

# AGENDA

---

**Meeting:** Eastern Area Planning Committee

**Place:** [Access the online meeting here](#)

**Date:** Thursday 9 July 2020

**Time:** 2.00 pm

---

Please direct any enquiries on this Agenda to Tara Shannon, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718352 or email [tara.shannon@wiltshire.gov.uk](mailto:tara.shannon@wiltshire.gov.uk)

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

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

**During the Covid-19 emergency situation the Committee is operating under revised procedures including in relation to public participation, as attached to this agenda.**

**The meeting will be available to view live via a Teams Broadcast Link as shown above. A public guide on how to access the meeting is included below.**

[Public guidance for accessing meetings online is available here](#)

---

## Membership:

Cllr Mark Connolly (Chairman)  
Cllr Paul Oatway QPM (Vice-Chairman)  
Cllr Ian Blair-Pilling  
Cllr Stewart Dobson

Cllr Peter Evans  
Cllr Nick Fogg MBE  
Cllr Richard Gamble  
Cllr James Sheppard

---

## Substitutes:

Cllr Ernie Clark  
Cllr Anna Cuthbert  
Cllr George Jeans

Cllr Jerry Kunkler  
Cllr Christopher Williams  
Cllr Graham Wright

---



## Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 22*)

To approve and sign as a correct record the minutes of the meeting held on 30 January 2020.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation** (*Pages 23 - 26*)

The Council welcomes contributions from members of the public.

**Public Participation**

During the ongoing Covid-19 situation the Council is operating revised procedures to permit remote attendance of meetings. The procedure for the Eastern Area Planning Committee including public participation is below.

The meeting will be available to view live via a Teams Broadcast Link as shown below. A public guide on how to access the meeting is included below.

[Access the online meeting here](#)

[Public guidance for accessing meetings online is available here](#)

**Statements**

Members of the public who wish to submit a statement in support of or in objection to an application on this agenda should submit it to the officer named on this agenda **no later than 5pm on 6 July 2020**.

Those statements in accordance with the Constitution will be included in an agenda supplement. Those statements must:

- State whom the statement is from (including if representing another person or organisation)
- State clearly whether the statement is in objection to or support of the application
- If read aloud, be readable in approximately 3 minutes

All statements received by the deadline will be published in an agenda

supplement.

### 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 1 July 2020 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 3 July 2020. 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 27 - 30)*

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

## 7 **Planning Applications**

To consider and determine the following planning applications.

### 7a **20/02218/FUL - Land opposite Hungerford Road, A338, East Grafton, Marlborough, Wiltshire, SN8 3DF** *(Pages 31 - 90)*

Erection of 15 dwellings with access onto A338, formation of bus stop layby on A338, parking and associated landscaping with change of use of agricultural land to residential garden land.

### 7b **20/01631/FUL - Honey Street Mill, 2 A Honeystreet, Pewsey, Wiltshire, SN9 5PS** *(Pages 91 - 108)*

Change of use of former factory building to D1 exhibition hall (for Crop Circle Exhibition) - Resubmission of 19/10296/FUL.

## 8 **Rights of Way Items**

To consider the following rights of way items.

### 8a **Highways Act 1980 - The Wiltshire Council Burbage 6 (Part) Extinguishment Order 2020** *(Pages 109 - 174)*

To consider the recommendation that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) with Wiltshire Council support for the confirmation of the Order.

### 8b **Wildlife and Countryside Act 1981 s.53 ("the 1981 Act") - The Wiltshire Council Grafton 29 (Part), 29A, 30 and 31, Burbage 1 (Part) and Collingbourne Kingston 34 Definitive Map Modification**

**Order 2019** (Pages 175 - 292)

To consider the recommendation that Wiltshire Council should support the confirmation of the above Order by the Secretary of State for Environment, Food and Rural Affairs.

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*

This page is intentionally left blank

### Eastern Area Planning Committee

---

#### MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 30 JANUARY 2020 AT WESSEX ROOM, CORN EXCHANGE, MARKET PLACE, DEVIZES.

#### **Present:**

Cllr Mark Connolly (Chairman), Cllr Paul Oatway QPM (Vice-Chairman), Cllr Ian Blair-Pilling, Cllr Stewart Dobson, Cllr Nick Fogg MBE, Cllr Richard Gamble and Cllr James Sheppard

---

#### 1. **Apologies**

Apologies were received from:

- Cllr Peter Evans.

#### 2. **Minutes of the Previous Meeting**

The minutes of the meeting held on 5 December 2019 were considered and it was;

#### **Resolved:**

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

#### 3. **Declarations of Interest**

Declarations of interest were received from:

- Cllr Richard Gamble declared an interest in agenda item 7a, 19/10245/VAR - Dauntsey's School, High Street, West Lavington, SN10 4HE. Cllr Gamble declared that he would not take part in the debate or vote on this item.
- Cllr Mark Connolly, for the sake of transparency declared an interest in agenda item 7c, 19/10636/FUL - 116 High Street, Marlborough, Wiltshire, SN18 1LZ, as he was a member of the Conservative Party and the site had previously been used as a Conservative Club. He declared that he would consider the application with an open mind whilst he debated and voted on the item.

#### 4. **Chairman's Announcements**

There were no announcements.

5. **Public Participation**

The rules on public participation were noted.

6. **Planning Appeals and Updates**

The report on completed and pending appeals was presented for consideration.

**Resolved:**

**To note the updates.**

7. **Planning Applications**

The following planning applications were considered.

8. **19/10245/VAR - Dauntsey's School, High Street, West Lavington, SN10 4HE**

**Public Participation**

Mr Stephen Herniman, spoke in objection to the application.

Mr William Blumsom, spoke in support of the application.

Mr Mark Lascelles – Headmaster, Dauntsey's School spoke in support of the application.

Ms Cat White – Agent, spoke in support of the application.

Morgan Jones, Senior Planning Officer, presented a report which recommended that planning permission be granted with conditions for the variation of condition 2 of planning permission K/42974 (change of use from agricultural land to use of playing fields and outdoor sports facilities) to allow for different surface material for outdoor sports track, with proposed landscaping to reduce visual impact (resubmission of refused application ref 18/11759/VAR).

The officer explained that this was a retrospective application. Unfortunately, there had been a misinterpretation of the original planning permission and a synthetic surface was used for the running track. This was red and was surrounded by a white fence. The application was a resubmission of refused application 18/11759/VAR, which was considered at committee in April 2019 and was refused due to the adverse impact it caused on the appearance and character of the area.

Maps and plans of the track were shown to members of the committee during the meeting. The application sought to address the previous reasons for refusal. It proposed a series of mitigation measures to reduce the impact of the development on the landscape. Plans of the proposed landscape mitigation were also shown during the meeting. Although these plans would not screen the track in its entirety the Wiltshire Council Landscape Officer had no objections. It was also proposed that the surrounding fence be painted grey as from a distance this would help it blend in to the landscape.



Photos of the track were shown during the meeting. From the same level the track and fence were hard to see. On byways at higher levels and from Strawberry Hill the track and fence could be seen, although it should be seen in context as part of the school and was set against the backdrop of the school and surrounding village.

The West Lavington Neighbourhood Plan supports the expansion or alteration of educational facilities or community facilities at Dauntsey's School but also seeks to ensure new development respected local character and is designed to integrate well with its surroundings.

The athletics track would be a valuable facility to the School and wider community and would contribute towards one of the aims of both national and local planning policy which was to enable and support healthy lifestyles through the provision of safe and accessible green infrastructure and sports facilities.

On balance the officers recommend that the application be approved with conditions.

Members of the committee then had the opportunity to ask technical questions of the officer. In response the officer stated that the photo shown of the track was a real photograph, not a computer-generated image. The officer explained that the wider community benefit of allowing the public to use the track was not part of a formal agreement as part of the application or approval. It was stated that if the school wished to provide lighting for the track this would be subject to a new planning application.

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

Cllr Mark Connolly proposed a motion to follow the officer's recommendation to approve the application with conditions, this was seconded by Cllr James Sheppard.

A debate followed where the following issues were discussed.

Some councillors thought that the school had addressed some of the concerns and reasons for refusal, although it would take time for the proposed landscaping to grow. It was stated in the application that when the track came to the end of its life and was renewed the school may change the colour of the track, this was welcomed. The track was of benefit to the community and should be considered an asset. Therefore, they felt able to support the application.

Others stated that Dauntsey's School had not represented themselves well at the last committee meeting. They were grateful to the headmaster for coming, speaking and apologising on this occasion. However, they were still anxious about the planting. The track record of the school had not been good in that regard. A plan to mitigate the appearance of the development subject to the original planning application to change the use of the land from agriculture to

recreation had been developed years ago but had not been implemented. Therefore, it was suggested that an informative be added to the conditions requesting that the school provided progress reports to Wiltshire Council and West Lavington Parish Council on the progress of the mitigation measures. The planning officer was asked whether this would be possible. In response it was stated that the conditions already specified that the planting be implemented within a timescale, but it would be possible to add the informative requested.

Some councillors felt that the gap in the differences of opinion had narrowed but that the fence seemed to be a sticking point. It was asked whether the fence was necessary. The officer explained that Sport England would prefer the fence to remain in place in order to keep spectators and athletes safe.

In response to another question regarding the details of what was to be planted, including the numbers and size of the trees, it was stated that a detailed landscaping plan had been submitted as part of the application which contained the requested details and officers had been happy with the plan.

It was proposed that the current motion be amended to include an informative to the school to provide reports to Wiltshire Council and to liaise with West Lavington Parish Council on the possibility of further planting which was offered by the Headmaster during the meeting.

It was;

Resolved:

That the motion be amended to include an informative as suggested.

At the conclusion of the debate it was;

Resolved:

**That planning permission be granted with conditions, as per the officer recommendation, with the addition of an informative to the applicant to provide reports to Wiltshire Council and West Lavington Parish Council on the progress of the mitigation planting.**

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

- **Drawing no. 1 001 Issue A (Mercers Field Proposed Site Location Plan), received 07.11.19;**
- **Drawing ref. Figure 4 (Revised landscape strategy with additional detailed planting proposals), received 07.11.19;**
- **Drawing no. 1743 2710 Issue C (Proposed Planting Plan), received 07.02.19 (originally under application 18/11759/VAR);**
- **Document no. 1743-2960 Rev A (Tree & Planting Schedules), received 07.02.19 (originally under application 18/11759/VAR);**
- **Drawing no. MCA-MUK1801-01 Rev E (Setting Out as Built), received 18.11.19;**

- Drawing no. MCA-MUK1801-02 Rev D (Setting Out as Built), received 18.11.19;
- Drawing no. MCA-MUK1801-04 Rev D (Drainage Layout as Built), received 07.11.19;
- Drawing no. MCA-MUK1801-05 Rev D (Cross Section and Track Construction as Built), received 18.11.19;
- Drawing no. MCA-MUK1801-15 Rev D (Setting Layout as Built), received 18.11.19;
- Drawing no. MCA-MUK1801-16 Rev D (Location Plan as Built), received 18.11.19;
- Drawing no. MCA-MUK1801-18 Rev D (Fence Layout as Built), received 18.11.19;
- Drawing title. Crowd barrier with half mesh, received 07.11.19;
- Drawing no.DAUNT09-OA (Proposed Sportsfield - Section Detail), approved under application K/42974;
- Drawing no.DAUNT09-OB (Proposed Sportsfield - Section Detail), approved under application K/42974.

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

2. Within three months of the planning permission hereby granted a colour sample panel of the paint to be applied to the perimeter fence shall be provided on site, inspected and approved in writing by the Local Planning Authority. The fence shall thereafter be painted with the approved colour within one month of the date of the approval or in accordance with a timeframe to be agreed in writing with the Local Planning Authority.

**REASON:** The matter is required to be agreed with the Local Planning Authority 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.

3. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the date of this planning permission. 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.

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

**NOTE:** The approved landscaping scheme involves the planting originally proposed on drawing no. 1743 2710 Issue C (Proposed Planting Plan) and

the additional planting shown on Drawing ref. Figure 4 (Revised landscape strategy with additional detailed planting proposals) listed above in condition 1.

4. Within three months of the planning permission hereby granted a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for new trees and shrubs approved as part of the landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

**REASON:** The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure the proper management of the landscaped areas in the interests of visual amenity.

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

**REASON:** In the interests of visual amenity.

6. The regarding of the site shall only be carried out in accordance with the details shown on drawing DAUNT09-OA and DAUNT09-OB, unless otherwise agreed in writing by the Local Planning Authority.

**REASON:** In the interests of the visual amenity of this edge of the village site.

7. The material, colour and treatment of the athletics track hereby permitted shall not be altered or replaced until full details or any proposed works 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:** In order to agree a suitable replacement track treatment and colour when the track reaches the end of its existing life and requires replacing in the interest of landscape character and visual amenity.

**INFORMATIVE TO APPLICANT:**

The applicant is requested to notify the Local Planning Authority when the approved soft landscaping scheme required by condition 3 has been planted, and to discuss possible further planting with the Parish Council which was offered by the Head Master during the Eastern Area Planning Committee meeting.

9. **19/08155/FUL - Glyndene, 8 Fiddington Hill, Market Lavington, Devizes, SN10 4BU**

Public Participation

Mrs Anne Boddon, neighbour, spoke in objection to the application.

Mr Paul Atfield, neighbour, spoke in objection to the application.

Mr Tom Grech, neighbour, spoke in objection to the application.

Mr Simon Trueick, Agent, spoke in support of the application.

Ms Claudia House, Applicant, spoke in support of the application.

Cllr Ian Myhill of Market Lavington Parish Council spoke in objection to the application.

Morgan Jones, Senior Planning Officer, presented a report which recommended that planning permission be granted with conditions for the construction of one detached house with associated siteworks, with access from The Paddock.

Key issues were stated to include the principle of development; layout, design and impact on residential amenity; impact on highway & pedestrian safety; impact on ecology and surface water and drainage.

The proposal was for a detached dwelling with a new access to the site to be created from The Paddock. Plans of the proposal were shown to the meeting. It was noted that there was extant planning permission to construct a dwelling nearby the site. The site itself had a long planning history. The current application was for just one dwelling. Wiltshire Core Strategy (WCS) provided support in principle for schemes within the built-up area of a village, which this site was.

Plans and aerial photos were shown to the meeting. The site sat between number 12 The Paddock and number 12 Ridgeway Close. The materials proposed in the plans tied in with existing properties. A photo was shown of where the new access to the site from The Paddock would be. Loss of parking spaces as a result of the scheme was a key local concern. The Highway Authority stated that the proposal met relevant standards and that it would not have significant impact on the highway network.

The site had previously been overgrown although it had recently been cleared by the applicant. Impact on neighbour amenity was an important consideration for this application. There would be loss of light to the dwelling next door, but this was not considered an unacceptable impact.

The principle of development was supported at the site and when all factors had been considered the officers recommendation was to approve with conditions.

Members of the committee then had the opportunity to ask technical questions of the officer. Details were sought on the loss of light at number 12 The Paddock. The officer stated that this was a material consideration. There was a clear impact on the ground floor windows, however those rooms did have other windows and there was already a boundary fence that would reduce light levels.

Although there was an impact, from a planning perspective it was not considered enough to refuse planning permission.

In response to a question regarding how close the proposed dwelling was from the neighbouring property at number 12 The Paddock, it was stated that it would be about a metre from the boundary fence.

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

The unitary division member, Cllr Richard Gamble, spoke in objection to the application. Cllr Gamble stated that although he had been there it was quite difficult to view the site. There had been an earlier application for three houses, which he had called in as he felt it was so unsuitable for the site. That application had been withdrawn and then another application put in for a single dwelling. This was then revised to the current application. Although it was felt this proposal was better than previous ones he felt that there were still issues with it. In the Wiltshire Core Strategy, Core Policy 57 was in place to ensure high quality design and place making. However, he did not feel that the building was integrated into its setting. Visual amenity on The Paddock due to the new access road was also affected. The Highways Officer recommended approval. However, it was felt that there may be problems with access.

In response to public statements the officer stated that most of the points raised had been covered in the report. The extant planning permission for a two-storey extension at number 12 Ridgeway Close was mentioned in the report so had been considered. Number 14 Ridgeway Close was not part of the application site. The Highway Authority had looked at the application and provided support for the proposal.

Cllr Mark Connolly proposed a motion to follow the officer recommendation and grant planning permission with conditions. There was no seconder for this proposal.

Therefore, Cllr Richard Gamble proposed a motion to refuse the application, this was seconded by Cllr Paul Oatway QPM.

Cllr Oatway QPM, stated that vehicles may have difficulty accessing the site and in particular expressed concern about access for emergency vehicles. For clarification the officer explained that the access was 4m wide. Usually an estate road built to an adoptable standard was 5.5m wide (this allows two cars to pass). Therefore, it was quite wide for a single lane track.

Cllr Ian Blair-Pilling had visited the site and asked neighbours about parking. He did not think that taking away parking by putting in a new access road was reasonable. It would have an impact on parking in the street and a visual impact. Cllr Blair-Pilling was also concerned about the loss of light to number 12 The Paddock. The resident of number 12 The Paddock had stated during public speaking that one of the ground floor rooms whose light would be affected by the proposal did not have another window so would be severely affected by loss

of light. This felt wrong. It seemed the proposal was contrary to policies related to place shaping and neighbour amenity.

Others stated that whilst they felt this site could have a dwelling built on it, it was not felt that this proposal was right. There were issues of scale and amenity impact on the neighbours. Therefore, they did not support the application.

Cllr Connolly stated that the principle of development was met as the site was within the confines of the village. On planning balance this was probably the best proposal for the site. It was not clear how it could be improved to have less impact on the neighbours. The application could not be turned down for highways reasons as the Highways Officer had supported the application.

Prior to voting on the proposed motion, the reasons for refusal needed to be specified. After debate and discussion these were determined to be: the building layout, form and effect on the streetscape; the impact on neighbour amenity due to overdevelopment, overshadowing, overbearing and loss of light.

At the conclusion of the debate it was;

**Resolved:**

**To refuse planning permission, against officer recommendation for the following reasons.**

**The proposed development, due to the position and layout of the proposed plot and associated new access onto The Paddock, along with the siting, scale and design of the proposed dwelling, would not respond positively to the character of the established built environment and would fail to integrate effectively into its setting. As a result, the development would have a harmful impact on the streetscape and the character and appearance of the area. As such, the application conflicts with Core Policy 57 'Ensuring High Quality Design and Place Shaping' of the Wiltshire Core Strategy, in particular criterion iii.**

**The proposed development, due to the siting of the dwelling within close proximity to neighbouring dwellings and its overall mass and form, would have an unacceptable harmful impact on the amenities of the residents of the neighbouring dwellings as a result of overshadowing, a loss of light and an overbearing impact. The proposed development is therefore not considered to be compatible with the adjoining residential dwellings due to the harmful impact on the amenities of their occupants, in particular no.12 The Paddock. As such, the application conflicts with Core Policy 57 'Ensuring High Quality Design and Place Shaping' of the Wiltshire Core Strategy, in particular criterion vii.**

10. **19/10636/FUL - 116 High Street, Marlborough, Wiltshire, SN18 1LZ**

Public Participation

Mr Guy Loosmore, spoke in objection to the application  
Mrs Marion Hannaford-Dobson, spoke in objection to the application.  
Mr Aaron Henecke, Agent, spoke in support of the application.  
Cllr Mark Cooper, Deputy Mayor, Marlborough Town Council spoke in objection to the application.

Lucy Rutter, Planning Officer, presented a report which recommended that planning permission be granted with conditions for the change of use of basement and ground floors from members' club (Sui Generis) to dental clinic and surgery (Use Class D1) and associated internal alterations.

The officer explained that the application had been called in by Cllr Nick Fogg MBE, due to perceived concerns that it contradicted Wiltshire's Core Strategy page 122, para 5.78 which supported Marlborough's town centre to continue to function as a prominent retail centre for east Wiltshire.

Key details were stated to include whether the use was acceptable in principle; whether the proposal would have a negative impact on parking and highway safety and impact on neighbour amenity.

It was explained that the application was for the change of use only. Any internal alterations were to be considered separately under the associated listed building application, which was being held in abeyance.

Photos of the site were shown to the meeting. The site and its surroundings lay within the North Wessex Downs AONB and the Marlborough Conservation Area. The property was formerly a member's club and was currently vacant. The application sought planning permission for the proposed change of use of the existing members' club (sui generis) to a dental clinic and surgery (use class D1 – non-residential institution).

Under the Wiltshire Core Strategy (WCS) the proposal was considered to be acceptable in principle. It was in a sustainable location and would contribute to the vitality and viability of the area and the economy. There were a number of existing restaurants, pubs, bars and cafes in the town centre and consequently the loss of this one establishment was not considered likely to have a harmful impact on the vitality and viability of the town centre.

The officer explained that saved policy ED18 of the Kennet Local Plan offered protection specifically for the Prime Shopping Areas, but that this policy was out of date (written pre-NPPF for a time expired local plan). Although a saved policy under the WCS, the weight to be attached to it should be on the basis of its conformity with NPPF. Policy within the NPPF was stated to be a material consideration when assessing development proposals under saved policy ED18. It had been established under previous appeal decisions (Costa Coffee, High Street, Marlborough) that little weight should be given to this policy in that it did not conform with NPPF policy e.g. it was considered to be inflexible and negatively worded vs. the NPPF's flexible and positive approach to changes of use in high streets. It was thought that the proposed dental clinic would



contribute to the vitality and viability of the town centre, which demonstrated compliance with ED18.

Most of the objections received were in relation to the loss of the business, however it was confirmed that the local planning authority did not have control over ownership of the property. The applicant had stated that the first floor of the building would retain the sui generis members' club use.

The principle of development was considered to be acceptable and the application conformed with relevant development plan policies. As such it was recommended for approval.

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

The unitary division member, Cllr Nick Fogg MBE, spoke in objection to the application. Cllr Fogg MBE had called the application in as it was a hugely valuable community facility. Its loss would be a blow to the vibrancy of the high street. He thought it was a viable business and stressed the value of the asset. The site had been a hostelry since the 15th century. It had been a conservative club for many, many years. The facility could be used for weddings, wakes and other large occasions and was not replicated elsewhere in Marlborough, other than at the Town Hall. It was used by a large number of organisations. The upper floor had two residential units. The applicant's offer to maintain the first floor as a social club had issues in his opinion. He felt that you could not separate consents in that way; also you would be unable to access the upper floors when the dental clinic was closed. The two nearest neighbours were said to be opposed to the application. Cllr Fogg, MBE thought it was odd that a retained policy could be declared redundant. He urged the committee to reject the application.

Cllr Mark Connolly proposed a motion to grant planning permission with conditions as per the officer recommendation. This was seconded by Cllr James Sheppard.

Cllr Stewart Dobson stated that the members club had recently been opened to the public. The High Street was the heart of Marlborough and was still vibrant and viable. The site was one of two large venues in the town. The applicant already had approval for a dental clinic at 42 High Street and there were three other dentists in the town so there was no need for another dental clinic. It was suggested that footfall for a dental clinic would not be as high as in its current use. He felt policy ED18, which stated there should only be A1 uses permitted within the Primary Shopping Centre, should be complied with. He was unaware of problems with anti-social behaviour or littering associated with the current use. Therefore, he felt there was no justification for the change of use and stated that he would not be supporting the application.

Cllr Mark Connolly stated that although dental practices were not typically found in high street locations, these needed to adapt and change. Marlborough was lucky to have a vibrant high street. He did not feel you could refuse the

application due to the number of other dental clinics in the town. He was not against the D1 use in principle. He felt that you could not consider the possible use of the first floor as a member's club as it was not part of the application. He felt that if the business was well used and viable it would not have closed.

Cllr Ian Blair-Pilling stated that his first inclination was to support the proposal. At the Council level, policy was set to try to ensure consistency. However, the Council was increasingly asking local communities to take the lead. It was extremely clear from the speakers that the community was against the proposal. Therefore, he would not support the application.

At the conclusion of the debate, the proposed motion to grant planning permission with conditions was voted on. The motion did not pass.

Cllr Stewart Dobson proposed a motion to refuse planning permission, which was seconded by Cllr Nick Fogg, MBE.

Technical advice was received from the planning officers. They advised that we could not stop people applying for the change of use for different floors. It was also stated that at a previous appeal the planning inspector had said that retained policy ED18 was out of date and was negatively worded, unlike the NPPF which had a more positive emphasis.

After debate the reasons for refusal were stated as follows. The application was contrary to policy ED18 as it was not an A1 use. In addition, it was contrary to the spirit of NPPF paragraph 92, point C: To provide the social, recreational and cultural facilities and services the community needed, planning policies and decisions should - guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs; and point D - ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community. It was also contrary to WCS core policy 14 paragraph 5.78.

At the conclusion of the debate it was;

**Resolved:**

**To refuse planning permission, against the officer recommendation, for the following reason:**

**The proposed change of use would result in the loss of an important existing facility within the Primary Shopping Area of Marlborough. The proposed development is not an A1 use nor would it make a positive contribution to the vitality and viability of the town centre. As such, it would be contrary to saved policy ED18 and Core Policy 14 (paragraph 5.78) of the Wiltshire Core Strategy 2015 and Section 7 (paragraph 85) of the National Planning Policy Framework 2019.**

At 17:15 the Chairman adjourned the meeting for a comfort break. The meeting reconvened at 17:20.

11. **19/09834/FUL - Clock House, Road off Honeystreet North of Canal, Honeystreet, SN9 5PS**

Public Participation

Mr Alex Oliver, spoke in objection to the application.

Mr Alex Whittle, spoke in objection to the application.

Mr Michael Spencer, spoke in objection to the application.

Mr Donavon Love, Applicant, spoke in support of the application.

Mr Tom Jakes, Agent, spoke in support of the application.

Cllr Robert Carpenter-Turner of Alton Parish Council spoke in objection to the application.

Ruaridh O'Donoghue, Senior Planning Officer presented a report which recommended that planning permission be granted with conditions for the demolition of two dwellings and vacant commercial buildings and their replacement with six dwellings.

Key details were stated to include whether the development was acceptable in principle; whether the scheme constitutes high quality design; whether the scheme would preserve or enhance the historic environment; whether the scheme would have an acceptable landscape impact; whether the proposal would have a negative impact on highway safety; whether the site can be adequately drained and whether there would be harmful impacts on protected species or habitats.

Attention was drawn to the late observations.

Some late submissions from a third-party objector had been published with the agenda. These consisted of a visual impact assessment and a light pollution statement. The third-party objector had submitted updated versions of these documents, which superseded the versions in the agenda and these were circulated to the committee. The late objections were considered, and officers did not change their recommendation.

There had also been a late consultation response from the Wiltshire Council Ecologist who reported that they supported the application, subject to conditions. If approved, the development should be carried out in strict accordance with the mitigation and enhancement measures outlined in the ecological report. They also stated there should be no additional lighting installed. The officer explained that these conditions were already included as part of the recommendation.

Photos of the site were shown, which the officer described to the committee. There were two dwellings in a poor state of repair and other dilapidated commercial buildings. The site lay in open country side, within the North Wessex Downs AONB and there was a listed building nearby.

The proposal was stated to be the demolition of the buildings and their replacement with six dwellings. The dwellings were all to be of a similar

appearance, comprising black stained timber for the walls and natural slate tiles for the roofs. Each property would also have a stainless-steel flue. All the properties had the same ridge heights, although the site was not totally level, so the properties would not all be at the same level. There was dedicated parking for each property, dedicated bin storage and cycle storage was also provided. House types, elevations and floor plans were shown.

It was stated that there was an extant planning permission on the site for five dwellings and that this was a significant material consideration. Even with an additional dwelling, the footprint of the application was stated to be less than the footprint of the extant permission.

The more sensitive boundaries of the site had more sympathetic fencing proposed, in the form of hazel hurdles, or post and cleft chestnut pale fencing. It was judged that there would be no harm caused to heritage assets and the proposal complied with Wiltshire Core Strategy (WCS) Core Policy 58. The Highways Authority had reported that there was a safe and suitable means of access to the highway and that parking met with the adopted standards. There had been no objections to the drainage scheme. The proposal would achieve a biodiversity net gain as the landscaping scheme included more native species and the introduction of bat, bird and hedgehog boxes.

The site was currently an unused brown field site which would be brought back into use as a result of the proposal. On balance the officer recommendation was to approve planning permission with conditions

There were no technical questions.

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

The unitary division member, Cllr Paul Oatway, QPM, spoke in objection to the application. It was stated that although the village was not opposed to development of the site in principle, six houses on this plot constituted overdevelopment. The design of the houses was not in keeping with the area. The Parish Council had not been consulted early in the process and 90% of the community opposed the development. The parking was also felt to be an issue. Especially in the summer, there was considered to be a lack of parking in the area. The positioning of some of the parking bays also meant that people would have to reverse out into the road, which could be quite busy - this was felt to be dangerous. Cllr Oatway QPM referred the meeting to the CPRE consultation response which he agreed with. He also felt that the proposal was contrary to WCS Core Policy 58 as the development would not enhance the setting of the nearby Grade II Listed building (Mill House) and may cause harm to it.

In response to public statements the officer stated that he had spoken to the Urban Design officer who had given advice to one of the objectors. The buildings were not back to back. There was no guidance in Wiltshire Council Policy regarding the distances required between dwellings which were not back

to back. The Urban Design officer was not in possession of all the information when they gave their advice.

The objectors and Parish Council had stated they much preferred extant scheme. However, it was noted by the officer that there had been some objections to it. The Highways Authority had stated that the proposal was safe. Unfortunately, it was common that there was a lack of engagement between developers and the local parish council. There was no absolute requirement for people to do this, although it was disappointing when engagement did not occur. With regards to the CPRE comments regarding the impact on Mill House, the conservation officer had disagreed with their assessment.

Cllr Mark Connolly proposed a motion to grant planning permission with conditions as per the officer recommendation. No one seconded the motion.

Cllr Paul Oatway QPM, then proposed a motion to refuse planning permission, against officer recommendation. This was seconded by Cllr Ian Blair-Pilling.

Cllr Richard Gamble stated that if this application had come in when there was no extant planning permission on the site, then it would be easy to refuse as it was in open countryside. However, the extant permission complicated the situation. The extant scheme was more traditional, with cottage type houses and had the broad support of community. He felt that the current proposal did not have support due to the design of the houses, which were alien to the area and community. Therefore, he felt that the application was contrary to WCS Core Policy 51 as it did not have regard to the locally distinctive character of the settlement. He also felt it was contrary to WCS Core Policy 57 as the development did not enhance the character of the settlement and was not informed by a thorough understanding of the locality and the development site. Therefore, he would not be supporting the application.

Many of the members agreed that there were numerous peripheral reasons that the application was disappointing. However, the main issue was that the proposed design simply did not fit in and was out of character with the area. Therefore, they felt that they could not support the application.

Cllr Mark Connolly stated that the principle of development had already been established due to the extant permission. It was hard to determine if six dwellings would constitute overdevelopment. The overall footprint of those dwellings was less than that of the extant permission. Although members had concerns about the parking and highway safety, the Highways Authority had stated that it was acceptable and therefore they could not refuse on that basis. However, he felt that the design of the site was inappropriate and did not fit its setting. Therefore, he would not be supporting the application.

Members felt that the scale, layout and design of the properties were issues of concern. The impact on the area and the landscape were also considered to be an issue, along with the impact on heritage (designated and non-designated) assets, namely a listed building and the canal.

At the conclusion of the debate it was;

**Resolved:**

**To refuse planning permission, against officer recommendation, for the following reasons:**

**The proposed development, by virtue of its scale, design, materials and layout, would not enhance local distinctiveness, would not respond positively to existing townscape and landscape features and would not be sympathetic to or conserve historic buildings. As such, the proposal is considered to be contrary to Core Policy 57 of the Wiltshire Core Strategy 2015.**

**The proposed development, by virtue of its scale, design, materials and layout, has not taken account of the locally distinctive character of Honeystreet and its landscape setting, nor the need to protect against intrusive light pollution. The proposal is therefore considered to be contrary to Core Policy 51 of the Wiltshire Core Strategy 2015 and to paragraph 172 of the National Planning Policy Framework 2019 which requires great weight to be given to the conservation and enhancement of the landscape and scenic beauty of, amongst other things, Areas of Outstanding Natural Beauty.**

**The proposed development, by virtue of its scale, design, materials, layout and proximity, would cause less than substantial harm to the setting of the grade II listed Mill House and the nearby Kennet and Avon Canal. There are no identified public benefits that would outweigh this harm. As such, the proposal is considered to be contrary to Core Policy 58 of the Wiltshire Core Strategy and the policies contained within the historic environment chapter of the National Planning Policy Framework 2019.**

12. **Urgent items**

There were no urgent items.

(Duration of meeting: 3.30 - 6.30 pm)

The Officer who has produced these minutes is Tara Shannon of Democratic Services, direct line 01225 718352, e-mail [tara.shannon@wiltshire.gov.uk](mailto:tara.shannon@wiltshire.gov.uk)

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

This document is not part of the Constitution

## **Remote Planning Committee Meeting Procedure and Public Participation**

### **Background**

1. The standard procedure for all planning committee meetings is included at paragraph 8 of Protocol 4 to the Constitution.
2. As a result of Government guidance on social distancing and other restrictions on public gatherings during the Covid-19 emergency standard operation of planning committees cannot proceed.
3. *The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020* (the Regulations) provide for remote attendance at local authority meetings by elected Members to enable the continued operation of committees during Covid-19 restrictions.
4. This document sets out the alternative procedure that will apply for Planning Committee meetings that are held remotely in accordance with the Regulations. These provisions will apply for the period permitted under the Coronavirus Act 2020 and the Regulations and apply notwithstanding any prohibition or other restrictions contained within the Council's Constitution relating to attendance and participation at meetings. This procedure will be kept under review and may be varied by the Monitoring Officer in consultation with the Chief Executive Officers and Group Leaders at any time.

### **Pre-meeting**

6. All who have made representations on an application to be determined by the relevant Planning Committee will be contacted by Wiltshire Council and provided with the following details:
  - Date and time of the committee meeting;
  - A link to the agenda for the meeting;
  - A link from which they will be able to view the meeting as it occurs
7. Those who have made representations will be advised that they may contact the Democratic Services Officer for the meeting, as listed with the agenda, and provide a statement that they would like to be read out at the meeting.

8. Any such statements must:

- State whom the statement is from (including if representing another person or organisation)
- State clearly whether the statement is in objection to or support of the application
- If read aloud, be readable in approximately 3 minutes
- Be provided no later than 5pm two clear working days before the meeting (eg Friday before a Wednesday meeting if no bank holiday).

9. All statements will be included in an agenda supplement published before the meeting. Longer representations should be provided to the Planning Officer listed for the application.

**Agenda Order**

10. Applications will be determined in the order they appear on the agenda unless the Chairman, with the agreement of the Committee, considers there are reasons for changing the order.

11. Officers will seek to ensure that applications which are likely to attract significant viewership or interest appear earlier in the agenda.

12. If the order is changed, this will be announced at the start of the meeting.

**Meeting Procedure**

13. In the interests of fairness, consistency and transparency, the procedure below must be followed at each meeting. Members of the public should note that it is not permissible during meetings to communicate with members debating the proposal by any means as this may give the appearance of bias. Any participation in the meeting should be as set out below.

14. For each application the Planning Officer will introduce the application and the key issues involved, as well as the reasoning behind the recommendation as set out in their report. They will also set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting, including those contained within any agenda supplement.

15. Committee Members may then ask the officer to clarify any points/ask technical questions.



This document is not part of the Constitution

16. Statements in opposition to the application will then be read out by the Democratic Services Officer. Up to three statements of up to three minutes each may be read.
17. Statements in support of the application will then be read out by the Democratic Services Officer. Up to three statements of up to three minutes each may be read.
18. Statements from any statutory consultees, except for parish councils, of up to three minutes in length may then be read out by the Democratic Services Officer, whether in support or in objection to the application.
19. A statement from the parish council for the area in which the applications sits, if provided, will then be read out by the Democratic Services Officer for a length of up to four minutes. This must be the formal view of the parish council not an individual representation. If the application is on the edge of several parishes which are directly affected, the Chairman may allow the reading out of statements from other parishes, to a maximum of three in total, for up to four minutes each. Individual members of a parish council may send statements to be read out, whether in agreement or disagreement with the formal view of the parish council, but would need to use a public statement slot.
20. The Unitary Division Member for the application, or nominated substitute, if present, will then be invited to make a representation. The Chairman may allow a neighbouring or any other Member of the Council to make a representation at this time if they consider it appropriate. Non-committee members should give prior notification if they wish to speak.
21. The Planning Officer will then have an opportunity to respond to comments or provide clarification of any points raised by the public or Members.
22. The Committee will then debate the application. The first Member to speak will be expected to move a proposal for deliberation. The rules of debate as detailed in Part 4 of the Constitution will apply, except where these are inconsistent with the Regulations and the *Wiltshire Council Temporary Protocol on Remote Meeting Procedures* in which case the latter will apply.
23. When speaking, each Member must introduce themselves for the benefit of anyone listening who may or may not have access to video.
24. At the beginning of each item each Member of the Committee will confirm that they are able to see or hear all relevant information. This will also be confirmed immediately prior to any vote.
25. For each vote, the Democratic Services Officer will call each Member of the

This document is not part of the Constitution

Committee in turn to indicate their vote. This will not count as a recorded vote for the purposes of the minutes, which would need to be specifically requested by three members of the committee.

### **General Public Participation**

25. In the case of all public speaking categories, as stated above, those who wish to have a statement read out at the meeting must contact the Democratic Services Officer for the meeting no later than 5pm two working days prior to the committee meeting.
26. Statements will be read out by the Democratic Services Officer in order of submission, with any further statements received beyond the three to be read out in objection or support to be included in the agenda supplement. Exceptionally, the Chairman may direct statements to be read in a different order, for instance if the first three statements submitted were all from the same organisation or household, or repetitive, in order to ensure the broadest inclusion of views.
27. While the Chairman of a committee has discretion over the timings and number of statements to be read out in the case of controversial or large-scale applications, in the interests of natural justice any increase should be applied equally between those speaking for and against the application.
28. No contributions from the public will be accepted outside the public statement slots detailed above.

### **Questions and Petitions**

29. Submitted questions and petitions on non-determined planning applications are excluded from the usual Council procedures at Part 4 of the Constitution. This means that any questions or petitions in relation to an agenda item at a meeting will be logged by Planning Officers as a representation and addressed in their introduction of the item.

**Wiltshire Council**  
**Eastern Area Planning Committee**  
**9<sup>th</sup> July 2020**

Planning Appeals Received between 22/11/2019 and 25/06/2020

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
19/03611/CLE	5 Spaines, Great Bedwyn Wiltshire, SN8 3LT	GREAT BEDWYN	Certificate of lawfulness for placement of existing twin unit caravan for ancillary accommodation	DEL	Hearing	Refuse	10/03/2020	No
19/06243/FUL	Fosburys Field Crowood Lane Ramsbury, Marlborough Wiltshire, SN8 2SQ	RAMSBURY	Conversion/ reuse of redundant stables and barn to residential dwelling and garage/ store	DEL	Written Representations	Refuse	26/02/2020	No
19/06565/FUL	Thickett Cottage Malthouse Lane Upper Chute, Andover Wiltshire, SP11 9EG	CHUTE	Demolition of existing dwelling and erection of replacement dwelling (following the withdrawal of 19/01652/FUL)	DEL	Written Representations	Refuse	03/12/2019	No
19/08155/FUL	Glydene 8 Fiddington Hill Market Lavington Devizes, Wiltshire SN10 4BU	MARKET LAVINGTON	Construction of one Detached House with Associated Siteworks with Access from The Paddock.	EAPC	Written Representations	Approve with Conditions	28/05/2020	Yes
19/08771/PNCOU	Former Pig Breeding and Rearing Building Stobberts Agricultural Buildings Market Lavington Devizes, Wiltshire SN10 4AZ	MARKET LAVINGTON	Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Building to a Dwellinghouse (Class C3) and for Associated Operational Development	DEL	Written Representations	Refuse	09/05/2020	No
19/08651/OUT	Meadow Farm Jockey Green Great Bedwyn Marlborough, SN8 3PB	GREAT BEDWYN	Demolition of existing commercial and agricultural buildings and redevelopment of the site to provide five dwellings	DEL	Written Representations	Refuse	26/05/2020	No
19/09902/FUL	Oak Tree Farm Crawlboys Lane Ludgershall, SP11 9PL	LUDGERSHALL	Demolition of poultry shed and agricultural store and erection of 5 no. dwellings with access and parking. Erection of new agricultural store (resubmission of 18/09957/FUL)	DEL	Written Representations	Refuse	19/03/2020	No
19/10254/FUL	Close Farm, Close Lane Marston, Devizes Wiltshire, SN10 5SN	MARSTON	Reconfigure and Convert the Existing Newly Built Stable into a 4-Bedroom Dwelling.	DEL	Written Representations	Refuse	13/02/2020	No
19/10765/FUL	22 Oxford Street Aldbourne, SN8 2DQ	ALDBOURNE	Retrospective application for an elevated timber viewing platform.	DEL	House Holder Appeal	Refuse	29/05/2020	No
19/11555/FUL	15 Edwards Meadow Marlborough, SN8 1UL	MARLBOROUGH	Two storey rear and front extensions.	DEL	House Holder Appeal	Refuse	29/05/2020	No

19/11956/FUL	Red Lion, Ermin Street Baydon, Marlborough Wiltshire, SN8 2JP	BAYDON	Proposed new 2 bedroom dwelling with parking in rear car park of the Red Lion.	DEL	Written Representations	Refuse	27/05/2020	No
--------------	---	--------	--	-----	----------------------------	--------	------------	----

Planning Appeals Decided between 22/11/2019 and 25/06/2020

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
18/00566/ENF	2 The Chantry, Bromham, Chippenham	BROMHAM	Unauthorised erection of fence	DEL	Hearing	-	Dismissed	29/04/2020	None
18/07505/FUL	Land East of New Road, Bromham Chippenham Wiltshire	BROMHAM	Change of use from agricultural land to create 1 no. gypsy and traveller pitch, with 1 static mobile home and 1 touring caravan, stable block with tack room and feed store, hardstanding, alterations to site entrance and associated ancillary development including 2m high security fence to site boundary	DEL	Hearing	Refuse	Dismissed	29/04/2020	None
18/11701/FUL	Court Close Farm 2 White Street Easterton, SN10 4NZ	MARKET LAVINGTON	Demolition of three detached dilapidated buildings and their replacement with a single dwelling including new access.	EAPC	Written Reps	Refuse	Dismissed	17/01/2020	None
19/01758/FUL	6 Woodborough Road Beechingstoke Pewsey, Wiltshire SN9 6HL	BEECHINGSTOKE	Retrospective change of use of land from agriculture to domestic garden and the retention of a former agricultural access onto the highway for domestic use	DEL	Written Reps	Refuse	Dismissed	04/12/2019	None
19/03278/FUL	Land At Church Farm Wootton Rivers SN8 4NH	WOOTTON RIVERS	Erection of a 5 bed, two storey dwelling (alterations to part of an existing consent for a 5 bedroom, one and half storey dwelling under applications 16/11051/FUL and 17/03881/LBC formerly known as Plot 3, now renamed as Plot 7).	DEL	Written Reps	Refuse	Dismissed	02/03/2020	None
19/03418/FUL	Eastcroft Farm Eastcroft SN10 4PJ	EASTERTON	Change of use of agricultural land (sui generis use) to situate ISO Shipping containers to store fireworks (B8 Storage & Distribution use) including perimeter screening	DEL	Written Reps	Refuse	Dismissed	08/01/2020	None
19/06565/FUL	Thickett Cottage Malthouse Lane Upper Chute Andover Wiltshire SP11 9EG	CHUTE	Demolition of existing dwelling and erection of replacement dwelling (following the withdrawal of 19/01652/FUL)	DEL	Written Reps	Refuse	Allowed with Conditions	27/02/2020	None

This page is intentionally left blank

## REPORT FOR EASTERN AREA PLANNING COMMITTEE

Report No. 1

<b>Date of Meeting</b>	9 July 2020
<b>Application Number</b>	20/02218/FUL
<b>Site Address</b>	Land opposite Hungerford Road, A338, East Grafton, Marlborough, Wiltshire, SN8 3DF
<b>Proposal</b>	Erection of 15 dwellings with access onto A338, formation of bus stop layby on A338, parking and associated landscaping with change of use of agricultural land to residential garden land
<b>Applicant</b>	Mr David Lemon
<b>Town/Parish Council</b>	GRAFTON
<b>Electoral Division</b>	BURBAGE & THE BEDWYNS (Cllr Stuart Wheeler)
<b>Grid Ref</b>	425932 160568
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Andrew Guest

### Reason for the application being considered by Committee

The Local Division Member has 'called-in' the application for the following reasons:

*Scale of development, visual impact upon the surrounding area, relationship to adjoining properties, and design (bulk, height, general appearance).*

#### 1. Purpose of Report

The report assesses the merits of the proposal against the policies of the Development Plan and other material considerations leading to a recommendation, which is to refuse planning permission.

#### 2. Report Summary

This is a full planning application to erect an estate of 15 dwellings (including 6 affordable units) with vehicular access from the A338, and associated parking and landscaping. The detailed layout incorporates a bus stop lay-by on the A338 (with crossing points) and pavements alongside most of this frontage. A small land parcel in the south-west corner of the site is proposed to be used as residential garden. The application follows a refusal decision in August 2018 for an identical proposal (ref. 18/11168/FUL).

East Grafton is defined as a 'Small Village' in the Wiltshire Core Strategy. The Small Villages do not have defined settlement boundaries, but in any event the application site lies outside of the confines of the village in open countryside.

The site and all surroundings lie within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). The agricultural land classification hereabouts is 'Grade 1'.

Grafton Parish Council supports the application.

Neighbour and third party consultation has generated representations from 10 parties – 8 objections; 1 support (CPRE); and 1 comments.

### 3. Site Description

The application site comprises an open parcel of land (c. 0.9 ha) mainly laid to grass, lying in countryside immediately to the south and east of the outer limits of East Grafton village. To all intents and purposes the site 'reads' as a paddock, although is used at least in part for the open storage of farm machinery. The site is generally level, with 'tractor access' from the A338 on its north side.

To the west side of the site is an established contemporary (early 2000's) estate of 9 houses – Granary Close – built on the site of a redundant farmyard; beyond this, and so further to the east, is the older core of East Grafton. To the north of the site (on the opposite side of the A338), is a further, slightly older (c. 1960's) residential development – Hungerford Road. To the east side are two detached bungalows – New Farm Bungalows – with open farmland beyond. To the south is open farmland.

The site and all surrounding land lies within the North Wessex Downs AONB. Likewise, the site and all surrounding land is classified as Grade 1 agricultural land. A relatively small part of the west side of the site lies within the East Grafton Conservation Area (land to the east, including Granary Close, lies within the conservation area). The site lies within the 40% affordable housing zone.



Extract from Wiltshire Core Strategy policy map  
(green shading: AONB; brown line: conservation area; brown triangles: Grade 1 agricultural land)



#### 4. Relevant Planning History

18/11168/FUL - Erection of 15 dwellings with access onto A338, formation of bus stop lay-by on A338, parking and associated landscaping with change of use of agricultural land to residential garden land – refused 19/08/2019

The reasons for refusal are as follows –

- 1 *Core Policy 1 of the Wiltshire Core Strategy sets out the 'Settlement Strategy' for the County, and identifies five tiers of settlement - Principal Settlements, Market Towns, Local Service Centres, Large Villages and Small Villages. Within the Settlement Strategy East Grafton is identified as a Small Village. The Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined boundaries, or limits of development. Beyond the limits - and including the Small Villages - is countryside.*

*Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. The policy states that within the limits of development of those settlements with defined limits there is a presumption in favour of sustainable development, and at Small Villages in the countryside development will be limited to 'infill' within the existing built area (defined as "the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling"); but outside these parameters, other in circumstances as permitted by other policies of the Plan, development will not be permitted, and that the limits of development may only be altered through identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans. The application site is not identified for development in a Development Plan Document or Neighbourhood Plan.*

*Core Policy 18 of the Wiltshire Core Strategy sets out the 'Spatial Strategy' for the Pewsey Community Area in which East Grafton lies. It confirms that over the plan period approximately 600 new homes will be provided in the Area consisting of a range of sites in accordance with Core Policies 1 and 2. The latest housing figures, published in the Wiltshire Housing Site Allocations Plan Topic Paper 3 Addendum (July 2018) confirms that the indicative requirement for the Wiltshire Core Strategy plan period (2006-2026) in the Pewsey Community Area has been met, i.e. the current residual requirement for the Pewsey Community Area is 0 dwellings due to completions and extant permissions. In identifying its supply of specific deliverable housing sites Wiltshire Council uses suitably defined sub-county areas as referred to in the Wiltshire Strategic Housing Market Assessment and the Wiltshire Core Strategy, titled 'Housing Market Areas'. The Pewsey Community Area lies within the East Wiltshire Housing Market Area. The Topic Paper also shows that there is at least an 8 year housing land supply in the East Wiltshire Housing Market Area at this time.*

*In terms of paragraphs 11 and 12 of the National Planning Policy Framework, this housing supply position confirms that the Wiltshire Core Strategy is not out-of-date in relation to housing supply in the East Wiltshire Housing Market Area; and in terms of paragraph 59, that the Core Strategy is "boosting significantly the supply of housing" in the Area in any event. It follows that further other, or 'windfall', sites, or sites delivered outside of any housing site allocations DPD or neighbourhood plan, are not required at this time.*

*The proposal is to erect 15 houses, etc. on land which is in the countryside and which does not comply with defined criteria for 'infill' development in Small Villages. Under Core Policies 1, 2 and 18, this does not accord with the Settlement and Delivery Strategies as a matter of principle. The Strategies are designed to ensure new development satisfies the fundamental principles of sustainability and so it follows that where a proposal such as this does not accord with them then it is unsustainable in this defining and overarching context. The site is not identified for development in a Site Allocations Development Plan Document, nor in a Neighbourhood Plan. Furthermore, there are no material considerations or exceptional*

circumstances, including set out in other policies of the Plan (including Core Policy 44), which override the core policy's positions. The proposal is, therefore, contrary to Core Policies 1, 2 and 18 of the Wiltshire Core Strategy and paragraphs 10-12 of the National Planning Policy Framework.

- 2 The application site lies within the North Wessex Downs Area of Outstanding Natural Beauty. In the context of paragraph 172 of the National Planning Policy Framework the proposal - for 15 dwellings on a c.0.9 ha site - comprises 'major' development. As there are no exceptional circumstances, and as the development is not required in the public interest, the presumption that planning permission should be refused for major development, as set out in the NPPF, applies. For reasons set out in reason for refusal no. 1, there is no 'need' for the proposed development; there is scope for residential development to be provided outside the designated area or in some other way; and the proposal would, in any event, have a detrimental effect on the environment and landscape.

Regarding landscape impact, the proposal would be detrimental to the Landscape Character Area (LCA) in which it is located, and would have harmful visual effects, albeit at a local level. In terms of the LCA, it is identified as having an essentially rural, agricultural character within which "small-scale, sensitively-designed development, associated with built form, could be successfully accommodated without adverse impacts". The proposal - being 'major'-scale (in terms of size and quantum of development); and being not sensitively-designed (in terms of form / layout of buildings, and resulting limited opportunities for landscaping/mitigation); and being not associated with existing built form (by encroaching on to open land and coalescing with other scattered development outside of the existing village) - would not be sympathetic to the specific LCA, and more generally would not protect, conserve or enhance the landscape character of the wider area. In terms of the visual effects, the local views towards the site are identified in isolation to be adverse. Again, by reason of the size/quantum of development and the insensitivities of the design (notably, with inadequate opportunities for meaningful mitigation), these impacts are considered to be unacceptable, the development failing to protect, conserve or enhance the visual amenities of the landscape hereabouts. This is contrary to Policies 51 and 57 of the Wiltshire Core Strategy and paragraphs 170 & 172 of the National Planning Policy Framework.

- 3 The application fails to provide any mechanism to ensure that the provision of essential infrastructure, services and amenities made necessary by the development can be delivered. The essential infrastructure, services and amenities include affordable housing, open space/recreation areas, highways infrastructure, and waste/refuse collection facilities (and/or contributions towards such infrastructure, services and amenities). This is contrary to Core Policy 3 ('Infrastructure requirements') and, more specifically, Core Policy 43 ('Providing affordable homes') and Core Policy 52 ('Green Infrastructure') of the Wiltshire Core Strategy and 'saved' Policies HC34 and HC37 of the Kennet Local Plan; and paragraphs 56-57 of the National Planning Policy Framework.

The proposed development, by reason of the number of market houses proposed and the size of the scheme fundamentally undermines the Council's approach to rural exception sites set out in Core Policy 44, and if approved, would set an undesirable precedent that could hinder the delivery of such affordable housing across the county.

- 4 **INFORMATIVE TO APPLICANT:** Notwithstanding reasons for refusal 1, 2 & 4, reason for refusal no. 3 may be overcome in the event of the applicant completing an appropriate planning obligation. The reason for refusal is necessary in the event that there is an appeal and such an obligation is not completed or not satisfactorily completed.

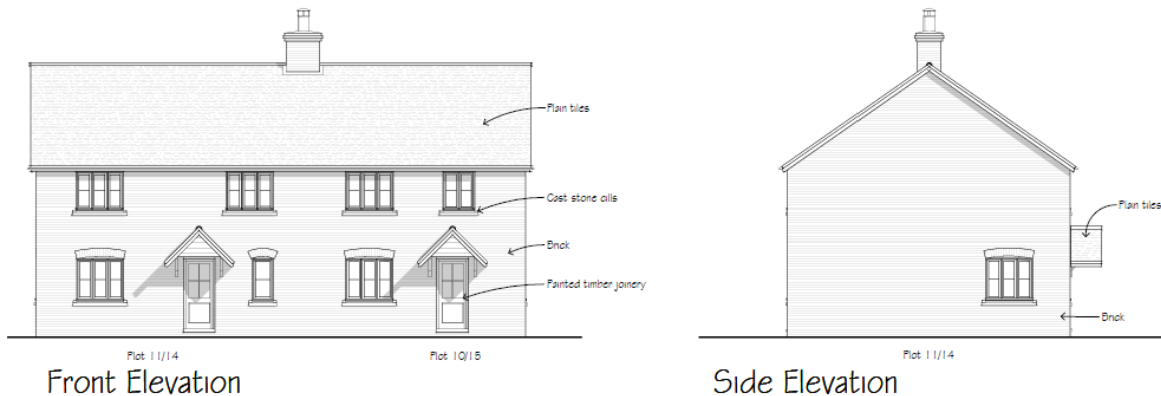
## 5. Proposal

The proposal is to erect 15 dwellings served by a new estate road. Of these dwellings, 9 would be open market for general sale (4 x 2 bed, 3 x 3 bed and 2 x 4 bed), including 2 bungalows designed to accessible and adaptable home standards. The remaining 6 dwellings would be affordable homes for rent, shared ownership and low-cost market (4 x 2 bed and 2 x 3 bed), with occupation priority given to local people. The design/tenure/mix has been informed by a Grafton Housing Needs Survey undertaken in 2016 by the applicant in agreement with Grafton Parish Council.

Access to the new estate would from the A338. A bus stop lay-by would be constructed on the A338 frontage, and an improved pavement provided for most of the length of this frontage (including a new section of pavement to connect to Byway GRAF2 (to the east)); a further pavement improvement (specifically, a dropped-kerb) at Wilton Road is also offered. A small part of the site (in the south-west corner) would be use-changed to residential garden land.



The dwellings would be of “traditional cottage designs with use of local materials” (Design and Access Statement). They would nearly all front a central landscaped area incorporating a basin for surface water storage (so with private rear gardens running out to the west, east and south boundaries of the site). Landscaping would be provided on, and at the edges of, the site.



**Typical elevations**

The application is accompanied by a Planning Statement, Design and Access Statement, Landscape & Visual Impact Assessment, Transport Statement, Arboricultural Impact Assessment, Landscape Strategy, Waste Audit Report, Affordable Housing Report, Extended Phase 1 Ecological Survey Report, Flood Risk Assessment and Statement of Community Involvement.

The proposal is identical to that presented in the 2018 planning application, which was refused. The reason for the repeat application is explained by the application agent in the 'Executive Summary' of the accompanying Planning Statement as follows:

- 1.1 *This Full Planning Application for 15 homes on Land Opposite Hungerford Road, East Grafton has been resubmitted to Wiltshire Council, following the refusal of 18/11168/FUL, because this sustainable development remains needed and supported locally.*
- 1.2 *The LPA have now failed to demonstrate a five-year supply of deliverable housing sites in Wiltshire and this site represents a sustainable location for this development.*
- 1.3 *The scheme was developed in full consultation with the local community. Grafton Parish Council endorsed the original Housing Needs Survey that informed the unit mix. Thereafter, two public consultations were undertaken whereby 91% of respondents supported the principle, location and amount of development. The scheme remains supported by Grafton Parish Council and the majority of representations to 18/11168/FUL confirmed their support.*
- 1.4 *Any continued delay of this scheme will do nothing to support Wiltshire Council in their need for more homes. It will also achieve nothing when there is a need to deliver a suitable mix of open market and affordable homes locally where clear public support exists.*
- 1.5 *In response to reason for refusal 1 of 18/11168/FUL, there remains a unique set of circumstances justifying non-compliance with Core Strategy Policies CP1, CP2 and CP18, including the failure of the LPA to demonstrate a five-year supply of deliverable housing sites.*
- 1.6 *In response to reason for refusal 2 of 18/11168/FUL, there is no reasonable basis to conclude the scheme represents major development in the AONB. The local need and scale of the development is entirely consistent with the Parish of Grafton and*

*there are no alternatives. The development is limited development in the AONB and the application is supported by the local community who live in the AONB and also agree the site is the most appropriate location to deliver limited housing growth. The scheme has attracted support from the North Wessex Downs AONB Board. The application remains supported by an expert LVIA that defines any impacts and establishes a wholly appropriate mitigation scheme.*

- 1.7 *In response to reason for refusal 3 of 18/11168/FUL, the Applicant agrees to enter into an appropriate legal agreement to provide planning obligations.*
- 1.8 *In response to reason for refusal 4 of 18/11168/FUL, that application was never predicated on the basis of compliance with Policy CP44 and this scheme in no way hinders the delivery of affordable housing as it wholly complies with Policy CP43.*
- 1.9 *There remains a compelling case for Wiltshire Council to approve Full Planning Permission for this sustainable development in accordance with the Framework.*

## **6. Planning Policy and Guidance**

### Wiltshire Core Strategy

Core Policy 1 – Settlement Strategy  
Core Policy 2 – Delivery Strategy  
Core Policy 3 – Infrastructure Requirements  
Core Policy 18 – Spatial Strategy for the Pewsey Community Area  
Core Policy 43 – Providing Affordable Housing  
Core Policy 44 – Rural Exceptions Sites  
Core Policy 45 – Meeting Wiltshire’s Housing Needs  
Core Policy 50 – Biodiversity and Geodiversity  
Core Policy 51 – Landscape  
Core Policy 57 – Ensuring High Quality Design and Place Shaping  
Core Policy 58 – Ensuring the Conservation of the Historic Environment  
Core Policy 60 – Sustainable Transport  
Core Policy 61 – Transport and Development  
Core Policy 67 – Flood Risk

### Kennet District Local Plan

Policy HC35 – Recreation provision on small housing sites

### Other SPD / guidance

Grafton Village Design Statement 2004  
East Grafton Conservation Area Statement 2005  
Wiltshire Revised Planning Obligations SPD  
Kennet Community Benefits from Planning SPG (relevant saved elements)

### National Planning Policy Framework & Planning Practice Guidance

Relevant paragraphs referred to.

## Consultations

East Grafton Parish Council: Support subject to conditions

1. *The PC considers Machinery Field to be within the village boundary of East Grafton.*
2. *The PC has purchased and installed a SID (Speed Indicator Device) along the A338 as part of the concerted efforts to manage the speed of vehicles entering and traversing the village. There has also been a traffic calming review undertaken by Highways and subsequent to this further traffic calming measures have been implemented. The PC will continue to monitor the speed of vehicles through the village since this remains a concern.*
3. *When vehicles use the proposed bus layby and people, more especially children, look to cross the road the PC would propose that the development contributes towards the cost of appropriate signage to ensure safe passage for pedestrians crossing the A338.*
4. *The plans need to ensure that surface water drainage from the development is carried away from the A338 and the village to ensure that there is not additional drainage water being pushed onto the road that in turn will flow down to the lowest point in the village.*
5. *Maintenance of the “common land” on the development. There is a concern regarding the management/maintenance of the area within the development which is not owned by residents. The Parish Council is unable to accept responsibility for this space and a robust, enduring legal framework is required to ensure that the land is correctly maintained in perpetuity. Any landscaping and planting will be in keeping with the area and any road frontage trees and or hedges will be maintained to ensure that visibility is not adversely impacted when joining the A338.*

WC Drainage: Holding objection

WC Ecology: No objection, subject to conditions

*The site has been assessed for a range of habitat and protected species issues and the report includes a desk study, although no records search with the local biodiversity records centre has been included as would usually be expected, in this instance a satisfactory level of information is provided to allow determination of the report (on the basis of ecology).*

*The southern site boundary is likely to be an important wildlife corridor including for bats and is recommended for retention as a well established dark vegetation corridor. The proposal to retain and manage this as illustrated on the Landscape Plan is welcomed. The details of management should be provided within a Landscape Ecological Management Plan (LEMP).*

*The ecology report recommends suitable wildlife protection and enhancement measures through the clearance and construction phases. A lighting strategy to demonstrate dark site boundaries will be required,*

*These details should be secured through suitably worded condition.*

WC Highways: No objection, subject to conditions

WC Housing: Comments on affordable housing requirement

*.... The proposed development site falls outside the boundary of East Grafton, which is classified as a small village and applications of this nature would usually only be considered under Core Policy 44 as a Rural Exception Site (which is defined as 100% affordable*

housing and up to 10 units only, to meet an identified need). It appears that the proposals would not comply with the rural exception site policy, and the proposal is therefore, contrary to Planning Policy and would not be supported.

In the event that the proposal is considered acceptable in planning policy terms, my comments and observations in respect of the affordable housing requirements are as follows:

*Policy Requirements - Core Policy 43 of the Wiltshire Core Strategy, as currently amended by the National Planning Policy Framework, sets out a requirement for 40% on-site affordable housing provision: on all sites of 10 or more dwellings; or on sites of between 5 - 9 dwellings if the development site is 0.5ha or greater, within the 40% Affordable Housing Zone. There is therefore a requirement to provide 6 affordable units within a scheme of 15 dwellings. This would meet the policy requirement and would assist in addressing the need for affordable housing in the Pewsey Community Area where there is a high level of demand for both affordable rented and shared ownership housing.*

*Tenure Mix - To meet need the affordable housing units should be provided with a tenure mix of 60% of the units (6 units) being for Affordable Rented housing, and 40% of the units (2 units) being provided for shared ownership.*

*Unit Size Mix - Core Policy 45 of the Wiltshire Core Strategy states that housing size and type will be expected to reflect that of the demonstrable need for the community within which a site is located. There is currently a need for all sizes of affordable accommodation in the Pewsey Community Area. An indicative mix which would reflect current need would be:*

*Affordable Rented:*

*2 x 1 bed 3 person flats or bungalows*

*2 x 2 bed 4 person houses*

*Shared Ownership:*

*2 x 2 bed / 4 person houses;*

*However, I would welcome the opportunity to discuss and review the unit size mix as proposals develop.*

*Minimum Size and Design Standards - Affordable housing in Wiltshire is expected to meet high standards of design and quality, to be visually indistinguishable from open market housing, and to be evenly dispersed, in small clusters, within mixed tenure developments.*

*All affordable homes would need to be built to, at least, meet minimum size standards of the Homes & Communities Agency's published guidance relevant to the dwelling type (or any subsequent design guidance which may supersede it), as well as to meet required minimum person eligibility criteria. To ensure that the affordable housing units are eligible for inclusion in Homes England's Affordable Housing programme, we would advise that all affordable homes are built to meet at least 85% of the Nationally Described Space Standard (NDSS) relevant to the dwelling type and minimum person criteria. NDSS and 85% NDSS are shown in the table below:*

NDSS and 85% NDSS

Number of bedrooms	Number of bed spaces	NDSS			Minimum 85% NDSS		
		1 storey (sqm)	2 storey (sqm)	3 storey (sqm)	1 storey (sqm)	2 storey (sqm)	3 storey (sqm)
Studio	1p	39 (37)*			34 (32)*		
1b	2p	50	58		43	50	
2b	3p	61	70		52	60	
	4p	70	79		60	68	
3b	4p	74	84	90	63	72	77
	5p	86	93	99	74	80	85
	6p	95	102	108	81	87	92
4b	5p	90	97	103	77	83	88
	6p	99	106	112	85	91	96
	7p	108	115	121	92	98	103
	8p	117	124	130	100	106	111
5b	6p	103	110	116	88	94	99
	7p	112	119	125	96	102	107
	8p	121	128	134	103	109	114
6b	7p	116	123	129	99	105	110
	8p	125	132	138	107	113	118

*\*Where a one person flat has a shower room rather than a bathroom the floorspace may be reduced from 39 sqm to 37 sqm (NDSS) or from 34 sqm to 32 sqm (85% NDSS).*

*Transfer to Registered Provider – The affordable dwellings will be required to be transferred to a Registered Provider, approved by the Council, or to the Council on a nil subsidy basis.*

*It is strongly recommended that the applicant makes contact with Registered Providers and Wiltshire Council's Residential Development Team as soon as possible in order to discuss the best option for the affordable dwellings, including an indication of transfer prices that can be expected. A list of Registered Providers who work in partnership with Wiltshire Council can be provided on request.*

*Nominations - The Local Authority would have nomination rights to the affordable dwellings, secured through a S106 Agreement.*

WC Public Protection: No objection

WC Trees: No objection, subject to conditions and a TPO

*The proposed application is acceptable in principle however, the holding objection could be removed once the relevant information needed has been clarified.*



*As the proposed site is predominately within a rural setting, it must be essential to maintain the existing native species boundary hedging and to remove the southern hedge to the rear of plots 5-9 OUT of private ownership as this may lead to systematic removal of the hedge to open up views across the fields and to remove shading of the gardens.*

*The arboricultural impact assessment carried out by SJ Stephens Associates (13/06/18) identifies the following recommendation:*

*“The mature hedgerow along the southern boundary is comprised of two distinct hedgerows. To the front is a good quality thorn hedge, G19, with a line of goat willow, G18, growing to the rear. The canopies of the goat willow are extending up to 4m into the site. It is recommended that these trees are cut back to allow the thorn hedge to develop”.*

*A native species hedge should be planted to the east of plots 9-14 and again, removed from private ownership. As a council, we must insist on a biodiversity net gain as much as can reasonably be expected.*

*The AIA also states the following:*

*“The oak tree, T15, will be located within one new residential garden. The garden area extends to approximately 445m<sup>2</sup>, with approximately 83m<sup>2</sup> covered by the tree canopy. The crown of the tree is approximately 2.5m from the corner of the proposed dwelling. The crown of the tree also extends over the neighbouring property to the east. The new development will increase the pressure for future pruning to control crown growth. However as oak trees are relatively tolerant of pruning it is considered that this work would be unlikely to threaten the future viability of the tree. Further the local authority could make the tree subject to a Tree Preservation Order, which would place control on all future tree work”.*

*It must therefore be considered to protect the Oak tree to the south east of the proposed site by means of a Tree Preservation Order so that the trees current characteristics are maintained. The proposed TPO would not affect the potential sale of the dwelling.*

*The proposed street tree planting must also be taken into consideration in regards to suitable sized planting pits that provide significant space for future incremental growth of the trees with suitable drainage and watering facilities especially during dry periods. The landscape management plan must include means to undertake regular watering of new trees as well as formative pruning for the duration of the management term.*

Thames Water: Partial objection

*Waste Comments - The proposed development is located within 15m of a Thames Water Sewage Pumping Station. Given the nature of the function of the pumping station and the close proximity of the proposed development to the pumping station we consider that any occupied premises should be located at least 15m away from the pumping station as highlighted as best practice in Sewers for Adoption (7th edition)'. The amenity of those that will occupy new development must be a consideration to be taken into account in determining the application as set out in the National planning Policy Framework (NPPF) 2019 at paragraphs 170 and 180. Given the close proximity of the proposed development to the pumping station we consider that it is likely that amenity will be impacted and therefore object. Notwithstanding this objection, in the event that the Local Planning Authority resolve to grant planning permission for the development, we would request that the following informative is attached to the planning permission: “The proposed development is located*

*within 15m of a Thames Water Sewage Pumping Station and this is contrary to best practice set out in Sewers for Adoption (7th edition). Future occupiers of the development should be made aware that they could periodically experience adverse amenity impacts from the pumping station in the form of odour; light; vibration and/or noise.”*

*We would expect the developer to demonstrate what measures will be undertaken to minimise groundwater discharges into the public sewer. Groundwater discharges typically result from construction site dewatering, deep excavations, basement infiltration, borehole installation, testing and site remediation. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. Should the Local Planning Authority be minded to approve the planning application, Thames Water would like the following informative attached to the planning permission: “A Groundwater Risk Management Permit from Thames Water will be required for discharging groundwater into a public sewer. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. We would expect the developer to demonstrate what measures he will undertake to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water’s Risk Management Team by telephoning 020 3577 9483 or by emailing [trade.effluent@thameswater.co.uk](mailto:trade.effluent@thameswater.co.uk) . Application forms should be completed on line via [www.thameswater.co.uk](http://www.thameswater.co.uk). Please refer to the Wholesale; Business customers; Groundwater discharges section.*

*Surface Water - With regard to SURFACE WATER drainage, Thames Water would advise that if the developer follows the sequential approach to the disposal of surface water we would have no objection. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. Should you require further information please refer to our website. <https://developers.thameswater.co.uk/Developing-a-large-site/Apply-and-pay-for-services/Wastewater-services>*

*Thames Water would advise that with regard to WASTE WATER NETWORK and SEWAGE TREATMENT WORKS infrastructure capacity, we would not have any objection to the above planning application, based on the information provided.*

*Water Comments – Thames Water recommend the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.*

*On the basis of information provided, Thames Water would advise that with regard to water network and water treatment infrastructure capacity, we would not have any objection to the above planning application. Thames Water recommends the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.*

*Supplementary Comments –*

*If you are planning on using mains water for construction purposes, it’s important you let Thames Water know before you start using it, to avoid potential fines for improper usage. More information and how to apply can be found online at [thameswater.co.uk/buildingwater](http://thameswater.co.uk/buildingwater).*

North Wessex Downs AONB Unit: Support

*The AONB is an expensive place to live with average house prices higher than outside of the AONB. The majority of developments provide 3 or 4 bed dwellings or executive homes which are often out of reach for young local adults wanting to stay in their community and get a foot on the property ladder, therefore they are forced to move to the large conurbations outside the AONB. Affordable housing is limited but highly sought after within the AONB and therefore we welcome this development which has taken on the needs of the community to provide local, affordable/starter homes that can serve East Grafton and some of the neighbouring hamlets. I have met with members of the policy and housing teams and those involved in community land trusts to try and work collaboratively to help find and secure sites for affordable housing and the opportunity that the local plan review can play in this. Affordable housing is an issue in all 3 of the AONBs within Wiltshire and it is something that the council needs to address, currently CP2 can be more of a hinderance than help in meeting the needs of local communities wanting to provide affordable housing, therefore the council should where the benefits outweigh the harm consider these as departure applications. The site if finished would enhance the entrance into the village along the A338.*

*A settlements character in many cases depends critically on the presence of green land within or adjoining it. Therefore, a site's location within an assumed boundary or within the visual built envelope of a settlement may not always make it suitable for development if it is of landscape, heritage or open space value. In my opinion the site does not fall within this, there is no physical or aesthetic interconnectivity with either the built or natural environment within the village or the wider AONB landscape. This may partly be down to its present use but also the strong reinforcement of the built environment that surrounds the site on 3 sides one of which sits at a slightly elevated position and dominates this end of the village and the open aspect of the site, locally and from long distance views.*

*The AONB unit agrees with the outcomes of the landscape assessment in that the impact of the development is local, specially from the approach into the village via Hungerford road, although classed as greenfield land the site is currently and has been used for some time as storage for agricultural machinery. The wider harm is negligible and locally minor, the proposed landscaping would enhance the character of the site and provide a natural connectivity to the neighbouring development to the west and the village beyond. The SUDs pond and new hedging if implement and maintained carefully can provide a biodiversity net gain. I do however believe there is some room for improvement in terms of the street layout to provide a larger central green space that would become the spine/trunk of the development.*

*There is room for improvement in terms of materials/design, a number of houses propose the use of flint, this is not a commonly used material within the village other than boundary walls, therefore I would recommend that this element is removed. Variation can be achieved using brick pattern and different brick colour (devil is in the detail and brick type must be carefully chosen), some of the pitched roof porch canopies could be altered to lean to style and one or two altered to include timber posts to help frame the building. Render/painted brick is a predominant finish within the village and this could be incorporated into the scheme. I would also go as far to request that plots 14/15 which face onto the road should act as a feature building and adopt a thatched roof design of thatch and lowered eaves, this can be achieved without affecting the internal space. Materials will be key making sure this development not only conserves but enhances the natural and scenic beauty of the AONB.*

*No street lighting is proposed which is welcomed by the AONB unit, dark skies are a special quality of the AONB and East Grafton is characterised by a lack of street lights. The neighbouring development to the west failed to factor this in and introduced street lights which has suburbanised the development. There is an existing street light on a telegraph pole fronting the site, this needs to be upgraded to an enclosed dimmable LED one, this*

*provides sufficient glow for the access into Hungerford Road and would provide the same for the proposed access into the site.*

*I believe that the infill definition given in the core strategy is a little restrictive and that the context of the site and the wider settlement should be taken into account. The site isn't merely bordered by a few dwellings but by substantial development, for which the density of the proposed would not appear contrived and would be a common sense approach as a natural extension of the village. The development as per CP2 seeks to meet the housing needs of the settlement and the wider area which;*

- i) Respects the existing character and form of the settlement*
- ii) Does not elongate the village or impose development in sensitive landscape areas;  
and*
- iii) Does not consolidate an existing sporadic loose knit areas of development related to the settlement.*

*The AONB is a nationally protected landscape where naturally development is more restrictive due to the sensitive nature of the landscape character, therefore development proposed has to be the right development (design/scale etc) in the right location and in the majority of applications this can't be achieved, in this instance we have a development that with some tweaks would fit comfortably within the local and wider landscape without affecting the existing balance of the built and natural environment in accordance with the North Wessex Downs AONB Management Plan (2019-2024) and para 18, 11, 170 and 172 of the NPPF and CP43, 45, 50 and 51 of Wiltshire's Core Strategy.*

*If you are minded to approve the AONB unit would respectfully request that conditions to attached including;*

- no exterior lights without first gaining permission from the LA*
- removal of PD rights for extensions and outbuildings; and*
- no additional hardstanding's, including the use of artificial grass (drainage, character and climate change are all reasons to control this).*

## **Representations**

The application has been publicised by neighbour letters, site notice and newspaper advert. Ten representations have been received – 8 objections; 1 support (CPRE); 1 comments (Salisbury & Wilton Swifts).

The objections are summarised as follows –

- Planning history – recent refusal of planning permission for identical proposal. No fundamental change in circumstances;
- Wiltshire Core Strategy - East Grafton is a 'Small Village' – 15 units too many and too ambitious in context and policy terms. Small villages only supposed to have infill when needed; East Grafton has insufficient amenities/infrastructure to support further major development. Sufficient housing already being delivered in area (six estates in recent years); too many houses now generally. Housing being provided elsewhere in more sustainable locations (Marlborough, Burbage);
- AONB - Major development like this not appropriate in AONB. Harmful to Landscape Local Character Area. Harmful to local public views;
- Highway safety – potentially 32-45 cars adding to existing traffic on roads and bottlenecks in and around East Grafton. Junction should not be staggered, rather directly opposite Hungerford Road;

- Ecology – existing field provides opportunities for wildlife;
- Affordable housing – not an exceptions proposal (CP44). Disproportionate numbers of affordable units;
- Residential amenity – loss of views/outlook from adjoining houses. Disturbance during construction;
- Maintenance - Methods for allowing maintenance of existing hedgerows unclear;
- Infrastructure - No mechanisms to deliver essential infrastructure made necessary by the proposal.

The support from CPRE states the following:

- *CPRE has no objection to the building of 15 dwellings on this plot.*
- *We are, however, concerned that the proposals give no indication of the use of heat pumps or solar panels, and grey water for recycling. In view of the Climate Change Emergency and the Council's commitment to net zero carbon by 2030, it is vital that sustainable measures for heating and for conservation of water resources should be employed in new developments.*

Salisbury and Wilton Swifts request inclusion within the development of nesting facilities for swifts.

## **Planning Issues**

The main issues to be considered in this case are, firstly, the principle of the proposal; and secondly (and notwithstanding the conclusion on the principle), the impact of the specific scheme on detailed matters including landscape/visual amenity, agricultural land 'loss', highway safety, heritage, ecology, residential amenity and infrastructure provision.

### 9.1 Principle –

#### 9.1.1 WCS Settlement and Delivery Strategies –

The Wiltshire Core Strategy sets out a 'Settlement Strategy' and 'Delivery Strategy' for development across the county. Core Policy 1 refers to the Settlement Strategy, and identifies four tiers of settlement – 'Principal Settlements', 'Market Towns', 'Local Service Centres', and 'Large and Small Villages'. Within the Settlement Strategy East Grafton is indicated to be a Small Village. Small Villages are defined as having a low level of services and facilities, and few employment opportunities. The Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined limits of development. Beyond these limits is countryside. Small Villages do not have limits of development, and so for the purposes of the Core Strategy lie within the countryside.

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. The policy states that within the limits of development of those settlements with defined limits there is a presumption in favour of sustainable development; but outside the defined limits, other in circumstances as permitted by other policies of the Plan (which are not relevant here), development will not be permitted, and that the limits of development may only be altered through identification of sites for development through subsequent site allocations Development Plan Documents and neighbourhood plans. The policy further states that at Small Villages development will be limited to infill within the existing built area and that it will be supported where it seeks to meet housing needs of the settlement provided this respects the existing character and form

of the settlement, does not elongate the village or impose development in sensitive landscape areas, and does not consolidate an existing sporadic loose knit area of development related to the settlement. 'Infill' is defined as "the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling".

Proposed development which does not accord with the Settlement and Delivery Strategies will be deemed unsustainable in the overarching context and aims of the Wiltshire Core Strategy.

The proposal is to erect 15 houses on an approx. 0.9 ha site at the edge of, but outside, the existing 'built' area of East Grafton. In terms of Core Policy 2 this is unacceptable as a matter of principle. Notably, and with specific regard to the location (that is, outside of the existing built area and so in open countryside) the proposal would lead to elongation of the settlement (in a sensitive landscape area – more below); and, with specific regard to the size of the site and the quantum of proposed development, it would not be 'infill'. The proposal, therefore, fails to comply with the physical requirements of Core Policy 2 for new development at Small Villages and so under this policy amounts to unsustainable development in the countryside as a matter of principle.

#### 9.1.2 Housing land supply –

In terms of the NPPF, paragraph 11 confirms that development plans should apply a presumption in favour of sustainable development. The paragraph continues by stating that for 'decision-taking' this means:

- (c) *approving development proposals that accord with an up-to-date development plan without delay; or*
- (d) *where there is no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Policies will be considered 'out of date' when a local planning authority cannot demonstrate a five-year supply of deliverable housing sites, or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the preceding three years.

The Core Strategy uses three 'Housing Market Areas' (HMAs) for its high-level disaggregation and measurement of the county's housing requirement, to ensure an appropriate distribution of housing across the county; East Grafton lies within the East Wiltshire HMA. The Core Strategy then drills down to defined 'Community Areas' within each of the HMAs, setting out more focused local spatial strategies. For the Pewsey Community Area in which East Grafton lies, the spatial strategy is set out at Core Policy 18. Core Policy 18 confirms that over the Plan period (2006 to 2026) approximately 600 new homes will be provided in the Community Area consisting of a range of sites in accordance with Core Policies 1 and 2. The recently adopted Wiltshire Housing Site Allocation Plan confirms that the overall pattern of growth in the East HMA is in general conformity with the WCS.

The most recently published Housing Land Supply Statement (dated August 2019, with a 'base date' of April 2018) sets out the Council's most recent interpretation of the housing supply position. For the Pewsey Community Area, it reveals 495 completions (2006 to 2018) and 142 developable commitments (to 2026); together these numbers meet the entire delivery target for the Pewsey Community Area (or in other words, the indicative remaining requirement is 0). Across the entire East Wiltshire Housing Market Area, the overall indicative requirement is 5,940 new houses, with already 4,039 completions and 1,996 commitments; again, these completions and commitments exceed the requirement. On the basis of this Housing Land Supply Statement – and notwithstanding its 2018 base date – it follows that there is, on face value, a more than adequate (6.67 years) supply of housing in the East Wiltshire Housing Market Area.

However – and notwithstanding the importance of Core Policies 1, 2 and 18 in the context of a plan-led system – these policies (in particular, CP1 and CP2) have more recently been found to be 'out-of-date' because at this time a deliverable five-year housing land supply cannot, in fact, be demonstrated, this confirmed in a very recent appeal decision<sup>1</sup>. This situation has arisen in the context of supply now being measured across the whole of the wider Wiltshire Council area (that is, the area over which supply must be calculated using the 'standard method' now that the Wiltshire Core Strategy is more than five years old and its strategic policies have not been reviewed and found not to require updating<sup>2</sup>); and in the context of agreement being reached during the recent appeal hearing that not all of the commitments for the county as set out in the latest Housing Land Supply Statement are deliverable at this time<sup>3</sup>. In a nutshell, the recent appeal decision has confirmed and concluded that housing land supply across the wider Wiltshire area is presently, in fact, in the range of 4.42-4.62 years, which is below the minimum 5 years requirement. There have not been any material changes in the supply position since this new Wiltshire-wide range has been confirmed.

As referred to earlier, under NPPF paragraph 11(d), where the policies which are most important for determining an application are out of date, the presumption is for planning permission to be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework taken as a whole. But, even with paragraph 11(d) now triggered, the inspector in the recent appeal case still dismissed the appeal. There was more than one reason for his decision, but fundamentally – and in the context of the housing supply shortfall which he had himself confirmed – he concluded that there remains substantial benefit in maintaining a plan-led system here. The Inspector said –

*“20. Even having regard to the above [the 5 yr land supply position], there remains substantial benefit in maintaining a plan-led system. The overall strategy of the CS to direct development to the most sustainable settlements remains desirable and accords with the objectives of the Framework.*

---

<sup>1</sup> Appeal: Land at Purton Road, Swindon, dated 6 April 2020 (17/08188/OUT) – annex 1 to this report.

<sup>2</sup> NPPF paragraph 73: "... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. ..." [unless these strategic policies have been reviewed and found not to require updating].

<sup>3</sup> NPPF definitions: 'Deliverable' – "To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. ...".

21. *Even at the lower end of the range agreed between the parties, there is a relatively modest shortfall in housing land in the Wiltshire Council area. The local housing need derived from the standard method is very similar to the housing requirement contained in the CS for the relevant five-year period and so there is no reason to think that the strategy will not continue to be effective, particularly in light of recent progress in adopting the Housing Site Allocations Plan. .... For all of these reasons, and notwithstanding that the policies are out-of-date, I attach significant weight to the conflict with policies CP1, CP2 and CP19<sup>4</sup> of the CS. ....”*

With this in mind – and with due regard to the development plan as being the starting point for decision making anyway – it is considered that significant weight must continue to be given to the development plan at this time, this in the context of there being only a relatively modest shortfall in housing across the county, and no shortfall in housing in the specific Eastern Housing Market Area and Pewsey Community Area anyway. Accordingly, the normal general presumption against development which does not comply with the WCS Settlement Strategy (Core Policy 1) and Delivery Strategy (Core Policy 2) continues to apply, and the failure of the proposal to comply remains a sound reason for objecting now.

Further weight can be given to this stance having regard to the proposal’s additional, and specific, failure to satisfy the location and scale requirements for development at Small Villages, as set out in the Delivery Strategy. These requirements allow for ‘infill’ sites only, which are defined as “the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling”; the proposed site does not comprise a ‘small gap’ and is not ‘within’ the village, and the proposal – for 15 dwellings – is not for ‘a few dwellings’. This is covered in greater detail in the following section of this report.

The approach taken by the Purton Road inspector has been re-confirmed in a more recent appeal decision relating to a site at Paddock Wood, Warminster<sup>5</sup>. Here the Inspector set the scene, and reached conclusions on the continuing significance of the Wiltshire Core Strategy, in the following terms –

*“11. At the time the Council refused planning permission for this proposal it could demonstrate a 5-year supply of deliverable housing sites, in accordance with the Framework, and the development plan policies therefore had full weight. However, shortly after determining this planning application the Council published an updated Housing Land Supply (HLS) Statement, which reduced its HLS assessment for the North and West Wiltshire Housing Market Area, within which the appeal site lies, to 5.07 years from the previous figure of 6.25 years.*

*12. Circumstances then changed again in February 2020 when, at an appeal elsewhere in Wiltshire, the Council confirmed that it was unable to demonstrate a 5-year HLS when assessed against the Local Housing Need (LHN) for Wiltshire, which became a requirement after 20 January 2020, when the adopted WCS became 5 years old, and when paragraph 73 of the Framework came into effect. When tested against the LHN the Council accepted that it could only demonstrate a HLS somewhere between 4.42 and 4.62 years.*

*13. The Framework explains, in paragraph 11(d)(ii) that where the policies which are most important for determining an application are out-of-date (which includes where a Council’s HLS does not accord with the Housing Delivery Test – as here), then planning permission*

---

<sup>4</sup> CP19 was the relevant Community Area policy for the appeal; CP18 is the equivalent policy relevant to the Pewsey CA.

<sup>5</sup> APP/Y3940/W/20/324500 – Paddock Wood, Warminster, dated 16 June 2020.



should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

14. With these points in mind it is not possible to give full weight to the aforementioned Core Policies. But as very little additional information on the current HLS situation has been supplied by either party, it is difficult to assess the implications of the existing shortfall with any certainty. The Council has, however, drawn my attention to comments made by the Inspector in the aforementioned Purton Road appeal, namely that even at the lower end of the agreed HLS range there is a relatively modest shortfall in housing land in the Council's area; that there is no reason to think that the WCS will not continue to be effective, particularly in light of recent progress in adopting the Wiltshire Housing Site Allocations Plan; and that there remains substantial benefit in maintaining a plan-led system.

15. No firm evidence has been submitted to cause me to reach a different view to my colleague Inspector on these matters, and I therefore consider it appropriate to still give significant weight to Core Policies 1, 2 and 31. Against this policy Framework it is clear that as the appeal site lies outside the defined settlement boundary for Warminster, the proposal would not represent sustainable development. The site was not considered as part of the Council's Strategic Housing Land Availability Assessment, nor was it brought forward as a possible housing site as part of the recently completed Wiltshire Housing Site Allocations DPD. The submitted evidence also makes it plain that this site was not considered for housing development as part of the process to make the Warminster Neighbourhood Plan 2015-2026. ....”.

This very recent appeal decision confirms that ‘significant weight’ should continue to be given to Core Policies 1, 2 and 18 in relation to which the proposal fails to comply.

### 9.1.3 Wiltshire Housing Site Allocations Plan and ‘Neighbourhood Plans’ –

As set out above, Core Policy 2 (Delivery Strategy) of the Wiltshire Core Strategy defines the level of growth appropriate within the built-up areas of Small Villages as ‘infill’. Infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. The WCS states that exceptions to this approach will only be considered through the neighbourhood plan process or DPDs.

The proposal – for 15 dwellings on land outside the ‘built’ area of East Grafton – does not meet the Small Village’s definition of infill. Indeed, the proposal does not even meet the definition of acceptable development at the next, higher, tier in the Settlement Strategy – that is ‘Large Villages’ where ‘small housing sites’ within settlement boundaries are acceptable, defined as “.... sites involving fewer than 10 dwellings (i.e. not a major application)”.

The recently adopted Wiltshire Housing Site Allocations Plan (DPD) revises (where necessary) settlement boundaries and allocates new sites for housing in order to maintain a five-year land supply in each of the county’s three Housing Market Areas. It does not provide for any sites at East Grafton, including the application site. Sufficient other sites are proposed to be allocated in the Plan to meet the Eastern Housing Market Area’s housing needs.

There is no neighbourhood plan – either made or in preparation – for East Grafton. The Wiltshire Housing Site Allocations Plan states that in locations where there may not yet be an appetite to prepare a neighbourhood plan, the Plan has considered how these neighbourhoods can accommodate additional housing and has allocated sites accordingly. As stated above, this process – based on need within the wider Housing Market Area and

the circumstances of East Grafton – has resulted in there being no allocated sites in East Grafton, including the application site.

#### 9.1.4 Grafton Parish Housing Survey –

The planning application is accompanied by a ‘Parish Housing Survey’, base-dated July 2016, and endorsed by Grafton Parish Council. According to the Planning Statement accompanying the application, the survey’s purpose was to determine whether or not local people have a need for additional housing across a variety of open market and affordable tenures in the Parish.

Notwithstanding the work undertaken by the Parish to complete the survey, in preparing the Wiltshire Core Strategy full regard was given to the housing needs of the county, and how the needs should be dispersed. As already referred to, the WCS contains a ‘Settlement Strategy’ (Core Policy 1); it identifies the different tiers of settlement within the County based on an understanding of the role and function of all settlements and how they interact with their immediate communities and their wider hinterlands. In doing this the Settlement Strategy, coupled with the ‘Delivery Strategy’ (Core Policy 2), defines where, and at what scale, development will be most sustainable, this ‘drilling down’ all the way to the Small Villages, such as East Grafton.

To further explain the strategies, at its highest level the Settlement Strategy has ‘Principal Settlements’ which are defined as strategically important centres, and so the focus for development (e.g. Chippenham, Salisbury and Trowbridge); at the next level, ‘Market Towns’ are recognised to have the potential for significant development that will increase jobs and homes in order to sustain and, where necessary, enhance their services and facilities (e.g. Devizes, Marlborough and Tidworth/Ludgershall); next, ‘Local Service Centres’ (smaller towns and some larger villages, e.g. Pewsey) will provide modest levels of development in order to safeguard their role and to deliver affordable housing; then in the ‘Large Villages’, which have a limited range of employment, services and facilities, development is limited to small housing and employment sites (‘small’ defined as sites involving fewer than 10 dwellings), (e.g. Burbage and Great Bedwyn); finally, the ‘Small Villages’ being within the countryside are limited to very modest development in the form of infilling.

So, although the Core Strategy uses Housing Market Areas for its high level disaggregation and measurement of the county’s housing requirement, to ensure an appropriate distribution its Settlement and Delivery Strategies further define what, in terms of sustainability, is appropriate to meet the more local requirements of the actual settlements – from the largest to the smallest. This prevents settlements from receiving un-balanced levels of growth, and allows each Community Area to accommodate housing having regard to its constraints and opportunities. It also builds-in flexibility – notably, to allow “.... local communities preparing neighbourhood plans, to respond positively to opportunities without being inhibited by an overly prescriptive, rigid approach which might otherwise prevent sustainable development proposals that can contribute to maintaining a deliverable five-year housing land supply and delivering the strategic objectives of the plan”.

So, where there is not a neighbourhood plan the delivery Strategy in any event defines the level of growth appropriate within the built-up areas of Small Villages, and this is ‘infill’. This planned approach is not changed by other factors such as local housing needs surveys. The Core Strategy concludes, “Exceptions to this approach will only be considered through the neighbourhood plan process or DPDs”.

### 9.1.5 Affordable Housing –

The WCS makes it clear that under Core Policy 44, where the site is outside but adjoining a settlement, (as in this case) a scheme for wholly affordable housing will often be supported, where it has clear support from the local community and the environmental and landscape impacts, amongst others, are acceptable. Normally, such schemes are restricted to up to ten dwellings in size.

This scheme is not for wholly affordable housing – in fact, it is a minority of houses that are proposed to be affordable. No viability argument has been presented to demonstrate the need for even a small proportion of the site to be market housing – in fact, the majority of the site is for market housing. The scheme is also larger than the up to ten dwellings referred to in CP44, and there is not clear support from all of the local community.

The importance of this conflict with policy should not be underestimated. If landowners begin to believe that the Council will grant planning permission for sites adjoining but outside of settlements where the majority of housing will be market housing, then the incentive to release land for Community Land Trusts, etc., for affordable housing in locations adjoining to or well related to existing settlements is fundamentally undermined.

### 9.2 Landscape impact

The application site lies within open countryside forming part of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

#### 9.2.1 Policy background –

Core Policy 51 ('Landscape') of the WCS states that new development should protect, conserve and where possible enhance landscape character, with any negative impacts mitigated as far as possible through sensitive design. The policy states that proposals should be informed by and be sympathetic to the distinctive character areas identified in relevant Landscape Character Assessment(s) and any other relevant assessments and studies; and proposals will need to demonstrate that the following matters in particular have been taken into account and landscape conserved and enhanced as appropriate:

- The separate identity of settlements and the transition between man-made and natural landscapes;
- Visually sensitive skylines, soils, geological and topographical features;
- Landscape features of cultural, historic and heritage value;
- Important views and visual amenity;
- Tranquillity and the need to protect against intrusion from light pollution, noise and motion; and
- Landscape functions including places to live, work, relax and recreate.

Core Policy 57 ('Ensuring high quality design and Place Shaping') provides more general development control standards, requiring new development to, in particular, respond positively to existing townscapes and landscape features in terms of building layouts, built form, height, mass, scale, building lines, etc., to effectively integrate development into its setting. It also requires the retention and enhancement of existing important landscaping and natural features, including trees, hedgerows and watercourses.

Paragraph 170 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by, in particular, protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils "... (in a manner

commensurate with their statutory status or identified quality in the development plan)”; and recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – “.... Including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland”.

With particular regard to AONB’s, paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing their landscape and scenic beauty, which have the highest status of protection in relation to these issues (alongside National Parks and the Broads). The paragraph further states that planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of .....

- a) *The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) *The cost of, and scope for, development outside of the designated area, or meeting the need for it some other way; and*
- c) *Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated”.*

For the purposes of this paragraph, the NPPF explains that whether a proposal is ‘major’ AONB development is a matter for the decision maker, taking into account “... its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined”.

In this case, having regard to the scale of the proposal (that is, 15 units) and its setting (that is, in open countryside outside of the East Grafton ‘Small Village’), **and** having regard to the Settlement and Delivery Strategies of the Wiltshire Core Strategy referred to already (which limit development to ‘infill’ only within the Small Villages), the proposal is considered to be ‘major’ AONB development in its context.

### 9.2.2 Landscape and Visual Impact Assessment –

The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) which assesses the landscape and visual effects of the proposal. It does this by applying established LVIA methodology – to define baseline conditions and then to assess the landscape and visual effects of the proposal; it also considers mitigation as necessary. The Assessment explains:

*“The LVIA is a tool used to identify and assess the likely Significance of Effects of change resulting from development, both on the landscape as an environmental resource in its own right and on people’s views and visual amenity. Landscape Effects relate to changes in the landscape character, elements, and features as a result of development. Visual Effects relate to the appearance of development, its effect on specific views and on the general visual amenity experienced by users of the landscape. The Nature of Effect as a result of development can be Positive, Adverse or Neutral”.*

### 9.2.3 Landscape Effects –

Landscape character may be defined as the distinct and recognisable pattern of elements that occur consistently in a particular type of landscape, and how this is perceived by people. It reflects particular combinations of geology, landforms, soils, vegetation, land use and human settlement. It creates the particular sense of place experienced in different areas of the landscape. Landscape impact is determined by combining the sensitivity of the landscape resource with the magnitude of landscape change.

In terms of baseline conditions, the application site is located within the 'Berkshire and Marlborough Downs' National Landscape Character Area. In 1998 Kennet District Council published the Kennet Landscape Character Assessment (East Wiltshire Landscape Character Assessment (EWLCA)). The document's main objective was/is to increase understanding of the landscape resources of East Wiltshire, to assist with policy formulation and development management and to assist with the targeting of resources for enhancement and management of the landscape. The site falls within LCA9: 'Vale of Pewsey', specifically LCT: Open Arable or Mixed Farmland (also referred to as Open Chalk and Greensand Lowland). The EWLCA describes LCA9's character and sensitivities as follows:

*"The Vale of Pewsey forms a broad, low-lying landscape unit separating the two main chalk upland blocks of the Marlborough Downs and Salisbury Plain to the north and south. It is dominated by intensive agriculture and characterised by a mixed pattern of farmland, woodland and hedgerows. The Vale has for hundreds of years been the economic heart of the Kennet District [East Wiltshire] area, and encompasses the great majority of the settlements in the District. These have developed in the rich and sheltered agricultural land present.*

#### *Landscape and Visual Character:*

*The flanks of the Vale retain the wide open character found on many of the upland chalk areas, where intensive arable farming dominates. These create long views east and west along the Vale, while views north-south, except from more elevated positions, are interrupted by hedgerow trees and small blocks of woodland. The core areas of the Vale are generally better vegetated with more enclosed fields, although many areas remain with very large fields and a weak or declining hedgerow structure. Landscape quality is enhanced in a number of locations by attractive parkland and areas of estate farmland. Areas of pasture on the Vale floor, particularly those associated with the catchment of the Avon, are very attractive where they pass through enclosed farmland, but become less well defined within open arable areas. ....*

#### *Development Sensitivities:*

- *the whole area has an essentially rural, agricultural character within which only small-scale, sensitively-designed development, associated with existing built form, could be successfully accommodated without adverse impacts;*
- *remnant pastures and meadows along the vale floor represent a scarce landscape and ecological resource, making them particularly unsuitable for development;*
- *areas of enclosed farmland with an intact hedgerow structure are more visually contained. These areas are potentially more able to accommodate that essential development which must be located in the countryside, but only where it would not compromise their rural, unspoilt character;*
- *the open arable landscapes along the Vale fringes and which appear as higher ground or ridges within the Vale are particularly visually sensitive and built development would be highly prominent and exposed;*
- *areas of parkland or estate landscape have particularly distinctive and attractive qualities and are sensitive to development;*
- *the Greensand scarps, which are very visually prominent from the clay vale to the west, are also of high landscape quality and sensitive to development;*
- *mosaics of woodland and farmland are more visually contained. In landscape and visual terms they may be able to accommodate change which would not adversely affect their attractive, rural and unspoilt character.*

- *strong landscape 'edges' and structure need to be maintained or established around the fringes of the main settlements to enhance their settings, to minimise impacts on surrounding countryside and to prevent the coalescence of linear settlements, e.g. at the far western end of the Vale*". [emphasis added].

In 2005, the Kennet Landscape Conservation Strategy (KLCS) classified the area in which the site is located as being also within the 'Vale of Pewsey' Landscape Character Area. The KLCS's conclusions on the character and sensitivities of the landscape closely match those of the earlier EWLCA. Its specific objectives for the Vale of Pewsey LCA are as follows:

*The Vale of Pewsey has an essentially rural, agricultural character, and this character must be retained. Development possibilities are restricted, with sensitively designed residential development located within and bordering existing settlements. It is essential that, in particular, the spring-line villages do not coalesce and therefore strong landscape buffers, using indigenous woodland species in combination [with] open space and shrub and hedge planting, will be required where development on the periphery of a settlement is deemed acceptable. This will ensure that the integrity of the individual settlements is retained, at the same time as integrating new development into the landscape and softening the hard edges of the built environment. ....*

Using this baseline information the LVIA draws a number of conclusions on landscape effects, set out as follows:

*5.2.2 The site itself does not represent a specific feature or element defined as a key characteristic of the study area or the AONB, but it does form part of the broader key characteristics in respect of the typical compact nucleated villages which dominate the built form of the Vale of Pewsey. The nature of the development, being a residential development contained within the existing built form, means that the proposals will be in keeping with the development sensitivities of the Vale of Pewsey as described in the East Wiltshire Landscape Character Assessment LCA 9: Vale of Pewsey, which states: 'the whole area has an essentially rural, agricultural character within which only small-scale, sensitively-designed development, associated with existing built form, could be successfully accommodated without adverse impacts'.*

*5.2.3 The development proposed will have a high level of containment within the wider landscape. As opposed to the creating [of] an isolated feature within the landscape, it will be located within the established residential context of the village. Furthermore, while there will be an overall increase in built-form, the proposed development is sited in such a way that the residential edge of East Grafton as a whole does not become unduly prominent nor detract from the wider landscape. ...*

*5.2.6 The development proposals will not conflict with the relevant key issues, strategies, objectives and policies identified across the relevant Character Assessments. Additionally, the proposals are not considered inappropriate in respect of the key issues identified in the North Wessex Downs AONB Management Plan 2014–19. The site is somewhat exceptional within the AONB, but it is considered that in landscape and visual terms it passes the test under the section entitled 'Built environment and New Housing' and The North Wessex Downs AONB Housing Position Statement, which requires strict tests to minimise the impact on the landscape. It states that in principle small-scale housing in larger villages may be supported where landscape and other planning issues have been resolved. It is accepted that East Grafton is not, in planning terms, a larger village, however, the site has attributes which make this site particularly well-contained and suitable for the form and scale of the development proposed.*

5.2.7 *At a local and regional level, the Landscape Value of the study area as a whole is High, due to its location within the North Wessex Downs AONB but also taking into account the area's various natural environment and heritage assets and recreational value. The overall Susceptibility to Change is Medium as, while the proposed development will represent the loss of an area of agricultural land, the proposals will be in keeping with the village's established character and will be well contained within the landscape. As such, this study considers the Overall Landscape Sensitivity of the site within the surrounding landscape to be High - Medium.*

5.2.8 *In terms of the Overall Magnitude of Landscape Effect resulting from the proposals, any change has to be considered in terms of the key elements and features that will definitely be affected and those that will potentially be affected, as well as the importance of these elements and features as part of the wider landscape. While the proposals will result in a new area of development, they will not result in the loss or alteration of any key elements, features and characteristics of the baseline condition, furthermore development will not significantly change the pre-development condition of the landscape as a whole. As such, the Overall Magnitude of Landscape Effect is Slight. The development proposals have an Overall Significance of Landscape Effect of Moderate – Moderate/Minor, which is not significant when considered under the LVA methodology used in the appraisal.*

5.2.9 *The proposals will be in keeping with the prevailing character of the eastern part of East Grafton and will not affect important elements and features of the wider landscape of the study area, they will however result in an increase in built-form in the immediate area. As such, while the nature of effect from within the immediate vicinity is considered Adverse due to the loss of the paddock, the Overall Nature of Landscape Effect is Neutral”.*

These conclusions of the LVIA are not entirely accepted. Firstly, it is not agreed that the proposal is for “... a residential development contained within the existing built form ...”. The existing built form of East Grafton effectively ends at Granary Close to the east of the application site and Hungerford Road to the north. The application site, which is essentially a field outside of the built area of the village, is in open countryside.

Secondly, and leading on from the first point, it is not accepted that the proposal is “... in keeping with the development sensitivities of the Vale of Pewsey as described in the East Wiltshire Landscape Character Assessment LCA 9: Vale of Pewsey, which states: ‘the whole area has an essentially rural, agricultural character within which only small-scale, sensitively-designed development, associated with existing built form, could be successfully accommodated without adverse impacts’”. Rather, the proposal is for development of ‘major’-scale (not ‘small-scale’) which by reason of this would cause significant encroachment, so effecting the existing transition between the established village and the countryside; and causing a coalescence of the village with the isolated bungalows (New Farm Bungalows) located further to the east. Accordingly, the proposal actually fails the sensitivity ‘test’ set out in the EWLCA which states that only small-scale and sensitively-designed development associated with existing built form can be accommodated within this landscape character area without adverse effects being caused to its rural and agricultural character.

With particular regard to the ‘major development’ status of the proposal, there are considered to be no exceptional circumstances to override the paragraph 172 presumption against such development in the AONB. Specifically – and with due regard to the current county-wide 5 yr land supply position (as considered and concluded on by the ‘Purton Road’ appeal inspector) and as already discussed – the adequate supply of housing in the applicable housing market area demonstrates no need for the development; and should there be future need then this could be delivered elsewhere or in accordance with housing delivery policies which allow for more sensitively-scaled ‘infill’ development within the Small

Villages anyway. And, notwithstanding the conclusions of the LVIA, the effects of a major-scale development outside of this Small Village are 'adverse' in the context of the Landscape Character Assessments, undermining the essentially rural and agricultural character of the area. All in all, the unacceptability of the proposal in terms of national AONB policy compounds the local landscape impact objection.

#### 9.2.4 Visual Assessment –

The visual effects of proposed development are the changes that arise in the composition of available views as a result of changes to the landscape and the degree to which these changes affect the overall amenity and character of an area.

The LVIA assesses a number of views, and its initial conclusions on sensitivity are agreed. These are as follows:

*“5.3.4 The Overall Visual Sensitivity of the study area is considered High/Medium, taking account of the potential for residential views, as well as the well-used PRow network within a sensitive part of the AONB. However, the visual envelope of the site is comparatively limited when taking account of the potential for elevated views from the east and south, with existing dense vegetation being a key mitigating feature, often obscuring views. Additionally, the existing built form of East Grafton precludes any views from the west and north. Furthermore, the development, while visible as a new feature within the local village landscape, will predominantly be seen in the established existing residential context of the eastern part of East Grafton. There is potential for some notable, close distance views, however the effect of these will be extremely localised. As such the Overall Magnitude of Visual Effect, where the site may be visible is considered to be Moderate – Slight, resulting in the Overall Significance of Effect being considered Moderate, which is not significant when considered under the LVIA methodology used in the assessment.*

*5.3.5 The proposals will see a change to the make-up and balance of the view from several local viewpoints, with the development being noticeably prominent from views directly adjacent to the site and from the residential areas surrounding it. However, the overall visual character of the wider study area will remain unchanged due to the high level of containment of the site. As such, while there will be some local Adverse effects, the Overall Nature of Visual Effect on receptors across the study area is considered to be Neutral”.*

It is agreed that more distant views of the application site are screened, or broken-up, by established hedgerows/tree belts, landform or intervening development, including East Grafton village itself. Some views from the east have established development in East Grafton providing a 'built' back-drop.

In some very local views – notably, from the A338 – the impact is recorded as 'adverse'. Notwithstanding the LVIA's conclusion on the overall combined 'neutral' effect in all views, the local adverse impacts are of concern. They are compounded by the scale and form of the proposal, and the resulting limited opportunities (that is, c/o meaningful un-built space) to introduce beneficial mitigation to soften the visual effects of the development and so maintain and/or create an appropriate transition with the countryside, as effectively provided by the existing field. In a sensitive AONB, this is unacceptable, neither conserving, nor achieving enhancement of, the landscape.

Overall the proposal is, therefore, considered to conflict with Core Policies 51 and 57 (and the NPPF) in that it does not protect, conserve or enhance landscape character, and its negative impacts are not adequately mitigated through sensitive design.



### 9.2.5 Agricultural Land –

As set out above, paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by “.... recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land ....”.

In this case the application site supports Grade 1 agricultural land according to Agricultural Land Classification records. Grade 1 is excellent [the highest] quality agricultural land, on which a very wide range of agricultural and horticultural crops can be grown and where yields will be high.

In taking into account this classification of the land it is material that the site is relatively small – c. 0.9 ha – and that the land is not currently being used for the growing of crops (it is used at least in part for the open storage of farm machinery). For these reasons in this particular case the loss of the land from agriculture is not considered to be a sustainable reason for refusing planning permission.

### 9.3 Highway Safety

In view of the failure of the proposal to comply with the Settlement and Delivery Strategies of the Wiltshire Core Strategy and so comprise unsustainable development, the WC Highways Officer raises objection as a matter of principle. The concern relates to occupiers of the development being reliant on travel by motor-car, which is unsustainable.

In terms of the detailed layout, the WC Highways Officer is satisfied that the proposal is satisfactory in terms of the access, visibility, parking and turning arrangements. There is support for the proposal to provide pavement and crossing improvements and a bus stop lay-by.

### 9.4 Heritage

A small section of the application site on its west side lies within the East Grafton Conservation Area. Granary Close (to the west) also lies within the Conservation Area. Granary Close is relatively recent development, and it now largely screens the site from the historic core of the village / conservation area further to the west. That part of the conservation area comprising mainly open land to the south–west of the site is also largely screened by hedgerows and trees.

All in all, it is not considered that the conservation area would be affected by the proposals. In terms of the NPPF the impact on East Grafton Conservation Area would be no worse than neutral.

In terms of historic buildings, the core area of the East Grafton Conservation Area supports a cluster of listed buildings and other non-designated heritage assets. However, they are sufficiently separated from the site and/or contained within their own small-scale and domestic settings to ensure no adverse impacts. Again, in terms of the NPPF the impact on historic buildings would be neutral and/or no impact.

### 9.5 Ecology

The application is accompanied by an Extended Phase 1 Ecological Survey. Although dated March 2019, it is, under the circumstances of the site, considered to be sufficiently recent to be relevant. Its self-explanatory summary states the following:

*“The site does not lie within or adjacent to any protected sites and is close mown grassland that is used for agricultural storage.*

*The mature trees and hawthorn hedge along the southern boundary provide suitable habitat for nesting birds and any works to these should avoid the nesting season, which is between March and August (inclusive).*

*The grassland is kept mown, making it of limited suitability for common species of reptile and amphibians. This mowing regime should continue until works on site commence, to deter these species from moving in to the working area.*

*An eDNA survey of the only pond within 250m of the site which holds water was negative for great crested newts. This species is not considered to pose a constraint to the development of this site.*

*There are no further ecological constraints to the residential development of this site but recommendations for ecological enhancement are made”.*

#### 9.6 Residential amenity

Established residential development adjoins the site on its west and east sides. To the west side is Granary Close. The gap between the rear elevation and common boundary of the closest proposed units (nos. 3 and 4) with Granary Close is c. 15m, with an overall ‘back to back’ separation (with no. 3 Granary Close) of c. 30m. A buffer planting strip is proposed to be planted inside the rear boundary of the new units. These measures / separation are sufficient to ensure adequate privacy for the existing and proposed residents. Units 1 and 2 are proposed to be single storey in any event.

To the east are New Farm Bungalows. The gap between the rear elevation of the closest proposed units (no. 10 and 11) and the common rear boundary with New Farm Bungalows is c. 12.5m, with separation of, c. 22.5m (to corner of bungalow). This is an acceptable separation to achieve adequate privacy for the occupiers of New Barn Bungalows.

#### 9.7 Drainage

The site lies within an area classified as Flood Zone 1, the low fluvial flood risk area.

The WC Drainage Engineer has raised a holding objection to the initial submissions in view of insufficient supporting information. Specifically, the Drainage Engineer requires a detailed drainage scheme to be presented with the planning application.

As part of the earlier planning application additional data was provided by the applicant’s drainage consultant, this including infiltration testing to demonstrate that proposed soakaways have a clearance of at least 1m from the groundwater level, allowing for seasonal variations. The application agent also made the following further supporting statement –

*“In response to the Drainage Officer consultation .... , the FRA has been updated to include details of preliminary infiltration testing undertaken mid-February (groundwater peak), revised greenfield runoff rates which reflect [the] recommended 5l/s/ha and confirmation that Thames Water support the development in respect of foul water drainage.*

*The consultant has added information ..... relating to infiltration drainage following the receipt of infiltration test raw data from the applicant Mr Lemon. Whilst the tests were not*

*undertaken in strict accordance with the industry standard BRE Digest 365 methodology, these provide sufficient information for the consultant to derive an indicative infiltration coefficient and therefore provide preliminary infiltration storage estimated requirements. The tests indicate that the site is geologically conducive with infiltration drainage, however reservations in relation to the level of groundwater in years wetter than the one which we have just experienced are maintained. The consultant has advised that the detailed design, to be established and details to be submitted pursuant to a pre-commencement planning condition, should include BRE365 compliant infiltration testing and pay further regard to the probable groundwater conditions over the lifetime of the development.*

*The consultant has also reviewed the greenfield runoff rate estimates in respect of an attenuation lead drainage system and included a revised estimate for less permeable soils (FSR WRAP 4), in addition to that already discussed (FSR WRAP 1). The FRA also provides an additional attenuation storage estimate to reflect the revised limiting discharge rate (1.5l/s). .....*

*Lastly, in paragraph 8.5, the FRA has been updated to reference the Thames Water consultation response in which they accept that foul water may discharge to the public sewer network.*

In view of this the FRA was/is able to conclude that the likely means of surface water drainage would be open green SuDS such as ponds, basins and swales in the undeveloped areas of the site. The detailed design of this, and further infiltration testing to confirm the capacities, would now reasonably be a matter for conditions in the event of planning permission being given.

#### 9.8 Other infrastructure made necessary by the proposed development

Core Policy 3 of the Wiltshire Core Strategy requires all new development to provide for necessary on-site and, where appropriate, off-site infrastructure requirements arising from it. Where relevant this must be in accordance with other policies of the Strategy – CP43 & CP45 relating to affordable housing, CP62 relating to highways and transportation, CP52 and ‘saved’ HC34 relating to open space, and ‘Waste storage and collection: guidance for developers’ SPD. Saved policy HC37 relating to provision of education is not applicable because the proposed quantum of development is below the threshold.

On affordable housing, the application proposes 6 of the 15 dwellings to be affordable units; this amounts to c. 40%. As noted above, at Small Villages, Core Policy 44 (Rural Exceptions Policy) supports exceptionally a proactive approach to the provision of affordable housing, “solely for affordable housing”; the proposal is not solely for affordable housing, and the quantum / scale of development is too great in any event with environmental / landscape implications already referred to. Core Policy 44 states that the inclusion of open market housing within a rural exceptions proposal will not normally be supported except in exceptional circumstances, including when the majority of the development is for affordable housing and it has been demonstrated through financial appraisal that the scale of the market housing component is essential for the successful delivery of the development. These exceptional circumstances do not apply in this case.

On open space, the scale of the development does not readily lend itself to on-site provision of play space. An off-site contribution is, therefore, required towards an on-going project to improve existing play facilities at the Green. Using current calculators this is £21,440.41.

On refuse collection, the requirement is for a financial contribution towards to cost of refuse collection containers for each dwelling. The total cost is £1,365 (2015 calculator).

On highways, 'S278/38' agreements would be required to deliver the highway works – including pavements, crossing points and the bus lay-by.

Health facilities come under 'essential infrastructure' in Core Policy 3, and Chapter 9 of the Revised Planning Obligations SPD allows for the funding of health facilities through s106 where there is a direct link to development, although this would normally be applied to larger proposals generating a need for new infrastructure. For this reason, a health contribution is not considered reasonable under the CIL tests as the site is too small to require specific infrastructure to be required.

The applicant has agreed the infrastructure requirements. In the event of a resolution to grant planning permission, their delivery would require completion of a S106 agreement prior to the issuing of the permission.

#### 7. Conclusion – the planning balance

By reason of its location in 'countryside' and its scale, the proposal conflicts with the Settlement and Delivery Strategies of the Wiltshire Core Strategy as a matter of principle. Notwithstanding the local needs survey submitted with the application, the housing needs of the housing market area in which the application site is located are being adequately met, including c/o a Core Strategy Delivery Strategy which allows an appropriate spread of new housing across all settlements within the area anyway.

The recent change in the way in which housing delivery is measured (that is, now county-wide), and the acknowledgement c/o recent appeal decisions that the 5 yr land supply requirement is not being met, does not tilt the balance in favour of the proposal. This is confirmed in the appeal decisions wherein the inspectors, in confirming that there is a slight county-wide shortfall in housing delivery, and that the relevant policies in terms of the NPPF are out of date, still concluded that there remains substantial benefit in maintaining a planned system and that the overall strategy of the Wiltshire Core Strategy - to direct development to the most sustainable settlements - remains desirable and accords with the objectives of the National Planning Policy Framework. The shortfall in housing land remains modest, and accordingly there is no reason to conclude that the Core Strategy will not now continue to be effective, particularly in view of the recent adoption of the Housing Site Allocations DPD.

In addition, the scale of the proposed development – 15 dwellings – does not comply with the Delivery Strategy which limits development in East Grafton (a 'Small Village') to 'infill' only. A development of 15 dwellings outside of the village does not comprise infill. Indeed, it even exceeds the appropriate scale permitted by the Delivery Strategy in 'Large Villages'.

Proposals which do not comply with the Settlement and Delivery Strategies of the Wiltshire Core Strategy are unsustainable in the context of the Core Strategy.

In terms of landscape impact, the proposal comprises 'major' development in an Area of Outstanding Natural Beauty. There are no exceptional circumstances, such as need, which outweigh the presumption against major developments in the AONB set out in the NPPF. Notwithstanding the findings of the LVIA which accompanies the planning application, the proposal, by reason of its 'major-scale' (15 units / c. 0.9ha) *and* by reason of its detailed design which is not adequately associated with existing built form, would have a harmful impact on the landscape character area in which the site is situated, this having regard to the identified sensitivities of this LCA. In terms of visual effects, these are really limited to local views only, but would in any event be adverse, and so – again, by reason of the scale of the proposal and the resulting extent of 'encroachment' into open countryside *and* the coalescing effect with existing development *and* the lack of opportunity for meaningful

mitigation offered by the layout – cause harm to the landscape hereabouts, neither conserving nor enhancing its appearance.

The application site presently supports grade 1 agricultural land which would be lost if developed. However, its limited area and present non-productive use means that an objection based on the loss would be difficult to sustain.

Other material considerations – such as the delivery of infrastructure made necessary by the development together with the bus stop and pavement improvements, and other matters such as the economic benefits for local services and construction industry – do not ‘tip the balance’ in the proposal’s favour. These considerations are demonstrably outweighed by the policies of the development plan and NPPF which seek to protect the character and appearance of settlements and the countryside, and so uphold the principles of sustainability.

## **RECOMMENDATION**

### **To refuse planning permission for the following reasons –**

1. Core Policy 1 of the Wiltshire Core Strategy sets out the 'Settlement Strategy' for the County, and identifies five tiers of settlement - Principal Settlements, Market Towns, Local Service Centres, Large Villages and Small Villages. Within the Settlement Strategy East Grafton is identified as a Small Village. The Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined boundaries, or limits of development. Beyond the limits - and including the Small Villages - is countryside.

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. The policy states that within the limits of development of those settlements with defined limits there is a presumption in favour of sustainable development, and at Small Villages in the countryside development will be limited to 'infill' within the existing built area (defined as “the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling”); but outside these parameters, other in circumstances as permitted by other policies of the Plan, development will not be permitted, and that the limits of development may only be altered through identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans. The application site is not identified for development in a Development Plan Document or Neighbourhood Plan.

Core Policy 18 of the Wiltshire Core Strategy sets out the 'Spatial Strategy' for the Pewsey Community Area in which East Grafton lies. It confirms that over the plan period approximately 600 new homes will be provided in the Area consisting of a range of sites in accordance with Core Policies 1 and 2. The latest housing figures, published in the Wiltshire Housing Site Allocations Plan Topic Paper 3 Addendum (July 2018) confirms that the indicative requirement for the Wiltshire Core Strategy plan period (2006-2026) in the Pewsey Community Area has been met, i.e. the current residual requirement for the Pewsey Community Area is 0 dwellings due to completions and extant permissions. In identifying its supply of specific deliverable housing sites Wiltshire Council uses suitably defined sub-county areas as referred to in the Wiltshire Strategic Housing Market Assessment and the Wiltshire Core Strategy, titled 'Housing Market Areas'. The Pewsey Community Area lies within the East Wiltshire Housing Market Area. The Topic Paper also shows that there is at least an 8 year housing land supply in the East Wiltshire Housing Market Area at this time.

This said – and notwithstanding the above figures – in terms of paragraphs 11 and 12 of the National Planning Policy Framework, a recent appeal decision elsewhere in the wider

Wiltshire Council area has confirmed that there is, in fact, a housing shortfall, this in the context of supply being calculated county-wide now that the Wiltshire Core Strategy is more than 5 years old and in view of some sites not being deemed as imminently deliverable. The confirmed supply is in the range of 4.42 to 4.62 years. But, regardless of this – and as determined by the appeal inspector – there remains substantial benefit in maintaining a plan-led system, and accordingly the overall strategy of the Core Strategy to direct development to the most sustainable settlements remains both desirable and preferable in meeting the objectives of the Framework. The Inspector confirmed, *“Even at the lower end of the range ..... there is a relatively modest shortfall in housing land in the Wiltshire Council area. The local housing need derived from the standard method is very similar to the housing requirement contained in the CS for the relevant five-year period and so there is no reason to think that the strategy will not continue to be effective, particularly in light of recent progress in adopting the Housing Site Allocations Plan”*.

Accordingly, very significant weight is still given to the Wiltshire Core Strategy policies; in terms of paragraph 59, the Core Strategy is still “boosting significantly the supply of housing” in the Area in any event. It follows that further other, or ‘windfall’, sites, or sites delivered outside of any housing site allocations DPD or neighbourhood plan, continue to be not required at this time and will continue to be deemed unsustainable in the context of the Wiltshire Core Strategy.

This proposal itself is to erect 15 houses, etc. on land which is in the countryside and which does not comply with defined criteria for ‘infill’ development in Small Villages. Under Core Policies 1, 2 and 18, this does not accord with the Settlement and Delivery Strategies as a matter of principle. The Strategies are designed to ensure new development satisfies the fundamental principles of sustainability and so it follows that where a proposal such as this does not accord with them then it is unsustainable in this defining and overarching context. The site is not identified for development in a Site Allocations Development Plan Document, nor in a Neighbourhood Plan. Furthermore, there are no material considerations or exceptional circumstances, including set out in other policies of the Plan (including Core Policy 44), which override the core policy’s positions. The proposal is, therefore, contrary to Core Policies 1, 2 and 18 of the Wiltshire Core Strategy and paragraphs 10-12 of the National Planning Policy Framework.

2. The application site lies within the North Wessex Downs Area of Outstanding Natural Beauty. In the context of paragraph 172 of the National Planning Policy Framework the proposal – for 15 dwellings on a c.0.9 ha site – comprises ‘major’ development. As there are no exceptional circumstances, and as the development is not required in the public interest, the presumption that planning permission should be refused for major development, as set out in the NPPF, applies. For reasons set out in reason for refusal no. 1, there is no ‘need’ for the proposed development; there is scope for residential development to be provided outside the designated area or in some other way; and the proposal would, in any event, have a detrimental effect on the environment and landscape.

Regarding landscape impact, the proposal would be detrimental to the Landscape Character Area (LCA) in which it is located, and would have harmful visual effects, albeit at a local level. In terms of the LCA, it is identified as having an essentially rural, agricultural character within which “small-scale, sensitively-designed development, associated with built form, could be successfully accommodated without adverse impacts”. The proposal – being ‘major’-scale (in terms of size and quantum of development); *and* being not sensitively-designed (in terms of form / layout of buildings, and resulting limited opportunities for landscaping/mitigation); *and* being not associated

with existing built form (by encroaching on to open land and coalescing with other scattered development outside of the existing village) – would not be sympathetic to the specific LCA, and more generally would not protect, conserve or enhance the landscape character of the wider area. In terms of the visual effects, the local views towards the site are identified in isolation to be adverse. Again, by reason of the size/quantum of development and the insensitivities of the design (notably, with inadequate opportunities for meaningful mitigation), these impacts are considered to be unacceptable, the development failing to protect, conserve or enhance the visual amenities of the landscape hereabouts. This is contrary to Policies 51 and 57 of the Wiltshire Core Strategy and paragraphs 170 & 172 of the National Planning Policy Framework.

3. The application fails to provide any mechanism to ensure that the provision of essential infrastructure, services and amenities made necessary by the development can be delivered. The essential infrastructure, services and amenities include affordable housing, open space/recreation areas, highways infrastructure, and waste/refuse collection facilities (and/or contributions towards such infrastructure, services and amenities). This is contrary to Core Policy 3 ('Infrastructure requirements') and, more specifically, Core Policy 43 ('Providing affordable homes') and Core Policy 52 ('Green Infrastructure') of the Wiltshire Core Strategy and 'saved' Policies HC34 and HC37 of the Kennet Local Plan; and paragraphs 56-57 of the National Planning Policy Framework.
4. The proposed development, by reason of the number of market houses proposed and the size of the scheme, fundamentally undermines the Council's approach to rural exception sites set out in Core Policy 44, and if approved, would set an undesirable precedent that could hinder the delivery of such affordable housing across the county.
5. **INFORMATIVE TO APPLICANT:** Notwithstanding reasons for refusal 1, 2 and 4, reason for refusal no. 3 may be overcome in the event of the applicant completing an appropriate planning obligation. The reason for refusal is necessary in the event that there is an appeal and such an obligation is not completed or not satisfactorily completed.

This page is intentionally left blank





# The Planning Inspectorate

3/J Kite Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Direct Line: 0303 444 5384  
Customer Services:  
0303 444 5000

Email:  
ELIZABETH.HUMPHREY@planningi  
nspectorate.gov.uk

[www.gov.uk/planning-inspectorate](http://www.gov.uk/planning-inspectorate)

Wiltshire Council  
Planning Appeals  
Monkton Park Office  
Chippenham  
Wiltshire  
SN5 1ER

Your Ref:  
Our Ref: APP/Y3940/W/18/3202551

06 April 2020

Dear Sir/Madam,

Town and Country Planning Act 1990  
Appeal by Beechcroft Land Ltd, John Webb, Sally Ballard & Carole Ann Lindsey  
Site Address: Land at Purton Road, Swindon, Wiltshire, SN5 4FR

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

[https://www.surveymonkey.co.uk/r/Planning\\_inspectorate\\_customer\\_survey](https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey)

Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

***Elizabeth Humphrey***

Elizabeth Humphrey

*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>*



---

## Appeal Decision

Inquiry held on 29 January 2019, 4-7, 12-14 and 27-28 February 2020

Site visit made on 7 February 2020

**by Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 6 April 2020**

---

### **Appeal Ref: APP/Y3940/W/18/3202551 Land at Purton Road, Swindon, Wiltshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb against the decision of Wiltshire Council.
  - The application Ref 17/08188/OUT, dated 21 August 2017, was refused by notice dated 2 March 2018.
  - The development proposed is described as “up to 81 dwellings and associated infrastructure”.
- 

### **Decision**

1. The appeal is dismissed.

### **Application for costs**

2. At the Inquiry an application for costs was made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb against Wiltshire Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. The application is submitted in outline form with details of the proposed access for consideration. Matters of appearance, landscaping, layout and scale are reserved for subsequent consideration.
4. The Inquiry was originally opened by a different Inspector but adjourned before hearing evidence in light of new and unanticipated ecology issues being raised by the Council, resulting in the need for further survey works. The Inquiry resumed some months later after the survey works had been undertaken and all parties had been given the opportunity to consider the new evidence.
5. Discussion between the parties took place during the course of the appeal in an effort to reduce the areas in dispute. As a result, and subject to appropriate conditions and planning obligations, the Council chose not to defend reasons for refusal 2 (planning obligations), 4 (air quality), 5 (flood risk and drainage), 6 (archaeology), 7 (design) or 8 (neighbours living conditions). Reason 7 was not defended by the Council following agreement from the appellant that the development should be restricted to no more than 79 dwellings. As such, it was not necessary to hear detailed evidence on these topics.

6. In addition, it was confirmed that concerns raised in relation to the character and appearance of the area were confined to Old Purton Road, in the vicinity of the proposed site access as expressed in reason for refusal 9. No wider issue in relation to character and appearance was pursued, notwithstanding a further reference in refusal reason 1.
7. Before the Inquiry closed, the Council resolved to adopt the Wiltshire Housing Site Allocations Plan Submission Draft Plan (July 2018) as amended by the Main Modifications and some additional minor modifications. The plan was subsequently adopted and the parties were given the opportunity to make any observations arising.
8. Following a round table session dealing with housing land supply, the parties reached agreement that the Council cannot currently demonstrate a deliverable five-year housing land supply. The parties agree that somewhere within the range of 4.42-4.62 years supply can be demonstrated against Wiltshire's Local Housing Need figure. It was further agreed that the position within this range was immaterial for the purposes of this decision. I do not disagree and it is not necessary for me to determine a more accurate figure in this case.

### **Main Issues**

9. In light of the above, the main issues are whether the site is a suitable location for the development, having regard to the development plan; the effect on ecology; and the effect on local character and visual amenity, with particular regard to the vicinity of Old Purton Road.

### **Reasons**

#### *Location*

10. The site is located adjacent to relatively recent residential development west of Swindon but within the neighbourhood plan area covered by the Purton Neighbourhood Plan 2017-2026 (Made November 2018) (NP). It is close to the Swindon Borough Council local authority area but within the area covered by Wiltshire Council, where the Wiltshire Core Strategy (January 2015) (CS) applies.
11. Core Policy 1 (CP1) of the CS sets out the settlement strategy for the area, identifying a hierarchy of settlements to which development will be directed with the aim of achieving sustainable development. Purton is identified as a 'Large Village', defined as settlements with a limited range of employment, services and facilities and where development will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities. The proposal conflicts with this policy since the proposed housing would not meet the housing needs of Purton, or any other settlement contemplated by the CS. The appellant does not suggest otherwise, asserting that the housing would more likely serve Swindon.
12. Core Policy 2 (CP2) provides a more detailed delivery strategy, assigning a minimum housing requirement to respective housing market areas, along with an allowance at West of Swindon for 900 houses in recognition of planning permissions granted at Moredon Bridge and Ridgeway Farm, which have since been developed. Core Policy 19 (CP19) details the amount of development expected in each community area. The site falls within the Royal Wootton Bassett and Cricklade Community Area, within which around 385 houses are

- expected to be delivered outside of Royal Wootton Bassett Town. There is no dispute that this number have been delivered or that the appeal proposal conflicts with these policies.
13. Saved policy H4<sup>1</sup> of the North Wiltshire Local Plan 2011 (LP) restricts development in the countryside, other than in specified circumstances, none of which apply to the appeal proposal. The appeal site is some distance from the built-up area of Purton and there is no dispute that it is located in countryside, in conflict with this policy.
  14. The NP is recently made and provides positively for the delivery of housing in the NP area, despite the relevant CS requirements having been met. In anticipation of population growth in the village during the plan period, the NP allocates sites for a minimum of 94 additional dwellings. The allocations comprise six sites within the settlement boundary capable of accommodating around 75 dwellings and approximately a further 40 dwellings on a single site outside the settlement boundary. The supporting text makes clear that the allocations are made to accommodate necessary growth in line with local aspirations for the village and to support a plan-led approach to development in recognition of the significant development pressures in the area.
  15. The NP does not seek to control development outside of the allocations made by Purton Policy 13 or 14, nor does it need to. It is a plan to be read in conjunction with the remainder of the development plan and seeks merely to plan positively for development that is considered necessary and appropriate in the plan area. It does not identify how further housing applications are to be considered beyond the allocations, because none are supported. That does not displace the suitable exceptions identified elsewhere in the development plan<sup>2</sup>.
  16. There would be no utility or desirability in the plan replicating policy requirements of higher-level policy, such as the CS, which already provides for the strategic approach to housing delivery. The NP does not cut across CS policies, it works with them. The appeal proposal does not expressly conflict with the wording of Purton Policy 13 or 14 but it is clear, taking the policies together and having regard to the supporting text, that the appeal scheme is entirely at odds with the NP taken as a whole and manifestly incompatible with the strategy contained within it.
  17. I have had regard to the court judgements referenced by the appellant<sup>3</sup>, but since none of them involve the development plan in Wiltshire and particularly, the Purton NP, they do not alter my judgement on the facts of this case. The community has gone to significant effort to plan positively for its neighbourhood area. The proposed development would deliver housing that is clearly not anticipated or sought by the NP.
  18. Notwithstanding the importance of the above policies for determining the appeal, they must be considered out-of-date because the Council cannot currently demonstrate a deliverable five-year housing land supply. In addition, the CS is now more than five years old and its strategic policies have not been reviewed and found not to require updating. As such, the Council's local housing need figure, calculated using the standard method, is the relevant

---

<sup>1</sup> Which remains part of the development plan notwithstanding adoption of the Housing Site Allocations Plan

<sup>2</sup> See CS para. 4.25

<sup>3</sup> Including Chichester District Council v SSHCLG [2019] EWCA Civ 1640

- housing requirement for the area and attracts greater weight than the housing requirement contained in policy CP2.
19. In addition, saved policy H4 of the LP is no longer entirely consistent with the National Planning Policy Framework (the Framework) in that it is more restrictive on development in the countryside and was devised some time ago, in a different policy context and when the need for housing differed.
  20. Even having regard to the above, there remains substantial benefit in maintaining a plan-led system. The overall strategy of the CS to direct development to the most sustainable settlements remains desirable and accords with the objectives of the Framework.
  21. Even at the lower end of the range agreed between the parties, there is a relatively modest shortfall in housing land in the Wiltshire Council area. The local housing need derived from the standard method is very similar to the housing requirement contained in the CS for the relevant five-year period<sup>4</sup> and so there is no reason to think that the strategy will not continue to be effective, particularly in light of recent progress in adopting the Housing Site Allocations Plan<sup>5</sup>. Whilst weight to the conflict with LP policy H4 is diminished for the reasons I set out above, it continues to provide an important function in recognising the intrinsic character and beauty of the countryside in accordance with the Framework. For all of these reasons, and notwithstanding that the policies are out-of-date, I attach significant weight to the conflict with policies CP1, CP2 and CP19 of the CS, and moderate weight to the conflict with policy H4 of the LP in this case.
  22. The appellant pursues a range of alternative scenarios in respect of housing land supply and policy matters, but they do not alter the conclusions I have reached. There is no disagreement between the parties that the local housing need figure should be used as the housing requirement in this case, given the age of the CS. The Framework and Planning Practice Guidance (PPG) are absolutely clear how that figure is derived and that the requirement to demonstrate a deliverable five-year housing land supply is against that requirement for each local planning authority. There is no scope for applying the housing requirements in an adjoining authority.
  23. As set out, the CS provides for an allowance of 900 houses at West of Swindon in recognition of planning permissions already granted. The plan is abundantly clear that this should not be considered to represent a housing market area and do not contribute to the housing requirements in the Wiltshire Council area.
  24. It is agreed that, at the time the CS was examined, it was expected that most, if not all of the housing would meet the needs of Swindon, given the close relationship to it. However, it is also very clear that the Council, in partnership with Swindon Borough Council, considered the need for further development west of Swindon and found that there was none, and that development in this area did not represent the most sustainable option for future growth in Swindon.
  25. There is no evidence to suggest that this position has changed and ultimately, the CS did not direct any further development in this area. The open wording

---

<sup>4</sup> See Proof of Evidence of Chris Roe, Section 4.0

<sup>5</sup> Notwithstanding that Mr Totz did not expect sites to come forward quickly during xx

in the supporting text<sup>6</sup> contemplating the possibility of development beyond that already committed does not change the clear policy position. I do not accept that this should be interpreted as an invitation or expectation for further development west of Swindon of an undefined quantity and over an undefined spatial area. Supporting text could simply not have that effect, in clear conflict with the policy and strategy of the CS. There is no housing requirement defined for West of Swindon in the CS, because it is not intended that housing should be delivered there beyond the allowance identified.

26. Even if much of the proposed housing would ultimately serve the Swindon housing market, it is the Wiltshire Council local housing need that applies. The amount of housing supply in Swindon does not alter the local housing need in the Wiltshire Council area, and this is the clearly defined requirement applicable to the appeal scheme. Should it become necessary to allocate housing west of Swindon in the future, that is a matter for the plan making process<sup>7</sup>. Planning appeals are not the correct vehicle for assessing whether a local authority should accept development for the purposes of meeting a neighbour's housing needs and I simply do not have the appropriate up-to-date evidence before me to consider such matters.
27. It is regrettable that the Council has not produced a housing land supply position statement which uses the most recent base date, instead relying upon a statement published in August 2019, with a base date of 1 April 2018. I do not endorse the Council's extreme tardiness, given the requirement to identify and update annually a supply of specific deliverable sites to provide a minimum of five years housing land supply. Such delays result in the testing of an outdated housing land supply picture, which is not at all helpful in ensuring an appropriate and ongoing supply. However, it is the best evidence available in this case and is more useful than artificially adopting a position that no supply exists at all.
28. Based on the evidence that is available, I therefore conclude for the purposes of this appeal, that the Council can demonstrate a housing land supply in the range of 4.42-4.62 years. As this exceeds the requisite 3-year supply identified by paragraph 14 of the Framework and all other criteria are met, the adverse impact of allowing development in conflict with the NP weighs heavily against the development.
29. Overall, I conclude that the appeal site is not located in an area supported by the development plan. It would involve housing development in the countryside, remote from all settlements identified for development in the CS and not in accordance with any of the housing allocations made by the NP. There is a clear conflict with policies CP1, CP2 and CP19 of the CS; Policy H4 of the LP; and the NP, fairly read and taken as a whole.

### *Ecology*

30. The site is located within a County Wildlife Site (CWS), designated for its species-rich neutral grassland habitat (HG2.2), a lowland meadows priority habitat within the UK Biodiversity Action Plan. The appellant accepts that the designation exists and that it should be taken into account in determining the appeal. However, some time and effort was subsequently applied in seeking to

---

<sup>6</sup> CS Para.4.34

<sup>7</sup> Whether through a review of the CS or a new Local Plan

undermine the designation, along with the evidence base underpinning it. It is not the role of a planning appeal to determine whether a County Wildlife Site is properly designated and I have not sought to answer that question in reaching a decision. It is, however, appropriate to consider the ecological value of the site based on the evidence available.

31. The appeal is accompanied by a recent survey (2019 Ecology Surveys) of the appeal site and other adjacent fields within the CWS. So far as establishing the grassland species present is concerned, it is not disputed between the parties that a Farm Environment Plan (FEP) structured walk is the most objective and appropriate method.
32. The results of such a survey are included in the appellant's evidence and was the most recent structured walk evidence before the Inquiry. It concludes that none of the fields surveyed, including Field 1, within which the appeal site is located, currently meet the minimum criteria (particularly the number of appropriate species) to constitute HG2.2 priority habitat. Nor does the evidence support qualification as any other priority habitat outside the purpose of the original CWS designation. The Council's own earlier survey (Botanical Assessment, 2018, v2) identifies that those areas which, at the time of the survey met the criteria for HG2.2, fall outside of the appeal site and within the wider field. Indeed, only an area of 0.8ha within Field 1 was shown to qualify as priority habitat at that time.
33. The appeal site itself is shown to be one of the least ecologically valuable parts of the CWS and is in fact of relatively low quality, dominated by coarse grasses as opposed to more valuable species. That is not to say that it has no ecological value or that it might not be capable of supporting the species necessary to qualify as priority habitat in the future, but there is no evidence to suggest that it would at present. The land is not currently subject to any management regime aimed at supporting ecological interests. Instead, I heard that it is used for grazing animals periodically, that chemicals are applied to support such practices and that the current landowner has considered ploughing the fields. All of this is likely to compromise the ecological value of the land. The evidence available does not indicate improving or even maintained ecological value, quite the contrary given that the latest survey identified no priority habitat.
34. The appeal proposal would result in a significant proportion of the CWS being built upon, but a large area would remain and could be made the subject of a more appropriate management regime. Appropriate cutting, over-sowing areas with species rich meadow mixture and the encouragement of species that reduce the dominance of coarse grasses are part of a proposed package of measures in a draft Landscape and Ecological Management Plan (LEMP). Species rich grassland could also be incorporated in the appeal site itself, around the water attenuation areas.
35. The close proximity of housing to the remaining fields would likely result in pressure for recreation but open spaces would be incorporated into the development and a country park provides an attractive alternative close by. As such, the use of fencing, information boards and mown paths are all measures that could mitigate such pressures. It must also be noted that the fields are already being used by members of the public for walking, albeit informally.



36. Overall, I am satisfied that suitable mitigation and enhancement measures could be put in place to ensure that the quality of the remaining fields within the CWS would be improved, potentially returning them to priority habitat status. Such improvements are unlikely to be achieved by other means and would compensate sufficiently for the loss of the area where new homes would be built. Measures could be secured by condition through a requirement for a LEMP. Furthermore, as much of the CWS would be retained and enhanced connectivity with other wildlife and ecology resources would be maintained.
37. In addition to the above matters, there are a number of faunal species identified through survey work as being in the vicinity of the site, including protected species. A variety of bats are shown to be using the site boundaries for foraging, including Myotis species. Within this category are a variety of sub-species, including some that are relatively rare such as Bechstein's bat which tend to be light-shy and prefer darker foraging routes.
38. The site currently provides such routes, the boundary with Old Purton Road in particular. Old Purton Road is subject to traffic restrictions such that it is mainly used as a pedestrian route. It is largely unlit, albeit that light spill from the adjacent Purton Road (B5434) does occur in places. It is lined by trees and vegetation on both sides, punctuated in places by gaps. From the bat surveys undertaken it is clear that numerous bats are using this route and whilst it is not possible to be definitive about the exact sub-species in all cases, most bats are light shy, some more than others.
39. The proposed site access would be gained from the elevated level of Purton Road, passing across Old Purton Road as it descends into the site, flanked by landscaped banking. This would necessitate re-routing Old Purton Road and the subsequent need for bats to navigate a large engineered structure. Whilst I acknowledge that this is likely to disrupt existing bat activity, particularly during construction, I am not persuaded by the evidence that such a feature would necessarily have a long-term or insurmountable adverse impact.
40. It is clear that gaps in the vegetation already exist along Old Purton Road and some contain man-made features such as a railway bridge. The illumination surveys also demonstrate that parts of the route are well lit, including in the vicinity of the proposed vehicular access. The new development could be designed to reduce impacts on bats through the introduction of extensive planting along the route, by providing tree planting within the highway island so as to shorten the gap bats are required to cross and through sensitive lighting schemes in this part of the site, minimising illumination to tolerable levels. Further measures, such as formal bat crossing points, could also be secured by condition. There is no evidence before me, that bats could not adapt to the new layout or that the proposed development would lead to long-term adverse impacts on bat species.
41. The survey work also identifies the presence of water voles and otters in the nearby River Ray, though the latter have not been identified since 2017 when a single spraint was found. Increased habitation near to the river has the potential to introduce activity to the area, including recreational users of the riverside and predation/disturbance by pets<sup>8</sup>. However, there is no suggestion that these species are using the stretch of the river close to the site for anything other than foraging or commuting and there is no reason to believe

---

<sup>8</sup> Fiona Elphick referred to literature that indicated mammals might be disturbed by dogs

this transient use could not continue. The appeal site would be located over 50m from the river and the intervening space would comprise the remaining CWS grassland subject to the measures discussed above, designed to dissuade recreational use other than on defined routes. Subject to appropriate measures being secured by condition, I am satisfied that these species would not be harmed.

42. The appellant makes use of the DEFRA Biodiversity Metric<sup>9</sup> to demonstrate a biodiversity net gain in excess of 30%. This is said to be a worst-case scenario as the tool has under-rated the anticipated net gain in past scenarios. The Council criticised some of the inputs into the tool and questioned its reliability, but no detail was provided to demonstrate that a net gain would not be achievable, even if not on the scale suggested.
43. I have had regard to the output of the tool with caution given its 'Beta' status and the criticisms made of the tool which is still undergoing a process of refinement. However, the draft LEMP demonstrates a range of ideas for enhancing the CWS, extensive tree and hedgerow planting could be secured, including new planting along the route of the railway line and new habitats could be created around water attenuation features. It seems to me, that there would be an opportunity to achieve a significant net biodiversity gain.
44. Core Policy 50 (CP50) of the CS seeks to protect and enhance biodiversity. Features of nature conservation value should be retained, buffered and managed favourably. With reference to local sites, such as the CWS, development should avoid direct and indirect impacts through sensitive site location, layout and design. Damage and disturbance are generally unacceptable, other than in exceptional circumstances. Purton Policy 4 (PP4) of the NP seeks the retention and enhancement of local sites of ecological interest wherever possible and an overall net gain in biodiversity.
45. The appeal proposal would result in development on part of the CWS, which even if not currently in favourable condition, could be improved and might become of more value in the future. It cannot be said that the development could not be reasonably avoided given my conclusions above in relation to the first main issue and so there is a conflict with policies CP50 and PP4. However, the proposed site location within the CWS, the design, ecological enhancement and management measures proposed would reduce impacts as far as possible and appropriate compensation measures could be secured. The ecological benefits that would arise would also, in my view, outweigh the loss of part of the CWS to development. Having regard to all of these matters, the ecology benefits attract significant weight, sufficient to outweigh the limited conflict with policies CP50 and PP4 in this case.

#### *Character*

46. The dispute between the parties lies in whether the proposed site access would unacceptably harm the character of Old Purton Road and the amenity of its users. Old Purton Road is a narrow road used primarily by pedestrians and cyclists. It provides a pleasant route with trees and other vegetation either side and glimpsed views of the open fields possible in places. That said, it is a relatively short route between two distinctly suburban housing estates and

---

<sup>9</sup> DEFRA Biodiversity Metric 2.0 Calculation Tool Beta

- users are very aware of the busy elevated road running parallel, given the noise and movements of traffic close by. It is not a remote or tranquil route.
47. It is no doubt a more preferable route for pedestrians and cyclists to that of the footway alongside Purton Road (B4543) which is heavily used by vehicular traffic. The appellant's suggestion that the two routes are comparable is simply not credible. However, much of the route would remain unaltered by the development and the parties agree that the effects of the development would be extremely localised around the new site access.
  48. The introduction of an elevated access across the line of Old Purton Road would undoubtedly change the appearance of the route but it would not be dissimilar to the elevated B4543, nor would the landscaped banking required either side be out of place given that it is already a feature of Old Purton Road. Diversion of the route to cross the new access road would introduce a more urban character to this part of the route, but again users would already be well aware of the established urban fringe context.
  49. Landscape features would remain largely unaltered, except for the point at which the proposed access passed through the field boundary vegetation. Appropriate landscaping of the diverted route could be readily achieved by way of condition and further landscaping would be incorporated into the development. Users of the route would only really be aware of the new access once in proximity to it and would still have the opportunity to continue their onward journey beyond the new access. Much of the route would remain unaltered, with limited impact on visual amenity or enjoyment, including for recreational users.
  50. Further urbanisation of part of the route and the breaking through an existing field boundary would nonetheless be detrimental to users experience of it to some extent. In addition, the views of housing on currently open fields must be seen as harmful. I agree, however, that the effects would be very localised and the harm arising would be limited. Whilst the development could be delivered sensitively, seeking to mitigate impacts as far as possible through landscaping and design, there would be inevitable adverse impacts in terms of character. These would be in conflict with Core Policy 51 (CP51), which requires development to protect, conserve and where possible enhance landscape character. Although the resulting harm is limited, this is a matter that further weighs against the appeal proposal.

### **Other Matters**

51. The appellant identifies a range of benefits that would arise from the proposed development. These include the provision of both market and affordable housing. Given the lack of a deliverable five-year housing land supply (in both the Wiltshire and Swindon local authority areas) and the demonstrable need for affordable housing, this is a matter that attracts significant weight, notwithstanding my conclusions on the first main issue. In addition, there would be economic benefits arising, including from construction works, employment and local expenditure from new occupants. There would be a net gain in biodiversity and some benefit from improved drainage. The delivery of housing close to the large urban area of Swindon might also provide opportunities to reduce commuting distances if existing Wiltshire residents that commute to the town could move closer, an objective of the CS. These matters all weigh in favour of the proposal.

### **Planning Balance**

52. The appeal proposal conflicts with policies CP1, CP2 and CP19 of the CS, policy H4 of the LP, and the made Purton NP. These are fundamental policies of the development plan which provide for the spatial strategy and the distribution of development across the Wiltshire Council area. The proposal is clearly in conflict with the development plan taken as a whole and I attach the conflict significant weight despite the policies being out-of-date for the reasons I have set out above.
53. This development plan conflict, which includes a carefully considered and positively prepared neighbourhood plan, is sufficient in itself to significantly and demonstrably outweigh the benefits identified, when assessed against the policies of the Framework taken as a whole. However, I have found additional limited harm to the character of the area, resulting in a conflict with policy CP51 of the CS. This further weighs against the proposal.
54. In this case, there are no material considerations that indicate a decision other than in accordance with the development plan.

### **Conclusion**

55. In light of the above, the appeal is dismissed.

*Michael Boniface*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Felton, Counsel (day 1)  
Martin Carter, Counsel (days  
2-10)

He called:

Fiona Elphick MSc	Senior Ecology Officer
Chris Roe MSc MRTPI	Spatial Planning Manager
Henning Totz	Senior Planning Officer
Catherine Blow MSc	Senior Planning Officer

### FOR THE APPELLANT:

Killian Garvey, Counsel

He called:

Dominic Farmer BSc (Hons) MSc MCIEEM CEnv	Director, Ecology Solutions
Mark Hewett	Senior Partner, Intelligent Land
Andrew Cook BA (Hons) MLD CMLI MIEMA CENV	Director, Pegasus Group
Guy Wakefield BA (Hons) MRTPI	Partner, Ridge and Partners LLP

### INTERESTED PERSONS:

Jacqui Lay	Councillor
Richard Pagett	Local resident and member of NP Steering Group
Elizabeth Scotford	Local resident
Darren Smith	Local resident

## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- 1 Council's list of appearances
- 2 E-mails relating to use of Biodiversity Metric
- 3 Cabinet Agenda (4 February 20) and Draft Housing Site Allocation Plan and Examination Report
- 4 Appeal and costs decision (APP/G2815/W/19/3232099)
- 5 Appellant's opening submissions
- 6 Council's opening submissions
- 7 Copy of objection from Purton Parish Council
- 8 Copy of original statement by Cllr Lay and updated statement
- 9 Statement of objection from Richard Pagett
- 10 Access proposals drawing (2900.07) and accompanying e-mails
- 11 Housing Land Supply – Position Statement Addendum
- 12 Enlarged copy of Appendix 7 from the evidence of Catherine Blow
- 13 Final 5 year housing land supply statement of common ground
- 14 E-mail from Swindon Borough Council regards 5YHLS
- 15 Draft conditions agreed between the parties
- 16 Appellant's costs application
- 17 Extracts from Biodiversity net gain – Good practice principles and the Biodiversity Metric 2.0 User Guide
- 18 Neutral grassland indicators table
- 19 Appeal decisions APP/W2275/V/11/2158341, APP/K2610/W/17/3188235 and APP/N5090/W/16/3145010
- 20 Completed S106 agreement
- 21 Ecology note – size of county wildlife site post development
- 22 Amended costs application by the appellant
- 23 Council's position on 5YHLS following publication of the 2019 Housing Delivery Test results
- 24 Council's response to costs application
- 25 Wiltshire Council Highway Report
- 26 Summons to full council meeting discussing Housing Site Allocations Plan
- 27 Council's closing submissions
- 28 Appellant's closing submissions and associated legal judgements
- 29 E-mail from Mark Callaghan regarding site access and tracking diagram



---

## Costs Decision

Inquiry held on 29 January 2019, 4-7, 12-14 and 27-28 February 2020

Site visit made on 7 February 2020

**by Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

---

### **Costs application in relation to Appeal Ref: APP/Y3940/W/18/3202551 Land at Purton Road, Swindon, Wiltshire**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb for a partial award of costs against Wiltshire Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for “up to 81 dwellings and associated infrastructure”.
- 

### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

#### **The submissions for Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb**

2. The application for costs was made in writing. In summary, it is said that the Council introduced a new issue very shortly before the Inquiry opened, that being the adequacy of ecological survey work and reports. This necessitated additional seasonal survey work that could not be undertaken before the Inquiry opened or for some time afterwards. This prolonged the appeal proceedings and required significant additional work on behalf of the appellant. This included new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first day to the inquiry; the need for new housing land supply evidence given the intervening time; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts. The issues had not been raised in the Council’s decision or subsequent statements but should and could have been.

#### **The response by Wiltshire Council**

3. The Council’s response was made in writing. In summary, it is said that concerns were raised throughout the lengthy pre-application process, in responses from the Council’s Ecologist, in the Officer’s Report, in the appeal statement and in other correspondence. In this context, the Council’s concerns cannot have come as a surprise to the appellant, who should have had regard to all the information available and the discussions had with the Council leading up to its decision. These specifically raised a concern about the apparent undervaluing of the County Wildlife Site (CWS). It was not unreasonable to pursue such concerns, which had gone unanswered by the appellant. The Council was content to proceed with the Inquiry based on the information available. It was in fact the appellant that considered an adjournment was

necessary for it to produce additional evidence. This could have been provided long before.

### **Reasons**

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. There has been a great deal of discussion between the parties in this case, evidenced in the e-mail trails and extracts provided to me. It is also very clear that these discussions have not always been in a positive spirit with the aim of narrowing or resolving issues. This is unfortunate as it might have allowed the appeal to be resolved more quickly.
6. I have had regard to the various documents provided by the Council, which do indeed identify ecology concerns raised over a long period of time leading up to the Council's refusal of planning permission, which included ecology concerns within reason for refusal 3. The fact that concerns existed must have been entirely clear to the appellant, but it is the scope of those concerns and the suggested inadequacy of the information that was not clear, and which led to the need for an adjournment.
7. References to undervaluing the CWS are numerous but little information was available to explain why the Council thought this was so or what evidence could be provided to justify the appellant's position. It was not until the exchange of proofs, very close to the Inquiry opening, that the numerous and detailed concerns were eventually clarified. At this point, there was no time (given the seasonal nature of the surveys involved) to undertake the necessary survey works in advance of the Inquiry.
8. There is a requirement for the Council to set out its reasons for refusal clearly and fully. I accept that the officer's report on the application and preceding discussions are also informative and should be taken into account. However, the Council's concerns were expressed vaguely throughout, with little opportunity for the appellant to establish exactly what was needed to overcome its concerns.
9. The appellant could not have anticipated the need for further extensive survey works until it was too late. This necessitated an adjournment and the production of evidence to meet the newly defined concerns of the Council.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 3 January 2019 in preparing new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first



day to the inquiry; new housing land supply evidence; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Michael Boniface*

INSPECTOR

This page is intentionally left blank



# The Planning Inspectorate

3D Eagle Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Direct Line: 0303 44 45931  
Customer Services:  
0303 444 5000

Email:  
West1@planninginspectorate.gov.  
uk

[www.gov.uk/planning-inspectorate](http://www.gov.uk/planning-inspectorate)

Wiltshire Council  
Planning Appeals  
Monkton Park Office  
Chippenham  
Wiltshire  
SN5 1ER

Your Ref:  
Our Ref: APP/Y3940/W/20/3245400

16 June 2020

Dear Sir/Madam,

Town and Country Planning Act 1990  
Appeal by Mr A Robinson  
Site Address: Paddock Wood Bradley Road, WARMINSTER, BA12 7JY

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access please write to the Customer Quality Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

[https://www.surveymonkey.co.uk/r/Planning\\_inspectorate\\_customer\\_survey](https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey)

Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

*Jasmine Rogers*

Jasmine Rogers

*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>*



---

## Appeal Decision

Site visit made on 3 June 2020

by **David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

---

**Appeal Ref: APP/Y3940/W/20/3245400**

**Paddock Wood, Bradley Road, Warminster, Wiltshire, BA12 7JY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Robinson against the decision of Wiltshire Council.
  - The application Ref 19/06023/OUT, dated 19 June 2019, was refused by notice dated 26 July 2019.
  - The development proposed is demolition of commercial buildings and erection of 8 no. dwellings (outline).
- 

### Decision'

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline, with all matters reserved for later consideration.
3. Although all submitted plans are stamped as 'preliminary', including the location plan, the appellant has confirmed that the stamp on this location plan should have been removed at validation stage, but unfortunately was not. The Council validated the plans as submitted, and both main parties appear to be content that the submitted location plan accurately shows the location and extent of the site in question. I have therefore determined the appeal on this basis.

### Main issue

4. The main issue is whether the appeal site represents an acceptable and sustainable location for new housing development.

### Reasons

5. The appeal site comprises some 0.24 hectares (ha) of land located on the south-eastern side of Bradley Road, about 150 metres (m) outside the settlement boundary of Warminster. It houses the headquarters of A & G Minibuses and contains a number of commercial buildings and structures, along with areas of hard-standing for vehicles. The site has a single access at its northern corner, where Bradley Road is about 5.5m wide with a surfaced footway on its eastern side. To the south-west of the access Bradley Road narrows to about 3.0-3.5m wide, with no footways, but with grassed verges either side and with the appeal site having a relatively dense roadside boundary of trees and hedging. There is a residential property on the north-western side of Bradley Road, opposite the appeal site and a small number of other residential properties further to the south-west.

6. Under the appeal proposal the existing buildings on the site would be removed, and replaced with 8 dwellings. The submitted plans indicate one way in which the appellant considers the site could accommodate this quantum of housing, but as all matters of detail are reserved for later determination, it is only necessary to consider the principle of the proposed development through this appeal.
7. In this regard, the Council's development strategy is set out in the Wiltshire Core Strategy (WCS), which was adopted in January 2015. Core Policy 1 sets out the Settlement Strategy, with Warminster defined as a Market Town – a settlement that has the ability to support sustainable patterns of living, through its current levels of facilities, services and employment opportunities. The policy's supporting text explains that settlement boundaries for Market Towns will be reviewed as part of the Wiltshire Housing Site Allocations and Chippenham Site Allocations Development Plan Documents (DPDs), in order to ensure that they are up to date. Local communities also have the opportunity to review settlement boundaries through the development of neighbourhood plans.
8. Core Policy 2 sets out the Delivery Strategy for Wiltshire for the period 2006 to 2026, aiming to deliver development in the most sustainable manner. Within the defined limits of development for settlements, including Market Towns, there is a presumption in favour of sustainable development, with development not permitted outside these defined limits except in certain specified circumstances, none of which apply in this case. The policy reinforces the point that these limits of development may only be altered through the identification of sites for development through subsequent Site Allocations DPDs and neighbourhood plans.
9. Also of relevance is Core Policy 31, which deals specifically with the Warminster Community Area, and which states that development within this area should be in accordance with the Settlement Strategy set out in Core Policy 1. It also makes it plain that land to the west of Warminster has been identified for strategic growth over the 2006-2026 period, with an extension to the built form proposed which would provide 6ha of employment land and some 900 new dwellings.
10. Having regard to the above policies, I see no reason to dispute the Council's view that the WCS as a whole, and Core Policies CP1 and CP2 in particular, constitute its definition of sustainable development, and that this has been found to be fully compliant with the National Planning Policy Framework ('the Framework'). As such, I also see no reason to dispute the fact that development that does not comply with Core Policies CP1 and CP2 should be considered unsustainable, and in conflict with the principal aims of the Framework.
11. At the time the Council refused planning permission for this proposal it could demonstrate a 5-year supply of deliverable housing sites, in accordance with the Framework, and the development plan policies therefore had full weight. However, shortly after determining this planning application the Council published an updated Housing Land Supply (HLS) Statement, which reduced its HLS assessment for the North and West Wiltshire Housing Market Area, within which the appeal site lies, to 5.07 years from the previous figure of 6.25 years.
12. Circumstances then changed again in February 2020 when, at an appeal elsewhere in Wiltshire<sup>1</sup>, the Council confirmed that it was unable to demonstrate a 5-year HLS when assessed against the Local Housing Need (LHN) for Wiltshire, which became a requirement after 20 January 2020, when the adopted WCS became 5 years old,

---

<sup>1</sup> Appeal Ref APP/Y3940/W/18/3202551 - Land at Purton Road, Swindon, Wiltshire

and when paragraph 73 of the Framework came into effect. When tested against the LHN the Council accepted that it could only demonstrate a HLS somewhere between 4.42 and 4.62 years.

13. The Framework explains, in paragraph 11(d)(ii) that where the policies which are most important for determining an application are out-of-date (which includes where a Council's HLS does not accord with the Housing Delivery Test – as here), then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
14. With these points in mind it is not possible to give full weight to the aforementioned Core Policies. But as very little additional information on the current HLS situation has been supplied by either party, it is difficult to assess the implications of the existing shortfall with any certainty. The Council has, however, drawn my attention to comments made by the Inspector in the aforementioned Purton Road appeal, namely that even at the lower end of the agreed HLS range there is a relatively modest shortfall in housing land in the Council's area; that there is no reason to think that the WCS will not continue to be effective, particularly in light of recent progress in adopting the Wiltshire Housing Site Allocations Plan; and that there remains substantial benefit in maintaining a plan-led system.
15. No firm evidence has been submitted to cause me to reach a different view to my colleague Inspector on these matters, and I therefore consider it appropriate to still give significant weight to Core Policies 1, 2 and 31. Against this policy Framework it is clear that as the appeal site lies outside the defined settlement boundary for Warminster, the proposal would not represent sustainable development. The site was not considered as part of the Council's Strategic Housing Land Availability Assessment, nor was it brought forward as a possible housing site as part of the recently completed Wiltshire Housing Site Allocations DPD. The submitted evidence also makes it plain that this site was not considered for housing development as part of the process to make the Warminster Neighbourhood Plan 2015-2026.
16. With these points in mind, and notwithstanding the appellant's views regarding the appeal site's accessibility, I consider that any new housing development on the site would be rather isolated from the settlement of Warminster and the services and facilities within it. Furthermore, although a footway extends from the site towards the town it is not continuous, but ends at the northern side of the A36 overbridge with a gap of close to 50m where only a relatively narrow grass verge exists before the footway resumes. Whilst in some respects this may not be seen as an excessive gap, it could clearly present an obstacle to anyone wishing to walk into Warminster, especially for those with children or pushchairs, or with mobility difficulties.
17. The verge could become muddy in inclement weather conditions, and there would be potential dangers for anyone choosing to walk in the carriageway to avoid this length of verge as there is no street-lighting over this section, with the road being subject to the national speed limit of 60mph. These points all lead me to the view that the proposed development could not be safely accessed by pedestrians and that it would therefore encourage use of the private car, even for relatively short journeys. As such, the proposed development would run counter to guidance in paragraph 117 of the Framework, which states, amongst other matters, that planning decisions should ensure safe and healthy living conditions. Accordingly, I do not accept the appellant's assertion that the appeal site represents a highly sustainable and accessible location.

18. I do acknowledge, of course, that the site is currently developed and in use, but no firm evidence has been submitted to support the appellant's assertion that this current use gives rise to extensive traffic movements entering and leaving the site. It is therefore difficult to assess what sort of change to vehicle movements there would be if the appeal proposal was approved, and consequently difficult to reach a view on whether there would be any meaningful benefits in this regard.
19. The appeal proposal would give rise to some economic benefits, both during the construction phase and then as a result of the additional spending power of future occupants, but in the context of just 8 dwellings these benefits would be relatively modest. Moreover, in light of the access difficulties just described I do not consider that any material social benefits would arise from this development.
20. With a fully outline proposal such as this it is difficult to say whether or not the development would provide any environmental benefits. But unless the existing access were to be used, there is the clear potential for the development to require some significant removal of the existing roadside vegetation, in order to provide adequate visibility at any new access point or points. This is likely to have an adverse impact in environmental terms. In light of these points it seems to me that in the absence of any further details, the best that could be said is that the proposed development would have a neutral environmental impact.
21. Overall, having regard to all the above points, it is my assessment that the adverse impacts of allowing this proposal would significantly and demonstrably outweigh what I consider to be limited benefits. Accordingly, I conclude that the appeal site does not represent an acceptable and sustainable location for new housing development, and that the proposed development would therefore be at odds with WCS Core Policies 1, 2 and 31.
22. On other matters raised, I note that Natural England has placed a block on any new development that would have a connection to a sewage treatment works which has a discharge into the River Avon (and River Test), as would be the case here. As a result, any new development in such areas is required to be nitrogen neutral as a precautionary measure. However, the appellant has highlighted the fact that similar applications affecting run-off into the Solent have been satisfactorily dealt with by means of an appropriate Grampian condition. Had other matters been in favour of this proposal, the appeal would therefore not have failed for this reason alone.
23. Moreover, had all other matters been favourable, the concerns expressed by the Salisbury and Wilton Swift Group, relating to the installation of integral swift bricks, could have been satisfactorily addressed by means of an appropriate condition.

## **Conclusion**

24. Notwithstanding my favourable findings on these latter points, and having had regard to all other matters raised, my overall conclusion is that this appeal should be dismissed, for the reasons set out above.

*David Wildsmith*

INSPECTOR





This page is intentionally left blank

## REPORT FOR EASTERN AREA PLANNING COMMITTEE

Report No. 2

<b>Date of Meeting</b>	9 July 2020
<b>Application Number</b>	20/01631/FUL
<b>Site Address</b>	Honey Street Mill, 2 A Honeystreet, Pewsey, Wiltshire, SN9 5PS
<b>Proposal</b>	Change of use of former factory building to D1 exhibition hall (for Crop Circle Exhibition) - Resubmission of 19/10296/FUL
<b>Applicant</b>	John and Anne Wyles
<b>Town/Parish Council</b>	ALTON
<b>Electoral Division</b>	Cllr Paul Oatway
<b>Grid Ref</b>	410384 161636
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Jonathan James

### Reason for the application being considered by Committee

The application has been called-in by Cllr Paul Oatway due to concerns regarding parking and highway safety.

#### 1. Purpose of Report

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

#### 2. Report Summary

Concerns have been raised regarding the potential impact on highway safety as a result of inadequate parking facilities on site and the likely overspill of parking onto the surrounding highway network. These issues will be addressed in the report.

#### 3. Site Description

The site is located at Honeystreet within the built form of the hamlet. The whole of the area is contained within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). Access into the site exists at present, off the adjoining highway through Honeystreet from the east and which forms part of the White Horse Trail. There is an existing car park associated with the business activities at this site contained by the existing industrial style buildings. Within the site are a number of large commercial structures associated with the former mill

site. Bounding the sites southern boundary is the Kennet and Avon canal. There is a Grade II Listed building (The Mill House) to the north-east of the site.



LOCATION PLAN

SCALE 1:1250

#### 4. Planning History

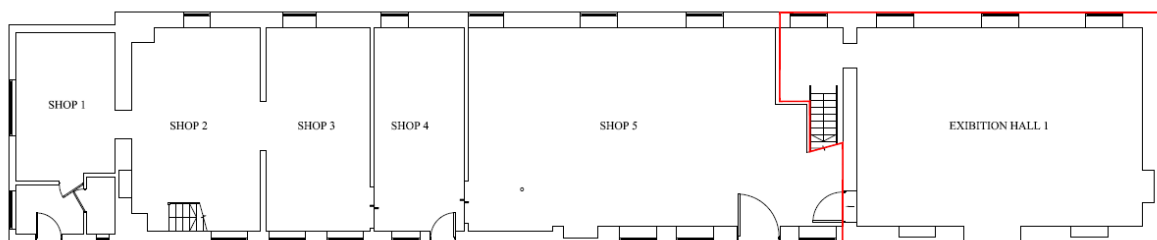
- |              |   |
|--------------|---|
| K/44749      | Change of use of each of the existing buildings (except the 2 dwellings) to use for B1 purposes or B8 purposes in any combination – Approved conditionally  |
| K/55924/F    | Demolition of existing industrial buildings and two dwelling houses. Construction of 6 market houses, 3 affordable houses with associated garages & parking. Formation of improved access road, retention of existing barn for employment uses and construction of all necessary infrastructure and landscaping - Withdrawn |
| 17/11688/FUL | Change of use from warehouse to tea room – Approved conditionally   |
| 19/10355/CLE | Certificate of lawfulness for building 2 which has been used continuously as a retail outlet, displaying goods for purchase at the site – Withdrawn   |
| 19/10296/FUL | Change of use of old mill building to D1 (Crop Circle Exhibition) - Withdrawn   |
| 20/01633/FUL | Change of ground floor use of Building 2 to retail (A1) – Approved conditionally  |

20/01634/FUL Change use of part of an existing agricultural field to provide a village parking area for 20 cars with associated works and landscaping - Refused

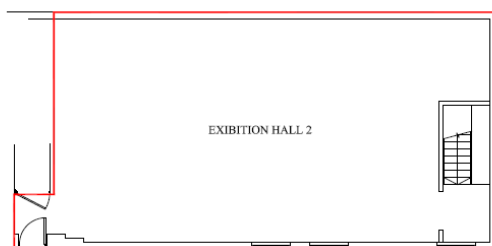
Planning consent was granted on the 12<sup>th</sup> February 2003 (application K/44749) for the change of use of the existing buildings to a B1 or B8 use or any combination. The buildings have clearly been used for some form of commercial business historically and certainly since the approval of application K/44749 there is no doubt that the premises have been used for, at the very least, a B8 storage use with associated wholesale. The consent granted under application K/44749 therefore remains extant and the buildings the subject of this application have an unquestionable and established B8 / B1 / or combination of these uses. In addition, planning consent was granted on the 1<sup>st</sup> February 2018 (application 17/11688/FUL) for the use of part of the buildings as a café/tea room. Planning consent has also now been granted for the retrospective change of use of part of the building as a retail unit (reference application 20/01633/FUL). These consents are material planning considerations for the further deliberation of the current applications and are the starting point for this assessment.

## 5. The Proposal

The application is for the change of use of the existing building (ref. floor plans below outlined in red) to a D1 Crop Circle Exhibition. The change of use is purported to have already taken place and has been operating as an exhibition hall since June 2019. Following the case officers site visits, it is acknowledged that those elements of the building for which this application is seeking the change of use to retail has already occurred and that this application is retrospective for the retention of the change of use of the building (as shown in the plans) to a D1 Crop Circle Exhibition.



GROUND FLOOR PLAN  
SCALE 1:50



FIRST FLOOR PLAN  
SCALE 1:50

*Plans show end building as ground floor part of exhibition hall and first floor plan of exhibition hall*

## 6. Local Planning Policy

### Wiltshire Core Strategy 2015 (WCS):

- Core Policy 1 – Settlement Strategy. This identifies settlements where sustainable development will take place, with a settlement hierarchy running from Principal Settlements through market towns and local service centres to large and small villages. Honeystreet would be considered a small village or hamlet
- Core Policy 2 – Delivery Strategy – in order to deliver the sustainable development envisaged in CP1, CP2 sets out the delivery strategy.
- Core Policy 18 – Spatial Strategy: Pewsey Community Area – clarifies that development in the Pewsey Community Area should be in accordance with the Settlement Strategy as set out in Core Policy 1.
- Core Policy 38 – Retail and Leisure
- Core Policy 39 – Tourist Development
- Core Policy 51 – Landscape – seeks to protect, conserve and where possible enhance landscape character.
- Core Policy 57 – requires high quality design and place shaping
- Core Policy 58 – Ensuring the conservation of the historic environment.
- Core Policy 60 – Sustainable transport
- Core Policy 61 – Transport and new development
- Core Policy 64 – Demand management – private non-residential parking standards.

National Planning Policy Framework (2019)

Wiltshire Local Transport Plan 2011 – 2026: Car Parking Strategy (2015) (draft)

Honeystreet Village Design Statement (Mar 2006)

## 7. Summary of consultation responses

Alton Parish Council – Objects; serious concerns relating to parking and over development of the site in a sensitive area. On its own it fails to meet vehicle parking requirements for an exhibition hall but the proposal must be considered in conjunction with the retail unit, cafe and new six dwellings. The proposed schemes are overwhelming and unacceptable for a small rural hamlet with no public facilities.

WC Conservation Officer – No objections

WC Highways - No objection; following the submission of further details relating to visitor numbers, satisfied that there would not be a detrimental impact on the surrounding highway network. The parking shall be conditioned as per the submitted plan and conditioned only for the use of parking in perpetuity.

## 8. Publicity

The site has been advertised by letter to local residents and by site notice; representations have been received from 27 number of third parties (including in some cases multiple

representations). 14 number of parties raised objections and 13 number of parties gave support. These are summarised as follows:

Third party comments:

Visit Wiltshire – Supports; *The need for additional low impact sympathetic visitor attractions and services in Wiltshire is supported by the Wiltshire Destination Management & Development Plan 2015 produced by Blue Sail Consulting. The change of use proposed with low impact services is in keeping with the rural setting and will generate additional visitor spend and support local jobs in the area.*

Pewsey Vale Tourism Partnership – Supports; *The Pewsey Vale Tourism Partnership fully supports the application to change the use of an old mill building to D1 use, to house the Crop Circle Exhibition. The centre is an important visitor attraction as well as being popular with local people. This area is well known for the crop circle phenomena and this acts as a fitting location for visitors. For the tourism industry to thrive in this area opportunities to host attractions must be grasped. The centre is high quality and has been operating since June 2019, it also houses a visitor centre that provides leaflets to other local attractions and walking leaflets for the area. It provides the perfect opportunity to encourage visitors to other parts of the area as well. There is no impact on the setting.*

*We would also refer to the Visit Wiltshire Destination Management & Development Plan which specifically states:*

- *Wiltshire needs to attract more visitors, especially high spending short-break visitors. To achieve that Wiltshire needs:*
  - *More to see and do - to encourage visitors to stay longer and visit more frequently, Wiltshire & Swindon needs to develop additional visitor attractions that create more choice and make more of the area's significant heritage and natural assets.*

*The Pewsey Vale Tourism Partnership therefore supports the application for change of use.*

Neighbour comments, 14 number parties raised objections and 13 number parties gave support:

Objections:

- Over development of the site
- Intensification of visitors to the site
- Exhibition is in wrong place, will attract massive clientele to rural area
- The site will become a mixed use of shopping and entertainment
- Not adequate or safe parking for visitors and staff
- Not adequate access for emergency vehicles and refuse
- Issues with displaced parking onto surrounding highways
- Insufficient parking attributed to proposed use
- Huge problem with lack of parking facilities, these issues have only happened since the development of the exhibition centre
- Increase in traffic including coaches

- Unauthorised engineering operations to create additional parking bays
- Conflict between existing residents and visitors parking along highway
- Conflict between pedestrian users and increase in traffic and parking
- Intensification of vehicular movements/increase in traffic
- Inadequate visibility at junction of Chimney lane and adjoining main road
- Health and safety issues
- No footway's, pavements along either Chimney Lane or surrounding highways
- Parking spaces block fire exits, parking scheme prevents buildings from meeting building regulation and fire regulation requirements for escape and access
- Parking spaces do not meet the necessary standards
- Cumulative impact from existing and proposed uses and adjoining uses
- Conflict with café use
- Unauthorised soap making business and canal boat business not accounted for
- Impact on AONB
- Character of village will be spoilt
- Incorrect and misleading statements made to support application
- Plans incorrect/inaccurate
- Description of development does not state the existing use
- Insufficient information, e.g. lack of scaled site plan; to reach a reasoned conclusion
- Criticism at highway officer reports and assessment of the scheme
- Use of low parking standards
- Site has been developed without the correct procedure

Support:

- Valuable asset for the community
- Great deal of time and research gone into exhibition
- Increases employment
- Ensure continued use for old buildings
- Supported by majority of local inhabitants
- Complimentary use with the café
- During crop circle season the centre delivers vital service to local farming community and tourists
- Consents granted for more modern or alternative change of uses in line with national policy
- Supports tourism to the area
- Support local businesses and employment opportunities for rural areas
- No noise disruption
- No inconvenience from traffic
- Soap manufacturing does not take place at Honey Street Mill site
- Misleading comments/information objecting to application

A number of comments have been made which appear to be personalised towards individuals; these are not material planning considerations and are not repeated here.



## **9. Planning Considerations**

### 9.1 Principle of Development

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the Kennet Local Plan that continue to be saved, forms the relevant development plan for the area.

The application is for the change of use of part of an existing building to an Exhibition Hall (Class D1 use). The site has been used for many years as a storage unit for the applicant's furniture import and sales business; it is understood and acknowledged that, at the very least, wholesale has taken place from the site, which is acceptable under the B8 use. It is also acknowledged that furniture may have been sold to the wider public during stock clearance sales in an ad hoc manner, and in more recent times the opening of the retail unit adjacent to this site (within the same building) on a more permanent basis. The Exhibition Hall use has been implemented already, commencing in June 2019.

The site is located in the Hamlet of Honeystreet which does not fall within any of the settlement definitions as identified by the Wiltshire Core Strategy (WCS) (2015); accordingly, and in terms of planning policy, the site is taken to be in countryside.

Core Policy 48 explains the approach that will be taken to support rural communities, outside the limits of development of Principal Settlements, Market Towns, Local Service Centres and Large Villages and outside the existing built areas of Small Villages, i.e. countryside. The policy is based on the following key objectives:

- Protecting the countryside and maintaining its local distinctiveness.
- Supporting the sensitive reuse of built assets to help meet local needs.
- Supporting improved access between places and to services; and
- Supporting the community in taking ownership of local services.

Core Policy 39 supports tourist development within Wiltshire. CP39 states that outside of Principal Settlements and Market Towns tourist and visitor facilities should be located in or close to Local Service Centres or Large and Small Villages, and, where practicable, be located in existing or replacement buildings. Any proposals need to protect landscapes and environmentally sensitive sites with the objective of providing adequate facilities, enhancing enjoyment and improving financial viability of the attraction. In exceptional cases development may be supported away from the Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages where it can be demonstrated that all of the following criteria are met:

- i. There is evidence that the facilities are in conjunction with a particular countryside attraction.
- ii. No suitable alternative existing buildings or sites exist which are available for reuse.

- iii. The scale, design and use of the proposal is compatible with its wider landscape setting and would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas.
- iv. The building is served by adequate access and infrastructure.
- v. The site has reasonable access to local services and a local employment base.

The proposed exhibition hall functions in conjunction with the crop circle phenomenon that takes place within the agricultural fields in this area. The exhibition hall would act as a focal point for visitors who expressly visit the area to view these features. The exhibition used to be held within the Barge Inn at Honeystreet until it closed; as such the application building, which exists already for a commercial purpose within the built form of Honeystreet, was identified as a suitable alternative.

The building exists as described above, and the physical alterations carried out to it have been minimal. The scheme has no impact on the wider landscape setting or on the character and appearance of the settlement, and would not be detrimental to the general amenities of the local area. The building is served by adequate infrastructure. Access is discussed in greater detail later in the report. However, the highways officer is satisfied that the site is served by an adequate access and that there would not be an adverse impact on highway safety. The site is located at Honeystreet, which is a hamlet and not a settlement with a designation within the development plan. However, the site provides for the community - through its mixed uses - access to services and is an employment base.

The buildings were granted consent to be used for a mixed B1/B8 use (or combination thereof) under planning consent K/44749 and the buildings have been employed for commercial purposes historically. Planning consent was also granted for a tea room/café under application 17/11688/FUL and for a retail unit on part of another existing building under application 20/01633/FUL. Adjoining the site is 'Honeystreet Boats' which offers canal boats for hire and holidays. Accordingly, it is considered that the exhibition hall would complement the existing mixed uses around the site and further diversify these, creating a more robust and flexible commercial hub. It is also relevant that the various uses at the wider site provide a local employment base.

The NPPF (2019) states that planning policies and decisions should help create conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Decisions should enable the sustainable growth and expansion of all types of business in rural areas through, for example, the conversion of existing buildings; sustainable rural tourism and leisure developments which respect the character of the countryside; the retention and development of accessible local services and community facilities, such as local shops, meeting places and cultural buildings.

The NPPF further states that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

Core Policy 48 of the WCS (2015) supports rural life and more specifically focuses on the conversion and re-use of rural buildings. CP48 states that proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where the building is capable of conversion without major rebuilding or modification; where the use would not detract from the character of the area; where the site is served by adequate access and infrastructure and has reasonable access to local services. The policy further acknowledges that the conversion of a heritage can lead to its viable long-term protection.

The building the subject of this application has already been converted and is currently being used as an Exhibition Hall, this complimenting the applicant's other businesses on site. This has been accomplished with few modifications to the building. Historically the majority of the buildings at the wider site formed a commercial hub, and whilst not designated as heritage assets, they do contribute to the character and history of the hamlet. Accordingly, it is considered that the proposal does not detract from the character of the area but instead sustains its historic use. It is further considered that the scheme complies with the requirements of Core Policy 39 (Tourism and Leisure) and Core Policy 48 (Supporting Rural Life).

### 9.2 Visual Impact

The Wiltshire Core Strategy identifies the need to protect the distinct character and identity of the villages and settlements in Wiltshire. Core Policy 57 and the NPPF seek to encourage high quality design in new development. The proposed scheme re-uses the existing buildings on the site and in this sense is considered to reflect and respect the existing character of the area. The proposed alterations are considered to be appropriate and reflective of the character of the existing buildings. As such, the proposed development is considered to comply with Core Policies 51 and 57 of the WCS (2015) and the relevant paragraphs of the NPPF (2019).

### 9.3 Impact on Heritage Assets

In terms of the historic environment, the primary consideration is the duty placed on the Council under sections 16 and 66 of the Planning (Listed Building and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Comments received from the Council's Conservation Officer clarify that there are no objections to the proposal.

The wider site supports a mixed range of mainly older buildings, all of which form part of the historic wharf - a vibrant part of the area's industrial past that thrived following the arrival of the canal in the early 19<sup>th</sup> century. A sawmill and related uses existed until the advent of the railway later in the century, at which point the wharf industries declined or evolved until the c.1950s. Since then, the wider site has had various mainly business-related uses, although parts of it are now rundown and derelict. None of the buildings on the wider site are listed nor are they within a Conservation Area, although they are certainly historic assets that represent an interesting and valued part of Wiltshire's past.

It is considered that the use of part of one of the historic wharf buildings as either a retail unit or a small exhibition space is an appropriate continuation of the historic commercial use of

the site. The Conservation Officer raises no objection as the buildings will be retained without external alteration, thereby maintaining the visual character of the site. The proposal would have a neutral impact on the setting of the listed building which adjoins the wider site. On balance, it is considered that the proposed scheme would not cause harm to the significance of heritage assets and as such would comply with Core Policies 57 and 58 of the WCS (2015) and with the relevant paragraphs of the NPPF.

#### 9.4 Highway Safety Impact / Parking

Core Policy 61 - Transport and New Development - seeks to ensure that new development is capable of being served by safe access to the highway network. Core Policy 64 seeks to ensure that parking standards are limited to a maximum, as set out in the Council's adopted standards. The NPPF (2019) states that an application should only be refused on highway grounds if *"there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe"*.

Access –

Access to the Honey Street Mill site is via the adjoining highway – Chimney Lane – which forms part of the White Horse Trail, a recognised tourist route for pedestrians and cyclists.

Concerns raised at the conflict with pedestrian users along Chimney Lane and traffic are acknowledged, however given the nature of the lane it is considered that traffic would not be moving at speed along its length and that the combination of parked vehicles, traffic accessing the site and pedestrian users would lead vehicles to operate generally more carefully and slowly. This is a principle as laid out in Manual for Streets on new housing development to slow drivers down, and it is considered that the existing constraints of the surrounding area to the site would more likely calm the speed of traffic along this lane.

In terms of the impact on the wider road network, at the request of the Highways Officer the applicant has provided a statement setting out visitor numbers to the exhibition hall based on ticket sales. The following extracts from this statement are relevant:

*"For the year 2019 after the official opening we have a day by day record of the ticket sales made as this was the first year a charge was made to enter the exhibition and a numbered ticket was issued.*

*Recorded ticket sales started on the 14th of July 2019 and ran until the 14th of August. After this time the fields containing the crops have been harvested and so interest drops. .... by September they were down to approx 2/3 tickets per weekend. ....*

*During this period, 14th July – 14th August, only 4 days had visitor numbers above 20 with two of those days being pre-arranged coach visits.*

*The Coach visits were two for the entire year. These were pre-arranged with advance planning put in place. They were arranged on weekdays and a separate parking arrangement was made in the neighbour's field. These coaches were not part of a scheduled tour, nor part of any publicity, both groups contacted us in advance as their passengers had a particular interest in Crop circles and had discovered us on the internet. As such both visits were one-offs. Both coaches stayed for approximately 2 hrs. These visits were extraordinary*

*and our expectation going forward is we would only have one or two coaches in the year if at all. There are no plans to link up with a tour operator.*

*Excluding the two pre-arranged tours the average 'high' season number of visitors is 12.6 over a day.*

*Visitors arrive in a variety of way, by car, cycle, public transport, boat and on foot and many link their trips with the café and the shop”.*

As is evident, actual numbers of visitors to the exhibition hall are relatively low, with an average 'high' season number of 12.6 per day. The wider highway network is capable of accommodating the likely traffic associated with these visitors' numbers. Parking is considered in more detail below.

Parking –

The wider mill site has space for the parking of 34 cars (plus additional motor-cycle and bicycle spaces).

Applying the Wiltshire Council parking standards, the various existing / permitted uses and the proposed exhibition hall use have the following maximum parking standards -

- Café: 91.8 sqm; 1 space per 5 sqm (public floor area) = 18 spaces
- Warehouse: 1465.6 sqm; 1 space per 200 sqm = 8 spaces
- Shop: 160.85 sqm; 1 space per 20 sqm = 5 spaces
- Crop circle/museum: 147.23 sqm; 1 space per 40 sqm = 4 (3.6) spaces
- TOTAL = 35 spaces

The implemented 2003 planning permission for B1/B8 use of the wider site has a maximum parking standard of 1 space per 30 sqm; this equates to c. 62 spaces (from 1865.5 sqm). In isolation the proposed exhibition building, if used for its authorised B1 use, would have a requirement for 4 (4.2 spaces) parking spaces.

From this it can be concluded that, the actual impact is no greater - and/or would be an improvement – over the authorised position. Or in other words, the status quo is maintained. It follows that there are no additional impacts on highway safety stemming from the proposal.

Overall on access and parking the Highways Officer raises no objections, concluding as follows -

*“Following on from the revised information I am now satisfied that the applicant has demonstrated that the majority of the time the number of vehicle movements generated by the proposed use are a number which I consider not significantly detrimental to the adjacent road network. This is also within the context of the ability of the applicant to use the same space for B1 use which could attract a similar number of vehicle movements. I do acknowledge that at times large parties may arrive by coach and that the site does not provide adequate space to accommodate parking, however, it is common practice for coaches to drop off and park elsewhere in a safe location and I am willing to accept on street*

*parking for a coach roadside for the few hours it is likely to be required (subject to it being in a safe location , which will be the driver to ensure).*

*Therefore in summary I am now satisfied that the applicant has provided the information requested in enough detail to allow me to be able to conclude that the proposal should not lead to a significant detrimental effect on the adjacent highway (users of the highway) in terms of both parking and movements on the highway and as such based on the information provided and the parking layout being conditioned I am minded to raise no highway objection”.*

Other highway related matters -

Regarding concerns that have been raised over access by fire service vehicles, it is relevant that the change of use proposed will not change the current situation for access by emergency services. The highways officer therefore raises no objection for this reason subject to the parking being conditioned as per the submitted plan and conditioned only for this use in perpetuity.

Paragraph 109 of the NPPF clarifies that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. No objections are raised by the Highway Officer and it is considered that the scheme would not have an unacceptable impact on highway safety or have a severe impact on the road network. It is therefore considered that the proposal, on balance, complies with the criteria of Core Policies 60, 61 and 64 of the WCS (2015) and the WLTP (2011 – 2026) Car Parking Strategy (2015) and with the relevant sections in the NPPF.

#### 9.5 Other matters

Reference has been made to an unauthorised use of the B8 storage buildings for soap manufacturing purposes; it is considered that this would likely fall under a B2 use. Clarification has been sought from the applicant/agent on this matter; written assurance has been received from the applicant that there is no manufacture of soap products on this site only the packaging and distribution as would be acceptable under a B8/B1 use.

Comments have been made from local objectors on unauthorised works to build an embankment (Ref. figure 1 below) on which the parking is provided (bays 11 to 19); the accusations made are that these works were carried out post the consent of the café in 2018.

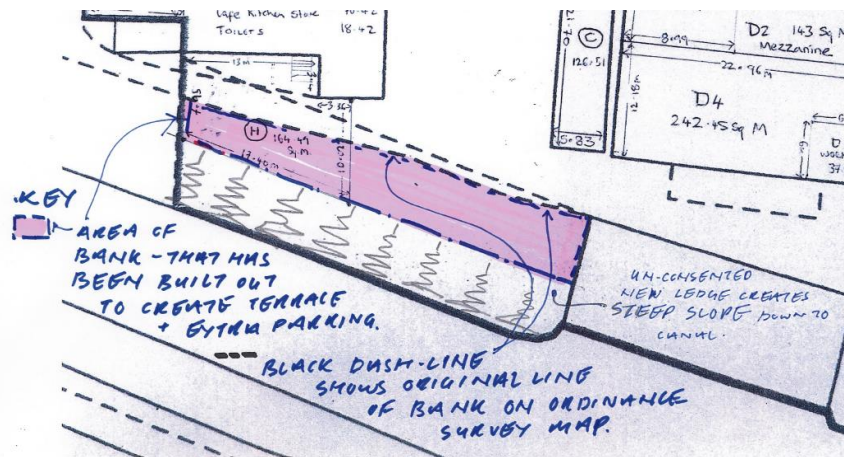


Figure 1

However, officers remain to be convinced by these assertions; as can be seen within the 'aerial photograph 2014' below, vehicles were parked along this line, which was allegedly built post 2017/2018, on land which apparently was as stable then as it appears to be now.



Aerial photograph 2014

Reference has been made to the applicant's canal boat business which is adjacent to the site. This business is self-contained and whilst there is a pedestrian link from the main car park down to the canal side, the parking for the canal business is contained adjacent to the moorings. As such this element of the business is completely separate from the warehouse side and does not form part of the parking calculations associated with the current application.

Criticisms have been made at the incorrect procedures adopted by the applicant, that is the implementation of the retail unit and D1 Exhibition Hall and submitting subsequent applications after the matter. The LPA would agree and does not condone a wilful breach of

planning law. However, where these scenarios arise, the LPA has the right to request a planning application be submitted and this does not mean that planning permission will be automatically granted, although an application will be treated in the usual way or the applicant has the right to submit one; as has happened in this instance.

It has been suggested that the plans/details submitted are inaccurate and do not allow for a proper assessment of the scheme before the Council. A detailed plan of the available parking spaces on site was requested and has been provided, as has a breakdown of the floor areas of the existing buildings and their uses and more detail on the visitor numbers to the exhibition. It follows that the details that have now been submitted in support of the application are sufficient to allow for a proper assessment of the scheme.

An assessment of fire safety access has been provided by one objector, which identifies that the applicant's assessment is based on insufficient details relating to the occupancy loading of the premises. The need for fire assessments is considered under separate legislation and so is not a material planning consideration.

## **10. Conclusion (The Planning Balance)**

Core Policy 51 refers to development within the setting of an AONB; as the change of use utilises the existing structure it is considered that there will be no impact on the special qualities of the AONB or on the character of the hamlet or surrounding area. Similarly, the development does not impact on the amenity of any nearby properties beyond that which existed before the exhibition hall was created. The principle of development has been assessed against the relevant policy of the development plan and it is considered that the scheme is in accord with the criteria of Core Policies 39 and 48 of the WCS (2015) and with the relevant paragraphs of the NPPF (2019). The third-party objections relating to impact on highway safety are acknowledged; however the Highways Officer is satisfied that the proposal does not raise highway safety concerns sufficient to justify a refusal for this reason. It is considered that the change of use from a Class B1/B8 combination use to a Class D1 exhibition hall use will not have a residual cumulative negative impact on the highway network and that adequate parking exists on site for the scheme described.

It is recognised that the scheme will support the long-term viability and vitality of an existing business at Honeystreet and through the addition of the café, the shop and now the exhibition hall increases employment opportunities and is a valuable asset for the community. It is considered that significant weight should be attributed to schemes that support rural businesses, especially where, as in this instance they reuse existing buildings and diversify an existing business to make it more flexible, robust and resilient. This view is supported by the NPPF (2019) which states that significant weight should be placed on the need to support economic growth. As in this case the applicant has expanded their existing business to incorporate alternative uses that are complimentary to each other. The complimentary form of uses now achieved on site creates a destination place for visitors and local residents to meet and socialise, adding to the scheme's sustainability.

It is considered that the public benefits that are achievable through the scheme if this development were to be approved, would outweigh the potential for any harm that is perceived on highway safety in this particular location. On balance it is considered that the



change of use of the existing building to an exhibition hall would comply with the policies of the Wiltshire Core Strategy (2015) and guidance set out in the National Planning Policy Framework (2019).

## **RECOMMENDATION**

### **Grant planning permission subject to the following conditions:**

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

Application Form; Agents email (dated 13/05/2020); Agents email (dated 24/04/2020) with breakdown of floor areas; Location Plan, Ground and First Floor Plans Dwg No. 02; Existing Car Parking Plan, Dwg No. BDS-05/20; Proposed Car Parking Plan, Dwg No. BDS-05/20; Crop Circle Centre and Exhibition (back ground and break down of visitor numbers, rcvd 10/06/2020)

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

2. There shall be no customers/members of the public within the exhibition hall hereby approved outside the hours of 11:00 to 17.30 from Monday to Sunday.

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.

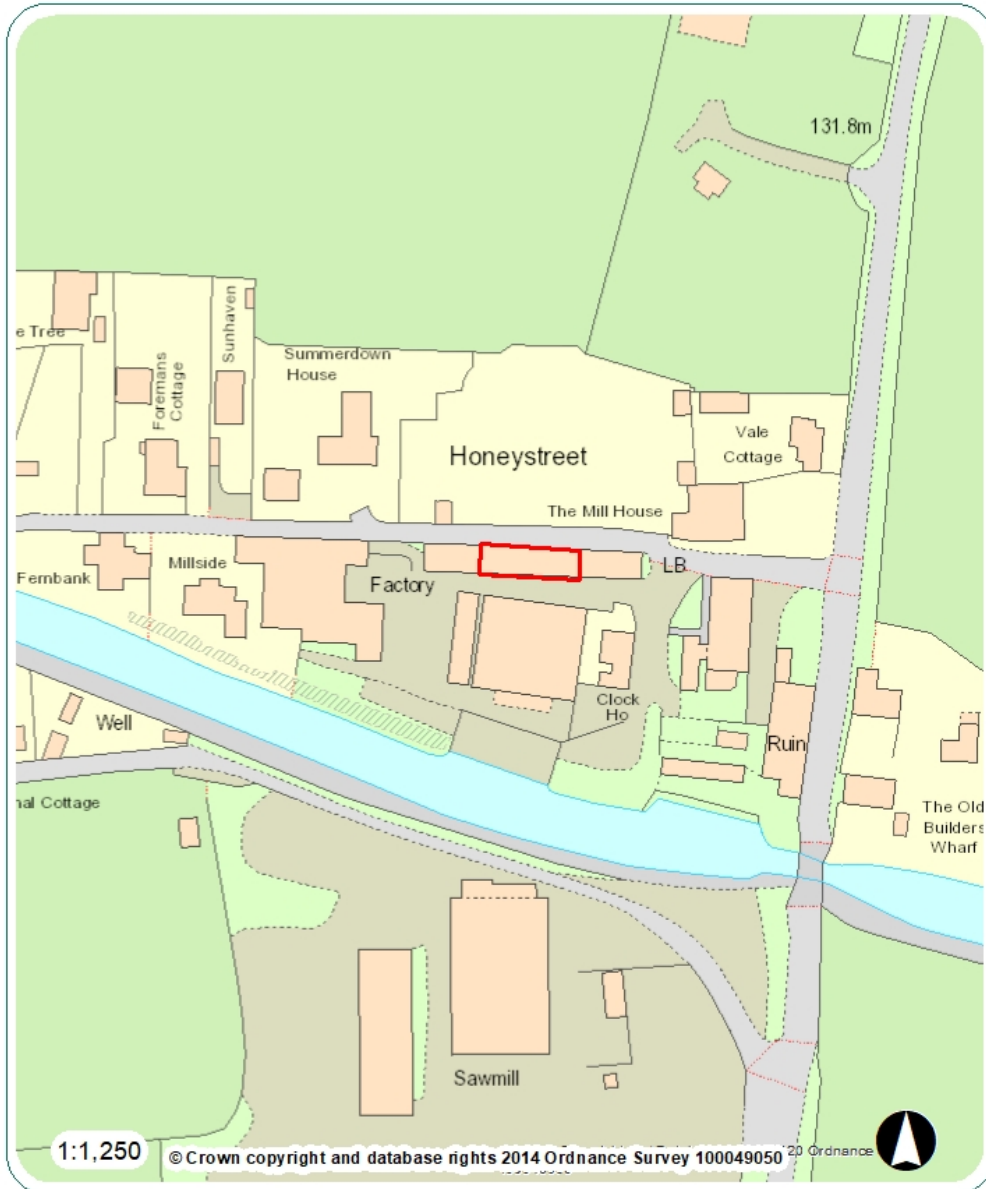
3. Within one month of the date of this decision, the parking scheme as approved under the approved plan, Proposed Car Parking Plan, Dwg No. BDS-05/20, under condition 1 above, shall have been laid out for the use of parking in accordance with this detail. This area shall be maintained and remain available for this use at all times thereafter.

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

4. **INFORMATIVE TO APPLICANT:**

Notwithstanding the details hereby permitted this planning consent provides for an exhibition hall only as shown on the approved plans and outlined in red. This does not grant consent for the retail unit as also shown on the submitted details.

This page is intentionally left blank



This page is intentionally left blank

WILTSHIRE COUNCIL

AGENDA ITEM NO. 8a

EASTERN AREA PLANNING COMMITTEE

9 July 2020

---

## HIGHWAYS ACT 1980

### THE WILTSHIRE COUNCIL BURBAGE 6 (PART) EXTINGUISHMENT ORDER 2020

#### Purpose of Report

1. To:
  - (i) Consider one objection to The Wiltshire Council Burbage 6 (Part) Extinguishment Order 2020 made under Section 118 of the Highways Act 1980.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with Wiltshire Council supporting the confirmation of the Order.

#### 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 received an application dated 19 July 2019, made under Section 118 of the Highways Act 1980, to extinguish part of the width of footpath Burbage 6, on the grounds that it is not needed for public use. The application is made by Zoe Turner of Holybrook Cottage, 39 Eastcourt Road, Burbage, Marlborough, SN8, with Blake Morgan LLP acting as agent.
4. The application proposes to extinguish a section of the footpath measuring 3.3 metres by 21 metres. The footpath at this section is recorded as 8 metres wide. If the Order is confirmed it will leave a minimum of 4.7 metres of width of highway available to the public on the affected section of the footpath.
5. Wiltshire Council conducted an initial 28 day consultation on the application, commencing in October 2019. The consultation letter was sent to interested parties, including Burbage Parish Council, user groups including The Ramblers, the local member and neighbouring properties.

6. Two objections were received at the initial consultation phase, from Burbage Parish Council and Mr McNicholas. A representative of The Ramblers also replied to the consultation stating they have no objection to the proposal.
7. Responses to the consultation were duly considered in the Council's Decision Report appended here at **Appendix 1**. Applying the legal tests of Section 118 of the Highways Act 1980 (see **Appendix 1** section 7.2), officers believed the application met the relevant tests and an Order was made to extinguish part of the width of footpath Burbage 6.
8. The Order was duly advertised and attracted one objection. A copy of the Order is appended here at **Appendix 2**.
9. Due to the objections received, the Order now falls to be considered by the Eastern Area Planning Committee whose Members should consider the legal tests for diversion against the objections received, in order to decide whether Wiltshire Council continues to support the making of the Order.
10. Where the Authority continues to support the making of the Order, it should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
11. Where the Authority no longer supports the making of the Order, it may be withdrawn with reasons given as to why the legal tests for extinguishment are no longer met. The making of a public path extinguishment order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

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

12. Section 118 of The Highway Act 1980
  - (1) *“Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.  
An order under this section is referred to in this Act as a “public path extinguishment order”.*
  - (2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is*

*expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.*

- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*
- (5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-*

  - (a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or*
  - (b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,*

*the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.*
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*
- (6A) The considerations to which-*

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

*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*

*include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”*

### **Objections to the Order:**

#### **13. Objection from Mr McNicholas**

*“I would like to raise a number of objections to the proposed footpath extinguishment order. These are:*

- 1. The proposal stated that the footpath, “is not used by the public and is therefore not required for public use”. This statement is incorrect. The full width of the public footpath has and continues to be used by the public including myself.*
- 2. The extinguishment order states that, "it appears to the local authority that the footpath...is not needed." This represents an, "error of fact or judgment" invalidating the order.*
- 3. The change offers no benefit to the public that use the footpath and as such the order is unnecessary.*
- 4. The change would disbenefit the public who use currently the footpath and consequently the order should be opposed.*
- 5. The footpath is a key feature of the conservation zone and should be maintained in order to protect the character of the conservation zone.*
- 6. The decision report produced by Wiltshire council fails to explicitly consider that the footpath is within a conservation zone and the impact of the extinguishment on it. This also represents an, "error of fact or judgment" invalidating the order.*
- 7. No justification or rationale has been provided for extinguishing the footpath.*
- 8. The elected council representatives, representing the footpath users, have objected to the proposed extinguishment. Wiltshire council supporting the order is therefore inconsistent with its Business Plan to work, "with the local community".*

*For the above reasons, the order should not be confirmed. Instead, the path should be retained and clear demarcation that was recently removed reinstated along with clear signage. Given the above facts, the council should also exercise its right to change its stance on this order by opposing it.”*



## **Comments on the Objection**

14. ***The proposal stated that the footpath “is not used by the public and is therefore not required for public use”. This statement is incorrect. The full width of the public footpath has and continues to be used by the public including myself.***

The Order has been advertised on site, in The Wiltshire Times, via letter to user groups, Burbage Parish Council, the local member and other interested parties. Mr McNicholas is the only objector and only respondent at any stage who claims to use the section of path that is proposed to be extinguished. As stated in the decision report at Appendix 1 section 10.6. The Planning Inspectorate Advice Note 9 states that when considering confirming an extinguishment order a way may be used to a limited degree but still not be needed for public use and be capable of confirmation.

15. ***The extinguishment order states that "it appears to the local authority that the footpath...is not needed." This represents an "error of fact or judgment" invalidating the order.***

Taking into consideration the consultation responses received and the location and nature of the path officers believe that not all of the width of the footpath at this location is needed. The path has a recorded width of 8 metres at this section, the Order, if confirmed will reduce this to a minimum of 4.7 metres wide. This is deemed more than adequate for the passing and re passing of pedestrians using the footpath. The Countryside Access Improvement Plan sets out Wiltshire Council's policy for new or diverted paths; this states that new footpaths should be a minimum of 2 metres or 3 metres if fenced. If confirmed this Order will leave a width of 4.7 metres which exceeds the minimum width required for a footpath in Wiltshire Council policy. The location and nature of the path have also been taken into consideration. As can be seen in the photographs of the site at section 5 of Appendix 1, the natural continuation and use of the path, particularly between Eastcourt Road and the section to be extinguished, is not affected, this is clearly demonstrated at photograph 5.4 of the site and proposed area to be extinguished.

16. ***The change offers no benefit to the public that use the footpath and as such the Order is unnecessary.***

The application for the Order is made by the landowner and the Council has a power to consider these applications. It is recognised by the legislation being in place to enable extinguishments and diversions that the rights of way network may not meet modern needs and circumstances. Each individual case is considered, and the relevant legal tests applied. In this case the only test to be applied is whether the path is needed for public use and the Council is exercising its power in determining this application. Whether or not there is public need for a path with a width of 8 metres at this location is the only matter to be considered in applying Section 118 of the Highways Act.

17. ***The change would disbenefit the public who use currently the footpath and consequently the Order should be opposed***

It is not considered by officers the public would be negatively affected by the confirmation of this Order. The proposed width of the path is the natural continuation of width available from Eastcourt Road as seen at photograph 5.4 of Appendix 1. The section of path to be extinguished is a gravelled area in front of a private dwelling, and not an attractive area for the public to use while exercising. Mr McNicholas is the only person, of those who responded to the consultations, who claims to use this section of path in front of the property.

18. ***The footpath is a key feature of the conservation zone and should be maintained in order to protect the character of the conservation zone.***

***The decision report produced by Wiltshire Council fails to explicitly consider that the footpath is within a conservation zone and the impact of the extinguishment on it. This also represents an, "error of fact or judgment" invalidating the Order.***

19. Mr McNicholas has confirmed via email that the conservation zone is referring to the Eastcourt Conservation Area. Officers have now reviewed the Eastcourt Conservation Area appraisal document which was last reviewed by Kennet District Council in 2008. The conservation zone is still considered by planning officers when considering planning applications in the affected area; however, this Order is not made under any planning regulations, it is an extinguishment Order for a public right of way made under the Highways Act.
20. Considering the document which is attached as **Appendix 3**, Section 2.2.8 refers to public footpaths. Stating "Footpaths separate to the road are important to rural character and encourage less use of the private car. It is important they are not diverted from their original direct routes, maintained clear of overgrowth and surfaced adequately to encourage universal use." This extinguishment Order does not divert the path from its original route and does not affect its maintenance or surface. Therefore, the Order clearly does not meet the policies of the Eastcourt Conservation Zone appraisal document.
21. ***No justification or rationale has been provided for extinguishing the footpath.***

The application to extinguish the footpath was made by the landowner on the grounds the path is not needed. The Council has a power to consider these applications and officers have followed the regulations and legal tests set out in Section 118 of the Highways Act 1980.

22. ***The elected council representatives, representing the footpath users, have objected to the proposed extinguishment. Wiltshire Council supporting the Order is therefore inconsistent with its Business Plan to work, "with the local community.***

Burbage Parish Council did object to the proposal at the initial consultation phase; however, it has not objected to the Order during the statutory consultation phase. The Parish Council's initial objection was considered in the Council's

decision report at Sections 9.5 and 11.3. The main point of the Parish Council's objection was on the grounds that drains run under that strip of land. Utility searches have been undertaken and the only utilities directly under the affected section of the footpath are electricity cables in the control of Scottish and Southern Energy, who have consented to the Order. Any drains under the section of the path will be the responsibility of the landowner and the extinguishment of the path will not affect their maintenance. The Order regulations will contain provisions for any statutory undertakers to maintain access to their plant. Burbage Parish Council was sent a copy of the Council's decision report to explain the decision to make an Order following the initial consultation.

23. The Ramblers, who represent the walking community of Wiltshire, have not objected to the Order and the local population have been consulted via on site notices and in a local newspaper. Mr McNicholas is the sole objector to the Order and the only objector at any stage who claims to have used the section of path to be extinguished.

### **Overview and Scrutiny Engagement**

24. Overview and Scrutiny Engagement is not required in this case.

### **Safeguarding Considerations**

25. There are no safeguarding considerations identified as a result of the proposal.

### **Public Health Implications**

26. The Order has no identified public health implications.

### **Corporate Procurement Implications**

27. In the event this Order is forwarded to SoSEFRA there are a number of opportunities for expenditure that may occur, and these are covered in paragraphs 31 to 33 of this report.

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

28. There are no identified environmental or climate change implications resulting from the proposal.

### **Equalities Impact of the Proposal**

29. The equalities impact of the proposal has been considered at Section 17 of the decision report at Appendix 1. The Wiltshire Countryside Access Improvement Plan 2015-2025 sets out the Council's policies for access. This proposal meets the CAIP policies. The required width for a new footpath is 3 metres for a fenced footpath; this extinguishment order will leave a recorded width of 4.7 metres. The proposal does not add any restrictions to the footpath or impact negatively on the access for any users.

## **Risk Assessment**

30. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Section 118 is a power rather than a duty; however, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully or in making an unjust decision. No specific risks have been identified to the public as a result of extinguishing the section of Burbage 6 subject to the Order.

## **Financial Implications**

31. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the Order, which includes staff time and the costs of advertising the making of the Order and the confirmation of the Order in one local newspaper.
32. Where there are outstanding objections to the making of an Order and it is forwarded to be determined by the Secretary of State, the outcome of the Order will be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held the costs to the Council are estimated at £300 to £500. A single day public inquiry could cost between £1,500 and £3,000.
33. Officers would recommend to SoSEFRA that the Order is capable of being determined by written representations; however, the method of determination would be decided by SoSEFRA.

## **Legal Implications**

34. Where the Council decides to abandon the Order, clear reasons for this must be given and must relate to the legal tests. The applicant may seek judicial review of the Council's decision if she sees it as incorrect or unjust by them. The cost for this may be up to £50,000.

## **Options Considered**

35. Members should now consider the objection received and the legal tests as set out in Section 118 of the Highways Act to determine whether Wiltshire Council continues to support the making of the Order. The making of the Order has been objected to; therefore, the Order must now be submitted to SoSEFRA for determination or abandoned. If the Order is abandoned clear reasons should be given as to why. The options for the committee are:
  - (i) The Order be forwarded to SoSEFRA with the recommendation it is confirmed.
  - (ii) The Order be abandoned.

## **Reason for Proposal**

36. Unless the objections and representations are withdrawn the Order must be forwarded to SoSEFRA for determination if it is to be confirmed.
37. The legal tests which must be considered are set out in Section 118 of the Highways Act 1980. The main tests are - is the path needed for public use and how likely is the path to be used. This is the test that SoSEFRA will apply and which this Council should consider.
38. The path is needed for public use and is likely to be used; however, it is important to consider that the path in its whole is not being extinguished; the Order extinguishes a section of path 3.3 metres wide by 21 metres long. The path at this section is 8 metres wide and the Order, if confirmed, will leave a recorded width of 4.7 metres. It is considered this is more than adequate for a public footpath and exceeds the minimum width of 2 metres for a new unfenced path and 3 metres for a new fenced path as set out in the Council's policies. The section of path to be extinguished is not needed for public use; it is a section of path in front of a private dwelling which requires a walker to deviate from their natural continuation east towards Eastcourt Road. It offers no obvious enjoyable features for the public, being gravelled in the manner of the adjoining section of the path and does not offer any additional views for the public. The width offered, 4.7 metres, is more than adequate for pedestrians to pass and repass.
39. The consultations carried out have attracted one objection from Mr McNicholas who claims to use this section of the path. It is clear in the Planning Inspectorates Advice Note 9 that an inspector may still confirm an extinguishment Order if the path is used to a limited degree but not needed for public use. This is relevant to this case, as Mr McNicholas claims to use this section of the path, but it is, in the officer's opinion, not needed for public use as no other evidence has been produced of the need for the full 8 metre width. Burbage Parish Council, who objected at the initial consultation phase, but not to the Order, did not state that members of the Council used or were aware of any use of the affected section of the path. Use of the affected section of path appears to be very limited from consultation responses and what would be the expected use of the 3.3-metre-wide section of path given its location and the available width of the adjoining path to Eastcourt Road.
40. The Order was advertised on site, at either end of the affected section of path, so anybody using this part of the path will likely have seen the notices and been aware of the Order and how to object to the Order. The Order was also advertised in a local newspaper. The regulations have been followed and no evidence has been produced which shows the 3.3 by 21 metre section of path is needed for public use.
41. The legal tests for Section 118 of the Highways Act have been met and the Order is capable of confirmation.

## **Proposal**

42. That “The Wiltshire Council Burbage 6 (part) Extinguishment Order 2020” should be determined by SoSEFRA with Wiltshire Council recommending that the Order be confirmed.

### **Jessica Gibbons**

Director – Communities and Neighbourhood Services

Report Author:

**Craig Harlow**

Definitive Map Officer

---

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

None

### **Appendices:**

Appendix 1 - Decision Report

Appendix 2 - The Wiltshire Council Burbage 6 (Part) Extinguishment Order 2020

Appendix 3 – Eastcourt Conservation Zone Policy Document 2008

**DECISION REPORT**  
**APPLICATION TO EXTINGUISH PART OF THE WIDTH OF FOOTPATH NO.6**  
**BURBAGE UNDER SECTION 118 OF THE HIGHWAYS ACT 1980 AND SECTION**  
**53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

---

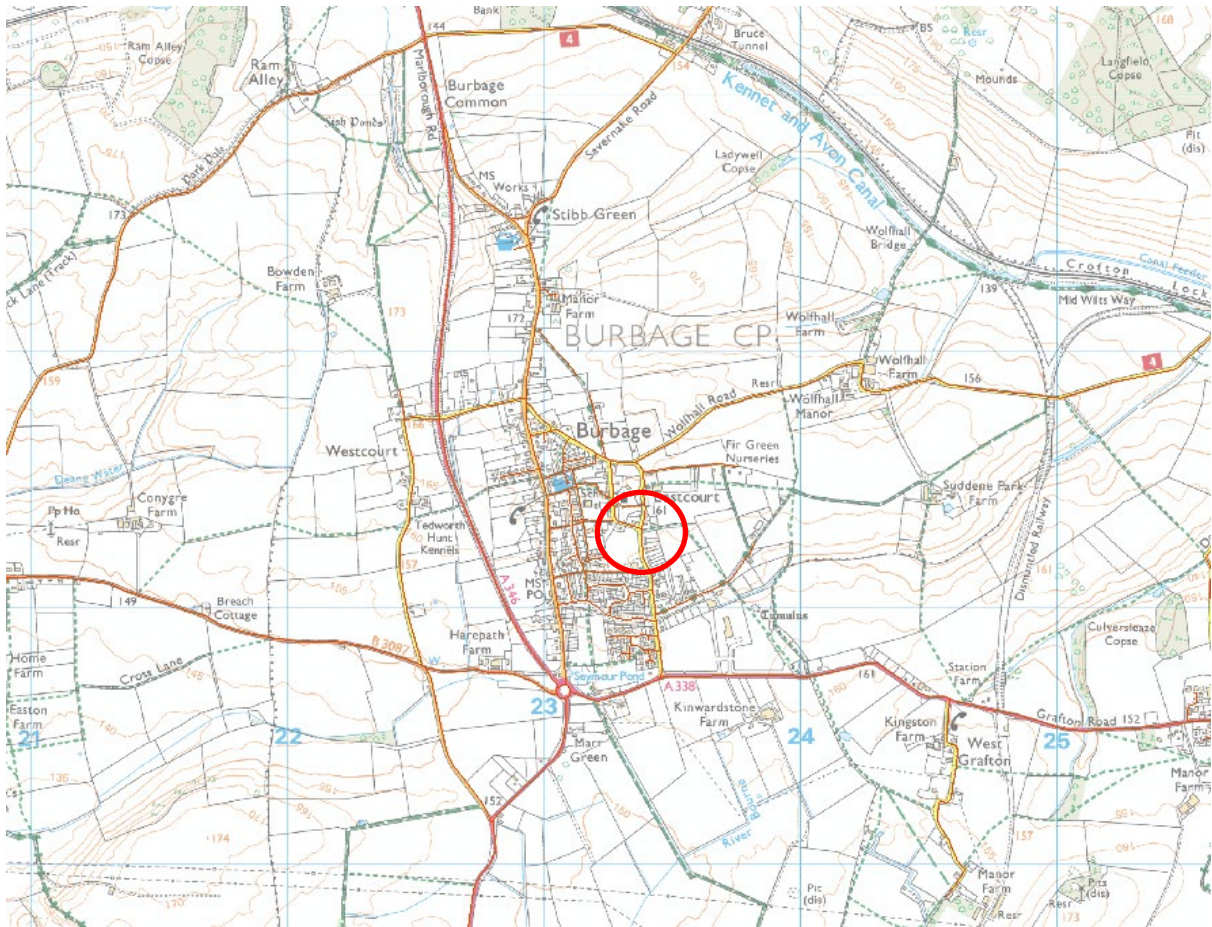
**1. Purpose of Report**

- 1.1. To consider an application to extinguish part of the width of footpath no.6 Burbage, under Section 118 of the Highways Act 1980 where part of the width of the highway is not needed for public use.
- 1.2. It is recommended that an order be made under Section 118 of the Highways Act 1980 to extinguish part of the width of footpath no.6 Burbage, where it is not needed for public use and under Section 53A of the Wildlife and Countryside Act 1981 to amend the Pewsey Rural District Council Area Definitive Map and Statement dated 1952 and to confirm the order if no representations or objections are received.

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

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

### 3. Location Plan

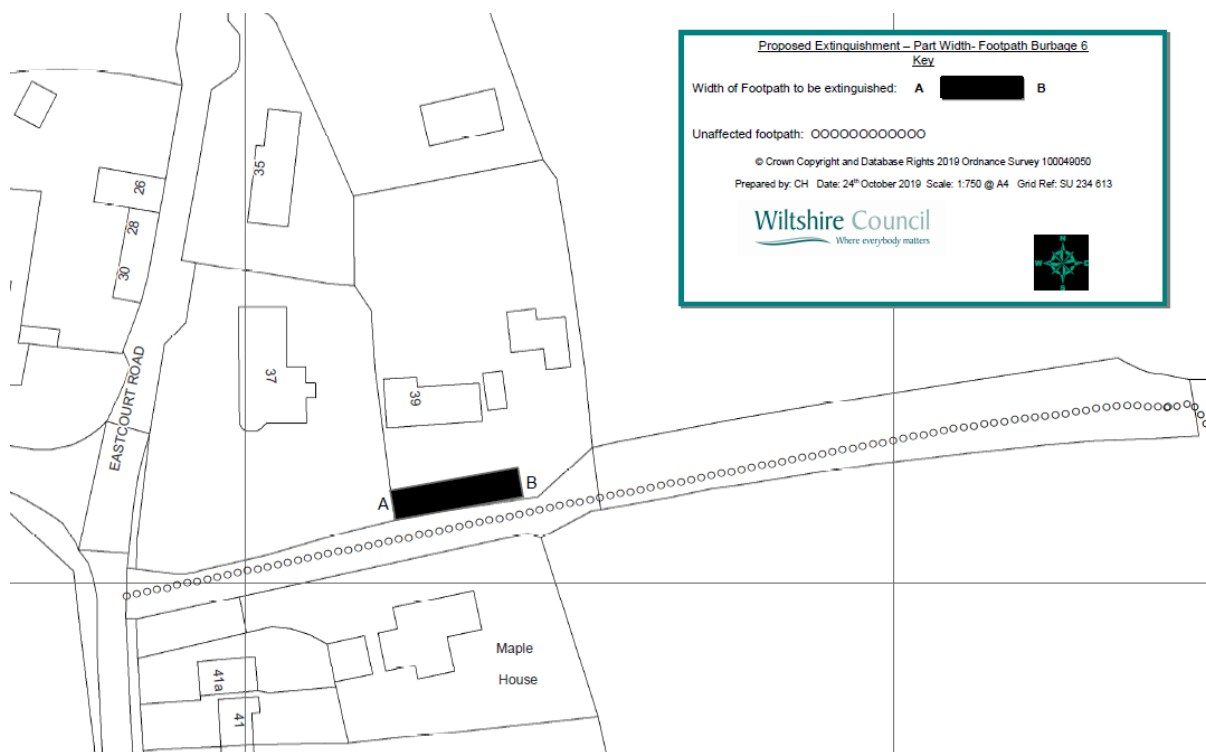


Footpath Burbage 6 leads east from Eastcourt Road, Burbage between number 37 and Maple House, Eastcourt Road.

Decision Report – Proposed Extinguishment of Part of the Width of footpath no.6 Burbage under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981



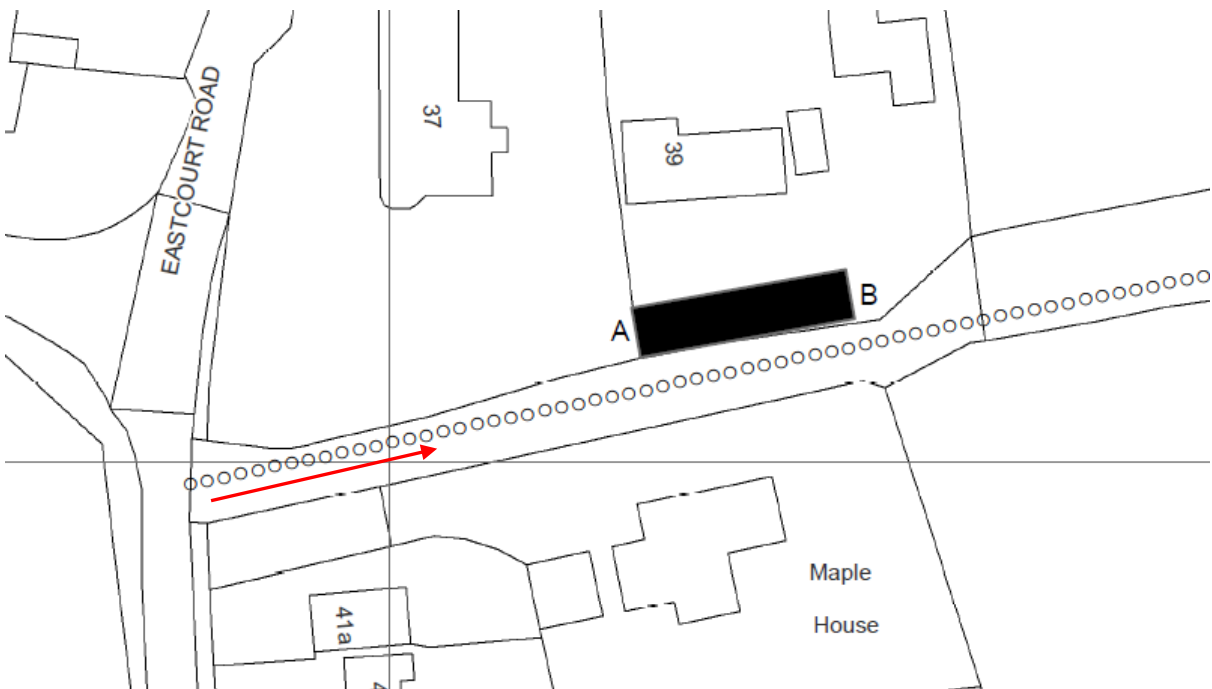
#### 4. Proposed Extinguishment Plan



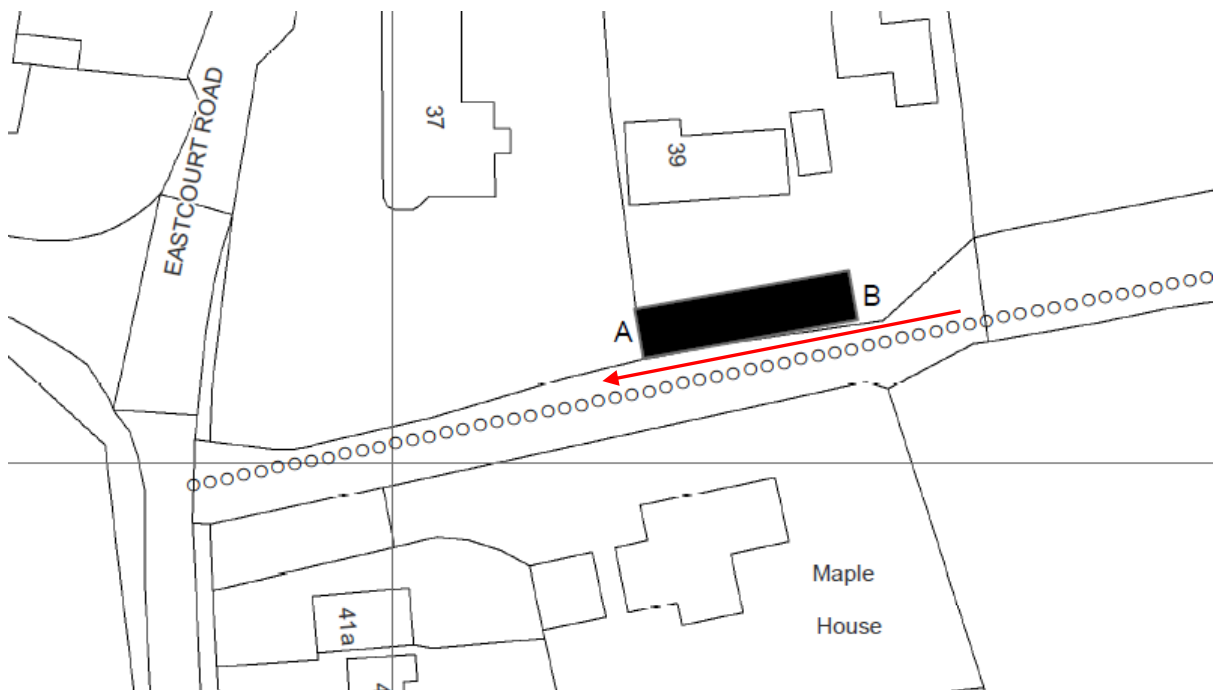
4.1. The application applies to extinguish the width of footpath Burbage 6 shown by the solid black rectangle on the plan above. The extent of the proposed extinguishment measures 3.3 metres wide by 21 metres long. If successful, this would leave a recorded width for the footpath immediately south of the extinguished section of 4.7 metres.

#### 5. Photographs

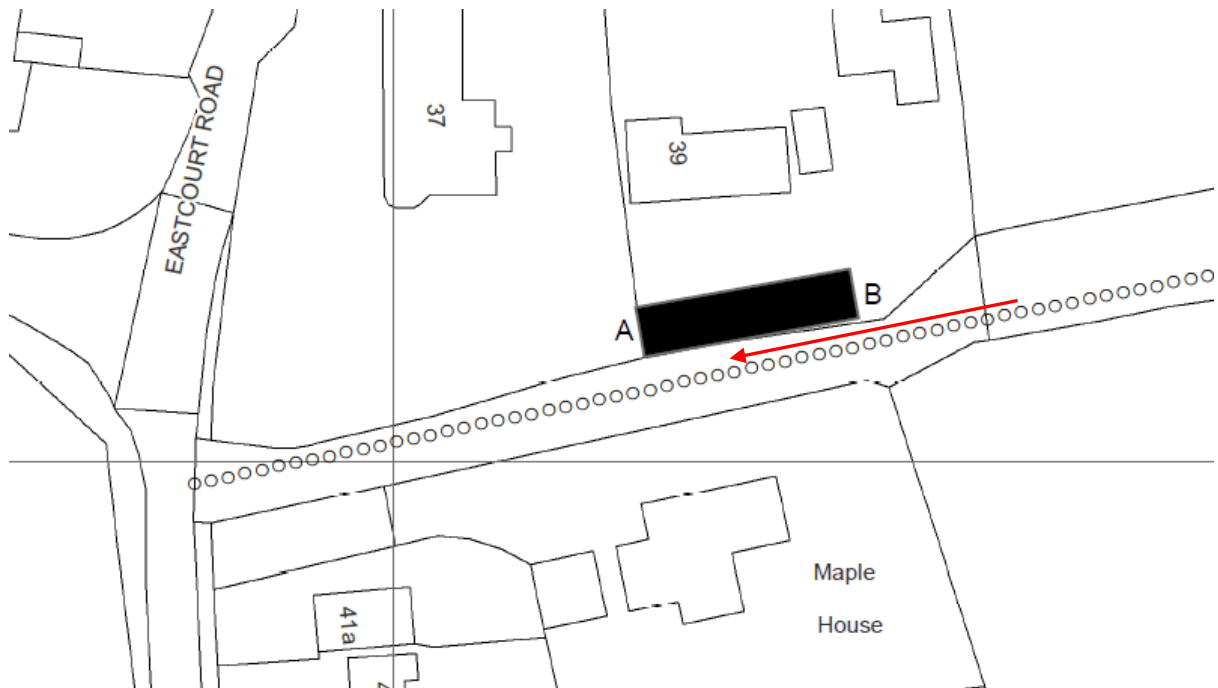
5.1



Decision Report – Proposed Extinguishment of Part of the Width of footpath no.6 Burbage under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981



Decision Report – Proposed Extinguishment of Part of the Width of footpath no.6 Burbage under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981



5.4. Approximate area to be extinguished marked by red arrows below.



## 6. Registered Landowners

6.1 Zoe Turner of Hollybrook, 39 Eastcourt Road, Burbage, Marlborough SN8 3AT who is also the applicant.

## 7. Legal Empowerment

7.1. The application to extinguish part of the width of footpath Burbage 6, is made under Section 118 of the Highways Act 1980. This applies where a footpath, bridleway or restricted byway, or part of that highway, is not needed for public use.

7.2. Section 118 of the Highways Act 1980 states:

*“118. Stopping up of footpaths, bridleways and restricted byways.*

Decision Report – Proposed Extinguishment of Part of the Width of footpath no.6 Burbage under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981

*(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.*

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

*(2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.*

*(3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*

*(4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*

*(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path*

*extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-*

*(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or*  
*(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,*  
*the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.*

*(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*

*(6A) The considerations to which-*

*(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and*  
*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*  
*include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”*

7.3. Section 51 and paragraph 2 of Schedule 5 to the Countryside and Rights of Way Act 2000 insert a new section 53A into the Wildlife and Countryside Act 1981. Previously where the Highway Authority, which was also the Surveying Authority, made an order which changed the network of public rights of way, e.g. a public path extinguishment order under Section 118 of the Highways Act 1980, they were subsequently required to make a further order under

Section 53 of the Wildlife and Countryside Act 1981 to record the change to the network on the definitive map and statement. The addition of Section 53A enables the Authority to include in public path orders satisfying the criteria in Section 53A(1), provisions to modify the definitive map and statement, thereby avoiding the need for a separate modification order. Officers propose that where a public path order is made under Section 118 of the Highways Act 1980, extinguishing Path no.6 Burbage, provisions are included within the same order to modify the definitive map and statement of public rights of way simultaneously. Section 53A of the Wildlife and Countryside Act 1981 states:

***“53A Power to include modifications in other orders.***

- (1) *This section applies to any order-*
  - (a) *which is of a description prescribed by regulation made by the Secretary of State,*
  - (b) *whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a).*
  - (c) *which is made by the surveying authority, and*
  - (d) *which does not affect land outside the authority’s area.*
  
- (2) *The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.*
  
- (3) *An authority which has included any provision in an order by virtue of subsection (2)-*
  - (a) *may at any time before the order comes into operation, and*
  - (b) *shall, if the order becomes subject to special parliamentary procedure,*  
*withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.*



- (4) *Anything done for the purposes of any enactment in relation to the order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.*
- (5) *No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.*
- (6) *Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.*
- (7) *Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds –*
  - (a) *that it is not within the powers of this Part, or*
  - (b) *that any requirement of this Part or of regulations made under it has not been complied with.*
- (8) *Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).*
- (9) *Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”*

## **8. Background**

Decision Report – Proposed Extinguishment of Part of the Width of footpath no.6 Burbage under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981

- 8.1. Wiltshire Council are in receipt of an application dated 19<sup>th</sup> July 2019, made under Section 118 of the Highways Act 1980, to extinguish part of the width of footpath Burbage 6, on the grounds that it is not needed for public use. The application is made by Zoe Turner of Holybrook Cottage, 39 Eastcourt Road, Burbage, Marlborough, SN8 with Blake Morgan LLP acting as agent.
- 8.2. It is proposed to extinguish a section measuring 3.3 metres by 21 metres of the footpath of the existing 8 metre width at this point of the footpath, leaving a minimum of 4.7m of highway available to the public on the affected section of the footpath.

## **9. Public Consultation**

- 9.1. A public consultation exercise regarding the extinguishment proposals was carried out on 24<sup>th</sup> October 2019, with a closing date for all representations and objections to be received in writing by 22<sup>nd</sup> November 2019.
- 9.2. The consultation included the landowners, statutory undertakers, statutory consultees, user groups, close neighbours and other interested parties including the Wiltshire Council Member for Burbage and Burbage Parish Council.
- 9.3. The following consultation replies were received, (all consultation responses are available to be viewed in full with the Rights of Way and Countryside Team, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN):
- 9.4. Mr McNicholas Of Maple House, Eastcourt Road, Burbage.

**Your ref: 2019/14 – Proposed width extinguishment of footpath Burbage 6**

*Dear Mr Harlow,*

*The proposal to reduce the width of a section of the Burbage footpath 6 states that, "it is not used by the public and is therefore not required for public use". This statement is incorrect. The full width of the public footpath has and continues to be used by the public including myself.*

*The recent redevelopment of number 39 included the removal of a hedge that marked the edge of the footpath and front boundary of number 39. The removal of this boundary, the failure to reinstate it, and the laying of gravel where there was once a garden has subsequently blurred the boundary between number 39 and the public footpath. Rather than remove the area of footpath that IS used by the public, the path should be retained and clear demarcation and signage reinstated.*

*The footpath also acts as an important buffer at the edge of the conservation zone, and should be maintained to prevent it being used as part of the 6-8 car and lorry park that the front garden of number 39 has become since it's redevelopment.*

*Yours sincerely*

*Anthony McNicholas*

## 9.5 Burbage Parish Council:

*Dear Mr Harlow,*

*The Parish Council inspected the footpath, and are not happy to change the width of the footpath as drains run under that strip of land.*

*They felt that if the owners of the adjoining property are concerned about privacy, then they may wish to consider reinstating the boundary fence.*

*Regards  
Joyce*

*Joyce Turner  
Burbage Parish Clerk  
For, and on behalf of,  
Burbage Parish Council.  
[clerk@burbage-pc.org.uk](mailto:clerk@burbage-pc.org.uk)  
01672 563718*

## 9.6 Peter Gallagher – The Ramblers.

Dear Craig

Thank you for your letter dated 24 October. We have no objection to the application.

Regards

Peter Gallagher  
Footpaths and Walking Environment Officer  
Swindon and North East Wiltshire Group  
The Ramblers

9.6. The following replies were received from statutory undertakers:

1) Openreach – online utilities search undertaken 20th December July 2019:  
No Plant directly affected.

2) Scottish and Southern Electricity Networks – online utilities search  
undertaken 18<sup>th</sup> December 2019:  
Cables present at location – written consent requested.

3) *Wales and West Utilities - online utility search conducted 17<sup>th</sup> December:*

*No apparatus in the area of enquiry.*

4) Wessex Water - online utilities search undertaken 18<sup>th</sup> December 2019:  
No plant at location.

5) [www.digdat.co.uk](http://www.digdat.co.uk) – online utilities search undertaken 19<sup>th</sup> December 2019:  
No Virgin Media plant at location.

6) Wiltshire Council Ecology database – search undertaken 18<sup>th</sup> December  
2019:  
No areas of special ecological/environmental interest are identified in the  
vicinity of the proposed extinguishment.

9.7. Where plant is located in the vicinity of the proposed public path  
extinguishment order, Section 121(4) of the Highways Act 1980 states that the  
Secretary of State may not make or confirm an order and an Authority may

not confirm an order unless affected statutory undertakers have consented to the making or confirmation of the order, therefore written consent to the proposals has been requested from those undertakers with plant at location, Scottish and Southern Electricity Networks must be forthcoming with consent before the Authority can confirm the order. The order regulations also contain provision for statutory undertakers to maintain access to plant.

## **10. Main Considerations for the Council**

- 10.1. Section 118 of the Highways Act 1980 requires the order making authority to be satisfied that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.
  
- 10.2. The Council are satisfied that it is expedient to extinguish part of the width of footpath Burbage 6, where the remaining width is sufficient for public use and exceeds the requirements, as contained in Wiltshire Council policy in the Countryside Access Improvement Plan, for the width of a new footpath at 2 metres. The footpath will retain a width of 4.7 metres at the point of the width extinguishment. A width of 4.7 metres is a more than reasonable width for the public to pass and repass on a public footpath. The path continuing east from the point of the extinguishment will retain its width of 8 metres. The width extinguishment will not affect any member of the public using the footpath as no deviation will be required in any manner walking from either direction. To use the proposed section to be extinguished would require a deliberate deviation. Walking from Eastcourt Road east along the path along the fenced in driveway, as seen at 5.1 of this report, a user would need to make a deliberate movement north once reaching the end of the fence line and hedge towards the property rather continuing in a naturally straight direction to the gateway as seen at 5.3 of this report. Officers consider that the legal test for making an order, as set out at Section 118(1) of the 1980 Act, is met in this

case, i.e. it is expedient that part of the path or way should be stopped up on the grounds that it is not needed for public use.

- 10.3. An order shall not be confirmed unless the authority or the Secretary of State are satisfied that it expedient to do so, having regard to the extent (if any) to which it appears that the path or way would, apart from the order be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation (Section 118(2) Highways Act 1980).
- 10.4. The land subject to the public path extinguishment application is in the ownership of the applicant Ms Zoe Turner, who has given written consent for the proposals, it is therefore considered unlikely that any claims for compensation will be received. Additionally, the applicant has agreed to pay any compensation which may arise in consequence of the coming into operation of the order.
- 10.5. To assist in its consideration likely public use of the path, as outlined at Section 118(2) of the 1980 Act, the Council consulted user groups, the landowner, immediate neighbouring properties and the Parish Council regarding the proposal, the contents of which can be seen at 9. of this report.
- 10.6. The Planning Inspectorate Advice Note No.9 *“General Guidance on Public Rights of Way Matters”*, suggests that “need” is the greater test in this case and *“At the confirmation stage, the decision-maker does not have to be satisfied that the way is not being used in order to conclude that it is not needed for public use. An Inspector could confirm an order even if he/she thought the way was likely to be used to a limited degree but was not actually*

*needed.*” Officers consider this is likely to be the case at Burbage 6. The section of path to be extinguished may be used occasionally by users of the path who do meander while using the path. It is deemed likely that the vast majority of users would not use the section to be extinguished, as mentioned previously to use this section would require a deviation from the natural line of walking the route at this location. It may be used to some degree but is not needed for public use where more than adequate path remains following extinguishment. The extent of the remaining highway will exceed Wiltshire Council policy of a width of 2 metres for a new footpath or a path bordered on one side being 3 metres, with a width of 4.7 metres left for public use.

- 10.7. At subsection 6A of Section 118 of the 1980 Act, the Secretary of State or the Council in determining whether or not to confirm the order, should have regard to any material provision of a rights of way improvement plan prepared by any local Highway Authority, in this case the Wiltshire Countryside Access Improvement Plan 2015 – 2025 (CAIP) . The CAIP sets out Wiltshire Council policies relating to rights of way including public path order applications. At section 1B.2 of the Policies section of the document, it is stated that:

*“A diverted/newly created path should meet the Council’s minimum standard width:*

*Footpath: 2 metres;*

*Footpath bordered on one side or both sides (e.g. fence, wall or hedge): 3 metres;*

*Bridleway: 4 metres;*

*Restricted Byway: 5 metres.”*

Under the extinguishment application proposals, the minimum width of footpath Burbage 6 at the point of extinguishment to be retained is 4.7 m, which exceeds Wiltshire Council requirements for a diverted/newly created bridleway or restricted byway.

- 10.8. Part 4 of the policies section *“Maintenance of public Rights of Way”* states:  
*“When considering the replacement or installation of new gates and stiles, the council will adopt the least restrictive option, (i.e. gap is preferable, then gate, then stile). This will be in accordance with the expected level and type of use of the path, and the management of the land.”*

This proposal does not introduce any new obstructions to the path and still allows more than adequate width for users of the path.

- 10.9. The CAIP includes a strengths, weaknesses, opportunities and threats (SWOT) analysis of the rights of way network in Wiltshire, produced in consultation with representatives from user groups. Under weaknesses it is recognised that:

*“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users.”*

*“Processing legal orders to change rights of way brings positive changes to the network, e.g. it protects ancient routes and diverts routes to meet modern requirements”*, is recognised as an opportunity for the network.

The rights of way network in Wiltshire is historic, which at times does not meet the needs of users. This is also applicable to landowners, e.g. where land use has changed. The legislation available to amend the rights of way network through extinguishment, diversion and creation, recognises this. The proposed extinguishment acknowledges the historic width of the footpath which was recorded as a result of a DMMO (definitive map modification order) confirmed in 2013, while taking into account the modern use of the footpath.



10.10. In making extinguishment orders, Sections 29 and 121(3) of the Highways Act 1980 require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological and physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also places a duty on every public authority in exercising its functions, to have regard to the conservation of biodiversity, as far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.

10.11. There are no considerations relating to forestry in the extinguishment of footpath Burbage 6 (part). Considering agricultural concerns, the continuation of the footpath east from the site of the proposal may give access to the field south of the footpath for the owner of that field. The proposed extinguishment will leave 4.7 metres of footpath which is just as wide as the current physical available width of the path leading from Eastcourt Road to the proposed extinguishment. Therefore, the proposed extinguishment will not affect any access and agricultural use of that field.

10.12 With regard to conserving flora, fauna and geological and physiographical features and biodiversity, the site does not lie within an area of special ecological interest.

10.13 The Countryside Access Officer for the area has been consulted and has no objection to the proposal.

## **11 Comments on the Objections**

- 11.1. Two objections at the initial consultation phase have been received from Mr McNicholas and Burbage Parish Council whilst Peter Gallagher representing The Ramblers responded stating they have no objection.
- 11.2 Mr McNicholas's objections can be seen at 9.4 of this report. Mr McNicholas claims to use the section of path which is to be extinguished. This may be the case but as stated at 10.6 of this report the way may be used to a limited degree but the actual need for the path must be considered even if it is used to a limited degree. In the case of Burbage 6 officers can see no case that the section to be extinguished is needed for public use as there will be 4.7 metres of path available if the extinguishment is confirmed at that point of the footpath. Mr McNicholas also states no.39, who are the applicants could reinstate the previous boundary. It appears no.39 purchased the section of path to be extinguished in 2017 and as such the property boundary does extend to the boundary of the proposed extinguishment. Concerns regarding the section being turned into a car park for the property are noted, however on inspection the section of path to be extinguished has not been parked on or blocked in any manner, however if the section is extinguished the owner will be entitled to park vehicles on this section. This will not have a significant adverse effect on users of the footpath who will have 4.7 metres of unobstructed path to use. Mr McNicholas also says the path forms a buffer for a conservation zone, officers are unsure which conservation zone is being referred to, however the area of Burbage does fall within the North Wessex Downs AONB, who have been consulted and not objected to this proposal. The area does not form part of a country park, SSSI, or any other designation to officer's knowledge.
- 11.3 Burbage Parish Council objected at the consultation phase on the grounds that drains run under the path to be extinguished and the property can reinstate the old boundary if they desire privacy.

Utility checks have been undertaken and the services that do exist have consented to the proposal. The extinguishment of the public rights over the surface of the right of way will not affect the maintenance of any drains under the surface.

Any privacy issues are not stated as part of the reason for the application for the extinguishment and are not part of the legal tests which must be considered. Only the need for the path can be considered and as stated previously in the report, in this circumstance it appears there is no obvious need for the 8 metre width of the footpath and the 4.7 metres of width left will be more than sufficient for public use.

11.4 The Ramblers representative for the area has stated they have no objection to the proposal.

11.5 If an order is made to extinguish the width of footpath proposed in this application the order will be advertised on site and in a local newspaper giving the opportunity for further representations to be made at that point.

## **12. Overview and Scrutiny**

12.1. Overview and Scrutiny engagement is not required where there is a statutory process to be followed, as set out under Section 118 of the Highways Act 1980 and Schedule 6 to the Act.

## **13. Safeguarding Considerations**

13.1. If an order to extinguish part of Footpath Burbage 6 is made, Wiltshire Council will follow procedures set out at Schedule 6 of the Highways Act 1980, which outline the provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted

byways, including notice of the making and confirmation of the order. In doing so Wiltshire Council will fulfil its safeguarding considerations.

#### **14. Public Health Implications**

14.1. No public health implications have been identified as a result of the extinguishment proposal.

#### **15. Procurement Implications**

15.1. The making of an order under section 118 of the Highways Act 1980, does have financial implications for the Council which are discussed at 19.

#### **16. Environmental and Climate Change Considerations**

16.1. There are no known environmental or climate change considerations associated with the proposals. The Wiltshire Council Ecology database has been consulted and no areas of special ecological/environmental interest are identified in the vicinity of the proposed diversion.

#### **17. Equalities Impact of the Proposal**

17.1. DEFRA Circular 1/09, at 5.4. states that “...all aspects of Public Path Orders (unlike Definitive Map Modification Orders which represent what is believed to have been the route, width and structures existing when a way was dedicated) will be affected by the DDA (Disability Discrimination Act 1995), particularly in relation to the limitations and conditions to be defined in the statement.”

17.2. The Disability Discrimination Act (DDA) is now superseded by the Equality Act 2010, which places a duty upon all authorities as follows:

*“(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result in socio-economic disadvantage.”*

17.3. The protected characteristics include disability and the Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the “public sector equality duty” placed upon a public authority, to:

*“in exercise of its functions, have due regard to the need to-*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

17.4. The Wiltshire Council “Wiltshire Countryside Access Improvement Plan 2015 – 2025 Rights of Way Improvement Plan 2” (CAIP), also sets out Wiltshire Council’s access for all and gaps, gate and stile policy (policy 7, page 10), stating that *“disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical”*, and the *“least restrictive option”* principle needs to be applied when a new route is being created. Officers are satisfied that there are no additional limitations and conditions placed upon public use of footpath Burbage 6 as a result of the extinguishment of part of its width. At its minimum the path would retain a width of 4.7m, which exceeds Wiltshire Council policy for a newly created footpath of 3m if bounded by a fence, as contained within the CAIP.

## **18. Risk Assessment**

- 18.1. No risks to the public are identified in making a public path extinguishment order. The financial risks to the Council are considered at 19.

## **19. Financial Implications**

- 19.1. 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), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.
- 19.2. The applicant has agreed in writing to meet the actual costs to the Council in processing the order, including advertising the making of the order and should the order be successful, the confirmation of the order in one local newspaper.
- 19.3. The applicant has agreed in writing to pay any compensation which may arise in consequence of the coming into operation of the order, (although this is not anticipated where the registered landowners have been contacted and have raised no objection to the application).
- 19.4. The applicant has also agreed in writing to pay the costs of any associated site works incurred by the Council on completion of the application. However, no works will be required.
- 19.5. If an extinguishment order is made under Section 118 of the Highways Act 1980 and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no additional costs to the Council.

- 19.6. If there are outstanding objections to the making of the order which are not withdrawn and the Council continues to support the making of the order, the order will be forwarded to the Secretary of State for decision. The outcome of the order will then be determined by written representations, local hearing or local public inquiry. If the case is determined by written representations, the cost to the Council is negligible, however, where a local hearing is held the costs to the Council are estimated at £200 - £500 and where the case is determined by local public inquiry costs are estimated at between £1,000 and £3,000.
- 19.7. The making of a public path extinguishment order under the Highways Act 1980 is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time without referral to the Secretary of State, up until the point of confirmation, if the Council no longer continues to support the order, for example, where it is considered that the proposals no longer meet the legal tests for extinguishment as set out under Section 118 of the 1980 Act.

## **20. Legal Considerations**

- 20.1. If the Council makes a public path extinguishment order and objections are received, where the Council continues to support the making of the order, it will be forwarded to the Secretary of State for determination, which may lead to the order being dealt with by written representations, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.
- 20.2. Where the Council refuses the application, there is no right of appeal for the applicant, however, any decision of the Council is open to judicial review.

20.3. The making of a public path extinguishment order is a discretionary power for the Council rather than a statutory duty, therefore an order may be withdrawn at any time up until the point of confirmation, without referral to the Secretary of State, where the Council no longer continues to support the making of the order.

## **21. Options Considered**

21.1. The options available to the Council are as follows:

(i) To refuse to make the order, where it is considered that the legal tests, as set out under Section 118 of the Highways Act 1980, are not met, i.e. that part of the path is needed for public use,

or

(ii) To make an order to extinguish part of the width of footpath Burbage 6 under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, on the grounds that the extent of highway proposed to be extinguished is not needed for public use.

## **22. Reasons for Proposal**

22.1. It is proposed to make a public path extinguishment order under Section 118 of the Highways Act 1980, to extinguish part of the width of footpath Burbage 6, where it is not needed for public use. The width of highway to be retained is 4.7 metres, which far exceeds the width requirements for a new footpath, as set out within Wiltshire Council policy in the CAIP.

22.2 The section of path to be extinguished may be used by a small number of users but is deemed it is not needed for public use as sufficient width will be



retained. The extinguishment will not negatively impact users of the footpath and officers deem the section to be extinguished is not needed for public use as must be considered as per s.118 of the Highways Act.

**23. Recommendation**

- 23.1. That an order to extinguish part of the width of footpath Burbage 6 be made under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, where that part of the path is not needed for public use and if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

Craig Harlow  
Definitive Map Officer  
23rd December 2019

This page is intentionally left blank

**PUBLIC PATH EXTINGUISHMENT ORDER  
HIGHWAYS ACT 1980  
THE WILTSHIRE COUNCIL BURBAGE 6 (PART) EXTINGUISHMENT ORDER  
2020**

This order is made by Wiltshire Council ("the authority") under Section 118 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that the footpath described in paragraph 1 below is not needed for public use.

Burbage Parish Council has been consulted as required by Section 120(2) of the 1980 Act.

**BY THIS ORDER:**

1. The part of the public right of way over land situate at Eastcourt Road, Burbage and recorded as Burbage path No. 6 shown by a solid black shaded area on the map attached to this order and described in Part 1 of the Schedule to this order shall be extinguished after 1 day from the date of confirmation of this order.
  
2. Notwithstanding paragraph 1 of this order Scottish and Southern Electricity Networks shall have the following rights over the land referred to in paragraph 1 above, namely:-  
Where immediately before the date on which part of the width of the public right of way is stopped up there is apparatus under, in, on, over, along or across it belonging to Scottish and Southern Electricity Networks for the purpose of carrying on their undertaking, Scottish and Southern Electricity Networks shall continue to have the same rights in respect of the apparatus as they then had.

**THE COMMON SEAL of** }  
**THE WILTSHIRE COUNCIL** }  
**Was hereunto affixed this** }  
**13th day of January 2020** }

in the presence of:

  
Senior Solicitor



**SCHEDULE**

**PART 1**

### **Description of Public Rights of Way Extinguished**


That part of the width of public footpath Burbage 6 as shown by a solid black shaded area on the plan attached hereto leading from point A at OS Grid Reference SU 2342 6131 in an easterly direction to point B at OS Grid Reference SU 2344 6131 , having a width of 3.3 metres and a length of 21 metres.

**THE WILTSHIRE COUNCIL BURBAGE 6 (PART) EXTINGUISHMENT ORDER 2020**

423400 0 34600

**BURBAGE 6 – Extinguishment Order – Part Width- Footpath Burbage 6**

**Key**

Width of Footpath to be extinguished: A  B

Unaffected footpath: OOOOOOOOOOOO

© Crown Copyright and Database Rights 2019 Ordnance Survey 100049050

Prepared by: CH Date: 13<sup>th</sup> January 2020 Scale: 1:750 @ A4 Grid Ref: SU 234 613



This page is intentionally left blank



# **EASTCOURT CONSERVATION AREA**

## **CHARACTER APPRAISAL AND MANAGEMENT PROPOSALS**

February 2008

**Planning Services**

 Development Control & Conservation

 Forward Planning & Transportation

 Building Control & Property Management

## SUMMARY

A conservation area was first designated at Eastcourt in October 1985 in recognition of its architectural and historic character. Its special quality is summarised in the following way.

The hamlet of Eastcourt lies on the eastern part of the large village of Burbage which also has a conservation area, designated in 1993. It lies in the North Wessex Downs Area of Outstanding Natural Beauty and has the modern-day advantage of being by-passed by through traffic. It retains the character of a sleepy village and has a high proportion of historic buildings. These mainly consist of well-spaced thatched cottages and polychromatic brick buildings. The conservation area only has about 30 properties, these include the grade II\* listed Parish Church of All Saints and the County Primary School. The abundant presence of trees, hedges and other features of soft landscaping are important in maintaining its settled and timeless atmosphere. The untouched nature of the network of lanes is also an important characteristic of the historic environment – all contribute to make Eastcourt particularly worthy of conservation area protection.

Some rural conservation areas are in a state of relative economic decline, and suffer from lack of investment. More often, the qualities that make conservation areas appealing also help to encourage over-investment and pressure for new development. Eastcourt however is in a reasonable state of equilibrium where the long established rural character survives and significant change in the future is not anticipated. Where infilling or replacement of existing properties takes place in the future it will be important to ensure that special regard is given to the historic and physical contexts in which the new development will fit.

*Front Page: The main Street in Eastcourt - looking south.*



# EASTCOURT CONSERVATION AREA

## 1. INTRODUCTION

Historic areas are now extensively recognised for the contribution they make to our cultural inheritance, economic well-being and quality of life. Public support for the conservation and enhancement of areas of architectural and historic interest is well established.

The government requires local planning authorities to determine which parts of its area are areas of special architectural or historic interest worthy of designation as Conservation Areas.

Government policy stresses the need for authorities to define and record the special interest, character and appearance of all designated areas in their districts, and the Kennet Local Plan refers to the Council's intention to prepare up-to-date Designation Statements for each of 74 conservation areas within the District.

Change is inevitable in most conservation areas; the challenge is to manage change in ways that maintain and, if possible, reinforce an area's special qualities. The character of a conservation area is rarely static and is susceptible to incremental, as well as dramatic, change. Some areas are in a state of relative economic decline, and suffer from lack of investment. More often, the qualities that make conservation areas appealing also help to encourage over-investment and pressure for new development. English Heritage recommends that positive management is essential if such pressure for change, which tends to alter the very character that made the areas attractive in the first place, is to be limited.

The Council's performance in designating conservation areas, defining the special interest that warrants designation through up-to-date character appraisals, and publishing management proposals is now the subject of a three-part "Best Value Performance Indicator"

The following character appraisal and management proposals for Eastcourt are intended to replace a recently revised Statement that was adopted by the Council in 2004.

The purpose of this document is to identify and record those special qualities of Eastcourt that make up its architectural and historic character. This is important in providing a sound basis for planning policies and decisions on development, as well as for the formulation of proposals for the preservation and enhancement of the character or appearance of the area. Beyond their use as planning tools, appraisals also have a wider application as educational and informative documents for the local community.







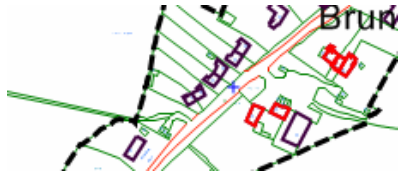
The document is intended for all those with an interest in Eastcourt, or undertaking work on the buildings, landscape, roads or public spaces. It is also essential reading for anyone contemplating new development within the area. By drawing attention to the distinctive features of Eastcourt it is intended that its character will be protected and enhanced for the benefit of current and future generations.

The remainder of the document is divided into three further main sections – the character appraisal, future management proposals, and community involvement.

The survey work for the appraisal was carried out during the Summer of 2007. The character appraisal commences with a short description of the planning context and is followed by an analysis of Eastcourt's special architectural and historic interest. This represents the core of the appraisal.

The conservation area is complex and, although priority has been given to highlighting significant features, omission of items from the text or from illustrations should not be regarded as an indication that they are unimportant in terms of conserving the character of the area.

**Key to Maps:**

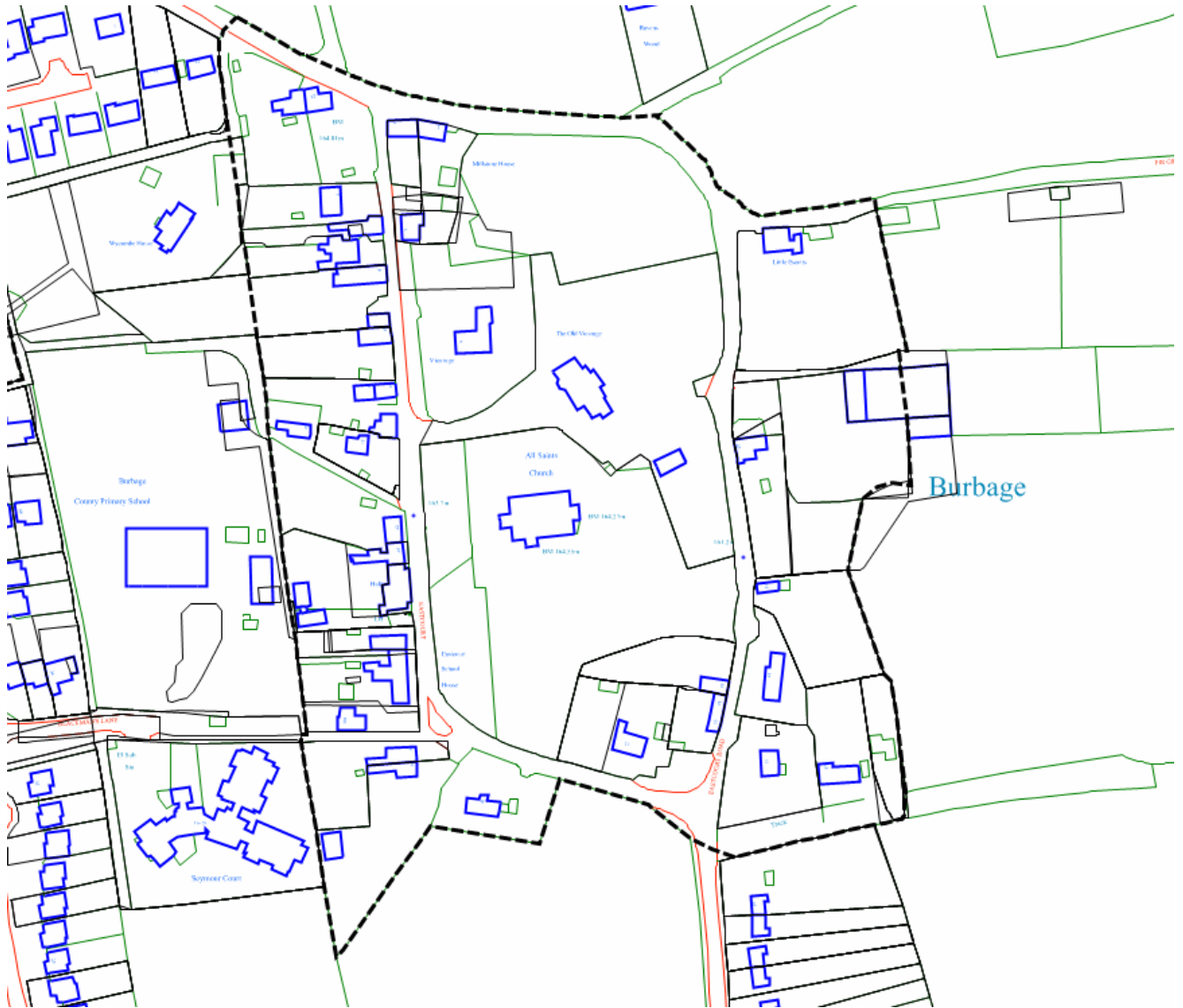
Conservation Area boundary		Groups of trees subject to Tree Preservation Orders	
Public Footpaths		Important trees and hedges	
Listed Buildings		Archaeological Alert Zone	
Unlisted buildings with townscape merit			

North is at the top of all maps

The following applies to all maps in this document : © Crown copyright. All rights reserved.  
Kennet District Council, Licence No. 100017656, 2008

## 2. EASTCOURT CONSERVATION AREA APPRAISAL

Map 1: The Boundary of Eastcourt conservation area



© Crown copyright. All rights reserved. Kennet District Council, Licence No. 100017656, 2008

### 2.1 THE PLANNING POLICY CONTEXT

The procedures governing the protection of listed buildings are widely understood and mainly focus on the protection of individual structures. Conservation area designation, however, is the main instrument to give effect to conservation policies for a particular *neighbourhood or settlement*. Designation introduces a general control over the demolition of most buildings, and tree felling / surgery. The scale of extensions that may be added to existing dwellings as “permitted development” is also limited. Designation has some resource implications for the local authority and the owners and occupiers of property within the area, because of increased statutory controls and particular requirements for the repair or alteration of existing, and

construction of new, buildings. For many owners, however, these implications may be outweighed by the cachet of designation, and the tendency of controls aimed at maintaining the character of the area to sustain, or enhance, the value of property within it. Designation also provides the basis for policies designed to preserve or enhance all the aspects of character or appearance that define an area's special interest.

The general planning policy for Eastcourt is currently set out under the area of Burbage in the Kennet Local Plan 2011. Eastcourt is defined as an area of 'minimum change', planning permission will not therefore be granted for development which would materially damage the character of the area. Policy HH10 of The Local Plan elaborates this. Eastcourt is recognised as a village with limited facilities and new large-scale, comprehensive or 'estate' forms of development are unlikely to be acceptable. Planning policy (HC24) anticipates that new building development proposals are only likely to be in the form of limited individual proposals for infilling or the re-use or replacement of existing buildings where the development would be within the existing built up area of the village, would not consolidate an existing sporadic, loose knit area of development and would be in harmony with the village in terms of its scale and character. Where such proposals are acceptable in terms of general planning policy the Council will require them to have regard to the historic and physical context of the conservation area.

Eastcourt lies within the North Wessex Downs Area of Outstanding Natural Beauty and Natural Resources. The Landscape Conservation Strategy is also relevant as supplementary planning guidance.

The government has recently introduced a new kind of planning system in which the focus is on flexibility, sustainability, and the use of evidence to underpin the core strategies. Local planning authorities will in future produce local development frameworks consisting of a portfolio of local development documents. It is unlikely that the fundamental planning policy for Eastcourt will change significantly under the new regime.

It is probable that a new core strategy will be supported by supplementary planning documents (SPD) giving greater specific guidance, for example on development control matters relating to conservation areas. The legislation relating to conservation areas runs parallel with general planning legislation and there will be a need to ensure that appropriate linkages are in place. It is anticipated that this will be achieved by new Heritage SPD which will in turn be supported by adopted and published character appraisals and management proposals for individual conservation areas. This is where this document fits in.

The intention is that a clear definition of those elements which contribute to the special architectural or historic interest of a place will enable the development of a robust policy framework for the future management of the area, on which applications for planning permission can be considered.

A local authority's reasoning for designating a conservation area, as set out in a formal character appraisal published in support of a supplementary planning document, will be taken into account by the First Secretary of State and the Planning Inspectorate in considering related planning appeals.

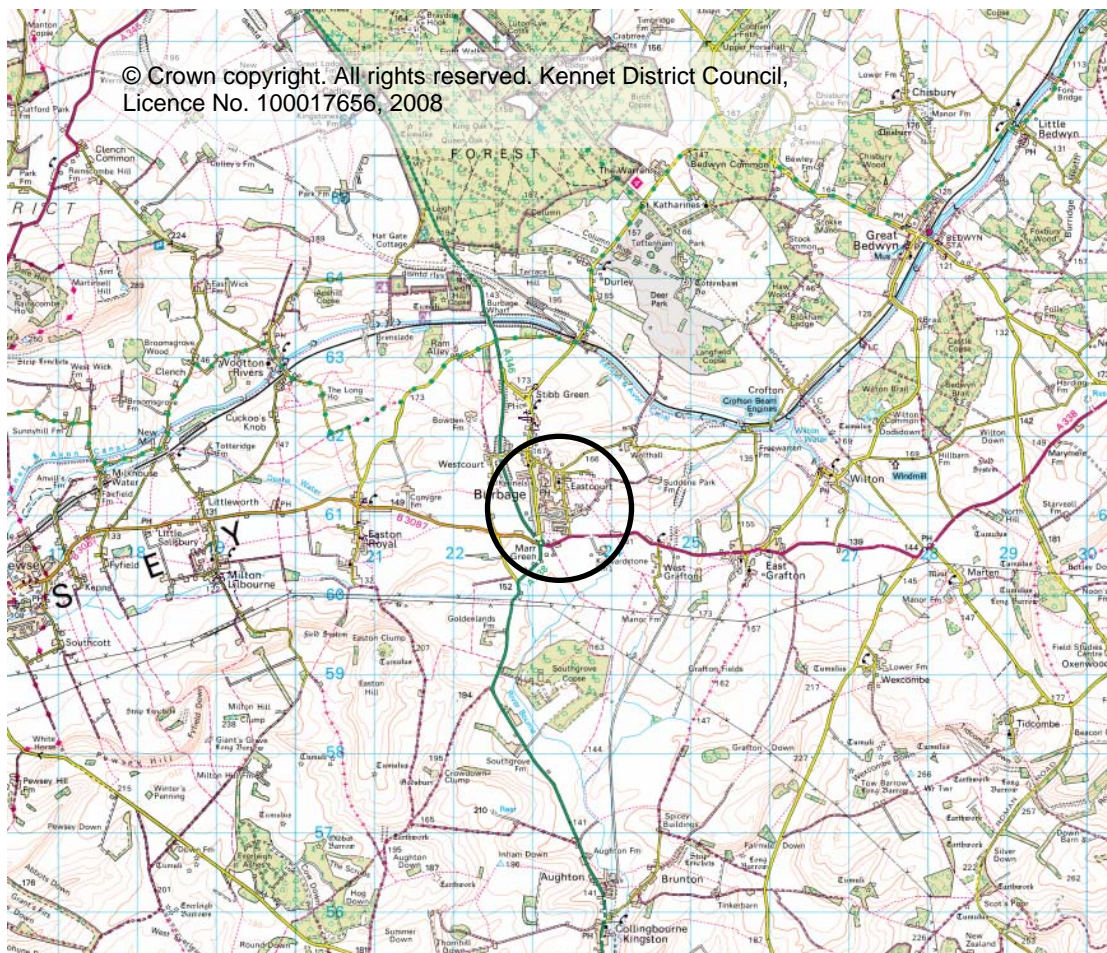
## **2.2 DEFINITION OF SPECIAL INTEREST**

### **2.2.1 Location and context**

Eastcourt lies south of Savernake Forest at the east end of the Vale of Pewsey, 5.5 miles southeast of Marlborough and 100 yards east of Burbage High Street.

The vale runs between chalk downs rising in places to 289 metres, these are part of the North Wessex Downs that range northwards from Salisbury Plain to the Thames valley. To the east of Eastcourt the Kennet valley cuts through the Downs so that effectively, the village lies on a connecting ridge of higher ground about 18 kilometres wide with the Marlborough Downs to the north and the Hampshire Downs to the south. The hamlet slopes gradually north-east to south-west at approximately 540 to 530 feet above sea level.

Map 2. The setting of Eastcourt in a rural hinterland



### **2.2.2 The boundary**

The conservation area takes in almost the whole of the settlement with exception of a terrace of modern dwellings to the south and neighbouring housing estates. The boundary essentially follows the rear property boundaries on the west side of the main street and follows round in a circle to encompass the church and the rear property boundaries to the east, off Eastcourt road. The boundary is closely drawn and there are no 'buffer zones' beyond the core of the village.

However, the surrounding areas of landscape are largely in agricultural use and are unlikely to be subject to development pressures.

There has been little significant change since the date of the original designation and it is considered the current boundary of the conservation area is appropriately drawn.

### **2.2.3 General character and plan form**

Eastcourt conservation area is essentially one row of historic buildings along a straight quiet road and of broadleaf woodland to the north and centre. There are no kerbs or footways to the road and it is bordered on the east side by a wide green verge in front of the church.

Towards the north end several houses and cottage walls define the west edge of the road. The 2-storey cottages tend to face south with gable ends to the roadside and vehicular access and parking between properties (see below). This disposition is both pleasant and unusual. Combined together with the great proliferation of trees on the wide verge opposite, the character of the place is of special character.

On the east side of the road the Parish of All Saints lies behind the pleasant linear green with spaced horse chestnuts and a central beech tree. Enclosing the churchyard are mature and native broadleaf trees incorporating three unusual cedars at the central gateway of the church (see below). The squat crenelated and buttressed church tower is of the 14<sup>th</sup> century but the wide body of the nave and aisles is of 1853 by T H Wyatt with walls and porch constructed of rich flint and freestone chequer-work.

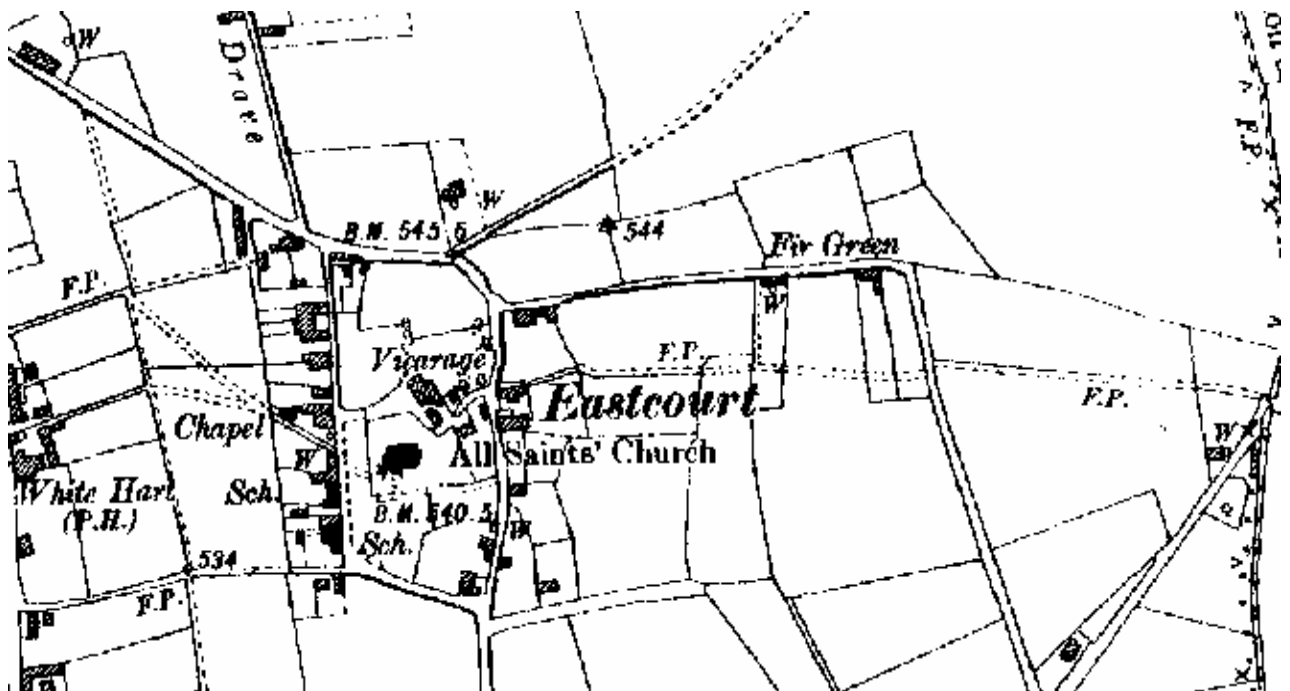


From the church gateway a tarmac footpath crosses the churchyard eastwards to a wooden gate which fronts a narrow lane, Eastcourt Road. This has quite a different character to that on the west side of the hamlet being set between grassy banks overhung by trees. There are fewer properties – largely thatched which are dotted along either side of the lane. Again, there are no curbs or pavements, giving the lane a rural and historic charm.

## **2.2.4 The origins and historic development of the area**

Eastcourt is just one of the hamlets that surround Burbage; others include Westcourt, Stibb Green, Ram Alley and Durley. In AD 71 the forest land of Burbage was part of a large forest estate known as Bedwyn, given by King Edgar to the Abbey of Abington but it was broken into four after 1066. Eastcourt is thought to have originated from land given to Burbage church. The church estate is mentioned in the Domesday book of 1086 as being held by one Viel, the priest. By 1139 however it was owned by Salisbury Cathedral and by 1150 it had established a prebend with the church estate as endowment. This lasted until 1847 when it passed to the Ecclesiastical Commissioners who sold the land to the Marquess of Ailesbury.

A school was first built in 1806 and a National School established in 1846 attended by 106 pupils. It was rebuilt in 1861 by which time the intake was over 140 pupils but was then closed on the opening of the present school in 1989.



*Above, Map 3: 1900 Map of Eastcourt*

## **2.2.5 Key views and vistas**

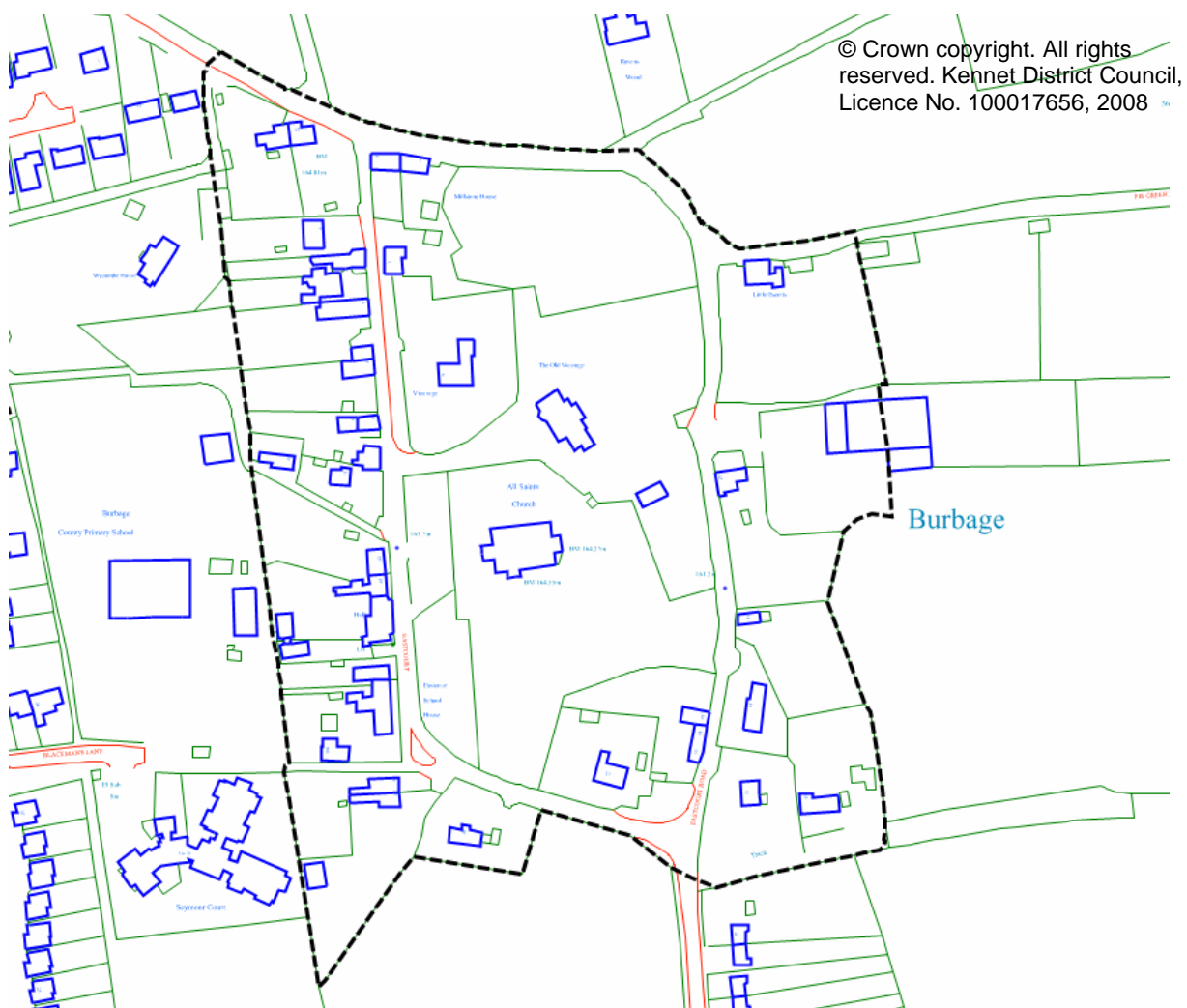
The size of Eastcourt may be small but it features a number of attractive and varied vistas both within and around the conservation area boundary, see below. These reflect the varied attributes that make the hamlet worthy of conservation area status – mature trees, high banks, open spaces, enclosed lanes, the churchyard and the varied architectural styles of the village. The lack of road markings, large visibility splays, highway paraphernalia and the like makes Eastcourt unique in its largely unspoilt character.

*Below: eastward view towards Eastcourt Road. Below left: The churchyard. Below right: The Old Vicarage*





Below, Map 4: Key vistas and public footpaths



### **2.2.6 Architectural Character**

Most of the buildings in the conservation area, by means of their age, material construction, design and position all contribute heavily to the character and quality of it.

The built environment at Eastcourt is low rise – even All Saints Church has a relatively short bell tower. There are no other structures greater than two stories in height. Cottages shape the traditional and characteristic form of dwellinghouse.

The oldest properties are listed sixteenth and seventeenth century cottages of timber frame and thatch with dormer and casement windows. One is believed to be of ancient cruck construction. The bulk of these dwellings lie on the west side of the village and are interspersed with several unlisted early nineteenth century houses and outbuildings. These are significant in their own right and have a consistency of sash, small paned windows and planked front doors, one of which is to

a hayloft. Roofs are predominantly hipped and covered in welsh slate. Several buildings of brick are painted and have replacement windows.

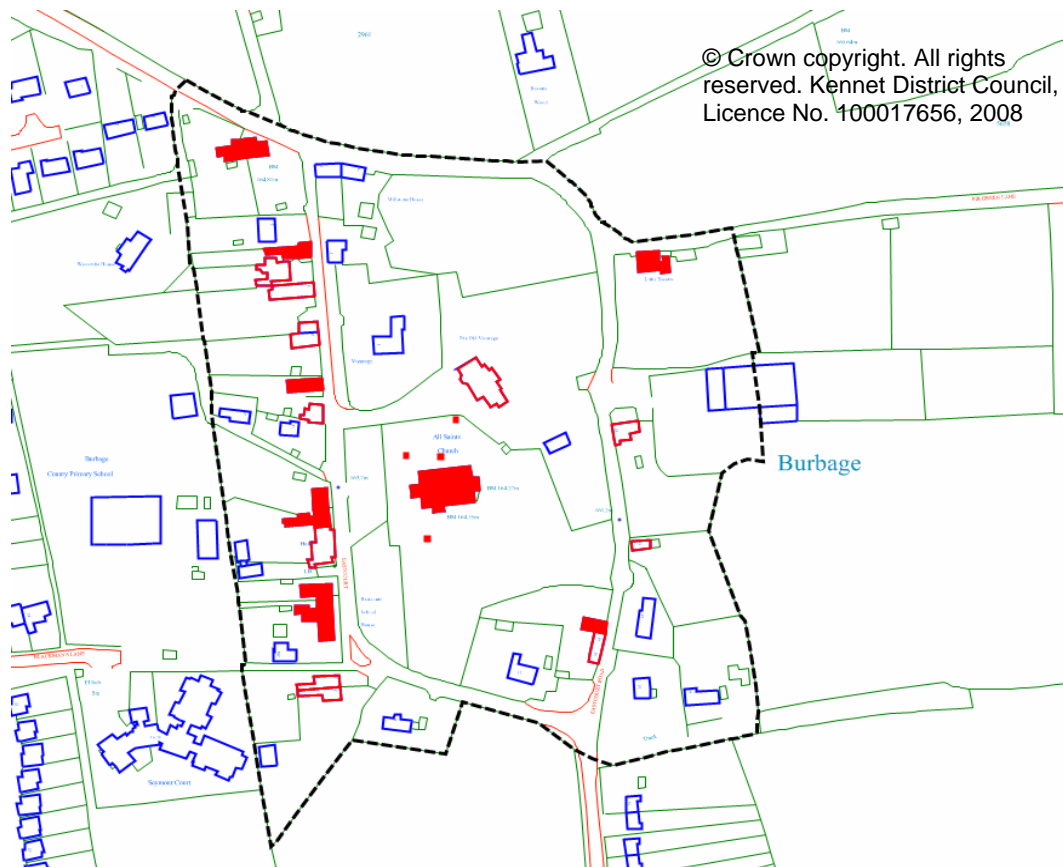
*Below: Examples of varying architectural styles within Eastcourt*



There is a consistency of style and materials of mid nineteenth century listed buildings towards the southern end of the village including the Church Hall and the former National School of the former Ailesbury Estate. These, together with a pair of unlisted cottages, No's 32 and 34 are of red and buff diaper brickwork with brick quoins and dressings. Roofs are steeply pitched in red clay plain tile with wide verge overhangs and barge boards.



*Left and above: Examples of Ailesbury Estate architecture.*



*Above Map 5: Listed buildings and unlisted buildings of merit within the conservation area*

### **2.2.7 The contribution made by greenery and green spaces**

Apart from being bordered on the west side by the settlement of Burbage, the three remaining sides face open countryside. To the north and east this land is used for arable farming and to the south is a large playing field.

In distant views across this open land, the tall trees in the wooded grounds of the church and Old Vicarage predominate and only a few fringe buildings are visible. In the north and east the sunken lanes are bounded by some hedgerow and trees, now much depleted by Elm disease, but still conceal the buildings from distant view.

Traditional cottages, particularly those with thatched roofs merge with the greenery; the character of the hamlet along the northern edge is exceptionally rural. The southern end of the lane is more open with only a few trees in the gardens of the cottages and bungalows. Similarly to the southeast, few trees lie beside the lane so open fronted gardens with non-native planting predominate.

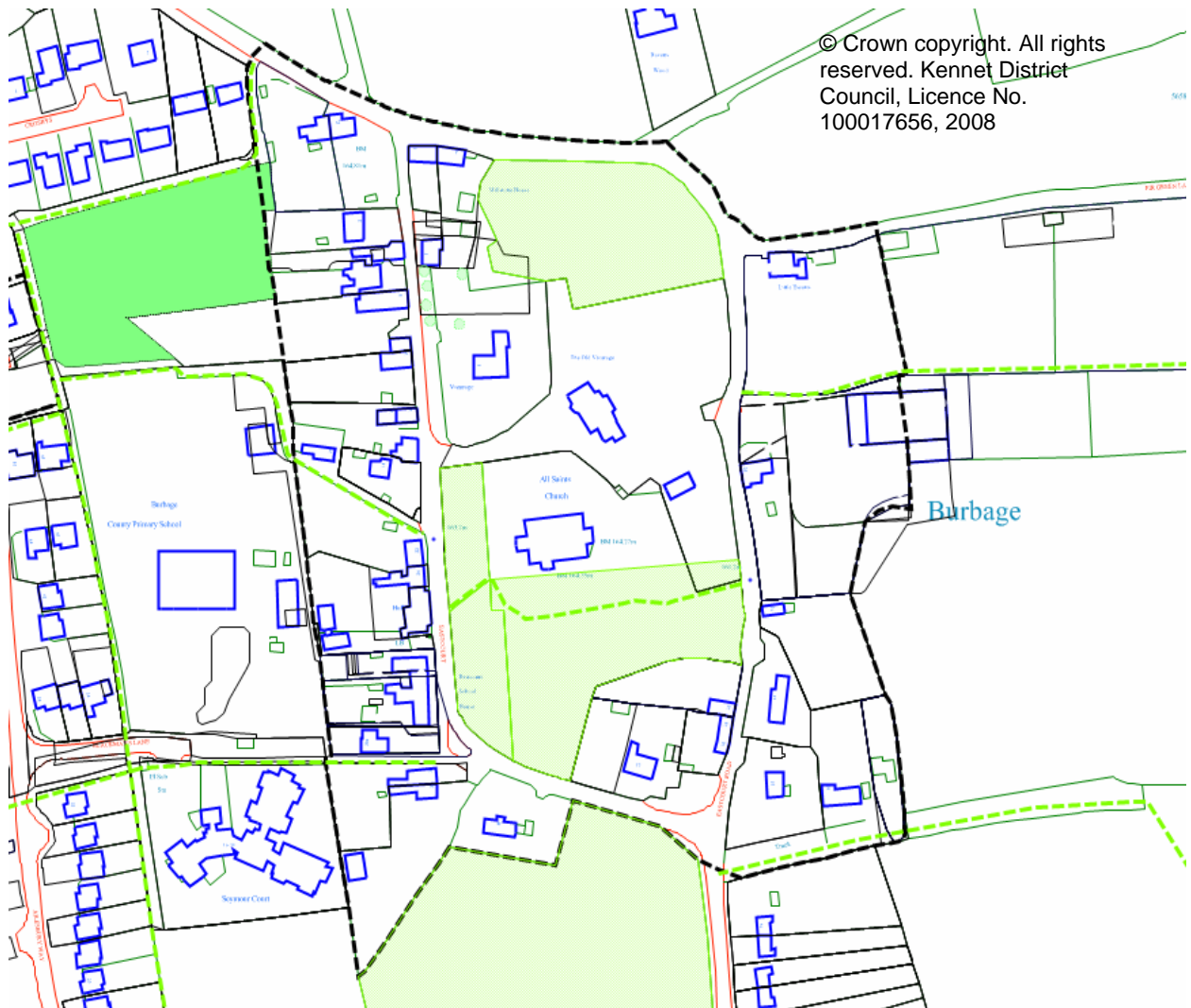
The west side is more intensively built up along Eastcourt but with grounds and gardens to the rear. Together with the playing fields to the south, there is still an undeveloped margin between the hamlet and development on the east side of Burbage High Street. Further infill between the two should be avoided to maintain the separate identity and rural character of the hamlet, apart from the modern residential developments of the larger village. Planning permission has recently been granted for the erection of several dwellings along the southern edge of the playing fields however it is hoped that the retention of land between this plot and Eastcourt hamlet will preserve the status quo of the conservation area.

The main area of open space in the conservation area lies in front of the church. This open green, dotted with several mature trees, plays a significant contribution to the character of Eastcourt village and provides an attractive amenity to its residents.

*Below: Northward view down Eastcourt road and right, The green in front of All Saints Church*



*Map 6. Important trees, hedges, open spaces and footpaths in and around the conservation area*



### **2.2.8 Surfacing and footpaths**

Around the hamlet most surfacing is low key with black top tarmac to the public roadway and private drives of gravel among the wide areas of grass. The character is strongly rural with no kerb or formal pavement. There is a simple network of public footpaths however that provide direct communication across the hamlet and into Burbage. Footpaths separate to the road are important to rural character and encourage less use of the private car. It is important that they are not diverted from their original direct routes, maintained clear of overgrowth and surfaced adequately to encourage universal use.

### **2.2.9 General condition**

Due to its attractive rural location and excellent transport links the settlement is largely prosperous. Properties have above average value and accordingly, the physical condition of its

historic buildings and other heritage assets is generally good. That said, a couple of properties are beginning to fall into a state of decline and could do with some overall maintenance, see below.



*Above: Examples of building that could do with sensitive repair and maintenance*

### **2.2.10 The extent of intrusion or damage,**

There are few negative factors and those that do exist are common place in most villages. The existence of overhead electricity and telegraph wires detracts from the special character of the area at certain points within the village. Television aerials and satellite dishes have a similar impact, as do insensitive alterations such as the replacement of timber windows with PVCu and the painting of fixtures, such as garage doors, in garish colours. Such things can easily be avoided with a little care and attention. The old and bent footpath sign to West Grafton could do with being replaced also.

*Below: unattractive aerials and satellite dishes*



*Below: An unsympathetic flat roofed extension with unsightly waste pipes, modern windows and aerial*



### **2.2.11 Problems, pressures and capacity for change**

In considering the future of the conservation area it is important to make an assessment of significance, and some analysis of how that significance is vulnerable to change. The character of Eastcourt as a traditional English village still shines through but a small number of 20<sup>th</sup> century dwellings fail to harmonise with their surroundings and pay little regard to the historic or physical context in which it

sits. Examples most notably lie to the north and south-east of the village.

There are no obvious potential development sites within the village and although gardens, open spaces and land between dwellings may be viewed as having potential, these areas are unlikely to be regarded favourably for development.

Having regards to general planning policy there are unlikely to be any major physical changes to the conservation area in the foreseeable future but where in-filling, or replacement of non-descript existing buildings, is under consideration it will be important to ensure that designs have regard to their historic and physical contexts.

## **2.3 ACKNOWLEDGEMENTS**

The main sources of information used in the preparation of the draft appraisal :

*Devizes and Central Wiltshire* – John Chandler, Hobnob Press ISBN 0-946418-16-0

*Eastcourt Conservation Area Statement* – Kennet District Council

*www.wiltshire.gov.uk*

*Wiltshire County Council*

*Kennet Local Plan*

*www.old-maps.co.uk*

## **APPENDIX 1 TO EASTCOURT CONSERVATION AREA APPRAISAL**

### **Locally important 'unlisted' buildings**

No's: 6, 8 and 10 Eastcourt

No: 16 Eastcourt

The Old Vicarage

Village Hall, 26 Eastcourt

No's: 32 and 34 Eastcourt

No's: 28 and 30 Eastcourt Road

No: 25 Eastcourt Road

No: 31 Eastcourt Road

*The location of these buildings is shown on Map 5*

## **3. EASTCOURT CONSERVATION AREA MANAGEMENT PROPOSALS**

### **3.1 RELATIONSHIP WITH THE CHARACTER APPRAISAL**

For the designation of a conservation area to be effective it is important that consistent judgements are made in determining its special qualities and local distinctiveness, as well as its value to the local community. Such judgements should be based on a thorough understanding of the area in its wider historic and physical context.

The character appraisal should be regarded as the first step in a dynamic process, the aim of which is to preserve and enhance the character and appearance of the designated area - and to provide a basis for making sustainable decisions about its future through the development of management proposals.

Now that the appraisal has been drafted, proposals for the future management of the area will need to be developed. Logically these will take the form of a mid- to long-term strategy for preserving and enhancing the conservation area, addressing any issues arising from the appraisal and identifying any further or detailed work needed for their implementation.

The strategy needs to be realistic, bearing in mind the staff and financial resources likely to be available. At the present time the Council has no dedicated funds for grant aiding building repairs or enhancement work, although minor grants may be available for some tree planting schemes. Only a 'light touch' approach can be justified for most of the rural Conservation Areas within the District.

### **3.2 GENERAL APPROACH OF THE COUNCIL TOWARDS DEVELOPMENT PROPOSALS**

In addition to the usual need to obtain planning permission for most forms of new development there is a requirement for applications to be made for Conservation Area Consent for the demolition of unlisted buildings, and notifications to be submitted for the felling or lopping of trees need to be notified

In exercising its planning powers, the Council has a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

For most proposals in the Conservation Area the Council will require detailed plans and drawings of new development, including elevations which show the proposed development in its setting, before considering a planning application.

The Council will advertise all applications for planning permission for development that would affect the character or appearance of conservation areas.

### **3.2 GENERAL APPROACH OF THE COUNCIL TOWARDS CONSERVATION AREAS**

The Council's general planning policies towards development and demolitions in Conservation Areas are guided by those outlined in PPG 15 and the Planning (Listed Buildings and Conservation Areas) Act 1990.



It is essential that a flexible approach is taken to the requirements of the Building Regulations and Fire Precautions Act and that rigorous application of general planning and highway policies should be relaxed where they would be in conflict with the preservation or enhancement of the area's character or appearance.

### **3.3 SPECIAL CONSIDERATIONS AT EASTCOURT**

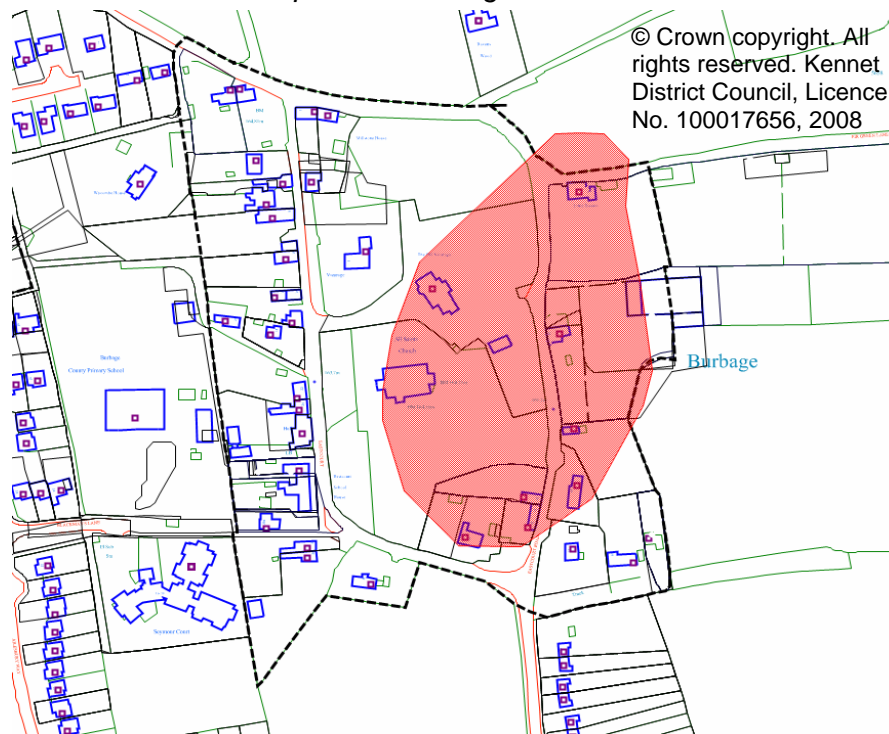
Applications for planning permission, conservation area consent, and tree works will be assessed with reference to the Conservation Area Appraisal. *There will be a presumption in favour of conserving key unlisted buildings, trees and hedges and views that have been identified.*

Following on from the above, at Eastcourt the preferred policy of conservation will lie with the preservation of the established 'status quo' rather than specific proposals for change. Where proposals for change occur the intention is to provide a framework to allow this to be carefully considered and managed in a positive way to reinforce the existing character and appearance of the area.

#### **3.3.1 Archaeology**

As noted in the appraisal there are signs of earlier clearances. The County Archaeology Service, in conjunction with the Council, has prepared archaeological zone maps for the district. These zones have been established following an analytical procedure for identifying and scoring archaeological sites and landscapes. Almost half of Eastcourt is included within an area of archaeological interest. The bulk of this lies around All Saints Church; it further encompasses Little Escotts to the north and No: 17 Eastcourt to the south. Since this area may contain below ground archaeological deposits from the medieval settlement, the Council will take archaeological advice on schemes involving below ground works. Preliminary consultation with the Archaeology Service is therefore recommended for prospective developers within this zone. It is unlikely that support will be given to development proposals which involve the disturbance of these areas.

*Map 7: Archaeological Alert Zone*



### **3.3.2 Infilling and Redevelopment**

At Eastcourt large-scale, comprehensive or 'estate' forms of development are unlikely to be acceptable. New building development proposals are therefore likely to be in the form of individual proposals for infilling or replacement buildings. The appraisal has noted that a small number of properties are not in harmony with the historic and physical context of the conservation area. The Council will therefore encourage the sympathetic redevelopment of those sites which currently detract from the character or appearance of the area. Where redevelopment does take place it will be important to maintain generous spacing between building blocks, to follow established building patterns, and to avoid destroying the verges, banks, walls and hedges fronting onto the lanes.

### **3.3.3 Design of New Buildings in the Conservation Area**

New development in the conservation area should aspire to a quality of design and execution, related to its context, which may be valued in the future. This in itself does not imply nor preclude working in traditional or new ways, but will normally involve respecting values established through assessment of the significance of the area. The aim of design guidance therefore is to encourage new development that complements the established grain or settlement pattern, whilst representing the time in which it is built and the culture it accommodates. When considering proposals for new development, the local planning authority's principal concern will be the appropriateness of the overall mass or volume of the building, its scale (the expression of size indicated by the windows, doors, floor/ceiling heights, and other identifiable units), and its relationship to its context - whether it sits comfortably on its site. A new building should be in harmony with, or complementary to, its neighbours. The footprint of new buildings should fit into the existing building pattern or grain. The use of materials generally matching in appearance or complementary to those that are historically dominant in the area is important, as is ensuring that materials, detailing and finishes are all of high quality. Within these criteria, new development should aim to achieve creative design solutions, whether contemporary or traditional in style.

In designing proposals owners and their architects are therefore advised to look carefully how their proposal will fit into its physical and historic context. Where construction work is involved particular care should be taken in the choice of building materials.

The palette of established materials at Eastcourt include :

- Roof coverings - Long straw thatch, combed wheat reed, welsh slate, handmade red clay plain tiles.
- Walling brick - Timber frame, wattle and daub, red and painted brick noggin. Red brick, buff and bath stone dressings, plain and knapped flint, chequered flint with Bath stone. Painted brick, stucco and cement render.
- Windows buildings - Timber casements for all types of buildings. Timber sliding sashes for C18 and later.
- Doors houses - Planked doors for cottages and former school buildings. Panelled doors for and larger buildings.

### **3.3.4 Extensions**

Relatively small proposals can cumulatively alter the character of the conservation area. It is important therefore that extensions to buildings do not dominate the host building, are of sympathetic design and material construction. Generic advice on the considerations to be taken into account in designing an extension is set out in a *Residential Extension Design Guide*. This is available free of charge from the Planning Services Unit at Kennet District Council.

### **3.3.5 Rethatching**

The importance of historic thatched roofs in Eastcourt has been noted. The Council has published Supplementary Planning Guidance on *Rethatching*, which is available on-line in the Conservation section of [www.kennet.gov.uk](http://www.kennet.gov.uk). This Guidance was recently updated following public consultation during 2007. The Council will shortly send copies of the revised guidance to the relevant owners.

### **3.3.6 Additional Controls**

In certain circumstances, the Council can apply additional controls to bring minor developments under restraint. This is particularly useful in cases of terraced development where thoughtless alterations can disrupt the harmony of adjacent properties. However, this has resource implications, is difficult to manage, and restricts the usual freedoms for house owners. In view of the individual nature of most properties at Eastcourt, and the above factors, it is considered that additional planning controls are not warranted. Similarly, additional control in respect of outdoor advertisements is not considered to be necessary at this location.

### **3.3.7 Care with Maintenance and Minor Alterations**

Listed buildings are already subject to additional controls, but in order to maintain the character of the conservation area the Council will also encourage the owners of unlisted properties to take care with maintenance and minor alterations. In particular the Council encourages the repair rather than replacement of original features. Where replacement of key architectural features including windows and doors is unavoidable then care should be taken to accurately copy original styles and details.

Similarly the Council encourages the long term maintenance of trees, shrubs and hedges identified in the appraisal. The planting of non-indigenous evergreen hedges and trees or close-boarded fencing in prominent positions is however discouraged.

### **3.3.8 Enhancement of the Public Realm**

Where resources are limited, balances will obviously need to be struck and priority given to key issues. There are only limited problems at Eastcourt. The biggest issues noted in the appraisal are the adverse visual impact satellite dishes and aerials, in addition to overhead telegraph and electricity wires in some parts of the village. The Council is unable to make a commitment to deal with this latter issue directly but would encourage landowners to seek carefully routing, preferably underground, when issuing wayleaves to public utility companies. Also attention is drawn to external sources of funding, such the Local Heritage Initiative, which are potentially available for community-led projects. This has the potential to provide funding for the implementation of ideas that emerge beyond the scope of the normal planning system.

### **3.3.9 Landscape Enhancement**

Throughout the conservation area boundaries between the settlement and the countryside are strong, as are property/street boundaries - these should be maintained as such. A large number of mature native trees help contribute to the character and appearance of the conservation area and these should also be maintained accordingly. Pollarding, coppicing and replanting work in this area may accord with the landscape enhancement recommendations of the Council's Landscape Conservation Strategy and discretionary grant aid may be available for suitable projects.

## **4. COMMUNITY INVOLVEMENT AND REVIEW**

### **4.1 CONSULTATIONS**

Involving the community and raising public awareness is an integral part of the appraisal process. Publicity provides an opportunity to test and consolidate public support. However, with limited resources and 74 conservation areas (at the time of writing) within its remit, the Council has to strike a balance. Lengthy public participation can be very expensive and create delays in the adoption of appropriate controls, policies and guidance. The Council's priority is the provision of these elements within a short timescale. In view of the magnitude of the overall project, and the relatively short period for completion, the Council is adopting the following model.

Notifications of the conservation area review have been sent to community representatives (including the Eastcourt Parish Council), statutory organisations, and relevant amenity groups.

Copies of a Draft Appraisal and Management Proposals document were sent to the same consultees together with a feedback form on 12th September 2007. A copy of the Draft document was also placed on the Council's publicly accessible web site, a press release issued, and a poster placed on the village notice board. Opinions were particularly canvassed on whether the boundary still adequately reflected the area of special interest, whether the appraisal contains any inaccuracies or omissions in respect of the character of the historic environment, and whether the management proposals are suitable and appropriate for the conservation of Eastcourt. The Consultative Draft was placed on deposit for six weeks.

A number of written responses were received; these are summarised in a separate document available upon request from the Council. Although a number adjustments were made to the Committee Draft as a result of the responses it was not considered that any amendments were of major or strategic importance so the revisions were not re-advertised. The Committee Draft was also then placed on deposit for a minimum of six weeks.

### **4.2 ADOPTION**

This final, approved document for Eastcourt conservation area was formally adopted on the 14<sup>th</sup> February 2008 by the Planning Policy Executive Committee on behalf of the District Council. The document is particularly intended to provide additional information on the interpretation and implementation of policies and proposals contained in the Local Development Plan. The character appraisal in particular will form an important role as part of the evidence base for the Local Development Framework, and for the purposes of Development Control.

The final document has been published and distributed to consultees, and placed permanently on the Council's web site. It is also being made available for viewing on the Parish Council's web page. Hard copies of the document may also be purchased from the address given below.

### **4.3 IMPLEMENTATION**

The need for reference to the Character Appraisal will be on-going. The implementation of the management strategy, however, requires a number of one-off positive actions which the Council will undertake at the earliest opportunity commencing from spring 2008. The adoption of the document is thus not intended to be the end of the story. In addition to its use in exercising its

planning functions, the Council will also try to influence other agencies in the protection of the area.

#### **4.4 REVIEW**

Now that Appraisal and Management Plan has been adopted there will be a need to keep it up to date and relevant. The Council will therefore aim to ensure that 75% of all Conservation Area Appraisals and Management Plans have been reviewed within the past five years.

This booklet is one in a series of Conservation Area Statements, and Appraisals and Managements Plans, and other general policy, technical and information leaflets produced by the Conservation Team at Kennet District Council. For an up to date list, please contact :

The Conservation Section. Planning Services, Kennet District Council, Browfort, Bath Road, Devizes,  
SN10 2AT

Tel : 01380 724911

Email : [conserve@kennet.gov.uk](mailto:conserve@kennet.gov.uk)

[www.kennet.gov.uk](http://www.kennet.gov.uk)

*Keeping Kennet Special*

WILTSHIRE COUNCIL

AGENDA ITEM NO. 8b

EASTERN AREA PLANNING COMMITTEE

9 July 2020

---

**WILDLIFE AND COUNTRYSIDE ACT 1981 s.53 (“the 1981 Act”)**

**THE WILTSHIRE COUNCIL GRAFTON 29 (PART), 29A, 30 AND 31, BURBAGE 1 (PART) AND COLLINGBOURNE KINGSTON 34 DEFINITIVE MAP MODIFICATION ORDER 2019**

**Purpose of Report**

1. To:
  - (i) Consider the objections received to the above Order recording rights of way at Grafton, Burbage and Collingbourne Kingston as restricted byways in the definitive map and statement.
  - (ii) Recommend that Wiltshire Council supports the confirmation of the above Order by the Secretary of State for Environment, Food and Rural Affairs.

A copy of the Order and Order plan is appended at **Appendix A**

The decision report relating to the making of the Order is appended at **Appendix B**.

Copies of the 2 objections and 2 representations in support and subsequent correspondence are appended at **Appendix C**.

**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. The definitive map and statement is the legal record of public rights and is conclusive in law as to what it shows but this is without prejudice to the existence of a more extensive public right (s.56 of the 1981 Act). The Council has a duty to keep it under continual review and make orders to modify it when evidence shows it is in error.

5. Members of the public may apply to the Council to modify the definitive map and statement and they do so under the provisions of Schedule 14 to the 1981 Act and the Council must determine these applications by investigating all available relevant evidence and by making a modification order where it is considered it is shown on the balance of probability (i.e. it is more likely than not) that a change in the map and statement is required.
6. An application has been received to record a byway open to all traffic over land at Grafton, Burbage and Collingbourne Kingston. The route is a long route linking the communities of West Grafton and Collingbourne Kingston and is currently recorded as a footpath and, in part, bridleway.
7. It is clear that in 2006 an Act of Parliament extinguished any public mechanically propelled vehicular (MPV) right that existed (s.67 Natural Environment and Rural Communities Act 2006) and that the highest public right that could exist is that of a restricted byway. A restricted byway is a route over which the public may pass and re-pass on foot, on or leading a horse, on a cycle or with a horse drawn cart or carriage. It is an offence prosecutable by the police for the public to use an MPV over one.
8. A significant amount of evidence has been investigated and the report attached at **Appendix B** explores this in detail. In considering historic public rights it is essential that the common law principal of 'once a highway, always a highway' is applied. In short, if a public right of way can be shown, on the balance of probability, to have existed in the past, no amount of disuse or neglect will extinguish that right. Only a defined legal event can stop up that right.
9. Notwithstanding evidence that suggests that parts of the application route is of Saxon antiquity it is very clear that the majority of the route was awarded to the public as a Public Carriage Road 40 feet wide in an inclosure award in 1792 arising out of an Act of Parliament in 1790.
10. Evidence of the route's physical existence is supported by a significant number of maps and documents including it being recorded as a "Public Highway", a "Road" and a "Public Road or Driftway" in plans and documents deposited with Parliament as the result of three deposited railways schemes. In all cases the route is recorded as being owned and occupied by the "Surveyors of Highways" or "Highway Surveyors".
11. Evidence arising from Acts of Parliament where the creation of public highways or the identification of public highways was part of the purpose of the award or deposit is of the highest evidential weight. A table of evidence graded by weight is given at page 82 of **Appendix B**.
12. It is likely that the route fell into disrepair or disuse in the late 1800s to early 1900s, perhaps when neighbouring roads were improved or the ground over which it led lost hedgerows or was ploughed to increase agricultural production; however, in the absence of any evidence of a legal event extinguishing the public rights it is clear that the Order is capable of confirmation whatever the recent physical history of the landscape.



13. As part of the statutory process contained in the 1981 Act, when the making of the Order was advertised, two objections and two representations of support were duly made. They have not been withdrawn and accordingly the Order may not now be confirmed by Wiltshire Council but must be sent to the Secretary of State for Environment, Farming and Rural Affairs (SoSEFRA) for determination.
14. Members are asked to consider the objections and representations and to make a recommendation relating to the confirmation of the Order to SoSEFRA.

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

15. The representations and objections are appended at **Appendix C** along with copies of letters sent by the case officer seeking the withdrawal of the objections.
16. The two representations both support the making of the Order and the recording of the route as a restricted byway. They are from the British Horse Society and The Ramblers.
17. The two objections are from two of the affected landowners. Neither objection raises any evidence to challenge the interpretation of the historical evidence or adduces any evidence of a legal event extinguishing public rights. The landowners' express concerns relating to the ability of the Council to manage the route, problems arising from the management of the greater width where it crosses arable land, seasonal flooding and illegal incursions from MPVs, especially hare coursers.
18. The case officer has written to the objectors (**Appendix C**) explaining that the Council is meeting its statutory duty in recording the route in the definitive map and statement and that matters relating to need, desirability, the environment or health and safety are not relevant concerns for the purposes of s.53 of the 1981 Act. It has no power to take these factors into account.
19. It is anticipated that in the event the Order is confirmed the Council will make very few changes on the ground. The northern end is likely to remain as it was when inspected in October 2019 and likewise the southern terminus with restricted byway Collingbourne Kingston 6A. The confirmation of the Order is therefore not likely to make the route any more accessible for MPVs than it currently is.
20. It is noted that a permissive route is provided for walkers who wish to avoid walking the definitive line of Grafton 29A and 30 across an arable field. This provides a reasonable alternative but does not negate in any way the landowners' duty to keep the definitive line open and available, even if across an arable field. To resolve concerns like this, Wiltshire Council accepts applications to divert public paths and restricted byways and it has been suggested that the owner of the land considers this option if management of the route across the field is difficult.

### **Overview and Scrutiny Engagement**

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

### **Safeguarding Considerations**

22. There are no relevant safeguarding considerations associated with the confirmation of this Order. These considerations are not relevant considerations for the purposes of s.53 of the 1981 Act.

### **Public Health Implications**

23. There are no identified public health implications which arise from the confirmation of this Order. These considerations are not relevant considerations for the purposes of s.53 of the 1981 Act.

### **Corporate Procurement Implications**

24. There are no additional procurement implications associated with this recommendation. These considerations are not relevant considerations for the purposes of s.53 of the 1981 Act.

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

25. There are no environmental or climate change considerations associated with the confirmation of this Order. These considerations are not relevant considerations for the purposes of s.53 of the 1981 Act.

### **Equalities Impact of the Proposal**

26. These considerations are not relevant considerations for the purposes of s.53 of the 1981 Act.

### **Risk Assessment**

27. Wiltshire Council is acting within its statutory duty and there is no risk associated with the pursuit of this duty.

### **Financial Implications**

28. Wiltshire Council has made financial provision for the pursuit of its statutory duty under s.53 of the 1981 Act.
29. The Order must be sent to SoSEFRA for determination and this may incur costs for the Council. The Order may be determined by written representations, at a public local hearing or a public inquiry.
30. In the event that SoSEFRA decides to determine the Order by written representations there is a minimal cost to the Council in officer time. Where a hearing is held there are costs associated with hiring a venue, these will be in the region of £200. Where a public inquiry is held it is usual to have legal representation and accordingly a cost in the region of £5,000 is possible.
31. Costs may be claimed against the Council if it is found by SoSEFRA to act unreasonably at an inquiry. The Council may seek costs against the objectors if they are found by SoSEFRA to act unreasonably at an inquiry.

### **Legal Implications**

32. 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 support or not support the confirmation of the Order.
33. 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**

34. That:
  - (i) Wiltshire Council support the confirmation of the above Order by SoSEFRA.
  - (ii) Wiltshire Council objects to the confirmation of the above Order by SoSEFRA.

### **Reason for Proposal**

35. There is a substantial body of evidence which officers consider shows, on the balance of probability, that a public carriage road was created in 1792 along the majority of the claimed route and that although the public right to use the route with an MPV was extinguished in 2006, the remaining public rights have not been extinguished over this route.
36. The route is currently recorded as a footpath in the parishes of Grafton and Collingbourne Kingston and as a bridleway in the parish of Burbage. It is clear that the recording of the route in Burbage is an error, notwithstanding the question of its status. It was not only awarded and consistently recorded in the parish of Grafton but is today in this position on the ground.
37. Where the definitive map and statement are found to be in error the Council has a duty to correct the records by making a definitive map modification order and where the evidence continues to be supportive, to either confirm or support the confirmation of the Order.

### **Proposal**

38. **That The Wiltshire Council Grafton 29 (part), 29A, 30 and 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019 is submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that the Order is confirmed as made.**

**Jessica Gibbons**  
**Director, Communities and Neighbourhood Services**

Report Author:

**Sally Madgwick**

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

---

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

None

**Appendices:**

Appendix A Order

Appendix B Decision report to make the Order

Appendix C Objections and representations and associated correspondence

**WILDLIFE AND COUNTRYSIDE ACT 1981****THE DEFINITIVE MAP AND STATEMENT FOR THE MARLBOROUGH AND RAMSBURY RURAL DISTRICT COUNCIL AREA DATED 1952 AND THE PEWSEY RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981****THE WILTSHIRE COUNCIL GRAFTON 29(PART), 29A, 30 AND 31, BURBAGE 1 (PART) AND COLLINGBOURNE KINGSTON 34 DEFINITIVE MAP MODIFICATION ORDER 2019**

This order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement for the Marlborough and Ramsbury Rural District Council area dated 1952 and the Pewsey Rural District Council area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of events specified in section 53(3)(c)(i), (ii) & (iii) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Authority have consulted with every local authority whose area includes the land to which this order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 14th November 2019
2. The Definitive Map and Statement for the Marlborough and Ramsbury Rural District Council area dated 1952 and the Pewsey Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the plan attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Grafton 29 (part), 29A, 30 and 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order

THE COMMON SEAL of  
WILTSHIRE COUNCIL was  
hereunto affixed this 6th day  
of December 2019

}  
}  
}  
}



in the presence of:

Senior Solicitor

HELEN CHANDLER

The remainder of this page 2 of 5 has deliberately been left blank

## SCHEDULE

### PART I

#### MODIFICATION OF DEFINITIVE MAP

Parish	Path No	Description of path or way to be upgraded	Modified under Section 53(3) as specified
Grafton	29 part	Length of restricted byway shown by a broken green line leading between points B and C2 on the plan attached hereto.  Width from B to C2 = 12. 2 metres (40 feet)  Approximate length 670 metres	53(3)(c)(ii) & (iii)
Grafton	31	Length of restricted byway shown by a broken green line leading between points A and B on the plan attached hereto.  Width A to B = 12.2 metres (40 feet)  Approximate length 460 metres	53(3)(c)(ii) & (iii)
Grafton	30	Length of restricted byway shown by a broken green line leading between points D2 and E on the plan attached hereto.  Width D2 to E = 12.2 metres (40 feet)  Approximate length 280 metres	53(3)(c)(ii) & (iii)
Collingbourne Kingston	34	Length of restricted byway shown by a broken green line leading between points E and F on the plan attached hereto.  Width E to F = 6.1 metres (20 feet)  Approximate length 800 metres	53(3)(c)(ii) & (iii)
Parish	Path No	Description of path or way to be added	Modified under Section 53(3) as specified
Grafton	29A	Length of restricted byway shown by a broken green line leading between points C2 and D2 on the plan attached hereto.  Width C2 to D2 = 12.2 metres (40 feet)	53(3)(c)(i) & (iii)

Approximate length 1300 metres

## SCHEDULE

### PART I continued

#### MODIFICATION OF DEFINITIVE MAP

Parish	Path No	Description of path or way to be deleted	Modified under Section 53(3) as specified
Burbage	1 part	Length of bridleway shown by a continuous green line between points C1 and D1 on the plan attached hereto.  Width from C1 to D1 = 9.2 metres (30 feet)  Approximate length 1300 metres	53(3)(c)(iii)

## SCHEDULE

### PART II

#### MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path No	Description of path	Modified under Section 53(3) as specified
Grafton	29	FOOTPATH from the junction of paths 28 and 17 at West Grafton south east of Kinwardstone leading broadly south south west to its junction with path 31 where: RESTRICTED BYWAY continuing south south west along the Parish Boundary to its junction with path 29A.  Width of restricted byway section = 12.2 metres (40 feet)  Approximate length 1140 metres	53(3)(c)(ii) & (iii)
Grafton	29A	RESTRICTED BYWAY Southgrove Lane From path 29 leading south and south south west along the parish boundary to its junction with path no 30.  Width = 12.2 metres (40 feet)  Approximate length 1300 metres	53(3)(c)(i) & (iii)



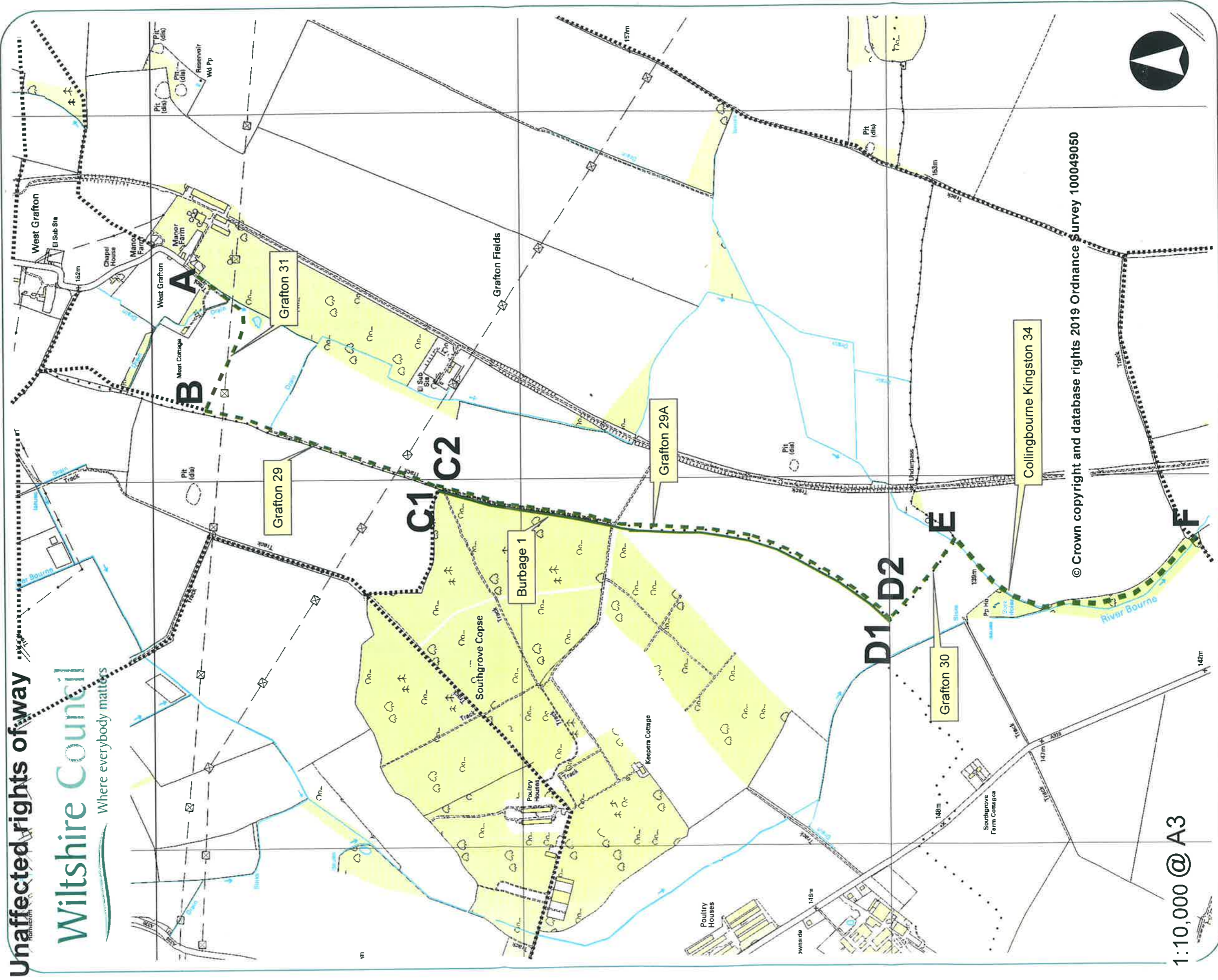
## SCHEDULE

### PART II continued

#### MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path No	Description of path	Modified under Section 53(3) as specified
Grafton	31	RESTRICTED BYWAY from the southern end of road u/c 5121 at West Grafton Farm leading south west and west north west to path 29.  Width = 12.2 metres (40 feet)  Approximate length 460 metres	53(3)(c)(ii) & (iii)
Grafton	30	RESTRICTED BYWAY from the southern end of path no 29A south of Southgrove Copse and east of the River Bourne, leading south east along the Collingbourne Kingston Parish Boundary until it turns south west into Collingbourne Kingston (west of the former railway) and its junction with Collingbourne Kingston path no 34.  Width = 12.2 metres (40 feet)  Approximate length 280 metres	53(3)(c)(ii) & (iii)
Burbage	1	BRIDLEWAY from the Salisbury to Hungerford road, A.338, at Pall Mall, north of Marr Green, leading south east, south west and east to the Grafton parish boundary and its junction with Grafton paths no 29 and 29A.  Width 9.2 metres (30 feet)  Approximate length 1900 metres	53(3)(c)(iii)
Collingbourne Kingston	34	RESTRICTED BYWAY from Grafton path 30, west of the former railway, leading south west to the River Bourne then south and south east on the eastern side of the river to path 6A.  Width 6.1 metres (20 feet)  Approximate length 800 metres	53(3)(c)(ii) & (iii)

- Grafton 29(pt), 30 & 31, Burbage 1 and Collingbourne Kingston 34 Order Plan**
- Grafton 31 to be upgraded to restricted byway **A** - - - - - **B**
  - Grafton 29 to be upgraded to restricted byway **B** - - - - - **C2**
  - Grafton 29A to be added as restricted byway **C2** - - - - - **D2**
  - Burbage 1 to be deleted **C1** ——— **D1**
  - Grafton 30 to be upgraded to restricted byway **D2** - - - - - **E**
  - Collingbourne Kingston 34 to be upgraded to restricted byway **E** - - - - - **F**



1:10,000 @ A3

## WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

### DECISION REPORT

#### Grafton 29 (part), 30 and 31, Burbage 1 (part) and Collingbourne Kingston 34

NB All documents (including user evidence forms where applicable, responses to consultations and correspondence) are available to be viewed at the Council's offices at Rights of Way and Countryside, County Hall, Bythesea Road, Trowbridge, BA14 8JN; please contact Sally Madgwick on 01225 713392.

#### 1.0 APPLICATION

Application number: 2004/07

Date of application: 26 March 2004

Applicant: Mr B Riley  
141 Bath Road  
Bradford on Avon  
Wiltshire  
BA14 8JD

Application for: An Order modifying the definitive map and statement for the area by upgrading to a byway open to all traffic the following rights of way forming one continuous route:

**Grafton right of way no 31** from the southern end of road u/c 5121 at Manor Farm, West Grafton leading south west and west north west to Grafton right of way no. 29. Estimated length 450 metres. Width ranging from 9 metres to 15 metres.

**Grafton right of way no 29 (part)** from Grafton right of way no. 31 leading south south west along the parish boundary to Burbage right of way no. 1. Estimated length 660 metres. Width 9 metres.

**Burbage right of way no 1 (part)** Southgrove Lane. From right of way Grafton no. 29 leading south south west along the parish boundary to right of way Grafton no. 30. Estimated length 1.33

kms. Width 9 metres except where awarded (40 feet 12.192 metres).

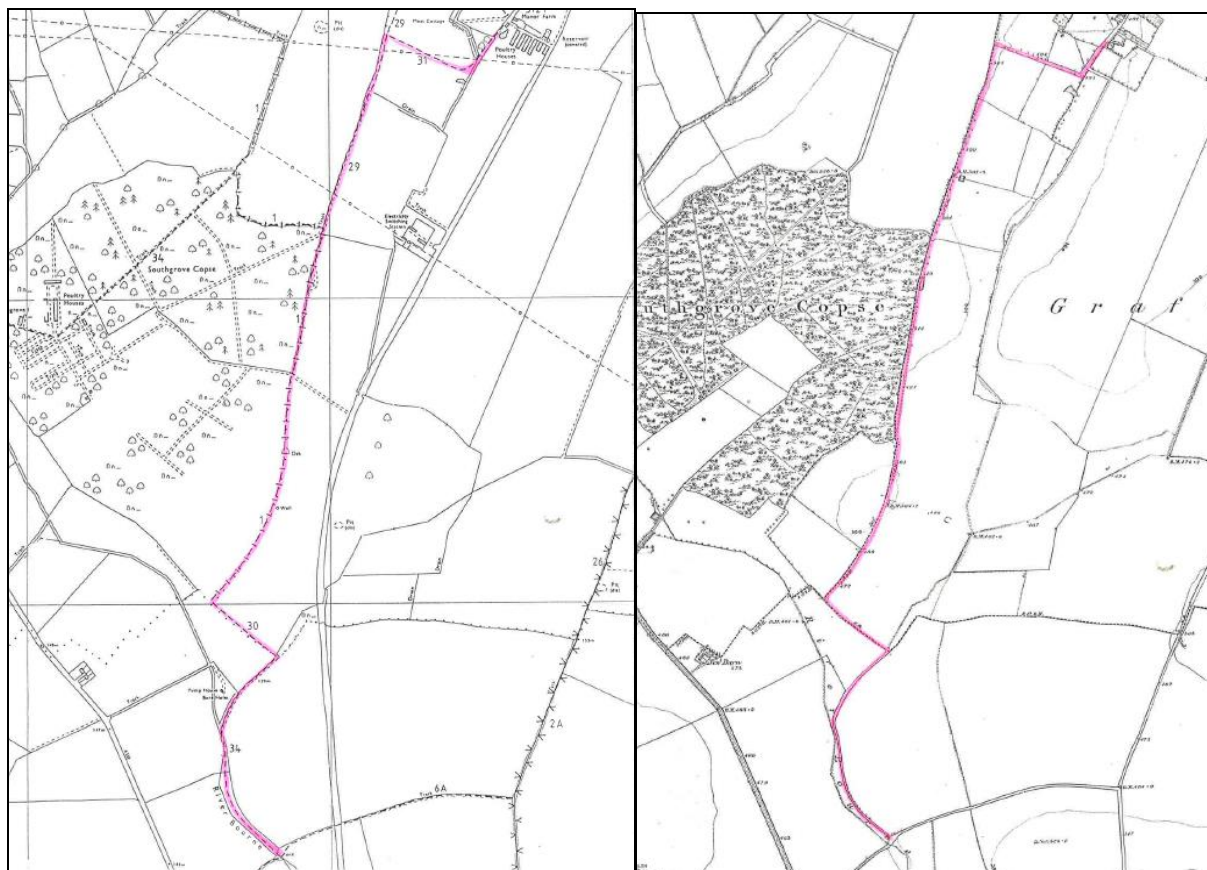
**Grafton right of way no 30** From the southern end of Burbage path no. 1 leading south east along the parish boundary to right of way Collingbourne Kingston No. 34. Estimated length 274 metres. Width 40 feet (12.192 metres).

**Collingbourne Kingston right of way 34** The Grafton Road. From Grafton right of way no. 30 leading south west to the River Bourne where south east on the eastern side of the river to Collingbourne Kingston right of way no. 6A. Estimated length 777 metres. Width 6 metres.

Application comprises:

- Schedule 7 Form of application for a modification order 26/03/04
- Schedule 8 Form of notice of application for a modification order sent to: (copies provided)
- Mr G Crook, Aughton Farm, Collingbourne Kingston
- Mr R Browning, Manor Farm, West Grafton
- A. C. Withers, Parsonage Farm, Upper Chute
- Mr N Hosier, Waglands Farm, Brunton, Collingbourne Kingston
- R Crook and Sons, Parsonage Farm, Collingbourne Kingston
- Mr T Curnick, Southgrove Farm, Burbage
- Mr Koenig, Manor Farm, West Grafton
- Schedule 9 Form of Certificate of notice of application 26/03/04
- Maps to the scale of 1:10560 and 1:10000 showing the claimed route highlighted in pink
- Summary of Historical Evidence

## Application maps



Reduced from 1:10000

Reduced from 1:10560

## 2.0 Enabling Legislation

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

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

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

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

***and statement as appear to them to be requisite in consequence of that event.***

2.3 The events referred to in subsection 2 above relevant to this case are:

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

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

*(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;*

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

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

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

2.5 Section 53(5) WCA 1981 allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

2.6 Schedule 14 to this Act states:

*Form of applications*

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

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

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

*Notice of applications*

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

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

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

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

- 2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.
- 2.8 This application is considered to fail the test of strict compliance (no actual copies of evidence were adduced, only a list and extracts were provided) to Schedule 14 but to otherwise be compliant.
- 2.9 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006 see Para 20) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.
- 2.10 An exemption under s.67(3) may only apply where an application was received before the 20<sup>th</sup> January 2005. In this instance the application was made on the 26<sup>th</sup> March 2004 and therefore may be subject to a saving under s.67(3).
- 2.11 The application, when received in 2004, in line with Defra advice and practice, appeared compliant with Schedule 14. Subsequent investigations by officers revealed that it is possible that the applicant had failed to serve notice on all of the landowners. Land Registry records show that the majority of the affected land forms

parts of Southgrove Farm and Aughton Farm. Notice was served on these owners at the time of application. In addition the neighbouring farms of Manor Farm, West Grafton, Parsonage Farm, Upper Chute and Waglands Farm Brunton all had notice served on them at that time. In 2012 notice of the application was also given to Kinwardstone Farm, Burbage (adjoining land) and Morgan and Denny of Newbury who farm that land .

- 2.12 Approximately 300 metres of the route appears unregistered. This is a very narrow piece of land lying within land owned by T W Curnick of Southgrove Farm and land owned by G Crook of Aughton Farm and T W Curnick of Southgrove Farm. It does not connect to any highways other than the one which leads over it. The adjoining landowners had notice served upon them but no notice was posted on this length (see section 3). It is unlikely that any prejudice has been caused to any party as the most likely owners are the adjoining landowners. In the event that an Order is made, permission to post notices on this short stretch will be sought from the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA). Based on a principle established in the second ground of the Winchester case ([2008] EWCA Civ 431) it is considered that no prejudice to date has been caused to any party and accordingly the matter is not fatal to the application or the Council's duty to examine the evidence brought to its attention.
- 2.13 The same case law (known as the Winchester Case and discussed in detail later) changed the way in which officers must look at Schedule 14 compliance where a case turns upon the application of s.67(3) of the Natural Environment and Rural Communities Act 2006 (NERCA 2006). This is regardless of any compliance issues regarding the service of notice.
- 2.14 Following the Winchester Case the Lord J Ward, Dyson and Thomas found that **if** the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) then strict compliance with Schedule 14 would be required in respect of the presentation of "copies of any documentary evidence ...which the applicant wishes to adduce in support of the application". This is required in Section 67(6) for Section 67(3) to apply.

However Dyson J, in paragraph 55 of his decision went on to say:

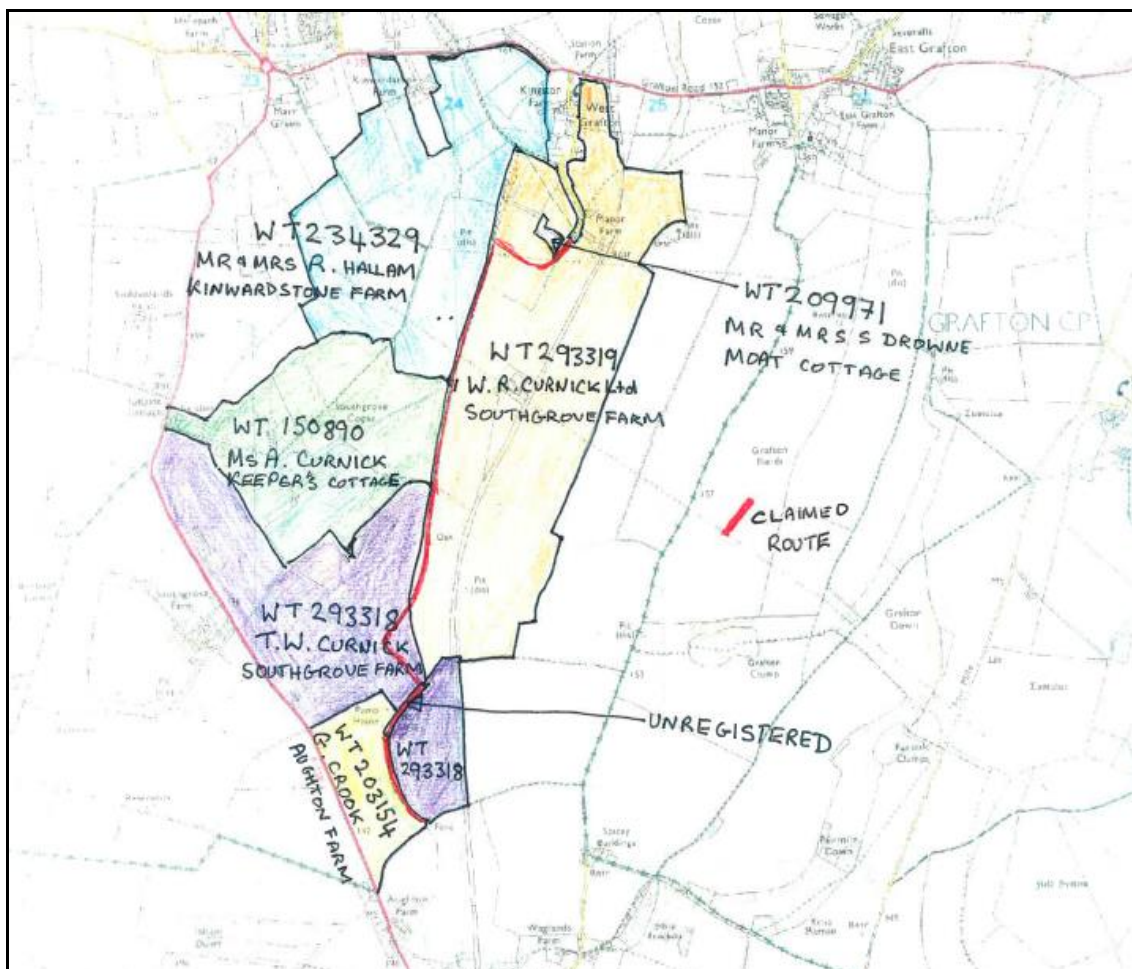
*"I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6) it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the "trigger" for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3)"*



- 2.15 As a result it is now considered that this application does not satisfy the requirements of Schedule 14 with regard to the evidence adduced. Schedule 14 states that copies of evidence may be adduced by the applicant but in this case Mr Riley has not included copies of any evidence, just a list of documents and some transcripts. The application is therefore not fully compliant with Schedule 14. The effect of this is that any right that the public had to use the route with a mechanically propelled vehicle is not protected by the making of the application (section 67(3) NERC Act 2006).
- 2.16 The NERC Act 2006 permits further exemptions to the extinguishment of public vehicular rights under s.67(2), however, in all cases it is necessary to establish whether, on the balance of probabilities, the route carried a right for the public to use a mechanically propelled vehicle before the 2nd May 2006. Only if, on the balance of probabilities, it was a public road before that date is it appropriate to consider whether any savings apply. As a result NERC Act 2006 will be covered later in this report (see sections 19 and 20 of this report).

### 3.0 Land Ownership

- 3.1 See plan below (red line shows claimed route):



## Landowners and occupiers/tenants as 16 August 2019

### Affected titles

WT293319 W R Curnick Limited, Southgrove Farm, Burbage, SN8 3RX (owned and farmed)

WT293318 T W Curnick, Southgrove Farm, Burbage, Marlborough, SN7 3RX  
Farmed by W R Curnick Limited

Unregistered land

WT203154 G I Crook, Aughton Farm, Collingbourne Kingston, Marlborough, SN8 3RY (owned and farmed)

### Adjoining

WT234329 Mr and Mrs R Hallam, Kinwardstone Farm, Grafton Road, Burbage, SN8 3BU  
Farmed by Morgan and Denny, East Woodhay, Newbury, RG20 0AH

WT150890 Ms A Curnick, Keepers Cottage, Southgrove Copse, Burbage, SN8 3RX  
Farmed by W R Curnick Limited

WT209971 Mr and Mrs S Drowne, Moat Cottage, West Grafton, Marlborough, SN8 3BY

Manor Farm, West Grafton, Marlborough, SN8 3BY

## 4.0 Current Records

4.1 The definitive statements for the route are as follows:

**Burbage 1 Bridleway** From the Salisbury – Hungerford road, A.338 at Pall Mall, north of Marr Green, leading south-east, south-west and east then south along the Grafton Parish boundary and the eastern side of Southgrove Copse to the Grafton and Collingbourne Kingston Parish boundaries, north east of New Barn.

Width 9 metres (30 feet) Approximate length 2.011 km

**Grafton 29 Footpath** From the junction of paths Nos. 28 and 17 at West Grafton, south-east of Kinwardstone, leading south-south-west along the Parish boundary to Burbage path No. 1 at the north-east corner of Southgrove Copse. Approximate length 1124 metres

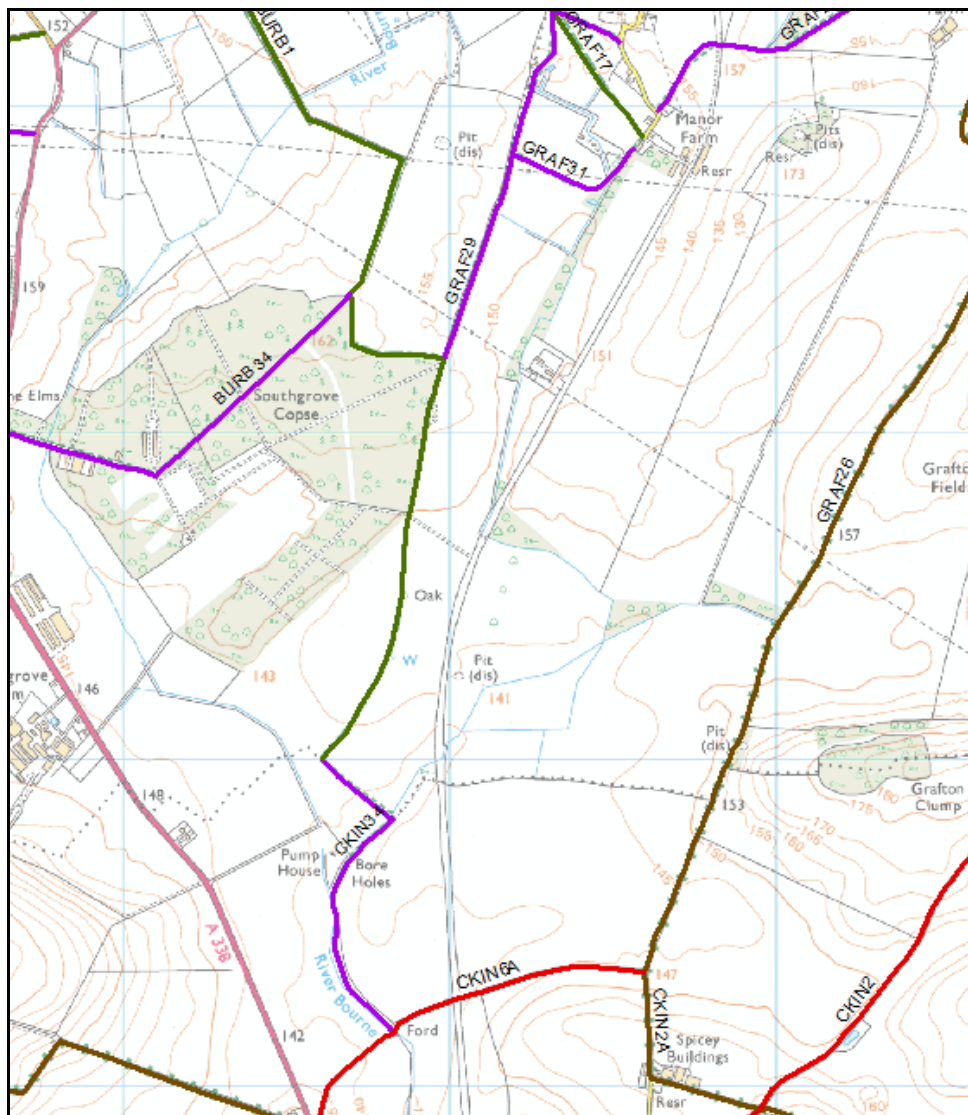
**Grafton 30 Footpath** From the southern end of Burbage path No. 1, south of Southgrove Copse and east of the River Bourne, leading south-east along the Collingbourne Kingston Parish boundary until it turns south-west into that Parish west of the railway. Approximate length 274m.

**Grafton 31 Footpath** From the southern end of road u/c 5121 at West Grafton Farm leading south-west and west-north-west to path No. 29. Approximate length 457 metres

**Collingbourne Kingston 34 Footpath** From Grafton path No. 30, west of the Railway, leading south-west to the River Bourne then south and south-east on the eastern side of the river to path No. 6A.

Approximate length 777 metres

#### 4.2 Working copy of definitive map



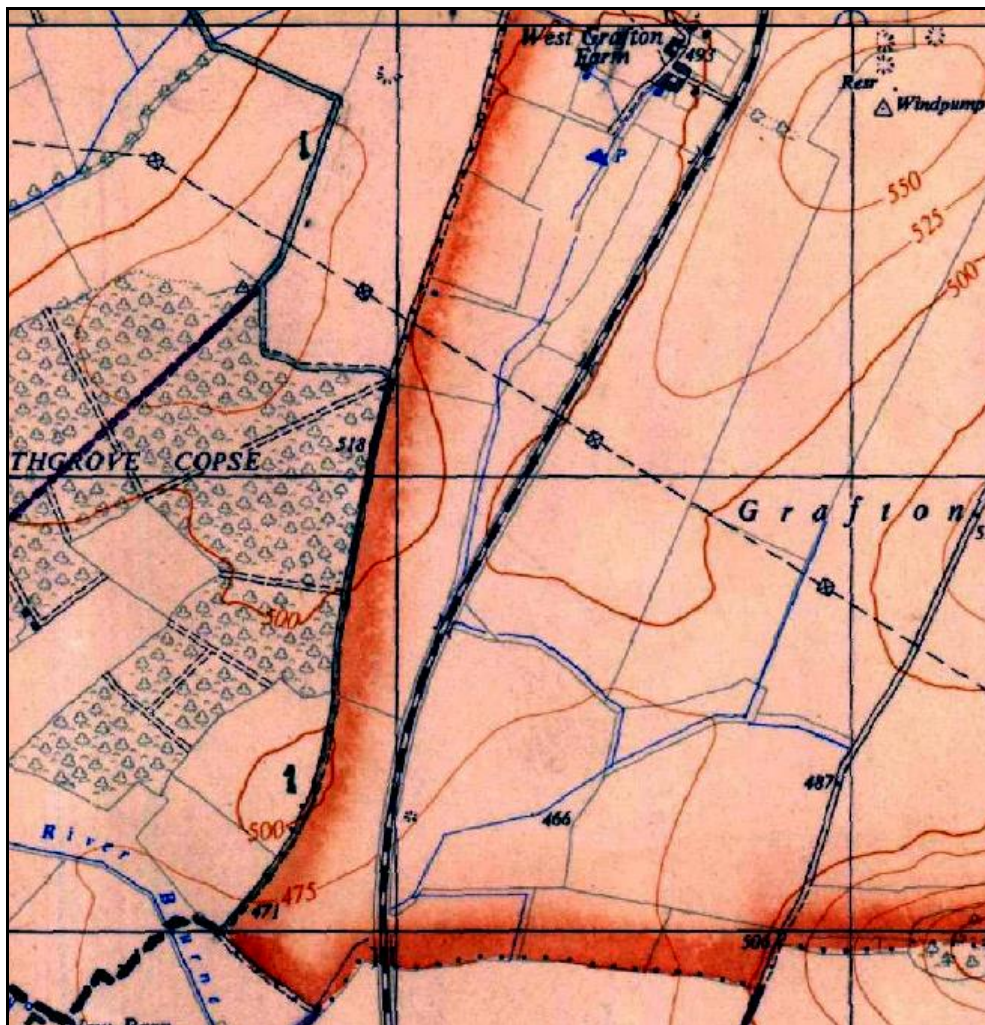
- 4.3 Burbage no. 1 and Collingbourne Kingston no. 34 are both recorded in the Pewsey Rural District Council definitive map and statement dated 1952 and have not been altered since their addition.
- 4.4 Grafton paths nos. 29, 30 and 31 are recorded in the Marlborough and Ramsbury Rural District Council area definitive map and statement dated 1952 and have not been altered since their addition.
- 4.5 The route was claimed at the draft definitive map publication stage by the Ramblers who objected to the route's omission as follows:

*“Although a step stile at one point indicates that these tracks are now used by pedestrians, old maps show all these tracks as old roads. The middle section of (b) is claimed by Burbage Parish”.*

- 4.6 Marlborough and Ramsbury Rural District Council area definitive map:



4.7 Pewsey Rural District Council area definitive map:



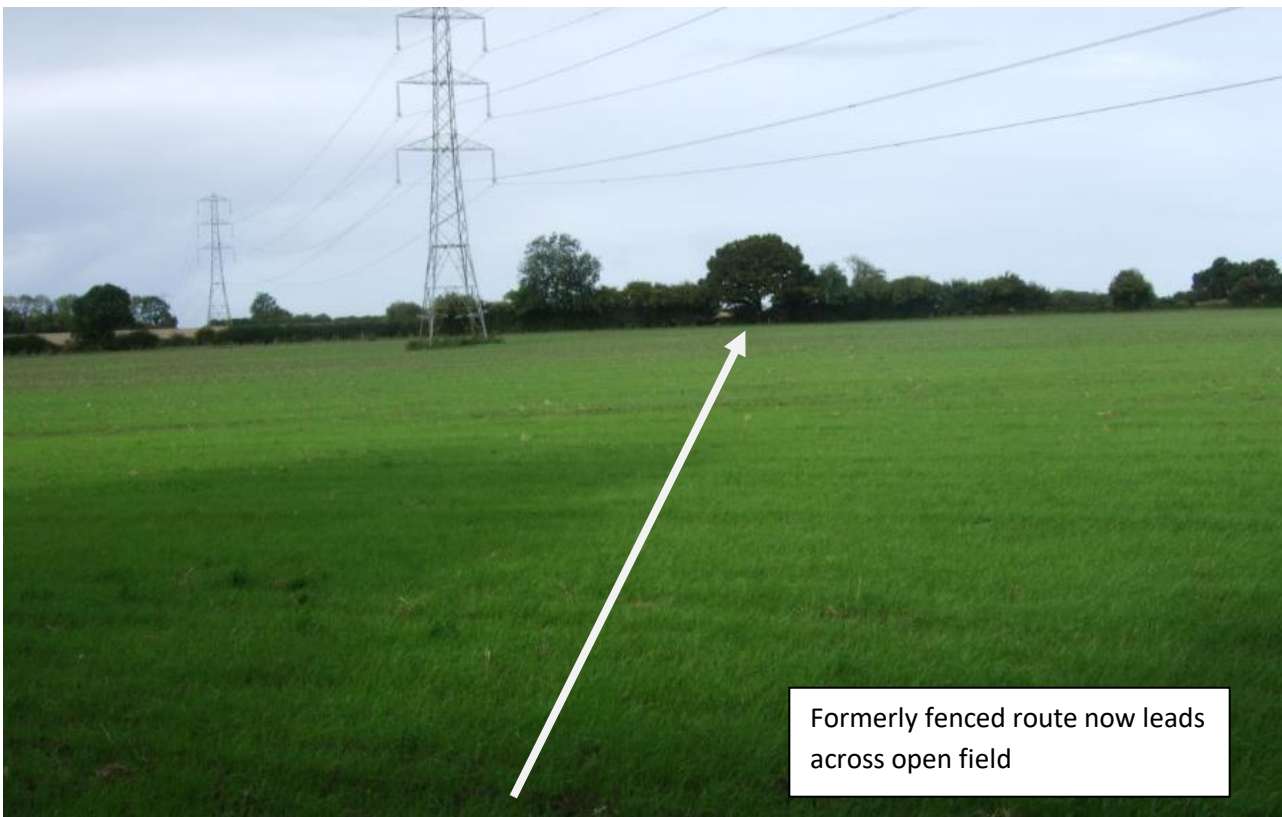
**6.0 Photographs of the Route**

- 6.1 Aerial photography demonstrates that the claimed route forms a north south link leading from West Grafton to Collingbourne Kingston. Lengths of the route now pass over arable land though historic documents show that this arises from the removal of road or lane boundaries (likely in this area to have been hedgerows) and the ploughing of the land. Part of the route follows a surviving section of lane past Southgrove Copse recorded as a Southgrove Lane.
- 6.2 The northern end of the claimed route is the cul-de-sac end of a road recorded in the Council's highway record as a road maintainable at public expense (the u/c5121). The recorded section of this road ends south of West Grafton or Manor Farm.
- 6.3 The claimed route is shown coloured orange in the following photograph.



6.4 A site visit was made on 09 October 2019. The route was walked from West Grafton towards CKIN6A.

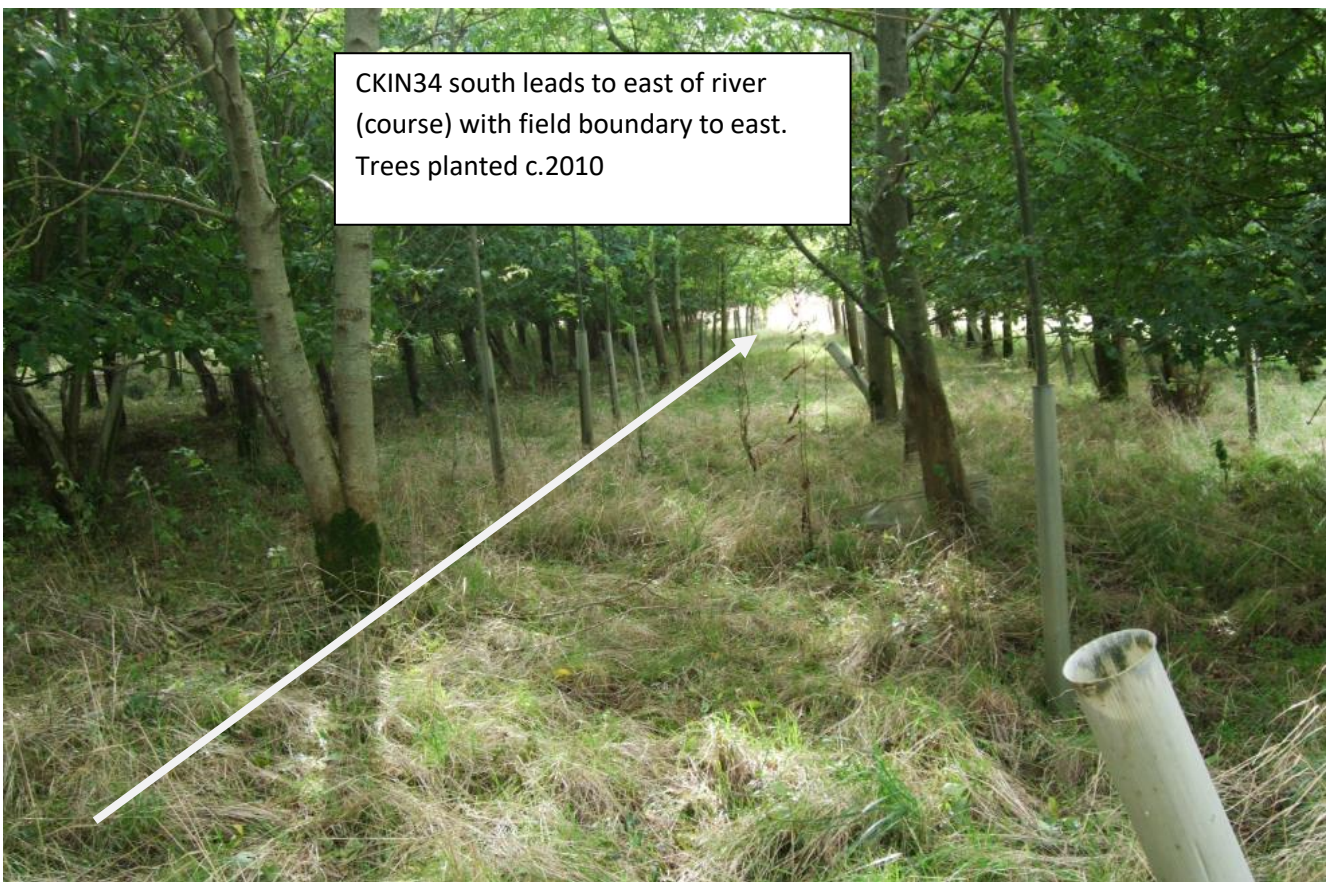












This route then joins CKIN6A.

## 7.0 Consultation

A consultation was conducted in January and February 2012 alongside another application for a DMMO affecting the adjoining route of Collingbourne Kingston 6A (CKIN6A). The letter stated:

***“Application to upgrade Collingbourne Kingston Footpaths 6A and 34, Grafton footpaths 29 (part), 30 & 31 and Burbage Bridleway 1 to the status of Byways Open to All Traffic.***

*Wiltshire County Council (now Wiltshire Council) received two applications under the Wildlife and Countryside Act 1981 s. 53 from Mr Bill Riley to amend the Definitive Map and Statement by upgrading to the status of Byway Open to All Traffic the above mentioned paths between West Grafton and Aughton. The application to upgrade Collingbourne Kingston 6A was received in January 2003 and the application for the other paths in March 2004. Both applications are supported by a substantial list of historical documents. The paths are shown on the enclosed map which is not to scale.*

*The 2006 Natural Environment and Rural Communities Act 2006 removed the right to record any more Byways Open to All Traffic onto the Definitive Map and Statement unless they fitted certain exemptions within s.67 of the said act. It is believed, after an initial examination of the submitted evidence, that none of the exemptions apply in this case and therefore the highest status that may be recorded is that of Restricted Byway. A Restricted Byway allows a right of way on foot, on horseback or leading a horse, riding a bicycle or using any other vehicle that is not mechanically propelled.*

*Wiltshire Council has a duty to consider all available evidence, so if you have any evidence you wish to bring to the Council’s attention, or comment to make, I would be pleased to receive it by Friday 17 February 2012.”*

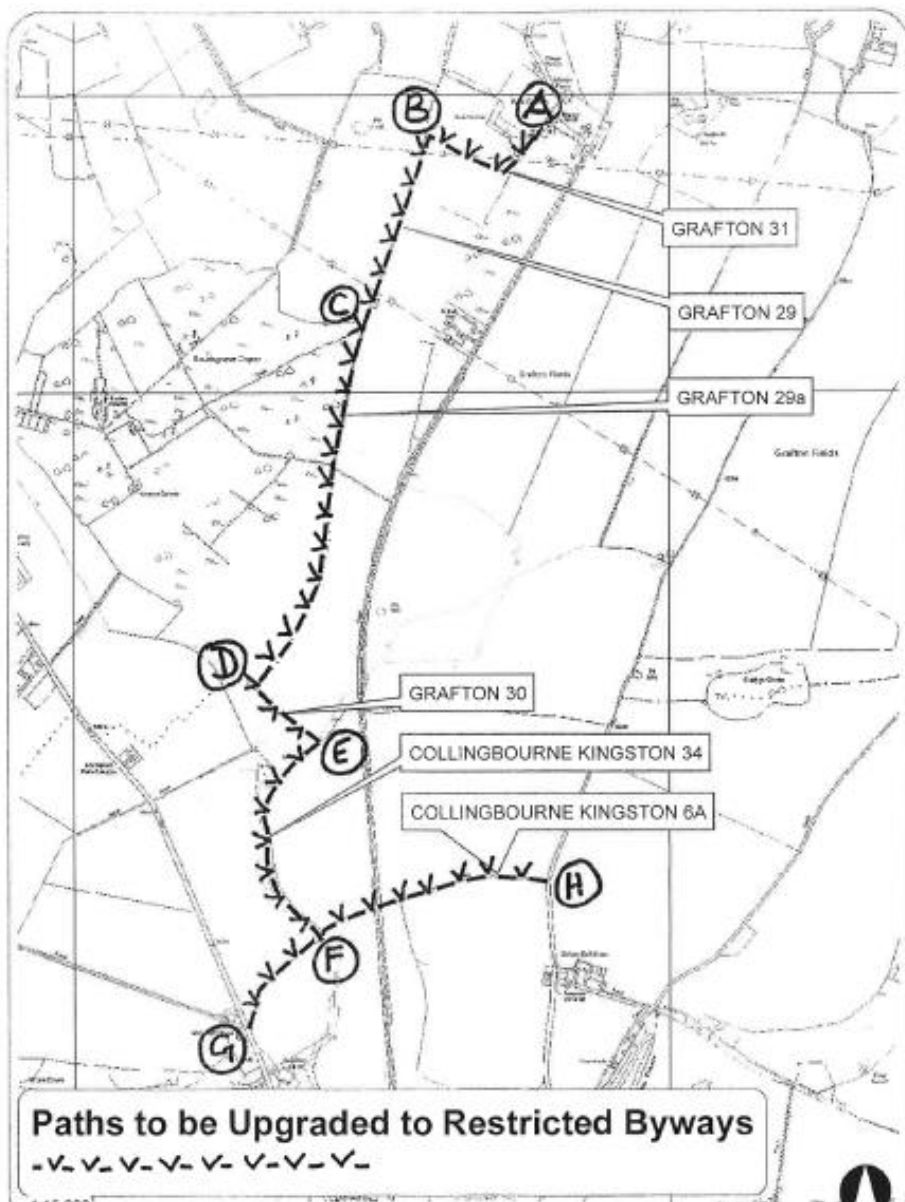
NB Owing to omissions in the circulation the letter was also sent on the 23<sup>rd</sup> January 2012 and the consultation date extended to March 2012.

### 8.1 This was circulated to the following:

The Auto Cycle Union	Commons, Open Spaces & Footpaths
Wiltshire Bridleways Association	Cycling Touring Club
British Horse Society	Grafton Parish Council
Collingbourne Kingston Parish Council	Burbage Parish Council
Cllr S Wheeler	Cllr Charles Howard
British Horse Society Wiltshire	Byways and Bridleways Trust
Rights of Way Warden Wiltshire Council	The Ramblers
Mr B Riley	British Driving Society
Wiltshire County Ecologist	Green Lane Association
Mr D Tilbury	North Wessex AONB

Mr Lemon, Manor Farm, Wilton  
 Mr Hosier, Manor Farm Wexcombe  
 G and D Crook, Aughton Farm  
 Mr M Rowland  
 Mr Powell  
 All Wheel Drive Club  
 Shire Land Rover Club  
 Morgan and Denny  
 Mr Koenig, Manor Farm, West Grafton  
 Mr R Hallam, Kinwardstone Farm, Burbage

Mr Hosier, Waglands Farm  
 Mr Taylor, Manor Farm Marten  
 W R Curnick Ltd, Southgrove Farm  
 Mr S Gunning  
 Southern Counties Off Road Club  
 Devizes Motor Club  
 Solent and District Rover Club  
 Mr A Withers, Parsonage Farm, Chute  
 Mr Browning, Manor Farm, West Grafton



## **9.0 Consultation responses**

### **9.1 Burbage Parish Council 07.02.12**

*"I am now in a position to comment on the request to upgrade Footpaths 29 (part), 30 & 31 and Burbage Bridleway 1 to the status of Byways Open to All Traffic.*

*I have one general comment and then will mainly limit my observations to the section of Bridleway within the Parish of Burbage.*

*Firstly are you correct in assuming that the Natural Environment and Rural Communities Act 2006 will apply in this case. Since the application was submitted in 2003/4 I would have assumed the request would have to be considered based on the legislation that applied at that time. This is relevant since while Burbage Parish would not object to an up rating to Restricted Byway status it would have serious objections to the route being converted in to an Unrestricted Byway.*

*As far as the bridleway section is concerned the physical evidence suggests that it was originally part of the drove road network in that 1. There is no evidence that it ever had a hard surface 2. It is securely hedged on both sides as was the case with many drove roads*

*3. It is wider than would be necessary in the case of a track*

*This is certainly the case for the section up to Southgrove Copse, thereafter any physical evidence has been lost due to the creation of new fields*

*I have consulted a local resident who has researched the drove roads and green lanes in the area and she says while she can provide no documentary evidence of its past usage it would fit logically into the known network of drove roads around Burbage.*

*I would comment as a walker on the section CKIN34. This section notionally follows the River Bourne from where it leaves CKIN6A. In reality the first section is so overgrown that it is impossible to follow and there is certainly no evidence that a track ever existed. Further north it does become a track running between mature hedges again suggesting it might have been a drove road*

*Burbage Parish Council's position therefore is that it would not oppose an up rating to Restricted Byway but would wish to oppose its conversion to a Byway"*

### **9.2 Wiltshire Bridleways Association 16.02.2012**

*"With reference to your letter of 06 January, regarding the above applications for upgrade, I write to state that the Wiltshire Bridleways Association fully supports all the upgrades to a status of Restricted Byway and has therefore no objections."*

**9.3 The Ramblers – Mid Wilts 25.01.12**

*“I personally do not know this area at all and as a group we do not really walk here. However, as a general rule of thumb, I personally am not in favour of upgrades as I do not want 4 x 4 s etc ploughing up paths and making them difficult to negotiate for walkers.*

*I appreciate that the Council legally has to deal with these applications, but as far as the RA is concerned, footpaths are for pedestrians.”*

**9.4 Robin Hallam - Kinwardstone Farm 09.02.12**

*“I have no legal evidence as to the status of the proposed paths but so far as concerns the Grafton footpath 29 where it borders Kinwardstone Farm, I can confirm that I have only ever seen pedestrians and horses on that footpath. I believe that Footpath 29 crosses land belonging to Mr and Mrs Curnick. I believe they have for a number of years placed signs on those footpaths stating that they are “permissive bridleways”. Members of the public regularly remove those signs and throw them into the undergrowth.*

*I would note that whilst I have no objection to motor vehicles using established BOATS such as cross Salisbury Plain it would seem that the paths in issue are not suitable for use by motor vehicles. That particular part of Wiltshire has many existing BOATS which can be used for recreation. There is no commercial purpose for establishing new BOATS, it is only for recreational use and it goes without saying that the admission of motorised vehicles to paths used as bridleways will diminish the safety and amenity of those paths to users on foot or horseback.*

*I believe that Wiltshire Council would become responsible for the upkeep of a path which is converted to a BOAT which may not be best use of Council resources.”*

**9.5 Clarke Wilmott LLP – Acting for W R Curnick Ltd 26.01.12**

*“We have been instructed by the landowners of Southgrove Farm, W R Curnick Ltd, in relation to this application. Our clients own a large part of the land over which Grafton footpaths 29, 30 & 31, Burbage Bridleway 1 and the Collingbourne Kingston Footpaths pass.*

*At this stage we should be grateful if we could register the landowners’ strong objection to any order upgrading the status of the footpath. This is a path that has extremely restricted use.*

*We should also be grateful if at each stage of the process we were given the opportunity to provide objections and evidence. We would be grateful if you would provide us with a copy of the application made to upgrade that led to the contemplation of this order.”*

**NB** Officers of the Council replied on the 27<sup>th</sup> February 2012 explaining about the documentary evidence and the process and advising that should an Order be made there is a 42 day statutory period for objections. Additionally, it was explained that a copy of the decision report would be submitted to them when a decision was made.

9.6 **Symonds and Sampsons – Acting for Mr G Crook** 24.02.12

*“My client has informed me that he adamantly disagrees with any proposed upgrade as it is my client’s opinion that since his father purchased the farm in 1948, the footpath on his land has always only been used by the public on foot and therefore cannot see any evidence suggesting otherwise. We would like this objection noted and are happy to provide further sworn statements and information if required.”*

**NB** Officers of the Council replied on the 27<sup>th</sup> February 2012 explaining about the documentary evidence and the process and advising that should an Order be made there is a 42 day statutory period for objections. Additionally, it was explained that a copy of the decision report would be submitted to them when a decision was made.

9.7 **Hosier Brothers Ltd** 06.03.12

*“I write following your visit recently concerning the application to upgrade Footpaths 6A and 34, Grafton Footpaths 29 (part) and Burbage Bridleway to the status of Byways Open to All Traffic. This was detailed in your letter of 6<sup>th</sup> January 2012.*

*I have serious objections to this upgrade to the Byway Open to All Traffic as it would spoil an area of wonderful countryside for walkers and horses to access but any motorised vehicle would find it impossible to go over. The width of the path is not sufficient and in wet winters would be flooded and totally out of the question.*

*I believe that the status of a Restricted Byway is appropriate in this case.”*

**10.0 General Context** *Some notes taken from Victoria County History Volume XVI*

10.1 The rights of way as recorded in the definitive map and statement traverse three modern day parishes; Grafton, Burbage and Collingbourne Kingston. These parishes are within the historic Kinwardstone Hundred.

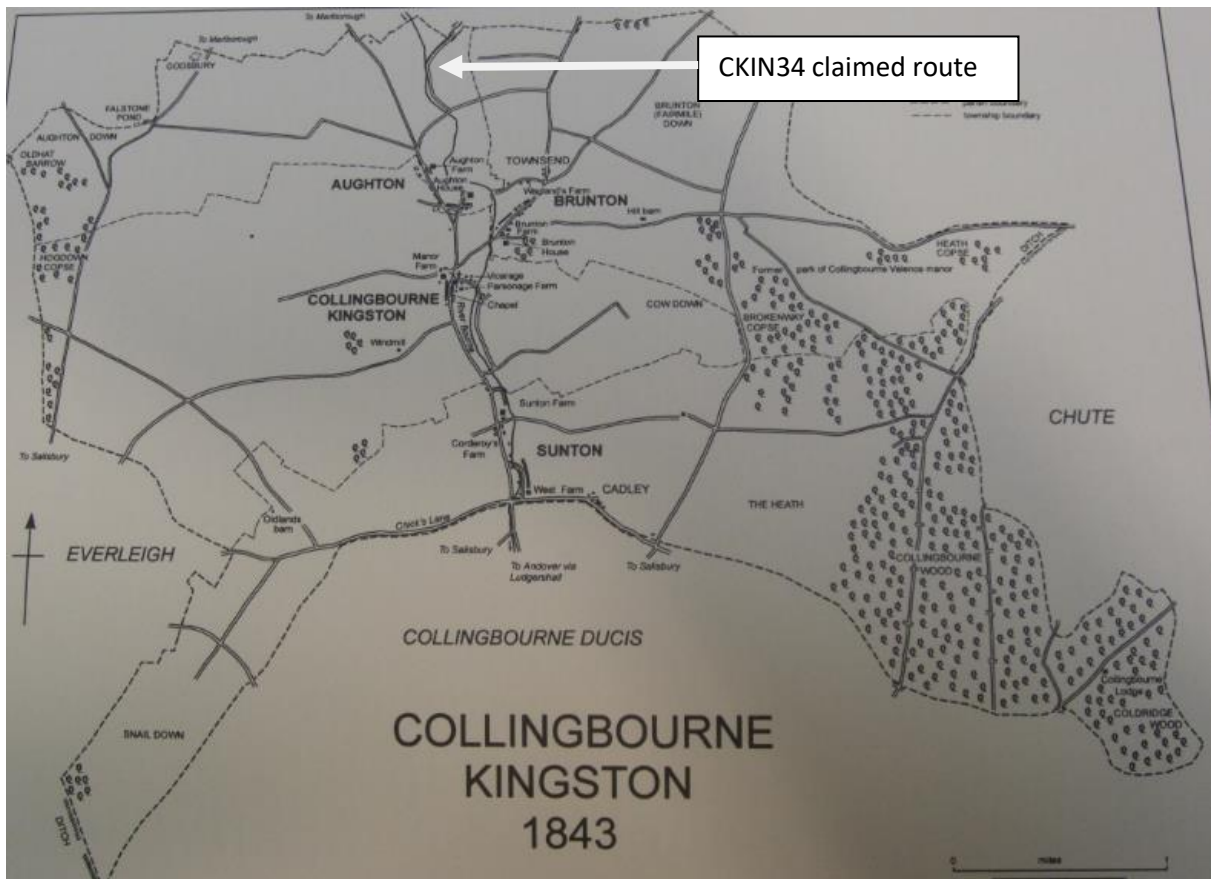
10.2 Evidence both adduced by the applicant and investigated by the Council demonstrates that the length of path known as Southgrove Lane (recorded as Grafton 29 and Burbage 1) lies wholly in the parish of Grafton and not in Burbage. Although there have been a number of changes to administrative boundaries in this area in the last 300 or so years, the boundary between Burbage and Great Bedwyn (now Grafton) has not altered in this time. Evidence will therefore show that notwithstanding the status of the rights of way, the path should not be recorded in the parish of Burbage but should be recorded in the parish of Grafton.

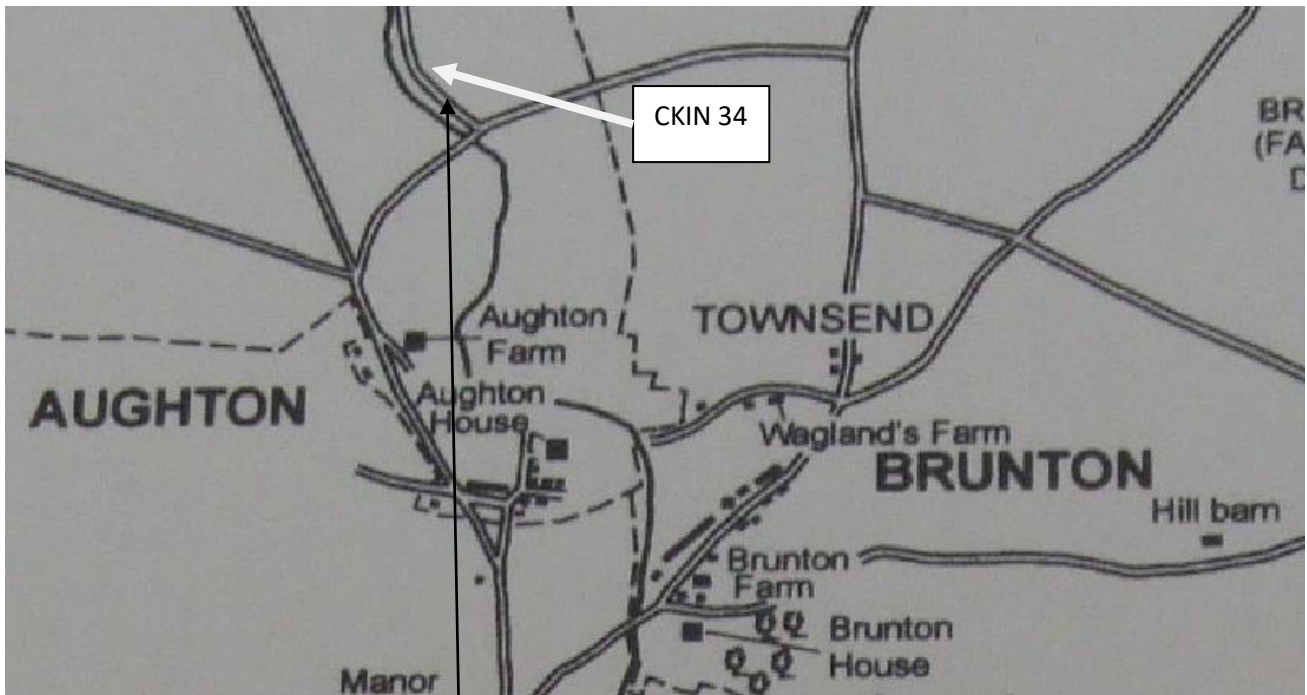
- 10.3 Grafton became a civil parish (C.P.) in 1895 having formerly been part of Great Bedwyn parish. The northern end of the claimed route is at West Grafton, the larger settlement of East Grafton lies to the east. Most of the land in Great Bedwyn parish (including the pre- 1895 inclusions of Grafton and Little Bedwyn) is suitable for arable use or pasture and there were few areas of woodland prior to the late 18<sup>th</sup> century. Up to the 17<sup>th</sup> century most if not all of the villages and hamlets had open fields and commonable land. The common pastures of West Grafton were inclosed between 1638 and 1657 with Parliamentary inclosure of the open fields occurring in 1792. The population of Grafton is not large and has ranged from 663 in 1901 to 547 in 1971 and 603 in 1991.
- 10.4 The farm at the northern end of the claimed route (GRAF29) is today called Manor Farm (there is also a Manor Farm in East Grafton) but was previously called West Grafton Farm. In 1867 the management of West Grafton Farm was said to be rather “slovenly” and ownership of lands was distributed between Sotwells Farm and Kingston Farm in 1905. These farms had land in other parishes in addition to Grafton.
- 10.5 Within the historic Great Bedwyn parish (including Grafton and Little Bedwyn) the route of the Kennet and Avon canal and the main line railway cross the parish north of the claimed route. The main line is the former Berks and Hants Extension Railway (operated by Great Western Railway) and was opened in 1862. However, plans for other railways schemes in the area were deposited with Parliament and one running north south to the east of the claimed route was built to the east of the claimed route.
- 10.6 This north south route was initially recorded as the Swindon, Marlborough and Andover Railway (1882 – 1883) and was vested in the Midland and South Western Junction Railway in 1884. The line passed north from Collingbourne Kingston to West Grafton where there was a station called Grafton and Burbage. The line closed in 1961. The line passed within 200 metres of the southern end of the claimed route Collingbourne Kingston 34.
- 10.7 This part of the claimed route (Collingbourne Kingston 34 - CKIN34) lies in the Aughton tithing of Collingbourne Kingston. This is a large parish on the eastern edge of Salisbury Plain and historically contained four small villages or hamlets; Collingbourne Kingston, Aughton, Brunton (formerly Valence), Sunton and part of Cadley hamlet.
- 10.8 In 1934 the parish was reduced when Sunton and part of Cadley were transferred to Collingbourne Ducis and again in 1987 when further parts were transferred to Collingbourne Ducis. Although the tithing of Aughton is no longer an administrative boundary the claimed route has always laid within in and within the parish of Collingbourne Kingston.
- 10.9 The parish is in the Upper Bourne Valley and the River Bourne flows north to south through it. The land is chalk and well drained and accordingly the River Bourne



frequently dries out. The route of adjoining right of way (in the south) Collingbourne Kingston 6A crosses the River Bourne as marked on the majority of maps but no maps record a ford at this location (a practice the Ordnance Survey would have followed if there had have been one) suggesting that the area is more likely *not* to have surface water on it than it would be to have surface water. The line of CKIN34 follows the line of the River Bourne for most of its length.

- 10.10 Although geographically a large agricultural parish, the population is not high and has ranged from 731 in 1801 to a high of 933 in 1841 before falling to 440 in 1951.
- 10.11 A Marlborough to Winchester road was important in the early middle ages and ran via Ludgershall and Andover following the River Bourne. Two other main roads crossed, one between Oxford and Salisbury via Hungerford across the eastern downs and one between Chipping Campden and Salisbury. Both were important in the later 17<sup>th</sup> century.
- 10.12 It is noted that the roads through the parish of Collingbourne Kingston that were turnpiked around the end of the 18<sup>th</sup> century (The Marlborough to Salisbury Road in 1762, the Hungerford Road in 1772 and the Bourne Valley Road to the west in 1835) remain for the large part the major routes now. These routes are all essentially north south routes and it is notable that none of the roads running east west across the parishes have become principal routes today although they are well represented on historical maps.





Extract from VCH map showing the southern end of CKIN34 east of the River Bourne joining CKIN6A

- 10.13 The area was also once active with railways and four railway schemes were promoted in Parliament for the area around CKIN6A alone. The Swindon, Marlborough and Andover Railway from 1882 operated as part of the Midland and South Western Junction Railway and ran close to the River Bourne. It was closed in 1961.
- 10.14 With respect to land division and enclosure in 1763 three of Aughton's four open fields (North, South and Low) were inclosed by a private agreement and the route of CKIN34 as "the Grafton Road" was used as a boundary to five of the allotments. Brakeham Field remained open and Aughton down remained in common use.

## 11.0 Historical Records

- 11.1 Although it can be helpful to present these in chronological order to show the consistency of recording of a way over time it does not allow for the need to apply evidential weight to documents. For example, although a way may appear on twenty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.
- 11.2 The value of relatively low evidential weight documents should not be underestimated though where it is considered that they add synergy to the evidence as a whole. The Planning Inspectorate's *Definitive Map Modification Orders: Consistency Guidelines* state:

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

- 11.3 The court of appeal gave guidance on how evidence should be considered in ‘the Fortune’ case (*Fortune & Ors v Wiltshire Council & Anr* [2012] EWCA Civ 334). Lewison LJ at paragraphs 22 and 23:

*22. “In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:*

*“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fail. It is more like the case of a rope composed of several cords. One strand of the cord may be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”*

23. *In addition section 32 of the 1980 Act provides:*

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

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

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

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/guidance> (as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

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

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

## 12.0 Category A Evidence

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

### 12.2 Inclosure

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

12.3 Three inclosure awards have been viewed. One sets out and awards the claimed route in Great Bedwyn (Grafton) and two others record the route as pre-existing.

### 12.4 **Inclosure of land at Aughton by Agreement 1763 WSHC 9/13/12, 13 and 14**

### 12.5 **Agreement - Wiltshire and Swindon History Centre (WSHC) Ref. no 9/13/12**

This document is the agreement made prior to the inclosure award for the hamlet of Aughton dated 17<sup>th</sup> January 1763 and entitled "The Arbitrators Award for Inclosing and Dividing the Common fields and Downs in the Hamlet of Aughton within the Manor of Collingbourne Kingston in the County of Wilts." Award WSHC ref. no. 9/13/14.

12.6 Both the agreement and the award are signed and sealed.

12.7 There is also a survey book at WSHC ref. no 9/13/13 entitled "Survey of Aughton Field before the Inclosure in 1763". Further entitled "A Book of Particulars drawn from the survey of Aughton field in the Parish of Collingbourne Kingston where each furlong is numbered, and the progressive numbers in each furlong shows each person lands respectively as named to the Surveyor. 1762".

12.8 The survey book lists the following affected proprietors:

Mr Tho Gilbert  
Mr Jn Dean  
Mr Edwards  
Mr Dan Tanner  
Mr Ralph Tanner  
Mrs Norris  
Thomas Collins  
Mrs Collins  
Mrs Chandler  
Mr Cannon  
Mr Legg  
Mr Greuill  
Mr Jennings

- 12.09 The Agreement is clearly signed and sealed by 8 of these with there also being two unreadable signatures and 2 seals with no signatures. It is considered that on the balance of probability all proprietors signed and or sealed the agreement.
- 12.10 The Award records that the appointed arbitrators and referees were James Poor of Crux Easton, Yeoman, Thomas Compton of Cholderton, Yeoman and Richard Rawlins of Hildrop Farm. The Lord of the Manor of Collingbourne Kingston at that time was the Right Honorable Thomas Bruce Lord Bruce Baron of Tottenham.
- 12.11 The Award was signed and agreed, sealed and delivered by Thomas Gilbert, Ralph Tanner and John Chandler.
- 12.12 **Transcript of Agreement**

*“Articles of Agreement ? had been made and fully agreed upon the twenty sixth day of January in the first year of the Reign of our Sovereign Lord George the Third by the Great God of Great Britain France and Ireland King and Defender of the faith and so forth and in this year of our Lord One thousand seven hundred and sixty one BETWEEN the Right Honorable Thomas Lord Bruce the Lord of the Manor of Collingbourne Kingston and in the County of Wilts Thomas Gilbert John George otherwise Edwards John Dean Edward Millington freeholder ffolk Greville Esq. and leaseholder Thomas Collins Mary Collins Ralph Tanner Richard Legg Elizabeth Chandler copy holder and the several other persons whos hand and seals are hereunto subscribed and sett Landholders or tenants or proprietors in possession or reversion of Common Lands within the hamlet of Aughton in the Manor of Collingbourne Kingston aforesaid WHEREAS the inclosing the common ffields common downs and other commonable places within the hamlet of Aughton will be a great advantage and improvement it is hereby mutually and reciprocally covenanted and agreed by and between all and every parties hereunto for themselves severally and respectively and not one of them for the other or others of them and for their several and respective ? ? and ? in manner following that is to say that it shall and*

*maybe lawfull for them the said parties hereto or the major part of them to nominate and appoint in writing under their hands four or three persons to be arbitrators or referees for the exchanging dividing and meteing the said common ffields downs and Commonable places and that such act ? or referred shall and may cause all the said premises to be measured and by writing under our hands and seals allot assign and sett out the same unto all and every the parties hereto ? and proportionally ? to the quantities and qualities of the Lands now held by each and every of them within the said ffields aforesaid having respect to the Quality of the land that shall be allocated to each of the said parties shall ffence in such part of what part of what shall be allotted to him or her or them respectively as shall be ordered and directed by the said arbitrators or referees so to be ? who shall also sett out such part of the said lands for proper and ? ways to each lott of land as they the said arbitrators shall adjudge proper and ? And that the lands so sett out and allotted to each and every the said parties hereunto shall be held and forever enjoyed by him her or them respectively in several in exchange for the Said lands and hereditaments now held and enjoyed by him or them ? to his and their respective estate rights and interest in such his her and their present lands and hereditaments and it is further agreed by and between the said parties that after the said arbitrators or referees shall have allotted Sett out and divided the said Common ffields downs and premises as aforesaid they the said parties hereunto their heir ? assigns shall and will make do or execute such deeds conveyences or other ? in the Law for the continuing the inclosing exchanging and dividing the premises and establishing the same for ever as by Council shall be reasonably advised AND it is further agreed that all the costs and expenses relating to the premises shall be born and paid by each of the said parties to whom the said Land shall be allotted in possession in proportion according to the number of acres allotted to him her or them Provided always and upon this Condition nevertheless that none of the Downs belonging to the said Lord Bruce or that shall be allotted to any of his tenants shall be broke up and that if the said arbitrators or referees are not appointed and do not allot divide and sett out the said premises and execute the powers in them hereby vested within the space of two years then these presents shall be void and of none effect ? where the said parties to these presents interchangeably have sett their hands and seals the day at year first above written”*

On reverse:

*“Memdum – That it is agreed by and between all and every of the said parties to the within written articles that the award to be made by the arbitrators or referees to be chosen as within mentioned shall not be carried into execution or be binding upon any of the said parties until the same shall be approved of and confirmed by the within names Thomas Bruce Lord Bruce and in case the said Lord Bruce shall refuse to do so then he doth in such case agree to pay all the costs and charges of such award and all other expenses that the said parties shall be put to relating hereto”*

## 12.13 Extracts from the Award – Allotments bounding the Marlbro', Grafton and Oxford Roads

References to the Grafton Road highlighted by case officer.

*“..to...Thomas Gilbert ....One other piece of Land near Duck puddle ...bounded on the North by the Oxford Road .....the said Thomas Gilbert to make all the fences therof against the Oxford Road...”*

*“To John Dean .....One piece of Land near Duck puddle....bounded on the North by the Oxford Road....and on the West by the Lot of the said Thomas Gilbert ...the said John Dean to make all the fences thereof against the Oxford Road...”*

*“To John George Edwards ...One piece of land near Duck puddle...bounded on the North by the Oxford Road...”*

*“To Ralph Tanner...One piece of Land....bounded on the East by **Grafton Road**...and on the West by the Marlbro' Road....”*

*“...to the said Mary Collins....bounded on the East by Brunton Lots, on the South by the Oxford Road, and on the West by a Drove called the Lot Drove”*

*“To Elizabeth Chandler...bounded....on the East by **Grafton Road**....and on the West by the Marlbro' Road”*

*“...to the said Thomas Cannon...bounded on the North by a Lot of Elizabeth Chandlers, on the East by the **Grafton Road**, on the South by the Oxford Road, and on the West by the Marlbro's Road”*

*“To Richard Legg...bounded...on the West by the Oxford Road”*

*“...to the said Richard Legg...bounded on the East by the Drove called the Lot Drove, on the South by the Oxford Road and on the West by the **Grafton Road**”.*

*“To Fulk Greville Esq...bounded...on the East...by the **Grafton Road**,....and on the West by the Marlbro' Road”.*

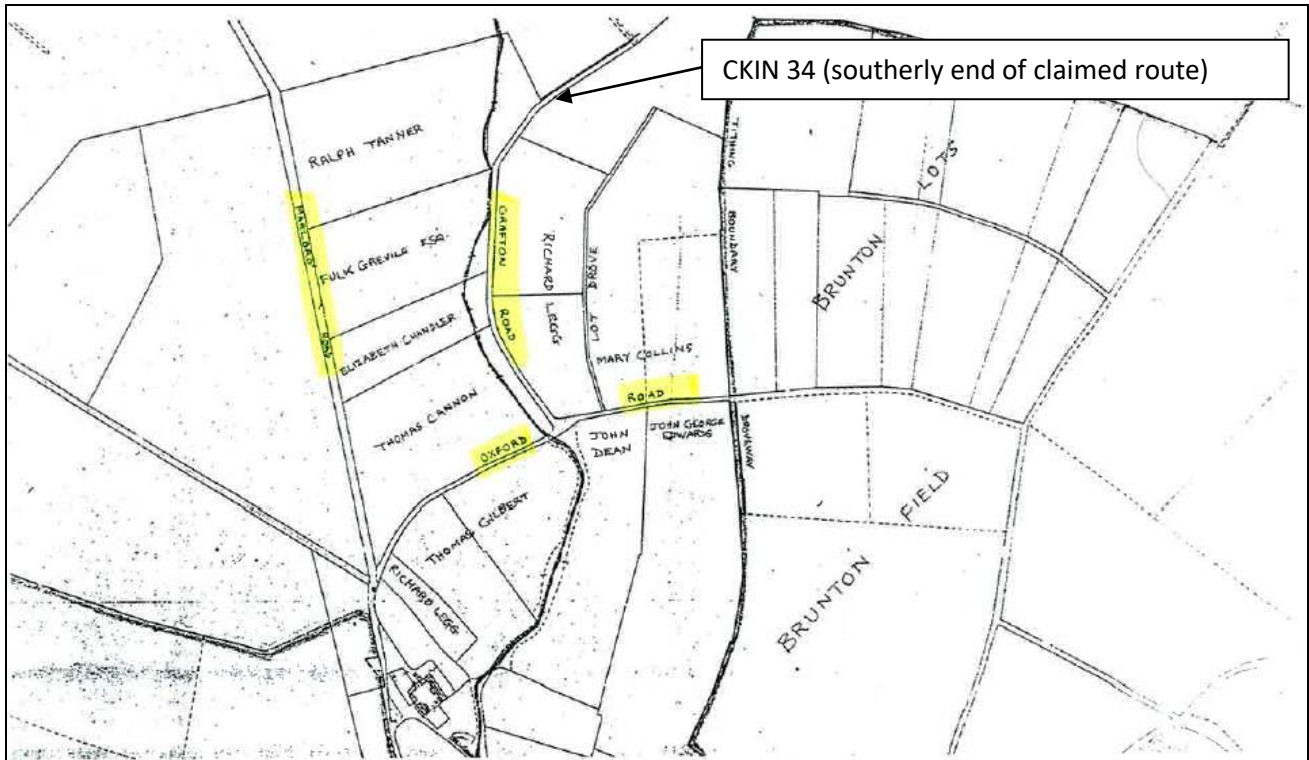
12.14 There is no map accompanying any of the documents though it has been possible to re-construct parts of the award on a map based on the allotment descriptions, the roads and the boundary between Collingbourne Lots and Aughton Field.

## 12.15 Resultant Map

The tithe map for Collingbourne Kingston, produced some 80 years later, is a detailed document that assists with the position of landscape features and has been used as the basis for reconstructing a map, supported by an 1807 estate map. The “Marlbro' Road” referred to is clearly the Salisbury to Marlborough Road, the A338 and former Turnpike and the “Grafton Road” referred to is clearly Collingbourne Kingston 34 (subsequently awarded as the “Road from West Grafton to



Collingbourne” at the inclosure of the Great Bedwyn Grafton Tithing in 1792), accordingly, and knowing the boundaries of the Aughton Tithing, it is possible to demonstrate that the route referred to as the Oxford Road can, on the balance of probabilities, only be the route followed today by Collingbourne Kingston 6A. We know that the Grafton Road is not byway open to all traffic Grafton 26 because this route lies firmly within Brunton tithing and not within Aughton tithing.



## 12.16 Parliamentary Inclosure of Grafton Tithing 1790 – 1792

### WSHC A1/215/23 and EA68

The inclosure of lands in Great Bedwyn (including the inclosure of land in Grafton tithing) was enabled by an Act of Parliament entitled “*An Act for dividing and Allotting Several Open and Common Lands and Grounds within the Parishes of Great Bedwin, Little Bedwin and Prechute, in the County of Wilts.*” 30 Geo. III 1790. WSHC A1/215/23.

12.17 The Act empowers the Commissioners to set out Roads as follows:

*“And be it further enacted, That the said Commissioners shall, and they are hereby authorised and required to set out, ascertain, order, and appoint, both public and private Roads, Highways, Bridle Ways, and Foot Ways, Ditches, Drains, Hatches, Water-courses, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds, and Land Marks, in, over, upon and through, or by the sides of the Lands and Grounds hereby*

*intended to be divided and allotted, with the Dimensions and Breadths thereof, so as all public Roads and Highways (except Bridle Ways and Foot Ways) shall be an remain Forty Feet broad at the least; and the said Commissioners, after they shall have ascertained all such public and private Roads and Ways, and caused the same to be marked and staked out, shall give Twenty-one Days Notice at least in The Salisbury and Winchester Journal, of the Day by them appointed to receive any Objections that may be made to any such public or private Roads and Ways, so set out, or omitted to be set out and ascertained in pursuance of this Act, and the said Objections, being maturely considered, shall, together with the Names of the Persons making the same, and the Resolutions of the Commissioners thereon, be entered in the Minutes of the Proceedings of the said Commissioners, in a Book to be kept for that Purpose, and such resolutions shall be binding and conclusive to all parties; and the said public Roads and Highways , so set out, shall at all Times for ever after be repaired and kept in Repair in such Manner as other public Roads and Highways are directed to be repaired by the Laws of this Realm; and all such private Ways, Ditches, Drains, Watercourse, Hatches, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds, and Land Marks, shall be made, and from Time to Time be amended, cleansed, renewed, and kept in Repair, by such Person or Persons, and in such Manner, as the said Commissioners shall award, order, or direct; and that it shall not be lawful for any person, after such new Roads or Ways are set out, and the Objections (if any) are heard and determined on, to use any other Road or Way, either public or private, in, over, upon, or through the said Lands and Grounds; and that the Grass and Herbage growing and re-newing in and upon all and every public and private Roads and Ways so to be set out and ascertained as aforesaid shall be and for ever remain to and for the use and Benefit of such Person and Persons, as the said Commissioners shall, by their Award or Awards, order and appoint, and all former Roads and Ways which shall not be continued, set out and ascertained, shall be deemed Part of the Lands and Grounds to be divided and allotted pursuant to this Act.”*

- 12.18 The Act makes it clear that the power for the Commissioners to draw up the Award followed the division and allotment of lands and *inter alia* Roads.

*“And be it further Enacted That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds in all or any of the Parishes or Tythings where the said Lands and Grounds are situate shall be finished, pursuant to the Purport and Directions of this Act, the said Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing for describing and confirming the respective Divisions and Allotments of the said Lands and Grounds in each of the Parishes or Tythings where the same are respectively situate, as the said Commissioners shall judge most expedient, which Award or Awards respectively shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds respectively, and the Quantity of each and every Part and Parcel thereof, which shall be so allotted, assigned, or*

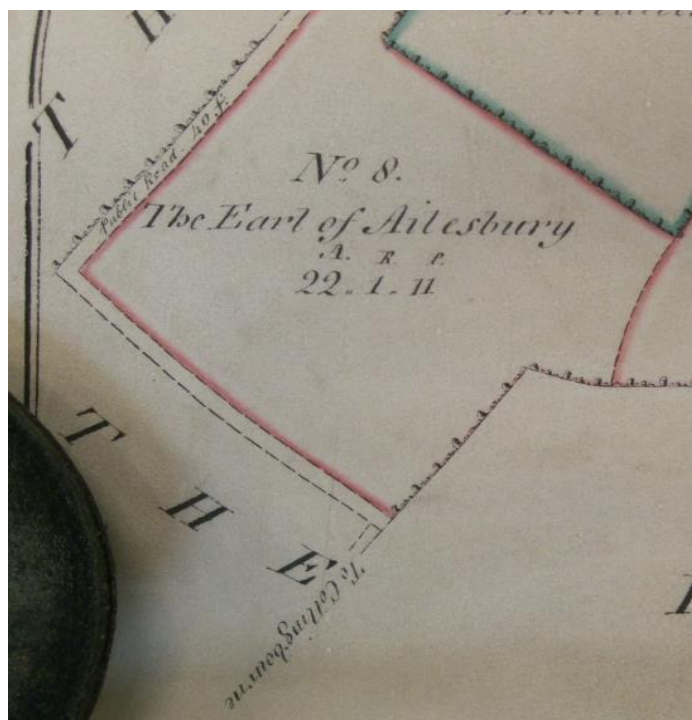
*exchanged and Situations and Descriptions of the same respectively, and shall also contain a Description of the Roads, Ways, and Foot Paths, set out and appointed by the said Commissioners as aforesaid, and also such Ditches, Drains, and Watercourses, Hatches, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds, and Land Marks, as the said Commissioners shall order and appoint by virtue of this Act, and shall also express and contain all such other Rules, orders, Agreements, regulations, Directions, and Determinations, as the said Commissioners shall think necessary, proper, or beneficial to the parties; which said Award or Awards shall be fairly engrossed or written on Parchment, and signed and sealed by the said Commissioners, and within Twelve Calendar Months after the same shall be so signed and sealed, or as soon as conveniently may be, shall be inrolled in One of His Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County of Wilts.....”*

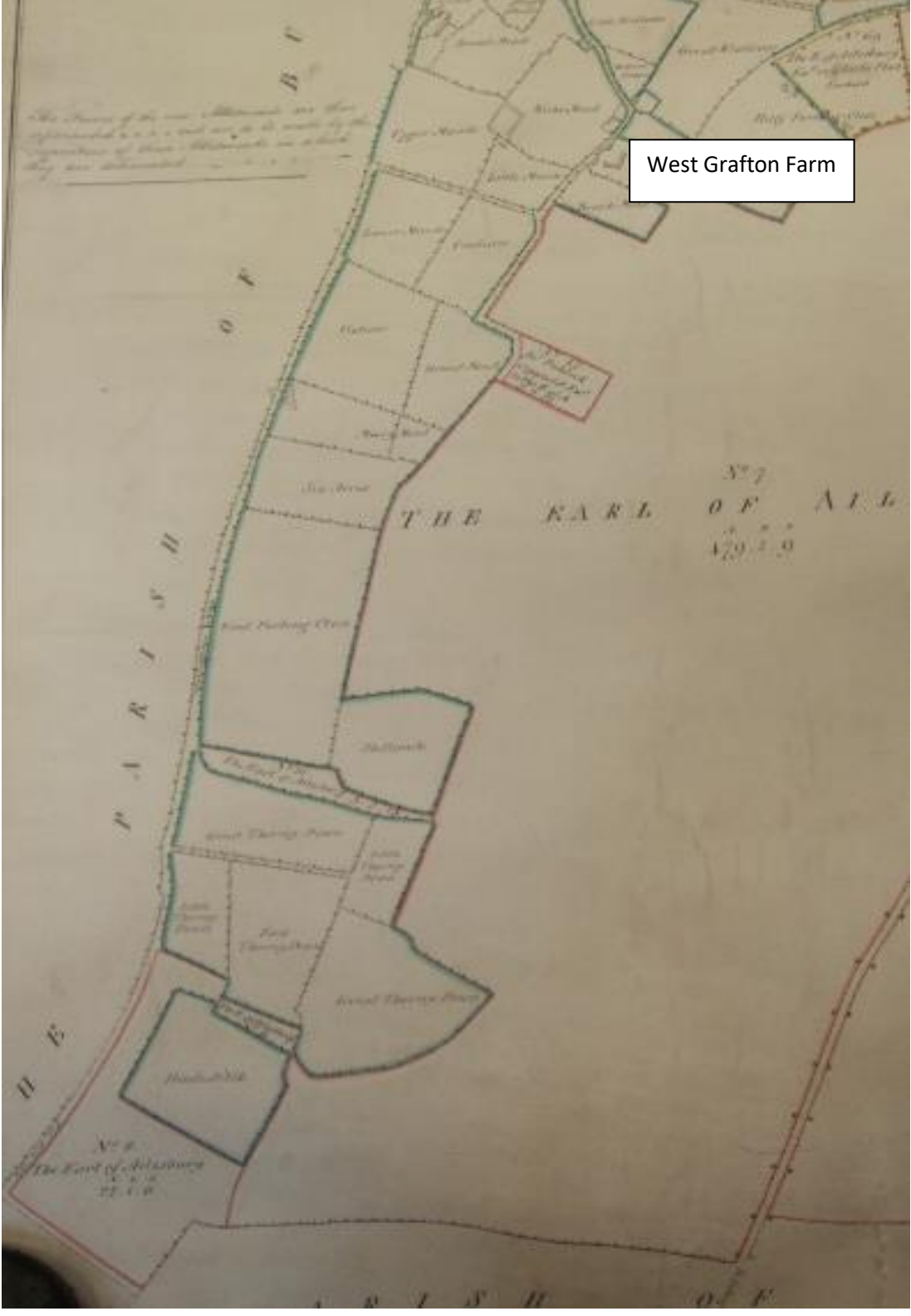
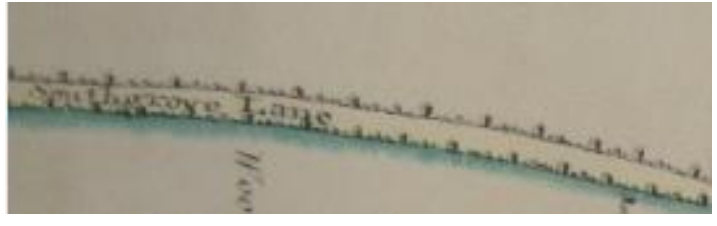
12.19 Tithes over land affected by this inclosure were also commuted to monetary charges by this Act.

#### 12.20 **Great Bedwyn (Grafton Tithing) Inclosure Award 1792 WSHC EA68**

The whole of the route currently recorded as GRAF29, 30 and 31 and Burbage 1 is shown as a road on Plan A 'Grafton Tithings'. The road is inscribed with the words "Public Road. 40f" and "Southgrove Lane". The southern end, now recorded as CKIN34 is not shown, being in another parish but is shown as a continuation of the awarded road marked "To Collingbourne".

12.21





West Grafton Farm

12.22 The map is drawn at the scale of 5 chains to one inch and has a key to the effect that:

New allotments are bordered red.

Old enclosures exchanged are bordered yellow.

The remainder of the old enclosures are bordered green.

“The Fences of the new Allotments are thus represented .... And are to be made by the Proprietors of those Allotments in which they are delineated.”

12.23 The route is described in the Award as:

*“Road from West Grafton to Collingbourne” “One other public Carriage Road and Drift Way of the breadth of forty feet beginning at the South end of South Grove Lane near the North-West Corner of an old Inclosure to the Right Honorable Thomas Bruce Earl of Ailesbury called little Thorny Down and from thence extending Southward until it comes to the South-West Corner of an Allotment to the said Earl of Hazelditch at which place it assumes an Eastward Direction and so continues unto the place of its usual Entrance into the Parish of Collingbourne the same being a Public Carriage Road and Drift Way leading from West Grafton towards Collingbourne.”*

12.24 The Route froms the boundary of two allotments (number 8 and 10) being described in the award as follows:

*Allotment No. 8 to the Earl of Ailesbury. A.r.p. 22.1.11*

*“One other allotment of arable land containing twenty two acres one rood and eleven perches situate at Hazleditch in West Grafton further field and bounded on the west and in part on the south by the road leading from West Grafton to Collingbourne in part and on the east and the remainder on the south by lands in the parish of Collingbourne in other part on the east by the allotment to the said Earl last described in other part on the north in other part on the east and in remaining part on the south by an old enclosure called Little Thorny Down.”*

**12.25 Collingbourne Kingston and Burbage Inclosure Award 1824 WSHC EA128**

The final act of inclosing the remaining open downs and common places (including some exchanges of previously enclosed lands) in Collingbourne Kingston and Burbage was carried in 1824. This was made possible by a private Act of Parliament entitled “*An Act for Inclosing Lands in the Parishes of Collingbourne Kingston, and Burbage, and in the Tithing of Poulton, in the Parish of Mildenhall, in the County of Wilts*” 1815 (‘the private Act’) and a general act of 1801 (‘the general Act’) entitled “*An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of providing the several Facts usually required on the passing of such Acts.*”

12.26 The private Act has been read and considered and contains no additional provisions regarding highways over and above those in the general Act. It is however interesting to note that the private Act, in protecting the quickset hedges to be planted, recognises the practice of grazing animals on public highways as follows:

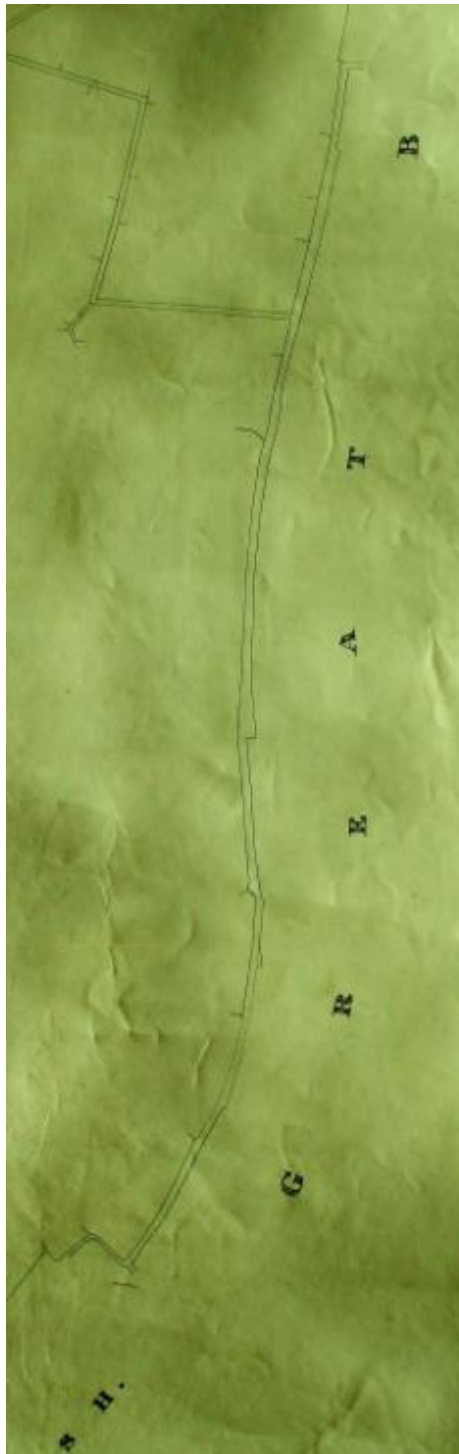
*“And be it further enacted, That no Horses, Cows, Sheep, Lambs, Mules, Asses, Pigs, or any sort of Cattle, shall be permitted to graze in any of the Highways, Roads, Lanes, or Passages, which the said Commissioners shall set out as aforesaid, at all, after the Execution of the Award of the said Commissioners, nor in any of the Allotments to be made in pursuance of this Act, for the Space of Ten Years next after the Execution of the Award...”*

12.27 On the Award map which is labelled “The Collingbourne Kingston Plan, CKIN34 is shown as a fenced road from what is now restricted byway CKIN6A leading in a northerly direction to the east of the River Bourne. It is likely to have been left uncoloured because it is not affected by the Award as none of the lands over which it leads are newly inclosed and only two small areas to the east of it are affected by exchanges. Other unaffected roads are also uncoloured (including the turnpike/A338).

12.28 The extent of inclosure delivered by the award is not great and the award sets out only four Public Carriage Roads and Highways in Collingbourne Kingston and these are shown coloured brown or sienna on the plan.



12.29 The above Act and award also covers the parish of Burbage which is shown on a separate map. Most of the claimed route is shown but being outside the parish (being in the parish of Great Bedwyn) it could not be affected by the award. No new enclosures adjoin the route. The award adduces little evidence for the claimed route beyond confirming the continued existence of the majority of the route at this time.



### 12.30 Other Category A Evidence – Railway Plans

Individual railway and canal schemes were promoted by Special Acts. The process for canal schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover railway schemes in 1810. The requirements for railways were expanded in the 1845 Act, which requires public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, these plans provide good evidence in this context as the law required provision to be made for existing routes crossing the line.

- 12.31 Clause 10 of the 1845 Act requires that true copies of such plans and books of reference ... certified by any such clerk of the peace .... shall be received by the courts of justice or elsewhere as evidence of the contents thereof. The Act also includes provisions for the crossing of the line by any highway and specifies (Clauses 46 to 51) the minimum bridge dimensions for public and private roads and the requirements for the gating of crossings on the level.
- 12.32 Railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes was exacting and the Book of Reference and Deposited Plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way.
- 12.33 The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description.
- 12.34 Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain.
- 12.35 Railway plan sections and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges laid down in the 1845 Act is 25 feet (7.62 metres) for public roads and 12 feet (3.66 metres) for private roads. However, caution needs to be exercised regarding the latter as some high status estate roads had wider bridges. There were no specified widths for bridleways or footpaths.

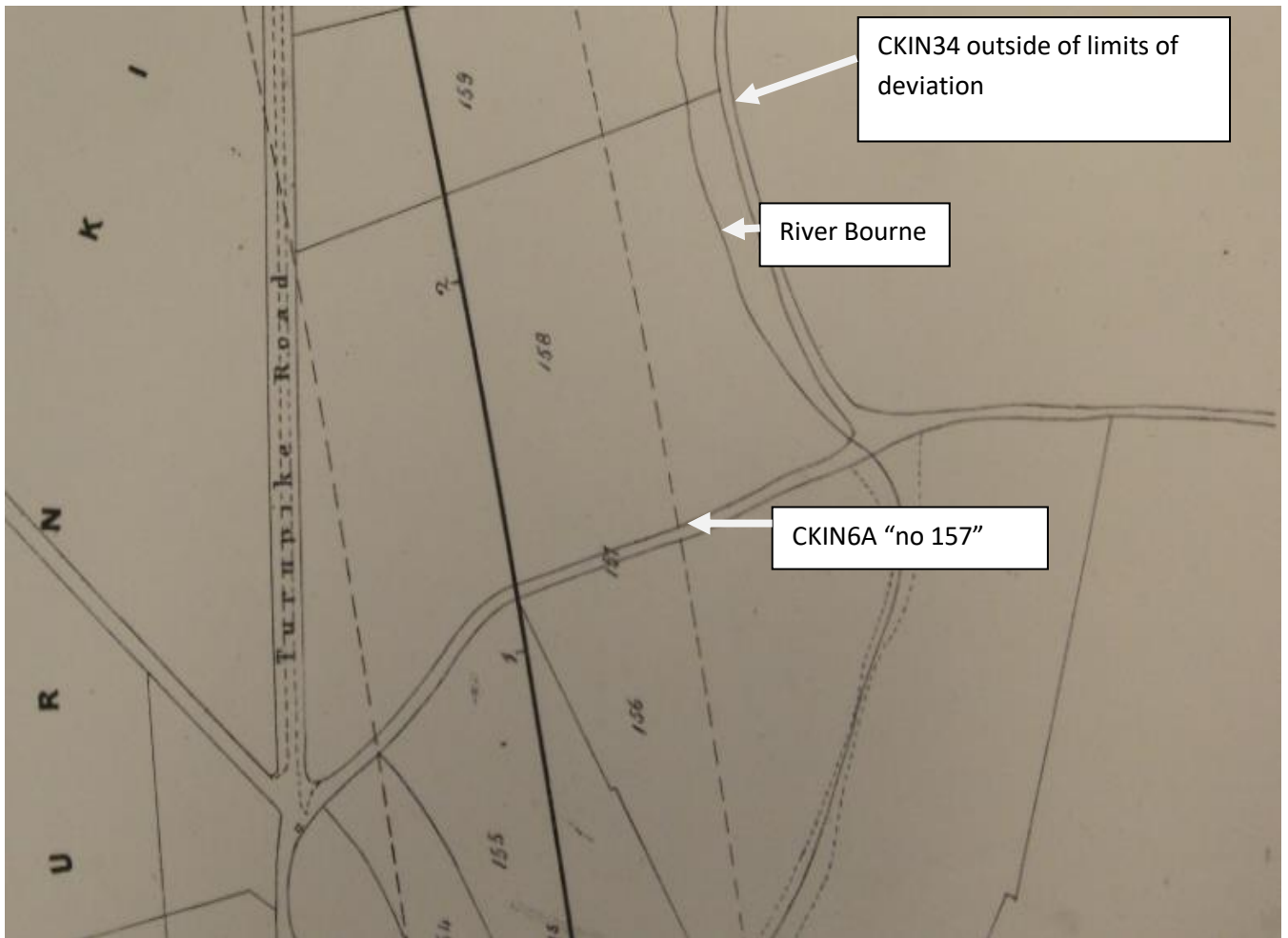


- 12.36 The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated Book of Reference.
- 12.37 It must be borne in mind that the procedure to be followed for deposited plans of public undertakings was strictly regulated by Standing Orders of the House of Lords. For example there was a requirement that plans, sections and books of reference, in duplicate, were deposited with Clerks of the Peace and Principal Sheriff Clerks; that Clerks of the Peace were to endorse them on receipt; that plans, sections and Books of Reference were to be deposited with clerks of the parishes through which the works were to be carried; that any plans showing variations had to also be deposited with the Clerks of the Peace and that copies of standing orders relating to the deposits were also to be delivered.
- 12.38 The claimed route is affected by four different railway schemes and accordingly four sets of deposited plans and books of reference have been viewed. Not all schemes were promoted by the same companies and accordingly the evidence has greater synergy as a result.
- 12.39 **Manchester and Southampton Railway 1845 WSHC ref. no. A1/371/70**
- The plans and Book of Reference were deposited with the Clerk of the Peace at 4.30 pm on the 3<sup>rd</sup> November 1845. All records are duly signed.
- 12.40 The proposed line passed to the west of the claimed route cutting across the former Turnpike (now A338) and the road now recorded as CKIN6A. The extent of deviation is shown on the plans by pecked lines and although the route of the claimed route CKIN34 is shown as a fenced road (approx. width 25 feet) in the same manner as other roads it is outside of the limits of deviation and hence not numbered and included in the Book of Reference.
- 12.41 CKIN6A, which has a junction with CKIN34, is recorded as number 157 on the plan and the Book of Reference records the following:

*Parish of Collingbourne Kingston (page 5)*

<u>No on Plan</u>	<u>Description of Property</u>	<u>Owner or Reputed Owner</u>
157	Public Highway	The Surveyor of Highways

*No Lessee or reputed lessee and no Occupier.*

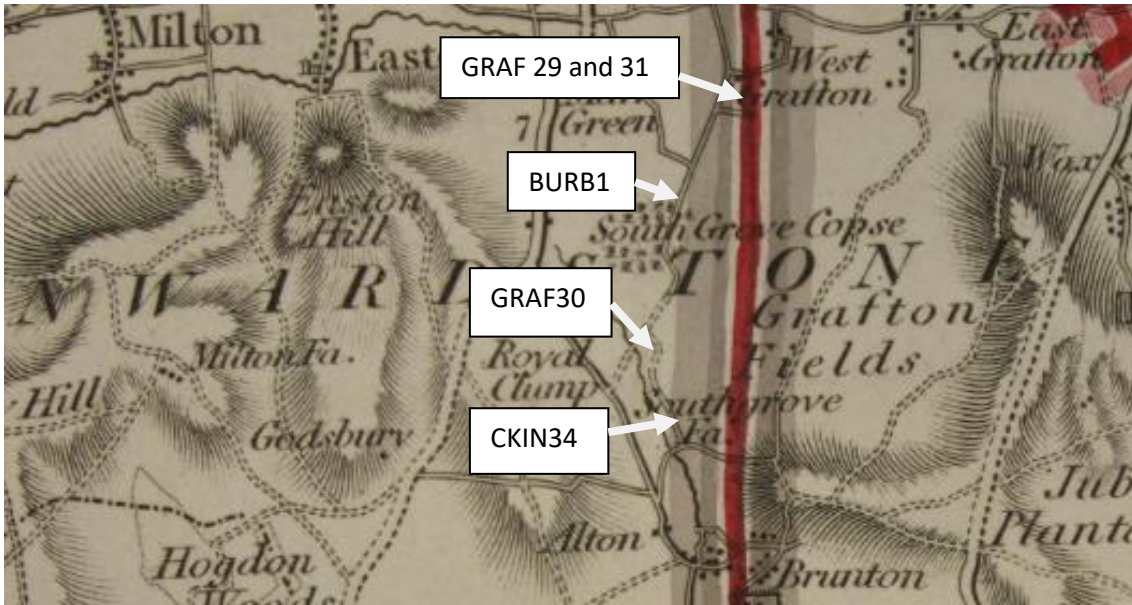


#### 12.42 Manchester and Southampton Railway 1846 – 7 WSHC Ref. no. A1/371/78

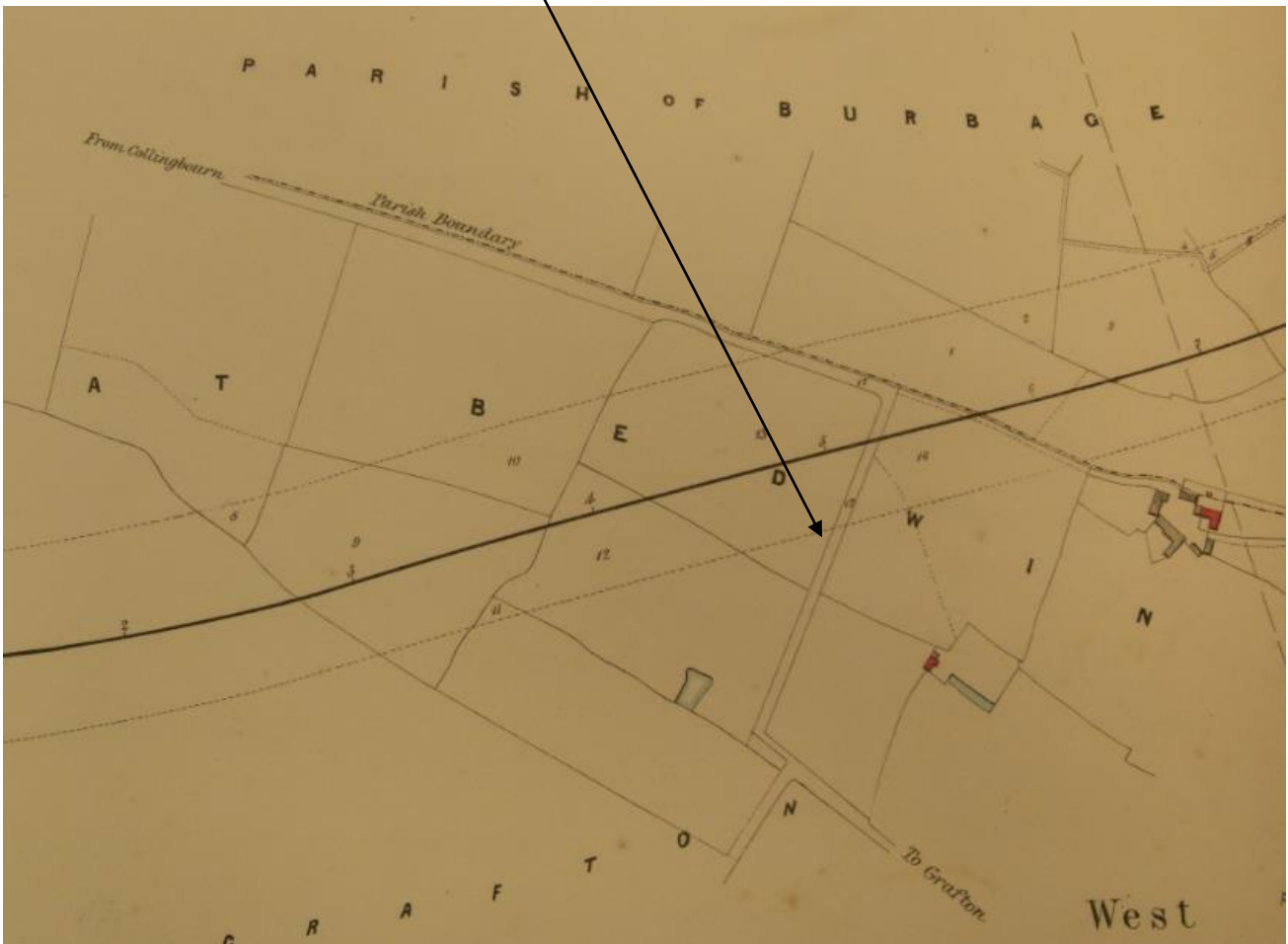
The Plans and Book of Reference were deposited with the Clerk of the Peace at 2.30 pm on the 30<sup>th</sup> November 1846 and have been duly signed.

The plans are accompanied by an overview map based on the Ordnance Survey's 1 inch to the mile map and show that the line proposed for this railway leads further east than the one above proposed in the previous year.

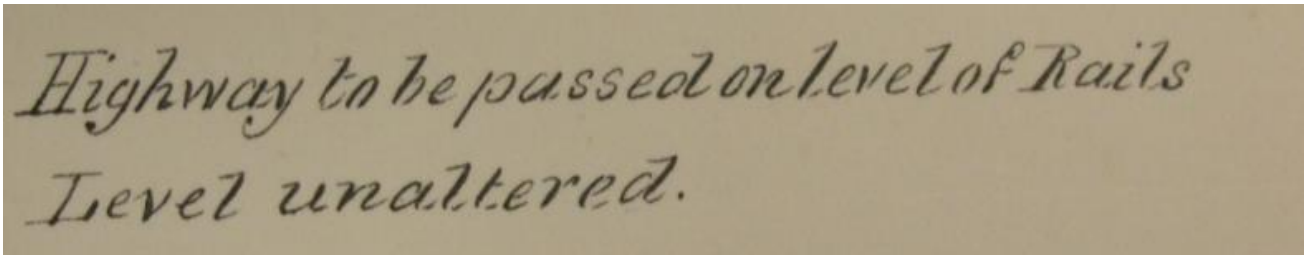
- 12.43 The overview plan shows the line in red passing east of CKIN34 (and therefore outside the limits of deviation) but affecting the claimed route of GRAF29 and 31 at West Grafton. The deposited plans, sections and Book of Reference give detail.



12.44 The plans at page 26 show the whole of GRAF31 and over 30 chains of GRAF29 as a fenced road, marked at the northern end "To Grafton" and at the southern end "To Collingbourn". The railway crosses at approximately 38 miles 5.25 furlongs. No. 17 in the parish of Great Bedwyn.



12.45 From the Section plans at page 16 it can be seen that at 38 miles 5.25 furlongs that the “Highway to be passed on Level of Rails. Level unaltered.”



12.46 The Book of Reference for the Parish of Great Bedwyn records:

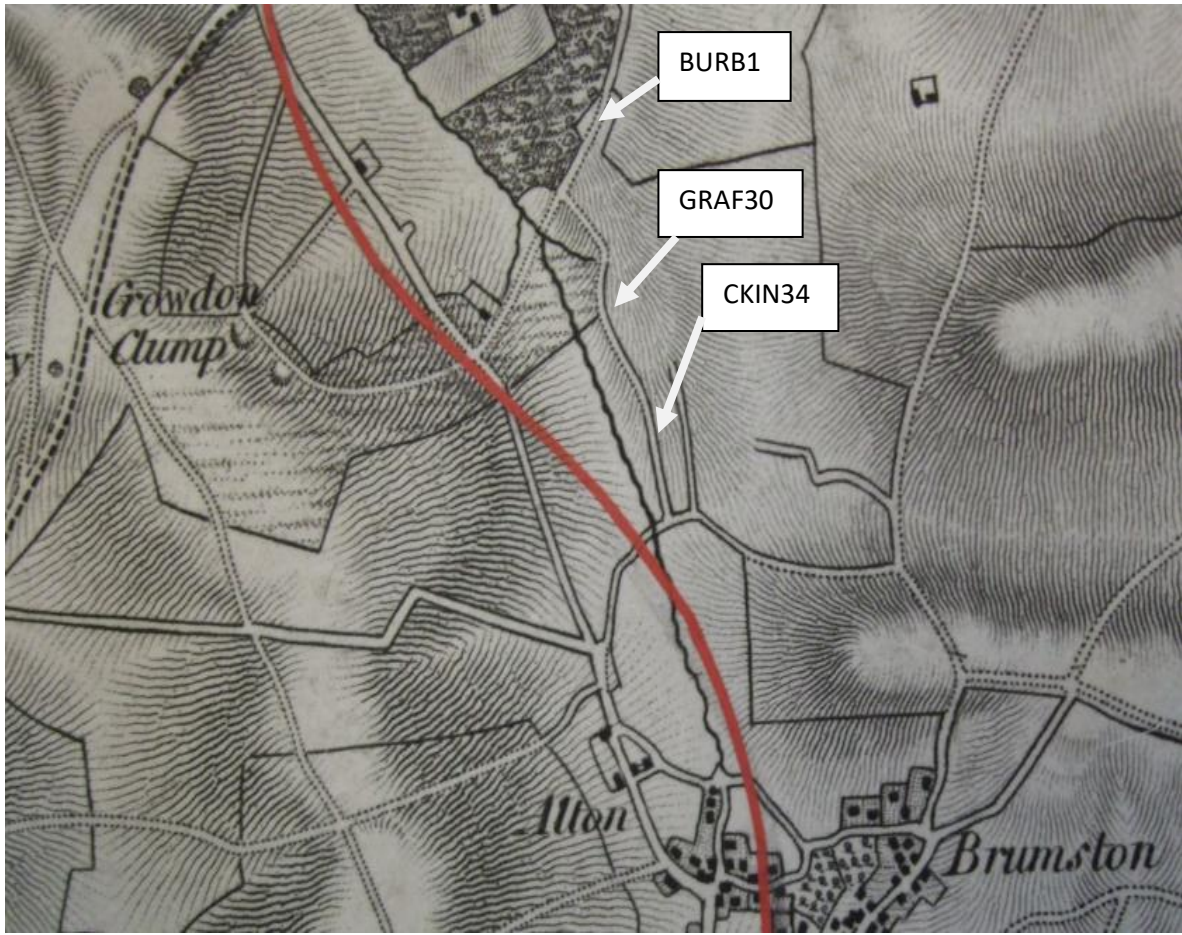
<u>No on Plan</u>	<u>Description of Property</u>	<u>Owner or reputed owner</u>
17	Public Highway	The Surveyor of Highways

12.47 **Manchester and Southampton Railway, Andover to Cheltenham 1847 – 8**  
**WSHC Ref. no. A1/371/80**

**Also Manchester and Southampton Railway Amendment A1/371/79**

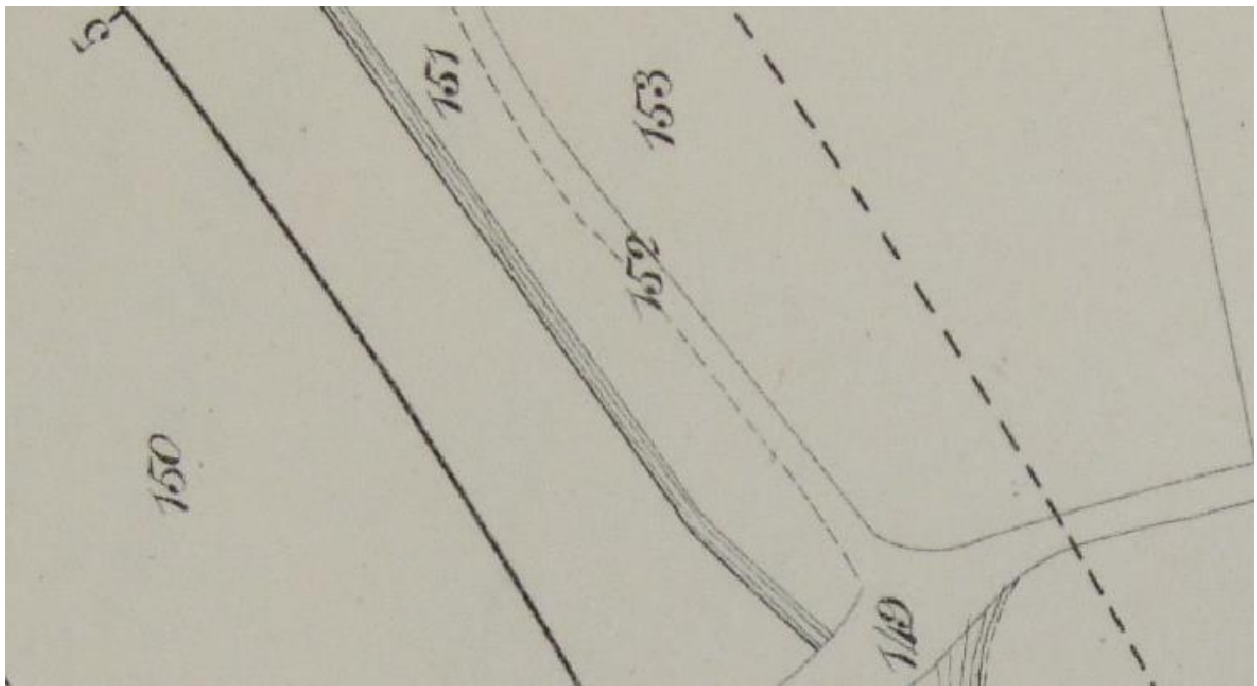
The plans and Book of Reference were deposited with the Clerk of the Peace between the hours of 9 and 10 o'clock am on the 30<sup>th</sup> November 1847. All records are duly signed. A further amended Book of Reference was subsequently deposited on the same day and duly accepted and signed.

12.50 An overview plan was also deposited based on the Ordnance Survey's one inch to one mile map and this shows the proposed line to the west of the River Bourne leading north west over the Turnpike Road (A338). The proposed line of the railway is shown in red.



12.51 CKIN34 is within the limits of deviation. Page 9 of the deposited plans show approximately 20 chains of CKIN34 fenced on the east side only, width approximately 18 feet. The road is numbered 152 on the plan.





12.52 Both the original Book of Reference and the amended one are the same in respect of CKIN34 and record it as follows:

*Parish of Collingbourne Kingston*

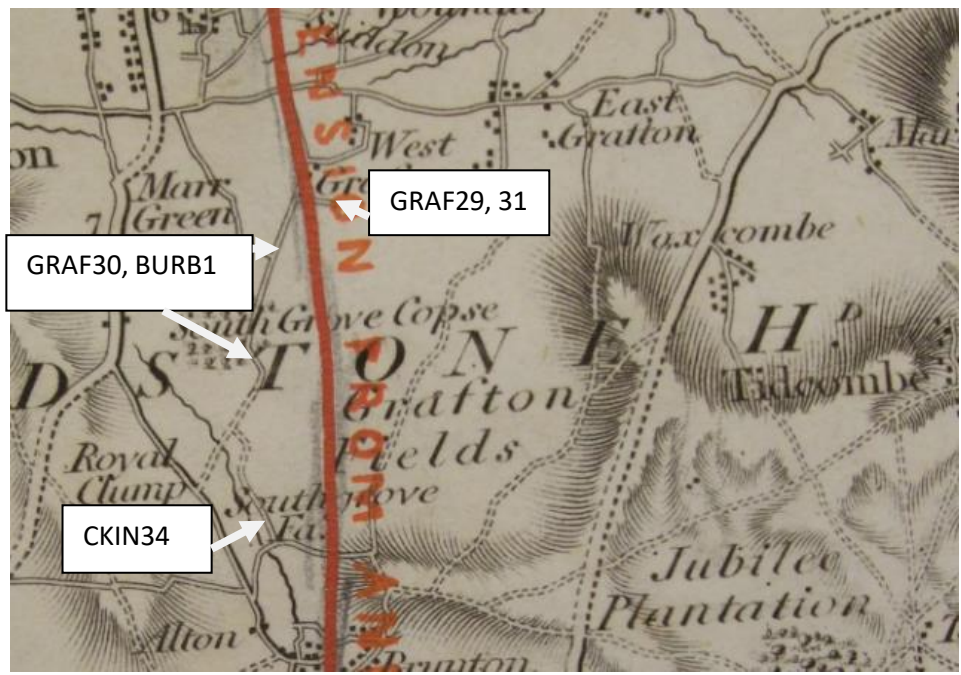
<i>No. on plan</i>	<i>Description of Property</i>	<i>Owner or Reputed Owner</i>
152	Road	The Surveyor of Highways

149	Road . . . . .	The Surveyors of the Highways.	
150	Field and Watercourse . . . . .	The Marquess of Ailesbury and his Trustees	Mary Hercomb.
151	Field and Watercourse . . . . .	The Marquess of Ailesbury and his Trustees	Mary Hercomb.
152	Road . . . . .	The Surveyors of the Highways.	
153	Field . . . . .	The Marquess of Ailesbury and his Trustees	Deane William Clunes.
154	Field . . . . .	The Marquess of Ailesbury and his Trustees	Deane William Clunes.
155	Field and Watercourse . . . . .	The Marquess of Ailesbury and his Trustees	Mary Hercomb.
156	Field and Watercourse . . . . .	The Marquess of Ailesbury and his Trustees	Mary Hercomb.

12.53 A copy of the Public Notice of the bill for the next session of Parliament was given in the Salisbury and Winchester Journal and the London Gazette. Copies of Plans, Sections and the Book of Reference were deposited for public inspection with the Clerk of the Peace for the County and a copy of so much as related to each parish with the parish clerk together with a copy of the notice. A copy of this notice is included in the archive A1/371/80.

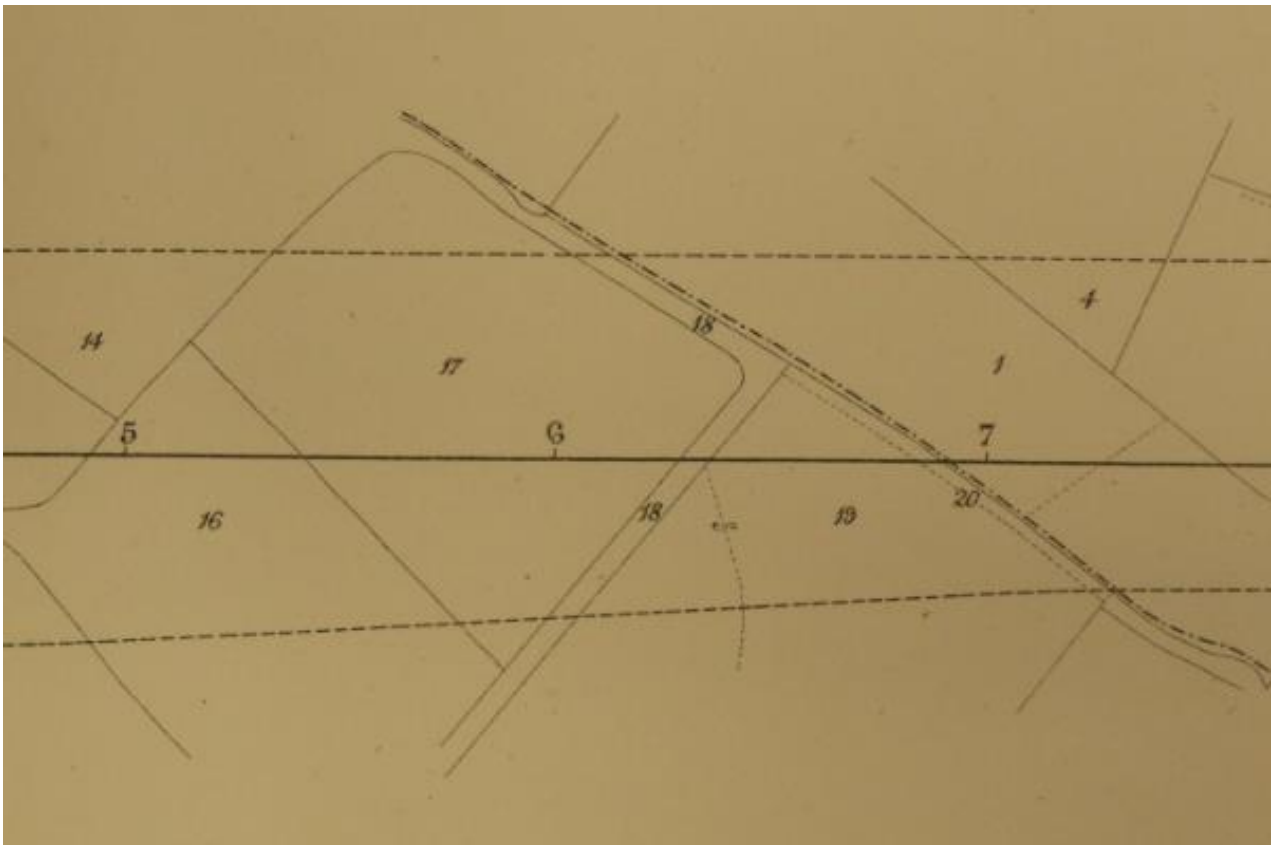
**12.54 Andover and Redbridge Railway 1859 – 60 WSHC Ref. no. A1/371/96**

The overview plan shows the proposed line of the railway in red.



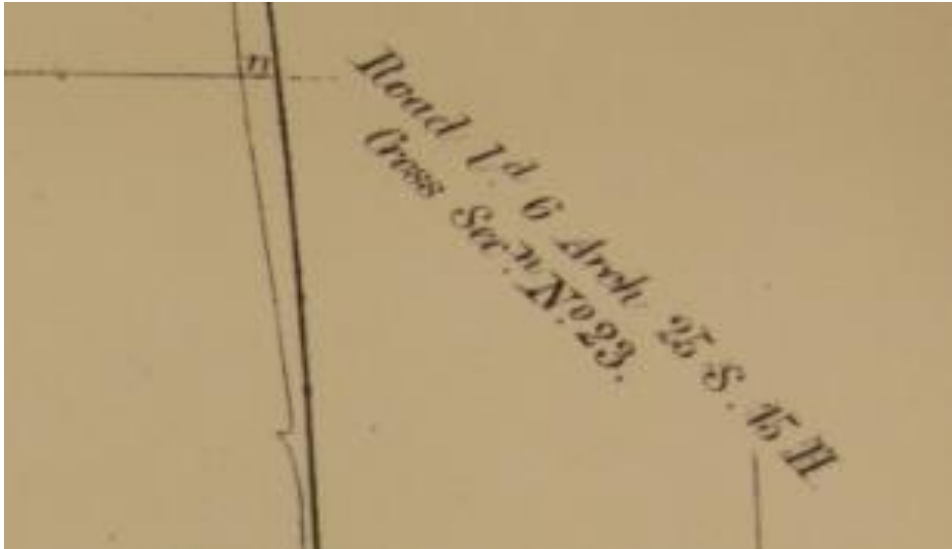
The Plans and Book of Reference were deposited with the Clerk of the Peace and duly signed. The proposed railway crosses CKIN6A a sufficient distance east of CKIN34 to make CKIN34 outside the limits of deviation but the line does cross GRAF29 and GRAF31.

12.54 The Deposited Plans show the east-west length of GRAF31 as a fenced road numbered 18 on the Plan. A length of GRAF29 branching south from GRAF31 is shown as a fenced road also numbered 18 on the Plan. The railway crosses at approximately 13 miles 6 furlongs and 3 chains. The Burbage parish boundary is shown by a bold pecked line north of route 18.





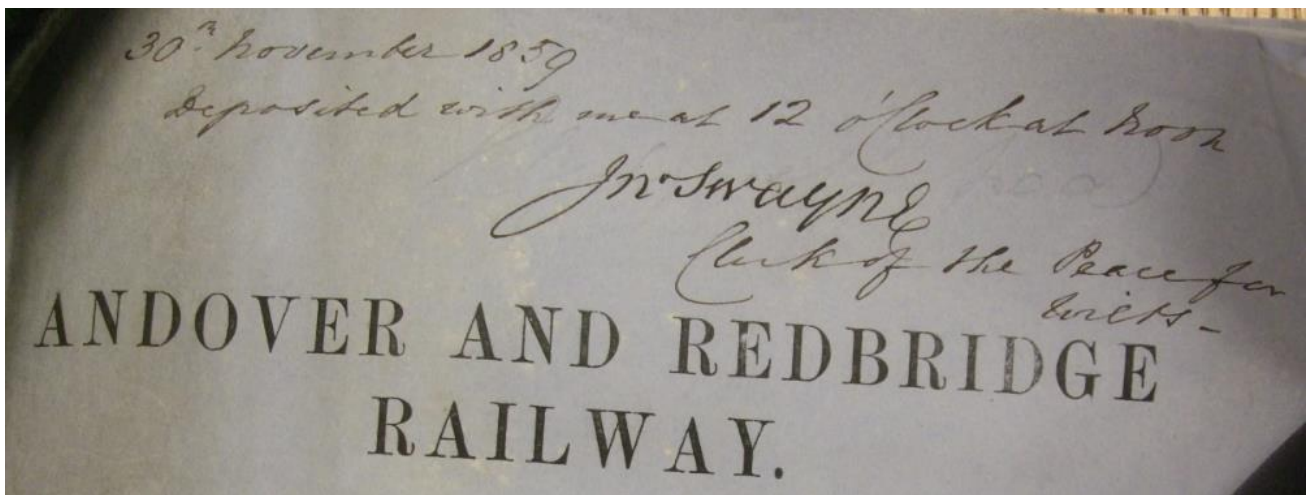
12.55 The Sections at page 15 at 13 miles 6 furlongs and 3 chains record “Road Id. 6 Arch 25S. 15H. Cross Secn. No. 23”.



12.56 Cross Section No 23 records that “Greatest Inclination of Present Road 1 in 30”  
“Greatest inclination of Road when altered 1 in 20”.

12.57 The Book of Reference in the Parish of Great Bedwyn records that No. 18 on the Deposited Plan is a Public Road or driftway as follows:

<u>No on plan</u>	<u>Description of property</u>	<u>Owner or reputed owners</u>
18	Public road or driftway	Highway Surveyors



## 12.58 Any Other Category A Evidence

No record of any extinguishment or diversion of the highway has been found and the area is not affected by any canal plans. "An Order made by the Inclosure Commissioners under the General Land Drainage and Improvements Companies Act 1849" is retained in the WSHC archives and this is considered under Category B evidence as the representation of highways was not the primary purpose of the document.

## 13.0 Category B Evidence

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

### 13.1 Order of the Inclosure Commissioners 1874 WSHC Ref. no. 529/245

This is entitled as follows:

*Dated 26<sup>th</sup> March 1874*

*Counties of Wilts and Berks*

*Parishes of Collingbourne Kingston, Collingbourne Ducis, Shalbourne, Easton, Burbage, Great Bedwyn, Little Bedwyn, Froxfield, Mildenhall, Preshute, Savernake, Great Parks, Milton, Wootton Rivers, Chute, Blagdon and Hungerford*

*No. 356*

*The Marquis of Ailesburys'*

*Drainage, Roadmaking, Clearing, Farm Buildings, and Village Improvements*

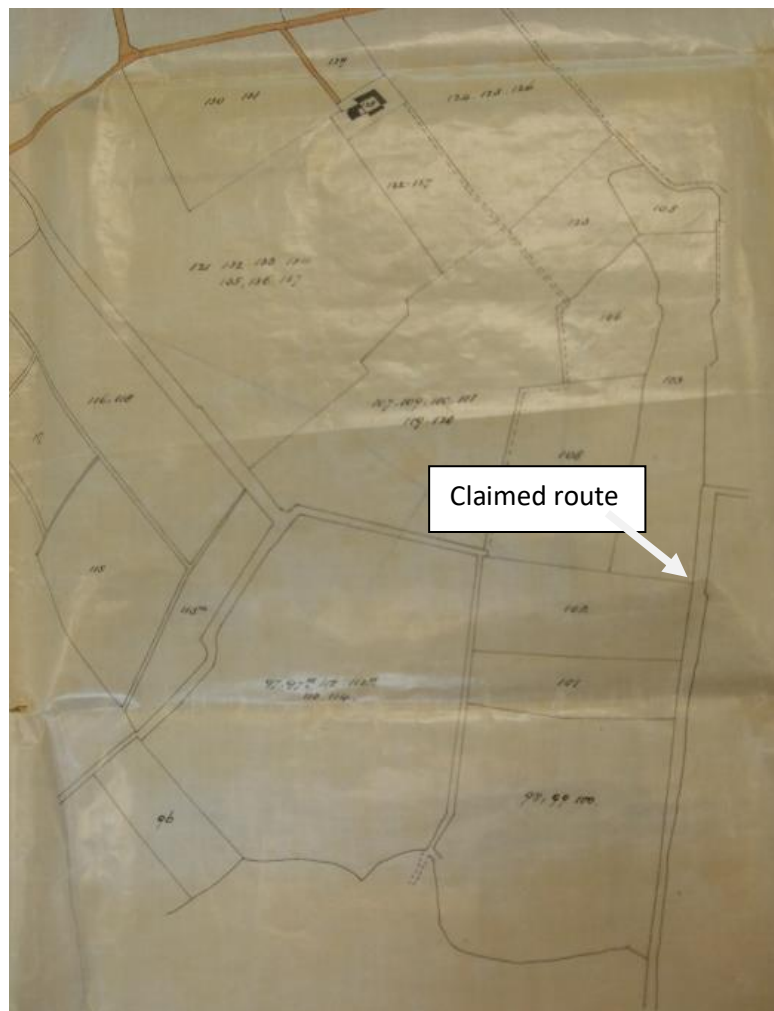
**ABSOLUTE ORDER**  
**OF THE**  
**INCLOSURE COMMISSIONERS**

13.2 The document comprises a signed, sealed and stamped order and plans showing the lands to be improved.

13.3 The Order commences: "*We the Inclosure Commissioners for England and Wales in pursuance of the General Land Drainage and Improvement Companies Act 1849 hereby declare and absolutely order that the inheritance of the lands mentioned in the schedule which is absolutely charged with the sum of £8,832 3/1d paid for the improvement by the dated....*" Payments are set for the following lands, all in the ownership of the Marquess of Ailesbury:

Collingbourne Brunton Farm  
Scots Poor Farm  
Kinwardstone Farm  
Brunslade Farm  
Burbage Manor Farm  
Easton Farm  
Wilton Farm  
other "lands in hand"

- 13.4 The route of GRAF29 between GRAF31 and BURB1 and short spurs of GRAF31 and BURB1 is shown as a wide fenced road on Plan C "Kinwardstone Farm". It is interesting to note that by this time (1874) the road may have been starting to lose importance and is shown uncoloured in the same way that the byway open to all traffic CKIN2A and other minor highways is rather than coloured sienna as the Hungerford Road is.



- 13.5 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the

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

- 13.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 13.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians* by Roger J P Kain and Hugh C. Prince) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 13.4 Roger J P Kain and Richard Oliver in *The Tithe Maps of England and Wales* at page 23 note that the portrayal of features on tithe maps is very variable across parishes and that advice to the privately commissioned surveyors was itself imprecise and that although the official instructions required that surveyors should include such detail on their maps as it is usual to find on estate maps, there was no statutory requirement to do this.
- 13.5 There are however general conventions that are observed and at page 24 Kain and Oliver observe that:

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

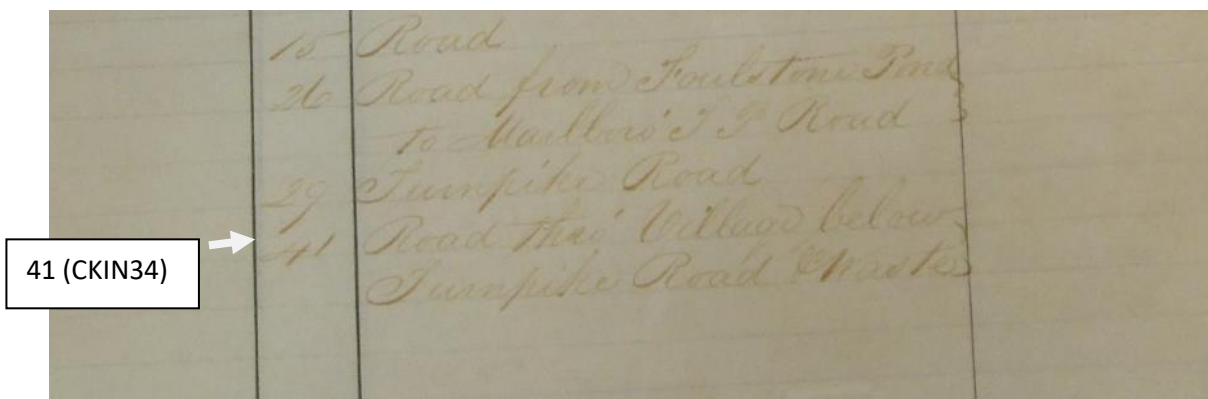
*“Foot and Bridleways ...are sometimes explicitly annotated as such, but more usually they are indicated by single or double pecked lines.”*

13.5 **Collingbourne Kingston Tithe Map and Apportionment WSHC Ref. no TA/Collingbourne Kingston**

The tithe map for Collingbourne Kingston is dated 1843 and is drawn at a scale of 6 chains to one inch. It is by A.M.May of Marlborough. Although the scale of the map falls short of Dawson’s ideal (3 chains to one inch), the map uses much of the symbology in the Parliamentary paper. Land detailed in the apportionment (which lists field names, land usage, ownership, acreage and details of payments) is

numbered on the plan to enable referencing. The road network is shown as either coloured sienna and numbered or unnumbered.

- 13.6 CKIN34 is shown as a fenced road (approximate width 25 feet) in the tithing of Aughton, coloured sienna and numbered '41' at its junction with CKIN6A . It is shown as part of the local road network and is described in the apportionment as '41' *'Road thro' village below Turnpike Road & Waste'*. No owner or occupier is recorded and it is tithe free. GRAF30 is show leading out of it at the parish boundary and is shown as an unfenced road leading north west along the parish boundary. A short length of the continuation in a north easterly direction is also shown.



13.7 Roads listed in the apportionment roll are as follows – all tithe free with no owner or occupier. The sum of roads and wastes appears at the end of the apportionment and are free of tithe.

Numbers on plan	Collingbourne Tithing	Description	A.R.P
15	Aughton	Road	7 – 1 – 20
26	Aughton	Road from Foulstone Pond to Marlboro' Turnpike Road	4 – 2 – 00
29	Aughton	Turnpike Road	5 – 1 – 10
<b>41</b>	<b>Aughton</b>	<b>Road thro' Village below Turnpike Road and Waste</b>	<b>2 – 2 – 39</b>
100	Brunton	Village Street & Road adjoining	13 – 0 – 20
204	Brunton	Turnpike Road and Hungerford Lane	7 – 0 – 27
230	Brunton	Knap Drove	1 – 2 – 24
292	Kingston	Road from Collingbourne Kingston toward Everley & part of Turnpike Road from Everley to Marlboro Etc	12 – 0 – 34
318 and 377	Kingston	Road Thro' Village and Adjacent Road from Turnpike	8 – 0 – 00
392	Sunton	Everley & Andover Turnpike Road	1 – 0 – 00
396	Sunton	Road from Everley & Andover Turnpike Road	4 – 0 – 20
414	Sunton	Turnpike Road	2 – 0 – 5
464	Sunton	Turnpike Road to Hungerford	3 – 1 – 20

CKIN34

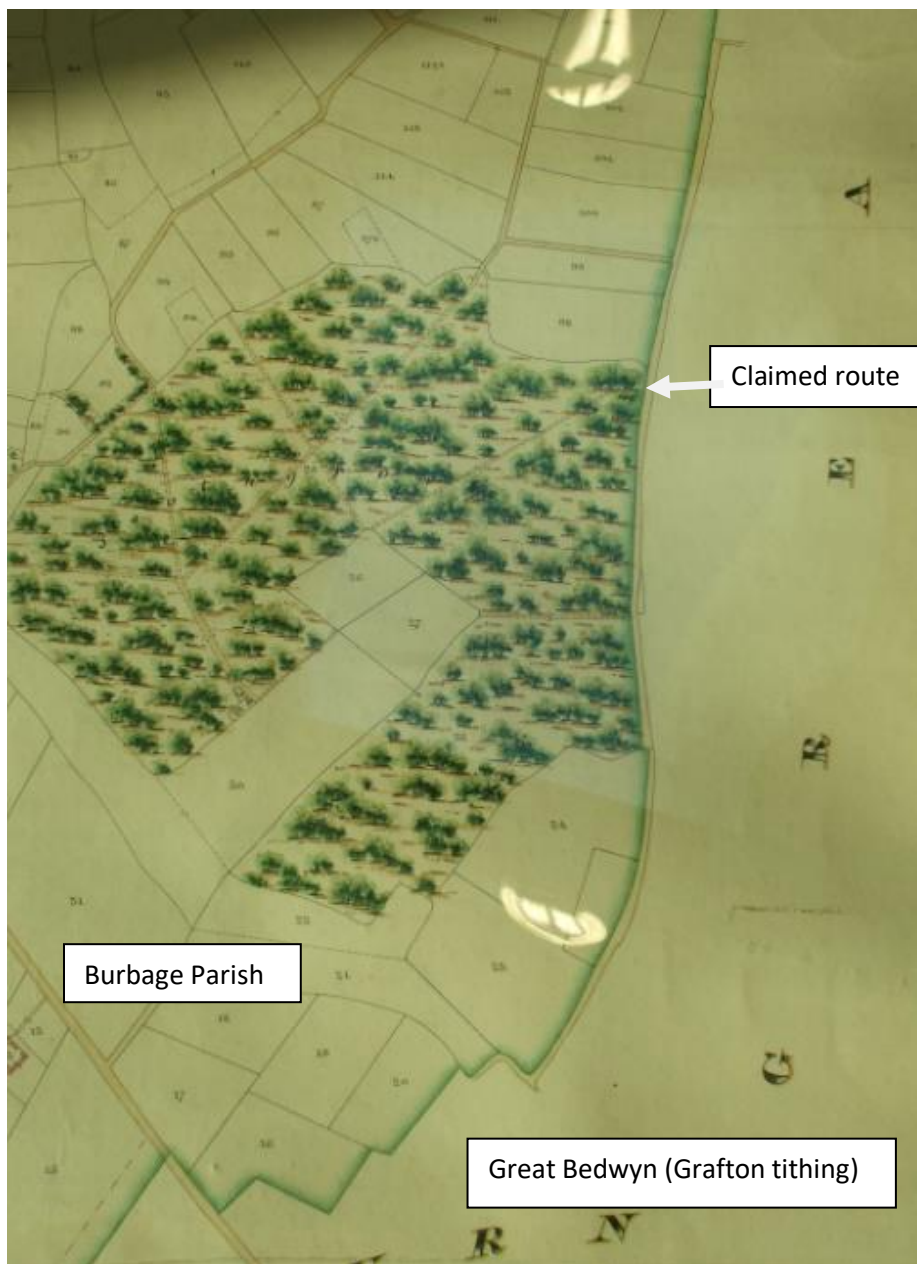


### 13.8 Great Bedwyn Tithe Award

The tithes were commuted in the tithing of Grafton in the parish of Great Bedwyn during the course of Parliamentary Inclosure in 1792 and accordingly there was no need to produce any further documents as a result of the Tithe Commutation Act 1836.

### 13.9 Burbage Tithe Award WSHC reference no: T/A Burbage

The map is dated 1844 and the apportionment 1840. It is produced to the scale of 6 chains to 1 inch by A. M May. Most of the claimed route is shown as a hedged or fenced road and coloured sienna, however, it is clearly shown outside of the parish of Burbage and in neighbouring Great Bedwyn.



## 13.10 Other Category B Evidence

### 13.11 Inland Revenue Finance Act 1909/1910 Records

**Plans** WSHC L8/10/42

**Valuation Book** WSHC L8/1/56

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

- 13.12 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and provide the most accurate record of the landscape that we have for this area at that time. Sheets 42/3, 42/7 and 42/11 cover the area of the claimed route (GRAF29, 30,31, BURB1 and CKIN34).
- 13.13 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 13.14 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that "No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority".
- 13.15 Although the claimed route was identified as a public road in the possession of the Surveyor of Highways for the purposes of depositing plans with the Government in the period 1845 to 1860 it is likely that by the time of the Finance Act Survey (1910) these unimproved and soft surfaced roads had fallen into disuse owing to the improvement of neighbouring roads. Certainly, the representation of the roads by the Ordnance Survey in plans dating from the end of the 19<sup>th</sup> century onwards do not record the prominent, double hedged and laid out routes recorded by the Inclosure or Tithe Commissioners from the late 18<sup>th</sup> century to the mid-19<sup>th</sup> century.



13.16 The claimed route is shown coloured as part of hereditaments 469, 677 and 8 on the three plans. No deductions are made for public rights of user.



BURB1 and GRAF30

CKIN34

#### 14.0 Category C Evidence

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

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

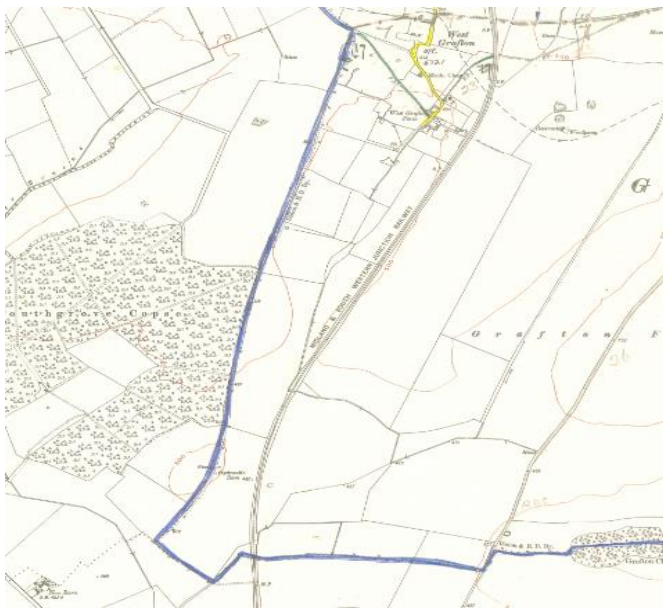
**14.2 National Parks and Access to the Countryside Act 1949**

Section 27 of the National Parks and Access to the Countryside Act 1949 required Wiltshire County Council (WCC) to carry out a survey of all lands in their area (with some exceptions) over which a right of way is alleged to exist. Section 28 required the authority to consult with parish and district councils and ultimately to compile a draft definitive map showing the public rights of way that existed or were reasonably alleged to exist.

14.3 WCC required parish councils to conduct their surveys in 1950 and records relating to these parish surveys have survived.

**14.4 Parish Surveys in Marlborough and Ramsbury Rural District Council area**

Grafton Parish Council did not identify a number of rights of way, GRAF29, 30 and 31 being amongst those not shown on their claim map (Grafton Parish Council identified only 22 rights of way out of the 35 recorded in the 1952 definitive map and statement).



Parish boundary in blue

**14.5 Parish Surveys in Pewsey Rural District Council area**

Collingbourne Kingston Parish Council did not identify a number of rights of way including CKIN34 and adjoining route CKIN6A both of which were missing from the original claim despite being prominent historic routes.



14.6 Burbage Parish Council identified BURB1 as a 30 foot wide “fenced and hedged” bridleway though drew it outside of their parish boundary (hence in Grafton) on their parish claim map:



- 14.7 The route ends at the Collingbourne Kingston Parish Boundary, presumably with the expectation that the continuation in Collingbourne Kingston would have been claimed by that parish.
- 14.8 The process required that Draft Definitive Maps containing information arising from the parish claims were advertised and published. These maps were held in all parishes for a period of not less than four months during which time representations and objections could be made to WCC.
- 14.9 WCC received objections to the omission of the linking paths that became GRAF29, 30 and 31 and CKIN34 from the Ramblers Association who considered the tracks were shown as “old roads” on “old maps”. WCC records reveal the following:

MARLBOROUGH 4125  
(and 4126)  
D27, D28

Parish-Grafton and Collingbourne Kingston

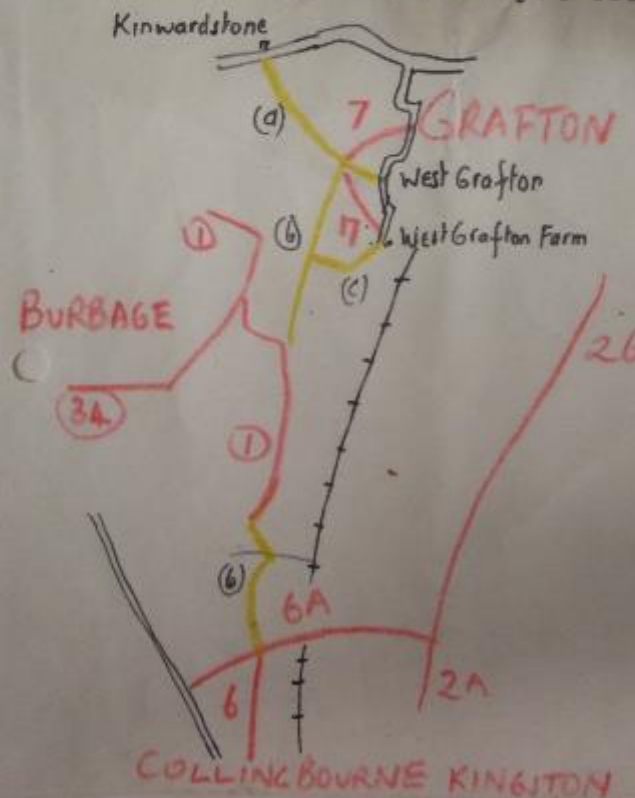
The Ramblers' Association claims that public paths have been omitted

- (a) from Kinwardstone to West Grafton
  - (b) from (a) to Collingbourne Kingston
  - (c) from the end of the County road at West Grafton Farm to (b) ~~xxx~~
- as shown on the sketch map below (in yellow)

Reasons.

Although a step stile at one point indicates that these tracks are now used only by pedestrians, old maps show all these tracks as old roads. The middle section of (b) is claimed by Burbage Parish.

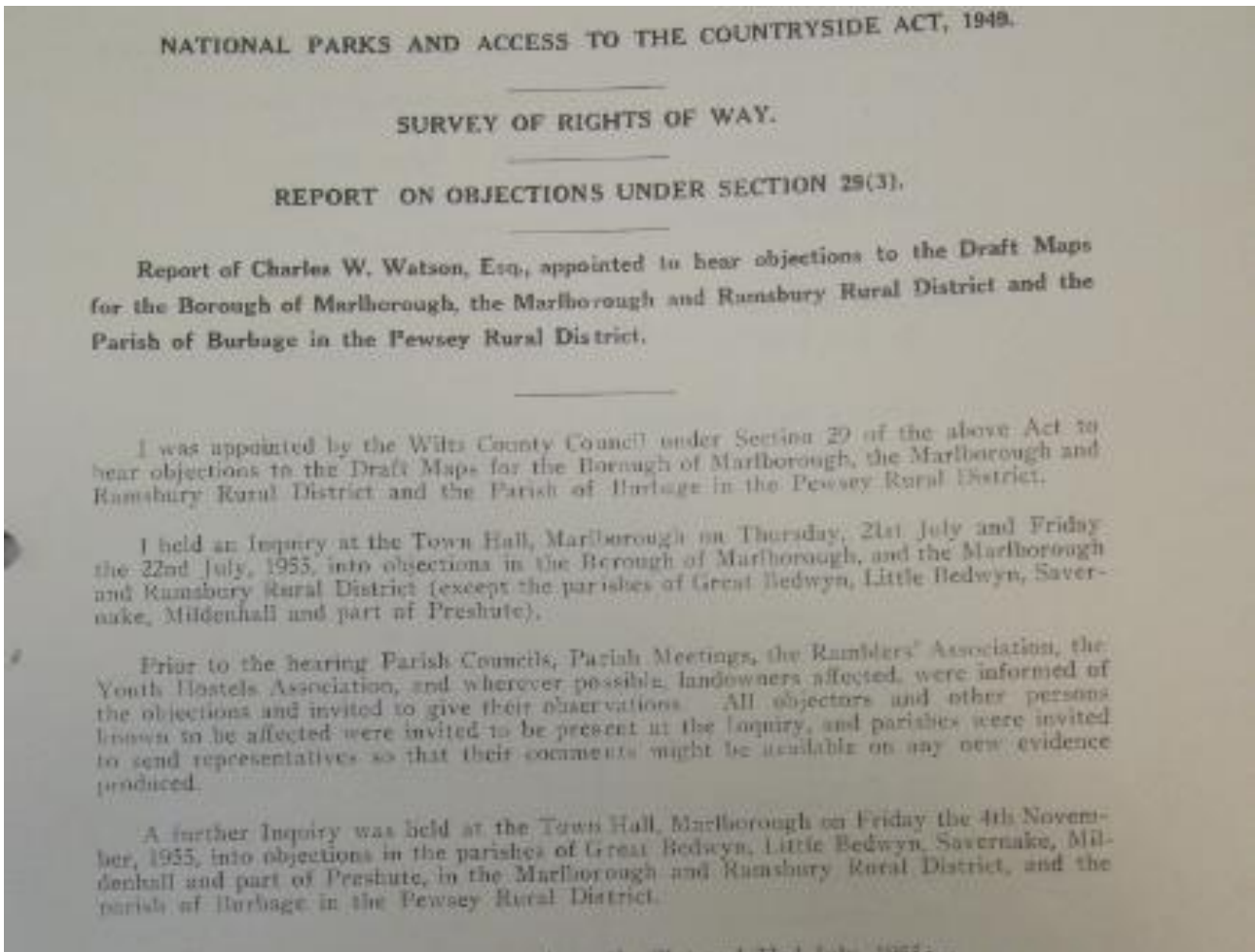
The northern paths are all open, the southern section has not yet been inspected.



23

14.10 The objection to the omission from the definitive map and statement was considered by inspectors appointed to hear the objections at public meetings held at the Town Hall, Marlborough on 21<sup>st</sup> and 22<sup>nd</sup> July 1955 and at Pewsey RDC offices held on the 25<sup>th</sup> and 26<sup>th</sup> January 1956. The inspector's reports are held at the Wiltshire and History Centre catalogue number F2/273/8 and F2/273/10 and has been viewed. This reveals that the rights of way Grafton 29, 30 and 31 and Collingbourne Kingston

34 were added to the definitive map and statement as the result of the objection by agreement in all parishes.



2	F.P's omitted	—	
(41/26, 41/25)	(a) From the N. end of path No. 17 leading S. along the Burbage boundary to Burbage path No. 1, then from the S. end of Burbage path No. 1 leading S.E. along the Collingbourne Kingston boundary until the path branches S.W. (Continuation claimed in Collingbourne Kingston, Pewsey R.D.).	—	Addition By agreement

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

SURVEY OF RIGHTS OF WAY.

REPORT ON OBJECTIONS UNDER SEC. 29(3).

Report of Charles W. Watson, Esq., appointed to hear objections to the Draft Map for the Pewsey Rural District (except the parish of Burbage which was dealt with as part of the Savernake Estate in Marlborough and Ramsbury Rural District).

I was appointed by the Wilts County Council under Section 29 of the above Act to hear objections to the Draft Map for the Pewsey Rural District.

I held an Inquiry at the Rural District Council Offices, Pewsey, on Wednesday, 25th and Thursday, 26th January, 1956.

Prior to the hearing Parish Councils, Parish Meetings, the Ramblers Association, and wherever possible, landowners affected, were informed of the objections and invited to give their observations. All objectors and other persons known to be affected were invited to be present at the Inquiry and parishes were invited to send representatives, so that their comments might be available on any new evidence produced.

No. and Map Reference.	Objection that path omitted from Draft Map.	Objection to path included in Draft Map.	Modification of Draft Map recommended.	Reasons
Parish of Collingbourne Kingston—continued.				
13 (41/25)	F.P. omitted from Grafton boundary, W. of the Railway, S.W. to the river and S. and S.E. to path No. 6A. (Continuation at N. end claimed in Grafton item 2).	—	Addition.	By agreement. Continuation in Grafton added on objection.

14.11 It is noted that although the Ramblers Association recognised that the routes were recorded as “old roads” on “old maps” use in the 1950s was clearly only on foot as stiles limited use. It is not uncommon for additions to only be recorded as footpaths in Wiltshire at this time, indeed, the survey was often referred to as “the footpath survey”.

4. Reasons for claiming the path.

Although a step stile at one point indicates that these tracks are now used only by pedestrians, old maps show all these tracks as old roads. <sup>possible</sup> The middle section of (A) is claimed by Burbage parish. The northern paths are all open.

5. Documents if any

## 15.0 Category D Evidence

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

### 15.1 Map of Collingbourne Kingston 1807 WSHC Ref. no 3354L

This document is a large estate plan drawn at the scale of 3 chains to one inch. It has a note on it that it is a "vellum Plan of the Farms" and shows fields and enclosures, details of ownership and occupancy, dwellings in red and other buildings in black, roads and droves in sienna with names and destinations in some cases, it also shows the River Bourne in blue.

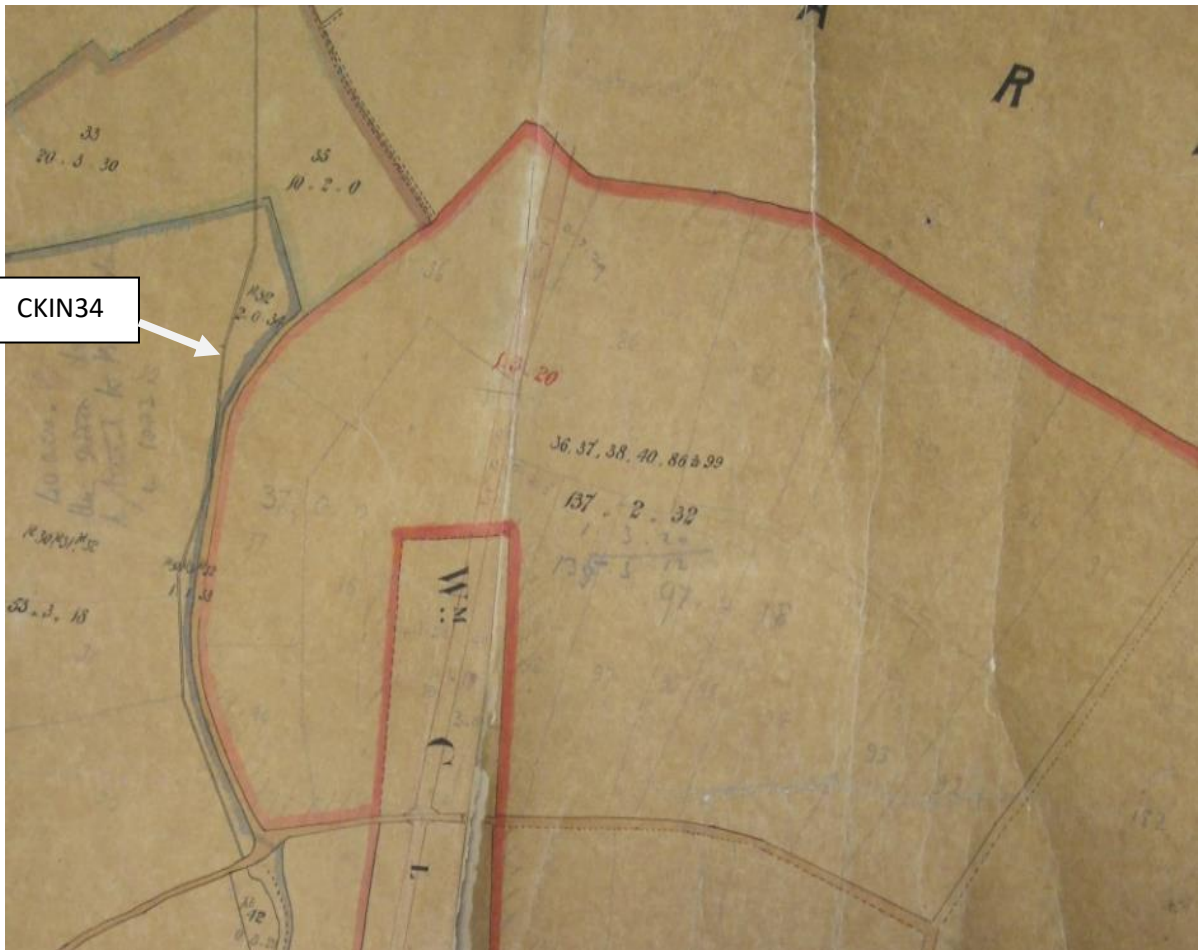
15.2 CKIN34 is shown as a sienna coloured road leading north from 'Duckpuddle Lane' (now CKIN6A).



**15.3 Plan of the Parish of Collingbourne Kingston, Belonging to The Most Hon. The Marquis of Ailesbury Revised from Old Plans November 1880 WSHC Ref. no 3354L**

This is detailed and coloured plan of the parish showing lands owned by the Marquis of Ailesbury (given by plot numbers) and land owned by others. The plan also shows rivers, dwellings, buildings and the local road network which is coloured sienna. The map also shows the railway line crossing the road that is now CKIN6A.

15.4 Most of CKIN34 is shown as a fenced road coloured sienna, at the northern end a length of the road is uncoloured and fenced only on the south east. The route has a width of approximately 30 feet. GRAF30 and part of BURB1 is also shown though it outside of the parish and not coloured as part of the survey.



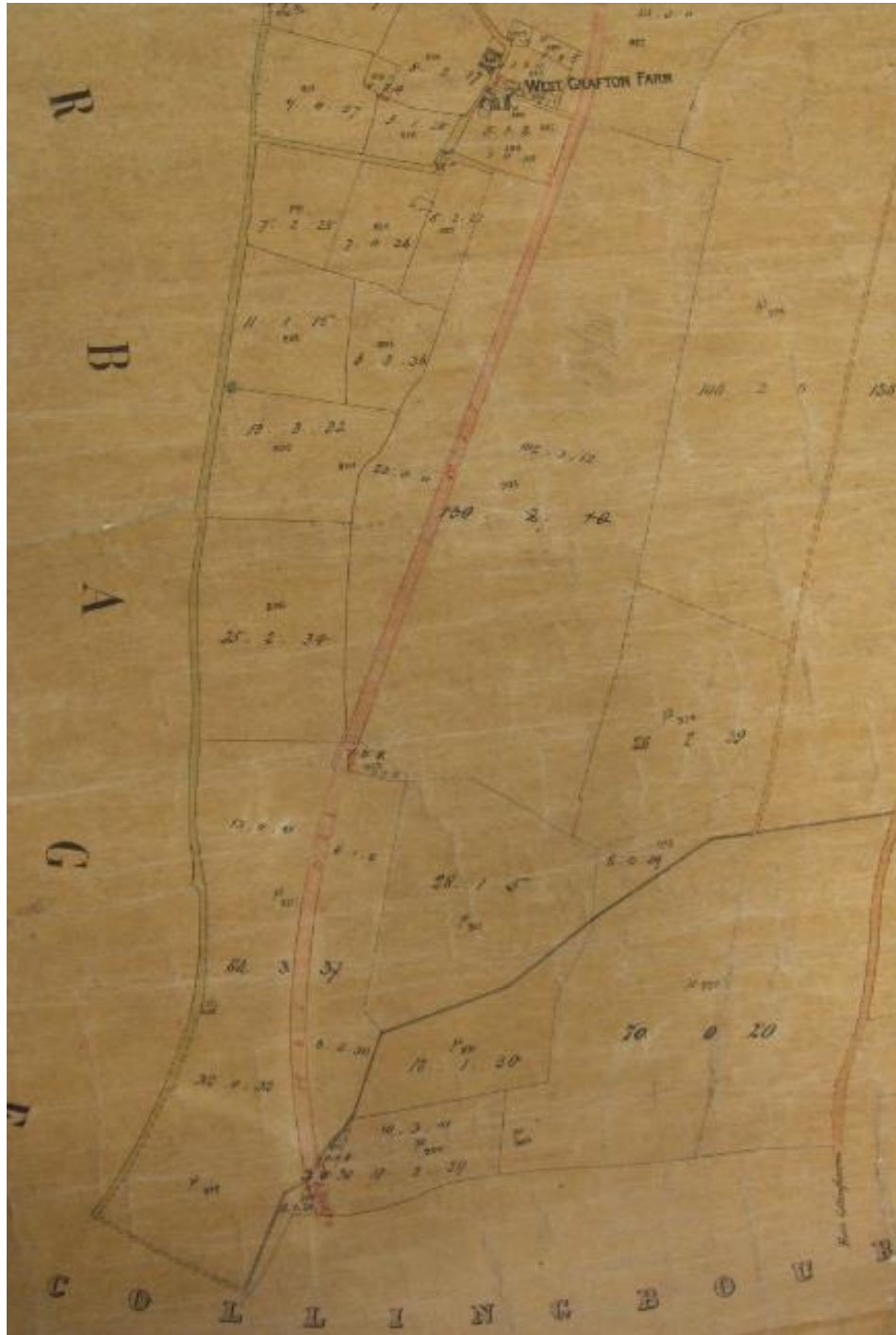
**15.5 Plan of the Lands in Great Bedwyn Parish. Revised from Old Plans 1880 WSHC 3354**

The map is entitled “Plan of Lands in Great Bedwyn Parish, Wilts The Property of The Most Hon. Marquis of Ailesbury Revised from Old Plans 1880 Scale 6 chains to 1 inch.” “Savernake Estate Office Marlborough” is printed in the bottom right corner.



Fields are numbered and, in some cases, measured and in some enclosures vegetation is shown (trees are drawn). Buildings are shown coloured red and blue. Some place names are shown as are neighbouring parish boundaries. Roads and tracks are shown coloured sienna or green. Routes coloured green seem to accord with unmetalled routes. Watercourses are shown blue. The line of the railway is shown coloured pink.

- 15.6 The whole of the route GRAF29, 30 and 31 and BURB 1 is shown in Grafton parish as a route coloured green. Widths can be measured at approximately 40 feet.



## 16.0 Category E Evidence

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

- 16.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the early county maps produced by Andrews and Dury , John Cary and C & I Greenwood and also those of the Ordnance Survey as all were independent surveyors.
- 16.2 It must also be considered that even when surveys produced by the Ordnance Survey were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors. The applicant has adduced a list of a considerable number of these maps and only some of them have been viewed, however, a full list of those adduced can be found at 16.20.
- 16.3 **Andrews' and Dury's Map of Wiltshire 1773**

This map was produced at the scale of 2 inches to one mile over 18 sheets. The area over which the claimed route leads is on sheets 9 and 12. However the area does not appear to be well surveyed as the tithings of Brunton and Aughton are incorrectly recorded with the map showing Brunton to the west of Aughton instead of the other way around. However, the route of CKIN6A with CKIN34 leading from it is discernible at the River Bourne though not further north.

From Sheet 9:

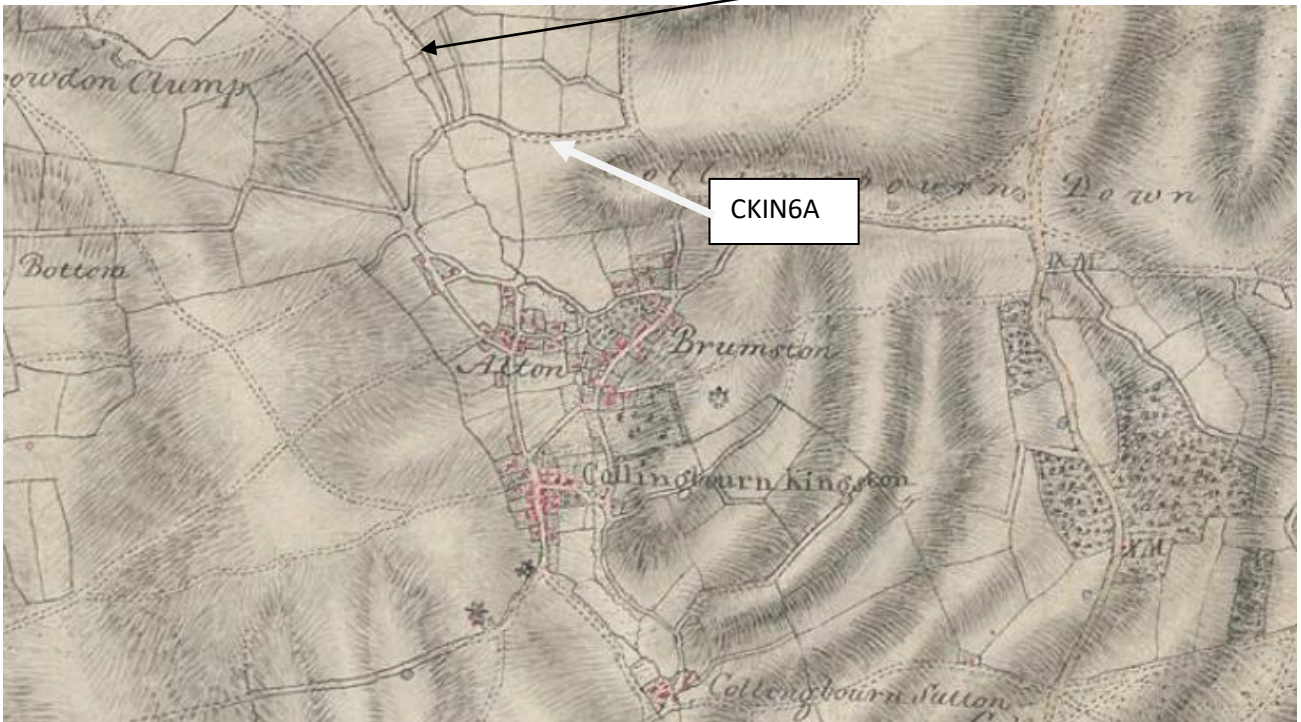


16.4 Sheet 12 predates inclosure of the area and shows a partially fenced and then unfenced route on the course of CKIN34 and GRAF30 leading to Southgrove Wood, but no routes are shown leading across Grafton Field to West Grafton. It is also noted that Puddleduck Lane is wrongly recorded – this is the name for CKIN6A but is shown on this map alongside the Turnpike Road north from Collingbourne Aughton.



### 16.5 Ordnance Survey – Surveyor’s Drawing 1808 – British Library

In preparation for the production of the first countrywide 1 inch to 1 mile maps (now known as ‘the old series’) the Ordnance Survey surveyed the country at the scale of 2 inches to 1 mile. The surveyor’s drawings have been examined and the Hungerford Sheet clearly shows the route of CKIN6A as a road and part of the local network with CKIN34 leading north from it. It is further noted that this drawing supports the position of the drove prior to the 1826 inclosure and hence further supports the interpretation of the Collingbourne Aughton Inclosure Award of 1763 and the production of the simulated map included here at 12.14. **CKIN34**



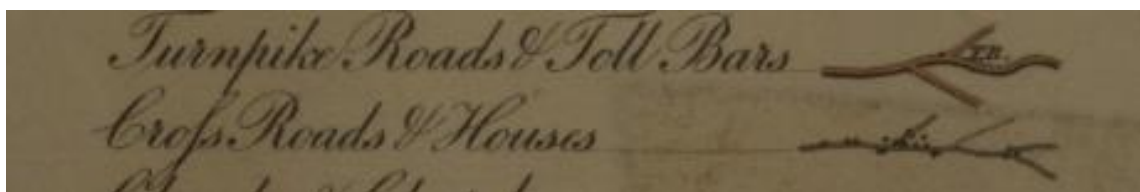
16.6 The full route of GRAF 29, 30 and 31, BURB1 and CKIN34 is shown as a wide track or road, fenced on both sides from West Grafton to and alongside South Grove Wood where it leads south east across enclosures as an unfenced track before becoming fenced (or hedged) on its eastern side for the length in Collingbourne Kingston east of the river.

Claimed route

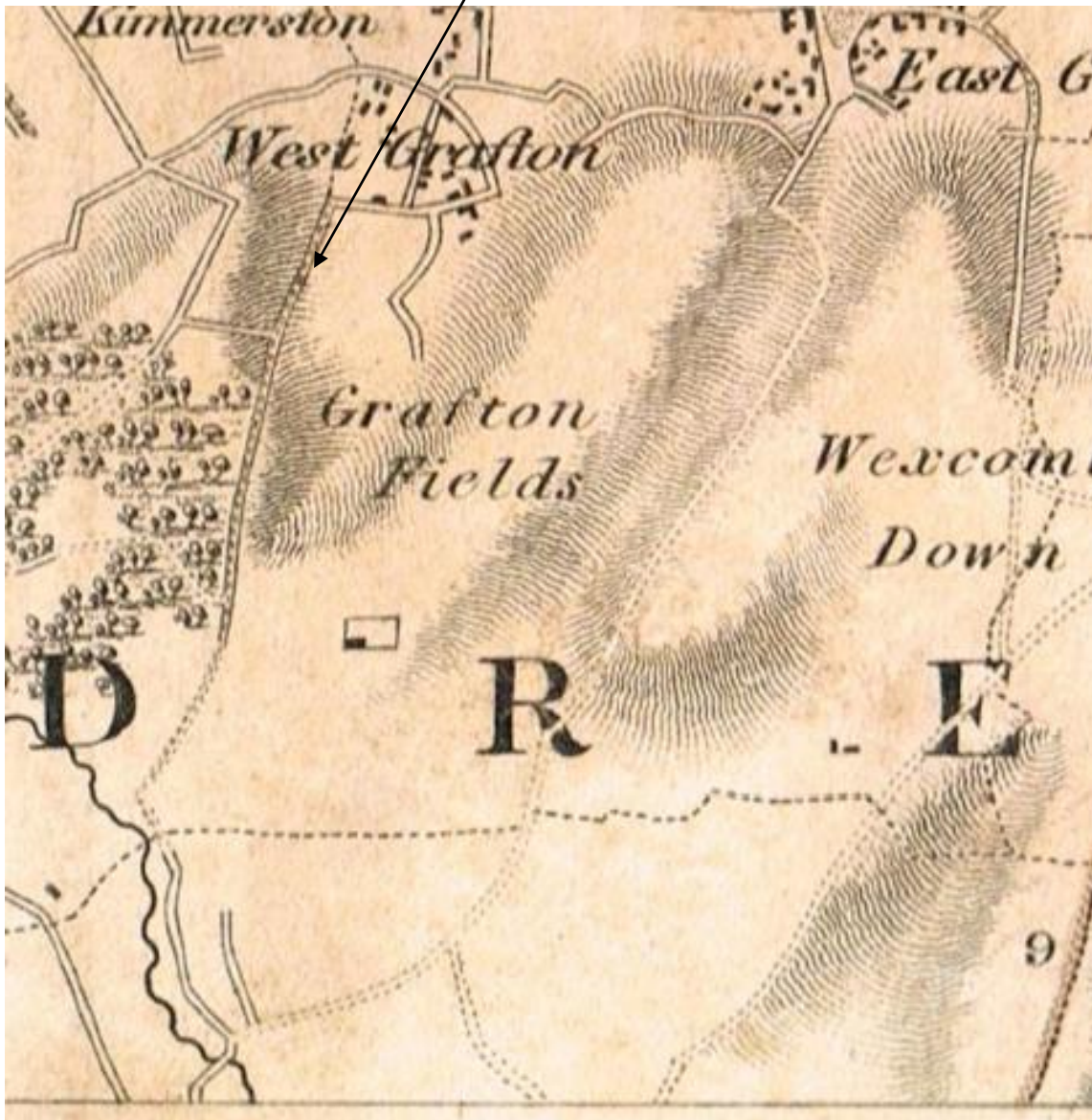


**16.7 C and I Greenwood's Map of Wiltshire 1820 and 1829 WSHC Ref. no 3.3**

This county map, again from an independent survey was produced at the scale of one inch to the mile in 1820 and then produced in 1829 as a revised and reduced version. The map has a scale and shows, amongst other things, Turnpike Roads and Cross Roads, Rivers and Brooks. The map does not show footpaths and bridleways.



16.8 The larger scale map of 1820 shows the entire claimed route as a “cross road”, largely fenced. The route beside South Grove Wood is shown in Grafton (Great Bedwyn) and not in Burbage. Claimed route



16.9 The reduced scale map of 1829 shows the entire claimed route as a “Cross Road” fenced (or hedged) on both sides from West Grafton to part way alongside South Grove Wood where it is shown as an unfenced route returning to a fenced route for the length in Collingbourne Kingston.

1829 map. Claimed route



16.10 The term 'cross road' is a historic term used to describe routes that were not primary or turnpike roads. Susan Taylor in her book entitled "What is a Cross Road?" ISBN 0 9530573 0 5 records:

*"The earliest mention of a 'cross road' so far discovered is found in John Ogilby's famous road book Britannia, published in 1675. Ogilby chose this term to distinguish secondary roads, which ran across country from one provincial settlement to another, from primary roads (which he called 'direct roads') which began in London and led to a provincial town or city..."*

16.11 The Planning Inspectorate's Consistency Guidelines records at section 12:

*"Hollins v Oldham 1995 C94/0206, unreported. Judicial view on cross roads: 'Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads... This latter category, it seems to me, must mean a public road in respect of which no toll was payable."*

16.12 Greenwoods Map of Wiltshire has an extensive key featuring 19 items. Like Burdett's map described in the case of Hollins v Oldham, there are 2 categories of road: "Turnpike Roads" and "Cross Roads".

16.13 **John Cary's Half Inch Map Sheet 18 1823 and 1832 (WSHC Ref. no 3.2 & 3.4)**

Both maps show the claimed route as a "Parochial Road". The extract below is from the 1823 map.

Claimed route



The 1932 map shows the route in same manner:





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

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 42.3, 42.7 and 42.11 cover the claimed route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

- 16.15 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 16.16 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 16.17 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information available for them at the Wiltshire and Swindon History Centre.

16.18 First Edition Sheets 42.3, 42.7 and 42.11 1878

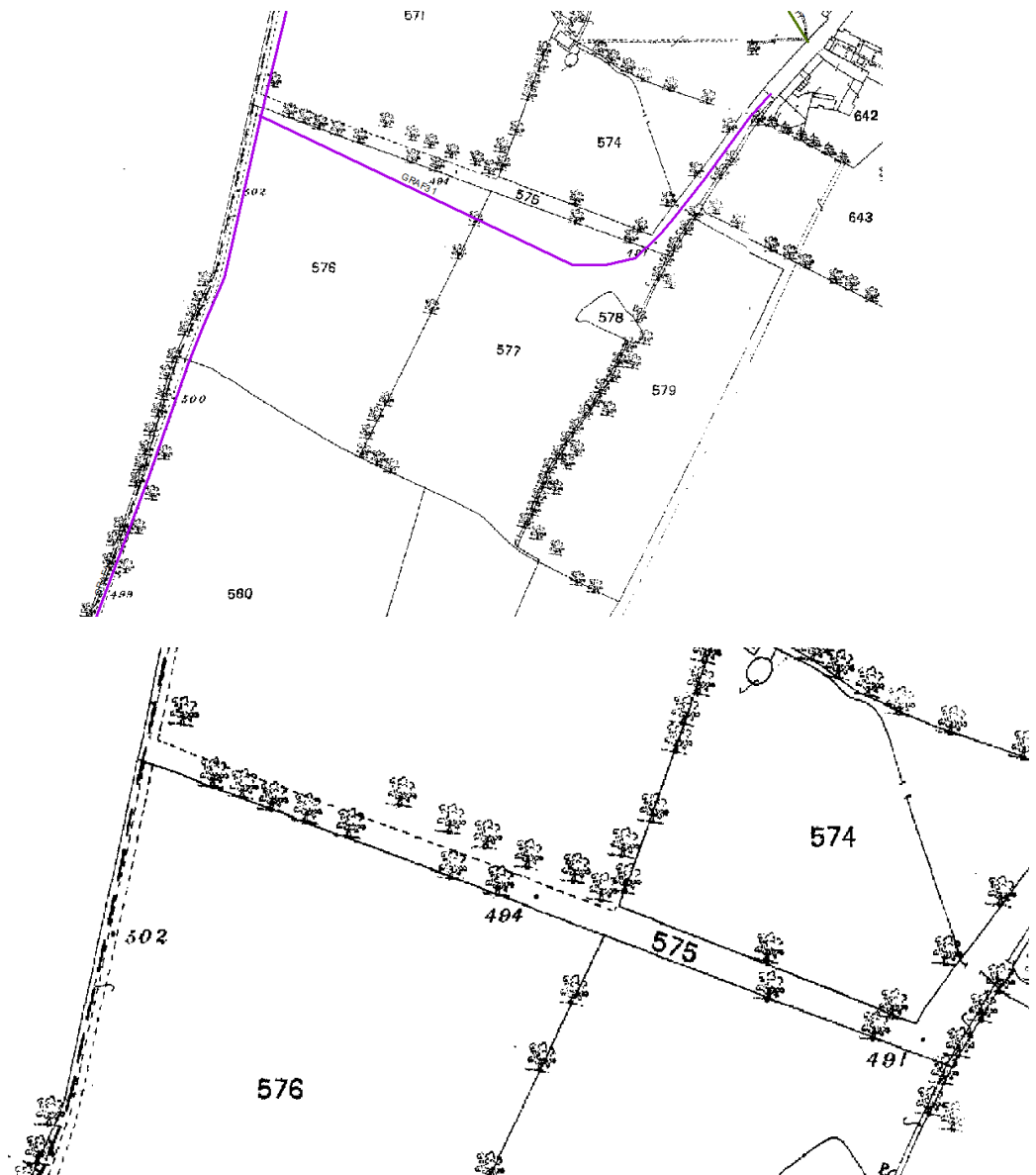
The approximate route of the claimed path is shown in purple. The underlying OS First Edition sheets show the following:

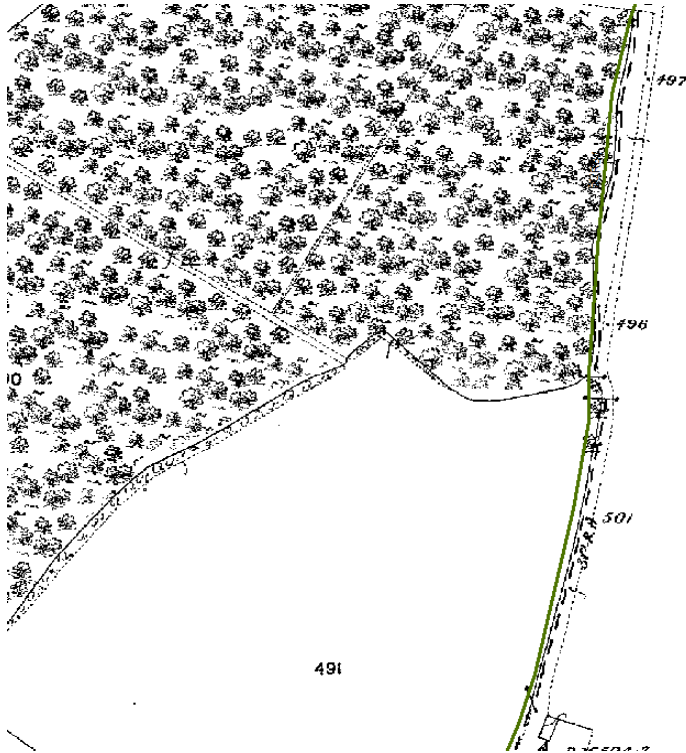
Grafton 31: A wide fenced road numbered 575.

Grafton 29 and Burbage 1: Road fenced on the western side in Grafton parish.

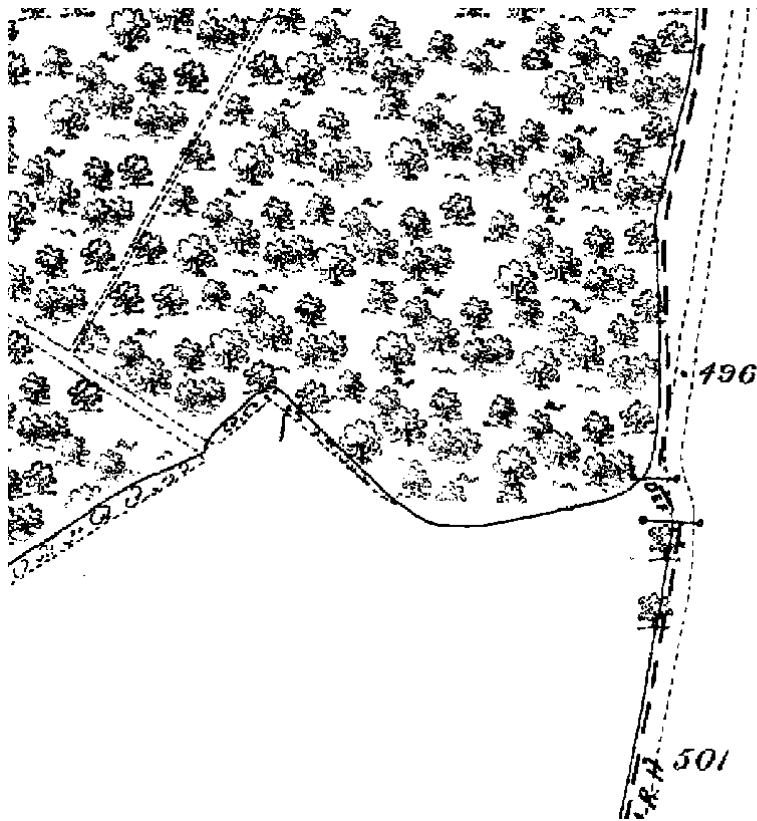
Grafton 30: Unfenced road. Parish boundary shown along the centre of the road inscribed 'C.R.' (Centre of Road).

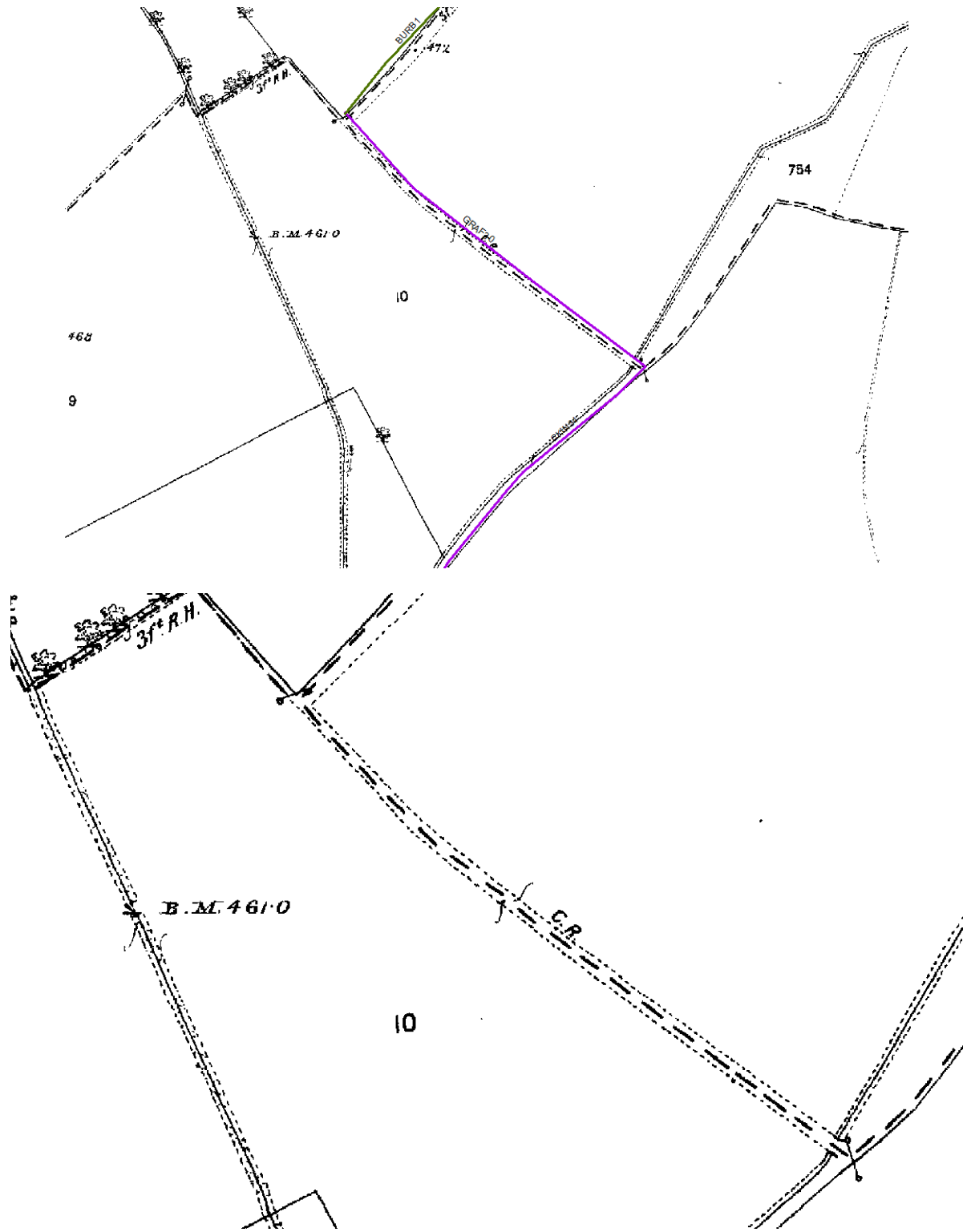
Collingbourne Kingston 34: Fenced road numbered 12.

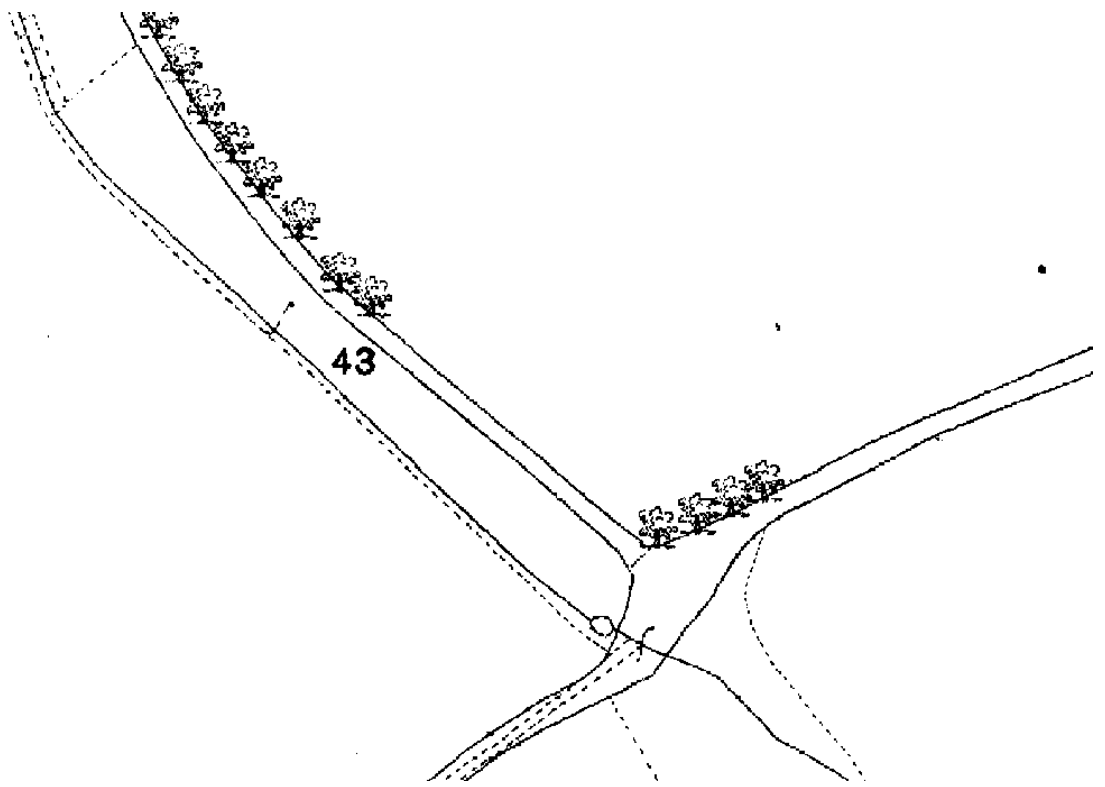
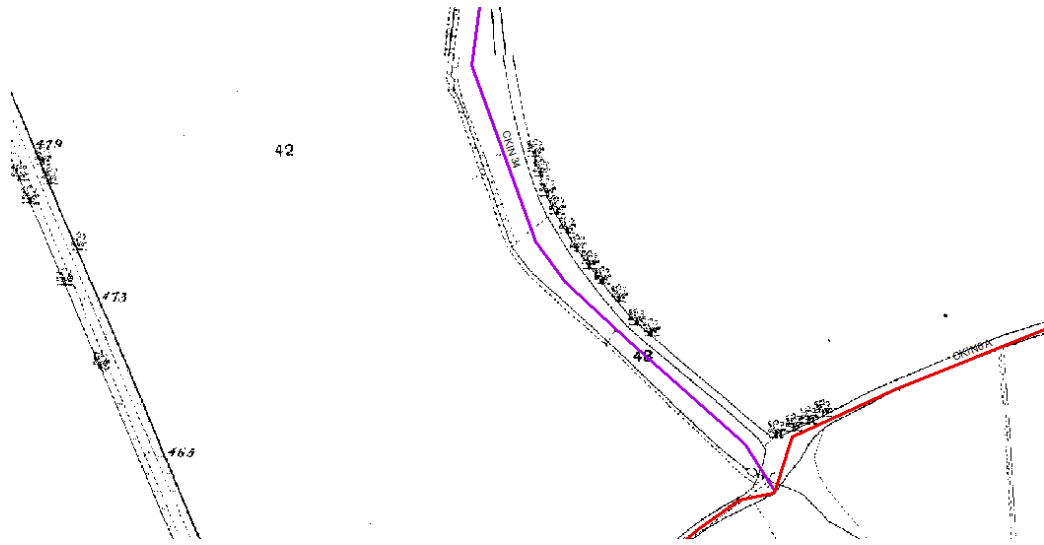




749





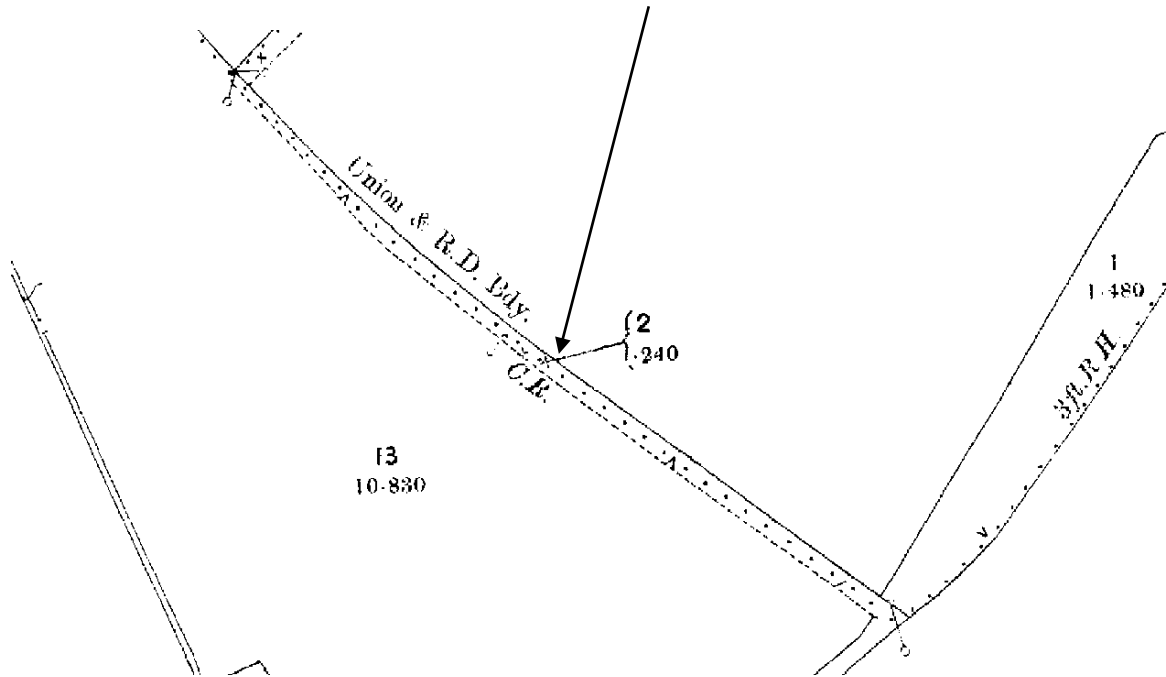


16.19 **Second Edition 1900 Sheets 42.3, 42.7 and 42.11 Surveyed 1878 revised 1899**

Grafton 31: A wide road, mainly fenced.

Grafton 29 and Burbage 1: Road fenced on the western side in Grafton parish.

Grafton 30: Road fenced on north east side. Parish boundary shown along the centre of the road inscribed 'C.R.' (Centre of Road).



Collingbourne Kingston 34: Fenced road.

16.20 **Other Commercial Maps**

A number of other commercial maps have been adduced by the applicant. These have not been investigated by officers at the date of writing this report but are listed below (references in brackets are to WSHC catalogues):

Pigot's Map of Wiltshire 1831	'Cross Roads'
Pigot's Map of Wiltshire 1840	'Cross Roads'
Crutchley's Half Inch Map c.1865	Minor roads
Ordnance Survey 1:10560 First Edition 1879 and 1886	'Minor Roads
Ordnance Survey 1" New Series 1896	Minor roads
Gall and Inglis 'Half Inch' Map for Cyclists Tourists etc 1898	Minor roads
Gall and Inglis 2 and a half miles to 1" Map for Cyclists Tourists etc 1902	Minor roads
Bartholomew's half inch Survey Atlas of England and Wales 1903	Other Driving Roads
Bacon's half inch Cycling & Motoring Map c.1906	Minor roads
OS 1" 3 <sup>rd</sup> Edition 1908	'metalled Road 3 <sup>rd</sup> Class and Unmetalled Roads'

Bartholomew's half inch Map for Tourists and Cyclists	Uncoloured roads
Bartholomew's quarter inch Road Map 1919	'Other roads'
Bartholomew's half inch Map for Tourists & Cyclists 1920	Uncoloured roads
Geographia half inch Road Map of Wiltshire c.1930	'Other Roads'
Bartholomew's Revised half inch Map 1940	'Other Roads'

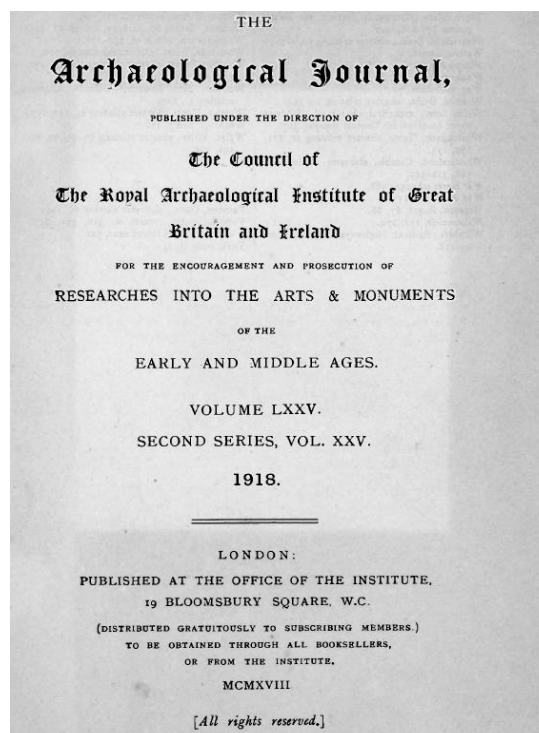
## 17.0 Category F Evidence

Evidence in this category includes any user or anecdotal evidence.

### 17.1 Saxon Charters AD961 & 968

Saxon charters are documents dating from the early medieval period often referring to a grant of land or other grant of privilege. The examination and translation of these documents is outside the scope of the case officers' knowledge and reliance has been placed on the interpretation of experts in this field from published sources. It is known that these documents have been held to hold legal status as to their contents and grants, often of land and rights. As such they would usually be evaluated as Category A evidence. However, owing to the reliance placed on secondary interpretation, albeit by an expert, they are included here.

17.2 Part of the claimed route (that section currently recorded as part Grafton 29 and Burbage 1) has been identified as a road in Saxon Charters dated AD 961 & 968 by G B Grundy D. Litt. M.A. in a paper published in the Archaeological Journal, Vol 75, in 1918.



- 17.3 The paper is entitled "*The Ancient Highways and Tracks of Wiltshire, Berkshire and Hampshire, and the Saxon Battle-fields of Wiltshire*". Grundy considers that the term 'Weg' (way) is a generic term which may be loosely applied to all kinds of roads of Saxon age but that it is more usually used for purely local roads, probably the tracks from the village to its outlying lands.
- 17.4 Grundy bases his identification of highways and tracks on 95 Saxon Charters in Wiltshire and considers that the foundation of the evidence is fairly wide and so large that it is necessary to present it in the guise of unadulterated fact unrelieved by imaginative considerations.
- 17.5 Part of Grafton 29 and Burbage 1 has been identified by Grundy as Road 30 'Weale Weg'/'Waelue Weg'.

*"Road 30. Road in Burbage and Grafton.*

*A road called in the Burbage charter<sup>1</sup> Weale Weg, and in the Bedwyn charter<sup>2</sup> Waelu Weg, ran along the line of the lane which now bounds those two parishes. It runs up the E. side of the big wood in the SE. part of Burbage. Owing to the variation of form it is uncertain what is the meaning of the name. Probably it is 'wall way', having reference to the fort or camp, Burb, from which Burbage gets its name."*

<sup>1</sup> B.1076 K.736

<sup>2</sup> B.1213 K.766

- 17.6 It is known from Grundy that the term 'weg' refers to roads or tracks but it is less clear what the prefix Waelu or Weale may refer to. The online Bosworth-Toller Anglo Saxon Dictionary gives the definition of Wealh as meaning a foreigner suggesting that use of the route may not be just by local people (i.e. a through route).
- 17.7 Although limited weight may be put on the exact translation of the description there is little doubt that the Charters describe part of the route now recorded as Burbage 1 and Grafton 29, thus establishing that this part of the route is a feature of extraordinary antiquity on the boundary between the two parishes.
- 17.8 **Other evidence** It is noted that the applicant did not adduce any evidence of use of the route with mechanically propelled vehicles (MPVs). In response to the consultation in 2012 for this route and adjoining CKIN6A Symonds and Sampson acting for Mr Crook responded by saying that since Mr Crook's father had bought the land in 1948 that path had only ever been used by the public on foot. It is not possible to use the claimed route GRAF29,30 and 31, BURB1 and CKIN34 as a through route without using CKIN6A and accordingly it seems reasonable to assume that there had not been any use of the claimed route with mechanically propelled vehicles (MPVs) either. Indeed, CKIN6A was reclassified as a restricted byway without objection in 2016.



- 17.9 A consultation inviting evidence of use of the route with MPVs was conducted in January and February 2012 and no evidence of use was received. Both Burbage Parish Council and Mr Hosier considered that the status of restricted byway would be appropriate. The applicant did not advance any evidence of use with MPVs.
- 17.10 Although the common law principle of ‘once a highway, always a highway’ applies, where a route is found, on the balance of probabilities, to be a historic public road it is necessary to consider the use of the way with MPVs in order to evaluate the effect of the Natural Environment and Rural Communities Act 2006 on public rights with MPVs.

## **18.0 Natural Environment and Rural Communities Act 2006**

18.1 On the 2<sup>nd</sup> May 2006 **the NERC Act 2006** commenced and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

- (1) (a) *was not shown in a definitive map and statement, or*  
*(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

*But this is subject to subsections (2) to (8)*

Subsections 2 to 8 are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

(2) *Subsection (1) does not apply to an existing public right of way if –*

- (a) *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles*
- (b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(List of highways maintainable at public expense),*
- (c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*
- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) *it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.*

(3) *Subsection (1) does not apply to an existing public right of way if –*

*(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*

*(b) before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*

*(c) before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*

*(i) was reasonably necessary to enable that person to obtain access to the land or*

*(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

*(4) “The relevant date” means –*

*(a) in relation to England, 20<sup>th</sup> January 2005;*

*(b) in relation to Wales, 19<sup>th</sup> May 2005.*

*(5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.*

*(6) For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

*(7) For the purposes of subsections 3(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact –*

*(a) exercising the existing public right of way, or*

*(b) able to exercise it.*

*(8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c.69) does not apply.*

*(9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c.37) has effect to this section.*

18.2 It is therefore necessary for the Council to consider the effect of the NERC Act 2006 if it is considered that on the balance of probability GRAF29, 30, 31, BURB1 and CKIN34 were, before the 2<sup>nd</sup> May 2006, a road or public carriageway.

**19.0 Interim Decision regarding public rights over the applicant route prior to the 2<sup>nd</sup> May 2006 – was it, on the balance of probability, a public road before that date?**

It is clear from the evidence examined and presented in this report that no records have shown any part of the claimed route to be a public footpath other than the definitive map and statement dated 1952. If Dr Grundy's translations of the Saxon Charters is considered, parts of the route have been a road since at least AD 961, a time over 200 years before the limit of legal memory. The road is again referred to in 1763 where the allotment of land in Collingbourne Kingston has boundaries defined in part by "The Grafton Road" in a position coincident with CKIN34. The earliest map viewed showing the route in its entirety is that of the Great Bedwyn (Grafton tithing) Inclosure award 1792 where the whole of the route currently recorded as Grafton 29, 30, 31, and Burbage 1 is awarded as a Public Carriage Road and Drift way with a width of forty feet during the process of Parliamentary inclosure of that part of the parish. The consistent representation in the deposited plans of public undertakings confirms that the route was laid out and endured in public knowledge to the mid to late 1800s at least. The road remains an enduring landscape feature in parts though clearly modern farming practices have altered the landscape through which it leads significantly.

19.1 The evidence for the route being an ancient road is very strong and 7 individual pieces of Category A evidence have been found that all support this. This is further supported by the Tithe award for Collingbourne Kingston which colours, numbers and lists part of the way as a Road and a number of additional plans that all show the way as a road and as part of the public road network. The evidence of four individual surveyors for both the Ordnance Survey and commercial outlets has been investigated and all of this is consistent with the route being a public road; albeit that Andrews and Dury clearly poorly surveyed this area (Aughton and Brunton are transposed). This is further supported by a number of commercial maps dating from 1831 to 1940 all of which represent the way as a road, as part of the local network and not as a footpath or bridleway. The evidence is summarised in the table below and is considered sufficient to show that on the balance of probability the Grafton Road comprising GRAF31, 29(pt), 30, BURB 1 (though in Grafton Parish) and CKIN34 was, before 2006, a public carriageway:

Cat.	Date	Document	Applicant rout represented
A	1763	Inclosure Agreement and Award Aughton tithing	5 references to it as the Grafton Road in the description of allotments being awarded and laid out
A	1790-92	Parliamentary Inclosure Grafton Tithing	Awarded as a Public Carriage Road and Drift way 40 feet wide (GRAF 30, 29 (pt) BURB1 and GRAF 30)
A	1824	Inclosure Act and Award Collingbourne Kingston	Shown as an existing fenced road unaffected by the award
A	1845	Deposited Plans - Manchester and Southern Railway	Shown as pre-existing fenced road in the plans but outside the limits of deviation. Joins "public road" CKIN6A
A	1846	Deposited Plans – Manchester and Southern Railway	"Public Highway". Owned by Surveyors of Highways Shown as wide fenced road labelled "to Grafton" and "to Collingbourn". Crossed by railway
A	1847 – 8	Deposited Plans Andover to Cheltenham Railway (and amended plans)	"Road" Owned by The Surveyor of Highways
A	1859	Deposited Plans Andover and Redbridge Railway	"Public road or driftway" owned by Highway Surveyors. "road" on section and cross section
B	1836	Tithe Map and Apportionment (Collingbourne Kingston)	"Road" no. 41, free of tithe. No owner or occupier
B	1840 -44	Tithe Map and Apportionment (Burbage)	Shown as sienna coloured road in Grafton tithing
B	1874	Inclosure Commissioners Drainage Order	Shown as a road and part of the network on the accompanying plan
C	1950 – 55	National Parks and Access to the Countryside Act 1949	Ramblers objection to omission from draft definitive map "old maps show all these tracks as old roads"
D	1807	Parish or Estate map	Sienna coloured road
D	1880	Estate Plan of the Parish	Green coloured road, part of local network
E	1808	Ordnance Survey 2" drawing	Shown as a road and part of the local network
E	1820 & 1829	C and I Greenwoods' Map of Wiltshire	"Cross Road"
E	1823 & 1832	John Cary's Map Sheet 18	"Parochial Road"
E	1878 – 1926	Ordnance Survey 1:2500	Separately numbered and measured as public road.
F	AD 961 and 968	Saxon Charters	BURB1 and GRAF29 (pt) identified as a boundary road in both Burbage and Grafton charters

## 20.0 Consideration of the Effect of NERCA 2006

It is appropriate to consider each exemption in turn:

- 20.1 **(2)(a)** *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.*

No evidence has been adduced for the use of the route with MPVs in the period 2001 to 2006.

I conclude that the requirements of Section (2)(a) NERCA 2006 are not met and public vehicular rights are not preserved by this section.

- 20.2 **(2)(b)** *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(list of highways maintainable at public expense).*

The claimed route is shown in the definitive map and statement and is not shown in a list required to be kept under section 36(6) of the Highways Act 1980 (the Highway Record)

I conclude that the requirements of Section (2)(b) NERCA 2006 are not met and public vehicular rights are not preserved by this section.

- 20.3 **(2)(c)** *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.*

It is known that this road was awarded as a public carriage road in 1792, a time before mechanically propelled vehicles were provided for.

I conclude that the requirements of Section (2)(c) NERC Act 2006 are not met.

- 20.4 **(2)(d)** *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

Public MPV rights have not been preserved by this section.

- 20.5 **(2)(e)** *it was created by virtue of use by such vehicles during a period ending before 1930*

Public MPV rights have not been preserved by this section.

- 20.6 **(3)(a)** *(3) Subsection (1) does not apply to an existing public right of way over a way if –*

*(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic.*

Although the application pre-dated the relevant date by nearly a year it is considered not to be strictly Schedule 14 compliant and hence not eligible for this exemption. See discussion at paragraphs 2.9 to 2.14.

- 20.7 It is concluded that the public's right to drive a motor vehicle over the route was extinguished on the 2<sup>nd</sup> May 2006. However, as the route was a public vehicular highway prior to this date, section 67(5) of the NERC Act 2006 applies with respect to private access rights to property:

*(5) Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.*

This is in addition to any granted easements or consents that the Council is unaware of.

## **21.0 Legal and Financial Considerations**

- 21.1 The determination of Definitive Map Modification Orders (DMMOs) and the continual review of the definitive map are statutory processes for which financial provision has been made. In determining applications for DMMOs the Council is acting in pursuit of its statutory duty and cannot be challenged in so doing (subject to due process being followed).
- 21.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £4000).
- 21.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. No works to the route are currently identified beyond signage and the removal of some growth.

## **22.0 Risk Assessment**

- 22.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 22.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 22.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 22.4 Advice from the Planning Inspectorate is that a byway open to all traffic application should not be refused where the evidence supports the recording of any other status and an Order will be made as the Schedule 14 appeal process is not open in a case where other evidence subsists and the Council has a duty to make an Order. The Schedule 14 appeal procedure is only open to applicants where the Council refuses to make any order at all. The applicant's appeal route is thereby through objection to the Council's order. Officers consider it highly unlikely that neither the 2004 applicant or the various user groups would object to a restricted byway order as the effect of the NERC Act 2006 is generally well known and understood. It is noted from consultation responses that a number of respondents would only object to a byway open to all traffic, but not to a restricted byway. The recent upgrade from footpath to restricted byway of the adjoining route CKIN6A in the definitive map and statement was not objected to.

## **23.0 Environmental Impact of the Recommendation**

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

## **24.0 Equality Impact**

- 24.1 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility. The width of the greater part of the route was awarded at 40 feet and the remainder will be as per the representation on the Ordnance Survey 1:2500 maps.
- 24.2 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. This would offer a significant improvement to the network for carriage drivers.

24.3 The recording of the full width as a restricted byway is in line with the Council's duty under The Equality Act 2010. Equality is however not a material consideration contained within the Wildlife and Countryside Act 1981.

## **25.0 Safeguarding Considerations**

25.0 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to safeguarding.

25.1 It is however noted that there are no considerations arising.

## **26.0 Public Health Considerations**

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

## **27.0 Relationship to the Council's Business Plan**

27.1 Consideration of the Council's Business Plan is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. However, Wiltshire Council is committed to working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

## **28.0 Options to Consider**

- i) To make an Order to modify the definitive map and statement to show GRAF31, part of GRAF29, GRAF30, CKIN 34 as restricted byways and to delete that part of BURB1 in Burbage parish adjacent to where the awarded route leads through Grafton Parish and record it as a restricted byway in Grafton Parish (where it is currently provided for on the ground) .
- ii) To make an Order to modify the definitive map and statement to show GRAF31, GRAF29 (part), GRAF31 and additional length in Grafton Parish adjacent to BURB1 as restricted byway 40 feet wide; to show CKIN34 as a restricted byway 20 feet wide and to delete that length of BURB1 adjacent to the length to be added in Grafton.
- iii) To refuse the application for an Order

## **29.0 Reason for Recommendation**

29.1 A substantive body of historical evidence supports that on the balance of probability the route should be recorded with a higher status than footpath and that the width should be recorded.

29.2 The route is an ancient one, the majority of the length being formalised during the process of Inclosure by Act of Parliament in 1792. The status of the route was further



recognised when four sets of railway plans were deposited between 1845 and 1859, the route being described as a public road in the ownership or reputed ownership of the Surveyor of Highways where the railway affected it . Provision was made for it to cross the railway lines at a level crossing and plans and sectional drawings also deposited support this. Considerable weight must be given to all of this evidence which is supported by a range of further records and plans dating from 1773 to 1944.

- 29.3 No evidence supports that the route is a footpath. No evidence supports that the route is in Burbage Parish. It is a boundary road but, for the section affected by this application, it lays within Grafton Parish where it was awarded at Inclosure. It is considered that the recording of the route in Burbage was an error during the definitive map process and that new evidence discovered by the Council shows that on the balance of probability this is so.
- 29.4 Public rights were affected by the NERC Act 2006 and Wiltshire Council must consider the effect of the Act on them.
- 29.5 It is clear that s.67(1) of the 2006 Act extinguished the public MPV right and officers have accordingly considered a number of exemptions to this given in s.67(2) and (3) of the same Act.
- 29.5 None of the exemptions have been found to apply and it is considered that the public right to use the way with a mechanically propelled vehicle was extinguished on the 2<sup>nd</sup> May 2006. Accordingly the way may only be recorded as a restricted byway and not as a byway open to all traffic as applied for.

### **30.0 Recommendation**

**That an Order is made under s.53(3)(c)(i)(ii) and (iii) of the Wildlife and Countryside Act 1981 to record GRAF31, 29(part) and 30 as restricted byways with a width of forty feet. To record CKIN34 as a restricted byway with a width of twenty feet. To add a section of restricted byway in Grafton parish with a width of forty feet linking GRAF29 with GRAF30 and to delete the adjacent section of BURB1 from the definitive map and statement.**

Sally Madgwick

Definitive Map and Highway Records Manager  
Wiltshire Council

01 November 2019

This page is intentionally left blank

**Madgwick, Sally**

---

**From:** Peter Gallagher [REDACTED]  
**Sent:** 15 December 2019 15:00  
**To:** Madgwick, Sally  
**Subject:** GRAF29, 29A, 30, 31, BURB1 & CKIN34

Dear Sally

Thank you for your letter dated 12 December advising me of the DMMO relating to these paths. We have no objections to the order.

Nice to see you have started work on the historical evidence cases!

Regards

Peter Gallagher  
Footpaths and Walking Environment Officer  
windon and North East Wiltshire Group  
The Ramblers

[REDACTED]

*The Ramblers' Association is a company limited by guarantee, registered in England and Wales. Company registration number: 4458492. Registered Charity in England and Wales number: 1093577, registered charity in Scotland, number: SC039799. Registered office: 2<sup>nd</sup> Floor, Camelford House, 87-90 Albert Embankment, London SE1 7TW.*

Patron Her Majesty The Queen

**The British Horse Society**

Abbey Park,

Stareton,

Kenilworth,

Warwickshire CV8 2XZ

**Email** enquiry@bhs.org.uk

**Website** www.bhs.org.uk

**Tel** 02476 840500

**Fax** 02476 840501



Bringing horses and people together

31<sup>st</sup> January 2020

[Redacted]  
Marlborough  
SN8 1AY

Your ref: JG/PC/238 2019/04

Sally Madgwick  
Rights of Way and Countryside  
County Hall  
Trowbridge  
Wiltshire  
BA14 8JN

Dear Sally,

The Wiltshire Council Grafton 29 (part), 29A, 30 & 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019

On behalf of the BHS I would like to register its wholehearted support for this order.

This will be a splendid and welcome addition to the routes on the Definitive Map available to equestrians and I am sure the BHS membership will be delighted with it.

Yours sincerely

[Redacted signature]

Alan Woodford

BHS Access and Bridleways Officer

email: [Redacted] (for all correspondence)

The British Horse Society is an Appointed Representative of South Essex Insurance Brokers Limited who are authorised and regulated by the Financial Conduct Authority

Page 276

## Madgwick, Sally

---

**From:** Jack Edwards [REDACTED]  
**Sent:** 03 February 2020 14:43  
**To:** Madgwick, Sally  
**Subject:** The Wiltshire Council Grafton 29 (part), 29A, 30 &31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019  
**Attachments:** 20200131142929950.pdf  
**Importance:** High

FAO Sally Madgwick

By email to [sally.madgwick@wiltshire.gov.uk](mailto:sally.madgwick@wiltshire.gov.uk)

Dear Ms Madgwick,

### Wildlife and Countryside Act 1981 s.53

### The Wiltshire Council Grafton 29 (part), 29A, 30 &31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019

We are instructed by the owners of Southgrove Farm, WR Curnick Ltd in relation to the proposed Modification Order seeking to upgrade the above mentioned footpaths and bridleway to restricted byways. We would be grateful if you could please acknowledge and register this objection to the Order in due course.

The 87 page Decision Report prepared by yourself in relation to Application number 2004/07 (upgrade to Byway Open to All Traffic (BOAT) confirms at paragraph 2.8 that the application put forward by the Applicant is considered to fail the test of strict compliance to Schedule 14 of The Wildlife and Countryside Act 1981 (WCA 1981) as no copies of evidence were presented, instead only a list of extracts were provided. Further legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006) makes it necessary for all Councils to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles may apply.

It is acknowledged that the application was received prior to 20<sup>th</sup> January 2005 cut-off date however investigations by officers has revealed that the applicant failed to adequately serve notice on all of the required landowners (see paragraph 2.11 and 2.12) and a stretch of approximately 300 metres of the route appears unregistered. Interestingly the part in question relates to land within my client's ownership.

Your Decision Report states within paragraph 2.12 that *"it is unlikely that any prejudice has been caused to any party as the most likely owners are the adjoining landowners"*. Although on the basis of the evidence presented Ms Madgwick considers *"no prejudice has been caused and the matter is not fatal to the Council's duty to examine the evidence brought to its attention"* I would like to reserve my Client's rights for them to seek a legal opinion if they so wish to assess whether the Council did have a duty to continue to examine the Application based on the fact that at paragraph 2.15 it states that the application does not satisfy the requirements of Schedule 14 and therefore we would question whether there was an ongoing duty for the Council to continue to investigate the matter and subsequently arrive at the decision to upgrade the existing routes to restricted byways.

Paragraph 23.1 states that Section 53 of the WCA 1981 does not provide for consideration of issues relating to the environment, however at 24.3 it also states that equality is not a material consideration yet the two paragraphs that

precede this promote the benefits that the upgrade would offer. In light of this discrepancy it seems reasonable to outline the impact that the proposed upgrade would have on the environment.

Part of Grafton 29A crosses an arable field and the proposal to increase the width on this stretch would result in 1.35ha (3.34 acres) of productive arable land being taken out of production. We accept that currently there is the footpath however the width of this is much less than the proposed route outlined within the Order and therefore has a much lesser impact upon the farming activities. In a bid to mitigate the impact of the footpath the owners and Esther Daly (a previous rights of way officer) agreed that a permissive path could be made available to walkers along the old railway line as shown on the attached plan. The owners have been trying to find the documentation relating to this to accompany this objection but to date have been unable to locate it. However this is a permissive right which offered a much easier and improved experience for walkers. Signs have always been in place explaining that this is a permissive right and only walkers are permitted to use it.

If the proposed upgrade to a restricted byway is enforced it will become a route for cyclists, horse riders and potentially horse and cart. If this is the case the owners will be forced to reconsider the use of the permissive route going forward as there will no benefit to them in allowing the use to continue. Currently they allow access on foot over the permissive path but they would not want that use to include cyclists, horse riders and horse and cart. At this point I would point out that the permissive footpath that the owners (and their neighbours) have allowed the public to use is the only direct link to both Aughton and Collingbourne Kingston. It is a very well used footpath that enjoyed by a significant number of local residents and prevents walkers from having to walk along the public highway. The owners do not want to allow the permissive use to extend to anything beyond walking and therefore will be forced to remove the permissive footpath which follows the route of the old railway line meaning that Wiltshire Council will have to construct two bridges (at the prescribed width) to allow access over the River Bourne. The bridges would have to be in situ prior to the Order being enforced to ensure that the public have the right to use the route safely.

The owners are very concerned that if the upgrade were to be approved albeit to a restricted byway it may be misinterpreted as being a Byway Open to All Traffic. BOATs are present on other land within their ownership and the presence of these already has a large impact on the farming business. Although the repair and maintenance responsibility of these BOATs should fall to the Council they argue that they do not have the budget to exercise their management responsibilities and as such the owners themselves have expended a significant amount of time and money on maintaining them as some of them are used to provide access to other parts of the farm. At least 1000 tonnes of chalk has been used as well as considerable amounts of road plainings to patch up and repair various areas. The cost of this has totalled thousands of pounds and in addition to the materials they have also used their machinery and taken their valuable time in undertaking this work.

To date the owners have respected all rights of way crossing their property and go above the requirements to ensure that the public are able to use these routes at all times. They top the grass to keep it at a length which is suitable for walkers, maintain and ensure that there are no obstructions. They diligently clear any fallen timber in a timely manner and have always supported and respected the public's right to enjoy these routes. However if the Order is enforced and the widths increased as outlined with the application assistance will have to be sought from the Council to ensure that this continues. The good will that they have shown in managing these routes to such an exemplary standard for the benefit of the public will be unmanageable as the proposed areas are set to increase so dramatically. As landowners they will have to ensure that access is permitted but they are unlikely to be able to undertake all of the additional beneficial works that they have done to date.

There is serious concern that the restricted byway may be incorrectly identified as a BOAT for some users and this could lead to 4x4 vehicles and motorcycles attempting to use the route to take vehicular access. The owners have been forced to take steps to prevent this from happening to date through the installation of electric gates to prevent vehicular access at considerable expense.

The owners face a constant and ongoing battle of people taking unlawful access over their land to partake in illegal activities. Hare coursing is a very real issue on this farm and the wider area with increasing frequency. Since the autumn cultivations were carried out last year the owners have had more than twelve incidents of hare coursing and there is a very real concern that the creation of a restricted byway along the proposed route will lead to additional areas on the farm being targeted. Reports have been made to the police and the owners are members of a local group alerting them to the presence of hare coursers in and around the vicinity however a lack of prosecutions or appetite from the police to enforce the problem has now resulted in this becoming a real threat to the owners who have faced physical intimidation and actual bodily harm in approaching the people partaking in this illegal activity.

Another matter that should be considered is the suitability of the ground for the proposed upgrade and the capability of the land to cope with not only people walking on foot but cyclists, horse riders and the possibility of horse and cart. During my inspection it was apparent that the land in which Grafton 29A passes through had not been planted with a crop as a result of the very wet conditions. The footpath is seldom used as the permissive route offers an alternative improved experience for walkers, however if the footpath is upgraded to a restricted byway this will encourage a wider range of users to make use of this route. Horse riders and cyclists will be permitted to use the route and even in years when there are low levels of rainfall this will create large swathes becoming trodden and subsequently impossible to cross.

Please accept this objection to the Order as being duly made as it has been received within the deadline set out in the notice advertising the Order. It is our client's entitlement for their objection to be heard by an Inspector and we look forward to hearing from them in due course.

Yours sincerely

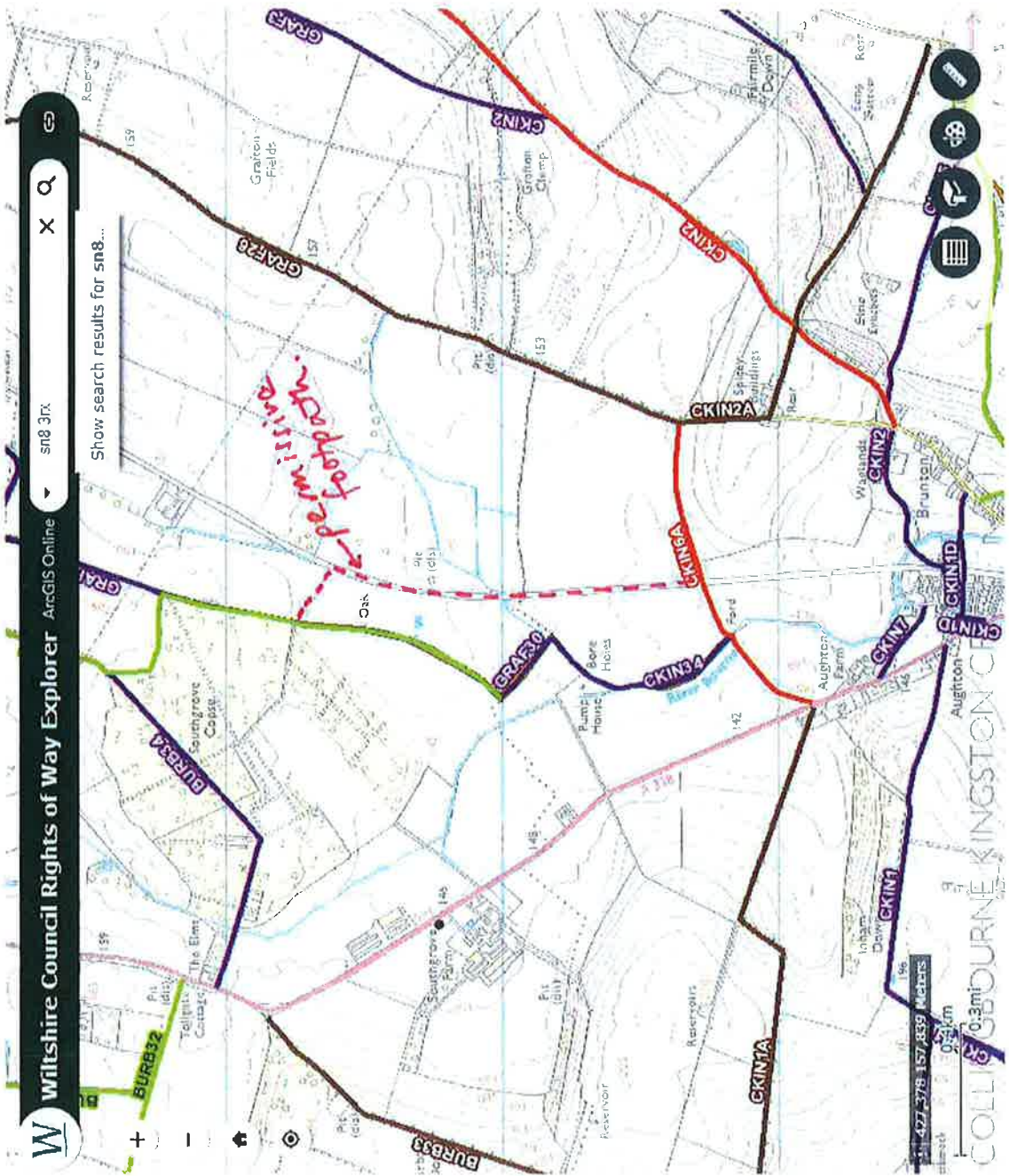
Jack Edwards MRICS FAAV

For and on behalf of WR Curnick Ltd

**Jack Edwards MRICS FAAV**  
**Rural Partner, Professional & Agricultural Department**

Symonds & Sampson LLP, 89 Crane Street, Salisbury, SP1 2PU







## Madgwick, Sally

---

**From:** Jack Edwards [REDACTED]  
**Sent:** 03 February 2020 14:55  
**To:** Madgwick, Sally  
**Subject:** The Wiltshire Council Collingbourne Kingston 34 Definitive Map Modification Order 2019

FAO Sally Madgwick

By email to [sally.madgwick@wiltshire.gov.uk](mailto:sally.madgwick@wiltshire.gov.uk)

Dear Ms Madgwick,

### Wildlife and Countryside Act 1981 s.53

### The Wiltshire Council Collingbourne Kingston 34 Definitive Map Modification Order 2019

We are instructed by the owners of Aughton Farm in relation to the proposed Modification Order seeking to upgrade the above mentioned footpath to a restricted byway. We would be grateful if you could please acknowledge and register this objection to the Order in due course.

The 87 page Decision Report prepared by yourself in relation to Application number 2004/07 (upgrade to Byway Open to All Traffic (BOAT) confirms at paragraph 2.8 that the application put forward by the Applicant is considered to fail the test of strict compliance to Schedule 14 of The Wildlife and Countryside Act 1981 (WCA 1981) as no copies of evidence were presented, instead only a list of extracts were provided. Further legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006) makes it necessary for all Councils to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles may apply.

It is acknowledged that the application was received prior to 20<sup>th</sup> January 2005 cut-off date however investigations by officers has revealed that the applicant failed to adequately serve notice on all of the required landowners (see paragraph 2.11 and 2.12) and a stretch of approximately 300 metres of the route appears unregistered. Interestingly the part in question relates to land within my client's ownership.

Your Decision Report states within paragraph 2.12 that *"it is unlikely that any prejudice has been caused to any party as the most likely owners are the adjoining landowners"*. Although on the basis of the evidence presented Ms Madgwick considers *"no prejudice has been caused and the matter is not fatal to the Council's duty to examine the evidence brought to its attention"* I would like to reserve my Client's rights for them to seek a legal opinion if they so wish to assess whether the Council did have a duty to continue to examine the Application based on the fact that at paragraph 2.15 it states that the application does not satisfy the requirements of Schedule 14 and therefore we would question whether there was an ongoing duty for the Council to continue to investigate the matter and subsequently arrive at the decision to upgrade the existing routes to restricted byways.

Paragraph 23.1 states that Section 53 of the WCA 1981 does not provide for consideration of issues relating to the environment, however at 24.3 it also states that equality is not a material consideration yet the two paragraphs that precede this promote the benefits that the upgrade would offer. In light of this discrepancy it seems reasonable to outline the impact that the proposed upgrade would have on the environment.

Footpath CKIN34 runs alongside the River Bourne and when an inspection was carried out in January 2020 the river was not passable. It was too high to cross by foot and could certainly not have been crossed on a bicycle or horse. The photographs shown below confirm this.



If the proposed upgrade to a restricted byway is enforced it will become a route for cyclists, horse riders and potentially horse and cart. From the photographic evidence shown above it would clearly not be possible for this to happen given the very high levels of the river. If the Order is enforced clearly in the interests of safety there would have to be a responsibility on Wiltshire Council to create a bridge or some form of crossing point over the river (to the specified width) to allow users access across the deep river.

CKIN6A is a restricted byway that directly adjoins CKIN34 and there is concern that if the upgrade were to be approved albeit to a restricted byway it may be misinterpreted as being a Byway Open to All Traffic and vehicles/motorcycles may attempt to use the route.

The owner of the farm has no recollection of any use of the route apart from walkers on foot. He is not aware of any other users and an upgrade of the route to a restricted byway seems unnecessary and unmanageable given the proximity of the route to the river.

Please accept this objection to the Order as being duly made as it has been received within the deadline set out in the notice advertising the Order. It is our client's entitlement for their objection to be heard by an Inspector and we look forward to hearing from them in due course.

Yours sincerely

Jack Edwards MRICS FAAV

For and on behalf of D.Crook , Aughton Farm

**Jack Edwards MRICS FAAV**  
**Rural Partner, Professional & Agricultural Department**

Symonds & Sampson LLP, 89 Crane Street, Salisbury, SP1 2PU



**Symonds & Sampson**  
ESTABLISHED 1858

- Estate Agents, Auctioneers & Chartered Surveyors
- Residential Lettings & Management
- Farms, Land & Rural Services
- Commercial Property Services

DORSET | SOMERSET | DEVON | WILTSHIRE | HAMPSHIRE | LONDON



COUNTRY MASTERS  
2019  
RURAL  
LIFE



To opt out of any future marketing contact from Symonds & Sampson, please reply to this message with **“Unsubscribe”** in the subject line.

Except where specifically stated to be the view of Symonds & Sampson LLP (in which case the relevant terms of business apply) this message is the responsibility of the individual sender. Unless expressly stated otherwise nothing in this e-mail shall create a binding contract or part thereof. It is intended solely for the addressee. It may contain information which is privileged and/or confidential and, if you are not one of the intended recipients, you must not copy, distribute or take any action in respect of it or its attachments but should notify the sender that it has gone astray and delete the message. We have taken every reasonable precaution to ensure that this message and attachments are malware free but do not accept responsibility for any damage whatsoever that is caused by malware being passed. We may monitor replies to this e-mail for operational reasons. Further information about the way in which we handle personal data is available in our [Privacy Policy](#).

Symonds & Sampson LLP is a Limited Liability Partnership registered in England & Wales. Reg No: OC326649 Registered Office: Symonds & Sampson LLP, 30 High West St, Dorchester, Dorset DT1 1UP 01305 261008. A list of partners names may be inspected at the above address or on the website.

12 February 2020

Rights of Way & Countryside  
County Hall  
Trowbridge  
BA14 8JN

Jack Edwards  
Rural Partner  
Professional and Agricultural Department  
Symonds & Sampson LLP  
89 Crane Street  
Salisbury  
SP1 2PU

COPY

Your ref:  
Our ref: SAM/2004/07

Dear Mr Edwards

**Wildlife and Countryside Act 1981 s.53**

**The Wiltshire Council Grafton 29 (part), 29A, 30 & 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019**

Thank you for your e.mail objecting to the above order on behalf of WR Curnick Ltd. It is noted that the majority of the route crosses land owned by your client and I am grateful to you for confirming that your client also owns the small parcel of unregistered land.

The order has attracted 2 objections which if not withdrawn will cause the order to be sent to the Secretary of State for Environment, Food and Rural Affairs. It is then likely to be determined by an Inspector at a public hearing or inquiry. As you are aware that decision will rest upon the evidence showing that on the balance of probability the order should be confirmed. The council relies upon historical evidence showing that this is an ancient public highway and considers that the evidence is especially strong for this in the Grafton Inclosure Award (arising out of an Act of Parliament) and likewise the plans deposited with parliament associated with the building of railways. Nothing in your client's objection challenges this evidence though does raise a number of other points which I would like to address in the hope that you will consider withdrawing this objection.

1) **The Council's duty to determine the application** It is acknowledged that the application is not strictly compliant with the requirements of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act"). Although this is fatal to the saving of any public mechanically propelled vehicular (MPV) right under s.67(3) Natural Environment and Rural Communities Act 2006, in this case, it doesn't affect the council's ability to either determine the application or to treat the application as an evidential event for the purposes of its statutory duty under s.53(2) of the 1981 Act.

In the Court of Appeal in the 'Winchester Case' ([2008] EWCA Civ 431) Dyson LJ said, at paragraph 55:

*"I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6), it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a*

*determination under paragraph 3; or to treat a non-compliant application as the “trigger” for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3).”*

The application is one of the oldest ones on the council's register and it is not unreasonable for it to be determined now.

**2) The Permissive Path** When officers have visited the site it has been apparent that the line of the right of way across the field (GRAF30) has not been available but that a permissive route has been signed as an alternative. The permissive route undoubtedly provides a good, if longer, alternative route. However, nothing in the provision of this route removes the landowner's responsibility to ensure the availability of the right of way on its definitive line or the Council's duty to enforce it.

I can understand how the clearance of a wide path would impact upon the productivity of the land today but the highway rights long pre-date the re-opening of this landscape post inclosure, the highway being a clear topographic feature recorded by a variety of surveyors and map makers since the late 1700s. The common law principle of 'once a highway, always a highway' prevails and while an Inspector would have sympathy with your client's concerns they would be unable to consider them as relevant objections.

It remains open to your client to apply to divert the public right of way or to apply to extinguish part of the width. A successful diversion could greatly or wholly alleviate the need to keep the right of way clear across the ploughed field – for example a diversion could lead along the track from Southgrove and along the margin of the field (if the owner did not want to divert onto the route of the railway line). Wiltshire Council officers would be happy to meet with you and your client on site to discuss possibilities.

**3) Restricted byways** The concerns of your client regarding the right of way being mistaken for a byway open to all traffic or being used for illegal activities like hare coursing are also understood. In 2006 many rights of way lost their apparent public MPV right (Roads Used as Public Paths were reclassified as restricted byways) and the available network for MPV users was greatly reduced. However, since that time officers have been consistently pleased to note that MPV use of the 'new' restricted byways has stopped and that the vast majority of MPV users appear to abide by the law. I can see no reason why recreational MPV users should suddenly start to use this route just because it has been reclassified as a restricted byway. The recent reclassification of the adjoining route Collingbourne Kingston 6A has not given rise to any reported problems of this nature and there is no evidence of such use on the ground.

It is agreed that illegal access for activities such as hare coursing remain a problem for land owners but it is not envisaged that physical changes to the route would make such access any more likely than it already is.

**4) Ground conditions** It is the nature of many rights of way that are wet, muddy and unpleasant to use at certain times of the year. It is possibly the underlying nature of the ground of this route that led to it not being the preferred route for vehicular traffic in the late 1800s and early 1900s when other routes in the area were improved and tar sprayed. That said, the section that is Southgrove Lane clearly copes well with the level of use it gets which clearly includes vehicular use, presumably by the landowner.

The route is, and would remain, a highway maintainable at public expense and the condition of the surface of the highway is the responsibility of the highway authority. Where seasonal conditions make paths difficult the Council places voluntary restraint notices on site. These are known to be effective at reducing use. In extreme cases the council make traffic regulation orders (TRO) to prevent use at certain times of the year (for example, The Ridgeway has a TRO on it preventing MPV use during winter months. The council may also exercise its power to make a TRO to close a route to make repairs or to allow them to stabilise.

The operation of the rights of way network in this area is managed by the council's countryside access officers. If you have any questions about management of this route or would like to discuss possible alternative routes for an application to divert please contact Stephen Leonard on 07771 721255 ([Stephen.leonard@wiltshire.gov.uk](mailto:Stephen.leonard@wiltshire.gov.uk)).

If you could let me know within the next 21 days whether your client wishes to maintain their objection I would be grateful.

Yours sincerely

Sally Madgwick  
Definitive Map and Highway Records Manager  
Direct Line: 01225 713392  
[Sally.madgwick@wiltshire.gov.uk](mailto:Sally.madgwick@wiltshire.gov.uk)

12 February 2020

Rights of Way & Countryside  
County Hall  
Trowbridge  
BA14 8JN

Jack Edwards  
Rural Partner  
Professional and Agricultural Department  
Symonds & Sampson LLP  
89 Crane Street  
Salisbury  
SP1 2PU

Your ref:  
Our ref: SAM/2004/07

COPY

Dear Mr Edwards

**Wildlife and Countryside Act 1981 s.53**

**The Wiltshire Council Grafton 29 (part), 29A, 30 & 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019**

Thank you for your e.mail objecting to the above order on behalf of the owners of Aughton Farm.

The order has attracted 2 objections which if not withdrawn will cause the order to be sent to the Secretary of State for Environment, Food and Rural Affairs. It is then likely to be determined by an Inspector at a public hearing or inquiry. As you are aware that decision will rest upon the evidence showing that on the balance of probability the order should be confirmed. The council relies upon historical evidence showing that this is an ancient public highway and considers that the evidence is especially strong for this as part of a through route supported by the Grafton Inclosure Award (arising out of an Act of Parliament) and likewise the plans deposited with parliament associated with the building of railways. Nothing in your client's objection challenges this evidence though does raise a number of other points which I would like to address in the hope that you will consider withdrawing this objection.

1) **The Council's duty to determine the application** It is acknowledged that the application is not strictly compliant with the requirements of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act"). Although this is fatal to the saving of any public mechanically propelled vehicular (MPV) right under s.67(3) Natural Environment and Rural Communities Act 2006, in this case, it doesn't affect the council's ability to either determine the application or to treat the application as an evidential event for the purposes of its statutory duty under s.53(2) of the 1981 Act.

In the Court of Appeal in the 'Winchester Case' ([2008] EWCA Civ 431) Dyson LJ said, at paragraph 55:

*“I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6), it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the “trigger” for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3).”*

The application is one of the oldest ones on the council's register and it is not unreasonable for it to be determined now, it is, after all, the council's duty to act on evidence that shows (on the balance of probability) that the definitive map and statement need modification regardless of how that evidence came to the council's attention.

**2) The River Bourne** The river at this location only flows during times of high ground water, usually associated with winter or early spring rains. The river bed vegetation demonstrates this seasonality and a casual observer would not realise it was a river in the dry season. The river was dry when officers visited the site in October 2019 but was flowing when they visited in December and was clearly flowing on your visit in January 2020.

The situation is by no means unique in Wiltshire. For example the adjacent restricted byway Collingbourne Kingston 6A is crossed by the river. Maps record that there is a 'ford' here though it is not a persistent feature of the route.

There is no record of a bridge having been at this location even though the evidence of it as a through route for vehicles is compelling. The likelihood is that the route was known to be wet at times but not at others and used accordingly. It is not unusual to find routes with names which warn of their character (i.e. Mud Lane, Watery Lane, Honeypot Lane and so on) all of which warn travellers of the problems associated with a particular route.

Although Wiltshire Council has no statutory obligation to provide a bridge at this location it is certainly something that would be considered and it is agreed that it would not be the landowners responsibility to provide one. The highway is and would remain a highway maintainable at public expense.

**3) Restricted byways** Your clients concerns that the route may be misinterpreted as a byway open to all traffic are understandable but not borne out by the experiences of officers in other areas or on the adjoining route Collingbourne Kingston 6A. In reality little would change on the ground with the reclassification of this route.

**4) Recollection of use** This route has been recorded as a footpath in the definitive map and statement since the early 1950s. It's inclusion in the definitive map further to an objection to its omission from the Ramblers supports that although “old maps show all these tracks as old roads”, its use in the 1950s was on foot, suggesting that any equestrian or vehicular use is likely to be outside of living memory. However, the common law principle ‘once a highway, always a highway’ prevails.

The operation of the rights of way network in this area is managed by the council's countryside access officers. If you have any questions about the management of this route please contact Stephen Leonard on 07771 721255 ([Stephen.leonard@wiltshire.gov.uk](mailto:Stephen.leonard@wiltshire.gov.uk)).



If you could let me know within the next 21 days whether your client wishes to maintain their objection I would be grateful.

Yours sincerely

Sally Madgwick  
Definitive Map and Highway Records Manager  
Direct Line: 01225 713392  
Sally.madgwick@wiltshire.gov.uk

## Madgwick, Sally

---

**From:** Jack Edwards [REDACTED]  
**Sent:** 04 March 2020 17:24  
**To:** Madgwick, Sally  
**Subject:** Definitive Map Modification Order

Dear Ms Madgwick

**Wildlife and Countryside Act 1981 s.53**

**The Wiltshire Council Grafton 29 (part) 29A, 30 & 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019**

Thank you for your letter confirming that the above Order has received two objections. I have made my client aware of the points contained within your letter addressing the concerns raised within the objection letter however he has instructed me that he will **not** be withdrawing the objection.

Yours sincerely  
Jack Edwards

For and on behalf of D.Crook , Aughton Farm

**Jack Edwards MRICS FAAV**  
**Rural Partner, Professional & Agricultural Department**

Symonds & Sampson LLP, 89 Crane Street, Salisbury, SP1 2PU  
[REDACTED]



ESTABLISHED: 1858

- Estate Agents, Auctioneers & Chartered Surveyors
- Residential Lettings & Management
- Farms, Land & Rural Services
- Commercial Property Services

DORSET | SOMERSET | DEVON | WILTSHIRE | HAMPSHIRE | LONDON



SCHEFFEL MATTHEW

To opt out of any future marketing contact from Symonds & Sampson, please reply to this message with “Unsubscribe” in the subject line.

Except where specifically stated to be the view of Symonds & Sampson LLP (in which case the relevant terms of business apply) this message is the responsibility of the individual sender. Unless expressly stated otherwise nothing in this e-mail shall create a binding contract or part thereof. It is intended solely for the addressee. It may contain information which is privileged and/or confidential and, if you are not one of the intended recipients, you must not copy, distribute or take any action in respect of it or its attachments but should notify the sender that it has gone astray and delete the message. We have taken every reasonable precaution to ensure that this message and attachments are malware free but do not accept responsibility for any damage whatsoever that is caused by malware being passed. We may monitor replies to this e-mail for operational reasons. Further information about the way in which we handle personal data is available in our [Privacy Policy](#).

Symonds & Sampson LLP is a Limited Liability Partnership registered in England & Wales. Reg No: OC326649 Registered Office: Symonds & Sampson LLP, 30 High West St, Dorchester, Dorset DT1 1UP 01305 261008. A list of partners names may be inspected at the above address or on the website.

## Madgwick, Sally

---

**From:** Jack Edwards [REDACTED]  
**Sent:** 04 March 2020 17:11  
**To:** Madgwick, Sally  
**Subject:** Definitive Map Modification Order

Dear Ms Madgwick

**Wildlife and Countryside Act 1981 s.53**

**The Wiltshire Council Grafton 29 (part) 29A, 30 & 31, Burbage 1 (part) and Collingbourne Kingston 34 Definitive Map Modification Order 2019**

Thank you for your letter confirming that the Order has received two objections. I have made my clients aware of the points contained within your letter addressing the concerns raised within the objection letter however they will **not** be withdrawing their objection.

Furthermore they have instructed me to raise the matter of safety. They have serious concerns that an upgrade to a restrictive byway would see a significant rise in the amount of horse riders and one of your rights of way officers has in the past commented that 'people walking their dogs and horse riders are not a good mix'.

You state that the route is and would remain a highway maintainable at public expense and the condition of the surface of the highway is the responsibility of the highway authority, however my clients do not have any belief that in reality this would happen. As outlined within the objection letter my clients have been forced to invest heavily in the repair and maintenance of byways on their land as they are told that Wiltshire Council do not have the budget to exercise their management responsibilities.

For the reasons outlined within the original objection letter and the points raised above my clients wish to maintain their objection.

Yours sincerely  
Jack

**Jack Edwards MRICS FAAV**  
**Rural Partner, Professional & Agricultural Department**

Symonds & Sampson LLP, 89 Crane Street, Salisbury, SP1 2PU  
[REDACTED]



ESTABLISHED 1838

- Estate Agents, Auctioneers & Chartered Surveyors
- Residential Lettings & Management
- Farms, Land & Rural Services
- Commercial Property Services

DORSET | SOMERSET | DEVON | WILTSHIRE | HAMPSHIRE | LONDON



RICs

To opt out of any future marketing contact from Symonds & Sampson, please reply to this message with "Unsubscribe" in the subject line.

This page is intentionally left blank