

## AGENDA

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**Meeting:** Southern Area Planning Committee  
**Place:** Alamein Suite, City Hall, Salisbury  
**Date:** Thursday 22 April 2010  
**Time:** 6.00 pm

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Please direct any enquiries on this Agenda to Pam Denton, Senior Democratic Services Officer, 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.

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### Membership:

Cllr Brian Dalton	Cllr George Jeans
Cllr Tony Deane	Cllr Ian McLennan
Cllr Christopher Devine	Cllr Ian West
Cllr Mary Douglas	Cllr Fred Westmoreland
Cllr Jose Green	Cllr Graham Wright
Cllr Mike Hewitt	

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### Substitutes:

Cllr Ernie Clark	Cllr Leo Randall
Cllr Russell Hawker	Cllr Paul Sample
Cllr Bill Moss	Cllr John Smale
Cllr Christopher Newbury	

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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 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 18<sup>th</sup> February 2010.

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**

Members of the public who wish to speak either in favour or against an application 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. 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.

6. **Proposed Diversion of Redlynch Footpath 17** (*Pages 13 - 20*)

To consider the attached report.

7. **Wildlife and Countryside Act 1981 - Section 53 - The Wiltshire County Council (Sheet ST 92 NE) (Ebbesbourne Wake No. 24) Rights of Way Modification Order No. 11, 2005** *(Pages 21 - 50)*

To consider the attached report.

8. **Planning Appeals** *(Pages 51 - 80)*

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

9. **Planning Applications**

To consider and determine planning applications in the attached schedule.

- 9.1. **S/2010/0007/FULL - Stonehenge Campsite Berwick Road Berwick St.James Salisbury** *(Pages 83 - 98)*

- 9.2. **S/2010/0259/FULL - Proposed Re-Instatement of two maisonettes to lower ground and ground floor including the installation of flood resistance and flood resilience measures** *(Pages 99 - 108)*

- 9.3. **S/2010/0260/LBC - Proposed Re-Instatement of two maisonettes to lower ground and ground floor including the installation of flood resistance and flood resilience measures** *(Pages 109 - 114)*

10. **Urgent Items**

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

## Part II

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

None

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## **SOUTHERN AREA PLANNING COMMITTEE**

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### **MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 18 FEBRUARY 2010 AT ALAMEIN SUITE, CITY HALL, SALISBURY.**

#### **Present:**

Cllr Brian Dalton, Cllr Tony Deane, Cllr Christopher Devine, Cllr Mary Douglas, Cllr Jose Green, Cllr Mike Hewitt, Cllr George Jeans, Cllr Ian McLennan, Cllr Ian West and Cllr Fred Westmoreland (Chairman)

#### **12. Apologies for Absence**

Apologies were received from Councillor Graham Wright.

#### **13. Minutes**

The minutes of the meeting held on 28 January were confirmed as a correct record and signed by the Chairman subject to the following amendment:

Minute no. 8.5/8.6 should read

Public Participation:

Mr P Proctor (agent) spoke in support of the application  
Mr R Cordle spoke in support of the application  
Mr D Vigors spoke in support of the application

#### **14. Declarations of Interest**

Councillor Devine declared a personal interest in application no. S/2008/2065 as his son works one day a week at the Homebase store which is located on the site.

Councillor Douglas declared a personal interest in application no. S/2008/2065 as she is a member of the Salisbury Vision Board.

Councillor Dalton declared a personal interest in application no. S/2008/2065 as he is a member of the City Council but not a member of the planning committee.

Councillor Deane declared a personal interest in application no. S/2009/1934 as he is acquainted with the applicant.

15. **Chairman's Announcements**

The chairman made no announcements.

16. **Public Participation**

The committee noted the rules on public participation and the manner in which the meeting would proceed.

17. **Planning Appeals**

The committee received details of the following appeals:-

Decision

S/2009/1137 - New Bower, Hindon Road, Dinton – dismissed – delegated decision.

S/2009/0943 - Hillstreet Cottage, Hindon Lane, Tisbury – allowed – delegated decision.

New Appeal

2009/1314 – Mobile Catering Van – layby, A338 West Gomeldon – delegated.

**Resolved:**

**That the report be noted**

18. **Planning Applications**

**18.1** S/2009/0900 - Hazeldene Giles Lane Landford

Public participation:

Mr M Hayward spoke in support of the application  
Mrs M Hayward spoke in support of the application  
Ms S Ambrose spoke in support of the application  
Cllr T Reynolds (Landford Parish Council) spoke against the application.

**Resolved:**

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

Due to the small scale of the proposal and the minimal visual, neighbour, and highway impacts resulting from the development, and given the fact that the site had been excluded from the New Forest designation and is located adjacent to a large industrial operation, the limited impact of the proposal outweighs the aims of current New Forest Heritage Area policies and would be in accordance with other Local Plan tourism and farm diversification policies and the aims of PPS4 and PPS7.

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 take place until details of the treatment of the boundaries of the site have been submitted to and approved in writing by the Local Planning Authority. Any tree screening, hedges, walls or fences thus approved shall be planted/erected prior to the occupation of the building[s].

REASON In the interests of the amenity and the environment of the development.

POLICY G2, C2 and C6 general and countryside policies

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- C2 and C6 protection of the Special Landscape Area

4 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the accommodation/cabins hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning

policies pertaining to the area, would not permit permanent residential accommodation.

POLICY C2 and C6 Countryside policies, H23 Housing policy boundaries, C21 Farm diversification

5 No person shall occupy the holiday accommodation hereby permitted for a continuous period of more than 21 days in any calendar year and it shall not be reoccupied by the same person/s within 28 days following the end of that period.

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

POLICY: C2 and C6 countryside policies, H23 Housing policy boundaries, C21 Farm diversification

6 The owners/ operators of the site shall maintain an up -to -date register of the names of all owners/occupiers of individual cabins on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.

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

POLICY C2 and C6 countryside policies, H23 Housing policy boundaries, C21 Farm diversification

7 The holiday accommodation/cabins hereby permitted shall not be occupied as a persons' sole or main place or residence.

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

POLICY C2 and C6 countryside policies, H23 Housing policy boundaries, C21 Farm diversification.

8 No external security lighting shall be used to illuminate the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority upon submission of a planning application in that behalf.



REASON In order to restrict the impact of light pollution on the surrounding open countryside and the New Forest National Park

POLICY: HA1 and C6 Protection of Special Landscape Area and New Forest Heritage Area

#### INFORMATIVE 1

##### DOCUMENT/PLANS SUBMITTED WITH THE APPLICATION

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.

Block plan, site for cabins and store received on 24 June 2009

Location plan and elevations of two cabins and store received on 24 June 2009.

Additional plan revising location of holiday cabins received on 2 November 2009

Amended plan revising design of cabins received on 27 January 2010

#### **18.2 S/2008/2065 - Southampton Road Retail Park And Dolphin Industrial Estate Southampton Road**

Public participation:

Mr M McFarland (Agent) spoke in support of the application

Mr A Smith – spoke in support of the application.

#### **Resolved:**

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

1. The proposal envisages the creation of a retail park, which includes retail, leisure, and restaurant uses. PPS4 defines The guidance in PPS4 (policy EC17) states that where planning applications for main town centre uses that are not in accordance with an up to date development plan should be refused planning permission where the applicant has not demonstrated compliance with the requirements of the sequential approach, or there is clear evidence that the proposal is likely to lead to significant adverse impacts Based on the information provided, it is considered that the current proposals fails to comply with the sequential approach (PPS4: EC15) and would potential have an adverse impact on the vitality and viability of Salisbury city centre (PPS4: EC16). As a result, it is also considered that the proposal would not adequately address the aims of the Council's shopping policies, particularly policies S1, S2, S3 and S6 & R1B, the emerging Core Strategy policy 7, project 10 of the Salisbury Vision, in that it would be likely to resulting in the relocation and loss of town centre uses and investment to a less accessible out of centre site.

2. Based on the information submitted to date, and notwithstanding the discussions between the applicants and the Highways Agency, the Agency's Direction of Non Approval remains in place, and it is understood that the applicants have not yet satisfactorily met all of the Agency's requirements. As a result, and in the absence of any mitigation measures being agreed, it is therefore considered that as currently proposed, the scheme would be likely to result in additional car borne traffic using the road systems around the site, thus exacerbating existing congestion problems on the Strategic Road Network, contrary to the sustainable transport and accessibility aims of policies G2 and TR12 of the Salisbury District Local Plan, and PPS4 & PPG13.

3. The existing buildings on the application site are of a poor visual quality, and the removal of some of those buildings is welcomed. However, due to a combination of the generally poor quality layout and visual appearance of the proposed scheme, the proposal as submitted is considered to be a missed opportunity to improve in any significant manner the overall visual quality of the area, or to provide a layout which is accessible by pedestrians, particularly those with mobility issues/disabilities. The proposal is therefore considered to be contrary to Salisbury District Local Plan design policy D1 and the guidance contained within the Council SPG "Creating Places", and contrary to the aims of the emerging Core Strategy and Salisbury Vision in relation to the enhancement of the Eastern Gateway area, and the aims of South Wiltshire Structure Plan policy DP1, and policies EC 8 & EC10 of PPS4, and PPG13.

### **18.3 S/2009/1903 -The Corn Mill Croucheston Bishopstone**

Public participation:

Dr O Chapple spoke in objection to the application

Ms Alexandra Munday (Agent) spoke in support of the application.

#### **Resolved:**

That planning permission be **REFUSED** against officer recommendation for the following reasons:

The proposal involves a property of significant scale, located in a prominent position adjacent a public right of way and existing dwellings, within the countryside outside any housing policy boundary and therefore where residential development is not normally permitted . Furthermore the site lies within the designated Cranborne chase and West Wiltshire Downs Area of Outstanding Natural Beauty.

It is considered that the scale and design of the proposal would not be sympathetic to the character of the landscape of the designated area in general nor be in scale and character with other dwellings within the locality, and would not be of such a sufficiently high quality design as to outweigh the harm that

would result in from its impact upon the character and scenic quality of the designated landscape.

As a result, the proposed development fails to accord with the aims of saved policy C5 (Landscape Conservation) of the adopted Salisbury District Local Plan, and the criteria set out within PPS7, whereby very occasionally, the exceptional quality and innovative design of a new house may provide special justification for granting planning permission.

#### **18.4 S/2009/1934 - Land Adjacent Rose Cottage The Street Teffont**

Public participation:

Mr H Homan spoke in support of the application

Mr T Allen (Agent) spoke in support of the application

Mrs G Green spoke in support of the application

Cllr R Willan (Teffont Magna Parish Council) spoke in support of the application.

#### **Resolved:**

That subject to the applicant entering into a legal agreement under s106 of the Town and Country planning Act 1990, to secure the provision of adequate escape access and egress in the event of flooding in perpetuity, permission be **GRANTED** (against officer recommendation) for the following reasons:

The proposed dwelling, by reason of its acceptable design, materials and positioning would preserve the character and appearance of the Teffont Conservation Area, Housing Restraint Area and Area of Outstanding Natural Beauty. The development would not harm the living conditions of nearby properties (including Rose Cottage), highway safety, protected species or any other material planning consideration, or be at unacceptable risk of flooding. It would therefore comply with saved policies G1, G2 (General Development Criteria), C4, C5 (Development in the AONB), D2 (Infill Development), C12 (Protected Species), H19 (Development in Housing Restraint Areas), CN8, CN10 (Development within Conservation Areas) and R2 Public Recreational Open Space) of the Adopted Salisbury District Local Plan.

And subject to the following conditions:

#### Time Limit and Plan numbers

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

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

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

08.27-E101;  
08.27-E102;  
08.27-P101A;  
08.27-P102A;  
08.27-P111A;  
08.27-P112A;  
08.27-P121A

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

### Materials

(3) The external materials to be used in the development hereby approved shall be those specified in the application forms.

REASON: in the interests of the character and appearance of the Conservation Area.

POLICY: H19, CN8, D2

### Highways

(4) The vegetation attached to and around the lower part of the two trees fronting the property adjacent to the site shall be maintained clear of vegetation (ivy etc) for the first 2.0m of their height measured from the adjacent carriageway level

REASON: In the interests of highway safety

POLICY: G2

(5) Visibility shall be provided at the site access with nothing over 1.0m in height above the adjoining carriageway being planted, erected or maintained in front of a line measured 2.0m back from the carriageway edge extending across the whole site frontage (site and blue land) in the form of a parallel strip.

REASON: In the interests of highway safety

POLICY: G2

(6) The access shall remain un-gated and shall not be brought into use until the first 5.0m of the access, measured from the carriageway edge 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

POLICY: G2

(7) The gradient of the access shall not at any point be steeper than 1 in 15 for a distance of 5 metres from its junction with the public highway

REASON: In the interests of highway safety

POLICY: G2

(8) No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/ driveway) incorporating sustainable drainage details, has been submitted and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with approved scheme

REASON: In the interests of highway safety

POLICY: G2

(9) A vehicle turning area shall be provided and maintained for that purpose only within the site.

REASON: In the interests of highway safety

POLICY: G2

#### Environment Agency Conditions

(10) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (ref: Laurence Waterhouse Consulting Ltd - Rose Cottage ver. 4 s A10) and the following mitigation measure detailed within the FRA: Finished floor levels are set no lower than 21.30m above Ordnance Datum (AOD).

REASON: To reduce the risk of flooding to the proposed development and future occupants.

POLICY: Planning Policy Statement 25

(11) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

REASON: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

POLICY: Planning Policy Statement 25

(12) No development approved by this permission shall commence until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details.

REASON: In the interests of sustainable development and prudent use of natural resources.

POLICY: Planning Policy Statement 25

#### Protected Species and Trees

(13) The development hereby approved shall be undertaken in accordance with the Arboricultural Method Statement dated 18<sup>th</sup> August 2009 and the recommendations of the Protected Species Assessment dated 1<sup>st</sup> July 2009.

REASON: in the interests of the character and appearance of the area and ecological interests.

POLICY: G2, CN8, C12

#### Residential Amenity

(14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the northern elevation of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

POLICY: G2

(15) The bathroom windows in the north elevation of the dwelling hereby approved shall be glazed with obscure glass only and fixed with a ventilation stay restricting the opening of the window prior to the first occupation of the development hereby permitted, and shall be permanently maintained as such at all times thereafter.

REASON: In the interests of residential amenity and privacy.

POLICY: G2

(16) No construction work shall take place outside of the following hours:  
Mondays to Fridays 08:00 to 19:00, Saturdays 08:00 to 13:00. No construction  
work shall take place on Sundays or Bank Holidays.

REASON: in the interests of the amenity of nearby properties

POLICY: G2

19. **Urgent Items**

There were no urgent items

(Duration of meeting: 6:00 pm – 9:15 pm)

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

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## WILTSHIRE COUNCIL

### SOUTHERN AREA PLANNING COMMITTEE 22 APRIL 2010

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#### PROPOSED DIVERSION OF REDLYNCH FOOTPATH 17

##### Purpose of Report

1. To:
  - (i) Consider and comment on the objection received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Redlynch Footpath 17.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs.

The proposed diversion is shown on the plan attached at **Appendix A**.

##### Background

2. An application was made on 14 July 2008, by Robert Andrews, to divert part of Footpath 17 Redlynch. Mr. Andrews owned the land over which both the existing path and his proposed new route pass. On his application form he gave the following reasons for the application and the benefit to both himself and the public:

*“The application is to follow the edge of the land and not go straight across it, as it currently is. The advantages to users is the reduction of a stile and the introduction of a kissing gate, also the new proposed route will be fenced off from any livestock.”*

3. Officers had a meeting on site with the applicant and they came to the agreement that the width of the new path would be 3 metres compared to the usual 2 metres as the path was going to be fenced on both sides.
4. An initial consultation was undertaken in August 2009 and no adverse comments were made to the proposal.
5. The ownership of the land changed in late August, early September 2009 and the new landowner, Mr. Richard Budworth, confirmed his desire to take over with the application. Mr. Budworth has, after discussion with the author of this report, indicated he would prefer no stiles or kissing gate on the proposed alternative route for the path, put for it to be open and easy to access for all users. There is a hedge running parallel to the existing line of the footpath, shown by a solid black line marked A-B on the plan attached at **Appendix A**. It is Mr. Budworth's intention to remove this hedge line.
6. On 1 October 2009 an Order was made providing for the diversion of part of Footpath 17, in accordance with the application. The alternative path has a width of 3 metres.

7. One objection was received to the making of the Order from Mr. A.P. Spires, a resident of Redlynch. Mr. Spires stated in an e-mail dated 13 November, 2009:

*“I strongly believe that as soon as this path is enclosed, it may become unsafe – it will certainly be unpleasant. I can assure you this path is used daily and quite often at night as it forms the best link between Bohemia and Lover.”*

Mr. Spires believes maintenance of paths around this area is already very poor and a 3 metre wide path will not provide any advantages in this regard. He also feels that the advantages of removing two stiles is “countered by the prospect of walking a further 50 metres along a dull corridor”.

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

8. Wiltshire Council has the power to make Orders to divert public paths under Section 119 of the Highways Act 1980. The Order may be made in the interest of the landowner but can only be confirmed if the new path or way will not be substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the path or way as a whole.
9. The Council has received an objection to the proposed Order and Members have to decide whether they still wish to support the Order or formally resolve not to proceed with it.
10. Section 119(1) of the Highways Act 1980 states that:

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

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

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

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

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

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

12. The Committee must now consider the second test under Section 119(6) which must be met at the Order confirmation stage.

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

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

13. The Council has to have regard to The Disabilities Discrimination Act 1995. Section 21 of this Act states:

*(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.*

*(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to:*

- (a) remove the feature;*
- (b) alter it so that it no longer has that effect;*
- (c) provide a reasonable means of avoiding the feature; or*
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.*

14. The author of the report notes that an existing stile at Point A is to be replaced with a “kissing gate”. The stile at Point B is to be removed altogether. Since the alternative footpath is to be enclosed from the adjoining field, officers do not now feel, having regard to Section 21 of the Disabilities Discrimination Act 1995, that a “kissing gate” is required at Point A. A gap in the fence line will ease access for users.

15. Turning again to Section 119(6) officers consider that the alternative route will not be substantially less convenient to the public, taking into account public enjoyment on the path as a whole. The proposed alternative route is only 50 metres longer and will have a generous width of 3 metres. A 3 metre width will not create a tunnel effect and officers do not feel that public enjoyment of the whole path would be detrimentally affected by the diversion. A wide fenced path could give surety to blind or partially sighted persons wishing to use the way. The fence and proposed route would also separate users from potential conflict with any animals which may be in the enclosure.

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

16. There are no significant environmental implications arising from the recommendations set out within this report.

### **Risk Assessment**

17. There are no risks arising from the recommendation set out within this report.

### **Financial Implications**

18. The making of a public path diversion Order is a discretionary duty for the Highway Authority rather than a statutory duty. Provision has been made within existing budgets for the costs involved in processing the application, including advertising costs.
19. The proposed new path is already in use and has been constructed by the landowner at his own expense to a standard that is already acceptable to the Council as Highway Authority. The new path will, however, need to be formally certified by the Council as acceptable. Officers do not expect that there will be any significant additional expense to the Council in providing the new path.
20. Mr. Budworth has confirmed that he is the only landowner affected by the proposals, therefore, no compensation costs or expenses are envisaged.
21. If the Committee decides to refer the Order to the Secretary of State with the request that it should be confirmed, the Secretary of State must decide the most appropriate method of reaching his decision. In cases where there are few objections to an Order and these are of a relatively straightforward nature, it is often appropriate to make the decision after an exchange of written representations or by means of a Hearing. Provision has been made within existing budgets to cover this.

### **Options Considered**

22. The following options have been considered:
  - (i) Not to continue with the Order.
  - (ii) That the Order be referred to the Secretary of State for determination with the recommendation that it be confirmed, subject to the deletion of the reference in the Schedule to the Order to the "kissing gate" at SU2079419717.

### **Reasons for Recommendation**

23. The proposed diversion meets the test contained in Section 119 of the Highways Act 1980.

## **Recommendation**

24. That:

- (i) The Committee resolve not to continue with the Order, or
- (ii) The Order be referred to the Secretary of State for determination with the recommendation that it be confirmed subject to the deletion of the reference in the Schedule to the Order to the “kissing gate” at SU20794197.

### **GEORGE BATTEN**

Corporate Director for Transport, Environment & Leisure

Report Author

**BARBARA BURKE**

Senior Rights of Way Officer

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

None

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**Redlynch 17 Plan**

**Key**

- Footpath to be added :     **A** - - - - - **B**
- Footpath to be deleted : **A** ————— **B**
- Unaffected footpath :     | | | | | | | | | | | | | | | |

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*George Batten BSc (Hons), C.Eng. FICE FIHT, Director for Transport, Environment & Leisure, Wiltshire Council.*

Prepared by AHF Date 19<sup>st</sup> February 2010 Scale 1:500 Grid Ref. SU 208-196



**4**

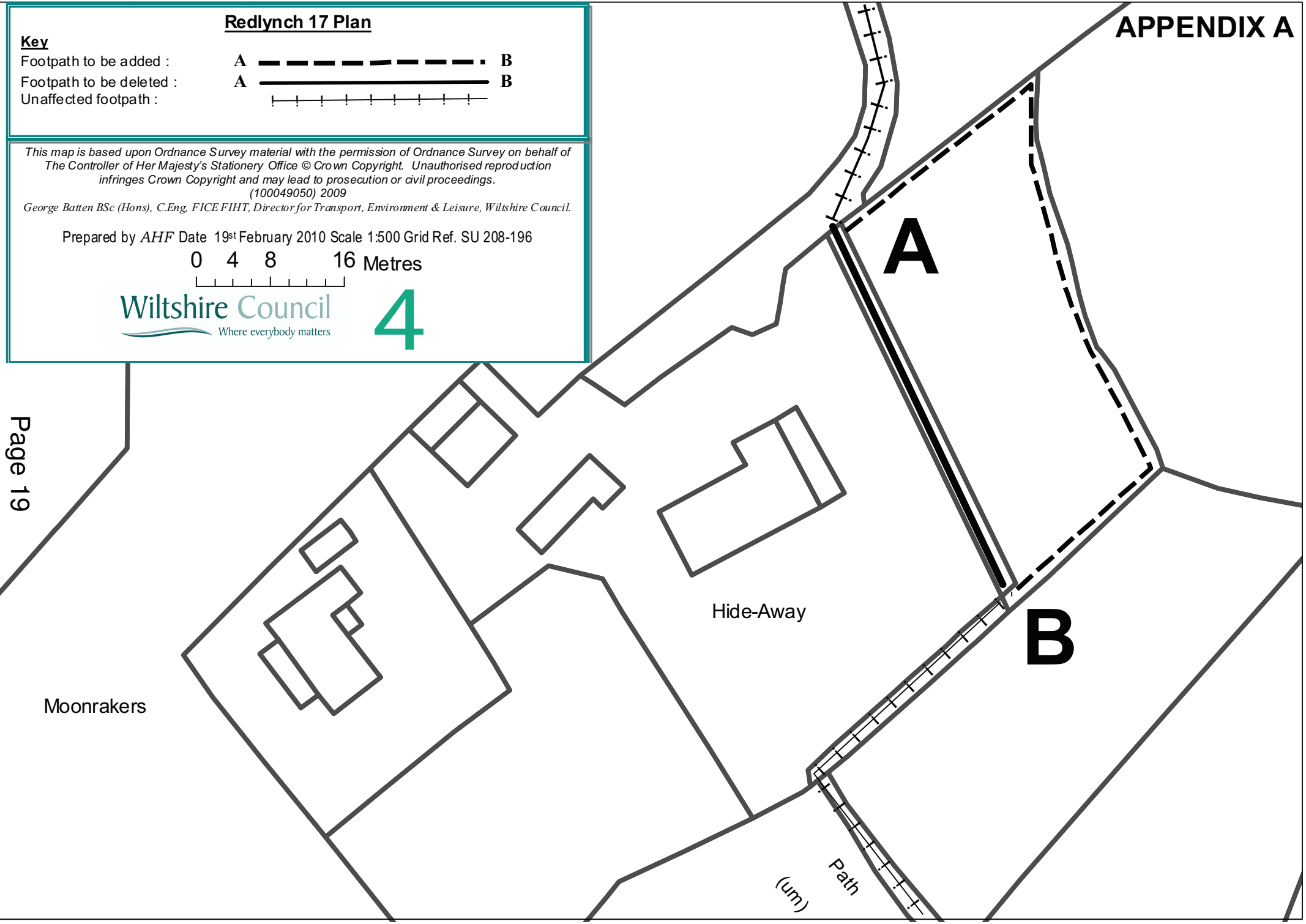
Moonrakers

Hide-Away

(um) Path

**A**

**B**



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## WILTSHIRE COUNCIL

### SOUTHERN AREA PLANNING COMMITTEE 22 APRIL 2010

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#### WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53, EBBESBOURNE WAKE NO. 24 RIGHTS OF WAY MODIFICATION ORDER

#### Purpose of Report

1. To:
  - (i) Reconsider and comment on the objections received following the making of the Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a byway open to all traffic (BOAT) at Ebbesbourne Wake.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that the Order be confirmed, subject to the status of the additional way, and be modified from BOAT to Restricted Byway.

#### Background

2. The Regulatory Committee of the former Wiltshire County Council considered a report on the objections received to the making of the Order to add a BOAT to the Definitive Map and Statement in Ebbesbourne Wake on 12 July 2006 (attached at **Appendix 1**). The Committee resolved:

*“To forward the Modification Order made under Section 53 of the Wildlife and Countryside Act 1981, to add a byway open to all traffic at Ebbesbourne Wake, to the Secretary of State for decision, with a recommendation from the County Council that the Order be confirmed without modification.”*

3. Pressure of work in the Definitive Map team prevented the Order from being submitted to the Secretary of State. Throughout subsequent months, following the recommended decision, the owner of the land crossed by the BOAT, Mr. G.L. Foyle, questioned the validity of the application. The Green Lane Protection Group commissioned opinion from leading counsel on what constitutes an application which is compliant with Schedule 14 to the Wildlife and Countryside Act 1981 (the 1981 Act). The opinion it received suggested an application of the nature of the one submitted to this Council, seeking this additional BOAT in Ebbesbourne Wake, was not validly made. Defra did not agree with this opinion. Other authorities were also dealing with applications to add BOATs to their respective definitive map in accordance with Defra guidance. It was clear that it would be only a matter of time until the High Court clarified this point of law.

## **Main Considerations for the Council**

4. In April 2008 the Court of Appeal held in the case of R (Warden and Fellows of Winchester College and Humphrey Feeds Limited) v Hampshire County Council that the requirements contained in paragraph 1 of Schedule 14 to the 1981 Act had to be complied with where:

- (i) An application is made to modify a definitive map and statement under Section 53(5) of and paragraph 3 to Schedule 14 to the 1981 Act, and
- (ii) Section 67(3)(a) of the Natural Environment and Rural Communities Act 2006 (the NERC Act 2006) applies.

Where such an application is found to be invalid, rights which are extinguished under Section 67(1) of the NERC Act 2006 are not saved by the provisions of Section 67(3) of the NERC Act 2006. This case is known as the Winchester case.

5. Section 53(5) of the 1981 Act provides:

*“Any person may apply to the Authority for an Order under sub-section (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 sub-section (3), and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this sub-section.”*

6. Section 67 of the NERC Act 2006 – Ending of certain existing unrecorded public rights of way states:

*“(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement:*

- (a) was not shown in a definitive map and statement, or*
- (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

*But this is subject to sub-sections (2) to (8).*

*(2) Sub-section (1) does not apply to an existing public right of way if:*

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;*
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under Section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense);*
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles;*

- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles; or*
  - (e) *it was created by virtue of use by such vehicles during a period ending before 1 December 1930.*
- (3) *Sub-section (1) does not apply to an existing public right of way over a way if:*
- (a) *before the relevant date, an application was made under Section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an Order, making modifications to the definitive map and statement so as to show the way as a byway open to all traffic;*
  - (b) *before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*
  - (c) *before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles:*
    - (i) *was reasonably necessary to enable that person to obtain access to the land, or*
    - (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.*
- (4) *“The relevant date” means:*
- (a) *in relation to England, 20 January 2005;*
  - (b) *in relation to Wales, 18 May 2005.*
- (6) *For the purposes of sub-section (3), an application under Section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.”*

Sub-sections (5), (7) and (8) do not apply in this case.

7. The principal issue of law before the Court of Appeal was what was meant by “an application made in accordance with paragraph 1 of Schedule 14 to the 1981 Act” within the meaning of Section 67(6) of the NERC Act 2006. For Section 67(3)(a) of the NERC Act 2006 to apply, an application had to have been made in accordance with Section 53(5) of the 1981 Act and all the requirements of paragraph 1, Schedule 14 to the 1981 Act. This means the application had to have been made in the prescribed form, accompanied by a map drawn to the prescribed scale and showing the way to which the application related, and accompanied by copies of any documentary evidence, including statements of witnesses, which the applicant wished to adduce in support of the application. The Court found that these words were expressed in clear and ordinary language and were to be given their plain and ordinary meaning. An application, which was not accompanied by copies of the evidence that the applicant wished to use as proof in support of the application, was not made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

8. The application made under Schedule 14 to the 1981 Act which triggered the making of the Order which is the subject of this report was submitted with a summary of historical evidence and three extracts from small scale county maps. Copies of the documents of key evidential weight were not supplied. Following the judgement of the Court of Appeal of the Winchester Case, the application no longer meets the requirements to justify an exemption from the extinguishment of the right to use a mechanically propelled vehicle on the order route.
9. Although the County Council had previously recommended that the Order which is the subject of this report be submitted to the Secretary of State to be confirmed as made, it has now, in the light of the Winchester Case, to review this recommendation. In a case where the rights to use a mechanically propelled vehicle have been extinguished by the effect of this case law, but where historically a BOAT would have been recorded, a Restricted Byway could be recorded. A Restricted Byway is a way over which the public have a right of way on foot, horseback or leading a horse, together with a right of way for non-mechanically propelled vehicles (for example a horse and carriage).
10. There are five exceptions to the extinguishment of vehicular rights for mechanically propelled vehicles, listed under Section 67(2) of the NERC Act 2006, as set out in paragraph 6 above. Officers have investigated whether or not any of these exceptions apply to the Ebbesbourne Wake Order. No evidence that they do has been provided.
11. The main considerations for the Council, given in paragraphs 12-30 of the report attached at **Appendix 1** are all still relevant. A Highway Authority is entitled to make a Modification Order under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 on the basis that the existence of a highway of a particular kind is "reasonably alleged to subsist". It was established in the High Court case of Todd and Bradley v Secretary of State for the Environment, Food and Rural Affairs in 2004 that confirmation of an Order under Section 53(3)(c) depends on discharging the normal civil burden of proof that such a way subsists on the balance of probabilities. Although vehicular rights can be shown to exist, the rights to drive a mechanically propelled vehicle over the Order route have been extinguished by Section 67(1) of the Natural Environment and Rural Communities Act 2006 and so the Order route should be shown as a Restricted Byway.

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

12. There are no significant environmental implications arising from the recommendations set out within this report.

### **Risk Assessment**

13. Failure to apply the law correctly in determining applications and Orders under the 1981 Act could lead to the Council being exposed to legal action.

### **Financial Implications**

14. The processing of applications under the 1981 Act is a statutory function of the Council for which budgetary provision is made.

### **Options Considered**

15. Having found that vehicular rights exist on the Order route, the legal tests for making the Order are met. Once an Order has objections made to it, the Council cannot abandon the Order. There is no other option but to forward the Order to the Secretary of State for decision.

### **Reasons for Recommendation**

16. The Order and the modification to be made to it now proposed comply with current legislation.

### **Recommendation**

17. That the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation it be confirmed, subject to the status of Ebbsbourne Wake 24 being modified to that of Restricted Byway.

## **GEORGE BATTEN**

Corporate Director for Transport, Environment & Leisure

Report Author

**BARBARA BURKE**

Senior Rights of Way Officer

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

Correspondence with interested parties

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## WILTSHIRE COUNTY COUNCIL

REGULATORY COMMITTEE  
12<sup>th</sup> JULY 2006

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**WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53**  
**THE WILTSHIRE COUNTY COUNCIL (SHEET ST 92 NE)**  
**(EBBESBOURNE WAKE NO. 24)**  
**RIGHTS OF WAY MODIFICATION ORDER NO. 11, 2005**

**Purpose of Report**

1. To:
  - (i) Consider the objections received following the making of the Wiltshire County Council (Sheet ST 92 NE), (Ebbesbourne Wake No. 24), Rights of Way Modification Order No. 11, dated 14<sup>th</sup> July 2005, under Section 53 of the Wildlife and Countryside Act 1981, to add a byway open to all traffic (BOAT) at Ebbesbourne Wake.
  - (ii) Determine the County Council's recommendation which should be attached to this particular Order when it is referred to the Secretary of State for decision.

**Background**

2. The County Council has received an application dated 1<sup>st</sup> May 2002, made under Section 53 of the Wildlife and Countryside Act 1981, to add a BOAT to the Definitive Map of public rights of way in the parish of Ebbesbourne Wake, between Byway No. 2 Ebbesbourne Wake and Byway No. 15 Ebbesbourne Wake (the Herepath), as shown on the plans attached at **Appendices A and B**. The application is accompanied by a list of historical evidence to support the claim that vehicular rights can be reasonably alleged to exist on the route in question which is also known as the "Swallowcliffe Road" (see **Appendix C**).
3. The County Council undertook an initial consultation regarding the proposals, involving landowners, statutory consultees and other interested parties, on 25<sup>th</sup> November 2002. Objections to the proposals were raised by the Parish and District Councils and the landowner.
4. County Council Officers have now investigated the historical evidence submitted with the application in an objective and independent manner and are satisfied that vehicular rights can be reasonably alleged to subsist over the claimed route, on the balance of probabilities (see **Appendix C**).
5. Therefore, under Section 53 of the Wildlife and Countryside Act 1981, the County Council has made a Definitive Map Modification Order, dated 14<sup>th</sup> July 2005, to add a BOAT at Ebbesbourne Wake (the Swallowcliffe Road) as shown on the plan at **Appendix B**.

6. The making of the Order was duly advertised, circulated and posted on site and was followed by a statutory objection period of six weeks. Three objections to the making of the order were received by the County Council, as follows (see **Appendix D**):
- (i) **Mr. G.L. Foyle, Foyle Bros. (landowner)** - Correspondence dated 21<sup>st</sup> July 2005:
    - As the landowner Mr. Foyle objects to the making of the Order based upon evidence which will be presented at a future date. Mr. Foyle intends to follow this matter through to a Public Inquiry.
  - (ii) **Ebbesbourne Wake Parish Council** - Correspondence dated 9<sup>th</sup> August 2005:
    - The Parish Council opposes absolutely any extension to the existing BOAT No. 2 Ebbesbourne Wake, (Swallowcliffe Road). Furthermore the Parish Council maintains that the evidence presented by officers of the County Council fails to justify, on the balance of probabilities, *“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”*. If the matter is pursued further, the Parish Council would require a full Public Inquiry.
  - (iii) **Mr. J.A. Withers, South Wiltshire Rights of Way Preservation Group** - Correspondence dated 9<sup>th</sup> September 2005:
    - Within the evidence submitted by the County Council there are thought to be a number of inaccuracies and indecisive statements, particularly regarding cartographic evidence.
    - The application as it stands suggests that its purpose is to bring vehicular traffic from valley and downland in the south of the County in order to access the Shaftesbury Ox Drove (Byway No. 15). If this is the case there are two adequate routes to achieve this, both of which are within 1,000 metres of the proposed new byway. One to the west is from Alvediston (the Ansty Road), the other to the east is via Byway No. 3 Ebbesbourne Wake. If, on the other hand, the purpose of the application is to connect to Footpath No. 10 Swallowcliffe, the South Wiltshire Rights of Way Preservation Group would strongly recommend reconsideration. The eventual route would have to negotiate a 1:3 gradient of approximately 140 metres on the north slope of Swallowcliffe Down and would present a serious hazard to life.
    - The proposed modification is over a land surface of clay over chalk which is largely unsustainable if used frequently by mechanically propelled or horse driven vehicles.
    - The proposed route is over unfenced land and in severe wet conditions it is likely that it would rut deeply and so induce additional width to the path, a situation common on downland, even in days prior to use by mechanically propelled vehicles.
    - The proposed byway route runs adjacent and close to recently confirmed open access land on which motorised traffic is prohibited. Parts of the open access land are unfenced.



- Although environmental evidence is currently unacceptable, by direction to the Planning Inspectorate, it is known that serious consideration is being given in debate of the Natural Environment and Rural Affairs Bill for strictures against damage to protected sites. The locality of this proposed modification is within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. It is a very open landscape and use with vehicles other than those used for agricultural purposes would be an affront to the beauty of this area, as well as a severe threat to wildlife.
  - The South Wiltshire Rights of Way Preservation Group is aware that the rights of vehicular users are often quoted when claims for modification are based on rights acquired in historic times. The EU Convention of Human Rights and the derived Human Rights Act in this country have played a significant part in recent rights of way legislation. Review is being undertaken to ensure that there is an ethical balance of the rights of users of mechanically propelled vehicles against those of owners/occupiers and conservationists.
7. The only valid objections to the making of a Definitive Map Modification Order are those which question whether or not the Order, as made, correctly reflects existing rights, i.e. those regarding the evidence discovered by the Surveying Authority. Although the objectors have stated that the evidence is insufficient or flawed, no further information to challenge the evidence discovered by the Surveying Authority has been provided by the objectors despite requests from the Order-making authority. Therefore it is not possible to provide the Regulatory Committee with further information regarding the objectors' challenge to the historical evidence. Under the legislation issues such as the environmental impact of the proposals, the effect upon landowners and other path users, or the suitability of the way to carry vehicular traffic cannot be taken into account. At any subsequent Public Inquiry the Inspector appointed on behalf of the Secretary of State will only be concerned with those objections which challenge the historical evidence discovered by the Surveying Authority.
8. In addition one representation has been received supporting the making of the Modification Order, as follows:
- Mr. Bill Riley** - Correspondence dated 24<sup>th</sup> July 2005 (Definitive Map Modification Order applicant):
- If confirmed, the Order will rectify a long standing anomaly which has caused Byway No. 2 to be a cul-de-sac for equestrian and vehicular users. The Council first attempted to remedy this in 1972 at the Special Review and again under the 1981 Act. The subsequent Public Inquiries confirmed that the route shown on the current Order is historically correct. When the original route is restored, all users will benefit.
9. The Public Inquiries referred to are two local Public Inquiries held in 1991 and 1992 regarding the reclassification of path No. 2 Ebbesbourne Wake (the southern continuation of the claimed route) which was originally recorded on the Definitive Map as a Carriage Road used mainly as a Footpath (CRF). At the first Inquiry the Inspector concluded that path No. 2 should be recorded as part BOAT from its southern end to its junction with path No. 3 Ebbesbourne Wake and that the remainder of the path should be recorded as a bridleway.

10. However, there was a subsequent Public Inquiry which examined further evidence from the parish of Swallowcliffe, including the inclosure award, tithe award and parish surveys upon which it was alleged that a further section of path No. 2 Ebbesbourne Wake should be recorded as a BOAT. However, the Inspector does acknowledge the existence of evidence to allege that the claimed route (which is the subject of this report) carries vehicular rights, but in this instance the Inspector was only able to apply the evidence to the Order route in question at that time: *"... The re-inforced evidence showing the existence of public vehicular rights over the major part of Ebbesbourne Wake 2 was such that only a stopping up or diversion order could remove these rights. There was no evidence to deny the existence of vehicular rights and if any modification to the order was necessary it should only apply to that part of the order path not on the line of the awarded Carriage Road. An application had already been made to add to the definitive map a short length of public highway to follow the Inclosure Award line to the Herepath ..."*
11. In April 1992 prior to the second Public Inquiry, the County Council was advised of the unrecorded right of way. The Rights of Way Section at that time advised that it was aware of this omission and would submit a report to the Rights of Way Sub-Committee seeking approval to add the way under the provisions of the Wildlife and Countryside Act 1981. However, this did not happen and a detailed Modification Order application was made on 1<sup>st</sup> May 2002. In its decision to make an Order to add the claimed route, ie the northern continuation of path No. 2 Ebbesbourne Wake to the Herepath, BOAT No. 15 Ebbesbourne Wake (as shown on the plan at **Appendix B**) the Surveying Authority has largely relied upon the same evidence presented at the second Inquiry.

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

12. Officers have examined the historical evidence relevant to the assessment of the status of the right of way.
13. Section 32 of the Highways Act 1980, states that:

*"...A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person and 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..."*
14. The Surveying Authority must apply the following tests to all documents:
  - (i) Why were the documents compiled?
    - Did the recording of the highway have a legal significance?
  - (ii) How were the documents compiled?
    - The compilation process
    - Public participation
    - Accuracy (ie was the map surveyed accurately?)

(iii) Who compiled it?

- What were the consequences for the compiler's rights/duties of including or not including a public right of way?
- What were the consequences for the rights/duties of others?
- Were there any declarations against the compiler's interest?
- Were there any sanctions for falsifying evidence?

Historical Evidence

15. These tests have been applied to all of the documents listed in **Appendix C** and the results suggest that the evidence supports the claim that vehicular rights can be reasonably alleged to exist on the route in question. In fact the claimed route appears to form part of an ancient carriageway between Ebbesbourne Wake and Swallowcliffe, referred to as the Swallowcliffe Road. Documents are available in the **Members' Room**.
16. The route pre-dates and survives the inclosure process, as shown by Andrews and Dury's map of Wiltshire dated 1773, which clearly shows the route. This map was produced for the travelling public of the day and is renowned for its high level of accuracy. It is unlikely that this map would show private routes or those which were not for use by all forms of traffic. Those using horse and carriage were the travelling nobility for whom this map was produced. Therefore to show routes not available to all forms of traffic and private routes would have caused difficulty for both landowners and users, which was not in the interests of the map maker.
17. The Ebbesbourne Wake Inclosure Award describes the route as "*...One other Public Carriage Road and Drift way of the breadth of thirty feet branching out of the last mentioned Road (the road from Ebbesbourne Wake to Sutton Mandeville) at the Distance of about twenty perches from the Northeast corner of the Old Inclosure called Lamb Down aforesaid and from there extending Northwest in its usual Course and direction thro' and over the Allotment of Down Land to the said William Coles Esquire unto the Northwest Corner of the said Allotment where it crosses the late Turnpike Road which leads from Shaftesbury to Salisbury and enters at its usual place into the parish of Swallowcliff the same being part of the Road which leads from the village of Ebesbourne-Wake to Swallowcliff aforesaid...*". The map accompanying the Inclosure Award, clearly shows the road coloured sienna and inscribed "*Carriage Road to Swallowcliff.*"
18. Inclosure Awards are particularly good evidence of the status of a right of way as all Inclosure Awards stem from Acts of Parliament and the Commissioners had the power to change the road network within that parish. In the case of the claimed byway route, it is shown in two inclosure awards. The Swallowcliffe Inclosure Award describes the route as "*...One other Public Carriage Road and Drift way of the breadth of thirty feet branching out of the New Turnpike Road aforesaid opposite an Old Inclosure belonging to the Earl of Pembroke in possession called the London Elm and from there extending in a southward direction through and over an Allotment to the said Earl in a strait line to the bottom of the hill and from there continuing in its Ancient Course and direction Southeastwards to the usual place of its entrance into the parish of Ebesborne Wake the same being part of the Road leading from Swallowcliff to Ebesborne Wake aforesaid...*". On the plan accompanying the award the route is inscribed as the "*Road from Ebesborne Wake*".

19. Surveys of the parishes of Ebbesbourne Wake and Swallowcliffe were carried out in 1794 and 1797 respectively. These maps show the suggestion of the route on the index plan and the full route on the main maps. The Ebbesbourne Wake map shows the route labelled “*to Swallowclift*” and the Swallowcliffe plan shows the whole of the route continuing into the parish of Swallowcliffe, suggesting that the claimed byway is part of a long distance route.
20. Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain comprising an agreed proportion of the annual profits of cultivation or farming. Payment in kind gradually began to be replaced by monetary payment, which was formally recognised by the Tithe Commutation Act of 1836, which regularised this system. The Swallowcliffe Tithe Award of 1844, provides further evidence of the status of the claimed route. It is shown on the map by double solid lines, but is not inscribed. However, the British Parliamentary Paper 1837, XLI 405, which sets out the map conventions to be used in plans made under the Commutation of Tithes Act 1836, shows the “Swallowcliffe Road” to be an “Open Road”.
21. The plan and book of reference for the “Direct London and Exeter Railway - 1845” shows the claimed byway numbered 18 in the plan and labelled “*To Swallowcliff*”, further supporting the claimed byway as part of a long distance route. The book of reference refers to route 18 in the parish of Ebbesbourne Wake as a “*Public highway*”, the owners or reputed owners being the “*Surveyors of highways*”. The cross-section of the area giving technical detail refers to the route as “*To Swallowcliffe, level unaltered – to be passed under Railway Arch 43ft H 20ft*”. The width of the tunnel at 43 feet suggests a substantial route which is likely to have been open to all traffic and concurs with the Inclosure Award which sets out the route being 30 feet wide in both the parishes of Ebbesbourne Wake and Swallowcliffe. This map refers only to the southern part of the path which presently forms Byway No. 2 Ebbesbourne Wake, but it can be concluded that it does continue northwards as the claimed route as it is inscribed “*To Swallowcliffe*”. The route leading west, branching out of Byway No. 2 Ebbesbourne Wake, does not lead to Swallowcliffe.
22. Other small scale maps form supporting evidence and consistently refer to the route as a “*Bye Road*”, “*Parochial Road*” and “*Cross Road*”. It is likely that “*Cross Road*” in this context has a different meaning to our understanding of the term today. It would appear that “*cross road*” was first mentioned in Ogilby’s *Britannia* of 1675, which used the term to distinguish secondary roads from direct or primary roads, (i.e. those originating in London). In the preface to the *Britannia*, Ogilby states “*...having illustrated the principal roads in England and Wales by 85 several itineraries we have distinguished the same into direct and cross roads...and calling such cross as lead from some of the said lesser centres to another like capital town or place of eminency...*” It would appear that subsequent map makers consistently used this term with the same meaning until about 1912 and dictionaries still contain reference to “*by-way*” within the definition of “*cross road*”.
23. The documentary evidence appears to show that between 1890 and 1901 the route became disused or went out of repair. The route was shown in Ordnance Survey mapping of 1890, but from 1901 onwards it would seem that it was no longer visible on the ground to the Surveyors. Ordnance Survey Maps are topographical in nature and therefore would not be expected to record an ancient route which was still part of local knowledge, (evidence provided by Rural District Council minutes of 1928 and 1929), if it was not evident on the ground, through disuse.

24. The Rural District Council minutes of 1928 and 1929 have maps attached which clearly show the route in question. The gates erected, which the minutes detail, have been placed on the route between West End in Ebbesbourne Wake and the Shaftesbury Drove, i.e. Byway/Bridleway No. 2 Ebbesbourne Wake and Footpath No. 2 Alvediston. This route is referred to as a “*Public Right of Way*”. The route in question is not coloured on these maps as the positioning of the gates does not directly affect the route, but in the 1928 minutes it is worth noting that it is shown in the same manner as Byway No. 3 Ebbesbourne Wake which is also uncoloured as it is not affected.
25. The claimed route is not shown on the later Finance Act of 1910 and the Highways Takeover Records of 1930 which are both based on Ordnance Survey mapping. Whilst it is acknowledged that the Finance Act Map could be an important piece of historical evidence and that Highway Takeover records could provide useful supporting evidence, they are inconclusive in this particular case.
26. A public right cannot be extinguished simply because it has become disused and those rights have not been exercised for a long period of time, or because that right has not been recorded on the Definitive Map of public rights of way. Officers therefore contend that the Inclosure Awards and supporting mapping evidence are sufficient to show that vehicular rights can be reasonably alleged to exist, on the balance of probabilities, on the route in question.

#### The Legislation

27. Section 53 of the Wildlife and Countryside Act 1981 places a duty upon the County Council as the Surveying Authority, to keep the Definitive Map and Statement of public rights of way under continuous review, as follows, (Section 53(2)(b)):

*“As regards every Definitive Map and Statement, the surveying authority shall:-*

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

28. The events referred to in Section 53(2)(b) above which are relevant in this case are as follows:

*“(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 definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies.”*

29. The burden of proof lies on the balance of probabilities. If the evidence is sufficient to enable it to be reasonably alleged that a BOAT exists, a Modification Order should be made, under Section 53 of the Wildlife and Countryside Act 1981.

30. The Natural Environment and Rural Communities Act received Royal Assent on 30<sup>th</sup> March 2006. The effect of this Act was to set a cut-off date for Definitive Map modification applications of 20<sup>th</sup> January 2005. Where applications are made after this date they must be investigated in the usual manner but, where vehicular rights can be reasonably alleged to exist, the Surveying Authority is only able to add/upgrade a route as a 'restricted byway', ie having a right of way for the public on foot, on horseback (or leading a horse) and for non-mechanically propelled vehicles only. This legislation does not apply to the application to add a BOAT at Ebbesbourne Wake as the application pre-dates 20<sup>th</sup> January 2005 and therefore must be processed under Section 53 of the Wildlife and Countryside Act 1981.

### **Options Considered**

31. The historical evidence has been carefully examined and, on the balance of probabilities, vehicular rights can reasonably be alleged to exist. There was therefore no option available to the County Council, as the Surveying Authority, other than to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add a BOAT (the Swallowcliffe Road) to the Definitive Map of public rights of way.

### **Reason for Recommendation**

32. To comply with the County Council's legal duties under Section 53 of the Wildlife and Countryside Act 1981.

### **Recommendation**

33. That the Modification Order made under Section 53 of the Wildlife and Countryside Act 1981, to add a byway open to all traffic at Ebbesbourne Wake, be forwarded to the Secretary of State for decision, with a recommendation from the County Council that the order be confirmed without modification.

## **GEORGE BATTEN**

Director of Environmental Services

Report Author

**JANICE GREEN**

Rights of Way Officer

---

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

None

SWALLOWCLIFFE CP


EBBESBORNE WAKE CP

The Proposed Addition of a Byway Open to all Traffic at Ebbesbourne Wake

Page 85

**APPENDIX A – LOCATION PLAN**  
**THE WILTSHIRE COUNTY COUNCIL (SHEET ST 92 NE),**  
**(EBBESBORNE WAKE NO.24), RIGHTS OF WAY**  
**MODIFICATION ORDER NO.11, 2005**

**Key:**  
 Length of byway open to all traffic to be added:

A  B

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*Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. George Batten, BSc(Hons), C.Eng FICE FIHT, Director of Environmental Services, Wiltshire County Council*  
 Prepared by: JEG Date: 15<sup>th</sup> June 2006 Grid Ref: ST 976-254



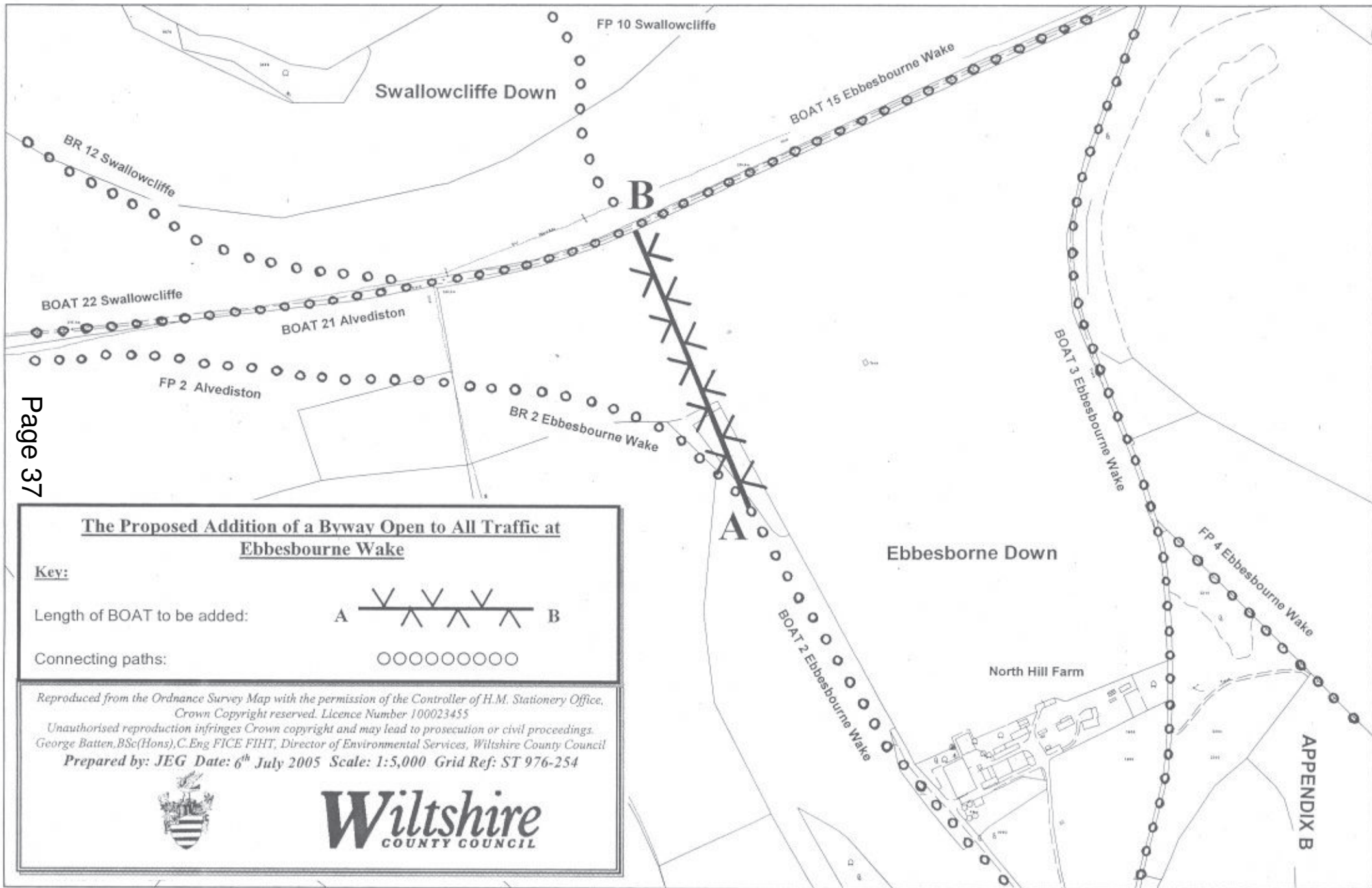
**Wiltshire**  
COUNTY COUNCIL

APPENDIX A



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**The Proposed Addition of a Byway Open to All Traffic at Ebbesbourne Wake**

**Key:**

Length of BOAT to be added:



Connecting paths:



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**Prepared by: JEG Date: 6<sup>th</sup> July 2005 Scale: 1:5,000 Grid Ref: ST 976-254**



**Wiltshire**  
 COUNTY COUNCIL

APPENDIX B

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**EBBESBOURNE WAKE NO. 24 - HISTORICAL EVIDENCE**

<b>Document</b>	<b>Date</b>	<b>Representation of route</b>
Andrews' and Dury's Map of Wiltshire – two inches to one mile	1773	<p>Andrews' and Dury's map of Wiltshire is a commercial map based on original survey. Commercial maps were produced for profit and intended for sale to the whole of the travelling public of the time. It is therefore considered unlikely that private routes which were not open to all traffic would be shown as this would encourage trespass against landowners and cause difficulties for map users, which was not in the interests of the map maker.</p> <p>Small scale mapping also placed constraints upon the routes which could be shown and it is likely that only principle routes would be shown, i.e. those open to all forms of traffic.</p> <p>The claimed route is shown by double broken lines, which suggests that the way is not bounded on either side. The Wiltshire map does not have a key, but the Hertfordshire map does and according to this explanation the path is an "Open Road". It is unlikely that the Wiltshire map would have employed different map conventions.</p> <p>The route is not shown on the index page for the map, which shows the whole of the county at a smaller scale.</p>
Quarter Sessions Indictment	1779	<p>The Highways Act of 1555 required the appointment by all parishes of two surveyors with a duty to keep the condition of roads in that parish, under review. They were also required to secure from each inhabitant of the parish, four days labour per year, to work on the roads, (later increased to six). If the parish failed to fulfil its duty to maintain the public highways to a suitable standard, it could be indicted for non-repair of highways. The indictment was expressed as a grand jury presentment, drafted by the Clerk of the Peace and these indictments are believed to be particularly reliable, as much importance was placed on the precise wording of the documents. It was difficult to introduce changes to the standard form and if the Counsel for the defence could find the slightest flaw in the indictment, the action could fail.</p> <p>The 1779 indictment describes what is thought to be the path in question as a route for all the Kings subjects and their horses, coaches, carts and carriages, as follows: "<i>...from the Time, whereof the Memory of man is not to the contrary, there was, and yet is a certain common and ancient Kings Highway, leading from Ansty – in the County of Wilts – towards and unto Bowerchalke – in the County of Wilts– used for all the King's Subjects, with their Horses, Coaches, Carts and Carriages, to go, return, and pass at their Will; and that a certain Part of the said King's Common Highway, situate, lying and being in the Parish of – Ebbesbourne Wake in the said County of Wilts (that is to say) From Ebbesbourne Wake through a Lane Called a Sheep Drove to the Dwelling House of Babbcock – containing in Length Four – Hundred Yards - and in Breadth Twenty – Feet, on the Tenth-Day of July – in the nineteenth Year of the Reign of his said present Majesty, and continually afterwards, until the present Day, was and yet is very ruinous, deep, broken and in great Decay, for want of due Reparation and Amendment, so that the Subjects of the King, through the same way, with their Horses, Coaches, Carts and Carriages could not, during the time aforesaid, nor yet can go, return, or pass, as they ought and were wont to do, to the great Damage and common Nuisance of all the King's Subjects</i> (Page 09) <i>the same Highway going, returning or passing,</i></p>

Document	Date	Representation of route
		<p><i>and against the Peace of our said Lord the King, and that the inhabitants of the parish – Ebbesbourne Wake aforesaid in the County of Wilts – the said common Highway so in Decay – ought to repair and amend when and so often as it shall be necessary...</i></p> <p>It is considered that this refers to the claimed route as it seems to concur with later mapping evidence, but this is open to interpretation and this particular piece of evidence should be viewed with caution in this case. The claimed route could feasibly form part of a route between Ansty and Bowerchalke, passing through Ebbesbourne Wake. It is possible that the lane referred to as “<i>Sheep Drove</i>” is that leading from Lamb Down as shown in the Ebbesbourne Wake Inclosure Award which refers to the claimed route as a “<i>Public Carriage Road or Driftway</i>”, leading from the old inclosure called “<i>Lamb Down</i>”. I have been unable to locate the dwelling house referred to within the indictment.</p>
Ebbesbourne Wake Inclosure Award	1792	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the manor were redistributed amongst people having rights of common. By the eighteenth century new innovations in farming were increasing output, but where communal farming was in place, it was difficult to modernise without the agreement of all parties. Therefore the larger landowners, who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Prior to 1801 inclosure was dealt with by local acts for specific areas. As part of the Ebbesbourne Wake inclosure, the Commissioners were required to “<i>set out, ascertain, order and appoint both public and private Roads Highways Bridleways and Footways in over upon through and by the sides of the Lands and Grounds by the said Act directed to be divided and Allotted which are situate within the said parish of Ebesbourne-Wake...</i>”</p> <p>The route is referred to in the Ebbesbourne Wake Inclosure Award as “<i>...One other Public Carriage Road and Drift way of the breadth of thirty feet branching out of the last mentioned Road (the road from Ebbesbourne Wake to Sutton Mandeville) at the Distance of about twenty perches from the Northeast Corner of the Old Inclosure called Lamb Down aforesaid and from there extending Northwest in its usual Course and direction thro’ and over the Allotment of Down Land to the said William Coles Esquire unto the Northwest Corner of the said Allotment where it crosses the late Turnpike Road which leads from Shaftesbury to Salisbury and enters at its usual place into the parish of Swallowcliff the same being part of the Road which leads from the village of Ebesbourne-Wake to Swallowcliff aforesaid...</i>”.</p> <p>The route is set out as a public carriage road and it should be noted that the same document deals with public bridleways, footpaths and private roads, separately.</p> <p>The map accompanying the Inclosure Award (Plan C) shows the road coloured sienna, as are other known vehicular routes in the parish and labelled “<i>Carriage Road to Swallowcliff</i>”. The route is shown by double broken lines, suggesting that it is not bounded by any form of fencing or hedging. The footpath to the east of this route is shown in a different manner, i.e. narrower as a less substantial route.</p>

Document	Date	Representation of route
		<p>The inclosure process had the power to change the road network of a parish, but it is clear that the claimed route pre-dates the inclosure process, as shown by Andrews' and Dury's map of 1773 and possibly the Quarter Sessions Indictment of 1779 and is set out within the award.</p> <p>Weight can be given to the routes included within an Inclosure Award as landowners had a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs. Therefore those routes included must be seriously considered. To balance this, the public nature of the inclosure process was clearly set out, as public notice was required at each stage and opportunity for objection given.</p>
Swallowcliffe Inclosure Award	1792	<p>Within this award the route is described as <i>"...One other Public Carriage Road and Drift way of the breadth of thirty feet branching out of the New Turnpike Road aforesaid opposite an Old Inclosure belonging to the Earl of Pembroke in possession called the London Elm and from there extending in a southward direction through and over an Allotment to the said Earl in a strait line to the bottom of the hill and from there continuing in its Ancient Course and direction Southeastwards to the usual place of its entrance into the parish of Ebesborne Wake the same being part of the Road leading from Swallowcliff to Ebesborne Wake aforesaid..."</i></p> <p>On the map (Plan B) there are three routes marked to Ebbesborne Wake. The claimed route is inscribed <i>"Road from Ebesborne Wake"</i>. It is interesting to note that this map differentiates between roads and footpaths, describing the adjacent route to the east as <i>"Footpath from Ebesborne Wake"</i>. The claimed route leading south is shown by double broken lines (suggesting that the path has no boundaries) and is coloured sienna, as are other known "roads" in the parish of Swallowcliffe. The footpath is not coloured and is shown by a different notation, i.e. narrower as a less substantial route.</p>
<i>"A Survey of the Parish of Ebesborne Wake In the County of Wilts Belonging to The Earl of Pembroke and Montgomery"</i>	1794	<p>Estate maps are not a primary source of evidence as it was not usually their purpose to show rights of way. Their purpose was to show an estate and in this particular case, types of land use on an estate. However, some useful information can be found on these maps, i.e. roads could help with orientation, and could sometimes form the boundary of a plot.</p> <p>The suggestion of the claimed route is shown on the main index plan showing the whole parish at a small scale <i>"General Plan of Ebesborne-Wake"</i>. On the larger scale plan, showing only part of the parish, <i>"Ebesborne Wake The North Part Plan A"</i>, the route is shown in full by double broken lines suggesting that it is not bounded in any way. The route is labelled <i>"To Swallowcliff"</i> suggesting that it is a long distance, well-used route. The explanation does not refer to roads.</p>
<i>"A Survey of the Parish of Swallowcliff In the County of Wilts The Property of The Earl of Pembroke and Montgomery"</i>	1797	<p>This estate map shows the suggestion of the continuation of the route into the parish of Swallowcliffe on the main index plan or General Plan. On Plan B, which shows part of the parish at a larger scale, the full continuation of the route in a north-westerly direction into Swallowcliffe, is shown. It is coloured sienna, as are other known vehicular routes in the parish, but the route is not inscribed and the explanation does not refer to roads.</p>

Document	Date	Representation of route
Greenwoods Map	1820	Greenwoods map of Wiltshire is a <i>“Map of the County of Wilts from Actual Survey”</i> . Greenwood re-surveyed and produced a set of updated county maps between 1817 and 1939. He seems not to have used OS maps, but did advertise for local surveys and made use of local directories and printed sources. This is a commercial map produced for the travelling nobility who contributed to its production and the inscription reads <i>“To the Nobility, Clergy &amp; Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the Proprietors”</i> . The route is shown by double broken lines as an unenclosed way, as a <i>“Cross Roads”</i> , according to the Explanation, which refers only to <i>“roads”</i> . In this context <i>“cross roads”</i> is not necessarily the same as our modern understanding of this term. It would appear that the term <i>“cross roads”</i> was first mentioned in Ogilby’s <i>Britannia</i> of 1675, which used the term to distinguish secondary roads from primary roads (i.e. those originating in London). In the preface of the <i>Britannia</i> , Ogilby states: <i>“...having illustrated the principal roads in England and Wales by 85 several itineraries we have distinguished the same into direct and cross roads...and calling such cross as lead from some of the said lesser centres to another like capital town or place of eminency...”</i> It would appear that subsequent map makers consistently used this term to describe secondary roads until about 1912 and dictionaries still contain a reference to <i>“byway”</i> within the definition of <i>“cross road”</i> . The purpose of the commercial map and the constraints of a small scale mean that footpaths and bridleways are unlikely to be shown.
Greenwood’s Map of Wiltshire (revised and corrected)	1829	The route is shown by double broken lines, suggesting that the path is not bounded on either side, as a <i>“Cross Roads”</i> , according to the Explanation. The term <i>“cross roads”</i> is likely to refer to a secondary road and again the map is of a small scale so routes not available to all traffic are unlikely to be shown.
Murray’s Map of Wiltshire	1830	The route is shown by double broken lines, suggesting that the route is not bounded on either side. According to the Explanation the route is a <i>“Bye Road”</i> . Again it is a small scale map of the County of Wiltshire and it is unlikely that footpaths and bridleways have been recorded.
Cary’s Map	1832	Cary was another skilled and accurate cartographer of national renown, born in Warminster, Wiltshire in 1755. He was map maker for the Post Master General and his maps were produced from original survey. The route is shown by double broken lines as an unenclosed way. According to the Explanation the route is a <i>“Parochial Road”</i> .
<i>“The History of Modern Wiltshire – Hundred of Chalk”</i> – Sir Richard Colt Hoare	1833	This is a very small scale map which makes it significant that the route is represented, as it is unlikely that footpaths and bridleways would be shown. The claimed route is shown by double broken lines, suggesting that the path is not bounded on either side.
Duncan’s Map of the County of Wiltshire	1833	This is a small scale map of the County and again due to the small scale, only principal routes are likely to be shown. The route is shown by double broken lines, (unenclosed), as a <i>“Bye Road”</i> according to the Explanation. The Explanation refers only to <i>“Roads”</i> .
Walker’s Map of Wiltshire	1836	Another small scale map of the County of Wiltshire, whose purpose appears to be to show electoral divisions. The depiction of rights of way is therefore likely to be incidental to the main purpose of the map, but it can of course give useful information. It has no key, but due to the small scale, only significant routes are likely to be shown, i.e. vehicular routes. The claimed path is shown by double broken lines which suggests that it is not bounded on either side.

Document	Date	Representation of route
Swallowcliffe Tithe Award Map	1844	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain comprising an agreed proportion of the annual profits of cultivation or farming. Payment in kind gradually began to be replaced by monetary payment and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>The Tithe Commissioners firstly has to ascertain to what extent commutation was already taking place and then by agreement commute tithes in the parish. The awards and maps produced are public documents, displayed in public for 21 days before confirmation by the Commissioners and since then they have been held in continuous public custody. It is this public provenance which adds weight to them as a source of evidence compared to private maps. The main purpose of the tithe award map was to serve as an official record of the boundaries of all tithe areas on which a tithe rent charge was apportioned in the schedule annexed to the award. The portrayal of a highway is usually a matter which is incidental to the main purpose of the map, but since the existence of a highway could affect the productivity of land, the Commissioners had an interest in recording them. They could also be useful for orientation, or where they formed the boundary of a plot.</p> <p>On the Swallowcliffe Tithe Award Map, the northern section of the route is shown by double broken lines, suggesting that the route is not bounded on either side. The route is not inscribed, but its representation suggests that the route does continue south from the parish of Swallowcliffe into Ebbesbourne Wake. It is shown in the same manner as other roads which form part of the parish road network. The map states <i>“We the undersigned Tithe Commissioners for England and Wales do hereby certify this to be the map or plan referred to in the Apportionment of the Rent charge in lieu of Tithes in the Parish of Swallowcliff in the County of Wilts”</i>.</p> <p>In the award itself plot 162, of which the route forms part (shown by the braces on the plan), is described as <i>“An Allotment of Down...Pasture”</i>. The British Parliamentary Paper 1837 XLI provides a list of conventional signs to be used in the plans made under the Act for the Commutation of Tithes in England and Wales. It shows the route to be an <i>“Open Road”</i> and it should be noted that <i>“Bridle Roads”</i> and <i>“Foot Paths”</i> are shown by different conventions.</p>
Direct London and Exeter Railway – Plan and Book of Reference	1845	<p>The plan shows the route numbered 18 and labelled <i>“To Swallowcliff”</i>. This refers to the book of reference which lists no.18 in the parish of Ebbesborne as <i>“Public highway”</i>, the owners or reputed owners being the <i>“Surveyors of highways”</i>. The cross section of the area, giving technical details shows the route <i>“To Swallowcliff, level unaltered – to be passed under Railway Arch 43ft H 20ft”</i>. A bridge this wide suggests a substantial route and supports the two inclosure awards which set out the claimed byway as a public carriage road and drift way having a width of 30 feet.</p> <p>This map does only refer to the southern part of the path which presently forms Byway no.2 Ebbesbourne Wake, but we can conclude that it does continue northwards as the claimed route as it is inscribed <i>“To Swallowcliff”</i>. The route leading west, branching out of Byway no.2 Ebbesbourne Wake, does not lead to Swallowcliffe.</p>

Document	Date	Representation of route
Map of the Parish of Swallowcliffe	1845	This map is a copy of the tithe apportionment map. It covers the parish of Swallowcliffe and therefore only the northern section of the claimed route is shown, but it suggests that the path does continue southwards into the parish of Ebbesborne Wake. The route is shown coloured sienna and by double broken lines suggesting that it is not bounded.
Crutchleys Map – Index map contained within plans of the Salisbury, Poole and Dorset Junction Railway 1860-61	1860	The route is shown by double broken lines, which suggests that it is not bounded on either side. This map has no key, but it is of a small scale and its main purpose is to show railways. It is therefore unlikely that paths of a lesser status i.e. footpaths and bridleways would be shown.
Weller's Map of Wiltshire	1862	This is a very small scale map of Wiltshire and due to the constraints of scale, it is unlikely that footpaths and bridleways would be shown. The route is shown by double broken lines, suggesting that the path is not bounded on either side.  The map does have a key which refers only to "Railways" and "Roads".
Ordnance Survey Map – 25 inches to 1 mile	1887	The Ordnance Survey was founded in 1791 due to demand from the military for accurate maps of Southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps varying in scale and levels of detail to meet changing needs for accurate and updated maps of the country.  The maps are produced from new surveys and are topographical, showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.  On this particular edition the route is shown by a broken line to the west and a solid line to the east, which suggests that the path has a solid boundary on the eastern side.
Ordnance Survey Map – 6 inches to 1 mile	1890	The route is shown by a broken line on the west and a solid line on the east, suggesting that the path is bounded on the eastern side. According to the key the route is a fenced/unfenced "Minor Road".
Ordnance Survey Map – 25 inches to 1 mile	1901	The path is not shown on this map, only the field boundary is shown. The reason for this could be that the route had gone out of use and the Surveyor at that time, did not see evidence of this path on the ground.
Finance Act	1910	The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments, for the purposes of levying a tax upon the incremental value of a site. It has been referred to as the "Second Domesday" as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence. Rights of Way across land could be excluded from the land as a tax benefit, in which case they could be shown uncoloured on the Finance Act plan. The plans were drawn onto the 1901 Ordnance Survey Map, which as we have already seen above, does not show the claimed route in any form. Therefore the route is not shown uncoloured on the plan. However, the reliability of this document can be questioned as the Herepath appears to be shown coloured, which suggests that there is no tax deduction for this particular path, but it is known to be a vehicular right of way (Byway no.15 Ebbesbourne Wake).



<b>Document</b>	<b>Date</b>	<b>Representation of route</b>
Ordnance Survey Map – 25 inches to 1 mile	1925	The route is not shown on this map, only the field boundary is shown. Again it is possible that the way was no longer used and there was no evidence of the paths existence visible on the ground, to the Surveyor at the time of survey.
Rural District Council Minutes	5 <sup>th</sup> July 1928	<p>A landowner had erected a gate on a right of way leading from the West End of Ebbesbourne Wake to the Ox Drove. On the plan attached to the minute, the claimed route is clearly shown between the public right of way marked in red and the Ox Drove. The continuation of the route north of the Ox Drove, is marked "<i>Foot Path</i>", but the claimed route, south of the Ox Drove, is not labelled in this way.</p> <p>Although the Ordnance Survey mapping does not record the path from 1901 onwards, this later evidence is possibly based on local knowledge of the existence of an ancient route, which may not have been available to the Ordnance Survey Surveyor. Also the nature of the Ordnance Survey maps, being topographical, meant that the Surveyor would only record features as they were seen on the ground.</p>
Rural District Council Minutes	24 <sup>th</sup> February 1929	The owner of Manor Farm had placed a gate on a right of way leading from Ebbesbourne Wake, to the Old Shaftesbury Road in the parish of Alvediston. On the map attached to the minute, the claimed route appears to be shown by double broken lines, suggesting that it is unbounded. Again this later evidence could be based upon local knowledge of an ancient route located here.
Wilton Rural District Council - Highways Takeover Map - 6 inches to 1 mile	1930	<p>Following the Local Government Act of 1929, responsibility for all rural roads was transferred from the Rural District Councils to the County Council, as the new Highway Authority. From information supplied by individual Rural District Surveyors, public highways which the Surveyors, at the time, considered to be publicly maintainable, or had a record of public maintenance, were recorded.</p> <p>The detail of the Highways Takeover Map is drawn onto the 1926 Ordnance Survey Map, which does not show the claimed route, only the field boundary is shown. The "Swallowcliffe Road" is therefore not shown on the map. However the reliability of these documents is questionable. They were prepared without public consultation and appear to be predominantly based upon the memory of the Rural District Council Surveyors and what they remembered, or had a record of maintaining, prior to 1930.</p>
The Victoria County History - Volume 13	1987	Contains a map of " <i>Ebbesborne Wake and Fifield Bavant c.1844</i> ". The "Swallowcliffe Road" is included on this small scale map.

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APPENDIX D

**FOYLE BROS**  
North Hill Farm, Ebbesbourne Wake  
Salisbury, Wiltshire, SP5 5JT  
(01722) 780348

21st July 2005

Miss J Green  
Rights of Way Officer  
Wiltshire County Council  
Environmental Services Dept  
County Hall  
Trowbridge  
BA14 8JD

Environmental Services Dept.			
PB <sup>23</sup> JUL 2005			Ack.
1	2	3	4
5	6	7	8

Dear Miss Green

**Rights of Way Modification Order No.11, 2005. (Ebbesbourne Wake No.24)**

Thank you for your letter of 18<sup>th</sup> July 2005.

I would like it placed on record that I object to the above Order. The evidence that I have will be presented to you later. I intend to follow this through to a Public enquiry.

Yours sincerely

*G. L. Foyle*

G L Foyle  
Foyle Bros

From: J.A.Withers, South Wiltshire Rights of Way Preservation Group

To: Miss Janice Green, Rights of Way Officer, Wiltshire County Council

Date: 9<sup>th</sup> September 2005

Subject: DMMO proposed to Byway (BOAT) No. 24, Ebbesbourne Wake

The following objections are submitted in respect of evidence prepared by the applicant for the above DMMO under s53 Wild Life and Countryside Act 1981.

1. There are thought to be a number of inaccuracies and indecisive statements particularly regarding cartographic evidence.
2. The application as it stands suggests that its purpose is to bring mechanically propelled traffic from valley and downland in the south of the county in order to access the Shaftesbury Ox Drove, Byway BOAT 15. If this is the case there are two adequate routes to achieve this, both of which are within 1000m of the proposed new entry point. One to the west is from the Alvediston – Ansty road and the other to the east is via the recently modified Ebbesbourne Wake BOAT 3. If on the other hand the purpose of the modification is, as is reported to have been, to connect to Swallowcliffe FP10 we would strongly recommend reconsideration. This eventual route would have to negotiate the 1:3 gradient of approximately 140m on the north slope of Swallowcliffe Down and would present a serious hazard to life.
3. The proposed modification is over a land surface of clay over chalk which is largely unsustainable if used frequently by any mechanically propelled or horse driven vehicle.
4. The proposed route is mostly over unfenced land and in severe wet conditions would be likely to rut deeply and so induce additional width to the path a situation common in the down land even in days prior to use by mechanically propelled vehicles.
5. The stretch of the proposed route runs adjacent and close to recently confirmed open access land on which motorised traffic is prohibited. Parts of the open access land are unfenced.
6. Although environmental evidence is currently unacceptable by direction to the Planning Inspectorate it is known that serious consideration is being given in debate of the Natural Environment and Rural Affairs Bill for strictures against damage to protected sites. The locality of this proposed modification is within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. It is a very open landscape and use of mechanically propelled vehicles other than those used for agriculture would be an affront to the beauty of this area as well as a severe threat to wildlife.
7. We are aware that the rights of vehicle users is often quoted when claims for modification are based on rights acquired in historic times. The EU Convention of Human Rights and the derived Human Rights Act in this country have played a significant part in recent Rights of Way legislation. Again we are aware that review is being undertaken to ensure that there is an ethical balance of the rights of users of mechanically - propelled vehicles against those of owner/occupiers and conservationists.

J.A.W. Sep 05.

# EBBESBOURNE WAKE PARISH COUNCIL

Janice Green  
Rights of Way Officer  
Environmental Services Department  
County Hall  
Trowbridge, Wiltshire BA14 8JD

9<sup>th</sup> August 2005

Reference: KA21/05

Dear Ms Green,

## Definitive Map Modification Order extension to Boat 2 Ebbesbourne Wake

With reference to your original letter of May 9<sup>th</sup> and subsequent letter containing the Definitive Map Modification Order I am instructed to inform you that this Parish Council opposes absolutely any extension to the existing Byway Open to All Traffic No2 at Ebbesbourne Wake (Swallowcliffe Road). Furthermore the Parish Council maintains that the evidence presented by officers of the County Council fails to justify, on the balance of probabilities, "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".

If the matter is pursued further then this Parish Council will require a full public enquiry.

Yours sincerely



Clerk to Ebbesbourne Wake Parish Council

Environmental Services Dept.			
10 AUG 2005 Ack.			
1	2	3	4
5	6	7	8

**Bill Riley 141 Bath Road, Bradford on Avon,  
Wiltshire, BA15 1SS. Tel/Fax: 01225 863811**

Janice Green  
Rights of Way Section  
Environmental Services Department  
Wiltshire County Council  
County Hall  
Trowbridge BA14 8JD

Your Ref: JC/LMW/PC 92

Environmental Services Dept.			
27 JUL 2005			Ack.
1 <i>JB</i>	2 <i>RS</i>	3	4
5	6	7	8

24 July 2005

Dear Miss. Green,

Wildlife and Countryside Act 1981-Section 53  
Modification Order to add a Byway Open to all Traffic  
at Ebbesborne Wake (Ebbesborne Wake No.24)

As the applicant, I am naturally pleased that the County Council has made this Order.

If confirmed, the Order will rectify a long standing anomaly which caused Byway No.2 to be a cul-de-sac for equestrian and vehicular users. The Council first attempted to remedy this at the 1972 Special Review, and again under the 1981 Act. The subsequent public inquiries confirmed that the route shown on the current Order is historically correct.

When the original route is restored, all users will benefit.

Yours sincerely,

*Bill Riley*

## APPEALS

### Appeal Decisions

Application Number	Site	Appeal Type	Delegated/ Committee	Decision	Overturn	Costs
S/2009/0601	Bark Barn Cottage 12 West Dean	WR	Delegated	Dismissed	No	No
S/2009/0931	Royal Mail Sorting Office, Fisherton Street, Salisbury	WR (Adv)	Delegated	Allowed	No	No
S/2009/1135	The Old Post Office, Lower Road, Charlton All Saints	WR	Delegated	Dismissed	No	No
S/2009/0958	123 Queen Alexander Road, Salisbury	WR	Delegated	Allowed	No	No
2009/0768 2009/0797	61 The Borough, Downton	WR	Delegated	Dismissed	No	No
S/2009/0746	Nadder House, Tisbury	H	Delegated	Dismissed	No	No
S/2009/1196	8 James Street/ 36 Sidney Street, Salisbury	WR	DEL	Dismissed	No	No

\* Copy of Appeal Decision attached

## New Appeals

Application Number	Site	Appeal Type	Delegated/ Committee	Decision	Overturn	Costs Applied for?
S/2009/1893	61 The Borough, Downton	WR	Delegated			
S/2009/0843	Land to rear of 6-12 Ringwood Avenue, Boscombe Road, Amesbury	WR	Committee			
S/2009/1538	Ware Farm, Benn Lane, Farley	WR	Delegated			
S/2009/1786	2A Albany Road, Salisbury	HH	Delegated			
S/2009/1820	15A Pennyfarthing Street, Salisbury	WR	Del			

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





# Appeal Decision

Site visit made on 3 February 2010

by **Michael J Muston** BA(Hons) MPhil  
MRTPI

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:

24 February 2010

## Appeal Ref: APP/Y3940/A/09/2114333

### Bark Barn Cottage, 12 West Dean, Salisbury, Wiltshire SP15 1JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs Nigel and Philippa Isaac against the decision of Wiltshire Council.
- The application, ref S/2009/601/FULL, dated 8 April 2009, was refused by notice dated 22 June 2009.
- The application sought the amendment of a condition attached to a planning permission (Ref: S/2006/2243), dated 21 December 2006, for the conversion of an existing barn to ancillary living accommodation, to allow holiday letting.
- The condition in dispute is No 5, which states:
  - 5) "The accommodation hereby permitted shall be used solely as ancillary accommodation to the existing dwelling (known as Bark Bank Cottage) and shall not be occupied, sold, leased, rented or otherwise disposed of as a separate dwelling unit."
- The reason given for the condition was:
  - 5) "In order that the Local Planning Authority may retain planning control over the use of the premises."

## Decision

1. I dismiss the appeal.

## Procedural Matter

2. The reason for the disputed condition set out above is not, as accepted by the Council, an appropriate reason for imposing a condition. It is clear from the reason for refusal of the appeal proposal that the reason the Council wish to see the condition retained is to prevent a potentially adverse impact on highway safety and the living conditions of occupiers of an adjacent property. I have dealt with the appeal on this basis.

## Main Issues

3. I consider the main issues in this appeal to be the effect of the proposal on:-
  - highway safety,
  - the living conditions of occupiers of the adjacent property,
  - the listed building and the character and appearance of the West Dean Conservation Area.

## **Reasons**

### *Highway safety*

4. Bark Bank Cottage and its outbuilding the subject of this appeal gain access onto the Class III road passing through West Dean via a vehicular access shared with 2 other properties. I noted on my site visit that visibility to the right from this access is severely restricted by the garden wall of 9 West Dean and further away by the property of 8 West Dean.
5. The appellants say that the bend in the road and the pinch point caused by 8 West Dean mean that the safe exit point from the access is further forward than would otherwise be the case, and that the path of northbound vehicles is deflected away from the nearside kerb. This has now been formalised to some extent by the painting of a white line in the road. I agree that in this case a vehicle is able to move forward and project slightly into the highway without causing any great hazard. This increases visibility to the left (north) to an acceptable level, but in my view still leaves visibility to the right (south) seriously restricted.
6. The proximity of the nearby station, combined with the bus services running through the village, provide an unusual opportunity in this rural area for holiday makers to travel to and from the property by public transport. However, it is my opinion that a significant number are still likely to come by private car, not least because it gives greater flexibility to visit tourist attractions, nearby towns and cities, public houses and restaurants during their stay.
7. The outbuilding could, when completed, be occupied by members of the appellants' family. However, I consider that the proposal to allow occasional holiday lets would be bound to increase the number of vehicular movements to and from the appeal site, as there is no suggestion that this traffic would replace any traffic arising from the appellants' family. In my view, the proposal would lead to a small but material increase in traffic using an access with seriously substandard visibility.
8. I acknowledge that traffic speeds through the village are likely to be low, and that a previous unauthorised use appears to have taken place on the site without giving rise to any reported accidents. It is though my opinion that the proposal would materially and unacceptably add to the risk of collisions taking place on the Class III highway running through the village. I have come to this conclusion having taken into account the lack of objection raised to this proposal by the Transportation Engineer from Test Valley Borough Council, as well as the objections of Wiltshire Council's Transport Development Services.
9. I conclude that the proposal would have an adverse effect on highway safety, contrary to saved Policy G2 of the Salisbury District Local Plan (adopted June 2003).

### *Living conditions of neighbours*

10. The outbuilding the subject of this appeal is located immediately to the rear of Long Straw Cottage. A number of windows in the outbuilding face towards that property and, because of the rising ground from east to west, would have the
-

potential to overlook the occupiers of Long Straw Cottage. The overlooking of ground floor windows is currently prevented by a substantial laurel hedge, within the control of the appellants. The possibility of mutual overlooking between the outbuilding and the first floor windows at the rear of Long Straw Cottage remains.

11. Whilst some overlooking between the two properties might still arise, this would be the case whether the outbuilding was used by the appellants' family or by customers using the property as a holiday let. The retention of the laurel hedge could in my view be dealt with by means of an additional planning condition. I do not consider that there would be a material increase in overlooking from the currently permitted position to that proposed.
12. I note that it is the intention of the appellants to direct anyone renting the outbuilding to park at its northern end and not to use the front entrance, other than for loading and unloading. I do though have my doubts as to whether this could reasonably be controlled by condition.
13. I saw on my site visit that the area between the outbuilding and the two houses is already used by the appellants for the parking of vehicles and that the south-eastern wing of the outbuilding (unaffected by this proposal) is used by the appellants as a workshop. In my view, the use of these two areas by the appellants is likely to generate far more noise and disturbance than any activities of holiday makers.
14. I acknowledge that those on holiday are not constrained by normal working hours and might on occasions make noise at unsocial hours. However, my experience is that there are any number of occasions where householders make noise at unsocial hours and I am not convinced that this is any more likely to arise from holiday-makers than from any family occupying Bark Bank Cottage and its outbuilding. A couple or small family on holiday are unlikely to invite others for a noisy social event, whereas this can often happen in a private house.
15. I saw on my site visit that the two properties of Long Straw Cottage and Bark Bank Cottage and its associated outbuildings are very closely related. As a result, some noise and disturbance is bound to occur, particularly to the occupiers of Long Straw Cottage from any activities in the outbuilding and the area between the outbuilding and their property. However, I do not consider that this would be made materially worse by allowing the appeal proposal. I conclude that the proposal would not have an unacceptably adverse effect on the living conditions of occupiers of the adjacent property, and would comply with saved Policies G2 and T6 of the Salisbury District Local Plan (adopted June 2003) in this respect.

*Listed building and Conservation Area*

16. The Council's reason for refusal did not refer to any impact on the appeal premises as a listed building or on the West Dean Conservation Area. I am however required by Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider these potential impacts. The appeal proposal does not involve any changes to the external or internal appearance of the property. In my view, the proposal to let the property out to holiday-

makers would have no material impact on either the listed building or the Conservation Area.

17. From the evidence before me, I conclude that the proposal would preserve the architectural and historic interest of the listed building and the character and appearance of the West Dean Conservation Area, and would comply with saved Policies CN4 and CN8 of the Salisbury District Local Plan (adopted June 2003).

**Conclusion**

18. I have concluded that the proposal would not have an unacceptably adverse effect on the living conditions of occupiers of the adjacent property and that it would preserve the architectural and historic interest of the listed building and the character and appearance of the West Dean Conservation Area. However, I have also concluded that it would have an adverse effect on highway safety. I consider this to be sufficient reason to dismiss the appeal.

*Michael J Muston*

INSPECTOR



# Appeal Decision

Site visit made on 7 January 2010

by Noel Hutchinson

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**29 January 2010**

**Appeal Ref: APP/Y3940/H/09/2111516**

**Royal Mail Sorting Office, Fisherton Street, Salisbury SP2 7QP**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Clear Channel UK Ltd against the decision of Wiltshire Council.
- The application Ref S/2009/931/ADV, dated 25 June 2009, was refused by notice dated 4 August 2009.
- The advertisement proposed is a 48-sheet poster panel.

## Decision

1. I allow the appeal, and grant consent for the display of the 48-sheet poster panel as applied for. The consent is for five years from the date of this decision and is subject to the standard conditions set out in the Regulations and the following additional conditions:
  - 1) The panel shall not incorporate any mechanism or device, electronic or mechanical, to provide a changing display.
  - 2) The panel and its advertisement display shall not be illuminated.

## Main issue

2. I consider the main issue to be the affect of the non-illuminated poster panel on public safety.

## Reasons

3. This proposal follows an earlier decision by the Council to refuse consent to display a 48-sheet "Ultravision" panel on the same site, a decision upheld recently on appeal (APP/Y3940/H/09/2098756). The Inspector dismissed the appeal on grounds of public safety, while concluding that the display would not harm amenity.
4. The Council's grounds for refusal were restricted to matters of public safety. For this reason and the views expressed in the previous appeal decision I do not propose considering matters of amenity and have restricted myself to those of public safety.
5. This revised proposal is for a static display rather than the changing form of the Ultravision. The building is sited at the back of the pavement and the panel would be displayed on its north east facing gable wall between first and second floor level. The combination of its height above ground level, its proximity to the road and the open expanse of yard and adjoining road would ensure

significant exposure. Its visibility coupled with the display measuring some 6m wide by 3m high, would give the panel prominence.

6. The building adjoins a short busy section of road from the northern end of the Ring Road into the City before passing under the railway bridge and a mini-roundabout junction with South Western Road leading to the station. With its various road junctions and the traffic light controlled pedestrian crossing those driving into the City will need to respond by exercising an appropriate level of care. Any lapse of concentration could result in an accident and I have therefore given careful consideration to the accident statistics provided by the Council. However, while a busy urban location I do not consider that the road presents any special difficulties for road users.
7. Poster panels within urban areas are a familiar sight to motorists and I see no evidence to suggest that the panel would prove a special distraction. PPG 19 recognises that all outdoor advertisements are intended to catch the eye of passers-by, if only fleetingly. However it qualifies this by stating that the vital consideration in assessing an advertisement's impact is whether the advertisement itself, or the exact location proposed for its display, is likely to be so distracting, or so confusing, that it creates a hazard to, or endangers, people in the vicinity who are taking reasonable care for their own and other's safety.
8. In this case the static panel, together with the other large panels next to the railway bridge, would be readily visible to drivers travelling into the City. As a familiar form of advertising, I am not persuaded that the panel, in its static form, would prove to be an unacceptable distraction to road users. Furthermore, because of its range of visibility it would not appear suddenly. Its message would be quickly assimilated and would not in my opinion compete with, or detract from, the effectiveness of the lights controlling the pedestrian crossing. In my view the panel would not appear so unusual, or be sited in a way that it would appear as a sudden feature, that it would be likely to distract road users and cause a hazard to public safety.
9. For the reasons given above I conclude that the display of the 48-sheet poster panel would not be detrimental to the interests of public safety.

*Noel Hutchinson*

INSPECTOR



# Appeal Decision

Site visit made on 1 March 2010

by **Phillip J G Ware BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
8 March 2010

**Appeal Ref: APP/Y3940/A/09/2116709**

**The Old Post Office, Lower Road, Charlton All Saints, Salisbury SP5 4HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Dr J Howard against the decision of Wiltshire Council.
- The application Ref **S/2009/1135/FULL**, dated 31 July 2009, was refused by notice dated 28 September 2009
- The development proposed is the construction of two dwellings and alteration to access.

## Decision

1. I dismiss the appeal.

## Main issues

2. There are two main issues in this case. Firstly the effect of the proposal on the character and appearance of the area, and secondly the effect on the living conditions of the residents of Tudan House in relation to noise and disturbance.
3. The Council also refused planning permission due to the absence of appropriate provision towards public recreational open space. However I understand that this matter has been resolved by the submission of a Planning Obligation, although I have not been provided with any detail of how this Obligation meets the advice in Circular 5/2005 "*Planning Obligations*". I have therefore not accorded it any weight in determining the issues before me.

## Reasons – the character and appearance of the area

4. The appeal site is located centrally within Charlton All Saints, which is a linear settlement set away from the main road in generally open countryside. The site is part of the rear area of the Old Post Office, and is currently unused. Two dwellings (The Old Stores and Post Office House) have frontages onto a vehicle access which leads to the site. There are public footpaths along the rear (west) and south of the site.
5. To the north is Tudan House, a relatively modern dwelling set back from the road frontage, whilst to the south are properties at Vicarage View. To the west is open countryside.
6. Planning permission has been granted by the Council for a single new dwelling on the appeal site on three occasions (2002, 2007 and 2008). In each case the development was for a two storey house, on a site smaller than the current appeal site – which has been enlarged towards the rear of the frontage properties. The dwelling in each case faced down the access towards the road

and, over time, the siting of the house has moved generally northwards towards the boundary with Tudan House. The 2007 and 2008 permissions have not lapsed.

7. The current proposal is for a two storey dwelling in generally the same position as that approved in 2008. In addition there would be a single storey dwelling to the south, at the rear of the frontage properties.
8. The principle of development on the site has been clearly established by the previous planning permissions. However the current proposal differs in that it proposes two dwellings where only one has been allowed before, and in that one of the new buildings would be sited entirely to the rear of the frontage properties.
9. From my visit, it is clear that the character of the settlement is essentially linear, with the overwhelming majority of the properties having a direct street frontage – although some are set back some distance from the highway. In that context the approved single dwelling, facing down the existing access, would be in keeping with the area. However the additional dwelling now proposed directly to the rear of the frontage properties would be out of character with the area, which is not characterised by such tandem development.
10. In addition, I observed that the settlement generally comprises properties set in spacious plots. Although the proposed development would provide adequate amenity space for future residents, the front area would be largely occupied by parking and turning areas, and the rear gardens would be of limited size. Overall, the location and size of the plots would appear cramped in comparison with the majority of the surrounding development.
11. Policy H16 of the Salisbury District Local Plan (LP) (2003) provides that, within housing policy boundaries, small scale development and infilling will be permitted subject to a number of criteria. These include the requirement that proposals should not constitute tandem or inappropriate backland development. The explanatory text to the policy makes it clear that tandem development may be acceptable where there is adequate access/parking and space between buildings. These matters are not in dispute in this case, but the explanatory text also refers to the importance of assimilating new development into existing settlements – and I consider the proposal fails to meet this aim. For that reason I consider the proposal conflicts with the policy.
12. I have no objection to the design of the proposal, and I appreciate that the single storey building has been designed to resemble a barn. However this does not overcome the issues I have set out above and I consider the proposal would harm the character and appearance of the area.

**Reasons – the living conditions of the occupiers of Tudan House**

13. The proposal would introduce an element of additional activity into the rear area relatively close to Tudan House. This would be from normal domestic use and, more importantly, from the vehicles of residents and visitors.
14. However, this has to be set against the background of the extant permissions for a single dwelling in the rear area. These included an access drive and



parking area close to the boundary (marked by a deciduous hedge) with Tudan House.

15. There would be some increased vehicle movement and noise in the rear area which would be noticeable from Tudan House. However, the low level of increased activity arising from the proposal would not, in my view, be such as to impact significantly on the amenity of the occupiers of that property.
16. For these reasons, I consider the proposal would not harm the living conditions of the residents of Tudan House in relation to noise and disturbance. It would not conflict with LP policy G2, which refers to the avoidance of disturbance to existing occupiers.

**Other matters and conclusion**

17. I appreciate that the proposal would make efficient use of land within the housing policy boundary as defined in the LP. However this should not be at the expense of compromising the quality of the local environment in the manner which would occur as a result of the appeal scheme.
18. I have taken account of the appeal decision (APP/T3915/A/08/2076931) at Appletree Road, Redlynch, to which I was referred by the appellant particularly in the context of LP policy H16. However, each application and appeal must be treated on its merits and, in that case, the Inspector came to a different conclusion related to the application of the policy and the effect of the proposal on the character and appearance of that area.
19. Overall, although I have found that the proposal would not harm the living conditions of the occupiers of Tudan House, this does not outweigh the harm which would be caused to the area. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector

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# Appeal Decision

Site visit made on 21 January 2010

by **Colin Blundel BSc MSc DipTP MRTPI**

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for Communities and Local Government

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**Decision date:**  
5 March 2010

**Appeal Ref: APP/Y3940/A/09/2114452**  
**123 Queen Alexandra Road, Salisbury SP2 9LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark Bugden against the decision of Wiltshire Council.
- The application Ref S/2009/958/FULL, dated 19 June 2009, was refused by notice dated 28 August 2009.
- The development proposed is the construction of a new dwelling.

## Decision

1. I allow the appeal, and grant planning permission for the construction of a new dwelling at 123 Queen Alexandra Road, Salisbury SP2 9LB in accordance with the terms of the application, Ref S/2009/958/FULL, dated 19 June 2009, and the plans submitted with it, with the exception that Plan A2307-302 is to be replaced by the revised plan, Plan A2307-302A. Planning permission is subject to the conditions in the attached schedule.

## Procedural matter

2. Revised plans were submitted to the appeal, which included some minor changes to the layout of the parking aspects of the proposal. These plans were not formally considered by the Council but were addressed in their statement to this appeal. I am satisfied that no interests would be prejudiced by my acceptance of these revised plans and I have considered the appeal on this basis.

## Main issues

3. The main issues are the effects of the proposed development on:
  - the living conditions of the residents of neighbouring properties, with reference to daylight, sunlight, overlooking and visual impact;
  - the character and appearance of the surrounding area;
  - highway safety, with reference to the proposed provision of parking.

## Reasons

4. The proposed development would be a 2-storey detached house in a corner location. It would be constructed to the rear of 123 Queen Alexandra Road on the site of an existing garage and storage unit, and would front onto Heath Road. Heath Road is mainly bungalows apart from the pair of semi-detached houses immediately adjacent to the appeal site and the corner property at 123 Queen Alexandra Road.

*Living conditions*

5. The closest properties to the appeal site apart from No 123 are 121 Queen Alexandra Road and 106 Heath Road and I shall deal with the potential impacts on the different aspects of living conditions at these properties in turn.
6. In relation to daylight and sunlight, the proposed dwelling would stand to the east of No 106, to the west of No 123 and to the north west of No 121. In my view, the only potential for loss of daylight or sunlight would be to the side kitchen window of No 106. This kitchen also has another window to the rear. The only impact on sunlight would be in the early morning, but I consider that the shadow would be little different to that caused currently by No 123 and is therefore acceptable. On balance, I consider these impacts would be acceptable.
7. Whilst overlooking from the proposed dwelling was not considered to be a significant issue by the inspector for the previous appeal from January 2009 ref APP/T3915/A/08/2084517, the amended design has incorporated an upstairs landing window facing to the rear. The angles between the properties are such that any overlooking from a window in this location would be mainly to the rear garden of No 121, with very little scope for looking into the windows of No 121 or No 106. I consider that this impact could be overcome by the installation of obscure glazing to this window, as suggested by the appellant, and which can be secured by a condition. Such a condition could also require the window to be fixed shut to avoid overlooking when in an open position.
8. In terms of visual impacts, the main issue is the impact of the increase in ridge height over and above the previous proposal and whether this would have an overbearing impact on the adjacent properties. Whilst the proposed dwelling is quite close to the rear boundary, I consider that its visual impact on the garden of No 121 would be little different to that caused by Nos 123 and 106 and the existing garage/store. Whilst the dwelling would be visible from the rear window of No 123 and the side kitchen window of No 106, it would not be directly in front of the windows and would, in my view, have little more impact on outlook than the existing building.
9. I conclude on the first main issue that the proposed development would not cause unacceptable harm to the living conditions of the residents of neighbouring properties with respect to daylight, sunlight, overlooking or visual impact. It would, therefore, be consistent with the requirements of policies H16 and D2 of the Salisbury Local Plan (2003) (the Local Plan), which seek, amongst other things, to ensure that infill development is appropriate to the area in which it is situated.

*Character and appearance*

10. In submitting this proposal, the appellant has clearly taken on board the concerns expressed by the Inspector in relation to the previous appeal, referred to above. I consider that the proposed dwelling has been carefully designed to complement the existing street scene by incorporating a hipped roof and ridge and eaves heights to blend with the existing rhythm of the street. It would also follow the existing building line along Heath Road.
11. I do not share the Council's view that this would be an undesirable and discordant feature within the street scene, or that it would lead to the loss of

an important open area. The site cannot, in my view, be considered to be open as it is currently occupied by a building.

12. On the second main issue I conclude that the development would not cause unacceptable harm to the character and appearance of the surrounding area and that it would be consistent with policies H16 and D2 of the Local Plan. These seek, amongst other things, to ensure that infill developments respect the character and appearance of the surrounding area and would not result in the loss of open areas.

*Highway safety and parking*

13. The original plans submitted with the application showed that the proposed parking area to the front of the dwelling would be of insufficient width to meet the Council's minimum standard of 4.8m for two parking spaces. The amended plans submitted with the appeal show that a slightly wider parking area could be achieved by incorporating a narrow strip of land from the adjacent forecourt of No 123 Queen Alexandra Road. This would have no material effect on the neighbouring forecourt and would not require adjustment to the site boundary as shown edged in red on the application plan. This would ensure that cars could be parked off the road and would not therefore have any significant impact on highway safety.
14. I, therefore, conclude on the third main issue that the development would not result in significant harm to highway safety and that the parking provision would be consistent with policy G2(i) of the Local Plan, which seeks, amongst other things, to secure a satisfactory means of access to the site.

*Other matters*

15. The appellant has submitted a Unilateral Undertaking in relation to off-site open space provision, which would, in my view, satisfy policy R2 of the Local Plan. The Council has indicated that it is satisfied with this and I accept that this would provide for the open space needs of future occupiers of the proposed dwelling. I consider that such a completed obligation would overcome the second refusal reason stated by the Council.
16. I have also considered the Council's argument that the granting of planning permission would set a precedent for other similar developments, although no similar sites to which this might apply were put forward. Each application and appeal must be determined on its individual merits, and I do not consider that such a generalised fear of precedent would justify withholding planning permission in this case.

**Conditions**

17. I have applied 11 conditions to this permission. They are based on those suggested by the Council with minor alterations for clarity or to be more consistent with model conditions in Circular 11/95.
18. Condition 2 is required for the avoidance of doubt and in the interests of proper planning.
19. Condition 3 is required to ensure that the proposed development would blend into the existing street scene and be appropriate to retaining its character and appearance.

20. Conditions 4 and 5 remove permitted development rights to give the Council more control over any future changes to the dwelling or surrounding site.
21. Condition 6 is required to ensure that the proposed parking spaces are implemented prior to occupation. This would minimise risks to highway safety.
22. Condition 7 is required to ensure the proper disposal of surface water and to guard against flooding; Condition 8 is needed to help promote the efficient use of water in the environment.
23. Condition 9 seeks to protect the living conditions of neighbouring properties by ensuring that the rear landing window is, and remains, obscure glazed to prevent overlooking.
24. Condition 10 is a standard condition to ensure that landscaping works are undertaken and maintained.
25. Conditions 11 and 12 were requested by the environmental health officer to reduce nuisance during the construction process.

### **Conclusion**

26. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion that the appeal should be allowed.

*Colin Blundel*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A2307-01, A2307-300C, A2307-301C, and A2307-302A.
- 3) Before development is commenced, a schedule of materials and finishes, and, where so required by the local planning authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order with or without modification), there shall be no additional windows at first floor, or on the rear sloping roofslope or gable ends of the dwelling.
- 5) Notwithstanding the provisions of Classes A-E of Schedule 2 (Part 1) of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order with or without modification), there shall be no extensions to the dwelling, nor the erection of any structures within the curtilage unless planning permission is first obtained from the local planning authority.

- 6) Before the dwelling hereby approved is first occupied, a properly consolidated and surfaced parking space and vehicular access shall be constructed, details of which shall have been submitted to and approved by the local planning authority prior to development commencing on site.
- 7) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway. Details of the surface water scheme proposed shall be submitted to and approved in writing by the local planning authority before development commences.
- 8) No development approved by this permission shall commence until a scheme of water efficiency has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed scheme.
- 9) The proposed landing window in the first floor rear elevation shall be glazed with obscure glass and be non-opening. It shall be maintained in this condition thereafter.
- 10) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 11) No delivery of plant, equipment and materials, demolition or construction work or other building activity shall take place on Sundays or public holidays or outside the hours of 08.00 to 18.00 weekdays and 08.00 to 13.00 Saturdays.
- 12) During the demolition and construction of the building, no bonfires or burning of surplus building materials or other waste shall take place on the site.







# Appeal Decisions

Site visit made on 1 February 2010

by **Jennifer Armstrong JP BA FRTPi**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
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**Decision date:**  
**10 February 2010**

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## Appeal Ref: APP/Y3940/E/09/2111056

### 61 The Borough, Downton, Salisbury, SP5 3LX

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr Darren Poole against the decision of Wiltshire Council.
- The application ref. S/2009/797/LBC, dated 29 May 2009, was refused by notice dated 30 July 2009.
- The works proposed are demolition of single storey section of cottage and construction of two storey extension on part of single storey section and internal alterations to thatched cottage.

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## Appeal Ref: APP/Y3940/A/09/2110230

### 61 The Borough, Downton, Salisbury, SP5 3LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Darren Poole against the decision of Wiltshire Council.
- The application ref. S/2009/768/FULL, dated 29 May 2009, was refused by notice dated 24 July 2009.
- The development proposed is demolition of single storey section of cottage and construction of two storey extension on part of single storey section and internal alterations to thatched cottage.

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## Decisions

1. I dismiss the appeals.

## Procedural Matter

2. Since the appeals were lodged planning permission and listed building consent have been granted for demolition of the rear single storey parts of the cottage and extension to it (refs. S/2009/1273/FULL and S/2009/1274/LBC). I understand that the approved plans differ from those before me in that, although the extension would be the same length, the end 3m of it would be single storey rather than two storey. The demolition of the rear buildings has already taken place.

## Main issue

3. The main issue is the effect of the proposal on the special architectural and historic interest of the listed building and on the character and appearance of the Conservation Area.

## Reasons

4. No. 61 is half of a pair of semi-detached Grade II listed cottages fronting the main village street. They are small in scale and timber framed with brick infilling and a thatched roof. In the light of the recent decisions mentioned above it seems to me that the only matter now at issue is the impact of the scale of the proposed rear extension on the cottage and its setting. In terms of its size, position and appearance, the proposal mirrors the addition to no. 59 which I understand was built following the granting of planning permission and listed building consent in 2002, prior to the adoption of the current Local Plan.
5. Whereas the side elevation of no. 59 is partly obscured, no. 61 has a stream running along the east boundary of its garden, resulting in a gap in the otherwise built up frontage. One result of this gap is that the extension proposed at no. 61 - some 8m long and therefore longer than the width of the dwelling - would be more visible from the public highway than that at no. 59. In my opinion, a two storey extension of this length and in this position would appear out of proportion with the scale and dimensions of the cottage. It would not therefore accord with Local Plan policy CN3 which, in line with advice in Planning Policy Guidance 15, requires that the scale of new development does not dominate a listed building. And because of the views into the site from the street I find that the proposal would be contrary to Local Plan (2003) Conservation Area policies CN8 and CN11 which seek to ensure that the form and scale of new development is appropriate to its setting and that views from the Conservation Area are safeguarded.
6. For the above reasons and having regard to all other matters raised I conclude that the proposal would not preserve the special architectural and historic interest of the listed building, or the character or appearance of the Conservation Area, and that the appeals should therefore be dismissed.

*J. Armstrong*

INSPECTOR



# Appeal Decision

Hearing held on 3 February 2010  
Site visit made on 3 February 2010

by **David Nicholson** RIBA IHBC

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**24 February 2010**

## Appeal Ref: APP/Y3940/E/09/2115963 Nadder House, East Hatch, Tisbury SP3 6PJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr & Mrs Charles Mackay against the decision of Wiltshire Council.
- The application Ref S/2009/746/LBC, dated 5 May 2009, was refused by notice dated 16 July 2009.
- The works proposed are to enlarge the existing dining room: remove existing partition wall between dining room and study to provide enlarged dining room, include for propping existing timber beam with timber posts; remove existing timber temporary supports – beam and post to south end of study beam currently restricting mullioned window outlook; restore heavily decayed mullioned window, include lay new timber floor throughout new dining area.

### Application for costs

1. At the Hearing an application for costs was made by Mr & Mrs Charles Mackay against Wiltshire Council. This application is the subject of a separate Decision.

### Decision

2. **I dismiss the appeal.**

### Main issue

3. Nadder House is a Grade II Listed Building. With this fact in mind I consider the main issue is whether the proposals would preserve the special architectural and historic interest of the listed building and, if not, whether there are sufficient material considerations to outweigh any harm.

### Reasons

4. The list description dates the earliest part of Nadder House as late 17<sup>th</sup> century. This would probably have been limited to the area within the thickest walls which is now used as the dining room and study. I saw that the roof structure and base coat of straw thatch above this part of the house are consistent with this date. The house was part of the Pythouse Estate and given the number 63, suggesting that there were at least that number of cottages on the estate. I was told that few of the other early estate cottages survive. Otherwise, the appellants have supplied little information about the early history of the house, its relationship with the Estate, or the layouts of other 17<sup>th</sup> century domestic buildings in the area.

5. The railway came through Tisbury in the mid 19<sup>th</sup> century. The appeal site was probably used as a public house from then until at least the mid 20<sup>th</sup> century, although exact dates have not been researched. Indeed, the appellants told me that they only removed the stanchions for the pub sign relatively recently. Recollections of a local resident, from the time when the property was a pub, record that the early part of the house was one large space.
6. The house was listed in 1987. There is no dispute that the partition between the study and dining room existed at the time of listing. A small amount of opening up has revealed that this is built of the sort of breezeblock manufactured shortly after the Second World War. Pairs of peg holes in the sides of the beam suggest that this may have once supported a timber screen. While such a division would be consistent with the age of the original cottage, I was not shown any physical evidence of the nature of any earlier partition.
7. Based on other 17<sup>th</sup> century Wiltshire cottages, including that illustrated in Document 1, the Council considers that Nadder House was probably built as a two room cottage. The appellant has put forward the alternative suggestion that it might have been two cottages. Either way, there was no dispute at the Hearing that these two ground floor rooms were originally separate spaces.
8. The proposals would remove the 20<sup>th</sup> century blockwork partition and introduce new posts with short lengths of wall at each end to indicate the line of where the separating wall currently stands. The appellants have argued that removal of this wall would not result in the loss of historic fabric but only of the two cell layout, the line of which would still be indicated. Furthermore, it would reinstate the layout from the time the building was a public house.
9. Section 16 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires me to have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses. Government advice in Planning Policy Guidance Note 15 (PPG15): *Planning and the Historic Environment* includes that: there should be a general presumption in favour of the preservation of listed buildings, except where a convincing case can be made out for alteration (paragraph 3.3); and that interior plans and individual features of interest should be respected and left unaltered as far as possible (paragraph C.58).
10. PPG15 also advises: that applicants for listed building consent must be able to justify their proposals, show why works which would affect the character of a listed building are desirable or necessary, and provide full information to enable an assessment of the likely impact on the special interest of the building (paragraph 3.4); that generally the best way of securing the upkeep of the great majority of historic buildings is to keep them in economically viable uses, and that new, and even continuing, uses will often necessitate some degree of adaptation (paragraph 3.8); and that the merit of some new alterations or additions, especially where they are generated within a secure and committed long-term ownership, should not be discounted (paragraph 3.13).
11. In my opinion, the special interest of the house includes the 17<sup>th</sup> century two cell plan form, its use as a pub, and that it reverted to a house prior to the time of listing. I have studied the English Heritage Selection Guides (Documents 2 and 3) but these do not alter my findings on this point. I consider that the original separation would have been important to divide the

heated front parlour from the unheated service room and this lends the early part of the house its small roomed character. Consequently I find that the surviving plan form reflects the use of the ground floor at that time, as well as now and at the time of listing. While I find it unlikely, even if the building was originally two separate cottages, the division is important. Indeed, as in my experience this would be particularly unusual, it would be of greater consequence. For all these reasons, I give significant weight to the contribution that the separating wall makes to the special architectural and historic interest of this listed building.

12. One of the four proposed new posts would be set in from the front wall, under the beam, with a short length of partition against it. Two further posts would stand under the beam towards the rear of the house, one with a new screen against it, the other free standing within the dining room. The posts would be designed to provide structural support with substantial notches to be cut out of the beam. I have no details of how the positions of the posts have been selected, whether or not they would relate to the existing peg holes, or why the existing beam requires additional support. In the absence of further information on how these elements of the design were arrived at, I find that the posts would be wholly conjectural and might confuse the historical development of the house. I therefore give little weight to the proposed posts and screens as mitigation for the loss of the partition. Rather, as the cut outs would remove historic fabric from the beam, which would not be fully reversible, the posts would further harm the listed building.
13. The appellants have explained that they wish to remodel the study as a kitchen, opening into the dining room, so that they can better entertain guest and keep an eye on visiting grandchildren. There would be the added advantage of re-using the existing kitchen as a better study. I can well understand the appellants' preference, in line with more recent fashions, for a more open floor plan. I have considered advice in PPG15, on adaptation and on the merits of committed long-term ownership, and that the property may have been badly modernised by previous owners. However, I also note that the appellants have lived elsewhere for most of the time they have owned the house, using it mostly for holidays, and no suggestion has been made that the house would not be attractive to other occupiers with its current floor plan.
14. For all these reasons, I find that neither the benefits nor the justifications put forward are sufficient to outweigh the harm the proposals would cause to the listed building or the conflict with the statute or advice in PPG15.
15. For the reasons given above I conclude that the appeal should fail.

*David Nicholson*

INSPECTOR

DOCUMENTS

- 1 Ground floor plan, Corner Cottage, Chilmark
- 2 English Heritage *Vernacular Houses Selection Guide (Domestic Buildings I)*  
March 2007
- 3 English Heritage *Commercial Buildings Selection Guide* March 2007
- 4 Costs application

APPEARANCES

FOR THE APPELLANT:

Roger Mascal	Development Planning Partnership LLP
Christiaan Zwart of Counsel	39 Essex Street
Barry Woodcock	BCW Developments
Charles Mackay	Appellant
AnnMarie Mackay	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jenny Strange	Wiltshire Council
Dorothy Treasure	Wiltshire Council
Elaine Milton	Wiltshire Council
Jocelyn Sage	Wiltshire Council







## Costs Decision

Hearing held on 3 February 2010  
Site visit made on 3 February 2010

by **David Nicholson** RIBA IHBC

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
24 February 2010

### **Costs application in relation to Appeal Ref: APP/Y3940/E/09/2115963 Nadder House, East Hatch, Tisbury SP3 6PJ**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Charles Mackay for a full award of costs against Wiltshire Council.
- The hearing was in connection with an appeal against refusal of listed building consent to enlarge the existing dining room: remove existing timber partition wall between dining room and study to provide enlarged dining room, include for propping existing timber beam with timber posts; remove existing timber temporary supports – beam and post to south end of study beam currently restricting mullioned window outlook; restore heavily decayed mullioned window, include lay new timber floor throughout new dining area.

#### **Decision**

1. **I refuse the application** for an award of costs.

#### **The Submissions for Mr & Mrs Charles Mackay**

2. The costs application was submitted in writing. In oral submission, the appellants summarised its case as being that the Council had not properly directed itself by giving weight to something that was not a fact, which led to the appeal.

#### **The Response by Wiltshire Council**

3. The response was made orally at the Hearing. The Council had looked for evidence from the layout of other cottages of a similar age simply because it needed to assess the special character of the cottage and there was a lack of evidence from this building.

#### **Conclusions**

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The gist of the appellants' case is that the Council had no evidence of the original layout. I accept that it had no physical fabric from Nadder House on which to base its opinion. However, I find it perfectly reasonable, in the absence of full information from the appellants, that the Council should research the probability of the original layout from similar properties.

6. In my view, while they may carry less weight than physical proof, the experience of local researchers and the floor plan submitted for a nearby cottage are relevant. Under the requirements of paragraph B16 of Circular 03/2009, I find that the Council's experience and research do comprise a respectable basis for its stance and amount to reasonable evidence. Consequently I find that the Council did have evidence to support its view, and that it was not unreasonable for it to base its case on the harm that the loss of the two room plan would have on the special interest of the listed building.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated and that an award of costs is not justified.

*David Nicholson*

INSPECTOR



# Appeal Decision

Site visit made on 1 March 2010

by **Phillip J G Ware BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**18 March 2010**

**Appeal Ref: APP/Y3940/A/09/2117771**

**8 James Street and 36 Sidney Street, Salisbury, Wilts**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Womersley-Smith against the decision of Wiltshire Council.
- The application Ref S/2009/1196/FULL, dated 6 August 2009, was refused by notice dated 9 November 2009.
- The development proposed is a one bedroom bungalow.

## Decision

1. I dismiss the appeal.

## Main issue

2. There is one main issue in this case. That is whether the proposal would provide acceptable living conditions for future occupiers with regard to the size of the proposed accommodation.

## Reasons

3. The appeal site is part of an end of terrace dwelling, located at the corner of Sidney Street and James Street. The proposal is for a new building facing James Street, to the rear of the main property at no.36 Sidney Street. The site is currently occupied by an unattractive garage.
4. There have been previous schemes affecting the site, most notably a similar scheme which was dismissed on appeal in June 2009<sup>1</sup>. In dismissing that appeal the Inspector noted that the accommodation would be very restricted in size for a dwelling which could be occupied by two people. In particular she was not satisfied that adequate provision could be made for refuse and recycling facilities without loss of living space.
5. The current proposal provides bin storage facilities in an internal area, accessed directly off the hall. The increased size of the bin store would be at the expense of the remaining living space.
6. The appellant has stated that the total area of the proposed accommodation would be slightly over 23 sq. m. and that it has been designed with a single occupier in mind. However the occupation of the property could not be controlled by a planning condition, and I have to bear in mind that it could be occupied by two people at some point.

<sup>1</sup> APP/Y3940/A/09/2099490

7. In either case, national policy is to promote high quality inclusive design in the layout of new development in terms of its function, and to achieve a wide choice of high quality homes. I do not consider that the very limited accommodation proposed would meet these objectives, as it has been reduced in size since the previous appeal due to the increased storage provision. The size of the proposed unit would be such that it would provide cramped rooms and a generally poor standard of accommodation, with two windows facing directly onto James Street.
8. In coming to that conclusion, I note that the Council has referred to English Partnerships' Quality Standards in relation to space standards. However this document was not mentioned in the Committee report or the reasons for refusal, and the document makes it clear that it is intended to apply to developments on English Partnerships' own land. There is no indication that the Council has adopted these standards as planning guidance, and I give them very little weight in this appeal.
9. However, for the above reasons, I do not consider the proposal would provide acceptable living conditions for future occupiers with regard to the size of the accommodation. Policy G2 of the Salisbury District Local Plan (LP) 2003 sets out general criteria for development and deals with the protection of the living conditions of existing occupiers. To the extent that this may, by implication, also be taken to refer to the effect on future occupiers, I find that the proposal would be in conflict with the policy.

#### **Other matters and conclusion**

10. The Council also refused planning permission due to the absence of appropriate provision towards public recreational open space, based on LP policy R2. An informative on the decision notice stated that this could be overcome by a Section 106 Obligation, or by a condition if appropriate. I have not been provided with any explanation of how such an Obligation would meet the advice in Circular 5/2005 "*Planning Obligations*", and I do not consider that a condition would be an appropriate method of dealing with the matter. Although I understand there is an overall deficiency in open space provision in the area generally, in the absence of any explanation of the Council's requirement in this particular case, I do not consider that this is a matter which should cause the appeal to fail.
11. I have considered the appellant's arguments that the proposal would replace an unattractive garage and that it would meet a local need – although no detail of need has been provided. However these matters do not overcome the harm caused by the inadequacy of the proposed accommodation which I described above.
12. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector

# Agenda Item 9a

## INDEX OF APPLICATIONS ON 22nd April 2010

	<b>APPLICATION NO.</b>	<b>SITE LOCATION</b>	<b>DEVELOPMENT</b>	<b>RECOMMENDATION</b>	<b>DIVISION MEMBER</b>
1	S/2010/0007/FULL	STONEHENGE CAMPSITE, BERWICK ROAD, BERWICK ST. JAMES, SALISBURY, SP3 4TQ	CHANGE OF USE OF LAND TO TOURING CARAVAN AND CAMPING SITE, INCLUDING RETENTION OF ACCESS, DRIVEWAY, HARDSTANDINGS, SHOWER/WC BLOCK, CHEMICAL TOILET DISPOSAL AREA, CESS PIT AND ELECTRIC HOOK UP POINTS	APPROVE	CLLR IAN WEST
2	S/2010/0259/FULL	9-11 ST. NICHOLAS ROAD, SALISBURY, SP1 2SN	PROPOSED RE-INSTATEMENT OF TWO MAISONETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANCE AND FLOOD RESILIENCE MEASURES	REFUSE	CLLR JOHN BRADY
3	S/2010/0260/LBC	9-11 ST. NICHOLAS ROAD, SALISBURY, SP1 2SN	PROPOSED RE-INSTATEMENT OF TWO MAISONETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANCE AND FLOOD RESILIENCE MEASURES	APPROVE	CLLR JOHN BRADY

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Deadline:	08/04/10		
Application Number:	S/2010/0007/FULL		
Site Address:	STONEHENGE CAMPSITE BERWICK ROAD BERWICK ST. JAMES SALISBURY SP3 4TQ		
Proposal:	CHANGE OF USE OF LAND TO TOURING CARAVAN AND CAMPING SITE, INCLUDING RETENTION OF ACCESS, DRIVEWAY, HARDSTANDINGS, SHOWER/WC BLOCK, CHEMICAL TOILET DISPOSAL AREA, CESS PIT AND ELECTRIC HOOK UP POINTS		
Applicant/ Agent:	MR A M ALLEN		
Parish:	WINTERBOURNE STOKETILL/WYLYEVALLE		
Grid Reference:	407430 140420		
Type of Application:	FULL		
Conservation Area:		LB Grade:	
Case Officer:	Charlie Bruce-White	Contact Number:	01722 434682

### Reason for the application being considered by Committee

The Head of Development Services does not consider it prudent to exercise delegated powers due to the degree of local interest shown within the application.

### 1. Purpose of Report

To consider the above application and the recommendation of the case officer to APPROVE the development subject to conditions.

### 2. Main Issues

- Principle of development;
- Character & appearance of the area;
- Highways safety;
- Amenities of the occupiers of nearby property and other recreation users;
- Sewerage & waste water disposal;
- Nature Conservation;
- Archaeology.

### 3. Site Description

The site relates to 0.7ha of land situated adjacent to the former Wisma Poultry Farm buildings, off Berwick Road, to the south-west of Winterbourne Stoke. The site comprises approximately one half of a former larger field of agricultural pasture, occupying its eastern end, as well as an access track running along the field's northern side. This field gently slopes down from the Berwick Road towards the River Ebble, and is currently divided into three distinct parts comprising an upper

paddock, closest to the Berwick Road and outside of the application site, a middle paddock, and levelled lower section closest to the river. The field is now used in connection with the 'Stonehenge Campsite', although the two paddocks are put to grazing for the majority of the year.

The lower section contains 5 hard surfaced standings, currently used as caravan pitches, as well as various associated facilities in connection with the campsite, as detailed within Section 5 below. The applicant is currently certified by the Caravan Club to use this part of the site for 5 caravan pitches, which does not require planning permission, although the hard standings and associated facilities including access alterations are currently unauthorised.

This lower part of the field formerly contained a variety of modest agricultural buildings, believed to have been used as pig houses, which have now been substantially demolished. Part of the walls and hardstanding of one of these buildings remain, however, which are now used in connection with a wash up and waste/recycling point. There is direct access from this lower part of the field onto a public footpath which leads into the village of Winterbourne Stoke, some 200 metres to the east. The village includes a modest range of local services including a public house, petrol station and bus stop. This lower section is the closest part of the site to the river, although the land is raised above the flood plain and separated from the river by a 50 metre strip of grass and woodland. The River Ebble is designated as a Site of Special Scientific Interest and a Special Area of Conservation.

The middle paddock is separated from the lower section by post and rail fencing and is currently put to grazing for the applicant's horses. The upper paddock, which does not form part of the application site, is referred to by the applicant as the 'rally field' and is understood to be used for temporary touring and camping events which do not require planning permission. These include, for instance, 5 day meetings held by 'exempted organisations' such as the Caravan Club or the use of land for not more than 28 days in a year for tented camping (as permitted under The Town and Country Planning (General Permitted Development) Order 1995 and the Caravan Sites & Control of Development Act 1960). It is understood that the applicant has taken advantage of these rights to use the upper paddock for accommodating campers' tents over the popular Summer Solstice period.

The site falls within the Special Landscape Area and is adjacent to the Winterbourne Stoke Conservation Area.

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

213	Re-building of shed & piggeries	AC	01.06.50
TP/59	Construction of new access to highway	AC	27.06.51
TP/226	Site chosen for the erection of house or bungalow	AC	12.10.55

#### **5. The Proposal**

The description of the development has been amended during the course of the application, in order to include retrospective works which were not referred to in the original description.

Consent is sought to change the use of the land to a touring caravan and camping site and for the



retention of the following retrospective works:

- Alterations to the field access and access track (including widening, resurfacing and landscaping);
- 5 hard standings for use as caravan pitches;
- 3 electric hook-up points;
- WC/shower block and associated hardstanding;
- Chemical toilet disposal area;
- Cess pit.

The number of pitches is unspecified although the applicant indicates a preferred split of 11 touring caravan pitches and 14 camping pitches, with 10 of the camping pitches being seasonal (Easter to September). The number of pitches and their respective mix are open to consideration, however, and a planning condition could potentially control their number to a lesser or higher extent should there be sound grounds to do so.

It should be noted that this application cannot consider the implications of caravan and camping activities outside of the application site, such as the use of the upper paddock for temporary events which do not require planning permission, and there are separate planning enforcement procedures available should any unauthorised activity occur within this area.

## **6. Planning Policy**

The following development plan policies and national planning guidance are considered relevant to this proposal:

- Local Plan policies G1, G2, G5, CN11, CN22, C2, C6, C18, C19, T9
- PPS1, PPS4, PPS5, PPS9, PPG13

Other material guidance includes:

- Good Practice Guide on Planning for Tourism
- Planning Circular 03/99 (Non-Mains Sewerage in New Development)
- Salisbury District Landscape Character Assessment
- South Wiltshire Tourism Strategy

Emerging policy:

- South Wiltshire Core Strategy

## 7. Consultations

<b>Highways Officer</b>	No objection in highway safety terms.
<b>Highways Agency</b>	No objection to affect upon the A303 trunk road.
<b>Wessex Water</b>	The site is not within a Wessex Water sewered area.
<b>Environment Agency</b>	Advise that guidance within Circular 03/99 is adhered to.
<b>Landscape Officer</b>	Object. The application has been developed without consideration of a Landscape and Visual Impact Assessment and no Landscaping Plan has been submitted. The earth bunds and fencing are not in keeping with the local landscape character, being out of scale and inappropriate on the flat valley bottom. In addition it would be prudent to establish what imported material has been used to construct the bunds to ensure that there is no risk of pollution.
<b>Ecologist</b>	Concludes that the proposal is unlikely to have a significant effect on the River Avon SAC, subject to controls on the number of pitches, the appropriate disposal of waste water and sewerage, and controls on external lighting.
<b>Environmental Health</b>	No objection.
<b>Archaeologist</b>	Note that site is close to the remains of the medieval settlement of Winterbourne Stoke. An archaeological watching brief should be undertaken during any excavation works to form the additional hard surfaced caravan pitches. The applicant should be informed that there may be concerns over any further uncontrolled ground disturbance in this archaeologically sensitive area.
<b>Tourism Officer</b>	Note that there is a need for additional capacity for touring vans during the main summer season, and especially during the school holidays.
<b>Winterbourne Stoke Parish Council</b>	Object on the grounds of increased traffic, detriment to highways safety, landscape impact, additional noise, inadequate village infrastructure to cope with the extent of development, potential problems associated with camping and the Solstice.
<b>Berwick St. James Parish Council</b>	Object

## 8. Publicity

The application was advertised by neighbour notification and site notice.

Original publicity expiry date 11/02/10, extended to 02/04/10 due to amended description.

33 letters of objection/concern were received, together with 6 further letters in relation to the publicity of the amended description. A summary of the grounds of objection are listed below:

- Out of keeping with the character of the area due to the visibility of caravans from public vantage points, light pollution, and the appearance of earth bunds;
- Additional traffic on local roads, making use of unsafe access, and increased congestion/accidents on the A303;
- Sewerage disposal needs to be appropriate for the expected level of use, and any discharge should not affect the natural environment;
- Loss of privacy to neighbouring dwellings;
- Potential for noise, smells, trespassing and other anti-social behaviour;
- Potential threat to wildlife and the SSSI;
- Erosion to local footpaths;
- Works are unauthorised;
- Loss of business to existing nearby campsites;
- The application is based upon questionable supporting information;
- Approval could lead to further expansion which would exacerbate harmful affects.

1 letter of support was received by the applicant who lives next to the site, citing the following reasons:

- A large investment has been made to landscape the site so that it will be barely visible;
- Campsite would support local businesses and the rural economy;
- There is a high demand for this facility;
- Campsite users are well behaved.

## **9. Planning Considerations**

### **9.1 Principle of development**

Policy T9 of the Local Plan deals with the establishment of new sites for touring caravans and tents which are outside of the Area of Outstanding Natural Beauty. The policy states that such sites will be permitted where they are located within, or adjacent to, settlements or adjacent to the main holiday routes (such as the A303), and subject to criteria concerning landscape impact, nature conservation, highways safety and affects upon neighbouring residents.

PPS4 is the Government's planning statement on economic development, and states that planning authorities should support the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres, carefully weighing the objective of providing adequate facilities or enhancing visitors' enjoyment or improving the financial viability of the facility with the need to protect landscapes and environmentally sensitive sites. The guidance goes on to state that planning authorities should ensure that new or expanded holiday and touring caravan sites are not prominent in the landscape and that any visual intrusion is minimised by effective, high-quality screening.

The Good Practice Guide for Planning Tourism recognises the contribution that touring and camping accommodation can make towards the economy, and echoes the advice contained within Local Plan policy T9 and PPS4 with regards to siting such facilities close to existing settlements and protecting landscapes and environmentally sensitive sites.

### **9.2 Character and appearance of the area**

The site is situated within an area of open and low lying land at the bottom of the Till Valley. Almost immediately to the east, and providing the backdrop to the site, exists a belt of woodland which lines the river corridor. Further to the east, and also to the west of the site, the valley sides rise moderately steeply up towards open chalk downland.

The main vantage point where the largest portion of the site can be seen is provided along the Berwick Road, from around its junction with the A303 to near the site access, where the site is viewed from higher ground across the adjacent open agricultural field, from distances of approximately 300 to 100 metres. There are close range views (<20 metres) into the lower section of the site from the public footpath that runs immediately to the rear of the site, and also seasonal filtered views (from approximately 200 to 250 metres) into parts of this lower section through the woodland belt from the footpath which runs along the east side of the river corridor. Longer distance views into the site are more limited, however, due to topography and tree cover, where the lower part of the site is obscured from view.

The visual impacts of the development, including both retrospective 'operational development' and the proposed campsite use, are considered as follows:

### **9.2.1 Access alterations**

There is some conflict between the applicant and a number of local residents over the former state and appearance of the access prior to the new works being carried out. Evidence suggests, however, that there was a field access in the general position of the proposed one and that some form of track, albeit possibly unmade or with any underlying surface having been substantially overgrown with vegetation, lead down to the former agricultural buildings towards the lower section of the site.

The most significant and visible alteration made to the access comprises its formalisation through its widening and resurfacing with crushed stone, together with the creation of earth banks and new fencing along the road frontage. The widening and resurfacing of the access point has created a reasonably large expanse of hardstanding, although such accesses are not untypical of those serving agricultural fields in rural areas, and the proposed crushed stone finish is not considered to be obtrusive.

The Council Landscape Officer has stated that "the earth bunds and fencing are not in keeping with the local landscape character, being out of scale and inappropriate on the flat valley bottom". Whilst it is noted that the bunding does contrast with the open and low lying nature of the surrounding landscape, due to its reasonably gentle gradient, limited height, grassed nature and position adjacent to the Berwick Road, where a sense of enclosure is already provided by roadside hedging of a similar height on the opposite side of the carriageway, it is not considered that the bunding would cause unacceptable harm to the character of the landscape. Furthermore, the bunding would effectively comprise a continuation of that already created and permitted to the roadside frontage at the adjacent redevelopment of Wisma Poultry Farm.

It is also noted that the majority of the roadside bunding is outside of the application site, and therefore not strictly subject to consideration under the proposed development. It is understood that the applicant will shortly be addressing the unauthorised nature of this section of bunding through a separate application relating to amendments to the approved redevelopment at Wisma Poultry Farm (application reference S/2006/2122). With regards to the proposed fencing this would comprise timber post and rail which is considered typical of rural locations.

### **9.2.2 Access track and hard standings**

The access track itself has a similar crushed stone finish and would run along the northern edge of the field to the lower section of the application site, where it turns at right angles providing direct access onto 5 separate pitches which are finished in contrasting limestone chippings. From outside of the application site, the topography of the land prevents any significant views of the track and hardstandings, other than from a small section of the public footpath which runs towards the rear of the site. However, even here, only a relatively small section of the access track is seen, and new landscaping proposed would be likely to completely obscure this section over time.

### **9.2.3 WC/Shower block**

This is situated at the lower section of the application site, and comprises a portable type structure, measuring approximately 5m by 2m in footprint and 2.5m in height, painted in a dark green colour. The structure is visible from the main views identified above, although given its low height, dark green colour and siting adjacent to several tall conifer trees, its visual impact is not considered to be significant. The continuation of native hedge planting already planted along the eastern boundary of the site, which could be secured through a planning condition, would assist in obscuring the short distant views of the structure from the nearby footpath to the rear of the site.

It is also noted that the WC/shower block includes a light fitting, secured to the wall of its north elevation. Some modest form of external lighting to this facility is considered reasonable, although any such lighting should be the minimum necessary to serve its purpose. Given that the applicant has not provided details of the type of lighting fitted, and there is currently no shield/hood/louvre to limit light spill, it is considered necessary to impose a condition requiring the submission and agreement of further details to ensure that any approved lighting is acceptable.

### **9.2.4 Other paraphernalia**

This includes 3 electric hook-up points and a chemical toilet disposal area. There is also a cesspit although its externally visible elements are limited to a man-hole cover and modest venting pipe. Overall these elements are of modest size and visual impact, and are not considered to have an adverse impact upon the character of the area. The electric hook-up points have light fittings and, for similar reasons to the lighting on the WC/shower block, it is considered appropriate to impose a condition requiring the submission and agreement of further details to ensure that any approved lighting is acceptable.

### **9.2.5 Visual impact associated with the proposed use**

The baseline for considering the application is the current authorised use of land for 5 Caravan Club certified touring pitches. The applicant indicates a preference for providing an additional 6 touring caravan pitches and a further 14 pitches for tents. A site layout plan has been submitted by the applicant indicating the potential position of the pitches. This shows all 11 touring caravan pitches being sited within the northern half of the lower section of the site. Also within the lower section, but to the south side, is shown 4 pitches for tents. Within the middle paddock, the applicant indicates that this would only be used for the remaining 10 tent pitches and, furthermore, this part of the site would only be used between Easter and September.

In terms of landscape sensitivity, the lower section of the site is the most appropriate location for several reasons. Firstly, it has the benefit of a backdrop of woodland which helps reduce the visual impact of caravan and tents within the otherwise open landscape. Secondly, it is the lowest part of the site and consequently the least prominent. Nevertheless, this part of the site is still

visible or partially visible from the main vantage points already identified.

Landscaping can potentially provide an appropriate means to effectively screen such development, as advised by PPS4, and it is noted that the applicant has already undertaken significant new planting. This is detailed within the indicated site layout plan, and includes native species hedge planting to the northern boundary of the site and along approximately half of the eastern boundary. This hedge planting to the boundaries is interspersed with intermittent tree planting, including a mix of oak, sycamore, beech, lime and horsechestnut. Some smaller tree specimens have also been planted intermittently within the lower section of the site to strategically screen individual pitches or other paraphernalia. Such native planting would be generally appropriate to the landscape character, and in particular the hedge planting, which is a specific management objective for the Till Valley Landscape Character Area (Salisbury District Landscape Character Assessment). Less appropriate landscaping undertaken includes the planting of a row of 8 thuja atop the earth bank to the northern boundary of the lower section of the site. Whilst these may provide a successful 'quick fix' to screen the caravan pitches from the Berwick Road / A303, and already do help break up the profile of the existing 5 Caravan Club pitches, such planting is not characteristic of the local landscape.

The landscaping could be improved through the continuation of the native hedgerow across the remainder of the eastern boundary to the site, which would greatly assist in screening the close distance views of the site from the public footpath. The thuja planting could also be removed over time, when other slower growth planting has taken hold, and it is noted that more appropriate native species including field maple have already been planted behind the row of thuja. It would also be necessary for further planting to be carried out towards the northern boundary of the site, since the planting already undertaken has been done outside of the application site, within the edge of the adjacent field which is not within the applicant's ownership. This landscaping is critical to the appropriate screening of the proposed development and, being outside of the applicant site, limited control could be imposed by the planning authority upon its retention should the landowner wish to remove it at a later date. Consequently, it is considered that additional landscaping should be planted along the northern boundary, within the application site, with the most appropriate available location being along the inside edge of the existing access track. Such landscaping could be secured through conditions requiring planting and management plans.

It is noted that the Council's Landscape Officer has criticised the proposed development on the grounds that a Landscape and Visual Impact Assessment (LVIA) and comprehensive Landscape Plan have not been submitted. However, this is not an essential requirement of planning applications and does not prevent assessments by planning authorities being made upon the landscape impact of such developments. The site has been viewed from the main landscape vantage points, including those identified within third party representation letters and the LVIA that was commissioned by the applicant for the redevelopment of the adjacent Wisma Poultry Farm. The applicant has also subsequently clarified the planting undertaken, which has been substantially undertaken very recently and during the course of the application. Furthermore, the determination of planning applications require that issues such as landscape impact are considered in relation to other factors including any associated benefits, such as to tourism and the rural economy, as well as the principle of imposing conditions to make any potentially detrimental impacts acceptable, such as through conditions to secure appropriate screening or controls over the siting and intensity of development.

In the short term it is acknowledged that landscaping to screen the site would have a relatively modest affect, and therefore the creation of additional pitches would increase the visual impact of the campsite over the existing use for 5 Caravan Club pitches. However, at the level of increase and in the position indicated by the applicant, it is considered by Officers that the economic

benefits of the proposal would outweigh the additional short term landscape impact. The proposed use would bring additional visitors and tourist spend within the area, benefitting the local economy and particularly those local businesses which are easily accessible from the site. This would accord with one of the strategic objectives of the Council's Core Strategy to establish tourism as a major sector of the economy. The Council's Tourism Officer indicates that there is demand for additional caravan pitches within the holiday period and the proposal would meet this demand in an easily accessible location, nearby to major tourist attractions within the area. The applicant further confirms that there has been significant enquires and demand for pitches beyond the current authorised use of the land for 5 Caravan Club pitches.

Once taken hold, the new and additional planting would provide an effective screen which would secure the visual quality of the landscape. It is noted that the middle field is a more sensitive location within the landscape, due to its higher level and more open character, and therefore tighter controls on its use and development are considered appropriate. A seasonal use for a limited number of 10 tented pitches only would help secure this, together with the removal of permitted development rights to use this field for uncontrolled temporary camping events. Furthermore, this part of the site should be left free of any associated permanent paraphernalia such as lighting, hardstandings, paths and electric hook-ups, so that the land can be fully restored to its former appearance outside of the permitted main holiday season.

To control the level of additional development within the lower section of the site, conditions can be imposed to ensure that any additional hardsurfacing and electric hook-ups for the caravan pitches are designed to limit their visual impact. It is noted that the pitches indicated as numbers 13, 14 and 15 within the applicant's site layout plan would also benefit through modest excavating operations to bring the level of the land down to the same as the existing and other caravan pitches, and details of this can also be agreed through a condition.

### **9.3 Highways safety**

It is noted that concern has been expressed over the highways implications of the development, including the safety of using the access onto the Berwick Road, the safety of its junction with the A303, and the potential for increased traffic and congestion. However, the professional advice given by the Council Highways Officers and the Highways Agency is that the development would not have an adverse affect upon highways safety on either the Berwick Road or the A303. Consequently it is not considered that this planning authority could substantiate a reasonable objection on highways safety grounds.

### **9.4 Amenities of the occupiers of nearby property and other recreation users**

Other than the applicant's own dwelling at Summerfield House, the nearest neighbouring residential property to the site relates to Till Cottage and Keepers Cottage. The next nearest dwellings are situated within the main body of the village on Church Road or further to the south of Summerfield House along Berwick Road. The affects on these neighbouring dwellings and recreation users are considered as follows:

#### **9.4.1 Keepers Cottage**

This dwelling is situated approximately 60 metres to the south-west of the nearest part of the site, which comprises the area earmarked for 4 tent pitches within the lower section of the site, although the curtilage of the dwelling is separated from this part of the site by only the width of the public footpath. However, this nearest part of the curtilage comprises the driveway, a vegetable garden and paddock, with the main amenity space being situated closer to the dwelling and to its

far southern side.

The occupants of the dwelling have raised concerns over matters of privacy and disturbance caused by the proposed use. They note that the site is situated at a higher level, which permits views into their property, and that the proximity of the tent pitches will cause disturbance. The applicant has formed modest height bunding to enclose the nearest part of the site to this property, and planted native hedging atop. The neighbour's own property includes reasonably mature tree planting to its facing boundary. Given this level of screening, together with the distance of the neighbouring dwelling and its main amenity space from the application site, it is not considered that loss of privacy and any potential disturbance arising from the proposed use would have an unacceptable affect upon living conditions. Neither are there any significant reasons to presume that activities associated with a campsite use would cause undue noise. Furthermore, the proximity of the applicant's own dwelling to the campsite will help ensure a reasonably high level of management and supervision of the campsite.

#### **9.4.2 Till Cottage**

This dwelling is situated approximately 80 metres to the north of the nearest part of the site, which comprises the area currently used for the existing 5 Caravan Club pitches. Between the dwelling and the site exists its main garden area, separated by a 25m strip of grassy land to the rear of the site.

The occupants of the dwelling have raised similar concerns to those also cited by Keepers Cottage, including loss of privacy, disturbance, noise, and in addition concerns relating to light pollution and the lighting of open fires. However, similar to Keepers Cottage, existing and recent planting, together with physical distance, would allow a reasonable level of privacy to remain, and it is not considered that disturbance associated with a campsite use would be significant. Such screening, together with controls that can be imposed upon the design of lighting within the site through a planning condition, would also serve to prevent harmful light spill from the site.

With regards to the lighting of open fires, this is not a matter which can be controlled through the planning system, although the Council could evoke environmental legislation should such fires become a statutory nuisance.

#### **9.4.3 Other nearby dwellings**

The concerns identified above would be less applicable to other nearby dwellings given their greater distance of separation from the site. Several residents have raised concerns over anti-social behaviour, such as littering, trespassing and rowdy behaviour when travelling to and from the village. However, there are separate controls outside of the planning system which regulate against such behaviour, and there are no significant reasons to presume that permitting a campsite will facilitate anti-social behaviour.

#### **9.4.4 Recreation users**

Concerns have been raised over the unauthorised use of footpaths, their littering and fouling, and increased erosion. However, as above, there are separate controls outside of the planning system relating to public footpaths, and the aim of planning guidance is to encourage the use of sustainable travel which includes walking on public footpaths.

### **9.5 Sewerage & waste water disposal**



Wessex Water have confirmed that the site is not within a sewered area, and the applicant's assertion that connection to the mains is not practical is accepted by Officers. A cesspit has been provided on the site to collect sewerage and grey water from the WC/toilet block and chemical toilet disposal area into a sealed 7000 litre unit. The applicant also confirms that the wash-up area will also be connected to the cesspit to collect grey water. Advice within Circular 03/99 is therefore applicable to the development, which provides guidance on the use of non-mains sewerage systems. On the use of cesspits, this guidance states:

*Whilst this Circular primarily deals with septic tank drainage systems, the attention of developers and local planning authorities is drawn to the implications of the use of cesspools. In principle, a properly constructed and maintained cesspool, being essentially a holding tank with no discharges, should not lead to environmental, amenity or public health problems. However, in practice, it is known that such problems occur as a result of frequent overflows due to poor maintenance, irregular emptying, lack of suitable vehicular access for emptying and even through inadequate capacity. These problems can be exacerbated by unsuitable conditions, such as some of those listed in paragraph 6 above. When considering a scheme proposing the use of cesspools, therefore, the local planning authority may wish to adopt the same process of considering the possibility of significant problems arising as described in paragraph 6 above, and whether these problems can be overcome by the attachment of suitable conditions to a planning permission.*

It is not considered that the site is subject to unsuitable conditions, such as flooding, which could result in problems from using such a system. However, the risks of overflow events is acknowledged, which could be particularly harmful given the topography and proximity of the site to the River Till. The applicant confirms that a contract has been entered into which will ensure the regular emptying of the cesspit on a monthly basis. In addition to this, it is considered appropriate to impose a condition to require the installation of an alarm which provides adequate warning of when full capacity is being approached, and this is considered to provide adequate precautions.

## **9.6 Nature Conservation**

The site itself is of limited potential for wildlife habitat, being well kept grassland/pasture. The adjacent riverside habitat, outside of the application site, is of more significance, particularly the River Till SSSI and SAC. The proposed development would not encroach directly upon this, and suitable controls on the disposal of potential sewerage and grey water run-off can be appropriately secured, as detailed above. Conditions concerning lighting within the site, already recommended for visual amenity reasons, can also ensure that lighting is designed in such a way to minimise harmful light spill which could affect wildlife associated with the nearby riverside habitat.

At the scale of development envisaged within the application, effectively an additional 20 pitches, the Council's Ecologist is satisfied that there will be no significant affects upon the River Till SSSI or SAC, and appropriate consideration has been given to the Habitats Regulations. New planting undertaken and proposed by the applicant also has the opportunity to enhance wildlife habitat within the site.

## **9.7 Archaeology**

The site is outside of the World Heritage Site but within an area designated for its high archaeological potential. The Council Archaeologist notes that the site is close to the remains of the Medieval settlement of Winterbourne Stoke, and therefore recommends that, if approval is granted, an archaeological watching brief is undertaken for works involving excavation, such as

the formation of the additional hardsurfaced caravan pitches.

## 10. Conclusion

The proposal would be acceptable in principle, representing the development of a site for touring caravans and tents within a location that is adjacent to a settlement and main holiday route. On balance, given the economic benefits deriving from this tourism related proposal, together with the capacity to successfully screen/landscape the site and control the number and siting of pitches, it is considered that the proposal would not result in unacceptable harm to the character and appearance of the area. Given the distance of the nearest neighbours and screening to the site boundaries, there would be no significant impact upon neighbours. Subject to conditions controlling the intensity of development, proposed lighting within the site and the means of sewerage and waste water disposal, there would be no harm to nature conservation interests. Highways Officers have raised no objection and the development is therefore considered acceptable in highway safety terms. Subject to a condition requiring appropriate investigation during any ground works, there would be no harm to archaeological interests.

## RECOMMENDATION

### ***It is recommended that this application is approved for the following reasons:***

The proposal would be acceptable in principle, representing the development of a site for touring caravans and tents within a location that is adjacent to a settlement and main holiday route. On balance, given the economic benefits deriving from this tourism related proposal, together with the capacity to successfully screen/landscape the site and control the number and siting of pitches, it is considered that the proposal would not result in unacceptable harm to the character and appearance of the area. Given the distance of the nearest neighbours and screening to the site boundaries, there would be no significant impact upon neighbours. Subject to conditions controlling the intensity of development, proposed lighting within the site and the means of sewerage and waste water disposal, there would be no harm to nature conservation interests. Highways Officers have raised no objection and the development is therefore considered acceptable in highway safety terms. Subject to a condition requiring appropriate investigation during any ground works, there would be no harm to archaeological interests. The proposal would therefore accord with the aims and objective of the development plan and other material Government planning guidance, having particular regard to saved Local Plan policies G1, G2, G5, CN11, CN22, C2, C6, C18, C19, T9; and PPS1, PPS4, PPS5, PPS9, PPG13, The Good Practice Guide on Planning for Tourism, and Planning Circular 03/99.

### ***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 Section 51 (1) of the Planning and Compulsory Purchase Act 2004.

- 2) The number of touring caravans and/or motor homes occupying the site shall be limited to a maximum of 11 at any one time and shall be restricted in siting to the lower (easternmost) part of the site only, as identified within the Landscape Plan received on 29/03/10 as the pitches

numbered 1 to 8 and 13 to 15. The number of tent pitches occupying the site shall be limited to a maximum of 14 at any one time, and the area identified within the Landscape Plan received on 29/03/10 as the "Livestock Paddock and Overflow Field" shall only be occupied by a maximum number of 10 tent pitches at any one time from the period of the Good Friday Bank Holiday through to the end of the month of September.

Reason: To limit the extent and siting of pitches in the interests of minimising landscape impact, and to control the overall intensity of development in the interests of nature conservation.

Policy: T9, C6, G2

- 3) The development hereby permitted shall not be brought into use until an alarm has been installed to the cesspit to provide warning against overflowing, in accordance with details which shall have first been submitted to and agreed in writing by the local planning authority.

Reason: To reduce the risk of overflow events to prevent pollution of the adjacent water course.

Policy: G5, T9, C18

- 4) The dish wash up area shall not be brought into use until it has been connected to the cesspit hereby approved, in accordance with details which shall have first been submitted to and agreed in writing by the local planning authority.

Reason: To prevent pollution of the adjacent water course.

Policy: G5, T9, C18

- 5) No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) details all species, planting sizes and planting densities in relation to the proposed planting;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) hard surfacing materials to any footpaths, tracks or pitches;

Reason: To ensure a satisfactory landscaped setting for the development.

Policy: T9, C6, G2

- 6) All soft landscaping comprised in the approved details of landscaping shall be carried out in the next planting and seeding season; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard

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

Reason: To ensure a satisfactory landscaped setting for the development.

Policy: T9, C6, G2

- 7) No development shall commence on site until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out in accordance with the approved details.

Reason: To ensure the proper management of the landscaped areas in the interests of visual amenity.

Policy: T9, C6, G2

- 8) No ground works to alter the level of land within the site, as agreed within the details of condition 5, shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.

Reason: The site is within proximity of the known location of the Medieval settlement of Winterbourne Stoke, and therefore any disturbance by ground works should be appropriately monitored in the interests of archaeology.

Policy: CN22

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Schedule 2, Part 4 or Part 5 shall take place within the part of the site identified as the "Livestock Paddock and Overflow Field" within the submitted Landscape Plan received on 29/03/10.

Reason: To maintain control over the character and appearance of the more landscape sensitive part of the site.

Policy: T9, C6, G2

- 10) No development shall commence on site until details of all external lighting, including any existing, of the site have been submitted to and agreed in writing by the local planning authority. Details shall include the type of light appliance, the height and position of fitting, illumination levels and details of measures to reduce light pollution including any external cowls, louvers or other shields to be fitted to the lighting. Development shall be carried out in accordance with the approved details and maintained as such thereafter. Other than those agreed, there shall be no further lighting of the site, unless otherwise agreed through a new planning permission.

Reason: To control the level of lighting within the site in the interests of the character and appearance of the area.

**Informatives:**

**1. APPROVED PLANS**

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.

Plan Ref....Stonehenge Campsite Planning Plan 23.12.09...	Date Received....30.12.09....
Plan Ref....Landscape Plan 2010...	Date Received....29.03.10....

**2. CARAVAN SITE LICENSE**

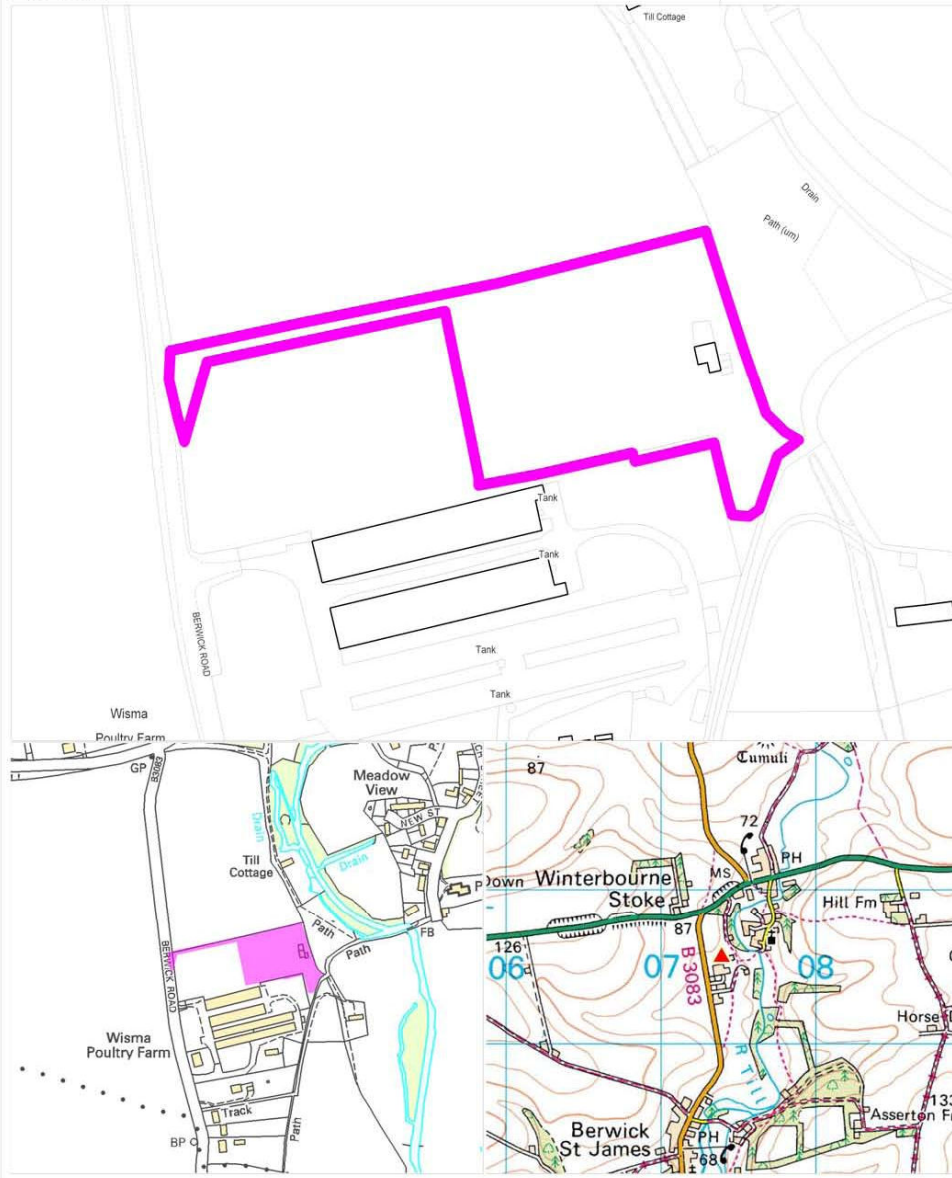
The applicant should be made aware of the requirements to obtain a Caravan Site License from the Council for the proposed use, which is in addition to planning permission. This can be obtained from the Council's Environmental Health Department.

**3. LAND OUTSIDE OF APPLICATION SITE**

The applicant should note that this planning permission does not grant consent for those bunds which are situated outside of the application site. Furthermore, any campsite use outside of the application site, such as within the upper paddock closest to the Berwick Road, should be carried out strictly in accordance with the requirements of The Town and Country Planning (General Permitted Development) Order 1995 and the Caravan Sites & Control of Development Act 1960. If in doubt the Planning Department should be contacted.

Site Visit:

S/2010/7



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**STONEHENGE CAMPSITE, BERWICK ST. JAMES**

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Deadline:	20/04/2010		
Application Number:	S/2010/0259/FULL		
Site Address:	9-11 ST. NICHOLAS ROAD SALISBURY SP1 2SN		
Proposal:	PROPOSED RE-INSTATEMENT OF TWO MAISONNETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANCE AND FLOOD RESILIENCE MEASURES		
Applicant/ Agent:	MR RICHARD GREENWOOD		
Parish:	SALISBURY CITY COUNCIL ST MAR/CATHEDRAL		
Grid Reference:	414372 129071		
Type of Application:	FULL		
Conservation Area:	SALISBURY	LB Grade:	II
Case Officer:	Mrs B Jones	Contact Number:	01722 434388

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

Councillor Brady has requested that this item be determined by Committee due to:

- Environmental impact (flooding)

**1. Purpose of Report**

To consider the above application and the recommendation of the case officer to REFUSE planning permission.

**2. Main Issues**

The main issues to consider are :

1. Impact on heritage assets (the character of the listed building and Conservation Area, including adjacent listed buildings).
2. Impact on neighbouring amenities and highway safety
3. Nature conservation
4. Flood Risk and the Continued Use of the Listed Building
5. Public open space

**3. Site Description**

The site is a Grade II listed, three storey town house situated adjacent to the river. The building is

probably 18<sup>th</sup> century, and is built directly on top of the bastion to the Old Harnham Bridge, which is Grade 1 listed. The front entrance to the house is level with St Nicholas Road, and the basement area leads into a garden to the rear of the property, adjacent to the river. There are further residential properties to the side and opposite the site. There is no parking for the property.

In the 19<sup>th</sup> century, Nos 9 and 11 were two separate houses with separate gardens. Approximately 15 years ago, the building was converted to subdivide the upper floor into 2 flats and the lower two floors to create a pair of separate maisonettes. In 1997, permission was granted to convert the two maisonettes into a five bed dwelling.

The site within the Conservation Area and in the Housing Policy Boundary. The site also lies within an Area of High Ecological Value, and adjacent to the River Avon SSSI in Flood Zone 3.

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

S/1991/1604 L/B Application - Enlarging Existing Eastern Doorway To Form New French Windows AC

S/1997/883 Amalgamation of two units via 2no. new internal openings and complete redecoration AC

S/2009/1682 Convert A Four Bedroom Maisonette Into A Pair Of Two Bedroom Maisonettes, Withdrawn

S/2009/1683 Convert A Four Bedroom Maisonette Into A Pair Of Two Bedroom Maisonettes, Listed building application, Withdrawn

#### **5. The Proposal**

The applicant is seeking to create two 2 bedroom maisonettes from the existing 5 bedroom maisonette. The two existing 2 bed flats would be retained above. Removable flood barriers are proposed for the French windows and window reveals on the rear elevation. Other works would all be internal, and include flood resilience measures, the filling of two door openings made under the 1997 application. This will involve lathe batons and lime plaster, and in the basement, plasterboard with gypsum. The applicant has also indicated that an Emergency Flood Management Plan will be produced, and could be secured through a S106 Agreement or condition.

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

The following policies are considered relevant to this proposal including PPSs

G2	General principles for development
H8	Housing Policy Boundary
CN3, CN5	Listed buildings
CN8, CN11	Conservation Areas



C12	SSSI and protected species
C18	River quality and habitats
R2	Public Open Space
PPS5	Planning for the Historic Environment
PPS25	Flooding
	Creating Places SPG
	Flooding and Historic Buildings 2004, English Heritage

## 7. Consultations

**Conservation** – no objection

**Highways** – no objection

**Environmental Health** – Any flood defence proposal needs to be done in consultation with the Environment Agency

**Environment Agency** – objection

*“The application and supporting Flood Risk Assessment (FRA) do not demonstrate that the proposed scheme, and the additional residential unit that is to be created, will remain safe from flood risk for the life time of the development (taken as 100 years for residential use). This means that we consider part c of the Exception Test could not be passed. We acknowledge the FRA offers flood resistance and resilience measures, clarifies flood warning and evacuation routes from the site and also discusses the unique nature of this listed building. However it fails to demonstrate that the proposed development will remain safe and unaffected by flooding. The flood barriers discussed are not considered to act as a fail safe means of defending the property and are unlikely at this site to prevent water penetration to the interior of the building.*

*If the applicant would reconsider the internal configuration of the proposal, with the entire lower ground floor being retained by a single property, only one property would be considered to be at risk of internal flooding. Such an alternative configuration would present no worsening over the current arrangement in terms of flood risk.*

*Although we understand that the listed status of the property and close proximity of the Main River Avon place considerable constraints and limitations on this site and scope to include certain methods of defending the site against flooding, the current proposal is to create an additional dwelling within a flood risk area. As such it is contrary to the guidance offered within PPS25.*

*Flood risk cannot be entirely eliminated and is expected to increase over time as a result of climate change. It is the responsibility of the developer to identify and make appropriate provision for flood risk, and to ensure a safe development. Recent flood records infer that the existing property is at risk both from fluvial and ground water flooding. The relationship between the quoted design flood level (45.35mAOD) and internal floor level (44.93mAOD) suggests that there is a considerable risk of flooding even with all openings defended by demountable barriers. We*

would also emphasise that the design flood level (FRA s.1.4) is not a maximum flood level. The level of 45.35mAOD (Halcrow: Salisbury ABD 2007) has previously been suggested by the EA (our ref: WX/2009/113362/02) as a conservative estimation of the relevant 1:100 year flood level, with suitable allowance for climate change (PPS25).

#### Sequential Test

As this proposal created an additional unit it should be subject to the Sequential Test in line with PPS25 requirements. We do not object on this aspect but it is up to your authority to determine whether the Sequential Test is passed. The Sequential Test is a land use tool for determining whether there are sites available in areas of lower flood risk where the additional unit which is being created could be located. Only if you consider this has been passed should you look to the requirements within the Exception Test, but as highlighted above we do not feel the development as currently proposed meets part c of that test.”

### **8. Publicity**

The application was advertised by site notice, press notice and neighbour notification  
Expiry date 1<sup>st</sup> April 2010. No comments received.

### **9. Planning Considerations**

#### **9.1 Impact on heritage assets (the character of the listed building and Conservation Area, including adjacent listed buildings).**

PPS5 Policy HE7 states that in decision making relating to an application for listed building consent, LPAs should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal (including by development affecting the setting of the heritage asset,) taking account of the evidence provided with the application and the heritage assets themselves. Heritage assets include listed buildings and Conservation Areas. LPAs should take account of the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, alignment and materials.

Policy HE9 states that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the asset, the greater the presumption should be. Significance can be harmed by development in its setting. HE9 states that where the application will lead to substantial harm, LPAs should refuse unless it can be demonstrated that

- i) the substantial harm is necessary in order to deliver substantial public benefits that outweigh the harm.

Policy HE10 states that in considering proposals that affect the setting of a heritage asset and do not make a positive contribution, LPAs will need to weigh the harm against any benefits of the application. The greater the negative impact, the greater the benefits needed to justify approval.

Policy CN3 and CN5 of the Local Plan seek to ensure that development affecting listed buildings

and their settings would not harm that character. New work must respect the character of the building in terms of scale, design and materials, and the historic form of the building must be retained.

Policy CN8 states that in Conservation Areas, only development that preserves or enhances the existing character of the area will be permitted, and special care will be taken to safeguard views into and out of the area (CN11).

PPS5 provides specific guidance on uses for listed buildings in respect of climate change. Policy HE1 states that LPAs should identify opportunities to adapt to the effects of climate change when making decisions relating to the modification of heritage assets (listed buildings) to secure sustainable development. Opportunities to adapt heritage assets include enhancing energy efficiency and improving resilience to the effects of a changing climate. Keeping heritage assets *in use* avoids the consumption of building materials and generation of waste. Where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefits of mitigating the effects of climate change should be weighed against any harm to the significance of the heritage assets.

The Heritage Statement suggests that in the 19<sup>th</sup> century, Nos 9 and 11 were two separate houses with separate gardens, and the report suggests that the present internal arrangement of the large maisonette confuses the significance and historic context of the listed building. This provides a strong argument in favour of supporting the present application to reinstate the subdivision, in the interests of the historic layout of the listed building.

The proposed internal works are minor, and involve re-filling two entrances made under the 1997 approval. Externally, the two French doors and sitting room window reveals would be fitted with removable flood barriers. The Conservation officer has raised no objection to the proposals which would have no adverse impact on the character or setting of the listed building.

In respect of the front door, this requires approval, preferably by drawings, but officers would be happy to agree this by inspection as the intention is to use a reclaimed door. Unfortunately, specific drawings for the flood resistance measures have not been provided, and these have been requested. However, the use of the flood barriers is acceptable in principle.

### **9.2 Impact on neighbouring amenities and highway safety**

The creation of an additional residential unit is not considered to affect neighbouring amenities, as no external works are proposed to the elevations to cause any overlooking or loss of privacy. There were previously two maisonettes on the ground floor, although the Council has no planning record of the original conversion. The additional unit is therefore unlikely to cause any undue disturbance to neighbours, in terms of noise or disturbance, as the property is detached. No parking is available to the units, and there is no available on street parking in the vicinity. Therefore, the conversion is unlikely to lead to any additional congestion levels in the vicinity of the property.

Highways consider that the property already offers four potentially separate living units, and the

proposal is not deemed detrimental to highway safety, and no objection is raised.

The proposal would therefore comply with Policy G2.

### **9.3 Nature conservation**

The applicant has submitted a construction method statement, which provides safeguards for the river and protected species during the construction works, in accordance with Policy C12 and C18.

### **9.4 Flood Risk and the Continued Use of the Listed Building**

PPS5 provides specific guidance on uses for listed buildings in respect of climate change. Policy HE1 states that LPAs should identify opportunities to adapt to the effects of climate change when making decisions relating to the modification of heritage assets (listed buildings) to secure sustainable development. Opportunities to adapt heritage assets include enhancing energy efficiency and improving resilience to the effects of a changing climate. Keeping heritage assets *in use* avoids the consumption of building materials and generation of waste. Where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefits of mitigating the effects of climate change should be weighed against any harm to the significance of the heritage assets.

The Heritage Statement suggests that in the 19<sup>th</sup> century, Nos 9 and 11 were two separate houses with separate gardens, and the report suggests that the present internal arrangement of the large maisonette confuses the significance and historic context of the listed building. This provides a strong argument in favour of supporting the present application to reinstate the subdivision, in the interests of the historic layout of the listed building.

In balancing the issues raised by PPS5 and PPS25, the LPA considers that it must be adequately demonstrated that the additional unit of accommodation would be necessary in Flood Zone 3 in order to ensure that the listed building would remain in use. The applicant has submitted evidence from a local estate agent who suggests that the existing five bedroom maisonette would, "Not be very appealing. Demand for a larger property would almost certainly come from families who would expect parking for at least 2 cars, and they would not expect to have two one bedroom flats above them. All these unusual features would make the property difficult to sell, and I would much prefer your original plans in terms of quality of living and saleability. Regarding letting a five bedroom property without any parking, it would be difficult to let other than to sharers, which would only further exasperate the problem as sharers could have as many as ten cars."

Whilst the Agent asserts that the 5 bed maisonette would be difficult to sell/let, the LPA has no evidence of any marketing of the property, and council tax records suggest that the property has had a long period (about 13 years) of non commercial letting by the Trustees of St. Nicholas Hospital.

The listed building lies within Flood Zone 3 which is at high risk of flooding and is immediately adjacent to the River Avon. The EA suggest that the site has flooded twice in the last 10 years.

The development, which would create an additional dwelling at basement level, is classed as “more vulnerable” in PPS25. Therefore PPS25 advises that the development should only be permitted in this zone if the exceptions test can be passed. For the exception test to be passed,

- a) it must be demonstrated that the development provides wider sustainability to the community that outweighs the flood risk
- b) the development should be on previously developed land and
- c) a Flood Risk Assessment (FRA) demonstrate that the development will be safe without increasing flood risk elsewhere and where possible, will reduce flood risk overall.

The EA have considered the FRA (see below) and despite the measures proposed to improve the building’s resilience to flooding (including removable barriers, suitable design of internal fixtures, and a proposed Emergency Flood Management Plan following English Heritage’s 2004 advice for Flooding and Historic Buildings) they do not consider that the development will be “safe” from flood risk for its lifetime and therefore, it fails part c of the exception test. The EA acknowledges the proposed flood resistance and resilience measures such as the flood barriers, flood warnings and evacuation routes from the site, but they consider that it fails to demonstrate how the development will remain safe and unaffected by flooding. The flood barriers are not considered to act as a fail safe means of defending the property and are unlikely at this site to prevent water penetration to the interior of the building. The EA would prefer to see the entire lower ground floor being used as a single property, so that just one property would be at risk of internal flooding. The EA feel that the property is at, “Considerable risk of flooding even with all openings defended by demountable barriers.”

The applicant has argued that the risk of flooding from the River Avon is low, and that the residents can insure against the risk of flooding to the sitting rooms, and advanced notice of flood warnings are available. There are also compelling heritage arguments in favour of the proposal to restore the listed building to two separate dwellings, and the applicant has urged the Council to take a pragmatic approach in balancing the issues. However, the proposal would fail part c of the exceptions test set out in PPS25, and on the basis of the identified risk to future occupiers of the additional unit, officers have recommended the application for refusal.

### **9.5 Public open space**

The applicant has been invited to enter into a Section 106 Agreement in respect of public open space provision. The agreement has been received.

## **10. Conclusion**

Officers consider that the listed property was originally two dwellings, has historically been occupied as two units on the ground and lower ground floor, and the 5 bed maisonette is likely to be difficult to sell or let without parking. However, the proposal would fail part c of the exceptions test set out in PPS25. On the basis of the strength of the representation by the Environment Agency, in the knowledge that the site has flooded twice in the last ten years and given their views on the likelihood of flooding in the future, officers have recommended the application for refusal.

**Recommendation:**

***It is recommended that this application is refused for the following reasons:***

The proposed development would create an additional residential unit by subdividing an existing maisonette in the ground and lower ground levels of a Grade II listed building, situated in Flood Zone 3. The basement has been flooded twice in the last decade. In applying the sequential test, the proposal fails the vulnerability category in PPS25 for Flood Zone 3, and the exceptions test must be applied. The flood risk assessment has failed to demonstrate that the new unit would be safe (not be at risk from flooding), and the development would therefore fail part c of the exceptions test. Whilst the development would ensure the ongoing occupancy of the listed building, and would restore the former layout as two dwellings on the ground and lower ground floors, occupiers of the additional residential unit would be at risk from flooding, and the development is contrary to the guidance in PPS25.

***INFORMATIVE***

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.

NJH/0018 Sept 09

Existing Plans, Proposed Plans and Door elevations, received 23/2/10

Planning, Design and Access Statement, WGDP, Feb 2010

Marketing Advice, Myddelton and Major letter dated 28/1/10

Construction Method Statement and Schedule of Works, Feb 2010

Independent wall lining solutions by Karma Acoustics

Flood Risk Assessment and Management Strategy, Feb 2010

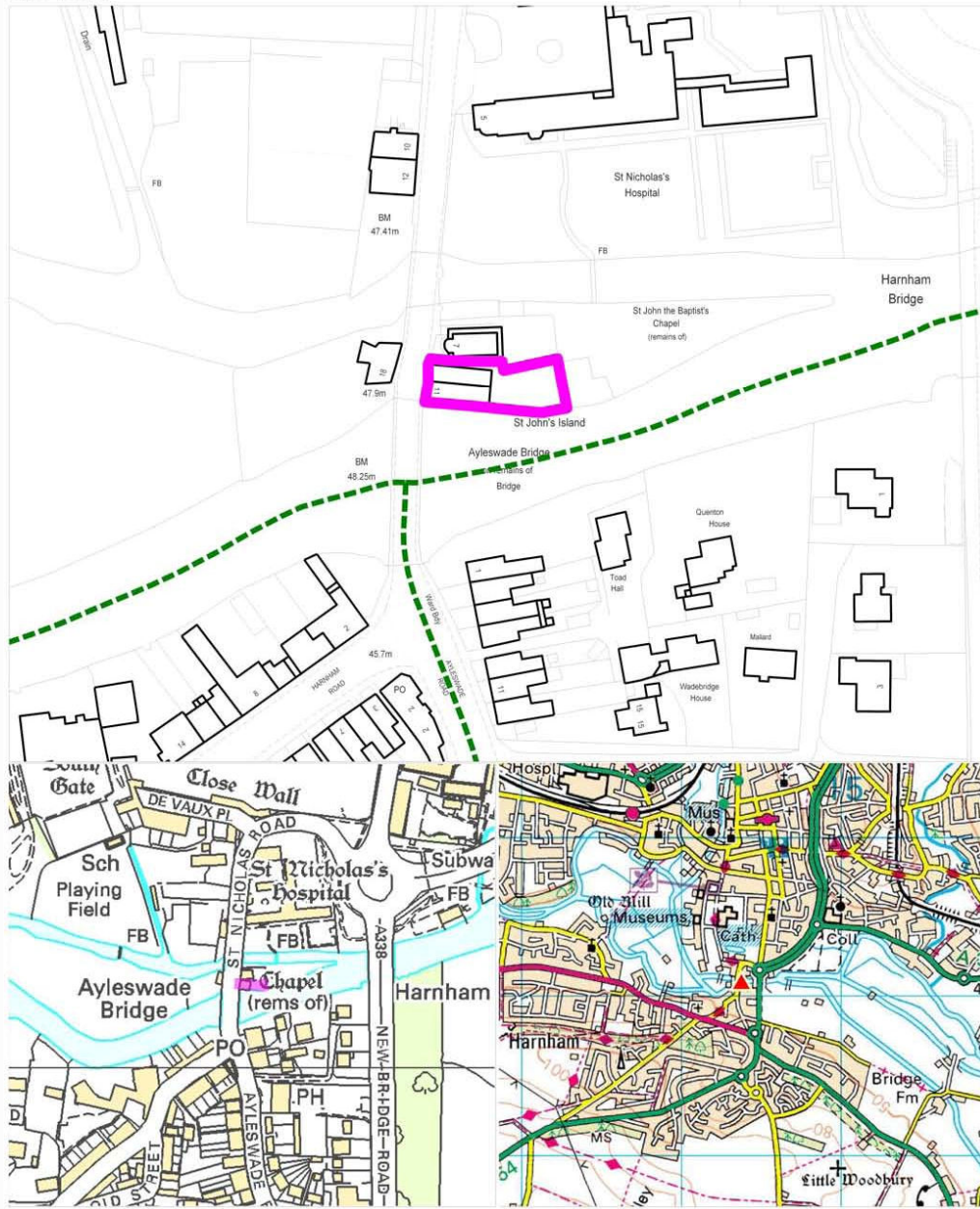
Appendices:	NONE
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Background Documents Used in the Preparation of this Report:	NONE
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PROPOSED RE-INSTALEMENT OF TWO MAISONNETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANT

S/2010/259

Site Visit:



Wiltshire Council  
Where everybody matters

9-11 ST. NICHOLAS ROAD SALISBURY

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Deadline:	20/04/2010		
Application Number:	S/2010/0260/LBC		
Site Address:	9-11 ST. NICHOLAS ROAD SALISBURY SP1 2SN		
Proposal:	PROPOSED RE-INSTATEMENT OF TWO MAISONETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANCE AND FLOOD RESILIENCE MEASURES		
Applicant/ Agent:	MR RICHARD GREENWOOD		
Parish:	SALISBURY CITY COUNCIL ST MAR/CATHEDRA		
Grid Reference:	414372 129071		
Type of Application:	LBC		
Conservation Area:	SALISBURY	LB Grade:	II
Case Officer:	Mrs B Jones	Contact Number:	01722 434388

### Reason for the application being considered by Committee

Councillor Brady has requested that the accompanying planning application is determined by Committee due to:

- Environmental impact (flooding)

### 1. Purpose of Report

To consider the above application and the recommendation of the case officer to APPROVE listed building consent, subject to conditions.

### 2. Main Issues

The main issues to consider are :

Impact on heritage assets (the character of the listed building and Conservation Area, including adjacent listed buildings).

### 3. Site Description

The site is a Grade II listed, three storey town house situated adjacent to the river. The building is probably 18<sup>th</sup> century, and is built directly on top of the bastion to the Old Harnham Bridge, which is Grade I listed. The front entrance to the house is level with St Nicholas Road, and the basement area leads into a garden to the rear of the property, adjacent to the river. There are

further residential properties to the side and opposite the site. There is no parking for the property.

In the 19<sup>th</sup> century, Nos 9 and 11 were two separate houses with separate gardens. Approximately 15 years ago, the building was converted to subdivide the upper floor into 2 flats and the lower two floors to create a pair of separate maisonettes. In 1997, permission was granted to convert the two maisonettes into a five bed dwelling.

The site within the Conservation Area and in the Housing Policy Boundary. The site also lies within an Area of High Ecological Value, and adjacent to the River Avon SSSI in Flood Zone 3.

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

S/1991/1604 L/B Application - Enlarging Existing Eastern Doorway To Form New French Windows AC

S/1997/883 Amalgamation of two units via 2no. new internal openings and complete redecoration AC

S/2009/1682 Convert A Four Bedroom Maisonette Into A Pair Of Two Bedroom Maisonettes, Withdrawn

S/2009/1683 Convert A Four Bedroom Maisonette Into A Pair Of Two Bedroom Maisonettes, Listed building application, Withdrawn

#### **5. The Proposal**

The applicant is seeking to create two 2 bedroom maisonettes from the existing 5 bedroom maisonette. The two existing 2 bed flats would be retained above. Removable flood barriers are proposed for the French windows and window reveals on the rear elevation. Other works would all be internal, and include flood resilience measures, the filling of two door openings made under the 1997 application. This will involve lathe batons and lime plaster, and in the basement, plasterboard with gypsum.

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

The following policies are considered relevant to this proposal Including PPSs

CN3, CN5	Listed buildings
CN8, CN11	Conservation Areas
PPS5	Planning for the Historic Environment
	Creating Places SPG
	Flooding and Historic Buildings 2004, English Heritage

#### **7. Consultations**

**Conservation – no objection**

## 8. Publicity

The application was advertised by site notice, press notice and neighbour notification  
Expiry date 1<sup>st</sup> April 2010. No comments received.

## 9. Planning Considerations

### ***9.1 Impact on heritage assets (the character of the listed building and Conservation Area, including adjacent listed buildings).***

PPS5 Policy HE7 states that in decision making relating to an application for listed building consent, LPAs should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal (including by development affecting the setting of the heritage asset,) taking account of the evidence provided with the application and the heritage assets themselves. Heritage assets include listed buildings and Conservation Areas. LPAs should take account of the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, alignment and materials.

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Policy CN3 and CN5 of the Local Plan seek to ensure that development affecting listed buildings and their settings would not harm that character. New work must respect the character of the building in terms of scale, design and materials, and the historic form of the building must be retained.

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use avoids the consumption of building materials and generation of waste. Where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefits of mitigating the effects of climate change should be weighed against any harm to the significance of the heritage assets.

The Heritage Statement suggests that in the 19<sup>th</sup> century, Nos 9 and 11 were two separate houses with separate gardens, and the report suggests that the present internal arrangement of the large maisonette confuses the significance and historic context of the listed building. This provides a strong argument in favour of supporting the present application to reinstate the subdivision, in the interests of the historic layout of the listed building.

The proposed internal works are minor, and involve re-filling two entrances made under the 1997 approval. Externally, the two French doors and sitting room window reveals would be fitted with removable flood barriers. The Conservation officer has raised no objection to the proposals which would have no adverse impact on the character or setting of the listed building.

In respect of the front door, this requires approval, preferably by drawings, but officers would be happy to agree this by inspection as the intention is to use a reclaimed door. Unfortunately, specific drawings for the flood resistance measures have not been provided, and these have been requested. However, the use of the flood barriers is acceptable in principle.

## **10. Conclusion**

The proposed development would not have any detrimental impact on heritage assets, including the character and setting of the listed building and Conservation Area, and adjacent listed buildings.

## **Recommendation:**

***It is recommended that this application is approved for the following reasons:***

The proposed conversion of an existing listed building to provide two ground floor maisonettes with flood resistance measures would not have any detrimental impact on heritage assets, including the character and setting of the listed building and Conservation Area, and adjacent listed buildings. The development would therefore be in accordance with the guidance in PPS5, and policies CN3, CN5, CN8 and CN11 of the adopted Salisbury District Local Plan.

***And subject to the following conditions:***

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

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

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

- a) the proposed front door for the property (fronting St Nicholas Road), and
- b) the proposed flood resilience measures to the lower ground floor French windows and window reveals to the sitting rooms

The development shall be implemented in accordance with the approved details, before the ground and lower ground floor maisonettes are occupied.

Reason: To preserve the character of the listed building

POLICY: CN3 and CN5, listed buildings.

3. The development hereby approved shall be in accordance with the following documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council.

NJH/0018 Sept 09

Existing Plans, Proposed Plans and Door elevations, received 23/2/10

Planning, Design and Access Statement, WGDP, Feb 2010

Construction Method Statement and Schedule of Works, Feb 2010

Independent wall lining solutions by Karma Acoustics

***INFORMATIVE***

The developer is advised that planning permission is required for the works approved in this listed building consent.

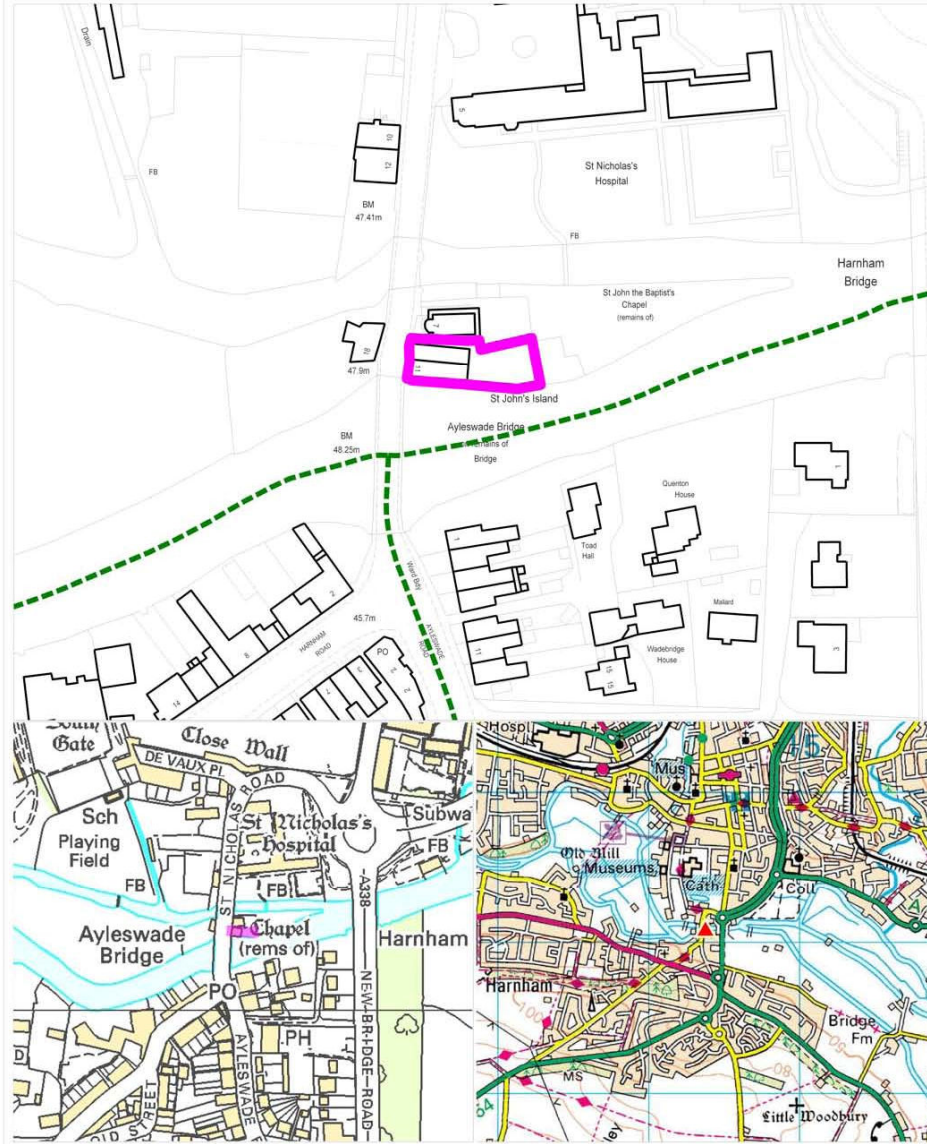
Appendices: NONE

Background Documents Used in the Preparation of this Report: NONE

PROPOSED RE-INSTATEMENT OF TWO MAISONNETTES TO LOWER GROUND AND GROUND FLOOR INCLUDING THE INSTALLATION OF FLOOD RESISTANCE MEASURES

S/2010/260

Site Visit:



9-11 ST. NICHOLAS ROAD SALISBURY



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