

AGENDA

Meeting: Eastern Area Planning Committee
Place: Council Chamber - Council Offices, Browfort, Devizes
Date: Thursday 3 November 2011
Time: 6.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718504 or email kieran.elliott@wiltshire.gov.uk

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

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Jane Burton	Cllr Chris Humphries
Cllr Peggy Dow	Cllr Laura Mayes
Cllr Nick Fogg	Cllr Jemima Milton
Cllr Richard Gamble	Cllr Christopher Williams
Cllr Charles Howard	

Substitutes:

Cllr Liz Bryant	Cllr Jerry Kunkler
Cllr Nigel Carter	Cllr Francis Morland
Cllr Peter Colmer	Cllr Christopher Newbury
Cllr George Jeans	Cllr Jeffrey Ody
Cllr Simon Killane	Cllr Jonathon Seed

AGENDA

Part I

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

1. **Apologies for Absence**

2. **Minutes of the Previous Meeting** (*Pages 1 - 4*)

To approve and sign as a correct record the minutes of the meeting held on 25 August 2011 (copy herewith).

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

5. **Public Participation**

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.

To receive any questions from members of the Council or members of the public received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named above (acting on behalf of the Director of Resources) no later than 5pm on Thursday 27 October 2011. Please contact the officer named on the first page of the agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6. **The Wiltshire Council Sheet ST95SE Parish of Cheverill Magna Rights of Way Modification Order No. 16 2011** (*Pages 5 - 68*)

Wildlife and Countryside Act 1981 - The Definitive Map and Statement for the Devizes Rural District Council Area Dated 1952 As Modified Under the Provisions of the Wildlife and Countryside Act 1981

The Wiltshire Council Sheet ST95SE Parish of Cheverill Magna Rights of Way Modification Order No. 16 2011

7. **Planning Appeals** (*Pages 69 - 72*)

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

8. **Planning Applications**

To consider and determine planning applications in the attached schedule.

8.1. **E/2011/1094 - Cresingham Elcot Lane Marlborough** (Pages 73 - 78)

8.2. **E/2011/0965 - Red Hone Cottage Townsend Urchfont** (Pages 79 - 90)

9. **Appeal decisions** (*Pages 91 - 110*)

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

Item 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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EASTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 25 AUGUST 2011 AT COUNCIL CHAMBER - COUNCIL OFFICES, BROWFORT, DEVIZES.

Present:

Cllr Jane Burton, Cllr Peggy Dow, Cllr Nick Fogg, Cllr Charles Howard (Chairman),
Cllr Chris Humphries, Cllr Laura Mayes, Cllr Jemima Milton and Cllr Christopher Williams

Also Present:

Cllr Liz Bryant and Cllr Jeffrey Ody

172. Apologies for Absence

There were no apologies for absence received.

173. Minutes of the Previous Meeting

The minutes of the meeting held 4 August 2011 were presented and it was,

Resolved:

To approve and sign the minutes as a correct record.

174. Declarations of Interest

The Chairman invited the Council's Solicitor to comment on the position of the Committee in respect of interests, given the role of the landowner at item 6 as a Wiltshire Councillor.

The Council's Solicitor advised that Committee Members would have a personal interest by virtue of being fellow Councillors and knowing the individual, but that this would not constitute a prejudicial interest unless Members had a close association with the individual beyond the professional relationship as fellow Councillors.

The Chairman, Cllr Gamble, Cllr Burton, Cllr Dow, Cllr Fogg, Cllr Humphries, Cllr Mayes, Cllr Milton and Cllr Williams declared personal but not prejudicial

interests owing to their relationship to the landowner, Mr Jonathon Seed, as fellow Members of Wiltshire Council.

Cllr Gamble declared an additional personal but not prejudicial interest in agenda item 6 owing to his knowing Mr Thomson, a supporter of the application and Order, on a professional basis.

175. **Chairman's Announcements**

There were no Chairman's announcements.

176. **Public Participation**

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

177. **Wiltshire Council Rights of Way Modification Order no. 9 2011**

The following people spoke in support of the Order to amend the definitive map and statement:

Mr Peter Holt, a user of the site
Mr Maurice John Benham, a user of the site
Mr Terry Thomson, farmer of the adjacent landholding

The following people spoke in objection to the Order to amend the definitive map and statement:

Mr Jonathon Seed, the leaseholder of the land

The Rights of Way Officer introduced the report and set out the main issues in respect of the Order. She explained the decision options available to the Committee and recommended that the decision is made to refer the Order to the Secretary of State for the Environment, Food and Rural Affairs for determination and that Wiltshire Council adopts a neutral stance at Public Inquiry.

Members of the Committee then had the opportunity to ask technical questions, after which the Committee received statements from members of the public as detailed above, expressing their views regarding the application and Order to amend the Definitive Map and Statement.

Upon conclusion of the public participation section, Mr Jonathon Seed withdrew from the chamber in order that, as a Wiltshire Councillor, his presence would not influence proceedings.

After lengthy discussion regarding:

- The need to test the evidence at a public inquiry;
- The nature of the use of the land 'as of right';
- Material considerations admissible under the Countryside and Wildlife Act 1981;
- The necessary action(s) required of a landowner in order to make clear that there is no intention to dedicate a route;
- Extent to which users may diverge from an accepted route without invalidating a defined course through the land;
- The current majority use of the site, maps submitted by supporters and likelihood that a single definable path can be accurately identified.

And upon hearing the views of the local Member, Cllr Liz Bryant, it was,

Resolved

That the Wiltshire Council (Sheet ST 96 NE) (Parish of Bromham – Chittoe Plantation) Rights of Way Modification Order No 9 2011 is forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and that Wiltshire council adopts a neutral stance at Public Inquiry.

For the following reasons:

- 1. It has not been possible to hold a site visit with witnesses to ascertain the routes they had walked. Although it is accepted that a public right of way does not have to be visible, it is essential that it has a legally definable route and this can only be acquired, in this instance, by the public walking the same way. If they have wandered more generally in the wood, the definition of “a way” in Section 31(1) cannot be met.**
- 2. In the absence of any additional post Order evidence and before the evidence is heard before an Inspector at Public Inquiry (and cross-examined) it is not possible to judge whether or not the public have used the same routes and whether Section 31(1) is satisfied.**

178. Urgent items

There were no urgent items.

(Duration of meeting: 6.05 - 6.55 pm)

The Officer who has produced these minutes is Chris Marsh, of Democratic Services, direct line (01225) 713058, e-mail chris.marsh@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

EASTERN AREA PLANNING COMMITTEE

3 NOVEMBER 2011

WILDLIFE AND COUNTRYSIDE ACT 1981

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

THE WILTSHIRE COUNCIL SHEET ST95SE PARISH OF CHEVERILL MAGNA RIGHTS OF WAY MODIFICATION ORDER NO. 16 2011

Purpose of Report

1. To:
 - (i) Consider and comment on the evidence and eight objections relating to the above Order to add public rights of way on foot to the Definitive Map and Statement at Great Cheverell.
 - (ii) Recommend that the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs and that Wiltshire Council supports the Order.

Description of the Route

2. The Order is attached to this report at **Appendix A** and contains a map showing the claimed way which connects public footpath Cheverell Magna 6 and Garston Lane. A location plan is attached as **Appendix B**.
3. The Order route is a grass and earth track bounded by hedgerow to the north-west and an open field to the south-east. The width of the Order route is 2.5 metres in the south-west field and 3.5 metres in the north-east field, with an approximate overall length of 360 metres.

Background

4. On 18 March 2009 Wiltshire Council received an application from a member of the public, Brigadier Christie, for an Order to add the route detailed above to the Definitive Map and Statement. The application was supported by the evidence of 27 User Evidence Forms (UEFs) and maps. A summary of the evidence forms is attached to this report as **Appendix C**.
5. The Council has a duty to investigate this evidence and to make an Order if, on the balance of probability, it is either reasonably alleged, or shown, that public rights subsist over the way. As a result, an initial consultation and investigation was conducted between 7 May 2010 and 30 June 2010.

6. A considerable amount of correspondence was received, both in support of, and in objection to, the application.
7. Officers considered all of the evidence available and following a Decision Report (**Appendix D**) an Order was made in June 2011 to add the claimed footpath to the Definitive Map and Statement and the Order was advertised in accordance with the statute. The Order attracted eight duly made objections.
8. Apart from modern aerial photographs there has been no other documentary evidence discovered supporting the application. The application is therefore mainly reliant on user evidence under the application of Section 31 of the Highways Act 1980. Section 31 broadly gives that where a way has been used without interruption by the public 'as of right' for a period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate, then public rights are deemed to have been dedicated. 'As of right' means without force, without permission and without secrecy.

Evidence In Support of the Order

9. The application is supported by 27 witness UEF forms claiming continuous public use covering the relevant period 1988 – 2008. The relevant period is most likely to be the twenty years leading up to when the public rights over the route were brought into question by the erection of a fence and gates in the late summer of 2008 (see **Appendix D, section 11** for brief discussion on when the route was brought into question).
10. Ten of the witnesses claim to have been using the way at the start of the relevant period in 1988. By 2008, 26 witnesses were claiming use (see graph of user evidence in **Appendix C**). Claimed use goes further back than the relevant period with seven of the witnesses claiming to have used the way in the 1970's, with one witness claiming to have used it as far back as 1946.
11. Witnesses indicate that use was open and the landowners must have been aware of the use as walkers use the path from dawn till dusk and workers in the fields have seen people openly using the way, i.e. without secrecy and all witnesses recall seeing other users using the way. All witnesses have stated that they had no permission to use the way, this is disputed by one of the landowner's but he has so far been unable to produce a list of people to whom he has given permission. Use is claimed to have been without force. Therefore, according to the evidence submitted, it would seem that the general use has been 'as of right' which is defined above in paragraph 8.
12. No witnesses can recall seeing any notice on or adjacent to the way during the relevant period sufficient to indicate that the route was not a public right of way and no evidence has been submitted to the contrary.
13. No witnesses recall being challenged during the relevant period and no evidence has been submitted to the contrary.

Objections to the Order

14. On advertising the Order, eight objections were received, they are attached as **Appendix E** and are summarised and commented on as follows:

Name	Nature of Objection	Officer's Comments
Brigadier Rawlings	<i>"The path as it currently exists is more than adequate in width for any legitimate use as a pedestrian right of way. If it gets a little overgrown at times, this merely reflects how little use it gets".</i> The Brigadier points out that 3.5 metres is unnecessarily wide for a footpath, representing an unwarranted limitation of the landowner's legal right to enjoy his property and asks to reconsider a width of 2 metres. He also points out that the stout fence and gates not only clearly identify the right of way, but also provide protection to users and their pets from cattle or livestock.	Under the Order legislation the width and positioning of the path must be determined through user evidence and cannot be considered with regard to necessity or convenience. Some witnesses claimed a width for the path and a distance of the path out into the field. The proposed measurements were determined by a mathematical average from available witness evidence.
Lady Hawley	<i>"I entirely agree with the points made by Brigadier Rawlings"</i>	With regard to the fence and gates, safety or effects on the environment or on the community cannot be taken into consideration.
Major N.Haines	Major Haines objection is identical to Brigadier Rawlings objection but asks to reconsider a width of 1.5 metres.	
Mr & Mrs Gammond	<i>"We have used the path frequently over the years, particularly when walking our dogs and have never felt that it should be any wider. The fence down the open field side is perfectly adequate and sufficient to protect walkers from livestock, should there be any".</i>	The level of use outside of the relevant period is not an applicable consideration under the Order legislation.
Mr V. Gaiger	<i>"I wish to Object to the making of the Order, the proposed width of the footpath & the stated distance of the footpath centre from the edge of the field".</i>	
Mr M. Gaiger	Ditto	
Mr B. Beddow	Mr Beddow points out that the proposed positioning of the footpath would make it necessary for Mr Kavanagh to move that fencing he has already generously put in place.	
	<i>"The width of 3.5 metres is just not consistent with other footpaths in the area".</i>	This is not a relevant consideration under the Order legislation
	<i>"I do not believe that 'on the balance of probabilities' a footpath exists".</i>	The existence or otherwise of a footpath will now be determined by the Secretary of State.
Mr Kavanagh (Principle Objector and Landowner).	<i>"I write to object to the Order in respect of the existence of a footpath itself, the proposed width and the proposed distance from the edge of the field".</i>	
	<i>"In respect of the existence of a right of way we do not feel that you have come to the right conclusion in your consideration of the prolonged periods each year when access was not available. We do not feel that the case law quoted is sufficiently relevant enough for you to rely on the conclusions you now draw from it in this instance".</i>	<i>'The interruption must be with intent to prevent public use of the way.²⁸ It will not be sufficient if the interruption is shown to have been for some other purpose...'</i> (Rights of Way A Guide to Law & Practice (4 th Edition) Ridall, J and Trevelyan, J pg.46 para 3) In Lewis v Thomas [1950] 1 KB 438 it was held that the locking of a gate across a right of way at nights to keep livestock in (and not with the express intention to prevent public rights being established) did not constitute an interruption of use (Sauvain, S (Q.C.) Highway Law, 4th Edition p 61 section 2-70 Sweet & Maxwell). The Department of Food & Rural Affairs (DEFRA) 'Rights of Way Advice Note 15'

		<p>states that it is DEFRA’s opinion that closures of rights of way during foot and mouth outbreaks do not constitute an “interruption” of use as intended by s.31 of the 1980 Act, because unlike wartime requisitioning of land, the landowner’s ability to dedicate is not removed. Similarly, in the Great Cheverell case, although the closures were for other reasons, i.e. the grazing of sheep, the landowner’s ability to dedicate was not removed. When Wiltshire’s rights of way were closed for the foot and mouth outbreak in 2001 it was for a longer period of time than the period closed off for grazing. DEFRA goes on to say that ‘Over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used’.</p> <p>Further to these arguments, some witnesses claim to have still used the footpath during the time of sheep grazing.</p> <p>The correct platform to argue if “interruption” as intended by s.31 of the 1980 Act has taken place is at public inquiry where all evidence can be tested by cross examination.</p>
	<p><i>“With regard to the width and positioning of the path we can only comment that there is no mathematical conclusion to be drawn in support of this from the evidence sent to us to date....Equally the evidence put forward itself suggests that walking took place further away from the edge of the field mainly due to the condition of the boundary. This does not appear to have been properly taken into account”.... “We would also comment that most of the evidence upon which the Council have relied especially in regard to width and positioning are based on a relatively short time period i.e. post 2001 to presumably when the fence was erected...in 2008...The evidence prior to that is far less certain indeed most of those quoting earlier years are either silent on the issue of width or state 1m. Certainly the pictorial evidence does not support anything approaching 3.5m”.</i></p>	<p>Of those witnesses that gave a width for the path, a mathematical average was extracted.</p> <p>The pictorial evidence Mr Kavanagh presumably refers to are photographs that are post relevant period.</p> <p>I agree with Mr Kavanagh that the path is some distance out from the edges of the fields and overall, the evidence suggests that the centre line of the path is 3.5 metres from the edge of the lower field and 2.5 metres from the edge of the upper field.</p> <p>There will be chances for both sides to give evidence on the width and positioning of the path before and at the public inquiry, where the inspector has powers to modify the Order in those respects, should he decide to confirm the Order.</p>

The Applicant’s comments on the objections are attached as **Appendix F**.

Main Considerations for the Council

15. The Council, as the surveying authority for the County of Wiltshire, excluding the Borough of Swindon, has a duty under Section 53 of the Wildlife and Countryside Act 1981 to investigate the application made by Brigadier Christie. Section 53 of

the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.

16. Section 53(2)(b) states:

“as regards every definitive map and statement, the surveying authority shall: “as from that date (the commencement date), keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”.

17. The events referred to in Section 53(2)(b) relevant to this case are set out below in Section 53(3)(c)(i):

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.”

18. In considering and determining the application, Wiltshire Council must have regard to ‘*all other relevant evidence available to them*’, as the statute demands.

19. Dedication of a way as highway can be presumed after public use for 20 years provided it satisfies the requirements of Section 31 of the Highways Act 1980. The Section states:

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

20. The Section provides that where a way has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate the way.

21. The term 'as of right' means without force, secrecy and permission. People using the way must do so openly without damaging the property and not be reliant on being given permission to use the path by the owner of the land over which the path runs.

22. The case of *R. v. Oxford County Council ex parte Sunningwell Parish Council* (1999) considered the issue of public use of a way. Lord Hoffman presiding stated, “...*the actual state of mind of the road user is plainly irrelevant*”, it is immaterial therefore whether the public thought the way was a 'public' path or not. The case concluded that it is no longer necessary to establish whether the users believe they have a legal right to use the land. Instead, it should be shown that use has been without force, secrecy and permission.

23. The use of the way must be without interruption. Once the 20 year uninterrupted use 'as of right' has been proved, the burden then moves to the landowner to show there was no intention to dedicate, i.e. evidence of any overt acts by the landowner

to deter the public from using the way, or conversely to permit the public to do so. Overt acts are covered in Section 31 (3)(4)(5) and (6) below:

24. Section 31 of the Highways Act states as follows:

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

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

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

*(3) Where the owner of the land over which any such way as aforesaid passes –
(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected.*

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

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

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

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

(i) within ten years from the date of deposit

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

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

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

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

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

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

26. The recent appeal case – Regina (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs drew the following conclusion regarding non-intention to dedicate: ...*'Sufficient evidence of no intention on the part of the landowner to dedicate a way as a highway required evidence of overt acts coming to the attention of users of the way'*.
27. It is noted that no witnesses record being aware of overt acts prior to 2008.
28. There have been no Highways Act 1980 Section 31(6) statutory deposits declaring non-intention to dedicate the claimed route deposited with the Surveying Authority during the relevant period. No notice under Section 31(5) has been given to Wiltshire Council during the relevant period (or at any other time).

The Order

29. It is important to note that this Order is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (see paragraph 17 of this report).
30. Further to the case of R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P & CR 402 it is clear that an Order may be made under this section by applying one of the following two tests:
 - TEST A: Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no credible evidence to the contrary.
 - TEST B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? This requires that the allegation of public rights is reasonable and there is no incontrovertible evidence to the contrary.
31. The evidence adduced in this case, from both supporters and objectors, forms at least a reasonable allegation that public rights subsist over the ways applied for, hence the Order was made.

32. To confirm the Order the stronger test needs to be applied, that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA* [2004] EWHC 1450 (Admin), Evan-Lombe J held that the burden of proof to be applied by the Secretary of State when confirming Orders modifying the Definitive Map and Statement was the civil burden of proof, namely the balance of probabilities.
33. No further evidence, either in support of the Order or in objection to it, has been brought to the Council's attention since the making of the Order and Wiltshire Council must consider whether it considers that, on the balance of probabilities, Test A applies to the evidence (in which case the Order would be supported), whether it considers that, on the balance of probabilities, Test A does not apply to the evidence (in which case the Order would be opposed).

Environmental Impact of the Recommendation

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

Risk Assessment

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

Financial Implications

36. It is considered that with this case, given the number of objectors and supporters and the need to test the evidence of both, a local Public Inquiry is the most probable route that the appointed Inspector will take.
37. The Council has a duty in law to support Orders where it is considered that on the balance of probability the Order public rights subsist as shown in the Order. Budgetary provision has been made for this.
38. The confirmation would be decided either by written representations, a Hearing or a local Public Inquiry. Written Representations would result in minimal cost to the Council, a Hearing would cost an estimated £850.00 and in the region of £2,500 for a two-day local Public Inquiry which is likely, or higher costs for a longer inquiry.

Options Considered

39. That:
 - (i) The confirmation of the Order is supported as made.
 - (ii) The confirmation of the Order is objected to.
 - (iii) The Council remains neutral as regards confirmation (see **Appendix G**).
 - (iv) The Council supports the Order with the modification that the centre-line of the footpath is 2.5m out from the hedge in Mr Alexander's field and 3.5m out from the hedge in Mr Kavanagh's field (see points 2 and 3 on page 11 of the decision report (**Appendix D**))

Conclusions

40. The evidence from users shows that on the balance of probabilities the route has been used by the public 'as of right' for a full period of twenty years. Therefore, in accordance with Section 31(1) of the Highways Act 1980 (subject to paragraph 41 below) the way would be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to dedicate it.
41. There is some dispute over whether the erection of temporary sheep fencing in the fields, which was sometimes across the way, constitutes an interruption of use. It is Officer's opinion that there has been no "interruption" (as intended by Section.31 of the 1980 Act) of use.
42. There has been no evidence given by objectors that any notices sufficient to rebut the presumption of dedication were in place during the relevant period and no other incontrovertible evidence against deemed dedication has been submitted.
43. There is some dispute over the width of the route and over exactly how far the route is out from the hedge. These points should be determined at local Public Inquiry by the Inspector who can test the evidence under cross examination. The Inspector has powers to modify an Order accordingly, should the need arise.

Reason For Recommendation

44. That, on the balance of probability, the legal criteria for confirmation of the Order have been met namely: *that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates* (see paragraphs 17, 29 and 32 above).

Recommendation

45. That the Wiltshire Council (Sheet ST 95 SE) (Parish of Cheverell Magna) Rights of Way Modification Order No 16 2011 is forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and that Wiltshire Council supports the Order with modification at Public Inquiry.

MARK BODEN

Corporate Director - Operations
Department of Neighbourhood and Planning

Report Author
Tim Chinnick
Rights of Way Officer

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

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

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

WILTSHIRE COUNCIL SHEET ST95SE PARISH OF CHEVERILL MAGNA RIGHTS OF WAY
MODIFICATION ORDER No. 16 2011

This Order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the Act') because it appears to that authority that the Definitive Map and Statement for the Devizes Rural District Council Area dated 1952 as modified under the Wildlife and Countryside Act 1981 requires modification in consequence of the occurrence of events specified in section 53(3)(c)(i) , namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

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

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

The Wiltshire Council hereby order that:

1. For the purposes of this order the relevant date is 16th June 2011
2. The Definitive Map and Statement for the Devizes Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council (Sheet ST95SE) Rights of Way Modification Order No 16 2011

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
16th day of June 2011 }
In the presence of: }



[Handwritten Signature]
Head of Legal Services
PRINCIPAL SOLICITOR

16717

SCHEDULE

PART I

MODIFICATION OF DEFINITIVE MAP

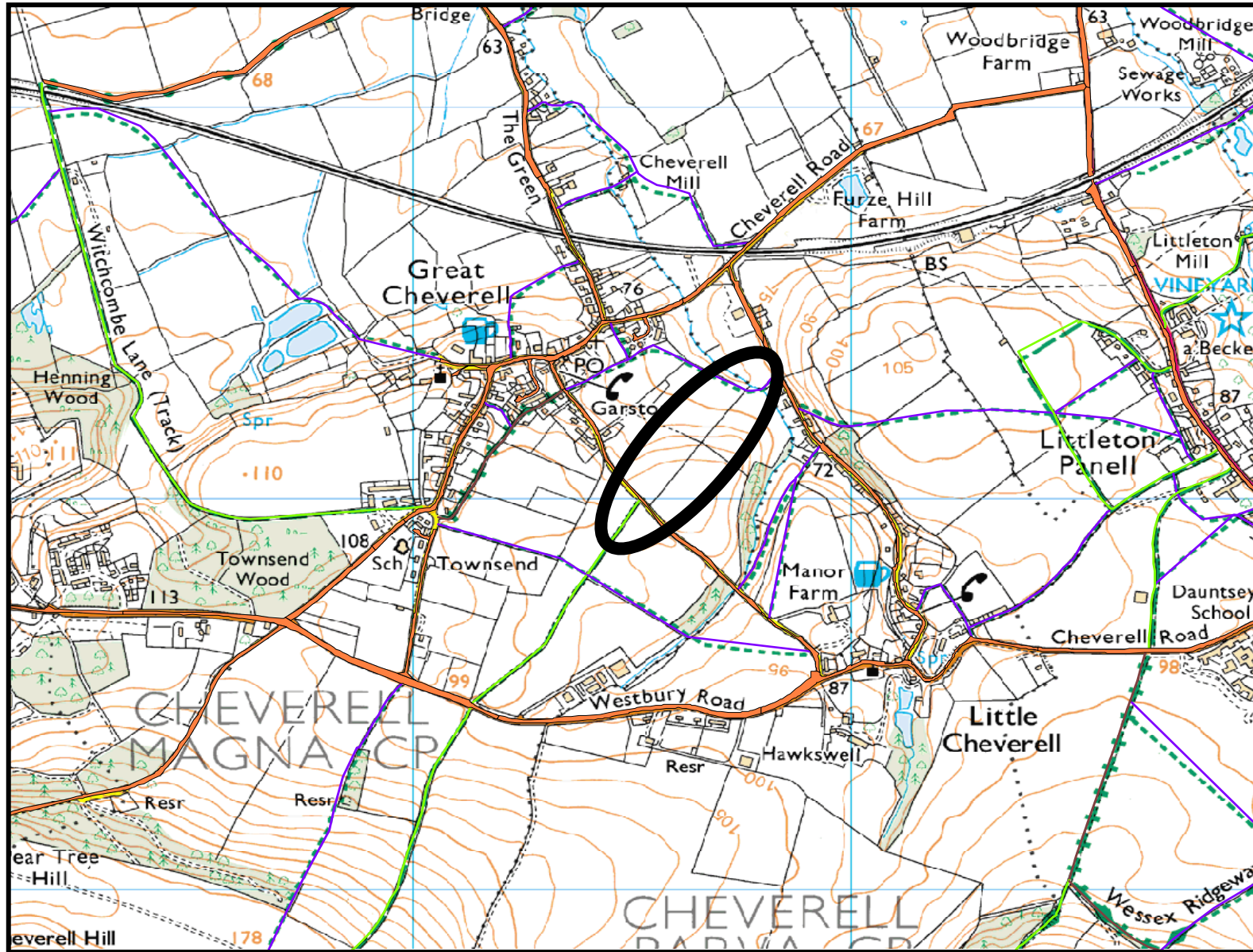
Parish	Path no	Description of path to be added	Modified under Section 53(3) as specified
Cheverill Magna	20	Length of footpath shown by pecked black line marked A-B-C on the plan annexed hereto. Length approximately 360 metres. Width 2.5 metres between A-B and 3.5 metres between B-C.	53(3)(c)(i)

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path no	Description of path to be added	Modified under Section 53(3) as specified
Cheverill Magna	20	Footpath from junction with u/c 7086 at O.S. grid reference ST98539,53979 in a north-easterly direction to its junction with footpath Cheverell Magna 6. Length approximately 360 metres. Width 2.5 metres between A-B and 3.5 metres between B-C.	53(3)(c)(i)

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DECISION REPORT LITTLE CHEVERELL

SUMMARY OF WITNESS STATEMENTS

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
1. Mr Alan Arnold	1948-2009 61yrs	F/P -	2 per week	Y	Y	N	N	Y	Used for recreation. Saw others walking. Fences and gates put up in 2008. Route became overgrown but remained useable.
2. Mrs Valerie Ann Bruce	1989-2009 20yrs	F/P 4-5m	3-5 per week	N*	Y	N**	N	Y	Used for dog walking. Saw others walking. *Would sometimes walk around perimeter of lower field **A neighbour has been instructed not to use it (outside relevant period) Gates erected Autumn 2008.
3. Mrs Anne Christie	2003-2009 6yrs	F/P 5-10m	1-2 per month	Y	Y	N*	N	Y	Used for recreation and dog walking. Saw others walking. *Mentions that Michael Maxwell, a neighbour, was forbidden to use the path (outside relevant period) Pedestrian gates and fences installed by new owner late summer 2008. Use restricted by vegetation during summer months since then.
4. Brig. Ian Christie	2003-2009 6yrs	F/P 5-10m	1-2 per week	Y	Y	N*	N	Y	Used for dog walking. Saw others walking. *Mentions that Michael Maxwell was forbidden from using the path after trying to use a strimmer to clear it (outside relevant period). Unlocked pedestrian gates and fences from 2008. Use restricted by overgrown vegetation during summer months since then.
5. Mrs Ann Clack	2002-2009 7yrs	F/P 1-2m	Daily	Y	Y	N	N	Y	Used for recreation. Some others walking. Unlocked gates (no mention of dates). Nettles caused some obstruction during summer but route remained useable.

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DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
6. Mr. W. Elliott	1996-2009 13yrs	- -	Daily	N*	Y	N	N	N	Used for recreation and visiting friends. Saw others walking. *Route varied sometimes for change of scenery; "mostly" walked claimed route.
7. Miss Claire Franklin	1982-2009 27yrs	F/P -	Daily	N*	Y	N**	N	Y	Used for dog walking, accessing amenities, walking to work and visiting friends. Saw others walking. *Walked around the edge of field to get into Shovel Woods. **Mentions that Mr. Maxwell was challenged. Three gates and fence since summer 2008. Mentions that claimed route has become impassable.
9. Mrs Louise George	2002-2009 7rs	F/P 1m	Daily	Y*	Y	N	N	Y	Used for recreation. Saw others walking. *Until landowner erected fencing and route became impassable due to vegetation. Gates and fences put up although these did not themselves prevent use.
9. Ms Diane Gilpin	1999-2009 10yrs	F/P -	2 per day	Y	Y*	N**	N	Y	Used for recreation, dog walking and attending to horses. Saw others walking. *Notes owner fenced it in such a way as to allow use to continue. **Has heard that a resident of Little Cheverell was 'banned' from using the path (outside relevant period). No gates until 2009. Path fenced in 2008. Overgrown vegetation makes use difficult.
10. Mrs Mary Hopkins	1971-2009 38yrs	F/P -	Daily	Y*	Y	N	N	Y	Used for exercise and recreation. Saw others walking. *Until obstructions put in place. "New" gates and fences.
11. Mr John Manners	1960-2000 40yrs	F/P -	1-2 per week +	N*	Y	N	N	N	*Sometimes used to cut across between the fields as shown on his map.

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DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
12. Mr Michael Maxwell	1963-2009 46yrs	F/P -	Daily from 2000	N*	Y	Y**	N	Y	Used for recreation and accessing amenities. Saw others walking. *Used to walk around the field boundary sometimes. **Strimmed path in early summer 2009 and informed PC. Went to do so again on 18 August 2009 but was challenged by landowner and told not to use the path as he was trespassing (outside relevant period). Gates appeared following sale, although these were not locked. Field was also fenced when it was sold.
13. Mr David Nichols	2002-2009 7yrs	F/P 1-2m	1-2 per week	Y	Y	N	N	Y	Used for recreation and dog walking. Saw others walking. New fence and gates "recently". Gates not locked.
14. Mrs Stephanie Nichols	2001-2009 8yrs	F/P -	1-2 per week	Y	Y	N	N	Y	Used for dog walking. Saw others walking. Gates installed with fence. Gates never locked. Notes that owner appeared to keep the route useable by installing gates.
15. Mr Bernard Nisbeck	1979-2009 30yrs	F/P -	2 per day	Y	Y*	N	N	Y	Used for recreation. Saw others walking. *Notes that owner fenced it leaving the path accessible. Gates and fences from October 2008.
16. Mr Hugh Russell	1996-2009 13yrs	F/P -	2-3 per week	Y	Y	N	N	Y	Used for dog walking. Saw others walking. Gates from 2008 and fence. Notes that path was too narrow and hence hard to use from that date.
17. Mrs Jennet Russell	1996-2009 13yrs	F/P c.1m	2-3 per week	Y	Y	N	N	Y	Used for recreation and dog walking. Saw others walking. Recent gates, never locked. Route fenced in 2008.

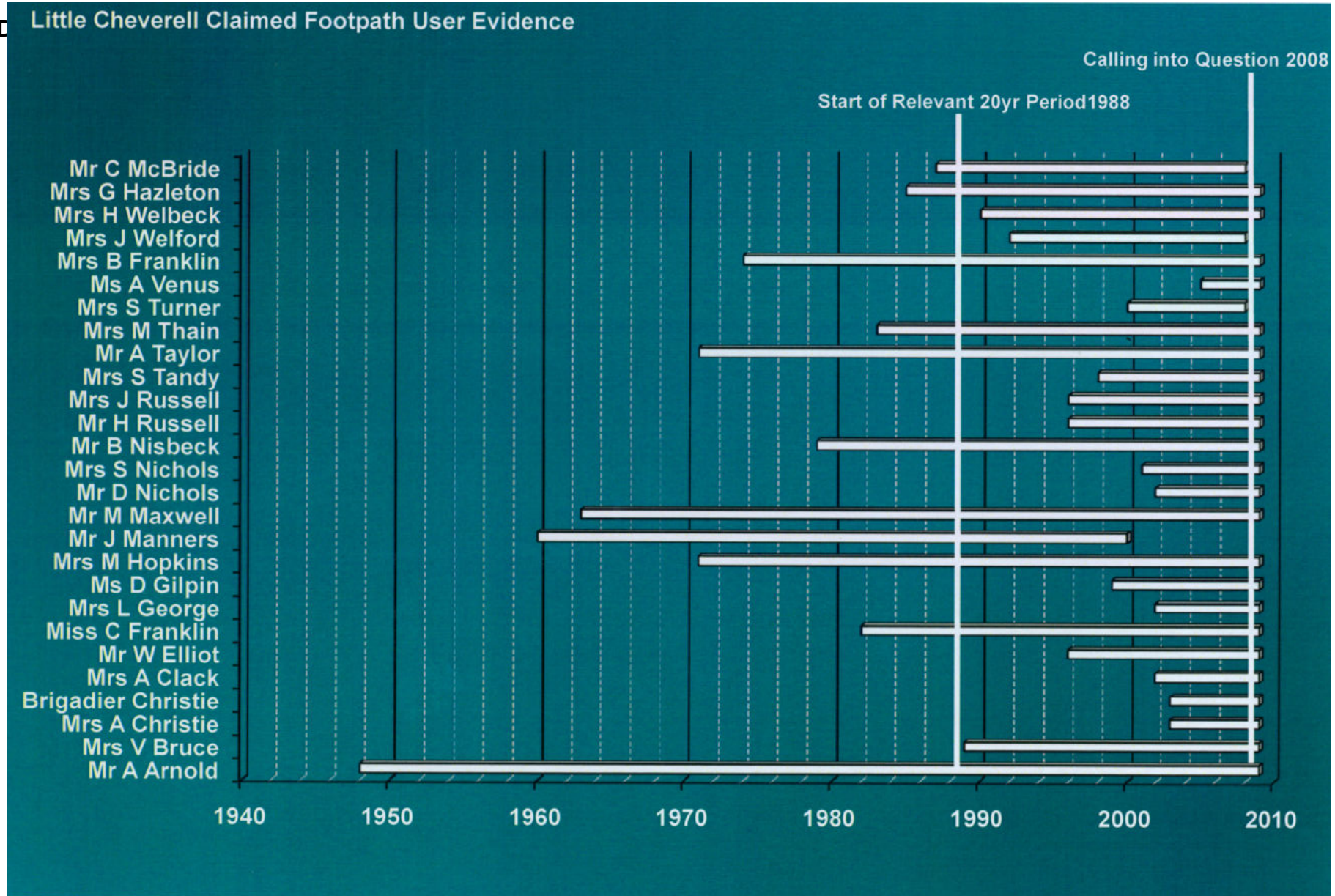
DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
18. Mrs Susan Tandy	1998-2009 11yrs	F/P -	Daily	N*	Y* *	N	N	Y	Used for recreation. Saw others walking. *Has walked other routes due to claimed path becoming overgrown. **Notes owner fenced path but left it open. Gates and fences. One gate cannot be used due to overgrown vegetation. Notes that route is now barely passable.
19. Mr Alan Taylor	1971-2009 38yrs	- c.3m	1-2 per week	Y	Y	N	N	Y	Used for walking the dog. Saw others walking. Fence and gates from 2008.
20. Mrs Mary Chain	1983-2009 26yrs	F/P 2-2.5m	Daily +	Y	Y	N	N	Y	Used for recreation, visiting friends and walking dog. Saw others walking. Recent gates and fencing. Notes that overgrown vegetation makes use difficult.
21. Ms Serena Turner	2000-2008 8yrs	F/P 1m	Daily	Y	Y	N	N	Y	Used for dog walking. Saw others walking. Gates and fence from 2008, at which point ceased to use the route.
22. Ms Anne Venus	2005-2009 4yrs	F/P -	3 per week	Y	Y	N*	N	Y	Used for dog walking. Saw others walking. *Aware that Mr Maxwell was challenged (outside relevant period). Fence and gates installed late 2008. Does not use route very often anymore as it has become overgrown.
23. Mrs B Franklin	1974-2009 35 yrs	F/P Approx 10 ft	6 per yr	N	Y*	N	N	N	Used for visiting and dog walking and walking with children. Seen others dog walking *Owner aware due to local use since 1974. Not always used the same route (to vary walk)
24. Mrs J Welford	1992-2008 16 yrs	- 1.5m	2-3 per week	Y	Y*	N	N	N	Used for walking/dog walking Seen others dog walking No fences, No obstacles or gates, open field * Owner aware because it is a well worn path

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DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
25. Hanna Wisbeck	1990-2009 19 yrs	F/P 10 ft	3 per Day	Y	Y*	N	N	N	Used for recreation/walking with dog/ walking to and from school Seen others using path (walking) *Owner has seen us walking the dog.
26. Gill Hazleton	1985-2009 24 yrs	- -	Monthly	Sometimes	Y*	N	N	N	Used for walking / dog walking Seen others walking dogs No obstructions or gates *Owner aware because obvious use of track for walking etc.
27. Christopher McBride	1987-2008 21 yrs	F/P 6ft-10ft	3 per day	Y	Y*	Y**			*Owner aware. I passed the owner walking my dog. ** Was turned back when fence was being erected. Has been told the way was not public (outside relevant period)



DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

Purpose of Report

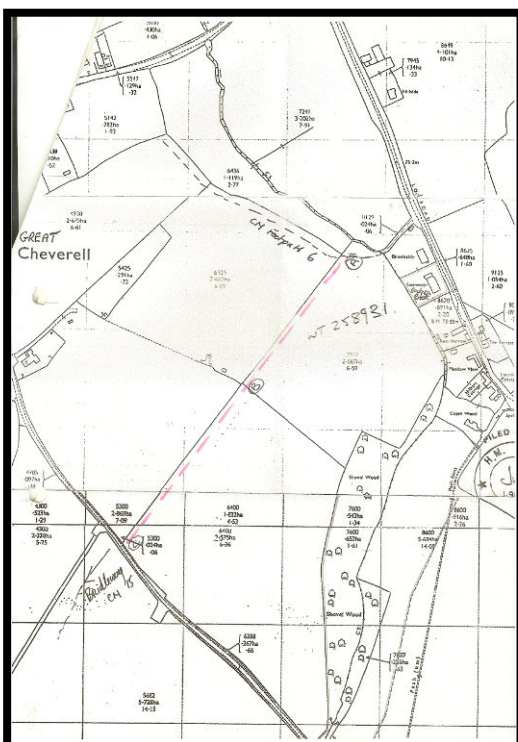
To: Consider an application to add a public footpath at Great Cheverell to the Definitive Map and Statement for the Devizes Rural District Council Area 1952.

1. Application Details:

Application number: 2009/05
 Application date: 28 October 2009
 Applicant: Brigadier Christie
 Manor House Farm
 Great Cheverell
 Devizes SN10 5YA

2. Application to: Add a public footpath to the Definitive Map and Statement for Devizes Rural District Council Area 1952. The claimed route is that length of path shown as a pink pecked line on the application plan (a copy of which is shown on page 2 of this report) leading in a westerly direction from Cheverell Magna Footpath 6 to unclassified road No.7086 (Known as School Lane or Garston Lane).

Copy of Application Map (reduced, not shown to scale)



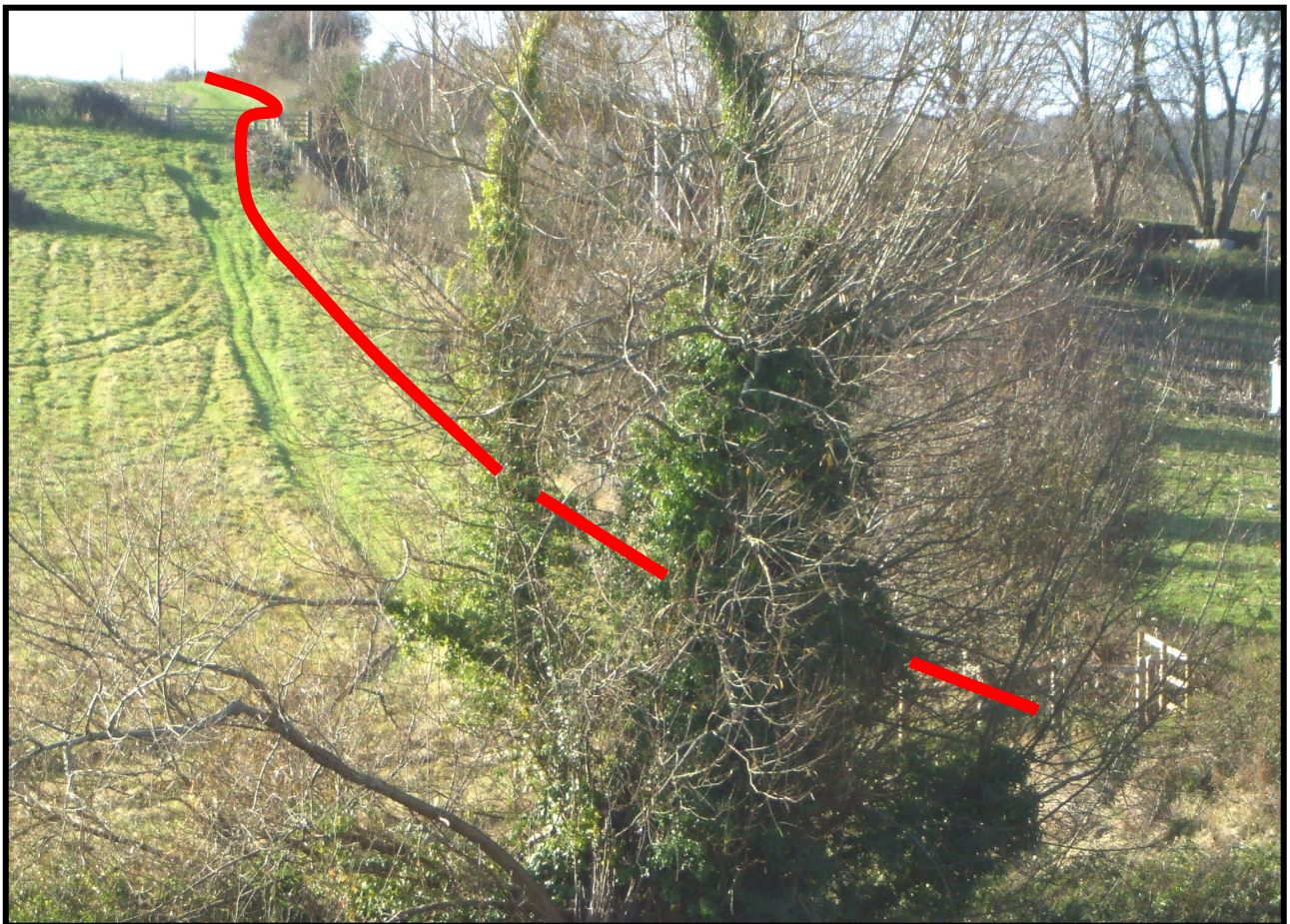
3. Contents of Application:

- Application for Modification Order (28/10/2009).
- Notice of Application for Modification Order (28/10/2009).
- Certificate of Service of Notice served on the landowner (29/10/2009).
- A map of appropriate scale (1:2,500).
- 27 supporting witness evidence forms.

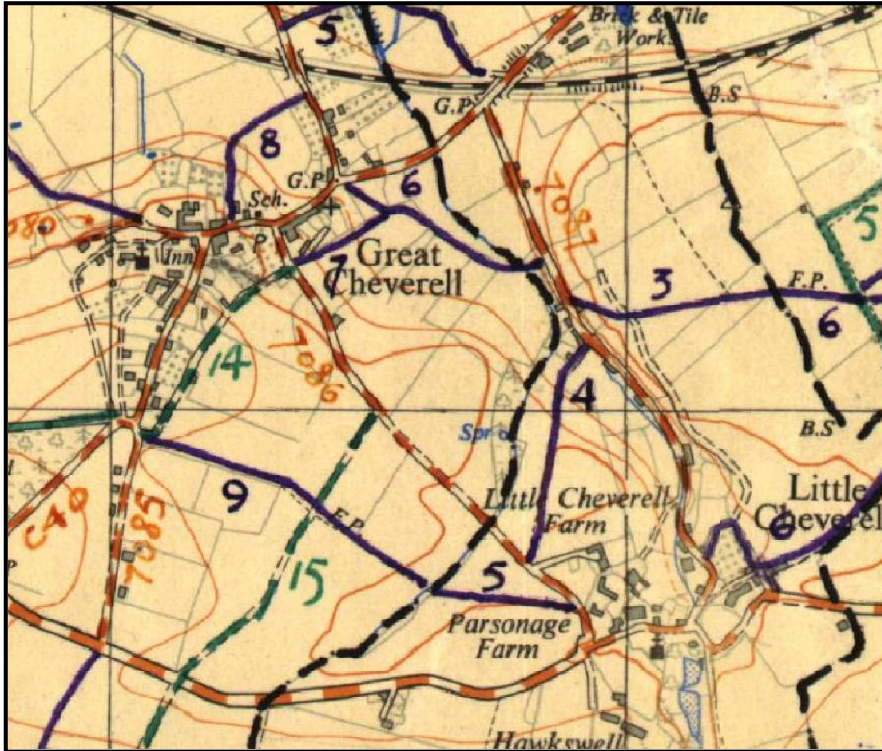
4. Basis of Application: That public rights exist over the claimed route that are not shown on the Definitive Map and Statement for Devizes Rural District Council Area 1952.

5. Description of Route: The claimed path is a grass and earth track bounded by hedgerow to the north-west and has an open field to the south-east. The width of the claimed route is stated in the application as being 4 metres in the south-west field and 10 metres in the north-east field. The claimed route has an approximate length of 360 metres.

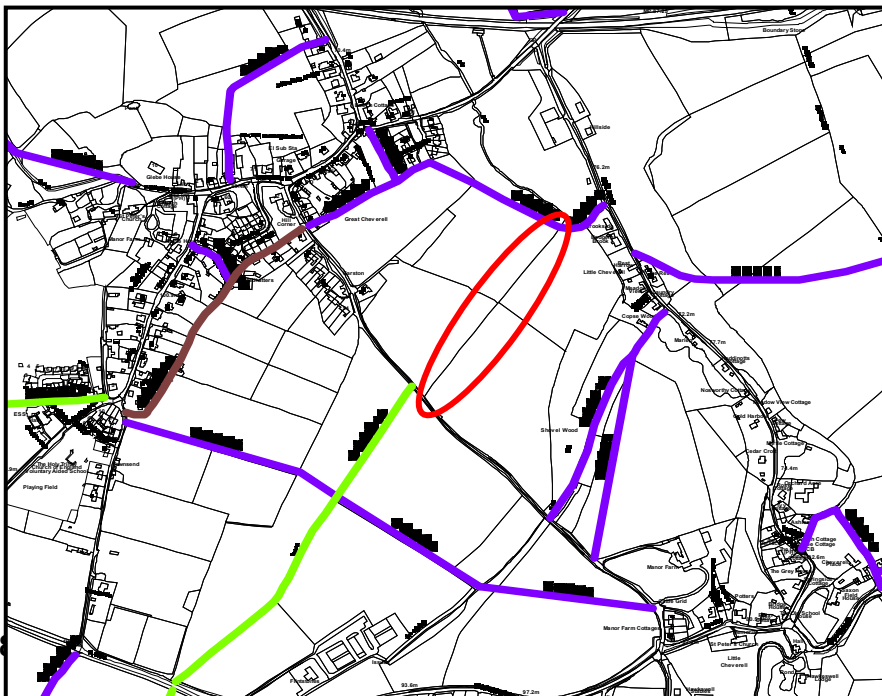
The approximate claimed route is indicated by a red line. Mr Kavanagh's field is in the foreground and Mr Alexander's field at the top of the photo, past the gate.



6. DEFINITIVE MAP



7. Current Electronic Working Copy of Definitive Map: Representation of public rights of way in this area from the working copy of the Definitive Map as at October 2010. [Blue = Footpath, Green = Bridleway, Brown = Byway]. This map has no legal status, but indicates the current extent of the public path network for working purposes. Location of claimed route circled in red.



Landowner	Address
Mr and Mrs Kavanagh	Meadow View, Low Road, Little Cheverell Wiltshire, SN10 4JZ
Mr F.W and Mr B Alexander	23 Brettingham Gate, Swindon, SN3 1NH

9. Background:

1.1 The Definitive Map and Statement was prepared under the 1949 National Parks and Access to the Countryside Act. This Act required the Definitive Map and Statement to be reviewed every five years. The Council is under a legal duty under Section 53 of the Wildlife and Countryside Act 1981 to determine any Definitive Map Modification applications submitted to them.

1.2 An application was received on 29 October 2009 by a member of the public, Brigadier I. Christie, to add a public footpath to the Definitive Map and Statement. The application is supported by 27 witness evidence statements. Apart from aerial photographs there has not been any other documentary evidence discovered supporting the application. The application is therefore mainly reliant on the user evidence, a summary of which is attached as **Appendix 1** to this report.

10. Dedication of way as highway presumed after public use of 20 years: The evidence submitted with the application must show, on the balance of probabilities, that the route has been used continuously by the public on foot 'as of right' (without force, secrecy or permission), for a period of time in excess of 20 years, sufficient to satisfy dedication as a public footpath under the 1980 Highways Act.

10.1 Section 31 of The Highways Act 1980 states:

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

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

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

–

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

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

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

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

(6) An owner of land may at any time deposit with the appropriate council-

(a) a map of the land on a scale of not less than 6 inches to 1 mile and

(b) a statement indicating what ways(if any) over the land he admits to having been dedicated as highways;

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

(i) within ten years from the date of deposit

(ii) within ten years from the date on which any previous declaration was last lodged under this section, to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has

been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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

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

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

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

10.2 There is no statutory minimum level of user required for the purpose of Section 31 and the matter does not appear to have been tested in the courts. However, it is clear that the surveying authority must be satisfied that there was a sufficient level of use for the landowner to have been aware of it, and have had the opportunity to resist it if he chose.

11. The Calling into Question

11.1 Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years. The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*). The period of 20 years

is taken as 20 years counted back from the date that the way was first called into question. There are two possibilities for this date

- i) The late summer of 2008 when the landowner erected fences and gates which partially obstructed access to the used route.
- ii) The application for a Definitive Map Modification Order (28 October 2009).

11.2 In late summer of 2008 gates and a fence were erected in the 'upper field' owned by Mr Kavanagh. The gates were erected across the way at each end of the field and a fence erected about 3 - 4 metres out from the centre of the hedge. The gates were not locked but the gates and fence narrowed the claimed route considerably. Three of the witnesses stopped using the route immediately, and although another two witnesses stopped using the way when it began to get overgrown in the spring of 2009, the majority of witnesses (19) continued to use the route through the summer of 2009. It would seem that the majority of the public who were using the route did not see the erection of the gates and fence as a challenge to public use therefore the submission of the application has been taken to be the relevant date for the calling into question of public rights. However, it can be seen from the graph of user evidence in **Appendix 1** that the above choices of a relevant date have no statistical impact on the evidence which sufficiently covers use spanning both of the above mentioned dates.

12. Legal Empowerment: Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. A Surveying Authority is the body responsible for the preparation and continuous review of the Definitive Map and Statement of public rights of way.

12.1 The Wildlife and Countryside Act 1981 (c.69) s.53 (2) (b) applies: *As regards every definitive map and statement the Surveying Authority shall-*

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

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

The event referred to in subsection 2 above relevant to this case is:

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

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

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

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

Schedule 14 to this Act states:

Form of applications

An application shall be made in the prescribed form and shall be accompanied by –

- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates and*
- (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*

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

13. Submitted Evidence:

13.1 The application, claiming continuous public use ‘as of right’ (see paragraph 11.1), which covers the relevant period 1988 - 2008 (see paragraph 9.2), is supported by 27 witness user evidence forms. A summary of the evidence forms is attached to this report as **Appendix 1**.

13.2 Ten of the witnesses claim to have been using the way at the start of the relevant period in 1988. By 2008, 26 witnesses were claiming use (see graph of user evidence in **Appendix 1**). Claimed use goes further back than the relevant period with seven of the witnesses claiming to have used the way in the 1970's, with one witness claiming to have used it as far back as 1946.

13.3 Witnesses indicate that use was open and the landowners must have been aware of the use as walkers use the path from dawn till dusk and workers in the fields have seen people using the way. All witnesses have stated that they had no permission to use the way. Use was claimed to have been without force. Therefore, according to the evidence submitted, the general use has been alleged to have been 'as of right' which is defined above in paragraph 11.1.

14. Consultation and Further Discussion of Evidence: Prior to this report a public consultation was undertaken.

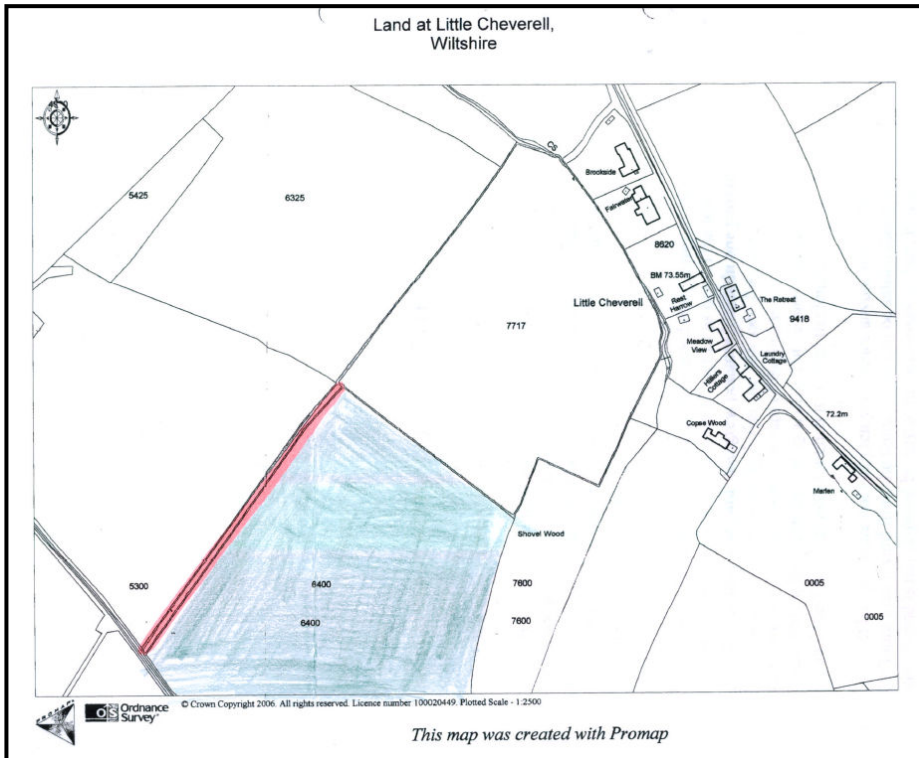
14.1 The consultation attracted four representations against the application from which seven main points of contention arose.

1. Shrubs and trees stopped people walking within a yard from the 'fence'.
2. Crops stopped people walking further out than a yard from the fence.
3. The public have only used the way to any extent since 2005.
4. Use of the way has been with permission.
5. Electrified sheep fencing has at times stopped people using the way.
6. Docks and thistles prevented use of one of the fields in 2005.
7. A dung-heap and a badger sett deterred and/or prevented use for many years.

These points were put to the witnesses for further comment. The seven points are shown below with Officer's comments on each point. Italics show relevant extracts from objector's written responses to the consultation.

POINT 1

Mr Alexander (landowner) states the following: “We understand that Brigadier Christie (and we assume all the other witnesses) agree that until four or five years ago when walking the field marked ‘6400’ (shaded blue) on the plan below, and owned by us, that they walked within about a yard from the fence, and not the existing path some four or five yards from the fence”.



Officer's Comments:- Brigadier Christie's written reply explains that Mr Alexander misunderstood him and Brigadier Christie says he did not walk within about a yard from the fence, indeed he claims it to have always been about 4 metres into the field. Several of the witnesses make the point that because of shrubs and trees along the centre of the old 'fence' line it would have been impossible to have walked within a metre of this line. The witness evidence indicates that the way was walked at various distances from the fence line up to a maximum of about 4 metres out into Mr Alexander's field and up to a maximum of about 10 metres out into Mr Kavanagh's field. A 2001 aerial photograph (Mapexplorer™) and a 2005 aerial photograph (Mapexplorer™) taken from the Wiltshire Council electronic mapping system suggest that a defined route was being used at the times that the photographs were taken (attached to this document as **Appendix 2**). The route is slightly less clear in Mr Kavanagh's field, but it can still be seen as a distinct path. One witness makes the point that the broken down remnant of what was once a fence with an intermittent row of shrubs is hardly straight enough to gauge the distance a path may be from it.

Evidence of one of the witnesses (Mr Manners) will be discounted from the Order decision due to his submission of conflicting maps of the route that he used.

POINT 2

Mr Alexander also states: *“Until 2003 it (the field shaded blue on the plan shown above) was farmed for a good many years to grow potatoes, and at this time the farmer ploughed as near to the fence as possible (within one yard) and grew potatoes to within one yard of the fence, and people never walked over the potatoes, they always walked in the last furrow, which was within a yard from the fence. It has therefore not been ten years since anyone has walked the land for more than a yard from the fence...”* Mr Howat (Farm Manager for the two fields 1987-2000) states: *“During that time we grew corn in both fields ploughing right up to the hedgerows at the edge of the field. I was not aware of any use of the claimed footpath or resultant crop damage.”*

Officer’s Comments: It is suggested by the landowner that up to the year 2003 people walked within a yard from the ‘fence’ in field 6400. The density of the hedgerow which consisted of shrubs and trees at that time can clearly be seen in the 2001 aerial photograph and would have made it very difficult to walk within a metre of the ‘fence-line’. This equally applies to ploughing within a metre of the ‘fence-line’. The witness testimony shows (rounded to the nearest half a metre) that in Mr Alexander’s field the mean distance claimed is 2.5 metres out from the hedge-line and the mean width claimed is also 2.5 metres. The 2001 photograph clearly shows a well defined track in Mr Alexander’s field that supports this evidence.

POINT 3

Mr Kavanagh (landowner since 4 April 2007) states: *“(Public have used the way) but only to any extent since 2005 when the lower field was put into set aside but even then only when cultivation of the top field and grazing in both fields allowed.”* **Officer’s Comments:** There are twenty seven witness evidence forms supporting the application indicating sufficient public use over the relevant twenty year period. Although the application states a claimed width of 10 metres in Mr Kavanagh’s field, the applicant points out in further correspondence (22 November 2010) that he is not expecting the path to be 10 metres wide but 10 metres from the boundary/hedge in Mr Kavanagh’s field and around 4 metres from the boundary in Mr Alexander’s field. The witness testimony taken as a whole shows (rounded to the nearest half a metre) that in Mr Kavanagh’s field the mean distance claimed is 3.5 metres out from the hedge-line and the mean width claimed is also 3.5 metres. The 2001 photograph mentioned in Point 2 above shows that the track is further out when it reaches Mr Kavanagh’s field. This supports the user evidence.

POINT 4

Mr Kavanagh also states: *“We have since our ownership made it clear to anyone using the claimed footpath that they may do so but that it is not a public right of way. We have made this clear to any interested parties as well”.* **Officer’s Comments:** All 27 witnesses that have supplied evidence deny being told by the landowners before or during the relevant twenty year

period that the way was not a public right of way. There is no evidence to show that any of the witnesses were given express permission by the landowners to use the way. There is no evidence which shows that notices indicating that the route is not a public right of way have ever been erected on or near the way and visible to users of the way. None of the witnesses used force and all have used it openly. Therefore, any use claimed seems to have been 'as of right' or *nec vi, nec clam, nec precario* (without force, without secrecy, without licence).

POINT 5

Mr Fielding (farmer who wintered ewes from 2000-2008 for periods of 4-6 weeks in each of the two fields) states: *"Over that period I always had electrified sheep fencing right up to the northwest boundary or hedgerow of the field leaving no room for access over the claimed footpath. Given that I often went straight from one field to the other in succession, this means that the claimed footpath in its entirety would have been impassable for 10-12 weeks at a time. Officer's*

Comments: The recent judgement in the Supreme Court by Lord Hope, Lord Rodger, Lord Walker, Lord Brown and Lord Kerr in the case of R(on the application of Lewis) v Redcar and Cleveland Borough Council and another [2010] UKSC 11 addresses whether use by the public could be 'as of right' if they didn't exercise that right when the land was being used for another purpose. The case in question related to a town and village green application where the public had not been using the land when golfers were using it as a golf course.

The judgement found that users had exhibited courtesy and common sense in not interfering with the golfers and that it was not inconsistent with their use of the land 'as of right' as it did not constitute an interruption.

Although the periods of time when the route was unavailable to the public was much longer in this case (4-6 weeks at a time during the winters of 2000-2008), the open nature of the surrounding land would have made it a very small diversion to take if a walker found their usual walk barred by electric sheep fencing and did not want to intrude out of politeness and respect for the landowner. The witness evidence suggests that any temporary electric fencing to control sheep proved to be no deterrent to a few of the people using the way. However, some of those that were deterred found a close temporary detour and others went a different way altogether. Overall, this shows that at least some use of the way is claimed to have continued during these temporary periods of controlled grazing. However, Mr Pearce and Mr Fielding (farmers of the fields during the relevant period) have stated that the sheep fencing was of the orange mesh type and 1m high which would mean anyone who did get over it would have had to have been very agile and very determined. Mr Fielding said the fencing was right up tight to the hedge and he used to turn off the electricity when he had to cross the fencing. Mr Pearce said that the flexi netting was two or three feet from the hedgerow otherwise it was possible it would short out.

D.E.F.R.A.'s Rights of Way Advice Note 15 on the Planning Inspectorate website states that *'Over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used. In cases where a landowner's ability to dedicate has not been removed it would be reasonable for an Inspector to take the view that, in a period of 20 years or more, periods of non-use of a way may occur'*. Talking about closures for Foot and Mouth the advice note says *'against this background, it does not seem that the temporary cessation of use of ways ... could be classified as an "interruption" under section 31(1)'*. Closing orders for Foot and Mouth occurred in Wiltshire in March and re-openings occurred in May and June which is a longer length of time than the claimed way was obstructed by sheep pens. Therefore, it is likely that the sheep pens were not sufficient to constitute an interruption of continual use of the way for the meaning of the Act, especially in the light of some users claiming to have still used the way during those times.

POINT 6

Mr Pearce who was the farmer of the two fields from 2005-2008 states in a letter: *"...during 2005 prior to our tenancy the field was not cropped at all and became (so) overgrown with docks, thistles and undergrowth, that no one could walk dogs etc at all."* Mr Pearce said during an interview that when he was farming, grass and maize were grown but it was possible that people walked through the maize close to the edge although he had not done this himself. **Officer's Comments:** The witness evidence claims that the presence of docks and thistles in the field did not prevent use of the path and it seems that it would still have been possible for people to use the way, even with maize planted in Mr Alexander's field.

POINT 7

Mr Cope who is a local resident states that: *"The large badger sett in the gateway at the top of the field had many entrances and caused difficulty for implements and anyone on foot and the supposed footpath could not continue west because the field was bounded by a large dung heap for many years – a perfect undisturbed home to breeding wagtails and deterrent for walkers!"* **Officer's Comments:** Aerial photographs and various letters from witnesses commenting on points raised by objectors indicate that there were no dung heaps or badger setts actually on the claimed route. It is also clear from the user evidence submitted and further correspondence that the closeness of either of these to the claimed route have proved no deterrent to the use of the way.

15. Options considered: To Make an Order or not to make an Order.

15.1 If an Order is made there will be a 42 day statutory objection period. If no objections are received the Order may be confirmed by Wiltshire Council and the footpath will be added to the Definitive Map and Statement. If there are objections, the Order must go together with the objections and representations to the Secretary of State for the Environment, Food and Rural

Affairs for a decision on whether or not to confirm the Order. This may be at a local Public Inquiry, a Hearing, or by written representations although a local Public Inquiry is the most likely method.

15.2 If an Order is not made there is a 28 day statutory period in which the Applicant may appeal to the Secretary of State against the Council's decision not to make an Order. On appeal, the Secretary of State has the power to instruct the Council to make an Order. If there are then objections to the making of the Order, the same course of action is followed as outlined in the preceding paragraph.

16. Risk Assessment: If an Order is made and confirmed as an unopposed Order by Wiltshire Council administration costs would be in the region of £700. If the Council sends the Order to the Secretary of State the confirmation would be decided either by written representations, a Hearing or a local Public Inquiry. On top of administration costs, written representations would result in minimal further cost to the Council, a Hearing would cost an extra estimated £850.00 and a local Public Inquiry in the region of an extra £2,500. Budgetary provision has been made to cover these costs.

17. Environmental impact: There is no foreseen environmental impact in making and confirming an Order.

18. Conclusion: Section 53 (3) (c) (i) provides that an Order should be made *'if the Authority discovers evidence which, when considered with all other relevant evidence available to them, shows that a right of subsists or is reasonably alleged to subsist over land in the area to which the map relates'*. In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs Norton and Mr R Bagshaw* (1994) 68P & CR 402 (Bagshaw):

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

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

The Oxford English Dictionary describes incontrovertible as not able to be denied or disputed. In this case, points of objection are in fact disputed by the witnesses. Although the claimed width of the route varies and is under dispute and uninterrupted use is also disputed, on the balance of

probability the evidence shows that, in the absence of incontrovertible evidence to the contrary, it is reasonably alleged that twenty use 'as of right' has occurred between points A and B on the application plan, therefore the criteria for making an Order has been met (see paragraph 12.1 above) and the Authority is under a duty to make an Order. The claimed width of the way varies, with different witnesses claiming between one and ten metres. The average claim is 2.5 metres wide in Mr Alexander's field and 3.5 metres wide in Mr Kavanagh's field.

19. Recommendation: That Wiltshire Council makes an Order to record the way onto the Definitive Map and Statement for Devizes Rural District Council Area 1952 with the status of public footpath with an approximate length of 360 metres and with a width of 2.5 metres in Mr Alexander's field and with a width of 3.5 metres in Mr Kavanagh's field.

Tim Chinnick
Rights of Way Officer (Definitive Map Section),
Wiltshire Council
29 March 2011

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SUMMARY OF WITNESS STATEMENTS

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
1. Mr Alan Arnold	1948-2009 61yrs	F/P -	2 per week	Y	Y	N	N	Y	Used for recreation. Saw others walking the claimed route. Fences and gates put up in 2008. Route became overgrown but remained useable.
2. Mrs Valerie Ann Bruce	1989-2009 20yrs	F/P 4-5m	3-5 per week	N*	Y	N**	N	Y	Used for dog walking. Saw others walking the claimed route. *Would sometimes walk around perimeter of lower field **A neighbour has been instructed not to use it Gates erected Autumn 2008.
3. Mrs Anne Christie	2003-2009 6yrs	F/P 5-10m	1-2 per month	Y	Y	N*	N	Y	Used for recreation and dog walking. Saw others walking the claimed route. *Mentions that Michael Maxwell, a neighbour, was forbidden to use the path. Pedestrian gates and fences installed by new owner late summer 2008. Use restricted by vegetation during summer months since then.
4. Brig. Ian Christie	2003-2009 6yrs	F/P 5-10m	1-2 per week	Y	Y	N*	N	Y	Used for dog walking. Saw others walking the claimed route. *Mentions that Michael Maxwell was forbidden from using the path after trying to use a strimmer to clear it. Unlocked pedestrian gates and fences from 2008. Use restricted by overgrown vegetation during summer months since then.
5. Mrs Ann Clack	2002-2009 7yrs	F/P 1-2m	Daily	Y	Y	N	N	Y	Used for recreation. Some others walking the claimed route. Unlocked gates (no mention of dates). Nettles caused some obstruction during summer but route remained useable.

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DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
6. Mr. W. Elliott	1996-2009 13yrs	- -	Daily	N*	Y	N	N	N	Used for recreation and visiting friends. Saw others walking the claimed route. *Route varied sometimes for change of scenery; "mostly" walked claimed route.
7. Miss Claire Franklin	1982-2009 27yrs	F/P -	Daily	N*	Y	N**	N	Y	Used for dog walking, accessing amenities, walking to work and visiting friends. Saw others walking the claimed route. *Walked around the edge of field to get into Shovel Woods. **Mentions that Mr. Maxwell was challenged. Three gates and fence since summer 2008. Mentions that claimed route has become impassable.
8. Mrs Louise George	2002-2009 7rs	F/P 1m	Daily	Y*	Y	N	N	Y	Used for recreation. Saw others walking the claimed route. *Until landowner erected fencing and route became impassable due to vegetation. Gates and fences put up although these did not themselves prevent use.
9. Ms Diane Gilpin	1999-2009 10yrs	F/P -	2 per day	Y	Y*	N**	N	Y	Used for recreation, dog walking and attending to horses. Saw others walking the claimed route. *Notes owner fenced it in such a way as to allow use to continue. **Has heard that a resident of Little Cheverell was 'banned' from using the path. No gates until 2009. Path fenced in 2008. Overgrown vegetation makes use difficult.
10. Mrs Mary Hopkins	1971-2009 38yrs	F/P -	Daily	Y*	Y	N	N	Y	Used for exercise and recreation. Saw others walking the claimed route. *Until obstructions put in place. "New" gates and fences.
11. Mr John Manners	1960-2000 40yrs	F/P -	1-2 per week +	N*	Y	N	N	N	*Sometimes used to cut across between the fields as shown on his map.

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DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
12. Mr Michael Maxwell	1963-2009 46yrs	F/P -	Daily from 2000	N*	Y	Y**	N	Y	Used for recreation and accessing amenities. Saw others walking the claimed route. *Used to walk around the field boundary sometimes. **Strimmed path in early summer 2009 and informed PC. Went to do so again on 18 August 2009 but was challenged by landowner and told not to use the path as he was trespassing. Gates appeared following sale, although these were not locked. Field was also fenced when it was sold.
13. Mr David Nichols	2002-2009 7yrs	F/P 1-2m	1-2 per week	Y	Y	N	N	Y	Used for recreation and dog walking. Saw others walking the claimed route. New fence and gates "recently". Gates not locked.
14. Mrs Stephanie Nichols	2001-2009 8yrs	F/P -	1-2 per week	Y	Y	N	N	Y	Used for dog walking. Saw others walking the claimed route. Gates installed with fence. Gates never locked. Notes that owner appeared to keep the route useable by installing gates.
15. Mr Bernard Nisbeck	1979-2009 30yrs	F/P -	2 per day	Y	Y*	N	N	Y	Used for recreation. Saw others walking the claimed route. *Notes that owner fenced it leaving the path accessible. Gates and fences from October 2008.
16. Mr Hugh Russell	1996-2009 13yrs	F/P -	2-3 per week	Y	Y	N	N	Y	Used for dog walking. Saw others walking the claimed route. Gates from 2008 and fence. Notes that path was too narrow and hence hard to use from that date.
17. Mrs Jennet Russell	1996-2009 13yrs	F/P c.1m	2-3 per week	Y	Y	N	N	Y	Used for recreation and dog walking. Saw others walking the claimed route. Recent gates, never locked. Route fenced in 2008.

Page 4 of 5

DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
18. Mrs Susan Tandy	1998-2009 11yrs	F/P -	Daily	N*	Y* *	N	N	Y	Used for recreation. Saw others walking the claimed route. *Has walked other routes due to claimed path becoming overgrown. **Notes owner fenced path but left it open. Gates and fences. One gate cannot be used due to overgrown vegetation. Notes that route is now barely passable.
19. Mr Alan Tayler	1971-2009 38yrs	- c.3m	1-2 per week	Y	Y	N	N	Y	Used for walking the dog. Saw others walking the claimed route. Fence and gates from 2008.
20. Mrs Mary Chain	1983-2009 26yrs	F/P 2-2.5m	Daily +	Y	Y	N	N	Y	Used for recreation, visiting friends and walking dog. Saw others walking the claimed route. Recent gates and fencing. Notes that overgrown vegetation makes use difficult.
21. Ms Serena Turner	2000-2008 8yrs	F/P 1m	Daily	Y	Y	N	N	Y	Used for dog walking. Saw others walking the claimed route. Gates and fence from 2008, at which point ceased to use the route.
22. Ms Anne Venus	2005-2009 4yrs	F/P -	3 per week	Y	Y	N*	N	Y	Used for dog walking. Saw others walking the claimed route. *Aware that Mr Maxwell was challenged. Fence and gates installed late 2008. Does not use route very often anymore as it has become overgrown.
23. Mrs B Franklin	1974-2009 35 yrs	F/P Approx 10 ft	6 per yr	N	Y*	N	N	N	Used for visiting and dog walking and walking with children. Seen others dog walking the claimed route *Owner aware due to local use since 1974. Not always used the same route (to vary walk)
24. Mrs J Welford	1992-2008 16 yrs	- 1.5m	2-3 per week	Y	Y*	N	N	N	Used for walking/dog walking Seen others dog walking the claimed route No fences, No obstacles or gates, open field * Owner aware because it is a well worn path

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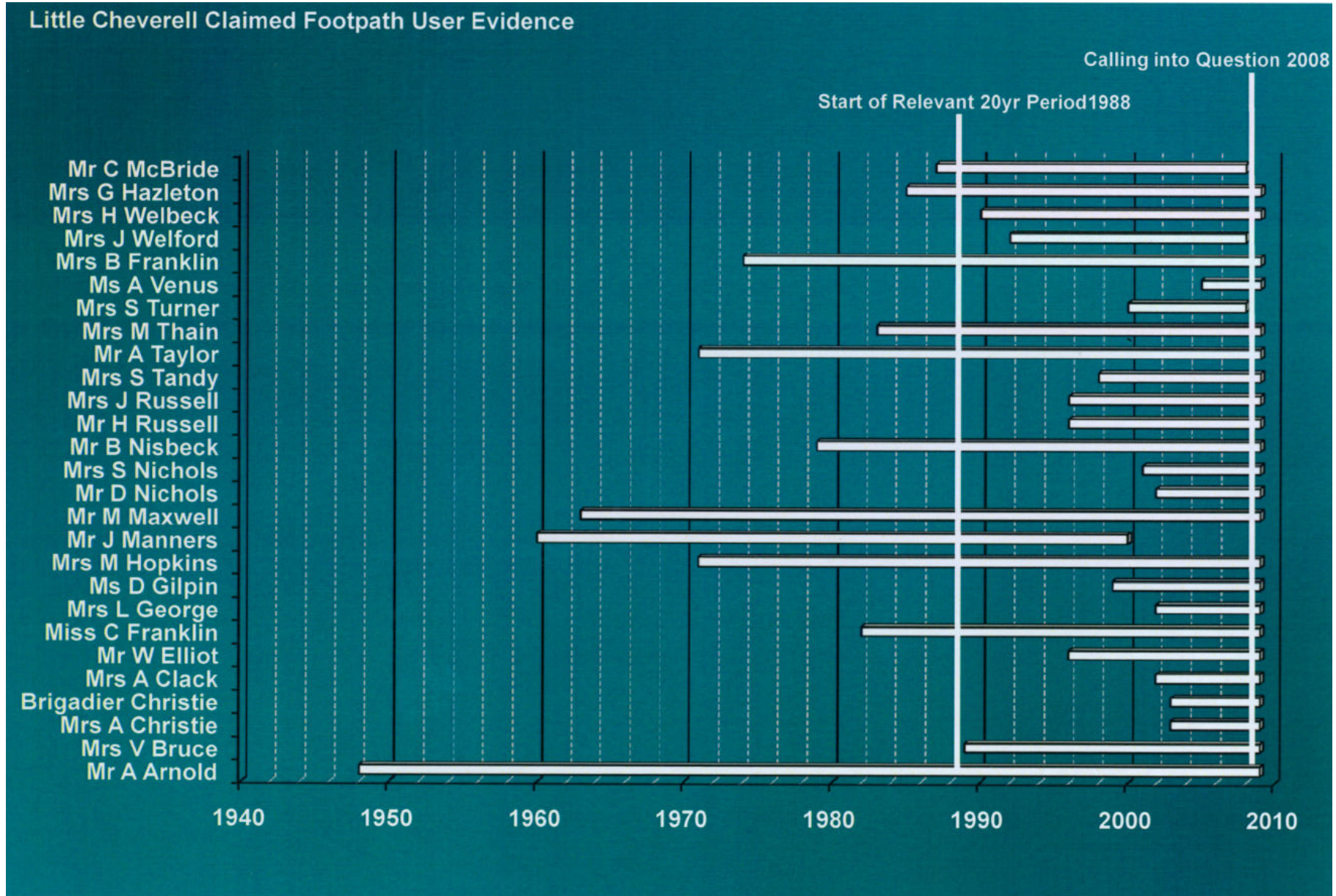
DECISION REPORT LITTLE CHEVERELL

WITNESSES	Dates of Usage	Believed Status and Width	Frequency	Same Route always used	Owner aware	Challenged	Permission	Obstructions/ Gates /Signs	COMMENTS
25. Hanna Wisbeck	1990-2009 19 yrs	F/P 10 ft	3 per Day	Y	Y*	N	N	N	Used for recreation/walking with dog/ walking to and from school Seen others using the claimed route (walking) *Owner has seen us walking the dog on the claimed route.
26. Gill Hazleton	1985-2009 24 yrs	- -	Monthly	Sometimes	Y*	N	N	N	Used for walking / dog walking Seen others walking dogs on the claimed route No obstructions or gates *Owner aware because obvious use of track for walking etc.
27. Christopher McBride	1987-2008 21 yrs	F/P 6ft-10ft	3 per day	Y	Y*	Y**			*Owner aware. I passed the owner walking my dog. ** Was turned back when fence was being erected. Has been told the way was not public (outside relevant period)

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DECISION REPORT LITTLE CHEVERELL

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PHOTOGRAPH 1

CLAIMED ROUTE TAKEN IN 2001



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2001 Aerial Photograph from Wiltshire Council Mapping Layer on Map Explorer™ (not to scale) black arrows point to claimed route



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PHOTOGRAPH 2

**ENLARGEMENT SHOWING
THE CLAIMED ROUTE IN
MR ALEXANDER'S FIELD IN
2001**



PHOTOGRAPH 3

FURTHER ENLARGEMENT SHOWING THE CLAIMED ROUTE AT APPROXIMATELY MID-WAY ALONG MR ALEXANDER'S FIELD IN 2001

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PHOTOGRAPH 4

**ENLARGEMENT SHOWING
THE CLAIMED ROUTE IN
MR KAVANAGH'S FIELD IN 2001**



PHOTOGRAPH 5

FURTHER ENLARGEMENT SHOWING THE CLAIMED ROUTE AT THE SOUTHERN END OF MR KAVANAGH'S FIELD IN 2001

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An important point to note from the above 2001 aerial photographs numbered 1-5 is that the claimed route is shown to be further out from the hedge in Mr Kavanagh's field. This is not inconsistent with the witness evidence.



PHOTOGRAPH 6

CLAIMED ROUTE IN 2005

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2005 Aerial Photograph from Wiltshire Council Mapping Layer on Map Explorer™ (not to scale) black arrows point to claimed route.



PHOTOGRAPH 7

**ENLARGEMENT SHOWING
THE CLAIMED ROUTE IN
MR ALEXANDER'S FIELD IN
2005/6**

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PHOTOGRAPHS 8 & 9

**ENLARGEMENTS SHOWING THE CLAIMED ROUTE IN
MR ALEXANDER'S FIELD IN 2005/6**

Approximately half way along Mr Alexander's field

South-western end of Mr Alexander's field. The route seems to become more diffuse here but the arrows attempt to point out the most worn track.

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PHOTOGRAPH 10

**ENLARGEMENT SHOWING THE
CLAIMED ROUTE IN MR KAVANAGH'S
FIELD IN 2005/6**

PHOTOGRAPHS 11 & 12

ENLARGEMENTS SHOWING THE CLAIMED ROUTE IN MR KAVANAGH'S FIELD IN 2005/6

North-eastern end of Mr Kavanagh's field



South-western end of Mr Kavanagh's field



As in the 2001 aerial photographs numbered 1-5, similarly the 2005 photographs numbered 6-12 indicate that the claimed route is shown to be further out from the hedge in Mr Kavanagh's field which is not inconsistent with the witness evidence.

THE EIGHT RESPONSES OBJECTING TO THE MAKING OF THE ORDER

File: gr. Cheverell
Objection to the order

Chinnick, Tim

From: Barnabas Beddow [barnabas.beddow@btinternet.com]
Sent: 05 August 2011 17:48
To: Chinnick, Tim
Subject: Wiltshire Council Sheet ST95SE Partish of great Cheverell Mod Order No 16 2011

Dear Mr Chinnick

Thank you for your letter dated 17 June reference the Cheverell Magna =
 Right of Way Modification order No 16 2011. I am truly astonished at the =
 decision as it stands and would like to make a firm objection. I do not =
 believe that "on the balance of probabilities" a footpath exists. The =
 width of 3.5 metres (from B-C) is just not consistent with other =
 footpaths in the area (and as a footpath traverses my own property I =
 would know). Additionally the positioning of this footpath vis a vis the =
 edge of the field seems to make the centre of the footpath some =
 5.25metres from the edge of the field. This would make it necessary for =
 Mr Kavanagh to move that fencing he has already generously put in place.

Yours sincerely

Mr B T Beddow
 Little Cheverell Mill
 Little Cheverell=20
 Devizes
 SN10 5UP

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From: Vince Gaiger [mailto:Vince@gaigerbros.co.uk]
Sent: 05 August 2011 11:49
To: Chinnick, Tim
Subject: Modification Order 16;2011 - Footpath, Little Cheverell

Dear Sir

I write to object to the making of the order, the proposed width of the footpath & the stated distance of the footpath centre from the edge of the field.

Yours faithfully

Vincent & Pamela Gaiger
 Orchard Acre
 Little Cheverell

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From: Mike Gaiger
Sent: 05 August 2011 11:30
To: 'tim.chinnick@wiltshire.gov.uk'
Cc: Vince Gaiger; Michael Kavanagh (michaelkavanagh@kavanaghs.co.uk)
Subject: Modification order No. 16;2011, Footpath Little Cheverell

Dear Sir

I write to object to the making of the order, the proposed width of the footpath & the stated distance of the footpath centre from the edge of the field.

1

Yours Sincerely
Michael Gaiger
Hawkeswell Lodge
Little Cheverell

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*File at Cheverell
objection*

Rose Cottage
Low Road
Little Cheverell
Devizes
Wiltshire SN10 4JY

Mr Tim Chinnick
Rights of Way Officer
Rights of Way Section
Department of Neighbourhood and Planning
Wiltshire County Council
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

14th July 2011

Ref: Modification Order No. 16 2011.

Dear Mr Chinnick,

As residents of Little Cheverell we are surprised to see that Mr Kavanagh is being asked to widen part of the path alongside his field to 3.5m (as per the a/m Modification Order). This is almost as wide as Low Road itself. We have used the path frequently over the years, particularly when walking our dogs and have never felt that it should be any wider. The fence down the open field side is perfectly adequate and sufficient to protect walkers from livestock, should there be any.

Why on earth are Council resources being used to enforce such a proposition? We would like to register our objections to the proposal.

Yours sincerely,

Spencer and Lynne Gammond

From Major Nicholas Haines

WILTS
 SPRINGSIDE COTTAGE
 LITTLE CHEVERELL
 DEVIZES
 SN10 4JS

01380 818280

12 July 2011

Dear Mr Chinnick,

MODIFICATION ORDER NO 16 2011

As a resident of Little Cheverell and frequent user of the footpath that is the subject of the above numbered order, I object in the strongest possible terms that the path should be 3.5m wide between the points B & C on the diagram. This is meant to be a footpath not a passage for large vehicles and if a 4' wide gate is considered adequate access, how can it possibly be right to require the path itself to be virtually 3 times that width?

The path, as it currently exists, is quite wide enough for a footpath. If it gets a little overgrown in places at times, that merely reflects how little regular use it gets. I believe that the provision by the present landowner of a stout fence along the open or field side of the path together with sturdy well maintained gates at either end not only clearly identifies the path but also provides protection for those using it (and their pets) in the event of cattle or other livestock being kept in the field.

The order, if implemented, would be an unwarranted limitation of the landowner's legal right to full enjoyment of his property. I therefore urge you to reconsider the order and to reduce the required minimum width to, at the most, 1.5 m.

Yours sincerely,
 Nicholas Haines

Mr Tim Chinnick, Rights of Way Officer
 Department of Neighbourhood and Planning
 Wiltshire Council
 Bythesea Road
 Trowbridge
 BA14 8JN

Tel: 01380 813322

*File to Cheverell
objection*

Cheverell Place,
Little Cheverell
Nr. Devizes,
Wiltshire, SN10 4JJ

14th July, 2011

Mr Tim Chinnick, Rights of Way Officer,
Dept. of Neighbourhood and Planning,
Wiltshire County Council,
Bythesea Road, Trowbridge, BA14 8JN.

Ref: Modification Order No. 162011

Dear Mr Chinnick,

I would like to ask you to reconsider the above referred order.

Rather than repeating the points made in the letter from
Brigadier Rawlins of the Grey House Little Cheverell, dated
11th July, may I refer you to it and say that I entirely agree
with the points which he has made.

Yours sincerely,

Ruth Hawley

(Lady Hawley)

Definitive Map & Highway Records Team Leader
Tel 01225 713044

From: Michael Kavanagh [mailto:michaelkavanagh@kavanaghs.co.uk]
Sent: 05 August 2011 15:31
To: Chinnick, Tim
Cc: Burke, Barbara; Linda Kavanagh
Subject: Proposed footpath modification order 16 2011
Importance: Low

Dear Mr. Chinnock,

I write to object to the order in respect of the existence of a footpath itself, the proposed width and the proposed distance from the edge of the field.

In respect of the existence of a right of way we do not feel that you have come to the right conclusion in your consideration of the prolonged periods each year when access was not available. We do not feel that the case law quoted is sufficiently relevant enough for you to rely on the conclusions you now draw from it in this instance.

With regard to the width and positioning of the path we can only comment that there is no mathematical conclusion to be drawn in support of this from the evidence sent to us to date. The proposed width is substantially wider than any other footpath in either of the parishes and indeed most of the adopted highways. Equally the evidence put forward itself suggests that walking took place further away from the edge of the field mainly due to the condition of the boundary. This does not appear to have been properly taken into account.

We would also comment that most of the evidence upon which the Council have relied especially in regard to width and positioning are based on a relatively short time period i.e. post 2001 to presumably when the fence was erected 4m from the boundary with locked gates to the remainder of the field in 2008. The evidence prior to that is far less certain indeed most of those quoting earlier years are either silent on width or state 1m. Certainly the pictorial evidence does not support anything approaching 3.5m.

You indicated when I rang you that you have already received objections to the order being made and that the matter will now go to inquiry. Please will you confirm by return that in light of this email and other objections this is the case.

Whilst writing I would comment that in arriving at its conclusion that a modification should be made the Council appear to have relied on information that they have failed to make available to us as land owners or any of the objectors. This includes the aerial mapping and the responses by supporters to both objectors initial comments and to their subsequent comments on interview. By not doing so you have denied us the opportunity to comment on what the Council now appear to regard as material evidence.

We are considering making a formal complaint in this respect of these issues but are awaiting comments from Barbara Burke prior to doing so.

You will also recall at our meeting with you and Barbara Burke on the 19th. Jan you undertook to revert to us for further discussion when you had made more enquiries. We hardly envisioned that such reversion would be in the form of a modification order.

Yours sincerely,

Michael Kavanagh

FNAEA, FICBA, MARLA

Direct Dial 01225 341490



Chartered Surveyors

File G.T. Cheverell
objection to the order

From: Brigadier (Ret'd) P P Rawlins, MBE.

The Grey House,
Low Road,
Little Cheverell,
Devizes,
Wiltshire,
SN10 4JS.
// July 2011.

Mr Tim Chinnick, Rights of Way Officer,
Rights of Way Section,
Department of Neighbourhood and Planning,
Wiltshire County Council,
Bythesea Road,
Trowbridge,
Wiltshire,
BA14 8JN.

Ref: Modification Order No. 16 2011.

Dear Sir,

I write as a resident of Little Cheverell and a not infrequent user of the footpath that is the subject of the above numbered order. I wish to register an objection in the strongest possible terms to that element of the proposed order requiring that the path should be 3.5m wide between the points B & C on the diagram. If a 4' wide gate is considered adequate access to the right of way, how can it possibly be legitimate to require the path itself to be virtually 3 times that width?

The path as it currently exists is more than adequate in width for any legitimate use as a pedestrian right of way. If it gets a little overgrown in places at times, this merely reflects how little regular use it gets. In my opinion, the provision by the present landowner of a stout fence along the open or field side of the path, together with sturdy well maintained gates at either end, not only clearly identifies the right of way, but also provides protection to users of the path (and their pets) in the event of cattle or other livestock being kept in the field. This had never been provided for in the past.

As a matter of fact, the tarmac surface of Low Road in Little Cheverell, a thoroughfare used by motor vehicles up to and including the Councils refuse collection lorries and commercial bulk fuel delivery vehicles, is no more than 3.5 m for most of its length. It is clearly ridiculous to require that a footpath should be of the same dimensions. More than that, it represents an unwarranted limitation of the land owner's legal right to full enjoyment of his property. I therefore urge you to reconsider the order and to reduce the required minimum width to at most, 2 m.

Yours faithfully



APPLICANT'S RESPONSE TO OBJECTIONS

Manor House Farm
Great Cheverell
Devizes SN10 5YA

File
Gr-Chev.

Department of Neighbourhood and Planning
County Hall
Bythesea Road
Trowbridge
Wiltshire

12 September 2011

Dear Mr Chinnick

Re: Claimed Footpath at Great Cheverell

Thank you for the opportunity to read the letters of objection to Modification Order 16 2011. I am writing to clarify a particular matter on footpath width and location, and to comment on the objections.

We were surprised that a new list of names had been assembled to convey their objections to the footpath (modification order 16 2011) recently approved by the your department, and note that the objections seem to focus on the width of the path which indicates that the landowner now accepts that a footpath does exist, but wishes to have it confined behind the fence he erected after purchasing the field in 2007.

The fenced-off pathway, intended to replace the original route used for over 40 years, was widened by cutting into the hedge without permission. The aerial photographs show a thicker hedge prior to the fencing being erected.

We have noted that the landowner has recently had his fenced path trimmed to make it walkable but this is the first attempt at clearing his fenced off path in over 2 years. It is our contention that the correct path runs approx 8-10 meters distance from field boundary - as it was, and as shown on the aerial photograph, and is itself about 4 ft wide. The owner appears to think that if the Order is confirmed he will have to move the fence, which, of course, is not the case. All he needs to do is provide an entrance and exit by way of a stile or small opening, maybe in the form of kissing gates.

Throughout this application there have been misunderstandings by both the applicants and the landowners on what constitutes the width. Is it the width of the actual path or is it the width/distance from the field boundary. On the Evidence Form completed by 27 applicants, question 6 asks 'how wide is the way you are claiming.' Many of the applicants appear to have read this as meaning the width of the path itself, not the width from the boundary.

Having walked the path for some years before the new fence was erected I am confident the path's distance from the boundary was 8-10 meters. Sorry to belabour this point but it is very important. Another reference to demonstrate the width/distance from the boundary is the aerial map (photograph 5 dated 2001) which clearly shows a path running down the field.

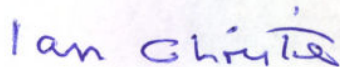
Before the field was purchased by the present owner in 2007 there were no gates and no fencing. The footpath ran from approx the centre of where the new large field gate is now situated at the top of the field, and joined the already designated Cheverell Magna 5 footpath at the bottom, well inside the field from the line of the new fence.

We note that Mr Alexander, the owner of the top field appears to have withdrawn from any objections. The new list of objectors are all from Little Cheverell, not Great Cheverell where the field is situated, all live some considerable distance from the claimed footpath, most are not regular walkers, and would probably not have known that any path existed. Unless the walker in question is a regular dog walker and walks the circuit from Great Cheverell joining up with Cheverell Magna Footpath 5, he or she will have been completely unaware of the existence of the path.

Reading the objections, we also note the wording and phraseology of some of the letters is remarkably similar. We therefore suggest these are frivolous, time-wasting objections.

We trust you will take these comments into account when advising the planning Committee on the matter.

Yours Sincerely



Brigadier Ian Alexander Christie

ADVICE TO AUTHORITIES REGARDING NEUTRAL STANCE

Planning Inspectorate WebsiteGuidance Booklet on Procedures for Considering Objections to Definitive Map and Public Path Orders: July 2011**5 Other issues relevant to hearings and inquiries*****Orders which the local authority does not support***

5.1 Local authorities do not always support orders that they have made. A local authority may have been directed to make an order by the Secretary of State, or new evidence may have come to light after the order was made which leads the local authority to change its view. If the local authority sends such an order to us the local authority should explain that it does not support it. But it still has to supply all the documents on the checklist (see section 1 paragraph 1.4), provide a venue for and attend any hearing or inquiry. In these circumstances the applicant, if there is one, or a supporter for the order will be asked if they wish to make the case in support of the order. If they agree they would be expected to submit their statement of case at the time when the local authority would have submitted theirs (i.e. not later than 8 weeks after the start date). This will be the same for the local authority. Whilst we would expect the person taking the case forward to submit their statement of case as if they were the local authority, the Rules do not state that they must and therefore if one is received at the same stage for all other parties (14 weeks from the start date for inquiries and 12 weeks from the start date for hearings) it will be accepted. Nonetheless, regardless of the local authority's stance, the Rules make the local authority responsible for ensuring that documents are submitted according to the timetable.

5.2 Where the local authority holds the view that the order should not be confirmed, this includes any orders they have been directed to make by the Secretary of State, it would be entirely appropriate for the local authority to appear at the inquiry or hearing as an objector, rather than assuming a neutral stance. Indeed, such a position can be helpful to the parties concerned, as well as the Inspector. Rights of Way Advice Note 1 gives more information about handling these orders. The note is on our website at www.planningportal.gov.uk/countryside.

Planning Inspectorate Website**Advice Note No.1****CONDUCT OF INQUIRIES AND HEARINGS INTO RIGHTS OF WAY ORDERS WHERE ORDER MAKING AUTHORITIES DO NOT ACTIVELY SUPPORT AN ORDER**

7. There may also be occasions where the OMA supported the initial making of the order but advertisement brought to light new information, further evidence or valid objections which caused the OMA to conclude that confirmation was not justified. Again, the OMA may opt to actively oppose confirmation of the order or it may choose to remain neutral as regards confirmation.

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EASTERN AREA PLANNING COMMITTEE NOVEMBER 3rd 2011

REPORT BY MIKE WILMOTT, AREA DEVELOPMENT MANAGER

APPEALS REPORT

1.00 Purpose of Report

1.01 To advise members of the Council's performance on planning appeals between January 1st and September 30th 2011 in the geographical area covered by the Eastern Area Planning Committee.

2.00 Performance

2.01 Decisions were received on 20 appeals between January 1st and September 30th. The attached table shows the location and outcome of each of these. Copies of the Inspector's decision letters relating to the appeals that were allowed are attached to this report.

2.02 Of the 20 appeals determined 16 (80%) were dismissed. This is higher than the national average, which is around the 70% mark. This demonstrates that the Council is acting soundly when refusing these applications. During this period, all appeals against planning applications determined under delegated powers were dismissed. Although the percentage of appeals dismissed relating to decisions made at the Planning Committee was less, this is to be expected as the applications considered by the Planning Committee are often the more controversial ones.

3.00 Analysis of Decisions

3.01 It is clear that at this stage, Planning Inspectors are giving very limited weight to the draft Wiltshire Core Strategy, as it is still at a very early stage. They are relying instead on the

policies of the existing Development Plan (Kennet Local Plan) and Government guidance in planning policy statements. They are also looking closely at the evidence brought to substantiate any refusal of planning permission. All of these factors can be seen in the decision to allow the appeal at the Ivy House Hotel, Marlborough.

- 3.02 Several of the appeals that were dismissed relate to development of new housing in gardens. Although it is often perceived that the Government have put an end to 'garden grabbing' by taking gardens out of the definition of brownfield land, the fact remains that Planning Inspectors will always look to see that harm can be demonstrated before dismissing any appeal. A copy of the decision at 23, Astor Crescent, Ludgershall, is attached that makes this clear (paragraphs 2 &3).

**Appeals Determined
01/01/2011 – 30/09/2011**

Reference	Parish	Location	Description	Committee/ Delegated	Decision
E/09/1241/LBC & E/09/1242/FUL	Seend	Old Chapel Seend Cleeve	Conversion to residential use	Committee (officer recommendation)	Allowed
E/10/0090/FUL	Grafton	273, East Grafton	Single dwelling	Delegated	Dismissed
E/10/0386/FUL	North Newnton	Woodbridge Inn	Static Caravan	Delegated	Dismissed
E/10/0516/FUL	Seend	Berhills Lane	Family Golf course	Committee (officer recommendation)	Dismissed
E/10/0819/FUL	Ludgershall	Land to r/o 23 Astor Crescent	Three dwellings	Delegated	Dismissed
E/10/0942/FUL & E/10/0943/LBC	Devizes	23, The Brittox	Extension and internal works	Delegated	Dismissed
E/10/0977/FUL	Devizes	37, Roseland Avenue	New dwelling	Delegated	Dismissed
E/10/0981/FUL	Ogbourne St George	Mill House, High Street	1.8 m high fencing to front	Delegated	Dismissed
E/10/1081/FUL	Marlborough	2, Chapter Close	Demolition of bungalow and erection of 2 dwellings	Delegated	Dismissed
E/10/1140/FUL & E/10/1144/LBC	Ludgershall	Old Rectory	Retention of porch, new timber gates, replacement wall	Delegated	Dismissed

E/10/1191/FUL	Urchfont	Baish Cottage	New parking bay	Delegated	Dismissed
E/10/1274/FUL	Devizes	Bowermead, Hillworth Road	New dwelling	Delegated	Dismissed
E/10/1281/FUL	Broad Hinton	2, New Cottages Uffcott	Change of use of land and new garage block	Delegated	Dismissed
E/10/1454/FUL	Devizes	30, Victoria Road	Retrospective application for UPVC windows	Delegated	Dismissed
E/10/1567/FUL	Great Bedwyn	8, Willis Close	Raising of roof for loft conversion	Delegated	Dismissed
E/10/1632/FUL	Marlborough	Ivy House Hotel High Street	Change of use to school boarding house	Committee (Officer recommendation overturned)	Allowed
E/11/0174/FUL	Urchfont	Fairview, Uphill	Double garage	Committee (Officer recommendation overturned)	Allowed

Notes:

There were no cost awards in any of these appeals either for or against the Council, although an application for costs against the Council in relation to application E/11/0174/FUL at Urchfont is still awaiting a decision from the Planning Inspectorate.

Copies of the Inspector's decision letters are automatically sent to the relevant Division Member by the Council's Planning Administration Team and are published on the Council's public web site. Copies are available for any other Councillor on request.

REPORT TO THE EASTERN AREA PLANNING COMMITTEE

Report No. 1

Date of Meeting	November 3 rd 2011
Application Number	E/2011/1094/FUL
Site Address	Cresingham Elcot Lane Marlborough Wilts SN8 2BG
Proposal	Addition of Car Port to front
Applicant	Mr Charles Hines
Town/Parish Council	MARLBOROUGH
Grid Ref	419672 169117
Type of application	Full Planning
Case Officer	David Cox

Reason for the application being considered by Committee

This application is brought to Committee at the request of the Division Member, Councillor Dow to consider whether the application is detrimental to the street scene as the car port would be built in front of the existing building line and that this would set a precedent for similar proposals.

1. Purpose of Report

To consider the recommendation that planning permission should be granted.

2. Report Summary

The application is for a single garage in the front garden. No objections have been received from neighbours, although the Town Council have objected. The property is screened from the road by an existing hedge that is higher than the garage and approval is recommended as it is not considered that the development will have any adverse impact on the appearance of the area or the amenity of neighbours.

3. Site Description



Site Location

'Cresingham' is one of four established detached dwellings located on this side of Elcot Lane

between Stonebridge Close and the access to the football club. Cresingham and its neighbour 'Devonshire' are bungalows with accommodation in the roof space. The other neighbour 'Laburnham' is a two storey dwelling with 'Omega' being a single storey bungalow. Each of the four dwellings is set back approximately 12 metres from the road. Cresingham has an integral single garage.

Cresingham has a 1.1 metre tall fence with a 3.2 metre tall laurel hedge behind at the front boundary with Elcot Lane. The side boundaries with both neighbours are defined by close board fences of 1.2 metres and 1.6 metres high.

Immediately opposite the application site is the Martin Ashby motorcycle building, which is a fairly large rectangle building with a 15 metre long flank side elevation facing immediately on to a narrow pavement. Additionally further down Elcot Lane to the west there are other examples of buildings and fences being immediately adjacent the pavement.

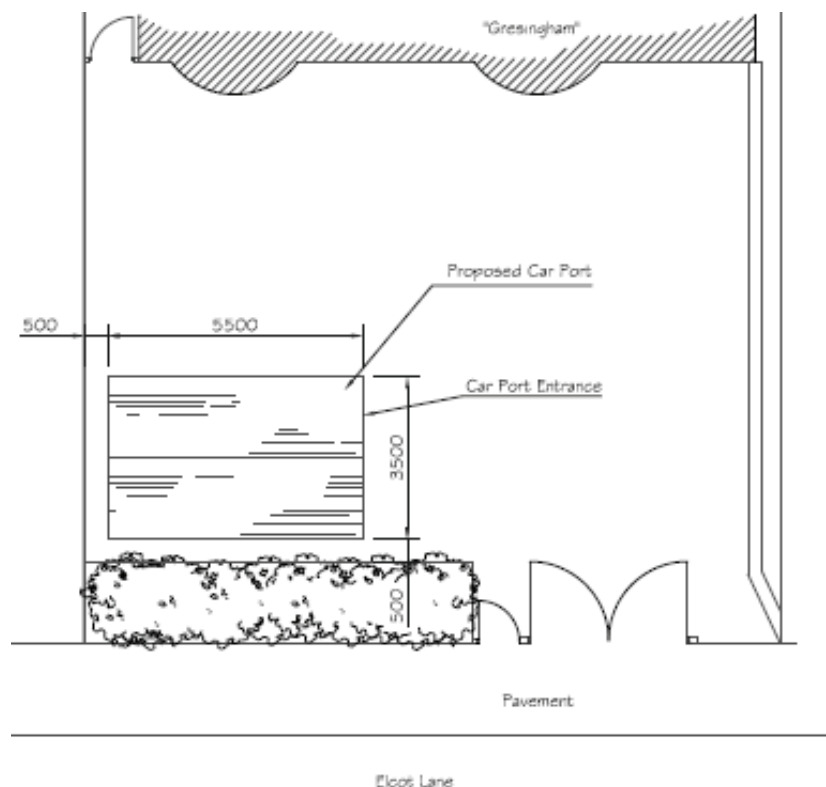
Of the four detached dwellings located in this row, only 'Devonshire' does not have any formal front boundary of either hard or soft landscaping. None of the 4 dwellings have any outbuildings located forward of their established building line.

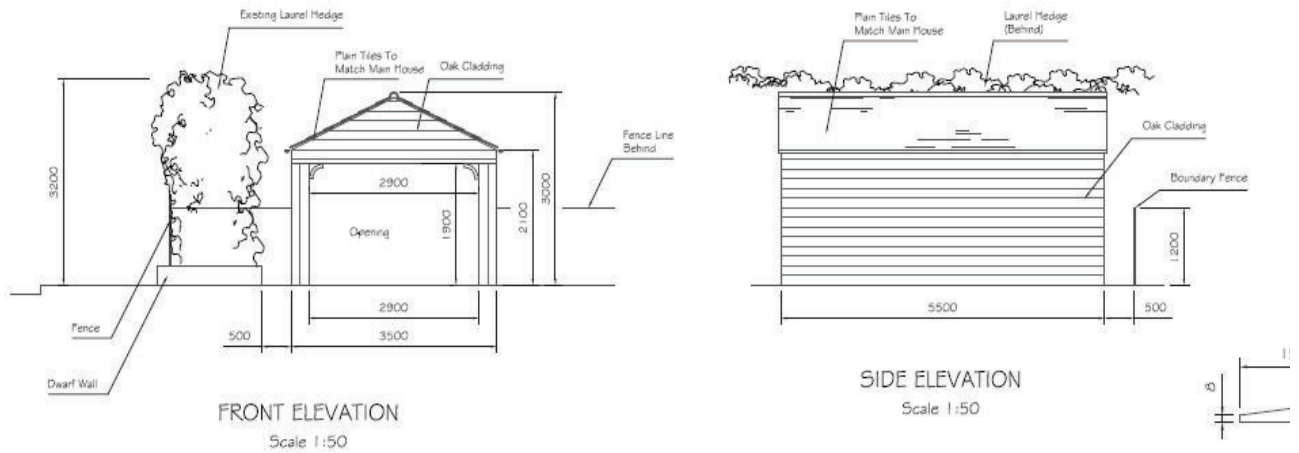
4. Relevant Planning History

None.

5. The Proposal

The proposal is to erect a car port measuring approximately 3.5 metres wide, 5.5 metres long and 3 metres tall sloping to 2.1 metres at eaves. Three sides would be clad with Oak and the roof would have plain tiles to match those on the host building. It would be located behind the laurel hedge, approximately 2.4 metres from the pavement.





6. Planning Policy

Kennet Local Plan – policy PD 1

The application site is also within the North Wessex Downs Area of Outstanding Natural Beauty.

7. Consultations

Marlborough Town Council – Objection

- Detrimental to the street scene and the amenity of neighbouring properties.
- In front of the established building line.
- Sets precedent for development in front gardens in this area.

Wiltshire Council Highways Officer – No objection.

8. Publicity

Neighbours and third parties were notified by letter and site notice. No comments have been received. Any comments received will be reported at the meeting.

9. Planning Considerations

The issues here are the impact on the amenity of neighbouring properties and on the appearance of the area.

In relation to the impact on amenity, the garage is a relatively small structure well away from the adjacent properties. No objections from neighbours have been received and it is not considered that there will be any detrimental impact on the amenity of these properties.

In relation to the impact on the appearance of the area, the car port itself would be a relatively small structure which would be just large enough to park one car. It is not considered to be of a size or in a position that would cause undue harm to the character or appearance of the street scene, particularly as it is would be screened by the taller hedge adjacent. The use of timber would be the most appropriate material as it would blend with the timber fences in the vicinity. Any future applications from other neighbouring properties, were they to be submitted, would be considered on their own merits taking into account the size of any new build and any existing screening.

No harm would be caused to the Area of Outstanding Natural Beauty.

RECOMMENDATION

Grant planning permission subject to the conditions set out below for the following reasons:

The decision to grant planning permission has been taken on the grounds that the garage would not have any adverse impact on the appearance of the area or the amenity of residents of nearby properties and would be in accordance with policy PD1 of the Kennet Local Plan 2011

1. The development hereby permitted shall be begun before the expiration of three years of 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 adjacent roadside hedge shall be retained at a minimum height of 3 metres.

REASON:

To help screen the building in the interests of amenity.

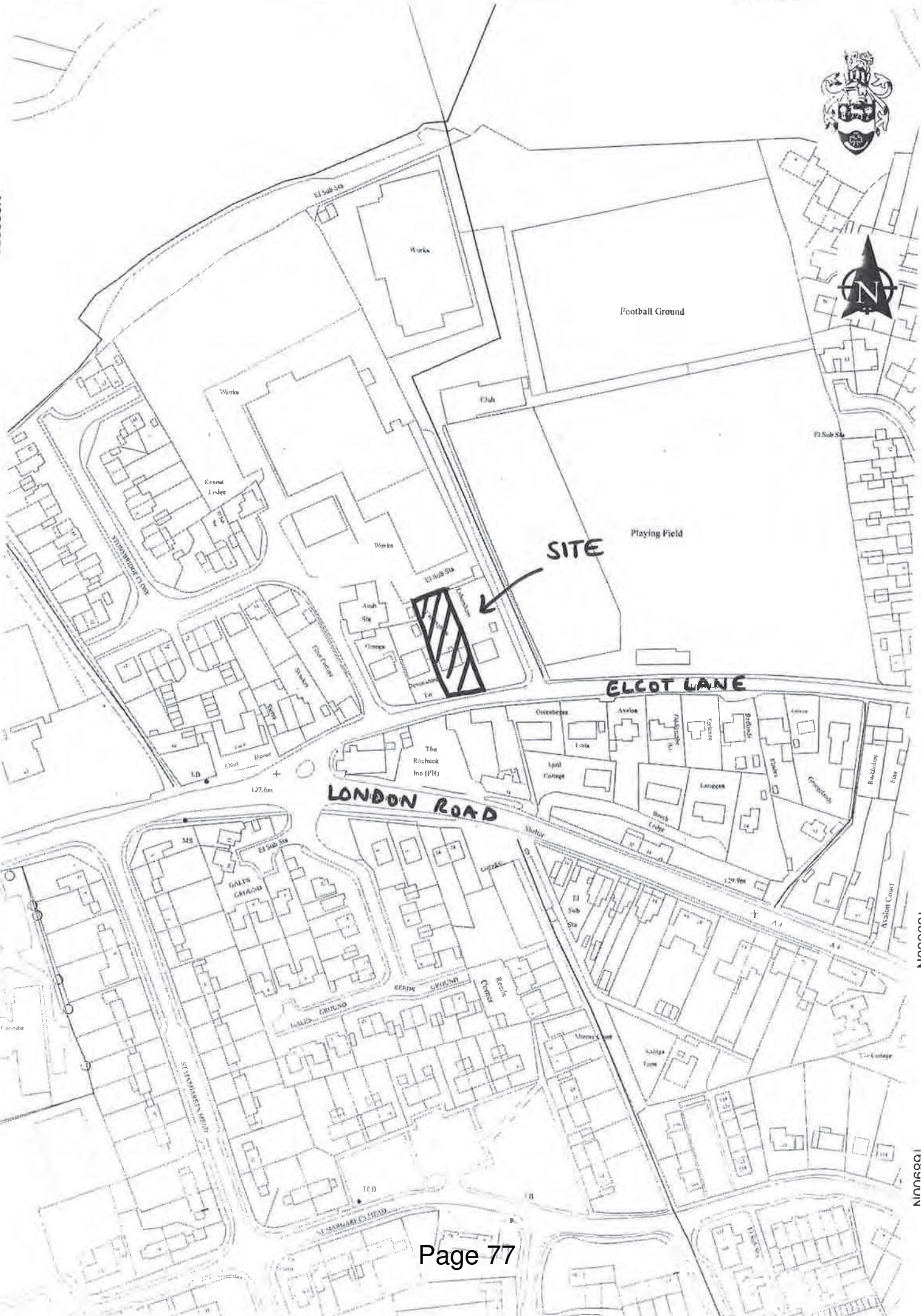
3. The materials to be used in the construction of the roof of the development hereby permitted shall match in colour and texture those used on the existing structure of 'Cresingham'.

REASON:

To secure harmonious architectural treatment.

4. 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 - AD-CH-001- Dated - 11 August 2011



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REPORT TO THE EASTERN AREA PLANNING COMMITTEE

Report No. 2

Date of Meeting	3 rd November 2011
Application Number	E/2011/0965/FUL
Site Address	Red Hone Cottage Townsend Urchfont Devizes Wiltshire SN10 4RR
Proposal	Erection of dwelling and garage.
Applicant	Mr Paul Clark
Town/Parish Council	URCHFONT
Grid Ref	404183 156957
Type of application	Full Planning
Case Officer	April Waterman

Reason for the application being considered by Committee

This application has been brought before the Committee at the request of the Division Member, Cllr Grundy.

1. Purpose of Report

To consider the recommendation that the application for planning permission be refused.

2. Report Summary

The main issues in this case are the principle of residential development at this location with regard to the policies of the development plan, national policy and other material considerations, covering:

- a) Grain and density of development in the locality
- b) Impact on heritage assets
- c) Trees and landscaping
- d) Impact on residential amenity of neighbouring property
- e) Archaeology
- f) Highway, access and parking matters

3. Site Description

The site lies at the south eastern edge of the settlement, with its southern boundary marked by a green lane which defines the Limits of Development for Urchfont set out in the Local Plan.

Red Hone Cottage is a Grade II Listed Building. The property is not within the Conservation Area for the village. A Tree Preservation Order, made in 1995, gives protection to a number of trees on the site.

Development around the site comprises various forms of residential units – houses and bungalows of a variety of sizes, in detached, linked and terraced forms. To the east of the site the buildings are predominantly arranged in a uniform, rectilinear terraced format, (The Croft: a mid/late C20 development of bungalows and houses). In contrast, to the west of the

site the pattern of development is more organic, with a mix of detached units set in irregularly shaped plots, and of a span of build periods covering the last three hundred years. Many of the most recent buildings are set in plots where the definition of the large grounds of traditional houses has been lost by multiple sub-divisions.

Red Hone Cottage and its immediate neighbour Croft Cottage are traditional road-facing houses, largely filling the width of their narrow frontage onto the street. Red Hone Cottage alone has retained the full depth of its historic curtilage, with its land running from Townsend all the way back to the green lane definition to the south.

The site comprises the rear half of the long back garden of Red Hone Cottage, together with the drive running next to the cottage, its garden and garage, along its western edge.

The principal part of the application site comprises a level lawned garden. The driveway access rises in level from its junction with Townsend, gaining an estimated 3 - 4 metres in height between the Red Hone Cottage road frontage and the main lawned area of the site.

The eastern boundary of the site is split into two parts – that which defines the access (shared with Red Hone Cottage) and that bounding the main development area of the proposal, to accommodate the new house, garage, its exclusive drive and garden areas. To the east of the access stands the existing Red Hone Cottage, its garage and rear garden, defined from the site (progressively, from the road southwards) by the side wall of the cottage itself, a retaining brick wall with timber close-boarded fence and hedging above, side wall of the garage and the edge of its hard-surfaced turning area. The proposal shows the planting of a hedge with gates let into it along this final section of boundary with the garden to be retained with Red Hone Cottage. The second part of the eastern boundary of the site borders a number of rear gardens, serving predominantly single storey dwellings on The Croft, which are separated from the site by a 1 – 1.2 metre high timber post and rail fence, with some hedge plants and mature trees. These gardens lie at generally the same level as that of the application site. The rear elevations of 5 of these bungalows stand between 8 and 10 metres from this boundary, while the gable side of another bungalow is approximately 2 metres from the fence. A pedestrian gate gives access from the site to The Croft.

To the west of the site again the boundary is split into two parts: that defining the access and that bounding the main development site. Stretching from the road junction of the access drive, the side and rear gardens of two storey properties on Bulldog Lane, including Bulldog Cottage, are separated from the land by a low brick wall with shrub border, trees, fence and hedge above, and then by a combination of timber panel and post and rail fencing, with hedging on the access drive side. The closest corner of Bulldog Cottage, which stands at an angle to the boundary, is some 3 or 4 metres from it. The wider part of the application site is separated from the rear garden of Redhorn Court (a two storey house) by hedging, with a number of trees close to this western edge. The back wall of the large garage building serving Redhorn Court runs parallel with and hard by this hedged boundary. The gable end of this house is estimated to be about 8 – 9 metres from this boundary.

The north boundary of the site is currently undefined, but it is proposed to erect a 2 metre fence and plant a hedge along this new division.

“16. At the west end of Red Hone Cottage there is a C20 extension set at an angle to the main cottage and adjacent to its driveway. Following refusal of the current proposal, Listed Building Consent was granted for the blocking up of windows in the elevation facing the driveway. It is your contention that the activities associated with the proposed bungalow could not now cause disturbance to the occupants of Red Hone Cottage at that end of the property. Whilst these alterations may well improve the sound insulation of the cottage, I do not consider that it would, by itself, remove the potential problem of noise and nuisance generated by the proposed bungalow.

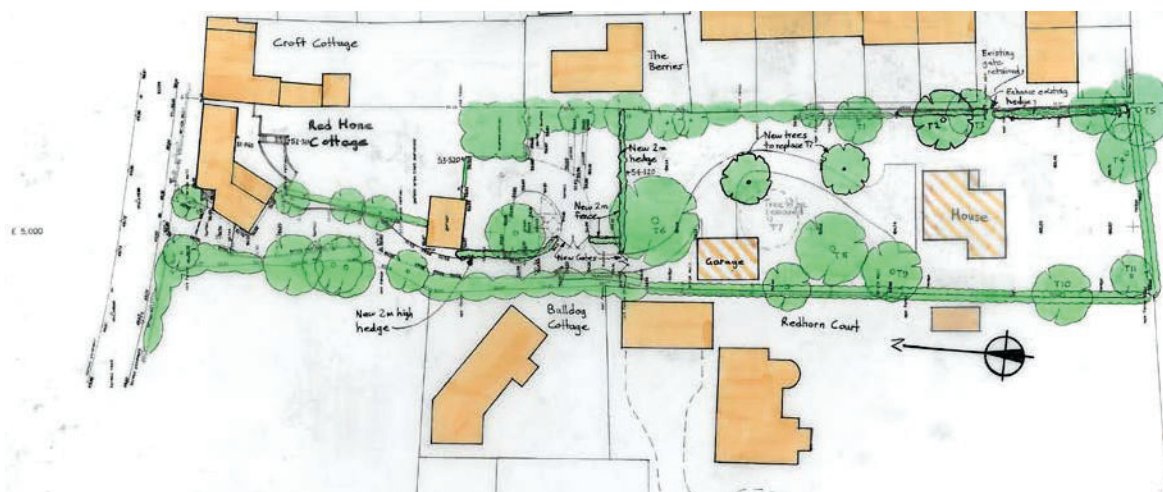
17. The driveway slopes upwards as it passes Red Hone Cottage to the garage at the rear. There is a garden wall along the east side of the driveway separating Red Hone Cottage and its garden from the driveway. The wall is approximately 1.5 metres high at the cottage end, but, on account of the slope, diminishes to almost nothing at the garage end. Above this there is a conifer hedge. The rear garden of the cottage would be separated from the curtilage of the proposed bungalow by way of a recently built garage and garden fence. It is your contention that the wall, the hedge and the fence would protect the occupants in the reduced rear garden of Red Hone Cottage from noise and disturbance generated by activity in the driveway or the adjacent garden of the proposed bungalow. However, I consider that these elements would primarily serve as a visual barrier and problems would ensue.

18. Notwithstanding the comments of the present occupant of Red Hone Cottage, my overall conclusion on the first issue is that the appeal proposal would impinge upon the living conditions of the occupiers of the existing dwelling and its setting with regard to privacy, noise and disturbance, both to the side and the rear, in an unacceptable manner.”

5. The Proposal

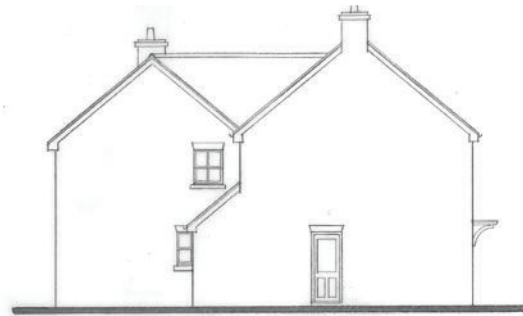
Full planning permission is sought for the erection of a 4 bedroom two storey house, detached double garage, garden store and shed. One tree subject of a TPO is indicated for felling, while all others are marked for retention. New hedge and tree planting is also proposed.

Vehicular and pedestrian access to the house is proposed to be via the existing driveway running next to the cottage along the western edge of the property. New fencing and hedging, with gates, are proposed to separate the new curtilage from that part of the garden to be retained with Red Hone Cottage. An existing pedestrian gate opening through the eastern boundary of the site to The Croft is also to be retained.





Front (North)



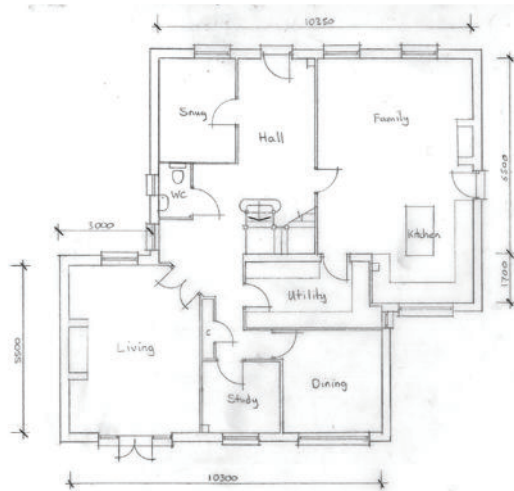
Side (East)



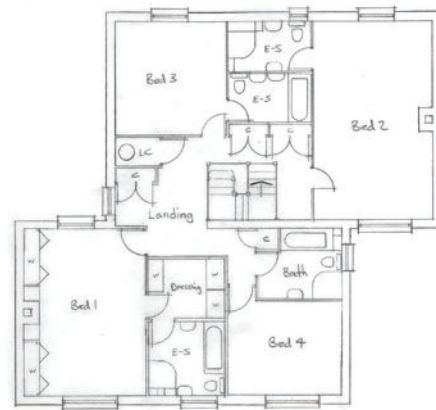
Rear (South)



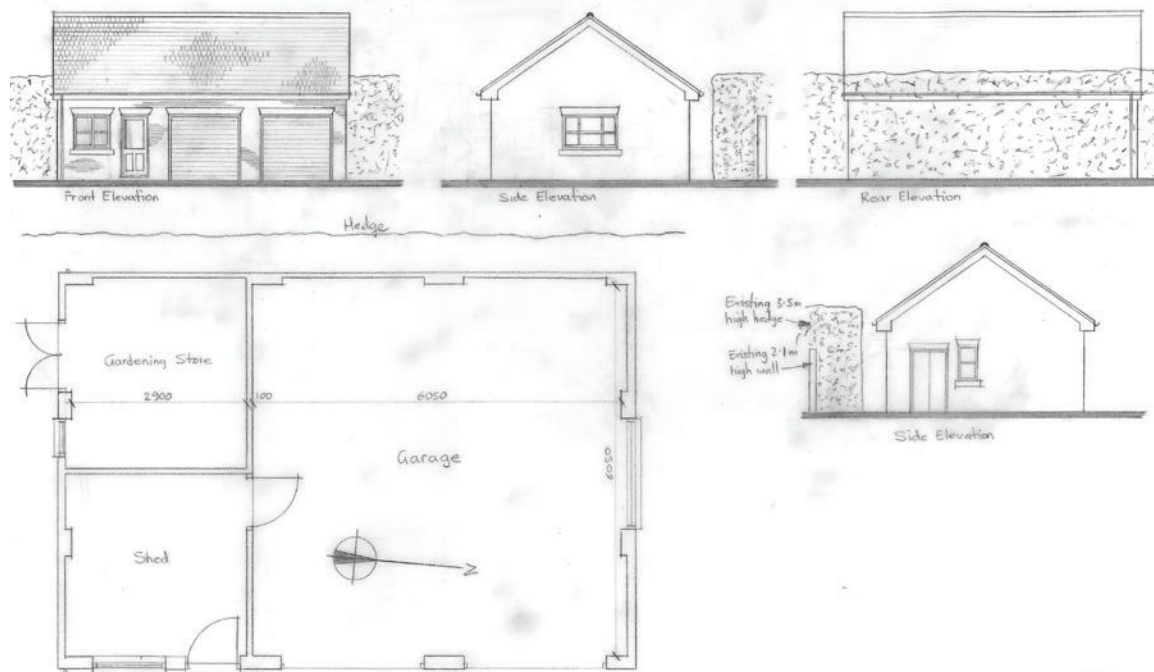
Side (West)



Ground Floor Plan



First Floor Plan



6. Planning Policy

Kennet Local Plan: - Policy PD1 Development and design; Policy HC22 Villages with a range of facilities; Policy AT1 Transport appraisal process

7. Consultations

Urchfont Parish Council – Supports this application.

Urchfont Parish Council voted unanimously to positively **SUPPORT** application E/2011/0965/FUL, for a proposed dwelling & Garage at Red Hone Cottage, Townsend, Urchfont, SN10 4RR, for the following reasons:

- UPC undertook a site visit at Red Hone Cottage and marked out corners of the proposed house to assess any effect on the amenity of adjoining dwellings and felt the effect was acceptable.
- The visual and traffic effect on Bulldog Cottage (outlined in the previous refusal) has been minimized by the planting of a new hedge. Fencing has also been installed between the driveway and Red Hone.
- UPC believe any traffic concerns to be negligible, as 3 cars could comfortably wait off- road to allow traffic leaving the site to pass the “pinch point” in the driveway. In addition sight lines are good at the roadside.
- The distance between Inglefield (Listed) and the property behind it (built some 5 years ago) is less than half the distance between Red Hone and the proposed dwelling.
- The distance between the proposed house and Red Hone Cottage is 100 metres, which is over twice the distance between Carina Cottage (Listed) and a proposed house which was turned down at Eastern Area Planning Committee by only 1 vote.
- The proposed dwelling is over 100m² smaller and 0.9m lower than the dwelling previously refused and, in our opinion, a much “better architectural fit”, in the general area, than the refused dwelling.

- *The integral garage is now 'free standing' and sensibly re-sited on the approximate location of a formerly planned, now withdrawn, Boat Store.*
- *Additional tree planting between the dwellings on the parcel of land will further screen Red Hone.*
- *UPC positively approve the size and style of the proposed house and highly commend the Applicant on his excellent liaison/dialogue with all neighbours in the vicinity. Also for the enormous effort made by himself and his Agent to meet the concerns of the Area Planning Committee.*

Wiltshire Council Highways

The proposed dwelling will use the existing access from the main road. Visibility from the access to the east passes over the existing garden and will need to be secured by condition to prevent its obstruction by future planting.

I recommend that no highway objection be raised subject to the following condition being attached to any permission granted:-

No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.0 metres back from the edge of the carriageway, measure along the centre line of the access, to a point to the east where the site boundary meets the highway boundary. The splay shall thereafter be permanently maintained free from obstruction to vision above a height of 1.0 metre above the level of the adjacent carriageway.

Wiltshire Council Archaeologist

Following the assessment of an archaeological evaluation of the site, no objection.

Wiltshire Council Conservation Officer

It appears to that the proposed development will be out of character with historic development in the area by virtue of its scale, mass, design and siting. The proposal will have an adverse impact on the amenity of the listed building and lead to the substantial loss of the rural character of the plot.

Overall, the proposals could not be said to preserve this significant element within the setting of both the designated building and conservation area. I am unaware of any mitigating public benefit in this case and must therefore recommend refusal of the application.

Wiltshire Council Arboricultural Officer

No objection to the proposed scheme, although more details are required in relation to the protection of existing trees.

8. Publicity

The application was publicised by site notice, press noticed and neighbour notification.

Letters from six households have been received, which raise the following points:

Support (3)

- no objection to the plans
- no reason to object to one residence in keeping with the area
- scheme will provide a good balance of family housing in the locality

Qualified support (1)

- no objection but concerned that new house will mean more cars parking on road outside the site: can on-street parking be restricted?

Objection (2)

- no change to Listed Building or principle of development since the dismissal of the appeal
- no change in building position between this and the last refusal
- no meaningful change in scale, height and footprint of building between this and the last refusal
- vegetation can be cut back, so no guarantee of screening being effective
- a solid gate for the driveway is not enough to offset the impact of the development on the setting of the Listed Building
- proposal will not fit with the grain of development in the area, which is of close knit groups with green spaces between them
- information supplied by the applicant is misleading – only 2 houses have been built since the appeal, and the inspector was aware of all other planning permissions granted at the time of the appeal.

9. Planning Considerations

9.1 Policy considerations and the principle of development.

The site lies within the Limits of Development of Urchfont as defined in the Kennet Local Plan 2011. Policy HC22 states that limited additional housing development, including infilling, will be permitted within certain settlements provided that the development is in harmony with the village in terms of its scale and character. It also requires conformity with other policy criteria set out in, among others, policy PD1. Policy PD1 sets out 10 criteria against which all development needs to be measured.

- 1) Sustainable design issues. The application does not present any information relating to sustainable construction methods. The use of local materials (stock red multi brick and plain clay roof tiles) is noted. The Design and Access Statement asserts that the use of this 0.56 acre site for the erection of one dwelling is an effective and efficient use of the land.
- 2) Scale, height, massing and density of the development. The scheme shows revisions of the designs for the house and outbuilding that were refused in 2010, dropping the ridge height and slightly reducing the overall mass of the building. Pre-application advice given to the applicant indicated acceptance of the design.
- 3) Townscape and landscape context. The site is at the point of change in the grain of development in this part of the village: dense, attached, rectilinear development to the east, and irregular individual plots to the west. Conformity with either pattern could be described as in keeping or conflicting with the prevailing townscape, therefore. The historic nature of the existing undeveloped site (similar to a burgage plot) stands against both patterns (which is not to concede that change is required, but that the diversity itself is part of the settlement character.).
- 4) Layout, servicing, access and road safety. The site is landlocked to vehicles except for the proposed access drive. Development of the site is dependent upon the acceptance of the disturbance that the increased use of the access would cause. No objection to the proposal has been raised by the Council's Highways Officer, subject to the provision and maintenance of a visibility splay at the access onto the public road. The land required to provide this splay is not within the application site, but is understood to be within the applicant's control, so the requirement could reasonably be met.
- 5) Creation of well used, attractive and safe environment. The scheme appears to

- have no impact in this regard.
- 6) Landscape proposals. The scheme's shortcomings in terms of landscaping information (as identified by the Council's Arboricultural Officer) may be addressed by the additional details being submitted and approved in advance of any development taking place.
 - 7) Relationship to historic features. The applicant has been advised that the impact of the development on the setting of the Listed Building relates mainly to the disturbance caused by the use of the driveway as access to the development, and the loss of the historic curtilage of the building. The survival of this long, narrow undeveloped plot within the village is remarkable, and its rarity was noted by the Inspector in her dismissal of the appeal in 1996. However, pre-application advice given to the applicant has indicated that this loss is not likely to be an impediment to the scheme. Concerns raised by the Council's Archaeologist have been addressed (see consultation response).
 - 8) Elevational treatment. The proposed appearance of the application buildings comprises a fairly standard treatment of element proportions, fenestration and materials, similar to those seen on nearby recent constructions, and others throughout the County.
 - 9) Building materials, colour and detailing. Again, these treatments are considered to be similar to other recent constructions nearby and within the County.
 - 10) The impact on residential amenity, including that caused by reason of noise and disturbance. As a result of the shape of the application site, the route for all traffic for any new residential development would have to run immediately next to the building and private garden of the existing Red Hone Cottage. It would also immediately adjoin the garden of Bulldog Cottage, and be within a very short distance of that building (estimated at about 3 – 4 metres). As the Inspector noted, the movements of traffic associated with the new dwelling could not be restricted in terms of volume, frequency or time of day/night, and in principle, therefore, were considered to be unacceptable. The size of unit under consideration at the time of the appeal was no larger than that now subject of application (i.e. a 3 – 4 bedroom bungalow in 1996, compared to a 4 bedroom house today). Average car ownership levels have not diminished in the last 15 years, nor so have home delivery levels in general, so at least the same level of disturbance could be expected now as would have been considered unacceptable by the Inspector in 1996. No significant development of Red Hone Cottage or its boundary treatments has taken place that would mitigate or obviate the disturbance that would be caused by an additional dwelling's traffic. Instead, the sensitivity of the location to noise disturbance has increased, as the number of recipient dwellings that would be affected by such disturbance has doubled by the construction of Bulldog Cottage. The application does not satisfy criteria 10) of policy PD1.

The applicant has stated that any new occupiers of Red Hone Cottage would be made aware of the use of the access driveway by vehicles associated with the new house, and would therefore have made their decision to live with any such disturbance at the time of buying the property. (This choice is not available to the present occupiers of Bulldog Cottage.) However, acceptance of disturbance by present or future occupiers is not the basis upon which decisions by the Council should be made. The Local Planning Authority is tasked with acting on behalf of the public interest, which includes the interests of any new occupier of Red Hone Cottage, in addition to the interests of the occupiers of other dwellings nearby (such as Bulldog Cottage). This is the premise upon which Policy PD1 of the Kennet Local Plan was adopted, to ensure that development is of an acceptable standard of environmental quality, and to promote compatibility between adjoining land uses.

9.2 Other material considerations

The planning history of the site itself and of the development sites surrounding the property are material in the assessment of this scheme. While it is acknowledged that to a degree the physical context in which the proposal is now to be determined is different from that pertaining to the case at appeal in 1996, these differences do not change the facts of the existence of Red Hone Cottage as a recipient of disturbance from the traffic of an additional dwelling in its rear garden. The changes in built development around the site increase the sensitivity of the area to such disturbance, rather than dilute any such effect.

10. Conclusion

For many of the issues raised as refusal reasons in relation to previous development schemes, progressive design amendments, the submission of additional information or an acceptance that matters can be dealt with by condition have meant that these issues are no longer considered to present reasons for the refusal of planning permission for the current scheme.

However, the single issue that has not been resolved and cannot be overcome is the impact on Red Hone Cottage itself of the access driveway use by an additional dwelling. Indeed, this issue has been worsened by the existence of a second disturbance receptor – Bulldog Cottage. The grant of planning permission by the Council for this new property was not at fault: at the point of its approval there was no permission for a new dwelling in the rear garden of Red Hone Cottage, and the prevailing planning history and policy for the area then indicated (and still does) that no such dwelling would be approved.

The relationship between the driveway and the garden and built form of Red Hone Cottage is fundamentally as before when the Inspector dismissed an appeal for a smaller dwelling on the same site. Regardless of the other matters that have been addressed above, the application for permission should therefore follow the decision of the Inspector in 1996 on this issue.

RECOMMENDATION

That planning permission is refused for the following reason

The proposed creation of a new residential unit on land to the rear of Red Hone Cottage, served by a vehicular and pedestrian driveway passing in immediate proximity to the building and private garden of Red Hone Cottage, would cause an unacceptable level of disturbance to occupiers of the cottage, to the detriment of the property's residential amenity, as confirmed by the Planning Inspector in the previous planning appeal for a new dwelling on this site. The proposal would also cause disturbance to the occupiers of residential units to the west of the site. As a result, the proposed development would not satisfy the criteria set out in Policy PD1 of the Kennet Local Plan 2011, relating to its impact on the amenity of nearby residential property, and, consequently, would not satisfy the requirements of policy HC22 of the Kennet Local Plan 2011.

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Appeal Decisions

Site visit made on 6 January 2011

by **David Morgan BA MA MRTPI IHBC**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
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Decision date:
3 February 2011

Appeal no. 1 Appeal Ref: APP/Y3940/E/10/2135151 **The Old Chapel, Seend Cleeve, Melksham, Wilts SN12 6PY**

- 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 Julian Mattock against the decision of Wiltshire Council.
- The application Ref E/09/1241/LBC, dated 9 September 2009, was refused by notice dated 25 February 2010.
- The works proposed are conversion of existing chapel to residential use, demolition of existing outbuildings and construction of new adjoining block to form part of the same dwelling.

Appeal no. 2 Appeal Ref: APP/Y3940/A/10/2135148 **The Old Chapel, Seend Cleeve, Melksham, Wilts SN12 6PY**

- 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 Julian Mattock against the decision of Wiltshire Council.
- The application Ref E/09/1242/FUL, dated 9 September 2009, was refused by notice dated 25 February 2010.
- The development proposed is conversion of existing chapel to residential use, demolition of existing outbuildings and construction of new adjoining block to form part of the same dwelling.

Decisions

Appeal no. 1 Appeal Ref: APP/Y3940/E/10/2135151

1. I allow the appeal and grant listed building consent for conversion of existing chapel to residential use, demolition of existing outbuildings and construction of new adjoining block to form part of the same dwelling at The Old Chapel, Seend Cleeve, Melksham, Wilts SN12 6PY in accordance with the terms of the application Ref E/09/1241/LBC, dated 9 September 2009 and the plans submitted with it, subject to the conditions in the attached schedule.

Appeal no. 2 Appeal Ref: APP/Y3940/A/10/2135148

2. I allow the appeal and grant planning permission for conversion of existing chapel to residential use, demolition of existing outbuildings and construction of new adjoining block to form part of the same dwelling at The Old Chapel, Seend Cleeve, Melksham, Wilts SN12 6PY in accordance with the terms of the application Ref E/09/1242/FUL, dated 9 September 2009, subject to the conditions in the attached schedule.

Procedural matters

3. On 23 March 2010 the Department of Communities and Local Government published Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5) which replaces PPG15 *Planning and the Historic Environment* and PPG16 *Archaeology and Planning*. Both applications now the subject of these appeals were determined prior to the publication of PPS5, although the appeals were submitted well after this event. Notwithstanding these circumstances, the Council's Appeal Statements take the form of the Officer Committee Reports, the reasoning of which, and reasons for refusal, refer to PPG15. For the avoidance of doubt, the decisions set out here refer to current national policy set out in PPS5.
4. Subsequent to the determination of both applications the appellant submitted a revised scheme to the Council in an attempt to address their concerns. These revisions were also submitted with the appeal documents and the appellant, advising that these represent minor amendments to the scheme, has asked that they be considered by the Inspector when determining the appeal.
5. However, the submission of an amended scheme at appeal stage is contrary to the principles set out in the Planning Inspectorate Good Practice Advice Note 10/2009, which indicates that new material not considered at application stage should not normally be considered at appeal. Moreover, the appeal system should not be used as a means of circumventing the normal process of revised schemes being submitted in the first instance to the local planning authority, for it denies the Council and interested parties the proper opportunity for comment. In this case there are a number of parties with an interest in it who have commented on the applications and the appeal, the applications also being presented to committee. As the amendments proposed do constitute a material change to the scheme, going beyond what could be considered minor, it is appropriate that they should have been the subject of a fresh application to the Council for consideration, prior to an appeal.
6. From the representations made in relation to the appeal it is not clear that those consulted are aware of the amended scheme, and this lends credence to the concerns expressed by the appellant that they were not widely available through the Council after the appeal was lodged. Whilst this may be a frustration for the appellant, in these circumstances, for which there is no provision within the appeal process to alter, it is appropriate that the decision be based on the contents of the applications that were refused permission and consent by the Council.

Main issues

7. In relation to Appeal no. 1 this is whether the proposed works and development would preserve the grade II listed building known as The Old Chapel (listed as Former Primitive Methodist Chapel) or any features of special architectural or historic interest which it possesses. In relation to Appeal no. 2 this is the effect of the proposed development on the character and appearance of the area.

Reasons

8. There are significant areas of common ground; the approach to the repair and internal alteration of the chapel is accepted, as is the principle of an ancillary extension handled in the design approach adopted, and no issue is taken with these matters here. However, the scale, presence and the visual impact the extension would have on the listed building and the character of the area are disputed, and it is this matter which are addressed below.
9. The addition comprises a two and three storey extension to the north east of the chapel with a linked entrance lobby. This is essentially an orthogonal structure with two slightly recessed gables of timber and glass set beneath an enveloping mantle of zinc cladding covering both roof and walls.

Effect on the special architectural and historic interest of the Chapel

10. In keeping with the reformist doctrine of this branch of Methodism, the architecture of the chapel is simple and restrained. That said, it does not escape the essentially neo-classical format that characterises nearly all dissenting architecture of the period. This is characterised by the formal proportions of the elevations, the dressed stone quoins, door and window architraves, plinth and central steps of the formal front elevation. There can be no doubt that this western-facing elevation, with the greater degree of architectural embellishment and incorporating the primary access for the congregation, is the principal elevation, and therefore the foremost one in relation to the special architectural interest of the building and therefore its significance. These architectural attributes are underpinned by the interior, which though plain, has the gallery at this west end with the focus of the lectern beyond to the east.
11. With respect to the proposed extension, the council is right to seek to ensure that any such addition achieves the appropriate degree of subservience and deference to the listed building in terms of form, scale, location and materials. It is also right that this be achieved through an understanding of significance (of the building), and the delivery of a form of development that is practical, usable and well designed, and balances these requirements with the necessity of preserving special interest and significance.
12. The north western graveyard-facing elevation of the proposed extension is tall, comprising three storeys. However, it is set well back behind the line of that of the chapel and this alignment, coupled with the simple form and restrained detailing, serves to achieve the necessary degree of subservience to ensure the preservation of this primary element of the building, and so this key component of its special interest and therefore significance.
13. In order that the necessary amount of accommodation is provided and this degree of subservience achieved in relation to the north west façade, the north eastern elevation has to project beyond that of the chapel. Here the two storey structure, with eaves the same height as the chapel, would be seen in close, overlapping juxtaposition with the chapel in views down the lane to the south west. The strong assertive form and location of the extension, coupled with the overt modernity of its materials and detail, would stand in striking contrast to the listed building, to a degree competing with it in architectural terms. However, this remains the secondary elevation of the building which is

off-set from the road and already a component of an informal ensemble of buildings defining this frontage. Moreover, the footprint of the extension picks-up that of the now ruinous outbuilding on the site (evident from map evidence) and its simplicity of form and detailing resonate with the chapel's restrained Nonconformist architectural character. Whilst assertive, this does not amount to dominance or overbearing impact resulting in a diminution of the special architectural interest of the listed building, so avoiding substantial and material harm to it. Such an outcome would secure a sustainable new use for the chapel and deliver its structural repair whilst preserving its special interest, in accordance with the expectations of the Act. In the same regard it would be in conformity with policy HE7.4 of PPS5 and the local development plan policies that underpin national policy. It is also consistent with the approach set out in the Government's objectives for the management of the historic environment outlined in the beginning of PPS5 which recognises, inter alia, that intelligently managed change may sometimes be necessary if heritage assets are to be maintained for the long term.

Effect on character and appearance

14. Much the same reasoning applies to the effect of the proposed development on the character of the area. Though its form, location and detailing the extension will be prominent in the street scene, especially from the north east. However, the extension would remove the desultory remains of the ruinous outbuilding and sit comfortably within the ensemble of informally arranged and detailed building that make up the road frontage. Again, whilst it's detailing and materials would mark it as discernibly *other* than its neighbours, there is sufficient diversity in form, texture and materials in the environs of the site to accommodate a building of such attributes. On this basis, the proposals would be appropriate to their context, in conformity with the design principles set out in Planning Policy Statement 1 *Delivering Sustainable Development*, with policy HE10 of PPS5 in respect of preserving the setting of the heritage asset, and with policy PD1 of the Kennet Local Plan, specifically criteria 2, 3, 7, 8 and 9 thereof.

Other matters

15. Concerns over the practicability and safe use of the garage may satisfactorily be overcome through a condition requiring details of the garage doors, including their means of opening. Concerns over parking understandably often attend development proposals but here both garaging and off street parking are proposed and concerns over such wider impacts are not shared by the highway authority. Moreover, no evidence is presented to suggest there is an acute issue of parking in the environs of the site; accordingly only little weight may be afforded such objections to the development on these grounds. Concerns about the overlooking of the adjacent property have been raised, though no specific property identified. Given the mature planting cover on the boundary and the distances involved, no overlooking would result that would cause material harm to living conditions of adjacent occupiers.

Conclusions

16. For the reasons given above I conclude that the appeals should succeed.

Conditions

17. The appeals being allowed, in respect of Appeal no. 1 conditions are attached requiring that details of materials used to clad the extension, details of glazing, details of rear balcony and steps, details of rainwater disposal system, details of garage doors, details of the junction of the proposed steel beams with the existing walls and interior arrangements, details of the junction of the inserted floor and existing window openings and details of the internal steel engineering structure be submitted to the local planning authority to ensure the preservation of the character of the listed building. A condition is also attached requiring the submission of a detailed schedule of repairs for the listed building to the local planning authority, again to ensure the character of the listed building is preserved.
18. In respect of appeal no. 2, a condition is attached requiring that the development be carried out in accordance with the approved plans, in the interests of sound planning and for the avoidance of doubt and conditions are attached requiring the provision of visibility zones to be maintained free from obstruction and a condition requiring that the access area be surfaced to a depth of two metres of well bound material, all in the interests of highway safety. Although the Council have requested that the proposed garage doors be of a roller shutter type, this is over-prescriptive, though a condition requiring the submission of details of the garage doors has been substituted, again in the interests of highway safety.

David Morgan

Inspector

Schedule of conditions

Appeal no. 1 Appeal Ref: APP/Y3940/E/10/2135151

- 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
- 2) No works shall commence on site until details of the materials to be used for the external walls and roofs of the extension and link (including samples and details of proposed finishes) have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 3) No works shall commence on site until constructional details for the glazed areas of the extension and link have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 4) No works shall commence on site until details of the balcony and steps to the rear of the extension have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 5) No works shall commence on site until details of any rainwater disposal system have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 6) No works shall commence on site until details of the garage doors to be installed in the extension have been submitted to and approved in writing by the Local

- Planning Authority. The works shall be carried out in accordance with the approved details.
- 7) No works shall commence on site until details of the junctions of the proposed steel beams with the existing side walls (i.e. the intervention required in order to insert the new structure and any measures to allow it to act in a tying capacity between the side walls) have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
 - 8) No works shall commence on site until further details of the proposed steel beam above ceiling level over the balcony and the method of suspension of the balcony (to show how the inserted steel will relate to the existing roof/ceiling structure as well as detailing the appearance of the suspension device) have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
 - 9) No works shall commence on site until larger scale details to clarify the proposed arrangement to the south-east elevation at the junction of the new inserted floor with existing window openings have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
 - 10) No works shall commence on site until details of the compensatory steel "goal post" structure referred to in the structural engineer's report have been submitted to and approved in writing by the Local Planning Authority. The submitted details should include a justification for the works and details of the structure's appearance and impact. The works shall be carried out in accordance with the approved details.
 - 11) No works shall commence on site until a detailed repair schedule for the listed building has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved schedule.

Appeal no. 2 Appeal Ref: APP/Y3940/A/10/2135148

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans received on the 24th September 2009 and numbered:
 - Location Plan and Site Plan – Drawing no. 0223-04.1 (dated 08/09/2009)
 - Existing Plans – Drawing no. 0223-04.2 (dated 08/09/2009)
 - Existing Elevations – Drawing no. 0223-04.3 (dated 08/09/2009)
 - Existing Elevations and Cross Sections – Drawing no. 0223-04.4 (dated 08/09/2009)
 - Proposed plans – Drawing no. 0223-05.1 (dated 08/09/2009)
 - Proposed plans 02 - Drawing no. 0223-05.2 (dated 08/09/2009)
 - Proposed Elevations – Drawing no. 0223-05.3 (dated 08/09/2009)
 - Proposed Elevations and Cross Sections – Drawing no. 0223-05.4 (dated 08/09/2009)
 - 3d model views – Drawing no. 0223-05.5 (dated 08/09/2009)
 - Report on Structural Inspection ref. 8303w0001 (October 2008)
- 3) The dwelling hereby permitted shall not be occupied until the area between the

nearside carriageway edge and a line drawn 2 metres parallel thereto between the centre-line of the access and the eastern end of the site frontage has been cleared of any obstruction to visibility at and above a height of 800mm above the nearside carriageway level. That area shall be maintained free of obstruction at all times thereafter.

- 4) The dwelling hereby permitted shall not be occupied until the first 2 metres of the access has been surfaced in a well-bound consolidated material (not loose stone or gravel).
- 5) No works shall commence on site until details of the garage doors to be installed in the extension, including their means of opening, have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

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Appeal Decision

Site visit made on 3 March 2011

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 24 March 2011

Appeal Ref: APP/Y3940/A/10/2135766

23, Astor Crescent, Ludgershall, Andover, SP11 9RG

- 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 S and T Connolly against the decision of Wiltshire Council.
 - The application Ref E/10/0819/FUL, dated 24 June 2010, was refused by notice dated 20 August 2010.
 - The development proposed is three new dwellings to the rear of 23 Astor Crescent.
-

Decision

1. I dismiss the appeal.

Procedural matters and background

2. The site comprises a substantial part of the garden of a semi detached house No. 23, Astor Crescent. Since the recent changes made to Planning Policy Statement 3: Housing (PPS3) garden land is no longer defined as previously developed land and there is no longer a national indicative minimum density. That said the Council, correctly in my view, raises no in principle objection to development on the site given that it lies within the built up part of Ludgershall. The development plan encourages the efficient use of land within settlements, subject to a satisfactory impact on, amongst other things, the character and appearance of the surrounding area and residential amenity.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on: **first**, the character and appearance of the surrounding area; **second**, the living conditions of those nearby; and **third**, highway safety.

Reasons

Character and appearance

4. The application property is the southernmost in a line of dwellings fronting Astor Crescent. The rear gardens of most of these properties are unusually lengthy in comparison with much of the housing in the area, especially the more recent housing to the east. The garden of No. 23 Astor Crescent is larger than most to the gardens to the north as it broadens out more to the rear.
5. The proposed development would be at the rear of No. 23 and accessed down the side of that house. The proposed dwelling on plot 1 would be directly to the rear of No. 23 and face onto the access road. The remaining 2 dwellings

- would be located at right angles to this house at the end of the plot. They would back onto bungalows to the rear.
6. The density of the proposed development is not high in numerical terms and would result in development in keeping with that to the east. However, given the constraints that would arise from providing this number of houses on a relatively a small and constrained parcel of land the site would have a fairly extensive coverage of buildings and hard surfaces. As such it would appear more intensively developed than would be appropriate given the housing fronting this length of Astor Crescent and that nearby to the west generally. This would be noticeable in views down the proposed access road where the houses on plots 1 and 2 would be seen with front elevations closely abutting hard surfaces.
 7. Moreover, the front elevation of the proposed dwelling on plot 1 would face closely onto a line of trees on neighbouring land to the south. Although these trees are not covered by a Tree Preservation Order they have been identified in a tree survey as being of local significance. It was clear from the site visit that they make an important contribution to the character and appearance of the area especially given the now fairly denuded state of the appeal site. They are shown on the application plans as being retained. However, the canopy of these trees would be in such close proximity to the front elevation of the house as to seriously overshadow and dominate it. It is highly likely that future occupants of the house would seek to have these trees reduced in size or removed. This would be to the detriment of the character and appearance of the area.
 8. The Council's concern extends also to a "precedent" being created for development of the remaining garden land to the north of the appeal site. To the extent that allowing this appeal could encourage development on this land at a density that would be out of keeping such concerns are merited. However, this merely adds weight to the harm already identified and is not relied on in this decision.
 9. A garden centre directly to the south of the site appears to be allocated for housing in the Local Plan. However, this is a substantial and a discreet site in its own right and there is no definite indication as to how development on it would affect the appeal site. The potential future development of this site is not therefore indicative that development of the appeal site in the manner proposed is acceptable.
 10. It is concluded that the proposed development would harm the character and appearance of the surrounding area. As such it would be contrary to Policy PD1 of the Kennet District Local Plan (2004) in so far that it seeks to maintain the character and appearance of areas.

Living conditions

11. The Council considers that the proposed houses at the rear of the site would detract from the outlook of those in the bungalows that back onto the site. These bungalows are on slightly lower lying land than the appeal site and the 2 directly behind the site have been extended out at the rear or are in the process of being so extended. Even so, a sufficient gap would be retained between these properties and the proposed houses for there to be no harm through visual intrusion or over-dominance. In part this is because the new houses have been designed in a cottage style with a low eaves line to minimise

their bulk. Nor, in the absence of substantial first floor fenestration would neighbours to the rear suffer any unacceptable loss of privacy. Neighbouring bungalows to the east, that do not directly back onto the site, would be sufficiently removed from the proposed houses for no harm to be caused through over-dominance.

12. The Council is also concerned that traffic on the proposed access road past No. 23 Astor Crescent would cause unacceptable noise and disturbance for the occupiers of that property. However, the proposed access road would be reasonably distant from the side elevation of this house. And the amount of traffic movement likely from a development of this small-scale would not be sufficient to be harmful.
13. The neighbour in the adjoining house to the north, No. 21 Astor Crescent, is concerned about the impact of the proposed development on his property. The proposed dwelling on plot 1 would back onto the side boundary of his rear garden. However, with its low eaves height, and lack of first floor habitable room windows, it would cause no harm through over-dominance or loss of privacy. The 2 houses at the rear would be too distant from No. 21 to cause unacceptable harm to living conditions.
14. Local concerns on the generation of additional noise generally, and of traffic pollution, are noted. However, within an existing urban area the small amount of additional housing would have a negligible effect in this regard.
15. It is concluded that the proposed development would not be harmful to the living conditions of those nearby. As such it would not conflict with Local Plan Policy PD1 in so far that it seeks to ensure compatibility with adjoining land uses.

Highway safety

16. The Council's concern on this issue lies in some minor details of the layout with regard to manoeuvring and turning space. Between permission being refused and the appeal lodged, the appellant has provided an amended plan which overcomes the Highway Authority's concern. Had it been determined that the appeal should be allowed a modifying condition could have been imposed to require that these minor changes be made.
17. Those locally are concerned about that additional traffic movements would be detrimental to safety and the free flow of traffic. However, the limited amount of traffic that would arise would not cause the harm feared. Concerns on the highway safety of the proposed access point are not borne out by technical evidence.
18. It is concluded that the proposed development would not be detrimental to highway safety. As such there would be compliance with Local Plan Policy PD1 in so far that it requires new development to ensure highway safety and provide safe and convenient access arrangements.

Other matters

19. Local views that planned for large scale housing schemes would meet housing needs, thus negating the need to develop other sites, are not supported by evidence or borne out by the Local Plan. There is no substantial evidence to support concerns on loss of biodiversity and the currently cleared site has minimal wildlife value. The layout of the proposed development would have no

harmful effect on the security of local residents and there is no evidence to support concerns on water pressure.

Conclusion

20. No harm has been found on the second and third issues and on the "other matters". However, the harm on the first issue alone warrants dismissing the appeal.

21. For the reasons given above the appeal is dismissed.

RJ Marshall

INSPECTOR



Appeal Decision

Site visit made on 14 September 2011

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 28 September 2011

Appeal Ref: APP/Y3940/A/11/2154519

Ivy House Hotel, 43 High Street, Marlborough, Wiltshire SN8 1HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Marlborough College against Wiltshire Council.
 - The application Ref E/10/1632/FUL, is dated 26 November 2010.
 - The development proposed is change of use from hotel (C1) to boarding house (C2).
-

Preliminary matters

1. The description of development given above is a shortened version of that on the application form. I have considered the appeal on the basis of the full description.
2. Wiltshire Council failed to make a decision on the planning application in the required amount of time. Had it been able to do so, it would have refused the application for the following putative reason:

'The proposal would result in the loss of an important tourist facility within the Marlborough area. This would be detrimental to the vitality and viability of the area as a consequence of lost local employment and tourism related spend, and so is contrary to the broad principles of Planning Policy Statement No. 4 and policy ED18 of the Kennet Local Plan 2011.'

Decision

3. The appeal is allowed and planning permission is granted for change of use from hotel (C1) to boarding house (C2) at Ivy House Hotel, 43 High Street, Marlborough, Wiltshire SN8 1HJ in accordance with the terms of the application, E10/10632/FUL, dated 26 November 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No part of the development hereby approved shall be brought into use until the turning area and parking spaces have been completed in accordance with the approved plans. The parking and turning areas shall be retained for these purposes thereafter.
 - 3) The development hereby approved shall be built in accordance with the approved plans P0500, P1301, P1100A, P1101A and P1102A.

Main Issue

4. The main issue is the effect of the proposed change of use on the vitality and viability of the area.

Reasons

5. The appeal premises consist of a 28 room hotel with conference facilities situated in the centre of Marlborough, an historic market town with an attractive retail centre. The building is a Grade II listed former house and school dating from the mid 18th century which has been much altered and extended over the years, most noticeably with a 50 cover restaurant and conference facility in the early 20th century and a large extension containing bedroom accommodation in 1986. As part of the current proposal, internal alterations, minor external alterations and the removal of hotel signage would be carried out, for which listed building consent has been granted.
6. The development plan comprises saved policies of the Wiltshire and Swindon Structure Plan and the Kennet Local Plan 2011, adopted in 2004 (LP). The replacement draft Wiltshire Core Strategy Document is at an early stage, having recently completed the first stage of consultation, and I give it very limited weight.
7. A main objective of the economic and tourist development policies of the LP reflects national guidance in current Government guidance in Planning Policy Statement 4 *Planning for Sustainable Economic Growth* (PPS4). It can be summed up as to promote jobs and to sustain and enhance the vitality and viability of existing town and service centres. The reason for refusal refers to policy ED18 of the LP, which seeks to protect the prime shopping areas of Devizes and Marlborough. It advises that planning permission will not be given for the change of use of ground floor premises to uses other than Class A1 (shops) the objective being to maintain a concentration of retail. However, the proposed change of use would not lead to a loss of an A1 use. I also give weight to the concern that conversion to a shop would not be sympathetic to the buildings special architectural interest.
8. Marlborough is a significant tourist destination in the area. Numerous cultural and public events are held throughout the year. It has a large shopping area on both sides of the wide High Street catering for visitors and locals. There is demand for accommodation from tourists and visitors and from the parents of children at Marlborough College, a major local enterprise that hosts and supports tourism in the town. To assist in understanding the potential impact of the proposal, the Council commissioned an independent economic impact study in June 2011. This indicates that average occupancy levels at the Ivy House of around 55% do not differ significantly from those experienced by other hotels in Kennet and reflect trends in the economy more generally. It is common ground that there is demonstrable demand for hotel accommodation in the area and that the existing enterprise contributes to the local economy in terms of employment and spending.
9. However, the hotel operator has provided evidence that occupancy rates and revenue have deteriorated over the last 5 years with a concomitant impact on profitability. As part of recent cost saving measures and in response to local competition from restaurants, bars and cafes, the restaurant has been closed for lunch and evening meals and the hotel now operates on a bed and

breakfast basis. Efforts to market the building in 2008 and 2009 as a hotel failed although there was significant interest. The last offer was in February 2010, but this fell away. Despite a reduction in the price agreed, buyers failed to obtain bank funding and/or were discouraged by the amount of capital expenditure required to maintain and improve the premises. I have no reason to doubt the figures provided on occupancy, revenue and marketing.

10. The proposed boarding house use would also generate employment. There would be 8 full time staff and additional support staff. Although lower in terms of full time equivalent (FTE) employment than the Ivy House, the amount of money paid in wages would be significantly higher. In addition, there would be increased food purchases and maintenance as well as other supplies necessary for a fully occupied building. The increased numbers of pupils in the town would generate additional spend by them and their parents. The premises would be used for residential conferences during the school holidays. As such, the effect on the local economy would be positive and would not conflict with the economic development objectives of PPS4.
11. Moreover, there is very unlikely to be an unacceptable effect on the availability of serviced accommodation in the area. Apart from the 33 room Castle & Ball Hotel on the opposite side of the High Street, there are a further 51 hotel rooms within 5 miles and 443 within 8 miles of the centre. There are 10 accommodation providers within 1 mile. I saw that there are bed and breakfast establishments such as the Merlin in the High Street and the Lamb Inn within a short distance. There is no evidence that closure of the hotel would lead to any shortage of accommodation for visitors or that there would be any negative impact on income received by other businesses in the town.
12. I appreciate the concern that the nature of a boarding house use would be different from a hotel which has existed for over 70 years, but there is nothing to suggest that potential visitors to Marlborough would be unable to stay in the area or would be discouraged from doing so; or that the use of the building by children, students or other users would not add to vitality and interest. The development would not conflict with the aims of policy ED18 of the LP.
13. In addition, the removal of the hotel lettering from the front elevation would improve its appearance as a former house. Whilst I saw that the hotel appeared in good physical condition, the ability of the owners to adapt and invest in it as a hotel is constrained by its listed status, as was demonstrated by an earlier application in 2008. The likelihood that the College would be committed to long term maintenance of the fabric of the listed building is a factor in favour. The development would maintain a diversity of uses within the centre, consistent with the conservation aims of the LP, and would encourage continued investment and so maintain and enhance the built fabric.

Other matters

14. I have taken account of all the other matters raised. Whilst it may be that hotel use could be successful as many suggest, marketing has not provided a way forward, even on the basis of 'offers invited'. If it were possible to operate the hotel at a profit that would enable investment for the future and a reasonable return, then that opportunity has been provided and no firm bids have been materialised.

15. There is nothing to suggest that the noise likely to be generated by students would be unacceptable compared with the existing hotel use which has a large outdoor sitting area at the rear. There is no existing public access to the rear that would be lost. There is no evidence to suggest that the reduction in business conference or reception facilities at the Ivy House is likely to have an unacceptable impact on the availability of such facilities in the town generally; in any case, the College has indicated that a similar facility would be provided at Ivy House out of term time, as is done at some of the other boarding houses on their estate.

Conclusion

16. The change of use would have no effect on the number of A1 shop uses in the High Street. There would be a positive effect on income received by local businesses and an increase in wages that contribute to the local economy. The vitality of the area would not be affected. The proposed development would not conflict with the aims of PPS4 or development plan policies and the appeal should be allowed.

Conditions

17. The turning and parking spaces need to be provided before the use commences in the interests of highway safety. It is necessary that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

Paul Jackson

INSPECTOR



Appeal Decision

Site visit made on 28 June 2011

by Les Greenwood BA(Hons) DipTP MRTPI

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

Decision date: 8 July 2011

Appeal Ref: APP/Y3940/D/11/2153171

Fairview, Uphill, Urchfont, Devizes, Wiltshire SN10 4SB

- 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 Keith Ewart against the decision of Wiltshire Council.
 - The application Ref E/11/0174/FUL, dated 1 February 2011, was refused by notice dated 21 April 2011.
 - The development proposed is a double garage with a garden and log store and PV panels on the roof.
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Application for Costs

1. An application for costs was made by Mr Keith Ewart against Wiltshire Council. This application will be the subject of a separate decision.

Decision

2. I allow the appeal, and grant planning permission for a double garage with a garden and log store and PV panels on the roof at Fairview, Uphill, Urchfont, Devizes, Wiltshire SN10 4SB in accordance with the terms of the application Ref E/11/0174/FUL, dated 1 February 2011, subject to the following 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: Drawing Nos 1004-L001, L100, L101, D110A and D111A.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted (including the finish for the wall cladding) and specifications for the photovoltaic panels have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Procedural matter

3. At my visit, I viewed the site from 2 neighbouring properties, Gaddon House and Carina Cottage, as well as from the street and from the appeal site itself.
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Main issue

4. The main issue is the effect of the proposal on living conditions at the neighbouring properties, with particular regard to Gaddon House and Carina Cottage.

Reasons

5. Fairview House sits to the rear of a row of houses, in a rural situation outside of the main part of the village of Urchfont. It has a large garden area, including a low, overgrown single garage faced with corrugated metal sheeting and located near to the boundary with Gaddon House. This would be replaced by a timber and slate double garage with a small garden/log store, in approximately the same location.
6. Gaddon House is a thatched cottage, backing onto Fairview's garden and sitting at a lower level, with only a narrow strip of land and a hedge between. Several of the cottage's rear windows look out towards the existing garage, particularly a ground floor kitchen window and a first floor bedroom window.
7. The proposed new garage building would, although much larger than the existing garage, be modest in height and scale. It would be turned end on to Gaddon House, would have an asymmetrical gable with a low eaves height at one side and would step down at the end closest to Gaddon House. All of these factors would minimise its apparent bulk as seen from that property. There are other windows in both of the rooms which would be most affected. I find that the new building would be designed and sited so that, even with the difference in levels, it would not be an unacceptably overbearing feature in the outlook from Gaddon House.
8. The garage would sit almost directly east of the nearest windows at Gaddon House, where it would block some morning sunlight. I note the lighting calculations submitted by the occupier of Gaddon House. However, the same factors which limit the impact on outlook would also limit the amount of overshadowing. I find that the impact on light at that property would be well within acceptable limits, bearing in mind the scale, orientation and position of the building. I am not convinced that the overhang of the house's thatched roof or the existence of trees near to the other kitchen window cause sufficient shading to alter this finding.
9. Carina Cottage is farther away and has a very large rear garden, with the main patio area located towards the farthest end of the house from Fairview. While the new garage would be clearly visible from Carina Cottage, that property would retain an open aspect to the rear and would not be significantly overshadowed. The garage also would be set well away from the house to the other side, Jasmine Cottage.
10. I conclude that the proposal would not unduly harm living conditions at neighbouring properties, including Gaddon House and Carina Cottage. The proposal therefore complies with Policy PD1(10) of the Kennet Local Plan 2011, which requires all development to adequately address the impact on residential amenity.

11. I have taken account of all other matters raised, including the comments of both the Parish Council and local objectors. I agree that the garage could practically be sited further away from Gaddon House, but must consider the acceptability of the proposal as submitted. The existing garage can be glimpsed from the street and the new garage building would be more visible, but not prominent. It would be a better quality building and would be far enough away from Carina Cottage so as not to significantly affect the setting of that grade II listed building. The provision of photovoltaic solar panels would be visually inoffensive and would accord with policies promoting sustainable development.
12. I impose a condition listing the approved plans, for the avoidance of doubt and in the interest of proper planning. This condition includes drawing No 1004-D110A, with a corrected east elevation. The approval of materials samples, and details of the solar panels, is necessary in order to protect the character and appearance of the area. Wessex Water advises that there is a public foul sewer crossing the site. It asks for a condition or informative notifying the developer that an agreement is needed for the protection of this infrastructure, prior to development. Having made reference to this matter, I see no need for a condition.
13. For the reasons set out above, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

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