plan Views Date rec. 08/03/17

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



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 3

Date of Meeting	06/04/2017
Application Number	16/12123/FUL
Site Address	Land at Whitsbury Road, Whitsbury Road, Odstock, Salisbury
Proposal	Construction of two residential dwellings
Applicant	Mr Alasdair Jones-Perrott
Town/Parish Council	ODSTOCK
Electoral Division	DOWNTON AND EBBLE VALLEY – Julian Johnson
Grid Ref	414603 126015
Type of application	Full Planning
Case Officer	Matthew Legge

Reason for the application being considered by Committee

Cllr Julian Johnson has called this application into the Planning Committee and has commented: “*The proposed construction of 2 residential dwellings should be considered within the definition of "infill" i.e. the filling of a small gap within the village.*”

1. Purpose of Report

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

2. Report Summary

- i) Principle of housing outside the settlement boundary
- ii) Design and impact on character of area
- iii) Impact on amenities
- iv) Highway impacts
- v) Drainage and ecology
- vi) CIL & S106 contributions

One third party letter raising concerns. No response from PC.

3. Site Description

The application site appears to be a section of garden land associated with the application dwelling known as 219 Whitsbury Road. The land is positioned between a row of trees which appear to have been thinned to increase to development plot size and the No. 219 Whitsbury Road.

The site has an existing vehicle access which serves the existing dwelling and permits an access to a rear agricultural field. The site rises in gradient up from the highway but the application site is largely flat with treed boundaries to the north and east and an open boundary to the southern field.

The plot lies within Flood Zone 1. There are no listed buildings in close proximity. There is a bridleway (ODST7) along the northern boundary of the application site.

4. The Proposal

Construction of two residential dwellings with vehicular access and driveway

5. Local Planning Policy

National Planning Policy Framework 2012:

Section 1: Building a strong, competitive economy

Section 3: Supporting a prosperous rural economy

Section 7: Requiring good design

Section 11: Conserving and enhancing the natural environment

The Wiltshire Core Strategy (WCS) - adopted by Full Council on the 20th January 2015:

CP1 (Settlement Strategy)

CP2 (Delivery Strategy)

CP24 (Spatial Strategy for the Southern Wiltshire Community Area)

CP41 (Sustainable construction and low carbon energy)

CP48 (Supporting Rural Life)

CP50 (Biodiversity and Geodiversity)

CP57 (Ensuring high Quality Design and Place Shaping)

CP60 (Sustainable transport)

CP61 (Transport and New Development)

Wiltshire Local Transport Plan 2011-2026:

Car Parking Strategy

Supplementary Planning Guidance:

Adopted Supplementary Planning Document 'Creating Places Design Guide' April 2006

The Community Infrastructure Levy Regulations 2010

Saved Policies of the Salisbury District Local Plan:

H28: Residential Development in the Open Countryside

6. Publicity

Parish Council – None received

WC Spatial Planning – Object

WC Ecology – No objection subject to conditions

WC Highways – No objection subject to conditions

WC Rights of Way – No objection

WC Drainage – No objection subject to condition

1 letter of concern:

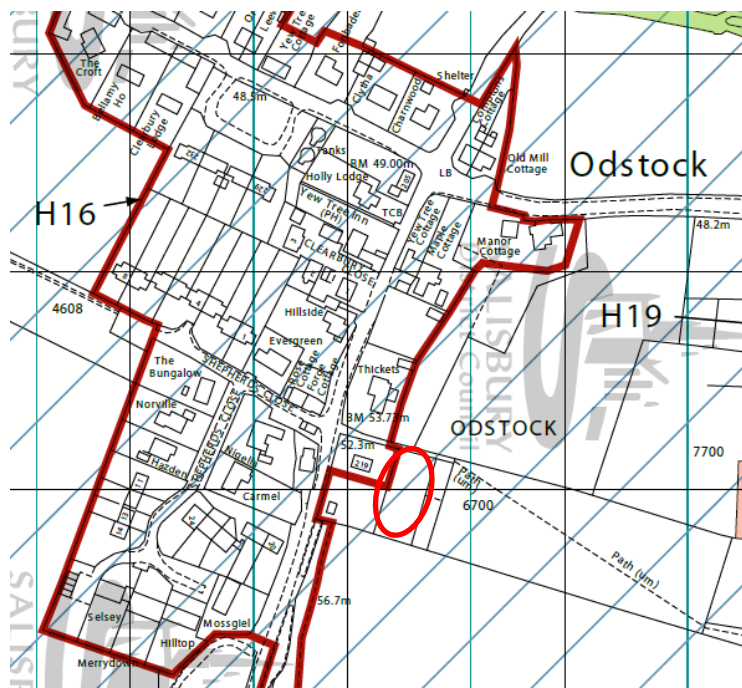
- Loss of views towards woods
- Concern over highway safety. Increased traffic generation on a narrow country lane which is frequently used for larger farm vehicles which takes up the width of the track.

7. Planning Considerations

The applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is also a significant material consideration and due weight should be given to the relevant policies in existing plans according to their degree of consistency of the framework.

Odstock did have a settlement boundary under the former Local Plan. The application site was located adjacent to a housing development area, outside of the settlement boundaries. However, the settlement boundaries for Odstock have been deleted by the Wiltshire Core Strategy (WCS). In planning policy terms, the application site relates to a site in the open countryside.

The application site (as shown by the above red circle) is located out of the centre of the village of Odstock. But the site was previously located adjacent to a housing development area (H16) within the old Local Plan maps. As mentioned above the H16 areas of the former plan have been removed and the WCS have also removed the settlement boundaries for small villages.



Odstock is identified as a small village in the WCS which has limited services and is reliant on Local Service Centres and is not the most sustainable location for new growth. As mentioned above Core Policy 1 of the WCS has removed the housing policy boundary of Odstock. The delivery strategy defines the level of growth appropriate within the built up area of small villages as being limited to infill.

The relevant paragraph in the Core Strategy defining infill is 4.29. It states the following:

“...For the purposes of Core Policy 2, infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. Exceptions to this approach will only be considered through the neighbourhood plan process or DPDs.”

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. The policy states that at Small Villages such as Odstock development will be limited to infill within the existing built area where it seeks to meet housing needs of the settlement or provide employment, services and facilities and provided that the development:

1. *Respects the existing character and form of the settlement*
2. *Does not elongate the village or impose development in sensitive landscape areas, and*
3. *Does not consolidate an existing sporadic loose knit areas of development related to the settlement.*

Infill is defined in the Core Strategy (relevant paragraph in the Core Strategy is 4.29) as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling.

Officers do not consider that there is a gap in the built form for the site and that this application is tantamount to back land development on what appears to be garden land. A recent Inspectors decision on a similar site in the north of Wiltshire (application reference 16/04999/OUT) commented that:

As 'infill' is defined in CP2 as the filling of a small gap within the village, it is reasonable to give those words their everyday meaning. A 'gap' implies a break or space between something. In this case there is a field, albeit a small one, immediately adjacent to the site to the west. Furthermore, though there is a school playing field, there is no built form to the immediate north and mainly garden land to the south. Therefore, I disagree with the appellant's view and do not consider that the proposal could be classified as infill within the existing built area.

The Inspector was clear that a 'gap' implies a break or space between something. In this case the only gap in the street form is for a vehicle entrance which serves a rear agricultural field and existing dwelling house. Officers do not consider that there is an obvious development gap in the built form (as intended by the WCS infill allowance). The aims of the policy also intends that the infilling of development is centralised around the core of the settlements which are likely to be better served with facilities. This site is arguably located a distance from any notable centre of the village and the access roads to the site are narrow and do not include any footpaths to promote safe pedestrian access through the village. The village mass is largely located in ribbons of residential development along highways and clusters of residential development at highway junctions. In considering this application site Officers do not consider that the scheme is appropriate as an infill plot and the development will consolidate the sporadic loose knit residential development that is the village.

Officers note that this scheme has not been supported by any local representation and note that the Parish Council has not objected to the scheme. It is also noted the Village does not have a Neighbourhood Plan or any plan in draft where sites can be locally identified for development and as such the village has not expressly identified where residential development would be acceptable. It is considered that the balance of consideration rests on the whether the site fully meets the criteria 1-3 as set out CP2. Officers consider that the village could indeed be characterised by the loose knit development and that the open gaps in residential ribbons and clusters do help to reinforce the rural organic character of the village.

CP2 comments that for residential development outside the limits of development those 'infill' dwellings should meet housing needs of settlements. The current interpretation of this is that the remaining housing needs to be provided in the Southern Wiltshire Community Area by 2026 (Housing Land Supply Statement April 2016 and published March 2017) is an indicative remaining requirement of 0. Due to the absence of housing need Officers consider that there is no local need as expressed in CP2 as such this application fails to fully meet the requirements of CP2.

remainder ¹⁵	425	361	88	0
Southern Wiltshire CA ¹⁵	615	428	214	0
Tisbury	200	167	9	24

Appendix 6 of the Housing Land Supply Statement April 2016 and published March 2017

The latest housing figures for the South Wiltshire Housing Monitoring Area reveal that the Council is able to demonstrate a 5 year housing land supply with the required 5% buffer. The latest housing figures for the county are set out in the Housing Land Supply Statement (base date of April 2016) and updated in March 2017. These latest figures demonstrate that the South Wiltshire HMA has a housing land supply of 5.69 which is in excess of the required 5.25 years (with the required 5% buffer).

As such in policy terms, the proposal is unacceptable. The site lies outside the centralised built area for any defined settlement and conflicts with the overarching sustainable development principles of the Settlement and Delivery Strategies of the WCS. Neither is the site subject of an adopted or emerging Neighbourhood Plan. It therefore comprises unsustainable development and, as such, is unacceptable in terms of the Core Strategy and the NPPF.

The NPPF states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there appear to be no material considerations which outweigh the policy presumption against unacceptable unsustainable development.

The core strategy includes exception policies (as set out under Paragraph 4.25) under which development *may* be acceptable outside of the settlement strategy – for example, sites which would deliver a high percentage of affordable units. Again, none of the exceptions policies appear to apply in this case. The proposal should be refused as there are no material considerations which merit making an exception to adopted planning policy in this case.

Highways

The vision and policies of the Wiltshire Core Strategy seek to concentrate new residential development in areas well served by local services and facilities so as to reduce the needs for travel. The Core Strategy thus sets a presumption against development outside villages in rural areas unless for a number of excepted circumstances, none of which apply in this instance.

Core Policy 60 provides that the Council will use its planning powers to help reduce the need to travel particularly by private car through measures such as planning development in accessible locations. Odstock is identified in the Core Strategy as having a low level of services and facilities, and few employment opportunities. Therefore it is considered that the occupants of the dwellings would likely be heavily dependent on the use of private cars for day-to-day activities and journeys. The site location thus does not contribute towards the aims of sustainable development and therefore contrary to the key aims of Core Policy 60 and as such Highways have recommended that the application be refused.

Wiltshire Council Highways have considered the revised scheme and has determined to raise no highway objection to the proposed visibility splays/horizontal alignment of the proposed driveway or to the surface water drainage details.

Neighbouring Amenity

The construction of two dwelling houses in a back-land location to the side/rear of the application dwelling would introduce direct overlooking from the proposed developments side elevation windows and direct overlooking of the neighbouring dwelling's primary outdoor amenity space. The proposed dwelling house would also introduce overlooking of the rear amenity garden area from the numerous rear dormer windows to the detriment of the amenity currently enjoyed by the application dwelling.

The revised vehicular entrance has brought the vehicular entrance way closer to the front elevation of the application dwelling. The closer proximity of the vehicle entrance will result in the increased comings and goings of vehicles associated with the 2 proposed dwelling houses which will introduce harm to the amenity of the application dwelling by virtue of the close proximity of vehicular engine noise and associated car lights. The back-land development is considered to result in undue harm to the amenity of the application dwelling (No.219 Whitsbury Road)

Ecology

A Wiltshire Council Ecologist has looked at the submitted information which includes an Ecological Survey. WC Ecology has not objected to the scheme (subject to conditions) having commented:

"The Ecological Survey report stipulates: 'A phase 1 survey was undertaken in October 2016 which found no evidence of protected species or habitats on the site but there is potential for nesting birds at the site perimeters.' The report goes on to state:

- *'There were no buildings or structures within the application site which would provide bat roosting opportunities but the trees to east of the site provided suitable foraging and commuting habitat.*
- *There was a section of trees and scrub at the east of the site with some potential to support nesting birds.*

The Ecological Survey report puts forward mitigation regarding the clearance of vegetation/trees that may afford nesting opportunities for birds. The report also proposes enhancement measures for bats, birds and landscaping to be implemented for the purposes of increasing the ecological value of the site."

Given the ability to impose conditions to mitigate harm to protected species, Officers do not consider that this application will result in undue harm to protected species.

Drainage

Given the recent amendments to the application a Wiltshire Council Drainage engineers has raised no objection to the application subject to a condition:

"Prior to any start on site the applicant shall submit a detailed storm water drainage scheme which if soakaway disposal is proposed to include full details of the soakaways and their relationship to ground water levels and location to roads/buildings and structures to the LPA for approval, and shall construct the system as approved prior to occupation"

8. CIL & S106 contributions

This development is subject to the Community Infrastructure Levy. Wiltshire Council has adopted a Community Infrastructure Levy (CIL) charging schedule on 18th May 2015. CIL is a charge that local authorities can place on new development in their area. The money generated through CIL will contribute to the funding of infrastructure to support growth.

Whoever has assumed liability for the development would be liable to make payment to Wiltshire Council for this type of development.

9. Conclusion

It is considered that the application site is outside the built up area of the village, would not comprise infill development and would consolidate the existing sporadic, loose knit development along Whitsbury Road. The principle of residential development in such a location is therefore contrary to the vision and policies of the Wiltshire Core Strategy for sustainable development, and the policies for protection of the open countryside. The development would also introduce harm to the amenity of the occupiers of the application dwelling house. The proposal is contrary to saved policy H28 of the Salisbury District Local Plan and; CP1, CP2, CP44, CP48, CP57 and CP60 of the Core Strategy for Wiltshire and Sections 1, 7 and 11 of the National Planning Policy Framework.

RECOMMENDATION

1. The proposal is located within a small village which the Wiltshire Core Strategy identifies as having a low level of services and facilities. This proposal for two dwellings does not meet the definition of permitted infill development within small villages and the development will result in the creation of back-land development contrary to the established linear pattern of development along the eastern side of Whitsbury Road. The development will consolidate the existing loose knit sporadic development along Whitsbury Road and the proposal fails to promote a sustainable pattern of development with the resultant occupiers dependent on the use of private car for day-to-day activities and journeys. Therefore, the proposed development is considered contrary to Core Policies 1, 2, 44, 48 and 60 of the Wiltshire Core Strategy and paragraph 14 of the National Planning Policy Framework.

2. The creation of two back-land dwelling houses would result in the introduction of direct overlooking to the side elevation of the application dwelling known as No.219 Whitsbury Road and undue overlooking across the rear garden area to the detriment of the privacy currently afforded to the neighbouring dwelling. The creation of the realigned vehicular entrance will bring an increased number of vehicles within close proximity to the front elevation of the neighbouring dwelling to the detriment of amenity. The proposed development is considered contrary to Core Policies 57 of the Wiltshire Core Strategy and paragraph 17 of the National Planning Policy Framework.

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Land at Whitsbury Road
Whitsbury Road
Odstock
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