

# AGENDA

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**Meeting:** Northern Area Planning Committee  
**Place:** Council Chamber - Council Offices, Monkton Park, Chippenham, SN15 1ER  
**Date:** Wednesday 12 June 2019  
**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Craig Player, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713191 or email [craig.player@wiltshire.gov.uk](mailto:craig.player@wiltshire.gov.uk)

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## Membership:

Cllr Tony Trotman (Chairman)	Cllr Mollie Groom
Cllr Peter Hutton (Vice-Chairman)	Cllr Chris Hurst
Cllr Chuck Berry	Cllr Toby Sturgis
Cllr Christine Crisp	Cllr Brian Mathew
Cllr Gavin Grant	Cllr Ashley O'Neill
Cllr Howard Greenman	

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## Substitutes:

Cllr Ben Anderson	Cllr Jacqui Lay
Cllr Bill Douglas	Cllr Melody Thompson
Cllr Ruth Hopkinson	Cllr Nick Murry
Cllr Bob Jones MBE	Cllr Philip Whalley

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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**

To approve and sign as a correct record the minutes of the meeting held on 27 March 2019.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 2.50pm on the day of the meeting.

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

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

### Questions

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

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on 05 June 2019 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 07 June 2019. 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      **Planning Appeals and Updates** (*Pages 5 - 8*)

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

7      **The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018** (*Pages 9 - 140*)

8      **Planning Applications**

To consider and determine the following planning applications.

8a      **18/09895/FUL - The Hullavington Arms, The Street, Hullavington**  
(*Pages 141 - 162*)

9      **Urgent Items**

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

### **Part II**

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

## **NORTHERN AREA PLANNING COMMITTEE**

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**MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 27 MARCH 2019 AT COUNCIL CHAMBER - WILTSHIRE COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.**

**Present:**

Cllr Tony Trotman (Chairman), Cllr Peter Hutton (Vice-Chairman), Cllr Christine Crisp, Cllr Gavin Grant, Cllr Howard Greenman, Cllr Mollie Groom, Cllr Chris Hurst, Cllr Toby Sturgis, Cllr Brian Mathew, Cllr Ashley O'Neill and Cllr Jacqui Lay (Substitute)

**Also Present:**

Cllr Allison Bucknell

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20 **Apologies**

Apologies were received from Cllr Chuck Berry.

Cllr Chuck Berry was substituted by Cllr Jacqui Lay.

21 **Minutes of the Previous Meeting**

The minutes of the meeting held on 6<sup>th</sup> March 2019 were presented.

**Resolved:**

**To approve as a true and correct record and sign the minutes.**

22 **Declarations of Interest**

There were no declarations of interest.

23 **Chairman's Announcements**

The Chairman noted that it was Richard Sewell's last Northern Area Planning Committee meeting and thanked him for his hard work for the committee.

24 **Public Participation**

The Committee noted the rules on public participation.

25 **Planning Appeals and Updates**

There were no planning appeals or other updates.

26 **THE WILTSHIRE COUNCIL PARISH OF ROYAL WOOTTON BASSETT No. 10 (PART) AND No. 111 (PART) DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT ORDER 2018**

Public participation

David Mannering, local resident, spoke in objection to the application.

Peter Gallagher, local resident, spoke in support to the application.

The Rights of Way Officer, Sally Madgwick, introduced a report which recommended that the Wiltshire Council Parish of Royal Wootton Bassett No. 10 (PART) and No. 111 (PART) Diversion Order and Definitive Map and Statement Order 2018 be forwarded to the Secretary of State for Environment, Food and Rural Affairs, with a recommendation from Wiltshire Council that the Order be confirmed with a modification to the Order to correct the year of sealing to read “2018” at the end of the Order.

Key details highlighted included: that Wiltshire Council had made an Order under Section 119 of the Highways Act 1980 diverting two public footpaths over land at Woodshaw Meadows on the south eastern slopes of Brynard’s Hill, Royal Wootton Bassett; that the Order was made pursuant to an application made by Wainhomes (South West) Holdings Ltd and that one objection had been made to the Order.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: why the order has been brought before the committee; what the objection to the order was and how the diversion and associated costs would be met.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Chris Hurst, Division Member, spoke regarding the application with the main point focusing on similar developments in the locality and their effect on footpaths.

The Rights of Way Officer addressed some of the issues raised by the public and local members with the main point focusing on the alternative footpath route.

At the start of the debate a proposal was moved by Cllr Chris Hurst, seconded by Cllr Gavin Grant to forward the Order to the Secretary of State for Environment, Food and Rural Affairs, with a recommendation from Wiltshire Council that the Order be confirmed with a modification to the Order to correct

the year of sealing to read “2018” at the end of the Order as detailed in the report.

### **Resolved**

**That the Wiltshire Council Parish of Royal Wootton Bassett No. 10 (PART) and No. 111 (Part) Diversion Order and Definitive Map and Statement Order 2018 be forwarded to the Secretary of State for Environment, Food and Rural Affairs, with a recommendation from Wiltshire Council that the Order be confirmed with a modification to the Order to correct the year of sealing to read “2018” at the end of the Order.**

### 27 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes, in respect of application 18/07128/FUL & 18/07246/LBC as listed in the agenda pack.

The Committee considered the following applications:

### 28 **18/07128/FUL & 18/07246/LBC - Manor Farm, The Street, Grittleton**

Public participation

Peter McGarrick, local resident, spoke in objection to the application.

Mark Judge, local resident, spoke in objection to the application.

Julian Brunt, the applicant, spoke in support to the application.

Simon Chambers, the agent, spoke in support to the application.

Cllr Johnny Walker, Grittleton Parish Council, spoke in support to the application.

The Planning Officer, Richard Sewell, introduced a report which recommended granting planning permission, subject to conditions, for the conversion of existing agricultural buildings to form 8 new dwellings and erection of 6 new dwellings and associated access, engineering and landscaping works.

Key issues highlighted included: principle of development; impact on heritage assets; design, scale, materials and layout of proposed new dwellings; residential amenity; impact on ecology; impact on highways and impact on drainage.

There were no technical questions.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Toby Sturgis, on behalf of the Division Member, spoke regarding the application with the main points focusing on: the relocation of the farm; the size of the new build; the footprint of the new build; the changes made from the previous application and the considerable support for the application in the village.

At the start of the debate a proposal was moved by Cllr Toby Sturgis, seconded by Cllr Howard Greenman to grant planning permission for 18/07128/FUL subject to additional conditions.

A second proposal was moved by Cllr Peter Hutton, seconded by Cllr Gavin Grant to grant planning permission for 18/07246/LBC as detailed in the report.

During the debate the main points raised were: the relocation of the farm; the balance of jobs, services, facilities and homes in the local area; the sustainability of the village; the desire for development within the village; the accumulate impact of the construction of the properties; the appropriateness of the farm's location and the impact on local amenity.

### **Resolved**

**Contrary to the Officer recommendation, that planning permission is approved for the following reason:**

**Taking account of the nature of the site as one not fit for modern agricultural purposes, the proposal would constitute infill development in accordance with Policy CP2 (i), (ii) and (iii) of the Wiltshire Core Strategy.**

**And subject to the following conditions:**

#### **18/07128/FUL**

#### **3 YR COMMENCEMENT**

**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.**

#### **APPROVED PLANS**

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

**Location Plan 16.1367/00 Rev B received 26.08.18**

**Typical Glazing Detail as Proposed 16.1367/28 received 26.08.18**

**Area B/ Building 1 Elevations as Proposed 16.1367/19 Rev B received 04.02.19**

**Area B/ Building 1 Plans as Proposed 16.1367/15 Rev B received 04.02.19**

**Area B/ Building 2 & 3 Elevations as Proposed 16.1367/20 Rev B received 04.02.19**



Area B/ Building 2 & 3 Plans as Proposed 16.1367/16 Rev B received  
04.02.19  
Area B/ Building 4 & 5 Elevations as Proposed 16.1367/21 Rev B received  
04.02.19  
Area B/ Building 4 & 5 Plans as Proposed 16.1367/17 Rev B received  
04.02.19  
Area B/ Building 6 Elevations as Proposed 16.1367/22 Rev B received  
04.02.19  
Area B/ Building 6 Plans as Proposed 16.1367/18 Rev B received 04.02.19  
Area B/ Building 7 & 8 Elevations as Proposed 16.1367/14 Rev B received  
04.02.19  
Area B/ Building 7 & 8 Plans as Proposed 16.1367/12 Rev B received  
04.02.19  
New Barns as Proposed 16.1367/48 Rev A received 04.02.19  
Dutch Barn as Proposed 16.1367/49 Rev A received 04.02.19  
Site Plan as Proposed 16.1367/24 Rev G received 04.02.19

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

#### **REMOVAL OF AGRICULTURAL BUILDINGS AND RESTORATION OF AGRICULTURAL LAND**

No part of the development hereby approved shall be first occupied until the existing agricultural buildings as shown in dotted red outline on the Proposed Site Plan 16.1367/24 received 04.02.19 have been demolished and removed from site entirely and the land to the north of the proposal site restored to agricultural pasture land

**REASON:** In the interest of interests of the character and appearance of the area and residential amenity

#### **BOUNDARY WALL STONEMWORK**

The natural stonework to be used externally on the proposed boundary wall forming the western vehicle access to the development shall match that of the existing wall in terms of type, colour, size, dressing and bedding of stone, coursing, type of pointing and mortar mix.

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

#### **CONSOLIDATED ACCESS**

The development hereby permitted shall not be first brought into use until the first five metres of the access(s), 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.

#### **PARKING AND TURNING SPACES**

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

**REASON:** In the interests of highway safety.

#### **VISIBILITY SPLAYS**

No part of the development shall be brought into use until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 0.9m above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

**REASON:** In the interests of highway safety

#### **PD REMOVAL FOR ALTERATIONS AND EXTENSIONS**

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

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

#### **PD REMOVAL FOR MEANS OF ENCLOSURE**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

**REASON:** To safeguard the character and appearance of the area.

#### **CONSTRUCTION METHOD STATEMENT**

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

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;

f) measures to control the emission of dust and dirt during construction;  
g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and  
h) measures for the protection of the natural environment.  
i) hours of construction, including deliveries;  
has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

**REASON:** The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

#### **HARD+SOFT LANDSCAPING**

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 species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- other vehicle and pedestrian access and circulation areas;
- all hard and soft surfacing materials;

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

#### **HARD+SOFT LANDSCAPING IMPLEMENTATION**

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.

#### **FOUL DRAINAGE**

No development shall commence on site until a detailed scheme for the discharge of foul water from the site, including all relevant permissions and consents, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

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

#### **SURFACE WATER DRAINAGE**

No development shall commence on site until a detailed scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365, 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:** To ensure that the development can be adequately drained

#### **ECOLOGY**

All development shall be carried out in accordance with the submitted Bat Survey Report (TP Ecology, 2016). All bat roost mitigation features shall be installed in accordance with the details set out in that report and shown on the approved plans, and shall be retained as such unless agreed in writing by the Local Planning Authority.

**REASON:** To ensure appropriate and adequate protection and mitigation for ecological receptors including protected and priority species is implemented in accordance with the NPPF and CP50 of the Wiltshire Core Strategy (Adopted January 2015), and to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 40 of the NERC Act (2006).

#### **EXTERNAL LIGHTING STRATEGY**

Prior to commencement of development, a Lighting Strategy shall be submitted to and approved in writing by the Local Planning Authority. The

approved Lighting Strategy will include details of all proposed external lighting including luminaires, heights and positions of fittings, direction and other features, e.g. cowls, louvres or baffles, and a lux plot showing light levels resulting from the proposed lighting. All external lighting shall be installed in accordance with the details set out in the Lighting Strategy, and shall be maintained thereafter in accordance with the approved Lighting Strategy.

**REASON:** To minimise light spill and illumination of habitats utilised by protected species, including bats and barn owl, and to maintain dark foraging and commuting areas and corridors; and to ensure compliance with Core Policy 50 of the Wiltshire Core Strategy.

**INFORMATIVE TO APPLICANT:**

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

**INFORMATIVE TO APPLICANT:**

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

**INFORMATIVE TO APPLICANT:**

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

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

**INFORMATIVE TO APPLICANT:**

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

**INFORMATIVE TO APPLICANT:**

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

**18/07246/LBC**

**3 YR COMMENCEMENT**

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.

**STONEMWORK**

The natural stonework to be used externally on the proposed development shall match that of the existing building in terms of type, colour, size, dressing and bedding of stone, coursing, type of pointing and mortar mix.

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

**ADDITIONAL DETAILS**

Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- (a) Large scale details of all external joinery including metal-framed glazing (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;
- (b) Large scale details of all internal joinery (1:5 elevation, 1:2 section);
- (c) Full details of proposed rooflights, which shall be set in plane with the roof covering;
- (d) Full details of external flues, background and mechanical ventilation, soil/vent pipes and their exits to the open air;
- (e) Full details of proposed meter and alarm boxes;
- (f) Large scale details of proposed eaves and verges (1:5 section);

- (g) Full details of proposed internal service routes;
- (h) A full schedule and specification of repairs including:
- (i) a structural engineer's report setting out the nature of, and suggested remedial work to, structural defects
- (j) proposed timber and damp proof treatment
- (k) proposed method of cleaning/paint removal from historic fabric
- (l) a full schedule of internal finishes to walls, ceilings and floors
- (m) Full details of external decoration to render, joinery and metalwork; and
- (n) 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.

#### **APPROVED PLANS**

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

Location Plan 16.1367/00 Rev B received 26.08.18

Typical Glazing Detail as Proposed 16.1367/28 received 26.08.18

Area B/ Building 1 Elevations as Proposed 16.1367/19 Rev B received 04.02.19

Area B/ Building 1 Plans as Proposed 16.1367/15 Rev B received 04.02.19

Area B/ Building 2 & 3 Elevations as Proposed 16.1367/20 Rev B received 04.02.19

Area B/ Building 2 & 3 Plans as Proposed 16.1367/16 Rev B received 04.02.19

Area B/ Building 4 & 5 Elevations as Proposed 16.1367/21 Rev B received 04.02.19

Area B/ Building 4 & 5 Plans as Proposed 16.1367/17 Rev B received 04.02.19

Area B/ Building 6 Elevations as Proposed 16.1367/22 Rev B received 04.02.19

Area B/ Building 6 Plans as Proposed 16.1367/18 Rev B received 04.02.19

Area B/ Building 7 & 8 Elevations as Proposed 16.1367/14 Rev B received 04.02.19

Area B/ Building 7 & 8 Plans as Proposed 16.1367/12 Rev B received 04.02.19

New Barns as Proposed 16.1367/48 Rev A received 04.02.19

Dutch Barn as Proposed 16.1367/49 Rev A received 04.02.19

Site Plan as Proposed 16.1367/24 Rev G received 04.02.19

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

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

29 **18/10662/FUL - Trotting Horse, Bushton, Royal Wootton Bassett**

It was agreed that this item would be considered after item 8c to enable both Grittleton applications to be heard together.

Public participation

Ian Tucker, the applicant, spoke in support to the application.

Malcolm Barber, the agent, spoke in support to the application.

Marian Kent, local resident, spoke in support to the application.

Peter Gantlett, Chairman of Clyffe Pypard Parish Council, spoke in support to the application.

The Planning Officer, Simon Smith, introduced a report which recommended granting planning permission, subject to conditions, for the change of use of the former public house to create one dwelling.

Key issues highlighted included: the principle of development; loss of the public house; the impact of the proposal on the character and appearance of the application site and the surrounding rural landscape; the impact of the proposal on the amenities of surrounding residential properties and the impact of the development on highway safety.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: the removal of permitted development rights; the existing holiday chalet accommodation and stable and the marketing of the property.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Allison Bucknell, Division Member, spoke regarding the application with the main points focusing on: the lack of resident engagement with the application; the Clyffe Pypard Community Plan; the marketing of the property; the efforts of the applicants to make the public house viable; the appearance and character of the property and the removal of permitted development rights.

At the start of the debate a proposal was moved by Cllr Peter Hutton, seconded by Cllr Gavin Grant to grant planning permission as detailed in the report and subject to additional conditions.

During the debate the main points raised were: the marketing of the property; the viability of the public house remaining open; the importance of retaining rural community assets and the lack of interest in the leasing or purchasing of the property as it is.



**Resolved**

**That planning permission is approved subject to the conditions set out within the Officer report together with additional 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: Location Plan (Drawing Number 1222/04), Proposed Ground Floor Plan (Drawing Number 1222/11) and Proposed First Floor Plan (Drawing Number 1222/12) dated 12 November 2018 and Proposed Site Plan (Drawing Number 1222/15) dated 9 January 2019.**

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

**3 Notwithstanding Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended)(or any order which revokes and re-enacts that Order with or without modification), the chalet accommodation within the curtilage of the dwelling hereby granted planning permission shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. An up to date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.**

**REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.**

**4 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.

**ADDITIONAL RECOMMENDATIONS AS FOLLOWS:**

**5** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending this Orders with or without modification) there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted unless planning permission has been specifically granted following receipt of a planning application by the local planning authority.

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

**6** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending this Orders with or without modification) no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans unless planning permission has been specifically granted following receipt of a planning application by the local planning authority.

**REASON:** To safeguard the character and appearance of the area.

**INFORMATIVE TO APPLICANT:**

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

**INFORMATIVE TO APPLICANT:**

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

**INFORMATIVE TO APPLICANT:**

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

**be necessary for the applicant to obtain the landowners consent before such works commence.**

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

**INFORMATIVE TO APPLICANT:**

**Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.**

30 **18/11700/FUL - Land East of Foscoote, Grittleton**

Public participation

John Wilding, local resident, spoke in objection to the application.

Timothy Major, local resident, spoke in objection to the application.

Ros Tate, on behalf of the applicant, spoke in support to the application.

Cllr Johnny Walker, Grittleton Parish Council, spoke in objection to the application.

The Planning Officer, Rose Fox, introduced a report which recommended granting planning permission, subject to conditions, for the conversion of an agricultural building to form a single dwelling house, associated curtilage and access driveway.

Key issues highlighted included: principle of development; impact on the character and appearance of the area (AONB)/design; impact on setting of conservation area; highways and parking; drainage; residential amenity and ecology.

There were no technical questions.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Toby Sturgis, on behalf of Division Member, spoke regarding the application with the main point focusing on the impact of the development on highway safety.

At the start of the debate a proposal was moved by Cllr Peter Hutton, seconded by Cllr Gavin Grant to grant planning permission as detailed in the report.

During the debate the main points raised were: the impact of the development on highway safety and the appearance of the proposed development.

**Resolved**

**That planning permission is approved subject to the conditions set out within the Officer report:**

**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:**

**Plans as received by the LPA 11/12/18:**

**Site Location Plan (KCC2667/01 11/18/rm, Dated: Nov 2018);**

**Block Plan (KCC2667/02 11/18/rm, Dated: Nov 2018);**

**Proposed Elevations and Floor Plan (KCC2667/03 11/18/rm, Dated: Nov 2018); and**

**Existing Elevations and Floor Plan (KCC2667/04 11/18/rm, Dated: Nov 2018).**

**Plan as received by the LPA 06/03/19:**

**Landscaping Plan (KCC2667/07A 03/19cb, Dated: March 2019).**

**And materials in accordance with details specified on the application form and Supporting Statement (Dated: December 2018).**

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

**3 No development shall commence on site until a detailed scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority.**

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

**4 The development shall not be first occupied until foul 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 a detailed scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365, has been submitted to and approved in writing by the Local Planning Authority.**

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

**6 The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.**

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

**7 Former agricultural use of the site/building may have given rise to potential sources of land contamination e.g. asbestos within the structure. As it is now intended to use the site for residential purposes a statement/letter must be provided which confirms the historical uses of the site/building and how development works will address any potential for land contamination which may exist. The strategy must be agreed in writing by the Local Planning Authority and fully implemented prior to the occupation of the dwelling.**

**REASON: To ensure that land contamination can be dealt with adequately prior to the residential use of the site**

**8 No paint or visible stain finish shall be applied to external timber until details of the paint or stain to be applied have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first occupied.**

**REASON: In the interests of visual amenity and the character and appearance of the area (AONB)**

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

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

**10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.**

**REASON: To safeguard the character and appearance of the area.**

**INFORMATIVE TO APPLICANT:**

**The applicant would be advised to contact the area office for a vehicle crossover license with details of the proposed access arrangement. The proposal includes alteration to the public highway, consent hereby**

granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a license may be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the vehicle access team on telephone 01225 713352 or email [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) for further details.

**INFORMATIVE TO APPLICANT:**

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

**INFORMATIVE TO APPLICANT:**

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

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

**INFORMATIVE TO APPLICANT:**

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

**INFORMATIVE TO APPLICANT:**

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

**INFORMATIVE TO APPLICANT:**

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

**the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website**

[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy).

31 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 5.30 pm)

The Officer who has produced these minutes is Craig Player of Democratic Services, direct line 01225 713191, e-mail [craig.player@wiltshire.gov.uk](mailto:craig.player@wiltshire.gov.uk)

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

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## NORTHERN AREA PLANNING COMMITTEE MEETING 27.03.19

### LATE OBSERVATIONS

Item 8a: 18/07128/FUL + 18/07246/LBC Manor Farm, The Street, Grittleton SN14 6AN

For the avoidance of doubt, the Grittleton Parish Council comments of 02/10/18 have been repeated below, verbatim:

*Grittleton Parish Council [GPC] has considered the revised applications for Manor Farm 18/07128/FUL and 18/07246/LBC. As part of these considerations, we ask Wiltshire Council [WC] to note that:*

*a] GPC has refrained from commenting upon the financial viability analysis detailed by the applicant on the assumption that this will be assessed and verified by suitably qualified and experienced personnel. We have further assumed that this financial assessment will warrant a development of this nature despite it being contrary to the Core Strategy. Should WC's assessment of this conclude that the size of the development, and in particular the number of new builds, is not justified, GPC's preference would be to reduce new builds C1-C4*

*b] Whilst GPC cannot consider detailed 'engineering' matters such as drainage and highways issues, we should like to draw WC's attention to the natural hazard that exists at the crossroads adjacent to the main access to the development. There have been numerous accidents at this spot and any development must not exacerbate the problem.*

*c] GPC notes the complexity of these plans and would like the opportunity to comment on any material amendments made.*

*With regards to the above, on balance, GPC would like to support the application subject to the following:*

*a] A restrictive covenant is placed on the land to the north of the rear wall of C1-C4, that it is returned to an agricultural field and all farmyard detritus be removed, and furthermore no development may take place on this land in the future. The applicant has given assurances he would be happy with this arrangement.*

*b] That, as part of the detailed deliberations, full consideration is given to optimising the design and siting of units D1-D2 to minimise the impact on neighbouring properties. We believe the applicant is working to resolve this issue.*

For clarification in respect of the Council's Highways Officer comments, whilst they are now satisfied with the proposed parking provision and refuse vehicle swept path analysis, they do maintain their objections to the level of visibility proposed for this development in relation to the use of the existing access points despite the proposed widening of the western access to The Street.

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**Wiltshire Council**  
**Northern Area Planning Committee**  
**12<sup>th</sup> June 2019**

Planning Appeals Received between 15/03/2019 and 31/05/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
17/09914/FUL	Land to the rear of 88-89b, High Street Cricklade, SN6 6DF	CRICKLADE	Erection of 2 no. new dwellings	NAPC	Written Representations	Approve with Conditions	19/03/2019	Yes
18/00298/ENF	Thistle Barn, Ashley Box, Corsham Wiltshire, SN13 8AJ	BOX	Unauthorised outbuilding	DEL	Written Representations	-	02/04/2019	No
18/05240/FUL	Land at Glevum Farm Top Yard Malmesbury Road Leigh, SN6 6RH	LEIGH	Flexible change of use of existing building and land to use for storage purposes (Class B8 Use) and/or the parking of a maximum of 5 HGVs and 2 trailers. Car parking spaces and alterations to existing building.	DEL	Written Representations	Refuse	18/03/2019	No
18/05429/FUL	Land at Ridgeway Farm (to the rear of Athelstan Park), Crudwell Wiltshire	CRUDWELL	Full planning application for the erection of 36 residential dwellings and associated works.	DEL	Written Representations	Refuse	18/03/2019	No
18/05885/VAR	Peacock Grove Land adjacent to Brook Drive, Corsham SN13 9AZ	CORSHAM	Variation of Condition 4 (Revised Vehicular access arrangement from Brook Road) from 15/11544/OUT	DEL	Written Representations	Refuse	10/05/2019	No
18/08590/FUL	Land south of Paddock House, The Paddocks Chippenham, Wiltshire SN15 3DN	CHIPPENHAM	Erection of new dwelling	DEL	Written Representations	Refuse	07/05/2019	No
18/10650/FUL	Land At St Johns Street Malmesbury SN16 9BW	MALMESBURY	Conversion of existing allotments into parking and associated works including the erection of external lighting.	DEL	Written Representations	Refuse	09/05/2019	No

Planning Appeals Decided between 15/03/2019 and 31/05/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
16/00302/ENF	Freckles Farm Brinkworth Road Royal Wootton Bassett, Swindon Wiltshire, SN4 8DT	LYDIARD TREGOZ	Alleged unauthorised residential use, takeaway facility, dumping of waste materials	DEL	Written Reps	-	Enforcement Notice <b>Upheld</b>	07/05/2019	None
17/12320/LBC	Baynards Ash Farm Brinkworth Road Royal Wootton Bassett, SN4 8DT	ROYAL WOOTTON BASSETT	Proposed single storey rear extension	DEL	Written Reps	Refuse	Dismissed	07/05/2019	None
17/12403/FUL	Land at Kent End Back Street Ashton Keynes SN6 6PF	ASHTON KEYNES	Erection of two bedroom holiday cottage with mostly natural stone elevations and a natural slate roof above	NAPC	Written Reps	Refuse	Dismissed	09/04/2019	Appellant applied for Costs. <b>REFUSED</b>
18/04983/FUL	The Gables Main Road, Corston SN16 0HD	ST PAUL MALMESBURY WITHOUT	Removal of modern conservatory, erection of single storey extension to provide open plan kitchen/dining area and boot room.	DEL	Written Reps	Refuse	Dismissed	22/05/2019	None
18/05140/FUL	Land at Glevum Farm Top Yard Malmesbury Road Leigh, SN6 6RH	LEIGH	Flexible change of use of existing building and land to use for storage purposes (Class B8 Use) and/or the parking of a maximum of 5 HGVs and 2 trailers. Car parking spaces and alterations to existing building.	DEL	Written Reps	Refuse	Dismissed	31/05/2019	Appellant applied for Costs. <b>REFUSED</b>
18/05396/FUL	66 Pauls Croft Cricklade, Swindon Wiltshire, SN6 6AL	CRICKLADE	New Dwelling & Access	DEL	Written Reps	Refuse	Dismissed	09/04/2019	None
18/05574/LBC	The Gables Main Road, Corston SN16 0HD	ST PAUL MALMESBURY WITHOUT	Removal of modern conservatory, erection of single storey extension to provide open plan kitchen/dining area and boot room.	DEL	Written Reps	Refuse	Dismissed	22/05/2019	None
18/06613/PNCOU	Fairmeadow Farm Dauntsey Chippenham Wiltshire, SN15 4HN	DAUNTSEY	Notification for Prior Approval under Class Q - Conversion of Barn into Residential Use as a Single Dwellinghouse (Use Class C3) and for Associated Operational Development	DEL	Written Reps	Refuse	Dismissed	13/05/2019	None
18/09885/PNCOU	No Parish Farm Braydon, Swindon Wiltshire, SN5 0AG	PURTON	Notification for Prior Approval for a Proposed Change of Use of Agricultural Building to a Dwellinghouse (Class C3), and for Associated Operational Development.	DEL	Written Reps	Refuse	Dismissed	10/05/2019	None

18/10396/FUL	40 Bristol Road Chippenham SN15 1NR	CHIPPENHAM	Two storey side extension & single storey replacement rear extension together with internal layout and landscaping alterations	DEL	House Holder Appeal	Refuse	Split Decision	09/04/2019	None
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WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

12 JUNE 2019

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## WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

### THE WILTSHIRE COUNCIL (PARISH OF ASHTON KEYNES) PATH NO.41 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018

#### Purpose of Report

1. To:
  - (i) Consider an objection and representations of support received following the making and advertisement of “The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018”, 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 30 September 2016 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 Ashton Keynes. The application was made by Ashton Keynes Parish Council on the grounds that public footpath rights subsist or could be reasonably alleged to 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 Parish of Ashton Keynes which lies to the north-west of Swindon, (please see location plan at **Appendix A**). The claimed route forms a link between Friday’s Ham Lane at Rixon Gate and Footpath no.19 Ashton Keynes, which forms part of the Thames Path, (please see Order plan at **Appendix B**).

5. Before determining the application Wiltshire Council undertook 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 Ashton Keynes, (the objection, representations and additional evidence received are included at Part 7 of the decision report attached at **Appendix C**).
6. Following an 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 of way for the public had been dedicated at common law by the landowner in 2004, (please see decision report at **Appendix C**). Senior officers approved the recommendation on 19 June 2018.
7. Wiltshire Council subsequently made a definitive map modification order to add a footpath to the definitive map and statement of public rights of way as Footpath no.41 Ashton Keynes, (please see Definitive Map Modification Order at **Appendix B**). Notice of the making of the Order was duly advertised, served on interested parties (including the landowner) and posted on site.
8. Following the making of the Order, Wiltshire Council received one objection to the making of the Order and two representations of support, as follows:

**Objection:**

- 1) Ashfords LLP for and on behalf of Alvin Mark Lindley (the landowner) – 19 November 2018

**Representations of Support:**

- 1) Ms P Lawrence – 18 November 2018
- 2) Ashton Keynes Parish Council, C/O Mr D Wingrove, Chair – 25 October 2018

Thames Path National Trails Officer – 22 October – No comments

9. The objection and representations are included in full at **Appendix D** and officer's comments on the objections are set out at paragraphs 16-43 of this report.
10. Due to the objection 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 the objection and representations received against, (i) the evidence already before the Council in this case and (ii) the legal tests for making a definitive map modification order under Section 53 of the Wildlife and Countryside Act 1981, Section 31 of the Highways Act 1981 and the principles of common law dedication, in order to determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State for decision.



## **Main Considerations for the Council**

11. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review.
12. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:  
  
*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*  
  
*(i) that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*
13. 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.”*
14. In this case, the evidence suggested that a public right of way could not be established under statute, (Section 31(1) of the Highways Act 1980) where 20 years use of a route by the public could not be established due to the mineral extraction works on site forming an interruption to public user of routes north of what is now Lake 82, from 1992 – 2004 and the Order route only being available since 2004. However, this does not preclude consideration of dedication of a public right of way at common law, which does not rely upon a period of use of 20 years and can be based on a much shorter period of public user. In this case there is evidence that the previous landowner, Aggregate Industries UK Ltd, set out and dedicated the route in 2004 and evidence that the public accepted the route, therefore a Definitive Map Modification Order was made adding Footpath no.41, based on common law dedication.
15. Evidence is 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 of the proposal, the availability of suitable alternative paths, or the “need” for the claimed route.

## **Comments on the Objections**

16. The objector, Ashfords LLP, on behalf of the landowner Mr Alvin Lindley, sets out a number of objections and officers will address each point in turn.

**The claimed path was not dedicated as a public footpath by the landowner. Such intention to dedicate has not been demonstrated. On the contrary, the claimed path was provided as a permissive path.**

17. The objector claims that the evidence falls far short of establishing that Aggregate Industries UK Ltd intended to dedicate the claimed path as a public footpath and that the route was laid out by them, (as the then landowner) in 2004, as a “permissive path” only. If a landowner was able to demonstrate that use of the path by the public was by a revocable permission, it would defeat a claim to add public rights where user was not “as of right”, i.e. without force, without secrecy and without permission. However, the evidence before Wiltshire Council, as the Surveying Authority, suggests the opposite, i.e. that it was the intention of Aggregate Industries UK Ltd to dedicate the path to the public as evidenced in correspondence between Aggregate Industries UK Ltd and Wiltshire County Council, dated 18 February 2004, in which Mr R Westell, Estates Surveyor for Aggregate Industries UK Ltd, confirmed that the order route had been installed and requesting advice on how this route could now be formally dedicated. It was clearly the landowner’s intention to dedicate the route to the public when it was laid out in 2004. An extract of the letter from Mr Westell is set out below.

*“FOOTPATH No.20, RIXON LAKES, ASHTON KEYNES, WILTSHIRE  
In 1995, this Company diverted the original footpath 20 to an alternative route (dark green on the attached plan), while sand and gravel extraction was being carried out. The diversion route was a temporary measure until a new path could be created around the northern and western margins of the newly created lake (the order route). I write to inform you that the new footpath 20 (red in the attached plan) has now been installed and is connected to Fridays Ham Lane and the Thames Path (footpath 19) (the order route).*

*I understand from historical correspondence held on our files that we now need to formally dedicate the new route, replacing the temporary diversion route. Could you please advise how this may be dealt with and furnish me with any forms, which need to be completed.”*

18. If the route was intended by the landowner to be permissive only, the actions of the landowner in providing a fenced route, with kissing gates and “Public Footpath” waymarking discs, suggest quite the opposite and would not have communicated to the public that their right to use the path was being brought into question, or that their use was subject to a revocable permission. 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 quoted 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... 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”...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.”*

19. There is no evidence before the Council that the landowner erected permissive path notices, or closed the path to the public for short periods. Neither did they lodge with Wiltshire Council a statement and plan, followed by statutory declarations at regular intervals, under Section 31(6) of the Highways Act 1980, to negate their intention to dedicate additional public rights of way over land in their ownership.

**The claimed path has not been used by the general public to any material degree over a material period, either to be sufficient to demonstrate implied dedication at common law or to demonstrate acceptance of any dedication, which dedication is denied.**

20. Officers consider that use by the general public following the landowner’s dedication of the right of way in 2004, has been demonstrated by the user evidence between 2004 and 2016, (when the route was closed to the public), please see user evidence chart at paragraph 10.13 of the Wiltshire Council decision report dated 15 June 2018, at **Appendix C**.
21. The landowner’s intention to dedicate the footpath in 2004 is denied in the Objector’s case; however, the present landowner, Mr A Lindley, was not the landowner with the power to dedicate the land at that time and would not have known the intention of Aggregate Industries UK Ltd. Where it is alleged that Aggregate Industries UK Ltd, the landowner in 2004, set out the path as a permissive route, correspondence dated 18 February 2004 suggests that it was the intention of Aggregate Industries UK Ltd, to dedicate the path to the public, (please see correspondence at paragraph 17). However, for whatever reason the path was never formally added to the definitive map and statement of public rights of way. Only once the path was physically closed to the public in April 2016, was an application made to add the path.

**In order for dedication to have occurred at common law, the burden of proof is firmly on the applicant to demonstrate that the landowner intended to dedicate the way. Caselaw establishes that this is a heavy burden: Jones v Bates [1938]. Further it must be established by the applicant that any such dedication was accepted by the public.**

22. The Jones v Bates Court of Appeal case [1938], considers the Rights of Way Act 1932, which stated at Section 1(1):

*“Where a way, not being of such character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way, or unless during such period of*

*twenty years there was not at any time any person in possession of such land capable of dedicating such way.”*

23. Prior to the 1932 Act, in England, as Scott L.J. considers in the Jones v Bates case:

*“Our legal theory had always been – at any rate within the last century or two – that the sole origin of a public highway was dedication to the public use by the owners of the land over which it ran, and in consequence that, in case of dispute, the public right could be established only by such evidence as would justify an inference of fact that the way had at some date, known or unknown, been so dedicated... The practical result of the English rule of law was that in many cases although quite a formidable body of evidence was available to demonstrate what I call the Scottish premises, the public claimant failed on the additional English requisites. I infer from its terms that the Rights of Way Act, 1932, was passed for the definite purpose of getting rid of these extra difficulties of proof... the Act has got rid of all the trouble and difficulty inherent in the task of inducing the tribunal of fact to give a solemn finding of an act of dedication at some past date, which was, as a rule, wholly imaginary, and often by an imaginary owner... Its main object was obviously to get rid of the onerous fiction of proving an actual dedication which had been imposed by a long series of English decisions...”*

24. In the same case, Farwell, J states:

*“Prior to the Act, it was extremely doubtful whether a public right of way could be acquired by prescription, and, generally speaking, it is true to say that the only way in which a public right of way could be created, apart from express creation by statute, was by dedication by the owner of the soil. Such dedication could be either express or implied, and the necessary implication would be made in a case where the court was satisfied that there had been at some material times a person or persons capable of dedication, and that the evidence of user by the public led inevitably to the conclusion that there must have been such dedication. In my judgment, notwithstanding the Act of 1932, it is still true to say that, apart from the statute, dedication is the only way by which a public right of way can be created. It is still possible to prove the existence of such right by express grant or by implication where the user is less than 20 years, but, where the user is for 20 years or more, no implication is necessary, because in that event sect. 1 of the Act provides that there shall be deemed to have been dedication if during that period dedication would have been possible...”*

25. It is accepted that prior to the Rights of Way Act 1932, (forerunner to what is now Section 31(1) of the Highways Act 1980), and where there is no such 20 year period of user as required under statute, the only way in which a right of way could be created was by dedication (at common law) which placed a heavy burden on the applicant in demonstrating that at some time in the past dedication took place. There could be a high level of public user, but it would be defeated where dedication could not be shown. In the Ashton Keynes case, no such 20 year user period can be shown and therefore it is open to officers to consider the application at common law. Please see paragraph 28 of this report and e-mail correspondence from Mr D Wingrove, Chairman of Ashton Parish Keynes Parish Council, dated 16 May 2016, in which the Parish Council, as the applicant

in the Definitive Map Modification Order, confirm that they considered that it was the landowner's intention to dedicate the path, as evidenced in the letter and map attached to this correspondence from Mr R N Westell, Estates Surveyor for Aggregate Industries UK Ltd, dated 18 February 2004, (please see letter extract at paragraph 17 of this report). The e-mail from Mr Wingrove also suggests that the landowner did not take steps to make it clear to users that the path was "permissive", (if that was their intention) and took no action to prevent public use.

26. The Ashton Keynes case is unusual in that there is direct evidence provided by the landowner, Aggregate Industries UK Ltd, at the time the order route was set out, that they themselves put in the route and it was their intention to dedicate it, as evidenced by the letter from Mr R Westell, dated 18 February 2004, (please see paragraph 17), i.e. as the landowner, capable of such dedication. Additionally, the evidence of user is sufficient to demonstrate that the route was accepted by the public, which is also required as part of the test at common law. Officers are satisfied that the order route has been successfully dedicated by the landowner and accepted by the public.

**The evidence adduced falls far short of establishing that Aggregate Industries intended to dedicate the claimed path. The route was laid out by them in 2004 as a permissive route only, clearly evidenced in correspondence between Aggregate Industries and the applicant and at meetings between them when the applicant was seeking dedication. It was the applicants' own knowledge that the path was only permissive and had not been dedicated.**

27. No evidence has been adduced that the path was laid out by Aggregate Industries in 2004 as a "permissive path" and the actions taken by Aggregate Industries UK Ltd in 2004, demonstrate quite the opposite, i.e. the letter from Mr R Westell to Wiltshire Council, dated 18 February 2004, (paragraph 17), contemporary with the setting out of the footpath, stating that the route was in place and requesting further details on how the path should be formally dedicated, i.e. added to the definitive map of public rights of way, where it was clearly their intention to do so. Additionally, the treatment of the path does not suggest a "permissive" path, i.e. the route was fenced with kissing gates at either end, allowing public access and public footpath waymarker signs, (the witnesses supporting the Order provide photographic evidence of these waymarkers in situ). This is discussed in further detail at paragraphs 10.25 – 10.31 of the decision report attached at **Appendix C**). There is nothing which may be implied from the actions of the landowner to suggest that it was their intention for the path to be "permissive" only. There is no evidence that they erected "permissive path" signs on the route, or closed the path to the public for short periods; neither did they lodge with the Council a plan and statement under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate. These are not the actions of a landowner who had no intention of dedicating public rights over the land. If the path was "permissive", which officers contend it was not, there is no evidence of how this permission was communicated to the public at large, the public may infer quite the opposite from the public footpath way marker signs at either end of the path.

28. The objector refers to e-mail correspondence in which they claim the applicants (Ashton Keynes Parish Council), concede that the footpath is “permissive” in nature. The correspondence to which the objector refers is an e-mail from Mr Tony Hudson, Estates Manager, Aggregate Industries UK Ltd to Mr Michael Seymour of Ashton Keynes Parish Council dated 6 August 2014, entitled “*Rixon Lakes – Public Right of Way and Permissive Footpath*”, following a meeting between Mr Hudson and Mr Seymour, earlier that day, (please see e-mail included at paragraph 10.43 of the Decision Report (15 June 2018) attached at **Appendix C**). The claimed route is consistently referred to within the e-mail from Mr Hudson as a “Permissive Path”; however, this is no evidence that the Parish Council, as the applicants, referred to the path as permissive and cannot assist in evidence that the applicants in 2014 considered the path to be permissive. Wiltshire Council was not party to that meeting and the contents of that meeting and officers have not viewed correspondence in which the Parish Council directly refer to the footpath as “permissive”. Wiltshire Council has viewed e-mail correspondence, from Mr D Wingrove, Chairman of Ashton Keynes Parish Council, to Wiltshire Council, dated 16 May 2016, which suggests that the Parish Council took the opposite view regarding the status of the path:

*“Ashton Keynes Parish Council is indeed concerned that the new owner of Lake 82 Ashton Keynes has effectively closed the footpath to the north of Lake 82. As I am sure you will be aware, this footpath, named Footpath 20, originally went diagonally across a large field (which is now Lake 82), but in 1995, [i]t’s route ceased to exist when Aggregate Industries, the owners of the land, commenced sand and gravel extraction. Local people immediately started to use a route to the north of the gravel workings (which ultimately became Lake 82) and have used it continuously since then.*

*Therefore, in accordance with Section 31(6) of the Highways Act 1980, this route should now be dedicated as a public right of way. The Act says that this should occur “unless there is sufficient evidence that there was no intention during that period to dedicate it.” We would contend that the reverse is true: there is clear evidence that it was indeed intended to dedicate it. Please see that attached letter and map (letter and map from Mr R N Westell, Estates Surveyor, Aggregate Industries UK Ltd, dated 18 February 2004, as referred to at paragraph 17 of this report).*

*Notwithstanding this, it is questionable as to whether this northern route was ever merely a permissive path as such. As you know, there are two main ways of establishing a permissive path; either through a formal written agreement between the local authority and the owner of the land, or by the owner of land granting consent in a less formal agreement. Neither of these steps have ever been taken. Furthermore, none of the usual recommended steps to prevent public rights accruing have ever been taken with this northern path e.g.*

- 1. By erecting permanent signs identifying that the route in question is used ‘by permission’ and not ‘as of right’. (Indeed, the very reverse was true. There were ‘Wiltshire County Council Footpath’ signs along the route.)*
- 2. By closing the path for a short period, for example one day per year, thereby preventing uninterrupted use ‘as of right’ from accruing.*

*Therefore, rather than condone the closure of the northern route and the formalization of the southern route, we request that Wiltshire Council takes the appropriate steps to designate the northern route as a public right of way.”*

29. Whilst Mr Hudson states that the path is “permissive”, this is at odds with the landowner comments from Mr Westell requesting the path be dedicated in 2004 and the landowner’s treatment of the path in 2004, i.e. the provision of a fenced route, with stiles and public footpath waymarkers. Mr Hudson states that the fenced pathway is classed as a “*permissive pathway only as checked with Wiltshire Council’s online public rights of way mapping and through liaison with Barbara Burke, Rights of Way Officer with Wiltshire Council*”. Officer’s agree that the definitive map would not have recorded the claimed route, where it had not been formally added; however, omission from the definitive map is not evidence that a path is “permissive” and the landowner has to do somewhat more to communicate to the public that the path is available only through permission which is revocable at any time, (see *Fairey v Southampton* [1956] in *Godmanchester* at paragraph 18 above). Wiltshire Council does not hold records of permissive paths and would not have been in a position to clarify that the route was “permissive”. There is certainly no evidence before the Council that the landowner at any time (*Aggregate Industries UK Ltd*), took any action to communicate their alleged intention as a permissive path, to the public in general, i.e. erecting permissive path notices or closing the path at any time, or depositing with Wiltshire Council a plan and statement with subsequent statutory declarations under Section 31(6) of the Highways Act 1980 which would negate their intention to dedicate additional rights of way over their land, as the present landowner Mr A Lindley did in April 2016, around the same time the path was closed to the public. The mere inaction of the landowner with knowledge of use of the land, does not amount to permission, (*R (on the application of Barkas) (Appellant) v North Yorkshire County Council and another (Respondents)* [2014] UKSC 31, quotes *Gale on Easements* (19<sup>th</sup> Edition, 2012):

*“17. In relation to the acquisition of easements by prescription, the law is correctly stated in Gale on Easements (19<sup>th</sup> edition, 2012), para 4-115:*

*“The law draws a distinction between acquiescence by the owner on the one hand and licence of permission from the owner on the other hand. In some circumstances, the distinction may not matter but in the law of prescription, the distinction is fundamental. This is because user which is acquiesced in by the owner is ‘as of right’; acquiescence is the foundation of prescription. However, user which is with the licence of permission of the owner is not ‘as of right’. Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence.”*

30. Four witnesses state that they did not need permission to use the way where the path is a “public footpath” and one user states that there was no need to request permission as the signs showed where to go. One witness suggests that permission is implied by the waymarking discs; however, they do not communicate to the public that the path is permissive, i.e. the public’s use is subject to the goodwill of the landowner which may be revoked at any time.

**The Council Rights of Way Officer removed waymarker signs from the claimed path, acknowledging that it was permissive only. This is pertinent where the officer in her report contends that the public right to use the path was not brought into question until April 2016.**

31. Shortly after purchasing the land, the present landowner, Mr A Lindley, sought to correctly identify and align rights of way over his land and began working with the Rights of Way Department to do so. Officers consider that the Rights of Way Warden removed the waymarking signs on the path, not because the path was permissive, but simply because it was not recorded on the definitive map of public rights of way. Mr Leonard (Rights of Way Warden – North Wiltshire), states: *“My first meeting was on 13th May 2015 and I think I removed the sign post on the claimed route then as well as some waymarkers...”* It cannot be construed from this recollection that Mr Leonard removed the waymarks because he considered the path to be permissive. Additionally, Wiltshire Council does not hold records of permissive paths and Mr Leonard would not have been in a position to comment on whether the path was “permissive”. Additionally, the presence of Wiltshire County Council footpath waymarkers suggests the opposite of a permissive path.
32. In any case, removing the waymarkers alone, did not prevent the public from physically using the path and there is evidence that the public continued using the path after the removal of the waymarks in May 2015. Additionally, the witnesses provide photographs of the path taken in November 2015, which reveal that the path was still signed as a public footpath at its southern end at least until November 2015 (the photographs provide evidence that the waymarkers had been removed at the northern end before November 2015).
33. The path was not physically closed to the public until 29 April 2016, as evidenced by Mr R Nesbit, who wrote to the Council the following day to report the closure following up on two phonecalls made the previous day. He had used the path on the morning of 29 April 2016, but when he returned to use the path at 3:30pm, it was closed shut with barbed wire. This demonstrates that the public’s right to use the way was not brought into question until April 2016, when the path was physically closed to the public and also demonstrates that Mr Nesbit did not consider this path to be “permissive” where he considers the closure to be *“illegal”*, with no notices placed to advise of the closure and that *“...the owner has no rights to arbitrarily close a public footpath...I draw your attention to the Highways Legislation regarding Public Footpaths.”* In his belief that the path was indeed a public path, rather than a “permissive” path only, Mr Nesbit saw fit to report the closure to both the Council and the Ramblers.
34. The order route is also recorded within the Cotswold Water Park Leisure Map as a footpath. It is noted that the map records the “permissive paths” by a different notation to that used for footpaths and records the order route as a footpath consistently in the 2014, 2016 and c.2017 editions which have been viewed by officers. If the route had been mistakenly recorded as a footpath rather than a permissive path in the earlier editions and the landowner had no intention to dedicate the path, as is suggested by the objector, they took no action to rectify this mistake and it is not corrected in later editions of the map. Mr Peter Gallagher of the Ramblers suggests that this route is shown on editions of this map from 2010 to 2017.



**The path has not been used as of right for any material period by the general public from which either dedication at common law can be inferred or from which acceptance by the public can be established:**

**It is apparent from the user evidence forms that the compilers are confused as to the route they are referring to and as to the route of the claimed path. Many of them refer to using the claimed route prior to 2004. As acknowledged by the officer's report that was not possible given that the route was not laid out until 2015 [2004]. Similarly, users claim to have used the claimed path post May 2015 when it was physically closed off by the landowner, again demonstrating that they are wholly confused. In such circumstances no weight can be given to such evidence given that it appears the compilers are referring to other routes walked than the claimed path.**

35. Officers consider that there were a number of routes, used by the public at this location over the years; however, officers have concluded that public use of these routes, prior to 2004 when the site was restored, was very likely to have been "interrupted" by the extraction works and therefore 20 years public use of these routes, under statute, cannot be established. However, witnesses consistently refer to using a route which was fenced with gates at either end, which would correspond with the order route, as laid out by Aggregate Industries in 2004 at the site restoration. A public right of way can be acquired at common law, on a user period shorter than 20 years, where there is dedication by the landowner and acceptance by the public, which are both met in this case.
36. Officers do not agree that the path was closed to the public in May 2015, where there is evidence in an e-mail sent to Wiltshire Council in April 2016, from Mr R Nesbit to report the path closure the previous day, having used it in the morning without problem and returning to use it later that afternoon to find it closed with barbed wire. This e-mail provides evidence of i) the date of closure of the path and ii) that Mr Nesbit considered this to be a public right of way over which the Council would be able to exercise its duty to protect and assert public rights of way.

**The evidence does not, and cannot support the use of the claimed path which only physically existed on the ground from 2004, and could not have been used during the extraction and restoration works on the Land in any event.**

37. It is not claimed by officers that the order route has been used by the public for a period of 20 years or more (and during the extraction period), as required to add a public right of way under statute and officers have not identified a route over the land which would be capable of being claimed under statute. However, where a path has been used by the public for a period of less than 20 years, it can be claimed at common law where there is an act of dedication by the landowner and acceptance by the public. In this case it is acknowledged that the order route has only existed since 2004; however, there is evidence that it was the intention of the then landowner, Aggregate Industries UK Ltd, to dedicate the path to the public, as evidenced in the letter dated 18 February 2004 from Mr R Westell of Aggregate Industries UK Ltd, (see paragraph 17) and the landowner's treatment of the route when it was set out, i.e. being fenced with kissing gates

and Public Footpath waymarker discs. Additionally, the evidence included with the application shows use of the path from 2004 onwards and path users consistently refer to a fenced route with gates and waymarkers, which corresponds with the order route.

38. It is open to the Authority to consider common law dedication, as the Planning Inspectorate “Wildlife and Countryside Act 1981 Definitive Map Orders: Consistency Guidelines” (4<sup>th</sup> revision January 2015), state:

*“5.41 Sometimes dedication at common law will be argued as an alternative, in case the s31 claim fails. In any event, the Inspector should consider common law dedication where a s31 claim fails...”*

**The application plan is fundamentally different from the order plan as acknowledged in the officer’s report (paragraph 10.48). They are referring to inherently different routes. The evidence in support relates to a different route to that subject of the Order and consequently cannot be relied upon in support of the Order.**

39. The application plan is of poor quality; however, it matters not that it differs from the route included in the Order. Once an application is received, Wiltshire Council is placed under a duty to investigate the evidence and therefore the Order includes an identifiable route which is supported by evidence. A claim cannot be dismissed simply because the application plan differs from the route identified within the accompanying evidence and once the authority discovers evidence of public rights, even if the route differs from the application plan, it has a duty to record that route within the definitive map and statement of public rights of way. The witness evidence regarding the fenced route, having a junction with both the Thames Path and Friday’s Ham Lane, (i.e. fully linking the two public highways, which differs from the application plan), is also supported by the presence of a previously fenced path on the ground, with a kissing gate at each end and aerial photography recording the fenced route (2005/06), (please see paragraph 63 of decision report attached at **Appendix C**).

**Lack of use of the claimed path by the public is demonstrated by the fact that it was overgrown to the extent that it was unusable when the landowner purchased the land in March 2015. It had clearly not been used for many years.**

40. Officers accept that there are reports of the path being overgrown, however, Mr R Gosnell provides GPS evidence that he is likely to have used the route between the two fences in both 2007 and 2008 and Mr R Nesbit in his e-mail dated 30 April 2016, reveals that he used the route between the fences on the morning of 29 April 2016, before it was closed with barbed wire when he returned to use the path at 3:30pm on the same day. The user evidence supports use of the fenced, gated and waymarked order route.
41. Mrs Hourihane provides a photograph of the northern end of the path dated 25 November 2015, which shows this end of the path somewhat overgrown (please see photographs included at paragraph 10.29 of the decision report attached at **Appendix C**); however, photographs taken on the same day at the southern end, show that this part is not overgrown. Some of the witnesses mention in evidence overgrowth of the fenced route and it would appear that

when they found it to be overgrown, they took a parallel route outside the fenceline to meet Fridays Ham Lane, (at the northern end of the route), at the field gate rather than the kissing gate. The evidence on this matter is conflicting, for example, Mrs Arnett states: *“There was a fenced in, signed Wiltshire County Council Public Footpath (fencing recently removed) to the North [of the lake] which ended at the road, but for many years walkers have used a route parallel to this exiting at the large gate rather than the road.”*, whilst Mr M Seymour states that he changed his route once *“...when gate by road C.69 was slightly overgrown with blackberry bush. This was later cut out by the owners, Aggregate Industries.”* (please see paragraph 10.56 of decision report attached at **Appendix C**). Mr Seymour provides evidence that when the path became overgrown, the then landowner perhaps carried out clearance works.

**As of April 2016 when the landowner made a deposit under Section 31(6) of the Highways Act 1980 to negative his intention to dedicate any public rights of way over the land, there had been no suggestion of, or any reference to, the claimed path being a public footpath which ought to have been recorded on the Definitive Map, whether by the applicant, any alleged user, any Rights of Way Officer from the Council or any other person. The first mention of any such contention was in September 2016 when the claim was made.**

42. There is a gap of five months between the closure of the footpath to the public, as evidenced by Mr R Nesbit in his e-mail dated 30 April 2016, sent the day after the fenced footpath was closed, the new landowner’s Section 31(6) Highways Act 1980 deposit dated 28 April 2016, and the application to amend the definitive map and statement of public rights of way, dated 30 September 2016. This is to be expected where the Parish Council was compiling the claim and non-reference to the path during this period, does not negate the evidence. Where the public had used the route since 2004 without challenge, it is not considered unusual that the path was not claimed previously, where public rights had not been brought into question until the closure of the path and the landowner’s Section 31(6) Highways Act 1980 deposit, in April 2016.
43. It is noted that the Parish Council has applied for this definitive map modification order and is supporting it, which demonstrates support from the local community, (please see e-mail, representation of support from Ashton Keynes Parish Council (C/O Mr D Wingrove), dated 25 October 2018 at **Appendix D**). Mrs P Lawrence also supports the making of the Order on the grounds that the path has been signed with footpath waymarker signs for at least ten years and where it provides a usable footpath link to Bridleway no.38 and then other footpaths, without walking on the road, where the recorded Footpath 20 crosses marshy land that can become impassable in wet weather.

### **Overview and Scrutiny Engagement**

44. 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**

45. 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**

46. 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**

47. 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 51 to 54 of this report.

### **Environmental and Climate Change Impact of the Proposal**

48. 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**

49. 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**

50. 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 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**

51. The determination of definitive map modification order applications and the modification 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.
52. 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.
53. Where 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 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 the 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).
54. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds at the public inquiry that the Council has acted in an unreasonable manner. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

## **Legal Implications**

55. 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 if this decision is seen by them to be incorrect or unjust.
56. The determination of an Order which has received objections is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State, (although the Council would be considered by the Court to be an "interested party" in any such proceedings).

## **Options Considered**

57. Members of the Committee should now consider the objection 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. The options available to members, having considered the available evidence, the objection and representations of support, are as follows:

- (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;
- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification, based on its consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
- (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear evidential reasons given for this resolution.

58. Please note that all references to the available evidence above, 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 15 June 2018, (included at **Appendix C**). Members should note that the evidence in full is available to be viewed at Wiltshire Council's Offices, County Hall, Trowbridge.

### **Reason for Proposal**

59. Common law dedication can be applied to the order route, where the landowner, Aggregate Industries UK Ltd, created a fenced route, with kissing gates and "Public Footpath" waymarkers. Common law dedication does not require a 20 year user period, (as at statute), and can apply to a much shorter period of public user. There is evidence of public acceptance of the order route, since 2004, through witness evidence, as required at common law.
60. The objector has provided insufficient evidence that it was not the intention of Aggregate Industries UK Ltd to dedicate the route to the public. There is no evidence that it was Aggregate industries UK Ltd's intention to provide the route only as a permissive path. Their actions in providing a fenced route, with kissing gates and public footpath waymarkers, suggest quite the opposite. They did not lodge with Wiltshire Council a deposit and plan under Section 31(6) of the Highways Act 1980 and there is no evidence that they took any steps to communicate their non-intention to dedicate the order route as a public right of way. At the time of setting out the footpath in 2004, Aggregate Industries UK Ltd requested further details from Wiltshire County Council on formalising this dedication, i.e. adding the path to the definitive map.

### **Proposal**

61. That "The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018", be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

**Parvis Khansari**  
Director Highways and Environment

Report Author:  
**Janice Green**  
Rights of Way Officer

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**The following unpublished documents have been relied upon 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, County Hall, Bythesea Road, Trowbridge)

**Appendices:**

<b>Appendix A</b>	Location Plan
<b>Appendix B</b>	The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018
<b>Appendix C</b>	Decision Report (15 June 2018)
<b>Appendix D</b>	Correspondence received in the formal objection period: (i) Representation of objection (ii) Representations of support

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**APPENDIX B - THE WILTSHIRE COUNCIL (PARISH OF ASHTON KEYNES) PATH NO.41 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE CRICKLADE AND WOOTTON BASSETT RURAL DISTRICT COUNCIL AREA DATED 1952**

**THE WILTSHIRE COUNCIL (PARISH OF ASHTON KEYNES) PATH NO.41 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018**

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 Cricklade and Wootton Bassett 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 7<sup>th</sup> September 2018.
2. The Cricklade and Wootton Bassett 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 on which it is confirmed and may be cited as The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018.

**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 0592-9417, at its junction with Fridays Ham Lane, at Rixon Gate, in a generally south-westerly direction for approximately 250 metres, before leading west for approximately 165 metres and then south-west for approximately 200 metres to point B at its junction

with Path no.19 Ashton Keynes, at OS Grid Reference SU 0544-9386, having a width of 1.4 metres.

## PART II

### Modification of Definitive Statement

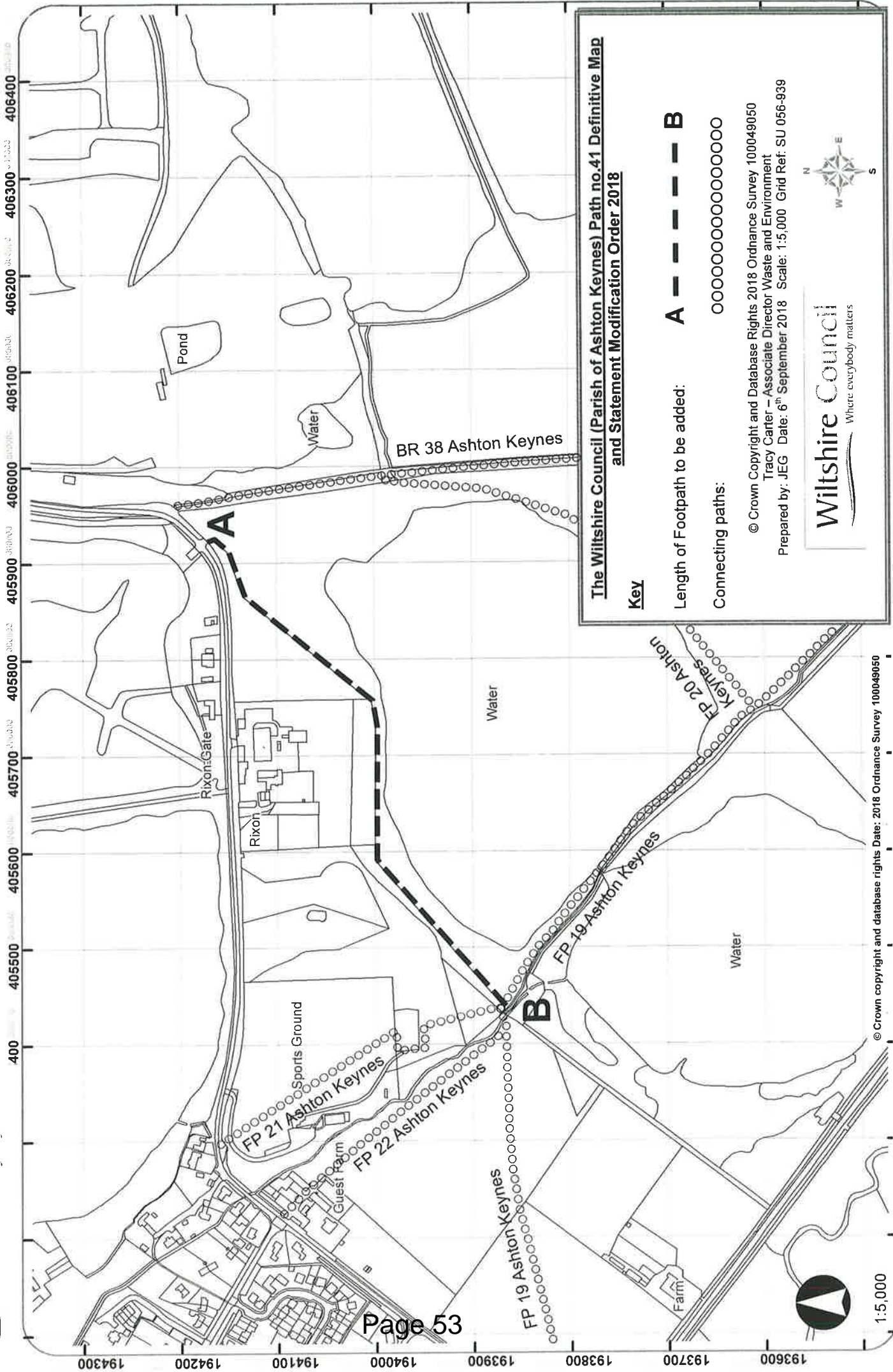
#### Variation of particulars of path or way

Parish	Path No.	Modified Statement to read:-	Modified under Section 53(3) as specified
Ashton Keynes	41	<p><u>FOOTPATH.</u> From its junction with Fridays Ham Lane at Rixon Gate, at OS Grid reference SU 0592-9417, leading generally south west, before leading west and then south-west, to its junction with Path no.19 Ashton Keynes at OS Grid Reference SU 0544-9386.</p> <p>Approximate length: 615 metres. Width: 1.4 metres.</p> <p>Limitations and Conditions: Pedestrian gate at OS Grid Reference SU 0592-9417. Pedestrian gate at OS Grid Reference SU 0544-9386.</p>	53(3)(c)(i)

THE COMMON SEAL OF  
THE WILTSHIRE COUNCIL  
was hereunto affixed this  
7<sup>th</sup> Day of September 2018  
in the presence of:

}  
}  
}   
Senior Solicitor





**The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018**

**Key**

Length of Footpath to be added:    **A** - - - - -    **B**

Connecting paths:    00000000000000000000

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Tracy Carter – Associate Director Waste and Environment  
Prepared by: JEG Date: 6<sup>th</sup> September 2018 Scale: 1:5,000 Grid Ref: SU 056-939

**Wiltshire Council**  
Where everybody matters

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1:5,000

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COVERING PAGE FOR DECISION REPORTAPPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – ASHTON KEYNES

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
<b>To:</b>	Sally Madgwick (Definitive Map and Highway Records Team Leader)	[REDACTED]	18/06/18
	Richard Broadhead (Head of Service, Rights of Way and Countryside)	[REDACTED]	17/06/18
<b>From:</b>	Janice Green		
<b>Date of report:</b>	15 <sup>th</sup> June 2018		
<b>Return to:</b>	Janice Green, Rights of Way (Ext. 13345)		

**Nature of Report:**

This is a report from Janice Green (Case Officer) to Richard Broadhead (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 30<sup>th</sup> September 2016, to add a footpath to the definitive map and statement of public rights of way in the parish of Ashton Keynes, leading generally north-east, east and north-east from its junction with Footpath no.19 Ashton Keynes, (the Thames Path), to Rixon Gate and its junction with Fridays Ham Lane. The application is supported by 34 completed user evidence forms.

Following an assessment of the evidence, it would appear that the previous landowners, Aggregate Industries UK Ltd, provided a fenced route, with kissing gates and footpath waymarkers, following the restoration of the site, south of Rixon Gate, Ashton Keynes, following mineral extraction works. The evidence suggests that it was the intention of the landowners to provide this path north of Lake 82, as an alternative to Footpath 20, which formerly passed through the extraction site, until it was stopped up in 1996 under Section 257 of the Town and Country Planning Act 1990, to allow the development to continue, with the provision of an alternative route south of the extraction area. However, Footpath no.20 was never formally diverted onto the fenced route provided.

Officers consider that the landowners, by the provision of a fenced route with kissing gates and public footpath waymarkers, in 2004, have dedicated the route at common law, with acceptance of this route by the public demonstrated by the completed witness evidence forms. The fenced route cannot be claimed under statute law where it has existed only since 2004 and therefore 20 years public user of the route cannot be shown. Officers consider that any other route over the land, prior to 2004, is likely to have been interrupted by the mineral extraction works taking place on the land between 1992 and 2004, therefore it is not possible to show 20 years uninterrupted public user over the land, prior to public rights being brought into question in 2016, when the fenced route was removed and shut by the present landowner.

**Officer's Recommendation:**

That a definitive map modification order be made to add the footpath as claimed to the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952, under Section 53 of the Wildlife and Countryside Act 1981, where there is sufficient evidence that the claimed footpath, (the fenced route), has been dedicated by the landowner at common law and where there are no objections, 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 – ASHTON KEYNES**

**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 Ashton Keynes, at Rixon Gate.

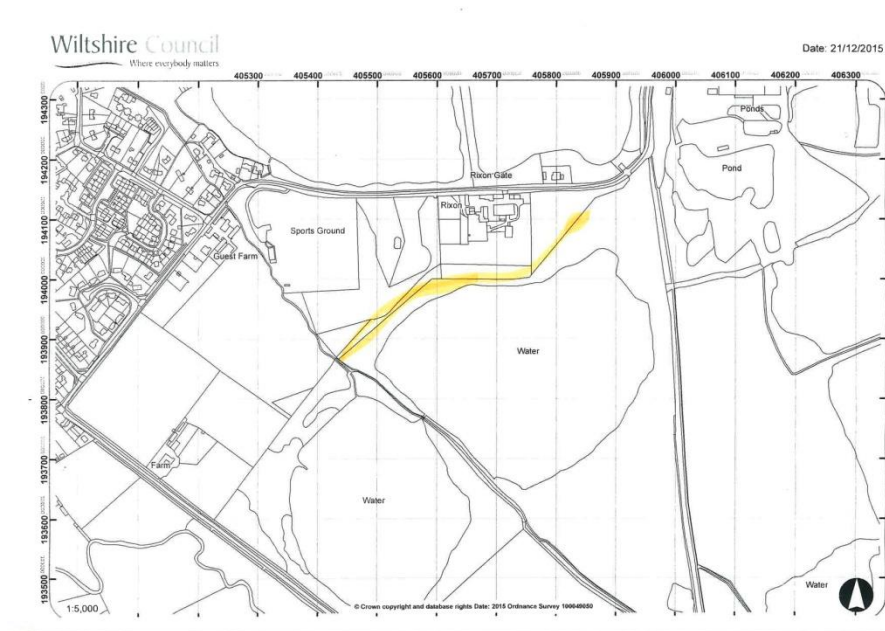
**2. Relevance to Council's Business Plan**

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

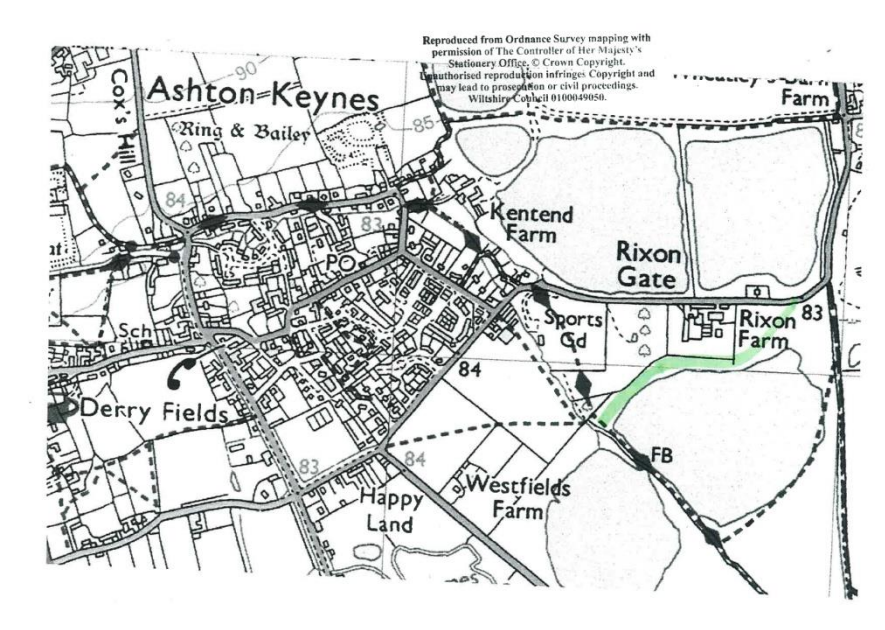
**3. Location Plan**



#### 4. Application Plans



*Plan attached to application form*

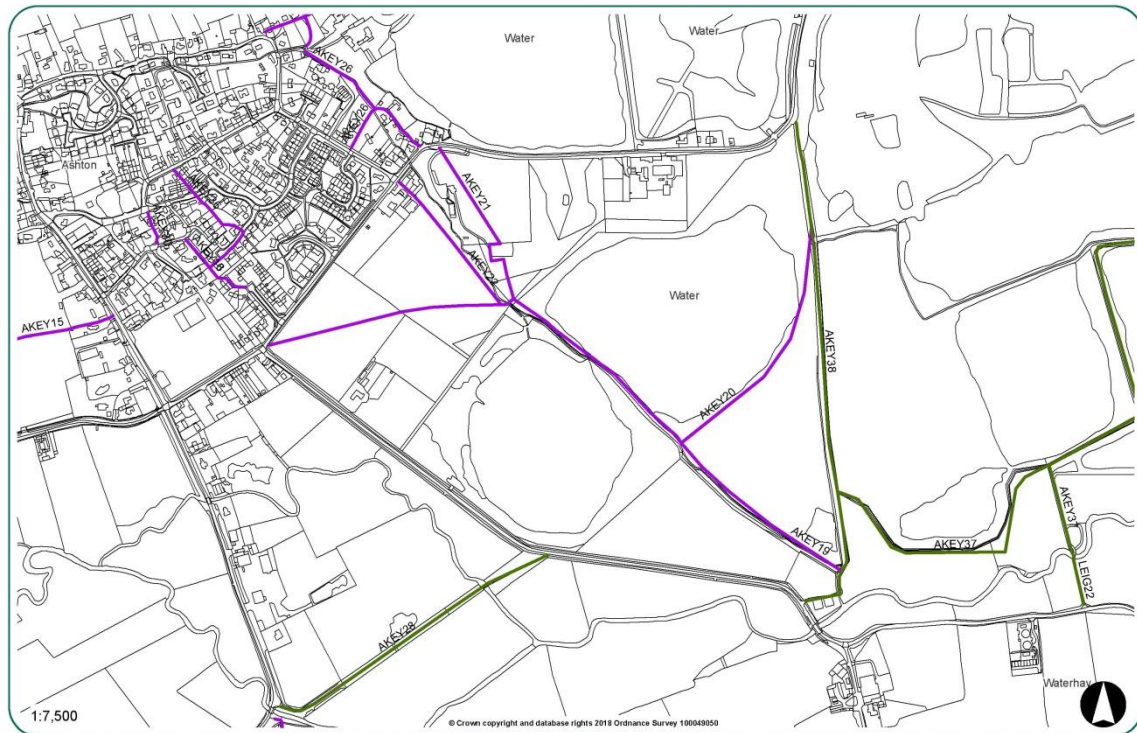


*Plan submitted following the application upon request for a clearer map of the claimed route*

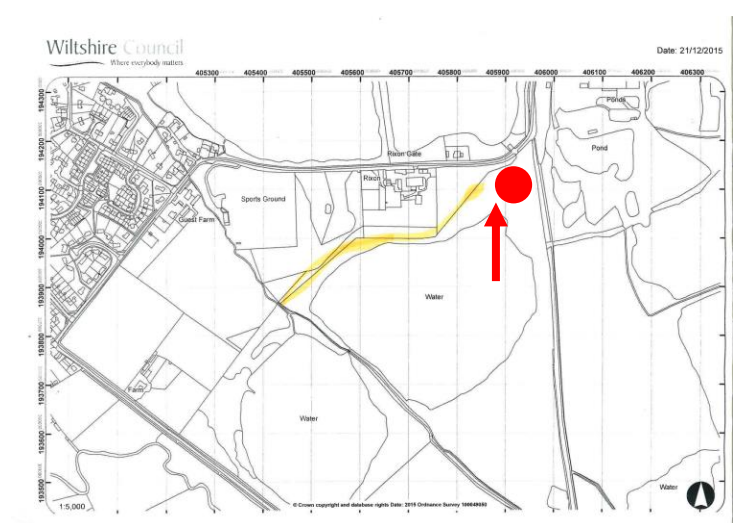
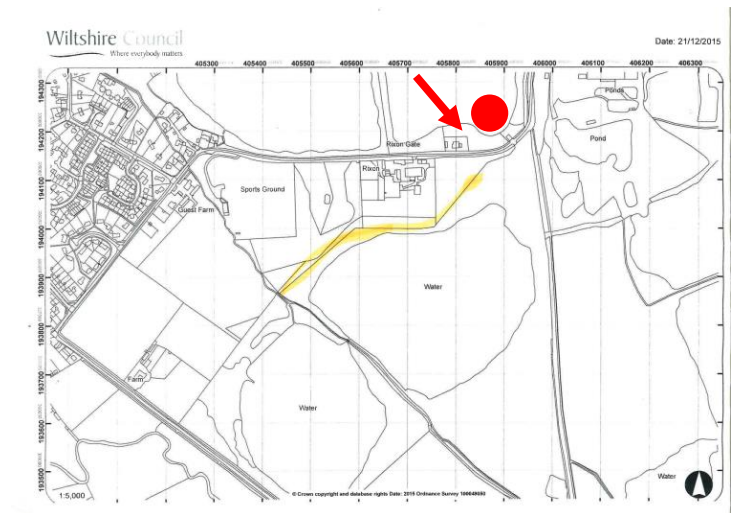
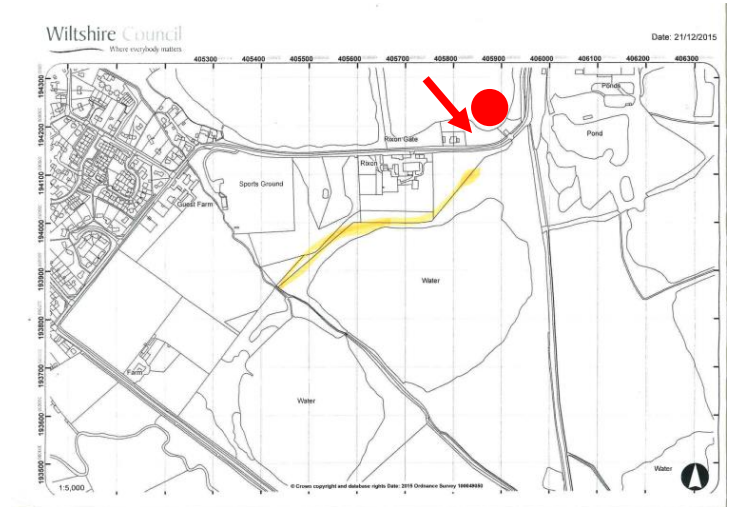
- 4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952, leading from its junction with the existing Footpath no.19 Ashton Keynes (Thames Path), in a

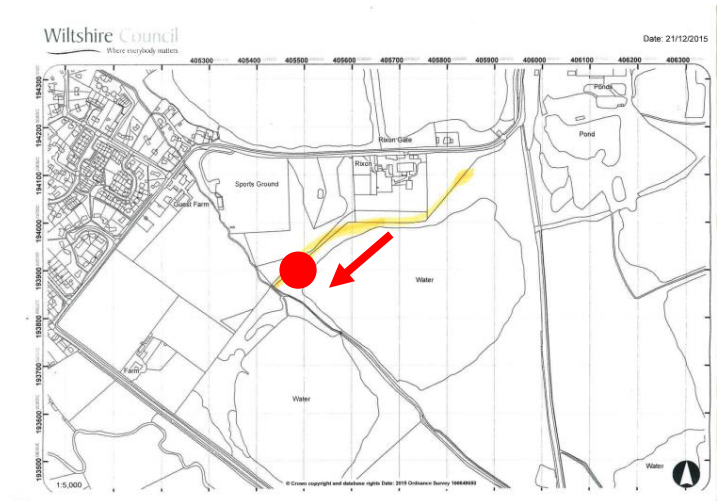
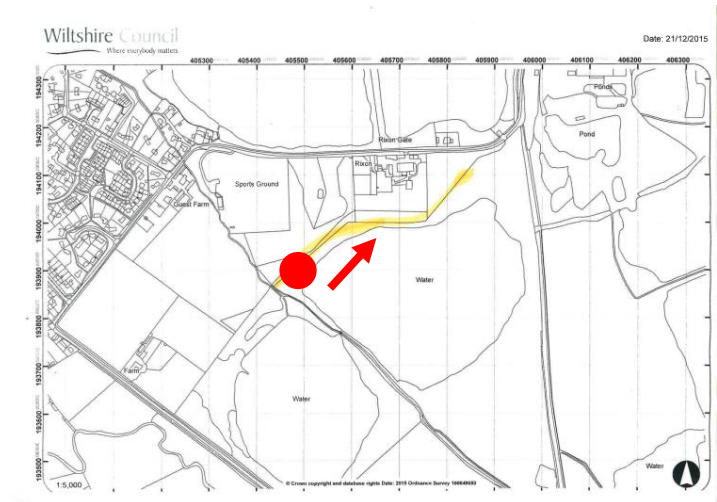
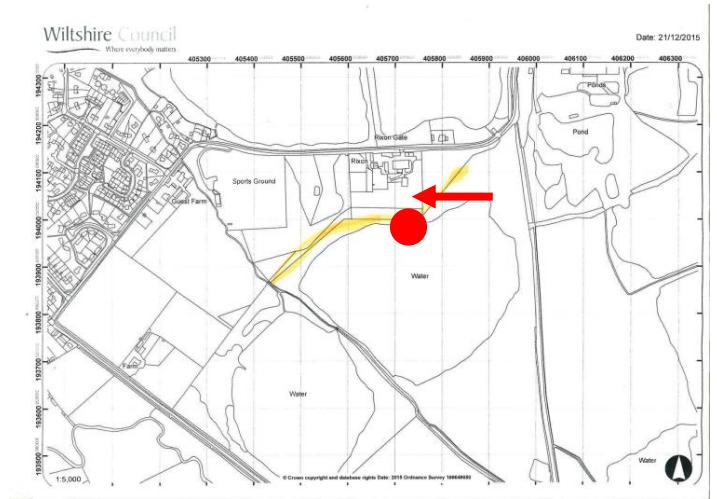
generally north-easterly, easterly and north-easterly direction to its junction with Fridays Ham Lane, at Rixon Gate, as shown highlighted in orange and green respectively, on the above plans. It is helpful also to consider the existing rights of way network at Rixon Gate, Ashton Keynes:

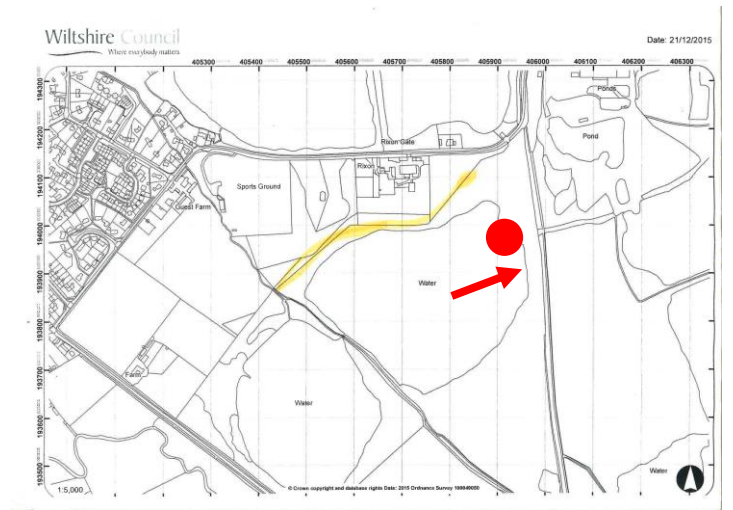
**Rights of Way Network  
Rixon Gate, Ashton Keynes**



## 5. Photographs







*Although not part of the application route, some witnesses claim to use a spur of the application route, leading along the northern edge of Lake 82 to junction with Fridays Ham Lane at the location shown above.*



*Although not part of the application route, witnesses refer to the recorded route of Footpath no.20 leading south of Lake 82, which the landowner has now fenced in.*

## **6. Registered Landowner**

- 6.1. Mr Alvin Mark Lindley  
C/O Clearwater Plc  
First Floor Offices  
Wimberley Park  
Knapp Lane  
Brimscombe  
Stroud  
Gloucestershire, GL5 2TH

## **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 Ashton Keynes, leading generally north-east, east and north-east from its junction with Footpath no.19 Ashton Keynes, (the Thames Path), to Rixon Gate and its junction with Fridays Ham Lane. The application is dated 30<sup>th</sup> September 2016 and is made by Ashton Keynes Parish Council on the grounds that a right of way for the public on foot can be reasonably alleged to subsist or subsist, based on user evidence and should be recorded as such within the definitive map and statement of public rights of way. The application form, (which consists of Forms 1 and 3), is accompanied by a plan drawn at a scale of 1:5,000 highlighting the claimed route and 34 completed witness evidence forms.
- 7.2. The claimed route is located in the parish of Ashton Keynes, which lies to the north-west of Swindon and the south-east of Cirencester, forming a link between Footpath no.19 Ashton Keynes, (the Thames Path) and Rixon Gate, at Fridays Ham Lane. From the Thames Path there is a kissing gate structure which is now obstructed by wire and a large ditch dug parallel to the Thames Path. The claimed path leads generally north-east, east and north east, on a

line to the north of what is now known as Lake 82, to its junction with Fridays Ham Lane, where there is a kissing gate, wired shut alongside a padlocked 5 bar gate. It is understood that there was formerly a fenced path along this route and the landowner confirms that the access points on this path have been physically closed and wired up and the fencing removed.

7.3. The land over which the claimed route passes is in the private ownership of Mr Alvin Mark Lindley, who has owned this land since purchasing at auction on 12<sup>th</sup> March 2015. The land was previously owned by Aggregate Industries UK Ltd. The area of land was referred to as “Lake 82” in the sale particulars dated March 2015.

7.4. Wiltshire Council undertook an initial consultation regarding the proposals on 17<sup>th</sup> May 2017. The objections and representations received are included below:

- Alvin Lindley – Statement dated 11<sup>th</sup> August 2017:

*“I, ALVIN MARK LINDLEY, OF FIRST FLOOR OFFICES, WIMBERLEY PARK, KNAPP LANE, BRIMSCOMBE, STROUD, GLOUCESTERSHIRE GL5 2TH DO SOLEMNLY AND SINCERELY DECLARE THAT:*

*1. I acquired the land to the south of Rixon Farm, Ashton Keynes, Wiltshire as more particularly described in the title plan WT265791 and referred to in AS LAKE 82 from Aggregate Industries UK Ltd at Public Auction on the 12<sup>th</sup> March 2015. The property was widely advertised and I understand many people from the local area requested particulars. I enclose a plan (Exhibit AL1) which was attached to the sale particulars which depicts the Public footpaths recorded on the Definitive Map and Statement at that time. I do not believe that there were any objections and or representations made to the either Aggregate Industries or the Agents Knight Frank either prior to the Auction or at the time of the Auction that*



*there were any concerns and or objections to the locations of PROW. In response to Standard Enquiries of a Local Authority a response dated 16<sup>th</sup> February 2015 was received from Wiltshire Council under reference N14/02788 and Highways reference N/06713 Public Rights of Way were described within answer 5.1 (Exhibit AL2) that is, Public Footpaths 19, 20 and 21 and Bridleway 38 (although I believe to be a mistype and should read 37) as further illustrated in the plan supplied (Exhibit AL3). There is no indication that there was any other recorded PROW's crossing the application site, despite the assertions of a number of the supporting statements accompanying the application.*

*Planning permission for the extraction of sand and gravel from the Land at Cleaveland Farm (incorporating the Rixon Land) and surrounding area was granted by Wiltshire County Council dated 26<sup>th</sup> March 1992 under reference N/89/2844 This permission also permitted the importation of limited inert infill (construction and demolition waste) to form new landscaped lake margins. Restoration was completed in 2004, with official confirmation of such detailed under a letter from the LPA dated 04/01/05. The planning permission has now therefore been fully complied with. Footpath 20 crossed the land as depicted on the attached plan (Exhibit AL4) and was formally stopped up on 20<sup>th</sup> November 1996 despite being shown as 25 October 1995. This was replaced with a new Footpath 20 to the south, although this was closed to the public during excavation and reinstatement; In detail, I understand that the original footpath no.20 Ashton Keynes was by a public path order (PPO) stopped up on 20<sup>th</sup> November 1996 and confirmed on 8<sup>th</sup> January 1997. The Definitive Map Modification Order (DMMO) followed on from the PPO, being made on 13<sup>th</sup> August 1997 amending the definitive map and statement of public rights of way to record the legal event changes as set out in the earlier PPO. Although in documentation to and from Aggregate Industries Wiltshire County Council Alan Harbour of 2<sup>nd</sup> March 2004 there is provided a plan which has reference to Footpath 21 and Footpath 20 both*

*being stopped up on 25<sup>th</sup> October 1995. It is important to mention this to bring clarity to the sworn declarations of Robert Westall, Aggregate Industries.*

*2. A statement in support of the proposed route has been submitted by a Michael Seymour (Exhibit AL5), stating among other matters that his family had owned the land in the past. I refer to (Exhibit AL6), being an extract of the sale conveyance dated 30<sup>th</sup> September 1974 upon which the original FP 20 is depicted upon the plans. This is to the south of the application site and was formally stopped up by application on 20<sup>th</sup> November 1996. A meeting was held on the 6<sup>th</sup> August 2014 between Tony Hudson, Estates Manager Aggregates Industries and Michael Seymour in his capacity as representative of Ashton Keynes Parish Council. An email (Exhibit AL7) was sent on the same day timed at 3.02 confirming the basis of the discussion and making it absolutely clear that the footpath now referred to in the Parish Council's application on the northern side of the lake was a permissive right of way. The Parish Council acknowledged that the footpath now subject to the current application was a permissive right of way and put forward their desire that the existing Footpath 20 being stopped up and the permissive footpath adopted as a public right of way. I am concerned that in the light of this knowledge; the Parish Council were aware that the footpath was permissive created in 2004, the Parish Council wished to have existing FP20 stopped up and for permissive right to be formally dedicated as a Public Right of Way, Michael Seymour was party to all information, that the Parish Council has made the application and encouraged others to put in user evidence forms which I comment on later in this statement. I consider it important that you are aware of these facts before making a decision.*

*3. There are several claims that the permissive right of way has been used for a period far in excess of when the fencing was erected in 2004. I*

*believe that their memory is confused with the original Footpath 20 stopped up in 1996. The footpath, as did the permissive footpath, crosses the land in a similar zig zag way meeting Rixon Gate in a similar position.*

*Further the attached photograph (Exhibit AL8) depicts the water filled quarry in June 1999. It is clear that during excavation and subsequent infill that the application footpath was not in existence, public access was not permitted due to the land being used as a quarry, nor as a consequence of the excavations and works to which not one of the statements refers would enable such access.*

*4. I have analysed the statements supplied by Rights of Way Wiltshire Council of those users supporting the application (Exhibit AL9).*

*Whilst I understand that the relevant period of use is an uninterrupted period of 20 years, out of the 35 representations there are four representations claiming over 15 years uninterrupted use. These are ref 3,6,33 and 34 of these ref 3 and 34 follow alternative routes to the application route and in any event all the statements include periods when the extraction and restoration was being undertaken, access was not physically possible. Further the fenced permissive route was not established until earliest 2004. It can only be concluded that these statements, either do not support the route as applied for, are inaccurate to the dates of use and should therefore be disregarded. There were ten statements supporting a use in excess of 20 years ref 8,12,14,17,21,22,26,27,31 and 32. One ref 14 does not show a route and should be disregarded for this reason alone. Statement ref 8,12,17 and 31 all refer to the route being moved north, the original footpath was south of the application site and once permanently closed in 1196 [1996] was moved further South. The users could not have utilised the footpaths during excavation and reinstatement and could only have walked the northern permissive right from 2004. All these statements should be*

*disregarded as clearly, they accept they have not walked the application during the period they state, either as it was in a different location, that is the original FP20 and or it was not possible until 2004. Statements ref 21 and 22 require the date of commencement confirming, however they do not support the application route neither do users 26 and 32. In any event the routes suggested again were not available until 2004. For these reasons, these statements should also be disregarded.*

*All supporting statements are inaccurate as to precise facts, in that they fail to acknowledge that the whole area was inaccessible due to excavation works and restoration works during the period 1997 to 2004, there is confusion as to the route each one walked, despite the permissive right being fenced. In addition, the fenced application route was neither in the year prior to or during my ownership from the 12<sup>th</sup> March 2015 to the 13<sup>th</sup> May 2015 maintained when signs were taken down by Stephen Leonard Public Rights of Way Officer for Wiltshire Council while attending the land to determine the location of FP20 which was then subsequently fenced in accordance with his requirements. The access points to the permissive right of way were physically closed and wired up by the end of May 2015. Again, the majority of supporting statements that support the application route state that the individuals walked the route into and including 2016, which was not physically possible.*

*5. The applicant was requested by Wiltshire Council to provide a more clear and detailed map as substitute for the application map (Exhibit AL10) to accompany and provide clarification to the application, despite several requests they have failed to do so. As the application lacks detail, it should be disregarded. The fenced route is shown on (Exhibit AL11) as can be seen from the aerial plan from 2006, although reference for FP 19, clearly shows the walked route which differs substantially from the application plan and majority of supporting statement plans.*

6. A plan showing the extent of the Property edged in red is annexed to this declaration and marked (Exhibit AL12).

*In essence I do not consider that users have made out a prima facie case for the following reasons:-*

1. *It was physically impossible for the route to have been used when excavation and re-instatement was being undertaken*

2. *The user evidence is not reliable for the reasons set out above.*

*I would respectfully suggest that the Council should not proceed to make a modification order and I make this statement believing the same to be true.”*

- Peter Gallagher, Footpaths and Walking Environment Officer Ramblers Swindon and North East Wiltshire Group – Correspondence dated 14<sup>th</sup> June 2017:

*“I understand that some Ramblers members have used this footpath and I have asked them to contact you direct with any evidence of use which they may have.*

*I would draw to your attention that the leisure map published by the Cotswold Water Park Trust has shown this footpath as a public right of way since 2010 and continues to do so in the 2017 edition. A copy of the 2014 edition is enclosed. Note that permissive paths are shown in a different colour.*

*In addition, in recent years an official Wiltshire Council “public footpath” waymark was sited at the junction of the footpath with the Thames Path, pointing along the footpath in an easterly direction. It is therefore likely that the path will have been well used.”*

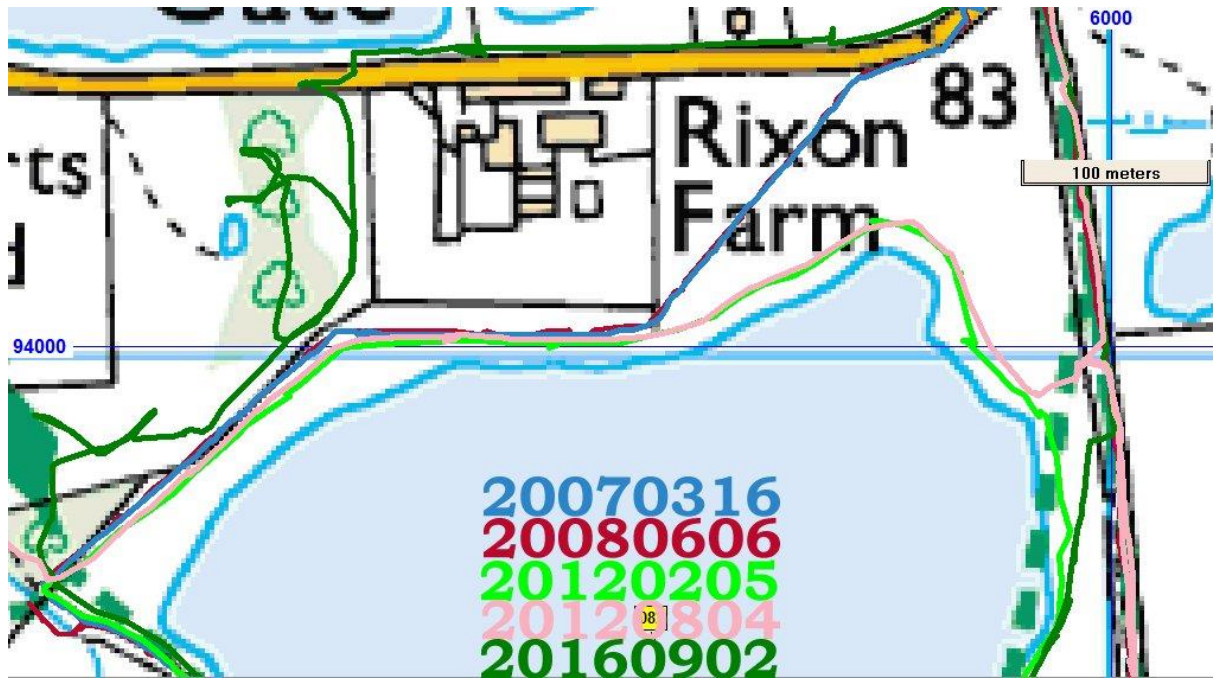


Cotswold Water Park Leisure Map

- Mr Richard Gosnell – E-mail correspondence dated 4<sup>th</sup> June 2017:

*“Referring to the Ashton Keynes footpath by lake 82, email from Peter Gallagher, I attach a map showing coloured lines representing GPS tracks of walks we have done on the tow paths discussed. It shows we walked the path beside Rixon Gate farm twice (brown and blue tracks) and walked along the lake edge (light green and pink). The 2007 and 2008 walks were probably within the twin fence line. We walked the Rixon Gate route on some unrecorded journeys.*

*The GPS data is also available as “tracklogs” or GPX files if required.”*



7.5. Where the claimed route links with Footpath no.19 Ashton Keynes, which forms part of the Thames Path, Natural England were consulted regarding the proposals as required by *The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12)*, but no representations were made by them.

## 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 those 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 1993 Regulations, 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 Ashton Keynes, has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:1,500 and 34 completed witness evidence forms.
- 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 1<sup>st</sup> 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 1** to this report.
- 9.2. The route as claimed is not recorded on historical documents examined. The Leigh Inclosure Award dated 1767, and the Ashton Keynes Inclosure Award dated 1778, would normally be significant evidence where these documents arise from Acts of Parliament which gave the Inclosure Commissioners powers to set out highways both public and private, within the parish, including public footways. However, there are no maps included with these

awards and it is not possible to determine whether or not the claimed route was set out as a public footway. The Victoria County History suggests that the area in question may not even form part of these inclosure awards, where some of Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixonn at the east of the parish. Neither is the claimed route recorded on mapping post-inclosure. The parish claim map which arises from the National Parks and Access to the Countryside Act 1949 includes the former route of Footpath no.20 Ashton Keynes, (formally stopped up by order in 1996), rather than the application route.

- 9.3. Ordnance Survey (OS) maps, do not record the application route. OS maps prior to 1900, i.e. the 1885 6" map and the 1886 25" map, record a route further east of the application route, which does not accord with the former route of Footpath no.20 and after 1900, the 25" OS maps record the route of the former Footpath no.20, prior to its stopping up in 1996. On these two maps it can be seen that the claimed route and the former route of Footpath no.20 share a northern entry point onto Fridays Ham Lane at Rixon Gate, but they do not follow the same alignment, Footpath no.20 leading south to the Thames Path (path no.19 Ashton Keyes), over land which is now submerged as part of Lake 82.
- 9.4. There is not sufficient documentary evidence to support the existence of public rights over the claimed route at Rixon Gate, Ashton Keynes. However, this does not mean that public rights over the application 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 34 witness evidence forms with maps attached. A landowner evidence form has been submitted by the landowner Mr Alvin Lindley, with Exhibits attached. Mr Robert Westell, Senior Estates

Manager, Aggregate Industries UK Ltd, has also submitted a Statutory Declaration.

- 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 Ashton Keynes case witnesses claim to have ceased their user, as follows:

<b>Date of cessation of user</b>	<b>Number of users</b>
Present day	6
2016	21
2016 when it was closed off	1
Present 2016 until closure	1
Early 2016	1
Feb 2016	1
2015	2
2014	1
2012	1

10.7. 17 witnesses refer to the closure of the route when it was fenced off and no longer possible for users to walk the claimed route:

<b>Witness</b>	<b>Date form completed</b>	<b>Comments regarding cessation of use</b>
1	16/07/16	<i>“The new landowner has recently blocked off all access to the northern side of the lake (including the fenced in route detailed above)...”</i>
2	19/07/16	<i>“Last few weeks new owner has blocked path at both ends.”</i>

4	03/08/13	<i>"Footpath now closed up with dyke and barbed wire fence."</i> (Officers consider date of completion of the form is given as 2013 in error and it should read 2016, where the witness claims use of the path ending in 2016).
5	03/08/16	<i>"Footpath has been closed with fencing and barbed wire – Dyke has also been dug."</i>
9	13/08/16	<i>"Summer 2016 – access at Rixon Gate blocked with barbed wire."</i>
10	16/08/16	<i>"Fencing has been erected to prevent entry to the previous route."</i>
11	11/07/16	<i>"Swing gate Friday Ham Lane end now wired up. Barbed wire."</i>
16	18/07/16	<i>"Barbed wire and earth bank...Within the last 3 months...Gate, locked and barbed wired."</i>
20	07/07/16	<i>"Earlier this year the gate at the end was padlocked and barbed wire fencing put across. The west end gate is still there but a fence with 3 rows of barbed wire has been erected (see map) and a ditch dug preventing access."</i>  Photographs provided of the <i>"Deep ditch and barbed wire fence preventing access to path"</i> and <i>"Gate at east end of path clearly blocked by barbed wire which is directly next to a public road."</i>
21	06/07/16	Confirms that use ended in May 2016, when the path was blocked – <i>"Path now blocked by a barbed wire fence and 5ft deep trench...the landowner has now dug a 5ft deep moat/trench and blocked the path with a dangerous triple strand barbed wire fence."</i>
23		Confirms that the path is now <i>"totally blocked by fence."</i>
24	23/07/16	<i>"Barriers have been erected ahead of new building work; including barring gate to main footpath to Rixon Gate...Now no longer possible to walk circuit of lake or join the main footpath to Rixon Gate."</i>
25	30/07/16	<i>"ditch and fence installed".</i>
30	08/08/16	<i>"Footpath now locked up with dyke and barbed wire fence."</i>
32	06/08/16	<i>"New owners have put barriers in place/ditch this year 2016 preventing use of previously established and well used footpath circling the lake on the northern side...Now manmade ditch and barbed wire fencing preventing access north side of lake...New owners of Rixon Farm have made access impossible to north side"</i>



		<i>of lake...Ditch/barriers just appeared! Preventing usage...Ditch/barriers clearly prevent access now."</i>
33	03/08/16	Confirms use from 2014 until <i>"Present 2016 until closure."</i>
34	04/08/16	Confirms use of the path from November 2014 until <i>"2016 when it was closed off...Access to the path around the lake have been fenced off with barbed wire."</i>

10.8. There is clear witness evidence of the closure of the claimed route in 2016, with fencing, barbed wire and a ditch, bringing the public right to use the way into question. The evidence of witnesses accords with that of the landowner Mr A Lindley who claims that when the location of Footpath no.20 was determined and fenced, the access points onto the claimed path *"...were physically closed and wired up..."* However, whilst the witnesses claim that the path was closed to the public around early summer 2016, Mr Lindley claims that action to close the path was taken by the end of May 2015 and that *"all supporting statements are inaccurate as to precise facts..."* and *"...statements that support the application route state that the individuals walked the route into and including 2016, which was not physically possible."* Mr Lindley claims that the path was closed when the route of Footpath no.20 was fenced and the Wiltshire Council Rights of Way Warden for the area was consulted and attended the site at this time, removing way markers from the claimed path at the same time.

10.9. The Rights of Way Warden for the area, Mr Stephen Leonard states: *"...my first meeting was on 13<sup>th</sup> May 2015 and I think that I removed the sign post on the claimed route then as well as some waymarkers. My next meeting was on the 26<sup>th</sup> November 2015 and I cannot recall what was discussed at the meeting but it could [to] [have been] about providing the definitive line of the ground."*

10.10. Whilst this supports the landowners recollection, the date of May 2015 is not supported by witnesses. In an e-mail to Wiltshire Council Customer Services at 09:12 on 30<sup>th</sup> April 2016, Mr R Nesbit writes:

*“This is a follow up message following two phone calls from myself yesterday to Wiltshire Council.*

*It relates to the closure of a public footpath between the Thames footpath and Rixon Gate just south of Ashton Keynes. It lies between lake 83 in the Clevedon lakes and the sports grounds at Ashton Keynes. [Officers consider this to be a reference to Lake 82 rather than Lake 83].*

*Most of the posts and all of the wire marking the footpath have been taken down and the access gate at the Rixon gate end has been barbed wired up. The barbed wire was put up yesterday afternoon (Friday 29 April). I had used the path in the morning but it was closed when I returned at about 3:30pm. I did actually cut myself on the wire but that can wait to a later time. No notice was placed to advise of closure and I understand this is quite illegal though that might be subject to further action at a later date.*

*I rang the Council at about 9am to advise of the path being removed and again at about 3:30pm when I noticed the barbed wire. I was put through to the department following my morning call but I only got the answerphone. I left a message (and phone number) for someone to call back but no-one did.*

*In the afternoon I spoke to Matthew who advised he would get someone to look into it.*

*I have also been in contact with the Ramblers Society who are appointing a representative for the case.*

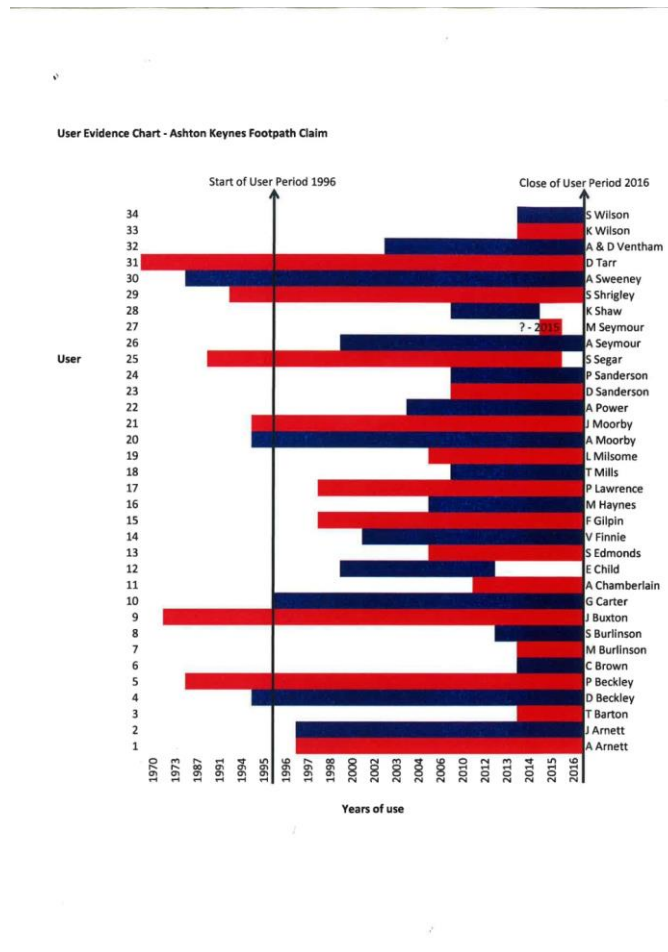
*I understand that the owner of the land through which this path lies has applied for planning permission to build. I do however believe that the owner has no rights to arbitrarily close a public footpath and don't want to believe that Wiltshire Council would provide the authority for the owner to do so. I draw your attention to the Highways Legislation regarding Public Footpaths. To avoid confusion the path allows walkers to walk between the Thames Path (running between lakes 82 and 83) to Rixon Gate. To do so now I would have to use a public highway with no footpath."*

10.11. Rights of Way Officers, Definitive Mapping Team, were consulted by the landowner Mr Lindley regarding the location of Footpath no.19 and Bridleway no.38 Ashton Keynes on 18<sup>th</sup> April 2016, for the purposes of fencing these routes. Definitive Map Officers, provided a response regarding the location of the paths to the Rights of Way Warden for the area on 22<sup>nd</sup> April 2016, following which it is understood that the Rights of Way Warden visited the site to advise on fencing the definitive lines. If the landowner is correct that access to the claimed route was fenced off at the same time the routes of the definitive Footpath 19 and Bridleway 38 were fenced, it would be possible to walk the claimed route until 30<sup>th</sup> April 2016, as evidence by Mr Nesbit above, who walked the footpath on the day it was closed and complained to the Council about the closure at this time. If the landowner did take action to close the path by the close of May 2015, it does not appear to have been sufficient to prevent use by the public or bring home to users that their right to use the path was being challenged. The user evidence does not support the closure of the path in 2015 and the public continued to use the route until April 2016. If the path had been closed in 2015, Officers would expect the definitive map modification order application to be received sooner, given the local interest in the path. As Mr J Arnett states in his evidence form: *"Path has been in use by villagers for over 20 years. It is signed as Wilts County Footpath, so everyone assumed it was a protected right of way, or would have applied earlier."*

10.12. Additionally, at around the same time the claimed footpath was closed to the public, the new landowner Mr Alvin Lindley, completed a “Form CA16” which is an “Application Form for deposits under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006”, on 28<sup>th</sup> April 2016. The deposition of this form with Wiltshire Council, with a map of all the public rights of way which the landowner acknowledges to exist over the land in their ownership, serves to negate the landowner’s intention to dedicate further public rights of way over the land, thereby bringing public use of the way into question. Therefore, additional public rights of way cannot be based on 20 years public user after that date, nor does it prevent a claim based on 20 years user prior to that date. In order to be effective, the landowner should submit a statutory declaration at the same time as the initial form CA16, and then at 20 year intervals after that, to continue the effect of the non-intention to dedicate. In this case the landowner has not submitted a statutory declaration with the map and statement, which cannot be relied upon alone to negate the landowners intention. However, in this case, the CA16 form is submitted on 28<sup>th</sup> April, just before the closure of the public on 30<sup>th</sup> April 2016, (as evidenced by Mr R Nesbit), and where these dates coincide, the user period in question can therefore be calculated retrospectively from April 1996 – April 2016.

### **Twenty Year User**

10.13. Please see chart below which shows the dates and level of user outlined within the 34 witness evidence forms:



10.14. For the user period in question, i.e. 1996 – 2016, of the 34 user evidence forms submitted, (Mr and Mrs Ventham have completed a witness evidence form jointly and are counted as one), all witnesses claim to have used a route around Lake 82, Ashton Keynes during this time period, although 3 of these witnesses have not used any part of the claimed route, or not recorded a route in their witness evidence map. 9 of these witnesses claim to have used the route for the full period of 20 years 1996 – 2016, although one of these witnesses has not indicated the route which they have used in their witness evidence form. The routes which witnesses have used in the vicinity of Lake 82, vary and are examined in more detail at paragraphs 10.48–10.58).

10.15. In addition to their own use, 33 witnesses refer to seeing others using a route around Lake 82 during their period of user, and comment as follows:

User	Others path users seen	Comments
1	Yes	Have regularly seen at least one other person using the route and many times have seen several others.
2	Yes	Regularly meet people.
3	No	
4	Yes	Walkers (usually with dogs).
5	Yes	Regular route for dog walkers and general public – Very well used!!
6	Yes	Several people every walk.
7	Yes	Walking.
8	Yes	Occasional dog walkers.
9	Yes	Lots of village people and visitors use this path. It is a safe route for families with children, especially the section following the route (roughly parallel with Rixon Gate). This latter point has been a crucial safety issue for me walking this path as a child and now with my child. We also use this route for watching wildlife. Earlier this year a rare bird (Great Northern Diver) was resident on the lake (2016). Many wildlife enthusiasts and visitors came to see this. Over the years there have been similar events. In the past 1990's – 2002 rare Plovers bred here. Wildlife enthusiasts could observe safely from this path.
10	Yes	Local dog walkers.
11	Yes	Walking.
12	Yes	Walkers.
13	Yes	Lots of people walk their dogs around it.
14	Yes	A community of regular walkers mostly from local area, but some from other areas arrive by car (either parking in Waterhay, Fridays Ham Lane or in Ashton).
15	Yes	Used extensively by the likes of Ramblers and walkers, but most use by people of local towns, villages, i.e. Ashton Keynes and from Cricklade via Waterhay Car Park.
16	Yes	
17	Yes	Other walkers.
18	Yes	People regularly walking their dogs or running.
19	Yes	On most occasions when I used this route.
20	Yes	Frequently.
21	Yes	Other people walking dogs, trekking etc. from Waterhay car park and the village of Ashton Keynes.
22	Yes	
23	Yes	Every time I have walked this path I have always met other walkers/dog walkers. Also often used by Thames Path walkers.

24	Yes	The route is used regularly by walkers (usually with dogs), birdwatchers.
25	Yes	Historically used by dog walkers and local residents of the village.
26	Yes	All the time for walking.
27	Yes	Many times – walking.
28	Yes	Walking and walking their dog.
29	Yes	Many walkers with and without dogs over this period.
30	Yes	Village walkers.
31	Yes	Many people use the path as it's a good point to watch the lake wild fowl and birds in trees.
32	Yes	Always, Ramblers, people walking their dogs, people watching birds, the odd fisherman too.
33	Yes	The route is (was) used regularly for personal exercise and residents walking their dogs and by visitors to the area.
34	Yes	Many villagers use the route around the lake regularly.

10.16. 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.”*

10.17. The majority of witnesses are resident of Ashton Keynes, (one user, Mr C Brown, lives in Cricklade and 2 user evidence forms have address information removed), 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.”*

10.18. Officers conclude that on the face of it 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 1996 – 2016, was sufficient to bring home to the landowners that a right for the public was being asserted against them. The routes which the public have used are considered later in this report.

### **As of Right**

10.19. 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**

10.20. In the Planning Inspectorate publication “Definitive Map Orders: Consistency Guidelines”, it states that *“Force would include the breaking of locks, cutting or wire or passing over, through or around an intentional blockage such as a locked gate.”*



10.21. From the evidence provided in the Ashton Keynes case, it would appear that users did not use force to enter the land over which the claimed route passes, where a fenced route with gates, was provided. 11 witnesses confirm that there were two gates in place, one at each end of the claimed route. Mr J Arnett and Mr J Moorby confirm that these were kissing gates whilst other users simply refer to these as “gates”. Mr D Buckley refers to a kissing gate at the northern end and Mr A Chamberlain refers to a swing gate at the Fridays Ham Lane end. Mr P Beckley, Mr S Segar, Mrs A Sweeney and Mr and Mrs Ventham refer to a kissing gate or lytch/swing gate at the western end. Mr C Brown, Mr F Gilpin, Mrs D Sanderson and Mr P Sanderson refer to a gate at the western end. 2 witnesses refer simply to a gate, but give no indication of the location of this gate. Mrs J Buxton and Mr D Tarr confirm that there were stiles at each end of the path.

10.22. The witness evidence suggests that these gates were not locked and these features were added approximately 20/30 years ago when the path was moved. The existence of the southern gate is supported by the Cotswold Water Park Leisure Map, which records the claimed route, (2014, 2016 and undated c.2017 (Cotswold Water Park Walking and Cycling Map) editions), as a footpath with one stile/kissing gate/bridge/steps at the southern end of the claimed route, at its junction with Footpath no.19 Ashton Keynes, (Thames Path). Additionally, kissing gates remain in place at either end the path, (i.e. at the junction with the Thames Path and at Rixon Gate), although they have been wired shut, and the remnants of the fencing may be seen at each end. This supports the evidence given by 11 witnesses who refer to two gates.

10.23. There is no evidence that the route was blocked until 2016, as Mr and Mrs Ventham advise: *“New owners have put barriers in place/ditch this year 2016 preventing use of previously established and well used footpath circling the lake on the northern side.”* Mrs Moorby states: *“Earlier this year [user evidence form completed 7<sup>th</sup> July 2016] the Gate at the East end was padlocked and barbed wire put across. The West end Gate is still there bit a*

*fence with 3 rows of barbed wire has been erected...and a ditch dug preventing access.*” Therefore there was no requirement for users to enter the route by force, prior to 2016.

10.24. 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.”*

10.25. In the Ashton Keynes 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 and a ditch in 2016 and therefore use is not deemed contentious. In his letter dated 14<sup>th</sup> June 2017, the local Ramblers representative states *“...in recent years an official Wiltshire Council “public footpath” waymark was sited at the junction of this footpath with the Thames Path, pointing along the footpath in an easterly direction. It is therefore likely that the path will have been well used.”* 13 witnesses refer to Wiltshire County Council waymarking discs present on the entrances to the claimed route. There is photographic evidence of these waymarkers provided by Mr J Arnett, P Lawrence and Mrs A Moorby. The photographs provided by P Lawrence clearly show a waymarking disc with a yellow arrow, which states:

*“WILTSHIRE COUNTY COUNCIL  
PUBLIC FOOTPATH”*

10.26. Ms Lawrence has also provided photographs of these waymarking discs in-situ on the claimed route, i.e. on the kissing gate and fence at the junction of the claimed route with the Thames Path, (please see photographs below).



10.27. The locations for these photographs can be identified and referenced to the kissing gate and fencing which remains on site at the southern end of the claimed route, (please see photographs at 5 taken by Officers on a site visit in January 2018). The photographic evidence provided by Ms Lawrence is supported by the photographic evidence provided by Mr Arnett and Mrs

Moorby, (different photographs taken at the same locations), showing the waymarks in-situ. In a previous e-mail dated 25<sup>th</sup> November 2015, to Mr Seymour of Ashton Keynes Parish Council, Mrs Veronica Hourihane submits similar photographs of the route, with waymarks in-situ at the southern end. She states *“Please find attached the pictures I took this morning which show that the footpath in question had been identified by Wiltshire Council as a public footpath.”* The landowner states that the footpath was closed by the end of May 2015, however the photographs show that it was still signed as a footpath and the gate at the southern end was still available in November 2015.

10.28. Ms Lawrence has also provided a photograph at the same location after the waymarks have been removed, showing the circular outline of the disc. These photographs are referred to as being taken *“recently”*, in a letter from Ms Lawrence dated 19<sup>th</sup> February 2018, (please see below):



10.29. Additionally, Mrs Moorby and Mrs Hourihane have provided photographs of a waymarking disc now removed or detached, at the northern end of the path. This can be dated from Mrs Hourihane's photograph with her e-mail to Mr Mike Seymour dated 25<sup>th</sup> November 2015, in which she states, *“Please find*

*attached the pictures which I took this morning...The sign at the Rixon Gate “entrance” has been badly damaged, but there is evidence that a similar signage to that from the Thames Path had been placed there at some point.”*

The waymarking sign at the northern end was removed before November 2015, which accords with the Rights of Way Warden’s recollection that he had a first meeting on site with the landowner Mr A Lindley on 13<sup>th</sup> May 2015 and believes that he removed the signpost from the claimed route, as well as some way markers, at this time. The photograph shows that this end of the path is somewhat overgrown by November 2015, but the gate is not wired shut and closed to the public at this time.



*Photograph taken by Mrs V Hourihane, dated 25<sup>th</sup> November 2015, showing damaged sign at Rixon Gate end. The gate is overgrown, but is not wired shut at this time.*

10.30. Mrs Moorby photographed the same area in July 2016, (please see photograph attached below). The gate is now wired shut and the remnants of the waymarking disc are still visible. On a site visit in January 2018, Officers also photographed the same, (see photograph attached below). Although there are no photographs provided in evidence of a waymarking disc in-situ at this location, the photographs suggest a circular sign which gives an indication that there was a waymarking disc present at this end of the path, which supports the witness evidence.



Gate at East End of path clearly blocked by barbed wire which is directly next to a public road.

*Photograph and comments from Mrs A Moorby – the kissing gate at the eastern end of the path, now wired shut (photographs provided with witness evidence form dated 7<sup>th</sup> July 2016), and waymarker disc “now removed or fallen off”.*



*The Rixon Gate end of the claimed route, former kissing gate access, now wired shut, with remnants of waymarking disc. Photograph taken by Janice Green, Rights of Way Officer, January 2018.*

10.31. Mrs A Arnett refers to a redundant warning sign relating to gravel extraction work by the gate at the end of the route, (still present), however, no further evidence of the wording of these signs is provided and they are not referred to by other witnesses, therefore user of the claimed route is not considered to be user by force in this regard.

**Without Secrecy**

10.32. It would appear that witnesses used the route in an open manner:

<b>Witness</b>	<b>Has anyone ever told you the application route was not public (including by an owner, tenant of the land or by anyone in their employment)</b>	<b>Have you ever been stopped or turned back when using the application route</b>	<b>Has anyone else ever told you that they were prevented from using the application route</b>
1	No	No	No
2	Yes – Last few weeks, new owner	Yes – Last few weeks, new owner	Yes – only last few weeks by new landowner
3	No	No	Yes – A friend was told off

			by the present owner
4	No	No	No
5	No	No	No
6	No	No	No
7	No	No	No
8	No	No	No
9	No	Yes – Summer 2016 – Access at Rixon Gate blocked with barbed wire	Yes – Other walkers – Summer 2016
10	No		Yes – Fellow local dog walkers
11 (Old style witness evidence form)	<b>Do you believe the owner or occupier was aware of the public using the way?</b> You would assume so but have never spoke to anyone so I don't know		
12 (Old style witness evidence form)	<b>Do you believe the owner or occupier was aware of the public using the way?</b> Yes		
13	No	No	No
14	No	No	No
15	No	No	No
16	No	No	Yes – A fellow dog walker – not previously stopped
17	No	No	No
18	No	No	No
19	No	No	No
20 (Old style witness evidence form)	I talked to a man who said he was from the Council who said this path was only 'permissive'. I do not believe this is the case. The Cotswold Leisure map marks this path and labels it as 'footpath' see enclosed, as do Wilts CC discs. <b>Do you believe the</b>		

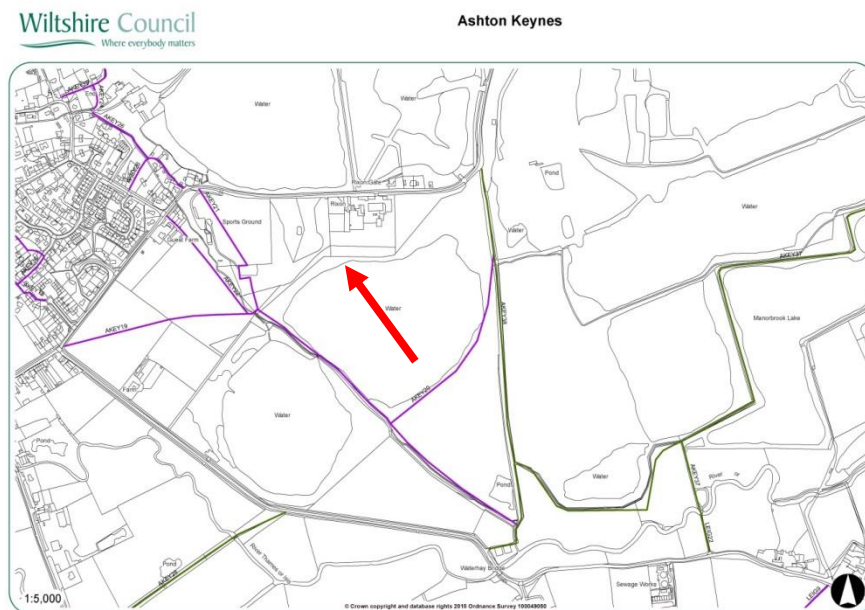


	<p><b>owner/occupier was aware of the public using the way?</b></p> <p>Yes – I believe the gentleman with the man from the Council mentioned above was the owner and so privy to this conversation. He was also present at a public meeting about the proposed development of this land and so assume he is aware. Also enclosure of an old path at the south side of lake 82 by an aggressive fence with 3 rows of barbed wire, implies that the owner has locked in paths across his land.</p>		
21 (Old style witness evidence form)	<p><b>Do you believe the owner or occupier was aware of the public using the way?</b></p> <p>Yes – His actions since the purchase of the land, the route marked on the Cotswold Water Park Leisure Map. The reinstatement of the old path (now through a bog) on reclaimed land the southern route is dangerous, was not used due to ground condition and rerouted in the 1990's as the land cleared, dug up and used for gravel extraction for a number of years. The restored land is now waterlogged for most of the year and unsuitable for walking without waders.</p>		
22	No	No	No
23	No	No	Yes – this has only happened in last 6 months. Dog walkers using the path

			told by landlord or representative
24	No	No	Yes – During the last month I have been told that walkers have been told they could no longer use the route
25	No	No	No
26 (Old style witness evidence form)	<b>Do you believe the owner or occupier was aware of the public using the way?</b> There has never been any notice put up saying it is not a footpath. It is a footpath used well.		
27 (Old style witness evidence form)	<b>Do you believe the owner or occupier was aware of the public using the way?</b> Yes – Because it was a F/P and no notices have ever been put up to say anything different		
28 (Old style witness evidence form)	<b>Do you believe the owner or occupier was aware of the public using the way?</b> The fence was pushed down then moved aside plus the footpath was well defined it had been well used and trodden down		
29	No	No	No
30	No	No	No
31	No	No	No – Only very recently when action was taken to close the path
32	No – Ditch/Barriers just appeared! Preventing usage	No – Not by a person but Ditch/Barriers clearly prevented access now	Yes – Common knowledge in the village that has been recently changed to prevent use of public footpath since new owners of Rixon Farm 2016 have taken ownership

33	No reply		
34	No reply		

10.33. Ms J Buxton states that this path is on the “Definition Map” for this area and Mr D Tarr confirms that the path is marked on the Definitive map for the area (Wiltshire Council website). The claimed route is not recorded on the definitive map and statement as a public right of way, which would make landowners aware of the existence of a public right of way and the need to make the path open and available for public use, please see extract below (working copy):



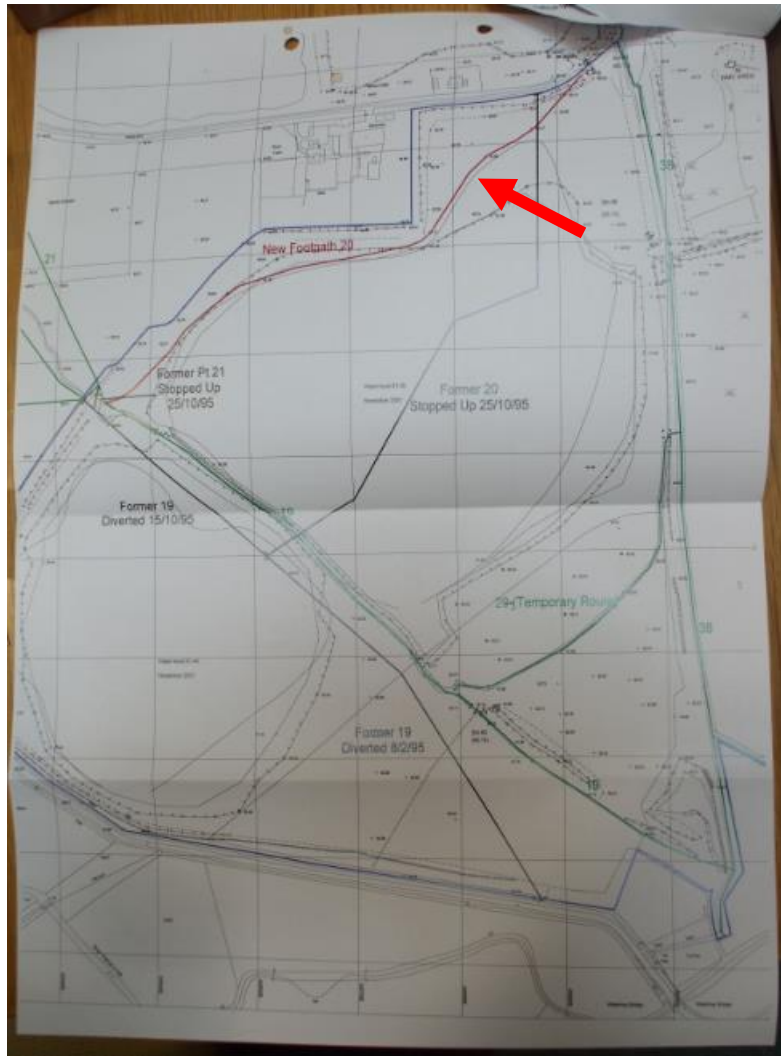
10.34. However, the route is recorded within the Cotswold Water Park Leisure Map, see 2014 edition at 7.4., which may have brought the path to the attention of the landowners, (the path is also included in the 2016 edition of this map). Mr Peter Gallagher on behalf of the Ramblers, states that this path has appeared as a public right of way in this document since 2010 and continues to be shown in the 2017 edition. “Permissive Paths”, which are open to the public only at the discretion of the landowners, are shown in yellow on these maps where “Footpaths” are shown in red, as the application route is. Although the objector contends that the path is “permissive”, this document does not support this view and additionally, there is evidence that the application route was provided as a fenced route which was waymarked as a public right of

way. It would appear that the present landowner was aware of use of the path by the public, in order to allow him to challenge that user, as evidenced by witnesses and take action to close the path, although his period of ownership commences in 2015 only.

10.35. The witnesses do not mention whether or not the previous landowners Aggregate Industries UK Ltd were aware of public use of the path, however Officers believe that the fenced path with kissing gates and Wiltshire County Council waymarkers, was installed during their period of ownership and they would have been aware of public use of the path. In correspondence to Mr A Harbour, Rights of Way Officer at Wiltshire Council, dated 18<sup>th</sup> February 2004, Mr R N Westall, Estates Surveyor for Aggregate Industries UK Ltd, states:

*“FOOTPATH No.20, RIXON LAKES, ASHTON KEYNES, WILTSHIRE  
In 1995, this Company diverted the original footpath 20 to an alternative route (dark green on the attached plan), while sand and gravel extraction was being carried out. The diversion route was a temporary measure until a new path could be created around the northern and western margins of the newly created lake. I write to inform you that the new footpath 20 (red in the attached plan) has now been installed and is connected to Fridays Ham Lane and the Thames Path (footpath 19).*

*I understand from historical correspondence held on our files that we now need to formally dedicate the new route, replacing the temporary diversion route. Could you please advise how this may be dealt with and furnish me with any forms, which need to be completed.”*



*The plan included with the letter from Aggregate Industries, shows the fenced and gated path provided by Aggregate Industries, in red, as referred to in the letter, (the claimed route), intended to be an alternative route for Footpath no.20.*

10.36. The letter suggests that Aggregate Industries UK Ltd, as the previous landowners, installed the path and were aware of public user. If the previous landowner had wished to challenge public user, it was not required to make the claimed route available. The action of installing the fenced, waymarked route with kissing gate access, is against a non-intention to dedicate public rights over their land and appears to dedicate the route. There is no evidence that the previous landowners took any action to challenge this user.

10.37. In evidence “*Statutory Declaration of Robert Nigel Westell Relating to Land to the South of Rixon Farm, Ashton Keynes, Wiltshire as More Particularly Described in Title Plan WT265791*”, Mr Westell confirms that he has been employed by Aggregate Industries UK since June 1999, as Estates Surveyor and from the commencement of his employment to November 2008, he was involved with and latterly managed the landholding at Cleveland Farm Quarry, Ashton Keynes, (the claimed route being installed in 2004). He visited the site on average twice a month for various purposes including site meetings with internal and external stakeholders, site inspections and other community relations tasks. His knowledge of the site during that time was quite extensive. Since 2008, being promoted to Estates Manager for the South East of England, he ceased visiting the site regularly, but still periodically visits what remains of the company’s landholdings at Cleveland Farm.

10.38. The frequency of user was such that it should have been clear to the former landowners, Aggregate Industries UK Ltd, particularly where Mr Westell was visiting the site at least twice a month between 1999 and 2008, that the public were using the path and where Aggregate Industries installed a fenced path, with kissing gates and footpath waymarkers in 2004, given that many witnesses used the path daily or weekly:

	Daily	Weekly	Monthly	Every few months	Once a Year	Other
On foot	14	13	4	2	0	Most days 5 times per week Sometimes twice daily 3-4 times per week 3 times a week Twice a week Possibly 12 or more times per year About 4-5 time a year
On horseback	0	0	0	0	0	N/A
By pedal cycle	0	0	0	0	0	N/A

By car	0	0	0	0	0	N/A
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10.39. 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.”*

10.40. 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. The new landowner, Mr Alvin Lindley, challenged the public use upon taking ownership of the land, by removing and closing access to the gated and fenced route in 2016.

### **Without Permission**

10.41. Use “as of right” was discussed in the Town/Village Green Registration case of R (on the application of Barkas) v North Yorkshire County Council and Another, Supreme Court, 21<sup>st</sup> 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.”*

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

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

10.43. The landowner in evidence considers that the claimed route is a permissive path which was created in 2004 and submits evidence in support of this claim, in an e-mail from Tony Hudson, Estates Manager, Aggregate Industries (the landowners at that time), to Mr Michael Seymour of Ashton Keynes Parish Council, dated 6<sup>th</sup> August 2014, entitled “Rixon Lakes – Public Right of Way



*and Permissive Footpath*". The e-mail follows up a meeting between Mr Hudson and Mr Seymour earlier that day and the Ashton Keynes Parish Council request to have the fenced route formerly recorded as a public right of way as a new Footpath 20, with the stopping up of the former route of Footpath no.20 south of Lake 82. The claimed route is consistently referred to within this e-mail as the "*Permissive Path*". Mr Hudson states:

*"The original Footpath 20 was stopped up in 25/10/95 and diverted to the south of the main lake. In 2004 AI [Aggregate Industries] wrote to Wiltshire Council to seek clarification on the process for dedicating the New Footpath 20 (i.e. the current fenced permissive path) as the formal permanent footpath. WC responded in March 2004 and provided a plan illustrating the routes that they suggested needed to be stopped up in order for the New Footpath 20 to be adopted as the PROW. As I understand it, no such application forms were ever submitted. The fenced pathway is therefore classed as a permissive pathway only. I have checked this with both WC's online PROW mapping service and through liaison with Barbara Burke at WC. It is clear on the definitive maps that the Thames Path and Footpath 20 (to the south of the Lake) are the only two adopted RoW at the property.*

*You stated that the Parish Council would wish to see the fenced permissive pathway adopted as Footpath 20, with the current Footpath 20 bordering the southern margins of the lake stopped up altogether. If the property wasn't being marketed and AI had time to make such an application (and be sure of a successful outcome in time for any sale completion) then the company would be happy in principle to submit such an application. Unfortunately, time is not on our side and as such I cannot provide complete comfort to you as to a future purchaser's requirements or preference over a right of way."*

10.44. Although the claimed route, the fenced and waymarked path, is referred to within this e-mail as a "*permissive path*", the treatment of the footpath on the ground is not consistent with a "*permissive*" path, i.e. the inclusion of Wiltshire

County Council “*Public Footpath*” waymarking discs. If it was not the landowners intention to dedicate this route as a public right of way, there is no evidence that they erected permissive path notices on the path, or closed the path at any time, to bring to the attention of the public using the way, that their right to use the way was with the permission of the landowners which could be revoked at any time. Nor did Aggregate Industries at that time deposit with Wiltshire Council a statement and plan, with subsequent statutory declarations under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate public rights over the claimed path. As Mrs A Moorby states in evidence, “*permission is implied by the discs and local maps.*” Many of the witnesses consider that they did not need permission to use the path, where it was a public footpath and waymarked as such.

10.45. The witnesses provide the following evidence regarding permission:

<b>Witness</b>	<b>Have you ever had a private right to use the application route</b>	<b>Were you working for the owner or occupier of the land crossed by the application route at the time when you used it, or were you a tenant / licensee of any such owner?</b>	<b>Did the owner or occupier ever give you permission (or did you seek permission) to use the application route?</b>
1	No	No	No
2	No	No	No
3	No	No	No
4	No	No	No
5	No	No	No
6	No	No	No
7	No	No	No
8	No	No	No
9	No	No	No
10	No	No	No
11		No	No – Public Footpath
12		No	No
13	No	No	No
14	No	No	No

f15	No	No	No – No need as signs showed way to go as they do on footpaths. Little acorn type signs pointing the way.
16	No – Not needed – public right of way	No	No – Not needed
17	No	No	N/A
18	No	N/A	No
19	No	No	No
20		No	Not specifically, permission is implied by the discs and local maps
21		No	N/A
22	No	No	No
23	No	No	No
24	No	No	No
25	No	No	No
26		No	It is a footpath, a right of public way known and recorded as Footpath 20
27		Yes – My Grandfather owned the land. I lived with him and worked the land 1959-1963. I also worked for Aggregate Industries 1963 until retirement. No instructions given from them as to the use of the way by the public. Before Aggregate Industries owned the land it belonged to my Grandfather. When he died it was left to my uncle who sold it to Aggregate Industries.	The way is F/P 20. You have every right to walk it
28		No	No
29	No	No	No
30	No	No	No
31	No	No	No
32	No – was always simply a	N/A	No – no need when clearly

	public footpath as indicated by markers on wooden kissing gate		marked as a public footpath
33	No	No	
34		No	

10.46. Mr M Seymour (user 27) states that the land was previously owned by his grandfather and he himself worked the land between 1959 and 1963. Mr Seymour then worked for Aggregate Industries, the subsequent landowner from 1963 until his retirement. Although Mr Seymour gives no dates for the sale of the land or his retirement, the Victoria County History, (2011), (please see details at Appendix 1, Historical Evidence Summary), states that between 1920 and 1924 Rixon Farm was passed to Aubrey Seymour, who was succeeded by his son Arthur in 1967, who sold most of the farm to E H Bradley & Sons Ltd, (a Swindon based gravel working company), and 18 acres to Moreton C. Cullimore Gravels Ltd. in around 1970. Mr Seymour states only that he last used the route in December 2015 and does not give dates of when his user began. It is possible that for part of his user period, he was either working the land in the ownership of his grandfather or working for Aggregate Industries, which may be implied permission to use the way. Even if Mr Seymour's evidence is removed where it is possibly by implied permission, all other users, (other than two users who do not reply to this question), claim to have used the path without permission. Mr Seymour does reveal that when he worked for Aggregate Industries, no instructions were given by them regarding use of the way by the public.

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

### **The Claimed Route**

10.48. It is not clear from the application map whether or not the fenced route is the claimed route, or an alternative route between the edge of Lake 82 and the field boundary parallel to this route, (please see application plan at 4 (first

plan), showing the claimed route in orange) and Officer's now consider the routes which witnesses claim to have used. Additionally the application plan does not show the path having a connection with Fridays Ham Lane, at Rixon Gate, at its northern end, however witnesses do make reference to the path between the Thames Path, (at its southern end), and Rixon Gate and Officer's are satisfied that on the balance of probabilities the used path connected with Friday's Ham Lane at its northern end. The witness evidence maps showing the route linking with public highways, is supported by the presence of kissing gates at both ends and aerial photography showing the fenced route in 2005/06, at 10.56, linking with Fridays Ham Lane.

10.49. A number of the witnesses refer to this path as Footpath 20 and refer to it being moved to the north side of Lake 82 some 20 – 30 years ago. Where the landowner supports that the claimed route is a permissive route created and fenced in 2004, there are several claims that the path was walked far in excess of the path being created and fenced in 2004, for which he considers *"...that their memory is confused with the original Footpath 20 stopped up in 1996. This footpath, as did the permissive footpath, crosses the land in a similar zig-zag way meeting Rixon Gate in a similar position."*

10.50. The history of the site is as follows:

- 1) 1992 – Planning permission granted for mineral extraction at the site, Cleveland Farm, Ashton Keynes, (Planning Application no. N/89/02844/FUL), including the extraction of 4,190,000 tonnes of sand and gravel, the progressive reinstatement of the site to land and lakes suitable for active and passive recreation and nature conservation, inert fill and materials imported to create the final landform. Extraction planned for 8-10 years with extraction scheduled to start in 1991 and restoration completed by 2005. Topsoil bunds to be constructed as an initial operation and in any phase which abuts onto a public route or

adjoins private properties. Such bunds to be 3m high, with an outer slope of 1 in 2 and an inner slope of 1 in 1.5.

The design statement considers four public footpaths over the site which would require diversion if planning permission is granted. *“Rixon Farm. The east-west path (F.P.19) would require a temporary diversion and would be reinstated between two lakes. The north-south path (F.P.20) from Rixon Gate would need to be diverted and a permanent one routing alongside the recently formed bridleway is suggested.”*

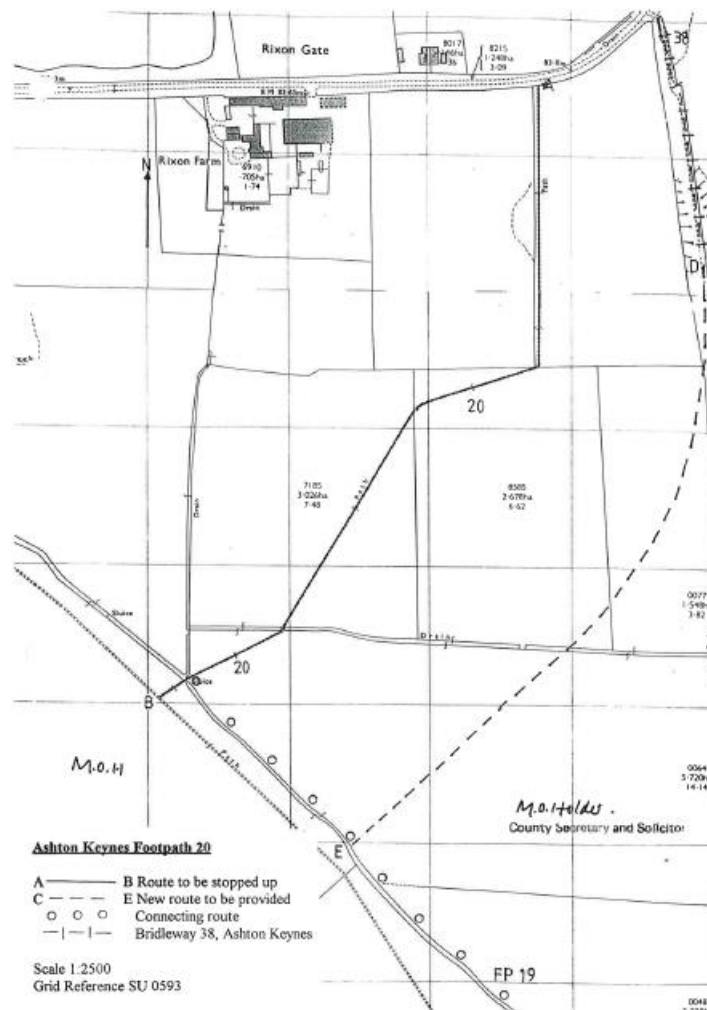
The following restoration is indicated: *“Rixon Gate. This would be restored as a lake area, with water based recreation as the possible after-use. Lake margins would typically be as shown on Fig.3 Section C. [It has not been possible to locate this drawing].*

*Rixon Farm. This area would be restored as two lakes, Rixon ‘A’ for club fishing, and Rixon ‘B’ as a waterfowl and nature reserve. The lakes would allow Footpath no.19 to be re-established close to its original route. Part of the land to the south would be returned to agriculture. The levels are shown on the Restoration Plan (Drawing no/291/13) and would be similar to the pre-existing levels at the boundary, with a slight dome to the centre to assist drainage.”*

There is no reference within the planning application or the permission to the provision of a footpath to the north of the lake, once the restoration works take place.

- 2) 1996 - Footpath no.20 Ashton Keynes, from its junction with the Thames Path, leading in a generally north-east and then northerly direction over the land now known as Lake 82, (following the restoration of the extraction site), to Rixon Gate, stopped under Section 257 of the Town and Country Planning Act 1990, to allow extraction of sand and gravel, for which planning permission is granted, to be

carried out. The order includes provision for an alternative route of Footpath no.20, south of what is now known as Lake 82, between the Thames Path (Footpath 19) and Fridays Ham Lane (Bridleway no.38), as shown on the order plan below. A definitive map modification order is subsequently made in 1997 to amend the definitive map and statement of public rights of way accordingly, following the confirmation of the stopping up order.



*1996 – Stopping up order plan, diverting Footpath no.20 on its line A – B, and the provision of an alternative route D – E, south of the extraction works.*

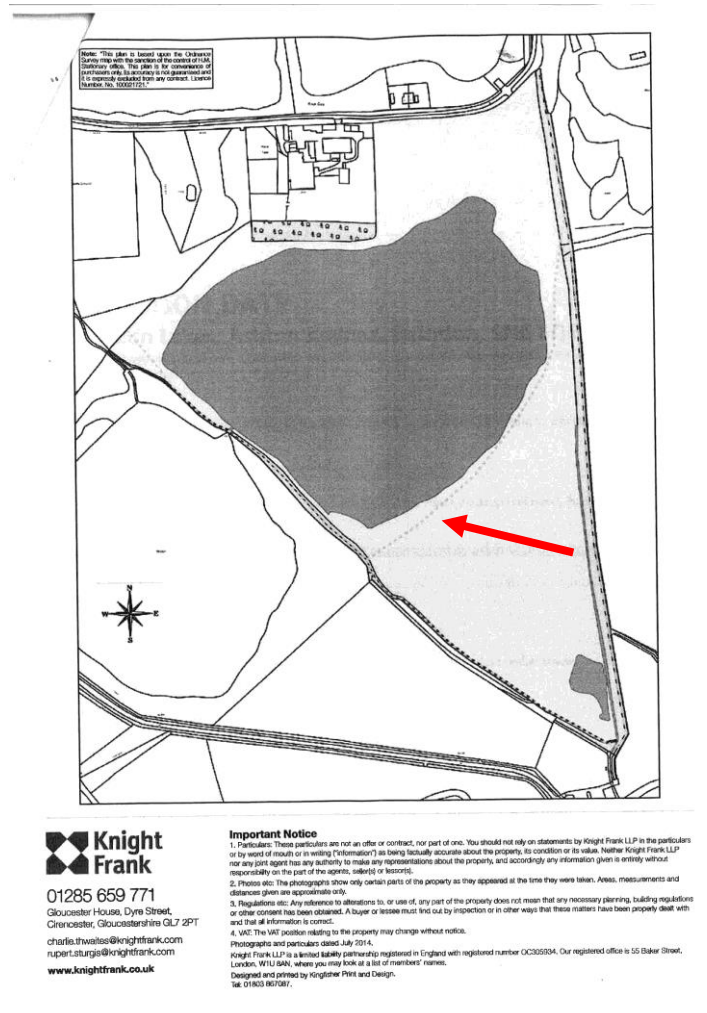
- 3) The new route of Footpath no.20, as created by order in 1996, is temporarily diverted, whilst the extraction works take place, to a new

route between the Thames Path and Fridays Ham Lane further south, however, Officers have been unable to locate details of a temporary diversion order.

- 4) 2004 – The gravel and sand extraction works completed and the site restored with the inclusion of Lake 82. The claimed route is installed as a fenced path, north of Lake 82. Mr R N Westall writes to Wiltshire Council, on behalf of Aggregate Industries, on 18<sup>th</sup> February 2004, (please see paragraph 10.35), to confirm that the path has been installed and it is their intention to formally dedicate the new route, (however this never occurred and the claimed route was never added to the definitive map and statement of public rights of way and the former route (south of the lake), which now forms the definitive line, was not extinguished). The claimed route is fenced at a width of 1.4 metres, (the width of the remaining fencing at the northern end of the path, has been measured at 1.4 metres and the landowner has confirmed that the route was fenced at a consistent width throughout its length), with kissing gates at both ends, i.e. at its junction with Rixon Gate and the Thames Path junction, and footpath waymarker discs at each end. The present landowner agrees that there was a fenced footpath physically available on the ground. Although witnesses consider the application route to be an alternative route for Footpath no.20, it has never been formally recognised by legal order to record it as such within the definitive map and statement of public rights of way.
  
- 5) 2015 – The present landowner Mr Alvin Lindley purchases the property on 12<sup>th</sup> March 2015. The sale particulars correctly record the position of Footpath no.20 Ashton Keynes, as the route created by order in 1996, (please see plan included with sale particulars below), but does not include the line of the fenced route, (the application route), where this path is not a definitive footpath recorded on the definitive map. Mr Lindley, during his period of ownership, removes the fencing for the



majority of the route, wires shut the kissing gates at each end of the path, removes the Wiltshire County Council waymarking discs and installs a ditch at the south-western boundary of the site, to prevent public access.



*Map included with 2015 sales particulars*

10.51. When considering a route which the public have used, there are a number of variations within the witness evidence statements. 18 witnesses have used the claimed route in full; 8 witnesses have used part of the claimed route, but left the claimed route at the south-east corner of the property Rixon Farm and continued in a generally easterly direction to meet with Fridays Ham Lane where there is a gated entrance onto Fridays Ham Lane, (being public

bridleway no.38). There are some variations on this route, i.e. P Sanderson, F Gilpin and G Carter junction with Fridays Ham Lane, but also connect with the definitive line of Footpath no.20 Ashton Keynes, south of Lake 82, which links to the Thames Path, to complete a circuit of the lake. D Sanderson follows a similar route, but travels on Fridays Ham Lane before picking up Footpath no.20 further south. C Brown junctions with Fridays Ham Lane at the gated entrance, but also uses a spur of that route to junction with Fridays Ham Lane further north. 3 further witnesses use a route on part of the claimed route and then leave the claimed route at the south-east corner of Rixon Farm and then continue east around the lake, to pick up the recorded right of way Footpath 20, without junctioning with Fridays Ham Lane, (Bridleway no.38).

10.52. One witness refers only to the existing right of way, Footpath no.20 south of the Lake; one witness uses a route from the Thames Path which circles Lake 83 to the south of the Thames Path (not the area in question); 2 witnesses do not include a used route on the plan submitted.

10.53. There appears to be sufficient evidence to support public user of the claimed route. In a letter dated 14<sup>th</sup> June 2017, the local Ramblers representative states that *“I understand that some Ramblers members have used this path...”* and where the path was waymarked from the Thames Path *“It is therefore likely that the path will have been well used.”*

10.54. There is also evidence from 8 witnesses that the public have walked a spur of this route leading east from the corner of Rixon Farm, to Fridays Ham Lane at the gated entrance. However, where the claimed route was fenced out of the site for the period 2004 to 2016, it would not have been possible for the public to access the spur leading east from the claimed route and this could be a recent development, occurring when the new landowner removed the fencing in 2016; or prior to the fencing in 2004; or that witnesses used a route alongside the fenced in route and in addition to the fenced route, after 2004, between the edge of the lake and the fenced route.

10.55. At the initial consultation Mr R Gosnell wrote to Wiltshire Council on 4<sup>th</sup> June 2017, providing evidence of the routes which he had used to the north of Lake 82, (please see plan at 7.4.). Mr Gosnell states that the routes in 2007 and 2008 were probably within the twin fence line, between Rixon Gate and the Thames Path, which supports other user evidence of the claimed route. However, Mr Gosnell also provides GPS evidence that he used a spur of the route in 2012 to Friday's Ham Lane at the gated entrance and also in 2012 a route leading from the claimed path alongside the lake and then junctioning with the recorded route of Footpath no.20. Officers conclude from this that Mr Gosnell was not using the fenced route which was available at this time, but a route alongside the fenced route at the edge of the lake, where it would not have been possible to access the spur routes from the fenced route. The GPS data provided by Mr Gosnell is evidence of 4 walks in the vicinity between 2007 and 2012, but Mr Gosnell clarifies that *"We walked the Rixon Gate route on some unrecorded journeys."*

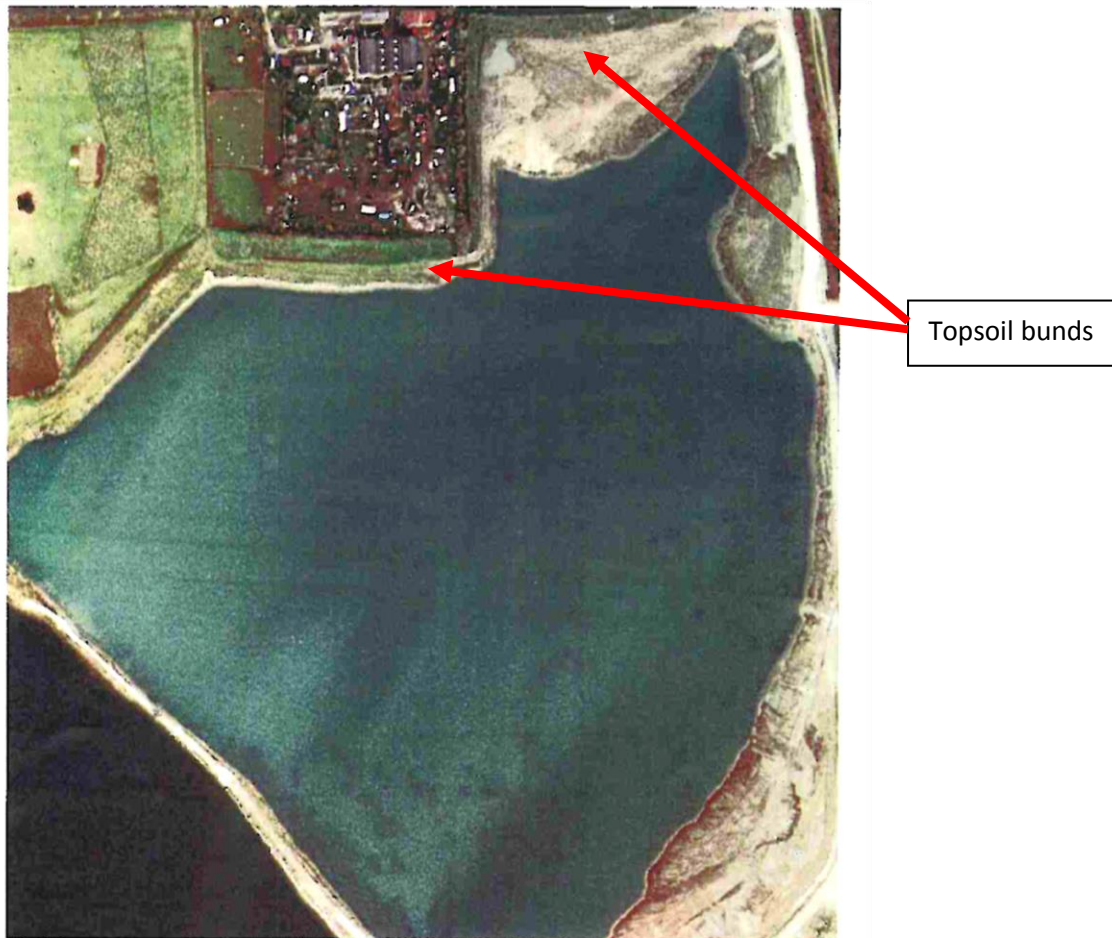
10.56. Mr G Carter states in evidence that: *"As the footpath has been overgrown for many years, the route between the path and the lake has been used (10 metres)."* V Finnie states: *"designated path – v. overgrown – about 1.5 metres, chosen route round lake – 2 people walking side by side."* Mrs A Arnett states that: *"There was a fenced in, signed Wiltshire County Council Public Footpath (fencing recently removed) to the North which ended at the road, but for many years walkers have used a route parallel to this exiting at the large gate rather than the road."* Mr M Seymour states: *"Changed route 1 time when gate by road C.69 was slightly overgrown with blackberry bush. This was later cut out by the owners Aggregate Ind."* Mrs L Milsome states: *"Quite often was overgrown, however still use direction of path but walked on land adjacent to pathway."* Mrs A Moorby states: *"Have walked parallel to this path in the adjoining field because the path has not been maintained and become impassable."* Mrs D Sanderson states: *"...and there was also a fenced path which was badly overgrown."* This evidence would suggest that where the fenced route became overgrown, a route between the fenced route and the

edge of the lake was used in preference, which would perhaps explain why Mr Gosnell was using a route outside the fenced route between 2007 and 2012, only after the installation of the fenced route and the restoration of the site following the mineral extraction works.

10.57. Where the fenced route has existed only since 2004, 20 years use of this route cannot be shown under statute law. However, there is evidence that the public used a very similar route, further south of the fenced route and witnesses refer to the route they were using being moved further north prior to the installation of the fenced path in 2004. However, 20 years user over the southern route cannot be shown where this route was interrupted by the sand and gravel extraction works for which planning permission was granted in 1992 with completion in 2004. There is some evidence that there were warning notices over the land at this time, where Mrs A Arnett refers to a *“Redundant warning sign relating to gravel extraction work by the gate at the end of the route, (still present)”*, although the wording of these notices is not clear and it is not known if these were prohibitory notices, preventing public access.

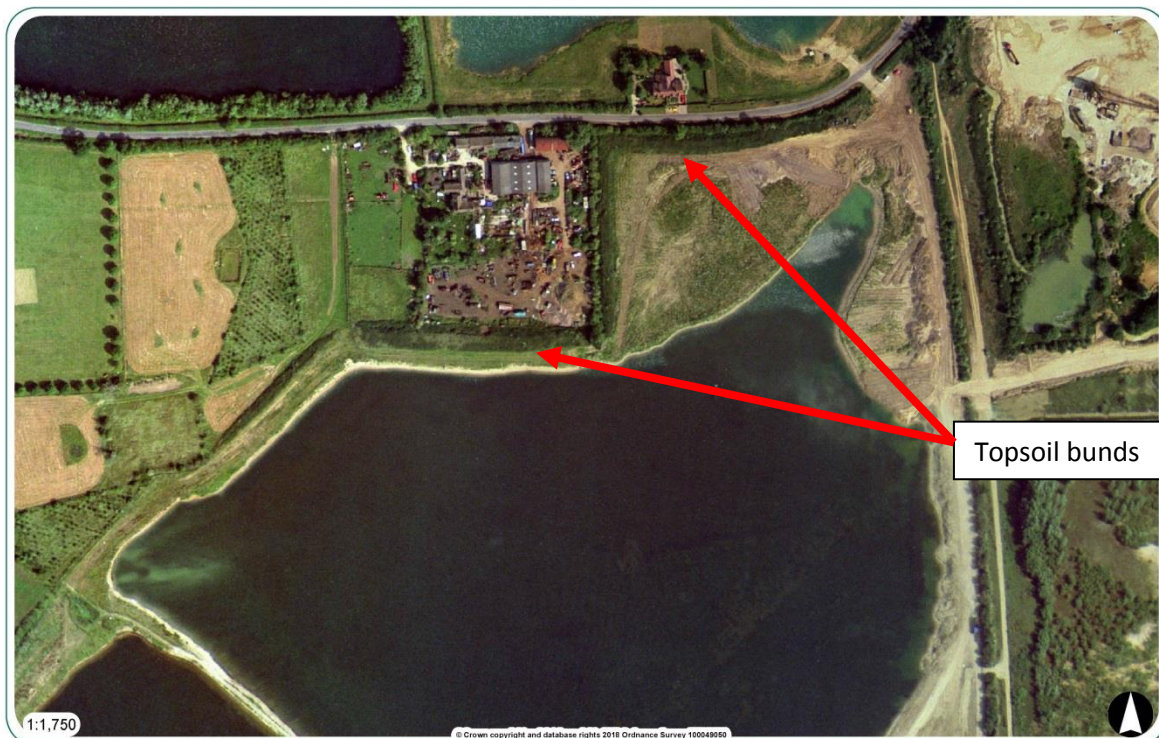
<b>Witness</b>	<b>Comments ref southern route</b>
1	There was a fenced in, signed Wiltshire County Council Public Footpath (fencing recently removed) to the North which ended at the road, but for many years walkers have used a route parallel to this exiting at the large gate rather than the road (user period 1997 – 2016).
4	Shifted a bit north and then fenced in on both sides. Kissing gate installed only when footpath moved north (user period 1995 – 2016).
5	Moved to north – fenced path (user period 1987 – 2016).
9	In general the route has been like this some formal fencing/posts were added in part (user period 1973 – 2016).
25	Moved from an irregular path to one fenced in on both sides a number of years ago. In the early years it was a footpath around the northern edge of Lake 82 in later years the previous landowner fenced in a path on both sides somewhat north (user period 1991 – 2015). Letter from Mr S Segar dated 19 <sup>th</sup> May 2018 <i>“...initially the footpath skirted the northern</i>

	<i>boundary of the lake, at a later stage it was moved to the northern boundary of the area and fenced in to form a narrow corridor, similar to the relatively recent footpath established to the southern boundary.”</i>
30	Moved slightly north and fenced in on both sides (user period 1987 – 2016). Lych (kissing) gate at western end only installed when footpath moved north.
31	In general followed the same route (user period 1970 – 2016).



*Aerial Photograph 1999 – (Photograph provided by Mr R N Westell and dated by him as June 1999, showing the water-filled quarry. Mr Lindley also provides a copy of this photograph in his evidence for which he provides proof of dating from Getmapping, as 25<sup>th</sup> June 1999). Parts of the claimed route are shown submerged with a very narrow corridor between the edge of the extraction area and the site boundary. Extraction began in 1992 and*

*continued until 2004, which would have been a significant interruption to public use of a path to the north of the extraction area, throughout that period. The planning permission also refers to topsoil bunds being erected between the edge of the extraction area and public routes, such as Fridays Ham Lane, and private property, such as Rixon Farm. These bunds appear to be visible in this photograph with no gap in the bund to allow access onto Fridays Ham Lane.*



*In 2001 there is a narrow corridor between the edge of the extraction area and the site boundary to the north, particularly to the south of Rixon Farm. The topsoil bunds appear to be present between the extraction area and Fridays Ham Lane and Rixon Farm.*



*The fenced route is clearly installed and visible in 2005/06. A route south of this line is likely to have been interrupted by the extraction works prior to 2004, as can be seen from aerial photographs dated 1999 and 2001. The bunds appear to have been removed following the restoration of the site and the newly created fenced footpath leads through the former bund area, which would previously been an obstruction to this route.*

10.58. Overall, Officers consider that 20 years user of the fenced claimed route cannot be shown where the fenced route has only existed since 2004. Additionally, it is considered that 20 years user of a route just south of the fenced route and any spurs linking to Fridays Ham Lane, cannot be shown, where they were interrupted by the sand and gravel extraction works between 1992 and 2004, as can be seen from the aerial photographs taken in 1999 and 2001. It might be possible to establish an alternative 20 year user period prior to the interruption in 1992, i.e. from 1972-1992, however, only one witness has used the route north of the lake for the full period of 1972 – 1992

and only 4 other witnesses used a route north of the lake, for part of that period. Officers consider that during that period, the path users are more likely to have been utilising the definitive line of path no.20 Ashton Keynes, prior to its stopping up in 1996, which followed a very similar line to the claimed route, (please see diversion order plan at 10.50). Therefore the routes cannot be claimed under statute.

## **Width**

10.59. There is evidence that the claimed route was fenced out of the field for the entirety of its route. Where short sections of the fencing remain, the width of the path has been measured at 1.4 metres. The present landowner agrees that it was fenced at the same width for the full length of the path, therefore if an order is made to add the claimed footpath, a width of 1.4 metres should be recorded within the order.

<b>Witness</b>	<b>Width</b>		<b>Witness</b>	<b>Width</b>
1	Approx 2 people wide along the majority of the route, but much wider near to the gate		18	Approx 6'
2	Approx 2 people wide		19	Approx 1-2m
3			20	1.5m approx
4	Normal footpath		21	Approx 1.2m due to the ground conditions and the amount of mud present
5	Normal footpath width		22	Approx 5 feet
6	1-2m		23	Up to 40 feet – varied in width
7	1m		24	4ft
8	Approx 1m		25	Narrow irregular footpath
9	Wide enough for people to walk side by side. Wider in more open parts		26	About 1.75m with fences
10	As the footpath has been overgrown for many years, the route between the path		27	App.1.5m – 2m fenced both sides



	and the lake has been used (10 metres)		
11	1.5 to 2 metres approx	28	0.5 -1.5m varying
12	1-2m	29	3m
13		30	Normal footpath
14	Designated path - v. overgrown – about 1.5m. Chosen route around lake – 2 people walking side by side.	31	When fenced 1.5 to 2 yards
15	Width varies depending on where one is on the route. Overall width between 1m to 1.5m.	32	Kissing gate then wide swathe of grass previously accessible – well trodden path relatively narrow but no fencing to dictate specific need to keep to that
16	3m	33	1m
17	1¼m	34	1m

10.60. The widths recorded by witnesses over the fenced route, generally accord with the 1.4 metres available on the ground between the fences, 1.5m being the mean width measurement stated by witnesses.

### **Landowners Intention**

10.61. 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..."*

10.62. 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."*

10.63. 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."*

10.64. Upon purchasing the land in 2015, the new landowner, Mr Alvin Lindley took steps to remove the fenced footpath, which came to the attention of footpath users in 2016 when the fencing was removed and the gates wired shut. He also completed a "Form CA16", "Application Form for deposits under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006" on 28<sup>th</sup> April 2016, to negative his intention to dedicate further public

rights over the land. However, there is no evidence that previous landowners, Aggregate Industries UK Ltd, have carried out any acts to bring home to the public that their right to use the path was being challenged. In fact the evidence shows the provision of a fenced route with kissing gates and public footpath waymarkers, suggested to path users that the way was already a public footpath. Mr R Westall in his letter dated 18<sup>th</sup> February 2004, confirms that the fenced route has been provided by Aggregate Industries UK Ltd. There is no evidence that the previous landowners took steps to close the footpath for short periods of time; or erected permissive footpath notices, which would convey to the public that their right to use the way was at the discretion of the landowners, as Mr and Mrs Ventham state, the claimed path was: “...*always previously open and accessible during previous owners of Rixon Farm time.*” Mr Seymour confirms that Aggregate Industries UK Ltd as the landowners, issued no instructions regarding use of the way by the public, (working for Aggregate Industries from 1963 until retirement).

10.65. Neither did Aggregate Industries UK Ltd, as the previous landowners, submit a statement with map and subsequent statutory declarations under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate additional public rights of way over their land.

### **Common Law Dedication**

10.66. 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.

10.67. 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.

10.68. 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.

10.69. Relatively few highways can be shown to have been expressly dedicated, however, in the Ashton Keynes case, there is evidence before the Surveying Authority that the landowners provided a fenced route, with kissing gates, waymarked as a "Public Footpath", an express act of dedication over the claimed route. In order for common law dedication to apply, there also needs to be acceptance by the public and this can be seen in the user evidence forms which refer to the fenced route, with gates provided and waymarked. In the letter from Mr R N Westell, Estates Surveyor, Aggregate Industries UK Ltd to Wiltshire Council, dated 18<sup>th</sup> February 2004, Mr Westell confirms that the new footpath 20, (the claimed route), has now been installed and it is now their intention to formally dedicate the route, however this formal dedication to add the path to the definitive map and statement of public rights of way, did not take place and the path has never been formally added. The planning permission, (N/89/02844/FUL), for sand and gravel extraction at Cleveland Farm, Ashton Keynes, does not include any reference to the provision of a footpath to the north of the lake as a substitute for Footpath no.20 and it is not a condition of the planning permission, therefore there was no onus upon the landowners to provide it. It was clearly the intention of Aggregate Industries to dedicate this route as a public right of way and the action of the landowners

providing the fenced route, with kissing gates and public footpath waymarkers is a sufficient act by the landowner to dedicate the path. If it was not the intention of the landowners to dedicate this path, there is no evidence before the Council that they took any steps to make clear to the public that it was not their intention to dedicate the path in 2004 or after that date. If the claim under statute fails, it is possible to apply the principles of common law dedication in this case.

## **11. Overview and Scrutiny Engagement**

- 11.1. Not required where the procedures to be followed regarding orders made under Section 53 of the Wildlife and Countryside Act 1981 are included at Schedules 14 and 15 of the 1981 Act and The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993 – Statutory Instruments 1993 No.12.

## **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. If a local public inquiry is held, the costs are estimated at £1,500 - £3,000, if Wiltshire Council continues to support the order (i.e. where legal representation is required by the Council) and £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. There is not sufficient user evidence to satisfy 20 years public user of the claimed route under statute, where the fenced route (as claimed), has only been in existence since 2004.



- 21.2. There is evidence that the public were using a route slightly further south of the fenced route, prior to 2004, however this would have been interrupted by the mineral extraction works on site between 1992 (planning permission granted) and 2004 (restoration of the site). The works on site would also have prevented access to the spur routes identified by some of the witnesses, during the same time period. Prior to 1992, only 5 witnesses used the path between 1972 and 1992 as a potential qualifying 20 year user period, however Officers consider it likely that in the years prior to the formal diversion of footpath no.20 in 1996, users would in fact have used the former legal line of Footpath no.20 between the Thames Path and Rixon Gate, which followed a very similar line to the claimed route, but use of the legally recorded line before 1996, does not constitute qualifying user.
- 21.3 Where witnesses used a path just south of the fenced route after 2004, when the fenced route became overgrown on occasion, 20 years of this route cannot be shown under statute.
- 21.4. However, common law dedication can be applied to the claimed route, where the landowners have created a fenced route, with kissing gates and “Public Footpath” waymarkers, which does not require a 20 year user period and can apply to a much shorter period of public user. There is evidence of public acceptance of the claimed (fenced) route, since 2004, through witness evidence. The applicants in this case have successfully demonstrated that the landowner Aggregate Industries UK Ltd, has dedicated the footpath for public use and that the public have accepted this route.

## **22. Proposal**

- 22.1. That a definitive map modification order be made to add the footpath as claimed to the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952, under Section 53 of the Wildlife and Countryside Act 1981, where there is sufficient evidence that the claimed

footpath, (the fenced route), has been dedicated by the landowner at common law and where there are no objections, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 15<sup>th</sup> June 2018

## Appendix 1 – Historical Evidence Summary

<b>Document</b>	<b>Leigh Inclosure Award (359/21)</b>
<b>Date</b>	1767
<b>Significance</b>	<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 18<sup>th</sup> Century new innovations in farming were increasing output, but where communal farming was 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 which usually gave the Inclosure Commissioners powers to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private. After 1801 the process was set out within the Consolidation Act, which consolidated the main features of the local acts and worked alongside the local act.</p> <p>Weight can be given to the routes included within Inclosure Awards as landowners has a strong influence over the inclosure 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 repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to the set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>One of the main purposes of the Inclosure Award was to record highways.</p>
<b>Relevant documents</b>	<p>Inclosure Award Apportionment Document</p> <p>No Inclosure Award Map has been located</p>
<b>Conclusions</b>	<p>Where there is no map of the lands to be inclosed available, it is not possible to ascertain whether or not the land has been enclosed and whether or not the claimed route is set out as a public footway. The Victoria County History of Ashton Keynes (published 2011), suggests that some of the Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixon at the east of village, prior to this inclosure award. This document is inconclusive.</p>

<b>Document</b>	<b>Ashton Keynes Inclosure Award (374/5)</b>
<b>Date</b>	1778
<b>Significance</b>	As above
<b>Relevant documents</b>	Inclosure Award Apportionment Document No Inclosure Award Map has been located
<b>Conclusions</b>	Where there is no map of the lands to be inclosed available, it is not possible to ascertain whether or not the land has been enclosed and whether or not the claimed route is set out as a public footway. The Victoria County History of Ashton Keynes (published 2011), suggests that some of the Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixon at the east of village, prior to this inclosure award. This document is inconclusive.

<b>Document</b>	<b>Ashton Keynes Parish Claim</b>
<b>Date</b>	1951
<b>Significance</b>	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map. Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey maps to all Parish Councils, who surveyed and recorded on this map what they considered to be public rights of way within their parish, with an accompanying description for each path. Parish Council's were required to convene a meeting at which 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 Council or Urban District area.</p> <p>Detailed guidance regarding the Parish Councils' input into the definitive map process was issued and the Planning Inspectorate "<i>Definitive Map Orders: Consistency Guidelines</i>" state that the legal "<i>presumption of regularity</i>" applies, i.e. unless otherwise demonstrated, it should be assumed that parish councils' received this guidance and complied with it in producing 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>
<b>Relevant documents</b>	Parish Claim Map Ashton Keynes path no.20 survey card
<b>Scale / size</b>	Map: 6 inches to 1 mile
<b>Conclusions</b>	Within the Ashton Keynes Parish Claim, path no 20. Is recorded as a footpath, but this is not on the line of the

application route, it is the original line of Footpath no.20 Ashton Keynes, before its stopping up to allow development to continue, (i.e. sand and gravel extraction), in 1996. This reflects the recording of this path within the definitive map and statement and there do not appear to have been any objections to the route of this path.

The claimed route is not recorded on the OS base map, (drawn at a scale of 6" to 1 mile), and is not claimed by the parish for inclusion within the definitive map and statement. Whilst the definitive map and statement of public rights of way is conclusive evidence of the rights recorded, it is without prejudice to the possible existence of other rights.

The parish claim survey card for this path shows that there was originally a "Gate at Rixon End..." The former path was "Open", (without fencing), and was used by the public for "Many years" from date "Unknown", until being stopped up in 1996.



Ashton Keynes Parish Claim Map - 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PUBLIC RIGHT OF WAY. PARISH OF Ashton Keynes

PATH No. 20 (to correspond with No. on map)

NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)  
*No. from farm to No. 19*  
*from 069 about 200 yds E of River farm leading S.W. to path No. 19.*

LENGTH *650 yds* WIDTH *2 ft*

WHETHER FENCED OR OPEN *Open*

APPROXIMATE PERIOD OF UNINTERRUPTED USER —  
*Many* YEARS FROM *Unknown*

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL —

NATURE OF SURFACE *earth*

DATE OF REPAIR

WHETHER SUBJECT TO PLOUGHING *No.*

DATE OF SURVEY *from July Aug 57*

WHETHER SHOWN ON UNDERMENTIONED MAPS —

ORDNANCE 6" SHEET. REF. *46 44 56*  
*46 44 57*

INCLOSURE AWARD

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932).

OTHER MAPS —

STILES, GATES, FOOTBRIDGES, STEPPING STONES  
*Gate at River End to stile then gate No. 1 in gate No. 2 then stile where going to 19*

WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)  
*No.*

OBSERVATIONS:

Ashton Keynes Parish Claim, Footpath no.20 - 1951

<b>Document</b>	<b>Ashton Keynes Tithe Award (Tithe Award: Ashton Keynes: Leigh)</b>
<b>Date</b>	1839
<b>Significance</b>	<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. Payment in kind gradually began to be replaced by monetary payment and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system. Tithe Awards are not primary sources of evidence as the apportionments and plans were produced as an official record of all titheable areas, 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 also give important map orientation and plot boundary information, therefore the Commissioners had some interest in recording them. Additionally the public provenance of the documents adds weight to the information recorded within them.</p> <p>Although there is no key to the map, the British Parliamentary Paper XLI 405, 1837, gives guidance on how landscape features were to be indicated on Tithe maps produced under the Commutation of Tithes Act 1836, however there was no</p>

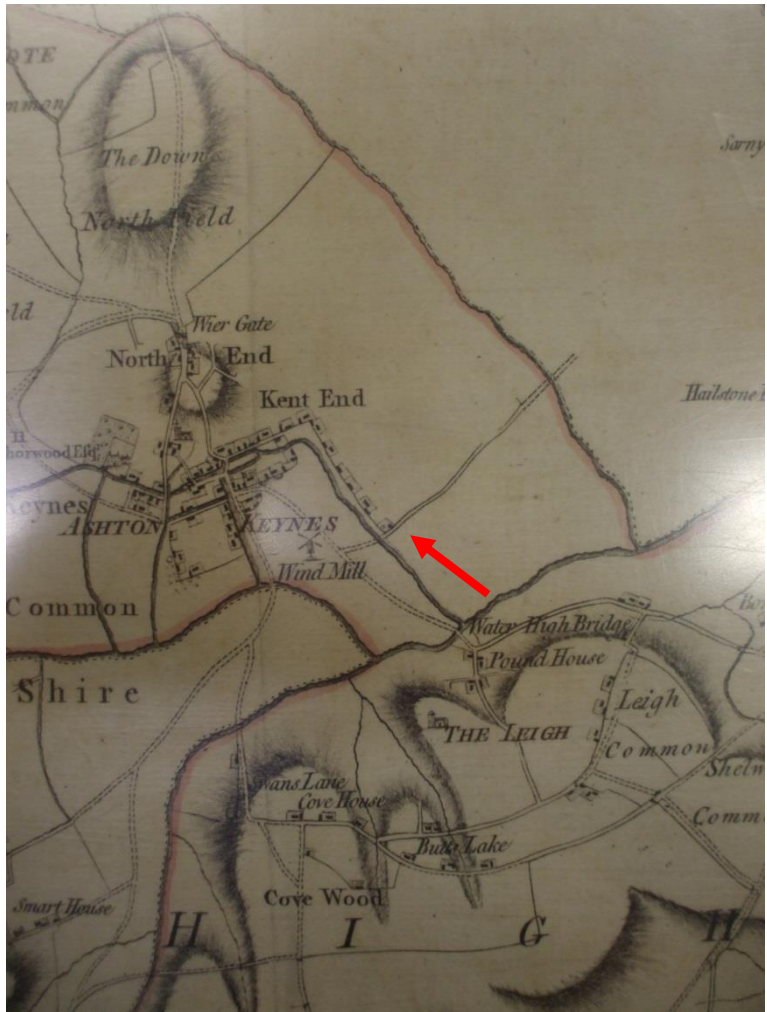
	statutory requirement to follow these instructions.
<b>Relevant documents</b>	Tithe Apportionment Tithe Award Map
<b>Scale / size</b>	Map: 2.5cm = 4 Chains (approx.)
<b>Conclusions</b>	The map is entitled " <i>Map of the Parish of Leigh in the Parish of Ashton Keynes in the County of Wilts.</i> " S Trinder Surveyor and Co, the map is signed by William Blamire, T H Buller and inscribed " <i>We the undersigned Tithe Commissioners for England and Wales Do hereby Certify this to be a Copy of the Map or Plan referred to in the Apportionment of the Rent Charge in Lieu of Tithes in the Hamlet of Leigh in the Parish of Ashton Keynes in the County of Wilts.</i> " March 24 <sup>th</sup> 1841. The area in question lies just outside the area included within the parish of Leigh, adjacent to plots in the ownership of the " <i>Late R Nicholas</i> ", on the road " <i>From Ashton Keynes to Buttsham Corner 1935 Yards</i> ". There is no footpath shown leading south or south-east from this road to junction with the Thames Path and the Thames Path is not recorded on this map. This document is inconclusive.



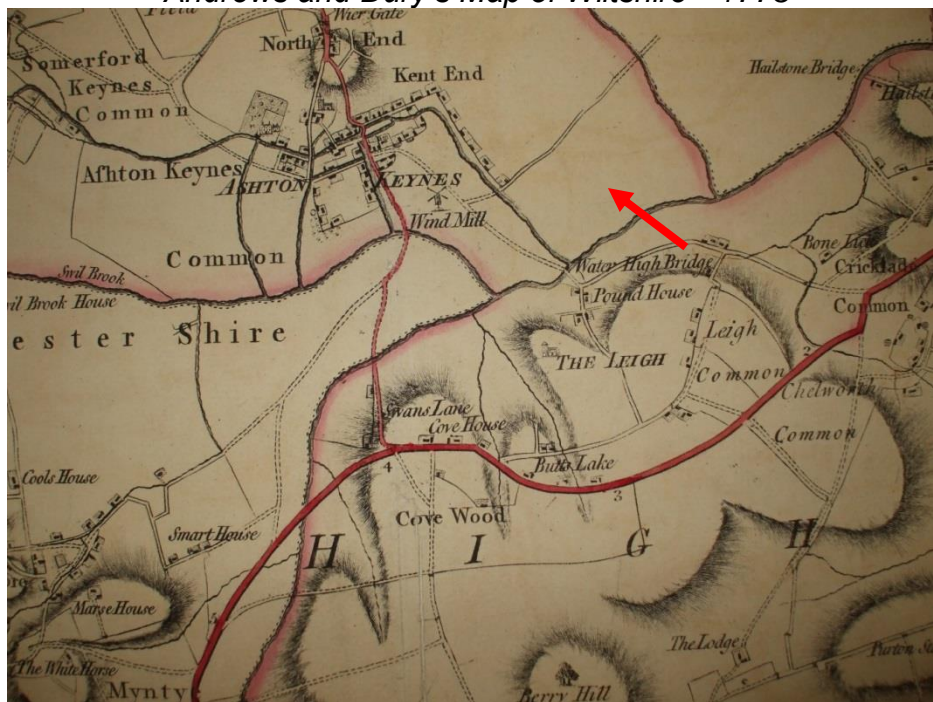
*Ashton Keynes (Leigh) Tithe Award - 1839*

<b>Document</b>	<b>Andrews' and Dury's Map of Wiltshire</b>
<b>Date</b>	1773 1810
<b>Significance</b>	<p>Commercial maps were produced for profit and intended for sale to the whole of the traveling 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, entitled, "<i>A Topographical Map of the County of Wilts Describing the Seats of the Nobility and Gentry Turnpike &amp; Cross Roads, Canals &amp; c. Surveyed originally in 1773 by John Andrews &amp; Andrew Dury Drawn from a Scale of two inches to one Statute Mile. Second Edition, Revised and corrected from the extensive information liberally communicated by The Right Honourable The Earl of Radnor and Sir Richard Hoare Bart To Whom This Improved Edition is most respectfully inscribed By William Eaden Charing Cross Jan.y 1<sup>st</sup> 1810</i>".</p> <p>The map has no key, but the Hertfordshire map does and there is no reason to consider that the Surveyor would have employed different mapping conventions for this particular map. The Wiltshire Archaeological and Natural History Society have produced a reduced facsimile of Andrews' and Dury's Map of Wiltshire 1773, (dated 1952), with an introduction by Elizabeth Crittall, who states: "<i>The map has no key, but it appears that, as is the case of Andrew's and Dury's map of Hertfordshire for which there is a key, a broken line indicates an unhedged roadside.</i>"</p>
<b>Relevant documents</b>	1773 Index Map 1773 Map Plate no.17 of 18 plates 1810 Index Map 1810 Map Plate no.2 of 18 plates
<b>Scale / size</b>	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
<b>Conclusions</b>	<p>The recording of routes on these maps is significant as they were produced for the travelling public of the day and therefore it is unlikely that private routes, footpaths and bridleways would be recorded, as the depiction of routes not open to all traffic would cause difficulty for map users and also encourage trespass against the landowners from whom the map makers sought subscriptions. Also the constraints of a small scale make it unlikely that footpaths and bridleways would be shown.</p> <p>The claimed footpath route is not recorded on these maps.</p>



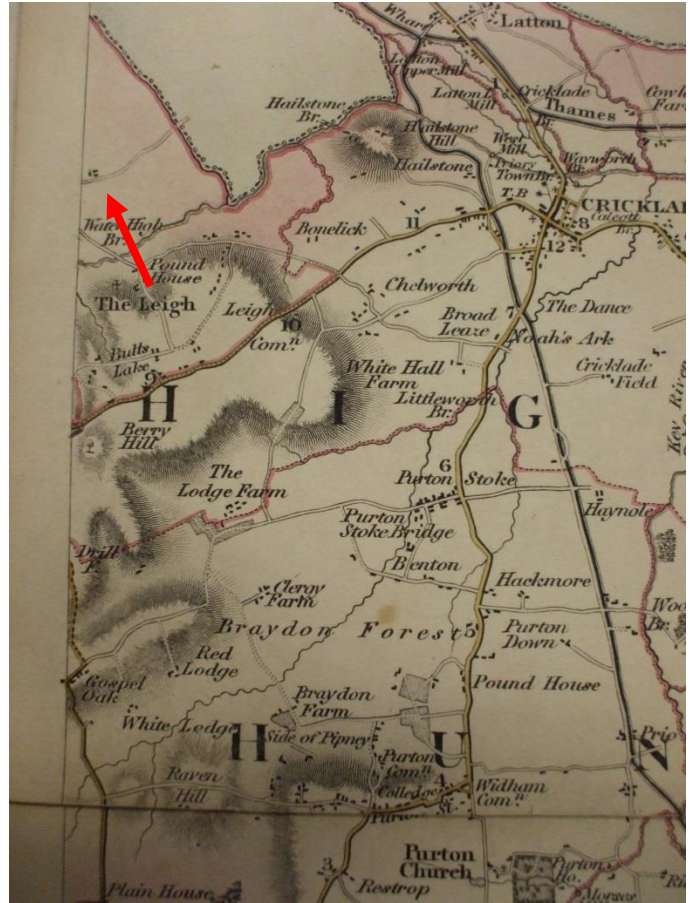
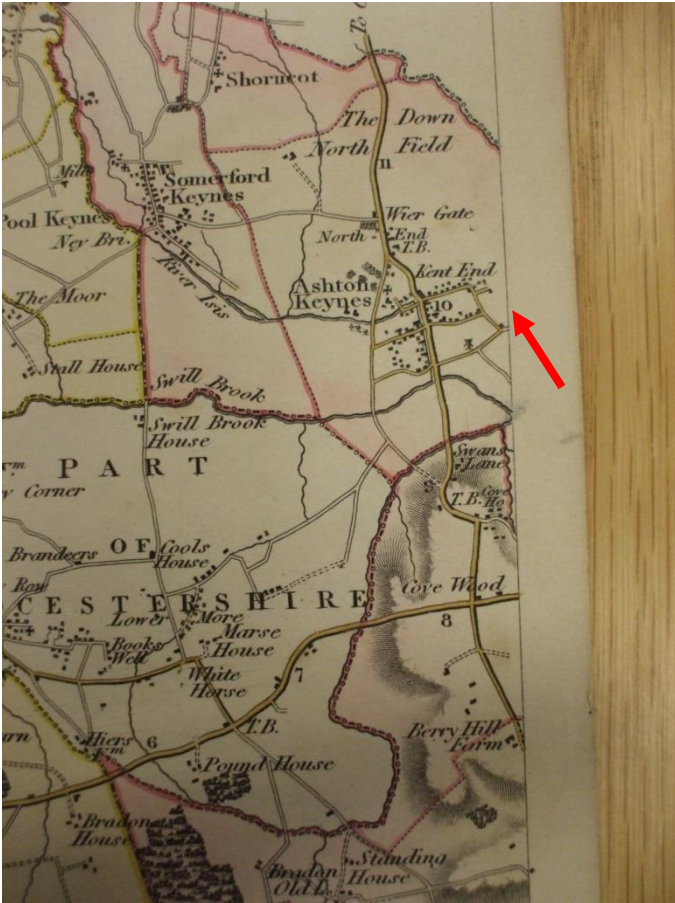


Andrews and Dury's Map of Wiltshire - 1773

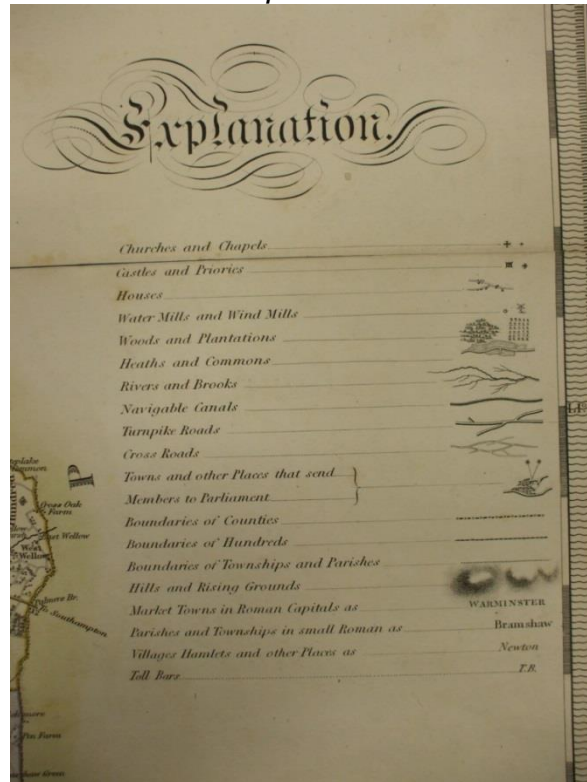


Andrews and Dury's Map of Wiltshire - 1810

<b>Document</b>	<b>Greenwoods Map of Wiltshire</b>
<b>Date</b>	1820 1829
<b>Significance</b>	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey supported by existing secondary sources such as inclosure and estate maps; printed guide books; official sources and local knowledge collected by Surveyors. Greenwoods first edition " <i>Map of the County of Wilts from Actual Survey</i> ", dated 1820 is a commercial map, produced for the travelling nobility who contributed to its production. The inscription reads " <i>To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors</i> ". Greenwood produced a revised and corrected map of Wiltshire in 1829.
<b>Relevant documents</b>	1820 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood 1829 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood Corrected to the present period and Published 4 July 1829
<b>Scale</b>	1820 – 1 inch to 1 mile 1829 – 1 inch to 3 miles
<b>Conclusions</b>	The claimed route is not recorded on these maps. Footpaths and bridleways are unlikely to be shown given the constraints of small scale mapping and the purpose of the map as a commercial map for sale to the general public.



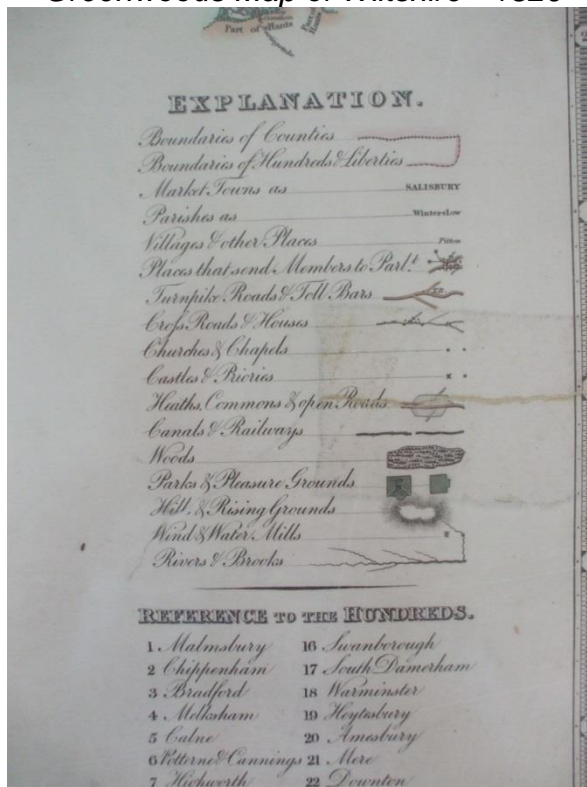
Greenwood Map of Wiltshire - 1820



Greenwoods Map of Wiltshire - 1820

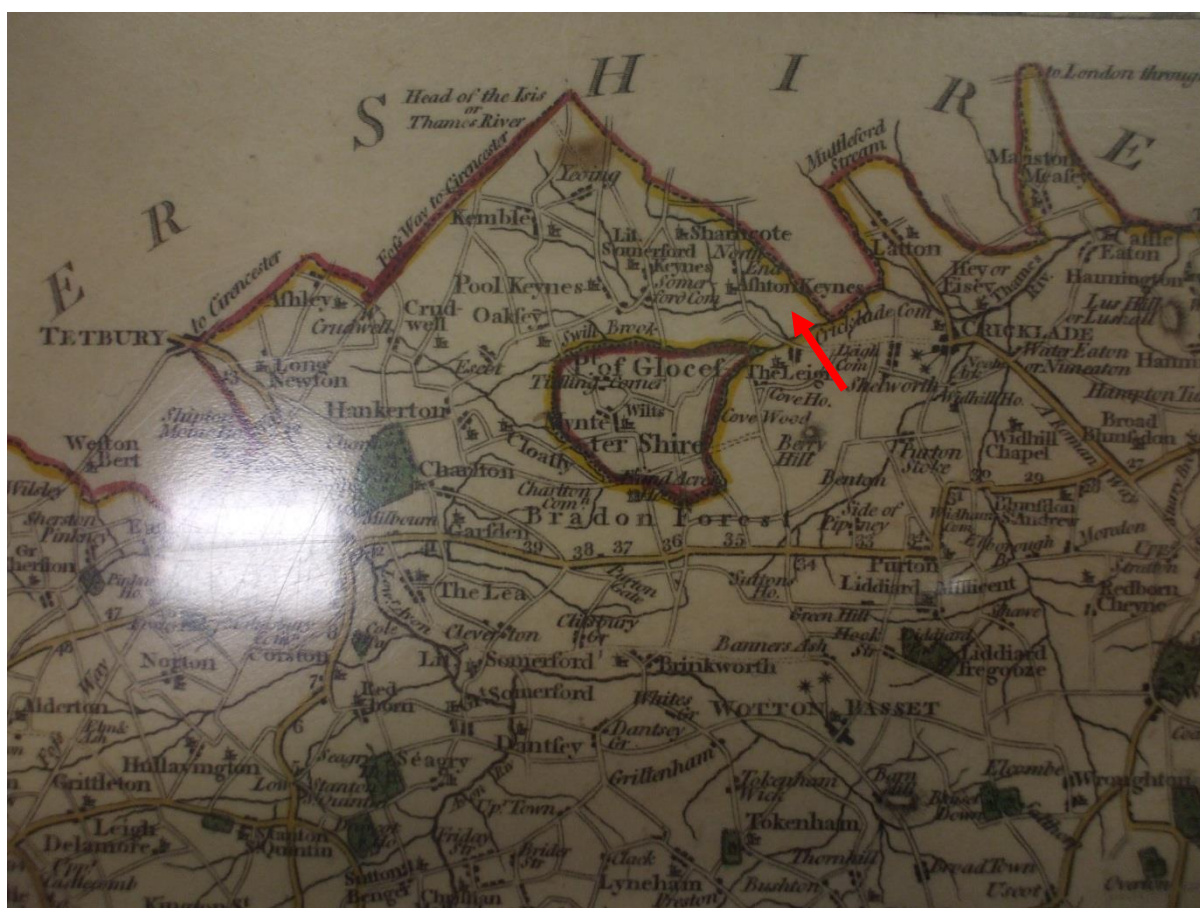


Greenwoods Map of Wiltshire - 1829

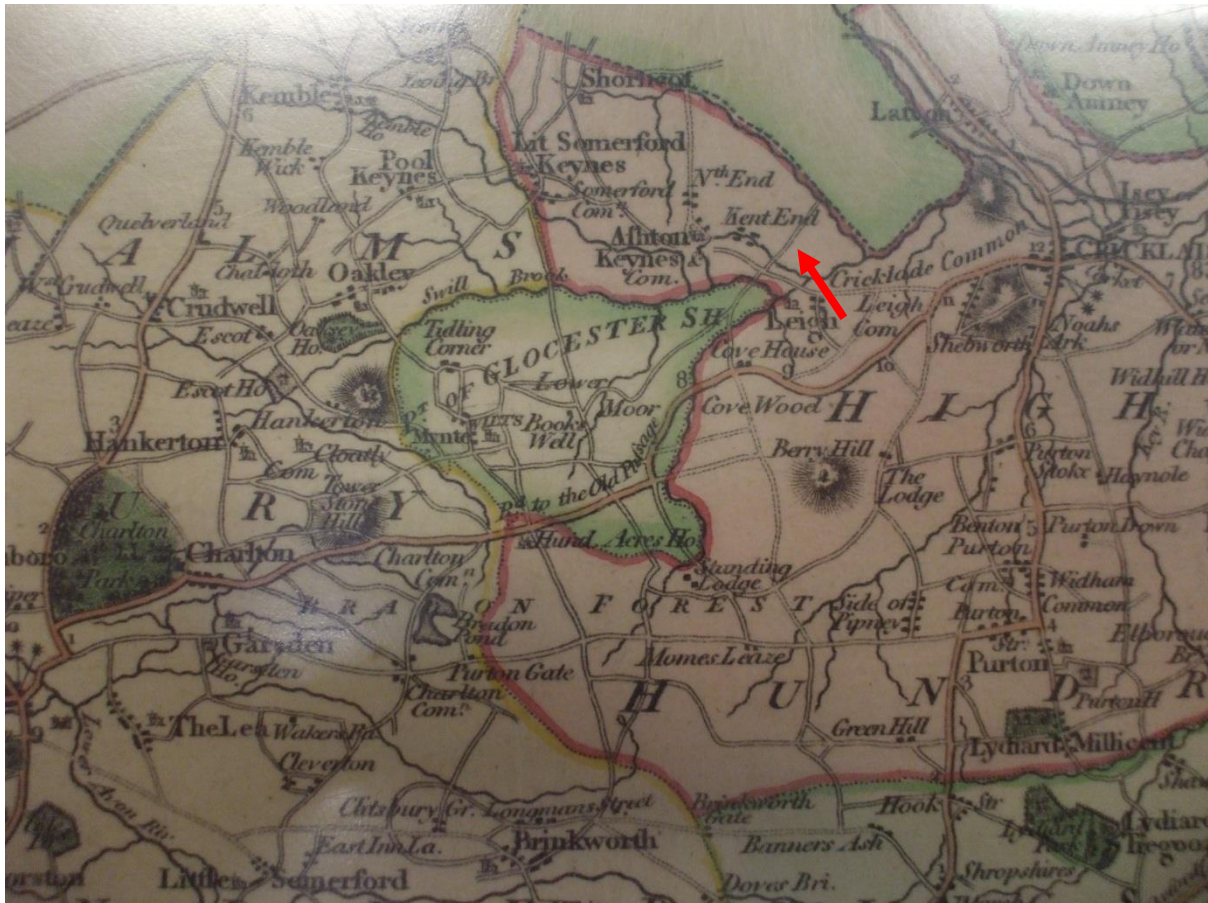


Greenwoods Map of Wiltshire - 1829

<b>Document</b>	<b>Cary's Map of Wiltshire 1787 (Map Folder 1:12)</b> <b>Cary's Map of Wiltshire 1801 (Map Folder 3.2)</b>
<b>Date</b>	1787 1801
<b>Significance</b>	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.
<b>Relevant documents</b>	1787 – Wiltshire by John Cary Engraver 1801 – A New Map of Wiltshire Divided into Hundreds Exhibiting its Roads, Rivers, Parks & c.
<b>Scale / size</b>	1787 – 10 miles = 1 ¾ inches 1801 – 8 miles = 2 7/8 inches
<b>Conclusions</b>	The claimed footpath is not recorded on these maps due to the constraints of small scale and where the maps are produced for sale to the travelling public.



*Cary's Map of Wiltshire - 1787*



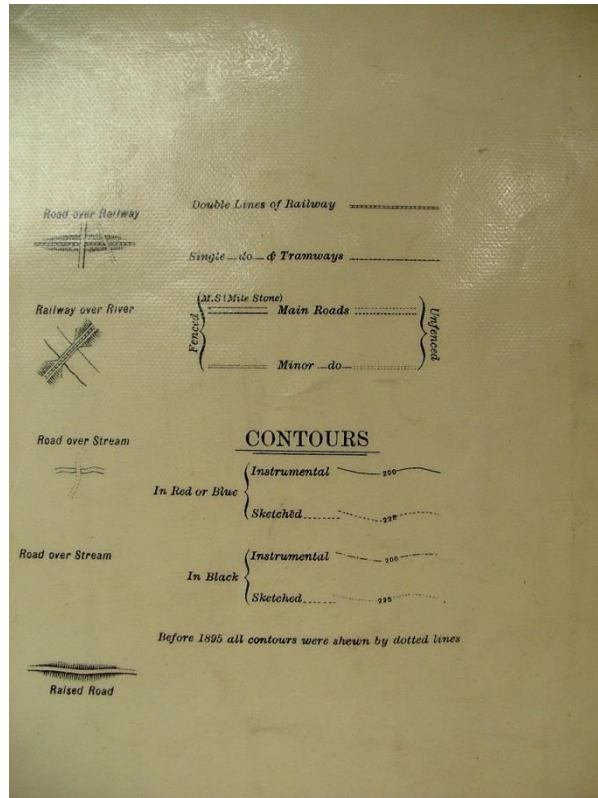
Cary's Map of Wiltshire - 1801

<b>Document</b>	<b>Ordnance Survey First Edition Map</b>
<b>Date</b>	Surveyed 1875 and Printed from a transfer to zinc in 1886 Engraved and published 1885
<b>Significance</b>	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. 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.
<b>Relevant documents</b>	Gloucestershire Map Sheet 59 and Wiltshire Sheet 4
<b>Scale / size</b>	6 inches to 1 mile
<b>Conclusions</b>	The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, however this is not on the line of the claimed route and the northern section does not accord with the line of Footpath

no.20 prior to its stopping up in 1996.  
The key to the map refers only to “Main Roads” and “Minor Roads”, fenced and unfenced.  
On the 6” map, paths and tracks are shown by a single or double pecked lines, or double solid lines where the route is fenced. Double lines are drawn to scale, subject to the minimum clearance between parallel lines. The map records this route by double broken lines, which would suggest an unfenced path or track, but the map is not supportive of a path or track on the claimed route.



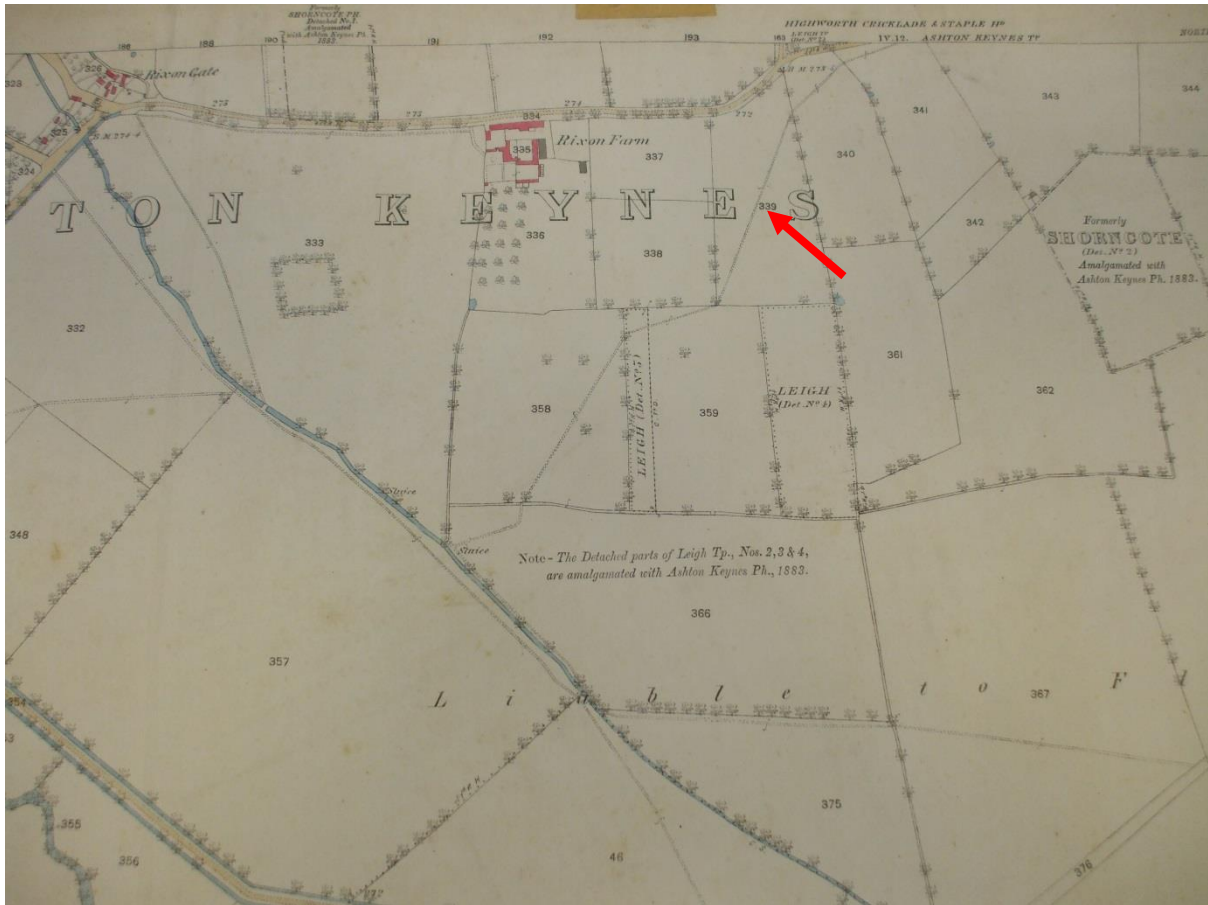
Ordnance Survey 6” to 1 Mile – 1885



Ordnance Survey 6" to 1 Mile - 1885 (Conventional Signs)

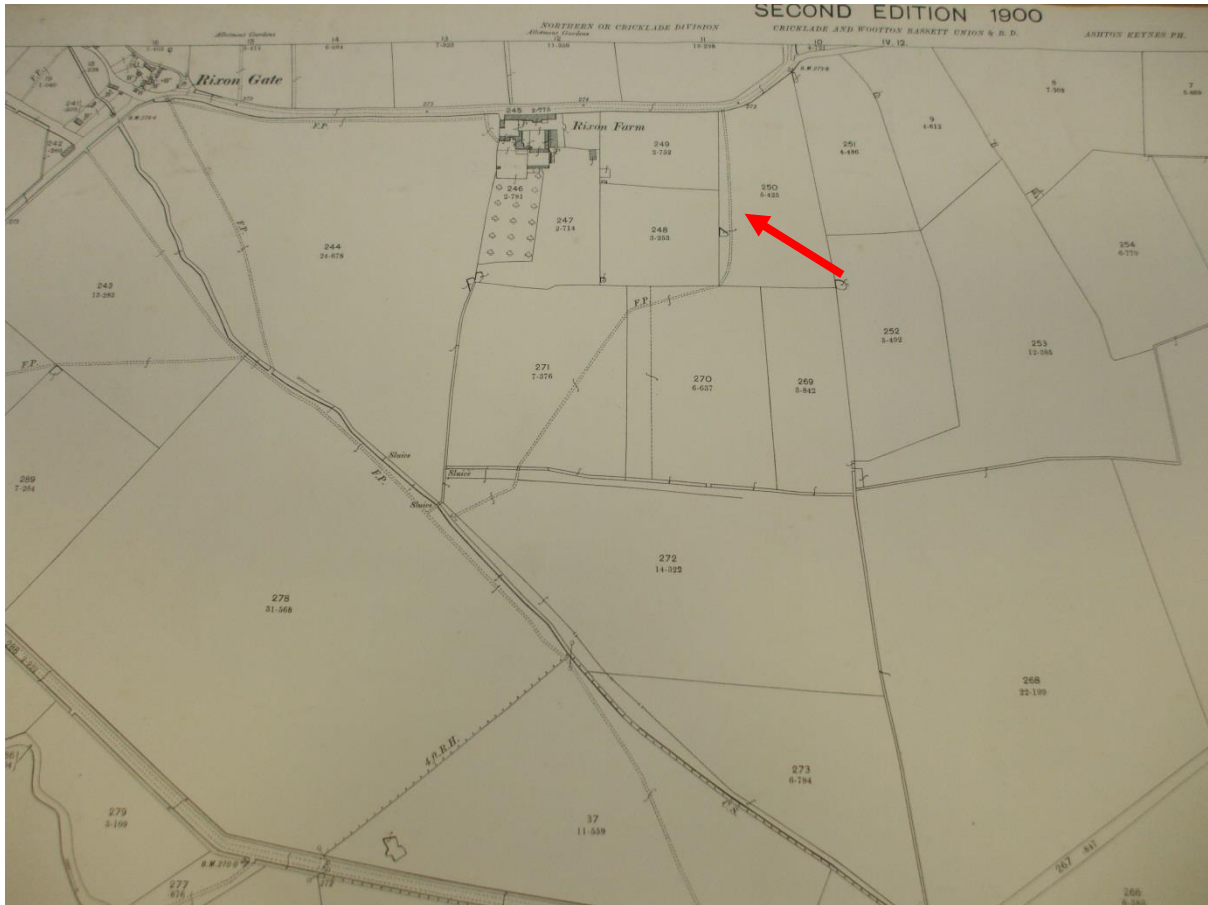
<b>Document</b>	<b>Ordnance Survey Map</b>
<b>Date</b>	Surveyed 1875, LGB Orders-Corrections 1886
<b>Significance</b>	As above
<b>Relevant documents</b>	Map Sheet 4/16
<b>Scale / size</b>	25 inches to 1 mile
<b>Conclusions</b>	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, however this is not on the line of the claimed route and the northern section does not accord with the line of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines which suggests an unfenced path or track. It is not individually measured and numbered as a public road.</p> <p>The map is not supportive of a path or track on the claimed route.</p>





Ordnance Survey 25" to 1 Mile - 1886

<b>Document</b>	<b>Ordnance Survey Map</b>
<b>Date</b>	Surveyed 1873, Revised 1898-99, Zincographed and Published 1900
<b>Significance</b>	As above
<b>Relevant documents</b>	Map Sheet 4/16
<b>Scale / size</b>	25 inches to 1 mile
<b>Conclusions</b>	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, now on a line which accords with the route of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines to suggest an unfenced path or track. It is not separately numbered and measured as a public road would be and the letters "F.P" appears alongside the path, but this gives no indication of the public status of the path. The map contains the disclaimer: "N.B. - The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way."</p> <p>The map is not supportive of a path or track on the claimed route.</p>



Ordnance Survey 25" to 1 Mile - 1900

<b>Document</b>	Ordnance Survey Map
<b>Date</b>	Surveyed 1873, Revised 1920, Levelling Revised 1900, Printed and Published 1921
<b>Significance</b>	As above
<b>Relevant documents</b>	Map Sheet 4/16
<b>Scale / size</b>	25 inches to 1 mile
<b>Conclusions</b>	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, now on a line which accords with the route of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines to suggest an unfenced path or track. It is not separately numbered and measured as a public road would be and the letters "F.P" appear alongside the path, but this gives no indication of the public status of the path. The map contains the disclaimer: <i>"N.B.-The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way."</i></p> <p>The map is not supportive of a path or track on the claimed route.</p>



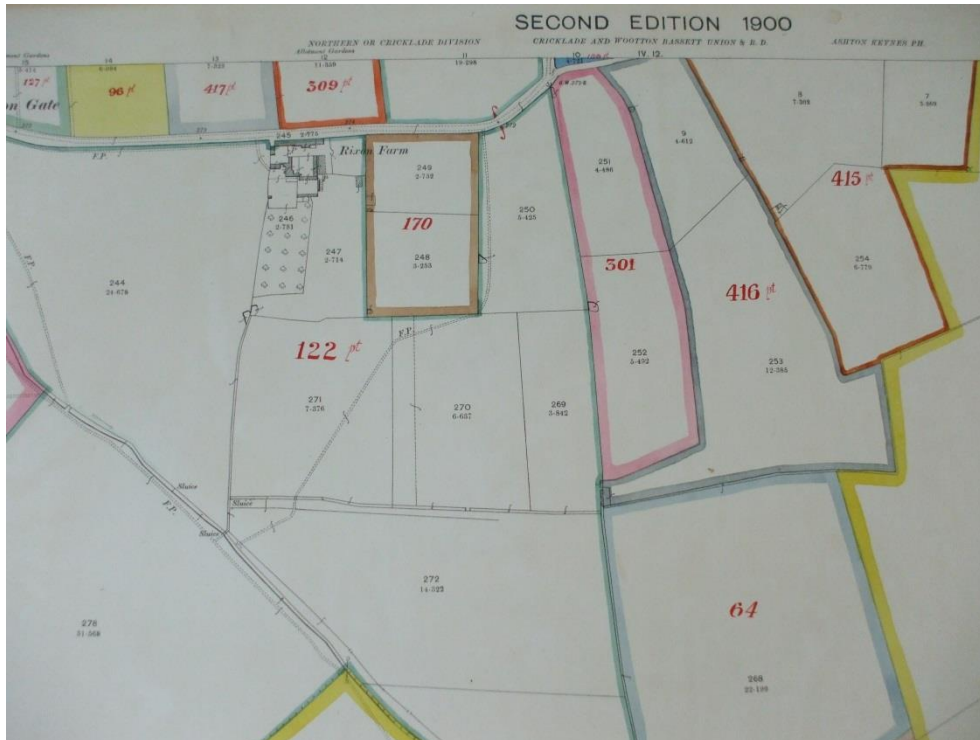
*Ordnance Survey 25" to 1 Mile - 1921*

<b>Document</b>	<b>Finance Act</b>
<b>Date</b>	1910
<b>Significance</b>	<p>In the early 20<sup>th</sup> Century, the ownership of the majority of the land in Britain by a privileged few, was seen as a major cause of social injustice and poverty. By the Finance Act of 1910, the government's main concern was that private landowners should pay part of the increase in land values which was attributable, not to their own efforts to improve the land, but to expenditure by the state, e.g. in the provision of improved roads, drainage and other public services.</p> <p>The 1910 Finance Act required the Valuation department of the Inland Revenue to carry out a survey of all hereditaments for the purposes of levying a tax upon the incremental value of a site. This included all property and land in the United Kingdom (whether or not it was considered to be exempt). It has been referred to as the "Second Domesday" as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence.</p> <p>Public rights of way across land could be excluded from the land as a tax benefit. Land holdings (hereditaments) are illustrated on OS base maps, coloured and numbered, being</p>

	referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditament, in the case of public roads, or as a deduction made for rights of way within the book of reference, in the case of a public footpath. The hereditament information is recorded on the Ordnance Survey 2 <sup>nd</sup> edition 25" map, dated 1901 and drawn at 25 inches to 1 mile.
<b>Relevant documents</b>	Valuation Book Finance Act Map
<b>Scale / size</b>	Map: 25 inches to 1 mile
<b>Conclusions</b>	The route of the definitive line of Footpath no.20, prior to its stopping up in 1996, is recorded on the OS base map, coloured with plot no.122, which records no deductions for rights of way within the valuation book. The Finance Act map is inconclusive.



*Finance Act Map - 1910*



Finance Act Map - 1910

<b>Document</b>	<b>“The Victoria History of the Counties of England”</b>
<b>Date</b>	Published 2011
<b>Significance</b>	A History of the County of Wiltshire Council Edited by Virginia Bainbridge Volume XVIII Published for the Institute of Historical Research by Boydell and Brewer 2011
<b>Relevant documents</b>	Cricklade and Environs Ashton Keynes – D A Crowley and Carrie Smith
<b>Conclusions</b>	The parish is flat land drained by the upper Thames and is notable for the gravel extraction which has taken place there since the second world war. In 2010 more than half the parish consisted of water-filled pits, now part of the Cotswold Water Park, a tourist attraction. In the middle ages both the parish and the manor of Ashton Keynes included the land of Leigh, which became a separate civil parish in 1884. To serve gravel pits and a factory in the east corner of Ashton Keynes, a new north-south road, given the name Fridays Ham Lane, was built along the course of an old lane between Spine Road East and Cerney Wick Road (1971). By the nineteenth century 7 pockets of settlement had grown up on the edges of Ashton Keynes village, including Rixon Gate, the area south-east of Kent End, it grew up in the nineteenth century. In 1899 a dozen or so small houses / cottages stood near the entrance to the common pasture

	<p>called Rixon.</p> <p>East of the village Rixon Farm was built in the 17<sup>th</sup> or 18<sup>th</sup> Century's on land probably inclosed in the 1590's. It includes a range of buildings of the 17<sup>th</sup> or 18<sup>th</sup> century and a farmhouse of the land 18<sup>th</sup> century. A pair of cottages was built nearby in 1904. Between 1920 and 1924 Rixon farm passed to Aubrey Seymour who owned it as a 237 acre farm in 1929. Seymour was succeeded by his son Arthur in 1967, who sold most of the farm to EH Bradley &amp; Sons Ltd, (a gravel working company, operating in Swindon since around 1900), and 18 acres to Moreton C. Cullimore (Gravels) Ltd, Haulage Company, in around 1970. Cullimore's still owned this property in around 2005.</p> <p>Some of Ashton Keynes commonable land was inclosed around the 1590's including pasture called Rixon at the east of the village.</p> <p>Most of the parish lies on gravel and sharp sand deposited by the Thames and its tributaries. Large scale mechanised gravel extraction from farmland began in around 1944 continuing until 2005 and the exhausted pits filled with water which by 2005 covered much of the parish. Pits south of Rixon Farm being worked in 1994 had been largely exhausted by 2001. In 2005 gravel was being extracted from land either side of Fridays Ham Lane, south-east of the village near Waterhay Bridge, south-west of the village and north of Ashton Field Farm.</p> <p>Because the water table is high and clay underlies the gravel deposits in the upper Thames valley, the pits from which gravel was removed have filled with water and by the 1960's water-filled pits were a prominent feature of the landscape. Gravel extraction catalysed a change from agricultural to recreational use and many lakes were used by clubs for water sports or fishing. In 1967 Gloucestershire and Wiltshire County Councils designated the land from which gravel had been removed, or was expected to be extracted, as the Cotswold Water Park and set up a committee to promote the use of the park for sport, by naturalists and as a general public amenity, nature conservation was a later increasing concern.</p>
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**Green, Janice**

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**From:** Duncan, Michael <m.duncan@ashfords.co.uk>  
**Sent:** 19 November 2018 09:31  
**To:** Green, Janice  
**Cc:** Nicholson, Robert; Alvin Lindley  
**Subject:** Objection - Path No. 41 Definitive Map and Statement Modification Order 2018 - your ref: JG/PC/9 2016/09  
**Attachments:** Objection of Alvin Lindley dated 19 November 2018(23274341\_1).PDF  
**Importance:** High

**Our ref: 223360-116**

Dear Ms Green

Further to our telephone conversation last week, please find attached the Objection of Mr Alvin Lindley pursuant to the above Order.

Kindly acknowledge receipt

Yours sincerely

**Michael Duncan**  
**Associate**

m.duncan@ashfords.co.uk  
Direct +44 117 321 8064  
Mobile +44 7763 559178  
Fax +44 117 321 8001

**ashfords**

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**THE WILTSHIRE COUNCIL (PARISH OF ASHTON KEYNES) PATH NO. 41  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018**

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**OBJECTION OF ALVIN MARK LINDLEY**

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**INTRODUCTION**

1. This is the formal Objection of Alvin Mark Lindley (“the Landowner”) to the Wiltshire Council (Parish of Ashton Keynes) Path No. 41 Definitive Map and Statement Modification Order 2018 (“the Order”). He is the freehold owner of land to the south of [REDACTED] Ashton Keynes, Wiltshire (“the Land”) over which the claimed path subject to the Order runs. He acquired the Land at Public Auction on 12 March 2015 from Aggregate Industries UK Limited (“Aggregate”).
  
2. The Land was part of a wider area subject to a planning permission granted by Wiltshire County Council (“the County Council”) on 26 March 1992 for the extraction of sand and gravel. The permission was implemented by Aggregate and restoration was completed in 2004. Former Footpath 20 crossing the Land was formally stopped up on 20 November 1996 by an Order made under section 257 of the Town and Country Planning Act 1990 to enable the extraction works to be carried out.
  
3. The Order has been made pursuant to an application made by Ashton Keynes Parish Council (“the Applicant”) dated 30 September 2016 (“the Application”). Despite the Application having been made in reliance upon more than 20 years use pursuant to the statutory presumption contained in section 31 of the Highways Act 1980, that contention has been rejected by the County Council which has instead made the Order specifically on the basis that the claimed path has been dedicated as a public footpath by the landowner at common law.

## **GROUNDS OF OBJECTION**

4. The primary Grounds of Objection are as follows. However, the Landowner reserves the right to add to the stated Grounds should additional information be forthcoming in support of the Order.
  - i. The claimed path was not dedicated as a public footpath by the landowner. Such intention to dedicate has not been demonstrated. On the contrary, the claimed path was provided as a permissive path.
  - ii. The claimed path has not been used by the general public to any material degree over a material period, either to be sufficient to demonstrate implied dedication at common law or to demonstrate acceptance of any dedication, which dedication is denied.

## **COMMON LAW DEDICATION**

5. In order for dedication to have occurred at common law, the burden of proof is firmly on the Applicant to demonstrate that the landowner intended to dedicate the way as a public right of way. Caselaw establishes that that is a heavy burden: *Jones v. Bates* [1938] 2 All ER 237. Further, it must be established by the Applicant that any such dedication was accepted by the public.

## **LACK OF INTENTION TO DEDICATE**

6. The evidence adduced falls far short of establishing that Aggregate intended to dedicate the claimed path as a public footpath. The route was laid out by Aggregate in 2004, but as a permissive route only. That was Aggregate's intention at that time. That is clearly evidenced in correspondence between Aggregate and the Applicant, and at meetings between them when the Applicant was seeking the dedication of the claimed path. It was thus in the Applicant's own knowledge that the path was only permissive and had not been dedicated.
7. Moreover, the County Council's Rights of Way Officer who attended on site in May 2015 himself removed the waymarker signs from the claimed path, acknowledging that it was permissive only. That is particularly pertinent given that the Applicant, and indeed the County Council's Officer in her Report to Committee, contend that the public's right to use the claimed path was not brought into question until April 2016.

## **LACK OF USE**

8. The claimed path has not been used as of right for any material period by the general public from which either dedication at common law can be inferred or from which acceptance by the public can be established.
9. In the first instance, it is apparent from the contents of the evidence user forms that the compilers are confused as to the route they are referring to and as to the route of the claimed path. Many of them refer to using the claimed path prior to 2004. As acknowledged in the County Council's Officer Report, that was not possible given that the route was not laid out until 2015. Similarly, users claim to have used the claimed path post May 2015 when it was physically closed off by the Landowner, again demonstrating that they are wholly confused. In such circumstances, no weight can be given to such evidence given that it appears the compilers are referring to other routes walked rather than the claimed path.
10. Secondly, the lack of evidence of public use is further demonstrated by the Applicant's claim in the Application and supporting evidence that the claimed path had been used for over 20 years and so should be regarded as having been dedicated pursuant to the presumption contained in section 31 of the Highways Act 1980. That very premise of the Application together with the evidence obtained in support is fundamentally flawed and misplaced. The evidence does not, and cannot, support the use of the claimed path which only physically existed on the ground from 2004, and could not have been used during the extraction and restoration works on the Land in any event.
11. Thirdly, that total confusion is further evidenced by the plan accompanying the Application itself and upon which basis the user evidence was obtained. The Application plan is fundamentally different from the Order plan as acknowledged in the Officer report: see paragraph 10.48. They are referring to inherently different routes. The evidence in support relates to a different route to that subject to the Order and consequently cannot be relied upon in support of the Order.

12. Fourthly, the lack of use of the claimed path by the public is demonstrated by the fact that it was overgrown to the extent that it was unusable when the Landowner purchased the Land in March 2015. It had clearly not been used for many years.
13. Fifthly, it is of note that as of April 2016 when the Landowner made a deposit under section 31(6) of the Highways Act 1980 to negative his intention to dedicate any public rights of way over his land, there had been no suggestion of, or any reference to, the claimed path being a public footpath which ought to have been recorded on the Definitive Map, whether by the Applicant, any alleged user, any Rights of Way Officer from the County Council or any other person. The first mention of any such contention was in September 2016 when the Claim was made.

**CONCLUSION**

14. Consequently, common law dedication of the claimed path has not been established, and the Order should not be confirmed.

Signed.....

Ashfords LLP  
For and on behalf of Alvin Mark Lindley

Date.....

**Green, Janice**

---

**From:** Dave Wingrove [REDACTED]  
**Sent:** 25 October 2018 15:01  
**To:** Green, Janice  
**Cc:** Berry, Chuck; Fiona Ryder  
**Subject:** Definitive map modification order - Ashton Keynes

Dear Ms Green,

Wildlife and Countryside Act 1981 - Section 53  
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way -  
Rixon Gate, Ashton Keynes

I understand that, on 7 September 2018, Wiltshire Council made a definitive map modification order. The effect of this order, if confirmed, is to add a public footpath to the definitive map and statement of public rights of way, in the Parish of Ashton Keynes, leading from Fridays Ham Lane, at Rixon Gate, in a generally south-west, west and south westerly direction, to its junction with Path No. 19 Ashton Keynes.

I wish to record that Ashton Keynes Parish Council is fully supportive of this order and that the Parish Council sincerely hopes that, in the fullness of time, the order is confirmed.

Yours sincerely

Dave Wingrove  
Chairman, Ashton Keynes Parish Council



## Green, Janice

---

**From:** Pippa Lawrence [REDACTED]  
**Sent:** 18 November 2018 19:02  
**To:** Green, Janice  
**Subject:** Representation re Path no.41 Modification Order 2018

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Wildlife and Countryside Act - Section 53

The Wiltshire Council (Parish of Ashton Keynes) Path no. 41 Definitive Map and Statement Modification Order 2018.

This path should be reinstated because:

There were Wiltshire Council footpath way marker signs at both ends of Path no. 41 for at least 10 years.

Footpath 20 crosses marshy land that turns into an impassable bog during wet weather and is regularly unusable for months over the winter. Footpath 19 also floods to above wellington boot height so is also unusable. This means that footpath 41 is the only path usable throughout the year enabling us to get to BR 38 and further footpaths. Without footpath 41 we have to walk along the road - Rixon Gate - which in places is narrow and the verges are high and narrow with uncut hedges, this makes it difficult to get ourselves and our dogs safely out of the way of any traffic.

Pippa Lawrence  
[REDACTED]  
Ashton Keynes





## Green, Janice

---

**From:** Jackson, Tess (NE) <Tess.Jackson@naturalengland.org.uk>  
**Sent:** 22 October 2018 10:22  
**To:** Green, Janice  
**Subject:** RE: Notice of Making Definitive Map Modification Order - Ashton Keynes

Hi Janice,

Thank you for forwarding the attached proposed Definitive Map Modification Order to me. Having considered it and discussed with the Thames Path National Trail officer I have no comments to make on this proposal.

Kind Regards

Tess Jackson  
Senior Advisor  
Statutory Access Team (National Trails)

Postal Address:  
Mail Hub,  
Natural England  
County Hall,  
Spetchley Road,  
Worcester. WR5 2NP

Tel: 01452 740295 

Teleconference Ready-Access Number : 0800 0730 694  
International/Mobile Ready-Accesss Number: +44 (0) 3306 068 753  
7-digit access code: 461 362 1922

[www.nationaltrail.co.uk](http://www.nationaltrail.co.uk)

[www.gov.uk/natural-england](http://www.gov.uk/natural-england)

**We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.**

In an effort to reduce Natural England's carbon footprint I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

---

**From:** Green, Janice [mailto:janice.green@wiltshire.gov.uk]  
**Sent:** 28 September 2018 13:57  
**To:** Jackson, Tess (NE) <Tess.Jackson@naturalengland.org.uk>  
**Subject:** Notice of Making Definitive Map Modification Order - Ashton Keynes

Dear Ms Jackson,

**Wildlife and Countryside Act 1981 – Section 53**

**The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018**

Further to my letter dated 13<sup>th</sup> September, enclosing notice of the making of the above-mentioned definitive map modification order adding a footpath in the parish of Ashton Keynes, please find attached a revised notice, where unfortunately the notice did not appear in a local newspaper as required.

Please note that the period for receiving representations to the order has been extended by one week and if you would like to make any representations to the order, I would be very grateful if you could forward them in writing, not later than 5:00pm on Monday 19<sup>th</sup> November 2018.

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](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:  
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

<b>Date of Meeting</b>	17/04/2019
<b>Application Number</b>	18/09895/FUL
<b>Site Address</b>	The Hullavington Arms The Street Hullavington SN14 6DU
<b>Proposal</b>	Erection of one dwelling with associated parking and car port, access and landscaping.
<b>Applicant</b>	Mr Richard Tanner
<b>Town/Parish Council</b>	HULLAVINGTON
<b>Electoral Division</b>	Hullavington
<b>Grid Ref</b>	389384 181911
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Eleanor Slack

### Reason for the application being considered by Committee

The application was called into Committee by Councillor Baroness Scott OBE to consider the scale of the development, the visual impact upon the surrounding area, the relationship with adjoining properties, the environmental or highway impact, car parking and the conflict with the emerging Hullavington Neighbourhood Plan.

#### 1. Purpose of Report

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

#### 2. Report Summary

The key issues in considering the application are as follows:

- Principle of development
- Impact on the scale and character of the existing site/buildings
- Impact on the context and character of the surrounding area

- Impact on heritage assets
- Impact on neighbour amenity
- Parking/highways
- Neighbourhood Plan

As a result of the consultation exercise, 36 letters of objection were received across two consultation periods. The Parish Council also raised a number of concerns regarding the application.

### **3. Site Description**

The application relates to a parcel of land to the north of The Hullavington Arms, which is a public house in Hullavington. The Hullavington Arms is registered with Wiltshire Council as an asset of community value. This designation was extended on 14<sup>th</sup> February 2019 and the property will retain this status until at least 14<sup>th</sup> February 2024. The parcel of land to which the application relates is also included in this listing. The site is accessed through the existing carpark serving the public house. Beyond the car park to the east is The Street, and the land to the west of the site appears to be an agricultural field. There is a public right of way (HULL4) to the north of the site, beyond which is the residential dwelling, no. 40 The Street.

### **4. Planning History**

- |                |                                                                                                |
|----------------|------------------------------------------------------------------------------------------------|
| N/05/02951/FUL | Change of use of land for the siting of a hot food vending van and sale of hot food (Class A5) |
| N/07/00866/FUL | Erection of outside covered smoking area                                                       |

### **5. The Proposal**

The application originally sought permission for the construction of no. 2 dwellings with associated parking, access and landscaping. However, following concerns raised the proposal was revised. The application now seeks permission for the erection of one dwelling with associated parking and car port, access and landscaping.

### **6. Local Planning Policy**

#### Wiltshire Core Strategy (2015)

- Core Policy 1 (Settlement strategy),
- Core Policy 2 (Delivery strategy),
- Core Policy 10 (Chippenham Community Area),
- Core Policy 48 (Supporting rural life),
- Core Policy 49 (Protection of rural services and community facilities),
- Core Policy 50 (Biodiversity and geodiversity),

Core Policy 51 (Landscape),  
Core Policy 57 (Ensuring high quality design and place shaping),  
Core Policy 58 (Ensuring the conservation of the historic environment),  
Core Policy 60 (Sustainable transport),  
Core Policy 61 (Transport and development) and  
Core Policy 64 (Demand management)

National Planning Policy Framework 2019:

Sections 2, 4, 5, 11, 12, 15 and 16

Wiltshire Housing Site Allocations Plan

Hullavington Neighbourhood Plan

## **7. Summary of consultation responses**

### **Consultation responses received during the first consultation period**

Hullavington Parish Council

The Parish Council raised an objection. They considered that there was insufficient parking for 2 no. 3 bedroomed houses. They noted that the emerging Neighbourhood Plan for Hullavington shows a requirement for smaller, less expensive family accommodation.

The Parish Council considered that the proposed dwellings were too large for the plot size and provided only the minimum parking. They felt that visitors to the dwellings would use The Hullavington Arms car park as the majority of households own two vehicles.

They considered that the parking area of The Hullavington Arms (a registered Asset of Community Value) would be decreased by at least 7 spaces. They noted that the pub is reliant on trade from outside the village to survive and should the parking be reduced, this will have a direct effect on the business of The Hullavington Arms. They also felt that the decrease in available parking spaces could lead to vehicles parking on The Street in an area of bends which would be dangerous. This would also have an indirect effect on local property owners through random on street or side road parking.

Employment opportunities at The Hullavington Arms could be impacted should customers find that the parking space at the pub is reduced and go elsewhere. They considered that contrary to the Planning Statement, there is not adequate visibility to the left when turning right out of the site. They also noted that the dwellings would be outside the proposed Settlement Boundary that was approved by Wiltshire Council on 10.7.2018. Finally, they considered that bins would have to be wheeled down to The Street. (approx. 100 yards).

Archaeology

No comment

Drainage

No objection subject to pre-commencement conditions

## Waste

The officer confirmed that no S106 contribution would be required. They requested vehicle tracking to demonstrate that refuse collection vehicles can move through the development. They advised that adequate turning room should be provided to take account of the restrictions on carry distances for residents set out in Part H of Building Regulations and the limitations on carry distances for waste collection crews. They advised that the Council requires an indemnity in order to operate on roads which are not adopted.

The officer explained that each dwelling should have a collection point that is on level hardstanding off any roadway or footway at the curtilage of the property. They advised that the collection point should not impact on space available on driveways and that soft landscaping should not prevent or encumber the collection crew when emptying bins. They advised that due to the private pub carpark, bins would be collected at the curtilage of the pub entrance as this is private property and the Council's contractors will not enter this car park to collect bins from the proposed dwellings unless there has been a signed indemnity form. They noted that collection points have not been indicated on the site plans.

## Public Protection

The development is below the threshold for which an Air Quality Assessment or Screening Assessment would be required. Despite this, the developer is encouraged to provide infrastructure ULEV infrastructure for the development.

They recommended that conditions be placed on any permission given to restrict working hours and to prevent the burning on waste on site. They also requested a condition requiring the submission of an external lighting scheme, and a condition requiring the submission of a noise assessment. However, they noted that they were principally concerned with any existing fixed plant at the pub, which should be assessed at the proposed dwellings position.

The Officer noted that future occupants may be affected by the car park and by patron activity and that proposals as to how this will be controlled so that amenity is protected would need to be evidenced. Similarly, any plant present at the pub would need to be assessed in terms of its potential impact on residential amenity. They recommended conditions in this respect.

## Highways

The Officer raised an objection to the application. They considered that the provision of four vehicle parking spaces was adequate and in line with Wiltshire Council's minimum parking standards for residential development. They also noted that the proposed site has room to manoeuvre so that vehicles can enter and leave the residential element in forward gear.

They noted that the proposal would result in a loss in vehicle parking provision for the public house. They considered that there are high levels of demand for parking in this location, which often result in over-spill parking on The Street as well as within the service area. They

considered that the loss of vehicle parking for the public house would adversely affect the public highway and would exacerbate an existing situation.

### Ecology

No objection subject to conditions requiring that the development is carried out in accordance with the recommendations of the Preliminary Ecological Report, and controlling any external lighting.

### **Consultation responses received during the second consultation period:**

#### Hullavington Parish Council

Although the Parish Council considered that the revised plans were a slight improvement on the original plans, they maintained their objection to the proposal. They raised concerns regarding the following matters:

- Queried why a car port was proposed rather than a garage
- Access through the centre of an established car park. They were concerned that there would be conflict between homeowners/patrons of the Hullavington Arms
- They considered that more of the plot could have been given over to additional car parking to allow for expansion of the business whilst keeping on street parking to a minimum. They felt that the proposal was not the best use of space and that consideration had not been given to the needs of the business.
- They highlighted that the Hullavington Neighbourhood Plan is almost at the External Examination stage. Consideration could have been given for 2 x 2-bedroom semi-detached properties on the same footprint as there is a greater stock of 3, 4, 5 bed properties in the village compared to 1 or 2 bed properties.

### Highways

The Highways Officer raised no objection to the proposal. They considered that the provision of 2 vehicle parking spaces is adequate and in line with Wiltshire Councils Minimum Parking Standards for Residential Development. They noted that the proposed site also has room to manoeuvre so that vehicles can enter and leave the residential element of the site in a forward gear. They considered that there would be no loss in vehicle parking provision for the public house. However, they noted the concerns raised that access to the property could become blocked by informal parking. They suggested that a strip be provided at the western edge of the site boundary in order to allow for two allocated spaces for the property within the car park. They noted that although the refuse collection point would be some 35 metres from the storage point, this would be the shortest carry distance possible.

### Public Protection

The Public Protection Officer considered that the proposed fence at the boundary of the pub and the car park may provide additional noise protection for the proposed dwelling. They reiterated the requirement for a noise assessment.

## Drainage

Holding objection. The Drainage Engineer requested the submission of an outline plan of foul drainage disposal, an outline surface water disposal plan, and an outline plan for the attenuation of the discharge rate for the surface water from the site. They noted that the detailed design could be undertaken via conditions.

## Arboricultural Officer

No objection subject to conditions.

## **8. Publicity**

The publicity for the application was by way of site notice and neighbour notification letter. A second public consultation took place following the receipt of revised plans and this was advertised by way of neighbour notification letters.

Concern was raised during the first public consultation that many adjacent neighbours had not received consultation letters, and that the site notice had also been altered. The Council sent consultation letters to all adjacent neighbours inviting them to comment on the application. A site notice was also posted to the East of the site, on The Street, and the consultation end date on the site notice was altered by the Case Officer to allow members of the public 21 days to comment on the planning application. Whilst the Council cannot guarantee that all neighbour letters which have been sent will be received, it is considered that The Council fulfilled its duty to consult in this instance.

18 letters of objection were received during the first public consultation period. The main points raised were as follows:

- The Council's consultation letter was not received
- The site notice was altered.
- Harm to the character of the village
- Proposal will be clearly visible from the adjacent footpath (Parsons Walk) and The Street
- The application does not consider its impact upon nearby listed buildings.
- Harm to viability of The Hullavington Arms and to its designation as an asset of community value
- The proposal would result in loss of the pub garden areas
- Potential closure of the pub would be pave the way for further development in this location
- The proposal would prevent any future extension of the public house and would detrimentally impact its ability to develop
- Concern that the proposal would result in the loss of the pub
- Loss of parking within the pub car park and its impact upon the viability of the pub
- Lost parking spaces within the pub carpark could not be replicated elsewhere due to highway safety issues.
- Insufficient parking spaces proposed within the development itself and concern that additional cars would park in the pub carpark.



- Construction traffic and vehicles accessing the proposed dwellings would cause conflicting vehicle movements and highways safety issues.
- The proposal would increase traffic exacerbating existing highway safety issues
- The existing access is substandard and increased usage will cause a hazard to road users
- Proposed dwellings would be adversely affected by noise arising from the pub
- Public views of trees, grass and fields would be lost.
- The area is home to a diverse array of wildlife and trees, the habitat for which will be lost.
- Local Parish Planning Authority Committee has voted for where they would like additional housing to be built. This location was not selected.
- The planning application would undermine the consultation process associated with the neighbourhood plan.
- There is no need for 2 more houses in Hullavington
- Site is outside of the village boundary and is therefore development in the open countryside contrary to planning policies.
- Construction traffic would cause significant disruption
- Give rise to overlooking causing loss of privacy and overshadowing
- Proximity of proposed dwellings to the pub will cause loss of privacy and noise disturbance to the occupants.
- If the LPG fuel tank were relocated it would be difficult to access.

18 letters of objection were received during the second public consultation. The main points raised were as follows:

- Out of keeping with listed buildings in the area.
- The proposal could pose a risk to the structural footings of the surrounding dwellings.
- Harm to the character of the area
- Leaving refuse collection bins on the pavement is inappropriate and dangerous.
- Refuse vehicles collecting the bin would create a dangerous obstacle.
- Contrary to the Council's guidance for developers on waste storage and collection. In conflict with the Council's statutory duty to protect the health and safety of members of the public.
- The proposal would erode the parking available for the Hullavington Arms and the Saddlery. As Hullavington grows, the public house will see greater use and more parking will be required. When at full capacity there is not sufficient space to form a driveway through the car park.
- The main pavement to the primary school is in front of the pub. Parking on the pavement will jeopardise the safety of pedestrians including children.
- Parking on the pavement would cause highway safety issues.
- The viability of the public house and other nearby businesses would be affected contrary to Core Policy 49.
- As existing, overflow parking takes place on the road. If this increases it will cause accidents.
- It would increase traffic onto the road which is very busy.
- The access is inappropriate and there would be frequent conflict between the future occupants of the dwelling and the pub's patrons. It does not have clear visibility.

- No provision is made for visitor parking to the dwelling. This would result in increased on-street parking.
- The construction traffic would be dangerous
- The proposal would prevent the Hullavington Arms from being able to grow.
- The proposal is in conflict with the Neighbourhood Plan
- The loss of parking would affect the viability of the public house and the shop on the site.
- It would remove a green space in the village which is used by children. It forms part of the pub garden and is frequently used.
- Activity within the car park, public house and its garden would cause harm to the amenity of the occupants of the proposed dwelling.
- The car park is floodlit which would cause harm to the amenity of the new dwelling.
- The public house is registered as a community asset.
- The proposal sets a precedent for further development
- The proposed car port does not comply with the Council's parking standards.

## 9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

### Principle of development

The site is located within the framework boundary of Hullavington, which is identified by Core Policy 1 of the Wiltshire Core Strategy as a Large Village. Core Policy 2 sets out a presumption in favour of sustainable development in existing settlements including Large Villages such as Hullavington. The North and West Wiltshire Housing Market Area in which the site is located currently has 6.25 years land supply as demonstrated by the Housing Land Supply Statement (March, 2018). As such, the housing policies contained within the Wiltshire Core Strategy have full weight in the decision-making process.

CP1 of the WCS confirms that: 'Development at Large and Small Villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.' This position is clarified in paragraph 4.15, which explains that '*At the settlements identified as villages, a limited level of development will be supported in order to help retain the vitality of these communities. At Large Villages settlement boundaries are retained and development will predominantly take the form of small housing and employment sites within the settlement boundaries.*'

### *Emerging Wiltshire Housing Site Allocations DPD*

The defined settlement boundaries are to be reviewed as part of the Wiltshire Housing Site Allocations DPD. A draft DPD is in existence and proposes an amendment to the Hullavington settlement boundary which *excludes* the whole of the application site from the framework boundary. Although the hearing sessions for the DPD were conducted in April,

the Council is currently awaiting receipt of the Inspector's report which may suggest that modifications to the DPD are required. The DPD has not therefore been adopted and it is understood that representations have been submitted objecting to the exclusion of the site from the revised settlement boundary. These representations will be considered by the Inspector and at this stage, it is unclear if any amendments to the plan and the settlement boundaries contained within it will be required, or whether a further consultation period will be required. In such a context, the draft DPD may only be afforded limited weight in decision making.

#### *Emerging Hullavington Neighbourhood Plan*

The draft Hullavington Neighbourhood Development Plan Neighbourhood Plan is also relevant to this application. Comments received during the public consultation period highlighted that the application site was not selected for development during the Neighbourhood Plan process, and it was felt that the current application undermines the consultation process associated with the neighbourhood plan. The plan proposes a new settlement boundary which would *exclude* the whole of the application site from the framework boundary.

The Neighbourhood Plan has not yet been made by the Local Planning Authority and does not currently form part of the development plan. The Inspector has examined the Neighbourhood Plan, and the Council has received the Examiner's report which is currently being 'fact checked'. Once the Council has received the final report, a 'decision statement' will be issued and a referendum will be arranged.

The weight to afford to policies contained within an emerging plan is a matter for the decision-maker. This is made clear by paragraph 48 of the NPPF which sets out the criteria which Local Planning Authorities should use when determining how much weight to give relevant policies in emerging plans. The criteria include the stage of preparation of the plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies to the NPPF.

In the case of both the draft DPD and the Neighbourhood Plan, both emerging plans have not reached the final stages of preparation. In the case of the Neighbourhood Plan the Council has yet to issue its decision statement, or to hold a referendum on the plan. Therefore it is not yet clear if the plan will be adopted. Similarly, in the case of the DPD, it is unclear if any amendments to the plan will be required, or if further consultation periods will take place. In such a context, the draft Neighbourhood Plan and draft DPD may only be afforded limited weight in decision making.

#### *Current adopted Development Plan context*

Assessed against the current policy context, the proposal is considered to be acceptable in principle. Whilst both the Hullavington Neighbourhood Development Plan and the Wiltshire Housing Site Allocations DPD would both exclude the site from the revised settlement boundary, these plans are still in draft form and do not currently carry full weight in the planning balance.

Clearly, whilst the proposal is currently acceptable in principle, the formal adoption of the aforementioned plans would render the development unacceptable in principle by virtue of its position outside of the revised settlement boundary.

### *Housing need*

Concern was raised during the public consultation period that no additional houses are required in Hullavington. Core Policy 10 of the Wiltshire Core Strategy states that 5090 homes will be required in the community area within the plan period, and that 4510 of these homes should be provided in Chippenham. Therefore, 580 homes are required to be delivered in the wider community area. The figure was 0 in the Housing Land Supply Statement (update, April 2017). Despite this, the site is located within the existing settlement boundary of Hullavington where a presumption in favour of sustainable development applies. It would not therefore be reasonable to recommend that the application is refused on this basis.

Regarding the type of dwelling proposed the Parish Council expressed a preference for the construction of two smaller dwellings in this location. They highlighted that there are few dwellings with only one or two bedrooms in the locality. Whilst this comment is noted, there are no policies contained within the current development plan which specify the size of dwellings that should be provided. As such, and given that the site is located within the existing settlement boundary where there is a presumption in favour of sustainable development the proposal is considered to be acceptable in this regard.

Although concern was raised during the public consultation period that the proposal would set a precedent for future development in the locality, it should be noted that there is no precedent in planning. As such, all future applications in the locality will be assessed on their own merits.

### Impact on the viability of the public house

Concerns were raised during the public consultation period that the proposal would cause harm to the viability of The Hullavington Arms as a public house and as an asset of community value contrary to Core Policy 49. It was felt that the proposal would also cause harm to the viability of other businesses in the locality including the Saddlery. Comments received suggested that the proposal would hinder the ability of the public house to expand by preventing any future extension for off-street parking or space which could be used for community events. Concerns were raised that the proposal would result in the loss of the public house, and that this would make further development in this location more likely.

It is considered that Core Policy 49 is not directly relevant to the proposal as it does not propose the loss of the public house. However, the policy does recognise the important role that public houses play in rural communities and lists them as a rural facility and service which benefits the local community. The importance of the public house to the local community is reflected in the recent renewal of its status as an asset of community value.

It is not considered that the proposal would cause harm to the viability of the public house or any other business in the locality. Paragraph 182 of the NPPF states that existing businesses should not have unreasonable restrictions placed on them as a result of development which was permitted after they were established. The proposed dwellings

would need to provide sufficient noise mitigation to ensure that there would not be any need for the existing pub to alter any of its existing hours or use of external areas. As will be explored in further detail below, the Council's Public Protection Officer considers that it would be appropriate to request these details by way of condition. The land on which the proposed dwellings would be located is not considered to be essential to the operation or viability of the public house and there is no policy contained within the Wiltshire Core Strategy which would prevent land adjoining public houses from being developed. As will be outlined in further detail below, it is not considered that the proposal would reduce the number of off-street car parking spaces serving the public house, and the proposal would not therefore cause harm to the viability of the public house in this regard. There is not precedent in planning and each application is assessed on its own merits. It is therefore considered that the proposal would not make development in this location more likely.

#### Impact on residential amenity

Concern was raised during the first public consultation period that the proposal would cause loss of privacy and overshadowing. Core Policy 57 requires development to have regard to its impact upon the amenities of existing occupants. The closest residential occupiers to the application site are no. 44 and 40 The Street. No. 44 is located approximately 23 metres to the east of the application site. Due to this separation distance, the position of the proposed dwelling and the location of windows within the proposed dwelling, it is considered that the proposal would not give rise to any significant loss of light, privacy or overbearing impact for this adjacent occupier such that the proposal could reasonably be refused on this basis.

With regard to the impact upon no. 40, it is noted that the proposed first floor windows in the rear elevation of the proposed dwelling would look out towards this adjacent occupier. However, no. 40 is located approximately 19 metres from its southern boundary line and it is considered that this significant separation distance would prevent any views into this adjacent residential dwelling itself. Due to the location, size and nature of the proposed windows and the site circumstances including the natural boundary treatments surrounding the site, it is considered that the proposed windows would not provide any unacceptable views into the private amenity space of no. 40 such that the proposal could reasonably be refused on this basis. Similarly, it is considered that the proposal would not give rise to any significant overshadowing or overbearing impact for this adjacent occupier. It is considered that the proposal would not cause any harm to the amenity enjoyed by another other residential occupier.

Concern was raised during both consultation periods regarding the impact of the public house on the amenity enjoyed by future occupants of the proposed dwelling. It was felt that patron activity within the car park, public house and its garden would cause harm to the amenity of the occupants of the proposed dwelling. It was also highlighted that the car park is floodlit, and it was felt that the glare associated with its use would also cause disturbance.

Core Policy 57 requires proposals to have regard to the levels of amenity achievable within the development itself, including the consideration of privacy, overshadowing, vibration and pollution (such as light intrusion, noise, smoke, flames, effluent, waste or litter). It is considered that the revised proposal has enhanced the proposal in this regard. The

reduction in the number of dwellings proposed has allowed for an increase in the distance of the proposed dwelling from boundary line with car park. As existing the site is surrounded by a low stone wall and the revised plans indicate that this boundary treatment would be replaced with a 1.8 metre close board fence. The Public Protection Officer considered that this fence may provide additional noise protection for the proposed dwelling and it is considered that it would reduce noise and light intrusion associated with patron activity in the adjacent car park. An enlarged area of private amenity space is now proposed, which is considered to be adequate. Notwithstanding the existing floodlight, this harm could be overcome through the use of thick, high-quality curtains or blinds within the proposed dwelling. Alternatively the car park of the public house could be lit through less intrusive means and given that both the application site and the car park are within the same land ownership, this is considered to be a realistic and appropriate means to overcome the minor harm caused.

Whilst it is noted that the proximity of the proposed dwelling to the public house may cause some disturbance to the occupants of the proposed dwelling through general patron activity, the presence of residential dwellings in close proximity to public houses is not an unusual arrangement. Indeed, even without the development of this site, the public house is surrounded by existing residential dwellings. Moreover, as indicated by the Public Protection Officer, the harm in this respect could be mitigated through adequate soundproofing and this could be secured through an appropriately worded condition.

With respect to noise arising from specific sources such as plant serving the public house, the Public Protection Officer considered that these matters could be adequately addressed by applying a condition to any permission given requiring the submission of a noise assessment.

#### Design and Impact on the scale and character of the existing site/buildings

Concern was raised during the public consultation period that the proposal would cause harm to the character of the village. It was highlighted that the proposal would be clearly visible from the adjacent public footpath and The Street, and that public views of trees, grass and fields would be lost as a result of the proposal.

Core Policy 57 of the Wiltshire Core Strategy requires a high standard of design in all new developments. It states that development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality. In particular, development must enhance local distinctiveness, relating positively to its landscape setting and the existing pattern of development in terms of building layouts, built form, height, mass, scale, building line, plot size and elevational design.

In terms of the design of the proposed dwelling, it is noted that there are a variety of building styles and materials in the area. It is considered that the layout and scale of the proposal is in-keeping with the surrounding built form and in this context, the design of the proposed dwelling is considered to be acceptable. Although the proposal would reduce the green space visible from public vantage points, it is noted that the site is not located in a specifically designated area such as an Area of Outstanding Natural Beauty or a conservation area. The loss of a fairly small area of green space would not cause such harm

to the character and appearance of the area that the proposal could reasonably be refused on this basis.

#### Impact on heritage assets

There are a number of listed buildings within the vicinity of the site, with the closest being no. 61 The Street which is located over 50 metres to the east of the site. The Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the preservation of listed buildings and the Act requires that special regard should be given to the desirability of preserving a listed building or its setting (s.16 and 66).

Paragraph 189 of the NPPF requires applicants to describe the significance of any heritage asset affected by the proposal and paragraph 190 of the NPPF places the same duty upon the Local Planning Authority. Concern was raised during the public consultation period that the application does not consider its impact upon nearby listed buildings. Although it is noted that no heritage statement was submitted in support of the proposal, given the significant distance between the application site and the nearest designated heritage asset, in addition to the position and nature of the proposed dwelling, it is considered that the proposal would have no impact upon the setting or significance of the listed building and that it would not be reasonable to require the submission of a heritage statement in this instance.

#### Parking/highways

Concern was raised during the first public consultation period that an insufficient number of parking spaces had been provided within the site. This concern was reiterated in the second public consultation period and it was highlighted that no provision had been made for visitor parking within the development site. The Highways Officer considered that the proposed parking arrangement was acceptable and in line with Wiltshire Council's minimum parking standards for residential development. The Officer also noted that there is room to manoeuvre within the site so that vehicles can enter and leave the residential element in forward gear. The proposal is therefore considered to be acceptable in this respect. With regard to visitor parking, the Council's Car Parking Strategy requires the provision of 0.2 spaces per dwelling. Although no visitor parking spaces are proposed, it is noted that there is a significant amount of space available on the proposed driveway within the site to accommodate a visitor's vehicle.

Concern was also raised during the public consultation period that the proposal would reduce the number of parking spaces available within the Public House's car park, and these comments were supported through the submission of photographs of the car park. It was felt that this would encourage on-street parking causing a hazard to motorists and pedestrians. It was felt that the proposal would increase traffic and by doing so would exacerbate existing highway safety issues. Moreover, concerns were raised that the existing access was substandard, and that any increase in its use would constitute a hazard to road users and that the proposal would give rise to conflicting vehicle movements between the occupants of the dwelling and the pub's patrons.

The Highways Officer noted that there may be a degree of informal parking within the car park at busy times. Although the construction of the proposal may prevent such informal parking from occurring, it would be unreasonable to plan on the basis that the car park would

be stacked beyond its reasonable capacity. The parking arrangement shown on the proposed plans is considered to be reasonable with respect to its layout and aisle widths; and it appears to be consistent with the use of the car park except when it is over-occupied. This layout is to be conditioned and provided future occupiers of the dwelling have access rights over the car park, the proposed layout is considered to be acceptable.

The Highways Officer suggested that two allocated spaces could be provided within the existing car park for use by occupants of the dwelling, and that these spaces could be off-set by the creation of two further spaces to the west of the car park. Given that the existing parking arrangement would be unaffected by the proposal and that the proposed parking arrangement is considered to be acceptable, it would not be reasonable to require that the proposal is amended on this basis. Moreover, the Highways Officer noted that if the car park is stacked beyond its reasonable capacity and the occupants of the new dwelling are not able to access their driveway, only two vehicles would be displaced onto the highway and this would not be unacceptable in terms of additional on-street parking within the area. Similarly, if occupants of the dwelling become blocked-in to their property due to informal parking within the car park, this would be a civil matter between the parties involved.

The Highways Officer was satisfied with the principle of vehicular access through the car park. Whilst they noted the potential for conflicting vehicle movements between the occupants of the dwelling and the patrons of the public house; they noted that there is always potential for conflict in car parks, and they considered that this issue would not necessarily be exacerbated by the shared access particularly given the small scale of the development proposed. They considered that the additional vehicle movements associated with the proposal would not significantly increase the use of the access onto the highway and that the proposal was acceptable in this respect.

Concern was also raised regarding the construction phase of the development. It was felt that construction traffic would cause disruption, would exacerbate conflicting vehicle movements and would cause highways safety issues. These concerns are noted and it is suggested that a condition requiring the submission of a construction method statement be applied to any permission given. This will allow the Local Planning Authority to control matters related to the construction phase including construction and delivery hours.

### Waste

Concern was raised during the public consultation period regarding the proposed waste storage and collection arrangement. It was felt that leaving refuse collection bins on the pavement was both inappropriate and dangerous, that refuse vehicles collecting bins would create a dangerous obstacle, and that the proposal would be contrary to the Council's guidance for developers on waste storage and collection.

The Council's Waste Officer advised that due to the presence of the car park, bins would be collected from the curtilage of the pub entrance. They requested that the proposed collection point be indicated on the site plan. Whilst the collection point shown on the proposed site plan would be some 35 metres from the collection point, this would be the shortest carry distance possible and it would not be reasonable to refuse the proposal on this basis. The use of the pavement as a bin collection point is not an unusual arrangement, and it is not considered that the very temporary presence of a small number of waste and recycling bins



on the pavement would cause such an obstruction or hazard to pedestrians that the proposal could reasonably be refused on this basis. Although waste collection vehicles would cause an obstruction while collecting waste, this obstruction would only be momentary and would be limited to one day a week. Moreover, the temporary stopping of a waste collection vehicle within the highway in order to collect waste is a common arrangement and it would not be reasonable to recommend the refusal of the application on this basis.

### Drainage

During the first consultation period, the Council's Drainage Engineer raised no objection to the proposal subject to pre-commencement conditions requiring details of the proposed surface water and foul water drainage arrangement. Given that their response indicated that there would be an appropriate drainage solution on the site and as the site is not located in flood zones two or three, it would not be reasonable to insist that this information was provided prior to the determination of the application.

### Protected species and trees

Concern was raised during the public consultation period that the application site is home to a diverse array of wildlife and trees, the habitat for which would be lost as a result of the proposal. However, the Ecologist reviewed the proposal and raised no objection subject to conditions requiring that the development is carried out in accordance with the recommendations of the Preliminary Ecological Report, and controlling any external lighting. The proposal is therefore considered to be acceptable in this regard.

The Council's Arboricultural Officer raised no objection to the proposal subject to conditions. The proposal is therefore considered to be acceptable in this regard.

### Other matters

Concern was raised during the public consultation period that the proposal could pose a risk to the structural footings of the surrounding dwellings. Damage to third party property is not a material planning consideration and cannot be taken into account in the determination of this application. However it should be noted that if such damage did occur, this would be a private legal matter between the individuals involved.

Concern was also raised that if the existing fuel tank were relocated it would be difficult to access. Although a relocated fuel tank was shown on the original plans, this was omitted from the revised plans. Notwithstanding this, the indicated position of the relocated fuel tank is outside of the red line boundary pertaining to this application and the relocation of an fuel tank may require planning permission in of itself. Such permission cannot be granted as part of this application.

## **10. Conclusion**

The development is considered to be acceptable on its planning merits. The proposal is acceptable in principle given its compliance with current planning policy. It would be in-keeping with the character and appearance of the locality and it would not cause any harm

to designated heritage assets. The proposal would not cause any harm to the amenity enjoyed by neighbouring properties and an adequate level of amenity would be achievable within the development itself. The proposal would not result in the loss of parking spaces associated with the public house, and the dwelling's proposed parking arrangement would satisfy the Council's parking standards.

**RECOMMENDATION: That Planning Permission be GRANTED 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:

06 - PROW plan

02 - Existing site plan

15964/1 - Topographic survey

Received 18/10/2018

03 Rev A - Proposed site plan

04 Rev A - Proposed elevations

05 Rev a - Proposed plans

07 Rev A - Landscaping details

08 Rev A - Bat box location

09 Rev A - car port details

Received 06/03/2019

01 Rev B - Location plan

Received 07/03/2019

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

- 3 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
  - a) the parking of vehicles of site operatives and visitors;
  - b) loading and unloading of plant and materials;

- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) measures to control the emission of dust and dirt during construction;
- f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- g) measures for the protection of the natural environment.
- h) hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

- 4 The development hereby approved shall be carried out in accordance with the recommendations made in section 5 of the Preliminary Ecological Appraisal Report dated 28th September 2018, prepared by Turner Jomas & Associates as already submitted with the planning application and agreed in principle with the local planning authority before determination.

REASON: To ensure adequate protection and mitigation for protected species.

- 5 No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

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

- 6 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.

- 7 No development shall commence on site until a scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

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

- 8 Prior to the commencement of development an acoustic report shall be submitted to the LPA that demonstrates the internal and external amenity standards in accordance with BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings and WHO Guidelines for Community Noise (1999) can be met within the proposed development; this must include details of any scheme of mitigation required to achieve this. Any scheme of mitigation applied to this development must be approved by the LPA prior to implementation and followed by verification prior to first occupation of the development and thereafter be permanently retained.

Reason: To protect the local amenity from any adverse effects of noise.

- 9 Prior to commencement of development an assessment of the acoustic impact arising from the operation of the adjacent public house including but not limited to external/internal plant and patron activity at the pub and its car parking shall be undertaken in accordance with BS 4142: 2014. The assessment shall be submitted to the Local Planning Authority together with a scheme of attenuation measures to ensure the rating level of noise emitted from the proposed plant shall be less than background. The scheme shall be submitted to and approved in writing by the Local Planning Authority. Any scheme of mitigation applied to this development must be approved by the LPA prior to implementation and followed by verification prior to first occupation of the development and thereafter be permanently retained.

Reason: To protect the local amenity from any adverse effects of noise.

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

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

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or

extensions or enlargements of any building forming part of the development hereby permitted.

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

- 12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

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

Reason: To ensure the safe retention of existing trees on and adjoining the site.

- 14 INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

- 15 INFORMATIVE TO APPLICANT:

Tree roots are normally located in the first 600mm of soil. Roots that are exposed should be immediately wrapped or covered to prevent desiccation and to protect them from rapid temperature changes. Any wrapping should be removed prior to backfilling, which should take place as soon as possible. Roots smaller than 25mm diameter can be pruned back making a clean cut with a sharp tool. Roots occurring in clumps or over 25mm should be severed only following consultation with a qualified arboriculturist, as such roots might be essential to the tree's health and stability. Prior to backfilling retained roots should be surrounded with topsoil or uncompacted sharp sand (builders sand should not be used because of its high salt content, which is toxic to tree roots).

- 16 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

- 17 INFORMATIVE TO APPLICANT:

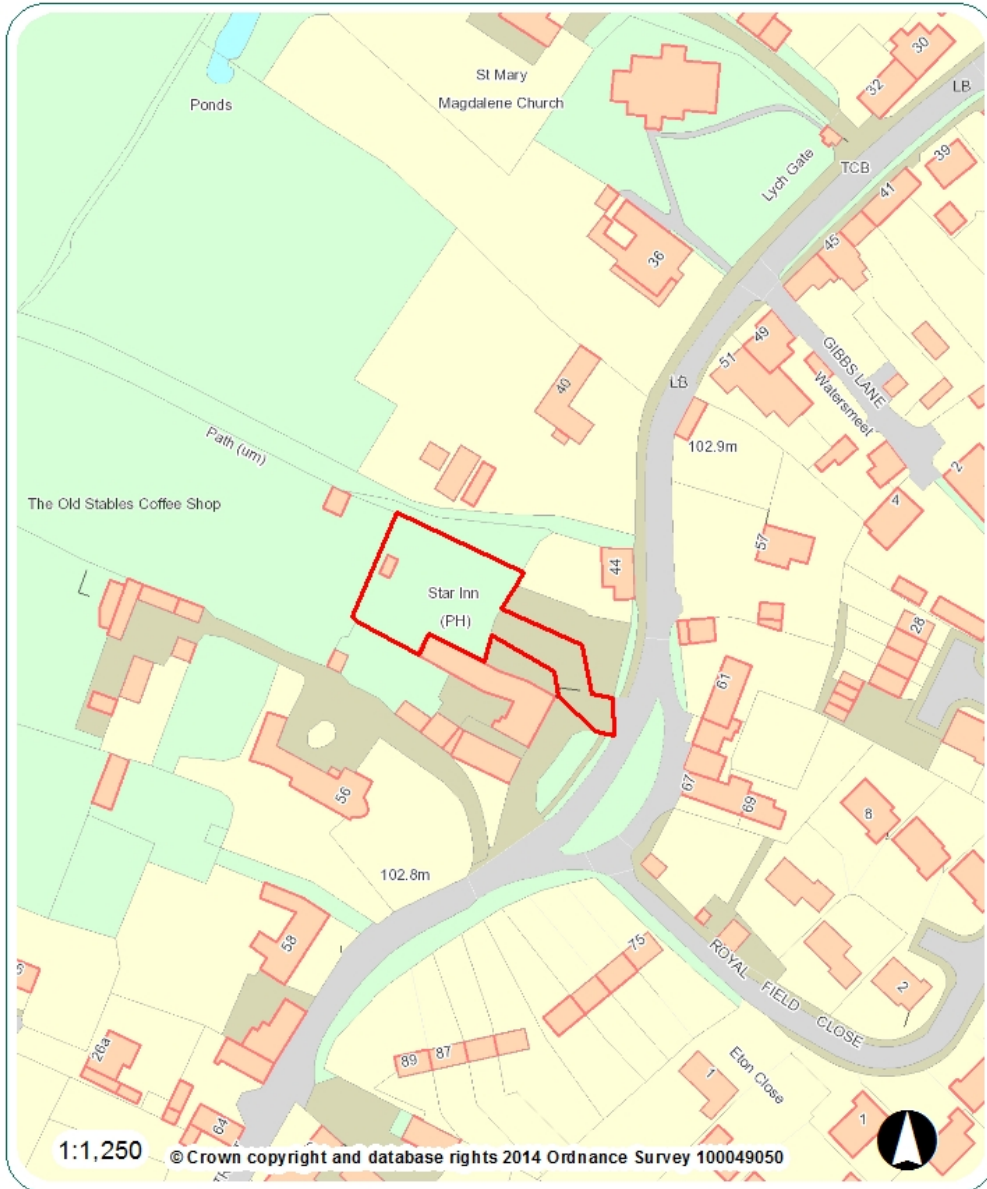
Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are

to be found.

18      INFORMATIVE TO APPLICANT:

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

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



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