

# AGENDA

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**Meeting:** Northern Area Planning Committee

**Place:** Council Chamber - Council Offices, Monkton Park, Chippenham,  
SN15 1ER

**Date:** Wednesday 6 November 2019

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Stuart Figini, 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 Peter Hutton (Vice-Chairman)  
Cllr Chuck Berry  
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

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## Substitutes:

Cllr Ben Anderson  
Cllr Bill Douglas  
Cllr Ruth Hopkinson  
Cllr Bob Jones MBE

Cllr Jacqui Lay  
Cllr Melody Thompson  
Cllr Nick Murry  
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** (*Pages 5 - 24*)

To approve and sign as a correct record the minutes of the meeting held on 09 October 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 30 October 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 01 November 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 25 - 26*)

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

7 **APPLICATION TO DIVERT PUBLIC BRIDLEWAYS CALNE WITHOUT 89 (PART), 89A AND 89B AT THE MILL HOUSE, CALSTONE WELLINGTON**  
(*Pages 27 - 388*)

8 **Planning Applications**

To consider and determine the following planning applications:

8a **19/01991/VAR - Oaksey Park Cottages, Wick Road, Oaksey** (*Pages 389 - 402*)

8b **19/07306/FUL - Land to the North West of Broad Town, Swindon**  
(*Pages 403 - 416*)

8c **19.0497.FUL & 19/5290/LBC - 4 Oxford Street, Malmesbury** (*Pages 417 - 430*)

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 9 OCTOBER 2019 AT COUNCIL CHAMBER - 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 Ian Thorn

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72 **Apologies**

An apology was received from Cllr Chuck Berry, who was substituted by Cllr Jacqui Lay.

73 **Minutes of the Previous Meeting**

The minutes of the meeting held on 4 September 2019 were presented.

**Resolved:**

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

74 **Declarations of Interest**

Cllr Tony Trotman declared an interest in agenda item no. 7 – application numbers 18/04202/FUL & 18/04719/LBC – Woodlands Social Club, Woodlands Park, Calne as he was a member of Calne Town Council and had attended a meeting of the Town Development & Planning Committee when these applications were debated. He declared that he would participate in the debate and vote on these applications with an open mind.

75 **Chairman's Announcements**

There were no Chairman's announcements.

76 **Public Participation**

The Committee noted the rules on public participation.

77 **Planning Appeals and Updates**

An update on planning appeals and decisions was received.

**Resolved:**

**To note the contents of the update.**

78 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting in respect of applications 18/04202/FUL and 18/04719/LBC as listed in the agenda pack and circulated as a late supplementary to the agenda.

**78a 18/04202/FUL and 18/04719/LBC - Woodlands Social Club, Woodland Park, Calne**

The Committee received a presentation from the Case Officer which set out the main issues in respect of the application. He drew attention to late representations he had received and also amended conditions which had been sent to members of the Committee. The purpose of the report was to assess the merits of the proposals against the policies of the Development Plan and other material considerations and to consider the recommendation that planning permission and listed building consent be approved.

The Case Officer explained that the key issues in considering the applications were as follows:-

- Principle of the development
- Impact on character and appearance of the area
- Impact on neighbour amenity
- Scale of development
- Impact on the listed building and its setting
- Highways and parking
- Viability

During the process with regard to the initial submission it had been made clear to the applicant about the many design issues as a result of the symptoms of overdevelopment and the Local Planning Authority had encouraged them to reduce the amount of development in order to resolve issues. In the latest set of plans that were consulted upon, the key amendments were as follows:-

- The Coach House (2 units) was replaced with The Bungalow (unit 14) and was reduced to a one bedroom unit – with removal of the car ports previously proposed and removal of the first floor to address overlooking issues.
- The Terrace units (7 – 13) were reduced from 4 bedroom units to 3 bedroom units. This resulted in a reduction in car parking demand.

Members then had the opportunity to ask technical questions after which they

heard statements from members of the public, all of whom spoke in opposition to the proposals, as follows:-

Mr Philip Messam, a local resident  
Mr Bob Burns, a local resident  
Mr John Boaler, a local resident  
Cllr Robert MacNaughton, representing Calne Town Council

Members then heard the views of Cllr Ian Thorn, the local Member, who explained that he had three major areas of concern, namely:-

- Conservation and restoration of existing buildings and wall.
- Viability of the scheme.
- The continued way in which the residents had tried to consult with the applicant with minimal success.

During the subsequent discussion, Members were informed that although there had not been a great deal of contact between the residents and the applicant, their views had been taken into account in drawing up the revised proposals. Members hoped that this would continue and develop further.

It was acknowledged that the proposals would result in a change to the outlook of some existing residents, it was not considered to result in unacceptable overlooking or impacts upon the amenities of the existing occupiers. On balance it was considered that the new building would be an acceptable distance from existing buildings.

Members considered that the merits of the proposals were finely balanced. The applicant had supplied various viability information for consideration. The result showed that the developer's profit output was short of that required to justify viability from the developer's perspective. It was therefore considered that the proposed scheme was not sufficiently viable to provide any affordable housing, public open space or Section 106 contributions.

After further discussion, on the proposal of Cllr Toby Sturgis, which was seconded by Cllr Peter Hutton, together with additional elements to condition 07 to the planning permission so as to require the hours of construction would avoid peak school drop-off and pick-up time and an informative was also to be added so as to request that the applicant consult with the local residents when preparing the Construction Method Statement.

**Resolved:**

**To grant planning permission, subject to the following conditions:-**

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

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

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

#### **SITE**

- PL100 Location Plan 1:1250@A3
- PL101 A Existing Site Plan 1:200@A1
- PL102 D Proposed Site Plan 1:200@A1
- SK202 B Refuse Truck Turning Site Plan 1:200@A1
- PL103 F Proposed Site Boundary Treatment 1:200@A1  
PL104 Proposed & Existing Root Protection Treatment 1:500@A1
- PL105 Existing South-East Boundary Wall to Silver Street 1:100@A1
- PL106 Proposed South-East Boundary Wall to Silver Street 1:100@A1
- PL107 A Existing South-East Site Section 1:100@A1
- PL108 A Existing North-East Site Section 1:100@A1
- PL109 C Proposed North-East Site Section 1:100@A1
- PL110 A Proposed South-East Site Section 1:100@A1
- PL111 A Proposed South-West Site Section 1:100@A1
- PL112 Proposed North-West Site Section 1:100@A1
- PL113 Visual of Proposal NTS
- PL114 Proposed South-West Site Section 1:100@A1
- PL115 Proposed South-East Site Section 1:100@A1
- PL116 Proposed North-West Site Section 1:100@A1
- PL117 Trees Proposed to be Removed 1:200@A1
- PL118 Tree Root Protection Areas of Retained Trees 1:200@A1
- PL119 Proposed North-West Site Section 1:100@A1
- PL120 Extract of Proposed South-East Site Section Including Levels Through the Gate Lodge (Bungalow) 1:100@A3
- PL121 Sun Path Diagrams + Shadow Cast for the Gate Lodge (Bungalow) – 21st June NTS A3
- PL122 Sun Path Diagrams + Shadow Cast for the Gate Lodge (Bungalow) – 21<sup>st</sup>December NTS A3
- PL600 Site Constraints 1:200@A1
- PL603 Proposed Bin Stores to the Front of the Terraces 1:20@A3
- PL604 A Proposed Bike and Bin Stores 1:20@A3
- PL605 A Bike Store – Three Bikes 1:20 @ A3
- PL606 A Bin and Bike Store – Three Bikes

#### **EXISTING SOCIAL CLUB & HOUSE**

- PL200 Existing Basement Plan 1:50@A1
- PL201 Existing Ground Floor Plan 1:50@A0
- PL202 Existing First Floor Plan 1:50@A0
- PL203 Existing Roof Plan 1:50@A0
- PL204 Existing Elevation Roadside - NE 1:50@A1
- PL205 Existing Elevation / Section - SW 1:50@A1
- PL206 Existing Elevation Front of Social Club - SE 1:50@A1



- PL207 Existing Elevation Skittle Alley Side - NW 1:50@A1
- PL208 Existing Elevation House Front - SE 1:50@A1
- PL209 Existing Elevation House Rear - NW 1:50@A1
- PL210 Proposed Basement Plan 1:50@A1
- PL211 B Proposed Ground Floor Plan 1:50@A0
- PL212 A Proposed First Floor Plan 1:50@A0
- PL213 Proposed Roof Plan 1:50@A0
- PL214 A Proposed North-East Elevation (Roadside) 1:50@A1
- PL215 B Proposed South-West Elevation (Green) 1:50@A1
- PL216 Proposed South-East Courtyard Elevation 1:50@A1
- PL217 A Proposed North-West Elevation (Skittle Alley Side) 1:50@A1
- PL218 Proposed South-East Elevation (Coachmans Cottage) 1:50@A1
- PL219 A Proposed North-West Courtyard Elevation 1:50@A1

### **THE TERRACE**

- PL300 A Proposed Ground Floor Plan 1:100@A3
- PL301 A Proposed First Floor Plan 1:100@A3
- PL302 A Proposed Second Floor Plan 1:100@A3
- PL303 A Proposed Roof Plan 1:100@A3
- PL304 A Proposed Elevation Front 1:100@A3
- PL305 A Proposed Elevation Rear 1:100@A3
- PL306 A Proposed Side Elevation 1 1:100@A3
- PL307 A Proposed Side Elevation 2 1:100@A3
- PL308 Proposed Front Elevation Materials & Finishes 1:100@A3
- PL309 Proposed Front Elevation Materials & Finishes 1:100@A3
- PL310 Proposed Front Elevation Materials & Finishes 1:100@A3

### **THE COTTAGES**

- PL400 B Proposed Ground Floor Plan 1:100@A3
- PL401 Proposed First Floor Plan 1:100@A3
- PL402 A Proposed Attic Plan 1:100@A3
- PL403 A Proposed Roof Plan 1:100@A3
- PL404 A Proposed Elevation Front 1:100@A3
- PL405 A Proposed Elevation Rear 1:100@A3
- PL406 A Proposed Side Elevation 1 1:100@A3
- PL407 A Proposed Side Elevation 2 1:100@A3
- PL408 Proposed Materials 1:100@A3

### **BUNGALOW**

- PL510 Proposed Floor Plan 1:100@A3
- PL511 Proposed Roof Plan 1:100@A3
- PL512 Proposed Elevation Front 1:100@A3
- PL513 Proposed Elevation Rear 1:100@A3
- PL514 Proposed Side Elevation 1 1:100@A3
- PL515 Proposed Side Elevation 2 1:100@A3

- **PL516 Proposed Materials & Finishes – Front Elevation 1:100@A3**

#### **DOCUMENTS**

- **Transport Technical Note (prepared by SK Transport and Highways, dated 25<sup>th</sup> March 2019)**
- **Phase 1 Habitat Survey and Bat Survey (prepared by Ecology Services, dated November 2017)**
- **Design, Access and Planning Statement - Rev.C (prepared by Alex Oliver Associates, dated 16.07.19)**
- **Heritage Assessment (prepared by Ian Lund, dated August 2019)**
- **Air Quality Assessment (prepared by DustScan AQ, dated 07/08/19)**
- **Arboricultural Method Statement (prepared by WH Landscape, dated April 2018)**
- **Asbestos Management Survey (prepared by Swindon Asbestos Surveying Ltd, dated 9 Jun 2016)**
- **Drainage Strategy (prepared by Simon Jones-Parry, dated 07/02/19)**

#### **SCHEDULE**

- **All drawings and reports as detailed in Drawings and Document List Rev C dated 26.09.19.**

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

3. **Prior to construction to slab level on site the exact details and samples of the materials to be used for all new and existing external walls (for both the new building as well as any new free-standing walls) and roofs have been submitted to and approved in writing by the Local Planning Authority. Such a submission shall include a sample panel to be erected on site for inspection, demonstrating coursing and mortar mix. Development shall be carried out in accordance with the approved details.**

**REASON:** The choice of final external materials to be used in this development 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 this sensitive location.

4. **Prior to construction to slab level full and complete details of all hard and soft landscaping to be created on the site shall have been submitted to and agreed in writing by the Local Planning Authority. Such details shall include, but not be limited to, an identification of the position of any trees proposed to be retained and the measures to be employed to secure their protection during construction. The details shall also include an identification of all trees to be removed on the site as well as timing for those removal works. Development**

and landscaping shall be carried out in complete accordance with the approved details.

**REASON:** To ensure a suitable hard and soft landscaping scheme for this sensitive site and so as to ensure the retention of appropriate trees on the site in the interests of visual amenity.

5. All soft landscaping comprised in the approved as part of the detailed component of the planning application shall be carried out in the first planting and seeding season following the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

**REASON:** To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6. No part of the development hereby permitted shall be first brought into use until the access, turning area and parking spaces (including cycle 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.

7. Prior to construction to slab level on site (including any works of demolition), a Construction Method Statement shall be submitted and approved in writing by the Local Planning Authority. The Statement 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 so as to avoid peak traffic hours, including local school drop-off and pick-up times;
- j) Routing of all vehicles (ie. deliveries, contractors)

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.

8. Prior to occupation a Traffic Order to amend the waiting restrictions on Station Road, Calne shall have been prepared, consulted upon, and advertised, with a final report recommending whether to proceed with the Order prepared for consideration by the Cabinet Member for Highways. In the event that the Cabinet Member for Highways approves the Order the amendments shall be implemented.

**REASON:** In the interests of achieving improved egress from the development.

**Informative:** The applicant will bear the costs of condition, irrespective of whether the Order is proceeded with.

9. Prior to construction to slab level a scheme outlining feasibility of the delivery of a soft footway along the access road from the site entrance to a point which meets the junction with Woodlands Park shall be submitted to and agreed in writing by the Local Planning Authority. If delivery of the soft footway is confirmed to be feasible, that scheme shall include a full specification and the timing of its delivery. Development shall be carried out in accordance with the details so agreed.

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

10. Before the development hereby permitted is first brought into use, at Plot number 14 (two rooflights to be obscure glazed) and a fixed opaque canopy over French doors (obscure glazed), at Plot 16 and 17 ground floor windows, windows shall be obscure glazed. All obscure windows to an obscurity level of no less than level 5. Those windows/ canopy shall be maintained with obscure glazing in perpetuity.

**REASON:** In the interests of residential amenity and privacy of neighbouring residential occupiers.

11. Other than those already shown on the approved plans, no further windows shall be installed into any elevation of any dwelling hereby approved unless otherwise agreed in the form of a separate planning permission in that regard.

**REASON:** So as to allow consideration of the effect upon the amenity of surrounding residents from any new windows being inserted.

12. 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 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 this sensitive area and to minimise unnecessary light spillage above and outside the development site.

13. The development hereby permitted shall not be first brought into use until final details of the arrangements to be made for the storage of refuse and recycling from the development, and collection regime have been submitted to and approved in writing by the Local Planning Authority, and; the approved refuse and recycling storage has been completed and made available for use in accordance with the approved details. The approved refuse and recycling storage shall thereafter be maintained in accordance with the approved details.

**REASON:** In the interests of public health, safety and visual amenity in this sensitive location where it is understood that the internal access road will not be adopted by the Council.

14. Prior to construction to slab level site a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

**REASON:** The arrangements for the disposal of surface water from the development is required to be agreed with the Local Planning Authority before development commences in order that it is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

15. Prior to construction to slab level details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until the approved sewerage details have been fully implemented in accordance with the approved plans.

**REASON:** The arrangements for disposal of sewerage from the development is required to be agreed with the Local Planning Authority before development commences in order that it is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

16. Prior to construction to slab level details of the ecological mitigation and enhancement for nesting birds and bats measures shall be submitted to ensure that the proposal be in accordance with the recommendations in Section 5 of the submitted ecology report (Protected Species Survey and Mitigation, 27 November 2017, AD Ecology Ltd), for ecological mitigation and enhancement for nesting birds and bats.

**REASON:** To ensure compliance with Core Policy 50 Biodiversity and diversity.

17. Prior to first occupation of the dwellings hereby permitted, the Ultra Low Energy Vehicle infrastructure shall have been installed on site

and made available for use in accordance with a final scheme (based upon the general details shown on the approved plans), which shall have been submitted to and agreed in writing by the Local Planning Authority beforehand.

**REASON:** Core Policy 55; Development proposals, which by reason of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health, environmental quality and amenity.

18. Prior to construction to slab level an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

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

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

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

**REASON:** The application contained insufficient information to enable this matter to be considered prior to granting planning permission and 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 land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.

19. Prior to construction to slab level, full and complete details of the treatment of all boundaries of the site (based upon the general details shown on the approved plans) shall have been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in complete accordance with those details so agreed.

**REASON:** So as to secure the amenities of surrounding residential properties and to secure a form of boundary treatment of a suitably high quality in this sensitive area in the Conservation Area and adjoining Listed Buildings.

20. 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 development within Part 1, Classes A-H shall take place on the dwellinghouse(s) hereby permitted or within their curtilage.

**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

21. No demolition, site clearance shall take place prior to construction to slab level until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:-

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;
- A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837:2012;
- A schedule of tree works conforming to British Standard 3998:2010;
- Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;



- Plans and particulars showing the siting of the service and piping infrastructure;
- A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, details of the no-dig specification and extent of the areas to be constructed using a no-dig specification;
- Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- Details of all other activities, which have implications for trees on or adjacent to the site.
- In order that trees to be retained on-site are not damaged during the construction works, no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant and the designated site foreman to discuss details of the proposed work and working procedures.

**REASON:** The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

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

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

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or

lopping approval shall be carried out in accordance British Standard 3998: 2010 “Tree Work – Recommendations” or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practice.

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

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

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

**REASON:** The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

## **INFORMATIVES**

There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species Regulations 2010 (as amended) even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0845 1300 228, email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk) or visit the Bat Conservation Trust website.

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.

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.

When preparing the Construction Method Statement (CMP) required by condition 07, the applicant is requested to engage with the local community to understand their concerns with regard to the disturbance and inconvenience associated with the construction phase and to tailor the CMP so as to minimise the potential for such impacts.

Consideration was then given to the application for Listed Building Consent,

On the proposal of Cllr Peter Hutton, which was seconded by Cllr Christine Crisp and a change to condition 03 to the LBC was proposed so to also refer to the repair of the boundary wall.

**Resolved:**

**To grant Listed Building Consent, subject to the following conditions:-**

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

**REASON:** To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

**SITE**

- PL100 Location Plan 1:1250@A3

- PL101 A Existing Site Plan 1:200@A1
- PL102 D Proposed Site Plan 1:200@A1
- SK202 B Refuse Truck Turning Site Plan 1:200@A1
- PL103 F Proposed Site Boundary Treatment 1:200@A1
- PL104 Proposed & Existing Root Protection Treatment 1:500@A1
  - PL105 Existing South-East Boundary Wall to Silver Street 1:100@A1
  - PL106 Proposed South-East Boundary Wall to Silver Street 1:100@A1
  - PL107 A Existing South-East Site Section 1:100@A1
  - PL108 A Existing North-East Site Section 1:100@A1
  - PL109 C Proposed North-East Site Section 1:100@A1
  - PL110 A Proposed South-East Site Section 1:100@A1
  - PL111 A Proposed South-West Site Section 1:100@A1
  - PL112 Proposed North-West Site Section 1:100@A1
  - PL113 Visual of Proposal NTS
  - PL114 Proposed South-West Site Section 1:100@A1
  - PL115 Proposed South-East Site Section 1:100@A1
  - PL116 Proposed North-West Site Section 1:100@A1
  - PL117 Trees Proposed to be Removed 1:200@A1
  - PL118 Tree Root Protection Areas of Retained Trees 1:200@A1
  - PL119 Proposed North-West Site Section 1:100@A1
  - PL120 Extract of Proposed South-East Site Section Including Levels Through the Gate Lodge (Bungalow) 1:100@A3
  - PL121 Sun Path Diagrams + Shadow Cast for the Gate Lodge (Bungalow) –21st JuneNTSA3
  - PL122 Sun Path Diagrams + Shadow Cast for the Gate Lodge (Bungalow) – 21<sup>st</sup> Dec NTS A3
  - PL600 Site Constraints 1:200@A1
  - PL603 Proposed Bin Stores to the Front of the Terraces 1:20@A3
  - PL604 A Proposed Bike and Bin Stores 1:20@A3
  - PL605 A Bike Store – Three Bikes 1:20 @ A3
  - PL606 A Bin and Bike Store – Three Bikes

#### **EXISTING SOCIAL CLUB & HOUSE**

- PL200 Existing Basement Plan 1:50@A1
- PL201 Existing Ground Floor Plan 1:50@A0
- PL202 Existing First Floor Plan 1:50@A0
- PL203 Existing Roof Plan 1:50@A0
- PL204 Existing Elevation Roadside - NE 1:50@A1
- PL205 Existing Elevation / Section - SW 1:50@A1
- PL206 Existing Elevation Front of Social Club - SE 1:50@A1
- PL207 Existing Elevation Skittle Alley Side - NW 1:50@A1
- PL208 Existing Elevation House Front - SE 1:50@A1
- PL209 Existing Elevation House Rear - NW 1:50@A1
- PL210 Proposed Basement Plan 1:50@A1

- PL211 B Proposed Ground Floor Plan 1:50@A0
- PL212 A Proposed First Floor Plan 1:50@A0
- PL213 Proposed Roof Plan 1:50@A0
- PL214 A Proposed North-East Elevation (Roadside) 1:50@A1
- PL215 B Proposed South-West Elevation (Green) 1:50@A1
- PL216 Proposed South-East Courtyard Elevation 1:50@A1
- PL217 A Proposed North-West Elevation (Skittle Alley Side) 1:50@A1
- PL218 Proposed South-East Elevation (Coachmans Cottage) 1:50@A1
- PL219 A Proposed North-West Courtyard Elevation 1:50@A1

#### **THE TERRACE**

- PL300 A Proposed Ground Floor Plan 1:100@A3
- PL301 A Proposed First Floor Plan 1:100@A3
- PL302 A Proposed Second Floor Plan 1:100@A3
- PL303 A Proposed Roof Plan 1:100@A3
- PL304 A Proposed Elevation Front 1:100@A3
- PL305 A Proposed Elevation Rear 1:100@A3
- PL306 A Proposed Side Elevation 1 1:100@A3
- PL307 A Proposed Side Elevation 2 1:100@A3
- PL308 Proposed Front Elevation Materials & Finishes 1:100@A3
- PL309 Proposed Front Elevation Materials & Finishes 1:100@A3
- PL310 Proposed Front Elevation Materials & Finishes 1:100@A3

#### **THE COTTAGES**

- PL400 B Proposed Ground Floor Plan 1:100@A3
- PL401 Proposed First Floor Plan 1:100@A3
- PL402 A Proposed Attic Plan 1:100@A3
- PL403 A Proposed Roof Plan 1:100@A3
- PL404 A Proposed Elevation Front 1:100@A3
- PL405 A Proposed Elevation Rear 1:100@A3
- PL406 A Proposed Side Elevation 1 1:100@A3
- PL407 A Proposed Side Elevation 2 1:100@A3
- PL408 Proposed Materials 1:100@A3

#### **BUNGALOW**

- PL510 Proposed Floor Plan 1:100@A3
- PL511 Proposed Roof Plan 1:100@A3
- PL512 Proposed Elevation Front 1:100@A3
- PL513 Proposed Elevation Rear 1:100@A3
- PL514 Proposed Side Elevation 1 1:100@A3
- PL515 Proposed Side Elevation 2 1:100@A3
- PL516 Proposed Materials & Finishes – Front Elevation 1:100@A3

#### **SCHEDULE**

- All drawings and reports as detailed in Drawings and Document List Rev C dated 26.09.19.

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

3. Prior to the works taking place, a full schedule of repair of the former Stable building, the Coachmans Cottage and the perimeter wall fronting New Road and the A3102 shall be submitted to and approved in writing by the Local Planning Authority. The development and all repairs shall be carried out in complete accordance with the agreed schedule.

**REASON:** To ensure that the repairs to the Coachmans Cottage and for Stable building are of a suitably quality appropriate to the heritage asset.

4. Prior to the works taking place, final details of ceiling layouts affected, and service runs created by the necessary mechanical and engineering and data cabling installations, shall have been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in complete accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority beforehand.

**REASON:** To ensure that the proposals will minimise impact on the historic fabric of the building and, where possible, to allow architectural features to continue to be appreciated.

5. Prior to the works taking place, full and complete details of proposals for necessary fire protection measures shall have been submitted to and agreed in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

**REASON:** To ensure that the proposals will minimise impact on the historic fabric of the building and, where possible, to allow architectural features to continue to be appreciated.

6. Prior to the works being undertaken, details of the type of all new partitions to be installed within the building shall have been agreed in writing by the Local Planning Authority. Such details shall include confirmation of the method of installation and confirmation that they be of a lightweight construction, reversibly installed and scribed around historic mouldings and architectural features. The

installation of all new partition shall be in accordance with the details so agreed.

**REASON:** To ensure new partitions are of a suitably lightweight and reversible construction so as to minimise impact upon the historic fabric of the building.

7. No works shall commence on site until details of all new external window and door joinery and/or metal framed glazing have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include depth of reveal, details of heads, sills and lintels, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections through glazing bars) at not less than 1:2. The works shall be carried out in accordance with the approved details.

**REASON:** The application contained insufficient information to enable this matter to be considered prior to granting planning permission and Listed Building Consent the matter is required to be agreed with the Local Planning Authority before works commence in order that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the listed building and its setting.

8. No works shall commence on site until details of all new or replacement internal joinery, including doors, door linings, architraves, beading, skirtings and staircases (including balusters, newel posts and handrails), have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

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

## 79 Urgent Items

There were no urgent items.

(Duration of meeting: 3.00 - 4.30 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



**Wiltshire Council  
Northern Area Planning Committee  
6<sup>th</sup> November 2019**

Planning Appeals Received between 27/09/2019 and 24/10/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
19/05866/FUL	Land opposite nos 8 to 10 Vowley View Royal Wootton Bassett Swindon, Wiltshire SN4 8HT	ROYAL WOOTTON BASSETT	Proposed erection of a detached two bedroom bungalow (resubmission of 18/06845/FUL)	DEL	Written Representations	Refuse	15/10/2019	No
19/03141/FUL	112 High Street, Cricklade, SWINDON, SN6 6AF	CRICKLADE	Change of use of vacant A2 premises to single residential unit C3a to include single storey rear extension (43 square metres) and associated internal and external alterations	DEL	Hearing	Refuse	24/10/2019	No

Planning Appeals Decided between 27/09/2019 and 24/10/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
18/09251/FUL	Hangar 88 Hullavington Chippenham Wiltshire, SN14 6GU	ST PAUL MALMESBURY WITHOUT	Retention of static food van.	DEL	Written Reps	Refuse	Dismissed	04/10/2019	None
18/11077/FUL	Land known as The Orchard, St Mary Street, Chippenham, SN15 3JJ	CHIPPENHAM	Works to facilitate 4 car parking spaces and turning area	DEL	Written Reps	Refuse	Dismissed	25/10/2019	None

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

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## HIGHWAYS ACT S.119

### APPLICATION TO DIVERT PUBLIC BRIDLEWAYS CALNE WITHOUT 89 (PART), 89A AND 89B AT THE MILL HOUSE, CALSTONE WELLINGTON

#### Purpose of Report

1. To:
  - (i) Consider an application for an Order to divert lengths of public bridleways at The Mill House, Calstone Wellington, Calne.
  - (ii) Recommend that Wiltshire Council refuses the application for an Order to divert lengths of public bridleways at The Mill House, Calstone Wellington, Calne.

The officers' report and appendices are appended at **Appendix 1**. **Appendix 1.F** is a plan showing the existing route and the proposed change and is provided for reference purposes.

#### Relevance to the Council's Business Plan

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

#### Background

3. Wiltshire Council has statutory duties to maintain the record of public rights of way in Wiltshire (excluding the Borough of Swindon), to maintain the rights of way shown therein, and to assert and protect them for the use and enjoyment of the public. These duties are not discretionary.
4. In addition to these duties the Council also has a power to make Orders to alter the rights of way network (though not for highways carrying a right for the public to use mechanically propelled vehicles). These Orders are known as public path Orders and they may create, extinguish or divert public rights of way. Wiltshire Council accepts applications for these Orders and processes them amongst work relating to its statutory duties.
5. The law permits applications to be made in the interests of landowners though it is clear that criteria laid out in the legislation must be met before any Order can be made or confirmed.

6. Applications for public path orders may be made under a variety of sections of the Highways Act 1980. Section 119 allows for the diversion of public paths where the existing route would be extinguished but a new route provided in its place. The new route must meet a number of tests or considerations largely reliant on comparison with the existing route and the effect of the loss of the existing and the creation of the new.
7. This comparison cannot take account of obstructions on the existing route or of any lack of maintenance. The comparisons must be made as if the existing route were open and available for the public and in a condition suitable for the local traffic of the area.
8. In May 2018 Wiltshire Council received an application for an Order under Section 119 from the owners of land at The Mill House, Calstone Wellington to divert a length of public bridleway leading over a bridge over the River Marden and past their house to a new route over land owned by them but situated up to approximately 100 metres to the west of the house. The new route also requires a bridged crossing of the River Marden.
9. The new route has already been constructed and is available for the public to use as a permissive path. The applicant has collected data relating to use of both the existing route and the permissive route and it is clear from their data that the permissive route is popular. It is especially well used by horse riders but also by walkers and cyclists. The data shows that largely the public choose to use the new route instead of the existing route but the data cannot take account of the fact that the existing route currently has a narrow bridge, overhanging tree growth, other uncleared vegetation, a neglected and in places poor surface, two gates which are unauthorised highway obstructions and at times has parked vehicles on it. All of which are factors that will have affected the choice of users but which must be disregarded for the purposes of comparison for Section 119. Although the Council has a duty to rectify the problems on this route and acting on complaints from local riders around 2003 had identified an alternative bridge to install, it has been unable to agree a solution to the problems without resorting to enforcement action, which it is always reluctant to do.
10. A number of responses from users of the permissive route are included at **Appendices 1.E** and **1.G** and have been categorised at 7.2 page 31 of the officers' report (**Appendix 1**). It is clear that respondents have included the narrow bridge, poor drainage and matters such as dogs and parked cars as all or part of the reasons for their preference for using the permissive route.
11. The existing route is a former road and as late as the 1960s was used by vehicles. Letters dating from this time from both Rural District Council and Parish Council support this. The bridge over the River Marden is a bridge maintainable at public expense number R.7/98. However, in 1968, the bridge then in place had suffered such flood damage as to be unrepairable and it was temporarily closed and then demolished by Wiltshire Council later that year.
12. A temporary footbridge was put up in its place and replaced over the years with similarly narrow temporary bridges. Wider and more suitable replacement bridges have been scheduled at various times (including as late as 2004) but works have, for a variety of reasons, not happened. It should be noted that the bridge on the proposed diversion route does not currently meet the construction standards that Wiltshire Council would require before accepting the route as a publicly maintainable highway (and hence bring effect to any Order).

13. The public vehicular right (for both mechanically propelled vehicles and horse drawn ones) over the route of the former road between Manor Farm and road u/c7008 was extinguished in 2007 and the remaining rights recorded as bridleways Calne Without 89, 89A and 89B (CALW89, CALW89A and CALW89B).
14. The public right now exists for the public on foot, riding or leading a horse, on a bicycle or with cattle.

### **Main Considerations for the Council**

15. The legal tests that must be applied by Wiltshire Council in considering whether or not an Order should be confirmed are contained within Section 119 (1) and (2) of the Highways Act 1980. The Council is entitled to further consider the tests for confirmation contained within Section 119(6) at this stage. In the event that an Order is made under Section 119 the Council must further consider the tests contained within Section 119(6) of the 1980 Act. This matter would therefore return to this area planning committee to reconsider. However, this requirement to consider Section 119(6) at the confirmation stage does not preclude the Council from considering it at the Order making stage.

16. In the Court of Appeal *Hargrave v Stroud DC*<sup>1</sup>, at para.15 Schieman L.J. stated that:

*“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”*

17. Subsection (6) (see paragraph 21 of this report) sets out factors which are to be taken into account at the confirmation stage. In *Hargrave v Stroud* (above), at para. 17 Schieman L.J. held that:

*“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”*

18. **Section 119(1)** of the Highways Act 1980 states that:

*“Where it appears to a Council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or*

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<sup>1</sup> *R(on the application of Hargrave and another) v Stroud DC* [2002] EWCA Civ 1281

*confirmed as an unopposed order:*

- (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) *extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

*An order under this section is referred to in this Act as a 'public path diversion order'.*

19. **Section 119(2)** of the Highways Act 1980 states:

*"A public path diversion order shall not alter a point of termination of the path or way:*

- (a) *if that point is not on a highway; or*
- (b) *(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public".*

20. **Section 119(3)** of the Highways Act 1980 states:

*"Where it appears to the Council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall –*

- (a) *specify a date under subsection (1)(a) above, and*
- (b) *provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*

21. **Section 119(6)** of the Highways Act 1980 states:

*"The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in Sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:*

- (a) *the diversion would have on public enjoyment of the path or way as a whole;*
- (b) *the coming into operation of the Order would have as respects other land served by the existing public right of way; and*

(c) *any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.*

22. The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2.
23. The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
24. The officers' report and appendices containing all details of the case are appended at **Appendix 1**. The following paragraphs 25 to 37 summarise the view contained within the report.

25. **S.119(1) – The landowner's interest**

The applicants are the landowners. It is agreed that the diversion of the right of way leading in front of the house and outbuilding to the field edge route would enable the landowners to securely fence and/or gate their property and to further screen it with trees or other planting. The diversion would therefore be in their interest.

26. **S.119(2) – Location and convenience of termination points**

The termination point of the route south of the River Marden is unaffected. The termination point of the route north of The Mill House is affected. The current route joins road u/c 7008 as a straight line continuation of the highway. The proposed route involves an approximately 90 degree turn from or onto the road as a 'T junction' shared with a footpath. The u/c road continues south towards the Mill House and the diversion of the bridleway would leave a cul-de-sac length of that highway. The termination point is not considered to be substantially as convenient.

27. **S.119(6) – Convenience of the new path**

It is important to compare the convenience of the two routes (the test being that the new one must not be substantially less convenient to the public) as if the existing route was open and available with no obstructions and a suitable bridge and maintained surface. The Planning Inspectorate's Advice note no. 9 at paragraph 29 states:

*Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under s.119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion."*

28. The effect of the diversion is to more than double the length of the existing path proposed to be extinguished (see **Appendix 1** para. 9.24). The new path also includes four changes in direction compared to the existing path which leads in a straight line.

29. When considering convenience matters relating to enjoyment of the route should not be included. Convenience is to be given its ordinary meaning and accordingly officers cannot see that increasing the length by more than double and introducing a number of turns and bends can be anything other than substantially less convenient. The new path has a reduced gradient as a result of the extra length (though has a steeper section near the bridge) but this is unlikely to outweigh the considerable inconvenience of having to go further, change pace or break cadence and turn.

30. **S.119(6) – Effect on public enjoyment of the path or way as a whole**

Correspondence received by the Council is divided on this point. It is clear that while many people enjoy the new route, they have incorrectly made the comparison with the existing route; inter alia they have highlighted the narrow bridge and unmaintained surface as factors affecting their choice of route. Other respondents have indicated that they value the historical nature of the route and that forms part of their enjoyment. Both the Mill House and the outbuilding on the opposite side of the highway are listed buildings and the route itself is undoubtedly historic.

31. Some users have made it clear that they do not enjoy passing so close to the Mill House as they feel uncomfortable doing so. It is not unusual to pass roadside houses but the proximity of users to the windows does exacerbate feelings of intrusion for users of the path in addition to the concerns of the residents.

32. Where the effect on the use and enjoyment is not clear, the expediency of the confirmation of an Order may be balanced against the interests of the owner.

33. In a 2011/2012 case at Purton a diversion Order was made and supported by Wiltshire Council. It had 39 objections and 83 representations in support when the matter was considered by an Inspector appointed by the Secretary of State for the Environment, Food and Rural Affairs at a public inquiry. Despite the Council's support for the diversion the Inspector refused to confirm the Order finding that the loss of the historic route had a detrimental effect on the public use and enjoyment of the route as a whole. He also found that the making of the Order itself was not in the interest of the public though was in the interest of the landowner. The case had several similar circumstances to those at Calstone Wellington, especially relating to the partially obstructed and poorly maintained nature of the existing route and members' attention is accordingly drawn to it. A copy of the Inspector's decision is appended here at **Appendix 2**.

34. **S.119(6) – Effect on land served by the existing right of way**

It is considered that there is no risk of compensation arising from the extinguishment of the existing route.

35. **S.119(6) – Effect on land served by the new right of way**

It is considered that there is no risk of compensation arising from the creation of the new route.



36. **Consideration of the Rights of Way Improvement Plan**

Wiltshire Council's rights of way improvement plan is entitled Countryside Access Improvement Plan 2015 – 2025. The plan outlines the Council's duties and policy with respect to rights of way (policy 4), bridges (policy 6) and structures on rights of way (policy 7.2.2) but contains no policies related specifically to the proposed diversion. The condition and availability of the bridleway CALW89, 89A and 89B as a whole falls short of the Council's policies. Fulfillment of the policies for an extensive rural network remains challenging with current resource provisions but remains a framework in which the Council should work. Priority is given to wholly obstructed and unavailable rights of way and CALW89, 89A and 89B are open and available, albeit with temporary limitations to access.

37. **Regard to the needs of agriculture, forestry and conservation of biodiversity**

The land has been acquired for the development of the proposed route which has been approved through the usual planning processes. No concerns were raised then or have been now.

**Overview and Scrutiny Engagement**

38. Overview and scrutiny engagement is not required in this case.

**Safeguarding Considerations**

39. There are no relevant safeguarding considerations associated with the refusal to make this Order additional to matters relating to the landowners' interest.

**Public Health Implications**

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

**Corporate Procurement Implications**

41. There are no additional procurement implications associated with this recommendation.

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

42. There are no environmental or climate change considerations associated with the confirmation of this Order.

**Equalities Impact of the Proposal**

43. The inconvenience of covering additional distance may be disadvantageous to some users while a lesser gradient may be advantageous to others. However, the route as a whole is rural in nature and any access for users who are less mobile is likely to be restricted by the wider nature and limitations of the route or

network as a whole. The Council's duties under the Equality Act 2010 are further examined in **Appendix 1** at paragraphs 3.4 – 3.6 and 12.0 – 12.1.

### **Risk Assessment**

44. In the event that the Order is not made Wiltshire Council will need to consider prioritisation of maintenance works relating to the existing route to minimise risks to users. The financial and legal risks to the Council where an Order is not, or is, made are outlined in the "Financial Implications" and "Legal Implications" sections below.

### **Financial Implications**

45. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to recover costs from the applicant in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. The applicant has agreed in writing to meet the actual costs to the Council in processing this application where an Order is made though the Council's costs relating to any Order being determined by the Planning Inspectorate on behalf of the Secretary of State may not be reclaimed from the applicant. Where an application for an Order is refused no costs are payable by the applicant. In this instance, if an Order is made and confirmed the cost to the applicant will be £1,875 plus the cost of any associated works incurred by the Council. The applicant has agreed to this.
46. In the event that an Order is made there may be financial implications related to the confirmation of that Order. In the event that any Order made attracts duly made objections or representations that are not withdrawn, the matter would return to the area planning committee for further consideration. At this point the committee would be required to decide whether to abandon the Order or to forward it to the Secretary of State for determination (with or without any modifications). An appreciation of those wider costs would only be relevant at that stage, should it arise.
47. A judicial review of the Council's decision from any party may have financial implications. These are covered below.

### **Legal Implications**

48. Any decision of the Council is open to an application for judicial review in the high court. An appeal may be made by any aggrieved party and may be the result of a decision to either make an Order or to refuse to make an Order.
49. If the appeal is allowed to be heard in the high court and the Council loses its case, all costs would be paid by the Council. If the Council wins its case, all costs would be paid by the opposing party. Further appeal may be made by either party. If the court finds against the Council in judicial review proceedings, the potential costs to the Council would potentially be in the region of £50,000.

## Options Considered

50. (i) To make an Order to divert part of bridleway Calne Without 89, 89A and 89B under Section 119 Highways Act 1980.
- (ii) Not to make an Order to divert part of bridleway Calne Without 89, 89A and 89B under Section 119 Highways Act 1980.

## Reason for Proposal

51. The officers' report attached at **Appendix 1** considers and includes matters relevant to this application. It is agreed that the proposed diversion is in the interests of the landowner. However, it is considered that the application fails the legal test relating to the convenience of the termination point at the northern end of the bridleway. This means that an Order should not be made.
52. Additionally, it is considered that the application fails the legal test relating to whether the new route is not substantially less convenient. This means that any made Order should not be confirmed.
53. Matters relating to the use and enjoyment of the route as a whole (Section 119(6)(a)) and the expediency of confirmation are more difficult to judge against the backdrop of respondents failing to compare the two routes in the appropriate manner. There is undoubtedly a value to be put on the history of the route and the proximity and views of the listed buildings but equally it is appreciated that some users dislike the feeling of intrusion that the existing route gives them.
54. In the case of the Purton public inquiry (see **Appendix 2**) a smaller number of objectors (39) were able to bring forward stronger arguments for the historic route than a greater number of supporters (83) and the value of the history of the route should not be underestimated. The matter is not simply one of numbers in favour as opposed to numbers against.
55. Matters relating to use and enjoyment may be balanced against the interest of the landowner when determining expediency of confirmation but it is noted that officers are of the view that the application already fails a legal test for making an Order and another for confirmation.

## Proposal

56. **That the application to divert parts of CALW89, 89A and 89B as applied for is refused.**

*The attention of members is drawn to further considerations and comments from officers at paragraph 16 – 16.5 of Appendix 1.*

**Parvis Khansari**  
**Director, Highways and Environment**

Report Author:

**Sally Madgwick**

Definitive Map and Highway Records Manager, Rights of Way and Countryside

CM09977F

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

None

**Appendices:**

Appendix 1	Decision report
Appendix 1.A	Applicants' reasons for diversion
Appendix 1.B	Consultation response from Wiltshire Bridleways Association
Appendix 1.C	Consultation response from the British Horse Society
Appendix 1.D	Applicants' response to objections received at consultation stage
Appendix 1.E	Unsolicited correspondence
Appendix 1.F	Reference plan
Appendix 1.G	Late correspondence
Appendix 2	Inspector's decision Purton 104

DECISION REPORT

HIGHWAYS ACT 1980 S.119

APPLICATION TO DIVERT BRIDLEWAYS CALSTONE WITHOUT 89 (part), 89B AND 89B AT THE MILL HOUSE, CALSTONE WELLINGTON

1. Purpose of report

- i) To investigate an application to divert part of a bridleway (CALW89(part), 89A and 89B) at The Mill House, Calstone Wellington under section 119 of the Highways Act 1980
- ii) To recommend that Wiltshire Council refuses the application.

2. Details of the application

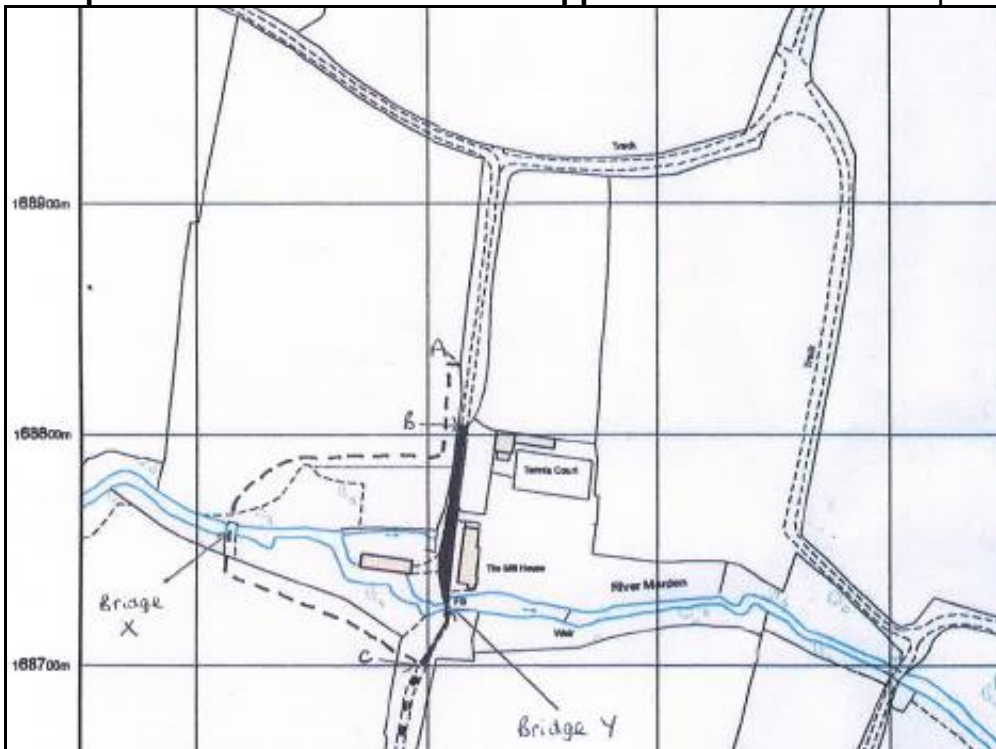
**Applicant:** Mr and Mrs J Moore  
 The Mill House  
 Calstone Wellington  
 Calne  
 SN11 8QF

**Date of application:** 31 May 2018

**Reasons for diversion:** Please see the submission of the applicant **Appendix 1.A**

The principal reasons are given as *“the impact on our clients’ privacy and security.”*

**Application plan:** not to scale. Please see **Appendix 1.F** for reference plan (to scale).



### 3. Considerations for the Council

The Council must consider the legal tests contained within section 119 of the Highways Act 1980 (HA80):

#### **119. Diversion of footpaths, bridleways and restricted byways**

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, -*
- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and*
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*  
*An order under this section is referred to in this Act as a 'public path diversion order'*
- (2) *A public path diversion order shall not alter a point of termination of the path or way –*
- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise that to another point which is on the same highway, or highway connected with it, and which is substantially as convenient to the public.*
- (3) *Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall –*
- (a) specify a date under subsection (1)(a) above, and*
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) *A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) *Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contributions as may be specified in the agreement towards,-*
- (a) any compensation which may be payable under section 28 above as applied by section 121(2) below; or*

- (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path into fit condition for use for the public; or
  - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm a public path diversion order, unless he, or as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –
- (a) the diversion would have on public enjoyment of the path or way as a whole;
  - (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
  - (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;
- So, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.
- (6A) The considerations to which –
- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
  - (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order
- include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.
- (7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, -
- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted;
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath, bridleway or restricted byway; and
  - (c) where some part of the new route is so comprised, defining that part.
- (8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path orders.
- (9) Section 27 above (making up new footpaths, bridleways and restricted byways) applies to a footpath, bridleway or restricted byway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

**Section 27 Making up of new footpaths, bridleways and restricted byways**

- (1) On the dedication of a footpath, bridleway or restricted byway in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order, being –
- (a) an agreement or order made by a local authority who are not a highway authority for the path in question; or
  - (b) an order made by the Secretary of State under section 26(2) above in relation to which he directs that this subsection shall apply,

*The highway authority shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) above or, where paragraph (b) applies, on such local authority as the Secretary of State may direct.*

- (2) *It shall be the duty of the highway authority to carry out works specified in a certificate under subsection (1) above, and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.*
- (3) *Notwithstanding anything in the preceding provisions of this section, where an agreement or order is made as mentioned in subsection (1)(a) above, the local authority making the order may –*
  - (a) *with the consent of the highway authority carry out (in place of the highway authority) the duties imposed by that subsection on the highway authority; and*
  - (b) *carry out any works which apart from this subsection, it would be the duty of the highway authority to carry out under subsection (2) above.*
- (4) *Where the Secretary of State makes a public path creation order under section 26(2) above he may direct that subsection (5) below shall apply.*
- (5) *Where the Secretary of State gives such a direction –*
  - (a) *the local authority who, on the coming into force of the order, became the highway authority for the path or way in question shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring into a fit condition for use by the public as a footpath, bridleway or restricted byway, as the case may be, and shall furnish the Secretary of State with a copy of the certificate.*
  - (b) *if the Secretary of State is not satisfied with a certificate made under the foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and*
  - (c) *subject to the provisions of the last foregoing paragraphs, it shall be the duty of the highway authority to carry out the work specified by them in a certificate made by them under paragraph (a) above.*
- (6) *In this section 'local authority' means any council.*

3.1 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

3.2 In the Court of Appeal *Hargrave v Stroud DC*<sup>1</sup>, at para.15 Schieman L.J. stated that:

*“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”*

3.3 Subsection (6) sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into

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<sup>1</sup> R(on the application of Hargrave and another) v Stroud DC [2002] EWCA Civ 1281



account at the order making stage. In *Hargrave v Stroud* (above), at para. 17 Schieman L.J. held that:

*“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”*

- 3.4 The Council must have regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring that a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.
- 3.5 These three matters are:
- Eliminating conduct that is prohibited by the Act
  - Advancing equality of opportunity between people who have a disability and people who do not; and
  - Fostering good relations between people who have a disability and people who do not.
- 3.6 The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance, Authorising structures (gaps, gates and stiles) on rights of way, Oct 2010 – a good practice guide now archived by Defra). See also <https://www.gov.uk/guidance/public-rights-of-way-local-authority-responsibilities>
- 3.7 The Council should also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council’s duty to have regard to the Equality Act 2010 and to consider the least restrictive option. <http://www.wiltshire.gov.uk/recreation-rights-of-way>
- 3.8 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
- 3.9 The Council is also empowered to make a ‘combined order’ under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).
- 3.10 Any Order made may come into effect a set time after confirmation. It is therefore important that works to create the new path are completed to the satisfaction of Wiltshire Council before the end of this period or in a manner prescribed in the Order. Failure to do this can result in a situation where the existing route is not extinguished yet public rights have been created over the new route even though it has not been accepted as a highway maintainable at public expense.
- 3.11 Where the new path requires construction that falls within s.55(1) of the Town and Country Planning Act 1990 planning permission for the works will be required.

- 3.12 Section 55(1) of the 1990 Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Engineering operations are defined within the 1990 Act (s.336(1)) as including the formation or laying out of means of access to highways and means of access includes any means of access whether private or public for vehicles or for passengers, including a street.
- 3.13 It is noted that the proposed route for the diversion is over a part surfaced route already in use as a permissive bridleway. Permission for the construction of the hard surfaced parts has been granted by Wiltshire Council (applications 16/03821/FUL and 18/02808/FUL).
- 3.14 It is an essential tenet of section 119 HA80 that the various legal tests to be applied rely upon comparison of the existing route with the proposed new route. Clearly problems arise when the definitive line is unavailable, obstructed or poorly maintained as a reasonable comparison cannot be made, either by members of the public or the council.
- 3.15 Section 118 (6) HA80 recognises this and provides that, for the purposes of decision any temporary circumstances preventing or diminishing use by the public shall be disregarded. There is no such provision within s.119 and the Council is guided by the Planning Inspectorate's Advice Note No. 9 General Guidance on Public Rights of Way Matters (11<sup>th</sup> revision 2019). In the event of the matter proceeding to the Planning Inspectorate they would also have regard to this advice:

*Para. 30 "Whereas section 118(6) provided that. For the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that] when considering orders made under section 119(6) whether the right of way will be/will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have a right to use it."*

This is an important principle and one that underpins officers' considerations throughout this report.

- 3.16 Guidance on Definitive Map Changes issued by Natural England (A guide to definitive maps and changes to public rights of way – 2008 revision) at page 17 underlines the consideration that applicants should give to applications for public path orders:

*"Careful consideration is therefore needed before deciding whether to apply for a public path order. The Rights of Way Review Committee has published a Practice Guidance Note Securing agreement to public path orders (see p38) from which the following is taken:*

*"Applicants for orders should bear in mind that there must be good reasons for wanting to make any changes to the existing network. Public rights of way and private rights of ownership should not be interfered with lightly. The 'do nothing' option should always be evaluated alongside any proposals for change. It may prove to be the best option even though the existing situation may be inconvenient for the owner or inadequate for the user."*

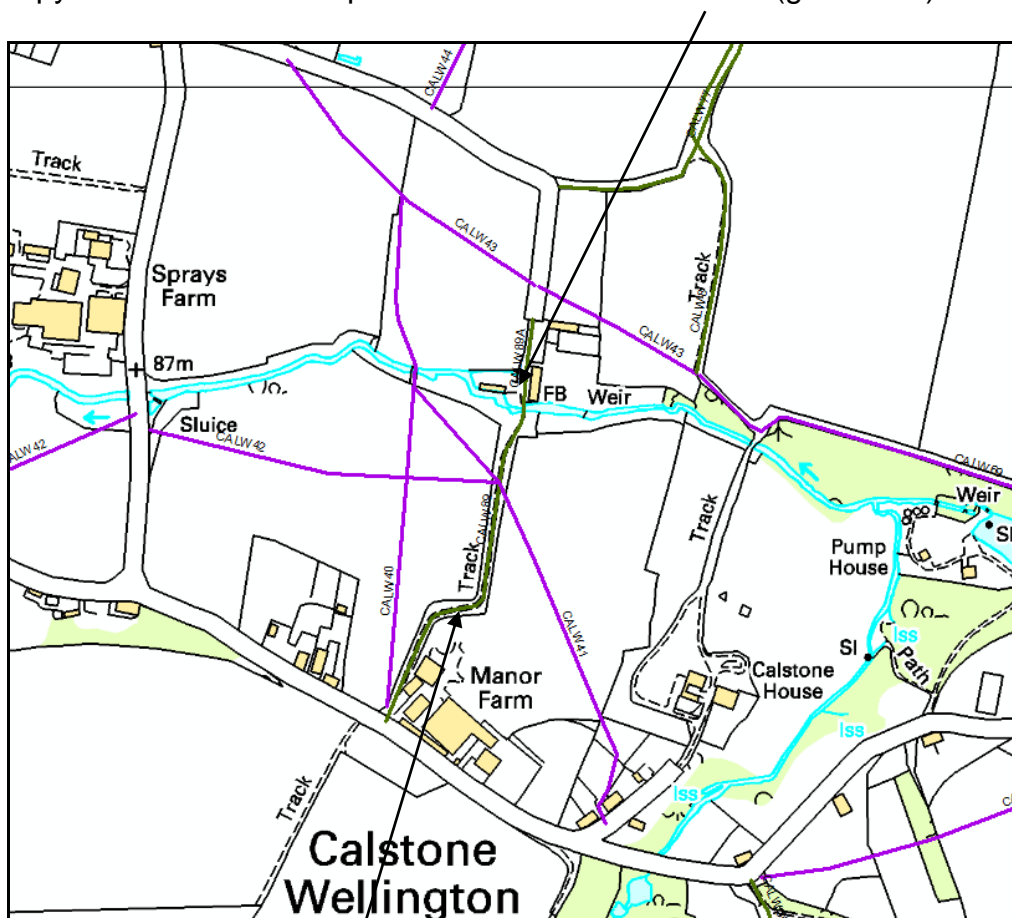
## 4.0 Current Records

Bridleways Calne Without 89, 89A and 89B were added to the Calne and Chippenham Rural District Council area dated 1953 definitive map and statement in 2008 and 2009 further to the stopping up of public vehicular rights over the route in 2007. They form a continuous bridleway linking road u/c7005 at Manor Farm with the u/c7008 north of Calstone Mill (The Mill House). The route crosses the River Marden south of The Mill House over bridge R7/98 which is maintainable at public expense.

The definitive statement records:

Calne Without	89	<u>BRIDLEWAY</u> . From the unclassified road south of Manor Farm, 7005, leading in a general north easterly direction to the south end of public bridleway 89A, to the north of Calstone Mill House. Approximate length: 344 metres Width: 4 -10 metres.
Calne Without	89A	<u>BRIDLEWAY</u> . From the northern end of public bridleway 89 leading north past Calstone Mill House to public bridleway 89B. Approximate length: 53m Width: 4 – 8 metres as coloured green on the Order map
Calne Without	89B	<u>BRIDLEWAY</u> . From the southern end of u/c road 7008 leading south to public bridleway 89A Approximate length; 7m Width: 4m

The working copy of the definitive map shows the routes as follows (green line):



CALW 89, 89A and 89B

## 5.0 Background

Prior to 2008 the path now called CALW89 was only recorded in the highway record by the highway authority (Wiltshire Council) as a road maintainable at public expense (u/c 7005). Further to an application by the owner of The Mill House public vehicular rights (both mechanically propelled and horse drawn) over this road were stopped up by the magistrates acting under the powers of s.116 of the Highways Act 1980 on 23<sup>rd</sup> April 2007. The reserved footpath and bridleway rights were recorded in the definitive map and statement in March 2008.

- 5.1 The order of the magistrates also stopped up public vehicular rights over a section of highway north of the bridge leading past The Mill House. Hence public vehicular rights were stopped up over a continuous length leading from Manor Farm to a point north of The Mill House and these are the sections now recorded as bridleways CALW89, 89A and 89B.
- 5.2 Although CALW89 and CALW89B were added to the definitive map using 'legal event orders' (s.53(3)(a) Wildlife and Countryside Act 1981) the order that added CALW89A to the definitive map was the result of historical research which showed that on the balance of probability, a public vehicular right had subsisted and that although extinguished by the 2007 s.116 order, the remaining rights fell to be recorded in the definitive map and statement. The order was made under a different section of the Wildlife and Countryside Act 1981, duly advertised and no objections or representations to it were received. It was confirmed in May 2009 and recorded in the definitive map and statement as a result.
- 5.3 Matters relating to the historical nature of this highway are relevant to the consideration of the legal tests contained within s.119(6) of the Highways Act 1980 and are covered briefly as follows:
- 5.4 Parliamentary enclosure of much of the commonable land and fields in the parish of Calne Without occurred in **1818** and records relating to this, held at the Wiltshire and Swindon History Centre (WSHC) under catalogue number EA110 have been viewed. Map C shows land in the Calstone area referred to in the award and the local road network. The route that now forms CALW89,89A and 89B and part of u/c7005 is shown as a continuous lane bordered in the most part by hedges. The river at this time is shown only passing through the mill reflecting the need for water at a working mill. The road was not created by the award and pre-dates it.



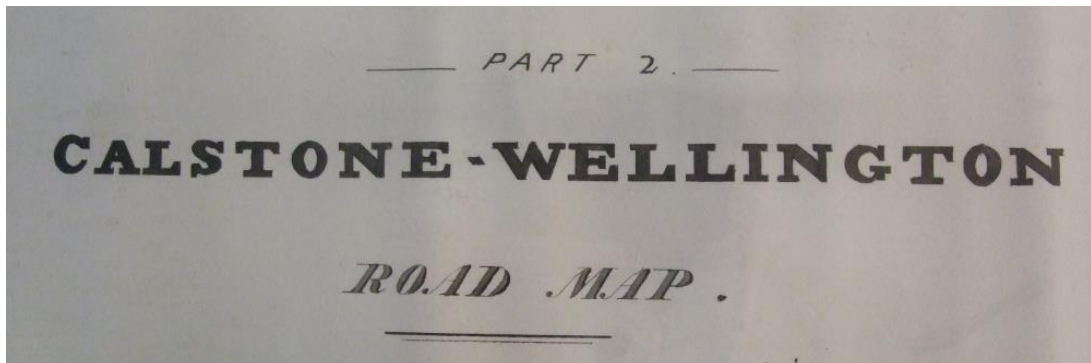


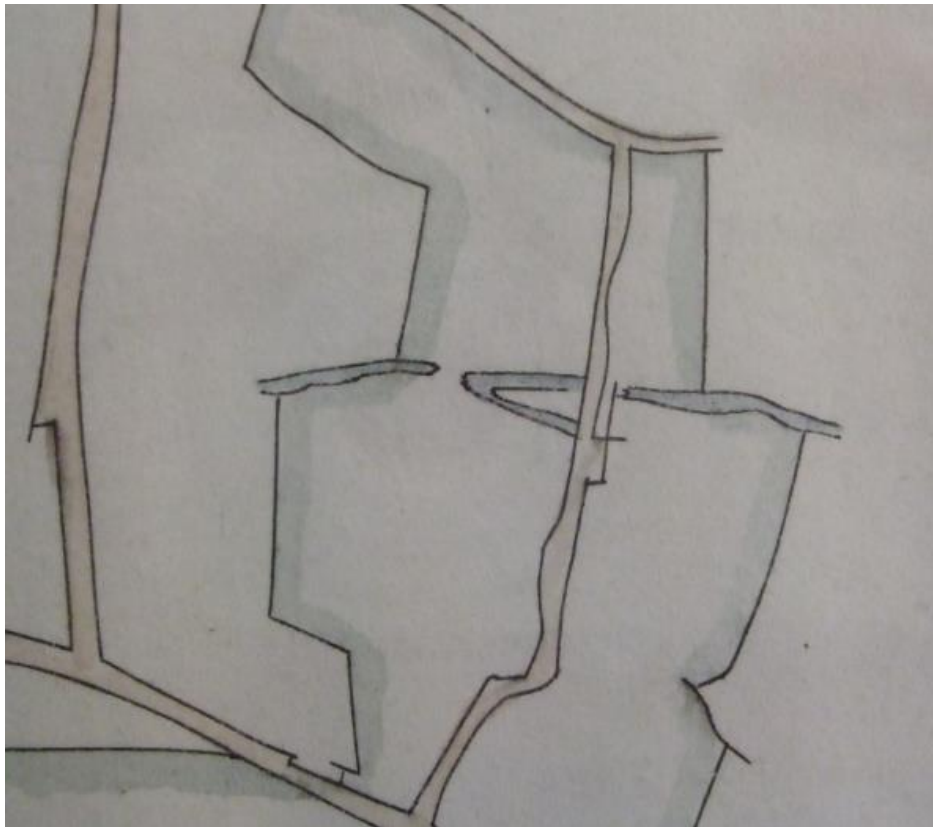
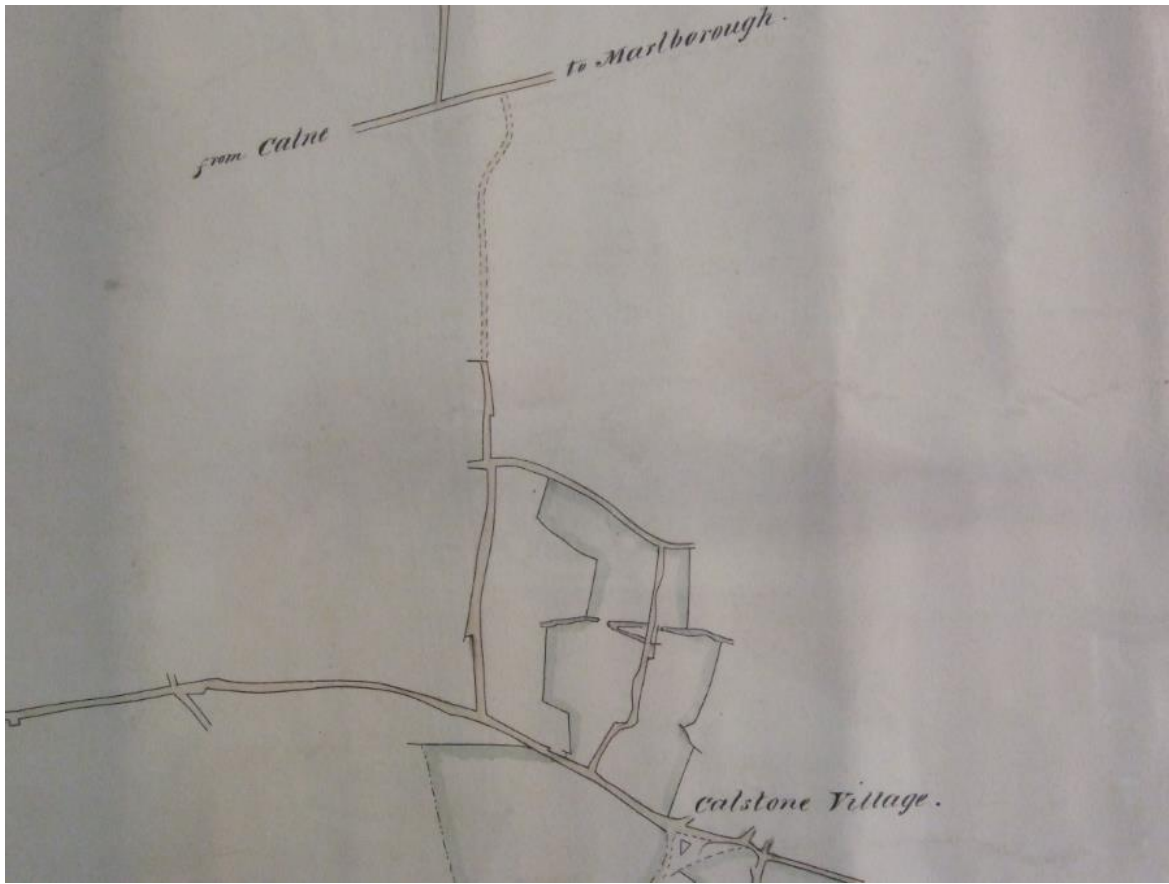
5.5 A map of the parish of Calstone Wellington dated **1830** (WSHC 807/27) drawn at the scale of 6 chains to the inch shows the road network coloured sienna, coloured numbered fields and land ownership details. Buildings are shown coloured red or grey in line with practice common to plans of this era to represent dwellings and outbuildings. The route now recorded as CALW89, 89A, 89B and u/c7005 is shown as a through route over the River Marden and past the mill. The main river is shown through the mill with a southern watercourse as a small pond, backbrook or drain only.

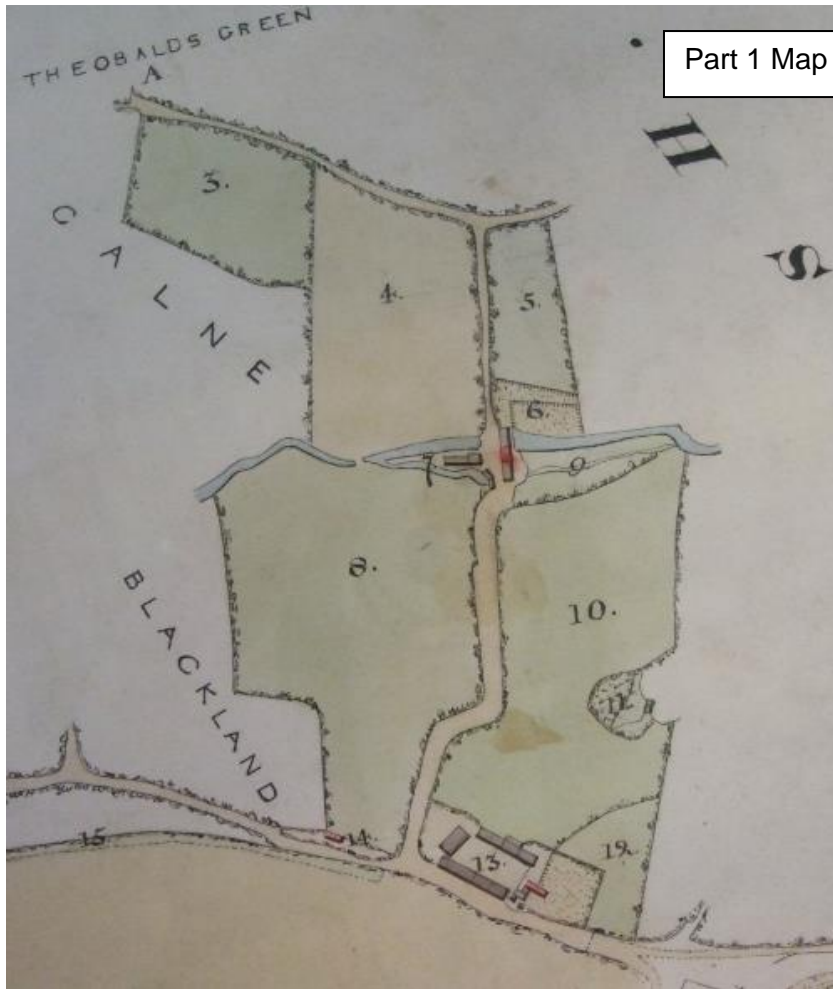




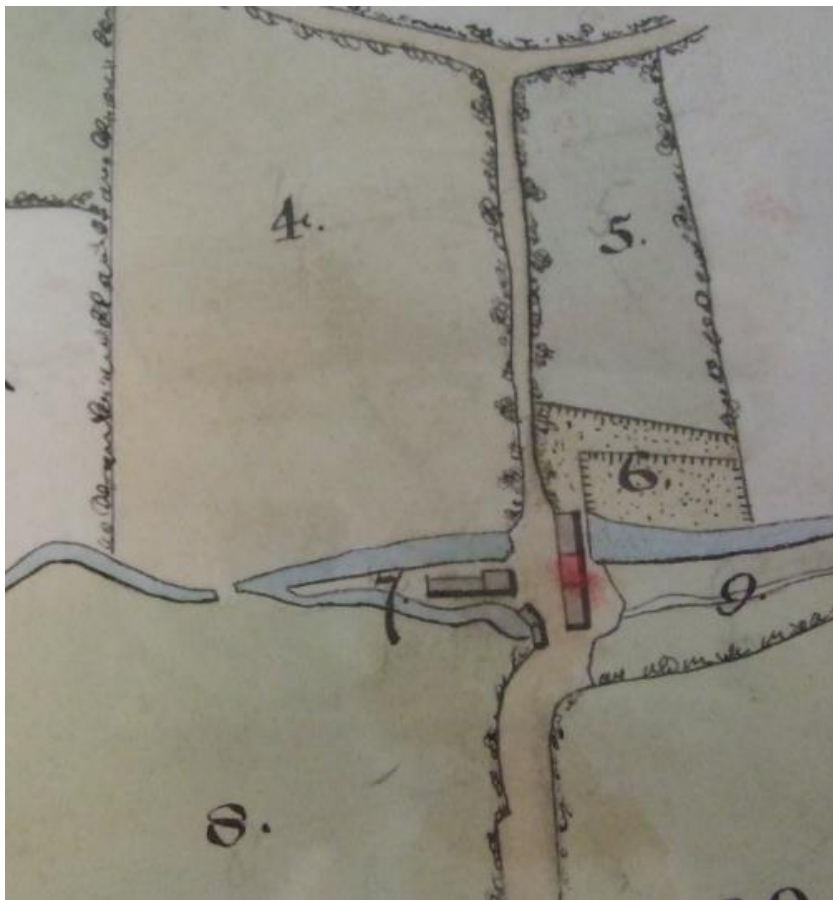
5.6 The Tithe Commissioners survey dated **1845** (WSHC TA/Calne Without and The National Archive IR/30/38/55) is in two parts, one of which, Part 2, is a "Road Map", Part 1 is similar, but not the same, as the 1830 map at para. 5.5. Both maps show the route of CALW89,89A,89B and u/c7005 as a through route and road coloured sienna.







Part 1 Map

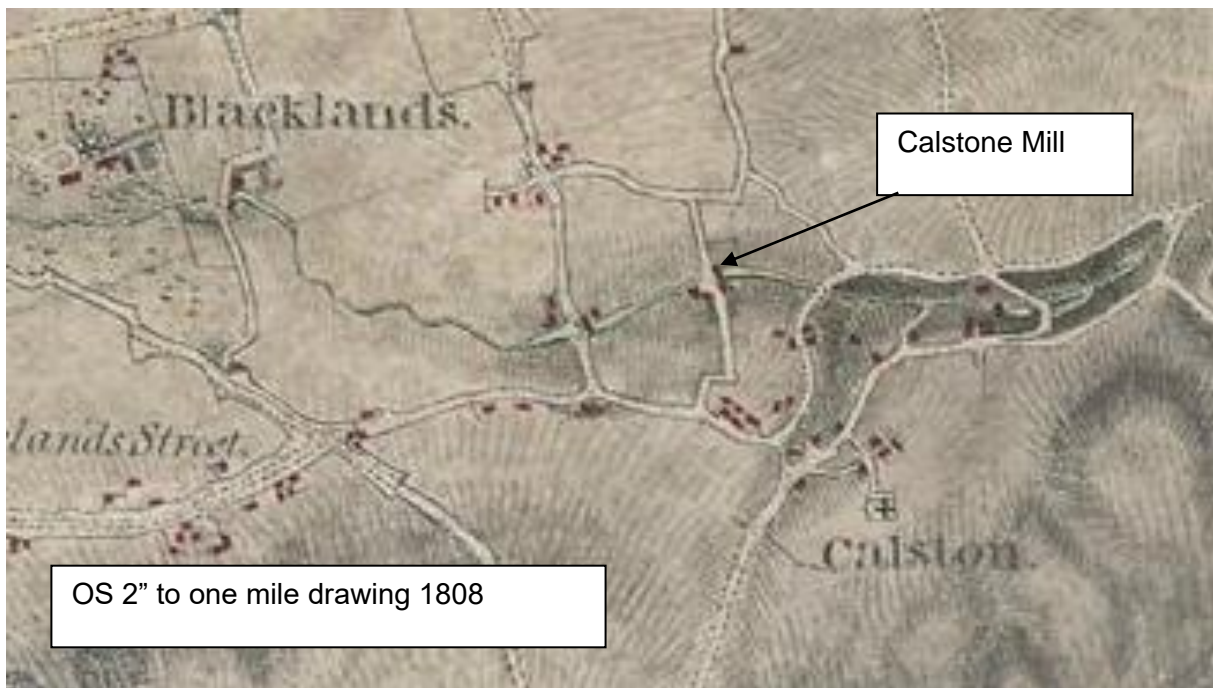




- 5.7 The records of the Inland Revenue relating to the Finance Act **1909/1910** exclude the route of CALW89,89A,89B and u/c7005 from the valuation of surrounding hereditaments showing it uncoloured and connecting to the local road network. The usual interpretation of this is that it was a highway in the control of the highway authority and other evidence is consistent with this interpretation. An extract from the Record Copy held at the National Archive at Kew (catalogue number IR/125/11/319/xxvii/10) is below:



- 5.8 The records included above (5.4 – 5.7), with the exception of the 1830 Parish map, were public documents arising out of Acts of Parliament. These maps consistently show a through road over the River and past the mill and certainly from 1808 onwards (when the road is shown on an Ordnance Survey drawing) a clear picture emerges of a continuous road. A large number of other commercially available maps and plans, especially those produced by the Ordnance Survey, but including others, show the route as a through road.



- 5.9 Submissions from the applicant arising from records held at the Bowood Estate refer to the northern section of the road as “Mill Lane” and the southern section as a “Drove” (“Sr Ed’s Drove”) in 1728. The drove is represented in the same characteristic shape as the route today open to the road network to the south. Any titheable productivity of a route is no barrier to public rights existing over it. Likewise an extract from a plan from 1760 to 1765 shows the same characteristic double hedged route leading to the mill. It is accepted that nothing in these records demonstrates anything further than the physical existence of a route but the shape and representation of the road appears broadly the same from 1728 to the current day suggesting land boundaries were laid out to accommodate a highway.
- 5.10 The earliest records held by Wiltshire Council relating to the extent of maintenance liabilities over the route are the Takeover Maps arising from the Local Government Act 1929 when the responsibility for rural roads was handed over from the Rural District Councils to the County Council. This record shows most of the route coloured blue with the central section past the mill coloured brown. The bridge over the River Marden is recorded as a road bridge maintainable at public expense (R/7/98).



- 5.11 Roads coloured brown have been viewed as “non-repairable tracks” or “u/c roads on which there is no grant available” and relate to the level of public maintenance liability and not to public rights. See also Wiltshire Council’s Policy 6 relating to bridges (para 9.55 this report).
- 5.12 The route of the u/c7005, u/c7008 and section shown coloured brown are all recorded as highways in the Council’s records. Publicly maintainable highways can be created in a number of ways including:
- i) by historic precedent if it pre-dated the Highways Act 1835 (thereby an ‘ancient highway’)
  - ii) By formal dedication or conveyance for highway use
  - iii) By formal adoption as public highway (i.e. s.26, s.38, s.119 (and others) Highways Act 1980)
  - iv) Specifically by Act of Parliament (i.e. parliamentary inclosure)
  - v) see also s.47 National Parks and Countryside Act 1949 for highways recorded in the original definitive map and statement

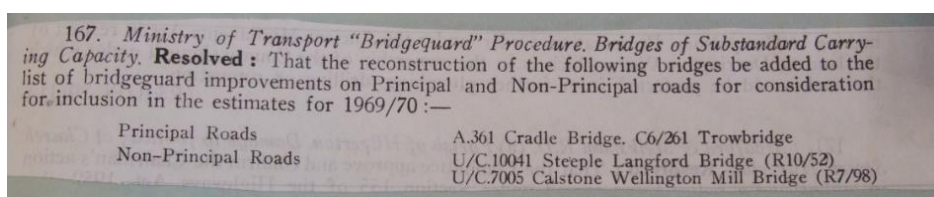
On the balance of probability the inclusion of this road in the highway authority’s records as being publicly maintainable arises from it being an ‘ancient highway’ within the usual use of the term.

- 5.13 Regardless of the history of the road it is now correctly recorded as a bridleway owing to the Highways Act 1980 s.116 Order of 2007(which extinguished all public vehicular rights), and it remains wholly maintainable at public expense.
- 5.14 An application also made by Mr Moore to divert part of the bridleway at The Mill House was received by Wiltshire Council in 2013 and the decision to refuse the application was circulated to the applicant and all interested parties in January 2016.
- 5.15 The application to divert the bridleway currently being considered will be considered wholly distinct from that 2013 application.

**5.16 The Bridge over the River Marden R.7/98**

Wiltshire Council’s bridge files support that the original masonry bridge (R.7/98) was demolished in November 1968 owing to its poor condition. Wiltshire Council has a duty in law to replace and maintain a bridge that is fit for purpose at this location.

- 5.17 Prior to demolition the road was closed in August and September 1968. During this period the Council consulted on the possible provision of a narrower replacement bridge that was not suitable for vehicular traffic. Both Calne and Chippenham Rural District Council and Calne Without Parish Council objected to any down-grading of the route which was still used by vehicles. Accordingly Wiltshire Council’s Roads and Bridges Committee resolved at their meeting held on the 27<sup>th</sup> September 1968 to schedule the new road bridge for inclusion in estimates for 1969/70.



5.18 As a temporary measure a footbridge was provided for the convenience of pedestrians. The following photograph shows this footbridge. The image is undated but likely to date from between 1968 and 1970. The image is useful as it shows the open aspect and road like appearance of the route at this time. There are no gates and the width of the highway is obvious.



Later image showing replacement footbridge and open width and nature of the road.

5.19 Correspondence reveals that by 1973 the council had still not erected the new bridge and instead considered providing a bridle bridge of greater width. Agreement for this was reached and a wider bridge was put in place in December 1975. This bridge was 1.2 metres wide.

#### Bridge widths

##### *Prior to 1968 Vehicular width*

1968           0.6 m wide

1975           1.2 m wide

1992           1.2 m wide

2002           1.8 m wide bridge proposed but not installed

5.20 Complaints relating to this width of bridge and its unsuitability for horses were received in the 1990s and early 2000s and correspondence files reveal that by 2002 the council had decided to put in place a wider bridge as the existing one was “causing some concern to local equestrian users”. The council also sought the removal of the gate by the mill as it was an obstruction to the highway.

5.21 In September 2003 the installation of the new bridge was delayed at the request of Mr Moore who identified that he could see no problem with the existing bridge that required what was proposed (i.e. that it was adequate). The replacement of this bridge remains ‘on hold’ at the date of this report.

5.22 Photographs contained within the bridge files are helpful in appreciating the changes to the site with time. In 2003 the area south of the bridge was open to the sun and air whereas by 2018 trees had been planted and an additional gate installed.



2003





2004

2018

5.23 In 2015 Wiltshire Council’s Principal Bridge Engineer advised that the current bridge has an overall width of 1200 mm but that the clear width is less than this. He further advised that the British Horse Society guidance suggests a width of between 2 and 3 metres with a parapet height of 1200mm.

5.24 The historical background is essential in understanding how temporary obstructions should be disregarded and that all considerations should relate to the full extent of the route being available to the public (as per the images at para. 5.10 and 5.18), that a bridge of vehicular width is available (the 2007 order only stopped up the vehicular right, not the extent or width of the highway), that there is no restricting vegetation or parked vehicles and no gates or other obstructions along the route. The comparison should also be made with the route as if it were maintained and that the surface was not out of repair and had the benefit of sun and air (i.e. not poorly drained or muddy). The route was clearly in vehicular use as a through route in 1968 (as evidenced by Parish Council and Rural District Council correspondence) and should, with appropriate maintenance, be capable of being so again (notwithstanding the extinguishment of the public vehicular right and that the local traffic of the area is now on foot, horseback or bicycle i.e. as a bridleway).

## 6.0 Consultation

When considering this application the case officer noticed that the lines of footpaths 40 and 41 as recorded in the definitive map and statement did not accord with the historic record or the situation on the ground. As the footpaths are in part coincident with the proposed bridleway diversion it was considered necessary to first correct the record relating to them. A letter of consultation on both of the issues was circulated on 16 November 2018. The matter of the footpaths has now been resolved and the working copy of the definitive map included here at paragraph 4.0 shows the corrected positions. There were no objections to this change. Any order now made would only affect CALW89, 89A & 89B.

6.1 The following letter of consultation was circulated:

***“Highways Act 1980 s.119 and Wildlife and Countryside 1981 s.53  
 Consultation regarding Calne Without Footpaths 40 and 41 and Bridleways 89, 89A  
 and 89B at SN11 8QF***

*Wiltshire Council has received an application to divert the bridleway at Calstone Mill, Calstone Wellington to a route to the west. The proposed route has a variable width from 4.5 metres to 10.5 metres with a surface approved by the British Horse Society over most of the length for part of the width and would be ungated. It is currently available as a permissive bridleway. The route of this proposed diversion shares a bridge with footpath Calne Without 40 before the routes diverge south of the River Marden.*

*While looking at the definitive map for this area officers realised that the legal record of the route of footpath Calne Without 41 was incorrectly reflected in the working copy of the definitive map and also did not agree with the situation on the ground. Historical mapping supports that there was only one footpath crossing of the River Marden at this point and not two as the definitive map shows.*

*The purpose of this consultation is therefore two fold. The Council would appreciate any views you may have on diverting the bridleway and on correcting the definitive map to reflect the historic line of the footpaths.*

*I have enclosed the following maps to assist:*

- 1) Location Plan*
- 2) Plan A Definitive Map – the legal record relating to Calne Without paths 40 and 41*
- 3) Plan B Ordnance Survey County Series map c.1924 showing the route of the footpaths*
- 4) Plan C Working copy of the definitive map showing the network including the error with 40 & 41*
- 5) Plan D Application map showing proposed diversion of bridleway 89 (pt), 89A and 89B*

*The application to divert the bridleway is supported by a detailed justification for the proposal and is available on request by e.mail. Please don't hesitate to contact me to request this.*

*I would be grateful to receive any responses you have, on either the diversion of the bridleway or the correction of the definitive map for the footpath by Friday January 4<sup>th</sup> 2019.”*

6.2 The deadline was extended to Friday 18<sup>th</sup> January 2019 at the request of Wiltshire Bridleways Association though in practice representations were accepted and are included up to 22 July 2019. This is a non-statutory pre-consultation phase (other than with other local authorities and statutory undertakers who have to be consulted pre-order) and accordingly response times can be flexible.

6.3 The following were consulted:

The Auto Cycle Union  
Open Spaces Society  
British Driving Society  
British Horse Society (national and Wiltshire)  
Mr Graham Bennett  
Byways and Bridleways Trust  
Cycling Touring Club  
Trail Riders Fellowship  
Wiltshire Council Senior Rights of Way Warden  
Wiltshire Councillor for the area  
Wiltshire Council County Ecologist  
Calne Without Parish Council



Wiltshire Bridleways Association  
The Ramblers (Wiltshire)  
The applicant (Mr and Mrs Moore)  
Mr D Walsh Coffin Mew LLP  
Mr P Maundrell (Manor Farm)  
Mr R Hislop (Sprays Farm)  
Scottish and Southern Electric plc  
Wessex Water  
National Grid (gas and electric)  
Southern Gas Networks  
Open Reach BT  
Linesearch BefureUDig  
DigDat – Thames Water and Virgin Media

6.4 The following responses were received:

**6.4.1 Mr Moore 19 November 2018**

*“We confirm that we are very happy for you to correct the Definitive Map and to show the footpaths converging at the bridge.*

*Also we support the diversion of the bridleway!!”*

**6.4.2 Wiltshire Councillor Mr Hill 19 November 2018**

*“Thank you for your letter relating to the proposal to re-route various footpaths and bridleways in the vicinity of The Mill House, Calstone, SN11 8QF. As I am sure you are aware, I support the proposals.*

*I also support the correction to the definitive map as you describe.”*

**6.4.3 Wiltshire Ramblers 26 November 2018 and 27 November 2018**

*“Further to your letter of 16 November about the correction of the definitive map re CALW40 & 41, and the proposed diversion of bridleways CALW89, 89A and 89B at Calstone Mill, I visited the site today.*

*The maps B & C you provided with your letter do indeed show the actual situation on the ground whereby CALW41 joins CALW40 south of the River Marden, as opposed to north of it, as shown on Map A (I think) and the definitive map, there being only one bridge across the Marden at that point, so correcting this is a no-brainer. However I did notice, as I walked the area, that there is no sign of the continuation of CALW41 to the south-east of CALW89, neither is there any sign of a stile or other entrance into the field allegedly containing CALW42 and CLAW40 where CALW42 goes west off CALW89.*

*As for the proposed diversion of the bridleways, as noted there is already a permissive bridleway in use on the route of the proposed diversion, which is clearly already being well used by horse riders. Whether the diverted route is also preferable for walkers is debatable; it is slightly longer and does not have the “quaintness” of the existing route over the Marden and past the mill, however I could be persuaded not to object to it if the mill owners were prepared to reinstate the two apparently “lost” footpaths of CALW41 and 42; all that would be needed as far as I can see would be a means of access into the fields concerned.”*

The case officer asked the respondent to clarify this with regard to the legal tests in s.119 and they responded:

*“As this was a consultation rather than an actual path order, I did not think it appropriate to get too legalistic! However, since you ask, I don’t think the proposed diversion would be as convenient as the existing bridleway, but not substantially less so, and I can see little difference in the public’s possible enjoyment of the route if it was diverted – so I would not object. However it would be good to get those other paths reinstated!”*

And from another respondent from the organisation:

*I would agree with [the comments above]. On behalf of North West Wiltshire Ramblers I agree that the Definitive Map should show one crossing of the Marden for both CALW40 and CALW41. I agree to the diversion of Bridleway 89 onto the permissive route. However, the footpaths need to be reinstated south of the Marden before the footpath Calstone Mill is closed and there needs to be clear signage and a map displayed so that walkers are certain of the legal route.*

*I note that there are issues with previous diversions near Sherston where the new routes have not been clearly waymarked, nor are there maps to show walkers the new routes. These are around the menage at Lady’s Wood on SHER15 and at Lordswood House on SHER17. Unless Ramblers can be assured that diversions will be well signed and easy to use, we will have no choice but to object to any proposed diversions in future.”*

#### **6.4.4 Calne Without Parish Council 12 December 2019**

Thank you for consulting the Parish Council on the above. The Parish Council considered the proposal to divert the bridleway at Calstone Mill and the correction of the definitive map at its meeting on the 10<sup>th</sup> December 2018.

The Parish Council is in support of the application to divert the bridleway at The Mill House, Calstone Wellington, Calne, SN11 8QF for the following reasons:

- The previous route of the bridleway was virtually impassable for up to six weeks every year, owing to the ground being waterlogged.
- The alternative route is now being used by riders, walkers and cyclists all year round in preference to the established route.
- The route is much more convenient and has been created as an all-weather bridleway, with a gentler gradient, which can be enjoyed all the year round.
- The proposed route is much wider and more convenient than the present bridleway. It also offers better views of The Mill House and the local countryside and is capable of being used by people who are unable to use the present route. It has real public benefit.

We also confirm our approval to the correction of the error on the Definitive Map.

#### 6.4.5 Trail Riders Fellowship 28 November 2018 and 27 December 2018

*"I support the proposed route correction for Calne footpaths 40 & 41 because evidence appears to demonstrate that an error has been made in recording, though object to the proposed diversion of Bridleways 89, 89A and 89B because the recorded route appears to be wholly accurate. Furthermore the bridleway is a former public road so may well carry higher public rights.*

*Therefore the proposed bridleway diversion is not in the public's interest as it would:*

- 1. Reward and incentivise landowner preference over historical public use.*
- 2. Be contrary to the established principle of a landowner accepting public rights of access upon purchase of land and property.*

*If the applicant wishes to be sincere in their claim of providing a superior alternative route then they should dedicate it accordingly and let the public decide which route is the more commodious through its use.*

*Finally – and as a side note – the proposed footpath realignment will make the Wiltshire Council's approach to such matters inconsistent given its lack of will to remedy an identical issue with Ogbourne St George 1 (Gypsy Lane)"*

NB The case officer responded to explain that whilst the route had once carried a public vehicular right this had been extinguished in 2007 and accordingly the classification of the bridleway was correct.

And from another respondent from the organisation:

#### **Consultation regarding Calne Without Footpaths 40 and 41 and Bridleways 89, 89A and 89B**

*"Thank you for your letter of 16 November 2018, together with enclosures. I support the proposal to correct the definitive map in respect of the route of Footpath 41.*

*Turning to the new application to divert bridleway 89(pt.), 89A and 89B; I have known and used this lane since the 1970s, both on a motorcycle (when it was still a carriageway) and on foot. No one ever questioned my use. I object to this proposal on the same grounds as for the previous application, which was refused. Please see my response to that consultation, dated 15<sup>th</sup> October 2014. In this response, I will, if applicable, refer to the applicant's paragraph numbers during my various comments. [appendix 1A]*

*Disregarding all the evidence to the contrary, the applicant persists in asserting that the bridleway is not an ancient or historical route (3.6, 6.7, 12.20.5 & 16.1)). The Ordnance Survey Drawing of 1808 shows the lane as being then an established part of the local road network; and the Calne Inclosure Award 1818 describes the road as an 'ancient lane'. The continuation of the road in Cherhill was awarded in 1822 as a Public Carriage Road "towards Calstone Wellington". It could only have passed along the present bridleway, because the alternative was set out as a private carriage road. The summary of evidence submitted with my 2005 DMMO application lists a host of 19<sup>th</sup> century and later historical evidence confirming the former importance of the road.*

*The lane forms part of a network of ancient roads, some of which are now green lanes, including the Old Bath to London Road over Cherhill Down. There would be a significant loss of history if the existing road were to be closed. Although the present mill dates from the 18<sup>th</sup> century (3.6.1) there has been a mill on the site, and hence the need for a road, for nearly 500 years (see VCH Vol.17).*

*The applicant's notion (3.6.8) that farmers would stop their carts south of the river and manhandle their sacks of grain (2 cwt. minimum; standard 280lbs.) across the bridge to the mill is laughable. The customary method was to winch the sacks straight off the wagons to an upper floor. The road was maintained by the highway authority and had a stone arched carriageway bridge until 1968. It was a right of way for traffic of all kinds until public vehicular rights were stopped up in 2007.*

*No one needed consent to pass along this highway, contrary to the applicant's assertion (3.6.10); and the suggestion that the highway could not be dedicated until after 1925 (3.6.12) is absurd, it had already been established as a highway for centuries by then.*

*The diversions in Pewsey (12.12) and Bishops Cannings (12.20) cited by the applicant for comparison, are not relevant. No ancient public carriage roads were affected. On the other hand, contrary to the opinion of the applicant, the Purton example (6.6 & 6.7) is a very good comparison. I was one of the objectors and gave evidence at the public inquiry. I carried out in-depth historical research on both routes and can vouch for the fact that the historical evidence confirming the antiquity of both roads is very similar. The Purton route was in a significantly worse state of repair than the Calstone one.*

*With regard to the comparative lengths of the existing and proposed routes, the applicant's measurements do not agree with the routes shown on the application map (12.4 & 12.5). I can provide accurate measurements if required. The proposed diversion is more than 2½ times longer than the length proposed to be closed and lacks any sense of purpose. Even using the applicant's dubious mode of comparison (12.2), it is more than twice as long, with the added disadvantage of four sharp bends, making it "substantially less convenient to the public", and having an adverse effect on "public enjoyment of the path or way as a whole". There is no guarantee that any future owner would keep it in repair. As stated in my objection to the previous application, much of the pleasure derived from travelling along old lanes and roads, is the knowledge that you are following in the footsteps and wheel tracks of countless generations before you.*

*The applicant states that the proposed diversion will not be gated (8.3.1 & 8.3.4). The existing route should not be gated either. It does not meet the statutory criteria.*

*The physical characteristics of Bridge Y are not proper matters of comparison (7.5.6). The Council has already agreed to provide a suitable bridge on the existing route.*

*Whilst the surface condition south of the bridge is not as good as it should be (6.1), this is due to insufficient maintenance, and can be rectified. For the purposes of the diversion application, the current state of the surface, and the suitability of the bridge, has to be disregarded. Until at least 1920, the mapping evidence shows the whole length of the existing route as a metalled public road in the control of the highway authority, and it remained a County repairable carriageway until 2007, so it will have a firm base.*

*Although some supporters of the diversion allege that the definitive route is in a bad or even dangerous state, it is noteworthy that Wiltshire Council has received no complaints about it. When I reported some fallen trees to the Council in 1994 (WCC Ref. AA/AB/PC 74 of 11*

October 1994), they were removed promptly and the lane cleared. Users obviously need to report problems if they want them resolved. It is understandable that the supporters (mainly local horse riders) welcome an extra place to ride, though I doubt whether many of them have given much thought to the historical value of the existing route.

The applicant has an obligation not to obstruct the highway with parked cars or anything else (21.16) and to keep his dog under control (2.10 & 21.16). It suits the applicant's plans to deter users. In March 2006, the owner (presumably the present applicant) was warned by Wiltshire County Council in respect of an incident of intimidation against a legitimate user (WCC Ref. ARH/LMW/PC 45(b)).

As far as I am aware, there were no complaints about lack of privacy from previous owners of the property. Presumably, they accepted that living adjacent to public road offers less privacy than a more remote dwelling.

To sum up, in this case as before, the interests of the landowner are significantly outweighed by the interests of the public and the application should be refused."

Letter of 2014 referred to:

Thank you for your letter, applicant's submission statement and map, referring to an application to divert Calstone Mill Lane.

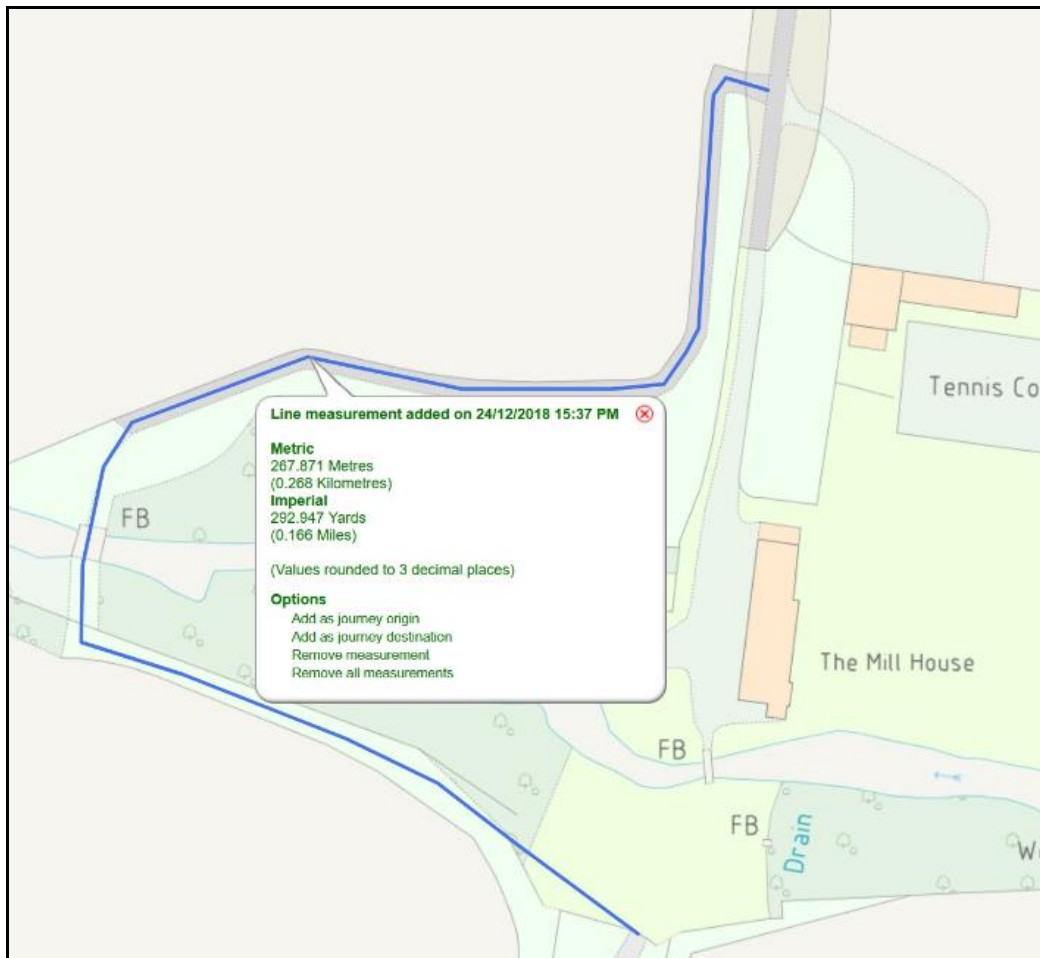
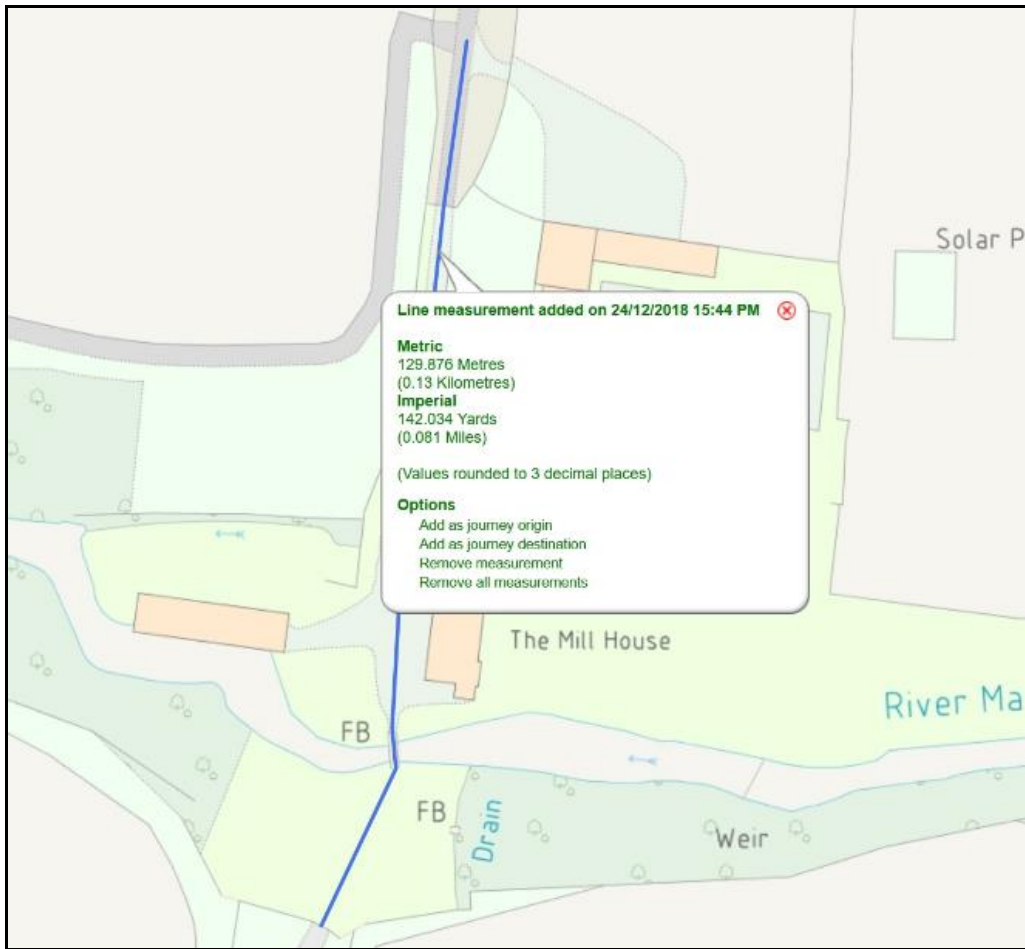
In this case I think the interests of the public heavily outweigh those of the landowner. This lane has existed for centuries, and is of great historical value. Much of the pleasure derived from using old roads and lanes is the knowledge that you are following in the footsteps and wheel tracks of countless generations. There has been a mill here for nearly 500 years, although the present one was rebuilt in the 18th century. Being forced to view the mill from a distance would diminish the pleasure of using the lane. It is illogical to argue that the existence of the lane is detrimental to the new owners of the mill house. The lane has almost certainly existed for as long as there has been a mill, and its existence was obvious when the property was purchased. Even the most cursory search of the Council's highway records would have revealed its existence.

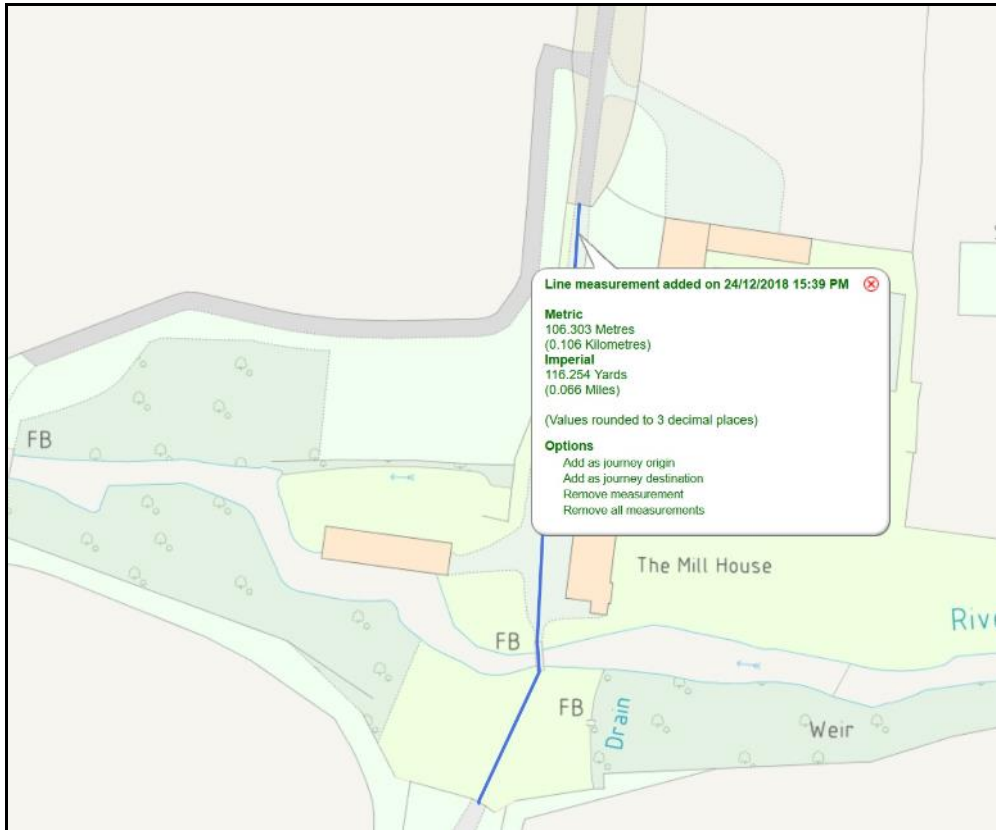
Except for a length of 53 metres which was repairable *ratione tenurae*, the lane was an unclassified road until April 2007, so it has a sound base. Any mud on the surface is due to the Council failing to carry out its maintenance duties. The old stone carriageway bridge over the River Marden (a county bridge) was demolished by the County Council in 1968 and replaced with a temporary wooden bridge. The Council is still liable to reinstate a substantial bridge and this liability must not be used as an excuse for diversion.

The legal width of the existing lane varies between 4 metres and 10 metres; nowhere is it 2.8 metres wide as asserted by the applicant.

The loss of an historically important route is sufficient reason on its own to refuse this application, but the circuitous alternative route is also unacceptable.

Measurements referred to:





#### 6.4.6 Wiltshire Bridleways Association 13 December 2018 and 18 January 2019

*“I and the remainder of the WBA committee received the full consultation documentation, 131 pages, relating to the Calstone Mill application during the evening of Tue 11 Dec 18. Our committee meeting was held on Wed 12 Dec 18, clearly not sufficient time for the information to be digested and discussed to a degree upon which any rational decision could be formulated. Our meeting was also attended by six Calne residents wishing to submit their thoughts. Those wishing to speak did so, but in order to ensure that none of their points were missed, I asked that they forward their submissions via email to me. This they agreed to do.*

*I have also asked each committee member to study the consultation papers and make relevant notes for discussion at our next meeting to be held on Wed 9 Jan 19. However, I understand that the response date for this application is Fri 4 Jan 19.*

*In order to allow time for the committee to consider and discuss the matter fully before formulating a reply, I would request that if possible, the response date be extended to Fri 18 Jan 19.*

*During the morning of Wed 12 Dec 18, I walked the bridleways concerned, including the permissive route, and met briefly with Mr Moore.*

*I trust this application will be looked upon favourably.”*

The case officer agreed to an extension until 18 January 2018.

Owing to its length the full response to the consultation is appended at **APPENDIX 1B**

#### **6.4.7 The British Horse Society 14 January 2019**

Owing to its length the full response to the consultation is appended at **APPENDIX 1C**

#### **6.4.8 Coffin Mew acting for Mr Moore 07 January 2019**

*“Application to divert part of bridleway CALW89 and bridleways CALW89A and CALW89B*

*Further to the Submission Letter dated 31 May 2018 from my former firm (Thrings) to Richard Broadhead, I am writing now to let you have the most up to date figures for the use of the present bridleway and the proposed bridleway for the period March 2018 to December 2018.*

*I attach the following documents:*

- *Record of Use from March to December 2017 (Appendix 1 and Enclosure 12 to the Submission Letter).*
- *Record of Use from March to December 2018 (Appendix 2).*

*As set out at paragraph 12.16 of the Submission Letter, “the best evidence that the proposed bridleway is not “substantially less convenient” and is preferred is the fact that, given a choice between using the present bridleway and the proposed bridleway, users have chosen to use the proposed bridleway.”*

*In the period from March 2017 to December 2017 the use can be broken down as follows:*

<i>Users</i>	<i>Present bridleway</i>	<i>Proposed bridleway</i>
<i>Riders</i>	<i>0</i>	<i>659</i>
<i>Walkers</i>	<i>14</i>	<i>934</i>
<i>Cyclists</i>	<i>0</i>	<i>26</i>

*In the period from March 2018 to December 2018 the use can be broken down as follows:*

<i>Users</i>	<i>Present bridleway</i>	<i>Proposed bridleway</i>
<i>Riders</i>	<i>1</i>	<i>695</i>
<i>Walkers</i>	<i>25</i>	<i>1,152</i>
<i>Cyclists</i>	<i>2</i>	<i>28</i>

*NB (i) Groups of users travelling together are counted as 1.*

*(ii) Proposed bridleway closed between 4 June and 12 June 2018 for track works.*

*As you will see, not only do users choose to take the proposed bridleway but the number of users has increased significantly.*

*I hope you find these figures helpful.”*

#### **Appendix 1 (Enclosure 12)**

#### **Record of Use of Bridleways 2017**



### **Proposed Bridleway**

<b>Month</b>	<b>Riders</b>	<b>Cyclists</b>	<b>Walkers and Runners</b>	<b>Total</b>
March	34	1	41	76
April	83	1	82	166
May	98	6	84	188
June	79	3	103	185
July	82	6	93	181
August	103	0	144	247
September	74	3	121	198
October	50	3	125	178
November	39	3	76	118
December	17	0	65	82

**NB** Groups of individuals travelling together are counted as 1.

### **Official Bridleway**

<b>Month</b>	<b>Riders</b>	<b>Cyclists</b>	<b>Walkers and Runners</b>	<b>Total</b>
March			<b>3</b>	<b>3</b>
April			0	0
May			1	1
June			1	1
July			0	0
August			0	0
September			3	3
October			3	3
November			1	1
December			2	2

**NB** Groups of individuals travelling together are counted as 1.

### **Appendix 2**

#### **Record of Use of Bridleways 2018**

### **Proposed Bridleway**

<b>Month</b>	<b>Riders</b>	<b>Cyclists</b>	<b>Walkers and Runners</b>	<b>Total</b>
March	22	0	154	176
April	49	4	94	147
May	73	1	102	176
June*	74	2	52	128
July	85	7	89	181
August	98	4	155	257
September	82	1	118	201
October	96	7	122	225

November	66	1	140	207
December	50	1	126	177

\* Proposed bridleway closed between 4 June and 12 June 2018 for track works.

**NB** Groups of individuals travelling together are counted as 1.

### **Official Bridleway**

<b>Month</b>	<b>Riders</b>	<b>Cyclists</b>	<b>Walkers and Runners</b>	<b>Total</b>
March	1	0	1	2
April	0	0	4	4
May	0	0	2	2
June*	0	0	11	11
July	0	1	1	2
August	0	1	1	2
September	0	0	0	0
October	0	0	2	2
November	0	0	1	1
December	0	0	2	2

\* Proposed bridleway closed between 4 June and 12 June 2018 for track works.

**NB** Groups of individuals travelling together are counted as 1.

6.5 The applicant responded to the objections received and their response is appended at **APPENDIX 1.D** Further correspondence was received in July 2019 and this is included here at **APPENDIX 1.G**

### 6.6 **Statutory Undertakers**

No apparatus has been identified as being affected by the application. However, it is noted Openreach do have plant on the road u/c7008 between points A and B (telephone line crossing over the proposed junction at A and a pole on the road u/c7008) and in the event that the diversion was successful and the applicant further applied for an extinguishment of the road u/c7008 spur created by the diversion, an allowance for Openreach apparatus would need to be made and consented to by them.

### 7.0 **Representations not solicited by Wiltshire Council**

Wiltshire Council has received a number of representations from members of the public relating to the new route. The responses appear not to be in direct response to the Council's consultation (no respondents refer to the proposals regarding CALW40 and 41) and it is not known what prompted parties to respond or what information they were given. Correspondence from 88 individuals was received. Owing to the need to comply with General Data Protection Regulations (GDPR) all parties were written to and their attention drawn to not only the Council's privacy statement and details of how their data would be held but also to the public facing nature of the process to which they had contributed. As a result of this 28 were withdrawn (and have been deleted) leaving 60 who confirmed that they were content for the Council to hold their data and use it in this way (though some

elected for anonymity whereby only their response and not their identity forms part of the case).

- 7.1 Notwithstanding that the Council does not have a duty to make an order here (or to forward any so made to the Secretary of State), it is only a power it has, in the event that an order is made and objected to and Wiltshire Council decides to support that order, all consultation responses must be forwarded to the Secretary of State for Environment, Food and Rural Affairs where they will be considered by an Inspector and become part of the case.

These responses are appended at **APPENDIX 1E**

- 7.2 Responses have been categorised as follows:

<b>Comment</b>	<b>Number of responses</b>	<b>Case officer's comment</b>
The diversion will be wider	28	The proposed new route will be between 4 and 11 metres wide.  The existing route has a recorded width of between 4 and 10 metres wide. The comparison must be made as if the whole width is available.
The diversion has a better bridge	21	The Council must consider that the existing route has a bridge appropriate for the width of the highway.
The diversion is safer	34	Matters raised relating to safety are slipping on gravel driveway, the bridge and dogs. All of which are partial or temporary obstructions and should be disregarded from considerations
The diversion has less mud	25	The Council must consider that the existing route is in good repair and maintained to a standard suitable for the use it gets
The diversion has better gradient	29	The gradient north of the River Marden (after the steeper section to the bridge) is less than the existing route
The diversion is better for privacy and security	17	Agreed
The diversion is good for people with buggies and the elderly	7	The Council must consider that the existing route is in good repair and maintained to a standard suitable for the use it gets.

Comment	Number of responses	Case officer's comment
Definitive route has partial or temporary obstructions limiting use		
i) dogs	8	Includes 1 dog bite incident reported
ii) cars	8	Parked cars regularly obstruct the route
iii) gates	1	The two gates are obstructions
iv) bridge	21	Comparison must be made with a wider bridge than is currently provided on the existing route
The diversion has better views	7	The diversion has different views, some of which are already available from footpath CALW40
The diversion is pleasant and enjoyable	10	The Council must consider that the existing route is clear, in good repair and maintained to a standard suitable for the use it gets when a comparison is made.
The diversion is convenient	15	Convenience must be weighed against the existing route as if fully available, maintained and with a wider bridge

7.2 Responses number 1 and 2 are identical as are 74b and 75.

7.3 Some responses demonstrate that comparison has been made with the existing route in its current condition:

No 41 *"In 24 years I have not noticed that the official route has ever been maintained by Wiltshire Council."*

No 8b *"The bridge is too narrow and the surface of the bridge is unsuitable for horses and ponies used by Pony Club members, and I understand that accidents have been recorded on this bridge in the past. It is therefore my view that continued use of the existing bridleway is unsafe.."*

No 48b *"Should we be required to use the original bridge then I will not use it at all as it is an unnecessary danger."*

No 70 *"...the old bridge was an accident waiting to happen from a rider's viewpoint."*

No 73 *"I have ridden in this area for many years and the original bridleway was impossible for most of the year, the bridge made it downright dangerous. On the occasions when I did ride it I was always in fear of clipping my knees or even worse the bridge giving way under the pair of us".*

7.4 It is not disputed that the bridge on the existing route is considered unusually narrow for equine use and should be replaced. Wiltshire Council proposed to replace this with a wider

bridge in 2003/4 but were delayed from doing so. It is important to stress that the narrow bridge and the unmaintained nature of the ground to the south should not be considered when making the comparison. In reality the bridge comparison should be the same for either route. In the event that a diversion were to be successful Wiltshire Council would approve the same structure at either location meaning there would be no material difference between the bridges themselves (unless the stone structure was brought up to a condition certified as acceptable by Wiltshire Council). The applicant has verbally indicated a willingness to provide whatever bridge was deemed suitable and required by Wiltshire Council.

## 8 Photographs of the route

8.1 The following images are taken from similar locations and demonstrate the effect of trees growth and parked vehicles on the accessibility of the highway.



c.1968 (temporary bridge in place)

2014

2018

8.2



Existing route

From Bridge Y north towards Point A (Application plan and Appendix 1.F)

8.3



**Existing route from Bridge Y south towards Point C (Application plan and Appendix 1.F))**

8.4



**Proposed new route from Point C leading south west (Application plan and Appendix 1.F)**

8.5



**Proposed new route approaching Bridge X (Application Plan and Appendix 1.F)**

8.6



**Proposed new route over Bridge X (Application Plan and Appendix 1.F))  
NB Bridge is shared with footpath CALW 40**

8.7



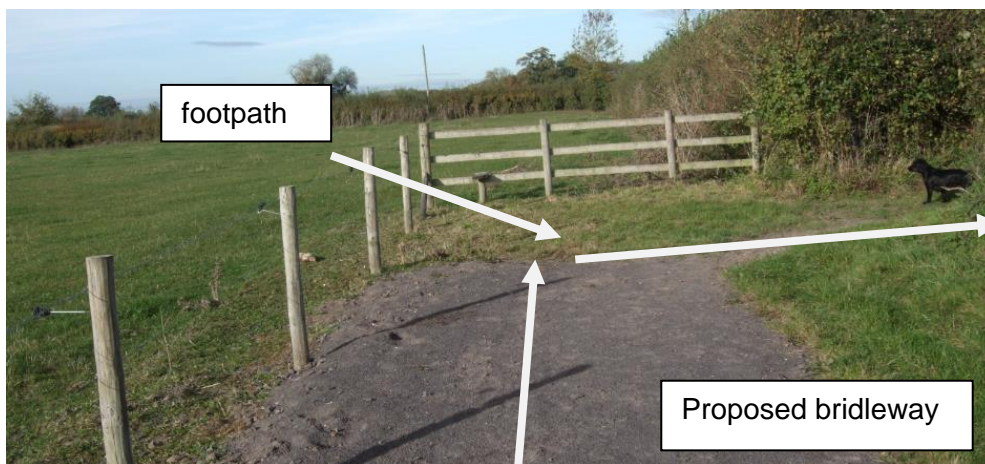
**Proposed route from Bridge X leading north and north west**

8.8



**Proposed route leading east**

8.9



**Proposed route at junction with footpath CALW43**



8.10



**Proposed route at junction with road u/c7008**

8.11



**Continuation of road u/c 7008 north**

8.12



**View of The Mill House from proposed new route**



**Proposed route over existing bridge carrying footpath CALW40**

## **9 The legal tests**

### **Summary of Legal Position and Tests**

Wiltshire Council is not under a statutory duty to make an order to divert the right of way though it has a power to do so. In deciding whether it will or not make an order it must consider the legal tests contained within section 119 of the Highways Act 1980. These are detailed below. To make an order it must be shown that tests s.119(1) and s.119(2) are satisfied. It may consider the tests within s.119(6) at this stage. If it proceeds to make an order, it must consider the tests at s.119(6) in order to either confirm the order itself or send the order to the Secretary of State for determination. Where an order is made but the Council does not consider s.119(6) is satisfied, it has the power to abandon the order.

9.1 The council must consider the tests at s.119(1) and (2) and may consider the legal tests at s.119(6) at this order making stage (see paragraph 3 this report). Consideration is made with reference to the plan appended at **APPENDIX 1. F**. Although the bridleways CALW89 (part to be diverted), 89A and 89B are recorded in 3 parts they are regarded throughout this analysis and comparison as being one highway “the bridleway” (i.e. length B to C on plan). The distance A to B on the plan is the road u/c 7008.

### **9.2 Section 119(1)**

*“Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or special road) that, in the interest of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, -*

*(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*

*(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

*An order under this section is referred to in this Act as a “public path diversion order”.*

9.3 The diversion of the bridleway as proposed in the application would remove the bridleway from its current location past The Mill House (approximately 3 metres from the front of the house) to land bordering agricultural land to the south west and west at its furthest point approximately 100 metres from the front of the house; this would improve the privacy of the house and associated areas. With appropriate planting it would become possible to screen the view of the house windows from the bridleway if it were moved to the proposed location, further promoting privacy. The removal of the bridleway from its current location would enable the house owner to gate his property securely and hence assist with matters relating to security. It is agreed that it is in the landowners’ interest to remove the bridleway from the front of the house and buildings.

9.4 A route past The Mill House is clearly a popular and well used part of the highway network (reference data supplied by the applicants at paragraph 6.4.8) and extinguishment would not be an option without an alternative being provided. Accordingly to achieve the applicant’s aspiration it is agreed that it would be expedient that the line of the path would need to be diverted and that an alternative route is required to achieve this.

#### 9.5 **Section 119(2)**

*“A public path diversion order shall not alter a point of termination of the path or way –*

*(a) if that point is not on a highway*

*(b) (where it is on a highway) otherwise than to another point which is on the same highway or highway connected with it, and which is substantially as convenient to the public.”*

The southern end of the diversion (Point C Appendix 1.F) does not alter the point of termination of the highway.

9.6 The northern end of the diversion (Point B Appendix 1.F) is affected by the diversion and is moved to point A. Currently the bridleway ends at the road u/c 7008 where it continues north in a straight line. Point A is 30 metres north of Point B and is a 90 degree turn from the same road. It cannot be argued that joining another highway at a right angle is more, or as, convenient than joining one straight on and the applicant route creates a physical highway T junction where there was not one before. S.119(2) allows for a small degree of inconvenience and the legal test is that the new junction is *substantially as convenient*, that is, that it is largely as convenient. Matters relating to the need to stop and give way, visibility and conflicts between users are all issues that would be relevant with a junction but that are simply not present to consider with the existing continuous highway situation.

9.7 The reality may be that there is relatively little contact with vehicular traffic since the only destination is The Mill House itself but levels of other traffic using the bridleway are

considerable. With as many as 257 users on the route in a month (applicants' figures August 2018) it is easy to envisage a situation where a cyclist, walker or runner rounds the corner from the u/c 7008 to spook a horse going in the opposite direction. It is noted that the junction already exists for footpath CALW43 and that there is an additional potential for conflict between users of this path; levels of use are not known for CALW43, it is however likely to be significantly lower than for the mixed use bridleway and officers consider the junction of CALW43 at the stile with the proposed new route unlikely to be a problem.

- 9.8 Issues related to visibility may be addressed by widening of the splay and maintenance of hedgerows but the need to slow, look and turn cannot be mitigated and can never be as convenient as a straight line route. Cyclists would be forced to break cadence and slow or possibly stop and look, likewise horse riders and walkers. The Council must consider whether it is *substantially as convenient* and it is considered that deviating from the existing straight line route at this point is considerably less convenient than the existing. Owing to the end of the public highway being 30 metres south of point A there is also the risk of cyclists, especially those who are travelling down the hill, overshooting or missing the junction completely. Any gate erected by The Mill House after a successful extinguishment of the bridleway would only be at point B and could not be across the highway at A.
- 9.9 The diversion of the applicant route creates a section of cul-de-sac highway. The most southerly 30 metres of road u/c 7008 would remain as a cul-de-sac maintainable at public expense (between points A and B Appendix 1.F). This is a vehicular highway and rights over it may only be addressed by the Magistrates Court (s.116 Highways Act 1980) or the Minister where affected by planning consent (s.247 Town and Country planning Act 1990). No resources are available to address the extinguishment of rights over this length of highway and if the diversion as applied for were successful it would remain as a 30 metre spur of vehicular highway maintainable at public expense serving only The Mill House.

9.10 **Section 119(3)**

*“Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall –*

*(a) specify a date under subsection (1)(a) above, and*

*(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”*

The effect of s.119(3) is that the existing route is only extinguished when any order made under s.119 is not only made and confirmed but also certified by the highway authority.

- 9.11 The proposed new route has already been constructed to a specification that provides an all weather surface over part of the width for the majority of its length. However, Bridge X has been identified by Wiltshire Council as not meeting an acceptable specification for a bridleway in its current condition and would require works to meet the Council's specification before being certified. Agreement would need to be reached with Wiltshire Council regarding works and for any commuted funds for the future given the poor condition and limited life expectancy of Bridge X. In the event that the applicant preferred to provide a new bridle bridge in its place then this would be acceptable to Wiltshire Council, though all costs would need to be found by the applicant.

- 9.12 On certification of the route, the effect of any order made under s.119 would be to extinguish the existing route and to record the new route as a highway maintainable at public expense. Failure to bring the route and bridge to the Council's specification would result in the highway being created in addition to the existing route, but it would be one that was not maintainable at public expense. In other words, the creation of the new highway is not conditional on certification of the new route but the extinguishment of the existing route is.
- 9.13 The current bridge (bridge X) is a private bridge currently carrying a public footpath. The existing position is that Wiltshire Council is liable for a portion of the maintenance liability relative to the footpath status it already has.
- 9.14 The applicants' willingness to maintain the proposed route is noted but the facts of the matter are that the route would become maintainable at public expense on certification. This ensures that ongoing maintenance of the route becomes part of the Council's statutory duty and transcends any changes in land ownership or intentions of the current landowner. Indeed, once accepted as a highway maintainable at public expense authorisation from Wiltshire Council would be required to perform any works to it though, where a landowner is willing to maintain a route, it is common for agreement to be reached.
- 9.15 Wiltshire Council has an existing duty to maintain the existing bridleway and it is noted that works to vegetation, the surface (including drainage and provision of sun and air) and the provision of a suitable bridge have not been prioritised to date.

9.16 **Section 119(4)**

*"A right of way created by a public path diversion order may be either conditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order."*

- 9.17 Neither the existing or proposed new route has any conditions or limitations.

9.18 **Section 119(5)**

*"Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*

*(a) any compensation which may become payable under section 28 as applied by section 121(2) below, or*

*(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or*

*(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*

- 9.19 The applicants have agreed to pay any compensation which may arise in consequence of the coming into operation of the order and any expenses which may be incurred in bringing

the new route of the path into a fit condition for use by the public as required by the Council. The applicants have also agreed to pay the sum of £2070 plus the cost of any associated site works incurred by the Council on completion of the application or proportion of same if the application is withdrawn or if an order is made, advertised but subsequently not confirmed.

## 9.20 Section 119(6)

*“The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –*

*(a) the diversion would have on public enjoyment of the path or way as a whole*

*(b) the coming into operation of the order would have as respects other land served by the existing right of way and*

*(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,*

*So, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.*

*(6A) The considerations to which –*

*(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and*

*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order, Include any material provision of a right of way improvement plan prepared by any local authority whose area includes land over which the order would create or extinguish a public right of way.*

9.21 S.119(6) contains tests to be satisfied on confirmation of an order made under s.119. The Council is entitled to consider these at the order making stage (paragraph 3.2 and 3.3) and is required to consider them as distinct tests relating to convenience, and expediency with regard to public enjoyment of the way as a whole and the effect of any order on land of both the existing route and the proposed new route. A balancing consideration for the expediency of the confirmation of any order may be made between the interests of the landowner and the effect on the public's enjoyment of the path as a whole.

9.22 Officers are guided by Advice Note No 9 issued by The Planning Inspectorate Rights of Way Section 11<sup>th</sup> revision April 2019 as follows:

*“27. Section 119(6) was considered in R (on the application of Young V SSEFRA [2002] EWHC 844 and the view taken that subsection (6) has 3 separate tests to it.*

(i) *Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.*

(ii) *Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.*

(iii) *Thirdly, that it is expedient to confirm the order having regard to the effect:*

(a) *the diversion would have on the public enjoyment of the path or way as a whole;*

(b) *of the order on other land served by the existing public right of way; and*

(c) *of the new path or way on the land which is to be created and any land held with it.*

*There may nevertheless be other relevant factors to do with the expediency in the individual circumstances of an order.*

28. *It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in Young was that the decision maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.*

29. *Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under s.119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.*

30. *Whereas section 118(6) provides that, for the purposes of deciding whether a right of way should be stopped up, or any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that] when considering orders made under section 119(6), whether the right of way will be/will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where the test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it."*

## 9.23 **Is the proposed new path substantially less convenient than the existing?**

Convenience can be taken to include features such as length, difficulty of walking and purpose.

## 9.24 **Length from Plan at Appendix 1F**

Length of new route (A to C)	269 metres
Length of existing bridleway route (B to C)	107 metres
Length of road u/c7008 (A to B)	26 metres
Total length of existing route (A to B to C)	133metres

The effect of the diversion is to more than double the length of public right of way at The Mill House requiring the user to cover an additional 136 metres. This would have the effect of increasing the overall length of Calne Without 89,89A and 89B from 385 metres to 547 metres.

- 9.25 The proposed diversion route is significantly longer and lacks the clear sense of direction and purpose that the existing, essentially north south, route offers. As a consequence of the extra length it has a lesser gradient on the northern side of the river though has a short steep unsurfaced section immediately north of Bridge X as the path climbs away from or towards the river.
- 9.26 In considering convenience the Council may also consider the ease of use, however, this must be by way of comparison with the existing route as if it were open and available and maintained to a standard commensurate with the local traffic of the area (i.e. walkers, horse riders and cyclists). Users of the route have made it clear that many of them find the way more convenient (15 of the 60 unsolicited responses mentioned this) but it is more likely than not that they have compared the new route with the existing in the condition it is now in rather than how it would appear with a wider bridge and better maintained and drained surface. Certainly many correspondents refer to dangers of the bridge or mud on the existing route. Notwithstanding the appearance of greater width of the proposed new route (which has none of the overgrowth or obstructions of the existing) officers consider that the width of the existing (definitive statement width 4 to 10 metres) is little different to that of the proposed new route (4 to 11 metres).
- 9.27 The purpose of the existing route may also be a consideration for convenience. For example a route that leads to a bus stop would be substantially less convenient if it were any longer and took more time to traverse but there may be a 'trade' between length and convenience if say the proposed new route provided better network links or perhaps offered a safer place to cross a road.
- 9.28 The original purpose of the road past The Mill House (u/c 7005 and u/c 7008) appears to be as part of the local road network and responses to consultations relating to changes to vehicular use conducted in the 1960s by Wiltshire County Council support that this was the use it had (both the Parish Council and the Rural District Council responded to this effect). In more recent times, and with the extinguishment of the public vehicular right, use of the route is likely to be largely recreational by walkers, cyclists and horse riders.
- 9.29 Considerations of convenience should not be conflated with those of enjoyment and it is accepted that horse riders especially may find that a longer route adds to their enjoyment as it affords them the opportunity of a longer ride, however a route that more than doubles the distance of the section it replaces must fall to be considered as substantially less convenient. Not only is the proposed new route 136 metres longer it also includes a number of 90 degree bends all of which would significantly reduce the speed at which a horse or cyclist could traverse the route owing to maneuverability and visibility being impaired. The junction at point C offers a wide splay which disguises the angle but there is no relief from the steep angled turns at the bridge and at point A.



- 9.30 The proposed new route also shares the use of Bridge X with footpath CALW40. This cannot be said to enhance footpath CALW40 but could have the potential for an adverse effect for users of the footpath who seek to exclusively use the footpath network. Those users may find it less convenient or perhaps less enjoyable to share the route; however, officers doubt that any such detriment would be judged to be substantive.
- 9.31 In examples from other places where a longer diversion has been successful it has been the case that it is only longer when approached from one direction and is shorter when approached from the other or there has been a greater gain in convenience (for example the removal of a bridge or limitation like a stile or gate). In this case the diversion is always longer regardless of the direction of travel.
- 9.32 Guidance (Planning Inspectorate Advice Note No 9 paragraph 29) is clear that in these circumstances an order cannot be confirmed.

**9.33 Expediency to confirm the order having regard to the effect on the public enjoyment of the way as whole**

Matters relating to enjoyment may relate to views, flora and fauna or perhaps character. It is a wide ranging consideration and may be balanced against the interests of the landowner. The example given by the Planning Inspectorate in Advice Note no. 9 is that where a proposed diversion is as convenient but less scenic the decision maker (either Wiltshire Council or the Secretary of State) would have to balance the interests of the applicant against those of the public to determine whether it was expedient to confirm the order.

- 9.34 As with other parts of section 119 it is necessary to compare the proposed new route with the existing route in a fully open, appropriately maintained and bridged condition. For some members of the public the enjoyment of using the existing route lies in its history. One respondent writes;

*“..this lane has existed for centuries, and is of great historical value. Much of the pleasure derived from using old roads and lanes is the knowledge that you are following in the footsteps and wheel tracks of countless generations. There has been a mill here for nearly 500 years, although the present one was rebuilt in the 18<sup>th</sup> century. Being forced to view the mill from a distance would diminish the pleasure of using the lane...”*

- 9.35 Both the Mill House and the outbuilding opposite have been listed by Historic England as Grade 2. Historic England’s website states:

*“A building is listed when it is of special architectural or historic interest considered to be of national importance and therefore worth protecting.”*

Calstone Mill has been allocated List UID: 1253559 and is described as:

*“Mill House, late C18...Lower Mill at Calstone recorded as owned by the Michell Family from 1545 to 1720 and by Baily Family in late C18 used for corn and cloth.”*

The outbuilding has been allocated List UID: 1253408 and is described as:

*“Outbuilding, late C18 or early C19....An industrial range possibly connected with the use of Calstone Mill for cloth. Picturesquely set right on the river Marden.”*

- 9.36 The proposed diversion route currently allows more distant views of The Mill House (see page 35 this report) but denies the user close views of the building and the opportunity to pass between the mill building and the outbuilding. The user is denied views of the outbuilding in its picturesque setting (see listing) from the proposed new route. Although the user can currently see The Mill House from the new route and may have glimpses of the outbuilding these views or glimpses could be lost by tree growth or future planting. Wider views of the landscape are not lost from the proposed new route especially to the south west, where views remain very good. The new route currently offers more open views to a grazed field to the west and north. It is also noted that walkers on the existing footpath network already enjoy some of the longer views of The Mill House.
- 9.37 It is therefore accepted that the loss of historical context and close views of the listed buildings is diminished, or lost in the case of the outbuildings, by the diversion of the path. However, a number of respondents clearly dislike passing so close to The Mill House and feel they are intruding on the residents' privacy. It is therefore undoubtedly beneficial to their enjoyment to divert the path. 17 of the 60 unsolicited correspondants considered this a factor that made their use more enjoyable. Calne Without Parish Council consider that the new route has better views of The Mill House and the local countryside. It also submits that the route may be enjoyed by a wider range of people than the existing. The latter remark fails to address the need to compare the existing route in a properly maintained condition and in any event the adjoining network of footpaths and bridleways offer limited opportunities for access for the less able. Where the proposed new route offers opportunities for cul-de-sac use to view the river, the same may be said of the existing, notwithstanding concerns users may have of feeling intrusive when lingering at the river.
- 9.38 Although it is not unusual to pass close to a dwelling situated beside a highway it is accepted that anxieties arising from this can affect enjoyment of a route. Temporary obstructions like parked cars, a residential style gate, domestic road surfacing and lack of signage or way markers will all be factors that can make people feel uncomfortable but officers accept that the close proximity of users to the windows does make the question of effect on the public's enjoyment more finely balanced.
- 9.39 It is noted that the new route passes land currently grazed by cattle. A risk is raised by this to horse riders where horses may be 'spooked' by the presence of cattle or by inquisitive young cattle rushing up to the fence. Riders may be unseated by the reaction of horses under these circumstances and horses may seek flight in more extreme instances. Although this is not an unusual occurrence for anyone hacking in the countryside it is not a risk presented to users of the existing route.
- 9.40 To confirm the order the decision maker must consider whether losing the historical context of the former road and close views of the listed buildings has a greater or lesser effect on the enjoyment of the public of the way as a whole. The way as a whole is a relatively straight and purposeful historic route and inserting a significant bulge in this route does undoubtedly affect the enjoyment of those interested in journeys and their history. Views of The Mill House and outbuilding from the proposed new route may be lost as a result of tree growth and screening but users who have no interest in this would benefit from not feeling like they are intruding on the privacy of The Mill House.
- 9.41 It is these things that any decision maker may balance against the interests of the owner in determining whether it is expedient to confirm any order.
- 9.42 **Other relevant factors relating to expediency**

Submissions have been made related to the cost to the council of restoring the condition of the route to one suitable for the local traffic of the area (i.e. appropriate for horse riders, cyclists and walkers). In particular the condition of the ground immediately south of the bridge can become wet, muddy and poached with use. The ground to the east of this area has suffered movement in recent times and it is alleged that this would affect the stability of the highway.

- 9.43 Officers cannot confirm the severity of this effect or on any ability to maintain the existing highway. However, it is an established principle that the owner of the land supporting the highway is responsible for retaining the highway. In other words, any collapse of the highway as a result of movement in the adjoining land would not be a cost to the council but would be a cost to the landowner. This is therefore an additional factor for making the order in the landowner's interest but not so as to represent a saving for the council.
- 9.44 It is also alleged that the provision of a bridge would be an additional expense that the council would avoid if the way were to be diverted. The council resolved to build a replacement bridge over 40 years ago as the crossing of the River Marden at this point is by way of a bridge maintainable at public expense. Although the vehicular bridge was never re-built a series of narrow bridges were provided to enable limited access and it is one of these that is in use today. The duty to provide a suitable bridleway bridge remains and in 2004 the council was delayed in installing the planned wider bridge and this remains the case to this day. The duty to do so remains and will remain in the event that the existing route is diverted to a new bridge. Further to a recent survey, the current bridge on the proposed route was found not to be in an acceptable condition and would need improvement before it could be accepted as part of a new bridleway. Once accepted the council would accept ongoing liability commensurate with the public use. Where the bridge has a limited life (which the council's bridge team consider this one has) any replacement would be the responsibility of the council though it may be possible to agree to a commuted sum from the applicant.
- 9.45 In any event, the cost of a new bridleway bridge is limited to around £3000 - £4000 and will ultimately be the responsibility of Wiltshire Council anyway. Any saving would be limited to the short term. This must be weighed against the long term effects of diverting the public right of way.

**9.46 Effect of land served by the existing and proposed right of way**

Considerations must be made to the effect of the diversion on land served by the existing and proposed right of way. This may affect the expediency of confirming the order. Where a highway maintainable at public expense is recorded over land, the highway does not form part of the Title Absolute as the surface is vested in the highway authority.

- 9.47 Title Absolute to the land over which the proposed route leads is registered (WT309963) to the applicant. Possessory Title to the land over which the existing highway leads was registered (WT261018 and WT420850) to the applicant; however, Title No. WT261018 (the highway north of the bridge) has now been upgraded to Title Absolute and combined with WT190593 (the main property). This is notwithstanding the presence of a public highway over part of the land.

- 9.48 Owing to incomplete documentation land south of the bridge (including the highway land) was registered as Possessory Title (WT420850) in 2016 and can be upgraded to Title Absolute in 2028. This is notwithstanding the presence of a public highway over the land.
- 9.49 It is considered that there is no risk of compensation claims arising from the diversion of the existing highway. Planning permission was sought and granted for the construction of the access track. It is not known whether any consent or permission was required or granted specifically for the removal of agricultural land for highway use.
- 9.50 The land lies within the North Wessex Downs Area of Outstanding Natural Beauty who were consulted on the construction of the proposed bridleway at the planning application stage.

9.51 **Consideration of Wiltshire Council's Rights of Way Improvement Plan**

Section 119(6) also requires consideration to be given to any material provision of a rights of way improvement plan prepared by the council. In Wiltshire this document is entitled Countryside Access Improvement Plan 2015 – 2025

- 9.52 Opportunity O36 at page 22 of the Appendices to the Plan highlights the conflicting considerations that the Council has with changes to the existing network:

*“Processing legal orders to change rights of way brings about positive changes to the network e.g. it protects ancient routes and diverts routes to meet modern requirements.”*

- 9.53 The proposed diversion of this bridleway would meet a modern need for greater security and privacy but it would fail to protect an ancient route.

- 9.54 Policy 4 at Page 7 of the Policies appendix confirms both the council's and landowners' key maintenance responsibilities:

*“Maintenance responsibilities are divided between the council and landowners/occupier. The council's key responsibilities are:*

- *Surface maintenance*
- *Signage and waymarking*
- *Repairing and replacing of bridges over natural watercourses, although there may be a shared responsibility where a bridge is also used by a landowner or occupier for private access (policy 6)*
- *Contributing toward repair and replacement of gates and stiles*
- *Clearance of annual growth and major clearance of overgrown paths”*

*“The key responsibilities of landowners are:*

- *Maintaining stiles, gates and other boundary crossings in a safe condition commensurate with the status of the path*
- *Obtaining consent from the highway authority before erecting new stiles or gates on footpaths or bridleways (there is no legal provision permitting landowners to erect new gates on restricted byways and byways open to all traffic)*
- *Cutting back encroaching hedges or overhanging vegetation that is growing from their land*
- *Keeping paths clear of obstructions such as padlocked gates, electric fences etc*

- *Ensuring that any animal known to have dangerous characteristics is not kept on land crossed by a public right of way*
- *Ensuring that no misleading signs are placed near rights of way that might deter people from using the path*
- *Reinstating ploughed cross field paths and bridleways to not less than their minimum widths within 14 days of initial ploughing. After this period any further disturbances must be reinstated within 24 hours....*

*Appropriate maintenance standards will be identified by the council according to the status of the path, type of use, level of strategic importance within the regional and local network and the character of the surrounding area.”*

9.55 Policy 6 Bridges states:

*The majority of rights of way bridges over natural water courses are provided, owned and maintained by the council. Where a privately maintainable bridge carries a public right of way the council will at its discretion contribute towards any justifiable repair or replacement. Contributions would not exceed 5% for a footpath and 10% for a bridleway. Such bridges are typically found on farm tracks, private drives and larger old country estates.*

.....

*When rights of way cross rivers near mills and sluices, bridges can often be part of the sluice structure. Generally these are privately maintained but ownership and responsibility is on a case by case basis.”*

9.56 Policy 7.2.2 Legal powers to authorise structures across public rights of way states:

*“Rights of way are highways so must not be illegally obstructed. A structure which restricts the use of Public Right of Way is an offence under section 137 Highways Act 1980 and also a common law nuisance unless:*

- *It is recorded on the definitive map and statement, the legal record of rights of way, as a limitation; or*
- *It has been authorised under section 147 Highways Act 1980*
- *It has been installed by the Highway Authority under either Section 66 or Section 115B of the Highways Act 1980*

*In the case of unauthorized structures, if the structure can be shown to be unlawful the council may either consider requiring the landowner to remove the structure or take action itself to secure removal at the landowner’s expense. Enforcement action will be undertaken in line with the council’s enforcement policy.”*

9.57 **Regards relating to the needs of agriculture, forestry and the conservation of diversity**

Although the creation of the proposed new route is over former agricultural land the creation and construction of the track has been approved by Wiltshire Council through planning applications. Matters relating to ecological impact would have been considered at that time. It is considered that recording the proposed route as a public right of way would have no detrimental or advantageous effect on the needs of agriculture, forestry and the conservation of diversity.

## **10 Risk Assessment**

The consideration of applications for public path orders under s.119 of the Highways Act 1980 is a discretionary power for the council; it does not have to accept them. However, Wiltshire Council does accept these applications and they are processed by the Council's Rights of Way and Countryside Service. The processing of them is conducted alongside the council's duties relating to the definitive map and statement and accordingly the allocation of applications for public path orders have generally been subject to a delay of approximately 12 to 24 months unless a permitted development is affected which would give rise to a prioritisation of those applications.

- 10.1 This application was made at the end of May 2018. The timescale for considering the application is considered reasonable and officers do not consider that a risk is raised for the council.
- 10.2 There is a risk to the council of judicial review by any party in relation to either the council's behavior in this case or of any decisions it may make. The risk is both financial and reputational (see following section) and can be mitigated by the appropriate considerations of the law relating to the case.
- 10.3 During the consultation period some users of the proposed path have highlighted risks to the public arising from use of the existing right of way. Officers have been unable to find recent (post 2004) complaints submitted to the council relating to the existing path, however it has been acknowledged that a wider bridge is required and that maintenance of the existing right of way has not been prioritised. Where a route is not wholly obstructed it is rare for works to be prioritised when other routes in the County are unavailable or obstructed.

## **11 Legal and Financial Considerations**

The decision of the council must be based on the legal tests contained within section 119 of the Highways Act 1980. Many of the considerations require a comparison to be made between the existing route and the proposed new route; temporary obstructions or difficulties should be ignored when making these comparisons.

- 11.1 In the event that a decision is taken to turn down the application and refuse to make an order there is no appeal process available within the Highways Act 1980 legislation. Any party may apply to judicially review the decision or processes of the council in the High Court. If the Council were to lose such an appeal it would be liable for the applicant's costs as well as its own. These costs are likely to be in the region of £50,000. If it were to win the case there would be no cost to the council as its costs would normally be paid by the losing party.
- 11.2 In the event that an order is made to divert the path it is possible that no objections would be received. If this was the case the order could be confirmed by the council (subject to the satisfaction of s.119(6)) and all costs recovered from the applicants. The order would come into effect only on certification of the new route and all costs for bringing the route and bridge into an acceptable condition would be met by the applicants.
- 11.3 In the event that an order is made to divert the path it is considered more likely than not that objections would be received and accordingly the matter would return to the council to decide whether to abandon the order or to send it to the Secretary of State for Environment,

Food and Rural Affairs (SoSEFRA) for determination. Any decision of the council at this point would again be liable to judicial review in the manner described at paragraph 11.1. Costs could be incurred in the same way. Whether or not Wiltshire Council supports any order made would be dependent on the further consideration of s.119(6) of the 1980 Act and any objections and representations received to that order during the advertisement period.

- 11.4 In the event that an order attracts objections which are not withdrawn and the order is sent to SoSEFRA for determination the council must bear all costs associated with supporting the order. SoSEFRA would determine the means of determination which could be by written representations, a local public hearing or a local public inquiry. There would be no costs other than officer time associated with written representations, a cost of around £300 for a hearing and costs of around £5000 associated with a 2 day public inquiry. It is open to either the council or any objector to apply for costs at a public inquiry. Such a claim would need to be based on unreasonable behavior by the other side to be successful; the decision on the award of costs would be taken by the Inspector appointed by SoSEFRA.

## 12 Equality Impact

The council's duty in relation to the Equality Act 2010 is outlined at paragraphs 3.4 to 3.6. As with the considerations of s.119 it is necessary to compare the proposed new route with the existing route appropriately maintained and with a wider bridge. Both routes are free from stiles and gates which can be obstacles to use for some people. The gradient of the northern side of the proposed new route is less than the existing but this is a result of the extra length leaving the balance between the gradient and the inconvenience of having to travel further as conflicting considerations. Additionally there is a short steep unsurfaced section of the proposed new route at the river which may present a barrier to some users.

- 12.1 The route as a whole is rural in nature and any access for users who are less mobile is likely to be restricted by the wider nature and limitations of the route as a whole and adjoining network than any specific considerations relating to the proposed change.

## 13 Options to Consider

- i) The application for an order under s.119 Highways Act 1980 be refused.
- ii) The application for an order under s.119 Highways Act 1980 is approved and an order (under s.119 Highways Act 1980 and s.53 Wildlife and Countryside Act 1981) is made and duly advertised.

## 14 Reasons for Recommendation

Officers consider that the termination point of the proposed new highway at the northern end is not substantially as convenient as the existing. The existing is a straight line continuation of the highway (u/c 7008 road) (**see Appendix 2**) whereas the proposed new termination point is a right angled turn on to or from the u/c 7008 road. A 'T-junction' and the requirement to give way or stop is created by the proposal. S.119(2)(b) is therefore not satisfied.

- 14.1 Additionally officers consider that the application fails the test contained within s.119(6) relating to the need for the new route not to be substantially less convenient to the public. The proposed new route more than doubles the length of the existing and involves a number of deviations and turns in the route that are not present in the existing which is essentially a straight line route.
- 14.2 It is considered that the diversion is in the landowners' interest and hence s.119(1) is satisfied.
- 14.3 Consideration of matters relating to the effect on use and enjoyment of the route are less clear cut. It is clear that some users value the history of the existing route and appreciate passing between two Grade 2 listed buildings. It is also clear that some users appreciate not passing so close to The Mill House windows and feel that they are intruding on the landowners' privacy. One user records that they are more likely to linger at the river with the proposed new route as they feel they are less intrusive.
- 14.4 Officers have been mindful that currently a good view of The Mill House (though not the Grade 2 listed outbuilding) may be had from the proposed new route. However, this could easily be lost should any owner or occupier of The Mill House choose to further screen their property with larger trees along this boundary. It is possible that current planting could at least partially achieve this (especially for walkers and cyclists) over time. It is further noted that walkers of the existing footpath network already enjoy longer views of The Mill House regardless of the position of the bridleway.
- 14.5 It is the consideration of use and enjoyment of the route as a whole that may be balanced against the interests of the landowner when considering expediency and officers consider that these matters are more finely balanced than for other sections of the Act where it is considered there is a clear failure.

## **15 Recommendation**

It is recommended that the application to divert parts of CALW89, 89A and 89B as applied for is refused.

## **16 Other Considerations**

Officers do not deny that the route created by the landowner offers a route that is well used by the public. However, this is against a background of an obstructed and problematic network for them which either wholly prevents or deters use. For example footpath CALW41 is obstructed by a fence where it meets CALW89 and it is known that CALW89 has a narrow bridge at the River Marden close to the Mill House. It is also known that there is a significant level of overhanging vegetation on the existing route and also that there are two unauthorised gates and vehicles parked on occasion on the highway. The route once supported vehicular use (it was used by vehicles in the 1960s) and is clearly capable of being brought into this condition again with attention to surface maintenance, drainage and cutting back growth.

- 16.1 If the existing route were to be made available to the public it would be possible to properly gauge the preference of the public through use.
- 16.2 In the event that figures support that the creation of the new route would add to the enjoyment of a substantial section of the public (and it is suggested that horse riders would be likely to be the main beneficiaries) it may be possible to meet the legal tests contained



within s.26 of the Highways Act 1980 relating to need and enjoyment (if those preferring it was a substantial section). An identified diminution of need for the existing could enable a concurrent extinguishment order for the existing route to be made.

- 16.3 S.26 HA80 addresses need and enjoyment of a substantial section of the public; it does not have to consider convenience of either route as a whole or of the termination point if the enjoyment aspect is satisfied.
- 16.4 S.118 HA80 contains the provision that the decision making body must disregard any temporary circumstances preventing or diminishing the use of the path by the public (s.118(6) HA80). Unless the existing route is open and available it is not possible to properly evaluate use and preferences therein; this approach is considered especially reasonable where the obstructions are of a temporary nature
- 16.5 Officers consider that this approach is the way that is fair to all members of the public in determining whether the existing line of the bridleway past The Mill House should, or should not be extinguished.

Sally Madgwick  
Definitive Map and Highway Records Manager  
24 October 2019

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Mr Richard Broadhead  
Head of Rights of Way and Countryside  
Rights of Way Section  
Waste and Environment  
Wiltshire Council  
Bythesea Road  
Trowbridge, Wiltshire  
BA14 8JN

31 May 2018

Your Reference:  
Our Reference: DXW/M5436-2

Direct Line: 01225 [REDACTED]  
Direct Fax: 01225 [REDACTED]  
Email: [REDACTED]

Dear Sirs

**Application to divert part of bridleway CALW89 and bridleways CALW89A and CALW89B**

Please find enclosed an application to divert the above bridleways under section 119 of the Highways Act 1980, together with enclosures.

I would be grateful if you would please acknowledge receipt of this application - an email to [dwlash@thrings.com](mailto:dwlash@thrings.com) will suffice.

I look forward to hearing from you.

Yours faithfully

[REDACTED]  
Derek Walsh

Partner

Thrings LLP

# THRINGS

sollicitors

Mr Richard Broadhead  
Head of Rights of Way and Countryside  
Rights of Way Section  
Waste and Environment  
Wiltshire Council  
Bythesea Road  
Trowbridge, Wiltshire  
BA14 8JN

31 May 2018

Your Reference:  
Our Reference: DXW/M5436-2

Direct Line: 01225 [REDACTED]  
Direct Fax: 01225 [REDACTED]  
Email: [REDACTED]@hrings.com

Dear Sirs

## Application to divert part of bridleway CALW89 and bridleways CALW89A and CALW89B

We act on behalf of Mr and Mrs J E Moore of The Mill House, Calstone Wellington, Calne, Wiltshire, SN11 8QF.

### ENCLOSURES

1. Application under section 119 of the Highways Act 1980 to divert part of bridleway CALW89 and bridleways CALW89A and CALW89B.
2. Plan showing:
  - (a) the unaffected line of the above mentioned bridleways as a dotted black line
  - (b) the section of the above bridleways (the present bridleway) to be extinguished as a public bridleway as a solid black line
  - (c) the diverted and proposed bridleway to be provided as a broken black line
3. Aerial photograph of the present bridleway and the proposed bridleway.
4. Details of our clients' title to the land over which the proposed bridleway should be diverted.
5. Details of our clients' title (three title numbers) to The Mill House, over which the present bridleway runs.

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6. Plan of The Mill House c1910
7. Wiltshire Council Definitive Map - Public rights of way at Calstone Wellington - with Theobalds Green shown at Point "T" and Manor Farm at Point "M" for reference only.
8. Wiltshire Council Definitive Statement - Description of public rights of way
9. Plan showing reinforced track within the proposed bridleway ("the track") on the north side of the river.
10. Exchange of emails between our clients and The British Horse Society approving work to proposed bridleway.
11. Planning Permissions for the track - north side dated 21 June 2016 and south side dated 16 May 2018.
12. Record of use of the present bridleway and the proposed bridleway - March to December 2017.
13. Photograph of the present bridleway in winter before the proposed bridleway was created.
14. Photograph of land, which is collapsing close to the present bridleway.
15. Stopping Up Order dated 23 April 2007.
16. E-mail dated 15 May 2013, and photographs, from Julian Haines to Stephen Leonard.
17. Public Path Diversion order in respect of Bishop's Cannings Path no. 4 (Horton Mill) including plan.
18. Photograph of The Mill House from the proposed bridleway taken from the south.
19. Photograph of The Mill House from the proposed bridleway taken from the north.
20. Copy local search dated 7 February 2000.
21. Schedule of Unclassified Roads.
22. Comments of the editors on Section 119 of the Highways Act 1980 in *Encyclopaedia of Highway - Law and Practice* Volume 1, at para 2-200.
23. Opinion of Counsel, Barry Denyer-Green, Falcon Chambers dated 30 May 2018.
24. Decision FPS/Y3940/4/10, Pewsey Path No. 62.

## 1. Application

- 1.1 Our clients are applying under section 119 of the Highways Act 1980 to divert part of bridleway CALW89 and the whole of bridleways CALW89A and CALW89B.
- 1.2 The principal reasons for requesting a diversion order are the impact on our clients' privacy and security. There are also safety issues for riders and walkers passing so close to their house. We believe there are many other reasons which support a diversion and that diverting the route will not only assist our clients, but will be of benefit to riders and walkers and Wiltshire Council. In outline, we say that it is expedient to make the diversion in the interests of our clients as the owners of the affected land.
- 1.3 We shall refer to the stretch of bridleway(s) to be diverted as "the present bridleway" and the proposed bridleway, which is to link into CALW89, as the "proposed bridleway".
- 1.4 An aerial photograph of the present bridleway and proposed bridleway is enclosed (Enclosure 3).
- 1.5 Our clients are prepared to underwrite the cost of obtaining a diversion order.

## 2. Differences from 2013 application

- 2.1 This application differs from a previous application, BB/2013/20, submitted by our clients on 3 September 2013, in a number of respects.
- 2.2 The application excludes a stretch of land on the south side of the river, part of which is adjacent to a pole and wire stay and which was identified as a "serious hazard" in the Decision Report prepared by Barbara Burke dated 1 December 2015.
- 2.3 The application now includes CALW89B. CALW89B is a 7 metre strip of land between CALW89A and the public highway, U/C road 7008. This stretch was omitted from the 2013 Application.
- 2.4 The proposed bridleway has been created and has been in use by the vast majority of users since 2013 as a permissive bridleway.
- 2.5 In 2016 the stretch of the proposed bridleway that lies north of the river was reinforced by the creation of the track, within the proposed bridleway (see paras 9.6 to 9.11) to a specification approved by the British Horse Society.
- 2.6 A plan showing the track is enclosed (Enclosure 9).
- 2.7 Copies of the emails giving approval to the construction of the track by the British Horse Society are enclosed (Enclosure 10), as is a copy of the Planning Permission (Enclosure 11).
- 2.8 The track ensures that the proposed bridleway is more convenient than the present bridleway for riders, walkers, cyclists and other users. In addition wheelchair users and others with mobility difficulties now have access.

- 2.9 Trees have been cut back to widen the proposed bridleway further. On the south side of the river the proposed bridleway varies in width from 4 metres to up to between 7.5 metres and 10.5 metres. The width of the proposed bridleway on the north side of the river varies from between 6 metres up to 11 metres.
- 2.10 By creating the proposed bridleway, which is now the route users take, our clients' Labrador dog no longer rushes out and spooks the horses.
- 2.11 The proposed bridleway is used, and has since 2013 been used, in preference to the present bridleway. This is clear evidence that it is substantially as convenient as the present bridleway and preferred.
- 2.12 A Record of the Use of the present bridleway and the proposed bridleway between March 2017 and December 2017 is enclosed (see Para12.17 and Enclosure 12). This is clear evidence that the proposed bridleway is substantially as convenient as the present bridleway.
- 2.13 On 15 May 2013 Julian Haines (County Engineer) emailed Stephen Leonard (Rights of Way Warden) to state that he found the stone arch bridge within the proposed bridleway, which we shall refer to as Bridge X, in "fairly poor condition" and identified works which would be needed to bring it up to standard (Enclosure 16). All these works have been carried out and the bridge fenced.
- 2.14 The present bridleway is increasingly vulnerable to land slippage through natural erosion. A large section of land adjacent to the bridleway collapsed in 2015 (Enclosure 14). Work has been done to limit this with boulders placed in the river and tree planting. However the slippage continues gradually in the direction of the present bridleway. This is likely to get worse over time and contributes to making the present bridleway unsafe.
- 2.15 In comparing the present bridleway with the proposed bridleway it is necessary to compare the natural condition of the land, through or over which the present bridleway passes with the proposed bridleway. The latter is considerably more stable. The natural condition of the present bridleway is inherently unstable, probably because of underground water courses or springs.

### 3. Background

- 3.1 In February 2000, our clients purchased The Mill House. They have since purchased other land, including the land through which the proposed bridleway runs.
- 3.2 At the time of our clients' purchase, the results of the local authority search carried out with Wiltshire Council, by their solicitors, revealed no rights of way through the property. Wiltshire Council also confirmed at that time that there were no public rights of way through the property (Enclosure 20).
- 3.3 Any suggestion that our clients knew there were rights of way through the property when they bought it is totally unfounded.
- 3.4 In September 2005, Wiltshire County Council was asked to determine the status of any rights of way which may have become established through The Mill House.

- 3.5 It was not until 5 January 2009 the Council determined that the driveway was a bridleway.
- 3.6 The bridleway is not an ancient or historical route.
- 3.6.1 The mill was constructed in the second half of the 18<sup>th</sup> century. It remained a mill until about 1915. It then became a dairy and continued as such until 1968, when it first became a single private dwelling.
- 3.6.2 The Malthouse opposite the mill was much larger than today. It extended several metres in front of the present building (see plan c1910 - Enclosure 6)
- 3.6.3 As can be seen from the plan there were workshops along the northern side of the Malthouse.
- 3.6.4 Between the Malthouse and the bridge there was a building, again restricting the area around the mill. This was demolished some years ago and all that remains on the surface is a mound.
- 3.6.5 Farmers would bring their grain to the mill either from the village to the south or from the north.
- 3.6.6 Those bringing their grain from the north would offload it by the northern side of the mill. A pulley wheel is still present on the side of the mill.
- 3.6.7 Those coming from the south would take the track from the village road.
- 3.6.8 At the bottom of the track, on the other side of the river from the mill, they would turn their carts. They would offload their grain here and carry it across the bridge to the mill.
- 3.6.9 It is clear that the area in front of the mill was a busy working area, between the activities of the mill, the Malthouse and the building next to the bridge. It is most unlikely that riders or walkers would simply have passed through between all the activities and the Council has already accepted this proposition.
- 3.6.10 If anyone did pass through it is likely to have occurred only with the consent of the mill owner.
- 3.6.11 The route through Calstone Mill is not a route to anywhere in particular. People going to the Mill from the Calne Road or the Devizes Road are far more likely to have taken the main village roads. The route via the mill is not a short cut.
- 3.6.12 The whole of the bridleway was what is known as Settled Land. The legal owner of the land did not have the power to dedicate the land to the public until after 1925. It is only subsequent to that date that bridleway rights could have become established. These were not in fact confirmed until 2009.
- 3.7 Our clients are now seeking to divert the bridleway over other land within their ownership.



#### **4. Interests of the Landowner**

- 4.1 The fact that the driveway is a bridleway impacts significantly on our clients' privacy and security. They have young children who are anxious when strangers come by, often peering in through the windows. Some people also have a habit of straying from the path into the garden, which causes concern.
- 4.2 Before the proposed bridleway was created, in the summer months, riders and walkers sometimes would come through as early as 7am disturbing our clients, particularly at weekends, and also after 8pm at night when they were trying to get the children to bed.
- 4.3 Some people have come through with dogs, which are not on a lead. In some cases they have run all over the garden causing anxiety to our clients' children and pets. It is not uncommon for dogs to relieve themselves on our clients' driveway or in the garden, leaving them to clear up the mess.
- 4.4 Our clients have a dog, a black Labrador, that gets upset when people or animals come through. This often causes it to bark.
- 4.5 Our clients have a gate at the top of the drive. It has a handle to enable riders to open and close it. On occasions our clients close the gate, particularly when they have young children at home. Notwithstanding this, it is often left open by people coming through, which impacts on their privacy and security.
- 4.6 There have been a number of thefts locally (our clients have had some bicycles and boots stolen from the front of the house) and security is an issue. Security is not improved by having people wandering through.
- 4.7 The issue of security came to a head on 5 July 2017, when our clients' 16 year old daughter, Matilda, was threatened by someone using the present bridleway. Our clients were at a school event for their younger son. Matilda was in the house alone. At about 6.30pm a man appeared at the front of the house shouting. Matilda quickly locked the doors. The man, a complete stranger, kept shouting at Matilda and started going around the house trying the doors and windows to gain entry. Matilda rang her parents who immediately contacted a neighbour to go to Matilda's aid. They then rang the police. The neighbour arrived very quickly and the police arrived a few minutes later. The police subsequently arrested the man and took him away.

#### **5. The present bridleway**

- 5.1 The present bridleway enters our clients' property from the north at the entrance to their driveway. It then follows the driveway, roughly 3 metres wide, passing less than 4 metres from the front door of their house. At its closest, the bridleway is only 2.4 metres from the front of the house.
- 5.2 Although the Definitive Map Statement describes the bridleway along our clients' driveway as being 4 metres wide, this is not correct. The driveway has remained unchanged for hundreds of years. It has vertical sides. It is and has only ever been about 3 metres wide.

- 5.3 The driveway is steep and often undulating and slippery. In front of the house our clients park their cars, as do visitors. Most days they have 5 or 6 cars parked in front of the house.
- 5.4 Proceeding southwards, the present bridleway then crosses a bridge over the river, at Point "Y" (Enclosure 2) and continues up a hill to the road junction at Manor Farm, Calstone.
- 5.5 The width of this bridge, which we shall refer to as "Bridge Y", within the railings, is 0.98 metres. Close to the bridge, the land on the south side of the river has suffered from landslip following persistent rain over the winters of 2012 - 2015 and again in early 2018.

## **6. Condition of the Present Bridleway**

- 6.1 The surface of the present bridleway is in parts poor, particularly between Point "C" and Bridge Y (Enclosure 2). There is no evidence that this part of the present bridleway was ever reinforced.
- 6.2 It is a matter of fact that the present bridleway is virtually impassable and slippery between Point "C" and Bridge "Y" for about 6 weeks of the year. The photo (Enclosure 13), was taken shortly before the proposed bridleway was opened in 2013. This is the natural condition and it is this condition which is properly a matter of comparison.
- 6.3 During the winter months, before the proposed bridleway was created, only a handful of riders were able to attempt this. A few walkers were able to wade through the mud. A cyclist has fallen off and needed assistance. Our clients have been told of two accidents involving riders.
- 6.4 When our clients purchased The Mill House the land on the south side of the river was relatively flat. In recent years it has started to collapse and continues to do so in the direction of the bridleway. It is likely that this has been caused by underground culverts or streams eroding the sub soil until it could no longer take the weight of the surface. Our clients have installed a land drain to ease the problem and planted trees. As mentioned above, boulders have been placed in the river to prevent further slippage but this will not stop a collapse. (Enclosure 14).
- 6.5 Whilst the tests for diversion should be applied based on the present way being available at the required standard, as opposed to the actual condition, these are practical matters which impact on many of those who can use the bridleway and in particular those with mobility impairments.
- 6.6 The Inspector in the Purton Path No.104 Diversion Order concluded that the issue of the cost of bringing the present way up to the required standard should be given reduced weight when considering the interests of the public. However, his conclusion was based on his view that "the present route is an ancient route and attractive feature with a distinct history and character which is clearly valued by many people". In addition, he found there was a considerable dispute between the parties as to what the cost of reinstatement would actually be and with all of that in mind he reached the decision he did.

- 6.7 It is not the case here that the present bridleway is “an ancient route and attractive feature with a distinct history and character” - the Purton Decision can easily be distinguished from this present application.
- 6.8 The present bridleway is not a shortcut between Manor Farm, Calstone and Theobalds Green, marked “M” and “T” respectively on Enclosure 7. In fact, the distance between “M” and “T” on the main road is shorter. As to the lengths of the present and the proposed bridleways, see below at paragraphs 12.1 to 12.14.

## **7. The present bridge - Bridge Y**

- 7.1 Bridge Y is a wooden bridge. It is less than 0.98 metres wide.
- 7.2 Bridge Y is often slippery and difficult for riders and cyclists to cross. There have been at least two accidents involving riders on the bridge.
- 7.3 The fast flowing river at Bridge Y can spook the horses.
- 7.4 Bridge Y was part of Unclassified Road 7005. By virtue of the Stopping Up Order dated 23 April 2007 (Enclosure 15) the road was stopped up reserving footpath and bridleway rights. Those rights can only be those exercised during the previous 20 years, which have been the same as those exercised today with their inherent physical restraints.
- 7.5 The offer of the proposed bridleway route and bridge also overcomes a problem with what to do about Bridge Y when it reaches the end of its natural life. The difficulty is this: -
- 7.5.1 Wiltshire Council is responsible for the repair and maintenance of Bridge Y.
- 7.5.2 When Bridge Y reaches the end of its natural life it will need to be replaced.
- 7.5.3 There is a limited amount of space to accommodate a new bridge without compulsorily acquiring some extra land and changing the appearance of the site.
- 7.5.4 On either side of Bridge Y are the foundations of parts of the mill (it used to extend over the river). The whole of the curtilage of The Mill House is now listed. This includes all the buildings or what remains of them.
- 7.5.5 Some of the land on the south side of the river has suffered from landslip not far from the bridleway.
- 7.5.6 The physical characteristics of Bridge Y are quite properly matters of comparison.
- 7.6 Our clients' proposal is that upon the diversion of the bridleway coming into effect, Wiltshire Council will be relieved of any further responsibility for repairing and maintaining Bridge Y, as it will no longer be subject to public rights of way.
- ## **8. The route of the proposed bridleway.**
- 8.1 The route of the proposed bridleway is shown by a broken black line on the attached plan (Enclosure 2), between Points “A” and “C”.

- 8.2 In considering the proposed bridleway, our clients took into account the views expressed in 2013 by Stephen Leonard, the Senior Rights of Way Warden, who was supportive, although of course made no comment on legal issues.
- 8.3 The route of the proposed bridleway can be described as follows: -
- 8.3.1 Coming from the north, along the road, U/C 7008, towards the entrance to The Mill House, the proposed bridleway starts at the opening to the field on the right, where footpath CALW43 enters the field. This has been marked "A" on the plan. The opening will not be gated.
  - 8.3.2 The proposed bridleway then turns left and follows the line of the boundary of the field to where footpath CALW40 crosses Bridge X.
  - 8.3.3 Point "B" on the map is the point level with the point at which the present bridleway begins. The distance between Points "A" and "B" on the plan (26 metres) does not add to the journey of anyone using the proposed bridleway. They would otherwise have covered the distance from Point "A" on the plan by continuing along road U/C 7008 to the start of CALW89B, at the top of our clients' driveway.
  - 8.3.4 From the bridge (Bridge X) the land climbs gently upwards and turns east. The proposed bridleway follows the line of the field turning gently south at the point where it meets the present bridleway (CALW89), marked "C" on the plan. This point will remain open and not be gated.
  - 8.3.5 The proposed bridleway can be and is used all year round. The present bridleway is largely out of use during the winter months as it becomes too boggy (Enclosure 13).
- 8.4 In addition to the new bridleway, walkers would continue to be able to use and enjoy Footpaths CALW40, CALW41, CALW42 and CALW43.
- 8.5 Bridge Y would be taken over by our clients, relieving Wiltshire Council of any further responsibility for it.

## **9. Condition of the Proposed Bridleway**

- 9.1 Unlike the present bridleway, the proposed bridleway can be used all the year round. It meets the standards of the British Horse Society, who support the diversion.
- 9.2 The proposed bridleway enables horses to be lead, which is not possible between points B and C on the Plan (Enclosure 2).
- 9.3 It is much wider, safer and has a more gentle incline. The proposed bridleway is the one that people prefer to use.
- 9.4 It is clearly more convenient as our clients have observed more people are now using the proposed bridleway. This includes people with limited mobility who are unable to use the present bridleway. We enclose a record of the use of the present bridleway and the proposed bridleway during the period March 2017 to December 2017 (Enclosure 12) upon which we shall comment further in paragraph 12.17.

- 9.5 In 2016, our clients consulted with the British Horse Society and sought their advice on the creation of an all weather surface.
- 9.6 Our clients agreed with the British Horse Society to reinforce the surface on the north side of the river.
- 9.7 The reinforced surface was along a 3 metre wide track with an approximate length of 140 metre (Enclosure 9).
- 9.8 We attach (Enclosure 10) an exchange of e mails dated 1 March 2016 and 9 March 2016 between our clients and Mark Weston of the British Horse Society.
- 9.9 The track remains clear of footpaths CAL40 and CAL43.
- 9.10 The track runs along a stretch of the proposed bridleway where the width is 6 metres or more, giving users the opportunity to decide whether to use the grass surface or the reinforced surface.
- 9.11 The work carried out is described as follows: -  
*“Proposed track laid of 150mm Type 1 Mendip Aggregate over Lobrene Membrane. 75mm Mendip Dust over rolled level.”*
- 9.12 Planning permission for the carrying out of the work was granted on 21 June 2016 (Enclosure 11).
- 9.13 The work was carried out by PB Services (Wiltshire) Limited. This Company has carried out substantial maintenance and repair work to bridleways for Wiltshire Council.
- 9.14 The work to the proposed bridleway ensures continuous use and enjoyment all year round.
- 9.15 Although the British Horse Society did not feel it was necessary, our clients intend to carry out similar work to that part of the proposed bridleway on the south side of the river. Planning permission was granted on 16 May 2018 (Enclosure 11) and work is expected to commence in June 2018

## 10. Width of the Proposed Bridleway

- 10.1 The proposed bridleway on the south side of the river varies in width from 4 metres up to between 7.5 metres and 10.5 metres.
- 10.2 The width of the proposed bridleway on the north side of the river varies from between 6 metres up to 11 metres.
- 10.3 This not only recreates the Awarded Widths of the three bridleway sections but also adds yet more width to enhance the position further.

## 11. The new bridge - Bridge X

- 11.1 Bridge X is now in good repair.
- 11.2 Bridge X is between 1.7 metres and 1.8 metres wide, almost double the width of Bridge Y.

- 11.3 Bridge X is considerably more accessible for riders, walkers and other users (especially disabled users) than Bridge Y, particularly in wet conditions.
- 11.4 Stephen Leonard, the Rights of Way Warden, arranged for the County Engineer to look at Bridge X.
- 11.5 In an e-mail dated 15 May 2013 from Julian Haines (County Engineer) to Stephen Leonard, Julian Haines reported that he found the bridge to be in “fairly poor condition” and identified works which would be needed to bring it up to standard.
- 11.6 The works identified by Julian Haines have all been carried out and Bridge X has been fenced.
- 11.7 Julian Haines even suggested a “*new timber bridleway bridge*” as a possibility. Our clients would be happy to adopt his suggestion, if necessary.
- 11.8 A copy of the exchange of e-mails with photographs attached is enclosed (Enclosure 16).

## 12 Length of the proposed bridleway

- 12.1 In comparing the length of the proposed bridleway with the present bridleway, it is necessary to look at a number of factors.
- 12.2 First, to calculate the extra length. To compare like with like the measurement should be taken between Points “B” and “C” on the plan, where there is a common start and finishing point.
- 12.3 The distance between Points “A” and “B”, 26 metres, does not add to the journey of anyone using the proposed bridleway. They would otherwise have covered the same distance along the road U/C7008 between Point “A” on the plan and the start of CALW89B.
- 12.4 The distance between points “B” and “C” along the present bridleway is 122 metres. The distance between points “B” and “C” taking the route across Bridge X is 222 metres.
- 12.5 It is acknowledged that the proposed bridleway is 100 metres longer than the present bridleway. Putting this in perspective, a length of 100 metres is illustrated on Enclosure 3 between Points “A” and “Z”.
- 12.6 100 metres is a distance covered by an average walker in just over a minute, and in a much shorter period by someone riding or cycling. The present bridleway has gates at either end which need to be opened and closed. This adds to the time taken to cover the present bridleway. The proposed bridleway is and will remain ungated.
- 12.7 The total length of the three bridleways, CALW89, CALW89A and CALW89B together is 404 metres and therefore the additional 100 metres must also be seen in the context of this total length. However, users do not start and end their journeys at the termination of these three bridleways.
- 12.8 Pedestrians and horse riders are very unlikely to use only the 404 metres for a walk or ride, and therefore a more realistic comparison should be between an extra 100 metres and the average walk or ride length that they take.

- 12.9 As a minimum, the closest points at which a rider could begin to enjoy the bridleways is at Theobalds Green ("T") at one end and Manor Farm ("M") (Enclosure 7) at the other end, a distance of 880 metres. These are the closest points at which a lorry or trailer could park to disembark a horse.
- 12.10 The reality is that riders and walkers start and end their journeys much further away, whether from one of the liveries in the village or further afield. Again, in the context of any such journey, an additional 100 metres is insignificant and the riders regard this as a "good thing".
- 12.11 When the access network is considered as a whole, riders/walkers using the present or proposed bridleways are likely to connect with other bridleways or footpaths in the area. In terms of bridleways these are, to the north CALW34, CALW8 and CALW77, to the east CALW7 and to the south CALW38 and CALW39. In terms of footpaths these are, to the north CALW44, CALW45 and CAAW46 and to the east CALW71 and CALW9.
- 12.12 When the additional distance is considered in this context 100 metres becomes insignificant. In Decision FPS/Y3940/4/10 in respect of Pewsey Path no.62 the Inspector was considering a slight increase in length of the bridleway in question, an additional 20 metres. However, the Inspector also had to consider the termination point as there was a difference of 150 metres between the old and new termination points. The significance of this is that if the termination point was altered by this distance a user attempting to reach the connecting bridleways was subject to a saving of 130 metres if going in one direction but an additional 150 metres if going in the other. In the event, the Inspector concluded that, "*even in the worst possible scenario, I recognise the additional length will undoubtedly be less convenient but I do not consider it to be substantially so in this context*" (original emphasis).
- 12.13 In the same way, when considering the additional 100 metres it is not sufficient to compare the present bridleway with the proposed bridleway in isolation. Even if it is considered that an additional 100 metres is less convenient then, just as in the Pewsey Path 62 Decision, it is not substantially less convenient.
- 12.14 In any event, even if the increased length was seen as a disadvantage, that has to be weighed against the overriding advantages. It is telling that only two objections were received in response to the original application and several letters and emails were sent in support of the proposed bridleway.
- 12.15 The proposed bridleway can be used all the year round. It is much wider, has a more gentle incline and is accessible by many more people, including those who could not manage the present bridleway. As the Inspector in the Pewsey Path 62 Decision concluded in respect of convenience "*I conclude the proposed route in this case would be less convenient in some respects but an improvement in others*" - the same principle applies here.
- 12.16 Since 2013, both riders and walkers have chosen to use the new route. The best evidence that the proposed bridleway is not "*substantially less convenient*" and is preferred is the fact that, given a choice between using the present bridleway and the proposed bridleway, users have chosen to use the proposed bridleway.

12.17 We enclose a Record of Use (Enclosure 12) of the present bridleway compared with the proposed bridleway. In the period from March 2017 to December 2017 the uses can be broken down as follows: -

<u>Users</u>	<u>Present bridleway</u>	<u>Proposed bridleway</u>
Riders	0	659
Walkers	14	934
Cyclists	0	26

NB. Groups of users travelling together are counted as 1.

12.18 Our clients undertake not to gate the proposed bridleway and it would be dedicated as such thereby allowing a free flow of movement. Furthermore the proposed bridleway does not conflict with any farming activities.

12.19 Unlike the present bridleway, the proposed bridleway is unaffected by nearby hedges and trees which hang over or are in close proximity.

12.20 Horton Mill is an old mill near Devizes, Wiltshire SN10 3NE.

12.20.1 When it was purchased by the present owners an old footpath (we believe) ran in front of the house (brown line between Points A-B - Enclosure 17).

12.20.2 The owners wished to divert the footpath away from the house and round an adjoining field (green line A-C-D to join up with BCAN11).

12.20.3 According to the owners, they were told that it would be easier if the diverted route was upgraded to a bridleway but we understand that further investigations have revealed the original right of way may have had higher rights in any event (i.e. bridleway status).

12.20.4 Wiltshire Bridleways Association made the application for them supported by Barbara Burke.

12.20.5 We understand that no one was concerned in that case that they were extinguishing an ancient footpath. The route through our clients' property is not even ancient.

12.20.6 Although the owners were upgrading from a footpath to a bridleway, our clients are diverting a bridleway which, in the view of Avon Vale Hunt Pony Club, should be closed, to something much better.

12.20.7 It appears from the Order (Enclosure 17) that there were no objections to the Horton Mill application and it was made unopposed.



13. Mobility

- 13.1 The proposed bridleway is wider, has a more gentle incline, and can be used all the year round. It also has a reinforced surface on the north side of the river. There are plans to install a similar surface on the south side.
- 13.2 The proposed bridleway has opened up a route to people who have been unable to use the present bridleway. Our clients' elderly neighbours, who exercise their dogs, regularly use the proposed bridleway now, whereas before they would have avoided the present bridleway for fear of falling over due to the wet, boggy and uneven conditions.
- 13.3 People with mobility difficulties and children in buggies are able to use and enjoy the proposed bridleway, all year round.
- 13.4 Children on horseback can be lead along the proposed bridleway as can horses being lead by riders.
- 13.5 There are enormous advantages to the community in having access to the proposed bridleway and it clearly satisfies section 119 of the Highways Act 1980. The fact that people choose to use it in preference to the present bridleway is clear evidence that it is at least as commodious. This would satisfy one of the further legal tests, as explained below.
- 13.6 This diversion also satisfies a number of objectives in Wiltshire's Public Rights of Way Improvement Plan 2015-2025 (ROWIP), as can be seen from the extracts below. In particular:

<b>SO14</b>	To promote travel modes that are beneficial to health	<ul style="list-style-type: none"> <li>• Walking, cycling and horse riding have been shown to be beneficial to both physical and mental health</li> <li>• The CAN provides routes and areas people can use to undertake these healthy travel modes, so its use can be promoted</li> </ul>
<b>SO15</b>	To reduce barriers to transport and access for people with disabilities and mobility impairment	<ul style="list-style-type: none"> <li>• The CAN provides some opportunities for those with mobility impairments to access local services and the countryside. Examples of these opportunities include:               <ul style="list-style-type: none"> <li>○ wheelchair accessible paths</li> <li>○ Riding for the Disabled groups</li> <li>○ disabled people driving along Byways Open to All Traffic to access remote locations</li> </ul> </li> <li>• Reducing barriers may include replacing stiles with gaps or gates, surfacing improvements or improving maintenance on key links</li> </ul>

13.7 Furthermore, in the context of use of the countryside access network the ROWIP identifies the needs of the elderly and those with mobility impairments - both groups will benefit from the improved surface afforded by the proposed bridleway (see extract below).

### 7.3 Demographic changes

#### Finding 4:

Population growth in Wiltshire:

- the population grew by 5.3% from 2002 to 2010
- this trend is expected to continue, with a 7.5% increase in the county's population from 2010 to 2021<sup>26</sup>

#### Conclusion 4:

An increasing population will lead to greater use of the network. As much of the demand for the CAN is from where people live, upgrades to the network around new housing sites must be sought

#### Finding 5:

Ageing population in Wiltshire:

- the population is ageing considerably more rapidly than average increases across England or the south-west. There was a growth of 20% in the number of people aged 65 or over between 2002 and 2010
- this trend is expected to continue, with a further 35% increase in the number of people over 65 in Wiltshire from 2010 to 2021<sup>27</sup>

#### Conclusion 5:

If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children

### 7.4 Disability

#### Finding 6:

- 32% of Wiltshire's residents say that they have a long-standing illness, disability or infirmity. Of these, 56% say it limits their activities in some way (i.e. 18% of the total population asked)<sup>28</sup>
- Many of those who say disability limits their activities will have a mobility impairment. This could be, for example:
  - o being blind
  - o a wheelchair user
  - o not being able to walk very far
  - o finding uneven surfaces painful to walk on
  - o finding gradients, climbing over stiles or opening stiff latches or other informal gate closures difficult

#### Conclusion 6:

The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5

13.8 Indeed the ROWIP specifically addresses this issue as an opportunity to provide a more coherent network with greater access.

2-5	<b>Improve conditions on the network for those with mobility impairments</b>	<p>Some people find routes difficult to use due to uneven surfaces. Stiles can be a barrier for many with mobility impairments and pushchairs; they can also be a problem for people walking dogs.</p> <ul style="list-style-type: none"> <li>• Where there is demand to make certain routes more accessible, improve maintenance (e.g. cut back vegetation further) and undertake surface improvements</li> <li>• Working within the framework of Wiltshire Council's gaps, gates and stiles policy, seek to replace stiles with gaps or gates where demand is greatest and landowners are willing</li> <li>• Encourage landowners to follow best practice for furniture design, as set out in the gaps, gates and stiles policy, including provision of dog access where possible</li> <li>• In partnership with user groups, promote existing and create new accessible trails where they would be well used</li> <li>• Improve surfacing on byways open to all traffic where there is demand for those with mobility impairments to be able to drive to remote locations (e.g. to enjoy views)</li> </ul>	What accessibility improvements have been undertaken on key routes?	SO6, SO15, SO17, SO18
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13.9 If our clients' application is unsuccessful it is likely that at some time in the future the proposed bridleway will be closed to incorporate the land in a possible development of the barn opposite The Mill House. The reason is that The Mill House would be exposed to the risk of Bridge Y having to be replaced at some time in the future. This would completely change

the character of the place. In those circumstances our clients might seek to recoup some of their loss by developing the barn for residential use, as has happened elsewhere in the village. This would mean that many people who enjoy walking and riding locally will be limited to the present bridleway and its hazards, and will lose the advantages of the proposed bridleway, as explained above.

**14. Sharing of the proposed bridleway bridge**

- 14.1 Riders and walkers will both share use of the proposed bridleway bridge. That is nothing new. Riders and walkers already share the present bridge, which is much narrower - less than a metre wide.
- 14.2 Walkers can take full advantage of CAL40 and CAL41 or may choose to walk along the proposed bridleway. There is good visibility as the bridge is approached from either side with widths between 10.5 metres on the south side and 13 metres on the north side of the river.

**15. Views/character of the route**

- 15.1 Stunning views of the house are obtained from the proposed bridleway on both the north and south sides of the river. Much better views than standing immediately in front of the house and looking up - see photos (Enclosures 18 and 19) of The Mill House taken from the proposed bridleway, north and south.
- 15.2 Our clients would be prepared to maintain the views from the proposed bridleway for people's enjoyment.
- 15.3 The objectors to the previous application noted a loss of purpose when using the diversion but it should be noted that public rights of way skirting properties are not new nor are applications to divert rights of way around properties - take for example the Pewsey Path 62 Decision (Enclosure 24) which is exactly on point and in which the diversion order was confirmed.
- 15.4 We also refer to the diversion of Bishop's Canning Path 4 (Enclosure 17) which includes two right angle turns but otherwise follows the general direction of the original route. Right angle turns on public rights of way are not novel.
- 15.5 The objectors claim a loss of purpose when using the proposed bridleway. Bearing in mind there were only two objectors as against numerous users in support the objectors' views are not widely shared. When considering this point the council should take into account all views expressed by respondents.
- 15.6 In terms of public enjoyment, the Inspector in the Pewsey Path 62 Decision noted the comments of several objectors that the alternative route would be of a wholly different character (but consistent with the route as a whole) and remove the opportunity to see at close hand some of the interesting listed buildings within the farm complex. In that case (not unlike this application) the diversion took an alternative route along an elevated level which the Inspector found provided an alternative view of the house and farm complex seen in the context of the landscape, as opposed to close up but limited views within the yard. The

similarities with this application are obvious. As can be seen from the photographs enclosed with this application the views of the Mill House provide their own enjoyment to users of the proposed bridleway. As the Inspector in the Pewsey Path 62 Decision said *"having considered the various aspects raised [the character of the route and the views], I conclude it would be different but not any less enjoyable."* The same point is made here - the users of the proposed bridleway would enjoy different but equally as enjoyable views of the Mill House and in their use of the way generally.

## 16. Historical value

- 16.1 The site is not of great historical value. Major works have been carried out over the years with the approval of the Listed Building Department, English Heritage and other statutory and historical bodies. Nothing of historical value has been discovered on the site. The property was one of many mills between the source of the River Marden and Chippenham.

## 17. Local Searches

- 17.1 At the time of purchase, Local Searches were carried out by the solicitors, and further enquiries concerning any rights of way were made of Wiltshire County Council. Wiltshire County Council maintained that there were no rights of way passing in front of The Mill House.
- 17.2 A copy of the local authority search carried out with Wiltshire County Council is attached (Enclosure 20).
- 17.3 The hatched plan shows what was being bought at the time and also includes the road (U/C 7008) leading up to the house.
- 17.4 The search reveals the footpaths CALW43 and CALW69 and the bridleway CALW77.
- 17.5 The search also shows U/C 7008 just entering our clients' driveway at the top and U/C 7005 just crossing the river and entering our property at the south. The latter is bizarre as there were buildings blocking the way - since demolished (see Enclosure 6).
- 17.6 Further enquiries were made and the solicitor handling the conveyancing was told that there was clearly a mistake with the plan. She was sent a Schedule of Unclassified Roads, which prevailed over the plan (Enclosure 21).
- 17.7 The Schedule revealed that U/C 7008 should have stopped at the entrance to the property. U/C 7005 should have stopped at the bridge. When the Stopping Up Order (Enclosure 15) was granted, these anomalies were resolved.
- 17.8 The area between U/C 7005 and U/C 7008 was not shown as affected by any rights of way. It was not until 2009 that it was determined that a bridleway had been established passing in front of The Mill House.
- 17.9 The diversion of the bridleway would therefore simply take our clients back to the position they believed they were in, as far as rights of way in front of The Mill House are concerned, in 2000.

## 18. Finance

### 18.1 Our clients are prepared to:-

- 18.1.1 bear the cost of any further improvement works required to the proposed bridleway. They have already carried out works to the standard recommended by the British Horse Society.
- 18.1.2 take responsibility for the future maintenance and upkeep of the proposed bridleway.
- 18.1.3 take responsibility for the future maintenance and upkeep of Bridge "X".
- 18.1.4 relieve Wiltshire Council of any responsibility for the maintenance of Bridge "Y".

### 18.2 We have addressed the costs issue in the context of the public interest above in paragraph 6.6.

## 19. The relevant legal powers and criteria

### 19.1 Section 119(1) provides that the Council may create any such new bridleway as appears to the Council requisite for effecting the diversion, and the extinguishment, of a public right of way, as appears requisite to the Council: the order is called a public path diversion order. The Council may do so:

*"where it appears to a council as respects a ... bridleway ... in their area ... that, in the interests of the owner, ... of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted ..., the Council may, ... by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an opposed order [create the new route and extinguish the old]"*.

### 19.2 Section 119(6) contains an important criterion:

*"the Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be affected by it is expedient as mentioned in sub-section (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which -*

- (a) the diversion would have on public enjoyment of the path or way as a whole,*
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and*
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it".*

- 19.3 There are therefore three principal criteria.
- 19.3.1 First, the criterion of expediency in sub-section (1).
- 19.3.2 Second, the criterion that the path or way will not be substantially less convenient to the public in consequence of the diversion in sub-section (6).
- 19.3.3 Third, the considerations in sub-paragraphs (a) - (c) in sub-section (6).
- 19.4 The Council should, accordingly, apply these criteria in a systematic manner. Even if there are any objections to this Application, they should not, as a matter of principle, preclude the Council from making the order even if any present objections are unlikely, or indeed are not, withdrawn.
- 19.5 As to the first criterion of expediency, sub-section (1) refers to the interests of the owner, lessee or occupier of land crossed by the way, or of the public. The advantages set out above of the proposed diversion are plainly expedient having regard to the interests of the owner.
- 19.6 However they are also expedient having regard to the interests of the public as the public will gain a wider bridleway, less incline in its route, and the omission of a length of the present route liable to flooding and similar disadvantages. The first criterion is satisfied.
- 19.7 As to the second criterion in sub-section (6), that the way will not be substantially less convenient to the public in consequence of the diversion, the following matters arise. The expression "*substantially less convenient to the public*" was considered in Young v Secretary of State for Food and Rural Affairs [2002] EWHC 844 (Admin) where Turner J said (at para 27) that the expression is capable of finding a satisfactory meaning by reference to consideration of such matters as the length, difficulty of walking and purpose of the path.
- 19.8 That case makes clear that the matter of length is only one factor, and difficulties, as outlined above in relation to the present bridleway, and the purpose of the bridleway, are also relevant factors.
- 19.9 Whilst it is true that the relevant length of the diverted route is approximately 100 metres longer than the present, that additional length must be considered against the advantages of its additional width as a bridleway, a more satisfactory incline, and the avoidance of an area substantially liable to flooding and becoming boggy.
- 19.10 The Council should conclude that, having regard to the additional advantages, as against the additional length, the proposed route will be as convenient to the public. Length is only one of the matters to be taken into account, in considering convenience, and is not the determining feature.
- 19.11 Third, as to the considerations contained within sub-paragraphs (a) to (c) of sub-section (6), Turner J, in the Young case, concluded that these considerations were not intended to qualify the word "convenient" as well as the expression "*expedient to confirm the order having regard to the effect which ... the diversion would have on public enjoyment of the path as a whole*".
- 19.12 It follows that if there is any substantial negative impact on the enjoyment of a path, this is to be balanced against the interests of the landowner rather than to be considered as a bar to

the confirmation of the order: see the comments of the editors on Section 119 of the Highways Act 1980 in *Encyclopaedia of Highway - Law and Practice* Volume 1, at [para 2-199] (Enclosure 22).

- 19.13 In consequence, the mere fact that there may be an objection on a ground that, for example, the diverted way is longer, that does not amount to a bar on the making or confirmation of an order, but is merely a matter that must be balanced against the expediency in the interests of the owner.
- 19.14 Taking into account the considerations at sub-sections (a) to (c) of sub-section (6), the position is as follows.
- 19.15 As to consideration (a), the effect of the diversion on public enjoyment of the bridleway as a whole, it would be open to Wiltshire Council to conclude that, having regard to the advantages and disadvantages, as set out above, there is no serious disadvantage to the public enjoyment of the bridleway as a whole.
- 19.16 In relation to consideration (b), land served by the bridleway would continue to be served following the diversion. There is no adverse consequence in relation to this consideration.
- 19.17 As to consideration (c), the land over which the diversion will be made is owned by our clients, they have created the diverted way at their expense, constructed a bridge and are prepared to agree to its maintenance.
- 19.18 We accept that Wiltshire Council does have a discretion, even if the conditions precedent are satisfied. But, a decision should at least be rational and not be made against the weight of the evidence and other material. A decision to dismiss an application, in the exercise of the discretion, notwithstanding that the legal tests are satisfied, runs the very high risk of being judicially reviewable.

## 20. General

- 20.1 For as long as a diversion of the present bridleway has been discussed, there has been tremendous support from Calne Without Parish Council, the British Horse Society, members of the Wiltshire Bridleway Association, the Pony Club, the local County Councillor, the local Member of Parliament, local liveries, riders, walkers and villagers. The reason for that support is that they view the proposed route as an enhancement on the present route and substantially as convenient.
- 20.2 It is obvious that horse-riders are using the proposed bridleway extensively (See Record of Use Enclosure 12), and probably prefer it for the following reasons;
- 20.2.1 First, because Bridge X is more accessible to horses, than Bridge Y.
- 20.2.2 Second, because it avoids a potential conflict between horses and pedestrians or vehicles in front of the Mill House.
- 20.2.3 Third, because it avoids the steep incline to the south of Bridge Y.

- 20.2.4 Fourth, because the views of the Mill House are better than those from the present bridleways.
- 20.3 The Council is required to carry out the requisite balancing exercise between expediency in the interest of the landowner and public enjoyment.

## 21. Summary

- 21.1. It is of course accepted that *“a diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.”*
- 21.2. If, on the face of it, the increased length of 100 metres, (i) over a length of 404 metres, (ii) or more reasonably, at least 880 metres being the distance between Points “T” and “M” (Enclosure 6), (iii) or when considering the access network as a whole and the connecting bridleways and footpaths in the area is seen as a disadvantage, that has to be weighed against the overriding advantages which include the following matters.
- 21.3. Since 2013, the proposed route has been the route of choice for people passing through. It is more convenient and preferred. (Enclosure 12).
- 21.2 The proposed route can be used all the year round. The present route cannot be used for about 6 weeks of the year owing to boggy ground. (Enclosure 13).
- 21.3 The distance has to be compared with the average ride or walk length that might be enjoyed by a rider or walker and not simply the length of the present bridleway, which is 404 metres. Nobody starts and ends their journey at either end of the bridleway where it joins the village roads.
- 21.4 The proposed route is much wider, up to 11 metres wide for a significant distance.
- 21.5 The proposed route is much safer. Users can pass easily and there are fewer hazards.
- 21.6 Users do not have to encounter a narrow driveway which can be slippery.
- 21.7 Bridge Y is wooden, narrow and can be slippery. Bridge X is a stone arch bridge with a firm surface and fenced sides.
- 21.8 Bridge X is almost twice the width of Bridge Y.
- 21.9 Horses can be spooked by the fast flowing river while crossing Bridge Y. The river flows more gently under Bridge X. The route in front of the house is always very busy - vehicles come up and down the driveway all day - animals and children add to this activity all of which have been known to spook horses.
- 21.10 The proposed route is wide enough for horses to be lead.
- 21.11 The proposed route is more gentle. It can be and is used by many more people.
- 21.12 The proposed route is more easily used by people with mobility difficulties. Children’s buggies can manage it. Mobility scooters have been known to go round in the summer. Neither could contemplate the present route.



- 21.13 The views of the house are better, different, arguably more enjoyable but at the very least are no less enjoyable.
- 21.14 Users on the north side have a choice between using the reinforced surface or the grass.
- 21.15 Riders have room to canter if there is no other traffic.
- 21.16 Most people respect our clients' privacy and security and prefer the proposed bridleway. They do not want to work their way past parked cars, children and animals, including a Labrador who will bark at strangers.
- 21.17 The threat to Matilda Moore on 5 July 2017 brings into focus the need to improve security which cannot be done while the present bridleway remains.
- 21.18 Any suggestion that our clients should retain the present bridleway and the proposed bridleway is not acceptable. If the diversion of the present bridleway is not approved alternative arrangements will be made for the property and the permissive bridleway will be closed to the public.

## 22. Final submission

22.1 It is clear that Wiltshire Council:

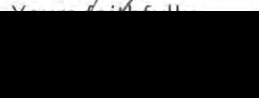
22.1.1 does have power to make an order under section 119 of the Highways Act 1980;

22.1.2 the relevant criteria are satisfied; and

22.1.3 there does not appear to be any substantial reason why the order should not be made.

22.2 The Opinion of Counsel, Mr Barry Denyer-Green, is enclosed in support of this application (Enclosure 23).

If you have any questions on any of the above please do not hesitate to contact the writer in the first instance.



Thrings LLP



**HIGHWAYS ACT 1980 S.119 Application to Divert a Public Path**

**1. Full Name and address of Applicant**

Name: JOHN EDWARDS MOORE and LUCY ANNA MOORE

Address: THE MILL HOUSE, CALSTONE WELLINGTON,  
CALNE, WILTSHIRE, SN11 8QF

Tel No: 01249 [REDACTED] Daytime Tel No: 01249 [REDACTED] Fax: \_\_\_\_\_

Email address: [REDACTED]

**2. Name and Address of Agents (if any) or Address for correspondence (if different from above)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel No: \_\_\_\_\_

**3. Particulars of Rights of Way to be diverted NB Byways Open to All Traffic may not be diverted under this process**

a) Footpath/Bridleway/Restricted byway Number PART CALW 89, CALW 89A and CALW 89B.

b) Parish of CALNE WITHOUT

c) From See plan - Point "B" OS grid ref 688.10 025.15

to See plan - Point "C" OS grid ref 686.95 024.95

Existing ~~stiles/gates~~ bridges (list and show position on plan)

Bridge to the south of The Mill House at Point "Y" on the Plan.

d) Length in metres of section to be diverted 122 metres

e) Width in metres of section to be diverted 3 metres along driveway, widening south of the river.

f) Is the existing route freely available to the public? Yes

If not, please give reasons: \_\_\_\_\_

#### 4. Reasons for the diversion of the path

**NB** A public path order may be made in the interests of the landowner.

Please give details of the reason for this application.

Please see accompanying letter with reasons and submissions.

#### 5. Particulars of new path to be provided

a) From Please see plan - Point "A" OS grid ref 688.37 025.15

to Please see plan - Point "C" OS grid ref 686.95 024.95  
(if known)

Proposed ~~stiles/gates~~ bridges (list with grid refs and show position on plan). The Council will not normally agree to stiles or gates in the Order setting out the new route. If necessary they may be authorised separately under s147 of the Highways Act 1980 to prevent the ingress or egress of stock.

Existing bridge at Point "X"

- a) Length in metres 248 metres between points "A" and "E", of which 26 metres is parallel to existing public highway from present bridleway.
- b) Width in metres Between 4 metres and 11 metres.

Please note, for a footpath the minimum width required by the Council for the new route is 2 metres; for a bridleway 4 metres. In some circumstances greater widths may be necessary)

- c) Surface Grass and Mendip Aggregate and Dust as approved by British Horse Society.
- d) What other works do you propose to undertake to bring the new path into use for the public (e.g. gates, bridges, steps etc)?

Please see accompanying letter.

***Please enclose written confirmation from any person having an interest in the land connected with the proposed new path of their agreement to any necessary work required to bring the new path into use for the public.***

**6 Particulars of Ownership. Proof of ownership to be supplied with the application**

- a) Applicant's interest in the land over which the existing path referred to in this application passes

Owner

- b) Applicant's interest in the land over which the new path is to be provided

Owner

- c) Have any other persons an interest in the land over which existing or proposed paths pass? If so, give names and addresses of persons and nature of interest

No

- d) Please enclose written confirmation from every person having an interest in the land over which the section of path to be provided crosses, consenting to the application, or give particulars of any consents still required to be obtained

**7 Names and addresses of Statutory Undertakers in the area (whether or not their apparatus is likely to be affected)**

- a) Gas Board British Gas, PO Box 4805, Worthing, BN11 9QW
- b) Electricity Board Southern Electric, PO Box 29977, Glasgow G67 9BW
- c) Water Authority Wessex Water, 1 Clivedon Walk, Nailsea, Bristol BS48 1WA
- d) Telecommunications BT, Providence Row, Durham, DH98 1BT

**8 This application should be accompanied by a plan, scale 1:2500 at A3 or A4 as follows:**

- a) Unaffected line of path shown as a dotted line e.g. ○○○○○○○○○○○○○○○○○
- b) Section of path to be diverted shown as a solid black line e.g. \_\_\_\_\_
- c) New path to be provided shown as a broken black line e.g. - - - - -

**9 Costs for the making of the Order**

We charge actual costs because we have a power to process public path orders, rather than a legal duty.

**Declaration**

I/We understand that no authority for the diversion of a highway is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation have been published. Additionally the new path must be built and certified as acceptable by Wiltshire Council before the order may come into effect.

I/We declare that the highway to be diverted is in no way obstructed and that it is fully available to the public. (Subject to 3f above).

I/We hereby agree that if a Diversion Order is made, I/We will pay any compensation which may arise in consequence of the coming into operation of the Order and any expenses which may be incurred in bringing the new route of the path into a fit condition for use by the public as required by the Council.

I/We declare that to the best of my/our knowledge and belief all the particulars given are true and accurate.

I/We will be responsible for waymarking the diversion to the Council standard before the original highway is closed.

I/We agree to pay Wiltshire Council the sum of £1875 plus the cost of any associated site works incurred by the Council on completion of the application or proportion of same if the application is withdrawn or if an order is made, advertised but subsequently not confirmed.

I/We apply for the Diversion of the highway described above.

Signed \_\_\_\_\_

Date 31st May 2018

On completion, this form should be returned, together with the plan to:  
The Rights of Way Manager, Rights of Way Section, Waste and Environment,  
Wiltshire Council, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

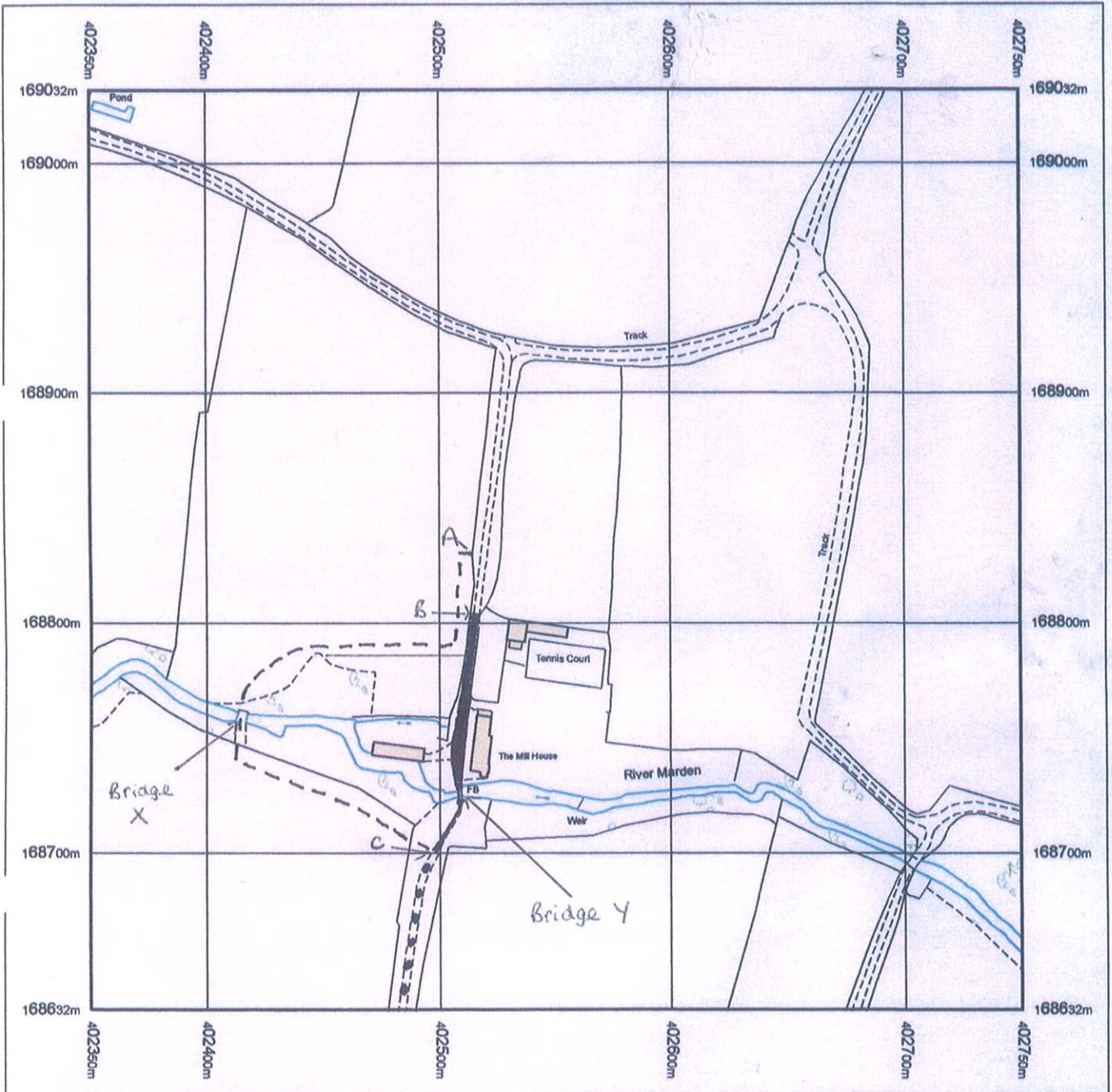
Please remember to enclose:

- The completed form,
- a plan based on an ordnance survey map of a scale not less than **1:2500 at A3 or A4**
- proof of title





2



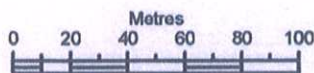
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Scale 1:2500

Supplied by: **Outlet User**  
Serial number: 00082500  
Centre coordinates: 402550 168832

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site.



3





Title Number : WT309963

This title is dealt with by Land Registry, Weymouth Office.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete.

Neither this extract nor the full copy is an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy.

This extract shows information current on 25 OCT 2016 at 12:23:56 and so does not take account of any application made after that time even if pending in the Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number	: WT309963
Address of Property	: Land at Theobalds Green, Calstone, Calne
Price Stated	: £85,000
Registered Owner(s)	: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone, Calne SN11 8QF.
Lender(s)	: None

## Title number WT309963

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 25 OCT 2016 at 12:23:56. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

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### A: Property Register

This register describes the land and estate comprised in the title.

#### WILTSHIRE

- 1 (16.06.2009) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land at Theobalds Green, Calstone, Calne.
- 2 (24.05.2013) The Transfer dated 28 February 2013 referred to in the Charges Register contains a provision as to boundary structures.
- 3 (01.08.2013) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (24.05.2013) PROPRIETOR: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone, Calne SN11 8QF.
- 2 (24.05.2013) The price stated to have been paid on 28 February 2013 was £85,000.

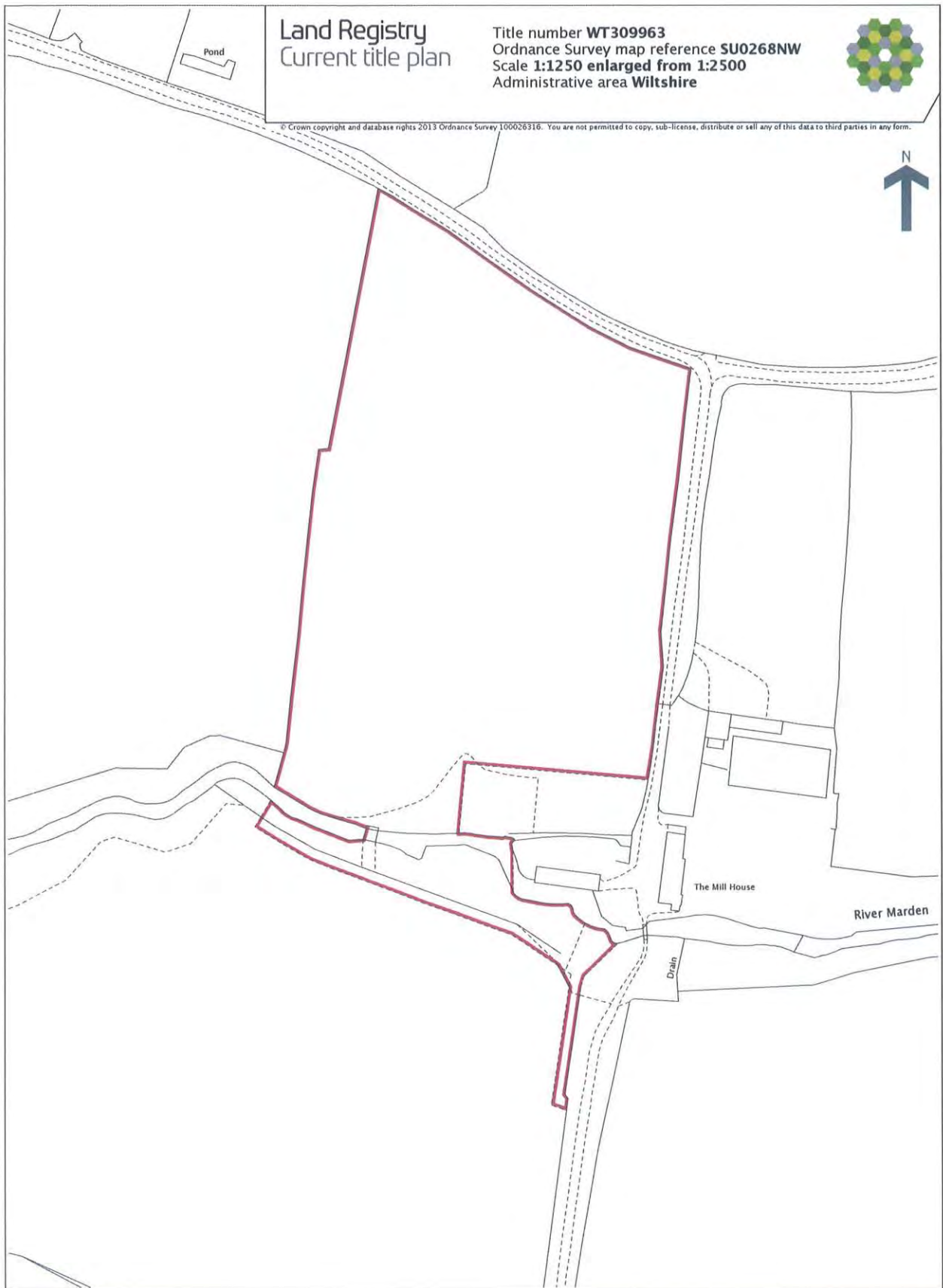
### C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (24.05.2013) The land is subject to the rights reserved by a Transfer of the land in this title dated 28 February 2013 made between (1) Patrick Hill Maundrell and Sandra Marie Maundrell and (2) John Edward Moore and Lucy Anna Moore.

*NOTE: Copy filed.*

End of register



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This title is dealt with by Land Registry, Weymouth Office.





S.1

Title Number : WT190593

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This extract shows information current on 25 OCT 2016 at 12:20:43 and so does not take account of any application made after that time even if pending in the Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number	: WT190593
Address of Property	: The Mill House, Calstone Wellington, Calne, (SN11 8QF)
Price Stated	: Not Available
Registered Owner(s)	: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone Wellington, Calne, Wiltshire SN11 8QF.
Lender(s)	: None

## Title number WT190593

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### A: Property Register

This register describes the land and estate comprised in the title.

#### WILTSHIRE

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being The Mill House, Calstone Wellington, Calne, (SN11 8QF).
- 2 (21.02.2012) A new title plan based on the latest revision of the Ordnance Survey Map and showing the land added to the title by yellow tinting has been prepared.

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 PROPRIETOR: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone Wellington, Calne, Wiltshire SN11 8QF.

### C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Transfer of the land tinted blue on the filed plan dated 7 November 2001 made between (1) The Honourable Charles Maurice Petty Fitzmaurice (Transferor) and (2) John Edward Moore and Lucy Anna Moore (Transferee) contains the following covenants:-

#### "Definitions

13.1.1 "the Retained Land" means that part of the land known as Sprays Farm more particularly described in the conveyance on sale referred to in Clause 4 as is not comprised by the Property

#### Restrictive covenants by the Transferee

13.2 The Transferee covenants with the Transferor, to the intent that the burden of the covenant will run with and bind the Property and every part of it and that the benefit of the covenant will be annexed to and run with the Retained Land and every part of it, to observe and perform the following stipulations :-

13.2.1 Not to erect any permanent buildings on the Property

13.2.2 Not to use the Property other than in conjunction with that part of the Transferee's adjoining property known as the Mill House shown edged green on the attached plan or part thereof"

NOTE 1: The Property referred to is the land tinted blue on the filed plan. The conveyance in Clause 4 referred to is a Conveyance dated 16

Title number WT190593

## C: Charges Register continued

October 1973 made between (1) The Most Honourable George John Charles Mercer Nairne Marquess of Lansdowne and (2) The Honourable Charles Maurice Petty Fitzmaurice

*NOTE 2: Copy plan filed.*

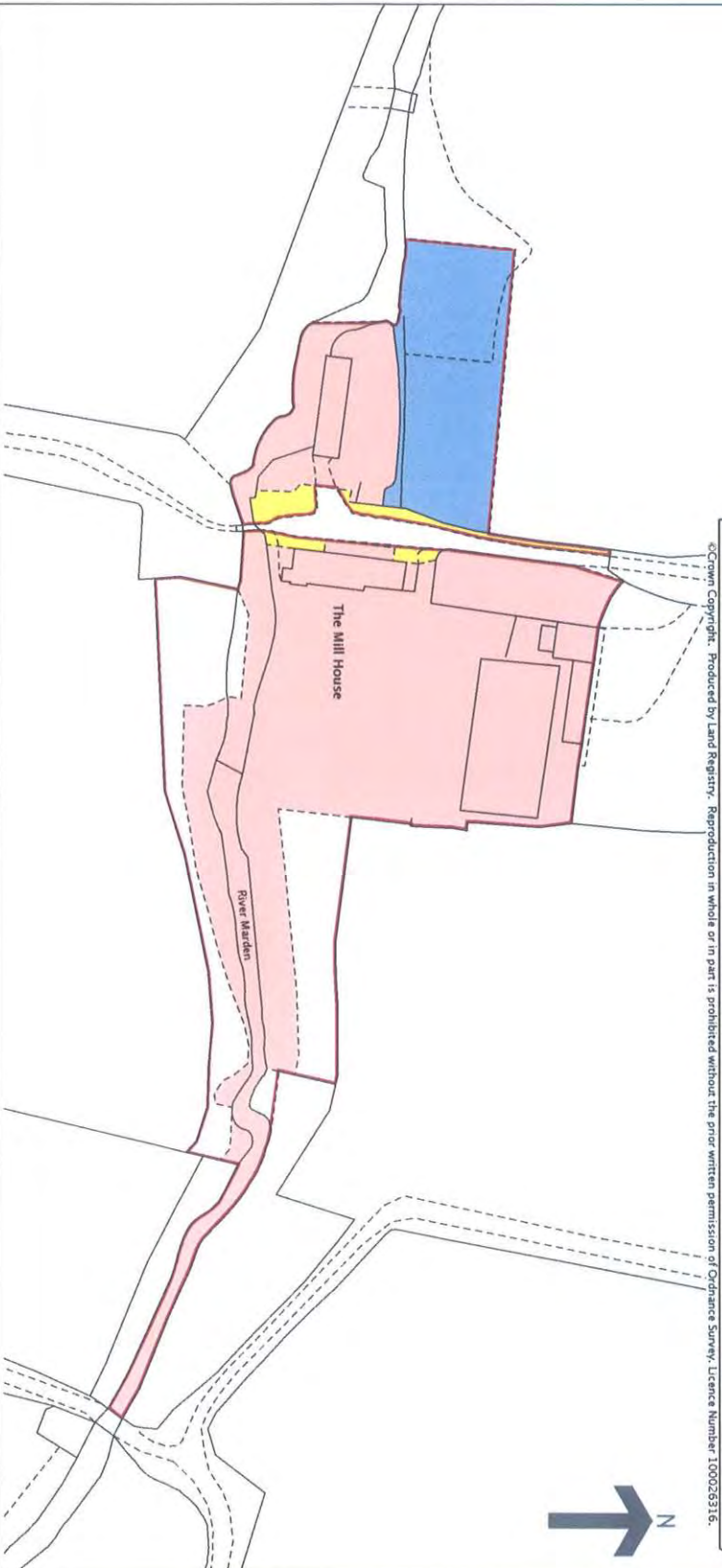
End of register

**Land Registry**  
Current title plan

Title number **WT190593**  
Ordnance Survey map reference **SU0268NE**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Wiltshire**



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This title is dealt with by Land Registry, Weymouth Office.

Title Number : WT261018

This title is dealt with by Land Registry, Weymouth Office.

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This extract shows information current on 25 OCT 2016 at 12:22:27 and so does not take account of any application made after that time even if pending in the Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number	: WT261018
Address of Property	: Land on the west side of The Mill House, Calstone, Calne
Price Stated	: Not Available
Registered Owner(s)	: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone Wellington, Calne, Wiltshire SN11 8QF.
Lender(s)	: None

Title number WT261018

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## A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (14.06.2007) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the west side of The Mill House, Calstone, Calne.

NOTE: As to the part tinted blue on the title plan the footbridge is not included in the title.

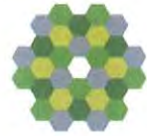
## B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

### Title possessory

- 1 (14.06.2007) PROPRIETOR: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone Wellington, Calne, Wiltshire SN11 8QF.
- 2 (14.06.2007) The value as at 14 June 2007 was stated to be under £100,000.

End of register



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Title Number : WT420850

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This extract shows information current on 25 OCT 2016 at 12:11:14 and so does not take account of any application made after that time even if pending in the Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number	: WT420850
Address of Property	: land adjoining The Mill House, Calstone, Calne (SN11 8QF)
Price Stated	: Not Available
Registered Owner(s)	: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone, Calne SN11 8QF.
Lender(s)	: None



Title number WT420850

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 25 OCT 2016 at 12:11:14. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

## A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (11.03.2016) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land adjoining The Mill House, Calstone, Calne (SN11 8QF).

## B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

### Title possessory

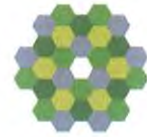
- 1 (11.03.2016) PROPRIETOR: JOHN EDWARD MOORE and LUCY ANNA MOORE of The Mill House, Calstone, Calne SN11 8QF.
- 2 (11.03.2016) The value as at 11 March 2016 was stated to be under £80,000.

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (11.03.2016) The land is subject to such restrictive covenants as may have been imposed thereon before 11 March 2016 and are still subsisting and capable of being enforced.

End of register



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This is a copy of the title plan on 25 OCT 2016 at 12:11:14. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

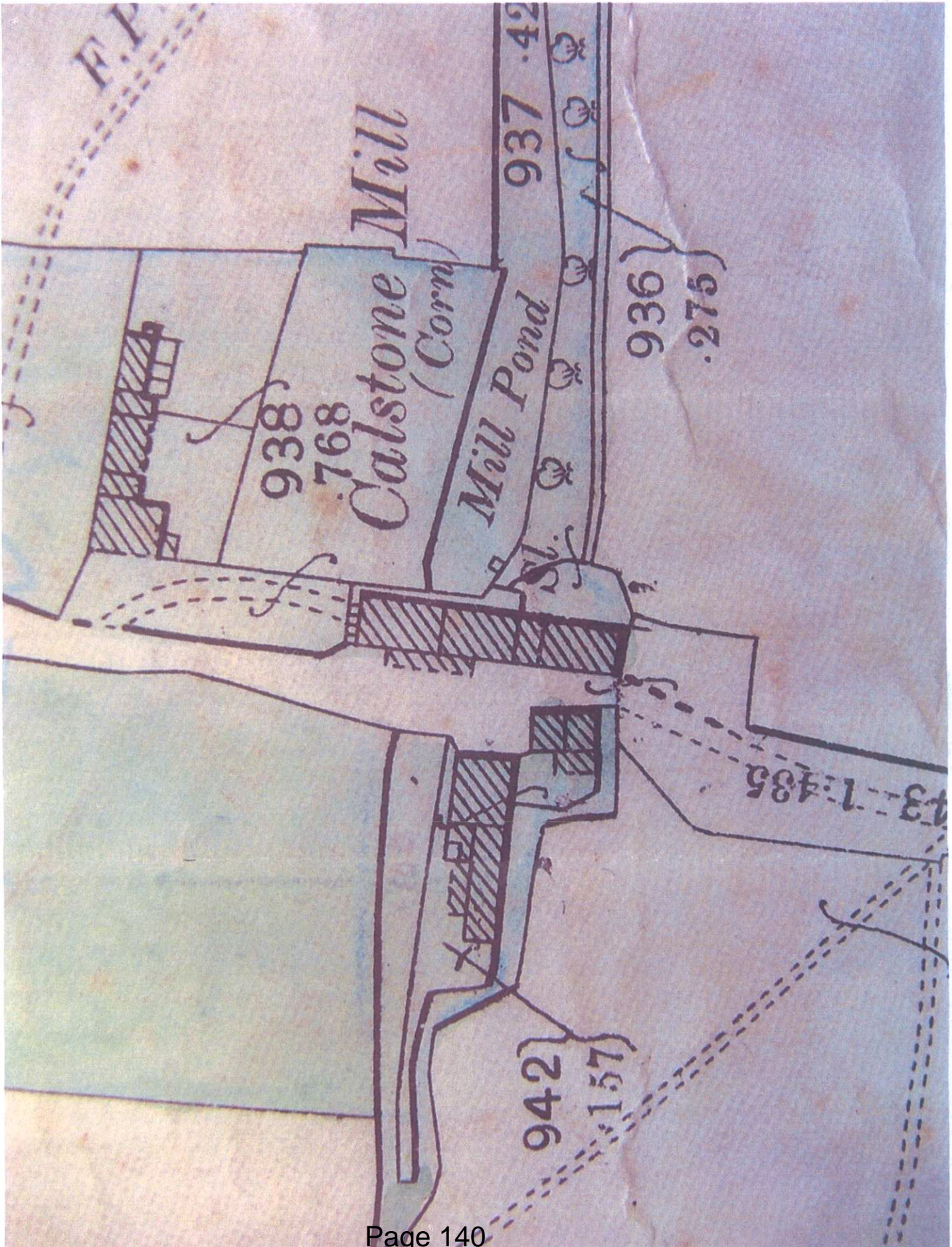
This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

The Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.



6

(v)

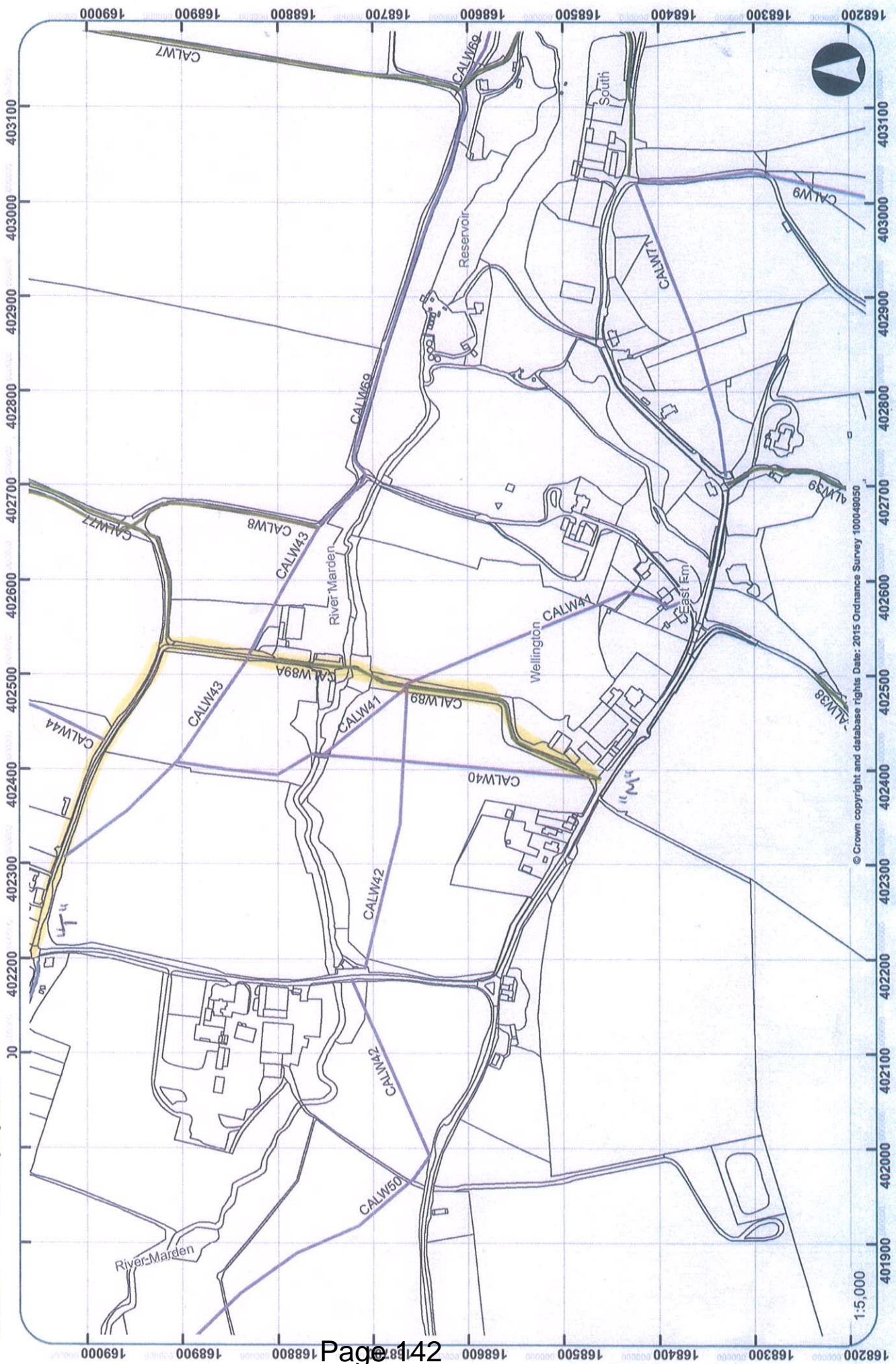




7

Date: 08/12/2015

# Public rights of way at Calstone Wellington





<u>Parish</u>	<u>Path No.</u>	<u>Description of Path</u>	<u>Limitations or conditions affecting public rights</u>
Calne Without	85	<u>FOOTPATH.</u> From the junction of spur road U/C 4170 with path No.79, south-east of Ash Hill Farm, leading north-east along the edge of Tynning Plantation at Raspberry Copse, along the west side of Horse Copse, across path No.82 to path No.84, about 218 m south of Devizes road, A.342, at Old Derry Hill. Formerly Pewsham No.4. Approximate length 2 km. Width 0.9 m. - 3 m.	relevant date 9th July 1991
Calne Without	86	<u>FOOTPATH.</u> From London Road, A.4, leading north-east along Derry Woods and Close Wood to the Stanley - Studley road, C.137. Approximate length 1.3 km. Width 0.9 m.	relevant date 26th June 1990
Calne Without	87	<u>FOOTPATH.</u> From road U/C 4170, opposite path No.27, Lacock, leading generally north-east to path no.85, north-west of Nethermore Farm. (Formerly Pewsham path No.9.) Approximate length 710 m.	relevant date 9th July 1991
Calne Without	88	<u>BYWAY</u> From Byway no 36, Bishops Cannings, at OS Grid Reference SU 0587 6823 leading north-east for a distance of approximately 80m, north-west for approximately 60m then continuing north-east for 311m to the Cherhill Parish Boundary at OS Grid Reference SU 0600 6860. Approximate length: 451m Width: 4m unfenced (6m fenced)	relevant date 19 <sup>th</sup> July 2001
Calne Without	89	<u>BRIDLEWAY.</u> From the unclassified road south of Manor Farm, 7005, leading in a general north easterly direction to the south end of public bridleway 89A, to the north of Calstone Mill House. Approximate length: 344 metres Width: 4 -10 metres.	12 <sup>th</sup> March 2008
Calne	89A	<u>BRIDLEWAY.</u> From the northern end of public	25 <sup>th</sup> March 2009



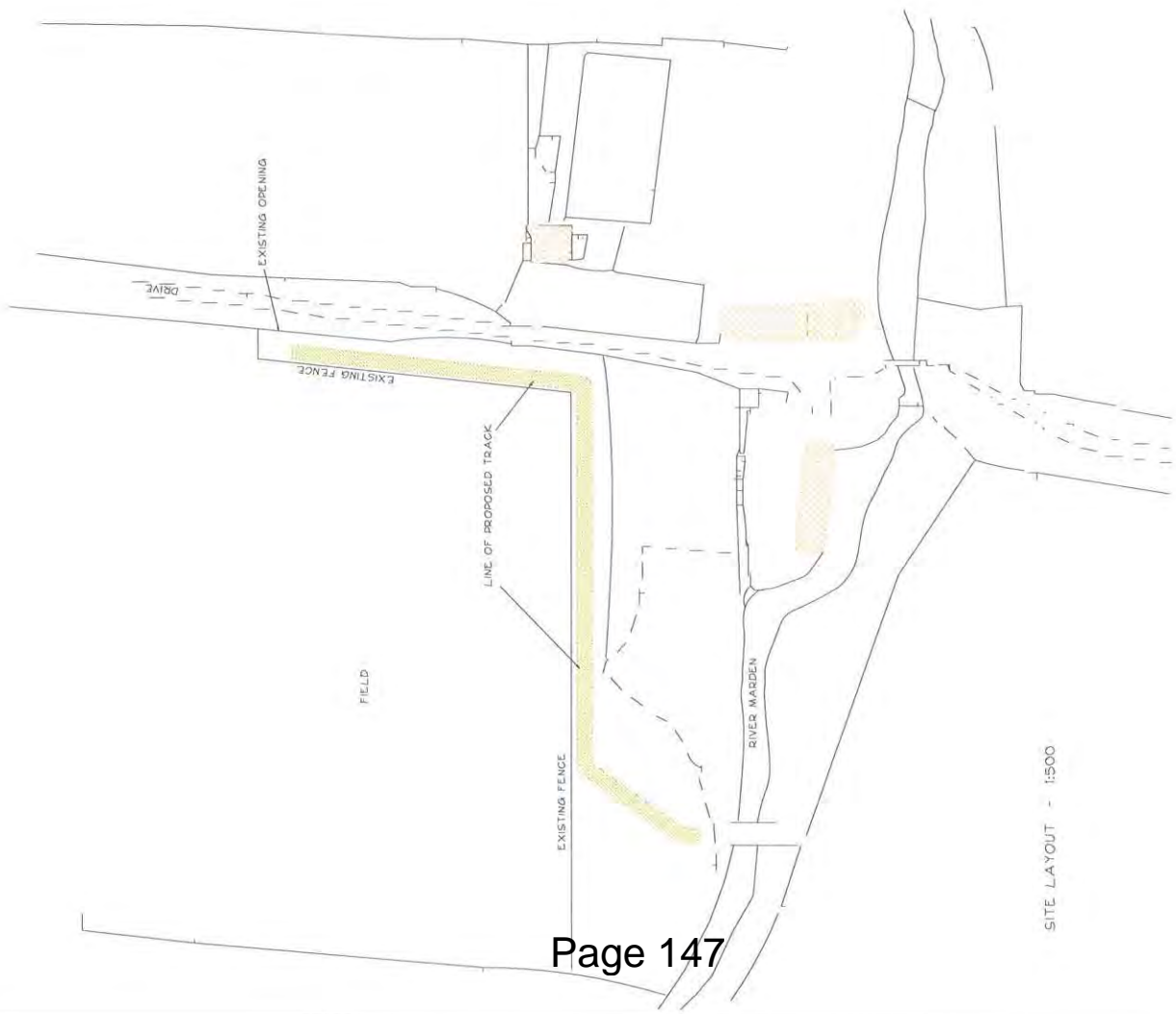
<u>Parish</u>	<u>Path No.</u>	<u>Description of Path</u>	<u>Limitations or conditions affecting public rights</u>
Without		bridleway 89 leading north past Calstone Mill House to public bridleway 89B. Approximate length: 53m Width: 4 – 8 metres as coloured green on the Order map	
Calne Without	89B	<u>BRIDLEWAY</u> . From the southern end of u/c road 7008 leading south to public bridleway 89A Approximate length; 7m Width: 4m	28 <sup>th</sup> May 2009



9

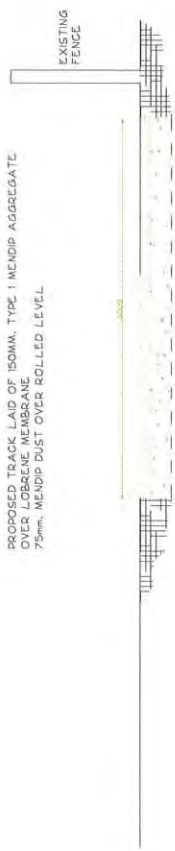
NOTES:

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- 2. DO NOT SCALE DIMENSIONS FROM THIS DRAWING
- 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE INDICATED TO BE OTHERWISE
- 4. ANY DIMENSIONS DISCREPANCY BETWEEN DRAWINGS TO BE REFERRED TO THE ARCHITECT'S FOR RECORD
- 5. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE TYPE SPECIFICATION DOCUMENTATION



SITE LAYOUT - 1:500

PROPOSED TRACK Laid of 100mm, TYPE 1 MENDIP AGGREGATE  
 OVER 75mm MENDIP DUST OVER ROLLED LEVEL



SECTION THRO' PROPOSED TRACK - 1:20

PROJECT  
 PROPOSED ACCESS TRACK  
 MILL HOUSE  
 CALLSTONE WELLLINGTON  
 WILTS.

SCALE	DRAWN
1:500 1:20 at A1	CHECKED

DRAWN TITLE  
 SITE PLANS & SECTION

EMPLOYEE  
 MR & MRS J. MOORE

DATE	SCALE	REV	DATE
26/16	1	4/16	



From: Mark Weston [redacted]  
Subject: RE: Bridleway surface  
Date: 9 March 2016 18:40  
To: John Moore [redacted]

Dear John,

Apologies for not getting back to you on Monday – I was struck down by some flu like virus and was in London yesterday.

The details you propose are fine subject to some kind of membrane being put down to stop the hard core from sinking.

Please do not hesitate to contact me if you wish to discuss this further,

Best wishes,

---

**From:** Mark Weston  
**Sent:** 02 March 2016 15:46  
**To:** 'John Moore'  
**Subject:** RE: Bridleway surface

Dear John,

I will get back to you on Monday and hope this will be ok.

Best wishes,

---

**From:** John Moore [redacted]  
**Sent:** 01 March 2016 07:16  
**To:** Mark Weston  
**Subject:** Fwd: Bridleway surface

Dear Mark,

I am forwarding an e mail from Peter Brown who does a lot of work for Wiltshire Council in maintaining bridleways.

You will see what he is suggesting for the surface of the bridleway. As I understand it there would be some initial work (the main work) followed by some top up work once the original work had bedded down.

Just to give you a bit more information, I attach a plan showing the route of the proposed bridleway between points A-B-X-C. I also attach a photo showing what the present bridleway looks like in winter – it is impassable for about 6 weeks of the year.

Our plan is to create a bridleway that is much wider and safer than the present bridleway and can be used all the year round.

The length of the proposed bridleway is about 250 metres. It runs either side of a chalk stream, which is the start of the River Marden.

The proposed bridleway on the south side of the river varies in width from 4 metres up to between 7.5 metres and 10.5 metres.

The width of the proposed bridleway on the north side of the river varies from between 6 metres up to 11 metres.

The route is presently grass, which for the most part drains well. It has been suggested by Sarah Jones that the width of the “reinforced” section of the bridleway should be 3 metres.

I am happy to do this but would like to make sure that it also fulfills your recommendations.

Best wishes,

John





Begin forwarded message:

**From:** P B SERVICES [REDACTED]  
**Subject:** Re: Bridleway surface  
**Date:** 29 February 2016 19:41:31 GMT  
**To:** John Moore <[REDACTED]>

Hi John,

Having looked at the proposed route of the bridleway with you the ground is rather wet to consider doing any work at the moment. When the ground is more firmer I would propose laying between 100mm - 150mm of type 1 mendip stone (40mm to dust), compact the base layer with heavy vibrating roller and cover with 50-75mm of mendip dust to fill the voids.

If the ground was in the right condition I would try to lay the base stone thinner and compact with roller. I would then cover base stone with 50-75mm of mendip dust hoping this will allow the grass to grow through, thus making it a more greener path.

Hopefully this will be of some use to you, if you have any questions please just give me a ring.

I will come back to you with an estimate of costings.

Many thanks

Peter

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This email is confidential and intended solely for the use of the individual or individuals to whom it is addressed.

Any views or opinions presented are solely those of the author and do not necessarily represent those of The British Horse Society or associated companies. If you are not the intended recipient be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error please contact the sender.

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(1.1)

Town & Country Planning Act 1990

**Notification of Full Planning**

Application Reference Number: 16/03821/FUL

<b>Agent</b> J.J.Sample Parham Bungalow Parham Lane Mkt.Lavington Devizes SN10 4QA	<b>Applicant</b> c/o Agent The Mill House Calstone Wilts SN11 8QF
<b>Parish: CALNE WITHOUT</b>	
<b>Particulars of Development: New access track hardstanding</b>	
<b>At: The Mill House, Calstone, Wilts, SN11 8QF</b>	

In pursuance of its powers under the above Act, the Council hereby grant **PLANNING PERMISSION** for the above development to be carried out in accordance with the application and plans submitted (listed below).

In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.

**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:

DRWG 1 - Site Plans & Section

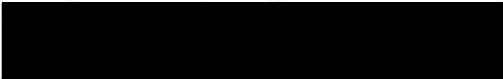
Received 5 May 2016

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

- 3 **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.
- 4 **INFORMATIVE TO APPLICANT:**  
Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site. You are advised to contact the PROW officer on 01225 713048.
- 5 **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.

**Signed**



**Director for Economic Development & Planning**

**Dated: 21 June 2016**

**Town and Country Planning Act 1990**  
**PERMISSION FOR DEVELOPMENT**  
**NOTES**

1. **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 1.1 the need in appropriate cases to obtain approval under Building Regulations. **(The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);**
  - 1.2 the need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge);
  - 1.3 the need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
  - 1.4 the need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).
2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal - <http://www.planningportal.gov.uk/planning/appeals> ). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.

**Appeals where an enforcement notice has been issued.** Article 33 (2) (b) & (c) of the Town and Country Planning (Development Management Procedure) (England) Order 2010, provides that a shorter time limit to appeal to the Secretary of State shall apply where an enforcement notice has been served, as follows:-

'Type A appeal', 28 days from— the date of the notice of the decision or determination giving rise to the appeal; or

expiry of the specified period;

'Type B appeal', 28 days from the date on which the enforcement notice is served;

['Type A appeal' means an appeal in respect of an application relating to land and development which are the same or substantially the same as the land and development in respect of which an enforcement notice—

(a) was served no earlier than 2 years before the application is made;

(b) was served before— (i) the date of the notice of the decision or determination giving rise to the appeal; or (ii) the expiry of the specified period; and

(c) is not withdrawn before the expiry of the period of 28 days from the date specified in sub-paragraph (b);

'Type B appeal' means an appeal in respect of an application relating to land and development which are the same or substantially the same as the land and development in respect of which an enforcement notice—

(a) is served on or after— (i) the date of the notice of the decision or determination giving rise to the

appeal, or (ii) the expiry of the specified period;

(b) is served earlier than 28 days before the expiry of the time limit specified— (i) in the case of a householder appeal, in paragraph (2)(a) of the Order; or (ii) in any other case, in paragraph (2)(d) of the Order; and

(c) is not withdrawn before the expiry of the period of 28 days from the date on which the enforcement notice is served.]”

3. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for Communities and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
5. **Discharge of Conditions.** There is now a fee for applications to discharge planning conditions, details of which are set out on the Council's website. The fee is payable per request and not per condition. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1 APP forms which are available on the Council's Website or the Planning Portal.  

You are advised that the local planning authority has up to 12 weeks to consider the request, that you apply well in advance of when you intend to start work
6. **Street naming and numbering.** If this permission relates to the creation of new dwellings/commercial units or conversion of buildings into dwellings/commercial units, you are required to apply for street naming and numbering to ensure that the new buildings are allocated accurate addresses and registered with the Royal Mail. Relevant application forms, guidance notes and fee sheets are available to download at <http://www.wiltshire.gov.uk/planninganddevelopment/streetnaming> or you can contact the Address Information Team on 01225 770508 or by email at [streetnaming@wiltshire.gov.uk](mailto:streetnaming@wiltshire.gov.uk)



- NOTES**
1. CONFORM WITH - J1 STAND CODE BOOK
  2. DO NOT BACK CHAINING FROM THE DRIVE
  3. BRIDGE PROTECTORS TO BE INSTALLED
  4. FLOOD TOLERANT ASPHALT TO BE INSTALLED TO THE ADJACENT TO THE DRIVE
  5. THE DRIVE SHALL BE CONSTRUCTION WORTH ROAD

**PROJECT**  
 PROPOSED ACCESS TRACK  
 MILL HOUSE  
 CALSTONE WELLSINGTON  
 WILTS.

**SCALE**  
 1:500 1:200 1:100  
 DRAWN | CHECKED

**SITE PLANS & SECTION**

**DESIGNER**  
 MR. & MRS. J. MOORE

**JOB No.** 2818  
**DATE** 1/4/16

**Town & Country Planning Act 1990**

**Notification of Full Planning**

**Application Reference Number: 18/02808/FUL**

<p><b>Agent</b> J.J.Sample Parham Bungalow Parham Lane Mkt.Lavington Devizes SN10 4QA</p>	<p><b>Applicant</b> c/o Agent The Mill House Calstone SN11 8QF</p>
<p><b>Particulars of Development: New access track hardstanding</b></p>	
<p><b>At: The Mill House, Calstone, Wiltshire, SN11 8QF</b></p>	

**In pursuance of its powers under the above Act, the Council hereby grant PLANNING PERMISSION for the above development to be carried out in accordance with the application and plans submitted (listed below).**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.**

**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: Location plan and 1803 DRWG. 1 dated 23/03/18.

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

- 3 **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.

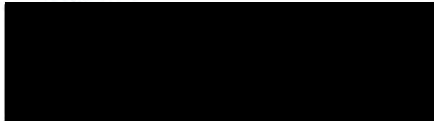
- 4 **INFORMATIVE TO APPLICANT:**  
The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain 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.

- 5 **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.

- 6 **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.

**Signed**



**Tim Martienssen**  
**Director**  
**Economic Development and Planning**

**Dated: 16 May 2018**



Town and Country Planning Act 1990  
**PERMISSION FOR DEVELOPMENT**  
NOTES

1. **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

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  - 1.2 the need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge);
  - 1.3 the need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
  - 1.4 the need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).
2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal - <http://www.planningportal.gov.uk/planning/appeals> ). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

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(c) is not withdrawn before the expiry of the period of 28 days from the date specified in sub-paragraph (b);

'Type B appeal' means an appeal in respect of an application relating to land and development which

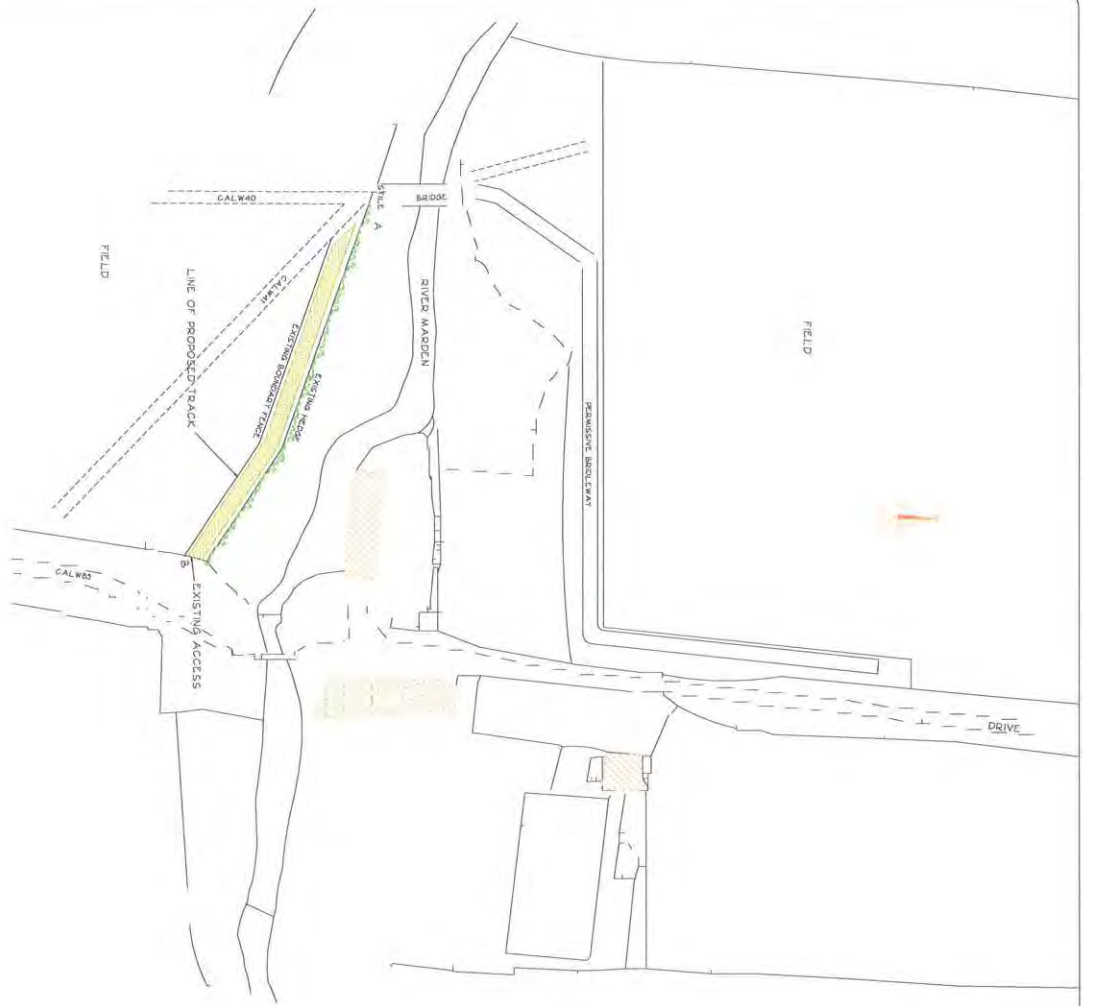
are the same or substantially the same as the land and development in respect of which an enforcement notice—

(a) is served on or after— (i) the date of the notice of the decision or determination giving rise to the appeal, or (ii) the expiry of the specified period;

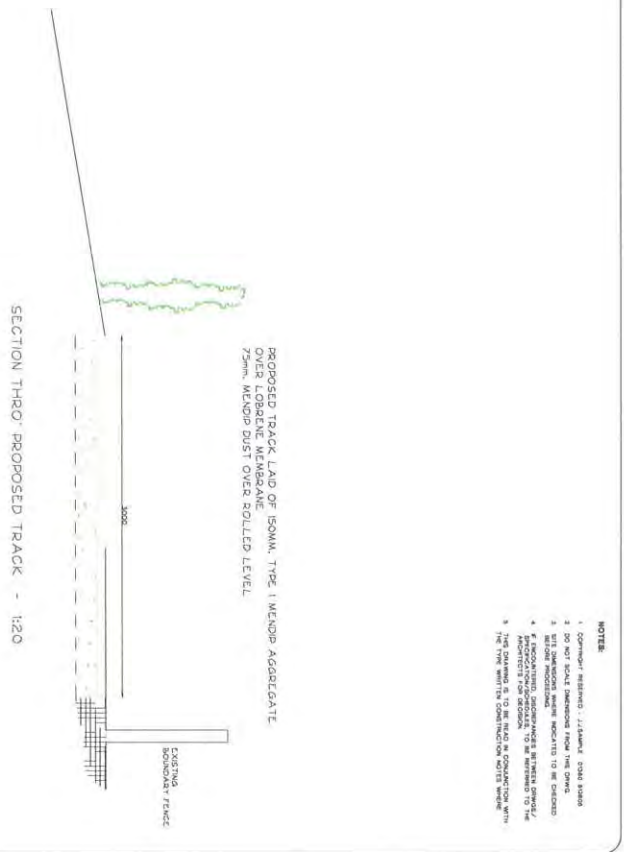
(b) is served earlier than 28 days before the expiry of the time limit specified— (i) in the case of a householder appeal, in paragraph (2)(a) of the Order; or (ii) in any other case, in paragraph (2)(d) of the Order; and

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5. **Discharge of Conditions.** There is now a fee for applications to discharge planning conditions, details of which are set out on the Council's website. The fee is payable per request and not per condition. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1 APP forms which are available on the Councils Website or the Planning Portal.  
  
You are advised that the local planning authority has up to 12 weeks to consider the request, that you apply well in advance of when you intend to start work
6. **Street naming and numbering.** If this permission relates to the creation of new dwellings/commercial units or conversion of buildings into dwellings/commercial units, you are required to apply for street naming and numbering to ensure that the new buildings are allocated accurate addresses and registered with the Royal Mail. Relevant application forms, guidance notes and fee sheets are available to download at <http://www.wiltshire.gov.uk/planninganddevelopment/streetnaming> or you can contact the Address Information Team on 01225 770508 or by email at [streetnaming@wiltshire.gov.uk](mailto:streetnaming@wiltshire.gov.uk)
7. **Informative** There is a legal duty of care incumbent on the customer and contractor that all commercial waste generated as a result of the works hereby authorised is safely contained, transported and disposed of lawfully in line with the Environmental Protection Act 1990 and Environmental Permitting Regulations 2016 (as well as any other related legislation). Failing to do so can lead to individuals or organisations being prosecuted for unlawful waste management.



SITE LAYOUT - 1:500



PROPOSED TRACK LAD OF 150MM, TYPE 1 MESH AGGREGATE  
 75mm KERB DUST OVER ROLLED LEVEL



- NOTES**
1. CONFORM WITH: 1.14 AND 1.14.1
  2. 20 OF SOIL DIMENSION FROM THE DRIVE
  3. ALL DIMENSIONS UNLESS NOTED TO BE CHECKED
  4. RECONSTRUCT DIMENSIONS BETWEEN DRIVE AND PROPOSED TRACK TO BE REFERRED TO THE DRAWING
  5. THE DRAWING IS TO BE FILED IN DRAWING WITH THE DRAWING

**PROJECT**  
 PROPOSED ACCESS TRACK  
 MILL HOUSE  
 CALSTONE WELLINGTON  
 WILTS.

**SCALE**  
 1:500 (1:20 OF A1)

**DATE**  
 3/18

**BY**  
 [Signature]

**CHECKED**  
 [Signature]

**DATE**  
 3/18



**Record of Use of Bridleways 2017**

**Proposed Bridleway**

<b><u>Month</u></b>	<b><u>Riders</u></b>	<b><u>Cyclists</u></b>	<b><u>Walkers and Runners</u></b>	<b><u>Total</u></b>
March	34	1	41	76
April	83	1	82	166
May	98	6	84	188
June	79	3	103	185
July	82	6	93	181
August	103	0	144	247
September	74	3	121	198
October	50	3	125	178
November	39	3	76	118
December	17	0	65	82

NB Groups of individuals travelling together are counted as 1.

**Official Bridleway**

<b><u>Month</u></b>	<b><u>Riders</u></b>	<b><u>Cyclists</u></b>	<b><u>Walkers and Runners</u></b>	<b><u>Total</u></b>
March			3	3
April			0	0
May			1	1
June			1	1
July			0	0
August			0	0
September			3	3
October			3	3
November			1	1
December			2	2

NB Groups of individuals travelling together are counted as 1.









14





IN THE COUNTY OF WILTSHIRE

IN THE LOCAL JUSTICE AREA OF NORTH WEST WILTSHIRE

Before the Magistrates' Court sitting at Chippenham  
on 23rd April 2007

Complaint having been made by Stephen Guy Gerrard, Solicitor to the Council, of County Hall, Trowbridge, in the County of Wiltshire (hereinafter called "the Complainant") for an Order under Section 116 of the Highways Act 1980 authorising the stopping-up of public vehicular rights over the two areas of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order, subject to the reservation of public footpath and bridleway rights thereover.

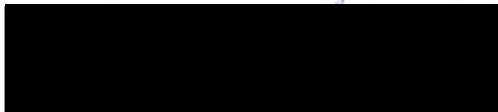
On the ground that the areas of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order are unnecessary for public vehicular use.

And the Court having heard the Complainant.

And the Court being satisfied that the Complainant has given the Notices required by Part 1 of the 12th Schedule of the Highways Act 1980.

And the Court being satisfied that the areas of highway referred to in Schedule 1 to this order and shown hatched respectively pink and blue on the plan attached to this order are unnecessary for public vehicular use.

IT IS HEREBY ORDERED that the lengths of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order be stopped-up subject to the reservation of a bridleway thereover.



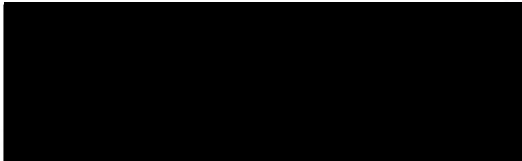
Chairman of the Magistrates' Court  
sitting at Chippenham  
In the County of Wiltshire  
Local Justice Area of North West Wiltshire  
on 23rd April 2007

## HIGHWAYS ACT 1980 – SECTION 116 APPLICATION

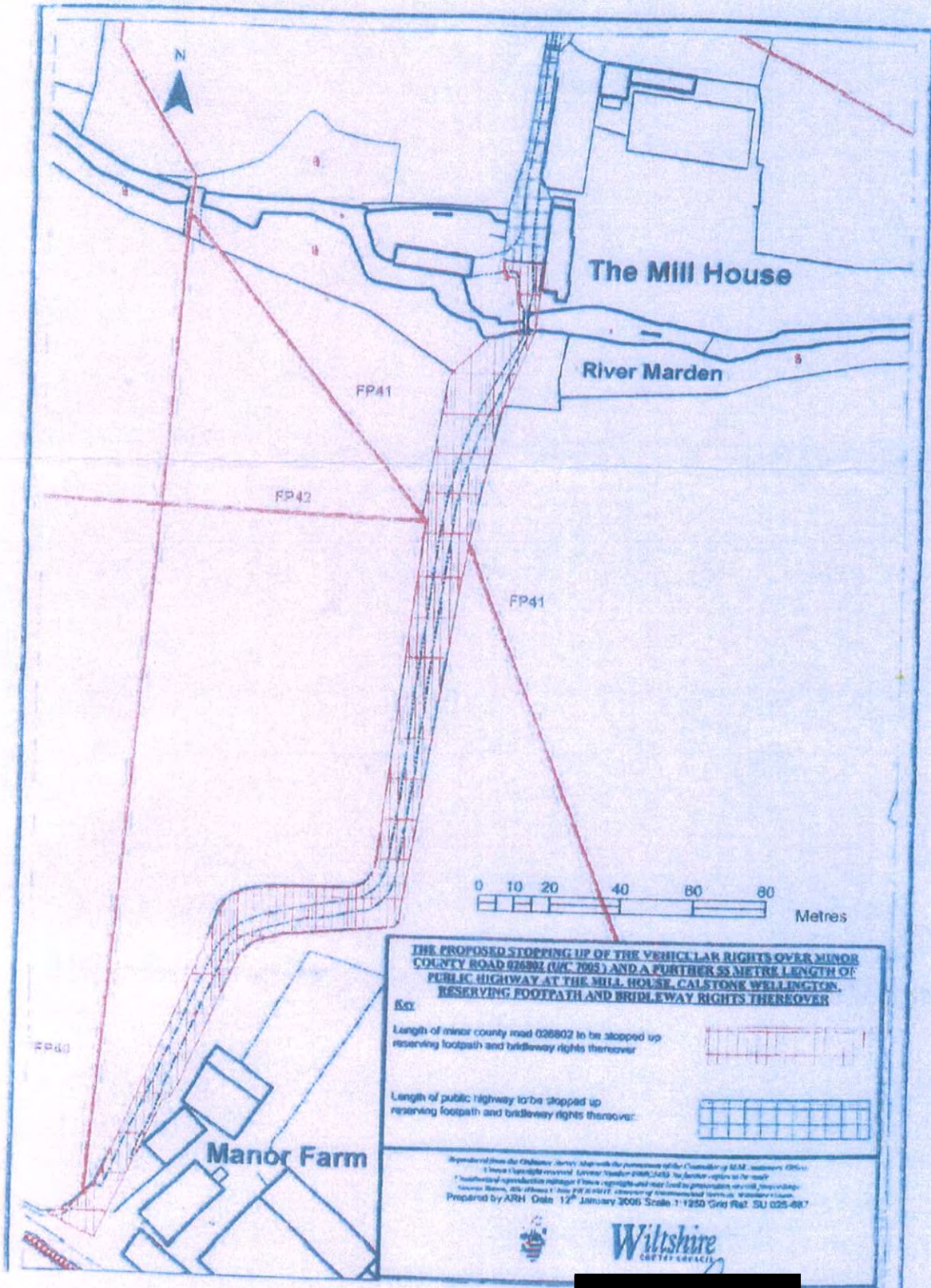
### SCHEDULE 1

#### Description of the areas of highway subject to the stopping up of public vehicular rights at Calstone Wellington Near Calne, Wiltshire

- (i) The length of public highway including part of U/C 7008 which extends from a point approximately 15 metres north of the small bridge over the river Marden to the gated entrance to the property known as Calstone Mill in a northerly direction for a distance of approximately 55 metres. The legal width of the highway is a maximum of approximately 8.1 metres.
  
- (ii) The part of Minor County Road 026802 (unclassified road U/c 7005) which extends in a southerly direction from a point approximately 20 metres north of the River Marden by Calstone Mill for a distance of approximately 289 metres to a point adjacent to Manor Farm. It contains a small bridge over the River Marden of 1 metre in width and 5.2 metres long. The passable highway width is approximately 4 metres and the legal width is a maximum of approximately 10 metres.



23/4/07



23/4/07



16

From: **Leonard, Stephen** [stephen.leonard@wiltshire.gov.uk](mailto:stephen.leonard@wiltshire.gov.uk)  
Subject: FW: The Mill House, Calstone - proposed bridleway diversion  
Date: 15 May 2013 10:06  
To: [REDACTED]  
Cc: Madgwick, Sally [Sally.Madgwick@wiltshire.gov.uk](mailto:Sally.Madgwick@wiltshire.gov.uk), Haines, Julian [Julian.Haines@wiltshire.gov.uk](mailto:Julian.Haines@wiltshire.gov.uk)

Hi John

Please find attached our bridge engineers recommendations for the bridge on the proposed bridleway diversion for your consideration.  
If you have any further questions please get back to me

Regards

Stephen

Stephen Leonard  
Senior Rights of Way Warden  
Wiltshire Council  
Bath Road Industrial Estate  
Chippenham  
SN14 0AB

Tel: 01249 445554  
Mob: 07771 721255  
Fax: 01249 445559  
Email [stephen.leonard@wiltshire.gov.uk](mailto:stephen.leonard@wiltshire.gov.uk)

Follow Wiltshire Council



---

**From:** Haines, Julian  
**Sent:** 15 May 2013 09:20  
**To:** Leonard, Stephen  
**Subject:** FW: The Mill House, Calstone - proposed bridleway diversion

This time with the photos.

Julian Haines  
Tel: 01225 713225  
Mob: 07500 100769

---

**From:** Haines, Julian  
**Sent:** 15 May 2013 09:19  
**To:** Leonard, Stephen  
**Subject:** RE: The Mill House, Calstone - proposed bridleway diversion

Stephen,

Sorry for the delay in responding.

The bridge is actually in a fairly poor condition and whilst it may have carried agricultural vehicles in the past I wouldn't suggest such use now. The bridge could be patched up for light bridleway use but if continued farm usage were required then I would suggest reconstruction. I have attached a pdf of photos rather than doing a full structural report. As well as extensive works required to return the bridge to its 'as built' condition we would also want to see parapets added.

All in all I suspect it would be cheaper to reconstruct the bridge or at least build a new timber bridleway bridge alongside. A new kit bridleway bridge would be circa £4,000 and we as the Council would then adopt and maintain it for perpetuity.

Julian Haines  
Tel: 01225 713225  
Mob: 07500 100769

---

**From:** Leonard, Stephen  
**Sent:** 24 April 2013 09:43  
**To:** Haines, Julian  
**Subject:** FW: The Mill House, Calstone - proposed bridleway diversion

Hi Julian

If you have time could you visit this bridge, which has a footpath over it at present but the proposal is to have bridle way use. Could you let me know what is needed to bring it up to spec so that the owner can price up the works before the application

Regards

Stephen

---

**From:** John Moore [REDACTED]  
**Sent:** 04 April 2013 15:54  
**To:** Leonard, Stephen  
**Subject:** The Mill House, Calstone - proposed bridleway diversion

Dear Stephen,

Thank you very much for coming out this morning and looking at our proposals for diverting the bridleway.

I have done a note (attached) (largely for my benefit so that I don't forget!!) of some of the issues which came out of our discussion. This includes a description of the proposed route and a plan which I would propose to use as part of the application. I need to put in the grid references.

I would very much like to hear your views as to what needs to be done to bring the route up to bridleway standard. I can then confirm in our application that we are happy to do this at our



cost.

If you feel that there are other points we should be considering I would be most grateful if you would let me know. I appreciate that there may be further points when interested parties are consulted.

I would propose submitting our application once our title to the land had been registered at the Land Registry.

Best wishes,

John

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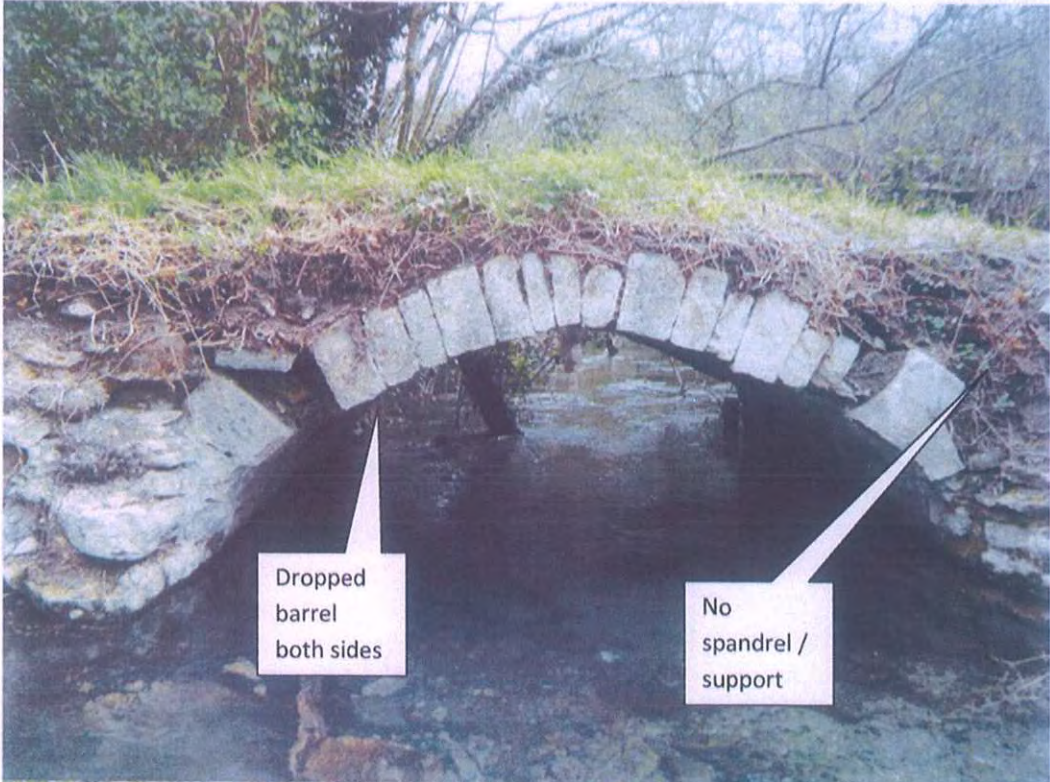
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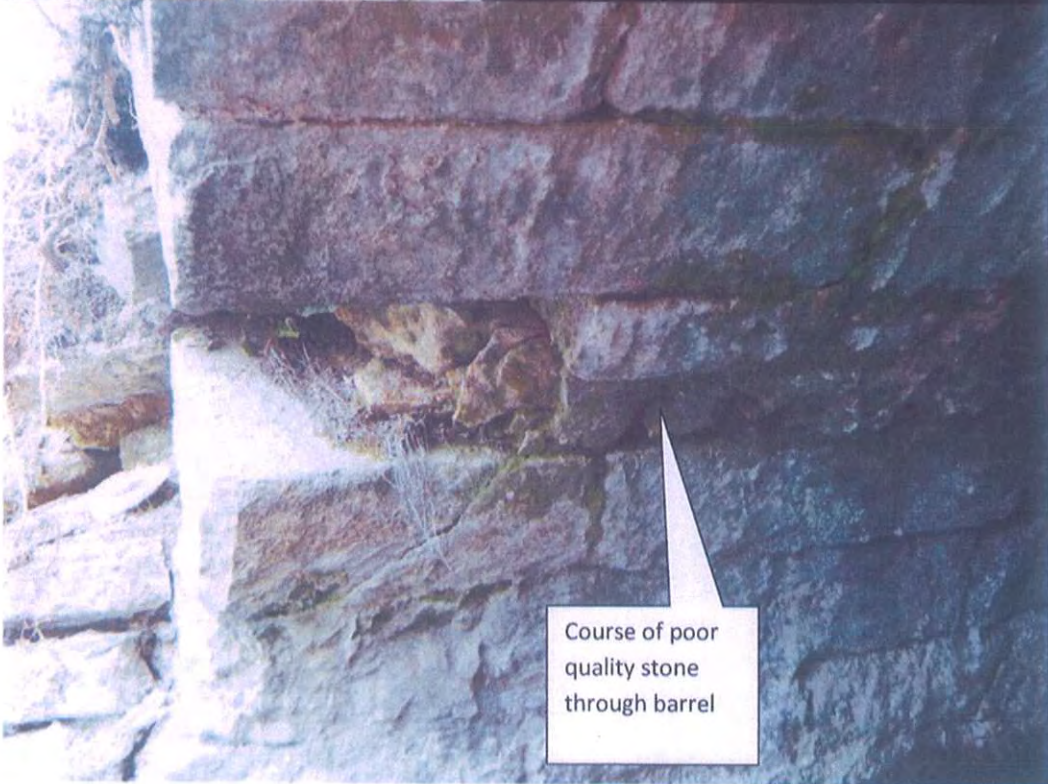
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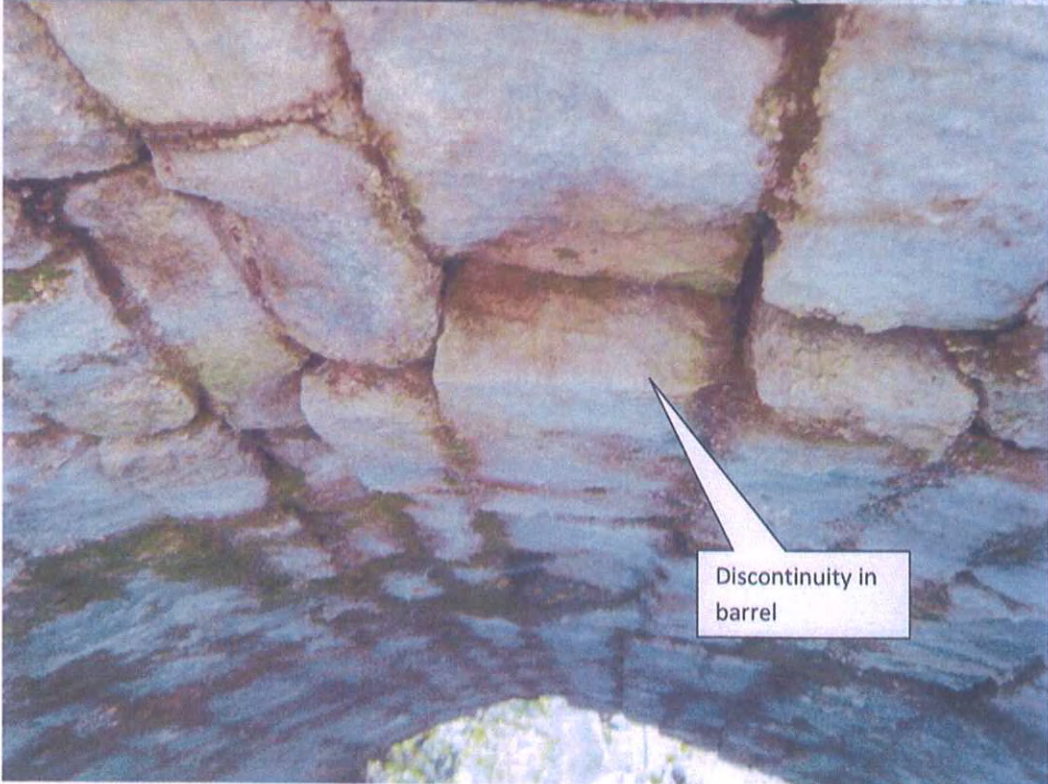
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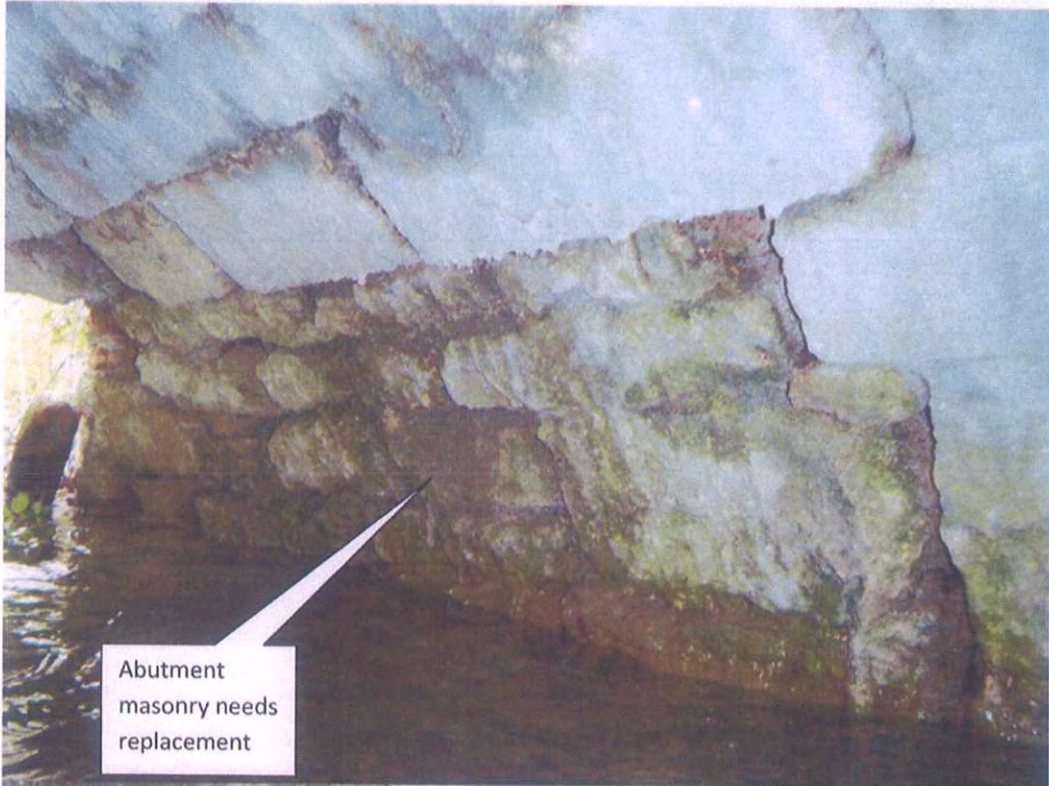
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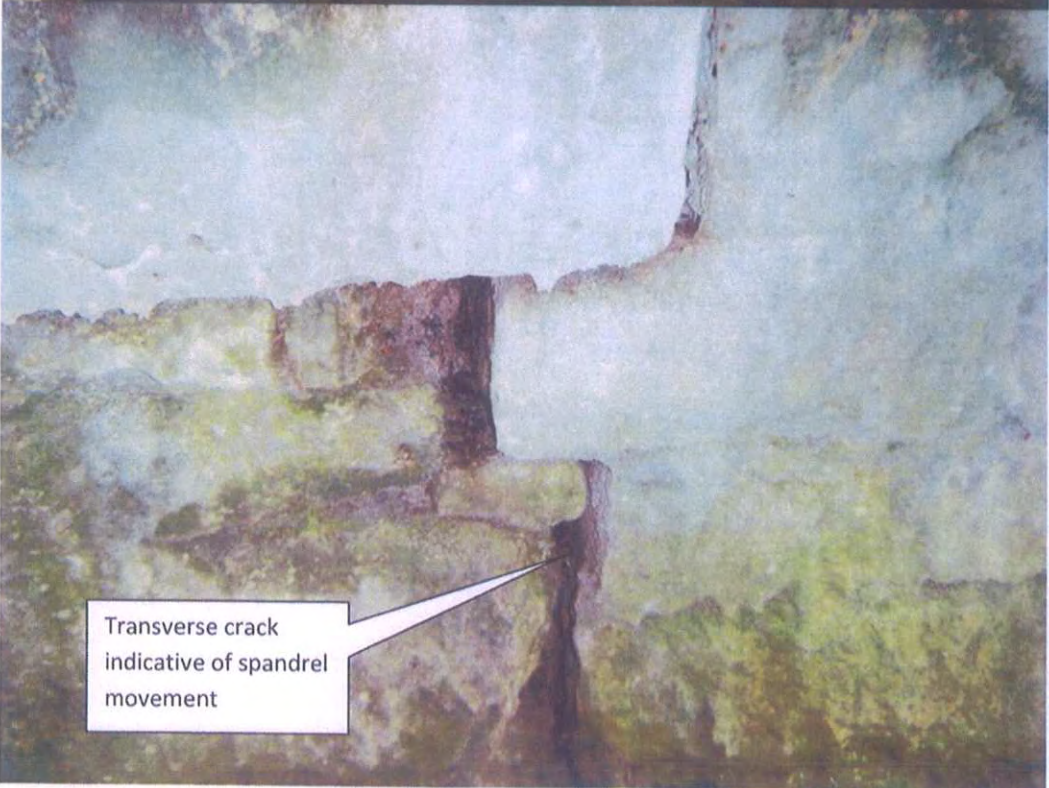








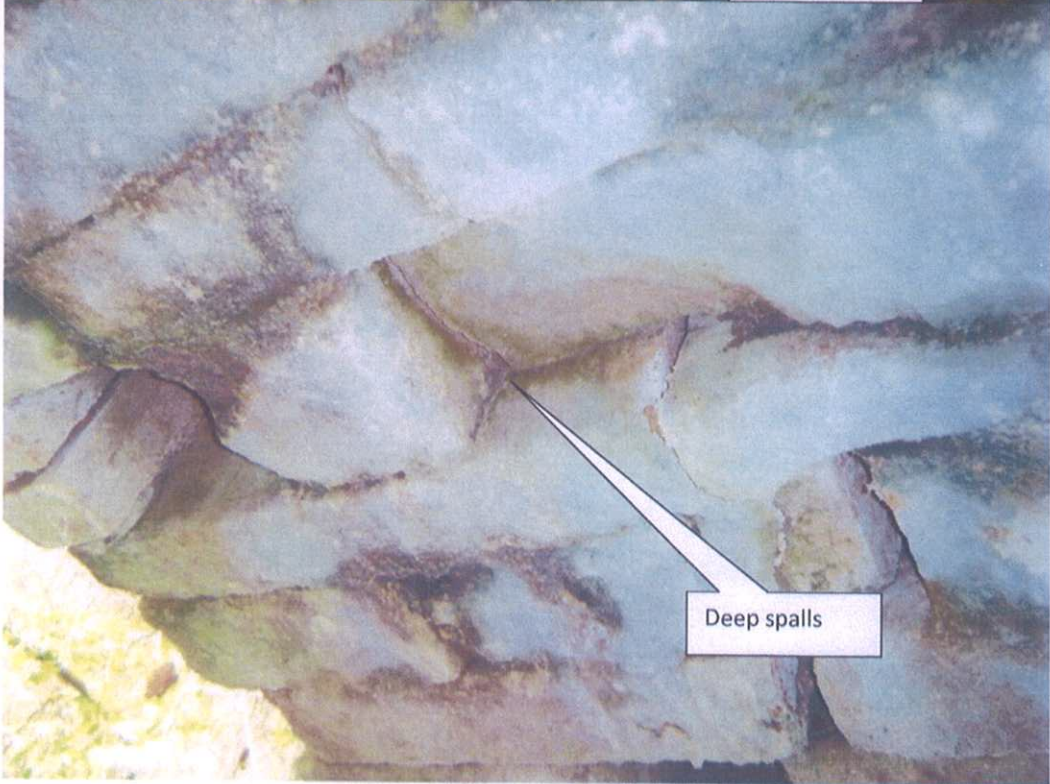
Abutment  
masonry needs  
replacement



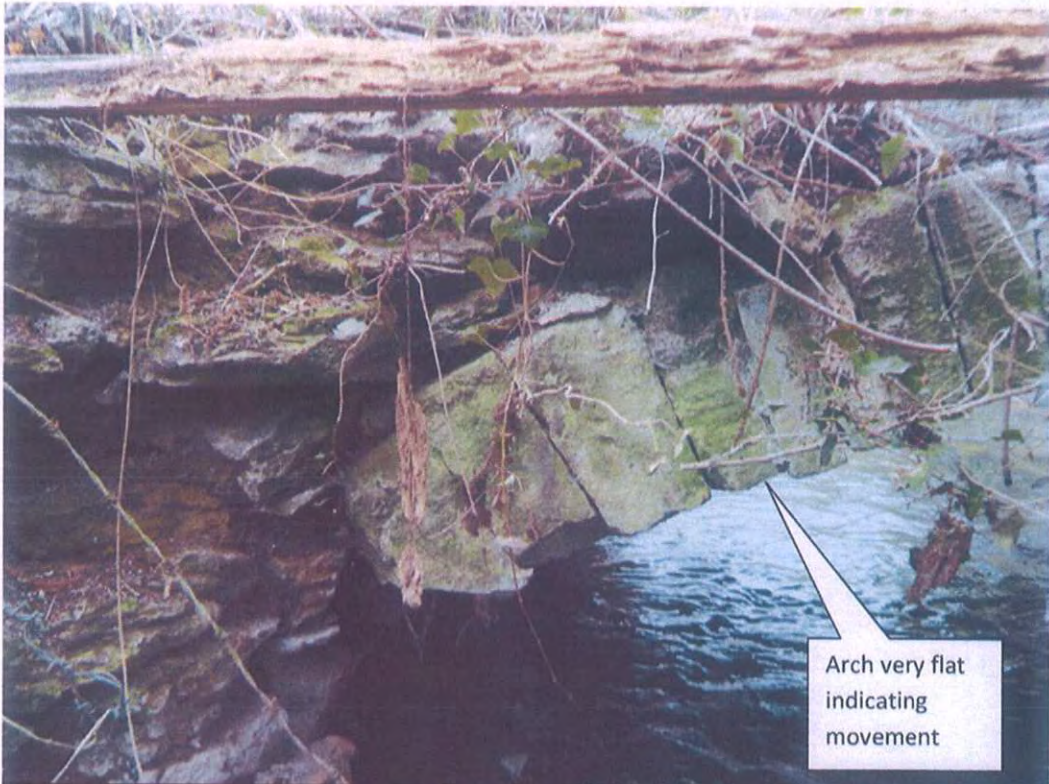
Transverse crack  
indicative of spandrel  
movement



Abutment  
masonry needs  
replacement



Deep spalls



Arch very flat  
indicating  
movement



No springing  
support to  
arch ring







**PUBLIC PATH DIVERSION ORDER**  
**HIGHWAYS ACT 1980 SECTION 119**

**The Wiltshire County Council Parish of Bishop's Cannings Path No 4**  
**(Sheet No SU 06) Diversion Order 2008**

This Order is made by the Wiltshire County Council "the authority" under Section 119 of The Highways Act 1980 ("the 1980 Act") because it appears to the authority that, in the interests of the owner of the land crossed by the public right of way described in paragraph 1 of this Order, it is expedient that the line of the path should be diverted.

**BY THIS ORDER:**

1. The public right of way over land situate at Horton Mill, Bishop's Cannings and shown as a bold continuous line on the map contained in this Order and described in part 1 of the Schedule to this Order, shall be stopped up after 28 days from the date of confirmation of this Order.
  
2. There shall at the end of 28 days from the date of confirmation of this Order be a Public Right of Way over the land situate at Horton Mill, Bishop's Cannings described in part 2 of the Schedule and shown by a broken line on the map contained in this Order.
  
3. The rights conferred on the public under this Order shall be subject to the limitations and conditions set out in part 3 of the Schedule.

# SCHEDULE

## Part 1

### DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The length of path 4 in the parish of Bishop's Cannings as shown on the attached plan as a bold continuous line from point A at OS grid reference SU04824 63655 past Horton Mill to point D at OS grid reference SU 04574 63709. Approximate length 265 metres.

## Part 2

### DESCRIPTION OF SITE OF NEW PATH OR WAY

The length of path 4 as shown on the attached plan as a broken line from point A at OS grid reference SU04824 63655 leading in a south south westerly direction to point B (OS grid reference SU04807 63619), through gate, follow field boundary to point C (OS grid reference SU04683 63665), through gate and across field in a west north westerly direction to join Bishop's Cannings path No 4 at point D (OS grid reference SU04574 63709). Approximate length 310 metres. Width 3 metres.

## Part 3

### LIMITATIONS AND CONDITIONS

Gate to BS5709:2006 at SU04807 63619  
Gate to BS5709:2006 at SU 04683 63665

THE COMMON SEAL of  
THE WILTSHIRE COUNTY COUNCIL  
Was hereunto affixed this  
15<sup>th</sup> day of October 2008

}  
}  
}  
}

In the presence of:-



Deputy Head of  
Legal Services



714838

**Diversion of all public rights on BCAN4 at Horton Mill**

Route to be extinguished A ——— D  
New route for public rights A - - - - B - - - - C - - - - D

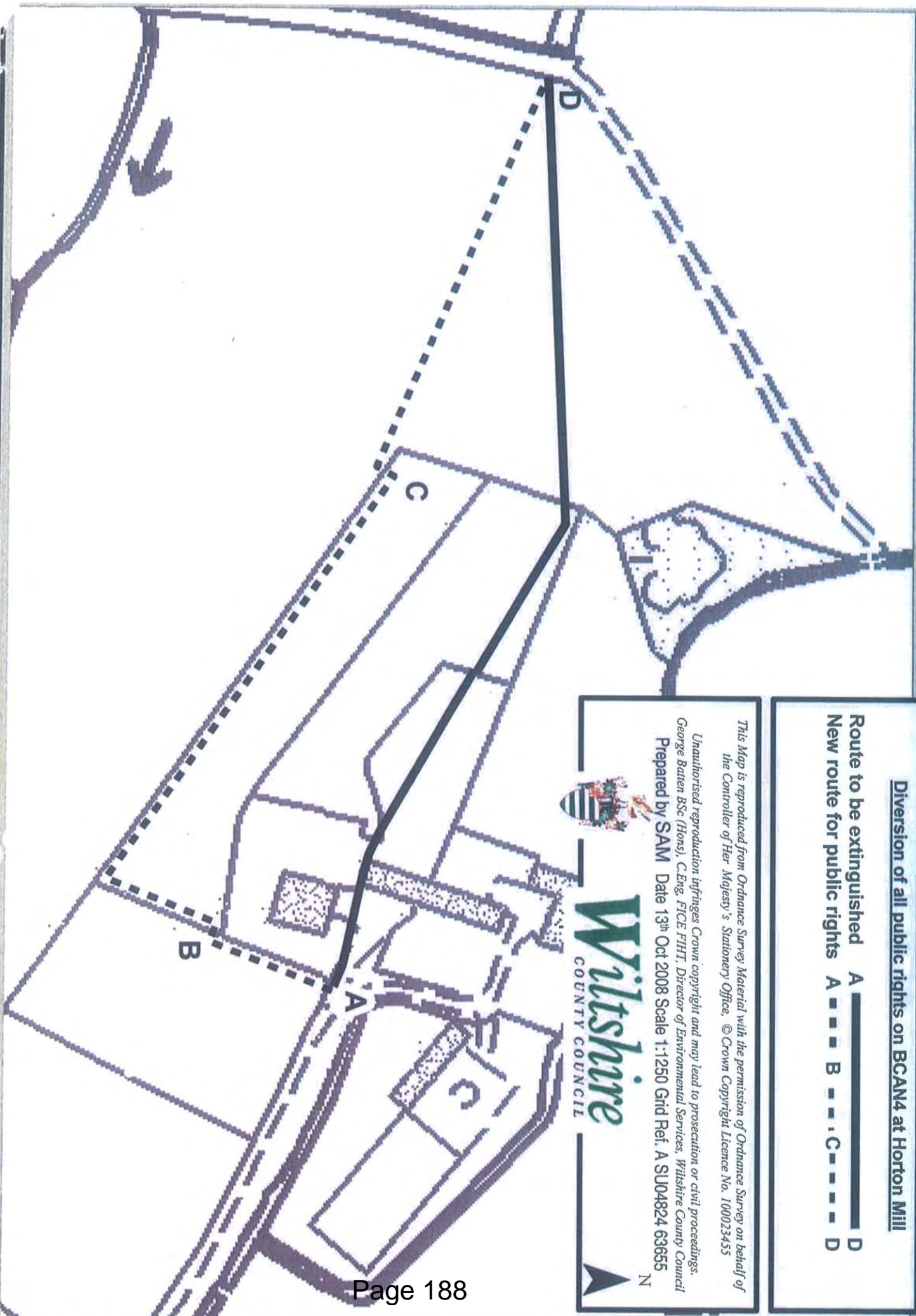
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George Baten BSc (Hons), C.Eng. FICE FIHT, Director of Environmental Services, Wiltshire County Council*

Prepared by SAM Date 13<sup>th</sup> Oct 2008 Scale 1:1250 Grid Ref. A SU04824 63655



**Wiltshire**  
COUNTY COUNCIL



Whereas the making of the Wiltshire County Council Parish of Bishop's Cannings Path Number 4 (Sheet No SU 06) Diversion Order 2008 was advertised and no objections or representations were made, the Wiltshire Council hereby confirms the Order.

THE COMMON SEAL of the  
WILTSHIRE COUNCIL  
Was hereby affixed this  
1<sup>st</sup> day of April 2009  
in the presence of:



*M. A. Smith*  
Principal Solicitor

715414













MACFARLANES  
DX 138  
CHANCERY LANE

DISTRICT COUNCIL  
OFFICIAL SEARCH  
NO:- 19 905536

Your ref:- HSXS. Road

PROPERTY SUBJECT TO SEARCH:- THE MILL HOUSE, CALSTONE WELINGTON WILTS CALNE

PART 1

d

- 1.1.1. Structure Plans for North-East, South and Western Wiltshire have been approved.
- 1.1.2. A draft replacement plan is currently under consideration.
- \*1.2.1. The Wiltshire Minerals Local Plan is adopted and a Wiltshire Waste Local Plan Consultation Draft is being prepared.  
NOTE: District Councils have prepared, or are preparing, local plans covering the whole of their area. Like the County Council Local Plans, these show planning policies in more detail than the Structure Plans. The District Council Local Plans have superseded Local Plans previously prepared by the County Council for the Western Wiltshire Green Belt and Wiltshire Landscape.
- \*1.2.2. Yes – A replacement Wiltshire Minerals Local Plan.  
NOTE: Adopted District Council Local Plans are also being reviewed.
- 1.3. None
- 1.4.1. } Not applicable
- 1.4.2. }
- \*1.5.1. No
- \*1.5.2. Not applicable  
NOTE: Refer also to District Council reply as to Non-Statutory Plans.
- \*1.6. Wiltshire Minerals Local Plan and proposed replacement.
  - (a) No/Yes
  - (b) No/Yes

~~Western Wiltshire Green Belt Local Plan.~~  
(See note to 1.2.1. This Plan is superseded by District Council Local Plans)

  - (a) None.
  - (b) ~~None/The property is shown as being within the Western Wiltshire Green Belt.~~

Wiltshire Landscape Local Plan.  
(See note to 1.2.1. This Plan is superseded by District Council Local Plans)

  - (a) None.
  - (b) The property is within an area/areas ticked below:
    - ✓ an Area of Outstanding Natural Beauty
    - a Special Landscape Area
    - the Salisbury Plain Training area
    - the Landscape setting to Salisbury/Bradford on Avon/Devizes/Marlborough/Warminster/Wilton/Wootton Bassett
    - ✓ an Area of High Ecological Value
    - ✓ an Area of Special Archaeological Significance.

In addition, policies concerning Ministry of Defence Land, predominantly broadleaved woodlands and the designation of Local Nature Reserves will apply if relevant to the property.
- \*1.7. No Yes

d

2. Refer to District Council reply.

3.1. ~~No~~ Yes  
Roads U/c 7008 and  
U/c 7005 as shown  
hatched blue are publicly  
maintained.

3.2. (a) ~~No~~ Yes  
(b) ~~No~~ Yes N/A  
3.3.1. No Yes  
3.3.2. No Yes

(N.B. The existence of a Section 38 Agreement under the Highways Act 1980 (or Section 40 of the 1959 Act) and a Bond does not mean that the County Council will complete the roadworks or adopt them as highways maintainable at the public expense if the developer and/or the Bondsman should fail to fulfil their obligations under the Agreement for any reason. Such an Agreement and/or a Bond does not absolve frontagers from liability for road charges under the Private Street Works Code, and are no guarantee that the roads will be completed satisfactorily and adopted).

4.1.1. None  
4.1.2. (a) None  
(b) None  
\*4.2. (a) None  
(b) None  
4.3. None  
4.4. (a) None  
(b) None

5. Public Health Acts  
Housing Acts  
Building Acts  
Part III of the  
Environmental  
Protection Act, 1990  
Highways Acts  
None  
Refer to District Council  
reply.

6 and 7 Refer to District Council reply.

\*8.1.1. None  
\*8.1.2. None  
\*8.2. None  
\*8.3. Not applicable  
\*8.4. No Yes  
\*8.5.1. No Yes  
\*8.5.2. No Yes  
\*8.5.3. No Yes

9. Refer to District Council reply.

\*10.1. No Yes  
\*10.2. No Yes  
\*11. None

12. Refer to District Council reply.

\*13. No Yes

14 and 15 Refer to District Council reply.

16. None

NOTES: Refer to Page 3 if replies to any Part 2 enquiries are required.

Any queries arising from answers given on this form to be addressed to County Secretary and Solicitor quoting the Search No.

\*All enquiries marked with an asterisk will be answered jointly by both the County Council and the respective District Council.

Proper Officer M.O. Holder.

Date 7 FEB 2000

Under arrangements made between the District Council and the County Council, both Authorities respond simultaneously to this Form of Enquiries, having regard to their respective responsibilities. Where the answer to a question is to be supplied by the District Council this is stated on the form. The replies above are furnished after appropriate enquiries and in the belief that they are in accordance with the information at present available to the officers of the County Council but on the distinct understanding that neither the County Council nor any officer of the County Council is legally responsible therefor except for negligence.

**PART II**

(Replies to be given to questions in this Part where the applicant has initialled the Form of Enquiries.)

7. NONE

21. Refer to District Council reply.

\*22. None

23.1 ~~No~~ Yes

23.2 ~~No~~

24, 25, 26, 27, 28, 29, 30 and 31 Refer to District Council reply.

32. No Yes

33. Refer to District Council reply.

\*34. From 1st April 1996 Wiltshire County Council ceased to have responsibility for Waste Regulation Authority matters, all enquiries should be addressed to:

**Districts of North Wiltshire and West Wiltshire**

The Environment Agency,  
North Wessex Area,  
Rivers House,  
East Quay,  
Bridgwater,  
Somerset. TA6 4YS.  
Tel: 01278 457333  
Fax: 01278 452985

**Districts of Kennet and Salisbury**

The Environment Agency,  
South Wessex Area,  
Rivers House,  
Sunrise Business Park,  
Blandford Forum,  
Dorset. DT11 8ST.  
Tel: 01258 456080  
Fax: 01258 455998

3. Public Footpaths (FP.43 + FP.69 Calne Without) and a Bridleway (BR.77 Calne Without) are shown on the enclosed copy of the Definitive Map of Rights of Way.

9.

35, 36 and 37 Refer to District Council reply.

10.

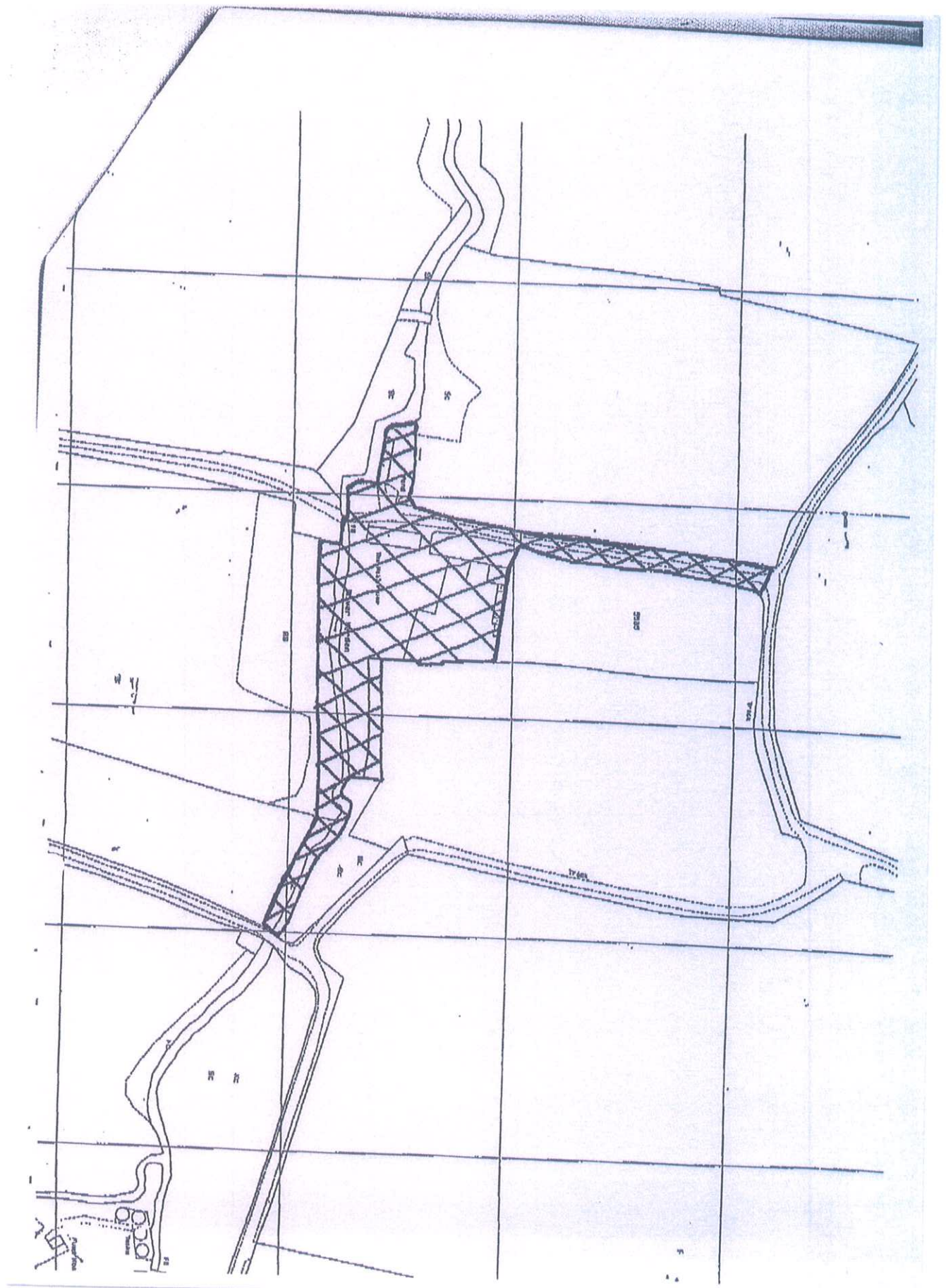
NONE

38. Refer to relevant Water Authority or District Council reply.

Proper Officer M.O. Holder

Date 7 FEB 2000











COUNTY ROAD SCHEDULE

CLASS: UNCLASSIFIED ROADS

Division No. ...3..... Melksham.....

New Number	Old Number	Description	Km
3303	7008	Calstone-Mill Lane. From U/C3302 about 320 metres north of Bridge R.7/99, leading east past Methodist Chapel and south to Calstone Mill	0.52
3300	7005	Calne-Blackland-Calstone. From C.247 about 90 metres south of Knights Marsh, leading southeast and east past Blackland Farm, across C.50 past Calstone Reading Room and Manor Farm to South Farm. Including spurs leading north from near Manor Farm to Bridge R.7/98 northeast to East Farm and southwest opposite East Farm road. (Part known as Maundrells Lane).	3.45

1/3

An...  
 1/3 1/3, 2/3, 3/3  
 1/3 1/3 1/3  
 1/3 1/3 1/3  
 1/3 1/3 1/3



## GUIDANCE FOR LOCAL AUTHORITIES

*England:* Rights of Way Circular 1/2009, see below at para.6-1861.

*Wales:* Welsh Circular Nos 44/90 "Rights of Way Act 1990", see below at para.6-1331/2; 5/93 "Public Rights of Way", see below at para.6-1451 and 6/93 "Recovery of Costs of Public Path and Rail Crossing Orders"-see below at para.6-1457.1.

**[THE NEXT PARAGRAPH IS 2-200]**

## GENERAL NOTE

2-200

An authority (see the notes to s.118 above) may make a public path diversion order if satisfied that the diversion is in the interests of the owner or occupier or lessee of the land or, alternatively, is in the public interest. This provision was substituted by the Wildlife and Countryside Act 1981 and is considerably wider than the previous version of the section which had required that the diversion should either secure the more "efficient use" of the land or that it would provide a shorter or more commodious route. The order is subject to the confirmation of the Secretary of State for the Environment and creates a new way and extinguishes the old.

A diversion order may be made on the application of the owner, lessee or occupier of the whole of the land crossed by the part of the path or way to be diverted or it may be made by the relevant authority on its own initiative—e.g. where the diversion is considered to be in the public interest.

*The Structure of the section: the statutory discretion*

The structure of this statutory provision has some similarities to that contained in s.118 above. The section starts by investing in the local highway authority an inherent discretion in determining whether the statutory requirements have been met—encompassed in the words "Where it appears to a local highway authority..." The statutory requirements themselves are not absolutes. The authority has to decide whether "in the interests" of the owner etc or of the public it is "expedient that the line of the path or way, or part of that line, should be diverted". Finally, the decision to make the order is expressed as a power—they "may" make the order. The existence of this discretion has been accepted by the court in *Hargrave v Stroud DC* [2002] EWCA Civ 1281. Per Schieman, L.J. at para. 15:

On the face of the subsection therefore the authority has a discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled."

Notwithstanding the different discretionary elements, if a Council obviously took into account irrelevant factors or failed to take into account relevant factors or otherwise acted unreasonably the decision could be open to challenge; see *Padfield v Minister of Agriculture, Fisheries and Food* [1968] A.C. 997; *Secretary of State for Education and Science v Tameside MBC* [1977] A.C. 1014; *Hargrave v Stroud DC* (above); *Ashbrook v East Sussex CC* [2002] EWCA Civ 1701.

Once made, the order may be the subject of objections. The submission of objections removes the power of the local highway authority to confirm the order itself. To obtain confirmation the order must be submitted to the Secretary of State. However this does not mean that local authority must submit the order to the Secretary of State. It now seems settled that a local authority has a discretion whether or not to submit the order i.e. whether or not to proceed with the order: *Hargrave v Stroud DC* (above), per Schieman, L. J., at para.19

"There is no express provision as to what is to happen in the, no doubt rare, case of the authority changing their mind as to the desirability of diverting the footpath after having made an order. But for my part I see no reason why, other things being equal, they should not change their mind. There is often in these questions no blindingly right answer. . . I can see no reason why one should construe this Act of Parliament in such a way as to put the authority into a straitjacket where it must continue the process just because it has started it."

Buxton, L.J. made the point equally forcefully, at para.33

"I therefore approach section 119 on the basis that it would need clear words in the section to impose upon the Council the initial obligation to make an order once an application is made to it. Far from there being the words in that sense there are in my judgement clear words in the opposite direction, by the use by Parliament of the word 'may' in s.119(1). True it is that on one reading of the section it might be said in literal terms that the licence to the Council to exercise its discretion extends only to the making of the order, and not to the submission of the order to the Secretary of State. But that is only one possible reading of the section. On another reading, even of the literal

words, the discretion of the Local Authority continues past the stage of the making of the order and into the stage of considering whether to submit the order to the Secretary of State. In light of the background considerations that I have already ventured to refer to, it seems to me that the latter reading is by far the more cogent interpretation of this section. As my Lord has said, the process of inquiry and the process of consideration will be a continuing one, and indeed the Local Authority not only may, but ought to, retain an open mind on whether or not it can support the propositions originally put before it in the light of local reaction."

It follows, equally, that the Secretary of State or his Inspector, when making their decision, have a discretion whether or not to confirm the order.

#### *The statutory criteria*

Like s. 118 this section sets out the matters to which the decision maker is to have regard differently in subs.(1) (the order making stage) and subs.(6) (the order confirmation stage). At the order making stage the issues are whether it is expedient in the interests of the landowner, lessee or occupier or in the interests of the public, that the order should be made. At the confirmation stage, the decision maker has again to be satisfied as to these matters and also

"that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on the enjoyment of the path or way as a whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it . . ."

However, the decision maker is also to take into account the provisions for compensation in subs.(5). A landowner whose land simply adjoins the line of the new way will not fall within the category of land affected by the creation of the new way under para.(c) above: see *Allen v Bagshot RDC* (1971) 69 L.G.R. 33.

These provisions imply a lesser, or at least different, exercise at the stage when the order is made than is to be carried out by the confirming authority. There may be good reason why the consideration of the issues set out s.119(6) should be left to the confirmation stage. At that point, the extent of any public objection or support for the order will be better known—there may well have been a public inquiry to consider the objections.

In *Ramblers Association v Secretary of State for the Environment Food and Rural Affairs* [2012] EWHC 3333 (Admin) Ouseley J. accepted that the test which the local authority had initially to apply under subs.(1) was different from that applicable to the Secretary of State's consideration under subs.(6) of whether or not to confirm the Order. At para.25 he said:

"The question for the Council and indeed the question for the Inspector is whether it is expedient in the interests of the land owner that the order be made. It is perfectly obvious why such a question has to be asked and answered at the outset. If it is not expedient in the interests of the land owner, it is difficult to see why the order would be made in the first place. But it is undoubtedly an important separate question.

26. It is plainly not an all-embracing discretion because the Council would otherwise be obliged to make an order once it was satisfied that it was in the interests of the land owner that it be made. The purpose of the discretionary power is to enable the local authority to consider other relevant factors which, in my judgment, clearly do include those that are set out more specifically in section 119(6) and any other relevant matters.

27. When, however, the Secretary of State or Inspector is considering the section 119(1) expediency question under section 119(6), he must do so by confining himself to what is expedient in the interests of the land owner. He is not at that stage concerned with the exercise of the discretionary powers which arises once a conclusion has been reached about what is expedient in the interests of the land owner. That wider class falls to be dealt with under the second expediency question in section 119(6)."

However, the expediency issue in s.119(6) was not confined to the specific factors in sub-para (a) to (c), nor to the effect of compensation on the land onto which the path might be diverted. It covered all things material. Looking at the subs.(1) test, the question of whether the land owner bought knowing the footpath, or bought not knowing of it, or bought taking a chance that he might be able to obtain a diversion order, however, has nothing to do with whether it is expedient in his interests that the order be made.

Nor did the question whether making the order might set a precedent. The precedent issue was capable of being a relevant issue under subs.(6). But, notwithstanding the fact that Secretary of State had conceded that the owners knowledge of the existence of the path at the time of their purchase of the property was relevant under subs.(6) (which the judge doubted) it was not one which could carry much weight.

Under s. 118 there has been some caselaw concerning these different tests and whether the decision maker may fall into error at the order making stage by taking into account matters to be determined at the confirmation stage; see para.2-198 above.

Section 119(1) gives a discretion to the local highway authority. However, it has been suggested in *Hargrove v Stroud DC* (above) that the order making authority may still take into account the matters set out in s.119(6) in deciding whether to make the order in the first place and in deciding whether or not to refer the order to the Secretary of State if objections are lodged; per Schieman, L.J. at para. 17.

"In my judgment the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment, entitled to take into account the matters set out in s. 119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed."

However, the factors to be considered at the confirmation stage do have to be tackled carefully and systematically. In *Young v Secretary of State for Food and Rural Affairs* [2002] EWHC 844 (Admin) the court had to consider the relationship between the expediency test in subs.(6) and the consideration of whether or not the path was substantially less convenient to the public. It was pointed out that subs.(6) has three elements to it. First there is the consideration of expediency according to the test in subs.(1), i.e. whether it is expedient that the path should be diverted in the interests of the landowner or the public. Secondly, there is the test whether or not the path is substantially less convenient to the public in consequence of the diversion. Third there is the test whether it is expedient that the order should be confirmed having regard to the matters set out in subs.(6)(a)-(c), i.e., inter alia, having regard to the effect which the coming into operation of the order would have on public enjoyment of the path or way as a whole. The court took the view that these were indeed three separate tests and that the Inspector had conflated the second and third tests in deciding not to confirm the Order by considering that the path was substantially less convenient by reason of its impact on the enjoyment of the public of the path or way as a whole. The decision was quashed. Turner J. said:

"27 ... In my judgment the expression 'substantially less convenient to the public' is eminently capable of finding a satisfactory meaning by reference to consideration of such matters as the length, difficulty of walking and purpose of the path. Those are features which readily fall within the presumed contemplation of the draftsman of this section as falling within the natural and ordinary meaning of the word 'convenient'.

28 I find it not to have been within the contemplation of the draftsman that the considerations contained within subparagraphs (a) to (c) of subsection (6) should have been intended to qualify the word 'convenient' as well as the expression 'expedient to confirm the order having regard to the effect which... the diversion would have on public enjoyment of the path as a whole'."

The significance of what might otherwise appear to be semantic distinction is that a substantial negative impact on enjoyment of a path (e.g. amenity) is to be balanced against the interests of the land-owner rather than to be considered as a bar to the confirmation of the order.

As to what might be taken into account in deciding whether or not an order is expedient in the interests of the landowner, the decision in *Roberton v Secretary of State for the Environment* [1976] 1 W.L.R. 371 may still be relevant. An application was made for the diversion of a footpath running near to the Chequers mansion house, on the ground that there was a real fear of an assassination attempt on the Prime Minister; the path ran within 275 yards of the terrace. The order for diversion was made under the former version of this subsection. Held, that in the circumstances the order was expedient "for securing the efficient use of the land" within the subsection. It may be noted, however, that the *Hargrove* decision (above) related to an application by a landowner on similar security grounds.

In *Ashbrook v East Sussex CC* [2002] EWCA Civ 1701 the question arose as to when a local authority might properly exercise its discretion to divert a highway which has been deliberately obstructed rather than seeking to enforce against the obstruction. The landowner had deliberately obstructed the right of way by erecting a large barn over it and by fencing off the line of the path and also by blocking it by placing a line of refrigeration units across it. He had failed to comply with notices from the local highway authority under s.143 and s.137ZA of the Highways Act 1980 requiring him to remove the obstructions and had failed to comply with orders under s.137 of the 1980 Act from the magistrates court requiring him to do so. He did, however, apply for a public path diversion order which would have taken the path

around the obstacles. That order was duly made by the local highway authority and was the subject of objections. Kate Ashbrook, an officer of the Ramblers Association, sought to challenge the decision of the local authority to make the Order on the grounds that the Council departed from its own published guidelines and that this departure defeated Ms Ashbrook's own legitimate expectation as to how the Council would deal with the matter. The Council's footpath officer had adopted informal guidelines as to the circumstances in which it would normally be prepared to make diversion orders. These were publicly available. In this Note the Council indicated that it would only make a diversion order in a case where a path had been obstructed by a structure or building if, inter alia, the removal of the obstruction was not considered reasonably achievable.

At first instance the court held that these guidelines did give rise to a legitimate expectation that the Council would be guided by its own policy and that, if it chose to depart from that policy it would have to give reasons for that choice. However, it was open to the Council to conclude that removal of the barn was not reasonably achievable. The Court of Appeal allowed the Claimant's appeal, holding that the Council should have taken into account the deliberate and persistent flouting of the law at the time when they decided whether or not to submit the order for confirmation. They had not done so and the decision should, therefore, be quashed.

The Council may require an applicant landowner, occupier or lessee to enter into an agreement with them to defray, or to make a contribution towards, any compensation which may be payable to a third party as a result of the making of the order and any expenses which may be incurred or recovered by the local highway authority in making the new way up to the standard required for use by the public: sub s (5).

*The restrictions imposed by subsection (2)*

Subs.(2) does not allow an Order under s.119 to be made where the diversion would alter the point





IN THE MATTER OF  
THE HIGHWAYS ACT 1980

AND IN THE MATTER OF  
THE DIVERSIONS OF PARTS OF CALW89, CALW89A AND  
CALW89B

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**OPINION**

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1. I am instructed to advise Mr and Mrs Moore in relation to their application under section 119 of the Highways Act 1980 to divert these three bridleways.

2. I have read the draft Application under section 119, which I understand is to be submitted to Wiltshire County Council in the next few days. I confirm section 19 of the Application, which sets out the relevant law and the legal tests, is correct and is applicable to the circumstances of this Application. In my opinion the legal tests are satisfied here.

3. I have visited the Property and walked the relevant parts of the existing bridleways and the length of the proposed diversion. I have had over 50 years' experience of matters relating to rights of way, and this is one of the clearest cases where a highway authority would allow the application and make the necessary orders, in accordance with the relevant legal tests.

4. Ultimately, the Council must carry out the requisite balancing exercise. In relation to the considerations contained within sub-paragraphs (a) to (c) of section 119(6) of the 1980 Act, Turner J, in Young v Secretary of State for Food and Rural Affairs [2002] EWHC 844 (Admin), concluded that these considerations were not intended to qualify the word “convenient” as well as the expression “expedient to confirm the order having regard to the effect which ... the diversion would have on public enjoyment of the path as a whole”. It follows that if there is any substantial negative impact on the enjoyment of a path, of which there appears to be none, this is to be balanced against the interests of the landowner rather than to be considered as a bar to the confirmation of the order: see the comments of the editors in *Encyclopaedia of Highway – Law and Practice* Volume 1, at para 2-199. In consequence, the mere fact that there may be the objections based on additional length, more limited width (if this be the case at all), or lack of a durable surface, such considerations do not amount to a bar on the making or confirmation of an order, but are merely matters that must be balanced against the expediency in the interests of the owner. In my opinion the Application demonstrates that that balancing exercise should favour the making of the diversion orders.

5. The Council can and should accept the Application and make the order.

**Falcon Chambers  
Falcon Court  
London EC4Y 1AA**

**BARRY DENYER-GREEN**

**30<sup>th</sup> May 2018**

IN THE MATTER OF  
THE HIGHWAYS ACT 1980

AND IN THE MATTER OF  
THE PROPOSED DIVERSIONS OF  
PART OF CALW89, CALW89A AND  
CALW89B

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**OPINION**

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THRINGS LLP  
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BATH  
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REF D WALSH



24.8.



## Order Decision

Inquiry opened on 25 November 2014

by **Sue Arnott FIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 17 December 2014

### Order Ref: FPS/Y3940/4/10

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is dated 18 October 2012 and is known as the Wiltshire Council Parish of Pewsey Path No. 62 (part) Diversion Order and Definitive Map and Statement Modification Order 2012.
- The Order proposes to divert a section of public bridleway at West Wick near Pewsey, as detailed in the Order map and schedule. It would also modify the definitive map and statement to take account of the change to Bridleway 62.
- There were three representations and eighteen objections outstanding when Wiltshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision:** The Order is confirmed subject to the modifications set out in the 'Formal Decision' below.

### Preliminary matters

1. I held a public local inquiry into the Order at the Village Hall in Milton Lilbourne on 25 November 2014 having walked the routes in question the previous afternoon. I made a further inspection of the site and its surroundings after closing the formal proceedings but, since none of the objectors were present at the inquiry, I was unable to make arrangements to be accompanied by objectors as well as supporters for this second visit. I therefore carried out both inspections of present and proposed routes alone.
2. This inquiry was originally scheduled for April 2014 but was adjourned until November in response to a request from the applicant's agent. The reason for the request arose from the need to ascertain the position as regards planning permission for the engineering works that would be required in order to provide the proposed new bridleway with an adequate surface. Since concern over the construction of the new track was a significant factor for many objectors, it made sense to defer consideration of the Order until this issue was resolved.
3. The planning authority has since concluded that the intended works fall within the class of development permitted under Schedule 2 of Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 and therefore prior approval under paragraph A.2(2)(d) of Part 6 is not required.
4. As a consequence of this process, detailed specifications for the proposed surface treatment and profile of the new route were prepared and publicised. Both Mr Ward, appearing for the order-making authority, Wiltshire Council (WC), and Mr Litton on behalf of the applicant suggested the absence of objectors at the inquiry might indicate that having been reassured that a

satisfactory alternative route could and would be constructed, they had chosen not to pursue their objections. Of course that is a possibility although I have received no further communication from any of the objectors to support or contradict this explanation. I have considered the points raised in the written objections even though the authors did not appear at the inquiry to add weight to their concerns. However, regardless of the attendance of any of the parties at the event, I need to be satisfied that the proposed diversion meets the tests set out in the relevant legislation if I am to confirm this Order.

#### **The Main Issues**

5. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
  - (a) it is expedient in the interests of the owner of the land crossed by Bridleway 62 that the right of way in question should be diverted;
  - (b) the new termination point of the bridleway (being on the same highway) will be substantially as convenient to the public;
  - (c) the new route to be provided will not be substantially less convenient to the public; and
  - (d) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of the way as a whole, and (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing way and the land over which the new way would be created together with any land held with it, having had regard to the provision for compensation.
6. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area. I am also mindful of the requirements of the Equality Act 2010.

#### **Reasons**

##### ***The interests of the owner of the land***

7. In essence, this proposal seeks to divert a public bridleway out of a farm yard and away from the farm house for three main reasons: security, safety and privacy.
8. Yet many of the objectors draw attention to the fact that this farm has not been active for several years and that therefore the reasons to support re-alignment of the bridleway are of little substance. Indeed it was apparent to me when walking the present line of Bridleway 62 (between the points marked on the Order map as A and B) that there was little evidence of current agricultural activity at West Wick Farm visible from the public right of way.
9. However the evidence presented by the applicant and his agents, both before and at the inquiry, reveals a farm management plan for the future that would significantly intensify usage of the farm yard with both machinery and livestock.
10. The applicant purchased this property subject to an existing agricultural tenancy of part of the land; this tenancy will expire in 2016 and the land will be taken back in hand. Agent Mr Brown explained that the business plan will see West Wick becoming a working farm again, consisting of 236 acres, of which 203 will be planted with arable crops and 19 acres will consist of pasture and

woodland. The farm buildings will be renovated and improved and the yard will be used on a daily basis for a range of activities connected with the farm.

11. It is predicted that both safety and security will be compromised by the continued existence of Bridleway 62 through the heart of the farm complex. Whilst objectors argue that riding the route between A and B at present is not problematic at all, doing so through a busy farm yard would create dangers for horses, riders and farm workers alike if, for example, a horse is spooked by a tractor. Cyclists and walkers may be equally at risk.
12. Agent Mr Anstis submitted that it is simply not feasible to improve safety by fencing the bridleway on its present line to separate the public from farming activities. Neither would fencing the whole farm yard improve security if the public right of way remained through the middle. He explained how the applicant's ability to make adjustments to the farm buildings is limited since many are listed. Parts of the site are not visible from the house and office and, in his view, it is unrealistic and impractical to expect all doors to be locked all the time on a working farm. A recent attempted theft had been prevented by a farm worker recognising an intruder, but the public could not be expected to distinguish between people lawfully on the farm and potential thieves.
13. Some objectors question the need to divert the bridleway to increase privacy at the property; some argue the applicant knew the path was there when he bought West Wick Farm and others say that many public rights of way pass through farm yards and close to private dwellings in the locality without difficulty or complaint.
14. Although the applicant has every right to seek a diversion on the grounds of privacy, I do not place a great deal of weight on this factor, particularly as the ground floor rooms with windows facing the bridleway are not main living rooms. Yet I recognise the significant benefits residents would enjoy if the public bridleway does not run immediately past the main door into the house.
15. In summary I accept that West Wick Farm will become an active agricultural holding once the current tenancy expires in 2016 and that thereafter the presence of the public using Bridleway 62 through the yard will bring safety risks to the fore together with the heightened security concerns often expected with a rural property of this nature. Given the limited options for addressing these issues by other means, I am satisfied that the diversion sought by the applicant would benefit him as land owner. In conclusion I consider it would be expedient in the interests of the owner of the land to divert this bridleway.

***Convenience to the public***

16. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, surface and gradient in the context of the role Bridleway 62 plays in the local network including the impact of the altered point of termination on Bridleway 23.
17. A simple comparison between lengths of the present and proposed routes (290 metres and 310 metres respectively) reveals little difference between the two. Given the overall length of Bridleway 62 in Pewsey parish is over 500 metres and its continuation to Oare a further kilometre or so, an additional 20 metres is of little consequence. However, the extra 150 metres between the points of termination, B and C, need to be taken into account. Here it depends entirely whether the user is following the connecting Bridleway 23 northwards or

southwards. In the former case there will be an overall saving in distance of some 130 metres; in the latter there will be an additional 150 metres to cover as well as the slightly longer new Bridleway 62. Yet even in the worst possible scenario, I recognise the additional length will undoubtedly be less convenient but I do not consider it to be *substantially* so in this context.

18. For pedestrians there is, at present, the additional option of a direct connection with Footpath 24 at point B. The diversion would result in the full additional 170 metres becoming necessary to continue and by a much less direct line via A-C-B or the reverse. I recognise this would be an inconvenience for walkers to an extent but one which I need to balance alongside other factors. I also bear in mind that, local resident, Mr Munday's impression was that relatively few people use this east-west route; most generally use Bridleway 62 along with Bridleway 23, although no actual survey data is available to support this.
19. In terms of its width, the Order schedule makes clear that the present 3 metres recorded in the definitive statement for section A-B would be increased to 4 metres for the new A-C. That is a very clear advantage (although I recognise that in practice much of A-B is unrestricted and may have been used beyond its legally defined extent.)
20. An additional feature related to the increased width is the nature of the surface that is proposed for the new route. Although it is intended to be constructed so as to be sufficiently robust to withstand agricultural vehicles, it is expected to be used by such traffic very infrequently. It is designed to offer a choice of surfaces to suit the different user types. Whilst providing hard limestone 'wheel tracks', it will also have a central grass section, giving it a more 'rural' appearance than the tarmac of the main access drive to house and farm and thus more in keeping with the character of the local countryside.
21. The applicant has indicated that he intends also to improve the condition of the lane surface between points B and C, thereby ensuring that users making the connection with the new bridleway would not be disadvantaged. WC confirmed that it would be prepared to authorise not only works to the surface of Bridleway 23 but also vegetation management along its verges.
22. It is the junction of the two bridleways at point C that is of greatest concern to many of the objectors. Looking at the proposed route at present, I can understand why, in the absence of any information about the intended profile and associated works, publication of the Order prompted so many objections from regular users. The present route A-B varies from a very shallow gradient to virtually flat whereas the proposed A-C has a gradual incline up to point C where it drops dramatically into the lane below. The applicant's intention is to re-grade the profile westwards from C so as to achieve a slope of no more than 1:25. The plans produced by his agents satisfy me that this will be possible. Once completed to the satisfaction of WC and when enhanced by the planned upgrading of C-B and with the vegetation cut back, I accept this would offer a substantially as convenient path surface for all types of bridleway user.
23. Under this heading I have looked at the question of public safety, especially in relation to agricultural vehicles which, it is said, may occasionally use the new track. In comparison with the activity likely within the farm yard once the business is developed, I consider the risks to the public on the new route to be significantly less. I am reassured by the applicant's agents who explained that the main vehicular use would be northwards out of the yard and effectively



across the new bridleway, not along it. With clear visibility here, the likelihood of conflict between tractors and the public, with or without horses, is reduced and is more easily and safely managed.

24. Finally, one of the arguments against the proposed diversion is based on concerns over what is described by an objector as an aggressive dog at Ley House (near point C). WC confirmed it had received no complaints about this and I was informed at the inquiry that there are two dogs living at the property: a Lurcher (which is kept indoors) and a Dachshund. Although I do not dismiss lightly the concerns of those intimidated by dog barking, in this case (and given the size of the dog), this is not a factor that would prevent me from confirming an otherwise satisfactory diversion.
25. Returning to the statutory test, this requires a comparison between present and proposed routes. Having considered all the factors which fall under the 'convenience' heading, I conclude the proposed route in this case would be less convenient in some respects but an improvement in others. Overall I consider the proposal would result in an alternative that would be *not substantially less convenient* than the present route and on balance, taking into account all relevant issues, I accept the proposed new point of termination of Bridleway 62 at point C on Bridleway 23 would be *substantially as convenient* as the present connection at point B.

#### **Public enjoyment**

26. Several objectors protest that the alternative route proposed would be of a wholly different character and remove the opportunity to see at close hand some of the interesting listed buildings with the farm complex. They argue that following the route through the settlement is part of its attraction, some claiming that the bridleway is of ancient origin.
27. In fact the historical evidence researched by WC has failed to provide any support for the existence of this bridleway before the late nineteenth century. Nevertheless, I understand the appeal of the farm in its current condition. Yet I have evidence before me that the air of quiet tranquillity within the yard will change significantly from 2016 onwards, such that the experience of bridleway users can be expected to alter considerably.
28. The consequence of the incline up to the western end near C is that the new route will afford superb long-distance views. From this elevated level there is an alternative view of the house and farm complex with its historic buildings seen in the context of the landscape, exchanged for close up but limited views of buildings within the yard.
29. Although none of the objectors voice such concerns, WC is aware that many members of the public dislike using rights of way which pass close to private dwellings where there is a feeling of intrusion, despite having the right to use the highway. This diversion would take the bridleway well away from the windows and doors of West Wick House, staying in more open countryside.
30. Having walked the whole route from Oare to the junction of Bridleway 62 with Bridleway 23 at B, I agree the proposal would result in an alternative route east of point A that would be of a rather different nature yet one that would be entirely consistent with the character of the route as a whole. Having considered the various aspects raised, I conclude it would be different but not any less enjoyable.

**Other considerations**

31. Compensation issues are not relevant here and no adverse effects arising from the diversion on any of the land concerned have been drawn to my attention. The owner of the land affected by the proposal is the applicant who clearly supports the Order.
32. WC drew attention to several aims and objectives within the Rights of Way Improvement Plan for Wiltshire which offer support for the proposed diversion, especially those under the headings "Managing network changes and improvements" and "Improving ease of access".
33. In particular Ms Madgwick highlighted the benefits of the diversion for the public: its greater width, the mixed surfacing to suit all types of user and the additional confidence people with partial sight or hearing impairments might enjoy as a result of this route following a field edge rather than through a dangerous farm yard. Whilst these relate generally to the convenience issue, I have given particular weight to the advantages for people with these types of disabilities.
34. At the inquiry I queried the provisions within the Order for the coming into operation of the new route. Articles 1 and 2 anticipate completion of the necessary works within 28 days of confirmation of the Order. Given the extent of the works, I consider that to be overly optimistic. In response, Mr Ward (for WC) submitted an alternative form of words that would ensure the public will not lose the right to use the present route before the new route has been completed to the satisfaction of the highway authority (WC). For the applicant, Mr Litton endorsed WC's request for this modification to the Order.

**Whether it is expedient to confirm the Order**

35. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public. In doing so I note that the proposed diversion is supported by the British Horse Society and the Wiltshire Bridleways Association and that neither Pewsey Parish Council nor the Rambler's Association oppose it.
36. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 119 of the 1980 Act, I conclude it would be expedient to confirm the diversion proposed by this Order with a modification to better provide for certification of the works proposed to construct a suitable surface for the new bridleway.

**Conclusion**

37. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification noted at paragraph 34 above.

**Formal Decision**

38. I confirm the Order subject to the following modifications:
  - Delete from Article 1 (in line 3) the words:  
"... after 28 days from the date of confirmation of this Order, ..."

and substitute:

"... upon the local highway authority giving written certification that the work to create the public bridleway referred to at paragraph 2 below has been satisfactorily carried out, ..."

- Delete from Article 2 (in line 1) the words:

"There shall be at the end of 28 days from the date of confirmation of this Order (be) ..."

and substitute:

"Upon certification of the works as specified at paragraph 1 above or at the end of 56 days from the date of confirmation of this Order whichever is the sooner there shall be ...".

*Sue Arnott*

**Inspector**

## **APPEARANCES**

### **In support of the Order**

Mr T Ward                      Counsel instructed by Mr Gibbons, Solicitor to Wiltshire Council

*Who called*

Ms S Madgwick                Wiltshire Council; Rights of Way and Countryside Section

Mr J Litton                     Queens Counsel instructed by Marriotts, Property LLP

*Who called*

Mr R Anstis                    Chartered Surveyor, representing the applicant

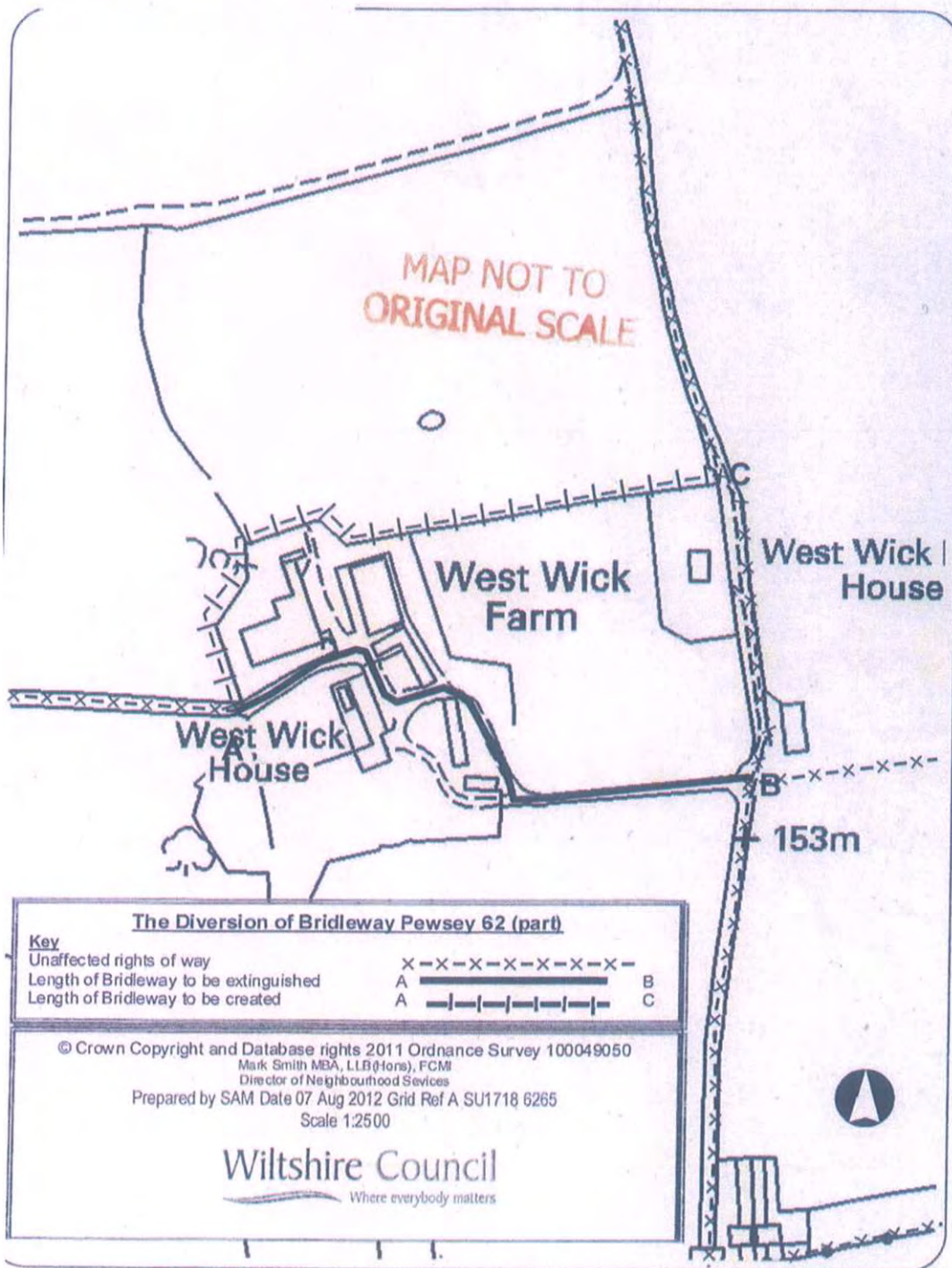
Mr M Munday

Mr A Brown                    Marriotts Property LLP

Mr G Griffin                    Applicant

## **DOCUMENTS**

1. Copies of statutory notices and certification
2. Copy of the statutory objections
3. Wiltshire Council's statement of case with accompanying background documents, its statement of grounds for seeking confirmation and comments on the objections
4. Proof of evidence of Ms S Madgwick
5. Applicant's statement of case together with appendices
6. Proof of evidence of Mr R Anstis and supplementary proof
7. Email to Wiltshire Council dated 22 November 2014 from Jane Brown



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## Wiltshire Bridleways Association

*Campaigning for riders rights since 1970*



17 January 2019

Ms S Madgwick  
Rights of Way and Countryside  
Waste and Environment  
County Hall  
Bythesea Road  
Marlowbridge  
Wiltshire  
BA14 8JN

Your Reference:- SM/CALW

Dear Ms Madgwick

HIGHWAYS ACT 1980, S. 119

WILDLIFE AND COUNTRYSIDE ACT 1981 S. 53

CONSULTATION REGARDING CALNE WITHOUT FOOTPATHS 40 & 41 PLUS  
BRIDLEWAYS 89, 89A & 89B.

I thank you for your correspondence under even reference dated 16 November 2018 and for granting an extended response time to Friday 18 January 2019.

The committee of Wiltshire Bridleways Association support the proposal to correct the Definitive Map and Statement with regard to Calne Without footpath 40 & 41.

Now turning to the question of Calne Without bridleways 89, 89A & 89B.

Perusal of a Draft copy of Calne Without Parish Council Minutes for a meeting held on Monday 9 April 2018, identified item 18, CALSTONE BRIDLEWAY, which reads:- 'Cllr Hislop reported that the applicants had been asked to resubmit the application to divert the bridleway as a way of breaking the current stalemate following a meeting chaired by Baroness Scott. Cllr Kronig had drafted a letter to send in support and to highlight the poor condition of the current

bridleway. Cllr Malpas suggested changing the wording to reflect the effort Baroness Scott had gone to. Cllr Cook suggested replacing “disappointed” with “pleased”. This letter has not been viewed by WBA.

On Monday 19 November 2018, correspondence was received from Mr Moore, attached to which was his latest submission to Wiltshire Council, minus enclosures. This document was circulated to all WBA committee members. Having read that correspondence, it is evident the Mr Moore, together with some of his supporters refuse to accept or acknowledge that the definitive line of the bridleway subject to this, and a previous application, is an integral part of a continual and historic road network.

At point 5 of his covering letter, Mr Moore records “A good number of your members regularly ride the proposed bridleway and find it more convenient.”

Firstly I will deal with the question of membership. In common with some other areas of Wiltshire, WBA membership within the Calne area has never numbered above 4/5. During late February 2018, WBA received a block application for fifteen new members. By October 2018 that number had grown to twenty five. The reason for this is perhaps best explained by the contents of an email dated Tuesday 27 February 2018 which reflects, “I’ve been trying to encourage new members amongst my friends and clients at Hampsley but many of them are upset that they might lose their preferred route around the Mill they have been told by a 3<sup>rd</sup> party, (who I don’t know), that they needed to be WBA members to raise an objection to the council.

Secondly, the question of convenience, which I will deal with in tandem with point 6 of the covering letter. “The proposed bridleway has opened up this part of the countryside to many more people, particularly those with mobility difficulties, children being led on horseback, parents with buggies, walkers, cyclists etc. It is very noticeable from the submission that Mr Moore deals only with the section of bridleway leading past the Mill and the proposed diversion. He makes no mention of the terrain which must be navigated in order reach the proposed diversion points. Therefore, on Wednesday 12 December 2018, a visit was made to this location. Beginning from Manor Farm at the junction of CALW89 and unclassified road 7005, the bridleway follows a downhill grass and mud slope in a northerly direction towards Calstone Mill. At point ‘C’ on the attached map, the proposed diversion is signed with two plastic direction arrows as ‘Permissive Bridleway’ There is no signage to indicate the definitive line of CALW89 which continues through a difficult to open wooden gate. The ground between the gate and the narrow wooden bridge, point ‘Y’, was firm and well grassed. It is agreed that this wooden bridge, identified on the map as a footbridge, is a replacement for the original stone bridge demolished in 1968. It is not of a standard for equine use and will need to be replaced. Once clear of the bridge, the line of the bridleway is constructed mainly of a firm gravel and



stone base but continuation along it was obstructed by two parked cars, later to be increased to three.

Returning to point 'C' on the map, the surface of the proposed route is as described by Mr Moore. On crossing bridge 'X' the path begins to climb and in parts becomes sparsely grassed and slightly muddy.

At the point where the proposed bridleway emerges onto a metalled road, point 'A', several meters north of the end of the end of CALW89B, the turning is again marked by two plastic direction arrows as 'Permissive Bridleway'. As with point 'C', there is no signage to confirm the definitive line.

Continuing in a northerly direction this short metalled road joins CALW77, a bridleway. This is constructed of a stone and mud surface, littered with pot-holes and very wet. Given the condition described of the way users must pass before reaching the proposed new bridleway, it is hard to comprehend how the applicant can justify claiming the new section has opened up the countryside to those who would not normally be to access it.

Photographs to confirm all the above comments are available.

Also on Wednesday 12 December 2018, five persons from the Calne area attended the WBA monthly committee meeting to express their views on this matter. Despite assurances that all were WBA members, only four were subsequently identified as such, the fifth being Mrs LA Moore, joint applicant.

At the conclusion of the meeting, those attending were requested to submit written accounts of the points raised. Subsequently a number of letters were received, focusing mainly around two common points. These were, the dangers of the narrow wooden footbridge on the definitive line, and the need to negotiate around parked cars, people and household pets. One reported that on Sunday 16 December 2018, the line of CALW89 had been blocked by six vehicles, a number of people and dogs. Consequently this rider had taken the option of using the proposed route.

Two members reported using the definitive route for a period of fourteen and twenty five years respectively, but despite considering it to be dangerous, had not considered it necessary to report any defects to Wiltshire Council for repair.

Also in his submission, Mr Moore produced a table of figures for users of both routes between March and December 2017. WBA would be interested to learn by what method these numbers were collected.

At the end of his covering letter, Mr Moore reported, "I should just mention that if we are unsuccessful in diverting the bridleway, in due course the proposed bridleway will be closed. I appreciate this will have an impact on people who would not otherwise be able to enjoy this part of the countryside, but we will have done our best to create the opportunity. There are two reasons:-

1. We are not prepared to have two bridleways run through our property. When we bought the property, Wiltshire Council assured us there were no rights of way.
2. In due course the bridge would need to be replaced by a much larger modern bridleway bridge. This would completely change the character of the property. We are not prepared to wait for this to happen. We shall adopt alternative plans for the Malthouse which will also include the land over which the proposed bridleway passes.

When I saw Mr Moore on Wednesday 12 December 2018, he made a further statement, claiming instead that if they failed in this quest, the family will be forced to sell the property and move.

It is also noted from the documentation that Mr Moore considers the Mill to have no historic value. Searches show that on 31 July 1986, Calstone Mill was recorded as having Grade 11 listed status by Historic England for its Special Architectural or Historic Interest, number 253559 refers. This listed status is also reflected in four previous planning applications for the property, N/00/02065/LBC, N/01/02708/LBC, N/08/02173/LBC and N/09/00933/LBC.

In conclusion, WBA submit that with the exception of the current wooden footbridge on the definitive route, the line of CALW89, 89A & 89B is more than adequate. We also note that it is the responsibility of the land owner to ensure that the route remains clear of obstruction, thus allowing free passage to all. We believe Mr and Mrs Moore have failed in this duty by not only the parking of vehicles, but also with regard to signage, thus encouraging/directing users away from the definitive line. There is only one bridleway sign along this entire definitive route.

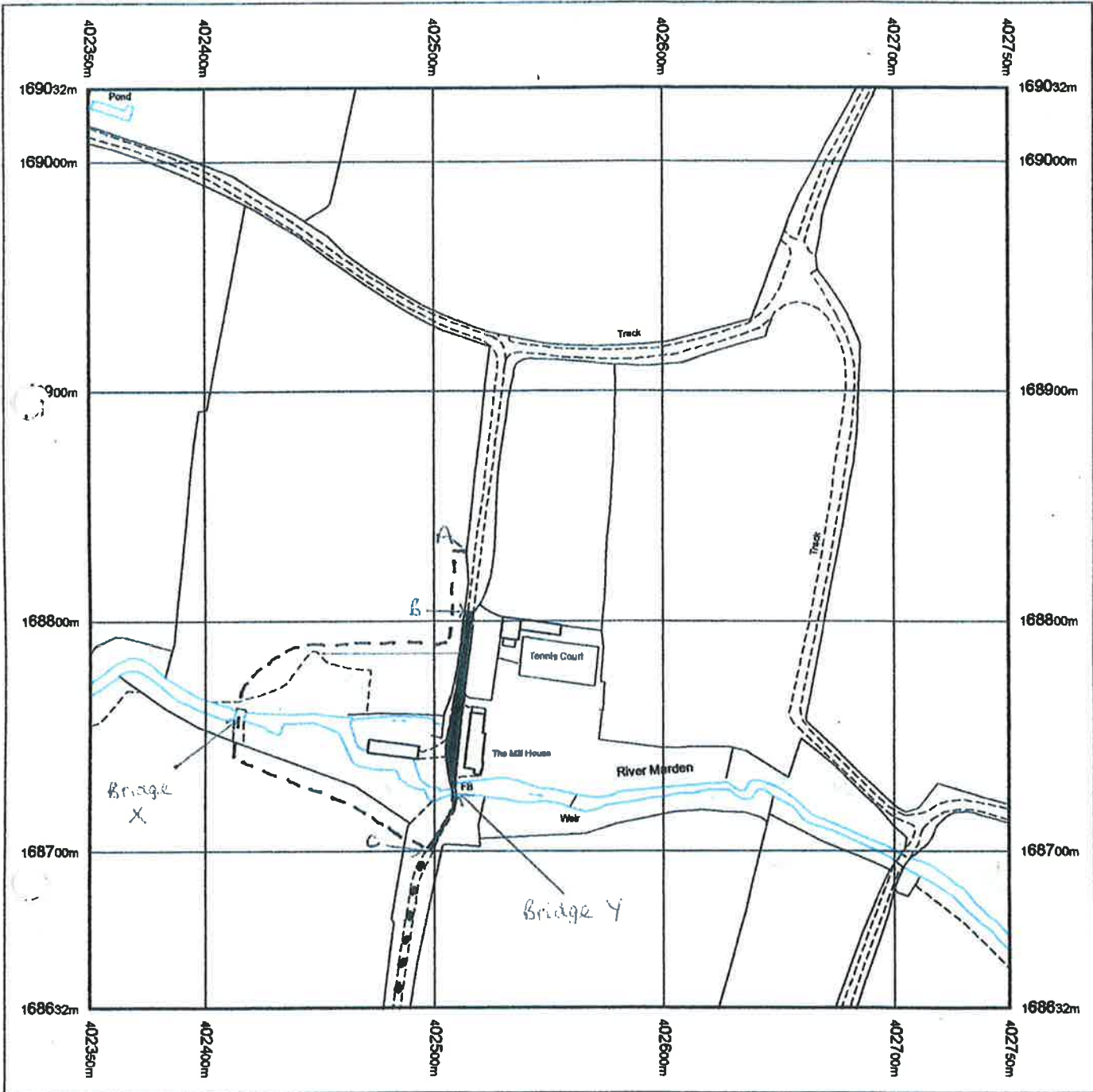
With the exception of two WBA committee members, it is considered that in the event this application is approved, much pleasure derived from the clearly historic aspect will be lost by ROW users.

With the exception of one committee member, Wiltshire Bridleways Association believe that no advantage will be gained by users should this application be approved but clearly much pleasure derived from the historic aspect will be lost. We therefore wish to register our strong objection and urge Wiltshire Council to give serious consideration to declining this application.

Yours sincerely

  
N Beardsley

Norman Beardsley  
Chairman,  
Wiltshire Bridleways Association



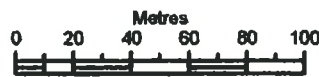
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**NOTE OF SUPPORT IN RESPECT OF THE APPLICATION REFERRED TO  
BELOW FROM THE BRITISH HORSE SOCIETY (WILTSHIRE).**

**Highways Act 1980 s119 and Wildlife and Countryside Act 1981 s53 –  
Consultation re Calne Without Footpaths 40 and 41 (“Footpaths”) and  
Bridleways 89,89A, and 89B (“Bridleways”) at SN11 8QF (“Consultation”)**

This note is written, formally, in my capacity as Bridleway Officer (Legal) for the British Horse Society (Wiltshire County) (“BHS”), to confirm the support of The British Horse Society for the Application for the Diversion (“Diversion”) of part of bridleway CALW89 and bridleways CALW89A and CALW89B submitted by Thrings on behalf of Mr and Mrs Moore dated 31<sup>st</sup> May 2018 (“2018 Application”).

### **1. Background**

The BHS has consistently supported the intended Diversion right from the beginning of its involvement in approximately October 2015. Accordingly, it supported the first Application for diversion (actually made by Mr and Mrs Moore in 2013) (“2013 Application”) and now supports the 2018 Application.

It has done so, throughout, for substantially the same reason - this is an excellent Diversion which is an improvement on the current route and meets the needs of walkers, runners, equestrians and cyclists. It may also improve the position of the disabled. All in all, it is in our view, a better route than the current one. In addition the Diversion is one that, in my view, Wiltshire Council has full power to grant under s119 Highways Act 1980.

I am aware from numerous exchanges with different parties involved with the Diversion, that the 2013 Application and Wiltshire Council’s refusal of it produced some strong responses of disbelief. For example, the support by Wiltshire Council of the objection lodged by the Wiltshire Bridleway Association (“WBA”), a body associated with the BHS, resulted (to judge from traffic on Facebook) in a number of resignations from the WBA.

I am also aware that the fact that the BHS has supported the 2013 Application, and now supports the 2018 Application, might be misinterpreted as support for the Applicants themselves. That is not the case. The “client” (for want of a better expression) of the BHS is the bridleway and the Diversion and no one and nothing else.

I, therefore, want to make it clear, right from the outset, that this note (which sets out continued support for the Diversion from the BHS) has been produced following an impartial review of the facts of the Diversion as set out in the 2018 Application, and applying the criteria set out in s119 Highways Act 1980.

The WBA’s principal ground of opposition to the 2013 Application, as I understand it, was largely one of principle, namely that the current bridleway

route shown on the Definitive Map (“Current Definitive Map Route”) was an ancient historic route.

As such, it seemed that the WBA’s view was that this ancient route should be preserved at all costs and regardless of consequence. This was so, despite the presence of, in my view, a significantly better route as set out in the (now) 2018 Application.

I am not sure on what evidence they reached this conclusion. It is a fact, however, that there is material evidence to the contrary. That material evidence is summarised in the 2018 Application.

Wiltshire Council (through Barbara Burke) (“WC”) reviewed the 2013 Application and refused it on the principal grounds set out in paragraphs 4.1 – 4.8 of the WC Decision Report dated 1.12.2015 (“WC 2015 Decision Report”).

I have read the WC 2015 Decision Report and I find some of the reasoning in there extremely difficult to follow. There is very little discussion in the WC 2015 Decision Report of, for example, the difficulties and dangers presented by the Current Definitive Map Route nor of the glorious riding freedom offered by the 2018 Application route.

How then do I regard the 2018 Application from an equestrian point of view? And, in my capacity as the Bridleway Officer (Legal) for the BHS (Wiltshire County), does the revised route, in my view, satisfy s119 HA 1980 so that Wiltshire Council ought properly to allow it?

## **2. My Riding Experience**

I set out below a short note of my riding experience. I do this because the 2018 Application requests diversion of the several bridleways involved under s119 Highways Act 1980 (“s119 HA”).

As such a key test is s119(6) HA which, inter alia, requires “that the path or way will not be substantially less convenient to the public in consequence of the diversion....”.

So, what is my level of riding experience so that I can bring an equestrian element to this issue? And what does that experience bring to this issue so as to enable me to compare one route against the other from a rider’s point of view? And, how might that background have a bearing on the issues in question for the purposes of s119 HA?

I first learned to ride when I was about 27 years old. That is late in life in riding terms. Throughout my riding life (until my retirement from full time work as a Solicitor in 2015) I have been a weekend rider. I learned to ride to pre Novice Eventing level and competed occasionally until about 1994, when the demands of work and family made carrying on competing impracticable. I turned instead to friendly hacking for longer distances.

I have been on numerous long distance hacks in England up to a length of about 32k. I have ridden in Africa on riding safaris on several occasions and also ridden across parts of Normandy in France. I have, in the course of the African rides, had to ride out fast at full gallop to avoid a very angry elephant and stood, mounted, on a narrow stone bridge, with a steep drop into a donga below, as my only potential route of escape from a full grown male lion that we had suddenly come across, just 80 or so yards further down the track. In 2008, I took a three months sabbatical from my Firm; and my wife and I rode a 1000 miles across different parts of Wales and England raising £3,500 for charity.

In 2017 we rode approx 140 miles in 8 days across Spain in 42 degrees of heat (ie 10 degrees hotter than the summer of 2018 in the UK). Since semi-retirement in 2015, I ride with my wife about 3/4 times a week for between one and three hours a time.

Despite having ridden thousands of miles, the vast majority of them outside the safe confines of the equestrian school, and experienced some awkward situations, I rank (in horse terms), in my view at least, as a novice rider. Novice riders are not necessarily nervous riders, but novice riders are not deeply experienced horsemen through and through.

When I encounter an awkward situation, I still need to pause and think (if circumstances allow) whilst the truly experienced rider, who has ridden all his/her life, knows what to do almost by instinct. That knowledge often comes from having ridden lots and lots of different horses each with their own peculiar capabilities and downsides. Weekend/novice riders, by contrast, tend to have one mount (perhaps for several years) and to ride only that one horse.

Equally, when I assess an awkward drop or a lengthy slithery path, or equivalent, I do that in the way a novice does it. My question to myself will be "Will my horse do that route"? The very experienced horseman, however, might well say "If I take this horse, and attack that climb or issue in this way, then I know from my experience (usually of riding lots and lots of other different horses) that this horse can do it".

My background, and in particular the fact that I came to riding late, therefore assists me in the task of assessing a route in a way that is sympathetic to the needs of a significant number of riders out there. Lots of us out there are what I am - a novice rider. So, we want to ride routes that we feel comfortable with; routes suitable for novice riders.

### **3. Inspections of the Bridleways concerned**

I have inspected the bridleways in question on two occasions.

The initial visit was on 9<sup>th</sup> February 2016 when, together with Sarah Jones of the BHS, I first familiarised myself with the site, the related bridleways and the two bridges referred to in the 2018 Application. I also discussed with John Moore the

issues he was encountering, the intended permissive route as well as his intention to put down at his own cost a rider/horse friendly 3 metre wide track of over 100 metres in length on the north side of the river.

The second was in July 2017 when I re-inspected the site after the horse/rider friendly track referred to above had been installed and was in use. It was, quite clearly, a wonderful addition; and, very obviously, to judge from the number of visible hoof prints in it, much in use. By the same token, there was little evidence, based on that visit, of the Current Definitive Map Route being used, although it was very clearly available for use.

#### **4. A comparison of the 2018 Application route with the Current Definitive Map Route**

##### **4.1 The Current Definitive Map Route**

The Current Definitive Map Route has, to my eye and applying my experience from an equestrian point of view, the following key characteristics:

4.1.1 Starting from the north, the drop down to the house over CALW89B and CALW89A is pretty steep and not very inviting to ride;

4.1.2 The entrance to the driveway is gated. The gate is “horse friendly” but, if closed, must be negotiated. Negotiating a gate, where it needs to be opened and then closed again, is often a difficult and, regularly, a time consuming task for novice riders.

Riding out with my wife (we mostly ride together), I prefer to avoid gates if possible. Where they cannot be avoided, then more often than not, one of us will dismount, open the gate for the other and then remount. We do this both for safety and for reasons of convenience. Remounting safely often involves the rider concerned finding a verge or tree stump that is high enough to use as a make shift mounting block, and the other standing (mounted) in front of the horse being mounted, this to reduce the risk of an accident.

The whole process can, and often does, take time. It also, certainly, does detract from the enjoyment of the ride - getting on and off, particularly from a spooky or high spirited mount, can be awkward, inconvenient and, sometimes, unsafe. In addition, there can be no doubt that the free flow of the bridleway route is lost.

4.1.3 CALW89A passes right over the otherwise private drive of The Mill House and, to use it, involves riding right past the front windows and front door of The Mill House.

I never enjoy this sort of element. I feel that the owners of the house have a right to their privacy if at all possible; and I do not like invading that privacy, if that can reasonably be avoided. Riding past, with eyes averted, consciously trying not to look through windows or into private gardens is uncomfortable in my view.



Nor, in my case, is this feeling peculiar to The Mill House. There is an equivalent situation that I am aware of at Great Durnford in the Woodford Valley where the river runs close to The Mill House at DURN 5 and WFOR 13. And, whilst I have never ridden this route, I have walked it (or sections of it) on several occasions in 2017. I felt the same there, on each occasion.

4.1.4 Once past the house, you need to cross the River Marden using a narrow bridge. The bridge crosses the fast moving millstream. It is a horrible bridge, narrow, low sided and poorly maintained by Wiltshire Council.

I have ridden narrow, low-sided bridges both out hunting on the Kent Marshes and in Africa perfectly happily, but I would not ride this one. I would turn back instead and try to find another way through to the other side if I possibly could.

This bridge is, frankly, thoroughly dangerous from a rider's point of view. The wooden surface looked, to my eye, unsafe and, very probably, slippery when wet or frosty. There was absolutely no room to turn, once on the bridge with a horse. If anything happened, there was a real risk of either or both of horse or rider landing in the Mill Stream with, potentially, very dangerous consequences for horse or rider or both.

Equally, it would not be much better to dismount and to lead a horse across, although I accept it would be safer for the rider, at least. From a riding point of view, once dismounted, a rider has far less control over a horse; and sometimes less capability to prevent an accident.

In any event, I care about my mount and respect him. I would not want to risk the bond of trust that grows over time and many miles between horse and rider by exposing him to the risks presented by this bridge.

There is one aspect that I can say for certain: I would never expose a child on a pony to this bridge, however experienced the child or mount might be. The risks are horribly obvious and the consequences of any of those risks turning into reality, too awful to contemplate.

It seems to me to be very likely that WC has neglected its highway repair and maintenance responsibilities in this location. Sadly, in Wiltshire, that is not an unusual situation: another such example that springs immediately to mind, without my having even to pause for thought, is MINETY 55; a key route offering safe off-road riding, yet so founderous as to be almost unrideable. The surface of CALW89 south of the bridge is another.

It is not that WC do not want to maintain routes, but the fact is that there is simply insufficient money in Wiltshire to maintain the substantial network of routes that exist – a situation that is surely set to get worse. Contrast the wonderful alternative Diversion route: beautifully sited, well funded and supported by the undertakings given in the 2018 Application.

4.1.5 Assuming that you can get across the bridge on CALW89 (and few of us would want to risk the trip), at least on the two occasions that I inspected, I found the route on the other side was slippery, boggy and would (at best) prove, in my view, difficult to ride. It might be practicable coming from the north (I trudged up the bridleway on foot, slipping and sliding as I went) but to ride down it, particularly when wet was, at best, for the very experienced.

4.1.6 That done, you meet the second gate in the orchard below point C. Gating the route here is perfectly fair, to my mind. There is a security issue to consider particularly after the very unfortunate incident involving the Applicant's daughter; and the gate itself was designed for equestrian use, where so many that we encounter are not. However, gates on slippery, steep paths (even equestrian gates) are always difficult to use and often not safe. I have already referred above to our practice at home for negotiating gates reasonably safely.

4.1.7 So, here on this route, the access from the north is steep, the invasion of privacy awkward, the bridge dangerous and (at best) treacherous to cross, the going underfoot in parts, boggy and awkward and the gates that must be negotiated time consuming to go through, potentially involving dismounting and remounting with all of the time and related risk that that involves plus, of course, the disruption to the free flowing feel of the route.

4.1.8 When you have negotiated this type of section, the natural reaction from some one like me is "pew, done it, still alive, not in the water, horse and rider intact and united/reunited; let us hope it improves from here".

4.1.9 Would I look forward eagerly to a return trip over the same route? I would be very chary of riding it in wet, frosty or windy conditions nor would I want to be on it in heavy rain ie any of the circumstances in which horses can get spooked. So, at best, and particularly from a safety point of view, it is a fine summers day ride only, in my view; and then only after assessing that bridge and the route uphill/downhill which follows it/precedes it with the greatest of care.

4.1.10 WC in their Decision Report of 2015 state: "The existing route provides a better surface for a wide cross section of users". They did not define who this "wide cross section of users" was. However it is difficult to see how they could possibly have reached this conclusion based on any inspection of the route.

The route is extremely difficult, in places, to cross safely. For example, it was not easy, without slipping and sliding, to walk up or down between points Y and C. I cannot, on that basis, see how it provides a "better surface" for any of the ordinary groups who might have used the route: walkers, riders and cyclists. I strongly suspect that the disabled would struggle, even armed with a "Tramper".

## **4.2 The 2018 Application Route**

The 2018 Application Route has, on the same basis as above, and again coming from the north, the following key characteristics:

4.2.1 It is free of gates throughout. The Applicant has undertaken not to gate the new route at any point (see paragraph 12.18 of the Application). This from an equestrian point of view:

(a) allows the rider to pass untroubled and in a very convenient, easy and free flowing fashion over the whole route. The route is not broken up by the process of opening and closing gates;

(b) enables the rider to enjoy the views and to concentrate, in an uninterrupted and thoroughly enjoyable manner, on the wonderful experience of riding across the country;

(c) can reduce, markedly, the time that it takes to pass over the route. Comparing gated with ungated, particularly where anyone has to get off and then back on again, there can be quite a difference there. Gated tends, very often, to be much slower, even if the alternative route is a little longer;

(d) overall, ungated is, to me at least, very often a much more pleasurable experience. Certainly, that applies here.

4.2.2 The route, at point A turns you slightly away from the house and away from that feeling of invading privacy.

4.2.3 Spectacular views open up to ones right as well as below, views which, at best, are rather obscured by comparison with the route down the drive over CALW89A.

4.2.4 And the route is invitingly wide. I always find that width, in situations such as these, engenders confidence both in the horse and in the rider. There is a wonderful feeling of freedom. Not only can everyone look around and get a feel for where they are and where they are going next, but if anything goes wrong (a horse spooks or whatever) there is room to sort the situation out – contrast the steep, awkward, narrow, boggy Current Definitive Map Route and that awful bridge plus those gates.

And then there is that inviting canter over the BHS approved surface unworried by any sense of slipping or sliding etc. It is just “lets go – this is why I learned to ride!”

4.2.5 Below that you come to the restored stone bridge. This is of a good safe width and it has excellent safe equestrian rails on either side. A nervous horse, staring down at the mill stream below – perhaps this is the first time that this horse has seen an obstacle of this nature - can safely, gently and calmly be encouraged over this bridge. So, both rider and horse have a good experience. And the bond between them is enhanced – contrast the scary and potentially uncomfortable Current Definitive Map Route.

WC in their rejection of this section of the route in their Report dated 1.12.2015 (“WC 2015 Report”) referred to the confluence of walkers, horse riders and

cyclists at this bridge producing a “conflict situation” and that “ the proposed diversion would require all users to share the confined space of the bridge and has the potential to adversely affect their enjoyment of the route as a whole” (paragraph 4.6d).

I can honestly say that I struggle with the emphasis placed by WC on this aspect of the WC 2015 Report. All that I can say is that I have ridden thousands of miles of narrow tracks, encountered hundreds and hundreds of walkers and cyclists and never encountered “conflict”. Each party simply has regard for the needs of the other and both can pass sensibly, often with a smile or a word of thanks and a wave, to continue to enjoy the day.

In addition, the bridge on the Current Definitive Map Route is significantly narrower than the one on the 2018 Application route, so, if “conflict” is an issue to WC then it exists to a far greater degree on the current route than the 2018 Application route.

4.2.6 At this point, the proposed new route swings left handed over a gently inclined uphill track with rather splendid views of the Mill House below and to the left. This section has, I understand, recently been surfaced and made even better than it was before. In addition, those works required the grant by WC of Planning Permission. It is difficult to understand why WC would, in the circumstances of this route, have granted Planning Permission for these works if they did not see them, and the route that they served, as beneficial.

The Mill House stands out in its setting from here; and you can look at it without the faintest element of embarrassment creeping in. This is vastly better in my view than averting ones eyes in embarrassment as you creep past the front door and windows of the house on CALW89A.

And, in addition, the Applicant has undertaken to maintain those views (see The 2018 Application).

So, everyone gains from this approach: the owners of the Mill House regain their privacy and security, much needed after the incident involving their daughter. The riders lose that sense of embarrassment that comes with proximity to the Mill House when riding on CALW89A, the route is splendidly accessible and easily capable of being ridden and the surrounding views are glorious, with the Mill House being seen by everyone in its proper setting.

What is there not to like?

4.2.7 And the going throughout over the whole length of the diversion A – C is usable year in and year out, so far as I could see from my inspections. Certainly, there were none of the issues that would be encountered on CALW89 when, after riding the steep driveway and crossing bridge Y (if you are brave or foolhardy enough) you would be faced with the difficult route up to point C. No heavy, boggy and horrible going, nor any gates.

4.2.8 The 2018 Application differs from the 2013 Application by the removal from it of that section which suffered from the wire stay which the WC 2015 Report described as a “serious hazard” (para 4.6e).

To describe this wire stay in this situation as a “**serious** hazard” (my emphasis) is, I think, rather excessive. If that is really their view, then they ought also to remove the “**serious** hazard” constituted by the same design of wire stay on (for example) the bridleway up from Whiteparish in the south east of the County at WHIT 39 and WHIT32. Yet, they have not suggested that at Whiteparish. So, why have they laid this degree of emphasis here?

I completely agree, though, that the wire stay could constitute a hazard (as it could at WHIT 39). I raised the same concern, quite independently, with the Applicant when I first inspected on the 9<sup>th</sup> February 2016. So, that concern is now removed.

4.2.9 The 2018 Application Route is also one that I think could safely be ridden by children of a wide range of ages mounted on different ponies of different experience ranges. In addition, a vast spread of riders of widely differing abilities, mounted on horses themselves of differing experience and capability could, in my view, use it safely.

That can absolutely not be said of CALW89A/CALW89, particularly in respect of the section over the bridge and up/down the section leading to/from point C.

### **4.3 Conclusion on this aspect**

So, for all these reasons, the 2018 Application Route is vastly to be preferred to the Current Definitive Map Route: vitally, you can ride the whole of the 2018 Application Route safely and at any time of the year. It is a splendid, free flowing, convenient, safe and uninterrupted route, affording wonderful views both of the surrounding countryside and of The Mill House itself.

In addition, it accords The Mill House the security it properly needs; and guards against a recurrence of the appalling incident involving Mr and Mrs Moore’s daughter, Matilda (see the 2018 Application itself).

None of that can genuinely be said of the Current Definitive Map Route despite the views of WC expressed in their 2015 Report or, for that matter, the views of the Wiltshire Bridleway Association.

And the 2018 Application Route genuinely does have “a better surface for a wide cross section of users”. It is wider and more accessible too; and it affords splendid views. It can safely be traversed, in my view, by children on ponies, novice riders, those leading horses from another (ridden) horse, walkers and, I suspect, cyclists. In addition, the disabled, surely, have a better set of options on the 2018 Application Route than on the steep and treacherous Current Definitive Map Route.

So, it is very difficult indeed to see how WC could have reached the conclusion that they did at paragraph 4.8.a of their 2015 Report:

**“It is not considered the application to divert the bridleway meets with any of the aims of the Countryside Access Improvement Plan 2015-2025” (my emphasis).**

In any event, that comment can certainly not be made of the 2018 Application Route.

Yet, WC in their Decision Report of 2015 said that the “difference in lengths of the two routes is significant.....The length of the proposed alternative route is substantially longer at 222 metres”. WC cited the case of R (Young) v. Secretary of State (2002) and expressed the view that this difference in length was a material factor in their conclusion that the Diversion failed the test of “will not be substantially less convenient to the public in consequence of the diversion” (s119(6) HA).

In fact, the difference in length is only 100 metres (see the 2018 Application, paragraph 12.5). In addition, the Young case makes it quite clear that length is not the sole factor. Instead, as the PINS Guidance makes it clear “the view in Young was that the decision maker would have to **balance** the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order” (my emphasis) (see the extract quoted by WC themselves at para 4.4 of the WC 2015 Decision Report).

So, length alone, is not a determining factor. Instead it is a factor in the balancing act that must go on to determine “not be substantially less convenient”.

The Oxford English Dictionary definition of “convenience” is (so far as relevant) “the state of being able to proceed with something without difficulty, the quality of being useful, easy or suitable for someone”. This is the “natural and ordinary meaning” of the word “convenient”.

To my mind, the issue of “not be substantially less convenient,” in this context, therefore, also imports a discussion, for example, of the issue of “convenience” of passage as well as “safety” of passage coupled with the issue of the “overall experience” of passage. All of these factors are consistent with the above core definition.

**On that basis I would submit that the 2018 Application Route is a significant improvement on the Current Definitive Map Route and more than meets the test of “not be substantially less convenient”.**

A difference of 100 metres (even 222 metres) is as nothing when taken in the context of a proper country walk or run of a few miles or a decent ride across the country of (say) a couple of hours duration and perhaps 6 – 10 miles in length. It is even less to a cyclist who is, quite probably, going a lot further.

What does matter, though, is convenience or “flow”. A poorly surfaced, slippery and slithery, gated route is not “convenient” and does not “flow”. Instead it is plain hard work!

If you are a walker, you have to stop, find the catch on the gate, open it, turn round and then close it again. That is inconvenient (if only in a small way) but nevertheless, the rhythm and “flow” of the walk is temporarily interrupted. That position is magnified if you are a runner or cyclist: having got into your “stride” you do not want to break stride to perform those same tasks; and then have to work hard to regain your rhythm and stride all over again – that wastes energy too. On a horse, where you may well have to get off in order to open and close a gate safely (particularly if it is above or below you on a path or way), then the break in “flow” is considerable and the route is inconvenient.

And then there is the factor of “time” and its relationship to “convenient”. “Convenient” can and should, in my view, also be considered in terms of time spent to cover a route. The 100 metres here of additional length on the Diversion needs, properly, to be balanced against the need to open and close, safely, at least two gates on CALW89 and CALW89A and the time taken to do that.

It is certainly the case that on a horse moving at (say) no more than a measured trot (very possible on the glorious free flowing and gently inclining Diversion) at a speed, therefore, of 5-6 mph (approx.) the extra 100 metres of the Diversion route would be covered in a fraction of the time that it would take to open and close two sets of gates. I strongly suspect that that would apply even if the rider concerned was capable of using the “heel and hinge” technique and was an expert in doing it – most of us novices just curse and get off!

If the route were, however, covered at a canter, moving at (say) a measured 15 or so mph, then there can be no doubt at all that it would be vastly quicker to cover the ungated Diversion than the Current Definitive Map Route (even assuming that the issue of the horrible bridge did not exist). With that bridge, the whole issue is magnified.

And, yet, the Diversion is just that: a glorious canter.

Furthermore, the gate on the southern side of the property is, necessarily, on a downhill slope. This means that, if you approach it from the north, you would normally pull it towards you. Then you have to pass through, hanging somehow, onto a gate that wants to swing (now) away from you. To close it, that gate (now) has to be pulled towards you, up a slope, as you pass through and can easily “get away from you”. You then have to start all over again. That is both a factor of gravity and part of its design. So, this is a further factor in the decision as to whether or not to get off – the last thing you want is a gate getting out of control in this way – accidents happen that way.

The position is no better if you approach from the south: the gate now tends to swing away from you. You can get through safely but now have to retrieve it and

then (pushing uphill) close it. The time taken to do this is not insignificant, as are the risks associated with the process.

So, overall, it is very difficult to see why, particularly when viewed in terms of the need to create a route here that is sustainable in the long term, regardless of ownership of The Mill House, the Diversion should not be supported in every way possible.

## **5. The Proof of the Pudding**

To those who still doubt my thesis here, I say: **“Enough of theory, what do the user statistics say? Is that not a real measure of “not be substantially less convenient”?**

After all, that which is “inconvenient” is rarely used in preference to the “convenient”, particularly when viewed over a reasonable period of time and particularly when (as here) both routes are open for use concurrently and so can be directly compared.

**The central question to my mind, when two routes of this nature are set, the one against the other in close juxtaposition, and (vitaly) both are available for use at the same time, is which is actually used?**

And, if the Diversion route is the more used, then it is very difficult indeed to say that that proposed Diversion route fails to satisfy the test of “not be substantially less convenient to the public in consequence of the diversion” where it is the more used.

So, what is the evidence of use?

Here, the Applicant has gathered evidence over two years; and the result of that evidence is simply overwhelming.

### **Record of Use of Bridleways 2017**

#### **Proposed Bridleway**

<b><u>Month</u></b>	<b><u>Riders</u></b>	<b><u>Cyclists</u></b>	<b><u>Walkers and Runners</u></b>	<b><u>Total</u></b>
March	34	1	41	76
April	83	1	82	166
May	98	6	84	188
June	79	3	103	185
July	82	6	93	181
August	103	0	144	247
September	74	3	121	198
October	50	3	125	178
November	39	3	76	118



December	17	0	65	82
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**NB** Groups of individuals travelling together are counted as 1.

### **Official Bridleway**

<b><u>Month</u></b>	<b><u>Riders</u></b>	<b><u>Cyclists</u></b>	<b><u>Walkers and Runners</u></b>	<b><u>Total</u></b>
March			3	3
April			0	0
May			1	1
June			1	1
July			0	0
August			0	0
September			3	3
October			3	3
November			1	1
December			2	2

**NB** Groups of individuals travelling together are counted as 1.

### **Record of Use of Bridleways 2018**

#### **Proposed Bridleway**

<b><u>Month</u></b>	<b><u>Riders</u></b>	<b><u>Cyclists</u></b>	<b><u>Walkers and Runners</u></b>	<b><u>Total</u></b>
March	22	0	154	176
April	49	4	94	147
May	73	1	102	176
June*	74	2	52	128
July	85	7	89	181
August	98	4	155	257
September	82	1	118	201
October	96	7	122	225
November	66	1	140	207
December	50	1	126	177

\* Proposed bridleway closed between 4<sup>th</sup> June and 12<sup>th</sup> June 2018 for track works.

**NB** Groups of individuals travelling together are counted as 1.

### **Official Bridleway**

<u>Month</u>	<u>Riders</u>	<u>Cyclists</u>	<u>Walkers and Runners</u>	<u>Total</u>
March	1	0	1	2
April	0	0	4	4
May	0	0	2	2
June*	0	0	11	11
July	0	1	1	2
August	0	1	1	2
September	0	0	0	0
October	0	0	2	2
November	0	0	1	1
December	0	0	2	2

\* Proposed bridleway closed between 4<sup>th</sup> June and 12<sup>th</sup> June 2018 for track works.

**NB** Groups of individuals travelling together are counted as 1.

I am not a statistician, rather a commercial property development lawyer. So, I have taken a headline look at these figures. Yet, even on that basis, it is apparent that in 2017 a mere 14 groups of people used the Current Definitive Map Route and every last one of them was a walker or a runner; yet, this is supposed to be a bridleway!

In contrast, over the same period in 2017, 1,619 groups of individuals used the 2018 Application Route and 934 of them were runners/walkers and 659 were riders.

So, only 0.85% of all users preferred the Current Definitive Map Route to the 2018 Application Route.

That goes some way towards suggesting that all of the arguments that I have propounded above are made out.

The point that will be made, of course, is that people tend to use an alternative when it is first offered, but revert over a period of time when the “new” route proves to fail the test of “not be substantially less convenient”.

**So, on that basis, what do the 2018 figures (above) suggest? They show, overwhelmingly, that the test is not failed; instead it is more than satisfied.**

They reveal that in 2018 only 1.47% of all users preferred to use the Current Definitive Map Route. That includes a period in June when the Proposed Bridleway was closed for an all weather track to be installed on the south side.

What is more, the popularity of this excellent route actually increased as word, no doubt of its ease, gentle gradients, facility of passage, convenience, flow and overall offering, spread. So, we find that whilst in 2017 the total of all users who

employed the Diversion was 1,619, by 2018 that number had increased to 1,875. Vitally, the number of walkers and runners using the 2018 Application Route had increased by more than 200 whilst the rider numbers had increased from 659 to 695 .

So, in my view, the Diversion meets the aims of the Countryside Access Improvement Plan and satisfies the tests under s119(6).

Vitally, it is also apparent that it satisfies the needs of every one of the class of users set out in these statistics: walkers, riders and cyclists – every single one of these groups is using the 2018 Application Route in preference to the Current Definitive Route **AND** they are doing so, consistently and over a material period of time.

That latter point puts paid comprehensively, and for ever, to the argument that the Current Definitive Route is preferable and that the 2018 Application Route fails the test of “not be substantially less convenient”: the public may pay deference to a new route for a patch, out of politeness for example; but if that new route is not better than the old, they revert soon enough where, as here, they have the opportunity. To revert where the old is better than the new, is human nature.

**Yet, that has resoundingly not happened here. And that can be for one reason alone: the new is, in truth, better than the old (look at the rising popularity, for example) AND the new more than satisfies the test under s119(6) HA 1980.**

## **6. Conclusion**

In my view, the proposed Diversion, with its improved access for all, its free flowing and time reducing nature, the works of improvement to the surface of the route both north and south of the stone bridge at X, the increased safety conferred by the Diversion, the undertakings given in the Applicants Letter of 2018 (which benefit Wiltshire County, its ratepayers and all user groups of the Diversion), coupled with the information and the route comparison set out above is one which the British Horse Society (Wiltshire) does, and should, properly support.

That conclusion is more than amply demonstrated by the user statistics. Furthermore, those user statistics are particularly telling in this context: here both routes are open concurrently, yet which is the more used? And is that difference marginal or overwhelming?

The Diversion meets, in my view, all of the tests under s119 HA 1980 and I support and agree also with the arguments under this head, set out in the Applicants 2018 Letter of Application (see, in particular, paragraph 19 of the 2018 Application).

Vitality, and in marked contrast to the Current Definitive Map Route, as the user figures demonstrate beyond any peradventure, it provides improved year round access and safe, off-road riding, cycling, running and walking benefitting BHS Members, other members of the equestrian community, walkers, cyclists, runners and (very possibly) the disabled.

Safety and getting equestrians (and other non-motorised countryside users) into the country off the roads is central to the policy and approach of the British Horse Society. It is also central to Government Policy in this area.

For all these overwhelming reasons, the Diversion that has been requested is very much within WC's powers to grant and should be granted without further ado.

Finally, if WC is still minded to refuse the 2018 Application, could I please ask that the matter be referred to the Secretary of State and an Inquiry held, so that all of the views involved in respect of this vital, important and connecting route can be properly and publicly aired and heard?

G. R. Bennett LLB,  
Bridleway Officer (Legal)  
British Horse Society (Wiltshire)

12<sup>th</sup> January 2019

**Madgwick, Sally**

**From:** Derek Walsh [REDACTED]  
**Sent:** 20 March 2019 12:43  
**To:** Madgwick, Sally  
**Subject:** RE: Diversion of the Bridleway at The Mill House, Calstone - your ref: SM/2018/08 (our ref: DW/202231-1)

Dear Sally

Thank you for forwarding this third objection. Although the points raised by this brief objection are covered elsewhere in our submissions I think it is appropriate to send you this brief note so that you have my response on the record.

Using the same numbering as the objection:

1. The interests of the landowner are a factor, amongst others, to be considered as part of the legal test (original submissions, paras 19.1 – 19.17). The issue of alleged historic use has been dealt with in depth but, as we know, the status of bridleway was established in 2009 and so I do not need to comment further here.
2. I have already dealt with the point about what was known at the time of purchase (original submissions, paras 17.1 – 17.9). Public rights are one of those protected interests but even a purchaser who bought land fully aware of a public right of way would not be prevented from applying for a diversion using the statutory process (this is obvious).

The option of 2 bridleways across my clients' property has also been dealt with previously (e.g. original submissions, para 21.8).

As ever, if you have any questions please do not hesitate to contact me.

Regards

Derek



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Our Ref: DW/202231-1  
Your Ref: SM/2018/08

Ms S Madgwick  
Rights of Way and Countryside  
Wiltshire County Council  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Letter also by email: [Sally.Madgwick@wiltshire.gov.uk](mailto:Sally.Madgwick@wiltshire.gov.uk)

(Hard copy and enclosures to follow by post)

19 March 2019

Dear Sirs

**Application to divert part of Bridleway CALW89 and bridleways CALW89A and CALW89B**

**Our clients: Mr and Mrs J E Moore, The Mill House, Calstone Wellington**

We have now had sight of the letters of objection sent to you following our clients' application. Although redacted (rightly) it is apparent that these letters have come from Mr Bill Riley and Mr Norman Beardsley.

Mr Riley appears to be writing on his own behalf (i.e. not on behalf of the TRF). Mr Beardsley purports to be writing on behalf of the Wiltshire Bridleways Association ("WBA") although we understand that members were not consulted, other than those attending a meeting in December 2018 who supported the diversion.

The remaining paragraphs are numbered for ease of reference. Numbers in square brackets are references to the enclosures.

1. Before turning to the substance of those letters we feel it appropriate to mention that in a meeting with Baroness Scott in February 2018, our clients were told emphatically by Ms Tracy Carter that the reason so much weight was given to the views of the WBA was that "they are part of the National Federation of Bridleways Associations ("NFBA"), and a statutory consultee".
2. Ms Carter and Baroness Scott may have been misled. The WBA is not part of the NFBA, nor is it a statutory consultee. Our clients have made enquiries of members of the NFBA. They are not

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aware of the WBA. The WBA does not appear on the NFBA website (<http://www.rightsofway.org.uk/bridleway-groups/>). Furthermore, the NFBA appears no longer to operate and the previous members look to the British Horse Society for guidance.

3. Our clients have no doubt that the WBA do a considerable amount of good work in keeping bridleways open but on the issue of diverting a bridleway, the position of the committee is emphatic. Their Constitution [1] states: -

*"The objects of the association are: -*

*To promote the permanent preservation for the benefit of the public generally and especially the inhabitants of the County of Wiltshire of the Byways and Bridleways within the county..."*

4. Furthermore, according to the WBA's website "*The Association continues to oppose any closure of riding rights of way ...*" (<http://www.wiltshirebridlewaysassociation.co.uk/>). That is a matter of principle although what is being offered in this case is the diversion to a much improved bridleway.
5. What is abundantly clear from the above extracts is that, as a matter of principle and regardless of whether a diversion would offer the public an enhanced bridleway, the WBA are duty bound to object. We submit that their objection letter should be read with that in mind.
6. Turning specifically to the letters of objection it appears that the common theme is the suggestion that the existing route through our clients' property is ancient and historic so we will deal with that as a separate point.

#### **Ancient and historic**

7. We have seen the email dated 11 March 2019 from Mr John Moore to you dealing with part of the history of the track (formerly Sir Edward's Drove and eventually part of U/C 7005). It appears from this that until sometime between 1802 and 1818 there was no access down the track to Calstone Mill. It was not an ancient or historic route.
8. It is well established that Ordnance Survey maps are only direct evidence of the topographical features which the surveyor found on the ground at the time of the survey – they do not provide evidence of status. Mr Riley refers to an OS map from 1808 but, as can be seen from the above, we accept that the drove was opened up at sometime between 1802 and 1818.
9. It is understood that the drove was opened up by the Bowood Estate to give easier access to the mill to their tenant farmers to the south of the mill.
  - It is clear that the track (later U/C7005) from the south, past Manor Farm, to the mill was not opened up until the early part of the 19<sup>th</sup> century.
  - In 1776 the Bowood Estate including the village of Calstone Wellington was bought by the Marquis of Lansdowne.



- East Farm, South Farm and Manor Farm were arable farms, the last two extending right up to the Roman Road above Calstone. Sprays Farm was predominantly a dairy farm. The farms extended down towards what is now the A4 and completely surrounded the mill. The farmers were all tenants of the Bowood Estate.
  - The track from the south would logically have been opened up to allow the tenant farmers at East Farm, South Farm and Manor Farm, all in the ownership of the Bowood Estate as well as Calstone Mill, to bring their grain down to the mill [2].
  - According to a History of the County of Wiltshire Volume 17:-
 

*"From 1776 to 1954 nearly all the land of Calstone tithing belonged to the owner of Bowood House. In 1954 George Petty-Fitzmaurice, marquess of Lansdowne, then the owner of Bowood House, sold East, South and Manor Farms to G.R. and Mr M. J. Maundrell".*
  - Sprays Farm is still owned by the Bowood Estate and let on an agricultural tenancy.
  - Calstone Mill remained in the ownership of the Bowood Estate until 21 July 1962.
  - The use of the track by tenants of the Bowood Estate would not have created any public rights of way.
  - The reason so much of the Bowood land was sold off in the 1950s was to pay death duties following the deaths of two family members in quick succession.
10. Having referred to the 1808 OS map, Mr Riley then refers to the 1818 Calne Inclosure Award and says the "road" is described therein as an "ancient lane". The 1818 Calne Inclosure Award refers to "Aw... One other public Bridle Way of the width of eight feet in its ancient track over Calstone West Field towards Devizes as the same is marked on the said Map C with the letters A.w.". We enclose a map of Blacklands (c. 1884) [3] (<https://www.british-history.ac.uk/vch/wilts/vol17/pp17-27>). The position of Calstone West Field is clear from this map.
11. It is also clear from the OS Map surveyed 1885, published 1889 (extract enclosed [4]) (<https://maps.nls.uk/view/102347989#zoom=5&lat=2985&lon=8471&layers=BT>) that the route referred to in the 1818 Calne Inclosure Award is the route running diagonally from just south of Manor Farm and East Farm, crosses Calstone West Field and meets up at Blacklands Crossroads (and then on towards Devizes). It is nowhere near The Mill House.
12. Furthermore, the 1818 Calne Inclosure Award depicts the drove as a track with no hedging between it and the mill [5].
13. Mr Riley states that there was a Public Carriage Road "towards Calstone Wellington" and suggests that it could only have passed The Mill House and along the current bridleway. This is not the case. There is a route from Cherhill to Calstone Wellington travelled due south from Labour in Vain Hill – see extract from OS Map surveyed 1885, published 1889 [6]. There was a spur leading west to Greens Lane and two further spurs at the end, one leading to South Farm and the other to East Farm. From the spur leading to Greens Lane, there is a spur which leads

south and round to join U/C 7008 and Theobalds Green. This spur is a bridleway (not a Public Carriage Road) and classified as CALW77. Alternatively, taking the spur route around South Farm would also take you to Calstone Wellington from where it meets with the "ancient track" across Calstone West Field and then towards Devizes. These are some distance from the mill and there is no reason why the route past the Mill House was the only route as Mr Riley implies.

14. Calstone Mill ceased to operate as a mill in the early 20<sup>th</sup> century and then became a dairy. It continued to be let from the Bowood Estate until 1962.
15. The Bowood Estate is settled land governed by the Settled Land Acts. Until the Settled Land Act 1925 the tenant for life (the then Lord Lansdowne) had no power to dedicate land nor could there be an implied dedication. It is clear that much later there was some movement of riders and walkers, through the mill, who may not have been tenants of Bowood (i.e. by which time some of the estate farms were in new ownership) but their exact status is unclear. Nevertheless, even if these were members of the public, any rights that were acquired then could hardly be regarded as ancient or historic.
16. Finally, even if the original route was to be classed as ancient and historic (which is not accepted), that is just another matter to be considered in the determination of the application and would not, of itself, be determinative of the matter.
17. We now turn to other matters raised in the letters of objection.

#### **Mr Riley's letter**

18. We do not intend to comment on every point made by Mr Riley but rather to focus on those that seem most relevant at this stage. Our clients reserve the right to comment further on Mr Riley's letter should that become necessary.
19. Paragraph 2. There is no evidence that Bill Riley has "known and used this lane since the 1970s both on a motor cycle (when it was still a carriageway) and on foot" beyond the bare statement in his letter. In the 19 years our clients have been living at The Mill House they have seen Mr Riley only once – the letter dated 10 March 2006 from Alan Harbour of Wiltshire Council to (presumably) Mr Riley refers.
20. By way of background to that letter, on 2 March 2006 Mr Riley drove his motorbike through the mill in a threatening way. Mrs Moore went out to see what was happening. She was quite distressed and telephoned her husband. Mr Moore told her to make a contemporaneous note of what had happened. She did and a copy was sent to Barbara Burke. A few days later our clients were surprised to receive a letter from Mr Alan Harbour threatening them with criminal action for harassing Mr Riley.
21. Mrs Moore's contemporaneous note reads as follows: -

"The Mill House

*At 3.45pm on the 2 March 2006, I Lucy Moore, heard a terrible noise outside. I went to investigate and much to my amazement someone had just gone past on a motorbike. The bike had crossed the bridge when I got outside. He was having difficulty controlling his bike and it stalled probably 20 metres the other side of the bridge. I spoke to the motor cyclist and said to him "what on earth are you doing? This is not a road". He replied "Yes it is and that he had written opposing our application to have it closed off". I said he ought to be ashamed of himself and turned around and went back inside the house."*

22. This note is already within your records.
23. In 2005, as part of dealing with Mr Riley's application to have our clients' driveway opened up as a byway open to all traffic, statutory declarations were obtained from previous owners of the mill and adjoining land owners. These are enclosed [7]. The originals are already within your records.
24. None of these had any knowledge of Mr Riley coming through on a motorbike and all were able to say that to the best of their knowledge the track had never been used as a vehicular public right of way.
25. Paragraphs 3 and 4. We have dealt with this issue separately above.
26. Paragraph 5. If Mr Riley is referring to our clients' driveway, this was never maintained by the highway authority – see final paragraph of the statutory declaration of Barry Victor George Summers dated 14 October 2005 [7 – **final statutory declaration in tab**]. This route was never a right of way for motor vehicles. In fact Wiltshire Council determined in 2009 that bridleway rights had become established having considered all of the relevant evidence.
27. Paragraph 6. Firstly, the route had not "been established as a highway for centuries" before 1925. Secondly, the land was Settled Land. Under the Settled Land Acts, the tenant for life did not have power to dedicate land until after 1925.
28. Paragraph 7. The position here is not the same as Purton and we addressed this in our original submissions dated 31 May 2018 – see paras 6.6 and 6.7 of those submissions.
29. Paragraph 8. The measurements were taken using a tape measure but we accept there will inevitably be discrepancies when using different measuring methods. Whatever measure is taken we have dealt with the issue of additional length in our original submissions and this is just one factor to be considered as part of the overall balancing exercise.
30. In reports produced by Wiltshire Council (Barbara Burke and Tracy Carter) they have used the measurements set out and adopted in the Submission Letter.
31. Paragraph 9. Wiltshire Council confirmed in 2006 that if our clients were successful in their challenge to Mr Riley they would be entitled to put up a gate. The gates are bridleway gates.
32. Paragraph 10. Our clients are unaware of any agreement by the Council regarding the provision of a new bridge to replace Bridge Y.

33. Paragraph 11. See our comments on Paragraph 5 above.
34. Paragraph 13. See our comments on Paragraph 2 above.

**Mr Beardsley's Letter**

35. Again, we do not intend to comment on every point made by Mr Beardsley but rather to focus on those that seem most relevant at this stage. Our clients reserve the right to comment further on Mr Beardsley's letter should that become necessary.
36. Paragraph 5. Our clients cannot comment on the number of WBA members in Calstone. However many riders, and WBA members, come from much further afield to ride around the proposed route. It is also ridden by at least one of the WBA committee members. It is true the WBA numbers were boosted by local supporters who should have a voice within WBA.
37. Paragraph 6. The terrain "which must be navigated in order to reach the proposed diversion points" is part of the present bridleway. Most of it is a gentle incline. The bottom line is that the proposed route has opened up the countryside to many more people because it is much improved on the section of bridleway it has replaced.
38. From the top of The Mill House driveway to Theobalds Green the road is a normal made up road. If you turn eastwards at the bend in the road along CALW77 there are a few potholes which can be navigated easily. Furthermore, the land here is flat.
39. Our clients are unaware of any difficulties opening the wooden gate and have had no such reports.
40. It seems obvious to state it but the only reason the ground approaching Bridge Y appeared firm on 12 December 2018 is that it had not been churned up by horses or walkers as the vast majority of people now use the proposed route rather than the original route. For an example of what that area used to look like please refer to enclosure 13 to the original submissions.
41. Erecting signage for the present bridleway is not our clients' responsibility. What our clients have done is to signpost the permissive route. Mr Beardsley later implies that the signs may be misleading because they encourage/direct users away from the definitive line. This is clearly not the case.
42. Paragraph 7. It is unclear what point Mr Beardsley is trying to make but for the sake of clarity we can confirm that Mrs Moore did go to the WBA meeting on 12 December 2018. She did not say she was a member. She had been invited along by a group of WBA members to observe and said nothing throughout the proceedings.
43. Members were asked to send their comments to Mr Beardsley. All were very supportive of the diversion. These positive comments were ignored by Mr Beardsley who, whilst writing in a WBA capacity, does not appear to be reflecting the WBA membership.

44. Furthermore we submit Mr Beardsley has overstated their remarks - you will have already seen the correspondence referred to which, for ease of reference, consists of the emails from Sally-Ann Leaf, Louisa Reis, Jayne Bullock and Sharon Hockey.

We appreciate there is a considerable amount of information above but we believe it is better that you have all relevant information to hand when considering this matter.

If you have any questions on any of the above please do not hesitate to contact us.

[REDACTED]

COFFIN MEW LLP

[REDACTED]



## WILTSHIRE BRIDLEWAYS ASSOCIATION – CONSTITUTION

31 March 2016

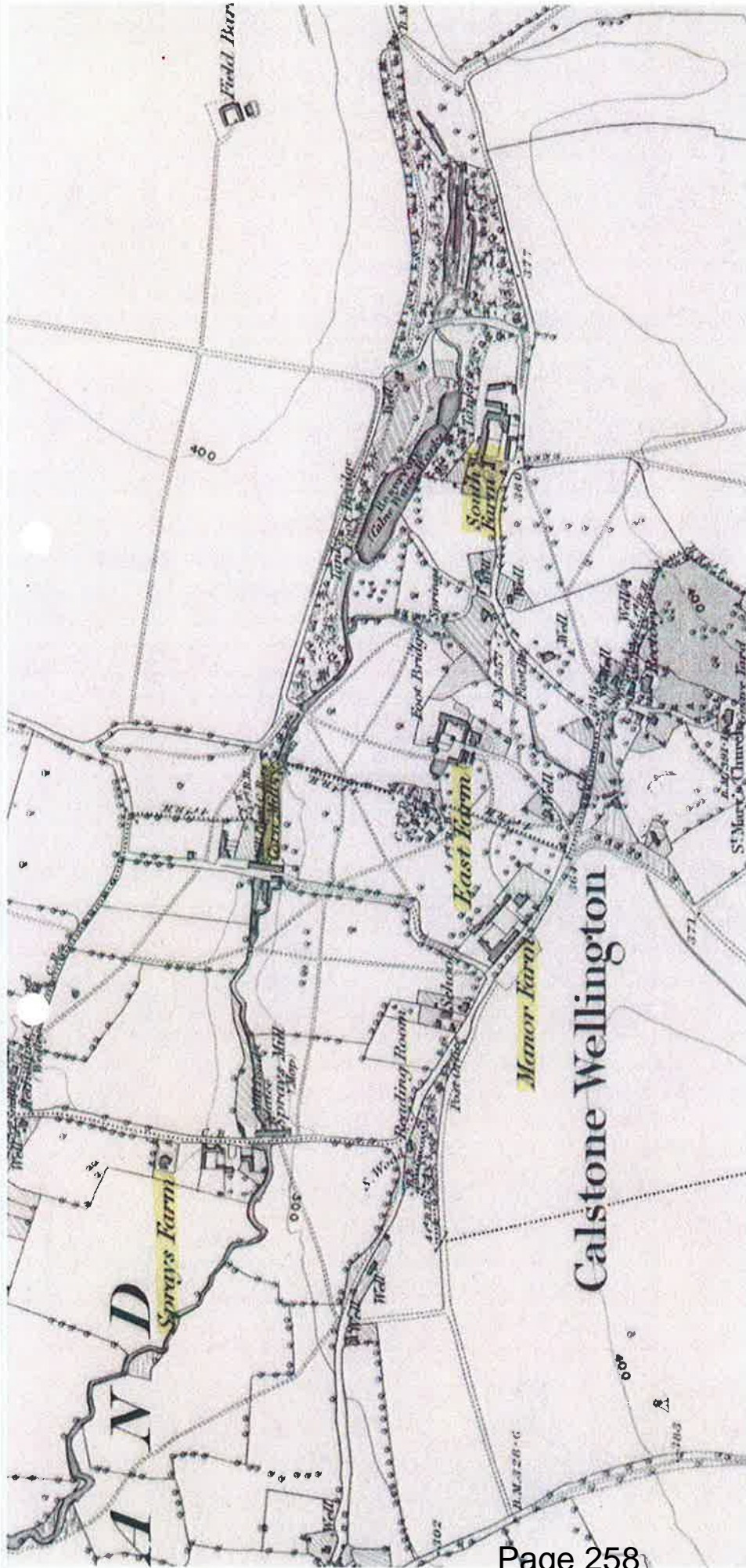
1. The name of the association shall be The Wiltshire Bridleways Association.
2. The objects of the association are:
  - a. To promote the permanent preservation for the benefit of the public generally and especially the inhabitants of the County of Wiltshire of the Byways and Bridleways within the county. To establish new equestrian routes within the county and to link such routes where possible and preserve the character and amenities of the said Byways and Bridleways and for the attainment of the foregoing to consider and if it shall seem necessary or desirable to promote, assist or oppose proposals for the use or development of the same within the said County.
  - b. To do all such lawful acts or things which are incidental to the attainment of the primary objects of the association, and so far as may be necessary or desirable to do such acts or things in collaboration with any person, body, institution, authority or otherwise.
3. Membership of the association shall not be confined to the county of Wiltshire.
4. The annual subscription shall be decided by the committee and ratified at the Annual General Meeting (AGM). The association shall have power to accept donations for any purpose not inconsistent with its objects and may make special appeals for funds to be used in connection with any purpose.
5. Any member may terminate his/her membership by notifying, in writing, the membership secretary.
6. The management of the association shall be vested in the committee; this committee shall consist of The Chairman, Honorary Treasurer, Administrative Secretary, Membership Secretary and one member to represent each area in Wiltshire. Provided that the committee may co-opt additional members to the committee. Five members shall form a quorum.
7. The association shall at the AGM elect a Chairman, Honorary Treasurer and Administrative Secretary together with one member to represent each area in Wiltshire to constitute the committee for the ensuing year. The members of the committee shall take office at the end of the meeting, at which there were elected, and shall hold office until the end of the next AGM. All members of the committee may be elected for a further term of office. The Chairman for the time being of the committee shall also be Chairman of the AGM.

8. The Honorary Treasurer shall keep accounts of all monies received and expended on account of the association and shall present such accounts at the AGM of the association. A banking account shall be opened in the name of the association and all such cheques drawn upon the said account shall bear the signature of the Honorary Treasurer plus the signature of one other delegated member of the committee if the cheque amount is above £50. Any expenditure over £100 is to be agreed by the committee.
9. The financial year of the association shall end on the 31<sup>st</sup> day of December in each year and a general meeting of members shall be convened by the administrative secretary not more than three months after this date for the purpose of receiving the annual report and balance sheet, for electing the officers and committee for the ensuing year and to consider any business as may be necessary. At least 21 days notice of this meeting shall be given to all members either by post or by a notice in the association newsletter sent to all members. Ten members present shall constitute a quorum at the AGM. In the event of a quorum not being present at the meeting, the meeting shall be adjourned to such place, date and time as the Chairman shall decide within the ensuing 14 days and the members present at such an adjourned meeting shall constitute a quorum. The committee reserve the right to contribute to projects in partnership with a third party regarding maintenance and improvements to Bridle Routes and Restricted Byways for the benefit of equestrian use.
10. An extraordinary general meeting may be convened at any time by a resolution of the committee or at the requisition of at least ten members of the association. A meeting held on such a requisition shall be held within 21 days of receipt of such requisition by the administrative secretary who shall give all members 14 days notice of such meeting. A quorum shall be the same as a quorum at the AGM.
11. Any amendments to this constitution shall be placed before the members at either the AGM or an extraordinary general meeting of the association where not less than three-quarters of those present and voting may amend this constitution.

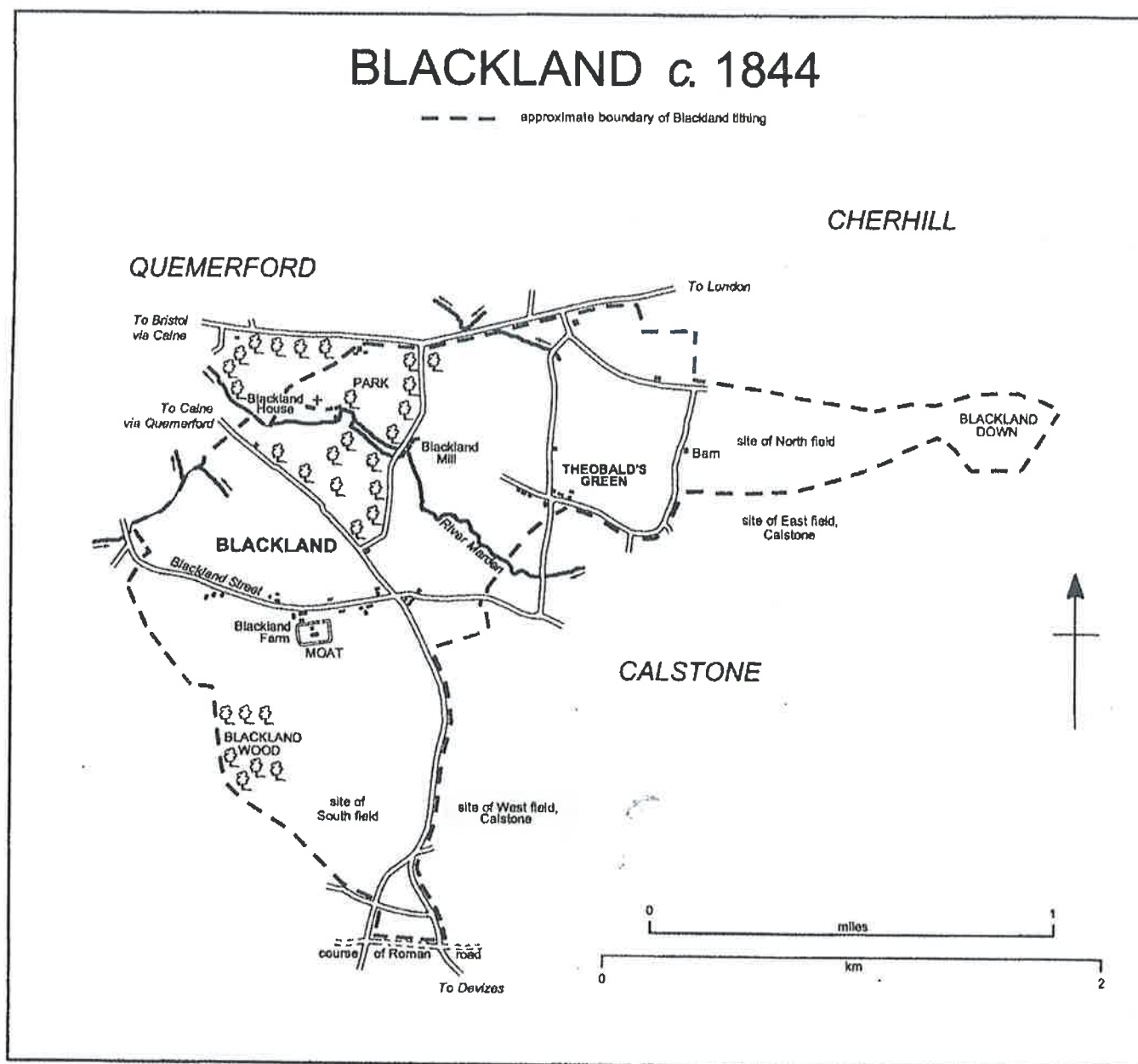
R Cunningham  
Administrative Secretary











At Blackland Farm the house enclosed by the moat was replaced by a new farmhouse, of dressed rubble, asymmetrical, and gabled, built in 1863 on or very near to its site. (fn. 40) Long ranges of single-storey and stone farm buildings were erected immediately north-west of the moat probably c. 1863, and other large farm buildings were put up on the site in the 20th century. None of the other buildings in Blackland street was used for farming in 2000. Of the buildings standing in the 18th century the only survivors were Blackland Thatch, a thatched 18th-century farmhouse immediately east of Blackland Farm, and possibly the cores of two much altered houses further east. To the west Dykes Farm was rebuilt in the 19th century; the new buildings, a small house and ranges of single-storeyed and stone farm buildings, survived 2000. A small earlier 19th-century house then stood on the site of a farmstead a little east of where, at Blackland crossroads, the street crossed the Calne-Devizes road. (fn. 41) A group of about seven cottages on the north side of the street near Blackland Farm was replaced by five cottages built between 1843 and 1885 (fn. 42) and a pair of houses built in the mid 20th century. At the crossroads a pair of 19th-century houses was converted to five cottages between 1899 and 1922. (fn. 43)

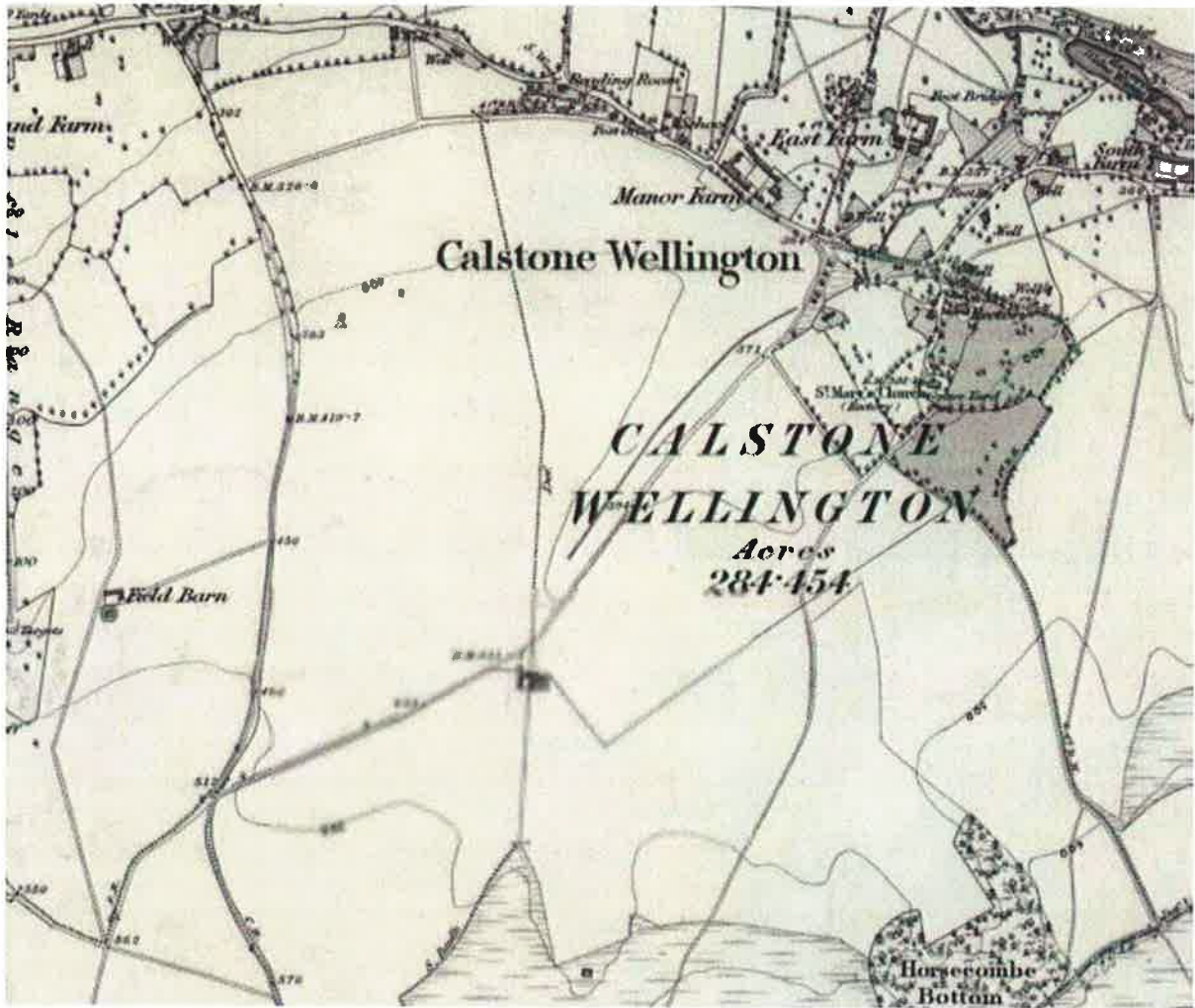
Tibbolls Green was an address in the mid 17th century. (fn. 44) In the earlier 18th century it was an area of waste where north-south and east-west lanes crossed east of Blackland mill, and eight buildings, including six on the waste, then stood at the crossing. (fn. 45) In 1773 and 1820 the name Tibbolls Green was erroneously applied to the small group of buildings at Blackland crossroads. (fn. 46) In the 1840s the settlement at the crossing east of Blackland mill was called Theobald's Green, c. 11 houses and cottages stood there, (fn. 47) and a nonconformist chapel was built there in 1866. (fn. 48) Of the buildings standing in the 1840s two cottages survive, each thatched, apparently 18th-century, altered, and extended. There were also six houses of the 19th and 20th centuries at Theobald's Green in 2000. A little north of them a pair of council houses was built in 1944, another pair in 1946. (fn. 49) Guernsey Villa, a house built a little further north between 1843 and 1885, was demolished in the mid 20th century and replaced by a cattle yard. (fn. 50)

Beside a lane leading south-east from the London road north of Theobald's Green a pair of cottages was built in the early 19th century. (fn. 51) Further south-east a few cottages were collectively called Green Lanes in the late 19th century; (fn. 52) a pair of mid 19th-century cottages and a few 20th-century houses stood at Green Lanes in 2000.

#### MANOR AND OTHER ESTATES

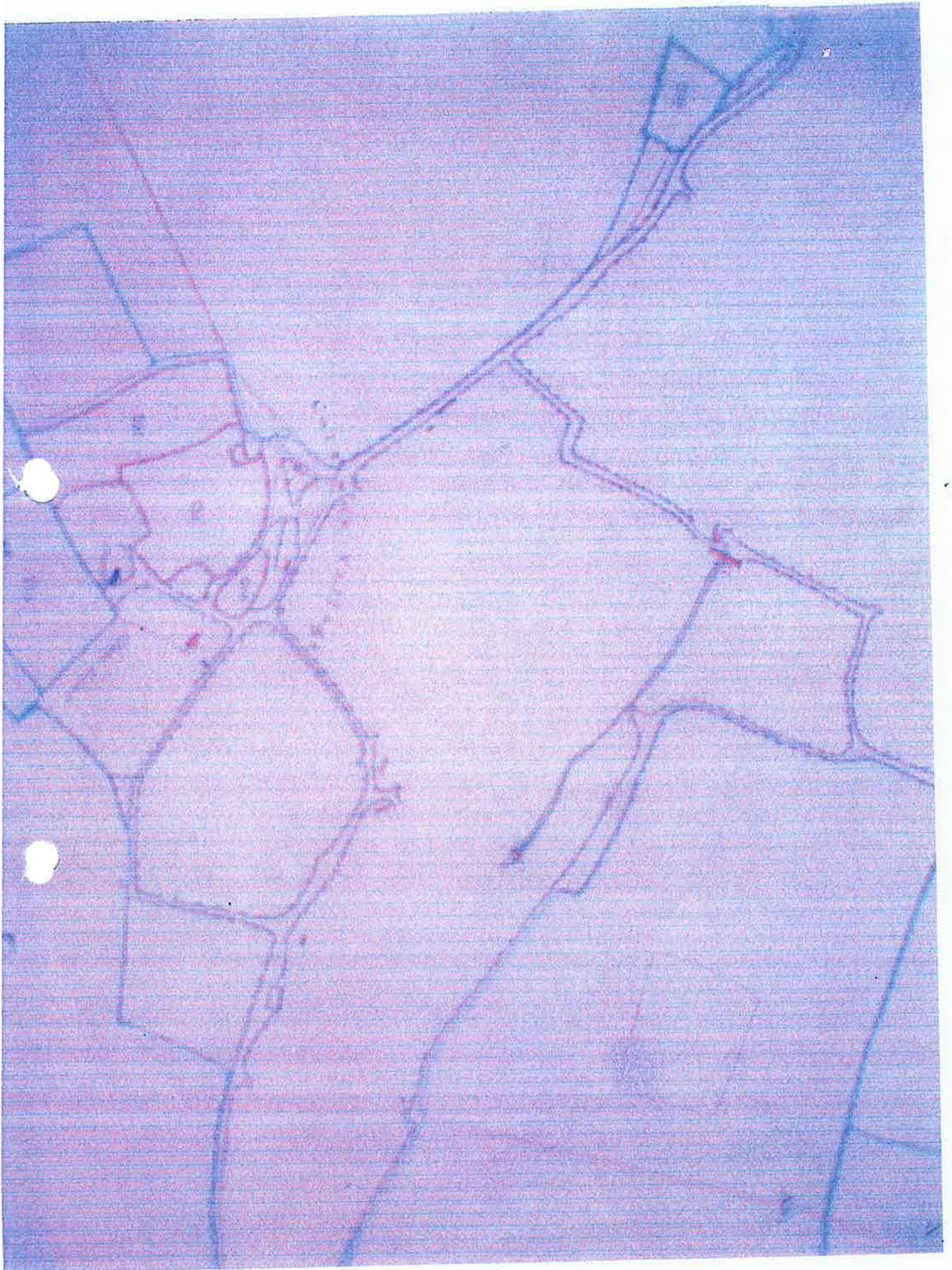
The land which became Blackland tithing was part of Calstone's land and, as such, in the 10th and 11th centuries almost certainly part of the king's large estate called Calne. In 1086 what became Blackland manor and parish presumably remained part of that estate, and the rest of what became the tithing presumably lay in the three estates called Calstone which had already been granted away. (fn. 53)





Extract of OS Map surveyed 1885, published 1889, showing Calstone West Field











Extract from OS Map surveyed 1885, published 1889



DATE

6<sup>th</sup> October

2005

**STATUTORY DECLARATION**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

Macfarlanes  
10 Norwich Street  
London EC4A 1BD

JIRM/557710/2830331.1  
03 October 2005

STATUTORY DECLARATION

DATE *Thirteenth October*

2005

I, Victor Henry Hislop of [REDACTED]  
[REDACTED] do solemnly and sincerely declare that:-

- 1 I live at Sprays Farm, Calstone Wellington and have lived on the farm for fifty two years.
- 2 My family have farmed Sprays Farm since I took on the tenancy in 1953. The farm is now farmed by my son Robert.
- 3 I am familiar with The Mill House, Calstone Wellington, formerly known as Calstone Mill. When I moved to Calstone Wellington, The Mill House was used as a dairy by the Summers family. They sold it to Wing Commander Evans in 1968.
- 4 There is now produced to me a plan shown "VHH1" on which is marked in brown the track passing The Mill House from the north and extending up to the junction with the village road at Manor Farm.
- 5 Until about 1969 there was a narrow cart bridge over the river next to The Mill House. That was replaced by a bridleway bridge. I remember that that caused some upset because Michael Maundrell was no longer able to pass over the bridge on his horse and cart or Land Rover to get to his fields on the north side.
- 6 Apart from Michael Maundrell going to his fields, I have never seen the track coloured brown used by any vehicle or horse and cart passing through The Mill House. Therefore to the best of my knowledge and belief this track has never been used as a vehicular public right of way whether by horse and cart or motor vehicles.
- 7 There used to be a whitening mill at Sprays Farm. Chalk would be crushed in a mill near the top of the village and brought down along the top road past the old Reading Room to the mill at Sprays Farm where the whitening stones were made. That is the way anyone would come from the top of the village. Any one wishing to get to the top of the village from the north would drive past Theobalds Green and Sprays Farm and join the top road at the junction by the old Reading Room.

12-10-05VHRM2838653.1

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED by the said Victor Henry Hislop

At

Ca

at

This 13<sup>th</sup> day of October 2005

Before me

Solicitor/Commissioner for Oaths

**EXHIBIT**

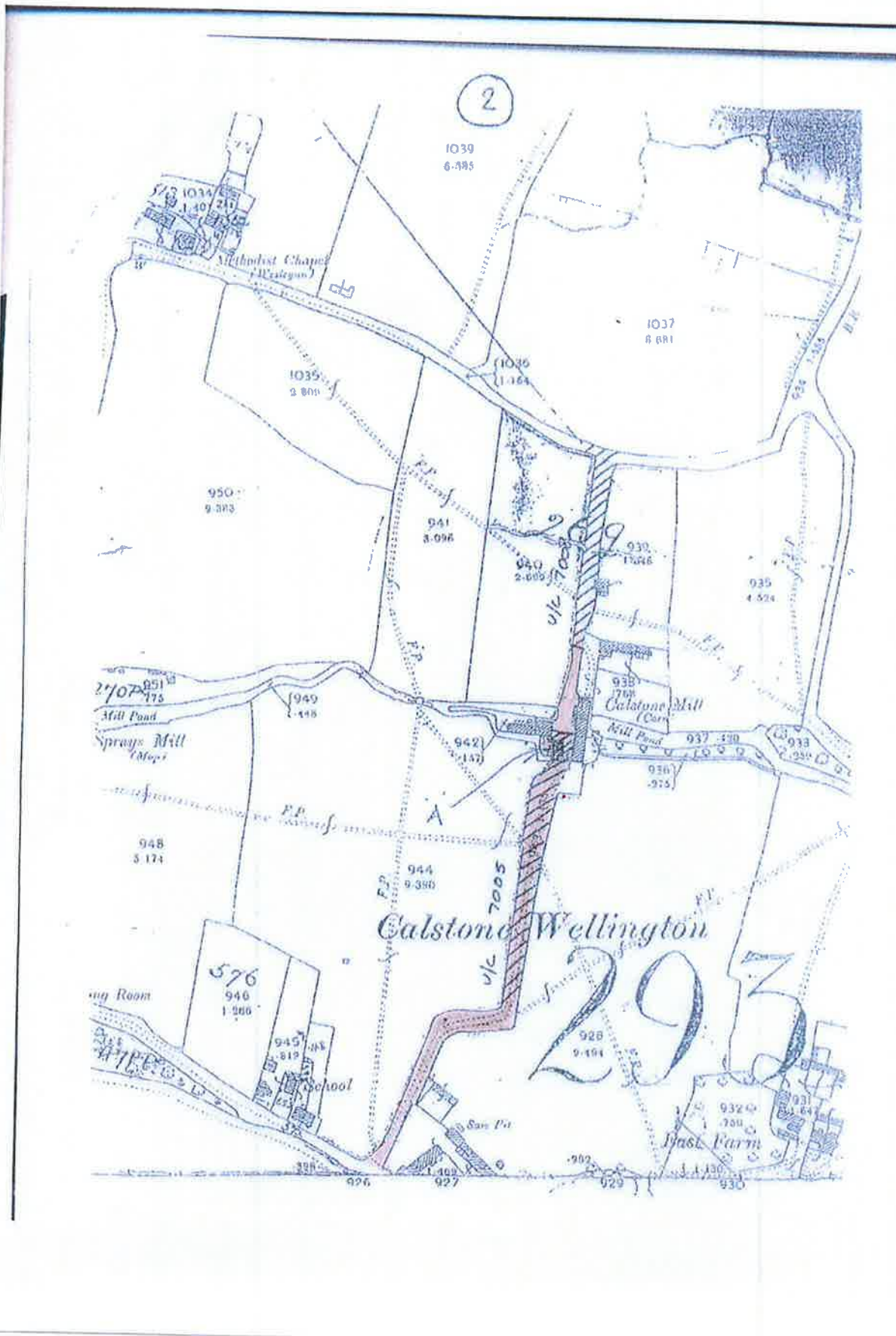
**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

This is the exhibit marked "VHH1" referred to in the Statutory Declaration of Victor Henry Hislop.

 *Salia, tar..*  
Signed

*13<sup>th</sup> October 2005*  
Dated

12-10-05VHIRM\2838653.1





DATE 13<sup>th</sup> October 2005

**STATUTORY DECLARATION**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

Macfarlanes  
10 Norwich Street  
London EC4A 1BD

JHRM/557710/2838583.1  
12 October 2005

STATUTORY DECLARATION

DATE 24<sup>th</sup> October 2005

2005

1 I, Joan Ellen Wheeler-Bennett of [REDACTED] do  
solemnly and sincerely declare that:-

2 I lived at The Mill House, Calstone Wellington, Calne, Wiltshire SN11 8QF from  
September 1982 until March 2000, nearly eighteen years.

3 There is now produced to me a plan shown "JEWB1" on which is marked in brown  
the track passing The Mill House from the north and extending up to the junction  
with the village road at Manor Farm.

4 During my time at The Mill House the track would be used by people on horseback  
or on foot. There is a bridge crossing the river which is wide enough to take horses  
and which I believe is classified as a bridleway bridge. I have never seen the track  
coloured brown used by any motorised vehicle passing through The Mill House.  
Therefore to the best of my knowledge and belief this track has never been used as a  
vehicular public right of way.

5 Any one wishing to get to the top of the village from the north would drive past  
Theobalds Green and Sprays Farm and join the top road at the junction by the old  
Reading Room. Anyone leaving the top of the village would come back by the same  
route or continue along the top road to the Devizes Road.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the  
provisions of the Statutory Declarations Act 1835.

DECLARED by the said Joan Ellen Wheeler-Bennett

At [REDACTED]

This 24<sup>th</sup> day of October 2005

Before me [REDACTED]

Solicitor/Commissioner [REDACTED]

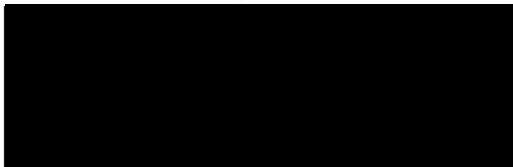
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**EXHIBIT**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

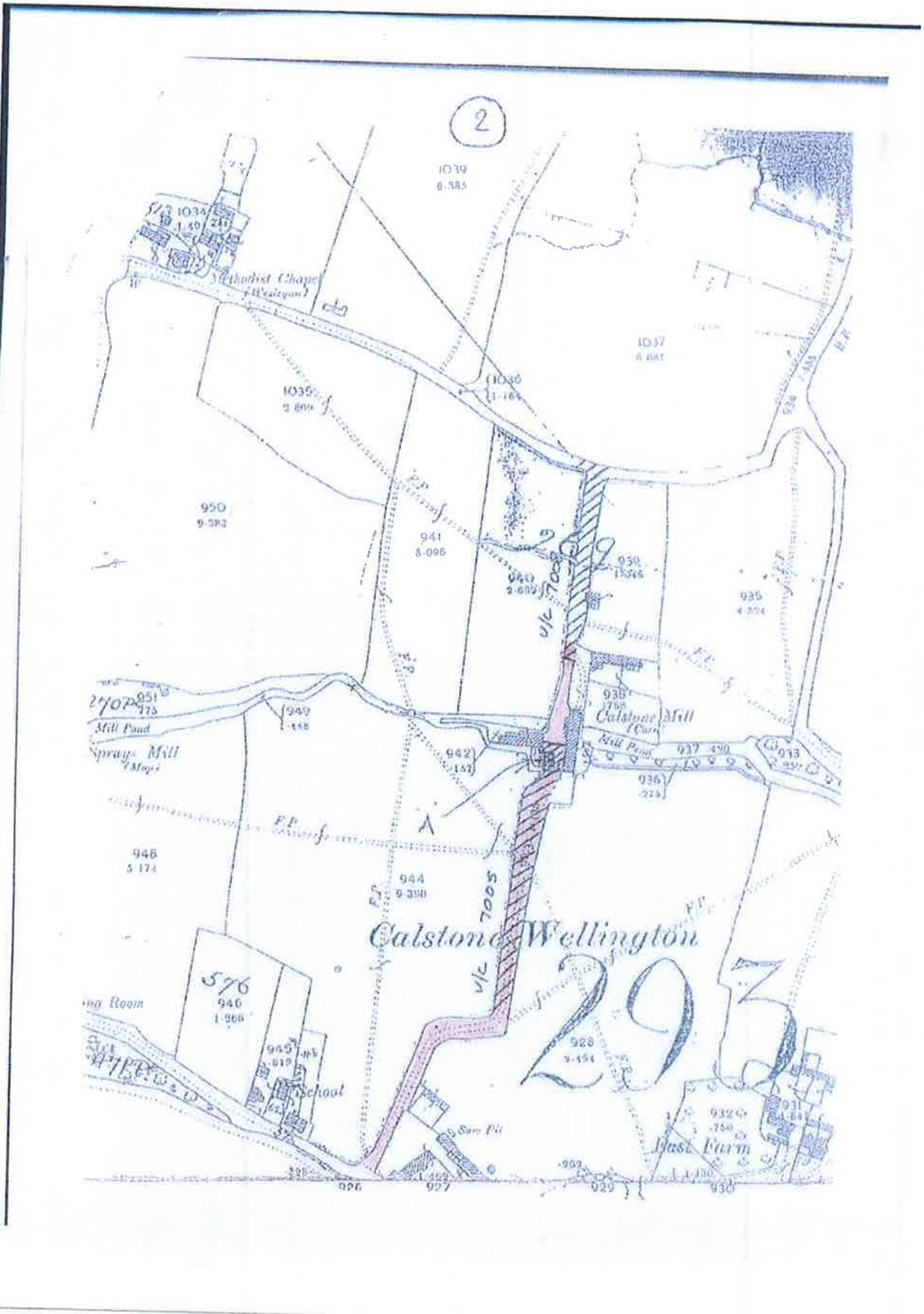
This is the exhibit marked "JEWB1" referred to in the Statutory Declaration of Joan Ellen Wheeler-Bennett.



*24<sup>th</sup> October 2005*

.....  
Dated

19-10-05VHRM12843736.1



DATE 24<sup>th</sup> October 2005

**STATUTORY DECLARATION**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

Macfarlanes  
10 Norwich Street  
London EC4A 1BD

JHRM/557710/2843736.1  
19 October 2005

STATUTORY DECLARATION

DATE

2005

I, Michael Joseph Maundrell of [REDACTED]  
[REDACTED] do solemnly and sincerely declare that:-

- 1 I live at Manor Farm, Calstone Wellington ("Manor Farm") and have lived there for ninety years.
- 2 My family have farmed Manor Farm since the early part of the nineteenth century. I was responsible for the running of the farm from the death of my father in 1936 until 1990, when I handed responsibility over to my son Pat. Pat continues to farm Manor Farm.
- 3 Manor Farm includes land to the north of the River Marden close to Calstone Mill now known as The Mill House.
- 4 Prior to 1969 I gained access to certain fields north of the River Marden by going down Bailey's Lane, which is the unclassified road 7005, crossing the cart bridge by horse and cart or in a Land Rover and passing in front of The Mill House.
- 5 Before 1968 The Mill House was lived in by the Summers family, who ran a dairy. They would use Bailey's Lane as a cattle drove to take their cattle up to fields near St Mary's Church for grazing. I had a good relationship with the Summers and they were happy to agree for me to pass The Mill House to gain access to my fields. To the best of my knowledge and belief this route was not used as a general thoroughfare for vehicles or horses and carts by the public at large.
- 6 In 1968 The Mill House was bought by Wing Commander David Evans. I believe he had the cart bridge declared unsafe and it was eventually removed. A bridleway bridge replaced the cart bridge, after which I had to take a different route to my fields.
- 7 My neighbour Colonel Luard and I argued for the cart bridge to be replaced by another cart bridge and as Parish Councillors sought to obtain a resolution to that effect.

3-10-05VJIRM\2830331.1

8

I acknowledge that my use of the cart bridge was in the nature of a private right for the benefit of Manor Farm. I do not believe it constituted a vehicular public right of way.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED by the said Michael Joseph Maundrell

At

This 6<sup>th</sup> day of October 2005

Before me

Solicitor/Commissioner for Oaths

*Senses*

DATE 14th October 2005

**STATUTORY DECLARATION**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

Macfarlanes  
10 Norwich Street  
London EC4A 1BD

JHRM/557710/2838525.1  
12 October 2005



STATUTORY DECLARATION

DATE

2005

I, Virginia Hope Rawlings of [REDACTED] do solemnly and sincerely declare that:-

1 I was born Virginia Hope Summers and lived at The Mill House, Calstone Wellington, formerly known as Calstone Mill, from when I was born on 14 June 1941 until 1968, latterly with my husband and children.

2 My father ran the dairy at Calstone Mill until it was sold to Wing Commander Evans in 1968.

3 There is now produced to me a plan shown "VHR1" on which is marked in brown the track passing The Mill House from the north and extending up to the junction with the village road at Manor Farm.

4 During my time at The Mill House the track would be used by people on horseback or on foot. My father would use the track to take his cattle to graze at the top of the village. There was a narrow cart bridge over the river. Our neighbour Michael Maundrell was permitted to pass through The Mill House to gain access to his fields just to the north.

5 With the exception of Michael Maundrell going to his fields, I have never seen the track coloured brown used by any vehicle or horse and cart passing through The Mill House. Nor did I ever hear anyone suggest that vehicles were allowed to pass through. Therefore to the best of my knowledge and belief this track has never been used as a vehicular public right of way.

6 Any one wishing to get to the top of the village from the north would drive past Theobalds Green and Sprays Farm and join the top road at the junction by the old Reading Room. Anyone leaving the top of the village would come back by the same route or continue along the top road to the Devizes Road.

7 I understand that on 24 March 1939 my grandfather George Summers complained about the condition of the road to Calstone Mill. I can only imagine that he was

12-10-05UHRM2838583.1

referring to the state of the road leading up to what is now the entrance to the driveway as in all the time that I lived at The Mill House the Council never repaired the road beyond that point, what we would call the top of the hill.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED by the said Virginia Hope Rawlings

At

This 13<sup>th</sup> day of October 2005

Before me

Solicitor/Commissioner for Oaths



**EXHIBIT**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

This is the exhibit marked "VHR1" referred to in the Statutory Declaration of Virginia Hope Rawlings.

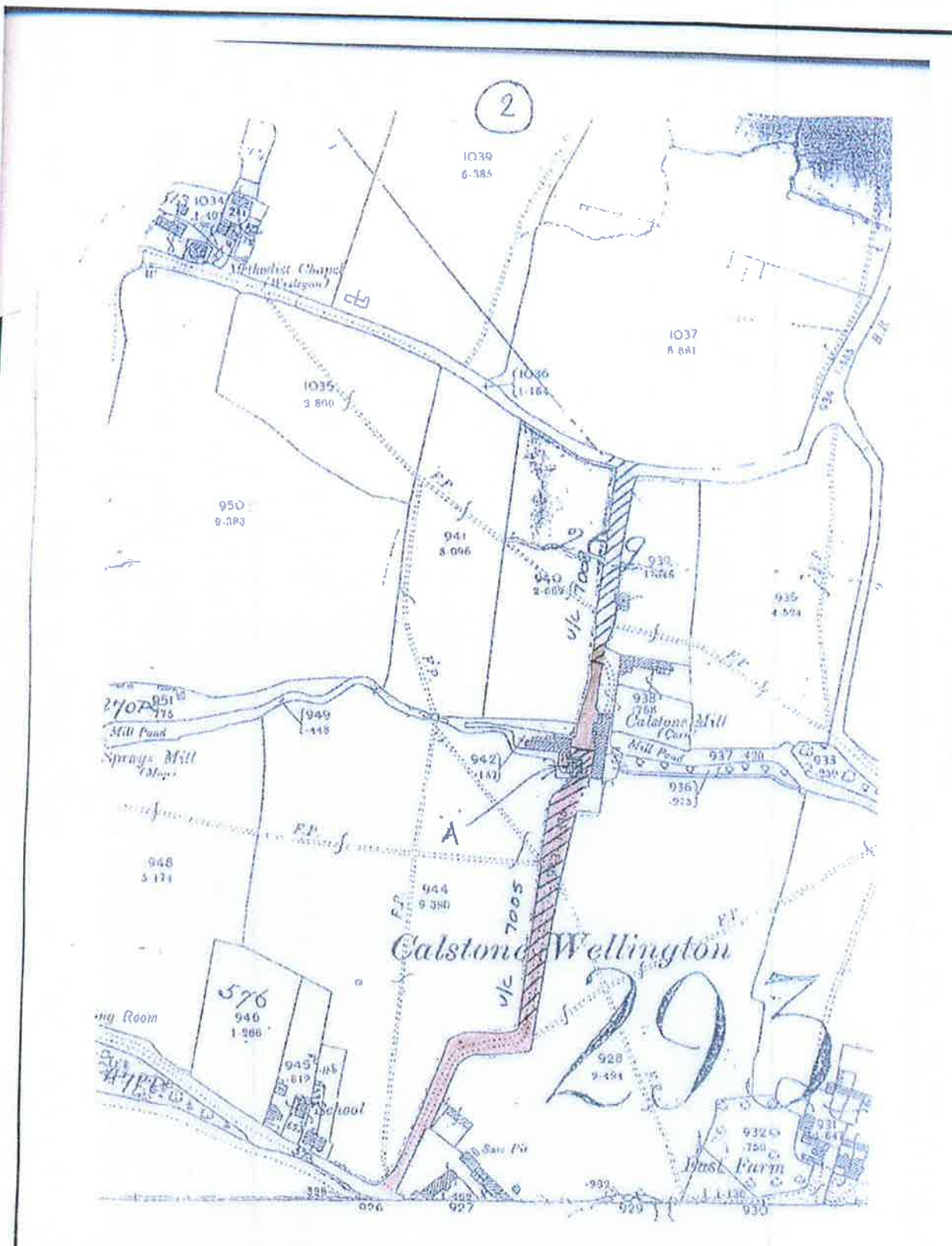


Signed

13<sup>th</sup> October 2005

Dated

12-10-05\JHRM\2838583.1



DATE 13<sup>th</sup> October 2005

**STATUTORY DECLARATION**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

Macfarlanes  
10 Norwich Street  
London EC4A 1BD

JHRM/557710/2838653.1  
12 October 2005

**STATUTORY DECLARATION**

**DATE**

2005

I, Barry Victor George Summers of [REDACTED] do solemnly and sincerely declare that:-

1 I was born on 9 April 1934 and lived at The Mill House, Calstone Wellington, formerly known as Calstone Mill, from when I was born until 1951 when I went off to do National Service. Members of my family continued to live there until 1968 and so I remained familiar with it until then.

2 My father ran the dairy at Calstone Mill until it was sold to Wing Commander Evans in 1968.

3 There is now produced to me a plan shown "BYGSI" on which is marked in brown the track passing The Mill House from the north and extending up to the junction with the village road at Manor Farm.

4 During my time at The Mill House the track would be used by people on horseback or on foot. My father would use the track to take his cattle to graze at the top of the village. There was a narrow cart bridge over the river. Our neighbour Michael Maundrell was permitted to pass through The Mill House to gain access to his fields just to the north.

5 With the exception of Michael Maundrell going to his fields, I have never seen the track coloured brown used by any vehicle or horse and cart passing through The Mill House. Nor did I ever hear anyone suggest that vehicles were allowed to pass through. Therefore to the best of my knowledge and belief this track has never been used as a vehicular public right of way.

6 Any one wishing to get to the top of the village from the north would drive past Theobalds Green and Sprays Farm and join the top road at the junction by the old Reading Room. Anyone leaving the top of the village would come back by the same route or continue along the top road to the Devizes Road.

12-10-05\JHRM\2838525.1

I understand that on 24 March 1939 my grandfather George Summers complained about the condition of the road to Calstone Mill. I can only imagine that he was referring to the state of the road leading up to what is now the entrance to the driveway as in all the time that I lived at The Mill House the Council never repaired the road beyond that point, what we would call the top of the hill.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED by the said Barry Victor George Summers

At

*Ce*

This 14<sup>th</sup> day of October 2005

Before me

Solicitor/Commissioner for Oaths

**EXHIBIT**

**In relation to  
The Mill House  
Calstone  
Wellington  
Nr Calne**

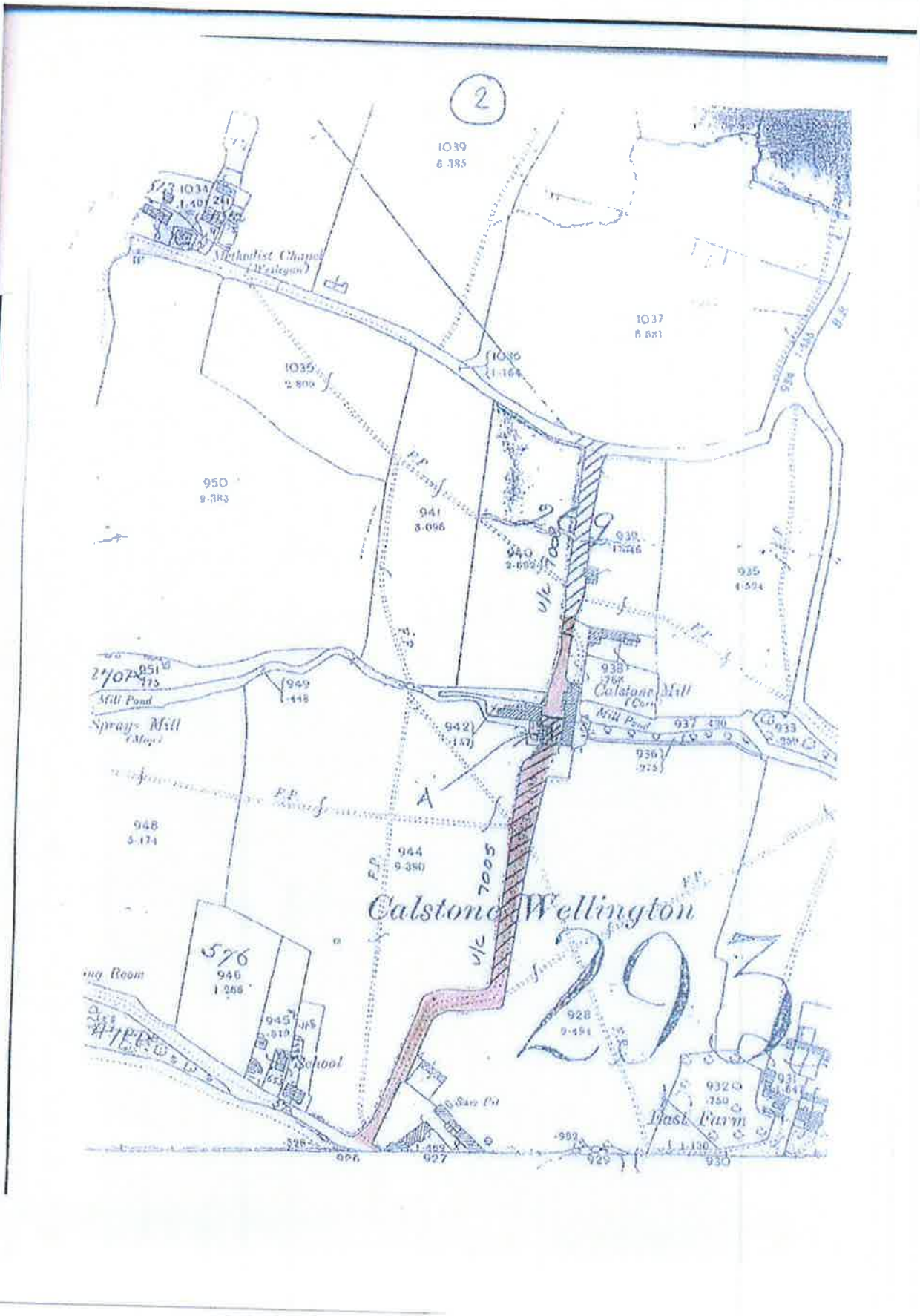
This is the exhibit marked "BVGS1" referred to in the Statutory Declaration of Barry Victor George Summers.

[Redacted Signature]

Signed  
Commissioner for Oaths

14.7.0-2005  
Dated





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**Madgwick, Sally**

**From:** Madgwick, Sally  
**Sent:** 12 March 2019 17:38  
**To:** Madgwick, Sally  
**Subject:** Bridleways Calne Without 89, 89A and 89B  
**Attachments:** Waste-and-environment-services-rowc-subject-information-notice.pdf; Privacy-notice-rights-of-way-and-countryside.pdf

*To ALL 83 = 85  
+ 2 by post*

**Highways Act 1980 s.119 and Wildlife and Countryside Act s.53  
 Application to divert parts of bridleways Calne Without 89, 89A and 89B**

You recently sent an e.mail to Wiltshire Council regarding the proposed diversion of a bridleway at Calstone Wellington. In order for your e.mail to be retained and to form a part of this application process it is necessary that you understand how your personal information will be held and used by the Council (please see attached).

If you agree to your personal data being held, your response will form part of the case and will be considered and included in all reports and case files. Personal and identifying information will be redacted from all public documents. In the event that any order made is sent to the Secretary of State for Environment, Food and Rural Affairs it will be necessary to include your response in full, including contact details to enable the Planning Inspectorate to 'take over' the matter.

If you would like to continue to maintain your representation and for your data to be held please let me know by Friday 29<sup>th</sup> March. I would also be grateful to receive your full postal address.

If you don't wish for your data to be held but would like your representation maintained please also let me know and I will remove all identification from your submission.

If I don't hear from you by the 29<sup>th</sup> March 2019 I will no longer hold your data and will delete your submission.

Best regards

Sally

Sally Madgwick  
 Team Leader Definitive Map and Highway Records  
 Rights of Way and Countryside  
 Waste and Environment  
 Wiltshire Council  
 County Hall  
 Bythesea Road  
 Trowbridge  
 Wiltshire  
 BA14 8JN  
 Tel. 01225 713392  
[sally.madgwick@wiltshire.gov.uk](mailto:sally.madgwick@wiltshire.gov.uk)

Information relating to how 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)  
 Follow Wiltshire Council

## **DATA SUBJECTS' INFORMATION – WASTE AND ENVIRONMENT – RIGHTS OF WAY AND COUNTRYSIDE SERVICE**

**To be provided to the data subject at the time of obtaining personal data from them**

### **1. Data Controller**

Wiltshire Council is registered as a data controller with the Information Commissioner's Office. Full details of the registration are available at [ICO register of data controllers](#).

### **2. Data Controller Contact Details**

We can be contacted by [phone, in person, or in writing](#)

### **3. Data Protection Officer**

Our DPO may be contacted as above or online at [dataprotection@wiltshire.gov.uk](mailto:dataprotection@wiltshire.gov.uk)

### **4. Purpose of processing**

The Waste and Environment service will process your personal information for the following purposes:

- maintaining our own accounts and records
- supporting and managing our employees
- promoting the services we provide
- carrying out public awareness campaigns
- managing our property
- carrying out audits
- carrying out surveys
- undertaking research
- managing archived records for historical and research reasons
- corporate administration and all activities we are required to carry out as a data controller and public authority
- the provision and administration of Garden Waste collection services
- the provision and administration of all non-commercial activities including refuse collections from residential properties,
- managing archived records for historical and research reasons

### **5. Legal basis for processing**

Our processing shall be lawful because at least one of the following will apply:

- (a) the data subject has given consent to the Council for processing of their personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the

data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

- (c) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (d) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Council;
- (e) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

If your special category data is processed, in addition to one of the above, processing will be necessary because at least one of the following shall also apply:

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes,
- (b) to carry out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law.
- (c) to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- (d) processing relates to personal data which are manifestly made public by the data subject;
- (e) for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- (f) processing is necessary for reasons of substantial public interest,
- (g) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services;
- (h) for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices,
- (i) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

## **6. Recipients or categories of recipients**

Where necessary and lawful, or when required by legal obligation, we may share information with:

- service providers
- local and central government
- press and the media
- professional advisers and consultants
- political organisations
- professional bodies

- survey and research organisations
- CFH Docmail Ltd
- police forces
- housing associations and landlords
- data processors
- regulatory bodies

#### 7. Retention Period

Wiltshire Council will process your personal data for the above purposes for no longer than necessary. Full details of [our retention schedule](#) may be found online.

#### 8. Your rights

Your rights are set out in in Articles 13 to 22 of the [General Data Protection Regulation 2016](#) and include:

- The right to access your personal information, to request rectification or erasure of certain personal information and to object to processing in certain circumstances.
- The right to withdraw any consent you may have given to process your personal information.
- The right to complain to the [Information Commissioner](#) if you feel we are processing your personal information unlawfully.
- The right to restrict processing activity in certain circumstances.
- The right to object to certain types of processing activity

#### 9. Contracts

The information you are giving us is not a statutory or contractual requirement; or a requirement necessary to enter into a contract.

You are not obliged to provide this information.

Failure to provide us with the information may result in the Rights of Way and Countryside Service being unable to offer you their full range of services.

#### 10. Automated Decision Making

Wiltshire Council Waste and Environment team does not use automated decision making in respect to your personal information.

## **Privacy Notice – Wiltshire Council – Waste and Environment – Rights of Way and Countryside Service**

*Wiltshire Council is the data controller for the personal information you provide in this form. The Council's Data Protection Officer can be contacted at [dataprotection@wiltshire.gov.uk](mailto:dataprotection@wiltshire.gov.uk)*

*The Rights of Way and Countryside Service will only use the information you have provided to:*

- maintain our own accounts and records
- support and manage our employees
- promote the services we provide
- market our local tourism
- carry out health and public awareness campaigns
- manage our property
- provide leisure and cultural services
- provide education
- carry out surveys
- undertake regulatory activities
- undertake corporate administration and all activities we are required to carry out as a data controller and public authority
- undertake research
- manage internal financial support and corporate functions
- manage archived records for historical and research reasons
- manage insurance issues
- Promote other organisations' events
- Appeal for volunteers to help with specific projects or events
- Promote competitions and offers
- Invite nominations to the Areas of Outstanding Natural Beauty governing bodies
- Invite comments on draft Areas of Outstanding Natural Beauty Management Plans

*We will share your personal data where necessary and lawful within the Council, but we will not share your data with any other third parties unless we are required or permitted to do so by law.*

*For further information about how Wiltshire Council uses your personal data, including your rights as a data subject, please see the Council's [Privacy notice](#) on the website*

12 March 2019

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

Our ref: SM/2018/08 CALW89

Dear Mrs [REDACTED]

**Highways Act 1980 s.119 and Wildlife and Countryside Act s.53  
Application to divert parts of bridleways Calne Without 89, 89A and 89B**

You recently sent a letter to Wiltshire Council regarding the proposed diversion of a bridleway at Calstone Wellington. In order for your letter to be retained and to form a part of this application process it is necessary that you understand how your personal information will be held and used by the Council (please see attached).

If you agree to your personal data being held, your response will form part of the case and will be considered and included in all reports and case files. Personal and identifying information will be redacted from all public documents. In the event that any order made is sent to the Secretary of State for Environment, Food and Rural Affairs it will be necessary to include your response in full, including contact details to enable the Planning Inspectorate to 'take over' the matter.

If you would like to continue to maintain your representation and for your data to be held please let me know by Friday 29<sup>th</sup> March. I would also be grateful to receive your full postal address.

If you don't wish for your data to be held but would like your representation maintained please also let me know and I will remove all identification from your submission.

If I don't hear from you by the 29<sup>th</sup> March 2019 I will no longer hold your data and will delete your submission.

Yours sincerely

Sally Madgwick  
Team Leader Rights of Way and Highway Records  
Direct Line: 01225 713392  
Sally.madgwick@wiltshire.gov.uk



## Madgwick, Sally

---

**From:** [REDACTED]  
**Sent:** 21 November 2018 14:58  
**To:** Madgwick, Sally  
**Cc:** Peter Alberry  
**Subject:** Bridleway Diversion at Calstone

Dear Sally,

I am writing to you to support the application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

The new Bridleway route created is much wider, safer and can be used all year round which makes it much more convenient for everyone than the existing route.

In fact to my knowledge, most people already use the new Bridleway in preference to the existing route.

Finally, the new route includes a better bridge that is likely to outlast the original bridge thereby saving future repair costs and safeguarding the overall Bridleway route into the future.

best regards

Dr Peter Alberry



Virus-free. [www.avg.com](http://www.avg.com)

anonymous by request

**Madgwick, Sally**

---

**From:** [Redacted]  
**Sent:** 24 November 2018 12:18  
**To:** Madgwick, Sally  
**Cc:** [Redacted]  
**Subject:** Bridleway Diversion at Calstone

13/03/19

Dear Ms. Madgwick

I am writing to you to support the application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

The new Bridleway route created is much wider, safer and can be used all year round which makes it much more convenient for everyone than the existing route.

In fact to my knowledge, most people already use the new Bridleway in preference to the existing route.

Finally, the new route includes a better bridge that is likely to outlast the original bridge thereby saving future repair costs and safeguarding the overall Bridleway route into the future.

Yours sincerely

[Redacted Signature]



Virus-free. [www.avg.com](http://www.avg.com)

**Madgwick, Sally**

4

**From:** MIKE BOWDEN [REDACTED]  
**Sent:** 09 December 2018 19:20  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Dear Sally Madgwick

We are writing to support the application made by Mr & Mrs Moore for the diversion of the bridleway to the new route of the permissive bridleway that they have created.

We have had issues in the past using the existing route, with a previous house-owner's dog which came out and barked at the heels of our horse, which resulted in injury to the unfortunate dog as well as distress to ourselves as well as the dog's owners. We were fortunate that it didn't result in greater injury to horse or rider. It also feels to be intrusive, riding right past someone's front door in that way. The alternative route provides a safer, more appropriate and enjoyable route, which can be enjoyed all year round and by many more walkers and riders than the existing route.

We regularly ride horses this way, as well as walking the route. We are British Horse Society members and have lived in the village for nearly 24 years. As local residents, walkers and riders of the route, we fully endorse the diversion as a better route for all concerned. We are grateful to the Moore's for making this possible and hope that you will also support them in their application.

Yours sincerely

Mike & Jacqui Bowden

[REDACTED]

**Madgwick, Sally**

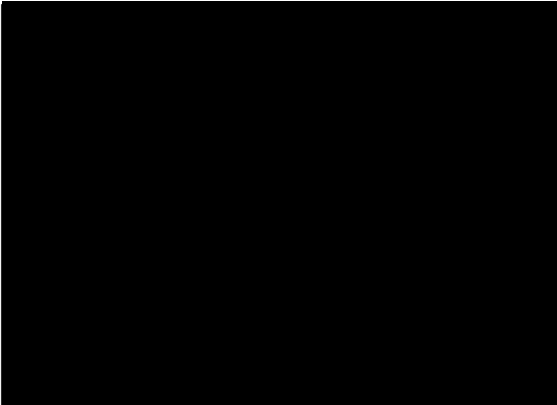
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**From:** Matt Bridger [REDACTED]  
**Sent:** 19 November 2018 16:11  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

**Importance:** High

I support the diversion of the bridleway to the new route created by Mr. and Mrs. Moore. They have gone to some effort & expense to create the new bridleway which in my opinion is preferable to walking/riding right past their property. I always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, with a gentler incline and can be used all year round as the track has a reinforced surface on the north side of the river avoiding boggy areas . This route is preferable to me & my dog, especially in the wet as the current bridleway can get very muddy when approaching the river before reaching the house. Also walking right past the house would make me feel intrusive & plain nosey. The diverted bridleway gives you extended views of the countryside & enables one to pause at the river for a spot of relaxation, not something I would be comfortable with standing right next to The Mill House.

Regards,  
Matthew Bridger



**Madgwick, Sally**

7a

**From:** Geoff & Benita Buckland [REDACTED]  
**Sent:** 19 November 2018 16:26  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89  
**Attachments:** Bridleway diversion.doc

Please find attached letter of support

kind regards

Geoff Buckland

7b

Councillor Alan Hill,

20<sup>th</sup> November 2018

Proposed Diversion of Bridleway 80(part) and 89A Calne without.

Dear Mr Hill

I have lived in Calstone for 22 years and consider myself as the most regular user of the above proposed diversion.

I walk all or part of this route twice, most days with my dog. To my mind the diversion has been a very positive addition to the walks in and around the village of Calstone.

The proposed diversion is much safer as I avoid walking down the drive to The Mill House, which is steep and uneven, it also avoids the narrow and slippery bridge crossing the river. Added to the fact that I don't have to move over for any traffic using the Mill House drive, which may seem trivial but I tend to walk at times which coincide with the school run and postal deliveries etc.

I feel much more relaxed and inclined to use the diversion route as it takes me away from The Mill House, I can still enjoy the views of the house, without watching its inhabitants eating their cornflakes!

The route is slightly longer, which I view as a positive, it is also very much flatter and well maintained. This allows me to use the path throughout the year. The bridge over the river is wider and safer and there are adequate waiting places if you meet any other users. It also takes you to a footpath junction, giving you more options to walk.

Please help make this diversion to take place. Not only is it better than the original route, it offers the council and its rate payers much better value for money as it has been installed by the land owner. The sad fact is that we may lose this facility if the council do not approve the change.

Yours sincerely.

Geoff Buckland

Madgwick, Sally

Anonymous by request

8a

From: [REDACTED] 13/03/19  
Sent: 17 December 2013 14:04  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Permissive Bridleway at The Mill House, Calstone

Dear Mr Beardsley,

Further to the recent meeting on Wednesday 12th December, I am writing to clarify my points raised in regards to the permissive bridleway being preferable to the existing path at The Mill House, Calstone. I will endeavour to do so as succinctly as possible so please contact me if further clarity is required.

- The safeguarding of children, adults and animals must be paramount in all considerations. The current bridle path is incredibly unsafe for a number of reasons which I know have been detailed within correspondence you would have received to date, including that sent to Cllr Alan Hill by Clare Bromfield, DC of Avon Vale Hunt Pony Club. The permissive route is free from the dangers that we all know the existing bridleway presents and represents an accessible and enjoyable alternative that can be appreciated by a whole family.
- I stated at the meeting that I would not allow my daughter to use the current bridleway however there are concerns that with lack of knowledge, both children and adult riders/walkers would attempt to access and only fully recognise the dangers at a point where return would be difficult. There is an assumption of reasonable safety by virtue of association ie signed as an approved bridle path. On a daily basis riders assess risk making informed decisions however, in this instance, the risk can be hugely minimised by use of the new route which provides a safe alternative with equal gain ie views of the countryside. I worry safeguarding, which is **everyone's** responsibility, will be compromised should the existing bridle path continue to be endorsed, which it doesn't need to be as there is another option.
- At the meeting the mammoth task of maintaining Wiltshires bridle ways was made clear to me. Wiltshire Council has increasingly limited resources and we should welcome any opportunity to relieve burden both from them and from the volunteers who work so admirably to keep the countryside paths safe. I am concerned that with ever reducing capacity, we run the risk of public bridleways becoming a danger due to lack of upkeep. Mr Moore has provided an alternative that will be significantly easier to maintain.

Very best wishes,

[REDACTED]

**Be green - keep it on the screen.**

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Madgwick, Sally

Anonymous by request

8b

From: [REDACTED] 13/03/19  
Sent: 18 December 2018 09:52  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Permissive Bridleway at The Mill House, Calstone

Dear Mr Beardsley

In my email sent to you yesterday I referenced a communication that [REDACTED] had sent to Cllr Alan Hill – please see this correspondence below fyi.

Dear Cllr Hill

*Diversion of the bridleway at The Mill House Calstone SN11 8QF*

*I am writing as the District Commissioner of the Avon Vale Hunt branch of The Pony Club, a position which I have held for more than ten years. As you may know The Pony Club is a registered charity and the largest equestrian training organisation in the country. It has some 40,000 members divided between branches and centres across the country. As District Commissioner, whilst I have been involved with horses all my life, I have also undergone the training schemes required by The Pony Club for District Commissioners and regularly attended the prescribed courses and conferences. I am responsible for planning and managing the training activities for approximately 200 children who are the members of this branch. Among the members is [REDACTED] who is the [REDACTED]*

*I have just inspected the existing route of the bridleway at The Mill House and the proposed diverted route. In my opinion the existing route (and in particular the bridge over the stream) is unsafe for Pony Club members. The bridge is too narrow and the surface of the bridge is unsuitable for horses and ponies used by Pony Club members, and I understand that accidents have been recorded on this bridge in the past. It is therefore my view that continued use of the existing bridleway is unsafe and that it should be closed at the first opportunity. The alternative route proposed by Mr and Mrs Moore is free from these difficulties and represents a perfectly suitable alternative.*

*I would be happy to provide any further information that you might require.*

*Yours sincerely*

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]  
Sent: 17 December 2018 14:04  
To: [REDACTED]  
Cc: [REDACTED]  
<Sally.Madgwick@wiltshire.gov.uk>  
Subject: Permissive Bridleway at The Mill House, Calstone

Dear Mr Beardsley,

Further to the recent meeting on Wednesday 12th December, I am writing to clarify my points raised in regards to



## Madgwick, Sally

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**From:** [REDACTED]  
**Sent:** 27 November 2018 09:52  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Dear Sally

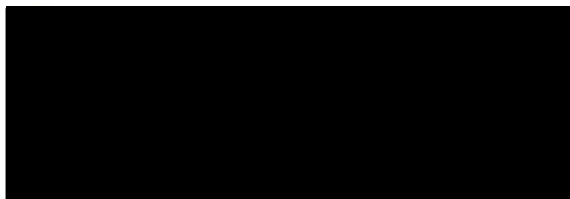
**"Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.**

I am contacting you to formally state my strong support for the diversion of the bridleway above to the new route created by Mr and Mrs Moore.

The new bridleway provides safer, all year round access, is a more enjoyable walk/ride, has a gentler incline and provides much more enjoyable views of the countryside. It provides convenience to a far greater proportion of the public who wish to enjoy this area of Wiltshire.

I am writing to you in my capacity as parent with a daughter in the Pony Club and as a member of both the BHS and WBA.

Very best wishes,



*Shaping the future together*

Collaborative Schools Ltd is a company limited by guarantee

Company Registration Number 7976220

Registered Charity Number 1147521

Collaborative Schools Ltd, The Hub, The John of Gaunt School, Wingfield Road, Trowbridge, Wiltshire, BA14 9EH

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

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Madgwick, Sally

(8) d

**From:** [REDACTED]  
**Sent:** 19 December 2018 09:34  
**To:** [REDACTED]  
**Cc:** Madgwick, Sally  
**Subject:** RE: DIVERSION OF BRIDLEWAY AT CALSTONE MILL

Dear [REDACTED]

Thank you for acknowledging receipt of correspondence sent.

I would be reluctant to request [REDACTED] involvement further – she has made her representation to Cllr Hill and I feel it inappropriate for me to share her details or ask her for more information.

However I understand that [REDACTED] (a local rider and WBA supporter) would be very happy to discuss with you accidents on the bridge – she has a very thorough understanding/history of the area and would be able to help you fully.

For further reference please see below the email sent to Wiltshire by the incoming District Commissioner of the Avon Vale Hunt Pony Club (1<sup>st</sup> January 2019) reinforcing again previous messages shared.

Dear Madam,

I am writing in my capacity as the incoming District Commissioner of the Avon Vale Hunt Pony Club, in support of the application to divert the above bridleways.

The [REDACTED] is a member of our Pony Club and as such I was horrified to note that some of the evidence in support of the application includes reference to an incident during which she was threatened by a male stranger whilst in her own home.

The Pony Club exists to support and encourage its members to enjoy the freedoms that horse riding can give them. This extends not only to competitions and training in formal settings, but the care and welfare of their equine friends and the freedom to be out in the countryside simply enjoying their time on horseback.

In relation to this latter aspect, it is vital that not only riders, but every member of the public, whether able bodied or not, has the ability to enjoy their time out doors in a safe and secure environment.

The existing route of the bridleways at The Mill House is not safe or secure and as such, I support wholeheartedly the application to divert them. The applicants have made considerable efforts to improve the environment around their property so that the Bridleway is accessible to all whether on horse back or not. The proposed route will allow safer access throughout the year unlike the current route which is often impassible. The proposed route is wider, safer and with a more gradual incline. The proposed new river crossing is quieter for the horses and much wider enabling it to be used all year round, rather than the current bridge which is narrow, steep and in a general state of disrepair.

It is clear from the evidence submitted by the applicants, the people are already using the proposed route on a far more regular basis than the existing one. Thus it is clearly more enjoyable, safe and more convenient.

I can see no reason why the application to divert the Bridleway to the proposed new route should not be granted and I hope that Mr and Mrs Moore are successful in their application.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

[REDACTED]

Very best wishes,

[REDACTED]

*the existing bridleway is unsafe and that it should be closed at the first opportunity. The alternative route proposed by Mr and Mrs Moore is free from these difficulties and represents a perfectly suitable alternative.*

*I would be happy to provide any further information that you might require.*

*Yours sincerely*



Best wishes,



**Be green - keep it on the screen.**

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**From:** Maddy Bullock [REDACTED]  
**Sent:** 26 November 2018 09:41  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

"Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington."

Dear Mrs Madgwick,

I am writing to show my support for the diversion of the bridleway at The Mill house in Calstone. I am a huge supporter of the new route created by Mr and Mrs Moore and think it is so much better than the original. I would definitely prefer to use the new route in preference to the one passing right in front of the Mill House as it can be used all year round and is much less intrusive. I never liked passing so close to the house and now the new route makes my rides so much more relaxing. I am a keen member of the Avon Vale Pony club and know that they are very supportive of the new route simply because it is clearly so much safer. The new route also allows me to have a canter on my horse which is something we could never have done before on the steep, gravel drive, and the all weather surface is excellent at cushioning older horses joints. Due to the bridge and track being wider it also means that I have seen lots of parents lead their children off their horses when hacking. I hope you take my opinion seriously as the thought of not having this bridleway is very upsetting.

Best Wishes,

**Madgwick, Sally**

11

**From:** Maggie Bush [REDACTED]  
**Sent:** 10 December 2018 18:31  
**To:** Madgwick, Sally  
**Subject:** Diversion of Bridleway CALW89A, CALW89B and part CALW89

Dear Sally,

I am emailing you to support the diversion of the above Bridleway.

My details are Maggie Bush,

[REDACTED]

Regards

Maggie Bush

Sent from my iPad

**From:** gianfranco chicco [REDACTED]  
**Sent:** 04 December 2018 16:10  
**To:** Madgwick, Sally; Broadhead, Richard  
**Subject:** Bridleway Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I'm writing to support Mr and Mrs Moore's claim to divert the existing bridleway to the new route they have created.

I'm an avid walker and rambler and always prefer walking on bridleways whenever possible because they tend to be much wider, well-maintained and safer to walk on. This is the case with Mr and Mrs Moore's proposed bridleway. The added advantage is that it will be possible to walk the bridleway year-round, especially in the wet winter months where that area tends to get very muddy and near impassable. The new bridleway with its well-maintained hard surface, is a welcome addition. I wholeheartedly support it and endorse it as a much-needed improvement over the older path.

Thank you for your attention on this matter.

Gianfranco Chicco

Sent from my iPad

**Madgwick, Sally**

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18

**From:** marina cobbold [REDACTED]  
**Sent:** 19 November 2018 22:32  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Fwd: Diversion of the bridleway at The Mill House, Calstone

Re: Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89

We are in complete agreement with this application as walkers as it is much safer, wider and not so steep.  
Marina Cobbold  
Gerald Watts

[REDACTED]

**Madgwick, Sally**

19

**From:** Compton Bassett [REDACTED]  
**Sent:** 09 January 2019 18:56  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert bridleway CALW89 and CALW89A and CALW89B at Calstone, Wellington

Dear Sally,

Compton Bassett Parish Council support the diversion of the bridleway at Calstone Mill to the new route created by Mr and Mrs John Moore.

Yours sincerely

Diane Zeitzen

Compton Bassett Parish Clerk

Sent from my iPhone



**From:** Mark Constable [REDACTED]  
**Sent:** 22 November 2018 17:30  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington  
**Attachments:** Letter from NFU 21.11.18.pdf

Classification: Confidential - PII

Dear Sally,

Please find attached a letter in respect of the above.

Kind regards,

Mark

**Mark Constable**  
Group Secretary

Agriculture House  
Langley Burrell  
Chippenham  
Wiltshire  
SN15 4LQ

Tel: 01249 655221  
Fax: 01249 766088  
Email: [mark\\_constable@nfumutual.co.uk](mailto:mark_constable@nfumutual.co.uk)



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*South West Region  
Chippenham, Malmesbury and Sherston Group*

*NFU Office, Agricultural House, Langley Burrell,  
Chippenham, Wiltshire, SN15 4LQ*

Mr Richard Broadhead  
Head of Rights of Way & Countryside  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

21 November 2018

Dear Mr Broadhead,

**Re: Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington**

---

I write in respect of our members, Mr and Mrs J Moore of The Mill House, Calstone Wellington, Calne, SN11 8QF, who have applied to divert part of bridleway CALW89 and the whole of bridleways CALW89A and CALW89B.


I am a Group Secretary for the National Farmers Union, covering the Chippenham, Malmesbury and Sherston area. I am familiar with both the present bridleway and the proposed bridleway.

I have read the submission letter dated 31<sup>st</sup> May 2018 from Thrings to Wiltshire Council and support the representations expressed therein.

The main reason for Mr and Mrs Moore requesting the diversion is due to the impact on their privacy and security. There are also safety issues for riders and walkers passing so close to their house.

Mr and Mrs Moore have invested heavily in carrying out works to the bridge, maintaining the route and putting in a reinforced surface. The new route is much wider, safer and as it has a gentler incline, means it can be used all year round. I know many riders and walkers already use the new route for these reasons and find it much more convenient.

Yours sincerely,

  
Mark Constable  
NFU Group Secretary

**From:** Tim Craig-Harvey [REDACTED]  
**Sent:** 26 November 2018 18:12  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Dear Ms Madgwick,

I am writing to lend my support to the diversion of the bridleway to the new route created by Mr and Mrs Moore. I am a regular user (walking and running) of both the original and new bridleway and given the choice would always use the new bridleway in preference to the one passing in front of The Mill House. The new bridleway is wider and safer and can be used all year round; I also felt very awkward walking or running through the Moore's garden which the original route forced one to do. The Moores have clearly gone to tremendous effort and expense to create an alternative route that, in my opinion, is far better than the original and thus I fully support their application.

I live at [REDACTED] and live only [REDACTED] metres from the bridleway. If you felt it necessary I would be delighted to discuss this further.

Yours sincerely,

Tim Craig-Harvey

**From:** David Moskovic [REDACTED]  
**Sent:** 25 November 2018 22:42  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Diversion of the bridleway at The Mill House, Calstone.

Dear Sally,

Just a quick note to express my support for the diversion of the bridleway at the Mill House. Our family regularly visits Calstone, we know The Mill House and surrounding area very well.

I know, and have walked the official bridleway and the permissive bridleway. The permissive bridleway is so much better and I would always use it out of choice. It is much more convenient. We have two young children and could never manage them in a buggy on the official bridleway but can do so easily on the permissive bridleway.

I am sure using this better alternative this would preferred option for anyone.

Best wishes,

David

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[REDACTED]

Ms S Madgwick,  
Wiltshire Council,  
County Hall,  
Bythesea Road,  
Trowbridge,BA14 8JN.

24<sup>th</sup> November 2018.

Dear Ms Madgwick,

I write in support of the track created to replace the difficult section of the path linking road UC7008 with BR 89a and UC7005. Having served on Calne Without Parish Council for 40 years and as chairman for 14 of those years, I have known this path for a long time. To my knowledge, the bridleway did not continue between end of UC7008 and the south side of the river crossing. The section from the River Marden to the buildings of Manor Farm, is dangerous and in wet weather, impassable due to the soft nature of the ground, the steep gradient, and the effect of water run-off which causes severe damage to the surface.

The alternative route which has been provided by Mr And Mrs Moore is of great benefit to all who wish to travel this way since with a firm, stable surface a more generous bridge and gentle gradients it is suitable for cyclists, walkers, and wheelchair users as well as equestrians.

In view of all the advantages of the new track, I would strongly urge members of the committee to recommend closure of the route past The Mill House by designation as a bridleway the new track which is safer for users and so much better in every way.

Yours sincerely,

[REDACTED]

Derick Eadon.

Copy to: Mr R. Broadhead.

**From:** BILL EGERTON [REDACTED]  
**Sent:** 21 November 2018 08:30  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** RE: Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

For the record, my address is: [REDACTED]

Bill Egerton  
[REDACTED]

**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

To whom it may concern,

The proposal to divert the bridleway outside the Mill House at Calstone Welington has been brought to my attention. This e-mail is in full support of the proposed diversion of the bridleway to the new route created by Mr and Mrs Moore.

Since inception I have and will always use the new bridleway in preference to the one passing in front of The Mill House. Frankly, it is just better and more convenient than the old route: nicer, wider and less steep. The bridge is wider and it is usable all year around.

I assume you operate in a way that seeks best value for the taxpayer. Repairing just to keep safe the bridge for which you are responsible will cost you a great deal of money and refusing the application defies logic especially when the landowner has created a better more commodious amenity out of their own pocket.

Please approve the application.

Bill Egerton  
[REDACTED]

**From:** Bruce Fein [REDACTED]  
**Sent:** 02 December 2018 19:46  
**To:** Madgwick, Sally  
**Cc:** richard.Broadhead@wilshire.gov.uk; [REDACTED]

“Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

I would always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, with a gentler incline and can be used all year round. That also makes it much more convenient.”

as one of a group who delights in walking in beautiful serene area, away from their home would be even more enjoyable.

Bruce F Fein  
[REDACTED]

**From:** Robert Fitzpatrick [REDACTED]  
**Sent:** 03 December 2018 11:20  
**To:** Madgwick, Sally; Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, CALW89A and CALW89B at Calstone Wellington

Sir

I support the proposed diversion of the existing bridleway to the new route being proposed by Mr and Mrs Moore.

My wife and I walk in the area and much prefer the new route. I have a arthritic knee and the new route has a gentler incline and firmer footing making it much easier to use. I can use it all year round which makes it much easier. I hope that you will give your approval to the new route.

Kind regards

Robert FitzPatrick



**Madgwick, Sally**

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**From:** William Gilmore [REDACTED]  
**Sent:** 09 December 2018 20:07  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

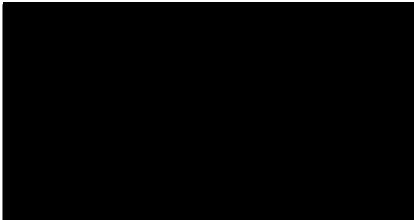
Dear Sally

Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

I support the proposed diversion of the bridleway, it is safer than passing in front of the Mill House and it can be used all year round.

Kind regards

William Gilmore



**From:** Cliff Goodman [REDACTED]  
**Sent:** 27 November 2018 10:17  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** CALW89 & CALW89B

Re. Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

As a regular dog walker, I strongly support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

I would always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, with a gentler incline and can be used all year round. This route is part of my daily routine, the diversion avoids the hassle of gateways and also allows my dog the freedom of walking off of it's lead.

That also makes it much more convenient.

What's not to like ?

Cliff Goodman  
[REDACTED]

**From:** [REDACTED]  
**Sent:** 21 November 2018 17:35  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

To whom it may concern,

Application to divert bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

I support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

As a keen birdwatcher, the new bridleway enables me to watch the herons down the river from a quieter point of view, and the ability to observe the birds all year round is useful to me, as I am currently looking into migration and breeding patterns.

Many thanks

[REDACTED]

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Registered Office: Curzon Street, Calne.

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**From:** Nick Harmer [REDACTED]  
**Sent:** 19 November 2018 16:10  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Dear Sally

I write to support this proposal. I walk my dog extensively around the Calstone and Smallgrain area and, in my advancing years, I think it would be better and more convenient to have access to a bridleway with a less steep incline that is wider and safer than the one that runs in front of the Mill House. This is something I would use all the time.

Thank you for your consideration.

Best regards

Nick Harmer  
[REDACTED]

**From:** Anne Henshaw [REDACTED]  
**Sent:** 01 December 2018 17:53  
**To:** Madgwick, Sally  
**Subject:** right of way diversion

Dear Sally,

Calstone

Diversion order for CALW89, part, and CALW89a and CALW89b.

CPRE have been approached about this diversion application, and having looked at the proposal we can see no landscape, environmental or habitat reasons why this should not be carried out.

The alternative proposal seems reasonable, practical and in no way spoils public enjoyment of a historic public path.

Kind regards,

Anne

**From:** HILL, Helen (RKSTL) [REDACTED]  
**Sent:** 02 January 2019 05:04  
**To:** Norman Beardsley;; Rosie Pack;; Madgwick, Sally; Broadhead, Richard; Norman Beardsley;; Rosie Pack;; Madgwick, Sally; Broadhead, Richard  
**Subject:** Caistone Mill bridleway

Dear All,

I have been advised that the Calstone Mill diversion is still under consideration.

Being both a horse rider and dog walker in the village, I like to think I see from different points of view. Please allow me to further air my views on the changes.

Firstly, Bravo to Mr Moore for installing and up-keeping the diversion to a very high standard. Yes, I am in favour. I use the diversion daily now without fear or embarrassment, in oppose to only weekly/monthly in the past. And seldom ever during winter or rainy season.

Gone is the :

Steep gravel gradient to a narrow foot bridge over river, passing closely parked vehicles and house, with slippery paving at close quarters. Whilst dodging residents, children, barking dogs and everything else associated with a working household, all the while hoping that your pony will not slip whilst negotiating the hazards. The winter months used to be abominable, with the extra mud and slippery surfaces adding to the uncertainty of crossing over the narrow wooden bridge.

I'm now extremely pleased to utilise the wide, well maintained, well fenced, aesthetically pleasing , gradual slope over an amply wide, solid bridge where even the largest of horses won't feel they are precariously near the edge. Even my dogs choose to walk on the all-weather surface, in oppose to the field. We are now less likely to cause the resident dogs to bark or chase the cats. I also feel I can now use the bridleway at 'unsociable hours'. I no longer feel I am encroaching on the Mill being slightly further away from their windows yet not spoiling my view. I hope you find my points worth discussion.

Kind regards  
Helen Hill



Helen Hill  
 [REDACTED]

*Please note that my email address has changed*

[REDACTED]



COLAS RAIL LTD

**From:** Simon Hillson [REDACTED]  
**Sent:** 20 November 2018 12:50  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Although I do not live in the area, I am a keen walker and member of the Ramblers Association and have visited the site of the proposed diversion several times, and have walked both the existing path and the new route created by Mr and Mrs Moore. I write in strong support of the diversion of the bridleway to the new route, which I would always use in preference to the one passing in front of The Mill House because it is better in every respect from the point of view of the recreational walker. Not only is it much wider, safer, with a gentler incline, and capable of being used all year round, but the views and overall experience are also superior.

Regards

Simon Hillson  
[REDACTED]



**From:** SHARON HOCKEY [REDACTED]  
**Sent:** 14 January 2019 10:10  
**To:** Madgwick, Sally  
**Subject:** Safe use of Bridleways CALW89A, CAL. W89B and part CALW89

Dear Mrs Madgwick,

I would like to expand on the reasons for many of us local people supporting the proposed diversion to the Calstone bridlepath CALW89A, CALW89B and part CALW89:

I am a lifetime rider, owner and breeder of horses and cattle. I have been using this bridleway since moving to the area in 1993. The area is beautiful to spend time in, many of the routes are really pleasant and this particular route connects some useful bridleways. However, using the existing official route presents serious hazards for the horse rider each time.

When trying to decide how to describe the numerous hazards that riding the current route presents, I thought of the Risk Assessments that I make at work for Building and Engineering Activities where safety is paramount and consideration of all those safety threats must be considered. For that reason, I have decided to write a formal Risk Assessment for using the current official bridleway route as compared to the proposed diversion, you may find it interesting so please bear with me.

Safe practice for horse riding in public spaces would be to avoid taking a horse close to a houses, large glass windows, parked cars and the normal human and pet traffic that comes with domestic living. Horses are large, flight animals who's natural instinct is to run from perceived threats and potential predators. When faced with unusual circumstances, their adrenalin levels are programmed to increase very rapidly to prepare their muscles to react very very quickly, sometimes in unexpected ways. Any sane rider will only expose their horse to such hazardous triggers where they are surrounded by plenty of safe space thus allowing the animal room to react and the rider a chance to regain control within the few seconds needed. Hence riders prefer quiet open spaces and fields and avoid roads and public places if possible.

Unfortunately, in order to use the existing route for this particular bridleway, the rider is forced to expose the horse to a concentrated succession of the high risk triggers and potential hazards that are normally only associated with passing close to a domestic property and not with attempting to avoid such hazards by using a rural bridlepath.

These hazards and the necessary preparation and countermeasures can best be described by the following **Risk Assessment** that we riders carry out EVERY TIME we use this path:- (where "rider" is mentioned, the same skills and tactics are required from dismounted handlers)

**Risk Assessment for Equestrian users of existing CAL 89, 89A and 89B** (also available as a separate document)

	Hazard	Risk	Actions	Mitigating Measure
	<b>EXISTING BRIDLEPATH ROUTE TRAVELLING SOUTH</b>			
1	Descend steep driveway approaching Mill buildings	Most horses are uncomfortable travelling steeply downhill. They are at a disadvantage if a predator appears and so their natural adrenalin levels will begin to rise at this point	Rider must prepare for a sudden over reaction from their horse to normal stimulus.	Stay alert but calm, look for hazards and try to plan avoiding action if necessary.
2	View Buildings	Any horse will register the approaching mass of buildings as a hazard and would prefer to pass it widely allowing room for escape should a potential "predator" appear. This route requires the horse to pass between buildings increasing the feeling of being "trapped"	At this point the rider must insist that the horse override it's instinct to avoid the hazard and begin to pass between the buildings at close quarters. The trained horse will obey, but it's adrenalin levels will increase further because it now feels at risk.	No mitigating measures possible.  The permitted route requires the rider to approach and pass these buildings closely.



		the first place.	Any sudden noise from the house or garden area during the bridge crossing will likely trigger a hasty and possibly dangerous exit from the bridge.	getaway by the horse.
6	If crossing the bridge travelling North	The exit from the bridge can be surrounded with an array of normal domestic objects that will present as a major hazard to the exit path of a fleeing horse. These cannot be seen clearly on approach to the bridge so preparation to deal with them is left to the last minute.	The rider must prepare for a high speed exit possibly even leaving the bridge with a jump.  The exit area can be restricted to the 3 metre width by parked cars. This could be inadequate in these circumstances.	Again, the rider will have to mentally register any obstacles in the vicinity that may be at risk of collision with a frightened horse in flight. Parked cars, toys, garden ornaments and people are all at risk at this point.
7	Look for pedestrians in the vicinity at all times whilst passing through this section of the route	Pedestrians are at high risk of collision from a frightened horse in the close confines of this part of the bridleway.	If necessary stop and wait to allow walkers or cyclists to clear the garden and bridge area before attempting to traverse this part of the bridlepath. Regrettably It may be necessary to move into the private garden area to retreat to a safe enough position at the worst part of the route.	It is advisable to shout a warning to people in the garden and driveway area when approaching the Mill House and buildings from either direction to enable them to take avoiding measures.  Never attempt to pass through this part of the bridle path with any pedestrians in the near vicinity for their own safety.
	End of Risk Assessment			

The above list of hazards and the precautions we have to take is what we riders risk every time we ride along the part of the bridleway that is within the garden curtilage of the Mill House.

I am aware of many riders who are unable to use this route because of the hazards detailed above. Novice riders, nervous riders, riders with children among their group, riders on young or nervous horses, unaccompanied riders. All of these groups will chose not to use this route because the risk assessment above makes the risks greater than the enjoyment to be gained - it's just not worth it.

Alternative route

Fortunately the landowner has created a safe haven as an alternative route and what a huge and refreshing improvement it is. Almost all of the above described hazards are removed and using the path becomes a pleasure instead of an ordeal. The equivalent Risk Assessment for the Diverted route is as follows:-

**Risk Assessment for Equestrian users of proposed diversion to CAL 89, 89A and 89B**

<b>PROPOSED DIVERTED ROUTE TRAVELLING SOUTH</b>			
Hazard	Risk	Actions	Mitigating Measure
Descend gently sloping path towards river crossing	Footing is sound, firm or optionally a grass surface. The path is wide with a high hedge on the left and a strong, obvious stock fence to the right.	Rider must look out for the wider range of walkers or cyclists that can now use this path who may be approaching from behind or in front. If sighted, allow room for them to pass.	Stay alert.
View Buildings	Buildings are easily viewed from higher ground but at a safe distance.	No actions required	Stay alert.

J) Whatever rights of way may exist; As polite humans we are instinctively aware of others personal space and take care not to cause damage or disruption whilst there. Removing that effort by not having to pass close to a private house is a relief and convenience worth describing here.

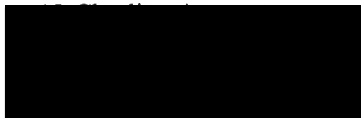
I understand the landowner offers to maintain the diverted route at his own expense. In 24 years I have not noticed that the official route has ever been maintained by Wiltshire Council. I have taken part in voluntary working parties to clear this route among others, so although the existing surface and bridge design might be improved by investment and maintenance from Wiltshire County Council, it seems unlikely that this will happen in the next 24 years either. This opportunity to legally secure a maintained and improved right of way must surely be seized?

I think the issue to be resolved here is the actual route of the existing bridleway as compared to the proposed, much safer and more convenient alternative. I feel it is now wrong to regard the proposed diversion as disadvantageous in any way over the existing, less desirable and far more dangerous route.

As riders and walkers, we use this path as an opportunity to get away from public roads and spend time enjoying our beautiful local countryside. Extending this path is a blessing and I'm sad that this is a mere 100 Metre extension to CAL89 etc.

Yours Sincerely

Sharon Hockey



**From:** SHARON HOCKEY [REDACTED]  
**Sent:** 27 November 2018 13:18  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Bridleway Diversion CALW89A, CAL W89B and part CALW89

Dear Ms Madgwick,

I write in wholehearted support of the proposed above bridleway diversion.

Having ridden this route for over 25 years I am delighted to know that It could be officially diverted to the benefit of all users.

The proposed diversion route is a huge improvement on the traditional route offering a far safer and more enjoyable journey for the horse rider or walker.

Since access to a working Mill is no longer necessary, the need to pass dangerously through a yard and between buildings on horseback is long obsolete. This route should be closed for the safety and comfort of all users and the much preferred diversion adopted.

Please can you register my support in this matter

Kind regards

Sharon Hockey  
[REDACTED]

**Madgwick, Sally**

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**From:** Vanda-Lynn Hughes [REDACTED]  
**Sent:** 26 November 2018 14:17  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

Dear Ms Madgwick

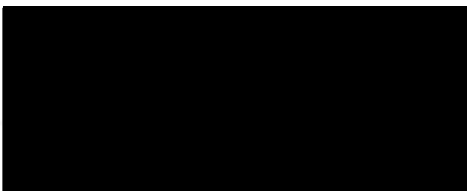
I really support and enjoy the new diversion of the bridleway, the new route created by Mr and Mrs Moore.

I will always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, with a gentler incline and can be used all year round. That also makes it much more convenient. for me with two large dogs.

Dog walker.

Kind regards

Vanda-Lynn Hughes



**Madgwick, Sally**

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**From:** Angela Gilder [REDACTED]  
**Sent:** 27 November 2018 11:02  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Bridle way Calstone

Re: application to divert bridleway part CALW89 & CALW89B

We fully support the diversion to the bridleway to the new route created by Mr & Mrs Moore.

It is a far pleasanter route to walk upon, the slope is gentler and the view superior. Local people appreciate very much the efforts of the Moores to improve the local environment. It one of our favourite walks in the vicinity and wonderful for canine visitors.

Mark and Angela Hyde  
[REDACTED]

Sent from my iPhone

**Madgwick, Sally**

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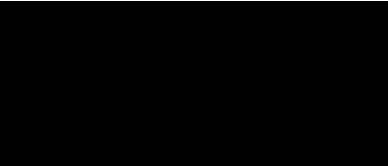
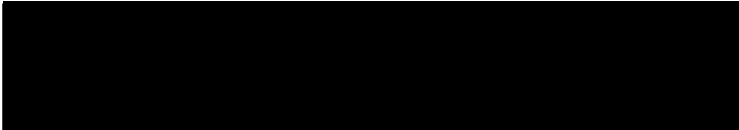
**From:** Jacobs, Simon  
**Sent:** 25 November 2018 12:50  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89

Dear Sally

I write with regards to the above application re the bridleways listed above. I am a long term Wiltshire resident and councillor. I am also a keen cyclist, walker and horse rider and have used the new permissive bridleway to the east of The Mill House. I found it to be a much easier and safer route to use than the old one and I very much hope that the new route is granted permission, not just for our benefit but for the many generations to come. I therefore support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

Yours sincerely  
Simon

Cllr Simon Jacobs



## Madgwick, Sally

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**From:** Jurgen Kronig [REDACTED]  
**Sent:** 10 January 2019 17:11  
**To:** [REDACTED]  
**Cc:** Scott, Jane; Madgwick, Sally  
**Subject:** Diversion of Bridleway Mill House Calstone

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Dear Cllr Hill,

### Diversion of the bridleway at The Mill House, Calstone.

I am a broadcaster and political journalist and have lived in Calstone for the last 29 years.

I am a former President of The Foreign Press Association.

I am a keen walker and strong supporter of the proposals to divert the bridleway at The Mill House. Last year, I became a member of the Wiltshire Bridleways Association ("WBA"), in part to encourage a proper debate on the merits of the proposed diversion.

Last night I attended a meeting of the WBA to discuss the matter. I was joined by 4 other members/supporters [REDACTED] (Parish Councillor), [REDACTED] (local rider), [REDACTED] (local resident and dog walker), and [REDACTED] (local resident and mother of young children).

Two other supporters, [REDACTED] had already written to Norman Beardsley (Chairman of the WBA), at his request to explain why they supported the proposal. Other local members have also written in.

It was clear from the start of the meeting that Mr Beardsley and his committee had decided to object to the proposal. Their objection was not on rational grounds but as a point of principle.

There was no proper debate. When points in favour of the proposal were raised they were quickly quashed by Mr Beardsley; it appeared that the decision had already been made. The WBA take the view that they will not oppose the creation of the new bridleway but will oppose the stopping up of the present - that is hardly a diversion.

Yours sincerely,

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Jurgen Kronig OBE



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## Madgwick, Sally

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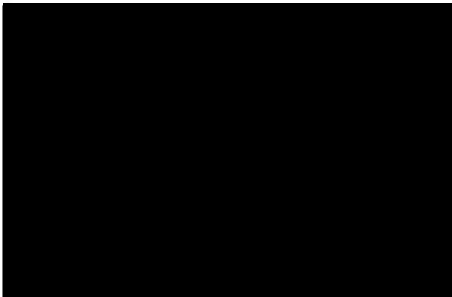
**From:** Lucy Tsourous [REDACTED]  
**Sent:** 19 November 2018 18:38  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Diversion of Bridleways 89,89A and 89B at SN11 8QF

46

I am told you are consulting over the above.

I support the diversion of bridleways 89,89A and 89B at The Mill House, Calstone. I am a keen walker and regularly stay in the Calne area often accompanied by my elderly mother. My mother could never manage the walk through The Mill House but enjoys the new bridleway which is much more convenient. When my children join us they too much prefer the new route particularly as they can use their bikes.

Kind regards,



## Madgwick, Sally

---

**From:** Kevin Last [REDACTED]  
**Sent:** 21 November 2018 16:56  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert bridleway part CALW89, CALW89a and CALW89b at Calstone Wellington

47

Dear Sally

I write to you in support of the diversion of this bridleway to the new route proposed by Mr And Mrs Moore.

As a resident of Calstone since 1990 who walks around the village every day with my dogs I have always felt awkward using the path so close in front of their windows, so was delighted to see the new route. The old route was steep and often waterlogged so this is so much better.

Mrs Ann Last  
[REDACTED]

## Madgwick, Sally

---

**From:** Sally-Ann Leaf [REDACTED]  
**Sent:** 16 December 2018 14:51  
**To:** wiltshirebridleways@yahoo.co.uk  
**Cc:** Rosie Pack; Madgwick, Sally  
**Subject:** Calstone Mill Permissive Bridleway

48a

Dear Mr Beardsley,

Further to the meeting on Wednesday 12th December I am writing, as requested, to outline why, in my opinion, the permissive bridlepath is preferable to the existing bridlepath at The Mill House, Calstone.

I have lived in the area for 14 years and I regularly ride through Calstone. One of my preferred routes is the above bridlepath. I rode through there this morning after a day of incredibly heavy rain and high winds. The original bridlepath would have been perilous due a number of factors. The muddy footing leading to a narrow and slippery bridge. The noisy rushing water beneath followed by a step down to a gravel drive. When a horse pushes off a bridge with their hind legs they can slip very easily if the surface has no traction. On the gravel drive there were 6 vehicles and a number of people and dogs to navigate on a hunting fit horse. When riding horses you are always assessing risk, consequences and planning for a safe outcome. So instead of taking the perilous route, today I used the permissive bridlepath and it was straightforward, safe and I hardly had to think about potential hazards as there were none.

From the permissive bridlepath the view of the house is wonderful. I had time to stop and take in the view whereas on the few occasions I have used the original bridlepath, I was too busy navigating my way through the hazards to look up and admire the house.

The horses I ride and own are competition horses. My daughter rides also and I would not risk my child, my horses or myself riding over the old bridge. Horses and ponies can be unpredictable and to be able to ride along a safer path makes eminent sense. The path is wide enough for horses to pass each other safely, the bridge is inviting and the footing secure.

Should we be required to use the original Bridleway bridge then I would avoid that part of Calstone as it an unnecessary danger and I would not put myself and my children at risk of using it.

Sally-Ann Leaf  
[REDACTED]

Sent from my iPhone

## Madgwick, Sally

---

**From:** Sally-Ann Leaf [REDACTED]  
**Sent:** 24 November 2018 19:36  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89

486

Dear Mrs Madgwick,

I am writing in support of the application submitted by Mr and Mrs John Moore for the use of the permissive Bridleway in Calstone.

We regularly ride along the permissive Bridleway which is now so much safer and more enjoyable for both horses and riders. The old Bridleway meant navigating a slippery, narrow bridge which was at time perilous for the horses. The water rushing underneath the bridge added to this risk. Horses and ponies are unpredictable and to be able to ride along a safer path makes eminent sense.

Should we be required to use the original Bridleway bridge then I will not use it at all as it an unnecessary danger and I would not put myself and my children at risk of using it.

Sally-Ann Leaf  
[REDACTED]

Sent from my iPad.

**Madgwick, Sally**

---

**From:** [REDACTED]  
**Sent:** 11 December 2018 16:19  
**To:** Madgwick, Sally  
**Subject:** Proposed diversion of Bridleway CALE89A, CALW89B & part CALW89

49

Dear Sally

I am a keen rider and member of the Wiltshire Bridleways Association.

I am writing in support of the above application to divert the bridleway which presently runs through The Mill House, Calstone to the route of the Permissive Bridleway which has been created by the owners of The Mill House.

The new bridleway is much wider, less steep and safer and unlike the present bridleway can be used all year round. The bridge on the new bridleway is much wider and reinforced unlike the old one which isn't really up to taking the weight of a horse and is narrow and can cause injury to both horse and rider.

If the diversion of the bridleway is not approved there is a real danger that the alternative bridleway will be closed. Many riders would then lose the ability to hack safely round and over the river.

I really hope that you will consider the points raised in this email to help bring about the diversion of this bridleway.

With kind regards

[REDACTED]  
Sent from my iPhone

Sent from my iPhone

## Madgwick, Sally

---

**From:** info@[REDACTED]  
**Sent:** 22 January 2019 19:21  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** "Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington."

52

Re: Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I support the diversion of the bridleway to the new route created by Mr and Mrs Moore

I regularly ride in Calstone and would always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider with a gentler incline and can be used all year round. When riding young, inexperienced or nervous horses the new bridleway is much more suitable and far safer.

I am a member of the Wiltshire Bridleway Association and British Horse Society

Yours sincerely

Helen Martin

Helen Martin, British Horse Society Registered Instructor and British Eventing Accredited Coach

## Madgwick, Sally

---

**From:** Sandy Maundrell [REDACTED]  
**Sent:** 04 January 2019 16:57  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Diversion of bridleway

53

Application to divert Bridleway CALW89 and CALW89A and CALW89B at Calstone-Wellington.

I fully support this proposal.

The new path which has been constructed by Mr. & Mrs. Moore is a much preferable route for a number of practical reasons, the most important to me, as a regular walker is that it is passable at all times of the year in order to access other parts of the village. Walkers and riders can equally enjoy this facility all year round unlike the existing route which is reduced to a quagmire for several months over the winter.

Sandra Maundrell  
[REDACTED]

Sent from my iPad

**Madgwick, Sally**

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**From:** [REDACTED]  
**Sent:** 22 November 2018 16:57  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard; [REDACTED]  
**Subject:** Calstone Wellington - Mill House Bridleway Application: CALW89A and CALW89B

(54)

Dear Ms Madgwick,

**Application to divert Bridleway part CALW89, and at Calstone Wellington**

May we write to support the diversion of the bridleway to the new route created by Mr. and Mrs. Moore.

We have walked both the existing and proposed diversionary bridleways and would always use the new bridleway in preference to the one passing in front of The Mill House. It is both wider, safer and can be used all year round. We are also aware that when using the existing bridleway, we are passing directly through the grounds immediately next to the main house and outbuildings, which is possible security risk to the owners.

We therefore believe that this application should be granted.

Roger and Stephanie Milburn

[REDACTED]

Dated 22 Nov 2018



Mrs Money-Kyrle

20. 12. 18.

Diversion of bridleway at Millhouse

Sir,

I am very anxious that the Bridleway around the Millhouse should be preserved.

It has been well made. It is very important for both the very elderly and the very young.

There are no other footpaths which are possible in the vicinity for various reasons.

The surface is excellent for humans and horses, and should not be taken back to its original hopeless state by the house.

Yours faithfully

## Madgwick, Sally

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**From:** Charles Money-Kyrle [REDACTED]  
**Sent:** 26 November 2018 11:50  
**To:** Madgwick, Sally; Broadhead, Richard  
**Cc:** Katie Money-Kyrle [REDACTED]  
**Subject:** RE: The Mill Bridleway improvement

56

To Sally Madgwick

Apologies, following our email below may I pls add our address as follows:

Charles and Katie Money-Kyrle



Kind regards

*Charles Money-Kyrle*



---

**From:** Charles Money-Kyrle  
**Sent:** 26 November 2018 11:44  
**To:** [Sally.Madgwick@wiltshire.gov.uk](mailto:Sally.Madgwick@wiltshire.gov.uk); [Richard.Broadhead@wiltshire.gov.uk](mailto:Richard.Broadhead@wiltshire.gov.uk)  
**Cc:** Katie Money-Kyrle [REDACTED]  
**Subject:** The Mill Bridleway improvement

To: Sally Madgwick, Wilts CC

Dear Madam

**Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.**

We would like to express our support for the diversion of the bridleway to the new route created by John and Lucy Moore.

We would always use the new bridleway in preference to the one passing in front of The Mill House. It seems a good initiative by the Moore family and seems to make the route significantly safer for walkers and riders, especially young or inexperienced riders.

As active riders in the area, we have to advise and to a large degree assist young riders often with young ponies and horses, and safety is always an issue. We always welcome improvements to bridle ways to make them easier to navigate, and generally safer and more user friendly for the wide variety of users to enjoy both mounted and on foot.

For these reasons we strongly support the proposed improvement to the route.

Kind regards

Charles Money-Kyrle

Katie Money-Kyrle

## Madgwick, Sally

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**From:** [REDACTED]  
**Sent:** 06 December 2018 17:18  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

58

"Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington."

Dear Mrs Madgwick,

I am contacting you with regards to the diversion of the bridleway in Calstone Wellington, As a very keen rider and dog walker I regularly use the new proposed route and feel that it is much better and more convenient.

Firstly, the proposed route allows my friends and I to hack on horse back and walk our dogs all year round. The mud on the old route completely eliminated the option of walking through for many weeks of the year especially in winter.

The lack of mud and the all weather surface also allows people of all ages to walk round as well as giving a safe track for those pushing buggies and wheelchairs. Whilst I have been riding round I have also noticed the increasing amount of people I see out. The proposed route has definitely enabled all people to walk through out the year. The proposed route is also much wider and along with the surface this allows riders to have a canter safely. The proposed route is much more relaxing to ride on as I no longer have to face the obstacle of cars, children or other animals whilst going through. The fear of being too loud or flicking gravel up at a car is no longer there as I am further away from the property and feel much less intrusive, especially on my early morning rides.

To conclude, I strongly believe that the new proposed route is much more popular and convenient due to the points I have mentioned. I see no reason why the old route should not be diverted to the new one and would like to think that the council took mine and my friends opinions seriously, after all Wiltshire councils motto is "where everybody matters".

Yours sincerely,

[REDACTED]  
St Mary's Calne;  
A Company Limited by Guarantee;  
Registered in England No. 235572;  
Charity No. A309482;  
Registered Office: Curzon Street, Calne.

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60

**From:** kate morley [REDACTED]  
**Sent:** 19 November 2018 18:33  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

Dear Sally

I am writing to support the application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I am a local resident who walks my dog extensively through the village and on the surrounding downs. I have also served as a Calne Without Parish Councillor in this ward so am fully aware of all the considerations required in planning issues.

I am wholly supportive of this diversion on the following grounds:

The diversion provides a better solution for both riders and walkers.

It's convenience has already proved it to be the preferred route for both.

It can be used all year around unlike the previous route even allowing access to buggies and mobility scooters during the dry months.

It is wider and therefore safer and more flexible than the old route for example allowing young riders to be on a leading rein. The new bridge is twice the width of the old one.

The new route has a gentler incline and so again makes it more accessible to all.

The diversion solves security issues experienced by the landowner in relation to family, pets, vehicles and property whilst in no way degrading the user experience.

I very much hope that this application will meet with success.

Kind regards

Kate Morley

[REDACTED]

## Madgwick, Sally

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**From:** [REDACTED]  
**Sent:** 26 November 2018 10:20  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Reference Application CALW89, and CALW89A and CALW89B

61

Dear Ms Madgwick,

We are writing to you to express our strong support for the application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

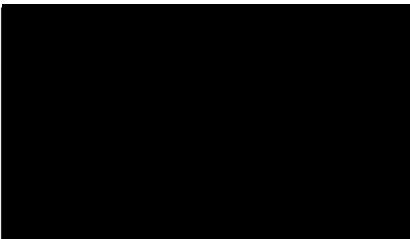
We are a local family who regularly enjoys using the local footpaths and bridleways with our two young children – be that walking or by bicycle. The diverted route created in this instance by Mr & Mrs Moore is infinitely more preferable to the one passing in front of The Mill House. Primarily, it has been created exactly for that purpose, providing a firm surface on which to walk/push children in buggies. The new path is wider and therefore by nature a safer route to take as well as being of a much gentler incline that can be utilized all year round.

We do feel it's worth noting that in this instance we have a local family who have invested their own money to create a vastly enhanced route for a huge variety of users – from walkers to horse riders. Given the well publicised pressure on local authority budgets and with that the general lack of ongoing maintenance seen on the majority of council maintained footpaths and bridleways in the area, it seems extraordinary to us that this application not be met with enthusiasm and support from the local authorities. We see no justification whatsoever in refusing this application, whose clear benefits vastly outweigh any perceived and illogical clashes with planning policy and ensures this permissive bridleway can remain open for future generations.

We would ask that the planning committee consider these facts carefully alongside the significant support for this application before reaching their decision.

Yours Sincerely,

Tom & Nina Newey



## Madgwick, Sally

---

**From:** Polly Nicholson [REDACTED]  
**Sent:** 19 November 2018 22:03  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Bridleway in Calstone Wellington

62

Dear Ms Madgwick,

Application to divert Bridleway part CALW89 and CALW89A and CALW89B at Calstone Wellington

I write in support of the diversion of the bridleway to the new route created by Mr and Mrs Moore. I am a close neighbour of the Moore family, and have three children who ride. When we previously hacked into Calstone we were forced to ride through the existing Bridleway detailed above, which involved passing through a busy area in front of the Moore's family home, and over an extremely narrow bridge which frequently caused our horses to spook. I felt uncomfortable on several counts, the main one being the danger of crossing the bridge and the steep incline which followed it. I was also conscious of being in such proximity to parked cars, even though the route was never blocked, and finally I was embarrassed to be crossing so close to somebody's house, and felt that I was invading on the Moore's privacy (despite them being extremely friendly and very good neighbours). We eventually stopped using the hacking route completely.

Since the introduction of the proposed bridleway we have resumed our rides, and I am very happy to let my daughters ride this route unchaperoned. It is much safer, with a proper surface and a realistic width to the whole route, including the bridge. The views of The Mill are beautiful, all the better seen from a short distance. and moreover we do not feel that we are invading anybody's privacy. There is no way that I would now allow them to go back to using the Bridleway right in front of the house.

I sincerely hope that you will support their application.

Best wishes,

Polly Nicholson.



*Baynton*  
FLOWERS

## Madgwick, Sally

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**From:** Louisa Vere Nicoll [REDACTED]  
**Sent:** 22 November 2018 15:20  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

63

Dear Ms Madgwick

### **Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington**

We would like to show our support of the diversion of the bridleway to the new route created by Mr and Mrs Moore.

We live at [REDACTED] and frequently take our children on walks around the village:

- The new bridleway has made walking with young children far more accessible and enjoyable. It is a generous and level path and can be used all year round as it does not get muddy.
- We feel far more comfortable using this path rather than walking in front of The Mill House as we would feel it would encroach on the family's privacy. Again with young children we would worry about cars and pets and safety.
- The path is completely fenced off and safe even when there is livestock in the field, which puts out minds greatly at ease.

We are very grateful to the Moore's for all their efforts in facilitating this new bridal path.

Yours sincerely  
Mrs Vere Nicoll

[REDACTED]

**Madgwick, Sally**

---

**From:** oksana grygorashyk [REDACTED]  
**Sent:** 25 November 2018 22:17  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

68

Dear Sally,

I am writing with regards to the Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

I do a lot of walking in the area and my strong preference would be to always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, and has a gentler incline. It can be used all year round and I find it a lot more convenient.

I will await your response.

Kind regards,  
Oksana



## Madgwick, Sally

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**From:** Kate Patterson [REDACTED]  
**Sent:** 18 December 2018 13:19  
**To:** Madgwick, Sally  
**Cc:** ricjhard.broadhead@wiltshire.gov.uk  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone, Wellington

69

Dear Madam,

I am writing in my capacity as the incoming District Commissioner of the Avon Vale Hunt Pony Club, in support of the application to divert the above bridleways.

[REDACTED] is a member of our Pony Club and as such I was horrified to note that some of the evidence in support of the application includes reference to an incident during which she was threatened by a male stranger whilst in her own home.

The Pony Club exists to support and encourage its members to enjoy the freedoms that horse riding can give them. This extends not only to competitions and training in formal settings, but the care and welfare of their equine friends and the freedom to be out in the countryside simply enjoying their time on horseback.

In relation to this latter aspect, it is vital that not only riders, but every member of the public, whether able bodied or not, has the ability to enjoy their time out doors in a safe and secure environment.

The existing route of the bridleways at The Mill House is not safe or secure and as such, I support wholeheartedly the application to divert them. The applicants have made considerable efforts to improve the environment around their property so that the Bridleway is accessible to all whether on horse back or not. The proposed route will allow safer access throughout the year unlike the current route which is often impassible. The proposed route is wider, safer and with a more gradual incline. The proposed new river crossing is quieter for the horses and much wider enabling it to be used all year round, rather than the current bridge which is narrow, steep and in a general state of disrepair.

It is clear from the evidence submitted by the applicants, the people are already using the proposed route on a far more regular basis than the existing one. Thus it is clearly more enjoyable, safe and more convenient.

I can see no reason why the application to divert the Bridleway to the proposed new route should not be granted and I hope that Mr and Mrs Moore are successful in their application.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

[REDACTED]

**Madgwick, Sally**

---

**From:** Charles Phillips [REDACTED]  
**Sent:** 03 December 2018 19:24  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert bridleway

70

**Application to divert bridleway part CALW89 and CALW89A and CALW89B**

Dear Ms Madgwick,

I am writing in support of the application to divert the bridleway mentioned above to the new route created by Mr and Mrs Moore.

I lived locally for many years and currently keep horses not far from Calstone [REDACTED] and regularly hack out on the bridleways. I am also a leisuretime walker on Wiltshire's footpaths. One of my available routes takes me past Mill House.

I am entirely happy to use the new route created by Mr and Mrs Moore and would, frankly, prefer to use the new, wider and safer bridge over the River Marden. The old bridge was an accident waiting to happen from a rider's viewpoint.

I can be contacted on the phone number below to enlarge on any points, if required.

Yours sincerely,

Charles Phillips

[REDACTED]

## Madgwick, Sally

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**From:** Sue Raven [REDACTED]  
**Sent:** 19 November 2018 23:02  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Calstone Mill bridlway

71

Dear Ms Madgwick

Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I support the diversion of the bridleway to the new route created by Mr and Mrs Moore.

Ive ridden,walked and lived in the Area for over 30 years. I have used the official bridleway in front of Mill House and the rickety bridge occasionally with much reluctance.

1, Due to safety. The bridge is slippery, too narrow for horses.

2, The track after the bridge gets extremely deep and likely to cause injury to my horse. I would not walk it for the same reason.

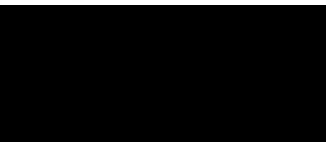
I would always use the new bridleway in preference to the one passing in front of The Mill House. It is much wider, safer, with a gentler incline and can be used all year round.

It provides one of the safest tracks to ride, walk, cycle in the area. It helps with horses exercise regime and gives another option to keep us off the roads.

I am a member of Wiltshire Bridleways but have NOT agreed with any of their decisions to prevent the track becoming permanent. I have written and met with them on numerous occasions to discuss the matter but they have not been willing to visit the site and hear the opinions of their members.

I do hope you are in a position to listen to the people who use this new track and come to a decision that means we can keep using it.

Best Regards  
Sue Raven



Sent from my iPad

## Madgwick, Sally

---

**From:** Redmayne, Charlie [REDACTED]  
**Sent:** 24 November 2018 15:28  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89

72

Dear Sally,

I wanted to write to you in support of the Proposed diversion of Bridleway CALW89A, CALW89B and part CALW89

We live at [REDACTED] and have found the new bridleway a valuable local facility - the Moore's have created a great walk and rout through beautiful countryside which is greatly valued, appreciated and supported by the local community..

Yours sincerely,

Charlie Redmayne

Charlie Redmayne  
CEO

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## Madgwick, Sally

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**From:** Teresa Rees [REDACTED]  
**Sent:** 09 December 2018 14:57  
**To:** Madgwick, Sally  
**Subject:** Application to divert bridleway part CALW89 and CALW89A and CALW89B

73

Dear Sally

I am writing in to you to express my full backing for the above diversion.

My horse is on livery at [REDACTED] Calstone and this is one of only a few bridleways that are passable at this time of year and that is down to all the hard work Mr & Mrs Moore have put into this diversion. I have ridden in this area for many years and the original bridleway was impassable for the majority of the year, the narrow bridge made in downright dangerous. On the occasions when I did ride it I was always in fear of clipping my knees or even worse the bridge giving way under the pair of us.

The lanes around Calstone have got busier and busier of the last few years with traffic to the nursery, the shoot and Wellington Barn to name but a few. Unfortunately some of these drivers are not as horse 'savvy' as they should be, so it is lovely to be able to ride a bridleway and not have to worry about what is going to come at you from around the next corner.

I hope you will take the above in to consideration when making your decision, especially as it is from someone who actually rides in the area.

Kind regards

Teresa Rees

## Madgwick, Sally

---

**From:** Louisa Reis [REDACTED]  
**Sent:** 18 December 2018 13:36  
**To:** wiltshirebridleways@yahoo.co.uk  
**Cc:** Madgwick, Sally  
**Subject:** Fwd: The Mill House Calstone - Bridleway

74<sub>a</sub>

Dear Norman,

Thank you for giving us the opportunity to speak at the WBA meeting last Wednesday.

You asked us to email you with our individual views. And here are mine.

I am not a rider but I am a keen walker. I have three young children who often come with me. The youngest is 7.

We find the driveway at The Mill House can be very slippery, particularly in winter. The bridge is also slippery. During the winter months my children struggle to climb up the hill on the other side of the river. It is so muddy as the rainwater accumulates there.

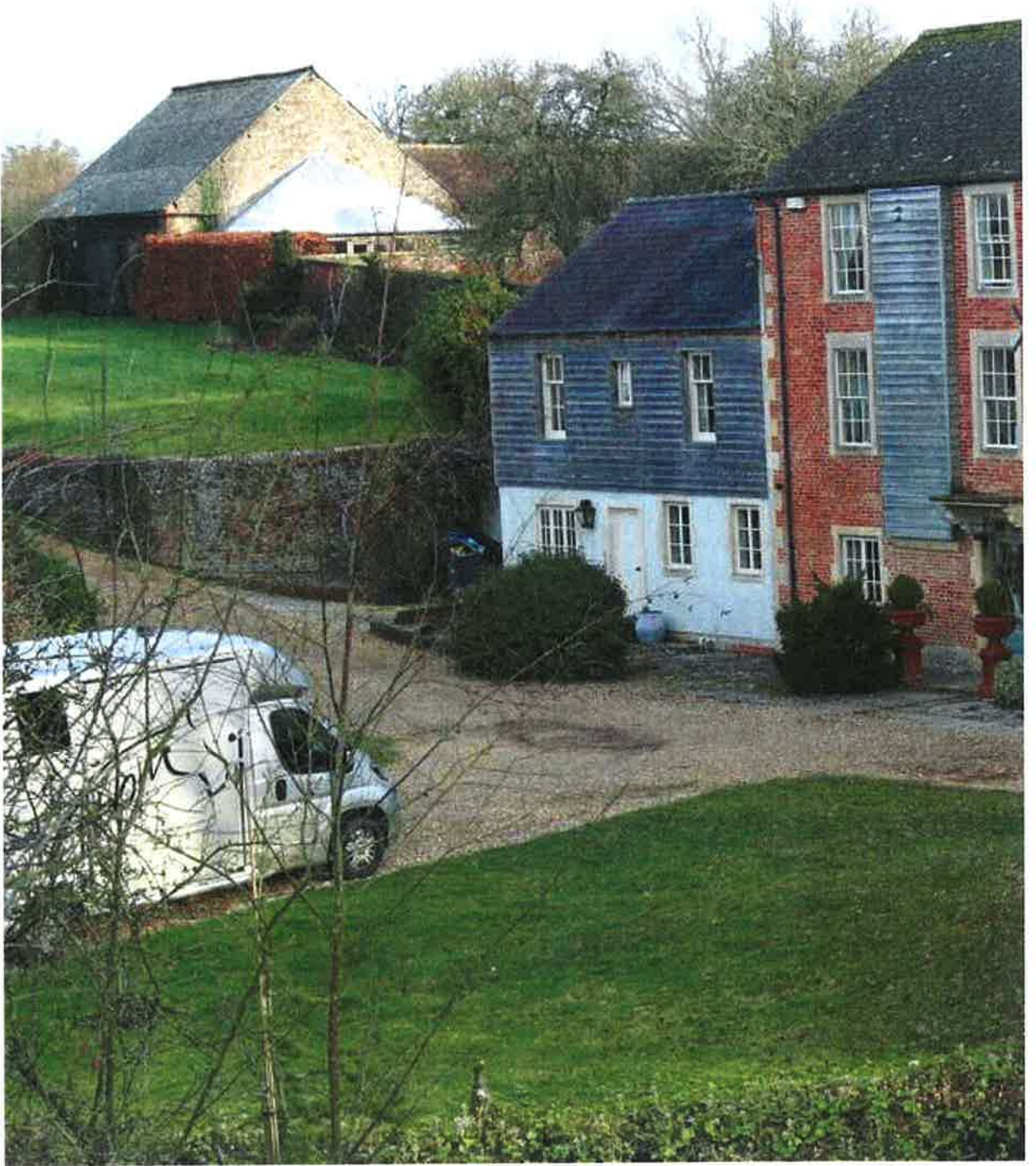
The new route, on the other hand, is much more convenient. It is much safer and can be used all year round. It is wider has a more gentle slope and can be used by many more people. Young children, elderly people and mothers pushing buggies can manage it quite easily.

We respect the Moore's privacy and do not want to be walking in front of their front door. There are often some cars parked right in front of their house.

You mentioned the views from the new route. I think we get a much better view of the house from the new route instead of standing immediately in front of it. I attach some photos taken this morning. I am sure you will agree.

I hope that when the WBA next meets on 9<sup>th</sup> January (where, and at what time, is the meeting to be held?) it will feel able to support the diversion on the basis of all the new information it now has.

Kind regards,



## Madgwick, Sally

---

**From:** Louisa Reis [REDACTED]  
**Sent:** 21 November 2018 10:37  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

74b

> Dear Ms Madgwick

>

> I am writing to support the application to divert the bridleway at The Mill House, Calstone.

>

> I have lived in Compton Bassett for 12 years now, and regularly use the footpaths and bridleways in this beautiful part of our county. I know the bridleway at The Mill House well, and find the proposed diverted route far preferable and much more convenient than the existing one. In my experience, I have found the proposed route:

>

> 1. Safer.

2. Wider.

> 3. Avoids the narrow slippery bridge.

> 4. Less steep.

> 5. Avoids the narrow gravel driveway.

> 6. Avoids contact with the children and dogs who live at the Mill House.

>

>

> I can understand the Council's responsibility to protect the County's rights of way. However, you have now been presented with an opportunity to approve a far superior alternative route to the current one. If this diversion is approved, it will open up the route to a much wider range of users which has to be a great bonus to us all.

>

> I urge you to approve the proposed diversion.

>

> With Best Wishes

>

> Louisa Reis.



## Madgwick, Sally

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**From:** Charles Reis [REDACTED]  
**Sent:** 20 November 2018 18:28  
**To:** Madgwick, Sally  
**Cc:** Charles Reis; Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

75

Dear Ms Madgwick

I am writing to support the application to divert the bridleway at The Mill House, Calstone.

I have lived in Compton Bassett all my life and regularly use the footpaths and bridleways in this beautiful part of our county. I am familiar with the bridleway at The Mill House and find the proposed diverted route far preferable and more convenient than the present one. In my experience, I have found the proposed route:

1. Safer.
2. Wider.
3. Avoids the narrow slippery bridge.
4. Less steep.
5. Avoids the narrow gravel driveway.
6. Avoids contact with the children and dogs who live at the Mill House.

I can understand the Council's responsibility to protect the County's rights of way. However, you have now been presented with an opportunity to approve a far superior alternative route to the current one. If this diversion is approved, it will open up the route to a much wider range of users which has to be a great bonus to us all.

I urge you to approve the proposed diversion.

Kind regards

Charles Reis

Charles Reis  
[REDACTED]

## Madgwick, Sally

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**From:** Peter Robinson [REDACTED]  
**Sent:** 06 December 2018 15:33  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Planning application for Mill House, Calstone

76

[REDACTED]

Dear Ms Madgwick

I am writing in support of Mr and Mrs Moore's planning application to divide the bridleway at the Mill House, Calstone. I am confident, based on the below, that horse riders will appreciate the less steep proposed new bridleway, with its made up surface rather than the steep loose surfaced original bridleway down to the north bank of the river. It is very difficult to maintain steep bridleways such as the original, which are conduits for fast running rainwater and which are used by motor vehicles - we have a similar bridleway at Calstone church, where I am a churchwarden, and horse riders almost always choose to use the parallel permissive bridleway with its made up surface and gentle slope in preference to our loose surfaced steep one.

The new path/bridleway in the application makes good use of a hitherto unregarded stone bridge, making for a pleasanter walk for ramblers and avoids the unease associated with tramping past someone's front door through their garden.

Yours sincerely  
Peter Robinson

## Madgwick, Sally

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**From:** Paul Rogers [REDACTED]  
**Sent:** 04 December 2018 11:41  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89 and CALW89A and CALW89B at Calstone Wellington Wiltshire

77

Dear Sally Madgwick,

Re Application to divert Bridleway part CALW89 and CALW89A and CALW89B at Calstone Wellington Wiltshire

I support the above applications to the new Bridleway route created and paid for by Mr and Mrs J E Moore.

My experiences of walking from time to time on both the existing and proposed new route clearly demonstrate the benefits of using the new route. It has a much larger width which adds to the safety of users, it is a more gentle route than the existing sharp incline as it passed over the bridge and heads south up the hill and is made of a suitable all year round weather surface which again adds to the safety of foot and horse riders. The proposed new route is far more suitable than the existing bridleway for the aforementioned reasons. In my experience as a former North Wessex Downs AONB Conservation Adviser I would find the proposed new route an asset to be welcomed by users as a more enjoyable, convenient and safer route to use in what is a damp, steep at times and slippy environment.

Yours sincerely

Paul Rogers

Paul Rogers BSc(Hons)Lond MAExeter PgCC MTA

## Madgwick, Sally

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**From:** Jacqui Steel [REDACTED]  
**Sent:** 03 December 2018 20:31  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington

79

Dear Ms Madgwick,

Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I am writing to give my full support to the diversion of the bridleway referred to above, as created by Mr and Mrs Moore.

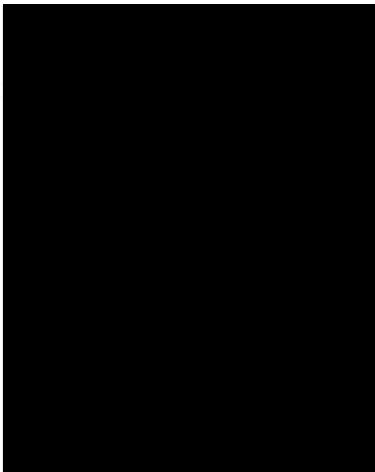
I have lived in Calstone Wellington for over 12 years. I walk extensively on many bridleways and footpaths in and around the village and on the National Trust land adjoining the village. I have however, always avoided walking along the bridleway which passes directly in front of the Mill House – just yards from the front door of the property – as I consider it a huge invasion of the privacy of Mr and Mrs Moore.

I am therefore delighted that a diversion of this bridleway has been proposed, since it opens up a whole new walk for me, and my family.

The new bridleway has been beautifully constructed. The surface is excellent, the incline gentle, the surrounding hedges and brambles have been cut back sympathetically and the whole route is very pleasant and attractive, for both walking and riding. I think Mr and Mrs Moore should be congratulated on the work they have done and I sincerely hope that their application to divert the bridleway will be successful.

Yours sincerely,

Jacqui Steel



## Madgwick, Sally

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**From:** Hugo van Kuffeler [REDACTED]  
**Sent:** 12 December 2018 12:51  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Calstone Bridleway diversion  
**Attachments:** Calstone\_Bridleway\_Diversion.pdf



**Importance:** High

Please find attached a letter of support for the proposed diversion of Bridleway CALW89A, CALW89B and part CALW89.

Kind regards

Hugo de Blocq van Kuffeler  
TYNDALL INVESTMENT MANAGEMENT  
5-8 The Sanctuary  
London  
SW1P 3JS  
[REDACTED]

Tyndall Investment Management is the trading name of Odd Asset Management Ltd. Odd Asset Management Limited is a private limited company registered in England (registered number 09317332) having its registered office at Pasture House, Juniper, Northumberland, NE46 1ST. Odd Asset Management Limited is authorised and regulated by the Financial Conduct Authority (FRN: 660915).

806



12<sup>th</sup> December 2018

Dear Sir/Madam,

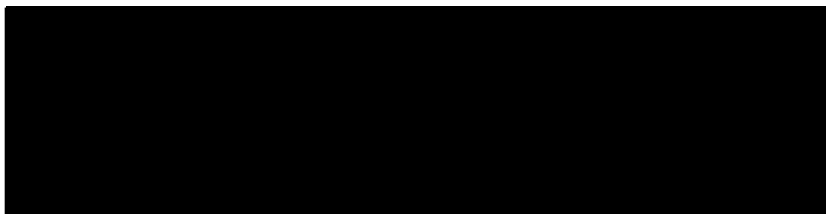
**Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.**

I am writing to you in support of the diversion of the bridleway to the new route created by Mr and Mrs Moore. Mr and Mrs Moore have created a considerably higher quality bridleway that the formal one and many in the village have expressed this sentiment.

As regular walkers through Calstone Wellington we have always felt uncomfortable walking directly in front of the Moore's home as it felt that we were being invasive. The Permissive Bridleway that has been created by Mr and Mrs Moore is safer, wider and with a gentler incline allows us to enjoy a particularly beautiful walk in Calstone Wellington all year round.

I do hope that you approve this application to divert the Bridleway so that we can enjoy the walk along the new (Permissive) Bridleway for years to come.

Kind regards



**Hugo de Blocq van Kuffeler**

## Madgwick, Sally

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**From:** Angus and Carrie Watson [REDACTED] (81)  
**Sent:** 20 November 2018 19:09  
**To:** Madgwick, Sally; Broadhead, Richard  
**Subject:** Diversion of the Bridleway at Calstone, Wellington (CALW 89, 89A and 89B)

Dear Sally and Richard

As a horse rider, member of BHS, supporter of the Wiltshire Bridleways Association and with children in the Avon Vale Pony Club, I would very much like to support the new bridleway in Calstone by The Mill House. The old bridleway, particularly in the winter, was rather narrow and in my opinion slightly fraught with danger, and I think the proposed route a real improvement.

I know that it is important to uphold historic bridleways and footpaths, but I think sometimes it is worth considering whether a new route is an improvement for all concerned, and in this case I think it is. The proposed new route has my full support.

With kind regards  
Carrie Watson

[REDACTED]

## Madgwick, Sally

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**From:** Caroline Williamson [REDACTED] (85)  
**Sent:** 13 December 2018 13:01  
**To:** Madgwick, Sally  
**Cc:** Broadhead, Richard  
**Subject:** Application to divert Bridleway CALW89, CALW89A and CALW89B at Caistone Wellington.

Dear Ms Madgwick

I am contacting you to show my support for the diversion of the bridleway to the new route created by Mr & Mrs Moore.

The old bridlepath is on a very steep, dark and muddy track which even in summer, is quite treacherous. Plus there is a small waterfall near the very rickety bridge, which is an accident waiting to happen, if horse riders are forced to use this route. Even for walkers and dog walkers, it's not a pleasant experience!

On the other hand, the 'new' bridlepath is a very different story. It is open with good visibility and is very well draining, so walkers and riders can feel much safer, especially going over the new bridge, which is well away from the waterfall, which can be very scary for a horse!

As both a horse rider and dog walker, I can honestly say that the new proposed bridlepath is a massive improvement on the original one from both a safety and an aesthetic point of view.

Yours Sincerely  
Caroline Williamson



**Madgwick, Sally**

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**From:** Jez Moore [REDACTED]  
**Sent:** 19 March 2019 16:17  
**To:** Madgwick, Sally

86

Dear Sally.

Application to divert Bridleway part CALW89, and CALW89A and CALW89B at Calstone Wellington.

I confirm I support the diversion of the bridleway to the new route created by the owners of The Mill House. As a rambler, I find it much more convenient.

I am happy for my data to be held for this purpose, and wish my representation to be maintained. My postal address is;

[REDACTED]

*Jeremy and Paula DaSilva-Moore*

[REDACTED]

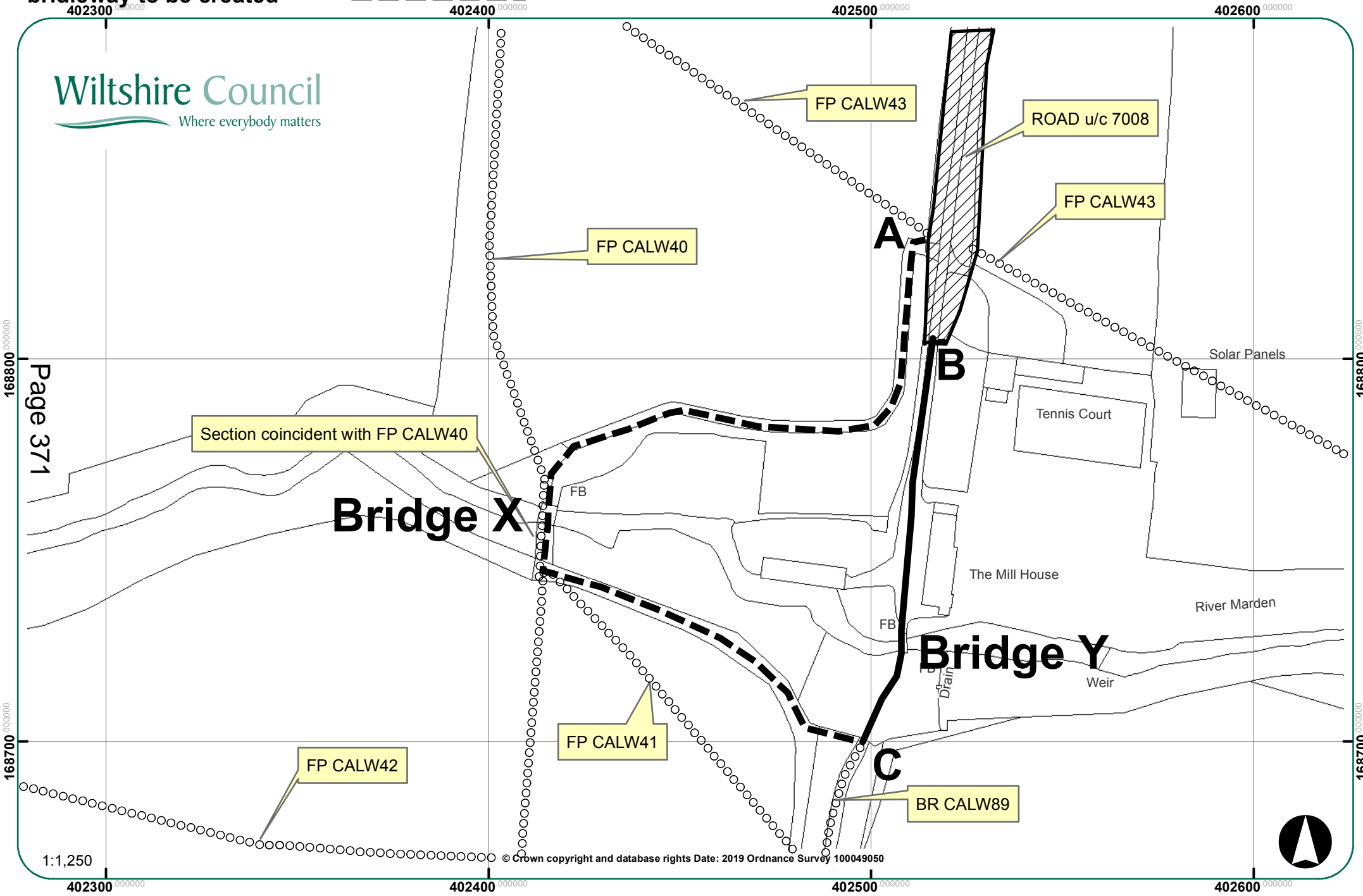
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# Plan showing proposed diversion and effect on the network

bridleway to be extinguished



bridleway to be created



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**Statement of Truth of Sue Raven of [REDACTED] Calstone, Calne, Wiltshire**

1. This is the Statement of Truth of Sue Raven of [REDACTED] Calstone, Calne, Wiltshire [REDACTED]

2. I learned to ride as a young girl and have ridden the bridleways, restricted byways and byways in and around Calstone since I was about 13 years old. So, I know them very well indeed.

3. In 1994 I set up my own livery yard at Seven Boxes. My Yard, Seven Boxes is about 10 minutes slow riding from The Mill House, Calstone and the bridleways that go immediately past it and the Permissive Route that the owner of Calstone Mill, John Moore, has now installed.

5. I am, therefore, a very experienced rider with thousands of hours in the saddle. In the course of my riding career I have ridden over all sorts of different surfaces, in every weather imaginable, and on lots and lots of different horses and I can honestly say in respect of the current formal bridleway route that:

5.1 Prior to the installation of the Permissive Route I only rode the bridleway past Calstone Mill on extremely rare occasions. I also know that that route was very rarely used.

The bridge that you have to cross over the millstream at the River Marden there is thoroughly dangerous; and I would only attempt it on a nice dry day when I could also be sure that the route underfoot there would be really dry. Even then I would only consider that crossing on a really reliable horse that could pretty much be guaranteed not give any trouble over that nasty, narrow, badly maintained and dangerous bridge.

The concern is that, once on the bridge, there is nowhere to go except forward. The bridge is so narrow that you cannot turn on it. So, a horse that becomes concerned at the crossing, due to the sight of the fast moving water underneath, or who slips because of the really poor surface which Wiltshire have never maintained properly at all, might land me or both of us in that mill stream with really nasty consequences.

You could have a horrific accident there. I would never advise someone to take a child on a pony there.

5.2 Also the route on the north side of the bridge away from Calstone Mill is genuinely impassable to a horse in winter: deep mud, really slippery and very awkward to get any footing in at all. Overall that section, in winter, is thoroughly unusable and not safe at all.

5.3 Also I do not like intruding on people's privacy; and the bridleway not only runs right past the Mill's front door but it is also very close to it. That sort of thing makes me feel uncomfortable.

5.4 Several of my liveries want to hack out. The hacking from my yard is in many ways excellent. However, if anyone wanted to cross the River Marden, I would send them down to the crossing at South Farm. This means that they have to ride further on the road: it is a quiet road, but you can still have accidents on a quiet road. Riders are a very vulnerable element of the community. So, when riding, you want to get off the road just as soon as you can.

6. The introduction of the Permissive Route, though, has changed all of that. This route is safe and inviting to ride. It is wide. We can use it all the year round, the going underfoot is solid and gives the horses a great feeling of confidence whatever the state of the weather and whatever time of the year it is. It no longer goes right past the house, so I do not feel awkward using it.

In every way, the Permissive Route is just so much better than that horrible old route. Also I can, and do, recommend the Permissive Route to my liveries.

They all ride to quite different standards and have horses with quite different capabilities; but with that route available to them, they can get off the road a lot faster and be safe using it. And so lots of them do use it, which was never the case before.

7. I know lots of people in the riding community around here and they all feel the same. We have been waiting for years for Wiltshire to make a proper decision about this route. Everyone is thoroughly fed up with Wiltshire not seeing what is perfectly obvious: the Permissive Route is just better in every respect than the Official Route and we all just want to carry on using the Permissive Route and thoroughly support the intended diversion.

**I BELIEVE THAT THE FACTS AND MATTERS CONTAINED IN THIS STATEMENT ARE TRUE**

Name: [Redacted]

Address: [Redacted] Calstone, Calno  
Wiltshire [Redacted]

Signature: [Redacted]

19/07/2019

## Madgwick, Sally

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**From:** Graham Bennett [redacted] >  
**Sent:** 21 July 2019 13:50  
**To:** Madgwick, Sally  
**Subject:** Calstone Mill - Diversion under s119 - Statement of truth of Sue Raven  
**Attachments:** Sue Raven - Statement of Truth.pdf

Dear Sally,

I understand that you are in the process of drafting your Report to Council on the subject of the proposed diversion of the bridleway at Calstone Mill.

It would be enormously helpful to know where you have got to with your Report and the decision process from there, once submitted. In particular, if it is likely to go to Area Planning Committee, it would be very helpful to know the date of the intended Area Committee Meeting that will address it and to be advised of that meeting in advance.

In the meantime, and for your review as part of your deliberations, I attach the Statement of Truth of Sue Raven who owns and runs the livery yard at Seven Boxes, Calstone.

Seven Boxes, as you may know, is only a few minutes ride away from the bridleways in question. Sue confirms:

1. that prior to the installation of the current Permissive Route, the Definitive Route was rarely used due to the serious difficulties in using that route (see paragraphs 5.1, 5.2 and 5.3 of the attached);
2. the dangerous and inconvenient nature of the existing Definitive Route (paragraphs 5.1 and 5.2);
3. the contrasting nature of the Permissive/Diversionsary route (paragraph 6);
4. the benefits of the Permissive Route to her livery yards and those engaged in Active Travel; and the fact that the intended Diversionsary Route is in every way better and more useful than the existing Definitive Route, enabling riders and others to get off the roads and away from motor vehicles, and the dangers that they entail to vulnerable user groups such as horse riders, quickly and effectively (paragraphs 6 and 7).

I maintain the view that the tests under s119 are satisfied in every respect by the intended Diversion and that this Statement is further evidence of that fact.

Kind regards

Graham Bennett  
BHS ABO (Legal)  
Wiltshire

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## Order Decision

Inquiry opened on 13 November 2012

Site visit made on 12 November 2012

by **Barney Grimshaw BA DPA MRTPI(Rtd)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **11 DEC 2012**

### Order Ref: **FPS/Y3940/4/8**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wiltshire Council Parish of Purton, path no. 104 Diversion Order 2011 and Definitive Map and Statement (SU08NE) Modification Order 2011.
- The Order is dated 20 September 2011 and proposes to divert part of a bridleway known as Mud Lane as shown in the Order Map and described in the Order Schedules.
- There were 39 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is not confirmed.**

### Procedural Matters

1. I held a public inquiry into this Order on Tuesday 13 and Wednesday 14 November 2012 at Purton Village Hall. I made an unaccompanied site inspection on Monday 12 November. At the inquiry it was agreed by all parties that a further accompanied visit was unnecessary.
2. In writing this decision I have found it convenient to refer to the Order Map and points along the Order route marked on it. I therefore attach a copy of this map.

### The Main Issues

3. The Order is made in the interests of the public and the owner of the land crossed by the bridleway. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
  - It is expedient in the interests of the public and the landowner that the bridleway should be diverted;
  - The new bridleway will not be substantially less convenient to the public;
  - The diversion is expedient with regard to:
    - the effect on public enjoyment of the right of way as a whole;
    - the effect on other land served by the existing right of way;
    - the effect of the proposed new right of way on the land over which it is created and any land held with it.

4. In addition, where a diversion will alter the point of termination of a path or way, as in this case, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and it must be substantially as convenient to the public.
5. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

### **Reasons**

6. The existing Order route is now a bridleway (the route was upgraded from footpath status in 2011) which follows a sunken way leading to Ringsbury Camp, an Iron Age fortress. It is obstructed by overgrowth towards its eastern end and would appear to have been similarly obstructed elsewhere prior to some recent clearance work undertaken by volunteers. It is also obstructed by a raised field crossing which is fenced on both sides. The route is said to be liable to flooding at certain times although it was not flooded when I visited. The route would appear not to have been available for public use for a long time. The proposed new route has been in existence for 7 years having been provided by the landowner as a permissive bridleway. This is said to be currently well used and passable at all times of year.
7. In accordance with current advice<sup>1</sup>, I have disregarded the obstructions to the existing route in assessing the proposed diversion and have compared the two routes as though both were open and available for public bridleway use.

### ***Whether it is expedient in the interests of the public that the bridleway be diverted***

8. The proposed diversion attracted a considerable amount of public support with a total of 83 people making representations in favour. The majority of these provided no evidence or indication of why they supported the diversion. It was suggested on behalf of objectors that many people were comparing the existing route in its currently obstructed condition with the new route which is open and available. It is not known whether a similar number of people would have still supported the diversion if the existing route had also been open and available.
9. There was also a considerable amount of opposition expressed to the diversion with 39 people making objections. Overwhelmingly, objectors referred to the loss of a historic route and/or features as their reason for objecting.
10. The OMA stated that the proposed new route is drier, more level and less liable to flooding or overgrowth than the existing route and accordingly the diversion is clearly expedient in the interests of the public. Objectors argued that, if the existing route was maintained to an appropriate standard, it would be more enjoyable to use and have few disadvantages compared to the proposed new route, particularly as this duplicates an existing footpath for most of its length. These and other matters affecting the interests of the public are dealt with in more detail later in respect of the effects of the proposed diversion on public convenience and enjoyment.
11. The OMA also stated that opening up the existing route of the bridleway would require considerable public expenditure. In 2008, an estimate was obtained from a contractor, MJ Church, for works to clear and open up the existing route

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<sup>1</sup> Rights of Way Advice Note No.9, PINS, Revised October 2009

amounting to a total of £148,434.17 excluding VAT. The current price of similar works would be higher than this allowing for inflation since 2008 (estimate increased to £152,160.72 in 2010). The OMA stated that the current annual budget for the maintenance of the whole rights of way network in Wiltshire is £176,000 (2012-13) and that for the northern area, of which Purton forms a part, the budget is £44,000. It was argued that the expenditure required to open up the existing route could not be justified when a reasonable alternative route could be made available at no cost to the public purse and that for this reason the proposed diversion would be expedient in the public interest.

12. It was further argued that, even if the existing route was put into good order, the proposed new route would require less ongoing maintenance and this would benefit the public as more resources would be available for maintenance of the rest of the rights of way network.
13. Objectors were unhappy with this argument on two main grounds. Firstly, that the authority has a duty to maintain the highway under section 41 of the 1980 Act and it was clearly the intention of parliament that public money would be spent in the carrying out of this duty and not that highways should be diverted to follow routes less expensive to maintain. On this ground it was argued that the expenditure of public money to maintain the existing Order route could be regarded as expedient in the interests of the public. Secondly, it was suggested that the OMA had grossly overstated the likely cost of opening up the existing route. The Ramblers had obtained an alternative assessment of the work needed to bring the route into usable condition as a bridleway which amounted to a total of £29,731 excluding VAT, an amount which was said to have been capable of further reduction (by about £5,000) if some work was undertaken by volunteers. At the inquiry a further alternative estimate of likely costs was produced on behalf of Purton Parish Council in the amount of £24,196 excluding VAT. It was stated on behalf of the parish council and other bodies that volunteers would be readily available to assist with appropriate works.
14. The large difference in the estimates produced can partly be explained by disagreement between the parties as to the nature and extent of works required. Notably, the OMA's estimate allowed for the import of a large quantity of stone, sufficient to fill the route to a depth of 2 metres, whereas the objectors felt this was unnecessary and, in any event, would seriously damage the inherent character of the way.
15. It was stated on behalf of the OMA that the hedges alongside the existing route were probably protected under current hedgerow regulations. The landowner, Mr Moseley, also stated that he had no intention of removing the hedges or destroying the ancient route and had in the past expressed his willingness to enter into some sort of covenant to protect it. However, I have seen no substantive evidence that the existing route and hedges would be guaranteed any long term protection if the proposed diversion is confirmed.
16. A further factor which could possibly affect the interests of the public concerns the presence on the existing route of a water pipe with flush pipe and flush pan. Apparently the latter is used to drain the mains water periodically and results in large quantities of water being flushed on to the existing Order route. Clearly this is unacceptable on a public bridleway and, if the Order is not confirmed, some alternative arrangement will need to be made which may involve additional expenditure. However, the water company is a private

business and such expense would not fall directly on the public purse although ultimately it might be that the cost would subsequently be passed on to consumers.

17. In this case, it is very difficult to balance the factors that can be regarded as contributing to the interests of the public as they are so diverse. In theory the financial implications of the proposed diversion might be thought to be relatively easy to quantify and yet there is very considerable difference between the parties regarding the extent and costs of the work required to bring the existing route to an appropriate standard. It also seems reasonable to note that the authority has a statutory duty to maintain public highways which will inevitably result in the need for some public expenditure. Nevertheless, it is accepted that the cost would be appreciable relative to the current size of the relevant rights of way budget of the OMA. However, even if it were possible to be more precise, it would still be difficult to balance the financial cost against the value of conserving an ancient route. It was clear at the inquiry that the value that different people placed on protecting what some regarded as a vital element of their heritage also varied considerably.
18. Overall, it is clear that the existing route is an ancient and attractive feature with a distinct history and character which is highly valued by many people. It would require significant public expenditure to restore the route to an acceptable condition and, even then, some users might still prefer the proposed alternative route. However, the uncertainty regarding the nature and cost of the necessary works and the fact that the highway authority has a statutory duty to maintain the bridleway which it does not appear to have carried out in the past leads me to give reduced weight to the question of cost. Accordingly, on balance, it is my view that the available evidence has not demonstrated that the proposed diversion would be expedient in the interests of the public.
19. This conclusion does not necessarily mean that the Order automatically falls since, in accordance with current advice<sup>2</sup>, even where an order is made in the interests of both the landowner and the public, it is still capable of confirmation if it is found to be in the interests of either the landowner or the public.

***Whether it is expedient in the interests of the landowner that the bridleway be diverted***

20. The existing route of the bridleway runs immediately alongside the farmhouse and garden of Restrop Farm and close to open barns and sheds, agricultural equipment, diesel fuel, yarded animals and hay barns. The landowner feels that the diversion will enhance his family's privacy and security by taking users further away from the farmhouse, farmyard and other buildings.
21. Although there has been no history of theft or other crime at the farm house area, the landowner points out that the existing right of way has been unusable for a long time and he fears that, if it is cleared and opened up the risk will greatly increase.
22. There are ongoing problems caused by trespass and illegal activities elsewhere on the farm and in nearby areas which have included the lighting of fires, vandalism of farm equipment, drug and alcohol abuse, litter including broken

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<sup>2</sup> The Planning Inspectorate Rights of Way Advice Note No. 9, 7<sup>th</sup> Revision, October 2009.

glass and hunting and killing of wild animals. The landowner fears that opening up the existing route of the bridleway will expose him and his family to the risk of such problems also arising in close proximity to his home.

23. The existing bridleway route is lower than the surrounding land and is liable to flood in parts at certain times of the year. The landowner is concerned that this may result in potential users leaving the right of way and crossing adjacent fields. In any event, he considered that, if the existing route were brought back into public use, he would need to fence it on both sides to prevent trespass.
24. On behalf of objectors to the Order it was argued that, if the existing bridleway was cleared and in a usable condition it need not pose any particular problem for the landowner. It was pointed out that many rights of way run close to or through farmyards and appear to cause no problems.
25. The existing route is crossed at one point by a raised track linking fields on either side. This is fenced on both sides and completely obstructs the right of way. The landowner stated that if this had to be removed in order to re-open the route it would cause him severe difficulties in managing his land effectively, possibly including the need to construct an alternative access track and new field entrance. It might also mean more use of narrow public roads by agricultural vehicles which would also be undesirable. However, it appears that the existing raised field crossing, having been constructed after the route became a public right of way, is an unauthorised obstruction which ought not to be there.
26. The landowner also drew attention to a wall alongside the existing route close to his farm. This leans into the route in places and has lateral cracks. Although this is said to be currently stable, the owner fears that increased use of the route particularly by horse riders will necessitate expensive works to strengthen the wall.
27. Overall, it is my view that the proposed diversion would clearly be expedient in the interests of the landowner as it would enhance his security and privacy, facilitate the management of his land and avoid the need for further expenditure.

***Whether the new point of termination of the bridleway will be substantially as convenient to the public***

28. The proposed new point of termination of the bridleway is on the same highway, U/C 2057, Mud Lane and is situated approximately 30 metres to the east of the current termination point. There is no evidence to suggest that it will be any less convenient to the public.

***Whether the new bridleway will be substantially less convenient to the public***

29. The distance between points F and B by way of the existing bridleway and the short section of public road, F-A, is approximately 410 metres, by way of the proposed new route it is approximately 445 metres. The nature and location of the Order routes suggests that they are likely to be used mainly for recreational purposes as part of longer walks or rides. In this context, the additional distance of around 35 metres is likely to be of minimal significance.

30. The width of the existing route is recorded in the definitive statement as being between 12 and 25 ft. wide (3.7 – 7.6 metres) although at present the usable width is considerably less than this for most of the route. The width of the proposed new route is between 4.0 and 4.2 metres. If the existing route were cleared and made available, I do not think there would be any significant difference in the relative convenience of the two routes on the basis of their width.
31. It was stated by supporters of the diversion that the proposed new route would be more convenient as it would have fewer gates than the existing route. The proposed new route would have 2 gates (at Points C and F) whereas the existing route would require 4 or 5 gates. However, there are no limitations currently recorded on the existing route and the statement that 4 or 5 would be required is based on the assumption that a field crossing would remain part way along the route and would need gates on either side. However, as already mentioned, this is an unauthorised obstruction which ought to be removed. If this were done, I do not know whether an alternative crossing which required gates across the route would necessarily be required. I do however accept that, if the landowner sought authority to erect gates at each end of the route to prevent livestock straying, it is likely that this would be allowed. With this in mind, it is my view that there is potentially little difference in the relative convenience of the two routes with regard to gates.
32. Supporters of the Order pointed out that the proposed new route has been in use for 7 years and is more even than the existing route and available at all times of the year. On the other hand, the existing route is liable to flooding, particularly in an area to the west of the raised field crossing, and is often muddy. In addition low branches make it unsuitable for horse riders. Clearly in their present condition, the new route is easier to use than the existing one. However, with appropriate maintenance work such as the removal of obstructions, clearance of overgrowth (including low branches) and suitable drainage, it is possible that the existing route could be brought to a comparable standard to that of the proposed new route. Nevertheless, it is likely that the proposed new route might always be easier for some users than the existing one, particularly for horse riders and possibly less able walkers.
33. Objectors to the Order argued that the existing route offered a more direct and 'natural' link between the public road and Ringsbury Camp and would therefore be considered more convenient by many users. This may be the case but, the proposed new route is only marginally less direct and over time would no doubt take on a more 'natural' appearance. I therefore do not think the new route can be considered to be significantly less convenient in this respect.
34. Overall, it is my view on balance that the proposed new route would not be substantially less convenient to the public and might be more convenient, at least for some users.

***The effect on public enjoyment of the right of way as a whole***

35. Objectors to the Order argued that the great attraction of the existing route for users lay in its history. Ringsbury Camp is an Iron Age fortress and a scheduled ancient monument and it was claimed that the existing route might well have been the main access way to it and be of similar antiquity. This cannot be proved at present but documentary records that are available show that the route has existed for hundreds of years, perhaps since around 1200 at least.

Objectors argued that it was impossible to quantify the value of the experience of following in the footsteps of countless previous generations or to quantify the cost of its loss.

36. It was also pointed out that in addition to the existing route having great historic value, it also offered a rare opportunity for people to walk or ride along a sunken way bounded by ancient hedges full of interesting vegetation and wildlife. There is apparently only one other sunken way in Purton parish and that has a completely different character as it is occupied by a tarmac road and such ways are unusual throughout Wiltshire. Although the proposed new route offers a different experience and the opportunity to enjoy open views this is of little benefit to walkers as similar views can be obtained from Footpath 103 which runs alongside the route for most of its length.
37. As already stated, I have seen no substantive evidence that the existing route and hedges would be guaranteed any long term protection if the proposed diversion is confirmed.
38. The general issue of nature conservation was referred to by several parties. Supporters of the Order suggested that the works required to restore the existing route to a usable condition would inevitably damage vegetation and wildlife habitats including badger setts. Objectors argued that works could be carried out with minimal disturbance to wildlife.
39. Some objectors argued that conifers planted alongside the proposed new route were an unattractive and alien feature which made that route less enjoyable to use. Mr Moseley stated that the conifers were only a temporary feature providing shelter for other species and would all be removed in the next two years. The intention being to create hedges that replicated ancient hedgerows such as those alongside the existing route.
40. Supporters of the Order pointed out that the proposed new route offered expansive open views whereas the existing route was largely enclosed and that some people would prefer this. The existing route is also easily visible from the proposed new route and accordingly some appreciation of the historic way could still be gained. The new route was also said to be better for horse riders as it has a more even surface allowing the opportunity for horses to canter whereas the existing route is always likely to have a less even surface and be subject to tree roots and overhanging branches.
41. It was also argued that some users would prefer walking or riding further away from the house and garden of Restrop Farm because, even if signage made it clear that there was a right of way, they might still feel they were intruding on private space.
42. It was also suggested that the works that would be required to put the existing route into a useable condition would inevitably damage and diminish its historic value. Objectors argued that in their view only relatively limited works were required which would have a minimal effect on historic features.
43. Although some users, such as horse riders might prefer the proposed new route, considerable weight should be given to the value placed on the retention of the historic route by many people. On balance, it is my view that the overall effect of the proposed diversion on public enjoyment of the right of way as a whole would be negative.

***The effect on other land served by the right of way***

44. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the right of way.

***The effect of the new right of way on the land over which it is created and other land held with it***

45. The owner of the land believes that the proposed diversion would have a beneficial effect overall on his land. Apart from improving the privacy and security of his house and garden, it would avoid the potential need for considerable expenditure to remove the existing field crossing and construct a new field access, to fence the existing route and to strengthen the garden wall. He also states that the proposed new route will be much easier and cheaper to maintain.
46. It is my view that the proposed new right of way would have little adverse effect on the land over which it is created and that the diversion of the existing route would have a significant beneficial effect.

***The Rights of Way Improvement Plan (ROWIP)***

47. The ROWIP contains no policies specifically related to the proposed diversion. However, the OMA argued that the proposal was in accordance with some of the aims of the ROWIP as it would help in the provision of a more usable network and, in particular would improve accessibility for the less mobile and the blind or partially sighted.
48. On behalf of objectors it was argued that Footpath 103 already provided an accessible route for the less mobile and they drew attention to current advice regarding the authorising of structures on rights of way<sup>3</sup> which they suggested was of wider application. This advice states "*Improvements that would make it easier for people with disabilities to use rights of way would also make it easier for other users ..., for example: parents with young children in buggies...Authorities will need to take account of the wider context, such as the accessibility of the route as a whole and also the need to be aware that some rights of way are valued, by those who use them, because of their challenging nature or intrinsic character. Other local factors that may need to be taken into account, when considering potential improvements, include the historical or aesthetic character of the existing structures and landscape features and local custom and practice*".
49. Overall, it is my view that, whilst the proposed diversion would seem to accord with some of the aims of the ROWIP, this needs to be balanced against other factors.

**Other Matters**

50. Mr Riley raised the possibility that the existing bridleway might in fact be subject to higher public rights (such as byway or restricted byway). He also suggested that he had seen evidence to support this. I have not seen this evidence and am not in a position to assess whether the correct status of the existing route is that of bridleway. Accordingly, I have given no weight to this matter in reaching my decision. I would however point out that, should any

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<sup>3</sup> Authorising Structures (gaps, gates and stiles) on rights of way. Good practice guidance for local authorities on compliance with the Equality Act 2010. Defra, October 2010.



higher rights be shown to exist, over the existing route they would not be affected by the proposed diversion.

51. Some objectors suggested that there had been some procedural irregularities in the process leading to the making of the Order and that consequently it might not be valid. The OMA denied this. In any event, I was satisfied that the Order itself had been correctly made and advertised and advised that I had no remit to consider events that had taken place previously.

### **Conclusions**

52. Overall, it is my view that the proposed diversion would have advantages for the landowner and possibly some users. It would also avoid the need for a significant amount of public money to be spent on restoring the existing bridleway, although the actual amount is uncertain and the highway authority has to accept that some resources are inevitably needed to carry out its statutory duty to maintain highways. On the other hand, the loss of such an historic route as the existing bridleway would have a serious negative effect on the enjoyment of many current and potential users of the right of way. As already stated, it is very difficult to balance such diverse factors but, taking all the arguments into account it is my view that the proposed diversion does not meet the criteria set out in the 1980 Act.
53. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed

### **Formal Decision**

54. I do not confirm the Order.

*Barney Grimshaw*

**INSPECTOR**

## **APPEARANCES**

### **For the OMA**

Trevor Ward Counsel (representing Wiltshire Council)

#### Who called:

Barbara Burke Definitive Map and Highway Records Team  
Leader, Wiltshire Council

### **Supporters**

Nicholas Hartley Path user (walker)

Richard Moseley Landowner

Michelle Philips Path user (horse rider)

George Hawksworth Local resident

Mike Bell Local resident and Chair of Parish Council

### **Objectors**

John Crawford Purton Parish Council

#### Who also called:

Ron Harris Parish Councillor (Chairman of the Rights of  
Way and Open Spaces Committee)

Janet Davis The Ramblers

#### Who called:

Joan Crosbee Walker

Marion Hobbs Walker

Brian Freegard Purton Historical Society

Bill Riley Applicant for the upgrading of the Order  
route from footpath to bridleway (2011)

Richard Pagett Purton's Qualities (P's and Q's)

Tony Price Parish Councillor

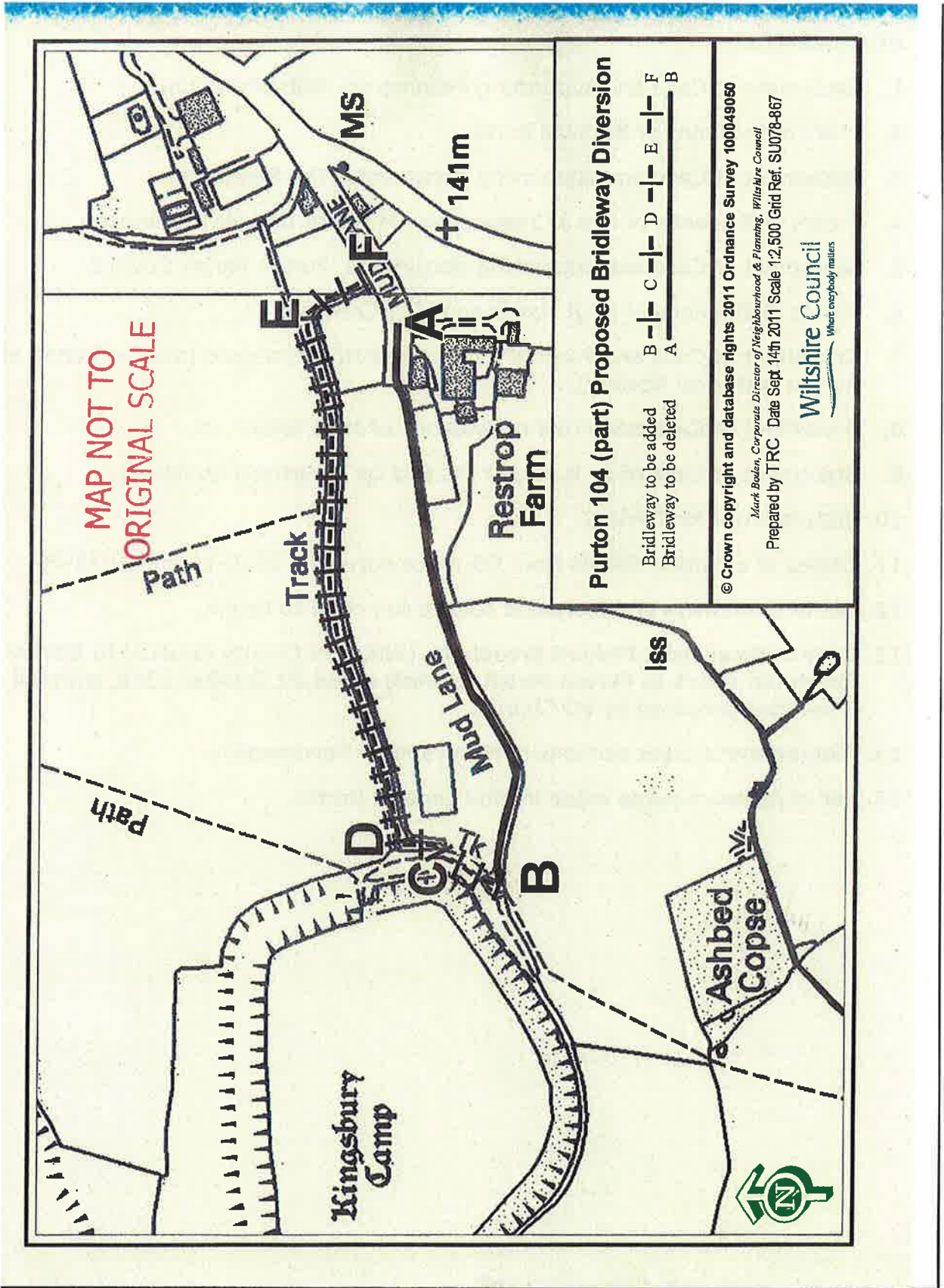
Richard Gosnell Walker

### **Interested Parties**

Jacque Lay Councillor, Wiltshire Council

## **DOCUMENTS**

1. Statement of Case and supporting documents, Wiltshire Council.
2. Proof of Evidence of Barbara Burke.
3. Statement of Case and supporting documents, The Ramblers.
4. Proofs of Evidence of Mrs J Crosbee, Mrs M Hobbs and Mr K Stimpson.
5. Statement of Case and supporting documents, Purton Parish Council.
6. Proofs of Evidence of Mr R Harris and Mr J Crawford.
7. Statement of Case and Proof of Evidence of Mr B Freegard (also on behalf of Purton Historical Society).
8. Statement of Case and Proof of Evidence of Mr B Riley.
9. Statement of Case of Dr R Pagett (Ps and Qs – Purton's Qualities)
10. Statement of Mr T Price.
11. Copies of enlarged details from OS maps surveyed 1815-16 and 1875-76.
12. List of bridleways and footpaths said to run close to farms.
13. Copy of Email from Richard Broadhead (Wiltshire County Council) to Shirley Bevington (Clerk to Purton Parish Council) dated 29 October 2008, with Bill of Quantities prepared by MJ Church.
14. Diagrammatic cross sections of Mud Lane, G Hawksworth.
15. Set of measurements made in Mud Lane, R Harris.



## REPORT TO THE AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>6<sup>th</sup> November 2019</b>
<b>Application Number</b>	<b>19/01991/VAR</b>
<b>Site Address</b>	<b>Oaksey Park Cottages, Wick Road, Oaksey SN16 9SB</b>
<b>Proposal</b>	<b>Removal of conditions 8, 9 &amp; 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 &amp; 11 and 20-25</b>
<b>Applicant</b>	<b>Oaksey Park Ltd</b>
<b>Town/Parish Council</b>	<b>Oaksey</b>
<b>Division</b>	<b>Minety – Cllr Chuck Berry</b>
<b>Grid Ref</b>	<b>399519 194174</b>
<b>Type of application</b>	<b>Variation/Removal of Condition(s)</b>
<b>Case Officer</b>	<b>Lee Burman</b>

### **Reason for the application being considered by Committee**

The Application was called in for Committee determination by Councillor Berry to consider the proposals and conflicts with the Made Oaksey Neighbourhood Plan.

### **1. Purpose of Report**

1.1 To consider the proposals in the context of the development plan and all other material considerations and recommend that consent be granted subject to conditions and completion of a S106 agreement within 6 months of the date of the Committee Resolution. In the event that the applicant declines to enter into the s106 Agreement to refuse permission for the reasons set out below.

### **2. Report Summary**

2.1 The application has resulted in 93 representations of support; 3 representations of objection; and 18 representations making general comments. Oaksey Parish Council object to the application.

2.2 The main issues raised by the proposals are: -

- The principles of the development proposal and compliance or conflict with the development plan
- The viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy i.e. as Holiday let accommodation
- And whether or not the properties have been marketed appropriately reflecting the restrictive occupancy conditions;

- Residential amenity

### 3. Site Description

3.1 The site is located within the open countryside to the east of the village of Oaksey. The application relates to a development of 25 semi detached and detached structures located adjacent a 9 hole golf course and its supporting clubhouse facility. The structures are modern in design two storey buildings utilising render and timber with substantive glazing elements. The structures are surrounded by shared amenity spaces with planting separating the properties from the golf course. The structures are residential in character but occupancy is restricted to holiday lets. Similarly there is established mature planting to the northern boundary separating the site and its access road from adjoining open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent the golf course itself though the golf course car park and passed the clubhouse facility. The land rises to the west and in the direction of the villages and adjacent unmaintained scrub land is situated against the western boundary of the site, albeit this land benefits from an extant consent for a final phase of the development which is as yet unbuilt.

### 4. Planning History

89/03470/F	Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved
02/01841/FUL	Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access Approved
03/02072/S73A	Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7) Appeal allowed conditions varied
10/03612/S73A	Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved
11/02036/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved
12/00034/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.
12/00050/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL). Relates to unit 7. Approved.
13/00958/S73A	Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607,

allowing the unrestricted residential occupancy of units 12 to 19 (8 in total). Approved

18/02717/CLE Certificate of lawfulness for use of holiday accommodation as independent residential accommodation. Withdrawn

18/05105/CLE Certificate of lawfulness for use of holiday accommodation as independent residential unit. Withdrawn

## 5. The Proposal

The application proposes the removal of conditions 8, 9 & 10 of planning permission 10/03612/S73A – Relating to residential occupancy in order to permit unrestricted residential use of units 3, 5, 6, 8, 10 & 11 and 20-25. The conditions are as follows:-

### 10/03612/S73A

*8 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) hereby permitted shall be used for holiday accommodation only and for no other purpose.*

*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.*

*POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism*

*9 The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.*

*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.*

*POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism*

*10 The owners / operators of the site shall maintain an up-to-date register of the names of all owners / occupiers of individual units identified in red upon drawing No. JC/001/2 and of their main home addresses, and shall make this information 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.*

*POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism*

## 6. Planning Policy

Wiltshire Core Strategy (Adopted Jan 2015) (WCS)  
CP1, CP2, CP3, CP13, CP57, CP60, CP61 & CP62

Saved Policies of the North Wiltshire Local Plan (Adopted 2006) (NWLP)  
H4 & NE18

Oaksey Neighbourhood Plan Made (March 2019) (ONP)  
P1, P2, P3, P6, P10, P14 & P17

National Planning Policy Framework (June 2019) (NPPF/The Framework)  
- in particular but not exclusively Paras 2, 7, 8, 11, 12, 38, 47, 55, 77, 79

National Planning Practice Guidance  
– in particular but not exclusively - Use of Conditions

## **7. Consultations**

Highways Officers – No objection subject to conditions

Education Officers – No objection and no requirements identified

Open Spaces Team – No objections additional playspace requirement identified

Butler Sherbourne (Independent Surveyors) – Advice addressed in detail the main body of the report but in summary concludes that the marketing undertaken was reasonable and appropriate and the conclusions reached as to lack of demand for the units with the conditions attached are agreed.

Oaksey Parish Council – Strongly object. The proposals are considered to conflict directly with Policy 3 Holiday Accommodation, Leisure & Recreation of the made neighbourhood plan.

## **8. Publicity**

8.1 The application was advertised by Site Notice, press Notice, Neighbour notification, Notification to the Parish Council, Notification to the Local Ward member, Publication of documentation on the Council's website and identification in the Council's weekly list of applications.

8.2 The vast majority of public representations received identify support for the proposals identifying a shortage of housing in the locality and significant benefits to local families and persons wishing to stay or become resident in the village. In addition a lack of demand for holiday lets, no site specific harmful impacts including to the character and appearance of the area. 93 representations of support were received in total.

8.3 3 representations of objection were received. Issues raised centred on the importance of the golf course and holiday lets to the local economy; the location outside the defined settlement and the view that limited weight should be given to previous decisions at the site removing conditions and the lack of demand for holiday lets at the site/locality.

8.4 18 representations making general comments or no objection were received, a limited number of persons made multiple submissions. Issues raised centred on:-

- Some of the supporting information submissions are not fully accurate e.g. property numbering on plans
- Parking and bin collection provision on site is inadequate
- Unauthorised development of the erection of boundary treatments has taken place
- Previous applications to remove restrictive conditions on properties at the site have been granted consent



- More homes are required and challenge to the previous decisions has been lost
- Prior approval for change of use sets a precedent that is material
- Will help the local economy
- Will support local services and create a better living environment at the site
- Better to use existing properties than build new housing
- Concerned about impact on businesses servicing the existing properties
- No detrimental impacts.

## **9. Planning Considerations**

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); and the Oaksey Neighbourhood Plan (ONP) (Made March 2019).

WCS Core Policies CP1 and CP2 define requirements for housing and employment development in the plan period and the development strategy for addressing those requirements. That strategy is based on a defined settlement hierarchy with significant development being directed to the most sustainable settlements in the hierarchy based on the infrastructure, facilities and employment opportunities and scope for self-containment within each of the settlements identified. Allocations to meet identified requirements are to be brought forward through neighbourhood plans and / or specific development plan documents. In this housing market area Chippenham is the most sustainable strategic location for significant development. A series of community area based policies then distribute the identified quantum of growth to locations throughout the market area with further definition of the settlement hierarchy in each community area. In this instance the relevant policy is CP13 and Oaksey is identified as a large village with a defined settlement framework boundary within which limited residential development to meet local needs is considered appropriate.

Oaksey has prepared and adopted a Neighbourhood Plan and this includes housing allocation to meet identified requirements and so can be given full weight. The Wiltshire wide housing site allocations development plan document is well advanced and can be given considerable weight.

Outside of the identified settlements and allocated sites new housing development is strictly controlled and, in accordance with the guidance in the framework, limited to a series of exceptions. Principally these exceptions focus on limited residential development required to allow persons to live close to their places of work in rural based employment activities, re-use of existing buildings, exceptionally innovatively designed dwellings or replacement dwellings.

The application site is not allocated for residential development and sits outside of the defined settlement framework boundary for Oaksey. The residential properties that would result from the removal of restrictive occupancy conditions as proposed would not fall within the exceptions categories of new residential development in the open countryside. The development would not be directly in accord with the development plan in respect of the development strategy and core policies of the WCS informing the location and distribution of new residential development.

At this point it is important to note that the WCS does not include a specific policy that deals with this particular situation – removal of restrictive occupancy conditions allowing unfettered residential use. However, the ONP does – Policy P3. The second part of this policy specifically states the following:-

*The removal of occupancy restrictions on holiday accommodation to allow their use as a permanent residential dwelling will not be supported unless the property is located within the settlement boundary.*

The ONP as noted above is a made plan and therefore carries full weight. However as with the WCS and all adopted and made plans it is subject to the statutory provision repeated throughout the Framework starting at para 2 that planning applications must be determined in accordance with the development unless material considerations indicate otherwise.

It is therefore necessary to consider what if any material considerations arise that would support and justify a decision other than in accordance with the development plan.

In this later respect it is considered that such circumstances do exist. Firstly the properties already exist having been constructed some years ago. As such this is not a proposal for new build residential development. The development that was permitted and which has taken place was also a form of residential development, that being for holiday let/ accommodation purposes. This falls within the same residential use classification of the town and Country Planning (Use Classes) Order England 1987 as amended being defined as an ordinary dwelling (C3). Whilst occupancy is restricted by condition the characteristics of the use of these structures is residential in nature as opposed to other land uses i.e. employment or retail. Finally the site has been the subject of a marketing exercise and the application is supported by a report in this respect which concludes that there is no demand for the properties with the restrictive conditions attached.

The considerations identified and especially the marketing of the properties with the relevant conditions attached are considered to be material to the weight to be given to the development plan including policy 3 of the ONP in determining this application.

In this context the submitted marketing report has been the subject of independent review and assessment by local surveyors with experience and knowledge in the tourism sector – Butler Sherborn. Their report concludes that the approach undertaken in the marketing report is appropriate and its findings reasonable and therefore the proposition of disposing of the properties to individuals as second/holiday homes is unviable. Both the marketing report and its assessment have been published to the public record and made available to interested parties. Queries arising from the Butler Sherborn assessment, including whether or not the use of auctions or marketing of the site as a whole going concern as opposed to individual units would have altered the conclusions have been put to the author who has confirmed that additional marketing by these means would not in their professional opinion and experience have materially altered their conclusions/the outcome of the marketing exercise. Butler Sherborn consider that the market is well provisioned for holiday homes and the available and planned facilities in the locality are of a comparable nature but in most instances are of a higher price but with a greater range of supporting facilities and of a higher specification in design. The assessment identifies that funding is not considered to be freely available to support investment/purchase from mortgage providers.

Oaksey Parish Council has reviewed and considered both the submitted marketing report and the Butler Sherborn assessment and does not agree the findings. The Parish Council considers that the application site is not comparable to other holiday let sites in the locality and referenced in the report having not been well maintained in a number of respects and requiring improvements. In addition the Parish Council considers that the site has not been

fully operated in accordance with the identified restrictive conditions. The Parish Council identifies that there is no requirement for additional housing in the locality following adoption of and provisions made within the ONP alongside other identified residential development having taken place/having been permitted. Whilst the Parish Council's concerns are noted it is not considered that these matters in and of themselves result in a different conclusion than that reached by the Butler Sherborn review which considers the identified sites at the Cotswolds Water Park and Wiltshire Leisure village to be reasonable as comparable sites for assessment purposes and that the properties have been marketed at an appropriate valuation reflecting site circumstances and the restrictions applied.

Retention of the restrictive conditions and their enforcement is ultimately likely to lead to a series of vacant structures and / or persons having to relocate to other dwellings with properties that they can not sell and not use except for restricted periods each year. Such a position / decision is not considered to be reasonable and defensible given the identified material considerations and could lead to deterioration of the site to the detriment of the character and appearance of the locality.

It is also material to note that a previous consent for similar proposals has been approved based on evidence demonstrating no demand for other units at the site with the restrictive conditions attached. Furthermore, the large representation of support from members of the local community with respect to the current application proposals is also notable.

On the basis of the above and in particular the findings of the independent assessment of the marketing of the application properties it is considered that it has been demonstrated that there are material considerations that support a decision otherwise than in accord with the development plan, including policy P3 of the ONP.

### Residential Amenity

Concerns have been raised by interested parties as to the future occupancy of the properties as permanent and principal residences without restrictive conditions limiting occupancy in terms of the adequacy of residential amenities.

As noted previously the existing units are in a form of residential occupancy and this requires an appropriate level of residential amenity in terms of privacy, overlooking, outlook and interrelationship between properties, daylighting and overshadowing, ancillary amenity spaces, access and parking arrangements. The scheme as approved and implemented to date secures adequate arrangements in these respects and it is not considered that this is significantly less than would be required had the units/properties been proposed and approved as unrestricted market dwellings.

Specific reference has been made to amenity spaces and boundary treatments with the existing units being approved largely as a more open plan arrangement with shared spaces than is often seen on market/unrestricted residential developments. Whilst this is true shared spaces with open arrangements are not completely unheard of or totally unique and it is not considered that this arrangement results in an inadequate level of amenity including in respect of privacy. The concerns raised at least in part stem from the use of conditions attached to previous consents requiring approval of boundary treatments by removing permitted development (PD) rights. Removal of PD rights by condition does not in any way indicate that such development is unacceptable in perpetuity, merely that it raises matters, such as impacts to the approved design character of a development, over which the LPA wishes to give further consideration and retain control. This reflects recent revisions to the NPPF at para 130 which exhorts LPAs to ensure that design quality is not undermined or diminished by multiple minor amendments to an approved scheme. Such minor amendments can be achieved through the exercise of permitted development rights.

It is also material to note that a similar previous consent has been granted and in that context the proposed arrangements were considered acceptable in residential amenity terms. The consultation response in respect of this application is also noteworthy in identifying significant levels of support for the proposal with the facility being considered desirable for the unrestricted residential use and meeting local residential need.

In summary it is considered that the units subject of the application will provide for an adequate level of amenity for future occupants with the restrictive occupancy conditions removed and that there is no conflict with the provisions of the development plan or the framework in this respect and no sound and defensible reason for refusal on this basis.

### Highways and Parking

On the basis of the initial submissions the Council's Highways officers raised no objection but did seek additional information in respect of car and cycle parking provision. Information has been submitted by the application as to available provision and on that basis Highways officers raise no objection subject to conditions.

The site access has been found acceptable in relation to the consented use. Similarly the previous determination of applications seeking variation of occupancy conditions attached to the properties at the site have given consideration to the adequacy of the arrangements. It is not considered that the material circumstances at the site and in relation to the access have changed significantly in this respect. The removal of the current restrictive occupancy conditions attached to the properties the subject of the application is not considered to result in revised vehicular movements to an extent that revisions to the site access or alternative site access arrangements are necessary.

### Other Matters

#### *Phase 4 of the development/Extant permission*

It should be noted that a final phase of development of holiday let units at the site remains unimplemented and is not covered by the current application proposals to remove restrictive occupancy conditions. The consent remains extant given the implementation of earlier phases and related works. In the determination of the previous application reference number 13/00958/S73A legal advice was sought as to voiding that element of the consent. The report to committee for the application addresses the matter in full and confirms that advice received identified that it was not appropriate or lawful in relation to material circumstances and considerations relevant to the site and the application. That is considered to remain the position.

However, correspondence indicating a possible intention to consider implementation of the remaining element of the scheme in 2017/2018 was submitted to the Council. Given this position it is considered necessary and reasonable to address the matter formally and on this basis it is agreed with the applicant that the S106 agreement / planning obligation will include covenants preventing the building out of phase 4 of planning permission ref N/10/03612/S73A without the applicant demonstrating to the Council's reasonable satisfaction that there is demand for the units contained within phase 4.

#### *Waste Collection*

Concerns have been raised during the consultation period that waste collection facilities and arrangements are inadequate for the proposed alternate living arrangements arising from the removal of restrictive occupancy conditions. The applicant has confirmed that the bin storage

area has been completed as per agreed details previously required by condition. Again it is also material to note that the existing properties the subject of the application are in a form of residential use. No significant concerns were raised at the time of determination as to future waste collection and the proposals were approved. A compound for bin storage has been approved through the discharge of condition attached to the previous consent and provision made in accord with the approved details. Waste collection frequency is not a matter that can be controlled through the determination of planning applications, this is a matter that is addressed by the Council on an area wide basis in accord with its business plan and a range of other considerations and objectives. It could be open to residents to make private arrangements if considered necessary. The storage provision facilities are considered adequate for the development and the removal of restrictive occupancy conditions in respect of the properties which are the subject of this application is not considered to generate a requirement for additional or revised provision such that there is conflict with the policies and provisions of the development plan or framework and consent ought to be refused on this basis.

#### *Planning Obligation / S106 Agreement*

The Council's Education Department has assessed the proposals and identifies that based on the current school place planning and projections the development does not generate a requirement for education provision at primary or secondary level but that the previously identified requirement remains.

The Council's Open Spaces Team has assessed the scheme proposals and has identified that additional playspace provision is required. Officers identify that the requirement can be addressed either by on site facilities in addition to the previously identified requirement or through off site financial contributions. The preferred option of Officers being on site provision. The applicant has agreed to meet the requirement through on site provision and this will be addressed through the S106 agreement. The previous covenants / requirement as to open space provision has yet to be fully discharged as triggers in the relevant S106 agreement in that respect have not yet been met but the current application if approved will do so once implemented. The applicant has confirmed that on site provision can be made and willingness to enter into the S106 agreement on this basis.

The Council's Housing Officers have considered the scheme proposal and the site history. In light of the previous determination and the current policy position Officers do not consider that a contribution toward affordable housing provision arises from the scheme proposals.

Commitments and requirements with respect to the Phase 4/extant elements of the consent re: further holiday lets at the site are addressed above.

Given the nature the triggers contained in the existing section 106 in part tied to the units that are the subject of the current application and the matters addressed therein that remain extant it is considered that agreement must be varied to apply to the consent that is recommended for approval. In so doing it is possible to include the additional provisions relating to the extant unimplemented element of the development and additional open space requirements. The Council's legal department has confirmed that this is appropriate and necessary.

#### *Drainage/Landscape/Ecology/Heritage*

It is not considered that the proposals result in any impacts in respect of these matters and no conflict with relevant policies of the plan or national guidance arise.

## **10. Conclusion**

The application proposals are not directly in accord with the provisions of the development plan with particular regard to the development strategy of the Wiltshire Core Strategy set out in policies CP1 CP2 CP13; and the requirements and provisions of the Oaksey Neighbourhood Plan in particular policy P3. The Wiltshire Core Strategy does not however contain specific policies that directly address the proposed variation of conditions as a matter of principle.

On the basis of the assessment of the submitted Marketing Report undertaken by independent surveyors instructed by the Council it is considered that it has been demonstrated that there is no demand for the holiday let units that are the subject of this application with the restrictive conditions attached. Similarly it is considered on the basis of the advice received that appropriate marketing of the properties has been undertaken at an reasonable valuation reflecting site circumstances. The Council has no detailed marketing evidence or submissions before it that demonstrates a demand for the units with the conditions attached. The applicant has confirmed their willingness to enter into a planning obligation to restrict further development of holiday lets at the site in accordance with the extant permission unless evidence is available to demonstrate demand for provision.

It is material to consider that the units subject of the application already exist and are in a form of residential use. It is therefore not considered that proposed removal of restrictive occupancy conditions will result in site specific impacts to interests of acknowledged importance such that harm arises and the application could and ought to be refused on this basis. Again the applicant has agreed to enter into a planning obligation to meet the identified infrastructure needs arising from the proposals and to vary the existing agreement to apply to the latest permission.

On this basis it is considered that there are material considerations of significant weight that do justify and support a decision otherwise than in accordance with the development plan in this instance. As such and in accordance with paragraph 12 of the Framework permission is recommended.

## **RECOMMENDATION**

Grant Planning Permission subject to the conditions below and the completion of a S106 agreement within 6 months of the date of the Committee resolution to vary the existing agreement to apply to this permission; address open space requirements; and prevent the Applicant from building out phase 4 of planning permission ref N/10/03612/S73A without demonstrating to the Council's reasonable satisfaction (to be confirmed in writing and such approval not to be unreasonably withheld or delayed) that there is demand for the units contained within phase 4. In the event that the applicant declines to enter into the s106 agreement to refuse permission for the following reasons:-

The application fails to make provision for the requisite services, facilities and infrastructure needs arising from the proposals and is therefore contrary to Wiltshire Core Strategy Policy CP3 and paras 54 and 56 of the National Planning Policy Framework June 2019.

The material circumstances supporting and justifying a decision otherwise than in accordance with the development strategy of the plan as set out in Wiltshire Core Strategy policies CP1, CP2 & CP13; and Oaksey Neighbourhood Plan Policy P3 have not been demonstrably established as evidence is available to indicate an intent to erect further holiday lets at the site.

## **Conditions**

- 1 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety.

- 2 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway.

- 3 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use

- 4 The development hereby permitted relates solely to units 3, 5, 6, 8, 10 &11 and 20-25 Inclusive as shown on site layout plan received 19/09/2019.

REASON: In the interests of proper planning.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (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.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (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.

- 8       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.
- 9       INFORMATIVE TO APPLICANT:  
This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the XX/XX/XXXX.
- 10      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.

**Background Documents Used in the Preparation of this Report:**

**Wiltshire Core Strategy**

**Oaksey Neighbourhood Plan**

**NPPF**

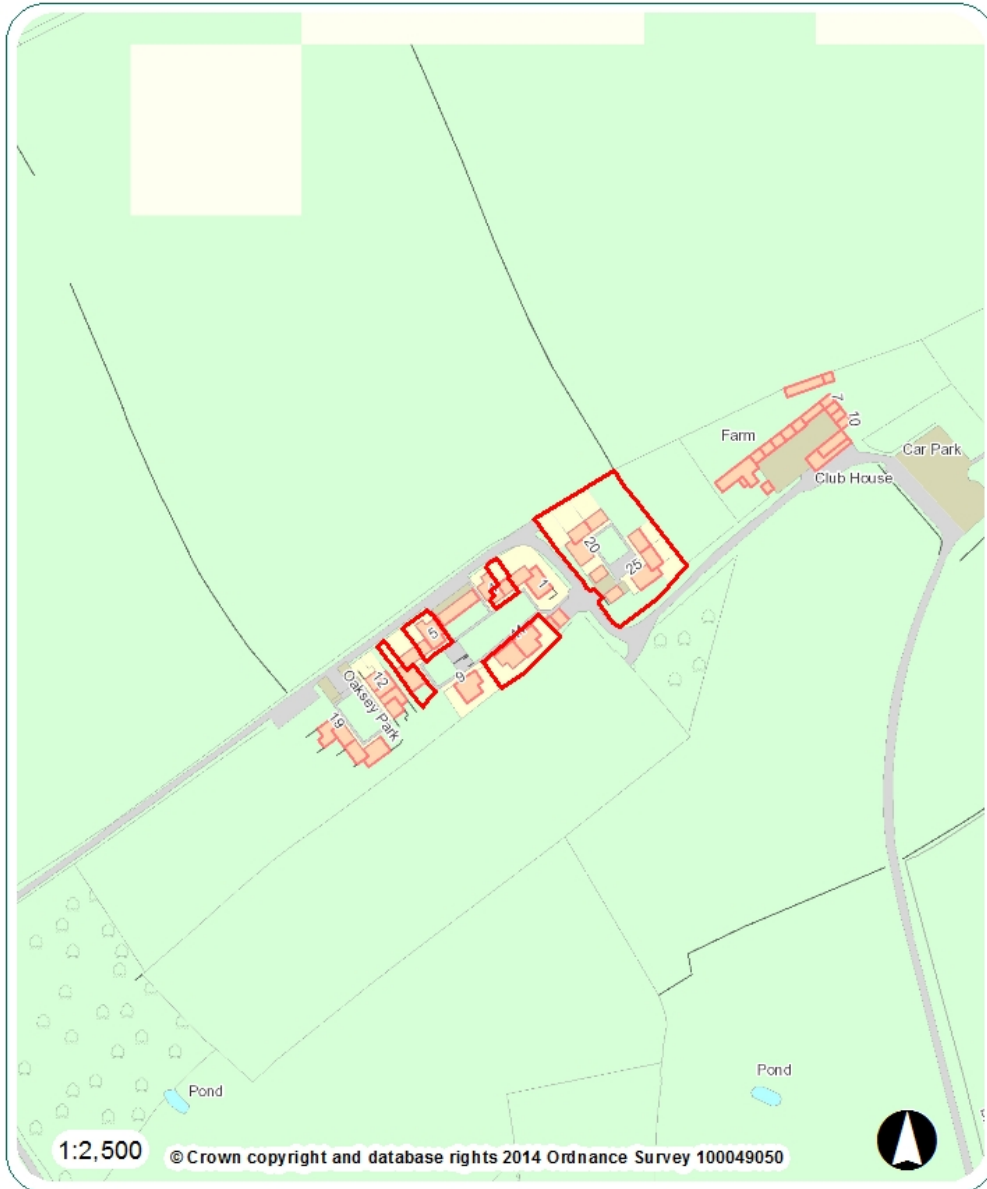
**NPPG**

**Application File N/13/00958/VAR**

**Application submissions 19/01991/VAR**

**Butler Sherborn Assessment**





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## REPORT FOR NORTH AREA PLANNING COMMITTEE

Report No.

<b>Date of Meeting</b>	06 November 2019
<b>Application Number</b>	19/07306/FUL
<b>Site Address</b>	Land to the North West of Broad Town, Swindon, Wiltshire
<b>Proposal</b>	Change of use of agricultural land to equestrian and construction of all-weather gallop
<b>Applicant</b>	Mrs Jane Allison
<b>Town/Parish Council</b>	BROAD TOWN
<b>Electoral Division</b>	Royal Wootton Bassett East - Cllr Mollie Groom
<b>Grid Ref</b>	409040 177993
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Nicole Gillett

### Reason for the application being considered by Committee

Cllr Molly Groom has requested the proposal be put before committee to examine; scale of development, visual impact upon the surrounding area, relationship to adjoining properties, design and environmental/highway impact.

#### 1. Purpose of Report

The purpose of the report is to assess the merits of the proposals against the policies of the development plan and other material considerations and to consider the recommendation that planning permission be APPROVED.

#### 2. Report Summary

The key issues in considering the application are as follows:

- Principle of the development
- Impact on character and appearance of the area and AONB
- Impact on highway safety
- Impact on neighbour amenity
- Impact on public rights of way
- Impact on Heritage Assets

Broad Town Parish council raised objection to the proposed development. 24 letters of objection and one support letter have been received, including multiple letters from individual writers.

#### 3. Site Description

The site is located to the west of Broad Town. The site lies at the foot of the North Wessex Downs Area of Outstanding Natural Beauty (AONB). The southern part of the site and Pye Lane areas occupy a geological transition between the elevated chalk geology rising to the south, and the lower clay vale landscape which extends northwards towards Royal Wootton Bassett. The south western corner of the site falls within the AONB designation, the remainder of the site is considered to fall within the setting of the AONB.

The site adjoins Broad Town, which contains several listed buildings. The closest to the site are; Queen Elizabeth Cottage, Broad Town Farmhouse and Jasmine Cottage all Grade II listed, however they do not adjoin the site. Further, medieval pottery sherds were found in the field 1997.

The site is a single agricultural field laid to grass with dense ruderal weed patches in places. The southern part of the site adjoins Pye Lane, a narrow rural road. To the east, the site is bordered by a mix of smaller paddock/field areas laid to grass and a linear single plot depth housing settlement stretching along Broad Town Road. The topography of the application site falls gently northwards. A mix of maintained native hedgerows, taller native hedgerows some with trees and tree belts border the various perimeter field boundaries of the application site with a notable small exception to the north east boundary where the housing lining Broad Town Road backs directly and openly onto the application field.

The White Horse Trail runs along the bottom of the scarp slope to the south of the site along Pye Lane. There are a myriad of other rural Public Rights of Way (PROW) surrounding the site in all directions. Three public footpaths pass through the site (BTOW7, BTOW9, BTOW10). The PROW are recorded as footpaths for pedestrians. An undesignated perimeter path exists around the boundary of the field. The land has two main points of access one to the north east on Broad Town Road and one to the south on Pye Road.

#### **4. The Proposal**

The proposal is to run an all-weather gallop from north to south down the field for commercial equestrian use. The rest of the field will be used to grow hay. Horses will cross Broad Town road, in up to groups of six led by a person, and enter via the northern Broad Town Road access. Horses entering the field will follow a grass route, mown, towards a short section of hardstanding before the gallop. A fence, which will be a maximum of 1.6 metres and constructed of wooden rails and keep safe wire, will run alongside the hardstanding. A PROW runs near the fence. Three metres will be maintained for the PROW at all points.

A circular turning circle, for turning horses only, is provided with plastic green railings at either end of the gallop. The gallop itself will remove 20cm of soil and place 10-15cm of geotextile membrane on top of sealed hardcore to form the gallop. The gallop colour is proposed as brown. The removed earth will be spread either side of the gallop and be grassed.

After finishing the gallop, the horses walk back up a mown strip of grassland, exiting via the Broad Town Road access. The horses will then cross Broad Town Road, being led by a person, to return to their stables at Manor Farm.

Where the PROW intersect the proposal warning signs are proposed.

The proposal changed two times during the application due to neighbour representations received. Firstly, the original proposal led the horses back to their stable via Pye Lane, however now the horses return via a grass strip in the field. Secondly, the original application had the hard standing close to the rear of the Broad Town Road properties but following revised plans the scheme was amended to set the hardstanding away from the boundary.

#### **5. Local Planning Policy**

Wiltshire Core Strategy Jan 2015:

Core Policy 1	-	Settlement Strategy
Core Policy 2	-	Delivery Strategy
Core Policy 34	-	Additional Employment Land
Core Policy 51	-	Landscape
Core Policy 52	-	Green Infrastructure
Core Policy 57	-	Ensuring high quality design and place shaping
Core Policy 58	-	Historic Environment
Core Policy 60	-	Sustainable Transport
Core Policy 61	-	Transport and Development

North Wessex Downs AONB Management Plan 2014–19 (2014)

Sections 66(1) and 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990

## 6. National Planning Policy

National Planning Policy Framework 2019

Paragraphs 2, 7, 11, 38 and 47

Paragraphs 108 – 110 Highway safety

Paragraphs 170-172 Conserving and enhancing the natural environment

Paragraph 83 and 84 supporting a prosperous rural economy

Paragraphs 189, 190, 191, 193, 196 & 197 Historic Environment

## 7. Summary of consultation responses

**Highways Officer:** No objection. Officers noted the benefits in terms of traffic generation in relation to the siting of the Gallop. The Officer stated Broad Town Road has good forward visibility to the junction accesses of Manor Farm and the site from the northbound carriageway, the forward visibility on the southbound carriageway is limited by a bend in the road and property hedges/walls. It would be beneficial to consider appropriate signing on at least the southbound carriageway of Broad Town Road in order to warn road users. Consequently, the report recommends a warning signs condition.

**Public Rights of Way Officer:** Following revised drawings showing the right of way as unenclosed by the slip railings and warning signs being added the ROW Officer removed their objection to the proposal. The Officer advised two conditions regarding warning signs and a condition stating the BROA10 be provided at a width of 3 metres. Consequently, the report recommends two PROW conditions.

**County Archaeologist:** No Comment response.

**Landscape Officer:** The Officer did not consider the gallop as currently proposed to be a particularly alien or visually intrusive feature, consequently they advised the proposal is not unacceptably harmful, but advised of a condition to prohibit further structures on the site, which has been added to the recommendation. The Officer advised greater consideration of the disposal of soil and possible drainage issues in the southern section of the site, however the drainage officer did not comment on the application as it presented low risk of surface or ground water flooding.

**Drainage Officer:** No comment. The Drainage Officer provided no comment regarding the application as the proposal site is of low risk for surface or ground water flooding.

**Council Ecologist:** Did not wish to comment on the application as the proposal did not present any ecological impacts.

**Councillors:** Cllr Molly Groom called the proposal to committee to examine; scale of development, visual impact upon the surrounding area, relationship to adjoining properties, design and environmental/highway impact. Cllr Groom further specified “represents a significant development in the village as the site capacity is for 120 horses. The route of the horses through the village to and from the gallop has been identified as a particular issue.”

The Councillor requested a site visit however a site visit was undertaken 07/08/2019.

**Broad Town Parish Council:** Objected on the below grounds;

- Lack of communication with applicant
- Making paths less safe and enjoyable
- Loss of arable land
- Noise and nuisance

- Highway safety
- Future development on the site
- No benefit to residents

## 8. Representations

**AONB Officer:** The AONB Officer advised a Landscape Assessment should be undertaken to examine the proposals effects on long range views from the AONB. The Officer advised the proposal has the potential to urbanise the field. The AONB Officer commented on Archaeological issues, but the County Archaeologist confirmed they found no issue with the proposal.

**Neighbour Letters:** The application was advertised by neighbour letter, site notices and press advert. 24 letters have been received raising concerns and objections. 5 letters were received (one from ramblers group) as a result of re-consultation. This is inclusive of multiple letters from individual writers. In summary, they raise the following relevant planning issues;

- Manor farm business scale
- No benefit to village
- Loss of arable land
- Drainage and flooding
- Archaeology
- Additional information requested on; entrance to site, hard standing purpose, footpath, tracks, fencing, vehicles using hard standing and third party use of site.
- Inconsistency in application documents
- Requested hard standing is moved from property boundary. Revised plans show the applicant listened to this request.
- Alternative land could be used

### Design

- Effect on character and appearance, including AONB
- Design, appearance and layout

### Highways and pedestrian safety

- Highway safety
- Pedestrian safety on public rights of way
- Horses causing safety issues
- At Manor farm a lack of parking for seasonal workers
- Vehicles in field

### Residential amenity

- Number of horses
- Noise and light pollution
- Times of use

### Public Rights of Way

- Location of public right of way questioned
- Access to public rights of way

### Non material planning matters and/or covered by other legislation

- Applicant's history on constructing fencing and maintaining rights of way
- Public rights of way maintenance
- The perimeter footpath around the field in question has been used for in excess of 20 years without restriction enabling Section 31 of the Highways Act to be implemented.
- Applicant's motives for future development
- Horse faeces
- Littering
- Loss of private view
- Private property damage

- Private rights of way at East Farm House driveway and entrance track
- Proposal has already started being constructed
- Stiles already in place hard to use
- No toilets on site

One letter of support regarding:

Employment

Countryside must evolve to survive

Used field for horse riding without issue

**Ramblers Group:** Objected on the grounds of danger to pedestrians twice.

## 9. Planning Considerations

### Principle of the development

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

In this case, the Wiltshire Core Strategy (WCS), including those policies of the North Wiltshire Local Plan saved in the WCS. The National Planning Policy Framework (NPPF) and, North Wessex Downs management plan (2013) Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight.

The site lies in countryside beyond any limits of development as defined within the Wiltshire Core Strategy (WCS) (2015). Paragraph 83 and 84 of the NPPF supports the promotion for development and diversification of agricultural and other land-based rural businesses. Further, the NPPF states decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements. It is, consequently, considered that the NPPF supports a prosperous rural economy.

Representations have been received stating the proposal presents no benefits to Broad Town residents. However, the proposal does provide the opportunity of employment locally if the business grows, further the proposal allows the continued growth of a rural enterprise.

Comments have been received stating the Manor Farm business is becoming too large. However, this is in contrast to the NPPF and CP34 which seeks to support rural enterprise. The development relates to an existing stable which is considered to constitute an existing land-based rural business of the type that the NPPF and WCS seeks to encourage. It is therefore considered that the proposal is consistent with the aims and objectives of paragraph 83 and 84 of the NPPF and CP34 which encourages a prosperous rural economy and diversification of the rural economy.

### Impact on character and appearance of the area and AONB

Para 170 and 172 of the NPPF reiterate the importance of conserving and enhancing the natural environment and that great weight should be given to conserving landscape and scenic beauty in AONB's. This is reflected within the WCS (2015) CP51 and CP57 relating to landscape and design, where development shall protect, conserve and where possible enhance protected landscapes.

The proposal is to create a 4 metre wide all weather gallop. This would be similar in general appearance to a farm track in terms of its scale. Equestrian gallops and other equine uses associated with horse racing industry within the North Wessex Downs AONB are common features within the landscape. The gallop is not considered to be particularly alien or visually intrusive feature. The Landscape Officer stated they did not consider this current development proposal to manifest as an unacceptably harmful landscape feature. Further, the AONB Officer did not object to the principle of gallop, as they are not uncommon the AONB, but requested a landscape assessment be provided to show the proposals effects on long range views. A landscape assessment was provided and it is considered the proposal is not inappropriate in respect of the development guidance within the North Wessex Downs AONB Management Plan 2014–19. Consequently, it is considered no harm would be

caused to the visual amenities of the countryside or the AONB in this instance. A condition will remove permitted development rights to ensure any future development can be examined on its merits.

#### Impact on highway safety

Representations were received concerning vehicles entering the field. There is no vehicle parking or access proposed with the application. A comment was received regarding a lack of parking at Manor Farm, however no highways officer concerns were raised in this respect.

The horses are proposed to be walked between Manor Farm and the site access on Broad Town Road. Several representations are concerned with large strings of horses utilising the public highways and resulting in highways hazard/vehicular and road uses conflict. The applicant confirmed peak numbers will be six in a string but most of the time there will be 2-3 in a ride. They will be supervised over the road by a member of staff. Broad Town Road is a section of 30mph road which, whilst a B road, is still in a relatively rural location and horses are expected on roads such as these. Additional horses walking on this section of highway, albeit for a short section, may serve to reduce the speed on the road. Broad Town Road has good forward visibility to the junction accesses of Manor Farm and the site from the northbound carriageway, the forward visibility on the southbound carriageway is limited by a bend in the road and property hedges/walls. The Highways Officer advised appropriate signing on at least the southbound carriageway of Broad Town Road, which has been added as a conditional requirement to this recommendation.

The Highways Officer did not object to the proposal and noted benefits in terms of traffic generation in relation to the siting of the Gallop, as the current situation stands horses are required to be transported between manor farm and another Gallop some 8 miles away. Having a gallop situated within horse walking distance to the equestrian facilities would reduce the frequency of vehicular trips in the form of horse transportation. On this basis, it is not considered that the proposal would result in cumulatively severe impacts to the highway network contrary to the guidance contained at paras 108 – 110 of the framework and CP62 of the WCS such that consent ought to be refused on this basis.

#### Impact on neighbour amenity

The site is largely enclosed by fields with a notable small exception to the north east boundary where housing lining Broad Town Road back directly and openly onto the application field. A low level fence provides the boundary treatment. Representations were concerned with large strings of horses with riders viewing into properties. The applicant confirmed peak numbers will be six in a string but most of the time there will be 2-3 in a ride. It is not considered the proposal will cause substantial overlooking over what is already experienced at the site.

With regards to noise and light pollution. The proposal does not propose any light sources and the applicant confirmed galloping is undertaken in daylight hours. The applicant advised the yard begins work at 8am consequently horses will not be galloped until 8.30/9.00am. Additionally, there may be some afternoon galloping at peak times. An hours of operation condition has been recommended to ensure residential amenity is safeguarded. It is considered the proposal does not cause substantial harm to residential amenity and is in accordance with CP57 of the WCS.

#### Impact on public rights of way

Concerns have been raised by residents concerning the interaction between people, including children, and horses both within the field, the access route and the highway. The Highways Officer has not objected to the application on safety grounds with the regards to the highway and the management of a horse's behaviour is not a planning matter. The Public Rights of Way Officer removed their objection following revised plans showing warning signs at points where the PROW crosses the gallop.

Three public footpaths pass through the site (BTOW7, BTOW9, BTOW10). An undesignated perimeter path exists around the boundary of the field. The proposal does not enclose or change the PROW and a sufficient buffer has been created either side of the PROW tracks. Whilst the experience of the PROW will change, as horses will now being use the field, the PROW is still retained for people



to utilise. The proposal safeguards the public rights of way and is therefore considered to comply with CP52 of the WCS.

Representations concerning the; applicant's track record on constructing fencing and maintaining rights of way, BTOW7 needs a hole in the hedge to be useable and the perimeter footpath around the field in question has been used for in excess of 20 years are not planning matters. With regard to the perimeter path which residents are claiming has been used for in excess of 20 years, they could apply to add the path to the Definitive map of Public Rights of Way. Further, with regard to BTOW7 this is an obstruction/ access issue which needs to be reported to the Countryside Access Office via the "Reporting" section of the Wiltshire Council website.

#### Heritage Assets

Pottery shards were found in the field in 1997, however the County Archaeologist advised no comment as they found no archaeological issues with the proposal.

The Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the designation, protection and enhancement of conservation areas and the preservation of listed buildings. 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 190 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 195 and 196 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset. Core Policy 57 of the Core Strategy for Wiltshire requires, amongst other things, that new development must be sympathetic to and conserve historic buildings. Core Policy 58 requires that development should protect, conserve and where possible enhance the historic environment.

Given the distance and dwellings in between the proposal and the listed buildings along Broad Town Road, it is considered no harm is caused by the proposal to the heritage assets. The proposal is therefore considered to be in compliance with CP 57 and CP 58 in addition to paragraphs 195 and 196 of the NPPF.

#### Sustainability

A number of representations stated the loss of arable land is concerning given the need for crop production and biodiversity. However, the Ecology Officer did not wish to comment on the application as the proposal did not present any ecological concerns. Further, rural enterprises such as farms sometimes diversify, as noted within the NPPF 2019, consequently some arable land does change use.

### **10. Conclusion (The Planning Balance)**

The proposed development would have the economic benefit of the expansion of a rural business, which is supported by local and national planning policy. These benefits have to be balanced against the intensification of the fields use. The development would respect the character of the locality and would not cause any demonstrable harm to residential amenity. It is considered no harm would be caused to the visual amenities of the countryside or the AONB in this instance. Access is considered acceptable and no objections have been raised by the highways officer. It is not considered that harm arises to ecology or heritage assets. Therefore, it is considered that the benefits of the proposed development would outweigh the intensification of the fields use associated with it and the development would comply with the Wiltshire Core Strategy 2019 policies; CP1, CP2, CP34, CP51, CP52, CP57, CP58, CP60 CP61, CP67 and National Planning Policy Framework 2019.

**RECOMMENDATION: Planning permission be approved subject to conditions;**

1 Time Limit

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 Approved Plans

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

Site Location Plan KCC2759/01A received 21st October 2019

Site Plan KCC2759/02A received 18th October 2019

Further revised details of gallop and location of footpath crossings KCC2759/03B received 11th October 2019

Revised details of stopping circle KCC2759/04A received 7th October 2019

Details of start circle and entrance track KCC2759/05 received 29th July 2019

Revised cross section of gallops and details of footpath crossing including signage KCC2759/06B received 7th October 2019

Details of footpath crossing 3 and 4 KCC2759/07 received 7th October 2019

Details of track and fencing KCC2759/08 received 15th October 2019

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

## 3 Public Right of Way Signage

Prior to the commencement of the development hereby permitted, as to the type, position and wording of signage to be erected at the footpath crossing is to be submitted to and agreed in writing by the Local Planning Authority. The approved signage must be erected at the approved locations where each public footpath crosses the gallops before the gallops are first brought into use.

Reason: In the interest of public safety.

## 4 Public Right of Way

The Public Right of Way BROA10 must not be obstructed 1.5 meters either side of the Public Right of Way line.

Reason: to safeguard the Public Right of Way.

## 5 Warning Signs

The development hereby permitted shall not be first brought into use until the requirements for

warning signs have been discussed and determined in relation to both approaches on Broad Town Road. Any requirements for warning signs would be implemented at the expense of the applicant.

Reason: In the interests of highway safety.

6 Materials

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

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

7 Soil Disposal

No development shall commence on site until details of the disposal of top and sub soil have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

8 Timing of gallops

The use hereby permitted shall only take place between the hours of;

Monday to Friday

8:30am-5:00pm

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

9 Lighting

No external lighting shall be installed on site without prior written consent from the Local Planning Authority.

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

10 Parking

There shall be no parking of horse boxes, caravans, trailers or other vehicles on the site.

Reason: In order to protect the living conditions of nearby residents and the rural character of the area.

11 Fences and Jumps

No fences or jumps shall be erected on the site without the prior approval in writing of the Local Planning Authority.

Reason: In order to protect the living conditions of nearby residents and/or the rural character of the area.

12 Structures

No portable buildings, van bodies, trailers, vehicles or other structures used for storage, shelter, rest or refreshment, shall be stationed on the site. Further, no permanent structures will be erected on site without the prior written consent of the Local Planning Authority.

Reason: In order to protect rural character of the area.

13 INFORMATIVE TO APPLICANT:

Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site.

14 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans must first be agreed in writing with the Local Planning Authority before commencement of work.

15 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.

16 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.

17      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).

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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

<b>Date of Meeting</b>	06 November 2019
<b>Application Number</b>	19/04927/FUL and 19/05290/LBC
<b>Site Address</b>	4 Oxford Street Malmesbury Wilts SN16 9AX
<b>Proposal</b>	Change of use from A3 cafe to single dwellinghouse. Proposed refurbishment & internal alterations to facilitate the change of use.
<b>Applicant</b>	Mr George Cazenove
<b>Town/Parish Council</b>	MALMESBURY
<b>Electoral Division</b>	MALMESBURY – Cllr Gavin Grant
<b>Grid Ref</b>	393345 187211
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Catherine Blow

### Reason for the application being considered by Committee

The application has been called in for consideration at this committee by Cllr Gavin Grant to enable consideration of the principle of the change in use in this location within the Secondary Retail Frontage within Malmesbury.

#### 1. Purpose of Report

The purpose of the report is to consider the above applications in the context of the development plan and all material considerations and the recommendation for APPROVAL of both applications subject to conditions.

#### 2. Report Summary

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

- Principle of Development
- Impact on the Listed Building & Conservation Area
- Design and Site Layout
- Impact on the locality/amenity
- Highways

There have been objections received from representatives from the Malmesbury Civic Trust, The Malmesbury Town Team and the Malmesbury Residents Association as well

as a local resident. An Objection has also been received from Malmesbury Town Council as well as Cllr Gavin Grant the Ward Member for Malmesbury.

### **3. Site Description**

The site is located along the northern side of Oxford Street which forms a thoroughfare through the northern part of Malmesbury Town Centre enabling movement to the east and west. The site is close to the junction with the High Street and the Primary Shopping Frontage for Malmesbury. The Market Cross is located to the west of the site. This part of Oxford Street has parking restrictions in the form of double yellow lines on either side, with only a shared pedestrian access to the rear located between

The existing property is a Grade II listed building consisting of a modest traditional wooden shop frontage with other areas consisting of a rendered finish with a stone tiled roof. This property is attached to and sub-ordinate to the attached buildings ether side. The attached building to the east of the site is also listed and consists of a stone built property which has recently been converted into residential development.

This site is designated as being within the Secondary Retail Frontage of Malmesbury and within Malmesbury Conservation Area.

### **4. Planning History**

The relevant planning history for this site are:

N/87/01561/LBC – Alterations to the listed building fascia and signage and projecting signs – approved subject to conditions

N/91/02131/ADC Non-illuminated shop sign and projecting sign – Approved

N/00/00799/COU – Change of use from A1 to A3 – Approved subject to conditions

N/01/00440/COU - CHANGE OF USE TO A3 TO TEA GARDEN – Approved subject to conditions

N/01/00464/ADV – Shop sign and hanging sign – Approved subject to conditions

### **5. The Proposal**

The proposed development seeks planning permission for the change of use of the premises from a café (Use Class A3) to single dwelling (Use Class C3). The proposal also seeks refurbishment of the premises to facilitate the proposed use. The changes to the property are largely only internal changes that do not require planning consent but do require listed building consent. These changes are as follows:

- Replacement of ground floor rear doors to folding doors within the existing opening
- Remove modern boxing of the existing staircase at ground floor level
- Removal bathroom/toilet partition at first floor to create one bathroom
- Removed existing partitions and make good the existing partition in bedroom two
- Provide new partitions at first floor to create a wall between bathroom and bedroom as well as a new doorway to bedroom two

The original proposal sought to undertake extensive works to the internal layout of this listed building that included the removal of the existing staircase and create a new staircase on the close to the western elevation. However, after the feedback provided

by the Council's Conservation Officer the works proposed were scaled back to those now proposed.

## **6. Planning Policy**

### **National Planning Policy Framework February 2019 (NPPF)**

Paragraph 2, 8, 9, 10 and 11

Section 7 – Ensuring the vitality of town centres – paragraphs 85,

Section 8 - Promoting Healthy Communities

Section 9 – Promoting sustainable transport – paragraphs 103, 105, 106, 109, 110

Section 12 – Achieving well-designed places – paragraph 124, 127

Section 16 - Conserving and Enhancing the Historic Environment – paragraph 185, 189, 192

### **Wiltshire Core Strategy (Adopted January 2015)**

CP1 - Settlement Strategy

CP2 - Delivery Strategy

CP3 - Infrastructure requirements

CP13 - Spatial Strategy for the Malmesbury Community Area

CP45 - Meeting Wiltshire's Housing Needs

CP57 - Ensuring High Quality Design and Place Shaping

CP58 - Ensuring the conservation of the historic environment

CP60 - Sustainable Transport

CP61 - Transport and Development

CP62 - Development Impacts on the Transport Network

### **North Wiltshire Local Plan (Saved Policies) 2011**

R2 Town centre secondary frontage areas

### **Malmesbury Neighbourhood Plan (Adopted February 2015)**

Policy 4 – Housing

Policy 13 – Design and Heritage

Volume II Design

Tasks 8.1, 8.3, 8.16, 8.22, 8.24

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

Malmesbury Town Council:

The Town Council object for the following reasons;

- The loss of the A3 space would have an impact on the vitality and viability of the Town Centre. Unlike the change of use to dwelling at 6 Oxford Street, which was supported by the Town Council in November 2015, there are no mitigating factors of (a) the demonstrated failure of and absence of business activity, (b) dilapidation of an important town centre building and (c) concern that proposals for remedial development would not come forward.
- No evidence is presented that 4 Oxford Street is not viable as an A3 business. The Town Council considers that continued A3 use would offer employment opportunities in the town centre and contribute to the town centre's offering to residents and visitors, particularly given the premises' proximity to the Abbey and Market Cross Ancient Monuments.
- The application is also silent on the provision of WC's minimum residential parking standards for a three-bedroom property. Parking shortages in and around the High Street have now reached such a critical point that MTC are pressing both the Police

and WC Parking Services to take further action to stem the amount of unlawful and dangerous parking that is taking place. It cannot be sensible to allow this unacceptable situation to deteriorate further by further indulgencies.

Council Conservation Officer:

The original consultation response raised concerns regarding the extent of the works proposed to the internal historic fabric of the building. However, the Officer has been re-consulted on the revised scheme and no objections are raised in relation to heritage matters, subject to conditions controlling the detailed matters of design.

Historic England:

No comments offered.

Council Highways Team:

No objections subject to conditions. In accord with NPPF paragraphs 103, 108 and 109 the likely impact of the proposal would not be considered severe and that it would be difficult to find substantive evidence that wider highway safety would be impaired by the proposal. CP 64 allows for reduction of parking standards where overspill parking can be controlled. As Oxford Street is protected with no waiting at any time there is sufficient parking control and adequate off-street parking within a short walk of the proposal site this is a site in my opinion that can be considered acceptable for reduction of parking standards, given that there are public transport options available from Cross Hayes. However, there is a requirement to provide for bike storage/parking should this be required by condition attached to any consent granted.

## **8. Representations**

The application has been advertised by neighbour letter, a site notice posted close to the application site and an advertisement in the local press. Four responses have been received from a resident, the Malmesbury Civic Trust Representative, The Malmesbury Town Team and the Malmesbury Residents Association, raising the following issues:

- This café/restaurant was, until its recent closure, a well-used and liked venue for Malmesbury residents and visitors alike.
- There is no evidence that it is no longer viable as such and its loss would impact badly on the town's facilities.
- There is a lack of cafes in Malmesbury and the loss of this facility would further limit choice
- No effective marketing has taken place to retain the restaurant use in these premises in a location where other restaurants thrive;
- The loss of the restaurant would affect the vitality of the town centre
- Visitors to the town would have less choice of refreshments in the town centre
- Lack of parking on site could result in stopping within the highway and the potential impact upon the narrow one-way street would affect the flow of traffic close to the junction with the High Street and a pedestrian crossing nearby

## **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. The statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015), the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006) and the Malmesbury Neighbourhood Plan – Made in February 2015.

Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require Local Planning Authorities in determining planning applications affecting a Listed Building or Conservation Area to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.

### Principle of Development

Core Policy 1 of the WCS sets out the Settlement Strategy and identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. The policy classifies Malmesbury as a Market Town. Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. They have the potential for significant development to increase jobs and homes in each town in order to help sustain and enhance their services and better levels of self-containment and viable sustainable communities. Core Policy 2 sets out that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Market Towns. The proposal is considered to comply with these relevant policies of the WCS in respect to it being for residential development within the defined settlement boundaries. Core Policy 13 reinforced the development strategy within Core Policies 1 and 2.

The proposal would provide an additional two-bedroom dwelling which, according to Policy 4 and 5 in the Malmesbury Neighbourhood Plan identifies the demand for housing within the Malmesbury Housing Market Area and according the table 2.1.1 and 2.1.2 there is a need for the provision of 81 new two-bedroom homes within the Malmesbury Area. Therefore, the proposal would add to the supply of two-bedroom dwellings in a sustainable town centre location in accordance with Policy 5 and 6 of the Malmesbury Neighbourhood Plan.

The site is located within the Malmesbury town centre secondary frontage area, meaning that saved policy R2 of the NWLP is of particular relevance to this proposal. The policy sets out that proposals for shops, financial and professional services, food premises, leisure facilities and night clubs (Use Class A, D1 and D2) will be permitted within the defined town centre secondary frontage areas of Chippenham, Calne, Wootton Bassett, Corsham, Malmesbury and Cricklade, subject to all the following criteria:

- i) They do not individually or cumulatively undermine the vitality or viability of the town centre.
- ii) The proposal is consistent with the scale and function of the town centre.
- iii) Consideration is given to ensuring that proposals do not eliminate separate access arrangements to the upper floors, which could be used for residential, community or employment uses.

Policy R2 does not however seek to control the conversion of retail units into residential. The development is therefore not considered to be contrary to policy R2 of the NWLP.

It is noted that concerns have been raised by local residents as well as local groups as to the loss of the restaurant in this location; however, the conversion is not considered to be contrary to Policy R2. There is reference to the loss of this restaurant affecting the vitality and viability of the town centre. However, there are several premises offering refreshments in the vicinity, including The Birdcage and La Campagna on the south side of Oxford Street as well as The Summer Café and Hobbs House Bakery in the High Street and The Whole Hogg in Market Cross. It is not considered that the loss of a modest restaurant in this location could be considered to affect the vitality of the retail and leisure function of the town centre, particularly that the restaurant/café offer within the primary frontage and other premises nearby could retain this function.

In addition, due to the age of the saved policy, it is necessary to give consideration to other material considerations such as the guidance within the NPPF in relation to town centres and the well evidenced change in retail patterns and their impacts to town centres nationally. The NPPF, at paragraph 85, requires decisions to support the role that town centres play and advises a positive approach to their growth, management and adaption. It advises policies to define the extent of the town centre and primary shopping area and make it clear the range of uses permitted. It also states that residential development can play an important role in ensuring the vitality of centres and encourages residential development on appropriate sites. In this instance both the North Wiltshire Local Plan 2011 and the Malmesbury Neighbourhood Plan has defined the town centre boundary as well as both primary and secondary primary frontages within Malmesbury in accordance with this advice.

The Malmesbury Neighbourhood Plan also contains policies to steer development within the Malmesbury Community Area. Chapter 3 of the Neighbourhood Plan sets out the issues for the town centre with section 3.2 detailing the issues for ensuring a prosperous town centre. The Malmesbury Neighbourhood Plan also identifies objectives and tasks in paragraph 3.2.3 which seek to develop the High Street to enable sustained economic, social and leisure growth, improve accessibility and promote tourism and local business. The tasks within the plan also set out the need to maintain the presence of primary retail frontages and encourage retail development. However, none of the tasks specifically preclude the use of premises within the secondary frontage for residential purposes. Although there is a chapter that relates to town centre issues, that section does not contain any policies to direct changes of use within the secondary frontage.

Impact on the Listed Building & Conservation Area

In respect to the Listed Building Consent the relevant legislation is Sections 16(2), 66 and 72 of the Town and Country Planning (Listed buildings and conservation areas) Act 1990. In paragraph 192 of the NPPF there is guidance on how to determine applications relating to heritage assets. It advises local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

In addition, paragraph 193 advises that when considering the impacts great weight should be given to the asset's conservation.

The proposed development would result in physical changes to the Grade II listed building as well as a building within the Malmesbury Conservation Area. The revised proposals only propose modest changes to the property which are limited to sympathetic internal changes to more contemporary structures as well as only modest changes to the external appearance to the rear of the site, in the replacement of a full length window casement. The proposed changes would conserve the significance of designated heritage asset. The proposal changes would not be located on the public side of the conservation area and does not propose any changes to the existing shopfront. Therefore, it is not considered the proposed works would have any significant impacts upon the setting or character of the Conservation Area.

The proposed development would conserve the significance, character, appearance and setting of the designated heritage assets and which would accord with the requirements of Core Policies CP57 and 58 as well as the guidance within the NPPF and Town and Country Planning (Listed buildings and conservation areas) Act 1990.

#### Design and Site Layout

As detailed already, the proposed development involved limited intervention to the existing property. There would be limited external works to the property. The proposed dwelling would be modest in size and would include the provision of private amenity space which is considered provide the future occupier with an acceptable level of amenity and adequate space for refuse and cycle storage. The adjacent attached property at 6 Oxford Street is in residential use and 2 Oxford Street used as a travel agent. These adjoining uses would allow for quiet enjoyment of the amenity space without significant disturbance. The design and layout would accord with the relevant requirements of Core Policy 57 in the Wiltshire Core Strategy and Policy 13 in the Malmesbury Neighbourhood Plan.

#### Impact on the locality/amenity

The adjacent attached property at 6 Oxford Street is in residential use and 2 Oxford Street used as a travel agent. These adjoining uses would allow for quiet enjoyment of the amenity space without significant disturbance. There is no likely significant impacts upon the amenity or outlook of either adjacent or future occupiers of the application site arising from the proposed development.

## Highways

The proposed development does not have a vehicular access to allow for parking on the site. However, it does have pedestrian access to the western side through a shared covered walkway allowing access to the rear of the site independently to the proposed dwelling. There is no objection to the proposed development from the Council's Highways Team who have assessed the likely travel movements associated with the lawful previous use as well as the proposed travel movements as well as the parking controls on street. It is often the case that residential units within the town centre are not provided with parking. The site is in a town centre location, where services and facilities can be accessed on foot or via other means of transport are available and this is supported by the guidance within the NPPF as well as Core Policy 64 of the Wiltshire Core Strategy that seeks to reduce the need to travel and prioritise pedestrian and cycle movements and should not be prevented unless there would be a severed unacceptable impact upon the highway network. The highways officer does require the provision of secure cycle storage within the site to encourage use of sustainable modes of transport. It is considered that this could be controlled by suitably worded condition attached to any consent granted. If the site was not listed there would be no need for details to be provided, however as it is there is a need to agreed the siting and design prior to the installation of any cycle storage to ensure this preserves the heritage asset.

The comments from the nearby resident regarding the partial obstruction associated with the future occupier stopping within the highway to drop off shopping/children are noted. However this is just as likely to take place from deliveries associated with the previous and surrounding businesses in Oxford Street. The matter has been carefully considered but due to the modest scale of the development proposed and the previous uses it is not considered that an objection on the basis of highway safety could be sustained in this instance.

## **10. Conclusion (The Planning Balance)**

Overall it is considered that the development complies with Core Policy 1, 2, 13 of the Wiltshire Core Strategy, saved Policy R2 of the North Wiltshire Local Plan as well as the relevant policies in the Malmesbury Neighbourhood Plan and provisions of the framework.

In accordance with paragraph 192 of the NPPF and Sections 16(2) and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, special attention has been paid to the desirability of sustaining and enhancing the significance of the heritage asset. In addition, great weight has been given to conversation of the asset in accordance with paragraph 193. The proposed works, subject to conditions controlling



certain elements of the detailed proposals, is considered to conserve the heritage asset sustain its positive contribution to local character and distinctiveness.

The proposed development would conserve the Grade II listed building, and would have no impact upon the character, appearance and setting of the Malmesbury Conservation Area. The design and appearance of the proposal is also considered acceptable with no material impacts upon the amenity or outlook of nearby resident and would accord with core Policies 57 and 58.

In accord with NPPF paragraphs 103, 108 and 109 the likely impact of the proposal would not be severe and so it is not considered there is reasonable evidence to demonstrate that highway safety would be impaired by the proposal. The parking provision in this location would accord with the aims of Core Policy 64.

## **RECOMMENDATION**

That Planning Permission is APPROVED subject to the following conditions

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 33772-3 received on 21<sup>st</sup> May 2019 and 1925/1 Rev F received on 8<sup>th</sup> October 2019.

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

- 3 No part of the development shall be occupied, until details of secure covered cycle parking and any enclosure for refused storage together with a timetable for their provision, have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved details and timetable and shall be retained for use at all times thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car and to protect the character, appearance and setting of the listed building and Conservation Area.

- 4 **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.

5 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.

6 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.

7 INFORMATIVE TO APPLICANT:

The applicant is reminded of the need to obtain separate listed building consent for certain works in addition to this. This decision should be read in conjunction with listed building consent 19/05290/LBC.

8 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).

That Listed Building consent be APPROVED subject to the following conditions:

- 1 The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and

Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 33772-3 received on 21st May 2019 and 1925/1 Rev F received on 8th October 2019.

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

- 3 Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
- Large scale details for all new or replacement external doors, gates, shutters and windows shown on elevations at a scale of no less than 1:10 (doors, gates and shutters), 1:5 (windows) and horizontal and vertical sections including setbacks and reveals at a scale of no less than 1:5 (doors, gates & shutters), 1:2 (windows);
  - Large scale details for all new or replacement internal doors, stairs, skirtings and partitions shown on elevations at a scale of no less than 1:10 (doors), 1:5 (stairs), 1:2 (skirtings) and horizontal and vertical sections including setbacks and reveals at a scale of no less than 1:5 (doors & stairs), 1:2 (partitions and skirtings);
  - Full details of any new flues, vents, meter boxes or mechanical extracts, including service routes and exit points;

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

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

- 4 Within 3 month(s) of the completion of the approved works being carried out, all adjoining surfaces which have been disturbed by the works (including brickwork, plaster and floor tiles) shall be made good with materials and finishes to match those of existing undisturbed areas surrounding the new opening.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

- 5 INFORMATIVE TO APPLICANT:

The applicant is reminded of the need to obtain separate planning permission for certain works in addition to this listed building consent. This decision should be read alongside planning consent 19/04927/FUL.

- 6 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.

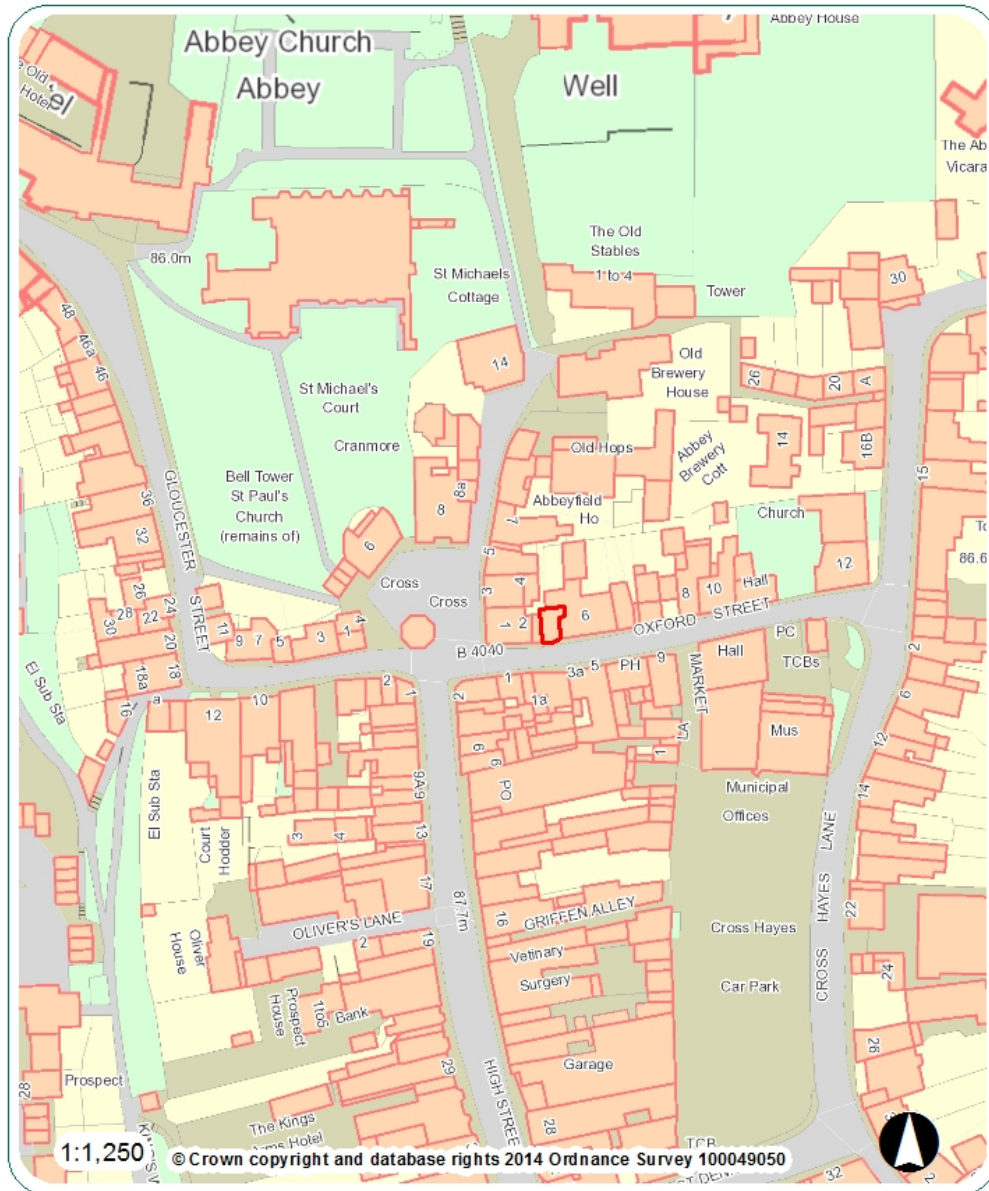
- 7 INFORMATIVE TO APPLICANT:

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.

19/04927/FUL & 19/05290/LBC

4 Oxford Street  
Malmesbury  
SN16 9AX



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