

## AGENDA

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**Meeting:** Southern Area Planning Committee  
**Place:** Alamein Suite - City Hall, Malthouse Lane, Salisbury, SP2 7TU  
**Date:** Thursday 29 March 2012  
**Time:** 6.00 pm

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Please direct any enquiries on this Agenda to Pam Denton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718371 or email [pam.denton@wiltshire.gov.uk](mailto:pam.denton@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)

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### Membership:

Cllr Richard Britton	Cllr Ian McLennan
Cllr Brian Dalton	Cllr Paul Sample
Cllr Christopher Devine	Cllr John Smale
Cllr Jose Green	Cllr Ian West
Cllr Mike Hewitt	Cllr Fred Westmoreland
Cllr George Jeans	

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### Substitutes:

Cllr Ernie Clark	Cllr Christopher Newbury
Cllr Mary Douglas	Cllr Stephen Petty
Cllr Russell Hawker	Cllr Leo Randall
Cllr David Jenkins	Cllr Ricky Rogers
Cllr Bill Moss	Cllr Graham Wright

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# AGENDA

## Part I

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

1. **Apologies for Absence**

2. **Minutes** (*Pages 1 - 16*)

To approve and sign as a correct record the minutes of the meeting held on 26 January 2012 (copy herewith).

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

5. **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

### Statements

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

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

### Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in

particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Thursday 22 March 2012. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6. **Planning Appeals** (*Pages 17 - 18*)

To receive details of completed and pending appeals (copy herewith).

7. **Wildlife and Countryside Act 1981. The Definitive Map and Statement for the Salisbury and Wilton Rural District Area Dated 1953 as Modified Under the Provisions of the Wildlife and Countryside Act 1981. The Wiltshire Council (Sheet SU 13 SW) (Parish Of Salisbury Path 107 - Bridge Mead) Rights of Way Modification Order No. 8 2011** (*Pages 19 - 122*)

To consider the report of the Rights of Way Officer.

8. **Planning Applications**

To consider and determine planning applications in the attached schedule.

2a **S/2012/0043/FULL - Clearway Garage, Firsdawn, Salisbury, SP4 6DT**  
(*Pages 123 - 128*)

2b **S/2012/0160/FULL - 26 Queens Road, Salisbury, SP1 3AJ** (*Pages 129 - 136*)

9. **Urgent Items**

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

10. **Exclusion of the Press and Public**

To consider passing the following resolution:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 11 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the

information outweighs the public interest in disclosing the information to the public.

## **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**

11. **The Old Coach House, East Grimstead** (*Pages 137 - 148*)



## **SOUTHERN AREA PLANNING COMMITTEE**

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**DRAFT MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING  
HELD ON 26 JANUARY 2012 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE  
LANE, SALISBURY, SP2 7TU.**

**Present:**

Cllr Richard Britton, Cllr Brian Dalton, Cllr Christopher Devine, Cllr Mary Douglas,  
Cllr Jose Green (Vice Chairman), Cllr Mike Hewitt, Cllr Ian McLennan, Cllr Ian West  
and Cllr Fred Westmoreland (Chairman)

**Also Present:**

Cllr Tony Deane and Cllr Bridget Wayman

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**9. Apologies for Absence**

Apologies were received from Cllrs George Jeans and Paul Sample

**10. Minutes**

The minutes of the meeting held on 5 January 2012 were presented.

**Resolved:**

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

**11. Declarations of Interest**

Cllr Richard Britton declared a personal interest S/2011/1746 - The Heather, Southampton Road, Alderbury, as the applicant was a friend of a close family member and he had met him on several occasions.

Cllr Jose Green declared a personal interest in S/2011/1734 – Downsway, Brook Street, Fovant as her husband farms in the vicinity and has assisted the landowner on several occasions.

12. **Chairman's Announcements**

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

The Chairman said that a report on the Old Coach House, East Grimstead would be brought to the next meeting.

13. **Public Participation and Councillors' Questions**

The committee noted the rules on public participation.

14. **Planning Appeals**

The committee received details of the following appeal decisions:

S/2011/1206 - 14 Tyndales Meadow, Dinton – delegated - allowed

S/2011/0955 - 37 High Street, Amesbury – delegated - allowed

And forthcoming appeals as follows:

S/2011/1304 - Hazelhead, Robin Hill Lane, Durrington

S/2011/1471 - Co-Op, Salisbury Street, Amesbury

S/2011/1570 - Shergolds, Swallowcliffe

S/2011/1489 - Shawmeare, Coombe Road, Salisbury

S/2011/1378 - 14 Bourne Avenue, Salisbury

15. **Planning Applications**

15a **S/2011/1395 - The Lime Yard, Crockford, Crockford Corner, West Grimstead**

Public participation:

Mr B Pritchard spoke in objection to the application

Mrs L Paramor spoke in objection to the application

Mrs L Bayford spoke in objection to the application

Mr T Allen spoke in support of the application

Mr G Bayford, on behalf of Grimstead Parish Council, spoke in objection to the application

The Planning Officer introduced the report, which was recommended for

approval, and explained that this application was for a change of use. The application had previously been refused and the revised application included a number of technical reports.

During the debate members considered traffic and ecological issues.

It was

## **RESOLVED**

### **That planning permission be refused for the following reasons**

The 1.6 ha application site lies within a remote countryside location characterised by open farmland, woodland and scattered residential properties; the site and its wider surroundings are designated as a Special Landscape Area. Access to the site is via country lanes, which from the east direction are narrow and windy in places, passing residential properties. The site is presently occupied by a single use comprising an agricultural lime yard where lime is imported, processed (including drying and crushing), and exported. The larger part of the existing use is heaped storage of the lime in both un-processed and processed form on both open and covered parts of the site.

The proposal, which is to allow largely unrestricted Class B2 and Class B8 uses on different parts of the site, would, by reason of the un-specified (but potentially significant) scale of the new development, the unknown (but potentially significant) levels of activity associated with the new development (including in terms of traffic generation on the entire surrounding country lane network), the unknown (but potentially significant) effects of other environmental considerations (including visual impact), and the effects on wildlife interests, would have a detrimental impact on both the amenities of the countryside and the amenities of residents within the locality. This is contrary to Policies G2, C2 and C6 of the Salisbury District Local Plan 2003, and the aims and objectives of PPS7.

#### 15b **S/2011/1606 - 8 The Poplars, Barford St. Martin**

Public participation:

Mrs B Kerly spoke in objection to the application

Mrs J Fardell spoke in objection to the application

Mr Adam Wilson spoke in objection to the application

Mr T Allen spoke in support of the application

Mrs S Shepherd, representing Barford St Mary Parish Council, spoke in objection to the application

Cllr B Wayman, local member, spoke in objection to the application

The Planning Officer introduced the report, which was recommended for approval. A debate ensued during which members discussed the issue of the scale of the development, the size of the plot and the impact on the adjoining property.

It was

## **RESOLVED**

**That planning permission be APPROVED for the following reasons:**

The proposal is considered to have satisfactorily mitigated the concerns with the previous refused application S/2010/1903/FULL dismissed at appeal ref No: APP/Y3940/A/1/2151382 on 23<sup>rd</sup> August 2011, in that it is a fundamentally different proposal with a form, design scale orientation and position on the site, that is not considered likely to adversely affect visual and residential amenity of this site within the wider AONB or, highways safety. As such the proposal is considered to generally accord with the saved policies G1, G2, C5, D2, H16, R2, TR11, TR14 of the adopted Salisbury District Local Plan, to the policies within 'appendix C of the South Wiltshire Core Strategy and to the advice contained within PPS 1 and 3.

**Subject to the following conditions:**

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

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. AS amended by section 51 (1) of the Planning and Compulsory Purchase Act 2004

- 2 This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Planning Design & Access Statement received 21/10/11  
Additional Letter dated 8<sup>th</sup> December 2011, received on 08/12/11  
Drawing ref.no. Absm/p/10, Plans As Proposed  
Drawing ref.no. Location Plan received on  
Drawing ref.no. Absm/p/01, Block Plan and Sections As Existing, received on 26/10/11  
Drawing ref.no. Absm/p/11, Block Plan and Sections As Proposed, received on 26/10/11

REASON: For the avoidance of doubt.

3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

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

POLICY- G2 General criteria.

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

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

POLICY- G2 General criteria.

5 No development shall commence on site until details of the design, external appearance and decorative finish of all, fences, gates, walls, and other means of enclosure have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first occupied.

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

POLICY- G2 General criteria.

Cllr B Dalton asked that his vote in dissention be recorded.

Informative:

This permission does not allow removal of any part of the chimney other than internal sections within no. 8 The Poplars as indicated in the application particulars. The external sections of the chimney projecting above the planes of the roof are to be retained as indicated in the application

particulars.

15c **S/2011/1734 - Downsway, Brook Street, Fovant**

Public participation:

Mr M Lyons spoke in support of the application

Mr N Knowles, on behalf of Fovant parish Council, spoke in objection to the application

The Planning Officer introduced the report. Members had attended a site visit prior to the meeting. During the debate the issues of the condition of the byway and working hours were discussed. As a separate matter unrelated to the planning application the Committee requested that the poor condition of the byway be brought to the attention of the relevant WC Highways Officer.

It was

**RESOLVED**

**That planning permission be GRANTED for the following reason:**

Subject to the land owner entering into an appropriate legal agreement with Wiltshire Council to make the relevant financial contributions in respect of affordable housing provision (SWCS Core Policy 3) and recreational open space (saved policy R2), it is recommended the application be approved, for the following reason:

The proposed development accords with the provisions of the Development Plan, and in particular Policies G1 & G2 (General Criteria for Development), D2 (Design), H16 (Housing Policy), C5 (Landscape Conservation), C12 (Protected Species) & R2 (Recreational Open Space) of the saved policies of the adopted Salisbury District Local Plan (including the saved policies listed in Appendix C, of the draft South Wiltshire Core Strategy) and the advice contained within PPS3 and PPS9 insofar as the proposed development is considered acceptable in principle and compatible in terms of the siting, scale, design, materials and character of the immediate and wider surrounding area. The proposed development would not unduly affect the amenity of neighbours, and would not adversely affect the natural beauty of the surrounding AONB. The proposal would not be prejudicial to Highway safety and would not have an adverse impact on nature conservation interests.

**Subject to the following conditions:-**

1. The development hereby permitted shall be begun before the

expiration of three years from the date of this permission.

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

2. This development shall be in accordance with the submitted drawing[s] deposited with the Local Planning Authority on 09.11.2011 & 14.11.2011, unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt

3. No development shall commence on site until details of the external materials to be used for the walls and roof(s) on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

POLICY: D2, C5

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E (inclusive) shall take place on the dwellinghouses hereby permitted or within their curtilage.

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

POLICY: G2, D2, C5

5. The access to each plot shall have a minimum width of 3 metres, shall be constructed 4.5m back from the carriageway edge and their sides shall be splayed outwards at an angle of 45 degrees towards the carriageway edge. Any gates shall be set back 4.5 metres from the edge of the carriageway, such gates to open away from the highway only.

REASON: In the interests of highway safety.

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

REASON: In the interests of highway safety.

7. No construction or demolition works shall take place on Sundays or public holidays or outside the hours of 8.00am to 6.00pm weekdays and 8.00am to 1.00pm Saturdays.

REASON: To safeguard the amenities of neighbouring properties.

Policy: G2

8. No burning of waste shall take place on site during the demolition and construction phase of the development.

Reason: In the interests of the amenity of neighbours

Policy: G2

9. The development hereby approved shall be completed in accordance with the recommendations given in sections 5, 6(iv) and 6(v) of the Bat Survey report (David leach Ecological Surveys, October 2011). The bat roosts and their access points will be maintained solely for use by bats for the lifetime of the development.

Reason: To mitigate against the potential impact(s) of the proposed development on protected species (bats).

Policy: C12, PPS9

10. Further details of the size of the roof void which is to be made available for occupation/use by brown long-eared bats within the new garages shall be submitted to, and approved in writing by the local planning authority prior to the commencement of development. Development shall be carried out in accordance with the details thereby approved.

Reason: To mitigate against the potential impact(s) of the proposed development on protected species (bats).

Policy: C12, PPS9



11. Prior to commencement of the development hereby approved a scheme for the treatment of the side boundaries of the site shall be submitted to the local planning authority for approval in writing. The scheme shall be implemented as approved prior to the first occupation of either of the two approved dwellings.

REASON: To safeguard the amenities of neighbouring properties.

15d **S/2011/1746 - The Heather, Southampton Road, Alderbury**

Public participation:

Mr J Hubbard, on behalf of Alderbury Parish Council, spoke in objection to the application

The Planning Officer introduced the report which was recommended for approval. Members noted that this was in outline with only the layout of the site and access to be determined.

During the debate issues of inappropriate backland development and inadequacy of the access were discussed.

It was

**RESOLVED**

**That the application be refused for the following reasons**

The proposal, by reason of the awkward shape of the plot and the awkward relationship between the siting of the proposed dwelling and established development, would result in a cramped and contrived development which would detract from the character and appearance of the surroundings. In particular, the plot has an uncharacteristically small front garden in relation to established development, and the gap between the proposed dwelling and the neighbouring property, 'Out of the Way', is uncharacteristically small. Consequently the proposal comprises an inappropriate form of backland development. This is contrary to saved Policies G2, D2 and H16 of the Salisbury District Local Plan and Central Government planning guidance set out in Planning Policy Statement no. 3.

15e **S/2011/1782 - Boot Inn, High Street, Tisbury**

Public participation:

Mr Fairweather spoke in objection to the application  
Mrs G Knight spoke in objection to the application  
Mr R Norgan spoke in support of the application  
Mr R Hill spoke in support of the application  
Cllr T Deane addressed the committee and highlighted issues that he felt that they should take into account.

The Planning Officer introduced the report which was recommended for approval. A debate ensued during which issues such as access, backland development, and the character of the area were discussed.

It was

## **RESOLVED**

**That planning permission be: GRANTED for the following reason:**

The proposed 4 bed dwelling and creation of new access is considered to be acceptable in terms of principle, impact on amenities, scale and design for the reasons outlined above and as such is in accordance with the provisions of the Development Plan, and in particular Policies G2, D3, H16, CN5, CN8, CN21, C4, R2, of the adopted Salisbury District Local Plan as included in the saved policies listed in Appendix C, of the draft South Wiltshire Core Strategy.

**And subject to the following conditions:**

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

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

2. No development shall commence on site until a sample wall panel including pointing, not less than 1 metre square, has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

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

POLICY- G2

3. Notwithstanding the provisions of the Town and Country Planning

(General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-H shall take place on the dwellinghouse(s) hereby permitted or within their curtilage.

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

POLICY- G2

4. No development shall commence on site until details of the clay tiles to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

POLICY- G2

5. No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans (Ref: 1554/23B). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

POLICY: G2

6. This development shall be in accordance with the submitted drawing[s] 1554/24, 1554/23B, 1554/22A, 1554/21A, 1554/20A, Design & Access Statement, Historic Site Assessment, Archaeological Evaluation, Arboricultural Survey deposited with the Local Planning Authority on 15/11/11, unless otherwise agreed in writing by the Local Planning Authority.

REASON: For the avoidance of doubt.

15f **S/2011/1790 - Bowles Barn and Yard, The Portway, Winterbourne Gunner**

Public participation:

Mr D Baker, on behalf of Winterbourne Parish Council, spoke in support of the application

The Planning Officer introduced the report which was recommended for refusal. During the debate members discussed the issues of development outside the housing policy boundary and the merits of saving the existing barn.

It was

**RESOLVED**

**That planning permission be REFUSED for the following reasons:**

1. The site lies outside the housing policy boundary, and is not considered to be previously developed land, due to its agricultural use. The guidance in PPS7 (para 10) requires special justification for planning permission to be granted for isolated new houses in the countryside. Whilst the building is identified as being of some historical interest, substantial reconstruction of the existing building is required together with a large single storey extension to enable the conversion to residential use. The building is not considered to be sufficiently important to provide the special justification required by PPS7 to support conversion to full residential use. The development would therefore be contrary to the guidance in PPS3, PPS4, PPS5, PPS7 and the adopted policies C22, H23, H26 and H27 and contrary to the saved policies, C22, H23, H26 and H27, listed in Appendix C of the draft South Wiltshire Core Strategy.
2. The proposed residential development is considered by the Local Planning Authority to be contrary to Policy R2 of the Adopted Replacement Salisbury District Local Plan and contrary to Core Policy 3 of the draft South Wiltshire Core Strategy as appropriate provision towards public recreational open space and affordable housing has not been made.

**Informative:** It should be noted that the reason given above relating to Core Strategy Policy 3 of the Draft Core South Wiltshire Strategy and Policy R2 of the Adopted Replacement Salisbury District Local Plan could be overcome if all the relevant parties agree to enter into a Section 106 legal agreement, or if appropriate by condition, in accordance with the standard requirement for recreational public open space.

15g **S/2011/1791 - Access to Bowles Cottage and Winterbourne Cricket Field, The Portway, Winterbourne Gunner**

Public Participation:

Mr D Baker, on behalf of Winterbourne Parish Council, spoke in support of the application

The Planning Officer introduced the report which was recommended for approval. The application was to create a new vehicular access for Bowles Cottage, the cricket ground and the surrounding agricultural land.

It was

**RESOLVED**

**Planning Permission be GRANTED for the following reason**

The proposed development will not cause any significant demonstrable harm to the character and appearance of the area and will improve highway safety it is therefore considered to be in accordance with the aims and objectives of Saved Policies G1, G2, C2, C6, TR11 and TR15 of The Salisbury District Local Plan (adopted June 2003) and also in accordance with the saved policies, G1, G2, C2, C6, TR11 and TR15 listed in Appendix C of the draft South Wiltshire Core Strategy.

**Subject to the following conditions**

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

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

2 This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Drawing ref. no W1198 PO6 Rev D received on 10 January 2012  
Drawing ref. Cross section of track received on 23 November 2011

REASON For the avoidance of doubt

3 The access shall not be first brought into use until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 1m above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety

POLICY G2 General criteria for development

4 No work shall commence on site until details of the proposed fence positioned along the sight line with the hedge planted behind the fence have been submitted to and approved in writing by the Local Planning Authority. The access shall not be brought into use until the fence has been positioned in accordance with the approved details.

REASON: In the interests of highway safety

POLICY G2 General criteria for development

5. The existing vehicular access shall be stopped up and its use permanently abandoned concurrently with the provision of the new access hereby approved being first brought into use.

REASON: In the interests of highway safety

POLICY G2 General criteria for development

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

REASON: In the interests of highway safety

POLICY G2 General criteria for development

## 16. **Urgent Items**

The committee agreed to a site visit being held for The Granary, Milford Mill should the application come to committee.

(Duration of meeting: 6.00 - 10.10 pm)

The Officer who has produced these minutes is Pam Denton, of Democratic Services,  
direct line (01225) 718371, e-mail [pam.denton@wiltshire.gov.uk](mailto:pam.denton@wiltshire.gov.uk)

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

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## APPEALS

### Appeal Decisions

Application Number	Site	Appeal Type	Application Delegated/ Committee	Appeal Decision	Overturn	Costs
S/2011/1489	Shawmere Coombe Road Harnham	WR (Trees)	Delegated	Dismissed	No	No
S/2011/1287	Crockford, West Grimstead	WR	Delegated	Dismissed	No	No
S/2011/1378	14 Bourne Avenue Salisbury	WR	Delegated	Dismissed	No	No
S/2011/1304	Hazelhead, Robin Hill Lane, Durrington	HH	Delegated	Part Allow/ Dismiss	No	No
S/2011/0866	Shergolds Swallowcliffe	WR	Delegated	WR	No	No
S/2011/0728	Mawarden Court Stratford Road StratfordSubCastle	WR	Delegated	Dismissed	No	No
S/2011/0868	Earl of Normanton Pub, Tidworth Road Idmiston	WR	Delegated	Dismissed	No	No

### New Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee		Overturn	Costs Applied for?
S/2011/1395	The Lime Yards, West Grimstead	WR	Committee		Yes	No
S/2011/0900	BridgeWoodland BritmoreLane, GutchCommon	WR	Committee		Yes	
S/2011/1790	BowlesBarn & Yard The Portway Winterbourne Gunner	WR	Committee		No	No
S/2011/1412	Evergreen ShepherdsClose Odstock	WR	Delegated		No	No
S/2011/1280	Court Hay, Lower Road, Charlton-All-Saints	HH	Committee		Yes	No
S/2011/1456	Co-op, Bulford Road, Durrington	WR	Delegated		No	No

**WR** Written Representations  
**HH** Fastrack Householder Appeal  
**H** Hearing  
**LI** Local Inquiry  
**ENF** Enforcement Appeal

**19<sup>th</sup> March 2012**

Wiltshire Council

Southern Area Planning Committee

29 March 2012

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## WILDLIFE AND COUNTRYSIDE ACT 1981

### THE DEFINITIVE MAP AND STATEMENT FOR THE SALISBURY AND WILTON RURAL DISTRICT AREA DATED 1953 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981

### THE WILTSHIRE COUNCIL (SHEET SU 13 SW) (PARISH OF SALISBURY PATH 107 – BRIDGE MEAD) RIGHTS OF WAY MODIFICATION ORDER NO. 8 2011

#### Purpose of Report

1. To:
  - (i) Consider the evidence and nine duly made objections relating to the above Order to add a public right of way on foot to the Definitive Map and Statement at Stratford-sub-Castle, Salisbury.
  - (ii) Recommend that the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs and that Wiltshire Council takes a neutral stance.

#### Description of the Route

2. The Order is attached to this report at **Appendix 1** and contains a map showing the claimed route.
3. The route leads across a field beside the River Avon linking the Avon Valley Nature Reserve with Salisbury Footpath Number 11 at Stratford-sub-Castle.

#### Background

4. On 19 June 2011 Wiltshire Council received an application from a member of the public for an Order to modify the Definitive Map and Statement by recording a footpath linking the Avon Valley Nature Reserve with Salisbury Footpath Number 11 at Stratford-sub-Castle. The application was supported by 99 User Evidence Forms (UEFs), maps, some photographs, hand written letters and an excerpt from a newspaper.
5. The Council has a duty to investigate this evidence and to make an Order if, on the balance of probability it is either reasonably alleged, or shown, that public rights subsist over the ways. Pursuant to this duty, consultations and investigations were carried out between July and the end of October 2011.

6. A considerable amount of correspondence was received, both in support of, and in objection to, the application.
7. Officers considered all of the evidence available and on 11 November 2011 a decision was made to make an Order. The Decision Report is appended here at **Appendix 2**.
8. The Order was made on the basis that it is reasonably alleged that Section 31 of the Highways Act 1980 applies. Broadly, this gives that where a right of way has been used without interruption by the public 'as of right' for a period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate, then public rights are deemed to have been dedicated. 'As of right' means without force, without permission and without secrecy.
9. In deciding to make the Order the Council was bound by the case of R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P and CR 402 which gives that the Council must apply one of two tests.  
  
Test A: Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no evidence to the contrary.  
  
Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? This requires that the allegation of public rights is reasonable and that there is no incontrovertible evidence to the contrary.
10. Test B is the weaker of the two tests and was applied to make this Order.
11. The Order has been advertised in accordance with the regulations and nine objections to it have been received.
12. The Order must now be forwarded to the Secretary of State for determination. The test for confirmation of the Order that will be applied by The Secretary of State will be Test A, i.e. that on the balance of probabilities a right of way subsists.

### **The Evidence in Support**

13. Of the 99 members of the public who submitted UEFs a number had not used the application route across the field but had instead walked alongside the river. This practice was prevented in 2007 by the sale of the riverside to Salisbury and District Angling Club and the riverside is now protected by fencing and locked gates. 92 members of the public claimed to have used the application route for varying periods of time.
14. The 20 year window to be considered for the application of Section 31 of the Highways Act was taken to be between 1977 and 1997. In 1997 a Deposit and Statutory Declaration was made by the then landowner under Section 31(6) of the 1980 Act and this was taken as incontrovertible evidence defeating the acquisition of public rights under Section 31(1) of the 1980 Act at that time. The deposit was valid for six years (i.e. 1997 to 2003) and provides an interruption to use for the purposes of the Act though the applicant and witnesses were unaware that the deposit had been made. As a result, it is necessary to discount some of the witness evidence submitted as it outside of the relevant period (1997 to 2011).

15. When the period 1977 to 1997 is considered, there remain 40 members of the public who submitted UEFs covering the full 20 years, 41 who used the route for some of that time and two who used the route before this period. Of the 40 who submitted UEFs for the full 20 years three of these state they only used the riverside route until 2007.
16. In summary, for the years 1977 to 1997 37 people used the route for the full period and 41 for part of this period.
17. Of these 78 people only one recorded that they knew of any challenge (had been “told that fishermen had” challenged) during that period. However, 18 of the 78 recorded that they had been challenged by the new landowner in the spring of 2011. It was this challenge that brought about the application for an Order in June 2011.
18. 73 of these 78 members of the public thought that the landowner was aware of their use.
19. Members of the public reported accessing the route by a number of means which included over stiles, over gates, through open gates and by climbing between bridge rails. No-one reported needing to use any force or secrecy.
20. Members of the public reported signs at the entrances to the route in the mid to late 2000s. These signs made it clear that permission to use the route could be withdrawn and were erected by the then landowner at Parsonage Farm, Mr Warren Armstrong. The signs were maintained and remained in place between the period 2004 to 2011.
21. Before this time, evidence has been given that some signs were in place at the entrances to the field but that these had said “beware of the bull” or had been a request to use an alternative route when cattle were grazing in the field.
22. All users report seeing other users on the path.
23. The UEFs are summarised at **Appendix 2(A)** and present at least a reasonable allegation that public rights have been acquired.

### **The Evidence Against the Order**

24. Prior to making the Order evidence was adduced by the current landowner, previous landowners, a tenant of the field and some local residents. This evidence is amongst that considered at **Appendix 2 pages 22 to 27**.
25. Nothing in this evidence was considered incontrovertible (i.e. not able to be denied or disputed) and capable of defeating Test B referred to at paragraph 9 above, hence, the Order was made.
26. The Order was advertised from 8 December 2011 to 23 January 2012 and attracted nine duly made objections and one objection which was delivered to the Council outside of the statutory period.

27. The submissions of the objectors are summarised and commented on below. The late objection is included (number 10) but it is noted that this is not a duly made objection and may be treated differently to the other 9 by the Secretary of State.

No and Name	Nature of Objection	Officer's Comment
<p>1. Mrs M Douglas Wiltshire Councillor Salisbury St Francis and Stratford</p>	<p>Concerned about contradictions in the evidence, especially:</p> <p>(i) Frequency with which gate at southern end was open, shut or locked and appearance and use of stile at this location.</p> <p>(ii) Means by which public accessed the northern end.</p> <p>(iii) Presence of signs.</p> <p>(iv) Issue of challenge.</p> <p>Requests that order is determined by the Secretary of State.</p>	<p>It is agreed that there are contradictions in the evidence which would be best given verbally at Public Inquiry and subject to cross-examination. The case has an unusually high level of evidence from both sides over a long period of time, parts of the land have had four owners since the 1970s and there have been changes to gating, fencing and grazing arrangements during this time. Differing memories of events is an inevitable consequence.</p> <p>Having received objections the Order must be forwarded to, and determined by, the Secretary of State.</p>
<p>2. Mr D Amey  Local resident and conservation volunteer</p>	<p>(i) Considers that the large number of witnesses is owed to "social networking" and notices.</p> <p>(ii) Users do not want a footpath but a field to exercise dogs in.</p> <p>(iii) Has seen fences cut by people to allow more convenient access to the field.</p> <p>(iv) Notices can be put up to control behaviour but he is a volunteer for Avon Valley Nature Reserve (and has known the area for nearly 70 years) and knows from experience that people will not obey notices.</p> <p>(v) This water meadow is a valuable habitat that should be protected.</p>	<p>(i) It is irrelevant how applicants contact users. It is the quality of the evidence submitted by them that is important.</p> <p>(ii) Need or desirability are not factors the Council may consider. It may only consider evidence of past use.</p> <p>(iii) The use of force is an important issue to consider and could defeat the application. In a site meeting with Mr Amey he pointed out where the fence had been cut and reported it but this was not on the Order route.</p> <p>(iv) Controlling behaviour is not something the Council may consider at this stage; it may only consider whether use has been 'as of right'.</p> <p>(v) This is not something that may be considered in determining whether public rights have been acquired or not though if recorded the Council would need to consider biodiversity in any management of the way.</p>

No and Name	Nature of Objection	Officer's Comment
<p>3A. Ms M Auchterlonie Landowner April 2011 to date</p> <p>FIRST SUBMISSION 21 December 2012</p>	<p>(i) There is insufficient evidence to show that a right of way subsists.</p> <p>(ii) There was never any intention to dedicate a public right of way.</p> <p>(iii) There has not been interrupted use of the path for a continuous period of 20 years.</p> <p>(iv) <b>NOTICES AND OBSTRUCTION</b> On 6 May 2011 the southern gate was closed and locked and 'Private No Access' signs erected, also placed at other access points.</p> <p>There were clear notices placed around the boundary of the land from 2004 to April 2011.</p> <p>There were notices put up on gates between 1999 and 2007 stating that the public should use the nearby footpath especially when cattle were in the field.</p>	<p>(i) There are no sufficiency guidelines just that the balance of probability must weigh in favour of the public rights. The quality of the evidence is important and this is best tested under cross-examination.</p> <p>(ii) S.31(1) does not require an intention to dedicate (though this is required under common law). S.31(1) requires evidence of intention <b>not</b> to dedicate (see <b>Appendix 2 paragraph 8.7</b> quote from Lord Hoffman in the Supreme Court). If a landowner does little or nothing then dedication may be deemed to have occurred.</p> <p>(iii) There needs to generally be uninterrupted use of the path for 20 years (Foot and Mouth closures exempt) and UEF's claim that this is so. However, there is also evidence that states that the gate was locked to prevent cattle straying. Users claim to have climbed the gate when this occurred.</p> <p>(iv) Agreed. This formed a clear and effective challenge directly leading to the application for an Order. Public use prevented.</p> <p>Agreed. These notices stated that the way was permissive and that this could be withdrawn. Public use continued.</p> <p>Notices were erected by Mr Hounslow who had the grazing licence but there is no evidence of maintenance of these signs or exactly what they said. To be effective for the purposes of S.31(3) of the 1980 Act the notices must be clear that there is no intention to dedicate to the public.</p>

No and Name	Nature of Objection	Officer's Comment
<p>3A. M Auchterlonie (continued)</p>	<p>There was a statutory declaration, deposit and map made for the area affected in 1997. It was deposited with Wiltshire Council.</p> <p>(v) <b>ACCESSES</b> Until 1999 there was only a perimeter stock proof fence around the field with gates not going in at either end until at least the early 1990s.</p> <p>(vi) <b>USE OF FORCE</b> There is significant evidence of the use of force from the early 1990s including signs being removed, people climbing over fences and gates, access through railings and fences being cut with wire cutters or broken down.</p> <p>(vii) <b>INTERRUPTION</b> The field is a water meadow and was flooded every year until the 1960s.</p>	<p>This deposit, plan and declaration were made with Salisbury District Council and subsequently accepted by Wiltshire County Council under s.31(6) of the 1980 Act and form an effective interruption to public use for the years 1997 to 2003.</p> <p>The aerial photograph taken on 2 August 1981 and appended here at <b>Appendix 3</b> shows a riverside track leading north alongside the river to the southern gate of the field. It is considered probable that this track led to an access point and was not just a 'dead end'.</p> <p>Access at the Stratford-sub-Castle end has been through the bridge rails in some instances and this has been possible since at least the 1970s.</p> <p>Evidence of the use of force is relevant evidence to consider. There is a range of users (young, old, male, female, with or without dogs) and none claim to have used force. However, the current landowner has submitted a list of events using force including eight reported crimes that have occurred since May 2011. This date coincides with the prevention of public access to the site. Only one earlier incident of wire cutting has been given (by Mr D Amey) but this was not on the Order route.</p> <p>There is very little evidence of use for this period, possibly as a result of this activity.</p>



No and Name	Nature of Objection	Officer's Comment
<p>3A. M Auchterlonie (continued)</p>	<p>(viii) <b>MAPS and PLANS</b> Aerial photographs show remains of water meadow feeder streams and drainage channels and not tracks or paths.</p> <p>(ix) <b>CHALLENGE</b> The tenant farm manager from 1959 to the early 1990s confirms that there was no intention to allow public access and that verbal challenges were given and that signs were in place.</p> <p>(x) <b>CONTINUOUS USE</b> Does not believe Order plan reflects application plan.</p> <p>(xi) <b>SUITABILITY</b> Does not believe the area is suitable for a route. The River is a SSSI and the field is a County Wildlife Site.</p>	<p>It is noted that aerial photographs only show physical features and cannot reflect public use and therefore may be of limited value. However, evidence from a previous landowner suggests the tracks were caused by his vehicle feeding cattle. The aerial photographs do show walked tracks leading to the claimed route and on the balance of probability it is considered that they do reflect use of some sort and not drainage.</p> <p>No witnesses reported being challenged during these times but 18 reported a challenge from the new owner in spring 2011.</p> <p>This is very difficult evidence to quantify and is best heard verbally and subject to cross-examination.</p> <p>The application plan and Order plan are at different scales which could lead to confusion. Additionally, the original application was for a 60 metre area of 'beach' to the river edge at Stratford-sub-Castle. An Order may only be made according to the evidence submitted (and may not be the same as the application). However, it is considered that the Order plan is a fair representation of the route claimed but may be modified at the Inspector's discretion if she or she sees fit.</p> <p>Suitability, desirability, safety, maintenance or any status (i.e. SSSI) cannot be considered by the Council under s.53 of the Wildlife and Countryside Act 1981. Only evidence of use, and relating to that use, may be considered.</p>

No and Name	Nature of Objection	Officer's Comment
<p>4. Mr J Stoddart, Salisbury and District Angling Club</p> <p>Owner of river bank on western edge of field</p>	<p>(i) The Club has held a licence to fish since at least 1960 and the earliest lease is dated 1975. Leases have been made with Mrs Coggan, The King's Fund and Mr Armstrong up to 2007 when the club bought the fishing and a strip of land.</p> <p>(ii) The terms of the lease make it clear the landowners had no intention of dedicating public rights and is specific about access for Angling Club members only. These access points are common to the application route.</p> <p>(iii) The Coggans challenged Angling Club members and excluded anyone not a member. The Kings Fund were absent landlords so could not challenge so readily. Mr Armstrong made it clear that access was for club members only and locked the gate at the bridge.</p> <p>No maps or plans show any other access or path and the club was required to "use its best endeavours to expel any persons poaching or trespassing.</p> <p>This demonstrates an intention not to dedicate.</p> <p>Later leases state that the Club is to "use reasonable endeavours to protect the river from trespassing and poaching" and that only they have free rights of way and use for fishing and for no other purpose whatsoever. Dogs were not permitted.</p> <p>(iv) Access at the bridge is for Angling Club members only and any wear on the ground or bridge rails is from their use only. Wear at the beach is from cattle drinking.</p> <p>It is usual for yearbooks to show footpaths near fisheries but none is shown here.</p> <p>Public use has been by trespass. Locks and chains have been cut.</p>	<p>(i) Officers are in no doubt that the intention of the fishing leases and licences was to allow access to the river bank and fishing to Salisbury and District Angling Club members only.</p> <p>(ii) It is likely that all members of the Angling Club were aware of their need to control this and to challenge anyone on the river bank or trying to fish.</p> <p>(iii)The words of Lord Hoffman in the Supreme Court (see <b>Appendix 2 paragraph 8.7</b>) are very important here. Any intention not to dedicate to the public must be brought to their attention. The Salisbury and District Angling Club cannot be taken to represent the general public.</p> <p>(iv) It is apparent that access was provided for the Angling Club since at least 1960 and that a gate was locked at the Stratford-sub-Castle bridge end sometime after 2004 when Mr Armstrong bought the land.</p> <p>However, there is no evidence that gates were installed or locked before then or during the years 1977 to 1997.</p> <p>It is accepted that any wear to the ground or bridge rails could have been due to anglers gaining access through the bridge rails.</p> <p>Evidence of locks and chains being removed by force may be of relevance depending on the position and date of incidents.</p>

No and Name	Nature of Objection	Officer's Comment
<p>5. Mr W Armstrong Landowner 2004 - 2011</p>	<p>(i) Disputes that there has been 20 years of continuous use of the Order route owing to use of the riverbank route until 2007.</p> <p>(ii) Believes his evidence has been misconstrued. He replaced the barbed wire and the gate with post and rail and a stile (at the bridge) simply because they had been so badly damaged over the years by people climbing over them and in some cases cutting them to gain access. The main motivation was to prevent animals straying and not to make public access easier.</p> <p>(iii) If the public are allowed access there would be more people crossing the river and trespassing on the land he still owns. He cannot police the bank and relies on notices to keep trespassers at bay. He re-habilitates dogs and uses his land for exercise. He cannot risk having the public endangered by approaching a dog. He has been verbally abused on several occasion removing people from his land. Since Mrs Auchterlonie fenced her land trespass on both banks has virtually ceased.</p>	<p>(i) Some UEFs record only use of the riverside route and these do not provide evidence for the Order route.</p> <p>Some UEFs record use of both the riverside route and the Order route depending on ground conditions. These provide some evidence for the Order.</p> <p>The majority of UEFs provide evidence for the Order route only. These provide evidence for the Order.</p> <p>(ii) This evidence, in part, suggests use by force when the wire was cut. Mr Armstrong owned the land between 2004 and 2011 which is outside of the relevant period (1977 to 1997) but he does refer to accumulated damage "over the years". The date the gate at the southern end was installed is not known.</p> <p>(iii) The Order does not seek to create a new right, merely to record something that has already been happening. It is not possible for the Council to consider desirability.</p> <p>Mr Armstrong provides further evidence of the effectiveness of Ms Auchterlonie's challenge to use.</p>

No and Name	Nature of Objection	Officer's Comment
<p>6. Mr R N Death</p> <p>Local resident (1986 to date) and conservation volunteer</p>	<p>(i) Unable to comment on whether the route was used as a footpath before 1979 but sees no advantage to recording it in 2012.</p> <p>(ii) Some users will not stay on the proposed path, will not keep dogs under control and will drop litter. This will have an effect disproportionate to their number and will lead to a negative impact on the wildlife by the river.</p> <p>(iii) His house has views over the water meadows and he regularly sees people walking the river bank and allowing dogs in the river. Also frequently sees people camping with open fires.</p> <p>(iv) The path will have no amenity value as there is an excellent standard path only a few yards away.</p> <p>(v) He strongly urges the Council to resist the pressure to extend the area of damage caused by a second footpath.</p>	<p>(i) Desirability is not considerable under s.53 of the Wildlife and Countryside Act 1981.</p> <p>(ii) These are not matters to be considered under s.53 of the Wildlife and Countryside Act 1981.</p> <p>(iii) If Mr Death's house has views over the Order route then he may have evidence of use to give, i.e. whether he saw people on the claimed route, how they accessed it etc. This could be given verbally at Public Inquiry.</p> <p>(iv) Amenity value is not considerable under s.53 of the Wildlife and Countryside Act 1981.</p> <p>(v) The Council must consider only the evidence of use and relating to that use.</p>
<p>7. Mr M Clarke</p> <p>Local resident 1993. Has known site since 1974.</p>	<p>(i) <b>THE CLAIMED ROUTE</b></p> <p>There is a fundamental inconsistency between the route applied for and the Order route. The route applied for is not shown in the Council's Decision Report and there is no evidence for a separate route to the beach area.</p>	<p>The decision report referred to by Mr Clarke is appended at <b>Appendix 2</b>. The map shown at paragraph 1.2 is the application map (reduced) and the beach area is clearly shown and described as area D in the application. The applicant's wording has been used at page 1. For the avoidance of doubt a copy of the original application is appended at <b>Appendix 4</b>.</p> <p>It is believed that the Order plan is a reasonable representation of the route applied for and allegedly used by the majority of users.</p> <p>The Order must be determined by the Secretary of State who has, in the event that the Order is confirmed, the power to amend the Order or Order plan.</p>

No and Name	Nature of Objection	Officer's Comment
<p>7. Mr M Clarke (continued)</p>	<p>(ii) It is important to be clear about the 'beach area'. When the photograph was taken the water was very low and that this area is usually part of the river.</p> <p>If there is a valid claim at all I believe it is to pass from point A to B and vice versa from the Nature Reserve. Access to the river bank would only be claimed if people wished to access the river which is not a right they can claim through the Wildlife and Countryside Act.</p> <p>"While I realise that the provisions of the Wildlife and Countryside Act relating to rights of way do not have regard to conservation, riparian owners and Councils do have obligations to do what they can to prevent harm to wildlife and cSAC/SSSIs in particular.</p> <p>The aerial photograph of 1981 does not show a track, it shows drainage channels. Wear in the footbridge area is attributable to fishermen.</p>	<p>Evidence was submitted that the public went to water's edge and the Order plan seeks to reflect this. This would be a point of public resort and hence admissible to be a right of way. The site was visited weekly throughout December and January and the beach was always visible.</p> <p>A river itself may not become a right of way; this is given in <i>Attorney-General ex rel Yorkshire Derwent Trust Ltd v Brotherton (1992)</i>. Here a right to navigate along a river failed to be established but it is noted that public rights can exist through rivers at fords. Access to the river bank is considered possible and there are other examples of it in Wiltshire on rights of way.</p> <p>The public have a right to pass and repass over a right of way and in <i>Hickman v Maisey (1900)</i> Smith LJ said that "<i>If a man while using a highway for passage, sat down for a time to rest himself, to call that a trespass would be unreasonable. Similarly, if a man took a sketch from a highway I would say that no reasonable person would treat that as act of trespass.</i>"</p> <p>Wiltshire Council has duties to consider biodiversity and must not harm wildlife and habitat where possible. However, these are not considerations for s.53 Wildlife and Countryside Act processes but would be a consideration for future management of the path in the event that the Order were confirmed.</p> <p>The alleged track shown in the aerial photograph is similar to the riverside track leading south to Salisbury which is not a drainage channel.</p>

No and Name	Nature of Objection	Officer's Comment
7. Mr M Clarke (continued)	<p>(iii) <b>THE RELEVANT PERIOD</b>  <i>“Based on the evidence you have determined that the date any right was called into question is in 1997 when a Statutory Declaration was deposited. Because this was discovered late on in your investigation, it has affected the writing of your report, as mention of this important fact does not appear until page 27 (as a note) and only substantively on page 32 out of a 36 page report. It therefore follows that the vast majority of the claimants’ evidence and the photographs taken after 1997 in the report are not relevant to a consideration of the application. I believe this is so significant that it should be drawn to the attention of the Planning Committee as the way in which the report has been drafted is prejudicial to a proper consideration of the balance of probabilities between the claimants and the owners of the land in the relevant period. Any decision should only be on the relevant facts and evidence.”</i></p> <p>(iv) <b>WITHOUT INTERRUPTION</b>  At the northern end witnesses state that they accessed the route by means of a stile, over a gate or through the bridge rails. The fence on Salisbury 11 may have been vandalised but there is no evidence that it was not repaired and maintained. This makes it clear that the landlord intended to interrupt the passage of people other than those by permission and was not merely to contain stock.</p>	<p>(iii) Sec 53(3) of the Wildlife and Countryside Act 1981 requires the Council to consider all evidence discovered and all other relevant evidence available to them.</p> <p>Hence, it is necessary for officers to consider all evidence and the Decision report (<b>Appendix 2</b>) seeks to do this.</p> <p>It is the opinion of officers that the Statutory Deposit made in 1997 forms a calling into question of the way and that Mr Armstrong’s notices and maintenance of same form an effective challenge to the public right. However, this may not be the view of this committee or Inspector appointed by the Secretary of State and it is important that all of the evidence adduced is presented.</p> <p>For the avoidance of doubt the Order was made based on evidence from the period 1977 to 1997 and this report makes this clear (paragraphs 14 to 22).</p> <p>(iv) Evidence dating back to 1800 supports that this land has been fenced though there have been changes. Fencing arrangements at Stratford-sub-Castle were different in the first half of the 1900s and access was possible to the ‘beach area’ from path number 11 (see maps at <b>Appendix 2 pages 11 and 12</b> labelled ‘ford’) and it is known that there were also stiles along path 9 suggesting that the northern boundary of the field was not as it is now. The maintenance of a secure fence and gating arrangements was necessary to maintain any sort of gazing arrangement. Objection 3B(iii)</p>

No and Name	Nature of Objection	Officer's Comment
7. Mr M Clarke (continued)	<p>(iv) continued</p> <p>There are differences about access at the southern end.</p> <p>It is irrelevant to consider access at either point C or the southern end as the northern end clearly proved a barrier to the establishment of a right.</p>	<p>supports that a primary concern of the person grazing was to keep stock within a defined area. It is considered more likely that fencing and gating was maintained to contain stock rather than keep the public out but this is another example of evidence best given verbally by the landowner and subject to cross-examination.</p> <p>Agreed. Some witnesses claim to have gone through an open gate or climbed over one while others claim to have used an old stile to the side. This stile may be an access point for licenced anglers. The gate post dates the relevant period. No users of the path claim the gate was locked but evidence from objectors states that the gate was locked for periods of time. This is another example of evidence best given verbally by the landowner and subject to cross-examination.</p> <p>Access arrangements on all of the Order routes are an important consideration. Fishermen have had access to the land since at least 1960 (evidence of Salisbury and District Angling Club) suggesting some form of usable access arrangement other than through or over a wire fence.</p> <p>The mid-point access at point C was affected by the presence of a large willow tree. Verbal evidence received from Mr Amey suggests that it was only when the tree fell that this access became usable. The date is not known.</p>

No and Name	Nature of Objection	Officer's Comment
<p>7. Mr M Clarke (continued)</p>	<p>(iv) continued</p> <p>More weight should have been given to Mr Coggan's statement (his family was a tenant from 1959 to 1999). Mr Phil Coggan gave evidence that he personally challenged people when cattle were in the field and when fishing without a licence. Mr Amey, who has also known the area for a long time, also understood that access was at the discretion of the owner. Mr Armstrong requested permission to walk there from the then landowner, through the agent Cluttons (1997). This was granted subject to animals being present. This shows a clear intention to give permissive access only when there were no cattle and was a practice going back at least to 1959.</p> <p>(v) <b>USE OF FORCE (VANDALISM)</b></p> <p>The fence along Salisbury 11 has been damaged from time to time. It would appear that many walkers go out with wire cutters on them to deal with legitimate obstructions put in their way. A police report (submitted) about an incident involving two escaped cows from land to the north stated that <i>"most trespassers are dog walkers who have in the past damaged fences...this is an ongoing situation...styles are not used and dog walkers continue to cut wire fences."</i> Also a woman told the tenant's wife that <i>"she had a right to walk her dog in their fields"</i>. Mr Clarke states that not all trespassers are reported to the police but <i>"it would not surprise me that the cutting of the wire and the destruction of</i></p>	<p>Officers have no doubt that the Coggan family, Cluttons, Mr Armstrong or Ms Aucterlonie had no intention to dedicate a right of way to the public. Indeed, Cluttons, Mr Armstrong and Ms Aucterlonie appear to have made obvious attempts to convey this to the public. However, the judgement of Lord Hoffman in Godmanchester (see <b>Appendix 2 para 8.7</b>) makes it clear that actions must be "perceptible outside the landowner's consciousness" and no witnesses claim to have received permission or been challenged before either the signs that Mr Armstrong erected or the challenges that Ms Aucterlonie issued.</p> <p>There is no incontrovertible evidence of publicly perceptible challenge within the period 1977 to 1997 and this evidence is best given verbally and subjected to cross-examination.</p> <p>(v) The incident that is referred to here is not on the claimed route and it must be borne in mind that neither is the incident referred to by Mr Amey in his verbal evidence at a site meeting. Additionally, although Ms Aucterlonie details a considerable number of incidents (and police log numbers) these are various and relate to the property as a whole. However, it seems reasonable that a relatively high level of vandalism occurs in this area and that the public would not have needed to use force on some occasions to gain access.</p>



No and Name	Nature of Objection	Officer's Comment
7. Mr M Clarke (continued)	<p><i>gates and signs in the land on which the right of way is claimed encouraged some of the people who claim that their rights have been obtained without force, to take the short cut to and from the Nature Reserve."</i></p> <p><b>(vi) The River Bank – Fishing Rights</b> The right to fish at the 'beach area' is owned by Mr Clarke but shared with Salisbury and District Angling Club since 1995. Fishing from the river bank south from here has been subject to licensing agreements from various landowners (Mrs Coggan, King Edward's Hospital Fund and Mr Armstrong) to Salisbury and District Angling Club. All licences have been clear that access was on foot only at points A and B (either side of Stratford sub Castle bridge). The 1983 agreement had a specific prohibition <i>"not to take dogs to the riverbank or on any part of the adjoining land of the landlord, tenant or licensees"</i> and <i>"not to permit the said right and privilege to be exercised by any person other than a member of SDAC."</i></p> <p><b>Access</b> The western end of the footbridge has been an access point for fishermen and evidence of access is a result of this. It is also probably that fishermen climbed between the bridge rails.</p> <p>Since 1993 Mr Clarke has repeatedly pointed out that the public have no right to use 'the beach area' and has asked them to move away. In some cases he has had to call the police to explain the legal position. Prior to his ownership the local water bailiff fished these waters and lived within sight of them and was active in removing those who had no right to be there.</p>	<p>However, it would appear that fences were maintained and yet the public were still able to gain access over a considerable period of time, albeit coincident with anglers under the terms of their licence.</p> <p>(vi) This provides further evidence of the intention of the landowners not to dedicate a public right of way over the land but it is not apparent that the details of the angling licences were conveyed to the general public.</p> <p>It is agreed that it is not possible to attribute wear on the ground to any specific type of user.</p> <p>Mr Clarke has clearly issued a challenge to some people using 'the beach area', however, the Council has before it evidence from people who claim to have used 'this area' without challenge.</p> <p>Their evidence would be best examined when given verbally and under cross-examination.</p> <p>The question of how the public challenged by Mr Clarke got to 'the beach area' may be relevant as Mr Clarke's challenge appears to only extend to the use of this area.</p>

No and Name	Nature of Objection	Officer's Comment
7. Mr M Clarke (continued)	<p>(vi) continued</p> <p><b>Practice of fishing</b></p> <p>The casting of a fly requires considerable space behind the angler and for this reason a 10 metre strip of land was sold to Salisbury and District Angling Club. It is considered that this buffer zone would also apply to Mr Clarke's fishing rights and demonstrates a lack of intention to dedicate a right of way to the public by the landowner.</p>	<p>It is agreed that the licences granted to Salisbury and District Angling Club are clear in not granting access to any other person. However, for s.31(1) of the Highways Act to succeed the landowner must bring his intention not to dedicate to the attention of the public to form a satisfactory interruption to their use.</p>
8. Dr D M Balston and Mrs H B Balston  Local resident	<p>(i) The decision appears to have been taken on the basis of claimed recent use and that history and ecology have not been considered. Also the views of local people have not been sought.</p> <p>(ii) If the footpath is approved the field will not be grazed and will revert to scrub.</p> <p>(iii) Have lived in Mill Lane since 1987 and many years ago used to occasionally walk across the meadow. However since path no. 9 was improved have used that as there is little reason to walk across the scrubland that the field is now.</p>	<p>(i) The decision report at <b>Appendix 2</b> investigates historical evidence in the forms of maps and plans as appropriate to s.32 of the Highways Act 1980. Ecology is not a relevant consideration for s.53 of the Wildlife and Countryside Act 1981. The purpose of making and advertising Orders such as this in local papers and on site is to alert local people to the Order and invites representations and objections such as this one. Prior to the Order being made the parish council, landowners and user groups were asked for evidence.</p> <p>(ii) If the Order is confirmed it will record a pre-existing activity which need not alter the character of the land. Public footpaths across farm land are common place and co-exist with grazing arrangements in hundreds of cases.</p> <p>(iii) Salisbury path 9 was improved in 2000/2001 as part of an initiative promoting walking for health. Dr and Mrs Balston walked the Order route occasionally sometime between 1987 and 2000.</p>

No and Name	Nature of Objection	Officer's Comment
<p>8. Dr D M Balston and Mrs H B Balston</p> <p>Local resident (continued)</p>	<p>(iv) The field was grazed in the past and when it was grazed they were happy to avoid it. Until a 'few years ago' the meadow on the opposite bank was open to the river and cows often crossed the river to graze the west bank.</p> <p>(v) <i>"It saddens us that decisions such as the one proposed seem to take place apparently without any consideration of the wider issues involved and we urge the Council to review the decision and reverse it."</i></p>	<p>(iv) Other witnesses have also said that cattle grazed more than just the field through which the Order route leads.</p> <p>(v) Wiltshire Council can only consider the evidence relating to the public rights and whether or not they have, on the balance of probability, been acquired. It cannot consider any 'wider issues'. Having received objections the Order must now be forwarded to the Secretary of State for determination.</p>
<p>9. Mr D Mills</p> <p>Local resident</p>	<p>(i) Does not consider that the evidence supporting the Order meets Test A which the Council used to make the Order.</p> <p>(ii) Only 30 of the 99 witnesses regularly used the route from 1977 to 1997.</p> <p>(iii) There is variation in statements relating to gates and stiles.</p> <p>(iv) It is highly unlikely that a sign saying "private" referred to fishing as other River Avon signs say "Private Fishing".</p>	<p>(i) The Council did not make the Order based on Test A (see paragraph 9 of this report). The Order was made based on Test B – that it was reasonably alleged that public rights subsisted. This required there to be no incontrovertible evidence that they did not. For the period 1977 to 1997 there has been no evidence found that is incontrovertible.</p> <p>(ii) It is considered that 77 used it within this period, 37 of them for the full 20 years.</p> <p>(iii) This is agreed and the evidence will be best heard verbally and subject to cross-examination. However there have been changes with time.</p> <p>(iv) For a sign to satisfy s.31(3) of the Highways Act 1980 the sign must be "inconsistent with the dedication of the way as a highway". It has been held that a sign simply saying "private" does not satisfy this.</p>

No and Name	Nature of Objection	Officer's Comment
<p>9. Mr D Mills Local resident</p>	<p>(v) The aerial photographs do not show that the route was being used as a public right of way. Any animals or vehicle movement could cause this and given the regular flooding of the land in winter, any animals would use the dry route. Mr Coggan's evidence had said it was used by tractors.</p> <p>(vi) The Order route does not connect to a public highway.</p> <p>(vii) The Order route does not follow a natural line and veers towards the river bank at Stratford sub Castle. The bank has been significantly eroded by cattle and human activity since 1993 causing this 'beach' effect. If the path were in a direct line it would not encroach on the river bank.</p> <p>(viii) Between 1993 (when Mr Mills' use started) and 2001 Salisbury 9 was difficult to use and was impassable at times. This might have encouraged some use of the adjoining field but since 2001 Salisbury 9 has been routinely passable making it extraordinary that the Council is seeking to agree a new path.</p>	<p>(v) It is agreed that the aerial photographs cannot show what caused the apparent tracks on the ground. However, it is noted that the representation of a track along the Order route is similar to an apparent path leading south from the Order route alongside the river (see <b>Appendix 3</b>).</p> <p>(vi) This is agreed. The southern end of the Order route connects to the Avon Valley Nature Reserve which is considered to be a place of public resort.</p> <p>(vii) The Order route reflects the evidence adduced by the applicant which includes people visiting the 'beach area'. The Order cannot put the path on a different route to that supported by the evidence.</p> <p>(viii) The Council is not seeking to agree a new path. It has a duty to consider an application such as this and to make an Order if it is reasonably alleged that on the balance of probabilities a public right has been acquired.</p>
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p>(i) Does not believe there is any credible evidence that a right of way subsists or that there was ever any intention to dedicate one. Does not believe that there has been 20 years continuous use for a period of 20 years prior to the application made in June 2011. The owner and/or occupiers rights to exclusive use of the land have always been positively maintained.</p>	<p>(i) The clear conflicts in evidence highlighted demonstrate the need to test the evidence from both sides verbally. However, it is noted that for the application to succeed under s.31 of the Highway Act 1980 it is not necessary for the owner to intend to dedicate to the public. Instead he must demonstrate that he had no intention to dedicate.</p>

No and Name	Nature of Objection	Officer's Comment
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p>(ii) The Order route does not accord with the route indicated on the application forms and maps or at any other time.</p> <p>(iii) <b>Fencing</b> A comprehensive body of evidence has been produced that shows that the field has been securely fenced and used for cattle grazing since the Coggan family bought the land in 1920. The evidence also comprises statements from Mr Pat Coggan who knew the land when it was managed by Reg Coggan (1920 – 1956) and managed the land (as a tenant) from 1959 to the early 1990s. Letters from Mr Pat Coggan's son, Phil Coggan (who was born at Parsonage Farm in 1957 and grew up there and worked on the farm for a 4 year period) and Mr Hounslow who held the grazing licence from 1999 – 2007 are also included and form a cohesive picture of land management from the 1920s through to the late 1990s.</p> <p>Mr Pat Coggan's statement is clear about access arrangements to the field. <i>"There were no gates at the north or the south of the field... There was a stile at the south end, next to the river for the fishermen."</i> An annotated plan shows this stile was in place until 2007 which ties in with the purchase of some of the land by the Angling Club and the resultant changes to access arrangements. Also <i>"The fishermen used the railings at the north end to gain access to the river bank...."</i></p> <p>Access was only altered post 1999.</p>	<p>(ii) It is considered that the Order route best reflects a route that the public claim to have used. The Secretary of State has the power to modify the map to reflect any errors in the event that the Order is confirmed.</p> <p>This is an example of how evidence may be tested at Inquiry – for instance a witness may be asked whether they went to the riverbank when they walked through the field.</p> <p>(iii) This evidence shows, on the balance of probabilities, that the field was securely fenced from at least 1920 onwards.</p> <p>The evidence also shows that access to the field from the northern (bridge) end was through or over bridge rails and at the southern end was over a stile up to 1999. These access points were used by fishermen. The large gate at the southern end is not mentioned in the Coggan family's evidence and the date of installation seems to have coincided with Mr Hounslow grazing the Nature Reserve extension which he is known to have done (1999 on).</p> <p>It is clear that even though the field was maintained in a stock proof condition, access was still possible. By witnesses giving evidence verbally and being subject to cross-examination it should be possible to test whether the dates that people accessed the land agree with the means by which they did it.</p> <p>Gate/Stile N end – installed 2004 Stile S end – removed 2007 Gate S end – installed 1999</p>

No and Name	Nature of Objection	Officer's Comment
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p><b>Challenge</b> The evidence also states that Reg Coggan (between 1920 and 1956) was very thorough in challenging people on the land and from 1950 to 1999 Mr Pat Coggan (1959 to 1999) <i>'challenged anyone on the water meadow and asked them to leave'</i>. Mr Hounslow (1999 – 2007) also challenged users <i>"and got them to go back and use the correct footpath"</i>.</p> <p><b>Signs</b> The evidence of Mr Pat Coggan covering the years from 1959 to 1999 states that <i>"Signs were put up to warn the public of the dangers of a bull. There was never any intention for there to be public access or the bull would not have been allowed to run freely in the fields."</i></p> <p>Mr Hounslow put up notices <i>"asking people to use the footpath around the field mainly because I had a bull with the cows."</i></p> <p>Mr Armstrong (2004 to 2011) erected signs stating the public use was permissive and could be withdrawn.</p>	<p>There is evidence of verbal challenge covering nearly 100 years. However, there is no evidence of challenge (pre-dating spring 2011) submitted by witnesses claiming to have used the path.</p> <p>It must be noted that this area is very heavily used by the public and on site visits officers have always seen between 5 and 15 members of the public (usually walking dogs) on the paths and fields adjoining the claimed route. Officers have not seen anyone using the claimed route demonstrating how effective Ms Auchterlonie's challenge to their use has been. However, it is likely that the challenges by the Coggan family and Mr Hounslow were not so effective resulting in a mixture of people who had and had not been challenged.</p> <p>This is another example of the benefit of hearing evidence verbally and subjecting it to cross- examination.</p> <p>The signs which warn the public of the dangers of the bull do not specifically show no intention to dedicate a right of way and to satisfy s.31(3) of the Highways Act 1980, it is important that they do.</p> <p>It must be borne in mind that whilst the landowners and tenants did not want the public on their land, arrangements were in place to enable the Angling Club access and there would have been people in the field at times when the bull was there.</p> <p>It is considered that Mr Armstrong's signs, which were maintained, form an effective challenge.</p>

No and Name	Nature of Objection	Officer's Comment
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p><b>Permission</b> Permission to access the land to launch boats and survey wildlife was sought and granted in 1980 and 2001.</p> <p>(iv) <b>Historic Maps and Aerial photos</b> None of the maps considered in <b>Appendix 2</b> show a path through any part of the field.</p> <p><b>Aerial Photographs</b> The aerial photographs do not show evidence of a track or path but instead align directly with the geological remains of the water meadow. There is no evidence of a track or path.</p> <p>There are numerous aerial photographs dated 1920, 1929, 1946, 1953, 1970, 1975 and 1988 held at the English heritage National Monument record centre in Swindon and the Wiltshire and Swindon Historical Record centre in Chippenham and none of these show a track or discolouration in the area of the alleged route.</p>	<p>Neither of these activities are relevant to a claim for a public right of way.</p> <p>(iv) This is agreed. Early OS 1:2500 maps (County Series) could show a path that appeared as a physical feature (whether public or not) and the surveyors for the period 1881 to 1936 clearly did not find one across the field. Later OS maps draw their information from the definitive map and are less likely to show an unrecorded path.</p> <p>It is suggested that the lighter areas are drainage features (Ms Auchterlonie), a track caused by cattle and a tractor (Mr Coggan) or a worn track similar to walked paths in the area (i.e. the riverside path south to Salisbury where it is an unimproved surface).</p> <p>The 2001 aerial photo in <b>Appendix 1</b> shows such a clear track both in the field and leading towards the newly installed kissing gate and link to Footpath 9 that it is difficult to support another explanation other than surface wear caused by feet.</p> <p>Whatever the explanation of the feature accordant with the Order route aerial photographs carry very little evidential weight as even if it possible to show a worn path exists, the photograph cannot show who or what made the path or track.</p>

No and Name	Nature of Objection	Officer's Comment
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p>(v) <b>Avon Valley Nature Reserve</b> The reserve was designated in 1993 and prior to that was part of Cowslip Farm. Before 1993 there was no public access to the southern end of the claimed route as the land was privately owned and a cattle farm. Information boards for the Reserve do not show access extending into the field and along the Order route.</p> <p>(vi) <b>Salisbury and District Angling Club</b> The 'daybooks' of 1964/65 and 1974 show access points at the northern end of the Order route only. A southern access point to the river bank is shown much further south at the boundary of the recreation grounds.</p> <p>The licences granted to the angling club specifically states that the club is responsible for protecting the privilege of access and that they should "<i>take all reasonable steps to deter poachers or trespassers from entering on the owner's land</i>".</p> <p>(vii) <b>Land Use, conservation, agriculture, flood management and recreation</b> The field is a County Wildlife Site and is wet for six months of the year. It was surveyed in 1981, 1982, 1984, 1994 and 2002 and it is recorded that the field was grazed by cattle at varying intensities.</p>	<p>(v) The southern end of the Order route joins the northern end of the Nature Reserve. This area is known as the 'extension' to the reserve and has been managed differently to the more southerly reserve having been grazed by cattle post 1993 (1999 onwards). To access the southern end of the Order route the public would have needed to walk in this field and it is considered likely that the most attractive and likely walk would have been beside the river as is in use today. Access to this area appears to have been granted to anglers suggesting a physical availability.</p> <p>This evidence agrees only in part with the statement of Mr Coggan who recalls an access stile for fishermen at the southern end of the claimed route. However, the Angling Club plan is crudely drawn and could be representing the access point that Mr Coggan (and some witnesses) refer to or one coincident with the southern end of the reserve extension.</p> <p>This evidence agrees with that submitted by Salisbury and District Angling Club and is further evidence of the owner's lack of intention to dedicate a route to the public.</p> <p>However it must be borne in mind that this intention must be brought to the notice of the public to be an effective challenge to s.31(1) of the Highways Act 1980.</p> <p>This supports the secure fencing of the land throughout these dates.</p>



No and Name	Nature of Objection	Officer's Comment
<p>3B. Ms M Auchterlonie Landowner April 2011 to date</p> <p>SECOND SUBMISSION 18 January 2012</p> <p>A4 lever arch file and CD-ROM</p>	<p>The field is marked 'liable to flood' and was flooded every year to the 1960s meaning the Order route was unavailable at certain times of the year.</p> <p>Salisbury walking for Health promotion included SALS 9 and 11 in a promoted route in 2001 though the routes were well used in 1993 and 1999 also.</p> <p>SALS 9 and 11 are historic paths identified in 1951 for inclusion in the definitive map. Had the Order route existed then it would have been claimed by the relevant Council.</p> <p><b>(viii) Suitability</b> The Order route does not follow the permitted route (2004 to 2011) and would damage a variety of plants. The development of a new footpath would not be compatible with maintaining a balance between agriculture, preservation of the rural environment, conservation, recreational facilities or new development.</p>	<p>There is very little evidence of use prior to the 1960s.</p> <p>It is probable that in 1951 no well used path subsisted though it is noted that definitive map processes were far from exhaustive.</p> <p>If the Order is confirmed the Inspector has the power to alter the map to reflect any errors. However, the route <b>MUST</b> reflect any used route and the purpose of the Order is to record an existing right of way and not to create a new one.</p> <p>It is the evidence that is key to whether this Order is confirmed or not and issues relating to Local Structure Plans, etc. cannot be considered.</p>
<p>10. J Platt</p> <p>Local resident</p> <p>NOT DULY MADE OBJECTION</p>	<p>(i) The water meadow needs to be properly grazed by sheep and cattle as it has been for hundreds of years. A footpath would obstruct this and in the latter part of the 20<sup>th</sup> century farmers including the Coggans went to great lengths to keep dog walkers out.</p>	<p>(i) It is not clear how Mr Platt was made aware of the Coggans "great lengths" or what they entailed. His evidence would be best heard verbally and subject to cross-examination.</p>

## **Main Considerations for the Council**

28. The Council, as the surveying authority for the County of Wiltshire excluding the Borough of Swindon, has a duty under Section 53 of the Wildlife and Countryside Act 1981 to investigate the application made by Mr M Quigley. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
29. Section 53(2)(b) states:
- “as regards every definitive map and statement, the surveying authority shall: “as from that date (the commencement date), keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”.*
30. The events referred to in Section 53(2)(b) relevant to this case are set out below in Section 53(3)(c)(i):
- “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: 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 to which this Part applies.”*
31. In considering and determining the application, Wiltshire Council must have regard to ‘*all other relevant evidence available to them*’, as the statute demands.
32. Dedication of a way as highway can be presumed after public use for 20 years provided it satisfies the requirements of Section 31 of the Highways Act 1980. The Section states:
- “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 and 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”.*
33. The Section provides that where a way has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway - unless there is sufficient evidence that there was no intention during that period to dedicate the way.
34. The term 'as of right' means without force, secrecy and permission. People using the way must do so openly without damaging the property and not be reliant on being given permission to use the path by the owner of the land over which the path runs.

35. The case of *R. v. Oxford County Council ex parte Sunningwell Parish Council* (1999) considered the issue of public use of a way. Lord Hoffman presiding stated, “...*the actual state of mind of the road user is plainly irrelevant*”, it is immaterial therefore, whether the public thought the way was a 'public' path or not.
36. The case concluded that it is no longer necessary to establish whether the users believe they have a legal right to use the land. Instead, it should be shown that use has been without force, secrecy and permission.
37. The use of the way must be without interruption. Once the 20 year uninterrupted use 'as of right' has been proved, the burden then moves to the landowner to show there was no intention to dedicate, i.e. evidence of any overt acts by the landowner to deter the public from using the way, or conversely to permit the public to do so. Overt acts are covered in Section 31 (3) (4) (5) and (6) below:
38. Section 31 of the Highways Act states as follows:

**“31. Dedication of way as highway presumed after public use of 20 years**

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

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*

*(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*

*(b) has maintained the notice after 1 January 1934, or any later date on which it was erected.*

*(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 the land as a highway would be incompatible with those purposes.”*

39. The Supreme Court (House of Lords) recently considered two cases which hinged on the intention to dedicate and the application of Section 31 of the Highways Act 1980. In the judgement delivered 20 June 2007 [2007] UKHL 28 Lord Hoffman reasoned:

*“It should first be noted that s.31(1) does not require a tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be a difficulty in satisfying such a requirement without any evidence at all.*

*It requires 'sufficient evidence' that there was no intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner's consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson's Case [R v S of S for the Environment ex p. Billson [1999] QB374 it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience."*

### **Environmental Impact of the Recommendation**

40. Effects on the environment cannot be taken into consideration for an Order decision.

### **Risk Assessment**

41. Risks or safety cannot be taken into consideration for an Order decision.

### **Financial Implications**

42. It is considered that with this case, given the number of objectors and supporters and the need to test the evidence of both, that a Public Inquiry is unavoidable. However, the decision whether to determine the Order by Written Representations, a Public Hearing or a Public Inquiry rests with the Secretary of State.
43. The Council has a duty in law to support Orders where it is considered that on the balance of probability the order public rights subsist as shown in the Order. Budgetary provision has been made for this duty.
44. The Council may maintain a neutral stance where it is considered that although it was reasonably alleged that an Order be made, significant objections have been received. This incurs a smaller cost for which budgetary provision has been made.
45. It is rare for a Council to object to an Order, though it may do so. An example of this may be when an Order has been made and during the advertisement period evidence against the Order is brought to its attention that is incontrovertible. This would attract a similar cost to supporting an Order and could be in the region of £5,000 to £10,000.

### **Options Considered**

46. That:
- (i) The confirmation of the Order is supported as made.
  - (ii) The confirmation of the Order is supported with modifications.
  - (iii) The Council takes a neutral stance at Inquiry.
  - (iv) The confirmation of the Order is objected to.

## **Conclusions**

47. A substantive amount of information has been viewed both in support of, and in objection to, this application. Evidence submitted of use dates back to the 1940s and evidence submitted by landowners dates back directly to the 1950s and indirectly to 1920.
48. However, it is considered that this evidence supports that the relevant period for the acquisition of any public rights is between 1977 and 1997. Hence, if this is the case, it is only necessary to consider evidence within this period.
49. Use by the public between these dates must have been without interruption and 'as of right' that is without force, without challenge and without permission.
50. The access points during this period were through the bridge rails at the northern end and over a stile at the southern end. The gates were put in after this period (evidence of Mr Pat Coggan and Mr R Hounslow).
51. It seems likely that access was shared with members of the Salisbury and District Angling Club who held a licence to access the riverbank to fish.
52. There were signs in place during this period "to warn the public of the dangers of a bull" (evidence of Mr Pat Coggan, tenant farm manager, 1959 to the early 1990s).
53. The Salisbury and District Angling Club licences required club members to challenge anyone who was not a member.
54. Mr Pat Coggan challenged "anyone I found in the water meadow and asked them to leave" during this period as did his grandfather, wife and son.
55. No users of the way claim to have been challenged or to have requested permission.
56. No deposit under Section 31(6) of the Highways Act 1980 for the land was received by Wiltshire County Council during this period.
57. No evidence of force being used during this period has been adduced.

## **Reasons for Recommendation**

58. Many members of the public submitted evidence of use over a long period of time and their evidence is insufficiently detailed to record whether or when they used stiles, gates or bridge railings. This is perhaps not surprising as such details would not be relevant to them all the time they had access. Additionally, the passage of time will inevitably dull some memories. Some responses agree well with paragraph 50 access arrangements (i.e. Mr D Hopkinson mid 1960s to 2011 and Mrs E Evans 1970 – 2011) and the Order plan suggesting clear recollections of the period, whereas others do not.

59. It is also apparent that both the riverside path and the Order route were used by many. Some recorded that they only used the Order route after 2007 while others used both according to ground conditions.
60. It is clear that evidence of use (including means of access, route and challenge) needs to be given verbally and subject to any relevant cross-examination for clarity.
61. It is equally clear that evidence of challenge, signage and interruption also needs to be given verbally and subject to any relevant cross-examination for clarity.
62. No incontrovertible evidence exists for the dates 1977 to 1997 that would permit Wiltshire Council to oppose the Order.
63. As a matter of administration, the “New Sarum (Extension Order) 1954” came into effect on 1 April 1954 making the affected part of the administrative area for the City of New Sarum and not the Salisbury and Wilton Rural District Council as it had previously been. Therefore this Order needs to be amended to replace all references to the “Salisbury and Wilton Rural District Council” with the words “The City of Salisbury”. This is a modification that can be requested of the Secretary of State in the event the Order is confirmed.

### **Recommendation**

64. That the Wiltshire Council (Sheet SU 13 SW)(Parish of Salisbury Path 107 – Bridge Mead) Rights of Way Modification Order No 8 2011 is forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and that Wiltshire Council adopts a neutral stance at Public Inquiry. In the event that the Order is confirmed it is requested that all references to “Salisbury and Wilton Rural District Council” are removed and replaced with “City of Salisbury”.

### **MARK SMITH**

Service Director - Neighbourhood Services

Report Author

**Sally Madgwick**

Rights of Way Officer

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

Correspondence with parish councils, user groups, other interested bodies and members of the public

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## SCHEDULE

### PART I

#### MODIFICATION OF THE DEFINITIVE MAP

Parish	Path No	Description of footpath to be added	Modified under Section 53(3) as Specified
Salisbury	107	Length of footpath as shown by a broken black line marked A to C to B on the plan annexed hereto.  Width 2 metres Approximate length 600 metres	53(3)(c)(i)

### PART 2

#### MODIFICATION OF THE DEFINITIVE STATEMENT

Parish	Path No	Description of footpath to be added	Modified under Section 53(3) as specified
Salisbury	107	<u>Footpath</u> leading from Salisbury path number 11 south west of the footbridge, leading to the River Avon where south and south east across water meadow to OS grid ref. SU 13110 31820 and a junction with Salisbury path number 9. Continuing south east to OS grid ref. SU 13259 31676.  Width 2 metres Approximate length 600 metres	53(3)(c)(i)

Limitations and conditions affecting the way:

Stile at junction with Salisbury path 11  
Stile at SU 13110 31820  
Field gate at SU 13259 31676



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## Wildlife and Countryside Act 1981 s.53

### Application to Add a Public Right of Way to the Definitive Map and Statement

#### STRATFORD SUB CASTLE, SALISBURY

#### Decision Report

- 1.1**
- Application number:** 2011/08
- Application date:** 19 June 2011 accepted as Schedule 14 compliant 06 July 2011
- Applicant:** “Re-Open Our Walk” Group  
c/o Martin Quigley  
115 Castle Road  
Salisbury  
Wiltshire  
SP1 3RP
- Application to:** Add a footpath leading from the northern most position of Stratford Field adjacent to the Stratford Bridge (A) towards the southern gateway (B) with access at points (C) on the map and to “beach” area (D)
- Width:** 5 metres (unrestricted access to “beach” area)
- Application comprised:** Notice of application for Modification Order (Form 1)  
Copy of notice of application for Modification Order to landowner (Form 2)  
Certificate of Service of Notice of application to the following owners and occupiers (Form 3):  
Melanie Auchterlonie  
(10 Kings Mead Place, Broad Bridge Heath, West Sussex, RH12 3TA)  
1:5000 Plan showing claimed route (sent 06 July 2011)  
Google aerial photograph with claimed route shown  
95 witness evidence forms (plus 4 subsequently submitted)
- Basis of Application:** That public rights exist and that the route should be recorded in the Definitive Map and Statement.
- Legal Empowerment:** Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map and statement of public rights of way.

The Wildlife and Countryside Act 1981 (c.69) s.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 the events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

The event referred to in subsection 2 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.

Section 53(5) allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or(c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

## 1.2 Description of Route:

The claimed route leads from the local nature reserve in a north north westerly direction through a field, leading to a beach area of the River Avon and on to join path Salisbury 11 at the bridge. The route leads through the field avoiding the drainage channels. There is an additional claimed access point on the western boundary accessed from path Salisbury 9.





**1.3 Site Visit 02 August 2011**

**Approaching claimed route (through gateway) from Avon Valley Local Nature Reserve**



**Claimed route from gateway leading across field (from south heading north)**





**Access point from path Salisbury 9 (western field boundary)**



**Access point from footbridge**





## Beach area from bridge



## 2.0 Compliance of the application

Section 53 (5) of the Wildlife and Countryside Act 1981 (WCA81) allows:

*(5) 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.*

Schedule 14 to this Act states:

### *Form of applications*

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

Schedule 14 (2) requires that notice is served on owners and occupiers of any land to which the application relates.

This application comprised the below and is considered to be compliant with the legislation.

*Notice of application for Modification Order (Form 1)*

*Copy of Notice of application for Modification Order (Form 2) served on landowner (Melanie Auctherlonie)*  
*Certificate of Service of Notice of Application for Modification Order (Form 3)*  
*Map showing claimed route at a scale of 1:5000*  
*Aerial photograph showing claimed route*  
*99 witness evidence forms in total*

### **3.0 Context of the Application**

The application brings evidence to the Council's attention relating to use of the claimed route over a period dating back to 1945. This evidence will be considered in more detail later in this report. The Council has a duty to examine all available evidence, hence a number of maps and historical documents have been viewed to investigate whether there is evidence for the existence of a historic route for the public.

### **3.1 History of Landownership**

1741	From Victoria County History Vol. VI After 1741 it was provided that Mill and Bridge Meads might be fed in common from Lammas to Lady day with all cattle except sheep.
1800	From Enclosure Award Plan Land enclosed into three enclosures. Ownership unreadable ("Thomas ??")
1839	From Tithe Commissioners survey records: Claimed route was three enclosures belonging to: Dean and Chapter of Sarum ("Bridge Mead") Alexander James ("in Bridge Meadow") Alexander James ("Rosewells Acre in Bridge Meadow")
1910	From the Inland Revenue Finance Act 1910 Valuation Book: All forms part of hereditament number 187: Eccliaistical Commissioners
1921	Victoria County History Vol. VI R F S Coggan bought the land
1981	4 Sept 1981 King Edward's Hospital Fund for London managed by Cluttons NB Grazing licence to R Hounslow 1999 to approx. 2007
2004	Warren Armstrong
2007	Riverside strip of land sold to Salisbury and District Angling Club and fenced
2011	Melanie Aucterlonie

### **3.2 Stratford Sub Castle Enclosure Award 1800 EA/74 WSHC**

The land over which the claimed route leads was enclosed by this award dated 1800. The process of enclosure removed the common rights from land and allotted specific parcels of land to individual owners. The process was also capable of extinguishing existing rights of way and creating new ones.

The right of way that is now footpath Salisbury number 11 (Stink Pot Lane) is shown on the same route as in the definitive map and is labelled "From Bemerton" supporting that it was a public right



of way at that time. It is shown by a pecked symbol leading across fields and not as a sienna coloured route like other enclosed routes.

The land over which the claimed path leads is enclosed at this time and forms three distinct plots. No paths or tracks are shown across the land but the path that is now footpath Salisbury 9 leading outside of the western boundary of the land is shown by a pecked line.



### 3.3 Stratford Sub Castle Tithe Map and Apportionment T/A Stratford Sub Castle WSHC

The tithe surveys arose out of the Tithe Commutation Act of 1836 which required all titheable land to be surveyed and tithes apportioned accordingly and commuted to fixed rent charges. It was not

a function of the act or a requirement of the surveyors and commissioners that they should record public rights of way but in drawing maps and plans routes are often represented. It is a convention suggested by a parliamentary paper that roads should be coloured sienna and footpaths may be shown by hatched or pecked lines but it was not a requirement of the act.

This particular map is stamped by the tithe commissioner in 1839 and shows roads and paths. The land over which the claimed path leads does not appear to be drained at this time as waterways are shown in blue. The land affected by the claimed path appears as three separate enclosures in keeping with the Enclosure Map and are numbered 155, 156 and 157.

- 155** Owner: Dean and Chapter of Sarum  
Leased to Alexander James  
Occupied by James Charles 'Parsonage'. "Bridge Mead and field over the water. Water Meadow and arable".
- 156** Owner Alexander James  
Occupied by James Charles "in Bridge Meadow" "Water Meadow"
- 157** Owner Alexander James  
Occupied by James Charles "Rosewells Acre in Bridge Meadow" "Water Meadow"



Path Salisbury 11 is shown (coloured sienna continuing as both Woodford path 16 and as a pecked line continuing as Salisbury 11 does). The path that is Salisbury 9 is not shown though the water course that leads along the western edge of the land affected by the claim is shown.

### 3.4 Ordnance Survey County Series Plans 1:2500

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheet LX.7 (66.7) covers the area affected by the claim and was originally surveyed in 1879 with revisions in 1900, 1923, and 1936. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road....., field....., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;...hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”

Ordnance survey maps of this period, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.

An Ordnance Survey Instruction to surveyors was released on the 16<sup>th</sup> February 1883 which stated that:

#### FOOTPATHS

*All permanent footpaths whether public or private which are a physical feature on the ground must be shown on the 1:2500 and 1:500 plans, with the exception that on the 1:2500 plans footpaths in back yards and small gardens attached to houses, whether grass or gravel will not be shown. F.P. will be written to all footpaths except those in gardens or yards or in cases of very short paths, where the omission is not likely to mislead; the object of the insertion of F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic.*

*This is to embody and supersede all previous orders on the subject.*

*To be entered in the Detail Memo Book and returned with a notification that this has been done.*

*Signed*

*A C Cooke*

*M General*

Against this background early Ordnance Survey can provide a valuable source of information relating to the physical existence of any paths, ways and field boundaries at the time of the survey or revision.

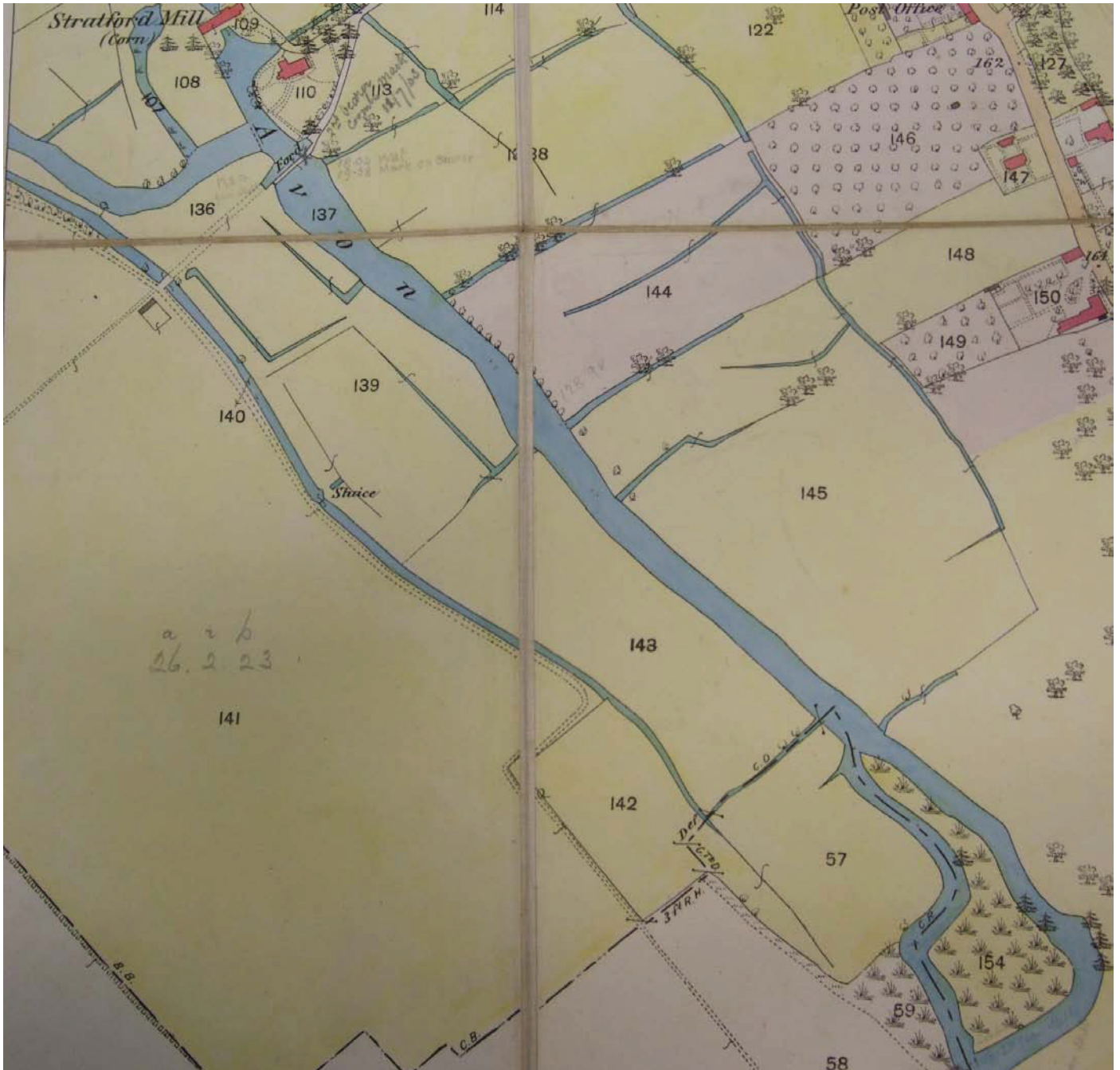
### First Edition 1:2500 Survey 1879 Printed 1881 Sheet 66.7

Mill Lane is clearly shown separately numbered and measured as a road. The road continues to Stratford Corn mill and over the bridge, which is narrower than the road. A ford is shown beside it on the mill side of the bridge (i.e. on the opposite side of the bridge to the claimed route) with the road continuing from the ford, the bridge route terminating at the bank. Paths that are now



recorded as Salisbury 9 and 11 are shown as unfenced paths. The Ordnance Survey did not use the symbols for F.P. and B.R. at the time of the survey.

The land over which the claimed route leads is shown with drainage channels, two of which cut across the claimed route. No path or track is shown across the two fields (parcels number 139 and 143).



**Second Edition 1:2500 Surveyed 1875 Revised 1900 Printed 1901**

Mill Lane is shown as a road, separately numbered and measured extending over a footbridge (marked F.B.) and through a ford. The road ends at the junction of Salisbury paths 9, 11 and Woodford 16 with both Salisbury 9 and 11 labelled F.P. as footpaths. The land over which the claimed route leads is marked "Liable to floods" and shows a system of drainage channels and three sluices, 2 of which cross the line of the claimed route. No path is shown across this land (parcels number 162, 163 and 64).

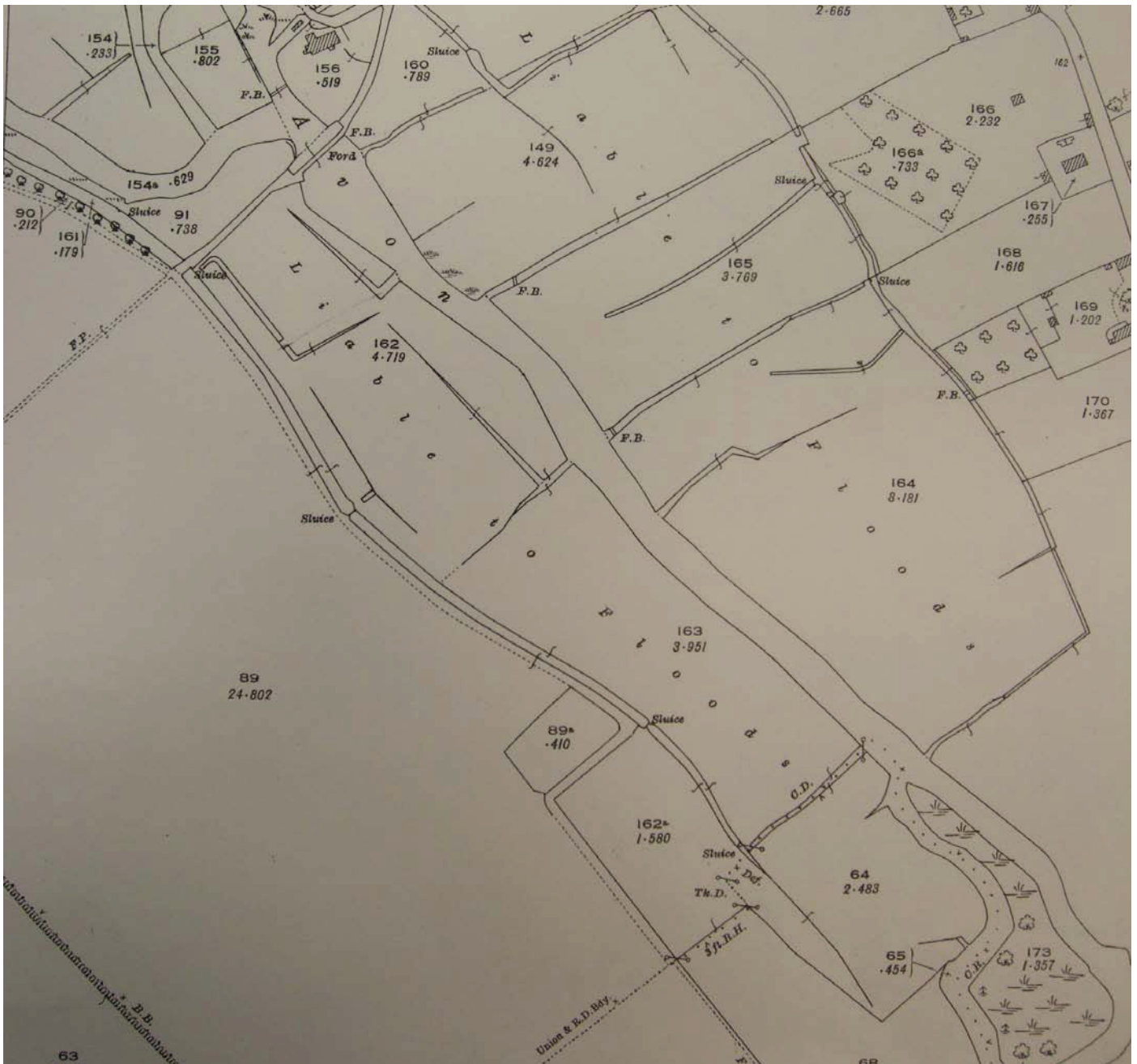


**Edition of 1926 1:2500 Surveyed 1875 Revised 1923**

The representation of Mill Lane and the footpath network is essentially as the Second Edition although some field creations (parcel 89a) have caused some enclosure of Salisbury 9. It is noted that the marsh land at the southern end of land affected by the claimed route (parcel 66) is no longer shown as marsh land suggesting that drainage and sluices in Bridge Mead had taken effect.

The land affected by the claimed route is shown as "Liable to Flooding" with drainage and sluices as in 1901.





Revision of 1936 1:2500 Surveyed 1875 Revised 1936

Representation as 1926 edition.

#### 4.0 Aerial Photography

Aerial photography can provide evidence of the physical existence of features only. It cannot determine what has caused a physical feature (for example whether an apparent path was created by walkers, animals or is just a feature of the land i.e. caused by water runoff). A number of aerial photographs have been viewed in relation to this claim.

Wiltshire Council's archives hold aerial photographs from 1981, 1991, 2001 and 2006.



**1981** The photographs show the existence of some drainage ditches but not bisecting the fields in the same manner as shown on the early OS maps (1879 to 1936 inclusive). Some evidence of tracks approximately consistent with the claimed route can be seen and an area at the end of the bridge would appear to be widened and worn suggestive of an entrance to the field through which the claimed route leads.



Path or track

**1991** This photograph supports the suggestion of a worn path or track approximately along the claimed route. Numerous drainage channels and undulations in the field can be seen in this photograph and track is over the only ground not affected by these undulations.



Worn path or track

Some evidence of a path can be seen from Salisbury 9 through the nature reserve to the claimed path.



2001

This photograph clearly shows a worn path extending along the claimed route. Another path can be seen following the river bank though this is less distinct. The river bank path appears to cut in land for part of its route apparently to avoid some drainage ditches. The 'beach' area has the appearance of being worn from the end of the bridge.



Tracks clearly shown

It is also noted that by 2001 the path into the nature reserve from Salisbury 9 was clearly visible.



**2006** This photograph shows a very worn area from the bridge to the 'beach' area and some evidence of worn paths along the river bank and the claimed route. Again the path from Salisbury 9 to the nature reserve is shown.



## **5.0 Other Photographic Evidence**

Wiltshire Council is the highway authority for this area and has a duty to inspect and maintain not just the public rights of way but also the bridges. The footbridge at the northern end of the claimed route was inspected on the 19 April 1993 and 23 March 1995. Photographs have been viewed which show the end of the bridge. Some witnesses describe gaining access to the claimed path as being 'through the bridge rails' and is clear from aerial photographs that there is significant wear on the ground at this point.

**19 April 1993** The barbed wire field fence has been secured to the bridge rails at the claimed land side of the bridge.





**23 March 1995** This photograph show that the fence is connected to the bridge with barbed wire in a manner consistent with the 1993 photograph but that there appears to be a fence post missing. There is significant evidence of wear on the ground at this point even though it is securely fenced. This wear could be attributable to water runoff from the bridge deck. It is noted that the final rails on the bridge show wear (darker polishing) at this point consistent with claims that people went through them.



## 6.0 Witness Evidence of Use

The application brought to the Council's attention evidence of knowledge of the claimed route by a total of 99 individuals, 92 of whom had used the claimed route. **SEE APPENDIX A**

On the subject of sufficiency of evidence The Planning Inspectorate issues Consistency Guidelines for modification orders and the following is taken from the current edition:

*There is no statutory minimum level of user required for the purpose, and the matter does not appear to have been tested in the courts. However, it is clear that Inspectors must be satisfied that there was a sufficient level of use for the landowner to have been aware of it, and have had the opportunity to resist it if he chose. In Hollins v Verney (1884) it was said that: No user can be sufficient which does not raise a reasonable inference of such a continuous enjoyment and that no actual user can be sufficient to satisfy the statute ... unless the user is enough to carry to the mind of a reasonable person (owner, etc.) the fact that a continuous right of enjoyment is being asserted and ought to be resisted..... It follows then that use of a way is less cogent evidence of dedication if the landowner is non-resident – at any rate, if the owner had no agent on the spot – than if he is resident. If the landowner did not know that the way was being used, no inference can fairly be drawn from his non-interference.*

*Use of the way should also have been by a sufficient number of people to show that it was use by the public – representative of the people as a whole, or the community in general (see 'The Public' above) – and this may well vary from case to case. Very often the quantity of valid user evidence (see 'User evidence,' below) is less important in meeting these sufficiency tests than the quality (i.e. its cogency, honesty, accuracy, credibility and consistency with other evidence, etc.).*

*It was held in Mann v Brodie 1885 that the number of users must be such as might reasonably have been expected, if the way had been unquestionably a public highway. Watson J said: If twenty witnesses had merely repeated the statements made by the six old men who gave evidence, that would not have strengthened the respondents' case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence. Arguably, therefore, the evidence contained in a few forms may be as cogent - or more cogent – evidence than that in many. However, Dyson J in Dorset 1999 did not question that the Inspector had found the evidence contained in five user statements insufficient to satisfy the statutory test, even though the truth of what was contained in them had been accepted.*

It is considered that prima facie there is a sufficiency of evidence and that it is appropriate to consider both statute law and common law.

### 6.1 Statute Law Relating to Use by The Public

The evidence submitted with the application suggests that the claimed route has been used by the public for a considerable number of years (since 1945); the route does not appear have a historical context and/or evidence of public use before this time and I mindful that either the principles of dedication at common law (the principal of long term use by the public and either acceptance by the landowner by making no objection if such use is considerable or perhaps by an express dedication) or those laid out by statute in s.31 of The Highways Act 1980 need to be found to apply for the application to succeed.

Section 31 of The Highways Act 1980 states:

### **31. Dedication of way as highway presumed after public use of 20 years**

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

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*  
*(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*  
*(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

*(6) An owner of land may at any time deposit with the appropriate council-*  
*(a) a map of the land on a scale of not less than 6 inches to 1 mile and*  
*(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;*

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

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

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are,*



*in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

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

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

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

*(8) 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 the land as a highway would be incompatible with those purposes.*

Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years.

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

## **7.0 Testing the Evidence**

### **7.1 Initial Consultation**

The following letter and plan showing the claimed route was circulated:

*Wiltshire Council has received an application for an order adding a public footpath to the definitive map and statement. The application relates to a claimed path across land at Stratford sub Castle leading from the bridge over the River Avon between Stink Pot Alley and Mill Lane in a south south easterly direction to a gateway leading to the Salisbury City Council owned nature reserve and as shown by a broken black line on the attached plan.*

*The application is supported by 95 user evidence forms submitted by people who claim to have used the way for varying lengths of time since 1945.*

*For public rights to have been acquired it is important that this use by the public has been 'as of right' that is without permission, without secrecy and without force. If you have any evidence relating to permissions granted, signs observed or any other evidence that you would like to bring to the Council's attention I would be pleased to receive it by Friday 16 September 2011. Please be as specific as you can be about dates and locations. Please also note that matters of desirability, need, the environment and health and safety are not issues that can be considered under the legislation.*

*When officers have considered all available evidence a decision will be taken by senior officers as to whether the application will be upheld and an order made or whether the application will be refused. Should an order be made there is a statutory period for receipt of formal objections and you will receive notification of this as appropriate.*

The letter and plan were circulated to:

All witnesses  
Salisbury City Council



time and were not there for 9 months of the year. He grazed the land through to the allotments as well and when the bull wasn't there the gate was open so cattle could graze all of the land. He was responsible for the new gate going in. He knew that people used the beach area and didn't mind but did find that fences were damaged.

At the bridge end the field was securely fenced and there was no gate and no stile. He put up notices to ask people to use the footpath outside the field. In 2004 when Warren Armstrong bought the field he put up notices on the boundaries saying there was no right of way. He was not aware of any dispute to this at the time.

### **M Gilchrist – Local person with former Avon Valley Local Nature Reserve Involvement**

The board walk through the nature reserve was installed around 1995 but there was a riverside track there before capable of accessing the claimed route. The gate between the nature reserve and the claimed route was sometimes open, sometimes shut and sometimes locked. He can recall the signs that Mr Armstrong put up when he bought the land.

Natural England give the date of declaration of the adjoining land as a nature reserve as 28.2.1993.

### **Mr M Clarke, Stratford Mill**

Has lived at Stratford Mill since 1993 and owns land adjoining the land over which the claimed route leads. Cattle have grazed the land affected by the claim for many years and watered in the River Avon just downstream of the footbridge. The land has been securely fenced and where it adjoins Salisbury paths 9 and 11 has been robust and complete.

In 2004 Mr Armstrong erected a stile near the footbridge and placed a permanent clear notice to the effect that "permissive access was allowed but could be withdrawn at any time". The notice was present until 2011 and was taken to mean that Mr Armstrong had no intention to dedicate any part of the land to the public. Was not aware of any objections to the notice.

He states that the starting point of the claimed route was exactly where Mr Armstrong put the notice so everyone must have seen it.

There was no way of getting from Sals 9 to the claimed route at the Salisbury end until a kissing gate was put in by the local authority. Not clear whether this is a public right of way or not.

### **Roger Leary – user of the path**

Has walked here for three years. The gate at the south end was always open. The notice was not conspicuous and may have only been put there five years ago when the owner wanted to sell. Did not see any notice at point A but the stile was well kept. Walked the path regularly every week and always saw others using it but never animals grazing. Does not consider he had permission or used secrecy or force.

### **Nick Cowen – Senior Rights of Way Warden Wiltshire Council**

Has been a warden since 1990. Salisbury path 9 was a narrow path leading between hedges and fences until 2001 when it was improved. Pre 2001 the path was well worn with exposed roots and could be muddy in the winter possibly from runoff water from the cultivated fields to the west.

The path was improved (trimmed back, levelled, drained and surfaced) in 2001/2002 as a result of Salisbury's Walking for Health promotion. It has always been a well used path but the new surface encouraged more use in the winter months (cyclists use it too).

The walks in the area have been promoted as Health Walks and as part of another health walking promotion called "Countryside Connection".

### **Dr G Powell – user of the path**

Regularly walked the route since 1992, at least once a month. Has never seen signs saying he couldn't walk it or granting him permission to do so. The field has always been open, there was a stile at the bridge end. The path across the field was always clearly visible.

### **Warren Armstrong – landowner September 2004 to March 2011**

Placed permissive access signs at points A and B and at interim point C adjoining Salisbury 9. The signs said "*Parsonage Farm, Permissive Access only. No cycles or motorised vehicles. Access prohibited when cattle are present as they can be dangerous. This is private property with no public right of way. Permissive access may be withdrawn at any time.*"

In 2004 he replaced the fence and the gate at the bridge end as they had been badly damaged by people climbing over them which had allowed cattle to escape. The gate at point B (southern end of claimed route) had to be repaired because it had buckled under the weight of people climbing it. Both gates had been padlocked by the tenant farmer.

In 1997 he had asked the then landowner's agent (Cluttons) if he could walk his dog in the field and had been told yes subject to no animals being present and the tenant farmer agreeing.

### **Philip Coggan – son of landowner 1921 to 1990s**

Has known the land for 50 plus years and has been aware of walkers and dog walkers using the route regularly but not when cattle were in the field. Organisations have requested permission to use the field (i.e. scouts)

Has known that people had been turned back when using the route if cattle were present and that they have been challenged. Has escorted people without fishing licences out of the field himself.

His family put up signs saying "Beware of the Bull" which were not defaced.

Only records a stile at the bridge which was put in by previous owner. The way was not obstructed.

The worn path seen on aerial photos is that used by his cattle and tractor and trailer as it was the only dry access route for putting food down.

In the early 1970s his father attended a court hearing when two boys shot another boy with an air gun in the field. The boys were not on a foot path and had not asked for permission. Believes the path was only created around 2000 when Mr Armstrong bought it.

### **Miranda Gallagher – user of the path**

Submitted an aerial photograph taken on Sunday 18 June 2000. A worn track can be seen along parts of the claimed route and is consistent with the Council's 1991 and 2001 images.



A photograph was also submitted which appears to show someone walking on the path on 23 August 2007.

An article from the Independent newspaper was also submitted featuring the claimed route as part of a “walk of the month”. The article is dated Sunday November 15 2004. The article is entitled “Walk of the Month : Wander back 5000 years in four hours” and is written by Ian McCurrach describing a route linking Salisbury Cathedral and Stonehenge.

*“...the route is not waymarked...”*

*“...The route takes you along a raised boardwalk with the Avon Valley Local Nature Reserve on your left. Stick closely to the river all the time, frequently passing under the canopies of weeping willow and hawthorn. Don't follow the raised boardwalk as it branches to the left but carry straight on along the river. Look out for a village on the right and in the distance a large flat-topped hillock. Eventually you will reach a footbridge which you cross, carrying straight on onto the village of Stratford sub Castle...”*

It is pointed out that there is no obstruction when passing between the nature reserve and the field and that the instruction is clear in directing the walker to carry on along the river rather than taking path Salisbury 9. Ms Gallagher goes on to add:

*“The path was obviously well used and popular enough for a journalist in a national newspaper to have walked it and direct his readership to use it. He would not have done this if it seemed to be private.”*

#### **David Amey – Local resident**

Has lived in the area and walked the Avon Valley for most of his 73 years. Has always understood that the field is water meadow for livestock and that any access has been at the discretion of the owner.

In the past there have been notices informing the public of this and he has used Salisbury 9 accordingly. Over the past few years there have been no livestock and the gate at the southern end has been left open or broken down allowing numerous people to take a short cut across to Mill Lane or an open space to exercise their dogs.

#### **David Mills – Local resident overlooking the water meadow and claimed route**

Has lived there since October 1993. For most of the period 1993 to 2003/4 the land was leased to Mr Hounslow who grazed cattle there. The field was fenced and gated at the southern end. He believes there was signage saying the land was private. People did walk there but alongside the river and not along the claimed path unless wet.

Had many conversations with the agent (Cluttons) and the tenant about vandalism and security as people damaged fences and gates in order to obtain access. Has recovered escaped cows on several occasions. Anglers had to have access to the river bank and this made it impossible to make the field impenetrable to people requiring illegal access.

Mr Armstrong purchased the field in 2003/2004 and when he sold the strip of river bank to the angling club he put up permissive notices on the field path to encourage use of this path as the riverside path was no longer available (this was fenced off).

During Mr Armstrong's ownership he does not recall seeing any grazing animals.

## **Melanie Auchterlonie – Owner of the land April 2011 onwards**

Bought the land 5<sup>th</sup> April 2011. Lived in Salisbury and knew the field during 1991 to 1996.

No searches on her property revealed a right of way. A local information website states “..these water meadows are made available by Parsonage Farm. Permissive access is at the discretion of the land owner and, in this case, is denied whenever there are cattle grazing in the meadow”. The extract is undated.

A photograph of the sign at the gate at the southern end was submitted. It stated “*Parsonage Farm. Permissive Pedestrian Access only. No cycles or motorised vehicles. Access prohibited when cattle are present as they can be dangerous. This is private property with no public right of way. Permissive access may be withdrawn at any time.*”

Another photograph of the remains of a broken sign of the same type was submitted. The broken sign is on the fence post by the stile where the water meadow meets Salisbury 9 (mid way along claimed route).

Between 1991 and 1996 Ms Auchterlonie kept her pony in the field to the south and can recall that cattle grazed the field in the summer and a private sign was on the gate and that the fencing was secure all around the field. Both gates were locked.

Has contacted Cluttons (the agent for the landowner c.1991 to 2004) who have declined to respond but have said that it was likely that the tenancy agreements made (Pat Coggan, Andrew Barratt and Richard Hounslow) would have contained caveats regarding prevention of public access or any rights of access or any intention to dedicate as such.

### **7.3 Second Consultation**

An investigation of the evidence submitted revealed that there were several points that required clarification. These related to:

**Signage** – Some witnesses recalled signs and some did not. However there seemed to be reasonable agreement that some signs had been in place regarding permissive access during the time Mr Armstrong owned the land. Users of the path that recalled the signs state they went up around 5 years ago and this agrees with the evidence of Mr Mills who states they went up when the riverside path was fenced in 2007. However, the evidence of the landowner at the time, Mr Armstrong gives that the signs went up in December 2004 and this agrees with the evidence of Mr Clarke of Stratford Mill.

As a result further questions relating to signage were asked of Mr Armstrong and Ms Auchterlonie.

This is considered an important point as the signs were undoubtedly erected and two were still in position in April 2011 (evidence of Ms Auchterlonie) and officers saw one in August 2011.

**Date of Calling Into Question** – If the erection of the signs called any public right into question then only evidence of use predating 2004 (or 2007) would be considerable. Hence 54 users were identified who had used the route for the full 20 years between 1984 and 2004 and additional

questions were asked of them relating to the route they took at that time and how they accessed the field during that time only.

Additional questions were also asked of Melanie Auchterlonie and Warren Armstrong.

NB Subsequent to this second consultation being circulated an expired s.31(6) deposit was found. This was in place between March 1997 and February 2003.

#### **7.4 Second Consultation Responses (22 received out of 54 sent)**

##### **Melanie Auchterlonie – current landowner (April 2011 on)**

In April 2011, when she bought the land there were two signs fully displayed on the route (the Parsonage Farm permissive access signs referred to in her earlier evidence). These were at either end of the claimed route (bridge and southern gate). Broken sign remains by Salisbury 9 junction halfway along claimed route.

In April 2011 the gate at the southern end of the route was chained and locked open.

Sent photographs showing the field in 2005. Claims that short grass is because land has been grazed by animals which would have needed to be contained.

User evidence submitted in support of the claim shows that only 65 of the 98 have used it for 20 years. 7 of these live too far away to realistically walk it. 8 have used a different route.

##### **Claire Connor – User of path 1979 – 2011**

Map shows riverside path walked with small variation at northern end. Map does not agree with application route.

Used stile near bridge.

Would be prepared to give evidence at inquiry subject to it being at a convenient time.

##### **Gervase Evans – User of path 1968 – 2011**

Map shows riverside route walked if not wet (until fenced off for anglers). Walked claimed route when wet. Entered field over a stile.

Would be prepared to give evidence at a public inquiry.

##### **Susan Saunby – User of path 1970 – 2011**

Map shows claimed route. Used a stile at the bridge end and entered the field through a gate that was always open.

Would not be prepared to give evidence at a public inquiry.

##### **S Hall – User of path 1973 – 2011**

Map shows the riverside route. Entered field over a stile at the bridge end.

Would be prepared to give evidence at a public inquiry.

**Mrs S Bailey – User of path 1976 – 2011**

Map shows most of claimed path with part of riverside walk included at southern end. Recalls using a stile at the bridge end and an old stile and then a gate at the southern end.

Would not give evidence at a public inquiry.

**Warren Armstrong – landowner 2004 – 2011**

Confirms that he inspected the fences and notices regularly. The original notices were plastic and broken within days so were replaced with metal notices. These were original attached at the stile by the bridge, the stile halfway along the claimed route and on the gate at the southern end, but the metal replacement only went at the bridge and gate ends. They were attached with blind bolts and self tightening nuts and successfully withstood some attempts at removing them.

He didn't replace the central one when it broke as it was at a point that was fairly difficult to climb over (not really a stile, more just post and rail fencing). He only recalls seeing one person using this access point.

**P Goddard – User of path 1984 – 2011**

Map confirms both riverside path and claimed route. Recalls that Salisbury 9 was impassable for a long time.

Used to access field through bars in the bridge before the stile went up. Changed to the claimed route after 2007 when fishing club closed off the riverside walk but also used claimed route when the ground was wet.

A rickety stile was replaced by the gate at the southern end. The gate was permanently left open.

Would be willing to give evidence at a public inquiry as would other local people.

**Ann Rumbold – User of path 1945 – 2011**

Map confirms claimed route. Access over stile at bridge end and a stile and then a gate at the southern end. Gate always open unless there were cows. People were not told they couldn't enter but when foot and mouth happened they were asked to avoid spreading it. The message was removed after this time (2001).

Many people have enjoyed this walk and it is a more peaceful walk than the Salisbury 9 as running clubs and cycles go past too fast making walkers end up in the nettles.

May not be able to attend a public inquiry.

**Julia Greenstock – User of path 1977 – 2011**

Map confirms use of the claimed route and the riverside path. Entered field by way of a stile near the bridge and a gate (always accessible) at the southern end. Sometimes used a stile in the middle to Salisbury 9.



The path has never been obstructed and people were invited to use the field as the farmer installed stiles.

Would be willing to attend a public inquiry.

#### **M Pearce – User of path 1983 – 2011**

Map confirms use of the beach area and then some of claimed route. Access over a stile near the bridge.

Would be willing to attend a public inquiry if not at work.

#### **Martin Quigley – User of path 1970 – 2011**

Map confirms use of claimed path. Accessed field over a stile for the majority of the time at the bridge and through a gate at the southern end. Sometimes used entry point halfway along on to Salisbury 9.

The path has always been open and free to use in the 44 years he has lived in Salisbury.

Would be willing to give evidence.

#### **S and J Allen – User of path 1970 – 2011**

Map shows a route across the field accessed over a stile near the bridge.

No further comment is given

#### **David Hopkinson – User of path mid 1960s – 2011**

Map shows application route. Entered field through metal bridge railings and also over a stile in the fence. Also entered field in the middle over a wooden stile and at the southern end he entered through a gate which was usually open but occasionally closed when he climbed over it. Through each entrance the dog would get beneath the fence.

Is willing to give evidence at a public inquiry.

#### **Mrs E A Evans – User of the path 1970 – 2011**

Map shows application route. Entered field over a stile near the bridge. The stile “came and went” over the years but was there in 2004. When it was not there climbed through bridge railings. Sometimes used a stile in the middle of the path but generally walked through the open gate, or over the gate or used a stile to the side.

If needed will give evidence but is a carer and would prefer not to if possible.

#### **Robert Read – User of the path 1982 – 2011**

Map shows application route. Entered field over a stile at the bridge and through an open gate at the southern end.

Would be willing to give evidence at a public inquiry but not on a Monday.

### **Robert Mullins – User of the path 1961 – 2011**

Map shows the application route. Entered field over a stile at the bridge or over a stile mid way along (at junction with Salisbury 9) or at the southern end over a stile or through a gate.

Would be willing to give evidence at a public inquiry.

### **Miss P H Jones – User of the path 1980 – 2011**

Map shows the riverside route and the application route. Used the riverside route until 2004 though during wet periods the drains became 'very squelchy' and a more passable route was used. Broke ankle in 2004 and therefore did not use the route for some time. When started walking there again found the riverside route fenced and used a path further away from the river which was much easier going- this was the application route. Used this route from that time.

Up to 2004 access at the bridge end was through the bridge railings though this became more difficult with time as the bank eroded making the drop larger.

In 2004 the stile at the southern end was still there but by then inaccessible owing to erosion and vegetation.

The gate at the southern end was certainly always open from 2004 until May 2011 when access was denied.

From 1979 to 1987 kept a pony and a horse at parsonage Farm and during the summer took them down to the bridge and used the river (ford) at the mill side. There were often people in the river and field on the side where the claimed path is.

Would be willing to give evidence at a public inquiry.

### **Mr and Mrs Best – User of the path 1946 – 2011 and 1949 – 2011**

Plan shows access near the bridge (but on wrong side of the river). Always accessed through an old rickety stile or through the fence. Have never been refused access at any time even when cattle were grazing.

### **Mr and Mrs Southey – Users of path 1977 – 2011 and 1978 – 2011**

Maps marked with application route on showing a stile near the rbridge and a gate at the southern end of the path.

Mr Southey may be able to attend (dependent on date). Mrs Southey is not willing to attend a public inquiry.

## **8.0 Interpretation of the Evidence**

The council must consider all available evidence and this may relate to a dedication at common law or by statute law. Historical evidence may be considered by virtue of Section 32 of The Highways Act 1980.

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

This application does not bring any historical evidence to the council's attention and none has been discovered. There is no evidence of an express dedication by a landowner and hence the claim must rely on use by the public of the way, 'as of right'. Section 31 (1) requires that a period of 20 years of use 'as of right' must be satisfied for the way to be deemed to have dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

**8.1 Date of 'calling into question'** To establish the 20 year period it is necessary to look to any acts that may have challenged the public's use of the way. This includes the erection of signs and notices inconsistent with the dedication of the way as a highway, notices given to the relevant authority in respect of these signs, a deposit made under section 31(6) of the 1980 act, verbal challenge or physical obstruction (perhaps a gate locked specifically to prevent access by the public).

The following possibilities are considered for the date of calling into question:

- i) June 2011 Application for a modification order to add the claimed route.
- ii) April 2011 Physical blocking of the way by Melanie Auchterlonie when she bought the land. Verbal challenges to the public evidenced by witness statements in support of the application and from Ms Auchterlonie.
- iii) 2007 The fencing of the riverside path and the erection of new stiles and permissive route signs by Mr Armstrong. This evidence from witness statements in support of the application and from Mr Mills.
- iv) 2004 The erection of a new stile and notices by Mr Armstrong three months after he bought the land in 2004. This evidence from Mr Armstrong and Mr Clarke.
- v) 1997 In March 1997 A deposit made under s.31(6) of the Highways Act 1980 was made by Cluttons, the agent for the landowner at that time – the King Edwards Hospital Fund for London. This deposit was held by Wiltshire County Council and contained a Deposited Statement and plan and a Statutory Declaration. The plan shows that the land affected by the application was included and that no public rights of way were shown across it nor was it the landowners intention to dedicate any. **SEE APPENDIX B**. The period covered by this deposit is six years (i.e. 1997 to 2003).

Although events i and ii could be taken as qualifying events it is considered that the signs erected and maintained by Warren Armstrong were clearly worded stating that the way was permissive and that permission may be withdrawn at any time. It is noted that not all users recall these signs but a lot do. There may be several reasons for this but the most likely are that the sign on the gate

was not visible when the gate was open (which from around 2007 it is likely that it always was), that people access the path through the bridge rails and not over the stile and that when out for a recreational walk people may not notice signs.

I am however satisfied that they were in place, that they were maintained and that their wording was sufficient to satisfy s.31(3) of the Highways Act 1980.

It would therefore be necessary to count the 20 years back from the time of erection of these notices. The evidence of Mr Armstrong is taken for this.

Additional to this action by the later landowner, Mr Armstrong, in 1997 the landowner at that time, the King Edward Hospital Fund, made a deposit with the highway and surveying authority, Wiltshire County Council under s.31(6) of the Highways Act 1980.

This deposit is sufficient evidence to negative the intention to dedicate a public highway (s.31(1) Highways Act 1980) for the period 1997 to 2003. As a 20 year period cannot be achieved between either 2003 and 2004 (the date of Mr Armstrong's signs) or 2003 and 2011 (the date of Ms Auchterlonie's challenge), the relevant period becomes the 20 years prior to 1997.

**The relevant period is 1977 to 1997.**

**8.2 'a way'** Section 31(1) refers to 'a way'. Witnesses claim that a defined path exists between the bridge and the gate at the southern end of the field. Officers have observed that in August 2011 a clear path was visible and hence it is likely that claimed route could be considered to be 'a way'. Aerial photographs dating back to 1981 support the existence of a way.

**8.3 'a way of such character'** section 31(1) refers to 'a way of such character'. Lightman J in *Oxfordshire County Council v Oxford City Council* ([2004] Ch253) said that the true meaning and effect of the exception of "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" is that "the user must be as a right of passage over a more or less defined route and not a mere and indefinite passing over land". The exception could also apply to routes that did not connect to highways or lead to a place of popular resort.

The claimed route has at its northern end footpath Salisbury 11, a public highway. The southern end does not link with a public highway but leads into a local nature reserve. This is clearly a place of popular resort where access is encouraged (i.e. provision of boardwalks) and hence qualifies.

Although some witness have claimed the whole width of the field as the right of way and many describe playing in the river at the northern end the vast majority of users specify a width of between 1 and 3 metres (see Appendix A – Width) consistent with the use of the defined path seen on aerial photographs and on the ground.

**8.4 'enjoyed by the public'** Case law from the 1930s (*Merstham Manor Ltd v Coulsdon & Purley RDC* [1937] 2 KB 77) established that enjoyment in this context means "having had the amenity or advantage of using".

Enjoyment of the public does not require that the way must have attracted people from far and wide. In *R v Inhabitants of Southampton* ([1887] 19 QBD 590) Coleridge C. J commented that in the common law context use by "the public" must not be taken in its widest sense; it cannot mean that it is a user by all the subjects of the Queen, for it is only the residents in the neighbourhood who ever use a particular road or bridge." Additionally, *Dyfedd CC v S of S for Wales (CA)*(1989)

59 P & CR 275 found that use which qualifies in all other aspects is not disqualified because the only purpose was recreational.

Officers consider that the claimed use has been by members of the public at large and not by some permitted right associated with, say, residents of Stratford sub Castle or those involved with the local nature reserve. It is natural that a short route such as this has amenity value for local people and unless recorded, its use will only arise from local repute. It is additionally noted that the claimed route may have been that promoted in a national newspaper in 2004.

**8.5 'as of right'** use that is 'as of right' is use that is without permission, without secrecy and without force.

It does not matter what is in the mind of the user when they are using the route, the only thing that is relevant is whether their use was without permission, secrecy or force.

All that may be considered is whether that use has gone on, without permission, without force and without secrecy. This point was addressed by Lord Hoffman in the House of Lords in the case of Regina v Oxfordshire County Council and others ex parte Sunningwell Parish Council [2000] 1 AC 335. In his judgement Lord Hoffman dismisses any additional requirement of subjective belief for the satisfaction of 'as of right':

*"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use a footpath will use it in any way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the earlier years will have been without any very confident belief in the legal right. But that does not mean that it must be ignored. Still less can it be ignored in a case like Steed when the users believe in the existence of a right but do not know its precise metes and bounds. In coming to this conclusion, I have been greatly assisted by Mr J G Ridall's article "A False Trail" in [1997] 61 The Conveyancer and Property lawyer 199."*

Additionally it is a feature of public rights of way in England and Wales that they pass over land that is in private ownership; that is, that the public has a right, in law, to pass and repass over a defined route on land that is privately owned.

Hence it is not relevant whether the users knew the land was in private ownership or used for grazing cattle, what matters is whether their use was for a full period of 20 years and was, as of right.

**Without permission** No users report ever having asked or been given permission to use the route prior to the erection of Mr Armstrong's signs.

**Without secrecy** Users report using the route during normal hours to visit shops, to visit friends, to exercise dogs and for pleasure. All users report seeing other users and local residents, tenants and landowners all acknowledge that people have used the land.



**8.6 Without interruption** Section 31(1) refers to actual interference which stops the public use for a time. Examples of this may include the locking of gates specifically to interrupt public use or an action under sections 31(3)[4][5] and [6] of the 1980 Highways Act.

There is some evidence that the gate at the southern end of the route was locked (if there was a bull in the field) but other witnesses report that it was always open and accessible. Some evidence reports that the public were excluded when cattle were grazing. There is clear conflict in the evidence relating to access. If the gate was locked to prevent the public entering then the use was not without interruption. If the gate was locked to prevent the public leaving the gate open and the cattle escaping then this would not interrupt the use and people do record having gone over the gate. Some users also report that there was an old stile at this point as well as a gate.

Access to Salisbury 9 and 11 was prevented to the public between March 2001 and July 2001 as a result of a declaration made by Wiltshire County Council under Article 37A of the Foot and Mouth Disease Order 1983. Hence access to both ends of the claimed route was denied during that period.

The Planning Inspectorate (PINS), in Advice Note 15 (2009), advises that this interruption to use of ways would not seem to be classified as an interruption to use under section 31(1). PINS consider that closures under the Plant Health (Great Britain Order) 1993 have not had implications for claims of deemed dedication under section 31(1) and are not aware of any case law from which a parallel may be drawn. PINS also state that over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used. There is no evidence of interruptions to use between the years 1977 and 1997.

**8.7 Section 31(1) the proviso** – the closing phrase of section 31(1) is that a way is deemed to have been dedicated ‘unless there is sufficient evidence that there was no intention during that period to dedicate’. The period under consideration is 1977 to 1997.

Once 20 years uninterrupted use of right has been proved the burden is on the landowner to show that there is sufficient evidence that there was no intention to dedicate. Section 31 details several ways in which a landowner may show that he had no intention to dedicate. Officers have received no evidence of any of these actions between 1977 and 1997, nor is it sufficient for any landowner to say that locked in their own mind was the knowledge that they had no intention to dedicate.

In the cases of *R.(Godmanchester Town Council) v. Secretary of State for the Environment Food and Rural Affairs* and *Cambridgeshire County Council and R. (Drain) v. Secretary of State for the Environment Food and Rural Affairs* and *Yattendon Estates Ltd* heard in the House of Lords, judgement delivered 20 June 2007 [2007] UKHL 28, two test cases were brought before the House of Lords for a ruling on the effect of the provision in s.31(1) of the Highways Act 1980. The main issue in both appeals concerned the nature of the evidence which is sufficient to demonstrate that there was no intention to dedicate.

Lord Hoffman reasoned:

“ It should first be noted that s.31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be a difficulty in satisfying such a requirement without any evidence at all. It requires ‘sufficient evidence’ that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in *Billson’s Case* [R v S



of *S for the Environment ex p. Billson [1999] QB374*] it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience”.

Mr Coggan states that signs during his family’s ownership (1921 to 1981) were in place saying ‘private’ but it is not clear to what they referred (they could have referred to fishing rights) and are not considered sufficient to satisfy s.31(3) Highways Act 1980.

## 8.8 Width

Witnesses were asked how wide they considered the claimed path to be. A table of responses can be found at the end of Appendix A. There is a reasonable variance with responses as the claimed route is unfenced and leads across a field. The following table gives a summary of responses:

<b>Width</b>	<b>No of responses</b>
<b>1 metre</b>	<b>2</b>
<b>1 – 2 metres</b>	<b>25</b>
<b>2 metres</b>	<b>21</b>
<b>2 – 3 metres</b>	<b>16</b>
<b>Wider than 3 metres</b>	<b>7</b>
<b>‘whole field’</b>	<b>7</b>

## 9.0 Conclusion

With reference to Appendix A. A total of 99 witnesses have submitted user evidence forms relating to their use up to 2011. Of these 99, 82 witnesses have submitted user evidence forms relating to their use in the years up to 1997.

Of these 82, 12 witnesses do not give evidence for the claimed route during that period (several people used the riverside path until it was fenced in 2007 and only latterly started using the application route). If the evidence of these people is deducted there are 30 who claim to have used the application route for the full 20 year period between 1977 and 1997 and who claim to have used the application route for part of that period. All of these people claim to have used it ‘as of right’.

The evidence of these people forms at least a reasonable allegation that public rights subsist. There are however clear contradictions in the evidence of users of the path and the owners and lessees of the land and some other witnesses. The key areas where differences exist are:

- 1) The frequency with which the gate at the southern end was left open or was shut and locked with the intention of excluding the public and when the old stile was in position at this location (one witness reports it still being there but almost unusable by 2004).
- 2) The means by which the public accessed the northern end of the claimed path near the bridge. Evidence has been given relating to stiles, a gate and climbing between the bridge rails. Additionally, Mr Armstrong states that he removed a gate at the bridge end because it had been climbed over by people and replaced it with a stile.
- 3) The presence of signs.
- 4) The issue of challenge.

Prior to the deposit of the s.31(6) statement, plan and statutory declaration in 1997 the Council has seen no incontrovertible evidence to defeat s.31(1) of the Highways Act 1981.

An order to add a public right of way to the definitive map and statement an order may be made under s.53(3)(b) and s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 (WCA81).

It is required that for an order to be made under s.53(3)(b) WCA81 the event is:

*(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway*

The legal test is 'the balance of probabilities'. A weaker test is however permitted to make orders under s.53(3)(c)(i) WCA81.

Further to the case of R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P and CR 402 it is clear that an order may be made under section 53(3)(c)(i) by applying one of the following tests;

**TEST A** Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no evidence to the contrary.

**TEST B** Is it reasonable to allege that on the balance of probabilities a right of way subsists. This requires that the allegation of public rights is reasonable and there is no incontrovertible evidence to the contrary.

Owen J said:

*"Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions as fact. However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry."*

To confirm such an order, the stronger test (essentially that contained within Test A) needs to be applied. 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 subsist on the balance of probabilities. This would be the test applied by an inspector appointed by the Secretary of State or any court.

## 10.0 Recommendation

That an order be made under s.53(3)(c)(i) WCA81 as appended at C. After due advertisement in accordance with Schedule 15 to the 81 Act, if no objections or representations are received the order should be confirmed. If objections or representations are received the order must be sent to the Secretary of State for Environment, Food and Rural Affairs for determination.

31 October 2011

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Witness no	Name	Address	Years of Use	Route used
1	Mrs R A Gilbert	25 New Zealand Avenue, Salisbury, SP2 7JX	1994 – 2011	Application route
2	D and S Ritchie	52 Harper Road, Salisbury	1950 – 2011	Application route
3	Mrs E A Evans	The Bungalow, South Wilts Grammar School, Stratford Rd, Salisbury	1970 – 2011	Application route
4	Mr P Frankland	312 Devizes Road, Salisbury, SP2 7DP	1986 – 2011	Application route
5	Mr P Lewis	23 Ashley Road, Salisbury, SP2 7BZ	1995 – 1999 2005 - 2011	Application route (Google Earth picture enclosed)
6	Mrs J R Harvey	47 Clifton Road, Salisbury, Wiltshire	1950 – 2007	Application route
7	Mr P J F Mitchell	5 Bedford Road, Salisbury, SP2 7LW	1985 – 2011	Application route
8	Miss P H Jones	66 Russell Road, Salisbury, SP2 7LR	1970 – 2011	Riverside path taken until fenced off by fishermen, then application route
9	Miss S Newman	46 Sidney Street, Salisbury, Wiltshire	1968 – 2010	Riverside path taken until fishermen fenced it, then application route
10	Mrs J Bailey	14 Gas Lane, Salisbury, SP2 7AN	1990 – 2011	Application route but refers to stile nearer river
11	Miss S J Chivers	45 Sarum Close, Salisbury, Wiltshire	1985 – 2011	Application route
12	Miss C Moreton	Top Flat, 9 Radnor Road, Salisbury, SP1 3PL	2006 – 2011	Application route
13	Mrs S Saunby	4 Wellington Way, Salisbury, SP2 9BX	1970 - 2011	Application route
14	B and S Obourn	141 Wilton Road, Salisbury, SP2 7JH	1970 – 2011	Application route
15	Mrs J R Douglas	The Beeches, Old Castle Road, Salisbury, SP1 3SF	1983 – 2011	Application route
16	Mrs M L Cowie	51 Fisherton Street, Salisbury, SP2 7SU	1966 – 2011	Application route
17	Mr S Jones	14 Broadlands Close, Salisbury	1970 – 2011	Riverside path until fenced also application route when wet
18	Miss S C Bowie	19 Gainsborough Close, Salisbury, SP2 9EU	2005 – 2011	Application route
19	Mr A Richardson	24 Russell Road, Salisbury	2000 – 2011	Application route
20	Mrs B Redding	26 Russell Road, Salisbury	1960 – 1990	Application route
21	Miss J Gilbert	60 Ashley Road, Salisbury	2000 – 2011	Riverside path until fenced off by fishermen, then application route
22	Mr R P Nixon	72 Ashley Road, Salisbury, SP2 7DD	1973 – 2011	Riverside path and application route as this stays dry all year.
23	Mr D J Hopkinson	93 Castle Road, Salisbury, SP1 3RP	Mid 60s – 2011	Riverside occasionally if dry but otherwise application route
24	Miss C Taylor	13 Sidney Street, Salisbury, Wiltshire	1980 – 2011	Application route
25	Mr G D Taylor	13 Sidney Street, Salisbury, Wiltshire, SP2 7AH	1975 – 2011	Application route
26	Mr S Hall	13 Empire Road, Salisbury	1973 – 2011	Application route
27	Mr R R Mullins	42 Rowan Close, Salisbury, SP2 9HP	1961 – 2011	Application route
28	Mr G K Bell	85 Firs Road, Salisbury, SP5 1SW	1961 – 2010	Application route

Witness no	Name	Address	Years of Use	Route used
29	Mrs T Southey	5 Beech Close, Porton, Salisbury, SP4 0NP	1977 – 2011	Application route
30	Mrs C Bell	85 Firs Road, Firsdown, Salisbury	1969 – 2010	Part of application route
31	Mr S Southey	5 Beech Close, Porton, Salisbury, SP4 0NP	1978 – 2011	Application route
32	Mr M Kelly	38 Thistlebarrow Road, Salisbury	1978 – 2011	Approximately application route
33	Mr M Pearce	24 Whitbred Road, Salisbury	1983 – 2011	Application route
34	Mrs S Iles	60 Montgomery Gardens, Salisbury	1990 – 2011	Describes and shows Salisbury 11
35	Mr S J Cofferon	35 Ayrshire Close, Salisbury, SP2 9PF	1963 -2011	Application route
36	Mr G Evans	1 Paul's Dene Crescent, Salisbury	1968 – 2011	Riverside route until fishermen fenced, then application route
37	H and L Macaulay	15 Ashley Road, Salisbury, SP2 7BZ	1973 – 2011	Application route
38	Mrs C Connor	31 Waters Road, Salisbury, Wiltshire	1979 – 2011	Riverside route only
39	Mrs S A Mortimer	28 Heath Road, Salisbury, SP2 9JS	2008 – 2011	Application route
40	Mrs H M Best	9 Lawrence Green, Ashley Road, Salisbury, SP2 7DB	1949 – 2011	Application route
41	Mr M E Best	9 Lawrence Green, Ashley Road, Salisbury, SP2 7DB	1946 – 2011	Application route
42	Mrs K J Mewett	129 Partridge Way, Old Sarum, Salisbury, SP4 6PX	1997 – 2011	Application route
43	Mrs S Parker	32 Heath Road, Salisbury, SP2 9JS	2001 – 2011	Application route
44	Mr N Sainsbury	Rest Harrow, Downton Road, Salisbury, SP2 8AR	1974 – 2011	Predominantly application route
45	Mr M Francis	9 Pauls Dene Road, Salisbury, SP1 3SE	1983 – 1986	Application route
46	Mr M Humphries	5 Verona Road, Salisbury, SP1 3JU	1978 – 2011	No route shown describes “along the River Avon”
47	Mrs L Lupi-Lawrence	24 Tidworth Road, Porton, SP4 0NQ	1954 – 1967 2006 – 2011	Application route
48	Mrs K Mackenzie	7 Primrose Road, Salisbury, SP2 9JR	1990 – 2011	Just used beach area
49	Mr A Smith	23 Melvin Close, Laverstock, Salisbury, SP1 1PE	1989 – 2011	Application route
50	Mrs S Dabill	30 Ridgeway Road, Salisbury, SP1 3BU	1986 – 2011	Riverside walk
51	Mr R C Read	275 Devizes Road, Salisbury, SP2 9LU	1982 – 2011	Application route
52	Mr N R Tonge	33 Assisi Road, Salisbury, Wiltshire, SP1 3QZ	1960 - 2011	Riverside path and application route depending on how wet it was
53	Mrs N Tonge	33 Assisi Road, Salisbury, SP1 3QZ	1982 – 2011	Riverside path
54	Miss L Jones	282 Devizes Road, Salisbury, SP2 7NB	1980 – 2011	Application route
55	Mr M Palot	6 Avon Terrace, Salisbury, SP2 7BT	2004 – 2011	Application route
56	Mr W J C Bradford	125 Queen Alexandra Road, Salisbury, SP2 9JY	1999 – 2011	Application route
57	A and S Myers	50 Herbert Road, Salisbury, SP2 9LF	1990 – 2011	Application route
58	Miss J Hardiman	86 Castle Road, Salisbury, SP1 3RX	1977 – 2009	Application route
59	Mrs J M Bradford	125 Queen Alexandra Road, Salisbury, SP2 9JY	1999 – 2011	Application route
60	S and J Allen	17 Broadlands Close, Salisbury, SP1 3QA	1970 – 2011	Application route
61	Mr A J Martin	8 The Portway, Old Sarum, Salisbury, SP4 6BY	2002 – 2011	Only accessed beach



Witness no	Name	Address	Years of Use	Route used
62	Mr A Ranger	74 Hilltop Way, Salisbury, Wiltshire	1978 – 2011	No plan attached
63	Mr K Hardiman	49 Montague Road, West Harnham, Salisbury	1948 – 1988	Predominantly application route
64	Mrs K Welcare	25 Lees Court, Salisbury, SP2 7DS	1973 – 1986 1990 – 2011	Application route
65	Mrs F Smith	22 Russell Road, Salisbury, SP2 7LR	1990 – 2011	Has not used any route relevant to application
66	M Powell	Cowslip Farm, Devizes Road, Salisbury	1992 – 2011	Application route
67	Dr G Powell	Cowslip Farmhouse, Devizes Road, Salisbury, SP2 7NB	1992 – 2011	Application route
68	Miss T K Grimes	2 Kingsland Road, Salisbury, Wiltshire	2006 – 2011	Has mis-read map but hand drawn map does show the application route
69	Mr and Mrs Kelly	27 Canadian Avenue, Salisbury	1972 – 2011	Application route
70	Ms M Vines	2 Bowles Cottages, Winterbourne Gunner, Salisbury, SP4 6JL	1980 – 1986 1995	Riverside route and application route
71	Ms S E James	275 Devizes Road, Salisbury, SP2 9LU	Early 1980s, 1982, 1997 – 2011	Application route
72	Mr C Dabill	30 Ridgeway Road, Salisbury, SP1 3BU	1986 – 2011	Riverside route and part of application route
73	Mr G Bath	18 Nelson Road, Salisbury, SP1 3LT	1970 – 2011	Sometimes riverbank but otherwise application route
74	Mrs S Jones	28 Wellington Way, Salisbury, SP7 9BX	1988 – 2011	Riverside but if wet used application route
75	Mrs S Bundy	19 Queensway Road, Salisbury, Wiltshire	1982 – 2011	Application route
76	Mrs M Barnes	48 Heath Road, Salisbury, Wiltshire	1960s and 2003 – 2011	Sometimes riverside route otherwise application route
77	Mrs N Smith	15 Queen Mary Road, Salisbury, SP2 9LD	1958 – 2011	Riverside path but application route is flooded. Application route only since river fenced.
78	Mr G Moore	16 Queen Mary Road, Salisbury	1986 – 2011	Riverside path, application route after fishermen fenced river.
79	Mrs W L C M Moore	16 Queen Mary Road, Salisbury, SP2 9LD	1953 – 2011	Riverside path but when wet application route
80	Mrs K Nuccio	53 Tournament Road, Salisbury	1975 – 2011	Application route
81	Mrs S Hicks	25 Tournament Road, Salisbury, SP2 9LQ	1967 – 2011	Application route
82	Mr R G Leary	37 Hulse Road, Salisbury	2009 – 2011	Application route
83	Mrs N Wyatt	14A Salt lane, Salisbury, SP1 1EE	1969 – 2011	Application route
84	Mrs B A Horne	33 Clifton Road, Salisbury, SP2 7BP	1994 – 2011	Application route
85	Mr T Varney	12 Stratford Road, Salisbury, Wiltshire	1970s – 2011	Application route

<b>Witness no</b>	<b>Name</b>	<b>Address</b>	<b>Years of Use</b>	<b>Route used</b>
86	Ms M Gallagher	28 Meadow Road, Salisbury, SP2 7BN	1986 – 2011	Application route
87	Mr M Quigley	115 Castle Road, Salisbury, SP1 3RP	1970 – 2011	Application route when wet
88	Mrs E A Kinsey	7 Olivier Close, Bemerton Heath, Salisbury, SP2 9JQ	1955 – 1959 1970 – 2008	Riverside route but application route when wet
89	Miss T K Grimes	2 Kingsland Road, Salisbury, SP2 7DQ	1989 – 2011	Application route
90	Mrs C Dugwell	374 Devizes Road, Salisbury, SP2 9LY	2004 – 2011	Application route
91	Ms I C E Dickins	27 Foxes Close, Chalford, Glos, GL6 8JZ	2005 – 2011	Application route
92	Miss P Goddard	2 Rambridge Crescent, Salisbury, SP2 9JE	1984 – 2011	Riverside and application route
93	Miss J L Greenstock	115 Castle Road, Salisbury, Wiltshire, SP1 3RP	1977 – 2011	Application route
94	Mrs A B Rumbold	Primrose Villa, Devizes Road, Salisbury, SP2 9JN	1945 – 2011	Application route
95	Mrs S Bailey	473 Devizes Road, Salisbury, Wiltshire	1976 – 2011	Application route
96	Mr J Blake	43 Calderwood Drive, Donnybrook, Douglas, Cork	1986 – 1987	Riverside route
97	Mrs P Fulton	31 Primrose Road, Salisbury, SP2 9JR	1982 – 2011	Application route
98	Miss A Hardiman	23 Melvin Close, Laverstock, SP1 1PG	1989 – 2011	Application route
99	Mr Elton S Pool	56 Wilton Road, Salisbury, SP2 7ES	2002 – 2011	Application route

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
1	17	3	Yes, walkers and joggers, see people each time	Recreation dog walking	Stile at bridge 4 – 5yrs ago. Stile by gate at S end. Gate closed if cattle in field.	Permissive access signs put up 3 – 5 years ago	No	Not until 7 <sup>th</sup> May 2011	4 times a week	Yes. Saw people using route before she closed it.
2	61	20	Yes, dog walkers and horse riders	Dog walking	Stiles at both ends	Permissive access signs erected at each end a few years ago	No – only permissive access	No	2 – 3 times per week	Yes always people in field walking and tending any livestock
3	41	20	Always dog walkers and hikers	Visiting and dog walking	Stile at both ends and gate at Salisbury end shut only when cattle in field	About 5 yrs ago two permissive access signs erected at each end	No, only by permissive access signs put up about 5yrs ago	No	Generally twice a week	Previous owner put up stiles and the public always use path even when cattle were there.
4	25	13	Frequently, walking, jogging, pram pushing	Dog walking and bird watching	Stile at footbridge (last 10 – 15yrs). Gate at S end. Normally open unless for grazing	Around 2005 concessionary access by Parsonage Farm stated at stile and gate.	Asked SDC for permission around 1985/86 to lead bird watching group. Only now know they weren't landowner.	No. Told by farmer that he would prefer me to use the alternative path for dog walking if cattle were present. Happened about 10 – 12 yrs ago.	Fortnightly 1990 – 2011. Occasionally (monthly?) 1986 – 1989	Yes. It is so well used in all weathers by walkers, runners, picnickers and so visible from many locations that no doubt exist.
5	10	2	Yes, lots of people walking	Walking	Stiles at both ends plus gate (not locked) at west end	Not originally but Permissive access signs erected 3 to 5 yrs ago. No access signs May 2011	No	May 2011	1 to 2 times per month 1995 – 1999 4 to 5 times per week 2005 – 2011	Yes because of the numbers of people using the path there is clear evidence of usage. Google Maps aerial view image attached showing clear path

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
6	57	20	Yes people walking, dog walking, courting couples, children paddling and picnicking	Courting and dog walking	Gate at S end, stile to its right until 5 yrs ago. Stile at bridge end for about 5 years.	No	No we just followed everyone else	No	Daily courting, dog walking twice weekly	Yes, always people walking path, I always thought it right of way
7	26	12	Yes almost every time I used it I was other walkers	Recreation primarily dog walking	Gate and stile at S end. Had to climb railings at bridge end until stile erected 3 to 5 yrs ago.	Permissive access sign appeared at the same time as the stile at the bridge end. Also at S end.	No	No	Twice a month on average but more frequently in recent years	Yes, footpath is perfectly obvious.
8	41	20	Yes many people walking, bike riding, accessing river to swim, fish, boat, watch wildlife	Recreation, dog walking, circular route	Stile at each end. Gate at S end.	Permissive access signs appeared several years ago. Private sign 2011.	No – its always understood that access was allowed	No	Variously from once a week during 1970s to monthly to 2009 and then 3 times a week	Yes have seen her working in the field.
9	42	20	Other walkers and joggers also children playing	Recreation and visiting friends	S end usually open unless cattle in field. Stile to right of gate until removed 5 yrs ago. Climbed railing at bridge end until stile installed	Permissive access only signs erected 3 to 5 years ago at both ends saying access could be removed.	No	No	Daily to walk dog and weekly to visit friends	Yes, lots of people walk through and I would have thought it obvious to anyone visiting the field, also signs about access at both ends.
10	21	7	Yes, dog walkers and joggers	Recreation	Gate at S end and stile approx 5 yrs ago.	About 5 years ago sign on S end when cows in field and other end too. Stated that access was permissive only when cows in fields	No	No	At least weekly, sometimes daily	Yes, gate at S end often pushed right open, litter on river bank by bridge.

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
11	26	12	Yes walking and running and people with children going to the beach	Dog walking	Gate at s end not locked or shut unless when grazed by cattle, but then not locked.	No not until land sold	No	No	1985 – 2007 occasionally 2007 – 2010 5 times per week 2010 – 2011 until the gate was locked	Yes people were walking across the area of land all the time she was negotiating the purchase.
12	5	0	Yes other walkers and runners	Dog walking, enjoying scenery, recreation	Stile at bridge gate at southern end usually open (until May)	Prior to May “Permissive Path” signs at each end not sure when erected.	Prior to 2011 “permissive path” signs allowed use	Not apart from signage	5 to 7	Yes, very obvious signage, well trodden and wide path, very frequent users.
13	41 years	20	Yes walkers and joggers	Recreation dog walking	Stile at bridge. Gate at S end always open. Fence used as stile middle corner.	Permissive pathway notice at bridge approx 3 yrs ago, nothing prior to that	No	No	3 – 4 times per week	Yes because of permissive pathway sign
14	41	20	Yes, walkers, hikers, cyclists, dog walkers, runners	Recreation and exercise	Stiles at each end	Permissive access signs put up 3 to 5 years ago	Permissive access only that put up 3 to 5 yrs ago, None before.	No	At least 3 times per week	Yes, it could be seen that many people used the pathway as there was always someone there.
15	28	14	Yes there is always someone out for a walk	Dog and family walking	3 stiles, gate closed when cows in field	Didn't see any	No assumed it was a right of way	no	Twice a month	Yes one can see where people walk in the ground
16	45	20	Yes dog walkers and many others	Dog walking	Stile by gate until fishermen's purchase. Two other stiles.	Permissive access signs at bridge and S end.	As far as I know there was no permission required re. Access signs	No	About once every 6 weeks	Yes, if owner was aware of the many people using the land and had objected he would presumably have taken steps to stop them

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
17	41	20	Yes	Recreation with dog	Never locked	No	No	No	Approx monthly	Yes because of frequent use by others with or without dogs
18	16	0	Yes other dog walkers, joggers, hikers, children and parents and tourists	Recreation walking the dog	Yes at bridge and S end	Occasional sign to warn of cattle in field	Always used it no permission was needed	Only the new owner 2011	Daily	Yes, they had no private land signs, gate was always open, well worn path and they kindly put in a stile by the metal bridge Google Earth shows a clear path
19	11	0	Yes many dog walkers	Recreation walking towards bridge	Stiles either side gate closed sometimes due to cattle	No	Never seen anybody	No	Twice daily	Yes was informed the field was used on a daily basis by dog walkers children playing in field
20	30	20	Yes lots of summers families walkers	Recreation walking children, swimming, picnic	Never noticed gates	No	No	No	Mostly summer	Not sure
21	11	0	Yes walkers	Recreation walking dog	Gate at S end closed when cattle grazing	No	No	No	5 times per week	Yes because it has been in constant use by the public for many years
22	38	20	Yes always people walking in field as long as I can remember	Recreation	Stiles at both ends for last few years. Stile by gate until riverside fenced off	Permissive entry sign on gate (up for about 5 years)	No	No	Twice a week	Yes nobody ever told not to. Stiles at both ends. Permissive sign went up about 5/6 yrs ago. We walked we paddled swam and fished from this field we were always there



No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
23	46	20	Yes other dog walkers families with children tourists walkers without dogs children in river	As a child to play on beach as an adult to walk dog	Stile by bridge for last 5 or 6 yrs. Before stile I climbed through wide railings. There was an old stile there a long time ago. Metal gate at S end, mostly left open.	No signs until 3 o4 yrs ago when Permissive Access Granted signs by stile over bridge	No	No	Twice a week	Yes because they put up signs beside all three entrances to the field informing us that permissive access was going to be withdrawn
24	31	17	Yes walkers and cyclists	Recreation walking dog to river	Stiles at either end	No but farmer had sign saying to be careful if cattle occupied the field as they can be dangerous	No there were stiles	Everyone challenged by new occupant.	Weekly	Yes new owner locked gate and put signs up  The path is very obvious
25	36	20	Yes walkers and cyclists	Dog walking	Sometimes gate shut to stop cows escaping	No		No	Daily	Yes, the new owner put up signs saying she was stopping public access
26	38	20	Yes walkers	Recreation walking exercise	Stiles	None	No	No	Twice a month	Yes, there is a clear pathway across the field
27	50	20	Yes, walkers	Recreation, social walking, walking dogs	Stile at bridge, gate and stile at other end	No	No	No	5 times a week	Yes, stiles were fitted at either end. Nothing to indicate people were not allowed entry
28	49	20	Yes walkers	Walking	Stile at bridge	Not that I was aware	No	No	Regularly as a child	Yes in my memory this area has always been used for walking and most people in Salisbury would know this

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
29	34	20	Yes walkers and dog walkers	Recreation, dog walking	Stiles and gate never locked to my knowledge	No	No	Husband challenged 9.5.2011	As a child 3 times a month	Yes the footpath is very well worn and I have never been on the footpath alone there are always people using it – a very popular local walk.
30	41	20	Yes walkers, cyclists, kids playing on beach, minnow catching and meeting place	Walking playing meeting friends walking dogs	No gates locked 1969 – 1980	no private property signs on beach	No	No	Summer childhood daily, latterly dog walks 4 times per year	Yes any solicitor would have informed owners of public use of this area for years and years
31	33	19	Yes lots of adults walking and children walking and cycling	Recreational walk from Leisure Centre to bridge and return	Stile at bridge, open gate at S end	No	No	Yes 9.05.2011	1978 – 1985 20 times per year 1985 to 2011 10 times per year	Yes because of a very well worn path and you always see other people all times of the day
32	33	19	Yes dog walkers	Exercise and recreation	2 stiles	Never noticed	No	No	Once a month	Yes a well trodden path and well worn stiles
33	28	14	Yes walkers and cyclists	Recreation	Stiles and kissing gate	“Enter at own risk if cattle in field, these animals can be dangerous”	No	No	15 – 30 times per year	Yes, there was a stile at each end of the field with a well worn (under foot) path across the field which looked very obvious it was in regular use
34	21	7	Yes walkers and cyclists	Recreation going to allotments	Not known	Not known	No	No	3 or 4 times per year	Not known

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
35	48	20	Yes numerous other people walking dogs running and the occasional bird watcher	Dog walking, bird watching	Stile at bridge, gate open at S end	Not until recently. Now hand painted Private and No Entry signs	No as the signs said it could be used	Only recently	Daily	Yes, erected signs
36	43	20	Yes many people dog walkers, walkers, hikers and occasionally campers	Recreation dog walking	Stile at bridge and a gate at S end of field open unless cattle in field	Private field but access allowed	No	No	Weekends	Yes, sign saying private land but access allowed
37	38	20	Yes walking cycling and running	Walking dogs and running	Gate and stile but gate not locked	Yes, remember a notice on the gate but can't recall words	No, its always been accepted as a thoroughfare	No	Daily	Yes path is well trodden and obvious
38	32	18	Yes other walkers	Recreation dog walking picnicking with friends	Not answered	No	No	No	Approx monthly	Always used by the public
39	3	0	Yes walkers	Recreation walking the dog	Stile by bridge and gate at S end	Yes "Parsonage Farm" and something about access being restricted a certain times	No	No	3 – 4 times per week	Yes, well used path with stile and open gate which people have been using for many years
40	62	20	Yes lots of people walking	Recreation paddling swimming picnics	Gate not locked, stile to right	About 2008 permissive access sign erected	No	No	Daily	Yes, they saw people using it
41	65	20	Yes may see as many as 20 people	Recreation swimming paddling and picnics	Gate not closed or locked since 2004	Permissive access signs erected 2007/2008	No	No	Daily	Yes people used the path

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
42	14	0	Yes lots of dog walkers and ramblers plus families playing at the beach area	Recreational dog walking part of circuit	Open gate at S end, stile at bridge end (was)	3 to 5 years ago a notice went up saying permissive path and permission withdrawn when cattle in the field	No	No, don't know of anyone else who has been turned back either	Past 7 yrs – daily before that regularly (not for 7 mths when not resident) and not when cows in it	Yes, current landowner saw and talked to people walking through
43	10	0	Yes dog walkers, joggers and hikers	Walking dogs	Stile at bridge and gate, always open at other end	No	No	No	Daily	Yes he drove through the field sometimes also the path was very clear that it was used
44	37	20	Yes walking, playing in the river	Recreation walking dog	Stile at bridge and open gate at S end	No	No	No	15 times per year	Yes the foot stile was put in and by the busy constant use of the general public
45	4	3	Yes walkers, runners, dog walkers	Recreational run	Stile at bridge no locked gates	No	No	No	Once a fortnight	Yes the number of people using the path and river beach would be hard to not notice
46	33	19	Yes walkers recreational dog walking	Recreation dog walking	Gates and stiles, stiles now removed	No	No	Always thought it was a public footpath	At least once a month	Yes due to the popular use of this path by walkers
47	15	0	Yes around 15 to 20 walkers every visit	Recreation exercise visiting friends	Gate never known to be locked	None until new owner put up notice of closure	No	Not expressly but everyone uses it	Every weekend	Yes, it is very popular, there is always someone walking their dogs or children. The path is trodden
48	21	7	Yes always by several means	Recreation walking dog	Not answered	No	No	No	3 times per week	Yes should have seen obvious sign of a path

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
49	22	8	Yes many people walking	Recreation walking dog	Not answered	None	Mo	No	Once a month	Yes pathway through field where people have walked for many years
50	25	11	Yes everytime usually walkers	Recreation dog walking	Gate always unlocked	No	No	No	3 times a week	Yes daily use by many people – open access
51	29	15	Yes regularly see up to 5 people each time walking and exercising dogs	Recreation dog walking and access to city	Stile at footbridge and open field gate at S end	No	No	No	1982 – 97 5 to 10 times per year 1997 – 2011 daily	Yes new owner removed stile, locked gate for the first time and put up notices
52	51	20	Yes many people with dogs with children, people enjoying the walk and the scenery, fishermen	Recreation dog walking	Stiles at west end and a gate at east end plus makeshift stile.	Warnings about livestock in fields	No	No	20 – 30 times per year	Yes there was a well maintained stile at one end and a well trodden path across the field
29	15	Yes walking or sitting by river	Recreation	Stile at each end of field and a gate, not aware gate was locked	No	No	No	10 – 15 times per year	Yes I believe due to the length of time people have been using this path and the large amount of people I have seen use this path over the years, that the owner must have been aware of the public using this path	
54	31	17	Yes lots of people walking	Walking the dog	Gates always open and a stile at the end by the bridge	No	No just always assumed it was a public right of way	No never until now	Daily	Put up a stile and must have seen lots of people there

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
55	7	0	Yes walkers and joggers	Recreation walking the dog	Gate at S end never locked. Stile at northern end and on western boundary	Permissive right of way sign on northern fence	No always assumed it was a public right of way	No	Once or twice a week	Yes the path is clearly visible on the ground and from the air also the removal of stiles to prevent suggest this knowledge as well
56	12	0	Yes walking	Recreation circular dog walk	Stile at bridge and gate at S end. Not known gate to be locked	"permissive right of way" on stile and gate	No	By current landowner only (8.5.11)	Minimum 4 times per week	Yes the path was regularly used by many people and the path was well trodden
57	21	7	Yes other dog walkers, ramblers, runners, bird watchers, cyclist	Recreation walking the dog	Stile by bridge, open gate leading into next field	No	Previous owners gave permissive access	No	Daily	Yes the pathway is obviously used and current landowner saw people using it before she closed it off
58	32	20	Yes walkers, joggers, dog owners and ramblers	Recreation walking with friends and dog doing a circuit	Stiles at bridge and gate at S end	Sign at bridge	No	No	A couple of times per month	Yes clear established pathway already running through field, beach part eroded by time and constant use, stile in field
59	12	0	Yes walkers	Recreation circular dog walking	Stile at bridge and gate at S end	Permissive right of way sign at stile and gate	No	8 <sup>th</sup> May 2011 current landowner	Daily	Yes, well trodden route, stile supplied and regularly used
60	41	20	Yes recreational dog walkers	Recreational dog walking	Stile by bridge	No	No	No	Weekly	Yes families in the last 30 years have used it for recreational purposes, dog walkers, ramblers etc

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
61	9	0	Yes on foot	Accessing River Avon to canoe	Stile	None noted	No	No	Twice a year	Yes, stile is maintained and river bank eroded from use
62	33	19	Yes other local walkers	Family walk	Not answered	Not seen	No	No	6 times a year	Yes presumably that is why a fence has recently been erected to prevent use
63	40	11	Yes lots of people mostly walking and fishermen	Recreational walking	No	No	No	No	10 – 15 times a year	Yes it was common knowledge to everybody that you could walk there the owner must have been aware
64	34	16	Yes all the time dog walkers	Playing as a child and later walking the dog	Stile by bridge gate at S end (always open unless cattle present)	Years ago I remember a sign on the gate warning cattle were present	No	Not until 7 May 2011	Once or twice a week as a child from 2004 daily	New owner knew the public used the land as she was there before she purchased it
65	21	7	Yes walkers	Walking for exercise	Stiles but always access	No	Not answered	No	Weekly	Not answered
66	29	5	Yes walkers	Recreation walking	Stile at one end	No	No	No	14 times per annum	Yes, large number of people walking in the field and a stile was provided
67	19	5	Yes frequently other walkers and joggers	Recreational walking	Stile at bridge end gate at other often open	No	No	No	12 times per year	Yes because of the large number of people using the way and because there was a stile at one end clearly there for walkers



No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
68	5	0	Yes dog walkers and runners	Leisure walking dog	Stiles at bridge	No	No	Notices on perimeter fence March/April 2011	Daily	Yes, notices put up in March 2011 "closing the right of way"
69	39	20	Yes frequently walking	Visiting and recreation	Gates and stiles	Not known	No	No	3 times a week	Yes because owner put up sign to shut right of way
70	7	8	Yes other walkers	Recreation	Stiles at bridge, middle link to FP and S end	No	No	No	Weekly or more	Yes I believe she was aware before she bought it
71	16	3	Yes, every day mostly dog walkers, runners, ordinary walkers, bird watchers	Recreation walking dog	Stile at bridge end and field gate at S end	No – in the 1990s recalls a sign at the gate warning walkers of cattle in the field.	No	no	Almost daily	Yes because so many people used it
72	25	11	Yes often, walking	Recreation dog walking	No locked gates, stile by bridge	No	No	No	Once a week	Yes because people have been using it for years and the ground is well trodden
73	41	20	Yes walkers	Running route and walk with dogs – recreational	No	No	No	No	Once a week	Yes the owner or occupier must have seen the worn path across the land
74	23	9	Yes many others walking	Recreational walking	Stile at bridge gate at S end. Gate locked when cows in field in summer but still walked through	No but signs now up saying private	Not in spoken words but there was stiles at both ends	No	Daily, sometimes twice a day	Yes because the farmer was in field when we walked through. Aerial photo attached showing trodden path

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
75	29	15	Yes lots of other users	Recreation trying to keep fit	Stile and gate. Gate not found locked previously	No but private now sprayed on fences	No	No	8 or 9 times per year	Yes because lots of people walk their dogs there, children play there – all this over many years
76	8 +?	0	Yes lots of walkers, dog walkers, joggers and tourists en route to Old Sarum	Recreation walking the dog	Gate (open) at S end and stile at bridge	A permissive access sign was in place by the stile for the last 5 or 6 years but there were no signs before this	No I was not told the way was not public but there was a permissive access sign in place for 5 – 6 yrs	Never nor do I know of anyone who has. Have not walked route under new ownership	Twice daily for last 8 years	Yes, the path has been walked for a long time (it is clearly defined in the field) by a large amount of people on a daily basis. Previous owner erected a stile for the public
77	53	20	Yes walkers runners and cyclists	Recreation and visiting family	Not answered	Not answered	No	No	Several times per month	No idea
78	25	11	Yes walkers and a few cyclists	Recreational dog walking	1 gate and 1 stile	No	No	No	3 times per week	Yes
79	58	20	Yes many others walking	Recreational dog walking	Gate at S end locked when cows in field but we still walked through. Stile at bridge and onto Sals9	No but since 7 <sup>th</sup> May 2011 Private has been sprayed on fence and gate	No	Not by the spoken word but there were stiles at each end of the field and the farmer would pleasantly pass the time of day when in the field	Daily	Yes the previous farmer would be in the field when we were walking and if walkers found a problem with his cattle we would tell him.
80	36	20	Yes walkers and runners	Walking dogs and children	Gate at end of field and stile at bridge	Sign on gate to notify closure in May	No	No	Daily	Yes purely by the amount of people who use it all day every day

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
81	44	20	Yes walkers, runners, children and adults	Walking to escape from living in a built up area	Gate at S end and stile at bridge	No there has never been a sign to say Private Property	No the landowners have always given right of way to the public my parents used the walk for more than 50 yrs.	No	40 times per year	Yes, the owner lived in Salisbury when younger and viewed the land before purchase it was clear this land was used by the public
82	2	0	Yes always someone else walking as well	Recreational walking	Gate always open at S end Stile at bridge	No	No	No	Once or twice a week	Yes it was a well trodden path frequently used by walkers and because a stile was located at the bridge end
83	42	20	Yes walkers and cyclists	Recreational walking	Stile	Don't recall was busy enjoying scenery	No it has always been open	No	Daily as a child (from school) 6 to 7 times a year as adult	Yes its a well loved and used local walk, I was taken as a child to walk and play at the beach. I did same with my son (now aged 24) and he now walks there
84	17	3	Yes dog walkers, runners, hikers, families	Dog walking	Gates never locked. Stile now removed	Not until 6.5.2011	No	Not until May 7 2011	Daily	Yes the old owner of the field was fully aware of people using the field and so was the new owner
85	36	20	Yes walkers alone or with dogs	Recreational dog walking or running	Stile never obstructed	No	No	Not until recently	6 or 7 times per year	Yes obvious to all that it is used frequently – there would be no need for barbed wire and signs if not

No	Total years	Yrs in rel. Period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
86	25	11	Always saw other people, one or two in the 1980s increasing in the 90s	Recreation dog walking	Old stile at bridge, then climbed railings, new stile 5 or 6 yrs ago now removed  Gate at S end, narrower in the 80s, then a heavier gate. Stile beside it lost when anglers fenced path.  Fence rails used as stile in middle of field connecting to FP	Not until 3 – 5 yrs ago when Permissive Path sign put on gate and stile.  Sign said permission would be withdrawn when cattle were grazing.	No	Not until May 2011	1986 – 1991 approx once or twice a month  1991 – 2011 once or twice a day except for two spells of 6 months when without a dog	Yes new landowner was told path was very popular with dog walkers and that I had used it for 25 years.
87	41	20	Yes all the time	Recreation walking dogs, keeping fit	Stiles at all access points. Gates at southern point, wasn't fixed for years, never locked	Never, only sign ever was 'cattle present' enter at own risk	No	Never until now	10 – 20 times per year	Yes the new owner was told
88	43	20	Yes other walkers	Dog walking and taking children out	Gate sometimes closed	No	No	No	Almost weekly	Yes walkers walked quite openly and during fine weather many people used 'the beach'.
89	22	8	Yes, walkers and runners	Recreational dog walking	Gates locked April 2011	No public access after April 2011	No	Not sure, only fishermen I have been told	Daily, sometimes twice daily	Yes as new landowner deliberately closed the field to the public
90	7	0	Yes constantly saw other users	Recreational walking	One gate and two stiles. Gate was locked when cattle in field (around two weeks in autumn)	Not until May 2011	No	Not until now	Daily	Yes because so many people walk their dogs here daily. Anyone visiting this area would have seen people walking

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
91	6	0	Yes I saw other people walking with or without dogs	Walking with dog for enjoyment and appreciation of the setting	Stile by bridge	Permissive route sign by stile previous to new ownership	I understood the sign 'permissive way' to have given permission	No	Weekly	Yes, the sign saying permissive way and the stile
92	27	13	Yes walkers	Recreational dog walking	Stile by bridge, open gate at S end	No	No	No	Daily	Yes previous owner erected stile by bridge and lived locally
93	34	20	Yes hundreds of people all the time, mainly dog walkers	Recreation	Gate at S end, 2 stiles, one at bridge, 1 on corner	No all put up on approx 1 <sup>st</sup> May 2011	No	Not until new ownership	5 times per week	Yes, the new owner told another dog walker that 'she always loved walking across the field and it was her dream to buy it'.
94	66	20	Yes, many people used path daily as they have done for years	Recreation and walking to town	A stile that the new owner removed	No	No-one has ever been given permission as its been walked for so many years	No	5 to 6 days per week	Yes as so many people use it and such pains have been taken to keep people out
95	35	20	Yes the pathway has been used for years so many use it of all ages, older walkers because it is flat	Recreational walking to dog and walking to town	Not answered	Not answered	No	No	Daily	Not answered
96	1	11	Yes plenty of people walking	Recreational running and dog walking	Not answered	No	No	No	Twice a week	Yes because of the lack of obstruction and the numbers that used it

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
97	29	15	Yes I always met at least another person	Exercise for myself and dogs, getting to town	Gate always open	About 8 yrs ago a square shaped printed and weatherproofed notice appeared pinned to a tree trunk (on gate by river) "I apologise for the inconvenience to walkers as there will be cattle grazing. However this will be for a short time only." The apologetic intent was clear and unambiguous.	No	No	Daily since 1990 less frequently before (3 times per week)	Yes, about 5 yrs ago the farmer had a red tubular metal gate he'd put up near the bridge, I was climbing over it and he asked me not to as it was sagging in the middle. I apologised and he said 'ok'.
98	22	8	Yes several people walking their dogs	Recreational dog walking	Always had public access through to Stratford Bridge	No	No its a public walkway	No	Once every three months	Yes, without a doubt. There is a path which runs through the field which has been used and enjoyed for many generations
99	9	0	Yes, walkers usually with dogs	Walking with dog	Gate by river (S end) stile by bridge. Gate locked a couple of times per year	Yes – permissive right granted by Parsonage Farm on gate and stile	No but sign was clear that path was permissive	No but gate was locked a couple of times per year for a week or two at a time	Twice weekly	Yes as they put up signs permitting use

## Width

Witness no	Width m	Witness no	Width m	Witness no	Width m	Witness no	Width m	Witness no	Width m	Witness no	Width m
1	1.5 - 2	19	Approx 3	37	3 m	55	1 - 3	73	1 - 3	91	1 to 2
2	1.5 - 2	20	Whole field	38	Few m	56	Approx 2	74	2 - 3	92	1.5
3	1 - 2	21	0 - 3	39	varies	57	2 - 2.5 m	75	Not ans	93	Approx 1.5
4	1 - 2	22	Approx 3	40	1.5 - 2	58	Approx 2	76	Approx 3	94	variable
5	2	23	At least 2	41	1.5 - 2	59	2m	77	4 - 6	95	Not ans
6	1.5 - 2	24	2 - 3	42	1.5 - 2	60	4m	78	1.5 m	96	Not ans
7	1.5 - 2	25	2 - 3	43	2	61	1 - 5	79	2 - 3	97	2.5
8	1 - 2	26	1.5	44	Whole field	62	1.5 m	80	Not ans.	98	changed
9	Approx 2	27	1.5 - 2	45	5m plus	63	Few metres	81	Not ans	99	Approx 2
10	Approx 2	28	All field	46	Various	64	Not ans.	82	2 - 4m		
11	2 - 3	29	Not ans.	47	Field path	65	varies	83	Not ans		
12	1 - 3	30	Don't know	48	Not ans.	66	1 - 2 m	84	2 abreast		
13	Approx 2	31	1 - 1.5	49	unchanged	67	1 - 2 m	85	1.5		
14	Max 2	32	2 m	50	Water meadow	68	Whole field	86	1.5 - 2		
15	Approx 1.5	33	1 - 2	51	1.5 - 2	69	Approx 2	87	5m plus		
16	Approx 2	34	unsure	52	Approx 2	70	Not ans.	88	1		
17	2	35	3 m	53	Whole field	71	2 - 5 m	89	changed		
18	2 - 3	36	1 m	54	Whole field	72	25yrs/ds?	90	2m		



Deposit of Statement and Plan - Section 31(6) Highways Act 1980

To: Salisbury District Council

1. King Edwards Hospital Fund for London has been the owner within the meaning of the above Section of the land known as Parsonage Farm edged red on the attached plan since the Fund acquired it by a conveyance dated 4th September 1981 made between Doris Emily Coggan of the first part and King Edwards Hospital Fund for London of the second part.
2. The aforementioned land lies in the Parishes of Stratford sub Castle and Bremerton near Salisbury, Wiltshire.
3. The ways coloured purple on the said plan have been dedicated as footpaths.
4. The ways coloured green on the said plan have been dedicated as bridleways.
5. The deposit shall comprises this statement and accompanying plan.

Signed *[Signature]* (as secretary)  
For and on behalf of King Edwards Hospital Fund for London

Date *16-11-97*

Witness *[Signature]*

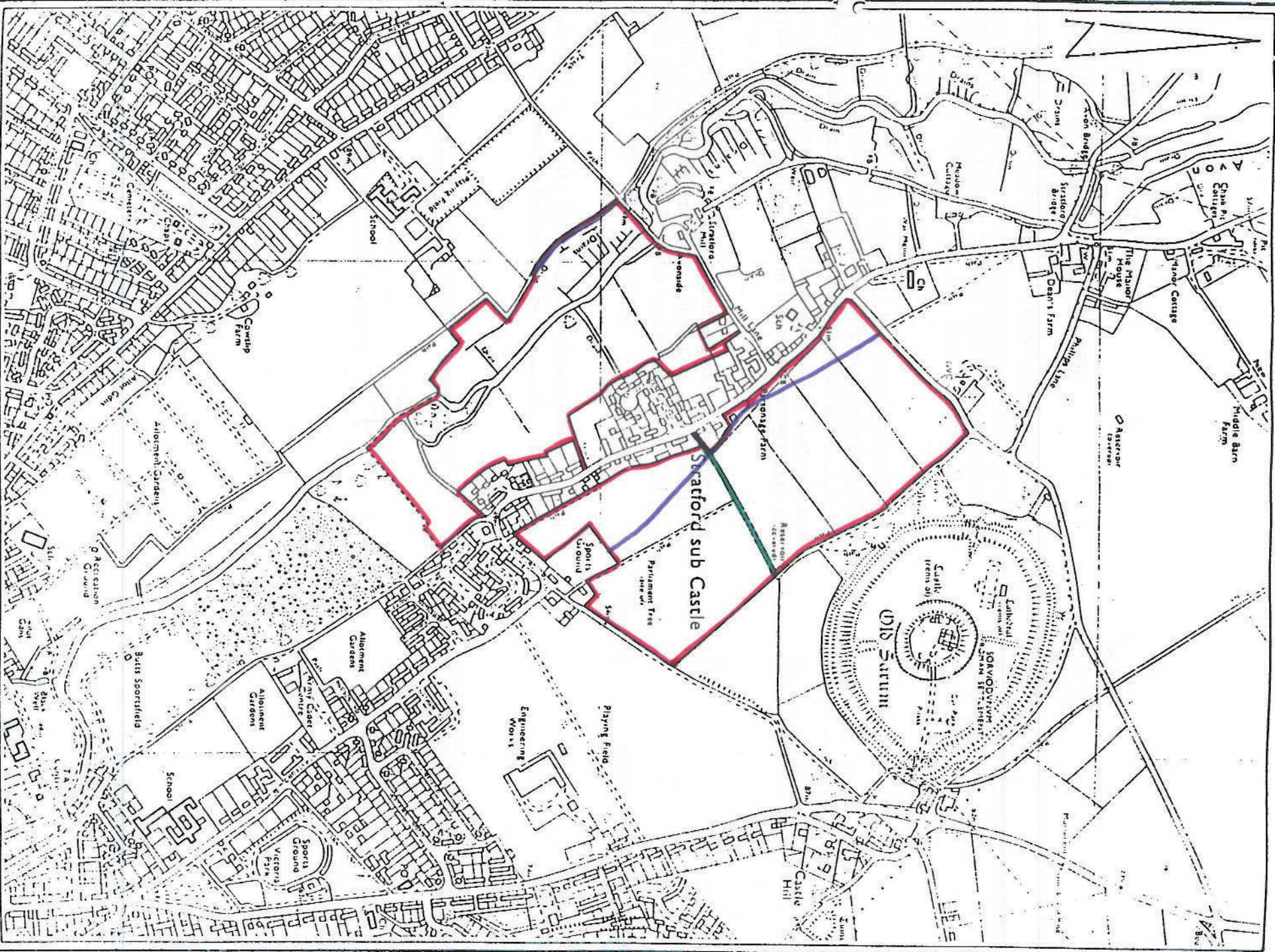
Occupation *P.A. to Director*

Address *11-13 CANBOROUGH ROAD  
SALISBURY WILT*

*.....*



Parsonage Farm, Stratford Sub Castle, Salisbury



Scale, 1:10000

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CLUTTONS



STATUTORY DECLARATION

SECTION 31(6) OF THE HIGHWAYS ACT 1980

The King Edwards Hospital Fund for London do solemnly and sincerely declare as follows:

1. The King Edwards Hospital Fund for London are and have been the owners of Personage Farm more particularly delineated on the plan accompanying this declaration and thereon edged red.
2. On the ~~16th~~ day of ~~February~~ the Fund deposited with Salisbury District Council being the appropriate Council a statement accompanied by a plan delineating their property by red edging which stated that the ways coloured purple on the said plan and on the plan accompanying this declaration had been dedicated as footpaths and that the way coloured green on the said plan and on the plan accompanying this declaration had been dedicated as a bridleway.
3. No additional ways have been dedicated over the land edged red on the plan accompanying this declaration since the statement dated ~~16th~~ ~~February~~ referred to in clause 2 above and the King Edwards Hospital Fund for London have ~~no~~ intention of dedicating any more public rights of way over their property.

The King Edwards Hospital Fund for London make their solemn declaration on the ~~16th~~ day of ~~February~~ ~~1997~~ conscientiously believing it to be true and by virtue of the Statutory Declarations Act 1835

Declared at (address)

For and on behalf of King Edwards Hospital Fund for London

Date ~~16.11.97~~

~~before me~~ F S Jackson Secretary  
King Edwards Hospital Fund for London

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**Wiltshire Council**

Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

Notice of Application for Modification Order

To: **Rights of Way Section, Department for Neighbourhood and Planning,  
Wiltshire Council, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN**

I/We (please insert your name or the name of the organisation making the application)

"RE-OPEN OUR WALK" GROUP 96 MARTIN CUNIFFEY

Of (please insert your full address) 115 CASTLE ROAD

SAUSBOREY, WILTSHIRE, SP1 3EP

Hereby apply for an Order under Section 53(2) of the Wildlife & Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

Adding the ~~footpath/bridleway/restricted byway~~ byway open to all traffic (please delete the irrelevant status) leading from (please describe the position and route of the right of way you are referring to)

THE NORTHERN MOST POSITION OF STAFFORD FIELD ADJACENT TO THE STAFFORD BRIDGE (A) TOWARDS THE SOUTHERN GATEWAY (B) WITH ACCESS AT POINTS (C) ON THE MAP AND TO 'BEACH' AREA (D) WITH A width of: 5m. (UNRESERVED ACCESS TO 'BEACH' AREA)

The route of the right of way is shown on the attached map.

I/We attach copies of the following documentary evidence and or statements of witnesses in support of this application.

Dated 19 JUNE 2011 Signed 

For a definition of the various categories of rights of way please see overleaf.



413000

STRATFORD SUB CASTLE

© Crown copyright and database rights 2011 Ordnance Survey 100049050  
 M.J. Boden, TD, MBA, LL.B(Hons.) Director of Neighbourhood and Planning, Wiltshire Council

Prepared by KLF Date May 2011 Scale 1:5000 Grid Ref. SU 130 317

**Wiltshire Council**  
 Where everybody matters

4

132000

SALS11

SALS6

SALS24

SALS6

SALS3

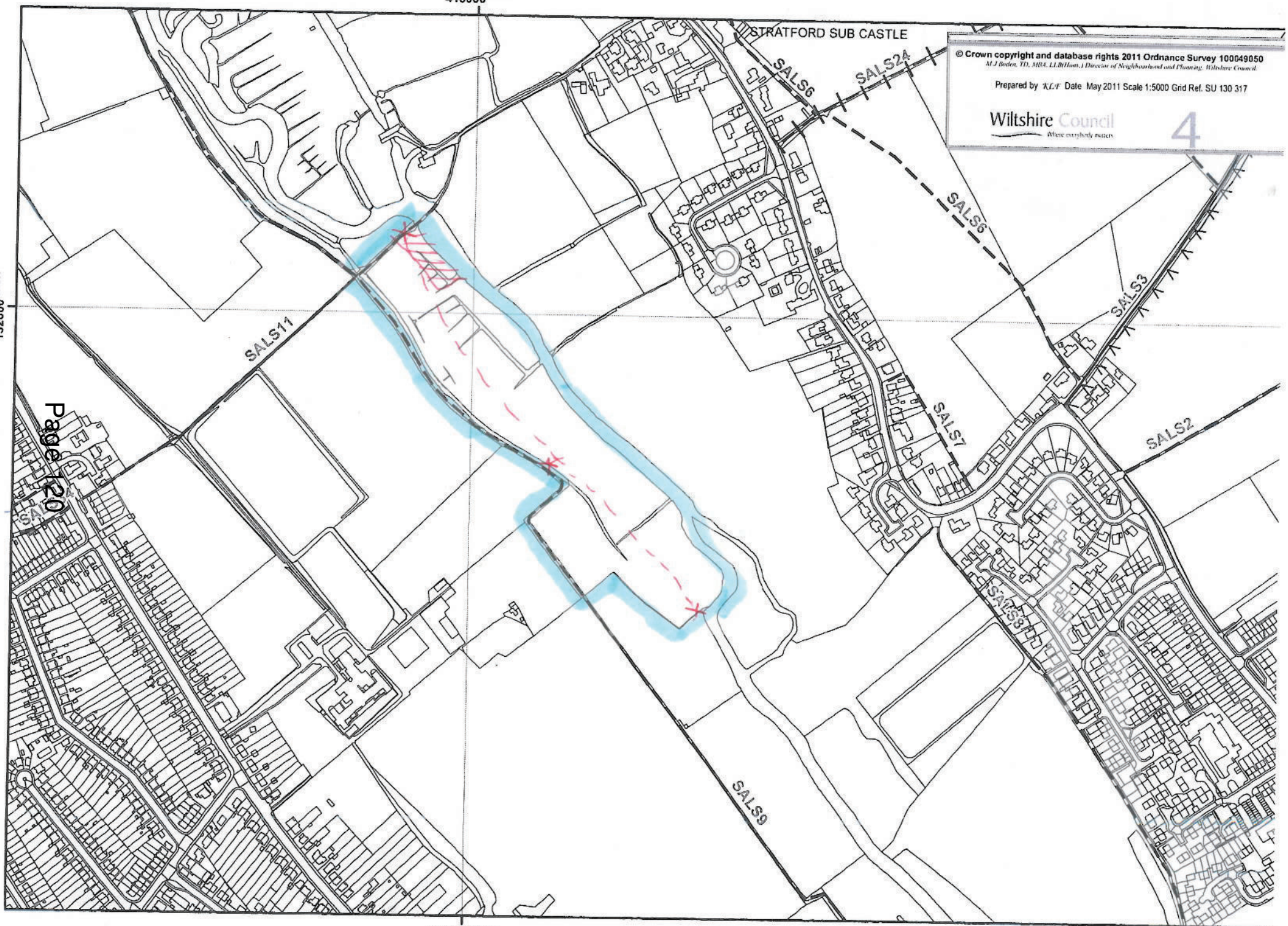
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# Agenda Item 8a

## REPORT TO THE SOUTHERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	29 <sup>th</sup> March 2012		
<b>Application Number</b>	S/2012/0043/FULL		
<b>Site Address</b>	Clearway Garage, Firsdow, Salisbury. SP4 6DT		
<b>Proposal</b>	Siting of a mobile catering van		
<b>Applicant/Agent</b>	Mr John Ritchie		
<b>City/Town/Parish Council</b>	Firsdow Parish Council		
<b>Electoral Division</b>	Winterslow	<b>Unitary Member</b>	Cllr Christopher Devine
<b>Grid Reference</b>	Easting: 419184		Northing: 133429
<b>Type of Application</b>	Minor		
<b>Conservation Area</b>	Cons Area: N/A	LB Grade: N/A	
<b>Case Officer:</b>	Warren Simmonds	Contact no. 01722 434553	

The application is before the Committee at the request of Cllr Devine on grounds of visual impact, relationship to adjoining properties, environmental/highway impact and parking.

### 1. Purpose of report

To consider the above application and recommendation of the Area Development Manager that planning permission be **Granted Subject To Conditions**.

### 2. Report summary

The main issues in the consideration of this application are as follows

1. Principle of the proposed development
2. Impact on visual amenity and the character of the surrounding landscape
3. Highway safety
4. Impact upon amenities of neighbours

An objection has been raised by Firsdow Parish Council.

One third party has raised objections.

### 3. Site Description

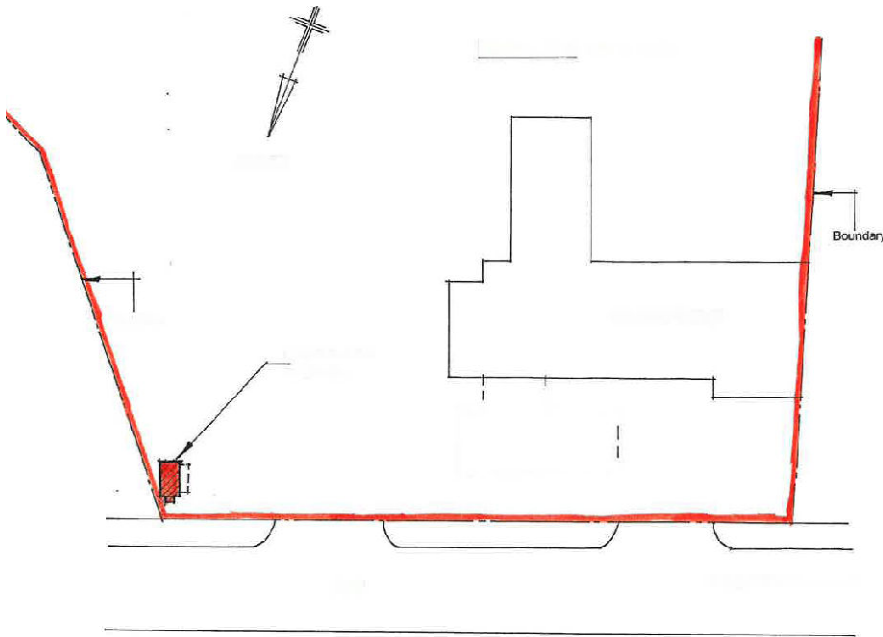
The application relates to an area of the tarmac frontage to the Clearway Garage (a former petrol filling station now in other car sales/commercial use) with access directly onto the A30 near Firsdow. The application site lies within the designated Special Landscape Area.

### 4. Relevant Planning History

None relevant to the current application

## 5. Proposal

The proposal is to change the use of a specified area of the forecourt/frontage to allow a mobile catering van to trade selling hot food, snacks and drinks etc.



**Block Plan**

## 6. Planning Policy

The following policies of the Salisbury District Local Plan which are 'saved' in the South Wiltshire Core Strategy are considered relevant to this proposal:-

Policies G2, C2 & C6

## 7. Consultations

### **Firsdown Parish Council**

Object to the proposal on grounds of highway safety and limited parking facilities considered to be insufficient for the intended use.

### **WC Highways**

No objection.

### **WC Environmental Health**

No objection.

## 8. Publicity

The application was advertised by site notice, and on the Council's website.

One objection has been received from 28 Ilynton Avenue summarised as follows:

- Site supports several business's already; no room for an additional one;
- Site is on very fast road, and proposed snack van would increase traffic entering and leaving, increasing risk of accidents;
- No parking is proposed. So where are customers going to park;
- A catering van is already operating from the site, presumably without planning permission. When previously operating, also without pp, very untidy advertising notices were displayed on the A30.

## **9. Planning Considerations**

Policy C2 of the adopted local plan refers to development in the countryside and seeks to restrict this unless it would benefit the local economy and maintain or enhance the environment.

Policy C6 states that within the designated Special Landscape Area development proposals should have regard to the high quality of the landscape and should be sympathetic with the landscape in terms of siting and scale.

Policy G2 outlines the general criteria against which proposals for development are to be assessed, and includes avoidance of disturbance, interference or conflict with adjoining dwellings or uses to the detriment of existing occupiers; avoidance of locations liable to environmental problems; and avoidance of detriment to public health or pollution to the environment.

The proposal is to station a modest catering van on an established car sales forecourt. In view of the established nature of the existing commercial use it is not considered that the proposal (which would cover a relatively small part of the overall site) would cause detriment to visual amenity or the wider landscape in general. Indeed, the introduction of an additional commercial use at the site is likely to benefit the local economy. This is in accordance with both Policies C2 and C6.

In view of the mobile nature of the catering van a temporary planning permission is recommended. This would also enable the suitability of the site to accommodate the use to be 'tested' prior to consideration of any more permanent permission.

In terms of highway safety, vehicular access to the catering van would be via the existing entrance serving the car sales forecourt. In the opinion of the WC Highways Officer customers to the catering van are likely to be visiting the car sales or travelling on the A30, and consequently the catering van would not in itself be a traffic generator. The Highways Officer further considers that the existing forecourt provides adequate parking and turning for both the existing and proposed uses, and reversing on to the highway should not be an issue. In view of this there is no highway safety objection.

By reason of the distance between the application site and the nearest residential properties it is considered that the proposal would not disturb, interfere, conflict with or overlook any of its neighbours.

## **10 Conclusion**

The proposed development is considered acceptable in principle and would not adversely affect residential amenity or the quality of the surrounding designated Special Landscape Area. The proposal would not be prejudicial to highway safety.

## 11. Recommendation:

Planning permission be **GRANTED** for the following reason:

The proposed development accords with the provisions of the Development Plan, and in particular Policies G2 (General Criteria for Development), C2 (Development in the Countryside) & C6 (Landscape Conservation) of the saved policies of the adopted Salisbury District Local Plan (constituting saved policies listed in Appendix C, of the adopted South Wiltshire Core Strategy) insofar as the proposed development is considered acceptable in principle, and would not adversely affect residential amenity or the quality of the surrounding designated Special Landscape Area. The proposal would not be prejudicial to highway safety.

### Subject to the following Conditions:

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

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

2. The use hereby permitted shall only take place within the area identified by a red hatched rectangular box as detailed within the application documentation (drawing reference J16 Block/Location Plan 1:500) and trading shall only take place between the hours of 0800 and 1500 hours from Monday to Friday and between 0800 and 1300 hours on Saturdays, and not at all on Sundays.

Reason: To define the scope of the planning consent and to limit the hours of operation in the interests of the amenity of the area.

POLICY: G2, C6

3. This development shall be in accordance with the submitted drawing[s] deposited with the Local Planning Authority on 10.01.2012, unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt

4. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 01.04.2015 in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.

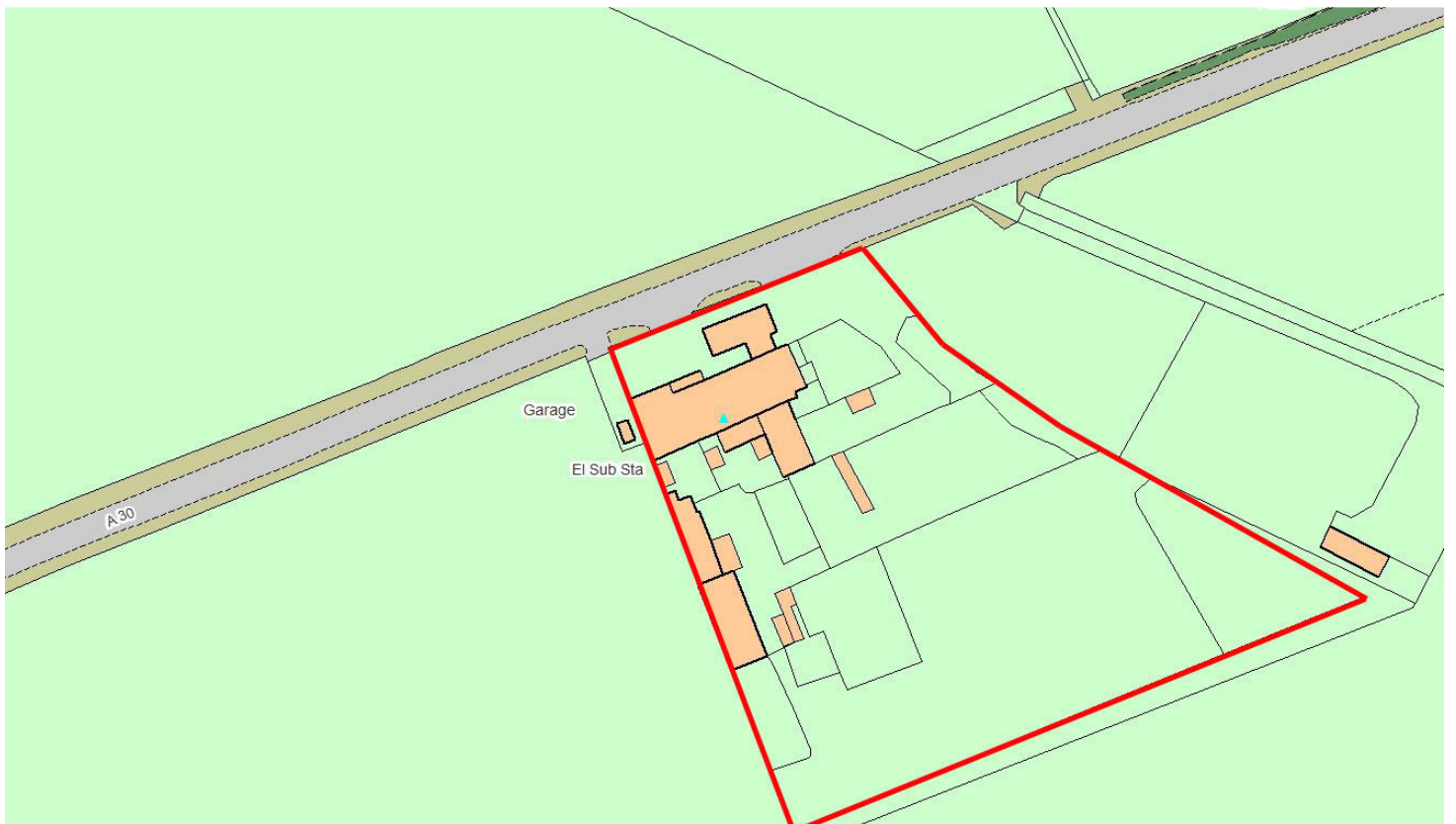
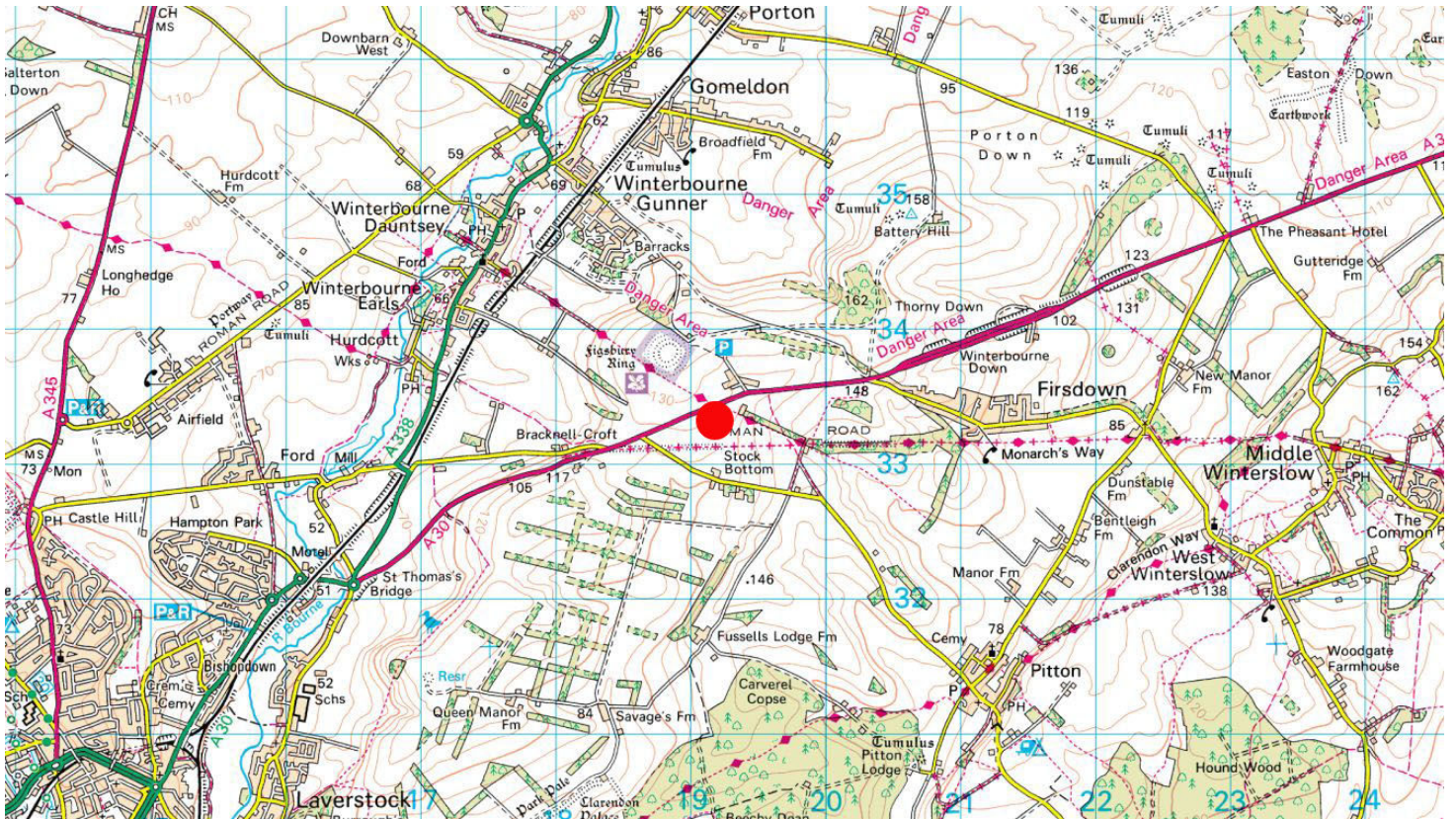
Reason: In the interests of amenity, in order to secure the restoration of the land upon the removal of a use for which permission can be justified only on the basis of a special temporary need, and to allow the local planning authority to monitor the ongoing use of the land to ensure that prejudicial impacts on highway safety and in respect of visual amenity within the landscape are avoided.

POLICY: G2 & C6

INFORMATIVE: The temporary planning consent hereby granted does not provide authorisation for any form of outdoor advertising, notices or signage such as A boards, roadside signs or banners etc. Any such advertisements will require the express consent of the local planning authority by the granting of a separate advertisement consent application.



# Clearway Garage, Firsdow, SP4 6DT



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## REPORT TO THE SOUTHERN AREA PLANNING COMMITTEE

<b>Date of Meeting:</b>	29 <sup>th</sup> March 2012		
<b>Application Number:</b>	S/2012/0160/FULL		
<b>Site Address:</b>	26 Queens Road, Salisbury. SP1 3AJ		
<b>Proposal:</b>	Replacement garage and new boundary wall		
<b>Applicant/Agent:</b>	Mr. J Lewis		
<b>City/Town/Parish Council</b>	St. Edmund and Milford		
<b>Electoral Division</b>	Salisbury City Council	Unitary Member	Cllr Paul Sample
<b>Grid Reference:</b>	Easting: 414722.5		Northing: 130636.5
<b>Type of Application:</b>	Other		
<b>Conservation Area:</b>	CA: N/A	LB Grade: N/A	
<b>Case Officer:</b>	Mrs. Becky Jones	Contact no. 01722 434388	

This application is before the Committee at the request of Cllr Sample in view of the local interest shown in the application.

### 1. Purpose of report

To consider the above application and to recommendation of the Area Development Manager that planning permission be **Granted Subject To Conditions**

### 2. Report summary

The main issues in the consideration of this application are as follows

1. Site history and permitted development rights (the fallback position)
2. Scale, design and impact upon the character of the streetscene
3. Impact upon amenities of neighbours
4. Highway safety

Salisbury City Council supports the application.

The application has generated 3 letters of objection including one petition with 79 signatures (St Marks Road and Park Street).

### 3. Site Description

The site is located on the corner of St Marks Road and Queens Road. The house faces onto Queens Road, and its rear garden and an existing garage front onto St Marks Road. A close board fence forms the northern boundary. A small pedestrian access lies to the east of the site, and separates the rear gardens fronting Queens Road from No 81 St Marks Road.

### 4. Relevant Planning History

S/2011/0771 Replacement garage structure and boundary fence to be replaced by solid wall. Withdrawn due to highway concerns.

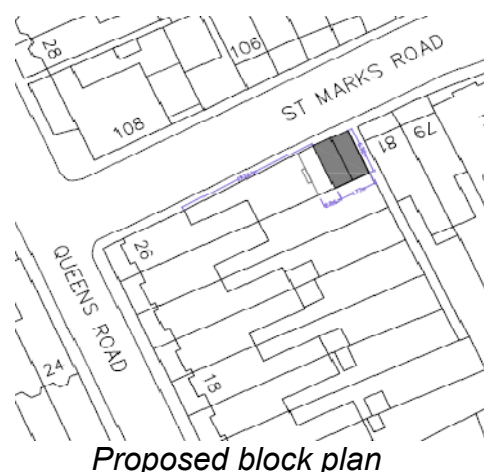
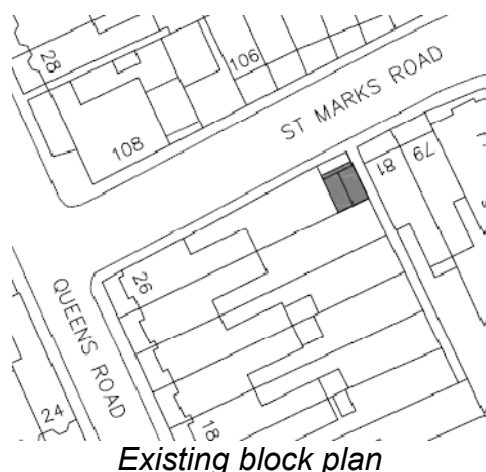
## 5. Proposal

The proposal is to demolish an existing detached garage and erect a new detached garage in its place, and replace the existing boundary fence with St Marks Road with a wall and pedestrian gate.

The applicant has amended the previously withdrawn scheme following discussion with WC Highways. The garage door has been widened from 2.7m to 4m and would have a roller shutter. The width of the new garage would be 4.7m, and its length equal to the full depth of the plot (about 5.6m) from the side boundary to the back of the pavement with St Marks Road. The front elevation of the existing garage has a small pitched roof section, and is about 3.2m from ground to ridge. The proposed garage would have a fully pitched roof and would be very slightly lower, about 3.15m from ground to ridge. It would be constructed from brick with a sheet metal roof.

The proposed brick wall would extend from the house to the garage, with one timber doorway close to the house. It would replace the existing timber close board fence and would be about 1.75m high.

The applicant has stated that the existing garage (measuring 4.6m by 4m) is not large enough for their needs and in their view cannot accommodate a family sized car.



## 6. Planning Policy

The following policies of the Salisbury District Local Plan which are 'saved' in the South Wiltshire Core Strategy are relevant to this proposal:-

- G2 - General Principles for Development
- D3 - Design

## 7. Consultations

### Salisbury City Council

Support.

### WC Highways

No objection subject to conditions.

## 8. Publicity

The application was advertised by site notice, and neighbour consultation which expired on 8<sup>th</sup> March.

3 letters of objection and petition signed by 79 people from St Mark's Street (and 1 in Park Street) were received. Objections were on the following general grounds:

- Lack of forecourt coupled with brick wall is dangerous to pedestrians;
- Negative impact on street scene as garage is no longer set back from the edge of pavement;
- Lack of visibility for drivers reversing out. Minimum standards are not sufficient.

## 9. Planning Considerations

### 9.1 Site history and permitted development rights (the fallback position)

The applicant has previously applied for a similar scheme, with a narrower garage entrance. WC Highways raised concerns and the application was withdrawn. Discussions with Highways have taken place and the scheme now includes a wide roller shutter door.

The Town and Country Planning (General Permitted Development) Order (GPDO) permits the applicant to construct a garage on the footprint as proposed (and up to the back of the pavement line) without the need for a planning application. This would be subject to a height limit of 2.5 metres which is 0.65m lower than the proposed scheme, but feasible. Significantly in view of the objections, the GPDO would not prevent the applicant from constructing a building to the back of the pavement line. This potential fallback position is, therefore, an important material consideration.

### 9.2 Scale, design and impact on the character of the streetscene

Policy D3 sets out the criteria for the development of ancillary buildings within the curtilage of a property. The proposal must be compatible in terms of the scale, design and character to the existing property, using complimentary materials. It must also be carefully integrated in relation to other properties and the landscape framework.

The area is characterised by terraced brick dwellings, set back from the pavement edge behind low walls and railings. The frontage is intermittently broken up by entrances to garages and open spaces around the houses used for parking and gardens. The existing garage lies adjacent to and level with the frontages for Nos 79 and 81 St Marks Rd. In turn, these two dwellings are set back from the frontage of the Kingdom Hall, which is set slightly forward within the street frontage. Its porch and boundary wall lie close to the back of the pavement line. Immediately opposite the application site is No 108 Queens Road, which has a set of garage doors and balcony/car port facing onto the street.

The proposed replacement garage would be slightly lower than the existing structure, but it would be brought forward within the street scene to the back of pavement line. This would be slightly forward of Nos 79 and 81 St Marks Rd, and almost level with the Kingdom Hall. When viewed from the east or west of St Marks Road, the garage would be visible within the street scene. However, it would be 3.15m above ground level, and given that the applicant could construct a building in this location up to 2.5m high without planning permission, the additional impact created by this difference in height is not considered to be sufficiently harmful to warrant refusal. Furthermore, No 108 Queen Street has a set of garage doors beneath a balcony which are sited on the back of pavement line. Given that



this site is opposite the application site, it is difficult to argue that the proposal sets an unwelcome precedent.

The scale of the garage is considered to be modest, and its design with a shallow pitched roof and brick walls is considered to be acceptable. The proposed brick boundary wall and gate would be constructed from matching brick, to replace the timber fence and this would also be acceptable. The proposal would therefore comply with Policy D3.

### **9.3 Impact upon neighbouring amenities**

The garage would have some impact upon the amenities of the occupiers of No 81 St Marks Road. This dwelling is separated from the site by a narrow pedestrian passageway. It has a low boundary wall and trellis on the west boundary of the small front garden, and a living room window faces north. The existing garage is set back almost level with the front of this house, but the replacement garage would be brought forward by about 1.4 metres. It would however be slightly lower in height to its ridge than the existing structure.

The new garage would be sited to the north/west of the front of No 81, and therefore, it is unlikely to have any significant impact on light levels reaching this property from the east and south. It would also be sited to the side of the front window, so would not be directly in the sight line from this window, but would be visible to the left side. No 81 already has a trellis and wall extending to about 2 metres in height above the pedestrian walkway, so the garage eaves would be visible for about 0.3m above the fence with the shallow pitch extending about 1.15m above the fence.

In conclusion, whilst the garage would be obliquely visible from the front window of No 81 St Marks Rd, about 1.15m of the structure would be visible above the trellis and wall for No 81. Due to its siting to the north west, it is unlikely to affect existing light levels reaching the front window. It would also be separated by the pedestrian walkway. Therefore, the amenities of the occupiers of No 81 would not be unduly disturbed by the development, and given the fallback position of a structure that could be constructed up to 2.5m in height, no objection is raised under Policy G2.

The amenities of other properties in the vicinity would not be unduly disturbed by the wall or garage in accordance with Policy G2.

### **9.4 Highway Safety**

Objections have been received from third parties on the grounds of highway safety. The highways department notes the history of this site and that the previous application was withdrawn after highway issues were raised. The latest scheme has alleviated original concerns, by introducing a 4m wide roller-shutter door which would provide sufficient vehicle to pedestrian inter-visibility and also not overhang the public highway. No highway objection is raised, subject to the following condition being attached to any permission granted:

*Any garage doors installed at any time in the garage hereby permitted shall be fitted so that its leading edge does not project forward of the leading wall of that garage.*

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

WC Highways have subsequently considered objections relating to the garage being brought forward to the back edge of the footway and vehicle and pedestrian inter-visibility. Objectors consider that there is the potential for conflict between an emerging car and



pedestrians on the footway. As the garage walls have been brought forward, objectors feel that visibility has been unacceptably reduced and that this presents a road safety hazard.

Whilst highways understand these comments, the issue of vehicle to pedestrian inter-visibility has been the main concern with this proposal. Initially, the applicant withdrew planning application S/2011/0771 on the basis of this issue. After discussions with the applicant, three alterations were proposed including the 4m wide door, and this is now incorporated.

A 4m wide door allows for a 2m x 2m vehicle to pedestrian inter-visibility splay, in accordance with the minimum standard requirement. Therefore, despite the garage being brought forward, sufficient visibility remains (due to the width of the door) to avoid any potential conflict and as such, highways do not view this as a safety issue. A roller-shuttered door has also been requested and shown, as this will avoid any part of the door overhanging the footway.

Therefore, having reconsidered the proposal, highways have raised no objection under Policy G2.

## **10. Conclusion**

The proposed replacement garage and brick wall would replace an existing garage which is set back from the pavement line and a timber close board fence. Under permitted development rights, it is considered that the applicant could construct a building on the proposed footprint, provided it did not exceed 2.5m in height (the fallback position). The proposed scheme is about 3.15m to its ridge.

There would be some impact on the street scene, but this is not considered to be sufficient to warrant refusal, given the fallback position. Furthermore, Kingdom Hall's porch and boundary wall are sited close to the pavement line, and No 108 opposite the site has garage doors sited on the back of pavement line, below a balcony. Therefore, the garage is not considered to set an unwelcome precedent.

The amenities of No 81 St Marks Road would be affected, as part of the eaves and shallow sloping pitched roof of the garage would be obliquely visible above the existing boundary wall and trellis. However, the building is unlikely to affect existing light levels reaching the front of the property, given the north-west siting. The fallback position means that a 2.5m high building could be constructed without planning permission in this position.

Highways have raised no objection on highway safety grounds, given the roller shutter door, which is considered to provide sufficient vehicle to pedestrian inter visibility.

## **11. Recommendation:**

### **Planning Permission be GRANTED for the following reasons:**

The proposed replacement garage and boundary wall would be in accordance with the adopted policies G2 and D3 of the Salisbury District Local Plan and the saved policies in Appendix C of the South Wiltshire Core Strategy. The garage would have an acceptable impact on the streetscene, and its design and scale are appropriate in relation to the existing property (Policy D3). Whilst there would be some impact on the oblique outlook from a neighbouring property (No 81 Queen Street), the building is unlikely to unduly disturb the amenities of the occupiers in terms of dominance or loss of light, given its modest height and siting to the north west (Policy G2). The roller-shuttered door would avoid any part of

the door overhanging the footway. The proposed 4m wide door allows sufficient vehicle to pedestrian inter-visibility splay, despite the garage being brought forward and in accordance with the minimum standard requirement. (Policy G2).

**And subject to the following conditions:**

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

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

2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building (No 26 Queens Road).

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

POLICY- D3 Design

3. Any garage doors installed at any time in the garage hereby permitted shall be fitted so that its leading edge does not project forward of the leading wall of that garage. The development shall be maintained in that condition thereafter.

REASON: In the interests of highway safety and convenience.

Policy G2 General Principles for Development

4. The development shall be in accordance with the following drawings and plans:

095274-008 30<sup>th</sup> March 2011 Proposed Elevations

095274-004 30<sup>th</sup> March 2011 Proposed North Elevation showing roller shutter door and 4m wide entrance.

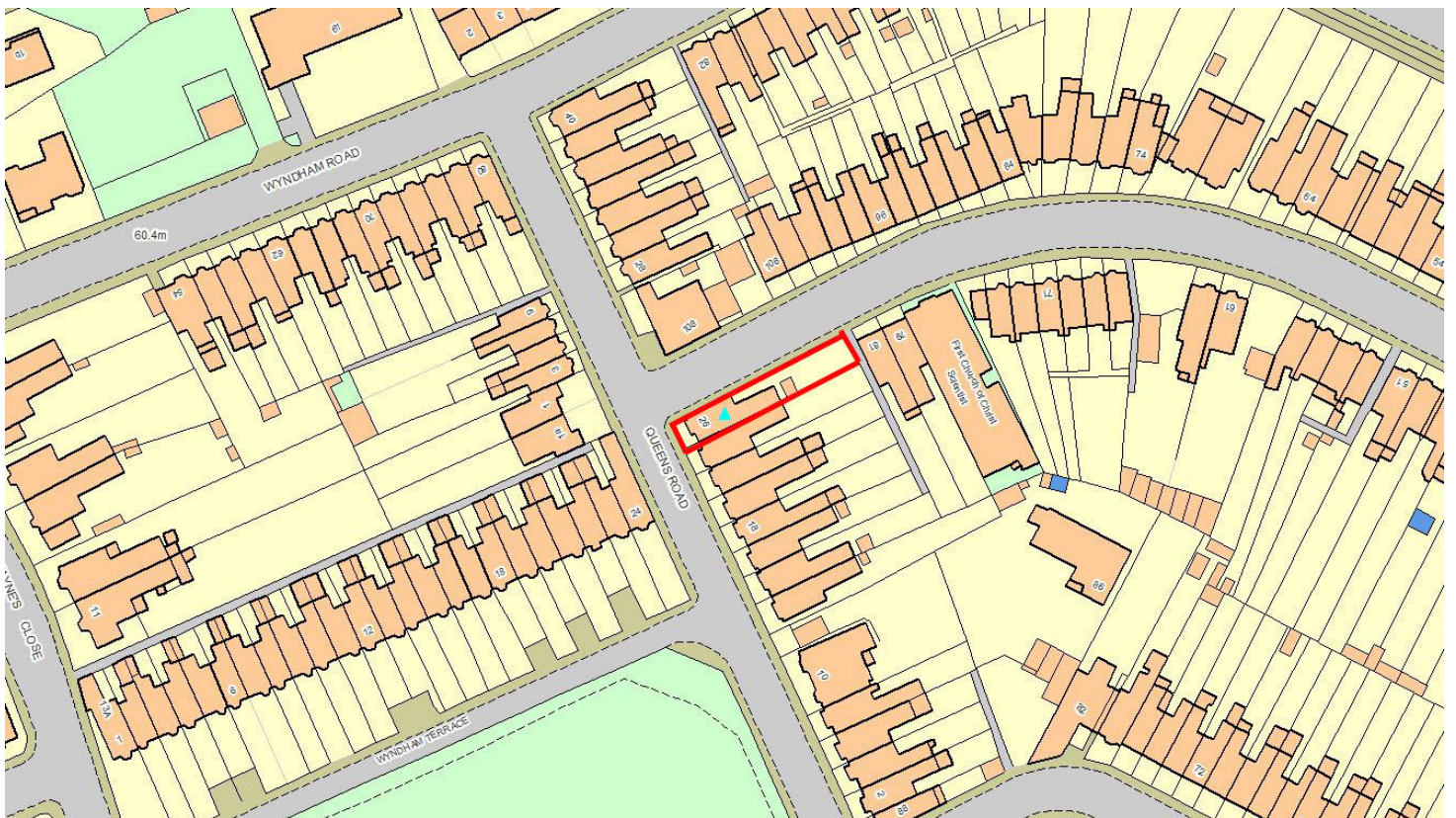
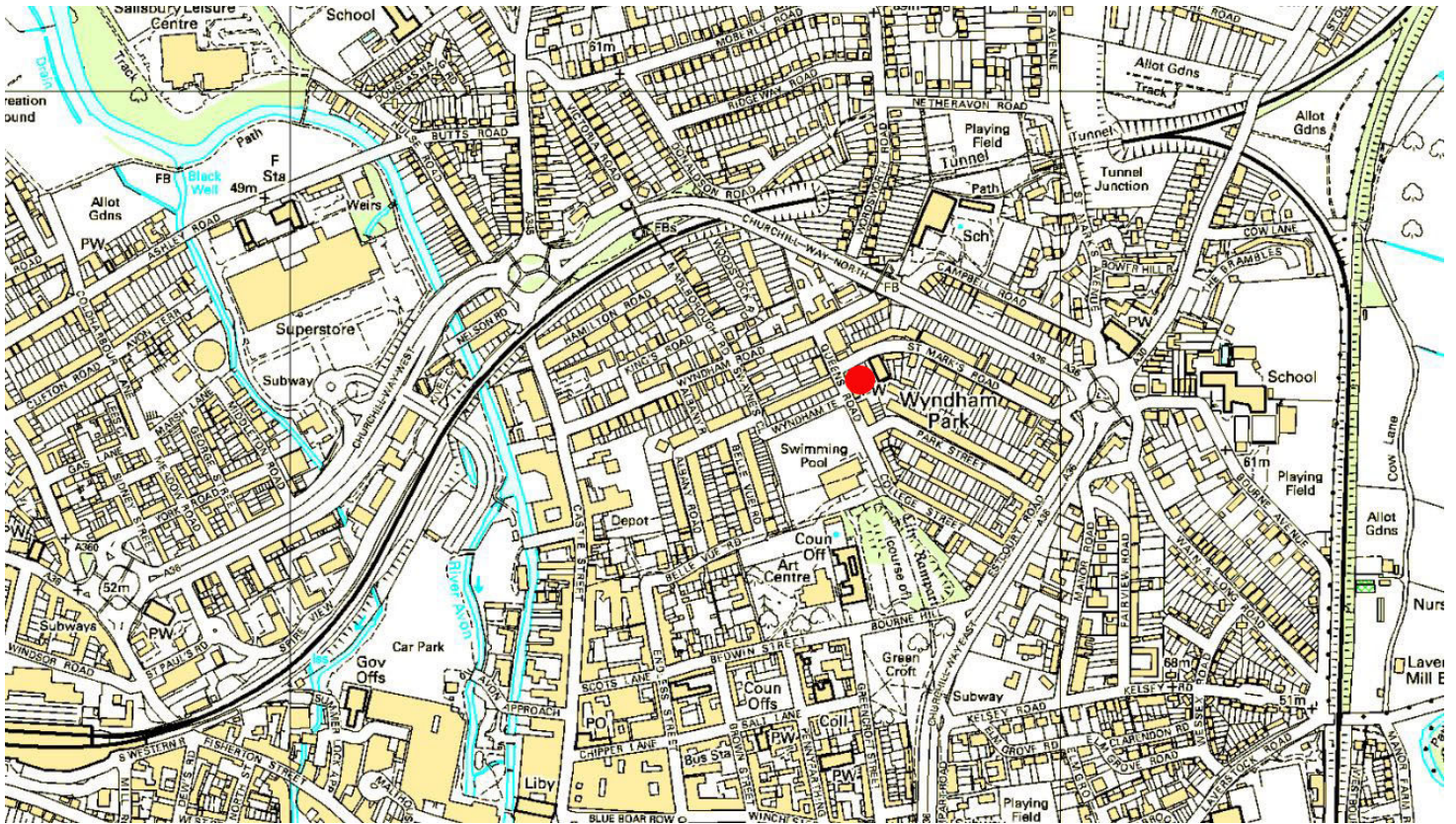
095274-002 30<sup>th</sup> March 2011 Proposed Plan Layout

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

Informative: The applicant is advised of the need to submit plans, sections and specifications of the proposed boundary wall for the approval of the Highway Authority in accordance with Section 167 of the Highways Act 1980.



26 Queens Road, Salisbury. SP1 3AJ





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