

# AGENDA

---

**Meeting:** Eastern Area Planning Committee

**Place:** The Assembly Room, The Town Hall, St. John's Street, Devizes,  
Wiltshire, SN10 1BN

**Date:** Thursday 15 July 2021

**Time:** 3.00 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)

---

## Membership:

Cllr Philip Whitehead (Chairman)  
Cllr Paul Oatway QPM (Vice-  
Chairman)  
Cllr Dr Brian Mathew  
Cllr Kelvin Nash

Cllr Sam Pearce-Kearney  
Cllr Tony Pickernell  
Cllr Iain Wallis  
Cllr Stuart Wheeler

---

## Substitutes:

Cllr Mel Jacob  
Cllr Jerry Kunkler

Cllr James Sheppard  
Cllr Caroline Thomas

---

## **Covid-19 safety precautions for public attendees**

To ensure COVID-19 public health guidance is adhered to, a capacity limit for public attendance at this meeting will be in place. You must contact the officer named on this agenda no later than 5pm on Tuesday 13 July 2021 if you wish to attend this meeting. Places will be allocated on a first come first served basis and all requests may not be accommodated if there is high demand.

To ensure safety at the meeting, all members of the public are expected to adhere to the following public health arrangements to ensure the safety of themselves and others:

- Do not attend if presenting symptoms of, or have recently tested positive for, COVID-19, or are awaiting a COVID-19 test result
- Wear a facemask at all times (unless due to medical exemption)
- Maintain social distancing
- Follow one-way systems, signage and instruction
- Contact the officer named on this agenda if within 14 days of the meeting you receive a positive COVID-19 test result or have been advised to self-isolate due to contact with someone who has as COVID-19.

## **Recording and Broadcasting Information**

Wiltshire Council may record this meeting for live and/or subsequent broadcast. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By submitting a statement or question for an online meeting you are consenting that you will be recorded presenting this, or this may be presented by an officer during the meeting, and will be available on the public record. The meeting may also be recorded by the press or members of the public.

Any person or organisation choosing to film, record or broadcast any meeting of the Council, its Cabinet or committees is responsible for any claims or other liability resulting from them so doing and by choosing to film, record or broadcast proceedings they accept that they are required to indemnify the Council, its members and officers in relation to any such claims or liabilities.

Details of the Council's Guidance on the Recording and Webcasting of Meetings is available on request. Our privacy policy can be found [here](#).

## **Parking**

To find car parks by area follow [this link](#).

## **Public Participation**

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

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

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

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

# AGENDA

## Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

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

To approve and sign as a correct record the minutes of the meeting held on 7 January 2021.

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 **Planning Appeals and Updates** (*Pages 15 - 18*)

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

6 **Public Participation**

To ensure COVID-19 public health guidance is adhered to, a capacity limit for public attendance at this meeting will be in place. You must contact the officer named on this agenda no later than 5pm on Tuesday 13 July if you wish to attend this meeting. Places will be allocated on a first come first served basis and all requests may not be accommodated if there is high demand.

### **Statements**

Members of the public who wish to submit a statement in relation to an item on this agenda should submit this in writing to the officer named on this agenda no later than 5pm on Tuesday 13 July.

Submitted statements should:

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;

Be readable aloud in approximately three minutes (for members of the public and statutory consultees) and in four minutes (for parish council representatives – 1 per parish council).

Up to three objectors and three supporters are normally allowed for each item

on the agenda, plus statutory consultees and parish councils.

Those submitting statements would be expected to join the online meeting to read the statement themselves, or to provide a representative to read the statement on their behalf.

### **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 electronically to the officer named on the front of this agenda no later than 5pm on 8 July 2021 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 12 July 2021.

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 members prior to the meeting and made available at the meeting and on the Council's website. Questions and answers will normally be taken as read at the meeting.

## **7 Planning Applications**

To consider and determine the following planning applications.

7a **PL/2021/04659 & PL/2021/05084, Sharcott Manor, Sharcott Drove, Sharcott, SN9 5PA** (*Pages 19 - 30*)

PL/2021/04659 (planning permission) and PL/2021/05084 (listed building consent).

Demolition of outbuilding and erection of a single storey extension to the grade II listed Sharcott Manor.

## **8 Rights of Way items**

To consider the following Rights of Way item.

8a **Wildlife and Countryside Act 1981 - The Wiltshire Council Parish of Ogbourne St Andrew Path No. 38 Definitive Map and Statement Modification Order 2020** (*Pages 31 - 110*)

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

## **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***

### Eastern Area Planning Committee

---

#### MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 7 JANUARY 2021 AT ONLINE MEETING.

##### **Present:**

Cllr Mark Connolly (Chairman), Cllr Ian Blair-Pilling, Cllr Stewart Dobson, Cllr Peter Evans, Cllr Richard Gamble and Cllr James Sheppard

##### **Also Present:**

Cllr Stuart Wheeler

---

#### 54. **Apologies**

Apologies were received from:

- Cllr Nick Fogg, MBE
- Cllr Paul Oatway, QPM, who was substituted by Cllr Jerry Kunkler.

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

The minutes of the meeting held on 3 December 2020 were presented for consideration and it was;

##### **Resolved:**

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

#### 56. **Declarations of Interest**

There were no declarations of interest.

#### 57. **Chairman's Announcements**

The Chairman explained the procedure should a recess be required.

#### 58. **Public Participation**

The Chairman detailed the procedure for the meeting and the procedures for public participation which were set out at item 5 of the agenda.

#### 59. **Planning Appeals and Updates**

##### **Resolved:**

**To note the report on completed and pending appeals.**

60. **Planning Applications**

The following planning applications were considered.

61. **20/07424/FUL - Rear Barn, Land at Devizes Road, Potterne, Devizes, SN10 5LN**

Public Participation

Robert Hunt-Grubbe spoke in objection to the application.

Amy Towill (Applicant) spoke in support of the application.

Cllr Richard Clark of Potterne Parish Council spoke in objection to the application.

Morgan Jones, Senior Planning Officer presented a report which recommended that planning permission be refused for the conversion and change of use from former storage building to single dwelling.

The officer stated that the application related to a former agricultural building whose former use was a mixture of employment uses; B1 light industrial and former B8 storage uses. The application site lay in the countryside on the Northern side of Potterne. The site was accessed by a track, which was also a right of way, which ran from the A360.

It was explained that in regards to the planning policy context surrounding the application, the provision of a new build in this area would conflict with the settlement strategy in the development plan. The application sought to benefit from an exception policy of the Wiltshire Core Strategy (WCS), Core Policy 48 'Supporting Rural Life'. That policy provided support in principal for the conversion and re-use of rural buildings. This was subject to meeting the following set criteria:

- i) the building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building; and
- ii) the use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas; and
- iii) the building can be served by adequate access and infrastructure; and
- iv) the site has reasonable access to local services; or
- v) the conversion or reuse of a heritage asset would lead to its viable long term safeguarding.

It was explained that the agenda report gave an assessment against the policy and criteria stated above. The officer felt the proposal conflicted with CP48, in particular point (i) above as the works were too substantial to be considered a conversion.

Slides showing photographs of the current building were shown to the meeting. The building was a timber framed building, with block work walls, timber cladding and a metal roof. The proposed plans, including floorplans and elevations were also shown to the meeting.

The proposed works included with the Structural Assessment provided by the applicant and as detailed in the agenda report were explained by the officer.

After further correspondence with the applicant after the report was published it was explained that the applicant had felt there were some misstatements within the report. It was highlighted that the applicant stated the block walls would be retained and the wood cladding present on the barn would simply be extended to ground level. No existing walls would be removed and only solid walls built to support and hold aluminium windows and doors. No extra support blockwork was required.

However, the officer stated that these clarifications did not affect the overall conclusion reached on the principal of development. The officer felt that while the timber frame of the building had been found to be structurally sound, the totality of the works required would fall outside the scope of a conversion under Core Policy 48.

Highways safety aspects of the proposal were addressed by the officer. The Highways Authority had provided an objection to the application on highways safety grounds. Since then the applicant had provided more detail on the historic use of the site and on average vehicle movements at the site, which were stated to be 11 vehicle movements a day. The applicant also asserted that the visibility splay in both directions was 100 metres. Although a scale drawing demonstrating this was not provided.

The Highways Officer had acknowledged that a comparable dwelling to the proposal had around 8-10 vehicle movements a day. As the movements for the current use were stated to be 11 movements a day it was unlikely that vehicle movements would increase and the Highways Officer therefore no longer felt it was appropriate to use highway safety as a reason for refusal.

On balance, the officer recommended that the application be refused, for the reasons stated on page 26 of the report, with the amendment to omit the highway safety reason for refusal.

Members of the committee then had the opportunity to ask technical questions of the officer. In response to questions it was stated that the existing roof was corrugated metal. Further clarification was sought on Core Policy 48 and whether the site was considered isolated or there were any special circumstances to be considered in relation to the proposal. The officer explained that the proposal as located in the countryside. The proposal sought to benefit from the exception policy (CP48), however it was not considered that it met the criteria for this. There were also no special circumstances, such as a dwelling

being required for rural employment, to provide worker accommodation on a site.

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

Cllr Richard Gamble spoke in objection to the application, in the division members absence. Cllr Gamble stated that the site was not within or adjacent to a settlement, it was in open countryside and therefore contrary to CP1 and CP2. The proposal was contrary to the Potterne Neighbourhood Plan which stated that the gap between Potterne and Devizes should be retained. As the track to the site was a public right of way vehicle movements on the track were undesirable. Cllr Gamble felt that the junction onto the A360 was substandard and therefore there was risk surrounding that. Cllr Gamble stated that the proposal did not meet the requirements of CP 44, it was not a Rural Exception Site and the proposal did not support rural employment. It did also not meet CP48 as there were no special circumstances. Therefore, he urged Members to reject the application.

In response to public statements the officer stated that the Potterne Neighbourhood Plan had been considered and did form part of the assessment on the application as detailed at section 8.2 of the agenda report and was also featured in the reasons for refusal. In regard to vehicle movements the officer explained that the access to the site did not comply with new build standards but there would be no intensification of use when you considered the fall back position of 8-10 movements a day. In regard to the extent of works permitted by CP48 it was stated that the decision maker had to draw the line between conversion or rebuild and each individual case should be decided on its own merits. The officer felt that in this case the extent of works was too substantial to be considered a conversion.

The Chairman proposed a motion to refuse planning permission, as per the officer recommendation, for the reasons outlined on page 26 of the agenda with the amendment to omit the highway safety reason for refusal. This was seconded by Cllr Richard Gamble.

During debate the issue of Neighbourhood Plans was raised and it was stated that whilst these are very worthwhile documents which are taken into account by officers as they form part of the local development plan, each application should be assessed on its own merits. Therefore, occasionally decisions would go against Neighbourhood Plans. However, most felt that on this occasion the Potterne Neighbourhood Plan should be adhered to and the strategic gap between Potterne and Devizes maintained.

The main issues raised by Members during debate was that they felt this proposal was too substantial to be classed as a conversion and therefore was contrary to CP48. It lay in open countryside where a new build would not be permitted and the proposed dwelling would constitute a substantial rebuild. The building was not a heritage asset and there were no special circumstances or exceptions such as the dwelling being required for employment uses.

At the conclusion of the debate it was;

**Resolved:**

**That planning permission be refused.**

**REASON:**

The proposed development, due to the position of the site within the 'open countryside', would conflict with the settlement strategy (Core Policies 1, 2 & 12) of the Wiltshire Core Strategy, and the residential policies of the Potterne Neighbourhood Plan. The change of use of the building to create an unrestricted open market dwelling would not comply with the relevant exception policy (Core Policy 48 'Supporting Rural Life') of the local development plan because the totality of works required to secure a residential use is considered to amount to major rebuilding that would fall outside the scope of a 'conversion'. The proposed development is therefore deemed to be unsustainable and would conflict with the Council's plan-led approach to sustainable development.

In light of the above the proposed development is considered to conflict with Chapters 4 'Decision-Making', 5 'Delivering a Sufficient Supply of Homes', 9 'Promoting Sustainable Transport' and 15 'Conserving & Enhancing the Natural Environment' of the National Planning Policy Framework (2018), Core Policies 1 'Settlement Strategy', 2 'Delivery Strategy', 12 'Spatial Strategy: Devizes Community Area'; 48 'Supporting Rural Life', 60 'Sustainable Transport' and 61 'Transport and New Development' of the adopted Wiltshire Core Strategy (2015), and Policy PNP1 of the made Potterne Neighbourhood Plan.

62. **20/09147/FUL - Upper Farm, Wexcombe, Marlborough, SN8 3SQ**

Public Participation

Mr Charlie Woodhead spoke in support of the application.

Morgan Jones, Senior Planning Officer presented a report which recommended that planning permission be refused for the conversion of an existing agricultural building into a C3 residential dwelling, together with associated residential curtilage, parking and landscaping, including the demolition and removal of two existing open sided barns within the site (resubmission of 20/02786/FUL).

Attention was drawn to some late items. Since publication of the agenda there had been a further 10 letters of support for the application. Two people who had previously objected to the application had updated their positions, one now supporting the application in principal with the caveat that there was no further development on the site and one supporting in principal, but not this particular proposal.

The officer explained that the site was among former agricultural buildings on the edge of a village, surrounded on three sides by open fields and was within the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

Plans and evaluations were shown to the meeting. The current building was of steel frame construction with a mixture of corrugated metal and blockwork elevations.

It was stated that in regards to the planning policy context surrounding the application, the provision of a new build in this area would conflict with the settlement strategy in the development plan. The application sought to benefit from an exception policy of the Wiltshire Core Strategy (WCS), Core Policy 48 'Supporting Rural Life'. That policy provided support in principal for the conversion and re-use of rural buildings. This was subject to meeting the following set criteria:

- i) the building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building; and
- ii) the use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas; and
- iii) the building can be served by adequate access and infrastructure; and
- iv) the site has reasonable access to local services; or
- v) the conversion or reuse of a heritage asset would lead to its viable long term safeguarding.

It was explained that the agenda report gave an assessment against the policy and criteria stated above.

Further slides were shown with proposed elevations and graphics of the proposal. The proposed conversion would see the removal of 1 bay, which was approximately 25% of the structure. Existing metal and blockwork elevations would be largely rebuilt, along with the roof. New windows and doors would be added. Comparisons of the building in its current form and a 3D image of the proposed dwelling were shown, highlighting the differences between the two.

It was explained that the submitted structural report had been based on a visual inspection which did not contain much detail. However, the costings submitted showed that the only part of the structure to remain was its steel frame, everything else would be new and substantial works were required. Officers were of the opinion that the extent of works required to secure residential use of the building fell well outside the scope of a conversion.

There were public footpaths near the site and the impact of the proposal on the character of the site and the AONB were also key considerations. In conclusion the officer recommended that the application be refused for the reasons outlined on page 47 of the agenda report.

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

The unitary division member, Cllr Stuart Wheeler, spoke in support of the application. Cllr Wheeler stated that there were many old barns in the countryside such as the one on the site at present. He felt the application was different to the previous application at agenda item 7a as it was on the edge of a village and the current barn was an eyesore. The AONB had not objected to the application and it was not a new build. This was the redevelopment of a rural brownfield site and the conversion of an old building. The Member cited 2 other applications he considered to be similar in Burbage Wharf and Froxfield where permission was granted.

In response to public statements the officer stated that the AONB had not said they had no objection to the proposal but had not commented at all, although they had objected to the previous application submitted on the site. In relation to the application at Burbage Wharf the officer felt that was very different, it was the redevelopment of a site within the setting of a listed building so there were many different policies involved. The proposal being considered was a barn conversion under CP48. The officer acknowledged that there were some similarities to the Froxfield case, but the committee needed to consider each application on its own merits and to apply a planning judgement on whether it was a conversion, or a major rebuild.

The officer confirmed that the steel structure was structurally sound, however the scale of the works required to make the building a residential property were the issue. The officer clarified that the Hibbitt case referred to in the report was in relation to conversions under permitted development rights, which was slightly different to the application before the committee. However, the principals set out within the judgement could be applied to any conversion because it sought to define what was meant by the word 'conversion' in a planning context.

Cllr Mark Connolly proposed a motion to refuse planning permission as per the officer recommendation, for the reasons stated at page 47 of the report. This was seconded by Cllr Ian Blair-Pilling.

During debate councillors stated that they did see similarities between this and the previous agenda item. The committee would not approve a new build in this location, a small hamlet, as it would not be considered infill. Core policy 48 was central and the consideration as to whether this was a conversion. It was felt that the works were very substantial, there was very little resemblance between the current barn and the proposed dwelling. In fact, it was felt to be almost a complete rebuild as only the metal frame would be reused, therefore it could not be considered a conversion.

It was stated that the current building was not a heritage asset that required conservation. Members felt that if this was approved then this would set a precedent for every unsightly metal shed in the countryside to get approval in this fashion. It was acknowledged that the proposal would make the site look more attractive, but the committee had to follow policy and the countryside

should be protected. It was also stated that there were so special or exceptional reasons linked to the application.

At the conclusion of the debate it was;

**Resolved:**

**That planning permission refused.**

## **REASON**

The proposed development, due to the position of the site within the 'open countryside' on the periphery of the village of Wexcombe, would conflict with the settlement strategy (Core Policies 1, 2 & 18) and exception policies of the Wiltshire Core Strategy. The change of use of the building to create an unrestricted open market dwelling would not comply with the relevant exception policy (Core Policy 48 'Supporting Rural Life') of the local development plan because the totality of works required to secure a residential use is considered to amount to major rebuilding that would fall outside the scope of a 'conversion'. The proposed development is therefore deemed to be unsustainable and would conflict with the Council's plan-led approach to sustainable development

It has not been demonstrated that the dwelling is required to meet a defined local need and there are no exceptional circumstances or material planning considerations which justify the approval of the proposed development.

In light of the above the proposed development is considered to conflict with Chapters 4 'Decision-Making', 5 'Delivering a Sufficient Supply of Homes', 9 'Promoting Sustainable Transport' and 15 'Conserving & Enhancing the Natural Environment' of the National Planning Policy Framework (2018), Core Policies 1 'Settlement Strategy', 2 'Delivery Strategy', 18 'Spatial Strategy: Pewsey Community Area'; 48 'Supporting Rural Life', 60 'Sustainable Transport' and 61 'Transport and New Development' of the adopted Wiltshire Core Strategy (2015).

### 63. **Urgent items**

(Duration of meeting: 3.00 - 4.25 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

**Wiltshire Council**  
**Eastern Area Planning Committee**  
**15<sup>th</sup> July 2021**

Planning Appeals Received between 20/11/2020 and 02/07/2021

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
19/00396/ENF	Brick Store at Dunkirk Hill Farm, Dunkirk Hill Devizes, Wiltshire	Devizes	Alleged breach of condition 3 to planning approval 18/01312/FUL relating to the permanent use of the building	DEL	Written Reps	-	19/02/2021	No
19/09834/FUL	Clock House Road Off Honeystreet North Of Canal Honeystreet SN9 5PS	Alton	Demolition of two dwellings and vacant commercial buildings and replacement with six dwellings	DEL	Written Reps	Refuse	14/12/2020	No
20/00623/FUL	Brunel Court Elcot Lane Marlborough Wiltshire, SN8 2AZ	Marlborough	Re-development involving demolition, change of use and erection of 6, one and two bedroom dwellings and associated works (resubmission of 19/07124/FUL)	DEL	Written Reps	Refuse	01/12/2020	No
20/01225/FUL	Brick Store at Dunkirk Hill Farm, Dunkirk Hill Devizes, Wiltshire	Devizes	Change of use from holiday let to dwelling (unrestricted residential use)	DEL	Written Reps	Refuse	19/02/2021	No
20/09834/FUL	Land North of Honeystreet Village Pewsey, Honeystreet	Alton	Change use of part of an existing agricultural field to provide a village parking area for 20 cars with associated works and landscaping.	DEL	Written Reps	Refuse	02/12/2020	No
20/03140/FUL	The Old Priest House 18 West Street Aldbourne, SN8 2BS	Aldbourne	Demolition of existing outbuilding and garage, construction of new extension, new sheds and refurbishment and repair works to Listed Building.	DEL	Written Reps	Refuse	14/12/2020	No
20/03674/LBC	The Old Priest House 18 West Street Aldbourne, SN8 2BS	Aldbourne	Demolition of existing outbuilding and garage, construction of new extension, new sheds and refurbishment and repair works to Listed Building.	DEL	Written Reps	Refuse	14/12/2020	No
20/04567/PNCOU	Barn, New Farm Goose Street, Marston Devizes, Wiltshire SN10 5SP	Marston	Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Barn to One Small Dwelling (Use Class C3) and for Associated Operational Development	DEL	Written Representations	Refuse	27/11/2020	No
20/04651/PIP	Foxhill House Clench Common Marlborough, Wiltshire SN8 4DR	Savernake	Application for permission in principle for the removal of existing kennel buildings and the erection of 1 dwelling (Resubmission of 20/03259/PIP)	DEL	Written Representations	Refuse	06/01/2021	No

20/05329/VAR	Thicket Cottage Malthouse Lane Upper Chute SP11 9EG	Chute	Variation of conditions 2 and 5 of 20/01143/FUL to include the extension of the ground floor by 8m, and the formation of a rooftop terrace with external staircase	EAPC	Written Representations	Approve with Conditions	02/12/2020	Yes
20/06672/FUL	912 Church Street Collingbourne Ducis Wiltshire, SN8 3EL	Collingbourne Ducis	Demolition of existing dwelling and erection of detached self-build dwelling and associated infrastructure.	DEL	Written Representations	Refuse	18/02/2021	No
20/07424/FUL	Rear Barn Land at Devizes Road Potterne, Devizes SN10 5LN	Potterne	Conversion and change of use from former storage building to single dwelling	EAPC	Written Representations	Refuse	14/02/2021	No
20/08332/FUL	Land Adjacent to Chandlers House Browns Lane Alton Barnes, SN8 4JZ	Alton	Retention of temporary access	DEL	Written Representations	Refuse	22/12/2020	No
20/11244/FUL	Land South of Back Lane Marlborough, Ramsbury	Ramsbury	Construction of single detached dwelling with linked double garage and associated works, including new access and partial re-building of unsafe boundary wall.	DEL	Written Representations	Refuse	14/05/2021	No
21/00813/PIP	Poulton Farm Poulton Hill Marlborough Wiltshire SN8 2LN	Mildenhall	Application for Permission in Principle for residential development of 1 dwelling.	DEL	Written Representations	Refuse	27/04/2021	No

Planning Appeals Decided between 20/11/2020 and 02/07/2021

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
19/00396/ENF	Brick Store at Dunkirk Hill Farm, Dunkirk Hill Devizes, Wiltshire	Devizes	Alleged breach of condition 3 to planning approval 18/01312/FUL relating to the permanent use of the building	DEL	Written Reps	-	Allowed with Conditions	10/05/2021	None
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	Dismissed	26/05/2021	None
19/09834/FUL	Clock House Road Off Honeystreet North Of Canal Honeystreet SN9 5PS	Alton	Demolition of two dwellings and vacant commercial buildings and replacement with six dwellings	DEL	Written Reps	Refuse	Split Decision	12/02/2021	None
20/00472/FUL	16 Southbroom Road Devizes, SN10 5AD	Devizes	Creation of a vehicular access point and hard standing area. Together with 18 Southbroom Road, Devizes	DEL	Householder	Refuse	Dismissed	01/02/2021	None
20/00476/FUL	18 Southbroom Road Devizes, SN10 5AD	Devizes	Creation of vehicular access point and hard standing area together with 16 Southbroom Road	DEL	Householder	Refuse	Dismissed	01/02/2021	None
20/00623/FUL	Brunel Court Elcot Lane Marlborough Wiltshire, SN8 2AZ	Marlborough	Re-development involving demolition, change of use and erection of 6, one and two bedroom dwellings and associated works (resubmission of 19/07124/FUL)	DEL	Written Reps	Refuse	Dismissed	11/02/2021	None
20/01225/FUL	Brick Store at Dunkirk Hill Farm, Dunkirk Hill Devizes, Wiltshire	Devizes	Change of use from holiday let to dwelling (unrestricted residential use)	DEL	Written Reps	Refuse	Allowed with Conditions	10/05/2021	None
20/01341/FUL	Crown Centre 39 St Johns Street Devizes, Wiltshire SN10 1BL	Devizes	Installation of a light to illuminate the hotel name sign	DEL	Written Reps	Refuse	Dismissed	18/12/2020	None
20/02035/LBC	Crown Centre 39 St Johns Street Devizes, Wiltshire SN10 1BL	Devizes	Installation of a light to illuminate the hotel name sign	DEL	Written Reps	Refuse	Dismissed	18/12/2020	None
20/02136/FUL	Chestnut Cottage Hilcott, Wiltshire SN9 6LE	North Newton	Demolition of existing conservatory and its replacement with a single storey extension side extension.	DEL	Written Reps	Refuse	Dismissed	13/01/2021	None
20/02720/LBC	Chestnut Cottage Hilcott, Wiltshire SN9 6LE	North Newton	Demolition of existing conservatory and its replacement with a single storey extension side extension.	DEL	Written Reps	Refuse	Dismissed	13/01/2021	None

20/03140/FUL	The Old Priest House 18 West Street Aldbourne, SN8 2BS	Aldbourne	Demolition of existing outbuilding and garage, construction of new extension, new sheds and refurbishment and repair works to Listed Building.	DEL	Written Reps	Refuse	Allowed with Conditions	27/04/2021	None
20/03674/LBC	The Old Priest House 18 West Street Aldbourne, SN8 2BS	Aldbourne	Demolition of existing outbuilding and garage, construction of new extension, new sheds and refurbishment and repair works to Listed Building.	DEL	Written Reps	Refuse	Allowed with Conditions	27/04/2021	None
20/03737/PNCOU	Roundway Farm Roundway, Devizes Wiltshire, SN10 2HZ	Devizes	Notification for Prior Approval under Class Q for Conversion and Adaptation of Existing Grain Store to Provide 5 No. Dwellings (Use Class C3)	DEL	Written Reps	Refuse	Dismissed	03/12/2020	None
20/03969/FUL	The Isis London Road Devizes, SN10 2DS	Devizes	Demolition of existing bungalow and construction of new 2 / 3 storey apartments building accommodating containing 9 No. flats, together with related external works	DEL	Written Reps	Refuse		26/02/2021	None
20/04042/PNCOU	Agricultural Barn Curnick's Lane Sells Green, Seend Devizes, Wiltshire	Seend	Notification for prior approval under Class Q for a proposed change of use of agricultural barn to a dwellinghouse (Use Class C3) and for associated operational development	DEL	Written Reps	Refuse	Allowed with Conditions	08/02/2021	None
20/04567/PNCOU	Barn, New Farm Goose Street, Marston Devizes, Wiltshire SN10 5SP	Marston	Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Barn to One Small Dwelling (Use Class C3) and for Associated Operational Development	DEL	Written Reps	Refuse	Dismissed	11/05/2021	None
20/04651/PIP	Foxhill House Clench Common Marlborough, Wiltshire SN8 4DR	Savernake	Application for permission in principle for the removal of existing kennel buildings and the erection of 1 dwelling (Resubmission of 20/03259/PIP)	DEL	Written Reps	Refuse	Allowed with Conditions	21/05/2021	None
20/05301/FUL	17 West View Crescent, Devizes SN10 5HE	Devizes	Demolition of existing property and erection of two dwellings	DEL	Written Reps	Refuse	Dismissed	03/02/2021	None
20/06672/FUL	912 Church Street Collingbourne Ducis Wiltshire, SN8 3EL	Collingbourne Ducis	Demolition of existing dwelling and erection of detached self-build dwelling and associated infrastructure.	DEL	Written Reps	Refuse	Dismissed	25/06/2021	None
20/08332/FUL	Land Adjacent to Chandlers House Browns Lane Alton Barnes, SN8 4JZ	Alton	Retention of temporary access	DEL	Written Reps	Refuse	Dismissed	28/04/2021	None

## REPORT FOR EASTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	15 <sup>th</sup> July 2021	
<b>Application Numbers</b>	PL/2021/04659	(planning permission)
	PL/2021/05084	(listed building consent)
<b>Site Address</b>	Sharcott Manor, Sharcott Drove, Sharcott, SN9 5PA	
<b>Proposal</b>	Demolition of outbuilding and erection of a single storey extension to the grade II listed Sharcott Manor	
<b>Applicant</b>	Mr & Mrs J Lloyd	
<b>Parish Council</b>	Pewsey Parish Council	
<b>Electoral Division</b>	Pewsey	
<b>Type of application</b>	Householder planning permission / listed building consent	
<b>Case Officer</b>	Nick Clark	

### **Reason for the application being considered by Committee**

The application is before the Eastern Area Planning Committee at the request of Councillor Kunkler as he disagrees with officer recommendation.

#### **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 in terms of the heritage significance of the grade II listed building and to consider the recommendation that the applications be refused.

#### **2. Report Summary**

The key issue for consideration is the impact on the heritage significance of the Grade II listed building, both in terms of the demolition of the outbuilding that contributes to that significance, and in terms of the impact on the listed building of the proposed extension.

#### **3. Site Description**

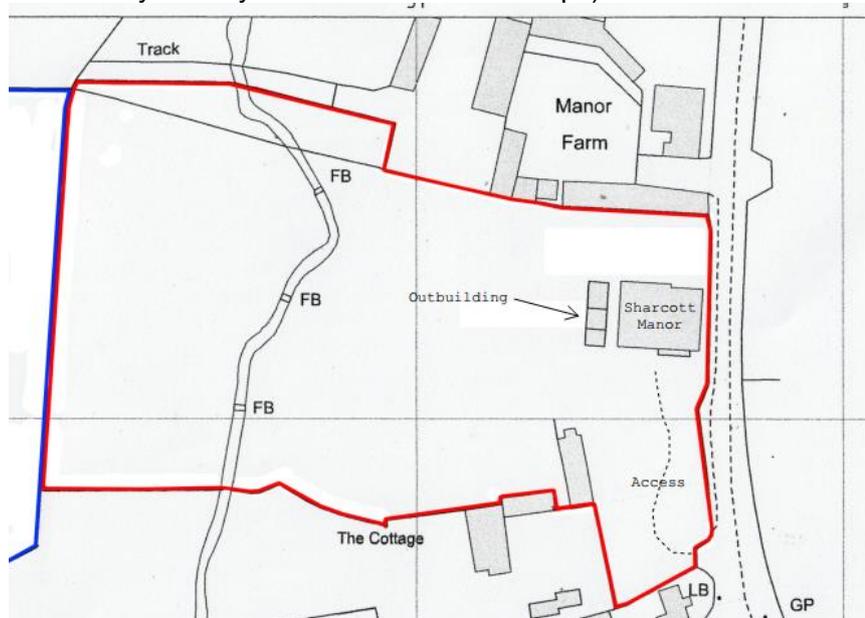
Sharcott Manor is a grade II listed building dating, originally, from the 18th century, with later additions.

The national heritage list description states, for means of identification purposes only, the following:

House. C18 and c1900. Diaper brick with slate roof. Two storeys, 3 x 3 bays, of C18 origin, much altered later. Elevation to garden with central fielded and 6-panelled door, linked with open timber porch to canted bay window to right, having moulded sill and deep fascia, and containing blind arch over French doors. Dentilled cornice. Other

windows paired 12-paned sashes with blind boxes in first floor, and finely gauged lintels. Wide eaves with heavy paired brackets. Elevation to road is all c19 fine brickwork, the central door replaced in round-headed opening by wheel light. Two storey bay to rear. Roof hipped with one flat-roofed dormer.

Sharcott Manor was also named Sharcott House during the majority of the 20th century (according to the Victoria County History and the historic OS maps).



*Location plan*

The application more particularly concerns a linked brick and slate ancillary outbuilding to the west side of the Manor, originally providing ancillary services for the main manor house. Its appearance suggests a mid-19th century date, although it could have incorporated or replaced an earlier outbuilding, but it appears to be contemporary with the north-west extension of the building. It is linked to the manor by walling and a cobbled courtyard between the two buildings.

An outbuilding containing services, such as a wash house, would have been quite usual for such a higher status building such as this manor house and it is clear that this particular building has had a principal and accessory relationship with the main house. Due to the age and association of this outbuilding with the main manor house, it forms part of the national heritage listing and has the same level of protection as the Manor itself.



*Sharcott Manor (from the rear/ side) and outbuilding to be demolished (2019 photo)*



*Sharcott Manor (from the front) and the outbuilding on left (2019 photo)*

#### **4. Planning History**

P884/59	Improvements to existing vehicular access	Approved
3713	Gardener's bungalow - outline	Approved
3713	Detailed plans of gardener's bungalow	Approved
19/00450/FUL 19/00706/LBC	Refurbishment of the out-building adjacent to the house. Link to the house to form an internal courtyard. Demolition of the lean-to on the west side of the house	Approved
20/11010/FUL 21/00224/LBC	Demolition of linked outbuilding and erection of a single storey extension to the grade II listed Sharcott Manor	Withdrawn

#### **6. The proposals**

The application proposes demolition of the outbuilding and its replacement by a large single storey extension to the house, providing a dining room and boot/ utility room and outside WC. The extension would be of flat-roofed construction with a parapet wall, reclaimed brick walls partly clad with 'rusted' steel panelling, and grey aluminium windows and doors.



*Proposed extension – front elevation*



*Proposed extension – side elevation*

Drawings and details submitted:

Location Plan	L000
Elevations (survey)	19556-100-02E
Proposed Context Site Plan	PL002
Proposed Ground Floor Plan	PL101-B
Proposed Roof Plan	PL102-B
Existing & Proposed Plans Overlay	PL103
Existing & Proposed Elevations Overlay	PL204
Proposed South Elevation	PL201-C
Proposed West Elevation	PL202-C
Proposed North Elevations	PL203-C
Proposed Sections	PL301-C
Proposed S Elevation Materials	PL901
Proposed W Elevation Materials	PL902

Proposed view from entrance	PL903
Proposed 3D Images	PL904
Historic Justification Statement & Design and Access Statement	NJK/2006/Dec 2020
Additional statement (addendum)	No date/ ref.
Heritage Assessment	December 2020
Structural engineer's letter	14218/ RPT01

## 7. Local Planning Policy

### The Development Plan

#### Wiltshire Core Strategy

CP57	Ensuring high quality design and place shaping
CP58	Ensuring the conservation of the historic environment

#### Other policies and guidance

[National Planning Policy Framework](#)

[Planning Practice Guidance \(national\)](#)

Making Changes to Heritage Assets – Historic England Practice Advice Note 2

The Setting of Heritage Assets – Historic England –Practice Advice Note 3

## 8. Summary of consultation responses

Pewsey Parish Council:	Support
Wiltshire Council Conservation Officer:	Objection
Wiltshire Council Highway Officer:	No objection

## 9. Publicity

The application was subject to direct consultation with immediate neighbours and statutory consultees, as well as advertisement in the Wiltshire Gazette & Herald on 27<sup>th</sup> May 2021.

## 10. Planning Considerations

There are no identified neighbour impacts associated with the development, and the main consideration is the impact of demolishing the attached outbuilding upon the heritage interest and significance of the listed building.

### 10.1 Key legislative and policy requirements

Sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant listed building consent or planning consent

for any works or development the Council shall 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.

Core Policy 58 requires proposals to protect, conserve and where possible enhance the historic environment, with designated heritage assets and their settings to be conserved, and where appropriate enhanced in a manner appropriate to their significance.

Core Policy 57 requires a high standard of design, with proposals needing to demonstrate, amongst other things, how they enhance local distinctiveness by responding to the value of the historic environment, and how they are sympathetic to and conserve historic buildings.

Para. 193 of the NPPF advises that when considering the impact of a proposed development on the significance of a designated heritage asset, *great weight* should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Para 194 advises that any harm to the significance of a designated heritage asset from its alteration should require *clear and convincing justification*, and at para. 195 that where there is substantial harm to the significance of a listed building, permission should be refused unless it is demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.

The criteria do not apply as the property is in a viable use as a dwelling.

Para. 196 advises that where the level of harm is 'less than substantial' the harm should be weighed against any public benefits of the proposal.

### 10.2 Assessment

The main consideration is the impact on the heritage significance of the listed building, both in terms of the demolition of the existing structure and the impact of the new extension.

### **10.3 Demolition of the existing structure**

The application includes a heritage statement. The statement refers to the outbuilding as being free-standing whereas in fact it is attached to the house by means of connecting walling forming an archway into the cobbled courtyard that links the outbuilding to the main Manor building.

The statement acknowledges however that the outbuilding forms part of the listed building and is thus protected under the Planning (Listed Buildings and Conservation Areas) Act 1990.

The submitted statement concludes that the outbuilding is of heritage significance due to its historic relevance in the role it played as a support or utility structure dating from the late Victorian / Edwardian era. As such, the application tacitly acknowledges that the demolition of the outbuilding would result in harm to the heritage significance of the listed building.

Against this it is said that the condition of the outbuilding and the work required to bring it back into use warrants its demolition. A letter from structural engineers has been submitted in support of this position, which outlines the following defects:

- Poor brickwork – particularly at low levels
- Rotting door and window joinery
- Cracking/ movement in external walls
- Horizontal movement in the roof structure, with rotten timbers
- Section of slate roof missing at one end of the building.

The report concludes that the building is beyond economic repair. It appears to accept however that the building is repairable, but that the (unidentified) cost of repair would be uneconomical. The Design & Access Statement submitted further suggests that the works needed to repair the building would detract from the heritage significance of the listed building, although this is not substantiated.

The Conservation Officer notes that

“Since my visit in 2019, part of the building’s roof has had its roofing material (Welsh slate) removed (due to rotten timbers) and overlaid with some form of protection that appears rather inadequate. It would appear that no attempt to repair the building has been made (presumably in the hope of demolition being approved) and therefore it would appear that there is a degree of deliberate neglect to the building’s condition, allowing it to deteriorate further. Therefore I consider paragraph 191 applies regarding neglect in this instance, which says: *Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision*”.

The Conservation Officer also notes that

“It is clear that the building has suffered due factors such as water ingress, ground levels, overgrown or badly located vegetation etc, some of which can probably be attributed to the lack of routine maintenance: these combine to result in neglect. Any building would suffer as a result of the lack of maintenance over time, which appears to be the case here. I appreciate this neglect is not all down to the current owners, however as the National Planning Policy Framework states, the deteriorated state should not be taken into account

in any decision, and measures could have been put in place to prevent further deterioration of the building's fabric”.

The Officer highlights Historic England advice at para. 42 of its publication ‘Making Changes to Heritage Assets’ that highlights the important contribution of a building's historic fabric to its significance and emphasises that where fabric has failed, it should be repaired or replaced. It also stresses that it is inappropriate to sacrifice old work to accommodate new, which the demolition of the outbuilding is essentially doing:

*“The historic fabric will always be an important part of the asset's significance, though in circumstances where it has clearly failed it will need to be repaired or replaced; for instance, seaside piers, constructed in timber and iron in a very hostile environment, will only survive through replication of corroded elements and mass-produced components in some C20 buildings, such as steel-framed windows, may not be simple to repair and repair would therefore be disproportionate. In normal circumstances, however, retention of as much historic fabric as possible, together with the use of appropriate materials and methods of repair, is likely to fulfil the NPPF policy to conserve heritage assets in a manner appropriate to their significance, as a fundamental part of any good alteration or conversion. It is not appropriate to sacrifice old work simply to accommodate the new”.*

It is thus assessed that the demolition of the outbuilding fails to conserve the significance of the designated heritage asset, as it results in total loss of the structure. With reference to para. 193 of the National Planning Policy Framework (see above) the Officer also concludes that the demolition of the outbuilding would result in ‘substantial harm’ to the heritage significance of the building. In accordance with para. 195 of the National Planning Policy Framework ‘**substantial public benefits**’ are needed to outweigh that harm, otherwise permission must be refused. Even if the degree of harm is less than substantial, the fact that there is harm still counts against the proposal and has to be weighed against any public benefits.

Whilst noting the extent of works needed to repair the building, and the applicant's desire to connect and integrate the main house with the garden area to the west, there is nothing to suggest that there is any public benefit in the building being demolished to provide for this.

As such the demolition of the outbuilding would be contrary to Wiltshire Core Strategy Core Policy 57 and Core Policy 58, as well as the advice of the National Planning Policy Framework and would conflict with the statutory requirement to have special regard to the preservation of the listed building.

#### **10.4 The proposed extension**

The submitted heritage assessment draws no clear conclusion on the impact of the extension but notes that ‘*the intention is contribute an innovative and high quality addition that reflects the needs of the current incumbents whilst keeping the scale in proportion to the main villa*’. On whether or not that intention is satisfied, the heritage statement is unclear, but concludes

rather vaguely that *'the proposed structure would therefore seem to be consistent with national and local policies aimed at protecting the historic environment.'*

The Conservation Officer however comments that:

"The proposed replacement structure is a modern cube built of brick, corten steel and glazing. The brick wall forms an extension from the main house, replacing the part wall and arched gateway opening and end elevation of the existing outbuilding. The corten steel element visually protrudes above the brick element on the front elevation, and is the main material for the remaining elevations, along with glazed openings. It lacks the architectural character and detail seen in the manor house and in its efforts to be subservient in size, its style and use of material actually heightens its visual impact, contrasting negatively with the host building of which it will become part. The extension is a bulky increase and its blocky mass results in an incongruous addition to the manor house, causing it harm. Corten steel is quite an alien use of material and increases the prominence of the structure from key views and the main approach of the manor. Because it is markedly different from the manor's Georgian and Victorian character, any potential for the extension to be subservient has been lost through the bulk, mass and use of materials proposed".

The Officer highlights the advice from Historic England in Paragraph 41 of Historic its publication 'Making Changes to Heritage Assets' that:

*'the main issues to consider in proposals for additions to heritage assets... aside from NPPF requirements such as social and economic activity and sustainability, are proportion, height, massing, bulk, use of materials, durability and adaptability, use, enclosure, relationship with adjacent assets and definition of spaces and streets, alignment, active frontages, permeability and treatment of setting. Replicating a particular style may be less important, though there are circumstances when it may be appropriate. It would not normally be good practice for new work to dominate the original asset or its setting in either scale, material or as a result of its siting. Assessment of an asset's significance and its relationship to its setting will usually suggest the forms of extension that might be appropriate'*

There is no cause to disagree with the conclusions of the Conservation Officer on the design of the large extension, which would fail to conserve the significance of the designated heritage asset or demonstrate a high quality of design, contrary to Wiltshire Core Strategy Core Policy 57 and Core Policy 58. The level of harm arising from the extension would be 'less than substantial' and in the absence of any public benefits, the extension would be contrary to the National Planning Policy Framework.

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

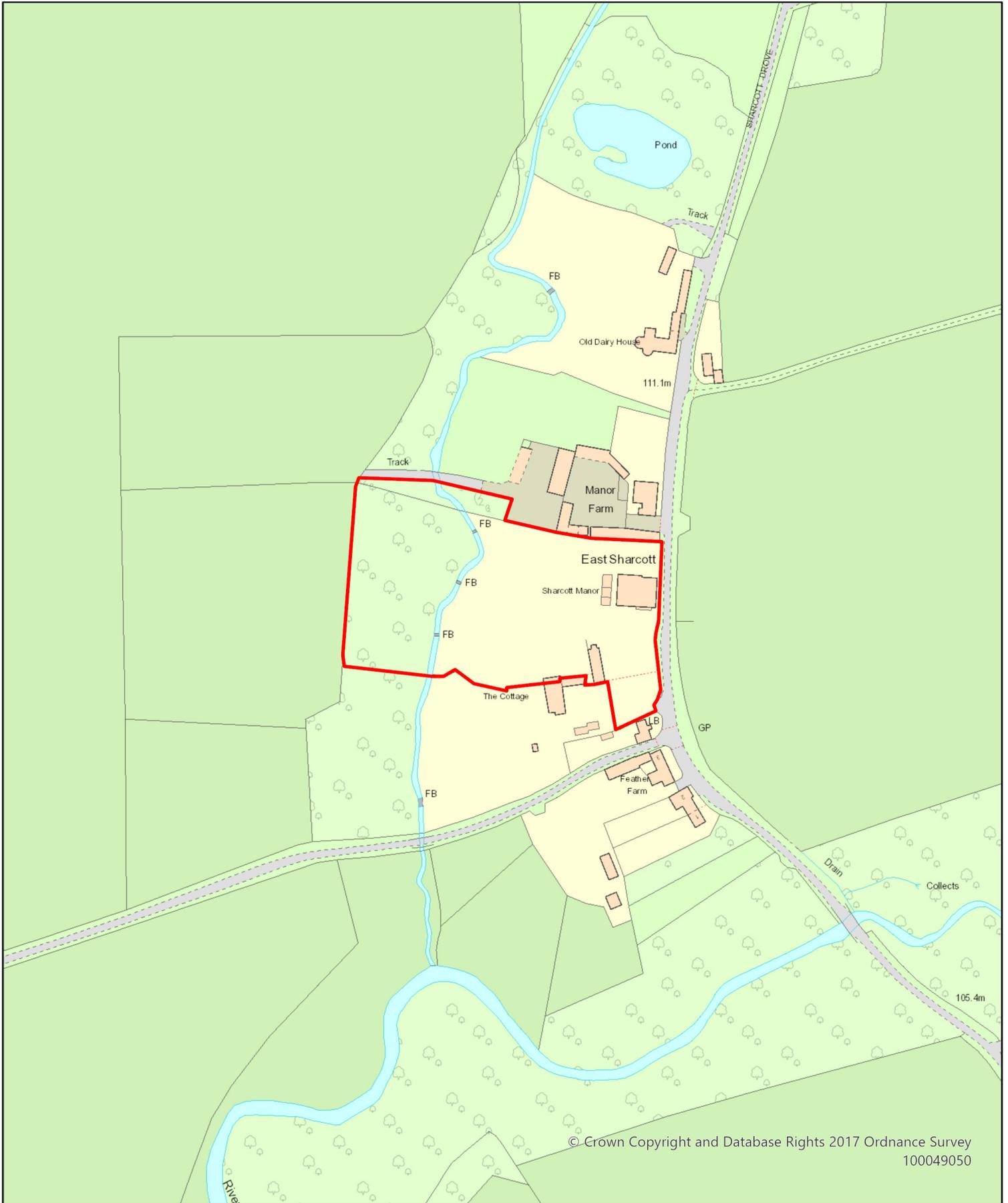
The outbuilding forms part of the listed building and has the same level of protection as the Manor itself under the Planning (Listed Buildings and Conservation Areas) Act 1990. The outbuilding holds heritage interest as part of the Manor and its demolition would result in

substantial harm to the heritage significance of the building. The materials size and form of the proposed extension would be an incongruous addition to the listed building; harmful to the aesthetic value of its Georgian and Victorian character and form, and would also result in 'less than substantial' harm to the heritage significance of the building. Whilst it is appreciated that the existing building would now require considerable work to bring it back into a usable condition, and that the owners wish to connect and integrate the main house, through the new extension, with that side of the garden, these are not considered to constitute the 'substantial public benefits' required by national policy to allow the proposals to be approved.

## **RECOMMENDATION: REFUSAL**

### **Planning Permission & Listed Building Consent – Reasons for Refusal**

1. As an ancillary/ service building to Sharcott Manor during the late Victorian / Edwardian eras the outbuilding contributes to the heritage significance of the listed building. Its demolition would result in harm to the heritage significance of the listed building and the proposal thus fails to conserve the significance of the designated heritage asset, as it results in total loss of the structure, contrary to Wiltshire Core Strategy Core Policy 57 and Core Policy 58. In the absence of clear and convincing justification for the demolition and without public benefits to outweigh the harm the proposal is also contrary to National Planning Policy Framework paragraphs 193 to 195.
2. The form, materials and size of the proposed extension lacks the architectural character and detail seen in the manor house and would contrast negatively with the host building as a bulky and incongruous addition that would fail to protect and conserve the heritage significance of the listed building contrary to Wiltshire Core Strategy Core Policy 57 and Core Policy 58. The level of harm would be 'less than substantial' and in the absence of clear justification and public benefits sufficient to outweigh the harm, the extension would be contrary to paragraphs 193, 194 and 196 of the National Planning Policy Framework and to the statutory requirement to have special regard to the desirability of preserving the listed building.



© Crown Copyright and Database Rights 2017 Ordnance Survey 100049050

1:2,500



Page 29 415081E 159418N m

This page is intentionally left blank

WILTSHIRE COUNCIL

AGENDA ITEM NO.

EASTERN AREA PLANNING COMMITTEE

17 JUNE 2021

---

## WILDLIFE AND COUNTRYSIDE ACT 1981

### THE WILTSHIRE COUNCIL PARISH OF OGBOURNE ST ANDREW PATH NO. 38 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2020

#### Purpose of Report

1. To:
  - (i) Consider one objection to The Wiltshire Council Parish of Ogbourne St Andrew Path No.38 Definitive Map and Statement Modification Order 2020 made under Section 53 of the Wildlife and Countryside Act 1981.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order be confirmed without modification.

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

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

#### Background

3. Wiltshire Council received an application dated 30 April 2020 from Carolyn Davis ( on behalf of Ogbourne St Andrew Parish Council), for an Order to record a public bridleway leaving Ogbourne St Andrew byway 6 at Drove Barn leading generally north east to link up with Ogbourne St Andrew bridleway 29 with an approximate width of two metres (please see claimed route at page 2 of Decision Report at **Appendix 1**). The total length of claimed bridleway is approximately 440 metres in length.
4. The application adduced evidence from initially 27 people, a further 6 have come forward since the application, making a total of 33 people who have completed User Evidence Forms (UEFs) detailing their use on foot, bicycle and on horseback of the application route in full for varying lengths of time dating from 1961 to 2020.
5. For public rights to have been acquired under statute law (see **Appendix 1** paragraph 9.5– Highways Act 1980 Section 31) it is necessary for the use to have been uninterrupted for a period of at least 20 years in a manner that is 'as of right', that is, without force, without secrecy and without permission. This would give rise to a 'presumption of dedication'.

6. A presumption of dedication may be defeated in a number of ways, including the erection and maintenance of signage indicating that there is no intention to dedicate public rights, effective challenges to use, the closure of the claimed route (for example a closure for one day every year may be effective), the granting of permission or by depositing a number of documents with the Council as prescribed by Section 31(5) and (6) of the Highways Act 1980 (see **Appendix 1** paragraph 9.5).
7. Wiltshire Council has a duty to consider all relevant available evidence and officers conducted an initial consultation between July and September 2020 on the application. The consultation letter was sent to all interested parties including landowners, the Parish Council, user groups, the local member and other interested individuals.
8. All the evidence and responses were duly considered in the Council's Decision Report appended here at **Appendix 1** (Section 8). Applying the legal test contained within Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 and s.31 of the Highways Act 1980 (see **Appendix 1** paragraph 9.1,9.2 and 9.5), the application formed a reasonable allegation that a public right subsisted. An Order was made to record the path as a public bridleway in the definitive map and statement.
9. The Order was duly advertised and attracted one objection and one representation. A copy of the Order is appended here at **Appendix 2**.
10. Where objections are received to a Definitive Map Modification Order Wiltshire Council may not confirm or abandon the Order and must forward it to SoSEFRA for determination. However, it must first consider the representations and objections to the Order and make a recommendation to SoSEFRA regarding the determination of the Order.
11. It is important that only the evidence adduced or discovered is considered and it is noted that matters relating to desirability, the environment, need, privacy concerns or health and safety are irrelevant for the application of Section 53 of the Wildlife and Countryside Act 1981.

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

12. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review.
13. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:

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

*(i) that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists*

*is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*

14. Under Section 31(1) of the Highways Act 1980 *“where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*
15. Evidence is the key and therefore objections to the making of the Order must, to be valid, challenge the evidence available to the Surveying Authority. The Authority is not able to consider other considerations, such as the suitability of the way for use by the public, the proximity of any other paths or facilities, environmental impacts and any need or desire for the claimed route.
16. **Objections and Representations:**

**(1) Susannah O’Brien (landowner affected by the Order) – Objection**

*Wiltshire Council has made an Order 19/11/20 to record a public bridleway partly on my land.*

*It is based on a reasonable allegation from submitted evidence that demonstrates that it has been used in the manner of a public bridleway for the past 20 years.*

*I object to the order on the grounds that the decision is wrong and made unfairly. Officers believe that test B has been met: that it is reasonable to allege that on the balance of probabilities a right of way subsists.*

*For an order to be made they rely on 27 user statements.*

1.

*The user statements were gathered in an unfair and dishonest way.*

*The Ogbourne Maisey and Ogbourne St Andrew and Rockley parish Council had a meeting early on to discuss the proposed bridleway.*

*Neither I or Catherine Burrell were invited . The council gave its unanimous support to the proposal.*

*Carolyn Davis who put forward the proposal led the Council to believe that the landowners had no objections to the existing track becoming a public bridleway.*

*This was a lie as I had told her when she raised her intentions with me that I strongly objected. This conversation took place before the Parish meeting.*

*The Chairman of the Council has made a user statement believing that there was no objection from the landowners.*

*Carolyn Davis further states in the Ogbourne st. Andrew and Ogbourne Maisey and Rockley newsletter spring 2020 when asking people to make user statements to present to the Council that the 'current landowners are happy for it to be used'. I.e. the track.*

2.

*Neither I or Catherine Burrell saw these user statements before the Council made their order which is also unfair.*

*I have been sent these statements in a chart . I don't know who prepared that. I have had no opportunity to challenge them.*

*I say at the first opportunity that*

*a) My family of myself ,my husband and three children, dog walkers, staff and friends and Catherine Burrell and her yard with permission have all ridden and walked on the track for 20 years daily sometimes twice daily and that is what these users might /would have seen.*

*b) I have never seen Carolyn or Ian Davis or Andy Curtis riding on my part of the track.*

*c) I have never seen a cyclist on it. Only 4 of the users have said that they used a bike*

*d) my house is out of view so I can't see the track from it*

*e) there was no gate so my children when young could go through on their ponies.*

*These people have used my track secretly.*

3.

*There is evidence that my husband ( now ex-husband ) stopped people .*

4.

*I did make a landowner evidence form but it appears it was never received. With Covid I was expected to scan and send which I thought I had done but obviously not. I have it here dated 27/9 /20 but it adds no more to my comments to Craig Harlow.*

*5 . My representation is that against 16.15 it is wrong to say that it 'would have been clear to the landowner that a right was being asserted.' Section 31. It was not clear to me.*

## **(2) Jilly Carter – Representation**

*Dear Craig,*

*Unfortunately, I would like to withdraw my earlier support for this proposed bridleway.*

*Kind regards,*

*Jilly Carter*

### **Comments on the objection**

#### **17. Susannah O'Brien**

***“The user statements were gathered in an unfair and dishonest way. The Ogbourne Maisey and Ogbourne St Andrew and Rockley parish Council had a meeting early on to discuss the proposed bridleway. Neither I nor Catherine Burrell were invited. The council gave its unanimous support to the proposal.***

***Carolyn Davis who put forward the proposal led the Council to believe that the landowners had no objections to the existing track becoming a public bridleway. This was a lie as I had told her when she raised her intentions***

***with me that I strongly objected. This conversation took place before the Parish meeting.***

***The Chairman of the Council has made a user statement believing that there was no objection from the landowners.***

***Carolyn Davis further states in the Ogbourne st. Andrew and Ogbourne Maisey and Rockley newsletter spring 2020 when asking people to make user statements to present to the Council that the 'current landowners are happy for it to be used'. i.e. the track."***

How the user evidence forms were gathered and submitted to the Council cannot be a valid consideration when deciding whether an Order should be made or confirmed. The UEFs were all signed by the individuals who filled them out as statements of truth regarding their use of the application route. It may or may not be the case that some individuals may have decided not to submit evidence if they knew the landowner would object but the content of their evidence detailing their use and knowledge of the route is what the Council must consider.

17.1 ***"2.***

***Neither I nor Catherine Burrell saw these user statements before the Council made their order which is also unfair.***

***I have been sent these statements in a chart. I don't know who prepared that. I have had no opportunity to challenge them."***

The user evidence forms have been on public deposit and available upon request at any time for anybody to view. Since Ms O'Brien's objection was received officers responded on the 15/02/21 to Ms O'Brien stating the forms have been available by request and asking if she would like copies to be sent to her. She has not requested to see the forms since this email. The chart detailing the contents of the UEFs was prepared by Craig Harlow, Definitive Map Officer and case officer for this application.

17.2 ***"I say at the first opportunity that***

***My family of myself ,my husband and three children, dog walkers, staff and friends and Catherine Burrell and her yard with permission have all ridden and walked on the track for 20 years daily sometimes twice daily and that is what these users might /would have seen."***

It may be the case that when users of the path have stated they saw other people on the route some of these people may have been people with permission to use the route. However, there is a body of evidence from 31 user evidence forms (was 33, two users have now either withdrawn their evidence or cannot confirm the details) that people used the track on foot, bicycle, and on horseback without permission. None of the users recall being challenged on their use of the Order route.

17.3 ***"I have never seen Carolyn or Ian Davis or Andy Curtis riding on my part of the track."***

Carolyn Davis in her UEF stated that *"I have met the owners whilst using the track on horseback"*. Since receiving the objection from Ms O'Brien officers have sought to clarify if Carolyn Davis was referring to Ms O'Brien when referring to

meeting the owners on the track. Mrs Davis has clarified by email *“One particular occasion, probably 5 or 6 years ago, I was riding with someone from the village and whilst on the track we met Susannah O’Brien’s husband, Titus, who was on foot. My companion chose to ride up on the field edge rather than the track and Titus asked her to keep to the track. Her response was that it was too stony and rutty.*

*I have met both of them individually on very rare occasions and would most certainly have exchanged greetings - but this one particular occasion sticks in my mind because of the exchange”.* This was put to Mrs O’Brien who restated that she does not remember seeing Mrs Davis or her husband using the route.

**17.4 *“I have never seen a cyclist on it. Only 4 of the users have said that they used a bike”***

Five Users in total have stated they used the route on a bicycle. It may be the case Ms O’Brien has not witnessed bikes on the route, although of these five users, four have said they believe the landowner would have been aware of public use of the route. Mr Poulton (a user of the route on a bicycle) states, when asked in the user evidence form do you believe the owner or occupier of the land was aware of the public use of the land? *“It happens so frequently that they must be aware”.*

**17.5 *“my house is out of view so I can’t see the track from it”***

This fact does make it difficult for Mrs O’Brien to comment on much of the use of the route and in particular to give first-hand account of the use of the route.

**17.6 *“there was no gate so my children when young could go through on their ponies. These people have used my track secretly.”***

There is no indication that users made any effort to conceal their use of the Order route. Several the users have stated they either met the owner on the route or knew the owners.

**17.7 *“3. There is evidence that my husband (now ex-husband ) stopped people”***

Clarification has been sought from Sir O’Brien regarding his knowledge of use of the order route and in particular any challenges he made to users. Sir Titus O’Brien has replied with the following:

*“In so far as I can help I never saw a cyclist and rarely a horse rider but I did challenge if I saw one, starting about 2010. As I said before I saw carol Davis and a female friend. I never saw the people who made statements. Not to my knowledge did they return. I would challenge people walking, but again I saw people rarely. I hope this helps. Titus O’Brien*

Further clarification was sought from Sir O’Brien as to why, as he states, he began challenging people around the year 2010 when his ownership began in 2000 and the evidence demonstrates use of the route has been consistent in the years pre and post 2010. No reply has been received to date. None of the users

recall being challenged by anybody on the route other than the incident recalled by Mrs Davis as seen at 17.3 of this report.

17.8 “ 4.

***I did make a landowner evidence form but it appears it was never received. With Covid I was expected to scan and send which I thought I had done but obviously not. I have it here dated 27/9 /20 but it adds no more to my comments to Craig Harlow.”***

No landowner evidence form has yet been received from Ms O’Brien, although as Mrs O’Brien states it adds no more to her comments.

17.9 “**5. My representation is that against 16.15 it is wrong to say that it 'would have been clear to the landowner that a right was being asserted.' Section 31. It was not clear to me.**”

The level of use of the route by multiple people on a regular basis over a prolonged period would indicate an onsite landowner would have been aware of the route being used. Although as Mrs O’Brien states she could not see the route from her house. Within Mrs O’Brien’s objection she also states her husband at the time stopped people on the path, which would indicate they were aware of at least some use of the route by people they deemed did not have permission.

18. The Council cannot consider the number of objections but must consider the evidence contained within those objections against the evidence contained within the evidence already before the Council, as outlined within the Decision Report attached at **Appendix 1**. There will inevitably be points of conflict within the evidence of objectors and that of the supporters. For this reason, the Order has been made on a reasonable allegation that a right of way for the public on horseback, on bicycle and on foot (as a public bridleway) subsists, which is a lower test than the balance of probabilities (see **Appendix 1**- paragraph 30.2).

19. Since the Order has been made two more user evidence forms have been received, both detailing use on horseback. Clarification from users claiming use on horseback and bicycle has also been sought. This clarification is detailed at **Appendix 3**. This graph and text details the use claimed of the route in the manner of a bridleway.

20. The case of R v Secretary of State for the Environment, ex p.Bagshaw and Norton, Queen’s Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective county councils for Orders to add public rights of way to the definitive map and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the councils should not be directed to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State’s decisions and held that:

*“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together will all the other*

*evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”*

21. Owen J also held that:

*“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”*

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

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

23. Even in a case with only limited supporting evidence and a large number of objections, Owen J held that an Order would seem appropriate. When this case law is applied to this case, where there are 33 completed UEFs (31 with the two withdrawn statements), 13 of which after investigation detail use in the manner of a bridleway, it suggests that the making of a definitive map modification order was appropriate.

24. In such a case concerning the balancing test to be applied to the evidence, the authority is correct in making the Order on the grounds that it is reasonable to allege that a right of way for the public on horseback, on a bicycle and on foot subsists. The use of the route in the manner of a bridleway has been

investigated and the evidence demonstrates when taking into account the objections raised that bridleway rights subsist. The 13 users who claim use on horseback or bicycle cover a period of 20 + years in a consistent manner. Given the rural nature of the location the use demonstrated represents a reasonable account of use in the manner of a public bridleway. The objection submitted has been discussed at paragraph 17 of this report and does not raise any incontrovertible evidence to defeat the allegation that public bridleway rights subsist on the route. There are conflicts within the evidence and as an objection has been received the only way to properly determine the Order is to see the witnesses at a public inquiry where they may give evidence in chief and their evidence may be tested through the process of cross-examination to confirm whether, on the balance of probabilities, the public right has been acquired. Officers suggest it will also be open to an inspector to consider if further evidence is brought at later date to defeat the allegation of bridleway rights that the Order may be modified to record a public footpath as there is a substantial body of evidence recording use of the route in the manner of a public footpath. Based on the evidence before the Council officers believe the committee should recommend to SoSEFRA that the Order be confirmed without modification.

### **Overview and Scrutiny Engagement**

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

### **Safeguarding Considerations**

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

### **Public Health Implications**

27. Any public health implications arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

### **Corporate Procurement Implications**

28. In the event this Order is forwarded to SoSEFRA there are several opportunities for expenditure that may occur, and these are covered in paragraphs 32 to 34 of this report.

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

29. Any environmental or climate change considerations arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

## **Equalities Impact of the Proposal**

30. Matters relating to the equalities impact of the proposal are not relevant considerations in Section 53 of the Wildlife and Countryside Act 1981.

## **Risk Assessment**

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

## **Financial Implications**

32. The making and determination of Orders under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
33. Where there are outstanding objections to the making of the Order it must be determined by the Secretary of State. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500. A one day public inquiry could cost between £1,500 and £3,000 if Wiltshire Council continues to support the making of the Order (i.e. where legal representation is required by the Council) and around £300 to £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
34. Where the Council objects to the Order, the Order must still be forwarded to the SoSEFRA for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 33 above.

## **Legal Implications**

35. Where the Council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicant may seek judicial

review of the Council's decision if he sees it as incorrect or unjust by them. The cost for this may be up to £50,000.

### **Options Considered**

36. Members should now consider the objection received and the evidence in order to determine whether Wiltshire Council continues to support the making and confirmation of the Order. The making of the Order has been objected to, therefore the Order must now be submitted to the SoSEFRA for determination and members of the committee may determine the recommendation (which should be based upon the evidence) to be attached to the Order when it is forwarded to the SoSEFRA as follows:
- (i) The Order be confirmed without modification
  - (ii) The Order be confirmed with modification
  - (iii) Take a neutral stance on the determination of the Order.
  - (iv) The Order should not be confirmed

### **Reason for Proposal**

37. Unless the objections and representations are withdrawn the Order must be forwarded to the SoSEFRA for determination.
38. It is considered that nothing in the objectors' submissions demonstrates sufficiently that there was no intention to dedicate a public right of way and that any attempt at communicating any lack of intention did not reach the relevant audience. This is demonstrated by the fact that all user evidence forms indicate they were unaware of any challenge to use of the route, no signs or notices were erected on the route and no barriers were erected on the route ( before the application was made or during the relevant 20 year period). Neither did the owners/tenants satisfy any statutory process of demonstrating a negative intention to dedicate the land, i.e. a valid deposit, plan, statement and subsequent statutory declaration under Section 31(6) of the Highways Act 1980, or a notice under Section 31(5) informing the relevant authority such notices have been torn down.
39. The testimony of users of the path has been questioned by the objector who claims that use of the order route has not taken place or was challenged. Where this evidence is conflicted it may be tested, along with all other evidence at a public inquiry. In *R v Secretary of State for the Environment ex p. Bagshaw and Norton [1994] 68 P&CR 402* Owen J "*In a case where the evidence of witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.*"
40. In making this Order officers considered that a reasonable allegation as to the acquisition of public rights over the Order Route had been made. Since the making of the Order and it being advertised to a wider audience additional evidence of use has been adduced and the clarification of the use of the Order

route in the manner of a bridleway has been undertaken. In addition to these actions no incontrovertible evidence has been adduced since making the Order, that demonstrates the route has not been used in the manner of a public bridleway and shows that, on the balance of probabilities, a public right has been acquired. The testing of witnesses will be key to the final decision in this case, but the Council's duty remains with supporting the Order based on the evidence it has before it.

### **Proposal**

41. That "The Wiltshire Council Parish of Ogbourne St Andrew Path No.38 Definitive Map and Statement Modification Order 2020" is forwarded to the SoSEFRA with the recommendation that it is confirmed as made.

### **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:**

User Evidence Forms

---

(The above-mentioned documents are available to be viewed at the offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road Trowbridge, BA14 8JN or available on request by email.)

### **Appendices:**

Appendix 1 - Decision Report

Appendix A to Decision Report – chart of User Evidence (valid at the time of the decision report publication)

Appendix 2 - "The Wiltshire Council Parish of Ogbourne St Andrew Path No.38 Definitive Map and Statement Modification Order 2020"

Appendix 3 - Bridleway use of the order route after investigation

**DECISION REPORT**  
**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**  
**APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT OF**  
**PUBLIC RIGHTS OF WAY IN OGBOURNE ST ANDREW**

**1. The Application**

Application number: 2020/06D

Date of application: 30<sup>th</sup> April 2020

Applicant: Carolyn Davis (on behalf of Ogbourne St Andrew Parish Council)  
Bridleway Cottage  
Ogbourne St. Andrew  
Marlborough  
Wiltshire  
SN8 1XF

Application for: An Order modifying the definitive map and statement for the area by adding a bridleway that *“leaves Ogbourne St Andrew byway 6 at Drove Barn and links up with Ogbourne St Andrew bridleway 29, approximate width 2 metres”*

Application comprises: Form 1 notice of application for a modification order  
Form 2 notice of application for a modification order  
Form 3 Certificate of Service of Notice of Application , notice served on landowners Catherine Burrell and Lady Suzannah O’Brien.

Map to the scale of 1:10,000 showing the claimed route highlighted in red

27 User Evidence forms (4 more UEFs submitted at a later date).

## Application map



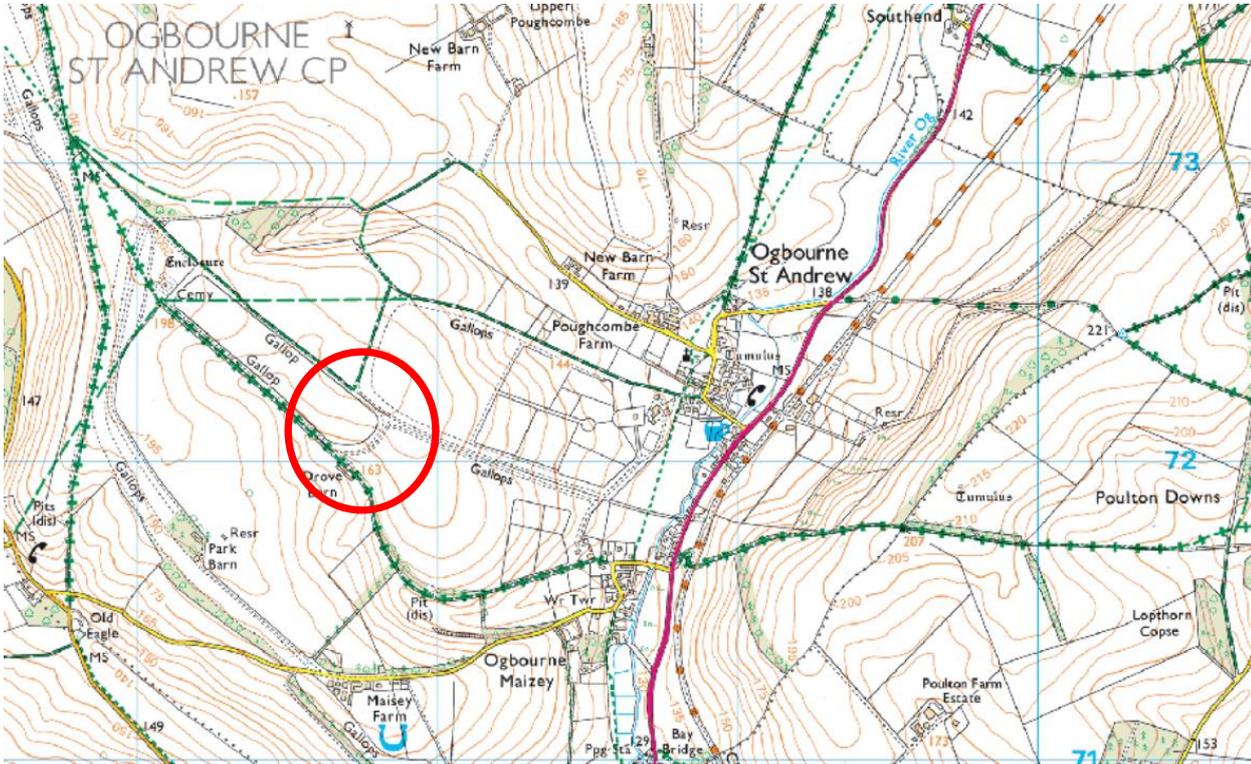
## **2. Purpose of Report**

- 2.1 To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a bridleway to the definitive map and statement of public rights of way, in the Parish of Ogbourne St Andrew. The claimed route leads from the junction of byway OSTA6 in a north easterly direction following a track to its junction with bridleway OSTA29.

## **3 Relevance to Council's Business Plan**

3.1. 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.

#### 4. Location



4.1 The claimed route is west of the village of Ogbourne St Andrew which itself is just north of the town of Marlborough. The claimed route follows the route of a track linking byway OSTA6 and bridleway OSTA29. The route is approximately 430 metres long.

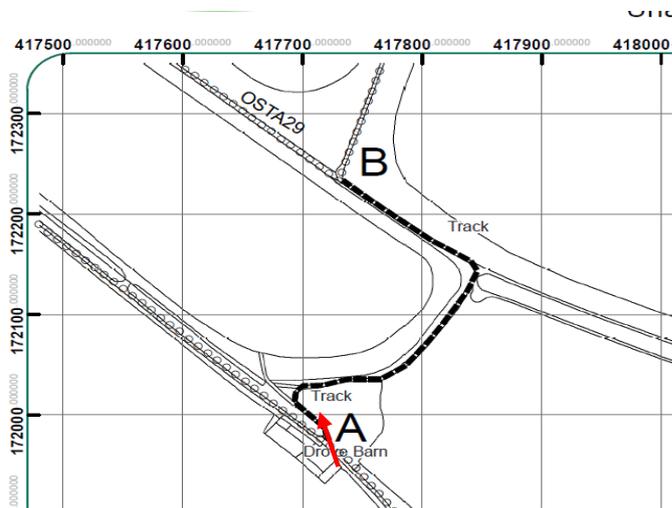
4.2 An aerial photo of the area from 2001 showing the track on which the bridleway is claimed is shown below– bridleways are denoted by green lines and the byway by a brown line.



5. **Photographs**

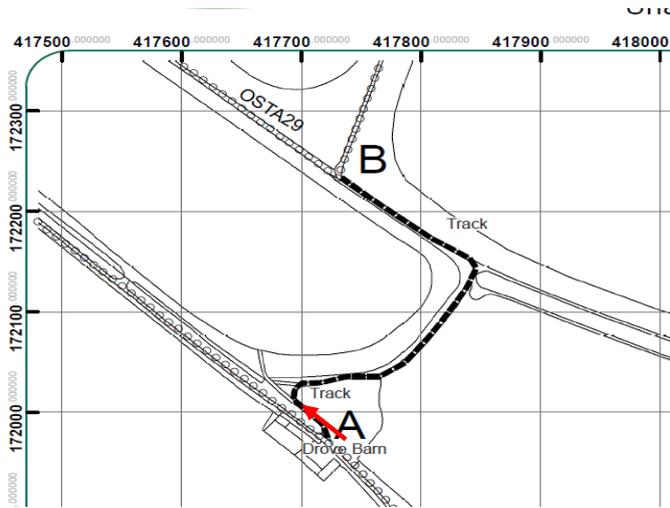
Photos taken in July 2020 of the claimed route.

- 5.1 The red arrow on the map shows where and which direction the photos below the map extract was taken.

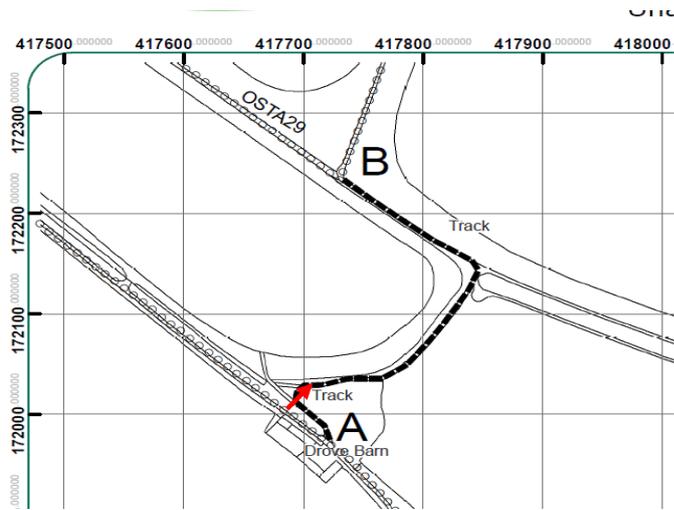


The claimed route , marked by red arrows leads off the existing byway , marked by a black arrow.

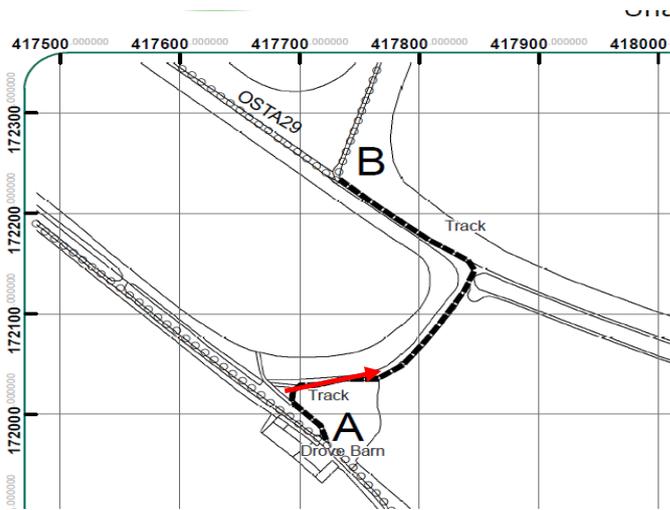
5.2



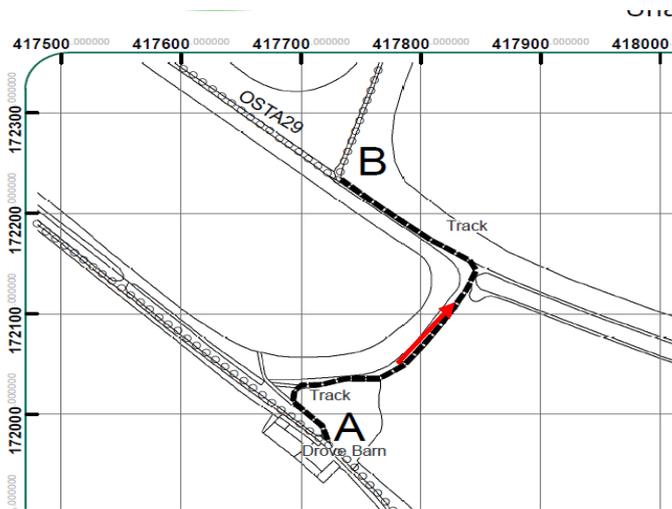
5.3



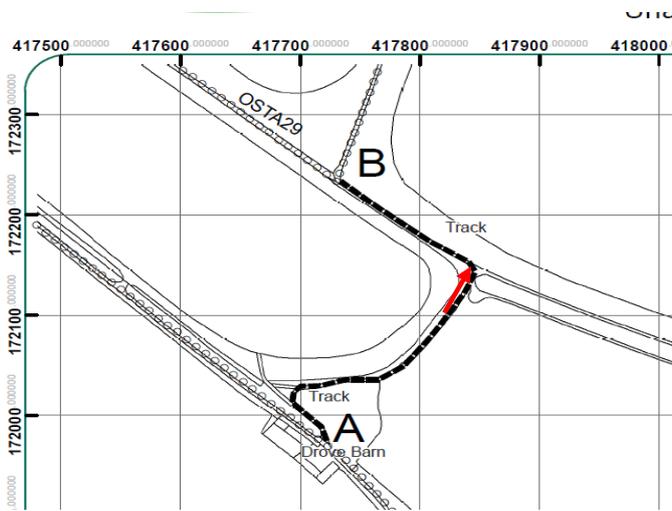
5.4



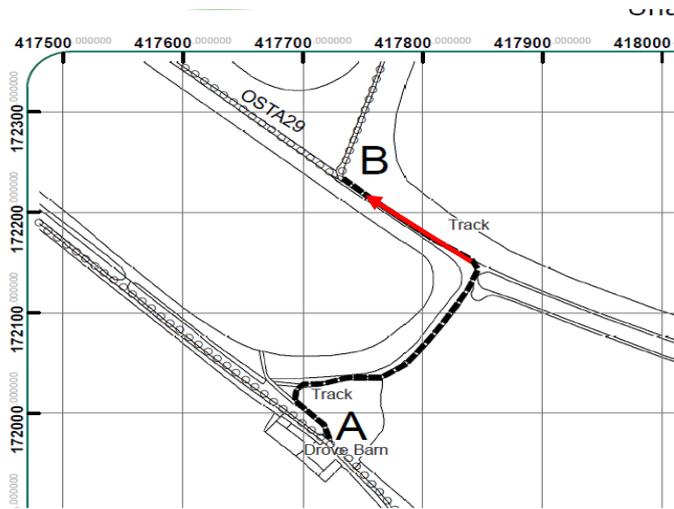
5.5



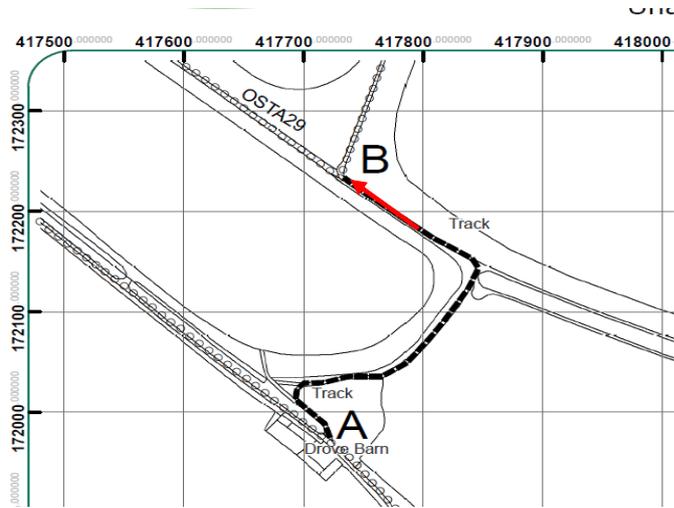
5.6



5.7



5.8



At this point the claimed route meets the existing bridleway OSTA29 which continues in both directions marked by the black arrows.

## 6. Registered Landowners

6.1. There are two land owners who are directly affected by this application.

Divers Trust Limited of Jersey. Accuro are appointed as directors and officers of Diver Trust Limited and have submitted representations.

Mrs Susannah O'Brien of Green Lane Farm, Ogbourne Maizey, Marlborough, Wiltshire, SN8 1RY.

6.2 The image below shows the land owned by Mrs Susannah O'Brien within the red boundary. The rest of the application route is the ownership of Divers Trust Ltd.



## 7. The Application

- 7.1. Wiltshire Council are in receipt of an application dated 30<sup>th</sup> April 2020 made under Section 53 of the Wildlife and Countryside Act 1981, to add a bridleway to the definitive map and statement of public rights of way in the parish of Ogbourne St Andrew.
- 7.2. The application was submitted by Mrs Carolyn Davis ( on behalf of Ogbourne St Andrew Parish Council). The route applied for is stated as a bridleway that leaves Ogbourne St Andrew byway 6 at Drove Barn and links up with Ogbourne St Andrew bridleway 29 and is approximately 2 metres wide.
- 7.3 The application was accompanied by a map depicting the claimed route with a red highlighter on an OS base map and 27 user evidence forms detailing use of the route. The user evidence forms will be analysed in detail later in this report.
- 7.4 The application forms submitted comply with the regulations set out in regulation 8(3) Schedule 7 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No 12. The applicant served notice on the two affected landowners, Catherine Burrell and Lady Suzannah O'Brien. It was later clarified that the land owned by Mrs Catherine Burrell is held by a trust , Divers Trust Limited , who have responded to the consultation in conjunction with Mrs Burrell who resides locally.

## **8. Initial Consultation**

- 8.1 Wiltshire Council undertook an initial consultation regarding the proposal on 7<sup>th</sup> July 2020. User groups, Ogbourne St Andrew Parish Council, the landowners and some neighbouring landowners, the Council member for area, and all interested parties were consulted as part of this process. The following replies were received. A copy of that letter can be seen below.

“Dear

***Wildlife and Countryside Act 1981 s.53***

***Application for a definitive map modification order to add a bridleway in the parish of Ogbourne St Andrew***

*Wiltshire Council are in receipt of an application dated 30<sup>th</sup> April 2020 under the Wildlife and Countryside Act 1981 s.53 to add a public bridleway to the definitive map and statement in the parish of Ogbourne St Andrew. The claimed bridleway runs along a track west of Ogbourne Maizey between byway OSTA6 and bridleway OSTA29. This application is currently supported by 27 user evidence forms, documenting use of the claimed route.*

*The Council has a statutory duty to determine this application and I will be the case officer. In determining the application the Council must consider all relevant evidence made available to it and you are invited to submit any evidence that you may have that relates to the claimed route and that you would like the Council to take into account. If you have already submitted a witness form as part of the application there is no requirement to resubmit any previously stated evidence , however if you have any additional evidence you feel is relevant please supply this.*

*If I could receive any evidence that you wish to adduce for the Council to consider I would be pleased to receive it by Friday 4th September 2020. Currently due to restrictions at County Hall receiving any responses by email ( [craig.harlow@wiltshire.gov.uk](mailto:craig.harlow@wiltshire.gov.uk)) would be preferable. Any correspondence sent in writing to County Hall will be received but may not be picked up immediately.*

Yours

Craig Harlow

Definitive Map Officer

Direct line: 01249 468568

Email: [craig.harlow@wiltshire.gov.uk](mailto:craig.harlow@wiltshire.gov.uk)

Enc. Map showing claimed route”

## Replies

### 8.2 Peter Gallagher – North Wiltshire Ramblers

Dear Craig

Thank you for your letter dated 7 July.

*We are unable to provide any evidence of use of this path. We have contacted our members living in the area but it does not appear that any of them have used it.*

*When I walked the path after receiving your letter (having never, from memory, walked it before) I noted that there were no barriers or “Private” or similar notices of any kind. Bearing in mind there are racehorse gallops in close proximity to the path the absence of any such notices suggests to me that the landowner(s) are acquiescing in the use of the path by the public.*

Best wishes

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

### **8.3 Alan Woodford**

*Hi Craig,*

*Please find attached a User Evidence Form relating to the above DMMO application.*

*The width of 2 metres specified on the application does significantly underestimate the width used. The track itself is around 12 feet wide and because it is so rutted grass adjacent to it has always been used by me and my companions.*

*Regards*

*Alan*

Mr Woodford submitted a user evidence form which is considered in this report.

### **8.4 Ogbourne St Andrew Parish Council**

*Hi Craig,*

*I am the Chairman of The Ogbourne Maizey, Ogbourne St Andrew and Rockley Parish Council. I am writing to confirm that the issue of the bridleway was discussed at a recent Parish Council meeting. Carolyn's proposal was put to the meeting, together with a map showing the route of the proposed public bridleway.*

*One member of the parish council was not familiar with the route, but the other six members knew the route well and had all walked it at some stage. The council gave its unanimous support for the proposal. Although we understand that the landowner has no objection to the existing track becoming a public bridleway, the parish council had no official notification of this.*

*I hope that clarifies our position, but if you need any further information, please let me know.*

John Hetherington

## 8.5 Bill Riley

Hi Craig,

Thanks for sending me details of the DMMO application in Ogbourne St Andrew. It seems like a useful link but I can't find any supporting historical evidence, so I guess it's all down to user evidence....

## 8.6 Emma Lavelle

Dear Mr Harlow

**REF 2020/06D OSTA**

Re Application for a definitive map modification order

I write with regard to the modification order of a bridleway with the above reference. My husband and I own the land adjacent to the suggested route and would have some considerable reservations about the track becoming an official bridleway.

As a racehorse trainer, training in excess of seventy horses and employing over twenty staff, through most of the year we would be using the gallops that are accessed from that track and then gallop alongside it. My greatest concern is that of the safety of casual riders, cyclists and dog walkers, all of whom would have access to that track if it were to become a bridleway, as well as the safety of my own staff and horses if there were increased use. It is a fairly narrow piece of land at the start and so would make passing difficult with fractious thoroughbreds. We are running a business that generates important employment in the rural community and I am very keen to keep the risks of injury to a bare minimum wherever possible.

I absolutely believe that the countryside should be shared and enjoyed and as landowners with several bridleways on our land, we maintain them so that they can be used, but although some people are respectful a vast number do not follow the paths and we have already had several instances of horses being chased by dogs, walkers in the path of galloping horses and cyclists flying past. There are a huge number of bridleways within the area and it is a wonderful place to be able to ride horses but for the safety of those working in the area as well as those wanting to casually enjoy it I think that particular piece of track would be far better to remain as it is – a track.

Yours sincerely



Emma Lavelle

## 8.7 Susannah O'Brien (Landowner)

*Dear Mr Harlow*

*Wildlife and Countryside Act 1981 s 53.*

*Application for a definitive map modification order to add a bridleway in the parish of Ogbourne St Andrew.*

*Please could the Council consider my objections to the application as the Land owner of part of the track.*

*1. Firstly the area is well served by bridleways . The proposed bridleway is a dog leg and unnecessary . In the very next field are two bridleways OSTA 29 and OSTA 27 which join up with OSTA 29.*

*2. Secondly the track up from Green Lane at the extreme left is used by race horses some four times a week. Peter Makin had a right of way for the purposes of gaining access to his gallops and that is extended to the current trainer Emma Lavelle who has given evidence too to you.*

*It is a narrow and steep track there with a sharp bend and obviously hazardous. There is also a right of way east to west in favour of my neighbour The Burrells' adjoining training establishment so there again is a risk to them .*

*3. Thirdly Carolyn Davis who has collected the User evidence statements, stated in the Ogbourne st Andrew , Maisey and Rockley Newsletter no 67 (submitted) to help support her application that " the current landowners are happy for it to be used " I.e. the track.*

*I had told her when she told me what she was doing ,that I objected to her application.*

*I believe that she used the press to get support and lead people to believe that it was uncontested by the land owners. It was a misrepresentation and not fair to have be side presented. In fact one lady who wrote a statement told me she had no idea I was objecting*

*.*

*I offered a permissive path to villagers to Carolyn which was rejected .*

*4. We have had problems with rural crime, trespassing , burglary , poaching. Another access is unwelcome . My fear is an increase from a few villagers who I know ,to strangers who do not understand or care so much about the area.*

*Susannah O'Brien*

Mrs O'Brien was asked to fill in a landowner evidence form but one has not been returned to date.

#### **8.8 Diver Trust Limited ( Landowner)**

*Dear Mr Harlow*

*We refer to the attached addressed to Catherine Burrell which has recently been forwarded on to us. The letter is in respect to the Application for a definitive map modification order to add a bridleway in the parish of Ogbourne St Andrew. We are responding to the letter at the earliest opportunity following receipt by us of the same.*

*Accuro is appointed as the directors and officers of Diver Trust Limited. Diver Trust Limited is a company incorporated in Jersey and which owns in its capacity as trustee title numbers WT189793 and WT186612. These title numbers are in the process of being registered out of the name of Valla Nominees 4 Limited which had previously acted as a nominee for Diver Trust Limited. A copy of the TR1 form is attached to evidence Diver Trust Limited's capacity to be writing to you regarding this matter.*

*Diver Trust Limited wishes to register its objection to the request to establish the new bridlepath. Please find below the reasons why we are not in favour of the bridlepath:*

- the proposed route comes off an already quite active byway- and the proposed track is quite wide and it does look vehicle friendly so if it was designated and identified as a bridleway it would encourage vehicles to travel up it. Catherine Burrell has a big problem already with cars / four wheel drives / motorbikes using the farm as speed / wheely practice- which is not only dangerous for the many horses being ridden on the farm, but they also damage the ground / grass gallops / dangerous for walkers / dogs too;*
- more people using the track equals more dogs- there were two recent incidents with dogs being out of control and chasing Catherine's horses - causing them to bolt blind. Of course this is*

*dangerous, but one of them now seems to have a lasting phobia of dogs so if Catherine seeks to sell her she will be devalued as she will have to declare that she is not the quietest of rides as she is frightened of dogs;*

- *Catherine had some farm machinery - some rollers - stolen from the top of the farm, close to the proposed track last year. The rollers had been stored at the same place for 20 years and the thieves towed them down the proposed track and then onto the byway. More people on this track will result in more people knowing things and more possible thefts;*
- *the land on every side of the proposed bridleway is open- We have not fenced the boundaries, and neither has the neighbour Sussanah Obrien. It is very special like this. It does however lend itself to travellers moving on to the land and again if the track was formalised then it would invite more people to see the area and encourage encroachment;*
- *Emma Lavell is a successful race horse trainer. She uses the track (with permission from Sussanah Obrien) to access her round gallop. If she is there with a large string of fit race horses and they are met with random riders / walkers / dogs coming down the proposed track the chances of an unhappy ending are high. It just wouldn't be safe for either Emma's horses, her staff, or the people accessing the track if it was to become a bridleway;*
- *the public can access all the areas perfectly adequately without the proposed bridleway. There is a super loop already in place and so we are not trying to keep people from enjoying the beautiful farms, we are just trying to maintain a level of safety for those involved in working in the area (mainly with valuable horses travelling at speed) and the public;*
- *the farmer who leases the land has advised that four wheel drives have been driven all over his oat crop, the day before it was to be harvested- and referred to wheel marks everywhere. They would have come up from the proposed bridleway; and*
- *Another neighbour Jilly Carter has had her trailer stolen from her storage barn recently- again another reason for trying to make the area no more accessible that it already is.*

*We should be grateful if you would acknowledge safe receipt of this email. We trust the above is in order however should you have any queries, please let us know.*

*With kind regards*

Divers Trust were also requested to fill in a landowner evidence form, which was completed by Catherine Burrell and returned.

LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME Catherine Burrell

ADDRESS Mainway Manor Farm, Ogbourne St. Andrew.

Tel no (day) [redacted] Tel no (eve) [redacted]

e.mail address [redacted]

**PATH DETAILS:**

Parish .....

Claimed Status of Way .....

Description of Path (also see attached map)

From: ..... To: .....

1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land?

YES / NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership 20 years or tenancy .....

2. Do you believe this way to be public?

(a) If so, with what status NO

(b) For how long have you held this belief? forever

3. Have you seen, or been aware of, members of the public using this way?

(a) If so, please state the period, regularity and nature of such use Yes, with permission

4. Have you ever required people to ask permission before using the way?

If so, please give details yes. The area is used by the land owners with prior permission to aid the training of their racehorses / competition horses. It is not suitable for other as increased traffic at inappropriate times will be dangerous for all.

5. Have you deposited a Section 31 (Highways Act 1980) plan and statement? YES  NO

If so, please give details and dates .....

6. Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?

If yes, please give details and appropriate dates ..... yes n/a

Dangerous as rickshaws on the path. & it is private land.

7. Have you, or someone on your behalf, ever told anyone using the way it was not public?

If yes, please give details and appropriate dates ..... yes n/a

8. Have you ever erected notices or signs stating that the way was not public?

a. If yes, please give details and approximate dates ..... yes Sept 2020

Increased mof + traffic in the area is dangerous.

b. State whether these notices were ever defaced or destroyed and whether they were replaced.

no

c. Show their position on the accompanying plan

9. Have there, to your knowledge, ever been on the way any stiles or gates? YES  NO

a. If yes, state whether the gate or gates were ever locked ..... n/a

b. Show their position on the accompanying plan .....

10. Have you ever obstructed the way?

a. If yes, state where, how and when ..... no

11. Can you give any further information? Please continue on a separate sheet of paper if needed.

we are no boundaries / fencing in the area, which is as the land ordering the "downs" should be increased traffic will change all this well as encouraging more traffic. mof. joy riders which are already a problem.  
I hereby certify that, to the best of my knowledge and belief, the information that I have given is true.

Signed: [Redacted]

Date: 12.9.20.

Please return this form and any accompanying map to:

Rights of Way and Countryside Section, Communities and Neighbourhood Services, Wiltshire Council, County Hall, Trowbridge, BA14 8JN

Information relating to how Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

## 9. Main Considerations for the Council

9.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the

Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

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

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

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

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

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

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

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

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

*“Form of applications*

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

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

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.*

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

- “(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has*

24

*been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
  
- (3) Where the owner of the land over which any such way as aforesaid passes –
  - (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
  
  - (b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.**
  
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
  
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*
  
- (6) An owner of land may at any time deposit with the appropriate council-
  - (a) a map of the land on a scale of not less than 6 inches to 1 mile and*
  
  - (b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;**

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

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

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

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

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

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

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

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

*“Evidence of dedication of a way as highway*

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

## **10. Historic Records**

- 10.1 This application was submitted with no historic evidence to demonstrate the route is or has been a public right of way, however officers are still obliged to investigate the historic nature of the applied for route.

Maps and documents dating back to the 18<sup>th</sup> century have been viewed depicting the area concerned. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example, although a way may appear on many commercial maps it does not necessarily carry as much evidential weight as if the way is shown in two publicly consulted documents or created, say, as the result of an Act of Parliament.

- 10.2 Therefore, 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 (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.

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

## 11. Category A

11.1 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 railway plans (i.e. arising from an act of parliament which specifically required the identification and verification of public rights of way).

11.2 The area concerned was not subject to an inclosure act and no other category A evidence has been found showing the route in question.

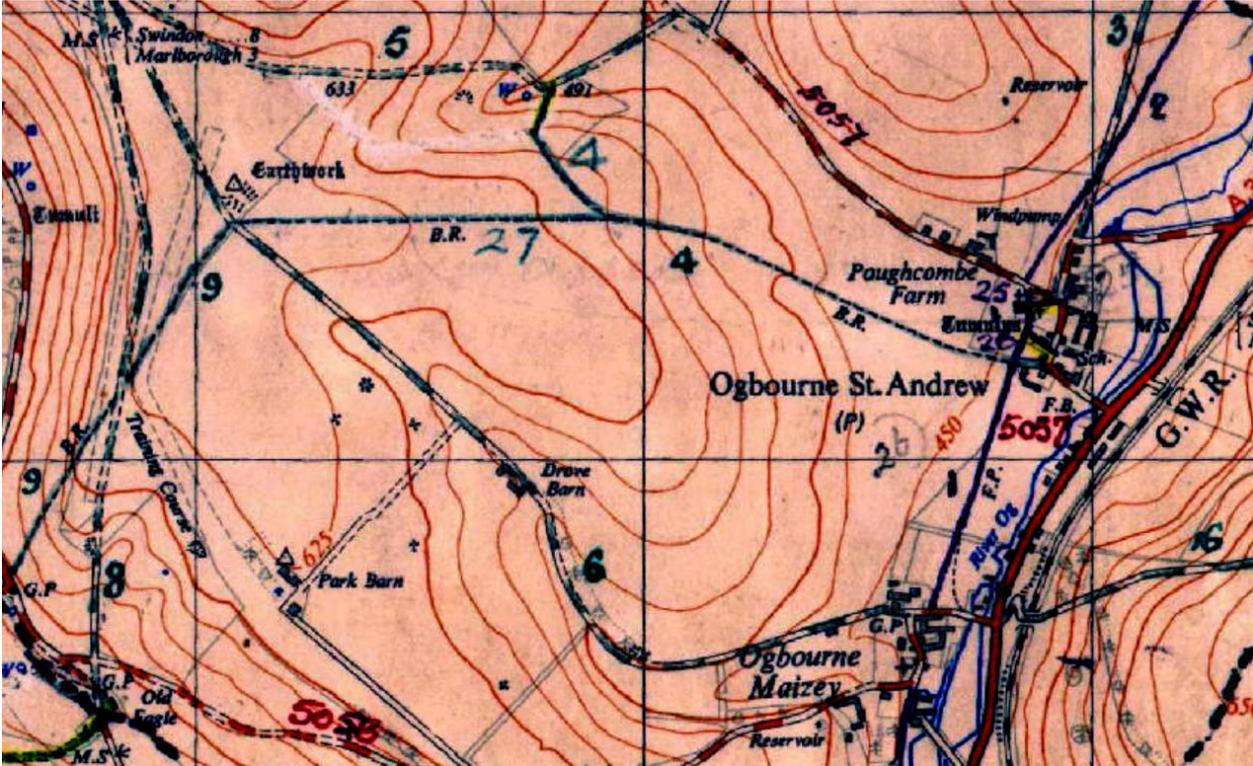
### 11.3. **Definitive Map and Statement**

As a result of the National Parks and access to the Countryside Act 1949 every surveying authority (in this case Wiltshire Council) holds and maintains a definitive map and statement which is a legal record of the public rights of way in its area. If a way is shown on the map then it is legal conclusive evidence that those rights existed at the relevant date of the map. However, the absence of a route is not conclusive that there may be unrecorded rights or the

showing of, for example, a footpath, does not preclude that a higher right on horseback may be unrecorded.

The Marlborough and Ramsbury Rural District Council Area Definitive Map and Statement dated 1952 does not depict the route.

See below image of the definitive map.



As stated above the absence of the route on the definitive map does not preclude unrecorded rights existing.

**12. Category B**

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.

**12.1 The Tithe Commutation Act of 1836**

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

12.2 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.

12.3 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.

12.4 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.

12.5 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.”*

12.6. **WHSC Ref- TA/ Ogbourne St Andrew** The 1844 tithe map for Ogbourne St Andrew has been viewed at the WSHC. The relevant section can be seen below and the application

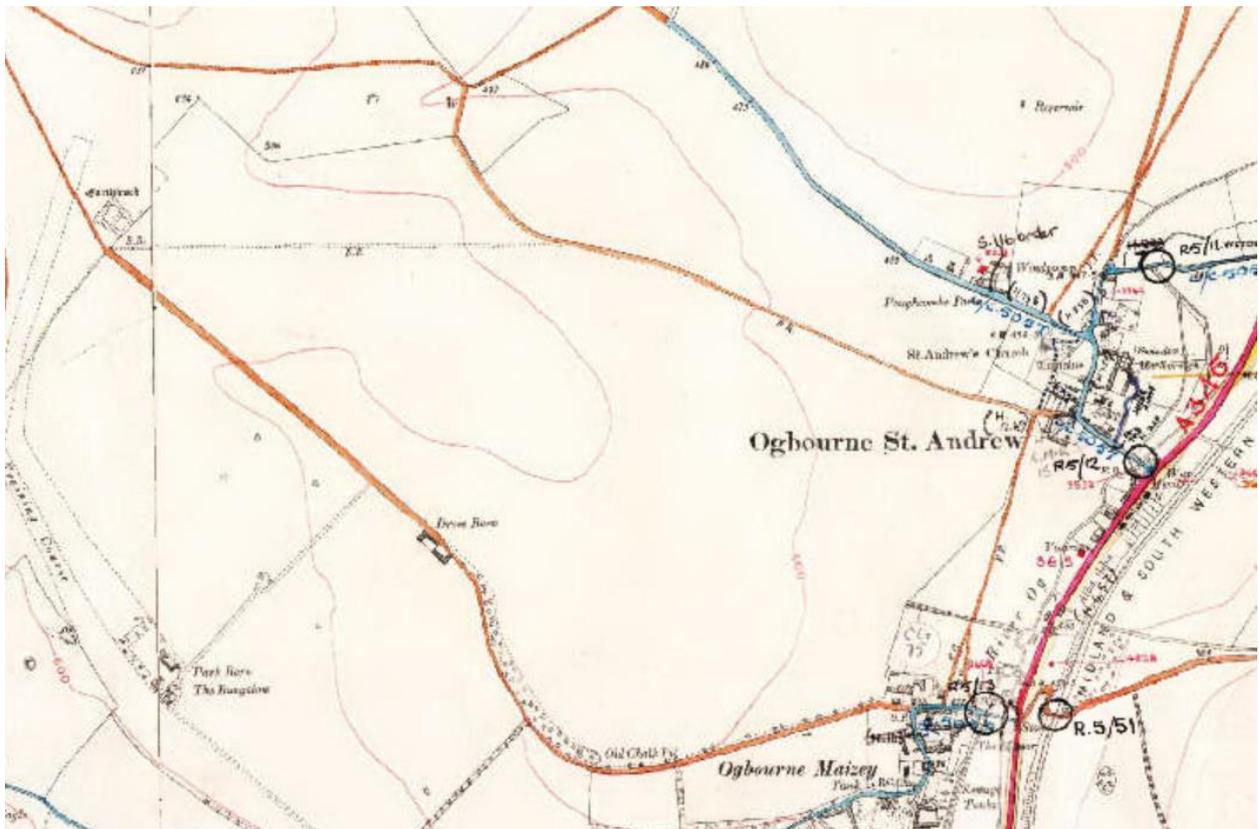
route cannot be seen , the track is not in existence or any path or other feature that follows the same route.



### 13. Category C

#### 13.1 Wiltshire County Council Highway Record

Sometime after the taking over of the responsibility for rural roads Wiltshire County Council amalgamated the information and produced a highway record. This record has been maintained and amended since that time and forms part of the Council's records of highways maintainable at public expense. The route under investigation is not shown, indeed once again it appears the route is not marked by any physical feature.



### 14. Category D,E,F

Officers have viewed a number of Ordnance survey maps at a scale of 6 inches to one mile for the area dating from 1889, 1900 and 1925 and the path in question is not depicted on any of those maps. No physical feature can be seen on the route of the application route on those maps. No other records have been found that depict or describe the route.

The historic records viewed give a clear picture that the route in question was not a physical recorded feature until more recent years and no documentary evidence has been found that the route has historic rights.

## 15. Twenty Year Use

15.1. Section 31 of The Highways Act 1980 states: ( see paragraph 9.5 of this report for section 31 in full)

*“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

The term ‘as of right’ is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

15.2. There is no statutory minimum level of users required for the presumption of dedication. The quality of the evidence i.e. its honesty, accuracy, credibility, and consistency are of much greater importance than the number of users.

In *R (Lewis) v Redcar and Cleveland Borough Council* UKSK 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

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

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

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

15.3. The application was submitted claiming the route as a bridleway , to acquire rights as a bridleway through section 31 of The Highways Act the users must demonstrate their use was

in the manner of a bridleway. That being on horseback or by bicycle. If a user only used the way on foot as a pedestrian their use would only satisfy that of a public footpath, not a bridleway. As such the analysis of the user evidence will be tackled in two parts , one to investigate the use claimed in the manner of a footpath and one of any use that would be considered in the manner of a bridleway, that use being on horseback and on a bicycle.

## **16. User Evidence Forms**

16.1 A total of 31 witness forms have now been submitted as evidence. 27 of these were submitted as part of the original application with a further four forms being submitted during the consultation phase.

16.2 It is useful to present the information within the user evidence forms within a table. This can be seen at appendix 1 to this report.

16.3 The table records the information submitted and signed as a statement of truth by the individuals that filled in the forms. It is important to examine this evidence to see if the use claimed satisfies section 31 of the Highways Act.

### **16.4 Clarification Points.**

The table appended documenting the information contained within the 31 UEFs resulted in officers seeking to clarify some points with individuals where some information was unclear.

The following points have been clarified.

16.5 User No.2 Gillian Carter submitted an evidence form which included use dating from 1960 through to 2020 on horse back and on foot. Mrs Carter ticked every box relating to her frequency of use of the route, officers sought to clarify how often she may have used the route on horse or foot at various different time periods. When contacted Mrs Carter could not clarify when or how often she may have used the route in the past 60 years as such her evidence cannot be analysed in a manner that officers can use for the application. Her user evidence form stands as submitted but her evidence will not be included in further detailed analysis of the submitted evidence.

16.6 User No.3 Andy Curtis stated his use was annually to monthly from 1963-2020, further clarification was sought , in particular his use from 2000-2020. Mr Curtis stated on a telephone call to officers that his use could be stated as on horseback as daily 20 years ago, down to weekly 10 years ago and less than weekly, but likely to be every other week in the last few years.

16.7 User No.10 Mrs Brown stated in her form she had permission to use the route from Mr Margesson in the 1970s. Officers sought to clarify how this permission came about and any further details on the permission granted. Mrs Brown stated the permission came via her husband who worked on the farm, she also clarified Mr Margesson has not been the landowner for 30 years or more, as such any permission verbally given by him would have expired with him ceasing to be the owner. Mrs Brown also stated she would like to amend her use of the path and that it had only been on foot not on horse as stated in her user evidence form as she had not ridden for the last 30 years. As such her use stated in her UEF that she used the path weekly on horse from 1973-2020 should now be considered to be only on foot not on horse.

16.8 User No.23 Alex Matthews stated he had permission to use the route from the landowner in 2000. Mr Matthews has clarified that his permission was from Mrs Green who was at the time part owner of the land in conjunction with Mrs Burrell who is a current owner. As such Mr Matthews use post 2000 is considered to be by permission and therefore is not as of right from that time onwards. Mrs Green was part owner with the current owner Mrs Burrell and as such it can be deemed that the permission given may have continued after Mrs Green ceased to be owner as Mrs Burrell continued to be owner. Mr Matthews use is therefore deemed to be by permission from 2000.

16.9 User No.24 Mrs Gordon – Finlayson clarified by phone and email that her use stated as from time to time on her bicycle in her UEF would be on average once or twice a month during the period 1994-2020.

16.10 User No. 31 Mrs Amanda Field clarified by phone that her use was daily between 1993 and 1998 and 2013-2020 while living in the village. She also clarified that her use in the intervening years when not living in the village was occasional as she would return to walk the route when she wanted to enjoy that area of the countryside. She also stated use was never challenged and it was a well-used and known route as the area was open with no barriers.

All of these points that have been clarified are reflected in the following analysis, i.e. Mrs Carter's evidence is not included ,Mrs Browns use on horseback is not included etc.

16.11 The application was submitted claiming the route as a bridleway , to acquire rights as a bridleway through section 31 of The Highways Act the users must demonstrate their use was in the manner of a bridleway. That being on horse back or by bicycle. If a user only used the way on foot as a pedestrian their use would only satisfy that of a public footpath, not a

bridleway. As such the analysis of the user evidence will be tackled in two parts , one to investigate the use claimed in the manner of a footpath and one of any use that would be considered in the manner of a bridleway, that use being on horseback and on a bicycle.

**16.12 The relevant Period.**

The period of 20 years which must be considered is taken as 20 years counted back from the date that the way was first called into question. In this case it is deemed the way was brought into question when this application was submitted as the route has not blocked in any manner and no history of blocking or signage interrupting use has been adduced before the application was submitted. Therefore, the relevant 20 year period to consider will be 2000-2020(April).

**16.13 The Route.**

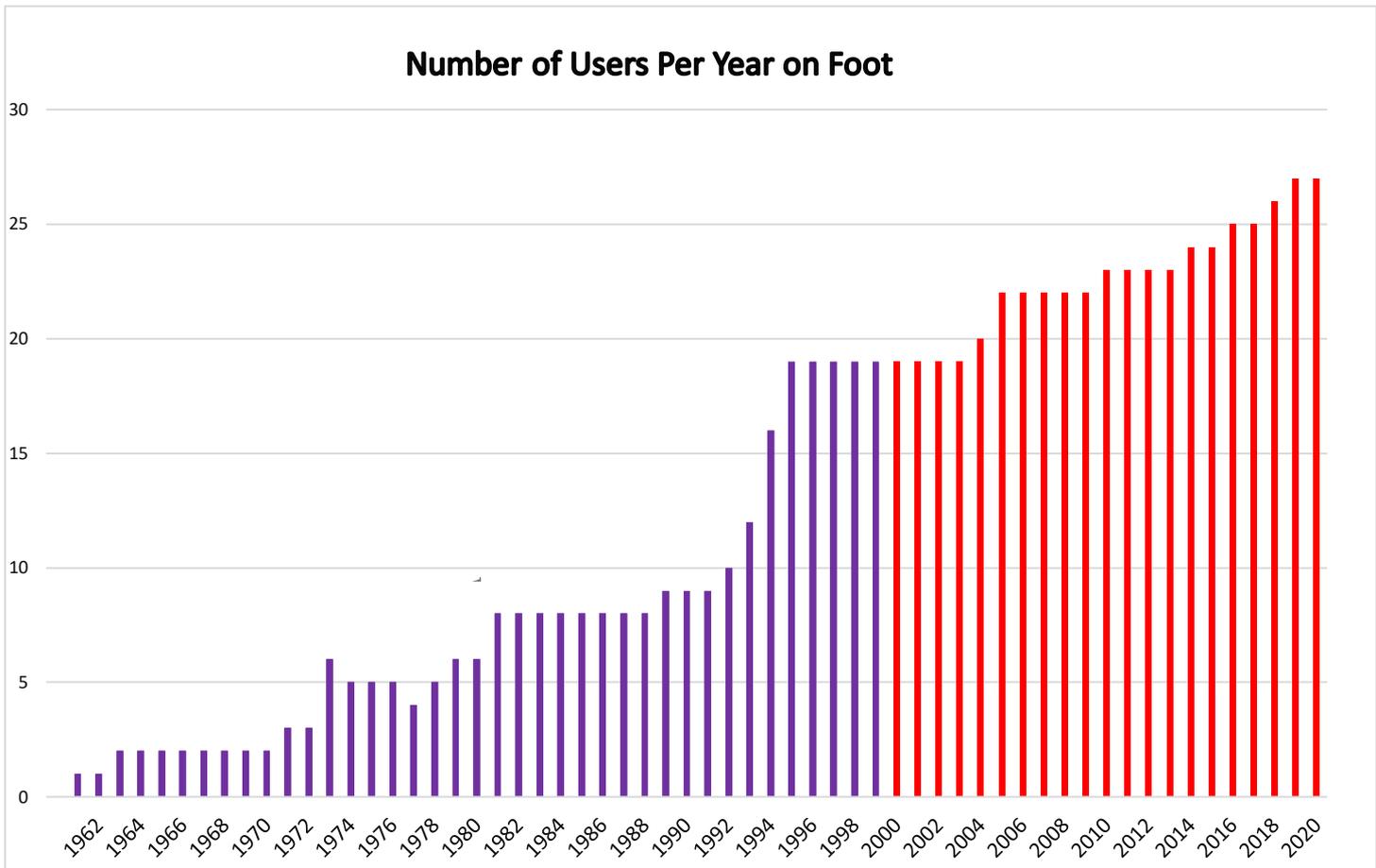
31 users have submitted evidence documenting use of the route applied for. All users claim use of the same route, there is no deviation in any of the maps submitted. It is noted the map was supplied by the applicant to users, but all users have signed the map as the route they used, and many have described the route. The route claimed is shown marked by a red line on the map below.



16.14 The route follows a track , as can be seen in the photos at section 5 of this report. During the investigation some users have stated that the track was created in the late 80s or early 90s and before this date the route used would have been slightly further north along the edge of the gallops. As it appears the track was created in , at the latest the early 90s, the use during the relevant 20 year period , 2000-2020 would have been wholly on the track. As such all of the use documented by the user evidence during the relevant period is over the same defined track.

**16.15 Frequency and Level of Use**

The level of use over the relevant 20 year period is an important factor to consider , while there is no statutory number of users required to satisfy section 31 the use should have been of a manner that represents the public and would have been clear to the landowner a right was being asserted.



16.16 The table above shows the number of users using the route on foot per year as per the evidence submitted. The use documented begins in the early 1960s and slowly but steadily increases through to 2020. The relevant period for this case, which is 2000 to 2020, is represented by red bars on the graph. This relevant period shows use in 2000 was 19 users using the route with that number rising to 27 by 2019. While it is likely others may have been using the route, this is the documented use that has been submitted in user evidence forms and only the evidence produced can be considered.

For context of the level of use that has been documented the population of the parish of Ogbourne St Andrew was 352 in 2001 and 417 in 2011.

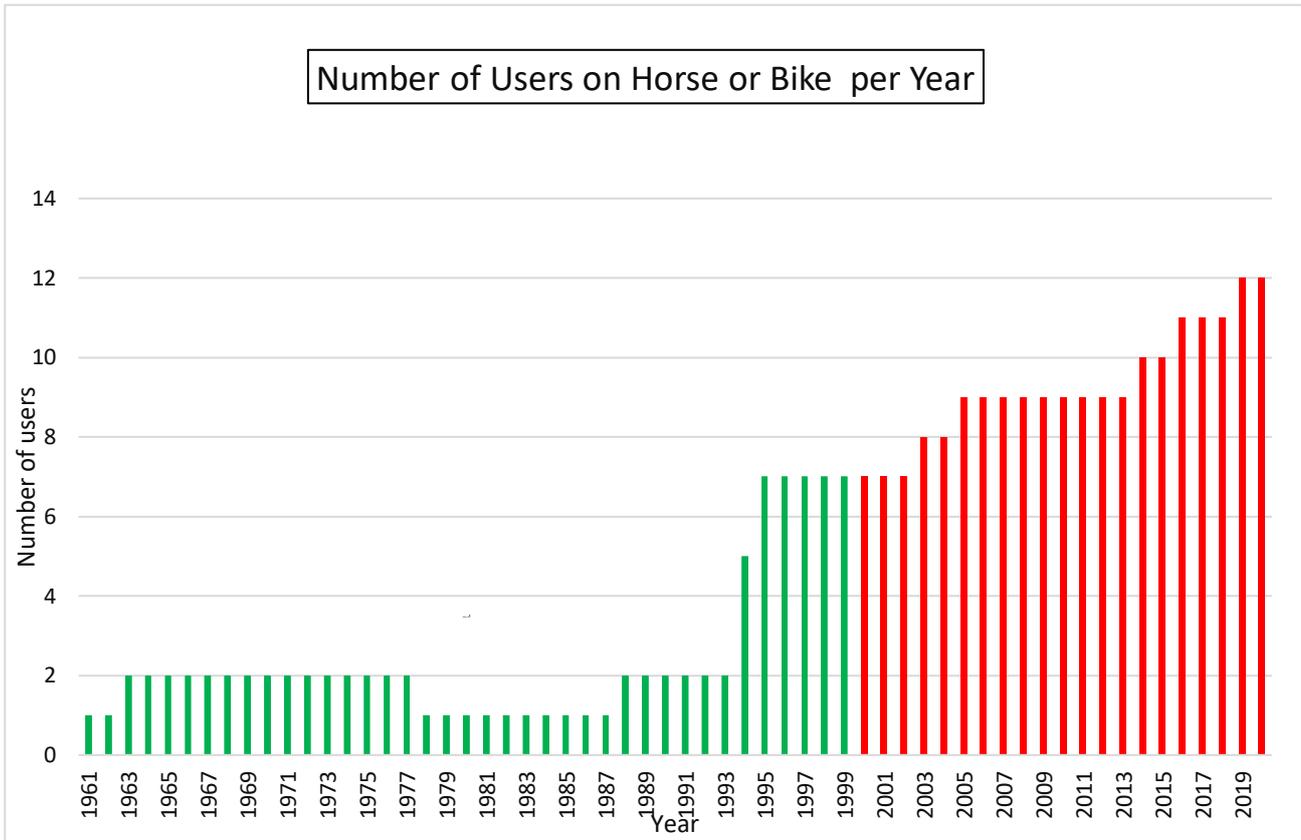
16.17 The frequency of this use must also be considered. In the relevant period between 19 and 27 people are using the route on foot in a manner which is as of right, that being without permission, force or secrecy. Of the 27 people using the route in the period 2000-2020, 23 of them during their period of use are using the route on foot at least weekly for at least part of their years of use. Every year there are multiple users using the route on a weekly basis on foot.

16.18 The level of use is a relevant consideration; the use of the route must be over the whole 20-year period and as the Planning Inspectorate DMMO consistency guidelines state at 5.15 *“Use should have been by a sufficient number of people to show that it was use by ‘the public’ and this may vary from case to case.”*

At 5.20 the guidelines also state in reference to user evidence *“In R(Lewis) v Redcar and Cleveland Borough Council UKSC 11(03 March 2010) Lord Walker said that if the public is to acquire a right by prescription they must bring home to the landowner that a right is being asserted against him.”*

16.19 The level of use recorded on foot demonstrates a consistent use by the public over the route in question for the last 20 years as of right, that is without force, permission or secrecy. The level and frequency of use meets the criteria set out in section 31 of the Highways Act 1980 and a demonstrates that the route has at least public footpath rights over it.

16.20 Use in the manner of a Bridleway



The level of use of the route in the manner of a bridleway will now be examined. The table above demonstrates the number of users per year in the relevant 20 year period using the route in the manner of a bridleway, that is either on horseback or on a bicycle.

16.21 The graph shows the number of users using the route from 1961 through to 2020 either on horseback or on a bicycle. The relevant 20 year period is marked by red bars on the graph. It can be seen that the number of users on horseback or on bicycle is 7 in the year 2000 and that number rises up to 12 in the year 2020.

16.22 The numbers of bridleway users are clearly lower than those on foot, which may be expected as less people in general will own a horse or be able to ride a horse than are able to walk in the countryside. The frequency of use of the users using the route on horseback or on a bicycle must be examined. Referring to the table appended to this report documenting the use claimed by the users, the relevant users who claim use in the manner

of a bridleway are numbers 1,3,4,15,18,19,20,22,24,28,29 and 30. Their frequency of use can be seen in this table which will be examined in more detail.

16.23 The focus of the frequency analysis of the route will be on the relevant 20 year period from 2000 -2020. During this period , beginning in 2000, of those 7 users that are using the route on bicycle or on horseback 5 of them are using the route on at least a weekly basis if not more often. The two other users are using the route monthly or less in 2000. As time progresses in 2003 another user begins to use the route every few months on horseback. In 2005 user No. 20 Mrs Jimenez- Aldridge begins using the route daily on horseback. This level of use of at least 6 users either riding a bicycle or a horse on the route at least weekly if not more often continues through to 2014. In that year another user (user no.30) begins using the route 3 or 4 times a week on a bicycle. Use again increases in 2016 and 2019 with other users beginning to use the route on a bicycle, monthly and 2/3 times a week respectively. By 2020 at least 8 users are documented using the route on at least a weekly basis in the manner of a bridleway, with others using on a less regular basis. It is also noted that a large proportion of the users ( of all types) saw other people using the route on a bicycle or horse back.

16.24 The frequency of the use claimed by these 12 users shows a regular consistent use of the route throughout the 20 year period. With use by multiple users on at least a weekly basis every year. This level of use in a rural area of the county is sufficient to bring home to the landowner that the route was being used and demonstrates public use of the route in the manner of a bridleway.

16.25 Whilst the focus of the analysis of use must be on the relevant 20 year period , the use pre 2000 on foot , bicycle and horse shows use of the route since the 1960s and adds to the reputation of the way as a route used in the area for recreational use over a number of decades.

16.26 At this stage of the process , i.e. the decision to make an order or not, the test is one of whether there is a reasonable allegation that rights subsist over the route subject to this application. From the analysis carried out of the user evidence it demonstrates that there is a reasonable allegation that bridleway rights subsist over the route.

## 17. Objections

17.1. As part of the consultation process the landowners and adjacent landowners were consulted. Emma Lavelle and the landowners Mrs Susannah O'Brien and Divers Trust Limited submitted objections to the application which can be seen at 8.6 through to 8.8 of this report. The objections are considered below.

17.2 Emma Lavelle's objection can be seen at 8.6 and within it she states she is a racehorse trainer who owns land adjacent to the application route. Ms Lavelle's main point of objection are the safety of her staff and horses with the potential increased use of the route if it were to be recorded as a public right of way as it is used as access to the adjacent gallops. She also says there have been other incidents with horses being chased by dogs and cyclists near the gallops. The points raised by Ms Lavelle of safety for her staff and horses and dogs near horses and people not following existing paths cannot be considered when reaching a decision to make an order or not. They can be sympathised with but only the legislation set out in section 31 of the Highways Act can be considered. Ms Lavelle raises nothing in her response to the consultation that demonstrates the route was used in any manner other than as of right by the users who have submitted evidence and she does not demonstrate the owners of the land made any effort to restrict or control use of the route.

17.3 Mrs Susannah O'Brien is a landowner directly affected by the application, her objection to the application can be seen at 8.7 of this report.

Within the objections she raises 4 points , those being there are other routes available, so the application route is unnecessary, the route would be dangerous with it being used by race horses, the way in which the applicant gathered the evidence and crime in the local area.

17.4 The first point raised may be true, there are other recorded rights of way in the vicinity but it can be seen the track subject to the application can offer another link to the other rights of way , creating more options for users, potentially shorter circular routes linking back to the village. It is clear why the track may have been used and that there are other options in the vicinity, ultimately this point of objection cannot be a relevant consideration when making a decision on the application , only the points of section 31 of the Highways Act 1980 can be considered.

17.5 The second point of objection raised safety concerns regarding the route being used and the potential conflict with racing horses , it being in close proximity to the gallops. This has been

41

considered in Emma Lavelle's objections and the same considerations apply here. It can be sympathised with but cannot be a relevant consideration when making a decision.

17.6 The third point of objection raised concerns the way in which the applicant Mrs Carolyn Davis gathered her evidence. Mrs O'Brien has supplied a copy of The Ogbourne St Andrew, Maisey and Rockley Newsletter no.67 in which the application was advertised. In which it is stated " the current landowners are happy for it to be used" Mrs O'Brien states she told Mrs Davis she objected to her application when it was discussed. Mrs O'Brien says this is therefore a misrepresentation and not fair, the implication suggested being that as a result of this people may have supported the order believing the landowners did not object and may have not if they knew the landowners objected. Also a permissive path was offered and rejected. Mrs Davis has clarified by email how she gathered evidence and supplied the following;

17.7 *"For your information, I attach the letter which I send out to people whom I thought might complete user evidence statements.*

*I am about to embark on a project, the details of which are explained in the following article, which is destined for the next Parish Newsletter.*

*I would be grateful if you would be able to complete a "User Evidence Statement" which I will forward to you separately, together with a map indicating said track. The statement must be completed by one person only - but you are encouraged to print more off for other family members to complete - this is certainly a case of the "more the merrier". Please return completed statements to me at Bridleway Cottage, Ogbourne St Andrew.*

*The description of the route for upgrade is " the track of approximately 500 metres in length, leaves Ogbourne St Andrew byway 6 at Drove Barn and links up with Ogbourne St Andrew bridleway 29"*

*Thank you in anticipation of your support.*

*Carol*

#### **PROPOSED UPGRADE OF TRACK TO BRIDLEWAY**

*For many years (at least since the early 1960s and probably before) a large number of us have been using the track which links the Green Lane byway at Drove Barn to the Bridleway which comes up from St Andrew, before heading up alongside the round gallop towards the Horsemans Graveyard.*

*This link that we have been enjoying, is not a right of way, and although the current landowners are happy for it to be used, this may not always be the case.*

*Following the introduction of the Countryside and Rights of Way Act (2000) which determined that any historic footpath or Bridleway in England that existed before 1949 needs to be recorded on the Definitive Map by 2026, or it could be extinguished forever.*

*So conscious of this deadline, I am proposing, on behalf of the Parish Council, to apply for the link between the two existing rights of way, to be upgraded to a Bridleway.*

*I am confident of achieving the upgrade, but in order to substantiate the application, Public Rights of Way User Evidence Statements need to be completed. To this end, I have already started to email this document, together with a map of the area in question, to people whom I know use or have used the link.*

*The plan is to get as many User Evidence Statements completed as possible for me to present to Wiltshire Council along with the application.*

*If you haven't already received a User Evidence Statement for completion, and would like to support my application, please email me - [davisian51@btinternet.com](mailto:davisian51@btinternet.com) and I will forward one to you.*

*Carolyn Davis*

- 17.8 Whilst it may be true some people may have not submitted user evidence forms if they knew the landowners would object we do not know if this is the case. The user evidence forms submitted are statements of truth signed by the individuals and the information within will be analysed as such as a record of the use of the application route, with clarification sought where required.
- 17.9 The fourth point of objection refers to crime and the potential this route being recorded could lead to more crime and people not known to the area using the route. It appears that the route has been being used already for many years and is surrounded by recorded public rights of way, so it would seem unlikely recording this track as a public right of way would directly result in an increase in any crime in the area. This however cannot be a relevant consideration to the making or not of an order.
- 17.10 In a later separate email exchange with Mrs O'Brien she has stated that in reference to the route her "*husband would stop people using it and it was rare to find anyone on it*". A challenge on the route is a relevant consideration as it would demonstrate the owner did not consent to use and was actively trying to disabuse use of the track. None of the users have stated they were ever stopped from using the route and as such it appears any efforts made to deter use was not made clear to the public that was the intention of the owner of the land. Until recently and throughout the relevant 20 year period ( since the application was made a sign and gate have been erected on the route) the submitted evidence shows the route was

43

open and accessible with no signs indicating the way was private or to deter people from using the route.

17.11 All of the points raised in initial response to the consultation by Mrs O'Brien and the later comment regarding her husband stopping people using the route have been considered and discussed above. All of the issues raised except her husband challenging people on the route cannot be relevant considerations when making a decision on this application as only the legislation set out in section 31 of the Highway Act 1980 can be considered. The challenges her husband was making to people using the route is not reflected in the user evidence and appears to have not been communicated to the local users of the route. The numbers of people using the route on foot, bicycle or horseback on a frequent basis every week would indicate it is likely a landowner who was present on the route would have seen people using the route on a regular basis. The points raised in objection demonstrate the use of the route was in a manner as of right and do not demonstrate as a landowner Mrs O'Brien has obstructed or restricted use of the way or communicated to the public she did not intend on dedicating the way as a public right of way. She appears to have acquiesced to the use of the route, that is not to say she was actively encouraging use of the way or intended for it to be a recorded right of way but that she made no efforts to the contrary.

17.12 The third objection received was from Diver Trust Limited who are a directly affected landowner. The 8 bullet points identified in the objection can be summarised as referring to crime in the local area, safety and conflicts between users of the rights of way network and the gallops in the area and that the route is unnecessary due to the other rights of way in the area. These points have been covered in previous objections discussed above in this report. Whilst officers can sympathise with the conflict between the gallops and users including dogs and crime in the area this is not something which can be considered when reaching a decision on this case. Nothing within Divers Trust Limited response demonstrates any action has been taken by the landowner to communicate a non-intention to dedicate the way as a public right of way. It also does demonstrate that the users of the way , as claimed in the user evidence forms, were using the way in any other manner than as of right , in a manner to satisfy section 31.

17.13 Divers Trust have also submitted a landowner evidence form filled in by Catherine Burrell which can be seen at 8.8 of this report. Of note within this form is that Mrs Burrell states she saw people using the route but with permission and that she or someone on her behalf has turned people away from using the route, although no details of this are given as requested by the form. Other than the two users who stated they had permission to use the route ,

neither of whom got permission from any current landowner and not Mrs Burrell , nobody has stated they had permission to use the route. It may be that Mrs Burrell is referring to the race horses / trainers using the route to access the gallops that had permission but there is no further evidence of the general public having or requiring permission to use the route on a walk , cycle or ride. There is also no record within the user evidence of anybody being turned away from using the route during the relevant period.as stated by Mrs Burrell.

17.14. Mrs Susannah O'Brien has also been asked to fill in a landowner evidence form but she has stated she had trouble returning the form, assistance was offered but to date one has not been returned to officers.

17.15 Mrs Elizabeth Wright who submitted a user evidence form has since emailed stating that she now believes the route should remain permissive due to the problems recording the route may cause with illegal use by motor vehicles and that she is now aware the landowner does not support the application. This is noted and an email was sent in response asking if she would no longer like to present her evidence at a possible future public inquiry but no response has been received. As Mrs Wright did not state that her user evidence form was incorrect, just that she no longer supports the application, her evidence of regular use of the way has been included in the analysis.

## **18. Landowner's intention**

18.1. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after uninterrupted public use of a route for a period of 20 years or more in a manner that is "as of right", unless during that period, there can be demonstrated there was no intention on the landowner's part to dedicate the land as a highway during that period. Intention to dedicate was discussed in the Godmanchester case, R ( on the application of Godmanchester Town Council (Appellants) v. Secretary of State for the Environment , Food and Rural Affairs ( Respondent) and one other action R (on the application of Drain) ( Appellant) v. Secretary of State for the Environment, Food and Rural Affairs ( Respondent) and other action [2007] UKHL 28, which is considered the leading authority in this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956: seen at paragraph 20 of the Godmanchester case:

*"...in order for there to be "sufficient evidence there was no intention" to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must*

*in Lord Blackburn's words, take steps to disabuse these persons of any belief that there was a public right..."*

18.2. In the same case, Lord Neuberger of Abbotsbury went further on this point in paragraph 83 of the case:

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

Lord Hoffman went on to say at paragraph 32:

*"I think that upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way would reasonably have understood the owner's intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* (1885), to "disabuse" [him] of the notion that the way was a public highway."*

18.3. Under section 31(6) of the Highways Act 1980, landowners can deposit statements and declarations with the Highway Authority acknowledging public rights of way across their land and stating that, at that time, they have no intention to dedicate any further public rights of way. No record of any deposit made under section 31(6) has been found affecting the land and the landowners do not claim to have made one. Deposits could also be made under the 1932 Rights of Way Act. The deposits made under the 1932 Act have also been checked and no such deposit has been found affecting the land at Ogbourne St Andrew subject to this application. No signs or notices are claimed to have been erected by the landowners during the relevant 20 year period or any time before that to deter use or state that they were not dedicating the way as a right of way. It is noted that a sign has now been erected on the bank next to the track in question stating, "PRIVATE LAND NO PUBLIC RIGHT OF WAY" . This sign appears to have been erected since the application was made and as such is not a relevant consideration. If a sign is erected and torn down a landowner can give notice to the

Highway Authority under section 31(5) of the Highways Act this has occurred, no record of any such notice affecting the land in question has been found or claimed.

18.4 The two landowners have claimed that challenges have been made to people using the route, Mrs Burrell has not provided any further details of these challenges and Mrs O'Brien has stated her husband turned people away. The user evidence records no challenges on the route to the users although one user does state they have heard a previous owner stopped a walker. No physical blockages in terms of signage or obstructions are recorded or evidenced on the route prior to this application. It is noted since the application signage and a field gate have been erected across the route. The landowners have not demonstrated by their actions or lack of an intention to not dedicate the way as a public right of way. One user did gain permission to use the route in 2000, that user has stated he gained permission from Mrs J Green who was part owner of a stable yard at the time. Mr Matthews has stated "*The request came about casually on an occasion when we spoke in her stable yard*". It does not appear to have been an overt action by the then part owner Mrs Green that she was actively ensuring or insisting anyone using the route had permission but that Mr Matthews asked as they were in conversation in the stable yard. No other users have stated they had permission to use the route or were challenged when using the track. The landowners appear to have acquiesced in the use of the track and made any efforts to communicate they had any intention to not dedicate the way as a public right of way was not communicated to the users of the way at large. If the owners wished to do so they had the ability to do so by erecting signage or a gate, as has now erected, depositing a section 31(6) notice or making their efforts of challenge known throughout the small rural community.

## 19. Width

19.1. The evidence has demonstrated that a route not shown on the definitive map and statement should be shown. If an order is made to record this path the route and width of the path has to be considered.

19.2. The 31 users who filled in a UEF were asked the width of the route in the form. The answers given vary from a minimum of 2 metres up to 5 metres. The most common answers were "tractor width" or "farm machinery width" with 8 people stating that or similar. The next most common answer was 3 metres wide with 7 people stating that. Only 7 people state the width was less than 3 metres (1 stated "don't know"). The route follows a constructed track and the route was being used by horses and multiple people the whole of the track will have been

used, as such the width of the track would be an appropriate width to record for the width of the route, which the users answers also reflects.

19.3 Taking into account both the physical track and the answers given by the user evidence forms the recorded width for the right of way will be 3 metres.

## **20. Common Law Dedication**

20.1. Section 5 of the Planning Inspectorate's Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.

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

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

20.2. In this case I do not believe the landowners' actions have expressly dedicated the way as a highway. It could be argued the landowners' lack of objection to use of the path by not taking any action to express their intention not to dedicate way as a highway could lead to there being a case at common law. However, the use by the public is of a level that section 31 will be relied upon for the making of the order.

## **21. Conclusion**

- 21.1 The law requires that any evidence of there being rights not currently recorded on the definitive map and statement must be shown on the balance of probabilities. This means that it is more likely than not that something is shown. To make an order to record public rights the evidence has only to form a reasonable allegation. However, to confirm the order the legal test is stronger i.e. on the balance of probabilities.
- 21.2 As there appears to be no historic documentary evidence the route has had public rights over it in the case fully relies upon section 31 of the Highways Act to establish a public right. The route must have been used over a 20 year period by the public, with permission, secrecy or force. The landowner can defeat such a claim by proving they made their non intention to dedicate the way as a public right of way. This can be achieved in a number of ways, a deposit can be made on land under the Highways Act 1980, section 31(6). Under this section landowners can deposit statements and declarations with the Highway Authority acknowledging public rights of way across their land and stating that, at that time, they have no intention to dedicate any further public rights of way. A landowner may also erect signage to indicate to the public the way is private and not a public right of way. Further to this if this signage is torn down a landowner may give notice to the Highway Authority under section 31(5) of the Highways Act 1980 that that has occurred. A landowner could also willingly obstruct the route to the public or consistently challenge the use of the route by the public.
- 21.3 This application to add a bridleway to the definitive map and statement in the parish of Ogbourne St Andrew has in total 31 user evidence forms from members of the public claiming to use the application route. Examination of these forms has led to some clarifications being sought. The analysis of the evidence in section 16 of this report presents the evidence post the clarifications and is therefore an accurate analysis of the evidence available to officers at this time. A total of up to 26 users on foot and 12 on a bicycle or on horseback are using the path as of right during the relevant 20 year period. The use on foot and on bicycle or horse back has been on a regular basis throughout the 20 year period, 2000-2020, to demonstrate a right was being asserted on the route in question.
- 21.4 The landowners' actions must be considered and if they have taken any steps to disabuse the public that were using the route they were not intending to dedicate the route as a public right of way. In this case no section 31(6) deposit covers the land, no record of any signage on the route is available or has been presented by the landowners (signage has since been erected) and therefore no section 31(5) has been served to Wiltshire Council. Mrs O'Brien has stated her husband challenged people on the route and Mrs Burrell has stated people were challenged on the route. These challenges are not recorded by any of the user

evidence and no other action has been taken that demonstrates the owners had an issue with people using the route. The use of the way increases as the years progress indicating the way was used by at least the local population openly over many years and no evidence of a reputation that use of the way was contentious has been presented.

21.5 In conclusion the landowners have not demonstrated that they communicated to the public their non intention to dedicate the way as a public right of way , which is what must be considered. It may not be the case that the landowners were actively seeking to dedicate the route as a right of way but they have not taken appropriate actions to communicate to the public that were using the route it was not a public right of way. The mechanisms to do so are available to any landowner but in this case they have not been undertaken. .

21.6 The application is for a public bridleway and as such the route must be used in the manner of bridleway to satisfy section 31 to record it as a public bridleway. The level of use on horseback or on a bicycle is lower than on foot but still is at a level , between 8 and 12 users , that for the area is of a sufficient level to demonstrate the route was being used in the manner of a public bridleway. The frequency of the use by those users on horse back or on bicycle , as discussed at section 16.17 , is of a level over the 20 year period to form a reasonable allegation that bridleway rights subsist and as such the way should be recorded as a public bridleway.

21.7 Having considered all the available evidence, officers conclude that that a right for the public on horseback and on bicycle subsists over the land in question and that there is no incontrovertible evidence that such a right does not exist. The evidence submitted in the user evidence forms shows the way was used in a manner that was without permission, force or secrecy by a proportion of the public on foot, horseback and on bicycle. The landowners' have submitted no evidence which demonstrates they communicated to the public they did not intend to dedicate the route as a public right of way. At this time officers believe the evidence demonstrates a reasonable allegation that a bridleway should be recorded on the definitive map and statement. They therefore consider that Wiltshire Council have a duty to make a Definitive Map Modification Order.

21.8 Making an order to record the route as a public bridleway on the definitive map and statement allows, if statutory objections are made to the order and are not withdrawn, for the

order and the evidence to be considered by an independent inspector appointed by the Secretary of State.

## **22. Overview and Scrutiny Engagement**

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

## **23. Safeguarding Considerations**

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

## **24. Public Health Implications**

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

## **25. Environmental Impact of the Proposal**

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

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

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

## **27. Risk Assessment**

27.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety.

- 27.2 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.
- 27.3 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.

## **28. Financial Implications**

- 28.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly is a statutory duty for the Council. The costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
- 28.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are those required by the statutory administrative procedures.
- 28.3. Where a definitive map modification order is made, and objections received which are not withdrawn, the order falls to be determined by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA). An Independent Inspector appointed on behalf of the SoSEFRA will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant). Any decision taken by SoSEFRA is liable to challenge in the High Court, the council would bear no financial burden at this stage as the decision has been made by the SoSEFRA.

## **29. Legal Considerations**

Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the SoSEFRA, who will consider the evidence and may direct the Council to make an order.

If an order is made and objections are received, the procedure is as detailed above in paragraph 28.3.

### 30. **Options Considered**

To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot, on horseback or bicycle subsists or is reasonably alleged to subsist, or
- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, the authority is required to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

30.1. Section 53(3)(b) requires that on the balance of probability a presumption is raised that the public have enjoyed a public right of way over the land for a set period of time. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. This section allows for the consideration of common law and the inclusion of historical evidence and is the more commonly used section.

30.2 In considering the evidence under section 53(3)(c)(i) there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA [2004] EWHC 1450 (Admin)*. Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence.

### **31. Reasons for Proposal**

It is considered that there is sufficient evidence to meet test B to make an order, which is the test being considered by officers at the order making stage. As described in the above paragraph 30.2 that a public right on foot, horseback and bicycle exists over the route in the parish of Ogbourne St Andrew subject of this application and subsequent investigation. The user evidence supplied demonstrated 20 years of uninterrupted use of the route in the relevant period to satisfy section 31 of the Highways Act. This evidence demonstrates bridleway rights should be recorded over the track subject to the application. Officers believe test B has been met as the evidence demonstrates it is reasonable to allege that on the balance of probabilities the existence of a public bridleway over the route subject to this application in the parish of Ogbourne St Andrew.

### **32. Recommendation**

That Wiltshire Council makes a definitive map modification order to record a public bridleway to be known as bridleway Ogbourne St Andrew 38. The bridleway is to be recorded in the parish of Ogbourne St Andrew leading north west and then north east and then north west

from Byway Ogbourne St Andrew 6 (OSTA6) to its junction with bridleway OSTA29 with a recorded width of 3 metres.

Craig Harlow

Definitive Map Officer

2<sup>nd</sup> November 2020

Appendix 1 – User evidence forms table

This page is intentionally left blank

No.	Name	Years of use/ frequency	Type of use	Route used	Width	Obstructions on route	Signs on route pre application	Others seen on route	Challenged on the route	Permission to use the route	Other Comments
1	Carolyn Davis	1961-77 88-20 3 or 4 times a week	Horse and foot	Track created in late 80s, early 90s	Tractor width	no	no	All types of user	no	no	Met owner on route many times
2	Gillian Carter	1960-2020 Varied frequency during years, daily to EFM	Horse and foot	Application route- says always followed same route	2 metres	no	no	Walkers and horse riders	no	no	Owners saw people using it
3	Andy Curtis	1963- 2020 Annually to monthly	Horse and foot	Route followed same route	Tractor width +	no	no	Walkers and horse riders	no	no	Clarified use on horseback was daily in 2000, weekly around 2010 and fortnightly in more recent years
4	Ian Davis	1973-2020 monthly on foot  1994- 2020 Weekly on horse	Horse and foot	Track created in late 80s/90s around gallops	Large tractor	no	no	Walkers, cyclists, horse riders	no	no	Met owners whilst riding the route
5	Elizabeth Turner	1971- 2007  Weekly	On foot	Track created when land changed hands	Farm machinery width	no	no	Walkers, horse riders	no	no	Knew the owners

6	Robert Brown	1968-2020  weekly	On foot (on tractor daily 68-72 when worked for owner)	Same route	Tractor width	no	no	no	no	Between 68 and 72 as worked for owner	
7	Catherine Fuller	2010-2020  Weekly 2010-17/18, occasionally since	On foot	Same route	Vehicle width	no	no	Walkers and horse riders	no	no	
8	John Hetherington	1981-2020 weekly	On foot	Same route	Approx. 5 metres	no	no	Walkers and riders	no	no	Heard was not a prow
9	Janice Hetherington	1981-2020 weekly	On foot	Same route	Approx. 4 metres	no	no	Walkers and riders	no	no	Heard previous owner stopped a walker
10	Mrs Brown	1973-2020  weekly	On foot and horse	Same route	Tractor width	no	no	Walkers and riders	no	Yes from mr margesson in 1970s- not been landowner for many years 30+	During phone convo- not owned horse for 30+ years so use only on foot
11	Michael Strevens	1978-2020  Monthly-6 monthly	On foot	Same route	Varies , mostly 3-4 metres	no	no	Seen walkers		no	Not a row on O.S

12	Lisa Benn	2004-2020 4 times a week	On foot	Same route	12 ft approx	no	no	Walkers,riders , cyclists	no	no	Saw owner when using route
13	Vivian Hooper	2000-2020 weekly	On foot	Same route	Approx. 2m	no	no	walkers	no	no	
14	John Havill	2005-2020 weekly	On foot	Same route	3-5 metres	no	no	walkers	no	no	
15	Cheryl Swan	1994-2020 3 times a week	On foot and horse	Same route	3 metres	no	no	Walkers and riders	no	no	
16	R F Swan	1994-2020 Once a week in early years more frequent since	On foot	Same route	3 metres	no	no	Walkers and riders	no	no	
17	Victoria Barker	2018-2020 2x a week	On foot	Same	Don't know	no	no	Walkers,riders	no	no	
18	Angela Hughes	1995-2020 ¾ x a week in last 10 years , less before.	On foot and on bike	same	2m approx	no	no	Walkers, cyclists	no	no	
19	Steven Poulton	2019-2020 2/3 x a week	Foot and cycle use	same	2 metres	no	no	walkers	no	no	
20	Jacyln Jimenez- Aldridge	2005-2020 daily	On horse and foot	same	12 ft	no	no	yes	no	no	
21	David Hughes	2008-2020 daily	On foot	same	Aprx 2m	no	no	Walkers,riders,cyclists	no	no	

22	Elizabeth Wright	1995-2020 weekly	On foot and horse	same	About 12ft	no	no	Walkers , riders, tractors	no	no	
23	Alex Matthews	1993-2020 Weekly<monthly	On foot and horse	same	2 metres	no	no	yes	no	Permission from landowner in 2000	
24	M.E Gordon-Finlayson	1994-2020 Weekly/fortnightly	On foot-time to time on bike	same	3 metres	no	no	walkers	no	no	Clarified use on bike would have been once or twice a month
25	Ian Gordon-Finlayson	1994-2020 Weekly	On foot	same	3 metres	no	no	walkers	no	no	
26	Jane Fox	1992-2020 Weekly/fortnightly	On foot	same	3 metres	no	no	Walkers,riders	no	no	
27	Bruce Fox	1979-2020 Weekly in summer-fortnightly in winter	On foot	same	Aprx 3 metres	no	no	Walkers, riders	no	no	
28	Alan Woodford	2003-2020 Every few months	On horse	same	12 ft + 4 ft of verge – see form	no	no	Walkers, riders	no	no	
29	Alexandra Hegarty	2016-2020 4+ x a week	On foot weekly and on bike monthly	same	3+ metres	Not until new gate	no	Horse riders/ cyclists	no	no	

30	Michael Pinhorn	2014-2020 ¾ x a week	On foot and bike	same	3 m	no	no	Infrequently on foot	no	no	
31	Amanda Field	93-2020 daily use when living in village	On foot	same	Single track for farm vehicles	no	no	Many , walkers and horse riders	no	no	Lived in village 93-98, 13-20. Use 98-13 was occasional

Valid at time of publication of Decision Report

This page is intentionally left blank

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE MARLBOROUGH AND  
RAMSBURY RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER  
THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL PARISH OF OGBOURNE ST ANDREW PATH NO.38  
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2020**

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

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

The Authority has consulted with every local authority whose area includes the land to which the order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is 11 November 2020
2. The Definitive Map and Statement for the Marlborough and Ramsbury 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 map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Wiltshire Council Parish of Ogbourne St Andrew Path No.38 Definitive Map and Statement Modification Order 2020.

THE COMMON SEAL of  
WILTSHIRE COUNCIL was  
hereunto affixed this 19<sup>th</sup> day  
of November 2020 in the  
presence of:

}  
}  
  
Michael DOOLEY.

ACT 1985  
Team Leader (Legal)



## SCHEDULE

### PART I

#### MODIFICATION OF THE DEFINITIVE MAP

Parish	Path No	Description of bridleway to be added	Modified under Section 53(3) as Specified
Ogbourne St Andrew	38	Length of bridleway as shown by a continuous black line with cross bars at Intervals marked A to B on the plan attached hereto.  Width of 3 metres  Approximate length 440 metres	53(3)(c)(i)

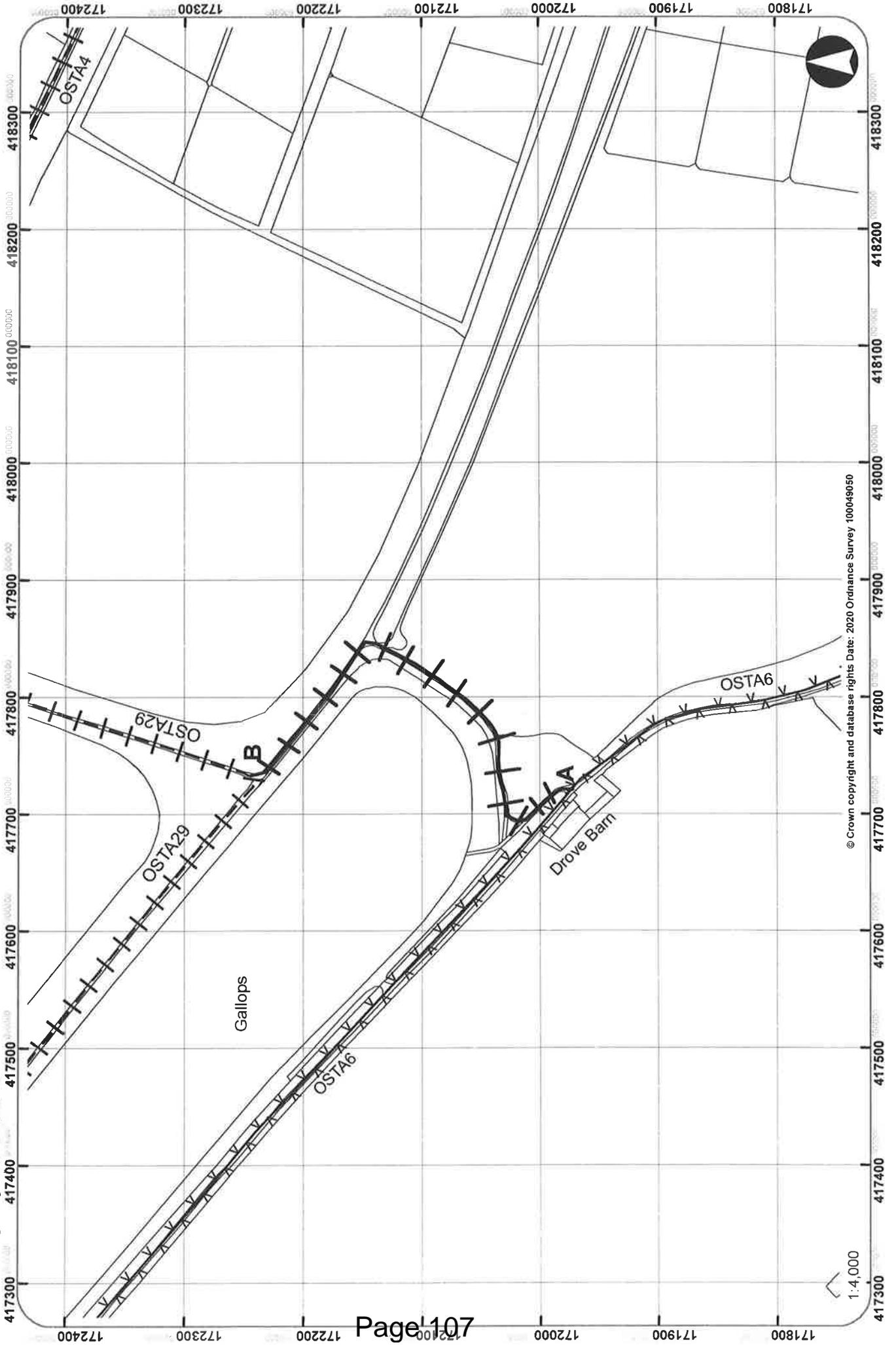
### PART 2

#### MODIFICATION OF THE DEFINITIVE STATEMENT

Parish	Path No	Description of bridleway to be added	Modified under Section 53(3) as specified
Ogbourne St Andrew	38	<u>BRIDLEWAY</u> From Ogbourne St Andrew path no. 6 at SU 1772 7197 leading north west and following the made track before turning east ,north east and then north west to its junction with Ogbourne St Andrew path no. 29 at SU 1773 7224  Width of 3 metres  Approximate length 440 metres	53(3)(c)(i)

**The Wiltshire Council Parish of Ogbourne St Andrew  
 Path no.38 Definitive Map and Statement Modification  
 Order 2020**

**Key:**  
 Bridleway OSTA38 to be added: A ||||| B  
 Unaffected Bridleways : -|-|-|-|-|  
 Unaffected Byway: -v-v-v-v-v-v-v-v-



This page is intentionally left blank

## **Use of Ogbourne St Andrew 38 in the manner of a bridleway as of 28/04/21**

- 9 users of horseback- ( was 11, 2 users withdrawn or use not on horseback)
- 5 users on bicycle – ( 1 now withdrawn)

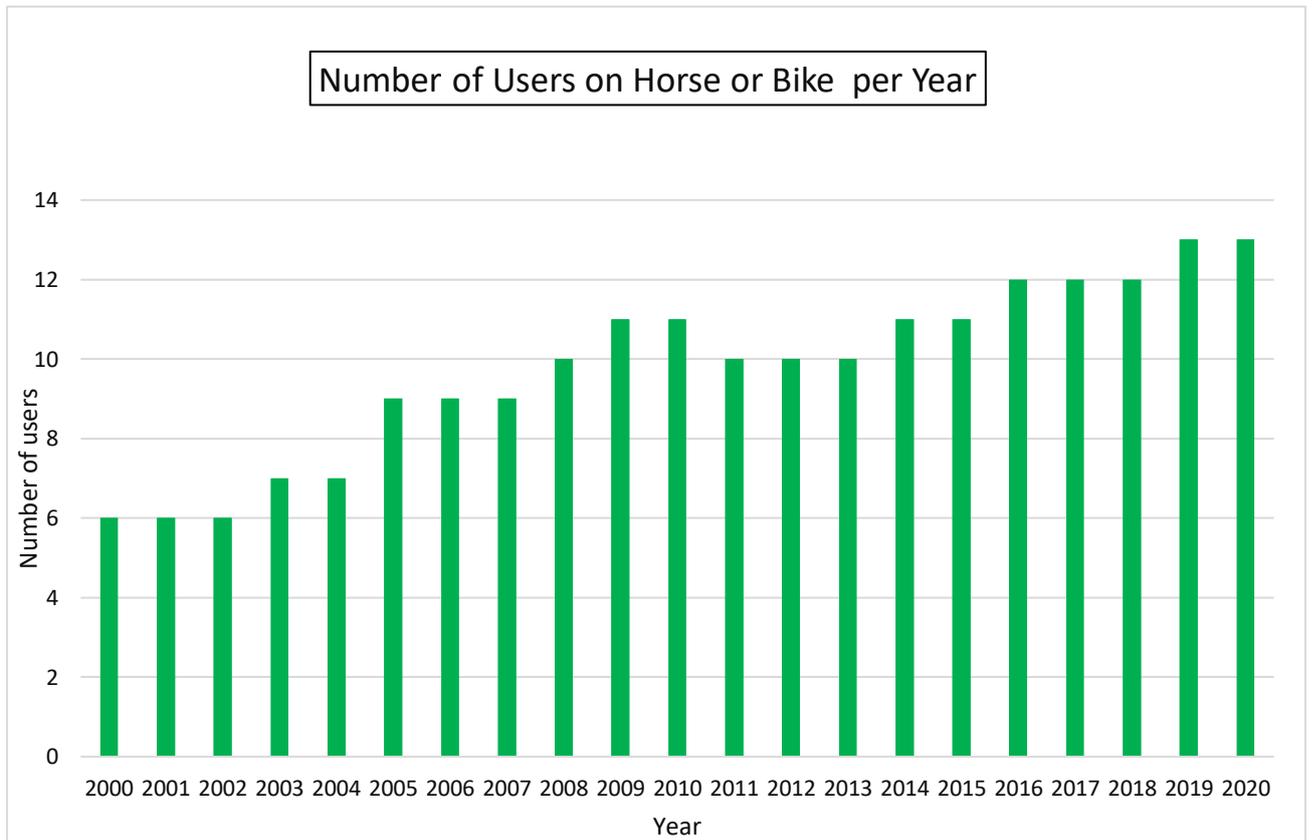
### **Horse riders**

- Carolyn Davis – confirmed use on horseback multiple times a week for 20+ years.
- Ian Davis- confirmed by Mrs Davis , use as form states, use weekly for 20 + years.
- Andy Curtis- clarified use on horseback in the last 20 years was on average daily 20 years ago , down to weekly around 10 years ago and slightly less than weekly in more recent years.
- Mrs Brown- Clarified she has not had a horse for the last 30 years and so her use has only been on foot.
- Mrs Swan- 3x a week on horse for 20+ years. Confirmed in phone call her use is as on her form.
- Gillian Carter- Has withdrawn support for order and cannot clarify her use on horseback or otherwise.
- Jaclyn Jimenez Aldridge- use on horseback up to 3 x a week from 2005-2020. Use daily on foot.
- Elizabeth Wright- clarified use on horse ended in 2010 rather than 2020 as per her form. Use on horseback weekly from 1995-2010.
- Alan Woodford- Use every few months from 2003-2021. Confirmed use is as on his form.
- Kathryn Webb- Use every few months from 2005-2020. ( late submission )
- Kathy Muir- Use every few months from 2009-2020. ( late submission )

### **Bicycle Use**

- Mrs Gordon-Finlayson- Clarified use on bike was once or twice a month from 1994-2021
- Alexandra Hegarty – Confirmed use on bike monthly 2016-2020. Also on foot up to 4x a week.
- David Hughes- Confirmed use on bike couple of times a week in last 5 years and once every couple of weeks before that. Use from 2008-2020.
- Angela Hughes- would like to withdraw user evidence form – use will not be included from this point of the process.
- Steven Poulton – Confirmed use on bike as on his form. 2-3 x a week from 2019-2020.
- Michael Pinhorn- Has not responded to attempts to contact him by email or phone. Use on form states use on bicycle 3-4 x a week from 2014-2020.

**Graph showing number of users per year during the 20 year relevant period in the manner of bridleway.**



The above table shows that after further investigation use of the route in the manner of a bridleway has been in a consistent regular manner by the public in a way that is as of right. The use gradually increases over the 20 year period which is an expected pattern with consistent use , as users move away or pass on the recorded use is expected to be less in the earlier years.