

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Council Offices, Monkton Park, Chippenham,
SN15 1ER
Date: Wednesday 20 February 2013
Time: 6.00 pm

Please direct any enquiries on this Agenda to Kirsty Butcher, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 713948 or email kirsty.butcher@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 Desna Allen	Cllr Peter Hutton
Cllr Peter Colmer	Cllr Simon Killane
Cllr Christine Crisp	Cllr Mark Packard
Cllr Peter Davis	Cllr Toby Sturgis
Cllr Peter Doyle	Cllr Anthony Trotman (Chairman)
Cllr Alan Hill (Vice Chairman)	

Substitutes:

Cllr Chuck Berry	Cllr Howard Marshall
Cllr Bill Douglas	Cllr Bill Roberts
Cllr Mollie Groom	Cllr Judy Rooke

AGENDA

Part I

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

1 **Apologies**

To receive any apologies for absence.

2 **Minutes of the previous Meeting** (*Pages 1 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 30 January 2013.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this **agenda no later than 5pm on Wednesday 13 February 2013**. Please contact the officer named on the front of this agenda for

further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **The Definite Map And Statement For Malmesbury Rural District Area**
(Pages 13 - 66)

7 **Planning Appeals** *(Pages 67 - 68)*

An appeals update report is attached for information.

8 **Planning Applications** *(Pages 69 - 70)*

To consider and determine planning applications in the attached schedule.

9 **12/03960/FUL & 12/03961/LBC - 31 Gloucester Street, Malmesbury SN16 0AA** *(Pages 71 - 78)*

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

This page is intentionally left blank

NORTHERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING
HELD ON 30 JANUARY 2013 AT COUNCIL CHAMBER - COUNCIL OFFICES,
MONKTON PARK, CHIPPENHAM, SN15 1ER.**

Present:

Cllr Desna Allen, Cllr Chuck Berry (Substitute), Cllr Peter Colmer, Cllr Peter Davis,
Cllr Peter Doyle, Cllr Alan Hill (Vice Chairman), Cllr Peter Hutton, Cllr Simon Killane,
Cllr Howard Marshall (Substitute), Cllr Toby Sturgis and Cllr Anthony Trotman (Chairman)

Also Present:

Cllr Alan MacRae and Cllr Sheila Parker

11 **Apologies**

Apologies were received from Councillors Crisp and Packard .

Cllr Crisp was substituted by Cllr Berry.

Cllr Packard was substituted by Councillor Marshall.

12 **Minutes of the previous Meeting**

The minutes of the meeting held on 9 January 2012 were presented.

Resolved:

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

13 **Declarations of Interest**

Cllr Doyle declared an interest in agenda item nos. 7a, 7b, 7e and 7f being a member of the Cotswold Conservation Board. He declared he would participate in the debate and vote for each item with an open mind.

14 **Chairman's Announcements**

A minute's silence was held in remembrance of Councillor Monica Blake, a previous chairman of North Wiltshire District Council Planning Committee.

15 **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

16 **Planning Appeals**

The Committee noted the contents of the appeals update.

17 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes, in respect of applications **7a** and **7e** as listed in the agenda pack.

The Committee agreed that Agenda item 7f would be heard before item 7e.

18 **12/00105/S73A - Cotswold Airport, Kemble GL7 6BA**

Public Participation

Simon Chambers spoke in support of the application.

The Planning Officer introduced the report which recommended that permission be delegated to the Area Development Manager for the signing of a Unilateral Undertaking and subject to conditions.

She explained that this matter had been brought back to Committee for an alteration to include Fridays in the named days for car testing, and highlighted this would not increase the number of days or hours permitted.

She explained that due to technical issues with the signing of the Unilateral Undertaking the information provided in the late observations was incorrect and she was therefore recommending the permission be delegated as detailed in her report.

There were no technical questions asked

Members of the Public then had the opportunity to address the Committee as detailed above.

The Local Member was not in attendance but it was understood that they were in agreement with the officer recommendation.

The Committee noted that the application had previous been debated extensively and the alteration did not increase the number of days or hours for car testing.

Resolved:

To DELEGATE to the Area Development Manager for permission to be GRANTED subject to the correct and accurate signing of the Unilateral Undertaking and

Subject to the following conditions:

- 1. All Show Days' traffic control shall be carried out in accordance with the Method Statement for the management and control of traffic on "Show Days" submitted to the Local Planning Authority on 29th November 2012 and 11/12/12 and attached to this decision, unless otherwise approved in writing by the Local Planning Authority.**

REASON: In the interests of highway safety.

19 **12/03823/FUL and 12/03824/CAC - Cyprus Cottage, West Kington SN14 7JE**

Public Participation

Mr Clinton, Julie O'Shea and Dr Tim Smith all spoke in support of the application.

Councillor Bush, Nettleton Parish Council spoke in support of the application.

The Chairman explained that there were two applications covered by the report and a decision would need to be made on both.

The Planning Officer introduced the report which recommended that planning permission be refused on both applications.

He noted that although progress had been made since the withdrawal of a previous scheme officers were unable to support the revised proposals. He explained that he would be minded to support the application with a few modifications including a change to the pitch of the roof, recessed corners to delineate and play down the bulk of the building and a reduction and recess of the canopy to achieve definition of early forms.

The Committee had the opportunity to ask technical questions of the officer and it was confirmed that demolition works related to the retaining wall at the rear of

the dwelling which required a suitable replacement and as the main application proposal was not supported this element could not be supported.

Members of the Public then had the opportunity to address the Committee as detailed above.

The Local Member, Councillor Jane Scott OBE was unable to attend and Councillor Toby Sturgis spoke on her behalf. Whilst understanding the position of the applicants and residents he noted the concern with setting a precedent and the need to compromise.

He explained that discussions had shown that raising the roof ridge halfway up to the main ridge and dropping the right hand eaves would be acceptable to both parties and reinstate the proper pitch of the roof.

A proposal to delegate to the Area Development Manager for permission to be granted subject to plans being submitted showing the modifications needed was seconded and accepted.

The Committee agreed that it would be wrong to grant Conservation Area Consent prior to the full application being granted.

A proposal to delegate to the Area Development Manager for consent to be granted subject to the full application being granted was seconded and accepted.

Resolved:

N/12/03823/FUL and N/12/03824/CAC

To DELEGATE to the Area Development Manager for permission to be GRANTED and Conservation Area Consent (following the grant of Full Planning Permission) subject to scheme revisions to include:

- **Increase in the ridge height of the roof ridge of the rear (North) extension**
- **Increase the pitch of the rear (North) extension roof profile following increase in height**
- **Lower western (right) eaves level on the rear (North) extension to ensure subservient to the main dwelling eaves**

20 **12/03291/S106 - 55B High Street, Corsham SN13 0EZ**

Public Participation

Mr Sam Van Hijnegen and Simon Chambers spoke in support of the application

The Planning Officer introduced the report which recommended that the Section 106 Agreement be modified to remove the provisions that the dwelling should be owned and used exclusively in conjunction with the retail unit, and that no access shall be created to or use made of the adjacent land by the owners but to continue to prevent the separate sale of the dwelling and commercial premises.

He explained that conditions imposed related to lack of parking and residential amenity. Whilst consultations had brought no complaints, he drew attention to the highways objection regarding the lack of parking provision. He explained that the applicant had leased land that was formerly part of Spring Gardens

There were no technical questions asked.

Members of the Public than had the opportunity to address the Committee as detailed above.

The Local Member, Councillor Alan Macrae then spoke in support of the application. He highlighted that no other properties in the area had parking, including the new properties at Hobbs Walk. He explained that due to the success of the commercial business it was looking to move to larger premises; however this could be hampered if it is still tied to the residential property.

In the ensuing debate the Committee noted that housing built subsequently to the residential site did not have relevant parking. A proposal to recommend to remove all three conditions was seconded and accepted.

Resolved:

To MODIFY the Section 106 Agreement to the following effect:

That the following sections be removed:

- a. the Owner will not cause or permit the Dwelling to be used except by the occupiers for the time being of and wholly in conjunction with the Commercial Premises**
- b. the Owner will not cause or permit any pedestrian access to be formed by opening in the Dwelling onto any adjoining land whatsoever except by openings onto the Commercial Premises**
- c. the Owner will not cause or permit any use to be made by the occupiers for the time being of the Dwelling of any land except the Dwelling and the Commercial Premises**

21 **12/03969/FUL - St Patricks Church, Corsham**

Public Participation

Simon Chambers spoke in support of the application.

The Planning Officer introduced the report which recommended that planning permission be refused.

Whilst accepting the need for a hall and agreeing the site was the correct location he detailed the reason for refusal as being one of design and highlighted the objection received from the conservation officer owing to the proposed building's impact on the adjacent listed buildings.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that community benefit justified the building, existing tiles on the old school building were of stone and the tiles proposed on the application were of slate. He clarified it was a question of definition in design over absolute scale and height.

Members of the Public then had the opportunity to address the Committee as detailed above.

The Local Member, Councillor Alan Macrae spoke in support of the application and highlighted the need for the development with it being the only Roman Catholic church in the area and as such it would benefit the whole community. He explained the design was creating balance whilst not detracting or overpowering the surrounding buildings, and was merely replacing a previous building.

A debate followed during which the Committee noted the development of the surrounding area, the previous development of the site and the existing use of render within the conservation area. A motion to approve was seconded, and an amendment to delegate to the Area Development Manager subject to conditions relating to the detail and materials used was accepted.

Resolved:

To DELEGATE to the Area Development Manager for permission to be GRANTED subject to appropriate conditions including submission and approval of materials.

22 **11/03974/FUL and 12/03843/LBC - Highways Land off A4, Bath Road, Box, Corsham SN13 8AF**

Public Participation

Mr Lyons and Helen Hann spoke in objection to the application.

Mr William Osborne spoke in support of the application.

Councillor Pauline Bush, Box Parish Council spoke in objection to the application.

The Planning Officer introduced the report which recommended that planning permission be granted subject to conditions.

He highlighted that improving telecoms coverage was both a council and government priority, no conservation objections had been received and the balancing exercise was one of need and requirement against harm to heritage assets and the character and amenity of the locality. He drew attention to the late observations which confirmed that the applicant had permission to alter the alignment of the existing kerbing at their own cost.

The members then had the opportunity to ask technical questions of officers and it was confirmed that the colour of the mast would be sympathetic to its background. Clarification was sought on the Inspector judging the appeals and it was confirmed this was a PINS Inspector.

Members of the public then had the opportunity to address the Committee as detailed above.

The Local Member, Councillor Sheila Parker had the opportunity to address the Committee, highlighting the mast as sticking out within its surrounding being the only pole visible and suggested the use of a tree design in mitigation.

In the debate that followed the Committee expressed sympathy with the local residents but noted that legislative framework was very clear.

Resolved:

To GRANT planning permission for both applications 11/03974/FUL & 12/03843/LBC for the following reason:

The proposed mast in the form of a telegraph pole and its associated equipment housing would be seen in the context of existing signage immediately next to it and with mature trees elsewhere in the vicinity. Consequently it is considered that any harm to the character and appearance of the Cotswold AONB and the effect would be minimal and in addition it would not detract from the openness of the Green Belt in this location. Further no harm is caused to the nearby heritage asset - the listed bridge structure or its setting having regard to the existing characteristics. The proposals are thus in accordance with Policies C3, NE1 and NE4 of the adopted North Wiltshire Local Plan 2011 and paragraphs 42 and 46 of the National Planning Policy Framework 2012.

Subject to the following conditions:

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

REASON: To comply with the provisions of Section 91 of the Town & Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 and the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2. Notwithstanding the details submitted, prior to the commencement of development/works, details of the colour and finish of the mast and associated equipment shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the details approved and maintained thereafter.**

REASON: In the interests of the character and appearance of the area and adjacent Listed Building.

- 3. The mast and equipment shall be removed from the site within 3 months of it ceasing to be required for telecommunications purposes.**

REASON: In the interests of visual amenity and the adjacent Listed Building.

- 4. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.**

Plans: Map showing preferred and discounted options for Cell No: AVN0552 dated 2nd December 2011
Map showing current GSM (in-train) Coverage from survey February 2011 dated 2nd December 2011

Revised Dwg Nos: A/GA/01 Rev B; A/GA/02 Rev B; A/GA/03 Rev B; A/GA/04/Rev B and A/GA/05 Rev B all dated 16th November 2012.

REASON: To ensure that the development is implemented as approved.

INFORMATIVES

1. The applicant is advised that no work should be carried out on the development site that may endanger the safe operation of the railway or the stability of Network Rail's structures and adjoining land. Care must be taken to ensure that no debris or other materials can fall onto Network Rail land. In view of the close proximity of these proposed works to the railway boundary the developer should contact Richard Selwood at Network Rail on AssetProtectionWestern@networkrail.co.uk before works begin.
2. The Council will encourage the consideration and use of this mast by other Telecommunications Code System Operators for mast sharing purposes.

23 **11/03983/FUL and 12/02928/LBC - Highways Land off London Road, Box, Corsham SN13 8EP**

The Committee agreed that agenda item 7f would be heard before agenda item 7e.

The Chairman explained that there were two applications covered by the report and a decision would need to be made on both.

Public Participation

Mr Lyons spoke in objection to the application.

Mr William Osborne spoke in support of the application.

Councillor Pauline Lyons, Box Parish Council spoke in objection to the application.

The Planning Officer introduced the report which recommended that planning permission and listed building consent be granted subject to conditions.

He noted that this application had previously been deferred, and his report addressed the concerns raised.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that whilst masts can potentially be shared there was no obligation to do so, and it was not possible to condition future applications.

Members of the Public then had the opportunity to address the Committee as detailed above.

The Local Member, Councillor Sheila Parker spoke in objection to the application. Whilst supporting the need for high quality communications she

questioned the benefit of the mast with its role not being for local residents or businesses, not conserving or enhancing natural beauty and queried how its removal when redundant would be enforced.

In the debate that followed the Committee expressed sympathy with the local residents but noted that it should not question the need for telecommunications systems. The addition of an informative for other users to look at using this mast was agreed.

Resolved:

To GRANT planning permission for both applications 11/03983/FUL and 12/02928/FUL for the following reason:

The proposed mast in the form of a telegraph pole and its associated equipment housing would be seen in the context of much larger street furniture immediately adjacent to it. Consequently it is considered that any harm to the character and appearance of the area would be de minimis and would not detract from the openness of the Green Belt at this location. Further no harm is caused to nearby Listed Buildings of their settings having regard to existing characteristics. The proposals thus accord with policies C3, NE1 and NE4 of the adopted North Wiltshire Local Plan 2011.

Subject to the following conditions:

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

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 and the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2. Notwithstanding the details submitted, prior to the commencement of development/works, details of the colour and finish of the mast and associated equipment shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the details approved and maintained thereafter.**

REASON: In the interests of the character and appearance of the area and the adjacent Listed Building.

- 3. The mast and equipment shall be removed from the site within 3 months of it ceasing to be required for telecommunications purposes.**

REASON: In the interests of visual amenity and the adjacent Listed Building.

4. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Plans: HD102-20048 01 Rev B; HD102-200480 02 Rev B; HD102-20048 03 Rev B; HD102-20048 04 Rev B. Dated 2nd August 2012

REASON: To ensure that the development is implemented as approved.

Subject to the following Informatives:

1. SAFETY

The applicant is advised that no work should be carried out on the development site that may endanger the safe operation of the railway or the stability of Network Rail's structures and adjoining land. Care must be taken to ensure that no debris or other materials can fall onto Network Rail land. In view of the close proximity of these proposed works to the railway boundary the developer should contact Richard Selwood at Network Rail on AssetProtectionWestern@networkrail.co.uk before works begin.

2. The Council will encourage the consideration and use of this mast by other Telecommunications Code System Operators for mast sharing purposes.

24 **Urgent Items**

There were no urgent items.

25 **Exclusion of the Press and Public**

Resolved:

That in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in agenda item number 10 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

26 **Confidential Minutes**

The confidential minute of the meeting held on 9 January 2012 was presented.

Resolved:

To approve as a true and correct record and sign the minute.

(Duration of meeting: 6.05 - 8.25 pm)

The Officer who has produced these minutes is Kirsty Butcher, of Democratic Services, direct line (01225) 713948, e-mail kirsty.butcher@wiltshire.gov.uk

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

WILTSHIRE COUNCIL

AGENDA ITEM NO. 6

NORTHERN AREA PLANNING COMMITTEE

20 FEBRUARY 2013

WILDLIFE AND COUNTRYSIDE ACT 1981

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

THE WILTSHIRE COUNCIL (PARISH OF LEA AND CLEVERTON) PATH No. 34, 35 and 36 RIGHTS OF WAY MODIFICATION ORDER 2012

Purpose of Report

1. To:
 - (i) Consider the evidence and one duly made objection relating to the above Order to add public rights of way on foot to the Definitive Map and Statement near Crab Mill, Lea.
 - (ii) Recommend that the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed.

Description of the Route

2. The Order is attached to this report at **Appendix 1** and contains a map showing the claimed routes.
3. The routes lead across fields and beside the Woodbridge Brook and link to footpath Lea and Cleverton No. 3 and Crab Mill Lane.

Background

4. On 17 January 2012 Wiltshire Council received an application from a member of the public for an Order to modify the Definitive Map and Statement by recording footpaths across fields in the Crab Mill area of the village of Lea. The application was supported by a total of 31 witness evidence forms detailing use of the claimed routes dating back to 1971.
5. The Council has a duty to investigate this evidence and to make an Order if, on the balance of probability, it is either reasonably alleged, or shown, that public rights subsist over the ways. Pursuant to this duty, consultations and investigations were carried out between February and May 2012.

6. Correspondence was received, both in support of, and in objection to, the application.
7. Officers considered all of the evidence available and on 16 October 2012 a decision was made to make an Order. The Decision Report is appended here at **Appendix 2**.
8. The Order was made on the basis that it is reasonably alleged that Section 31 of the Highways Act 1980 applies. Broadly, this gives that where a right of way has been used without interruption by the public 'as of right' for a period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate, then public rights are deemed to have been dedicated. 'As of right' means without force, without permission and without secrecy.
9. In deciding to make the Order the Council was bound by the case of R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P and CR 402 which gives that the Council must apply one of two tests.

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

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? This requires that the allegation of public rights is reasonable and that there is no incontrovertible evidence to the contrary.
10. Test B is the weaker of the two tests and was applied to make this Order.
11. The Order has been advertised in accordance with the regulations and one objection to it has been received.
12. The Order must now be forwarded to the Secretary of State for determination. The test for confirmation of the Order that will be applied by The Secretary of State will be Test A; i.e. that, on the balance of probabilities, a right of way subsists.

The Evidence in Support

13. A total of 31 members of the public have submitted user evidence forms (UEFs) detailing their use of the claimed paths for varying periods of time dating from 1971 to 2012.
14. Photographs showing the family and dogs of one of the witnesses using some of the claimed paths were additionally submitted. The photographs are dated 2005, 2007 and 2009.
15. UEFs were all accompanied by a map showing where the witnesses had walked. Not all witnesses had walked all routes claimed. All 31 witnesses claimed to have used the route A to B on the Order plan (**Appendix 1**), 26 claimed to have used the route around the field perimeters (C-E-F) and 12 claimed to have used all of the routes.

16. Witnesses all claim to have used the routes without challenge until the autumn of 2011 when a number of witnesses were either challenged or had heard of others who had been. This challenge precipitated the application and has been taken as the date that the use was called into question.
17. If the end of 2011 is taken as the date that the public use was called into question then the relevant period for the consideration of 20 years use is between 1991 and 2011.
18. All 31 users have used the routes within this 20 year period, without interruption to use, challenge or permission (except for witness No. 19 who states that she did have permission).
19. The UEFs are summarised at **Appendix 3**.

The Evidence Against the Order

20. Prior to making the Order, evidence was adduced by the current landowners and one previous landowner. This evidence is amongst that considered at **Appendix 2, pages 13 to 17**.
21. Nothing in this evidence was considered incontrovertible (i.e. not able to be denied or disputed) and capable of defeating Test B referred to at paragraph 9 above, hence, the Order was made.
22. The Order was advertised from 25 October 2012 to 7 December 2012 and attracted one duly made objection. The objection was made by Osborne Clarke on behalf of one of the affected landowners (land shown coloured blue at **Appendix 2, page 6**).
23. The objection is appended in full at **Appendix 4**.
24. The objection is the same as that submitted during the initial consultation period and is summarised and discussed at **Appendix 2, pages 15 to 17**.
25. The covering letter to the objection states that substantial evidence from a number of witnesses will be adduced, including that of the tenant of the agricultural land, adjoining owners and predecessors in title to challenge the evidence that will be given by the supporters of the Modification Order at a Public Inquiry.
26. This evidence has not been made available to Wiltshire Council.

Main Considerations for the Council

27. The Council, as the surveying authority for the county of Wiltshire, excluding the Borough of Swindon, has a duty under Section 53 of the Wildlife and Countryside Act 1981 to investigate the application made by Mr. M. Moss. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.

28. 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.”

29. 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.”

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

31. Dedication of a way as highway can be presumed after public use for 20 years provided it satisfies the requirements of Section 31(1) 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.”

32. 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.

33. 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.

34. 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.

35. 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.
36. 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:
37. Section 31 of the Highways Act states as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(i) within ten years from the date of deposit

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

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

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

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

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

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

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

“It should first be noted that s.31(1) does not require a tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be a difficulty in satisfying such a requirement without any evidence at all. It requires ‘sufficient evidence’ that there was no intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible

outside the landowner's consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson's Case [R v S of S for the Environment ex p. Billson [1999] QB374 it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience."

Environmental Impact of the Recommendation

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

Risk Assessment

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

Financial Implications

41. It is considered that with this case and the need to test the evidence of witnesses from both sides, that a Public Inquiry is unavoidable. However, the decision whether to determine the Order by Written Representations, a Public Hearing or a Public Inquiry rests with the Secretary of State.
42. The Council has a duty in law to support Orders where it is considered that on the balance of probability public rights subsist as shown in the Order. Budgetary provision has been made for this duty.
43. It is rare for a Council to object to an Order, though it may do so. An example of this may be when an Order has been made and during the advertisement period evidence against the Order is brought to its attention that is incontrovertible. This would attract a similar cost to supporting an Order and could be in the region of £3,000 to £10,000.

Options Considered

44. That:
- (i) The confirmation of the Order is supported as made.
 - (ii) The confirmation of the Order is supported with modifications.
 - (iii) The confirmation of the Order is objected to.

Reasons for Recommendation

45. The application adduces evidence that shows that on the balance of probability the routes have been used by the public at large for a period of at least 20 years without interruption in a manner that is 'as of right'.
46. The objector to the Order disputes this evidence on a number of grounds.

47. Wiltshire Council is not aware of any incontrovertible evidence to defeat the application of s.31(1) HA80 and has no evidence of any statements or deposits being made in respect of s.31(5) and (6) HA80 or of any signs or notices being placed to satisfy s.31(3) or (4).
48. There is no requirement to demonstrate an intention to dedicate with the application of s.31(1) HA80. It is for the landowner to demonstrate a *lack* of intention to dedicate the way as a public right of way to the relevant audience and Wiltshire Council has no evidence before it that this was done.
49. The placement of fencing and gates does not constitute an interruption to use unless the intention of the gate or fence was to prevent public use and that it was effective in doing so. As the land was grazed it is likely that the purpose of the fencing was to contain livestock. UEFs show that use of the ways was continuous since 1971 and that the presence of cattle did not prevent use. There is no evidence of gates being locked or of locks or fencing being damaged by users to gain entry to land.
50. Although a dog walker may choose not to walk in a field containing cattle it is a fact that many hundreds of kilometres of rights of way in Wiltshire pass through fields containing cattle and that the public use them without incident.
51. All of the routes shown in the Order satisfy the term 'way' as given in s.31(1) HA80.
52. In the absence of any further evidence being adduced at the Order making and advertisement stage it is considered that on the balance of probabilities rights of way subsist over the Order routes and that the Order should be confirmed.

Recommendation

53. That the Wiltshire Council (Parish of Lea and Cleverton) Path No. 34, 35 and 36 Rights of Way modification Order 2012 is forwarded to the Secretary of State for Environment, Food and Rural affairs for determination with the recommendation that the order be confirmed.

MARK SMITH

Service Director - Neighbourhood Services

Report Author

Sally Madgwick

Rights of Way Officer

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

Correspondence with Parish Councils, user groups, other interested bodies and members of the public

WILDLIFE AND COUNTRYSIDE ACT 1981

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

THE WILTSHIRE COUNCIL (PARISH OF LEA AND CLEVERTON) PATH No. 34, 35 and 36 RIGHTS OF WAY MODIFICATION ORDER 2012

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 Malmesbury Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: -

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

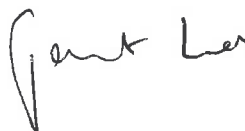
The Authority has consulted with every local authority whose area includes the land to which the order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 7th day of June 2012
2. The Definitive Map and Statement for the Malmesbury Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council (Parish of Lea and Cleverton) Path No. 34, 35 and 36 Rights of Way Modification Order 2012.

THE COMMON SEAL of
WILTSHIRE COUNCIL was
hereunto affixed this 18th day
of ~~OCTOBER~~ 2012 in the
presence of:

}
}
}
}



Principal Solicitor



76387

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP

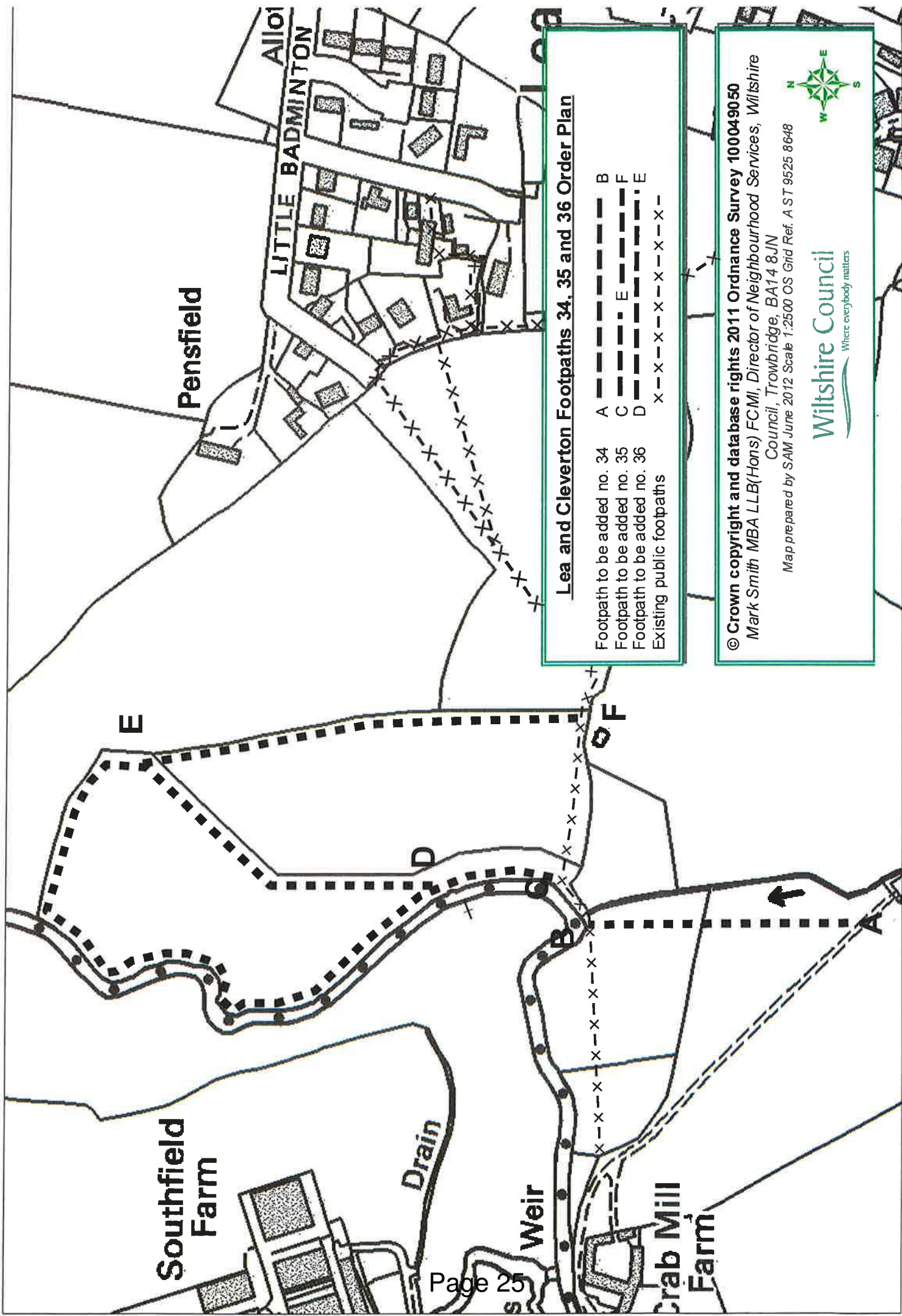
Parish Path No	Description of footpath to be added	Modified under Section 53(3) as specified
Lea and Cleverton 34	Length of footpath as shown by a broken black line marked A to B to on the plan annexed hereto. Width 1.5 metres Approximate length 150 metres	53(3)(c)(i)
Lea and Cleverton 35	Length of footpath as shown by a broken black line marked C to E to F on the plan annexed hereto. Width 1.5 metres Approximate length 670 metres	53(3)(c)(i)
Lea and Cleverton 36	Length of footpath as shown by a broken black line marked D to E on the plan annexed hereto. Width 1.5 metres Approximate length 180 metres	53(3)(c)(i)

PART 2

MODIFICATION OF THE DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

Parish Path No	Description of footpath to be added	Modified under Section 53(3) as specified
Lea and Cleverton 34	<u>Footpath</u> leading from Crab Mill Lane at OS grid ref. ST 953 865 in a northerly direction to join footpath number 3 close to Woodbridge Brook. Width 1.5 metres Approximate length 150 metres	53(3)(c)(i)
<u>Limitations or Conditions</u>	Field gate at field boundary OS grid ref ST 953 866	
Lea and Cleverton 35	<u>Footpath</u> leading from path no 3 at OS Grid ref ST 9529 8666 in a generally northerly direction following the brook to the field boundary where east south east and south following the field edges to join path no. 3. Width 1.5 metres Approximate length 670 metres	53(3)(c)(i)
<u>Limitations or Conditions</u>	Gap at field boundary OS grid ref ST 9536 8690	
Lea and Cleverton 36	<u>Footpath</u> leading from path 35 at the Woodbridge Brook leading in a northerly and north easterly direction along the northern side of the field boundary to join path no. 35 at OS grid ref ST 9536 8690. Width 1.5 metres Approximate length 180 metres	53(3)(c)(i)



Pensfield

LITTLE BADMINTON

E

F

Southfield Farm

Drain

Weir

Crab Mill Farm

Lea and Cleverton Footpaths 34, 35 and 36 Order Plan

- Footpath to be added no. 34 A ———— B
- Footpath to be added no. 35 C - - - - E - - - - F
- Footpath to be added no. 36 D - · - · - E
- Existing public footpaths X - - - - X - - - - X - - - - X - - - -

© Crown copyright and database rights 2011 Ordnance Survey 100049050
 Mark Smith MBA LLB(Hons) FCMJ, Director of Neighbourhood Services, Wiltshire Council, Trowbridge, BA14 8JN
 Map prepared by SAM June 2012 Scale 1:2500 OS Grid Ref. A ST 9525 8648



Wiltshire Council
 Where everybody matters

Wildlife and Countryside Act 1981 s.53

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

Land off Crab Mill Lane, Lea

Decision Report

NB All documents (including user evidence forms, responses to consultations and correspondence) are available to be viewed at the Council's offices at Newbury House, Aintree Avenue, White Horse Business Park, Trowbridge, please contact Sally Madgwick on 01225 713392.

- 1.1**
- Application number:** 2012/02
- Application date:** 14 January 2012
- Applicant:** Mr Maurice Moss
13 Pembroke Green
Lea
Malmesbury
Wiltshire
SN16 9PB
- Application to:** Add the footpath from tarmac road to Woodbridge Brook, follow Woodbridge Brook to hedge, turn right and follow hedge to top of hill. Route 1 At top of hill continue following the hedge line to bottom of hill. Turn right onto public footpath and continue towards Woodbridge Brook.
Route 2 At top of hill turn right and follow fence line back to Woodbridge Brook. At Woodbridge Brook turn right and walk back to tarmac road.
- Width:** 1 to 3 metres at the narrowest point
- Sch 14 Compliance:** Notice of application for Modification Order (Form 1)
Certificate of Service of Notice of application to the following owners and occupiers (Form 3):
Mr Smith, Crab Mill Farm, Crab Mill Lane, Lea, Malmesbury, SN16 9NF
Mrs J Wraight, Crabb Mill, Crab Mill Lane, Lea, Malmesbury, SN16 9NF
1:2500 Plan showing claimed route
29 witness evidence forms plus 2 subsequently submitted – total 31
- Basis of Application:** That public rights exist and that the route should be recorded in the Definitive Map and Statement.

Legal Empowerment: Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map and statement of public rights of way.

The Wildlife and Countryside Act 1981 (c.69) s.53 (2)(b) applies:

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

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

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

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

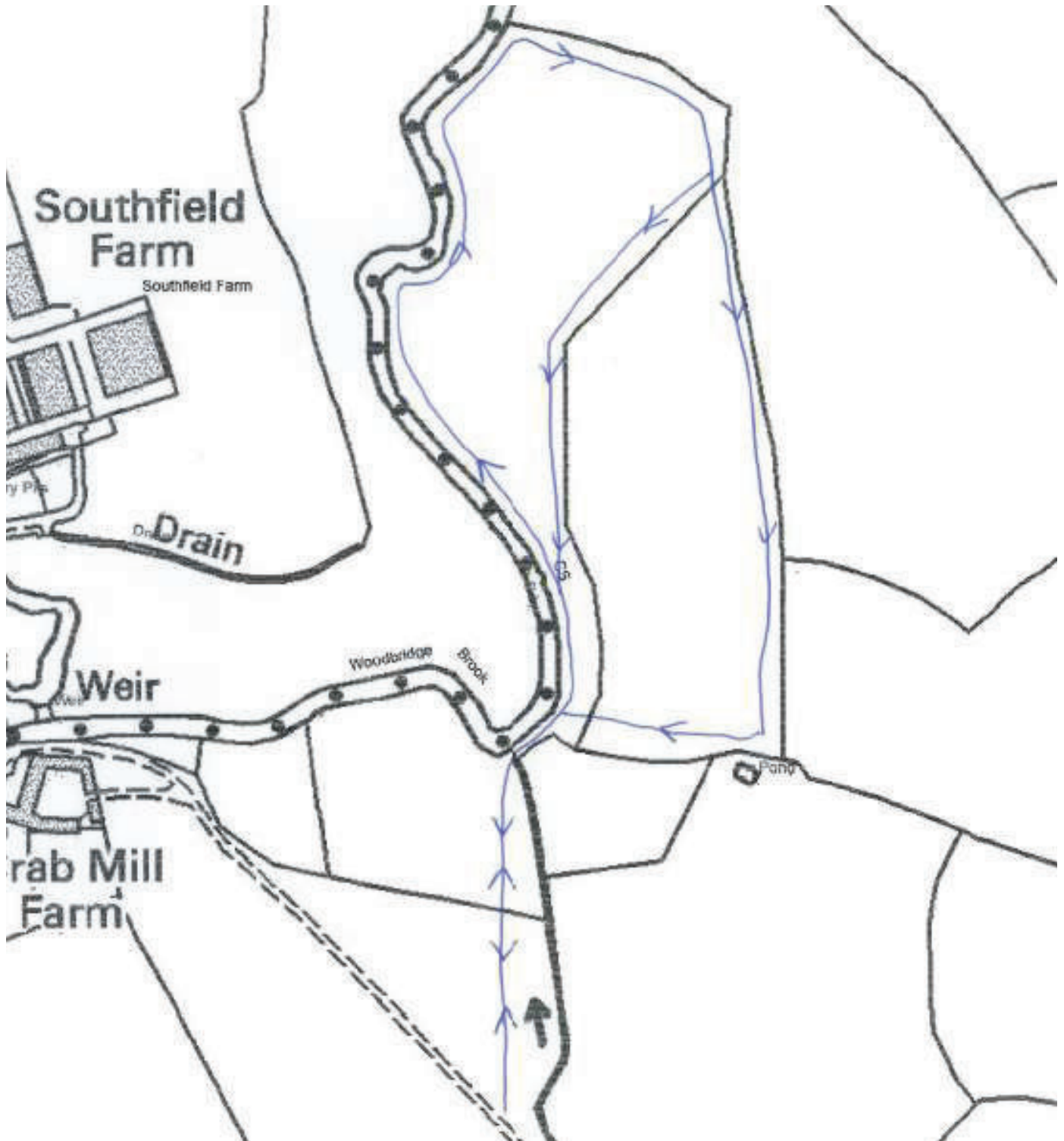
(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way over such that the land which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway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

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

1.2 Description of Route:

The claimed route leads from Crab Mill Lane in a northerly direction across two fields to Woodbridge Brook. At Woodbridge Brook the route joins public footpath Lea and Cleverton number 3 for a few metres until leading due north to follow Woodbridge Brook in an approximately northerly direction to the field boundary where it follows the hedge line to the top of the hill. Route 1 turns south west at this point and follows the field boundary to return to the Woodbridge Brook and footpath Lea and Cleverton 3. Route 2 proceeds across the field boundary and follows the hedge line to join public footpath Lea and Cleverton 3.

1.3 Application plan showing claimed route



1.4 Site visit 28 February 2012



Route leading north from Crab Mill Lane towards Woodbridge Brook



Route leading north alongside Woodbridge Brook (fencing erected in the second half of 2011)



Continuation of route alongside Woodbridge Brook



Field edge route leading north at top of hill from Lea and Cleverton path number 3 28 Feb 2012

2.0 Compliance of the application

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

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

Schedule 14 to this Act states:

Form of applications

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

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

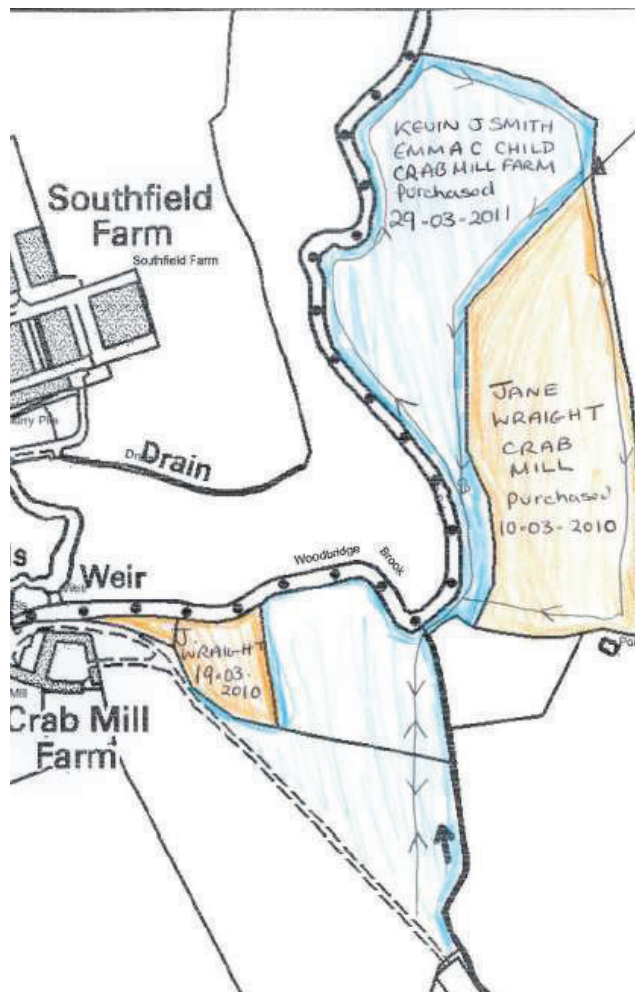
This application comprised the below and is considered to be compliant with the legislation.

Notice of application for Modification Order (Form 1)

Certificate of Service of Notice of application to the following owners and occupiers (Form 3):

*Mr K Smith, Crab Mill Farm and Ms J Wraight, Crabb Mill
1:2500 Plan showing claimed route
31 witness evidence forms*

2.1 Land Ownership Details



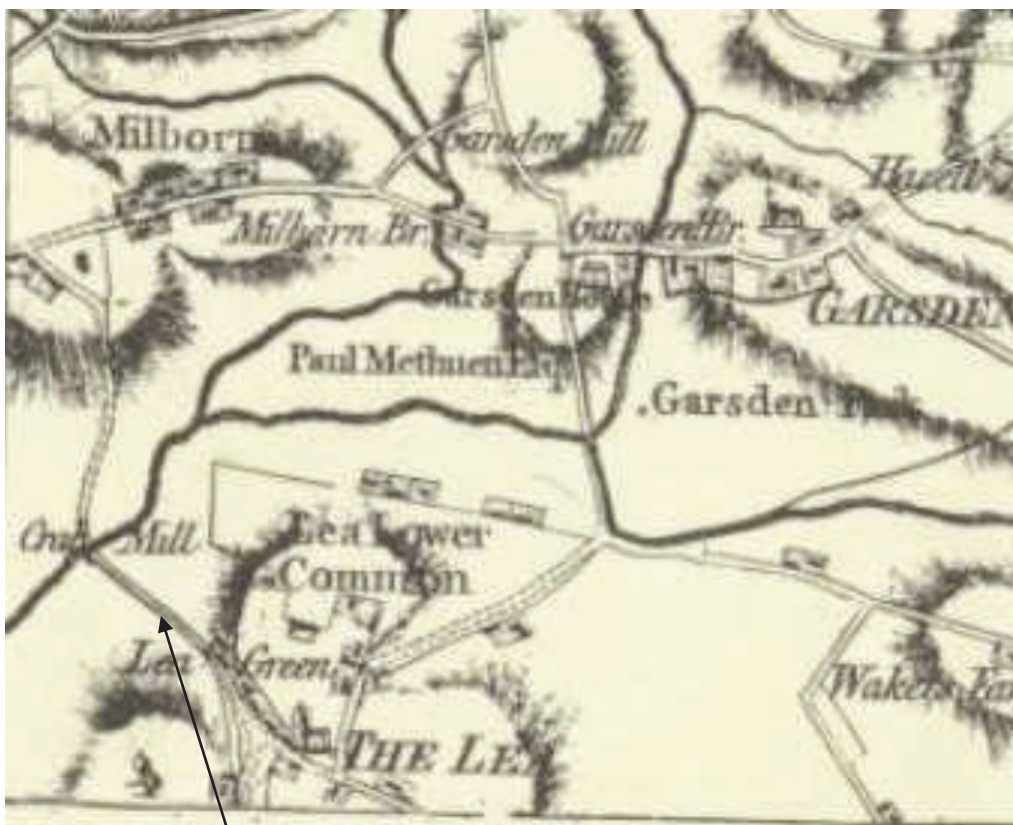
Notes: From 2002 to 2010 Ms Wraight has not been at her property (Crabb Mill) very often. Land owned by Mr K Smith was previously owned by Mr and Mrs I Perry. In 1990 land was leased to Mr and Mrs Baker of Southfield Farm for grazing. Dates for purchase from Land Registry. Ms Wraight's land was sold to Crabb Mill in 1992 by Mrs C Bateman. Mrs Bateman bought the land in 1986 from Mr D Stratton (evidence from Ms Wraight).

3.0 Context of the Application and Historical Evidence

Source: Victoria County History and Wiltshire and Swindon History Centre

The village of Lea lies 2.5 km east of Malmesbury and forms part of the parish of Lea and Cleverton. The parish population remained relatively low throughout the 1800s rising from 252 in 1801 to 484 in 1871 but development in the village in the latter parts of the 19th century caused the population to rise to 695 in 1981 and 769 in 2001. Over 100 houses were built between 1970 and 1980.

The claimed route leads off a lane known as Crab Mill lane. This is today recorded as an unclassified road (the u/c 1079) which ends at Crab Mill, continuing as footpath Lea and Cleverton 1. However, the route is shown as a through road on Andrews and Dury's Map of Wiltshire dated 1773 and would historically have provided a through route linking the settlements and permitting access to the mill from the east and the west.



Crab Mill Lane Excerpt from Sheet 17 Andrews' and Dury's Map of Wiltshire 1773

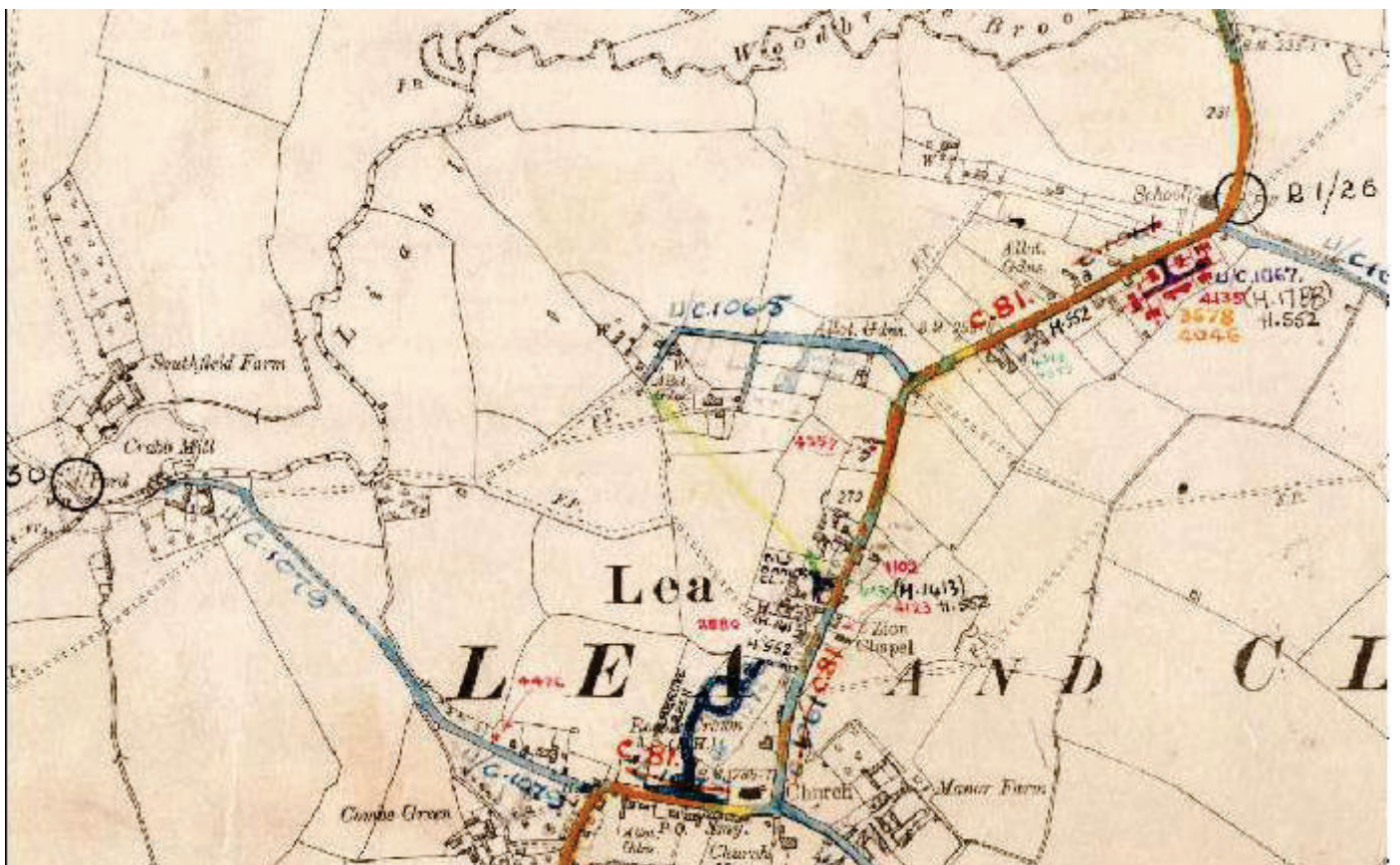
Crab Mill stands on the Woodbridge Brook. There was a mill recorded there in 1421 (Crabwell Mill) as a part of Lea Manor. The current Crab Mill was built in the early 17th century and is currently called Crabb Mill. The mill went out of use between the years 1927 and 1939.

Ordnance Survey maps of the late 19th century record that paths now recorded as Lea and Cleverton 3,4 and 5 are historic footpaths (the Ordnance Survey showed paths that were physical

features) but no maps have been viewed that show any paths as physical features or otherwise on the claimed routes.



Excerpt from Ordnance Survey 1:2500 County Series map c.1925 Not to scale.



Excerpt for Ordnance Survey 1:10560 map 1929 Not to scale

The above map is useful as it shows the area of the claimed routes in the context of the local area in the early part of the 20th century. The following map demonstrates how development has occurred in the area west of Crab Mill.



The definitive map and statement for the area is the Malmesbury Rural District Council definitive map and statement dated 1952. At the time this was drawn up Lea and Cleverton Parish Council did not claim public rights of way over the claimed routes and none have been claimed until the application of January 2012.

4.0 Initial Consultation

An initial consultation was carried out between 29 February and 13 April 2012. This was extended at the request of Mr Smith's solicitors to May 11 2012. The initial consultation letter was as below:

Wildlife and Countryside Act 1981 S.53

Application for an order to add public footpaths to the definitive map and statement at Lea, Malmesbury

Wiltshire Council has received an application for a definitive map modification order to record public footpaths over land near Crab Mill Farm, Lea. Please see the attached maps. The application is supported by 31 user evidence forms submitted by members of the public who have walked all or parts of the claimed routes for various lengths of time.

For the application to be successful it must be shown that, on the balance of probability, that use has been 'as of right', that is without force, permission or secrecy. Evidence must also be considered relating to interruptions to use, any signs or notices displayed, any challenges or

permissions from landowners or tenants and any legal deposits made by landowners with Wiltshire Council.

If you have any additional evidence for the Council to consider I would be pleased to receive it by 13 April 2012.

The letter was circulated to statutory consultees, landowners, witnesses and interested parties as follows:

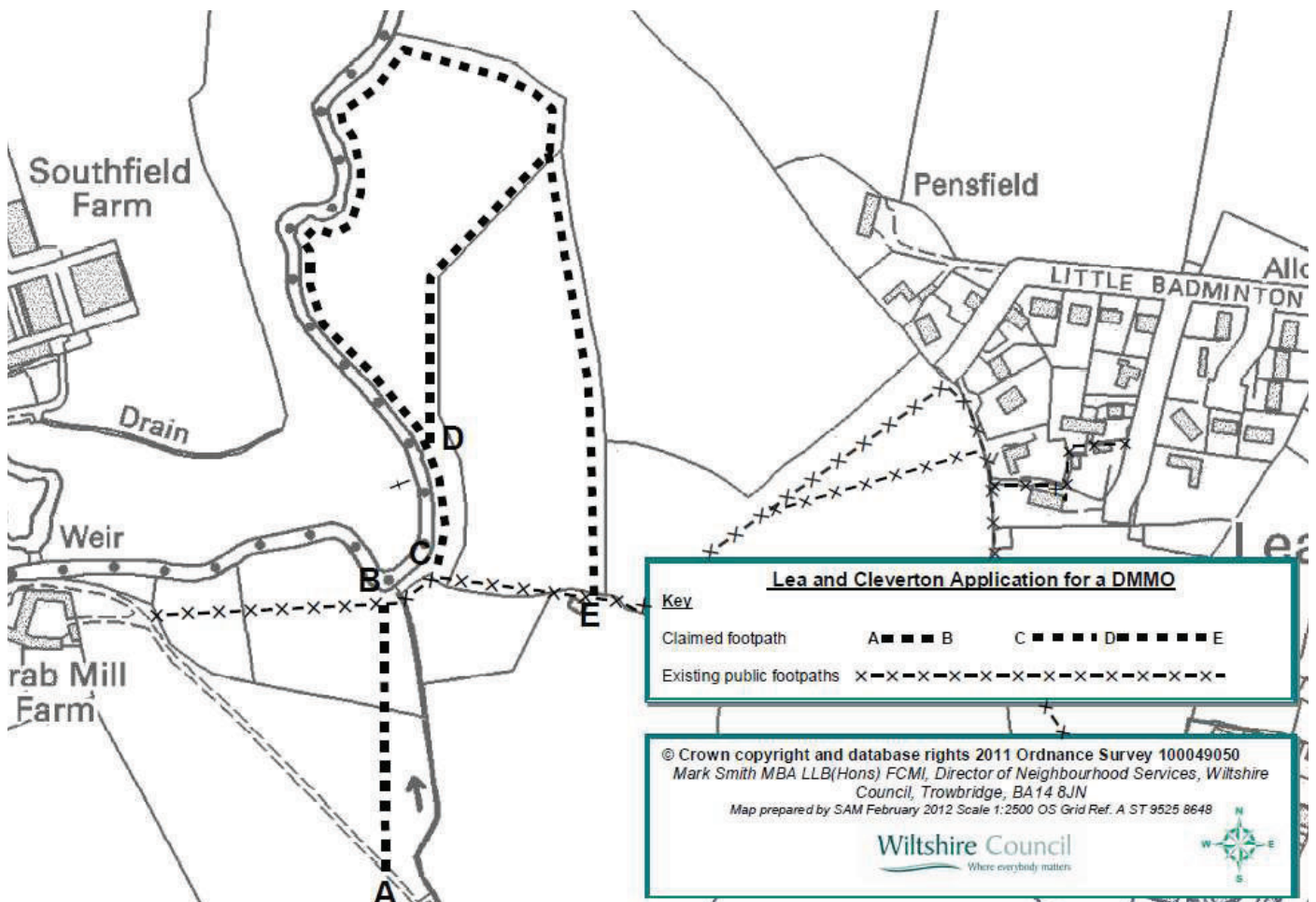
The Secretary General ACU House Wood Street Rugby Warwickshire CV21 2YX	Mrs D Plummer BHS CABO Wiltshire Leaze Farm 65 Stanton St Quinton Chippenham Wiltshire SN14 6DQ	Mr A Heron Ashbourne House Crab Mill Lane Lea Malmesbury SN16 9NF
Commons, Open Spaces & Footpaths 25a Bell Street Henley-on-Thames Oxfordshire RG9 2BA	Byways and Bridleways Trust PO Box 117 Newcastle Upon Tyne NE3 5YT	Mr S Masson 2 Rushcroft Close Lea Malmesbury Wiltshire
Mrs R Cunningham Wiltshire Bridleways Association Staddlehouse Charlton St Peter Pewsey SN9 6EU	Stephen Leonard Senior Rights of Way Officer Wiltshire Highways Partnership The Avenue Wilton Salisbury SP2 0BT	Mr C Daws Coombe Crab Mill Lane Lea Malmesbury SN16 9NF
Mr Clarke Wiltshire Cycling Touring Club Hill House Kelsey Road Salisbury SP1 1JR	Maurice Chandler 8 Malmesbury Road Leigh Swindon SN6 6RH	Mr M Porter Hazelea The Street Lea Malmesbury SN16 9PA
British Horse Society Stoneleigh Deer Park Kenilworth Warwickshire CV8 2XZ	Mr B Riley 141 Bath Road Bradford on Avon Wiltshire BA15 1SS	Mrs V Suter Rose Cottage Lea Malmesbury Wiltshire
Mr J Parmiter Clerk to Lea & Cleverton Parish Council 33 Pembroke Green lea Malmesbury SN16 9PB	Mrs H D Woodbridge Area Commissioner British Driving Society Hafaway House Hoggs Lane Purton Swindon SN5 4BU	Mr P Holmes West View Lea Wiltshire SN16 9PF
Cllr T Sturgis Wiltshire Councillor	Mr M Moss 13 Pembroke Green	Mrs K Roy Ashmidie House

Brinkworth Division Brook Farm Great Somerford Chippenham SN15 5JA	Lea Malmesbury SN16 9PB	Crab Mill Lane Lea Malmesbury SN16 9NF
	Mr J McManus The Cottage Crab Mill Lane Lea Malmesbury SN16 9NF	Mrs S Bobbett Ashdene The Street Lea Malmesbury Wiltshire
	Mr T Coleman 18 Pembroke Green Lea Malmesbury SN16 9PB	Mrs S Wilson Yew Tree House Lea Malmesbury SN16 9PA
Mrs J Ind Cleverleys Coombe Green Lea SN16 9PF	Mrs J Cole 9 Pembroke Green Lea Malmesbury SN16 9PB	Ms Janice Cowley Osborne Clark Solicitors 2 Temple Back East Temple Quay Bristol BS1 6EG
Mr A Francis The Villa Lea Malmesbury Wiltshire	Mr and Mrs C Kerstar Churchwood House Crab Mill Lane Lea Malmesbury	Mrs J C Jones 3 Rushcroft Close Lea Malmesbury SN16 9YJ
Mrs M Knight 2 The Cedars Lea Malmesbury SN16 9FE	Ms S Seymour 27 Pembroke Green Lea Malmesbury Wiltshire	Mr I Perry Apartment 40 1 Goat Wharf Brentford TW8 0AS
Mr K E Keilholz 6 The Crescent Lea SN16 9NE	Mr T Bobbett Ashdene Lea Malmesbury SN16 9PG	
Mr N Seymour 27 Pembroke green Lea Malmesbury	Mr S Suter Rose Cottage Lea Wiltshire SN16 9PF	
Mr and Mrs M Saxty 6 Pembroke Green Lea Malmesbury Wiltshire	Mrs G Porter Hazelea The Street Lea Malmesbury	
Mrs Y Collingwood 26 Pembroke Green Lea Malmesbury Wiltshire	Mrs R Milton-Daws Coombe Crab Mill lane Lea Malmesbury SN16 9NF	
Mr B Gore	Mrs J Masson	

Vixen Lodge The Street Lea Malmesbury SN16 9PA	2 Rushcroft Close Lea Malmesbury SN16 9YJ
Mr K Smith 32 Campden Hill Gardens London W8 7AZ	Mr J Walmsley 28 Pembroke Green Lea Malmesbury SN16 9PB
Mrs J Wraight Crabb Mill Crab Mill Lane Lea Malmesbury Wiltshire SN16 9NF	Mr P Summersell 23 Pembroke Green Lea Malmesbury SN16 9PB

Additionally landowners were supplied with copies of all evidence submitted with the application.

The following map was also circulated:



4.1 Initial Consultation Responses – Summary of Points Made

Mr McManus March 2012 submitted photographs of members of the public using parts of the claimed routes in 2005, 2007, 2009 and 2011.

Mr K Smith 05 March 2012 e.mail providing details of previous ownership of Crab Mill Farm.

Mr C Daws 05 March 2012 e.mail stating that since 2010 he had used all the claimed footpaths shown on the map in particular path ABC and along the river bank. From 2008 to 2010 he had occasionally used path ABC. At no time had he used force, permission or secrecy and had not had interruptions or seen signs, notices or any actions by the landowners relating to their use of the land.

Mr I Perry 07 March 2012 letter stating that Mr Perry owned Crab Mill Farm from 1989 to 2011. He highlights that none of the land is visible from Crab Mill Farm and that he was only at the property at weekends so no permission was granted or observed from Monday to Friday of any week. Only occasionally had he seen any dog owners, often challenging them about using paths other than the existing footpaths which are clearly marked. He had never given permission for anyone to use the land for any reason whatsoever.

Osborne Clark 30 March 2012 letter from David Shakesby acting for Mr Smith requesting an additional 28 days to gather and consider evidence. Will object on technical grounds on the basis that whilst the new footpath starts and ends on a footpath, it starts and ends at the same place so is effectively a cul-de-sac (*this is rebutted at 6.6*). Additionally considers that the applicants will be unable to make out the necessary evidence to establish a footpath in these circumstances.

Jane Wraight 04 May 2012 Submission from the owner of Crabb Mill and the most easterly part of the affected land. Includes responses to witness statements by number, photographs, aerial photographs and information relating to previous owners.

- i) *“Mr Moss states he has walked the land in question for 40 years. Mr Derek Stratton who farmed the land knows Mr Moss from the days when they walked down to Crabb Mill but he never saw them on the land as claimed”.*
- ii) *“With regard to the grazing of the land Southfield Farm can confirm that up until 2002 they had cattle out on the land with an electric fence running down Crab Mill Lane to contain the stock.”*
- iii) *“My land was also grazed and the stock had access to the river via Mr Perry’s land.”*
- iv) States that between 2002 and 2010 she had not been at Crabb Mill much owing to personal business. As a result the use of her land did not come to her notice until summer 2011 when she started approaching people asking them to clear up after their dogs and keep to the marked paths.
- v) States that the area marked CDE is a haven for wildlife which can be observed from the existing footpaths and Wiltshire Council is urged to consider the impact on this wildlife.
- vi) Aerial photograph taken 14 October 1974. High quality photograph of the area annotated to show position of electric fence and other features. Does not show beaten tracks on claimed routes or existing definitive footpaths.

- vii) Aerial photograph taken 22 August 1994. High quality photograph of the area annotated to show position of some landscape features. Shows cattle grazing in field crossed by Lea and Cleverton path 3 and several beaten tracks, not necessarily coinciding with claimed routes or definitive footpaths. Most likely to be attributed to animal use though clearly some coincide with parts of recorded footpaths and claimed routes
- viii) Comments on UEFs from Ms Wraight

UEF No.	Comment
1	Walking groups do not use these routes, they use clearly signed footpaths
2	Livestock have been kept on the land. Has spoken to Mr McManus on the land.
	A notice had been placed on the boundary fence saying it wasn't a public footpath but this was torn down.
	Spoke to several people about them not being on a public footpath
	Can see only some of the land from Crabb Mill
3	Public footpaths were lightly used until approx 10 – 12 years ago when dwellings in the village increased and more people and dogs walked. 15 years ago this wasn't the case.
4	Had challenged this witness as stated on UEF and he in turn had heard of other challenges.
5	Notices sent by the Council were ripped off.
6	Disputes that anyone ran on fields but they do run on Crabb Mill Lane which is tarmaced.
7	You would not walk to Malmesbury using the claimed routes, you would use the definitive routes.
8	Fencing broken down by dog owners and notice removed.
11	Fence is on boundary of her land and has been there for 27 years.
16	Fence lowered to be like a style was done by dog walkers climbing over the fence. Notice torn down and ignored.
18	Was not unpleasant to people when challenging them.
	Land was used for cattle, pigs and horse prior to 27 years ago.
19	Some statements say no livestock but this lady is correct.
21	Disputes statement regarding a lease. Can be confirmed by Mr Trevor Baker.
22	Land Registry will confirm that her land purchases are not recent. <i>NB Land Registry show sale to Ms Wraight to be 2010.</i>
23	Asked people to keep to public footpaths
30	Never seen anyone having a picnic. One gentleman asked for permission to pick fruit but not this witness.

Additional Information from Ms Wraight: –

The previous owner of the 5 acres sold it to Crabb Mill in 1992. Prior to this 2 ponies lived in the field.

Mrs C Bateman, 30 Pound Hill, Alresford, Hampshire, SO24 9BW

The owner prior to Mrs Bateman owned all the land in question and left 26 years ago. He kept cattle, pigs and a horse.

Mr D Stratton, Anne Braynes Cottage, Willesley, Gloucester

Lea and Cleverton Parish Council Letter dated 02 May 2012.

“You will recall that in our recent telephone conversation that I indicated to you that the Members have considered this matter and are unable to offer any knowledge in support or rejection of the application.

They are not aware of any agreement, formal or informal regarding the use of the land in question as a public right of way. They do accept that it is very probably that parishioners have allowed their dogs to openly wander at will and freely over the area rather than adhering to existing right of way on Crab Mill Lane. It is therefore presumed that previous landowners have nominally acquiesced without any formal written comment or prohibition of any kind.”

Calvert Smith and Sutcliffe Acting for Mr I Perry. Letter dated 11 May 2012. Issues raised summarised and in italics.

- i) Mrs Perry rarely ventured outside Crabb Mill Farm and gardens.
- ii) Mr and Mrs Perry were not at the property during the week nor for several months of the year since they have a house in Spain.
- iii) Mr Perry only walked the grounds of the farm 3 or 4 times per year, usually on a Sunday morning and rarely encountered anyone during these trips.
- iv) Mr Perry is very surprised that so many people have regularly walked the land.
- v) Mr Perry notes that only 4 out of 31 people mention they met Mr Perry in his 22 year occupation.
- vi) Mr Perry recalls meeting Mr McManus and the three Dalmatians at the drain, however this was on the public right of way.
- vii) Mr Perry says he has no reason to erect barriers or signs as to his knowledge there are very few walkers and only on a few occasions.

Additional letter from Mr Perry dated 19 April 2012.

“Further to my letter of 7th March I now understand that the applicants have to show 20 years continuous use of the “footpaths” shown on their application. This is not possible. Between 1990 and 2000 I leased my land to Mr and Mrs Baker of Southfields Farm. Between April and November each year they grazed their dairy herd (generally behind electric fences) on the land in question. No dog walker/rambler would walk through a herd of cows! Mr and Mrs Baker and Jane Wraight (Crabb Mill) can confirm this. I hope the Council will dismiss the application as the usage claims are totally untrue.”

Osborne Clarke Acting for Mr K Smith. Letter dated 11 May 2012. The below is a summary of the issues raised in this letter. Summary in italic text.

The Application

Recognises that the application is made pursuant to s.53 of the 1981 Act and s.31 of the Highways Act 1980. These require that the public has used the route for an uninterrupted period of at least 20 years ‘as of right’, that there is not sufficient evidence to rebut the presumption arising from s31 of the 1980 that the landowner intended to dedicate the land as highway and that the route must be capable of subsisting as a highway at common law.

Evidence in Support of the Application

- i) *Witness number 2 (Mr McManus) records that there was a broken gate across the southern leg which was not locked. It therefore had to be opened to be climbed over. There is reference to conversations with Mr and Mrs Perry indicating that his use was permitted or tolerated.*
- ii) *Witnesses 3, 5, 7, 8, 9, 13, 17, 21, 23, 25, 26, 28 and 30 all refer to the gate.*
- iii) *Witness 7 refers to Mr and Mrs Perry allowing public access which indicates permission.*
- iv) *Witness 8 refers to a lowered section of fence which has to be climbed over. This is also mentioned by witnesses 15, 25, 30 and 31.*
- v) *Witness 14 indicates that he had heard new owners were not going to be as accommodating as Mr and Mrs Perry and stopped using the routes. This indicates that he understood there to be a revocable permission.*
- vi) *Witness 19 records that she asked for and was given permission 43 years ago.*
- vii) *Witness 21 records that she was given permission.*
- viii) *Witness 22 records that Mr and Mrs Perry never objected indicating toleration or permission.*

Intention to Dedicate

States that the applicants can not establish an intention on the part of the landowner to dedicate the land in perpetuity as a highway for the following reasons:

- a) *the southern leg used to have a gate across it*
- b) *the southern leg was regularly fenced off with electric fencing*
- c) *evidence, even from applicants, suggests a significant part of the use was by express permission and some witnesses consider it by implied permission.*
- d) *the gate, inaccessibility of parts of the land whilst being grazed amount to interruptions to the claimed period of use.*

An intention to dedicate cannot be shown.

As of Right

Use must be without force, without secrecy and without permission. Witnesses state that they climbed over or opened a gate, climbed under electric fencing or climbed over or under a broken down section of fence. This use is by force. It would also be obvious to any reasonable observer that persons using the routes were not doing so as of right.

It is given in R v Secretary of State for the Environment ex parte Bilson [1999] QB 274 that evidence of express or implied permission is fatal to the application.

Southern leg

The southern leg is a deviation from the two sections of existing highway, essentially cutting the corner between Crabb Mill Lane and the existing footpath. A deviation from an adjoining highway or a recreational walk along a longer route of a footpath proper between two points cannot be claimed as a footpath. See British Museum Trustees v Finnis (1833) 5 C&P 460 and Bilson (above).

The cul-de-sac

The law does not recognise that a cul-de-sac can be a highway; a highway must lead from one place to another.

Grazing licences

Between approximately 1989 and 2011 a nearby farmer (Mr Baker) took a grazing licence on all of the land affected by the application between approximately March and October and Mr Baker had control of the land between these months but had no authority to dedicate the land as a highway in perpetuity.

This occupation during each year acted as an interruption to the claimed public use.

Conclusion

It is stated that Mr Smith submits that for all of the reasons set out above none of the routes may be added to the definitive map and statement. In particular it is considered that the southern leg is not capable of being deemed to have been dedicated as a public footpath and that other routes affected by this would become cul-de-sacs and hence not capable of being deemed to have been dedicated as a public footpath either.

5.1 Officer's Comments: User Evidence – See Appendix A

The evidence submitted with the application suggests that the route has been used by the public since 1971; the route does not appear to have a historical context and/or evidence of public use in earlier times and I am mindful that either the principles of dedication at common law (the principal of long term use by the public and either acceptance by the landowner by making no objection if such use is considerable or perhaps by an express dedication) or those laid out by statute in s.31 of The Highways Act 1980 need to be found to apply for the application to succeed. Whilst the dedication of this route may have occurred at common law at some time in the past, it is recognised that such a dedication is difficult to determine and hence it is considered appropriate to apply section 31 of The Highways Act 1980.

Section 31 of The Highways Act 1980 states:

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

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

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

(3) Where the owner of the land over which any such way as aforesaid passes –
(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
(b) has maintained the notice after the 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 if the existence of a highway would be incompatible with those purposes.

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

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

6.0 Consideration of all evidence

6.1 Calling into question

Section 31(2) states that the 20 years of public use is to be calculated retrospectively from the date that the public use was brought into question.

31 User evidence forms with individually annotated maps were provided to support the application. A number of witnesses recorded having their use challenged by the landowners (Ms Wraight and Mr Smith) in the autumn of 2011. Additionally other witnesses had heard of others who had been challenged around this time. It was these challenges and the erection of fencing on Mr Smith's land that brought about the application for a modification order (received by Wiltshire Council in January 2012). Hence it is considered that the 20 year relevant period for the application of s.31(1) is from 1991 to 2011.

It is considered that it was only at this time was public use effectively challenged. Case law requires that there is sufficient evidence that there was no intention on the part of the landowner to dedicate the route as a public highway (Godmanchester and Drain House of Lords ([2007] UKHL 28). Lord Hoffman at para. 33 said:

"It should first be noted that s.31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires 'sufficient evidence' that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner's consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson's Case [R v S of S for the Environment ex p. Billson [1999] QB374] it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience".

The evidence provided shows that 31 witnesses walked the route A to B on the consultation map from Crab Mill Lane to footpath LECL3 ("the Southern leg") during this period with 10 having walked it for the full 20 year period.

26 witnesses had walked the route leading alongside Woodbridge Brook and along the northern boundary of the land ('the perimeter route'). Of these 9 had walked it for the full 20 year period.

12 witnesses had walked the route leading alongside Woodbridge Brook returning to its start point at point D on the consultation map. Of these 4 had walked it for the full 20 year period. One of these 4 states that they walked with permission, however it is not clear from whom they had permission.

Nearly all witnesses reported that their use had been without permission, secrecy or force. None of them had worked for the landowner.

6.2 Without permission

It is noted that two witnesses expressly refer to using the routes with permission. Witness number 19 states “yes, I have walked the fields around Lea with permission...” and witness number 21 states that they met with Mr and Mrs Baker of Southfield Farm who said they could walk anywhere on their land.

The submission of Osborne Clarke dated 11 May 2012 on behalf of Mr Smith considers that evidence of express or implied permission is fatal to the application. It is agreed that use must be without permission but noted that very few of the users claim to have had either express or implied permission. The submission of Mr Perry dated 07 March 2012 confirms that he “never gave permission for anyone to use my land for any reason whatever.” Ms Wraight does not state whether she did or did not give permission for any use. It is also noted that implied permission is not necessarily fatal to a claim based on use by the public that is ‘as of right’. In a recent case involving a village green the question of whether implied permission would be fatal to user ‘as of right’ was considered by the House of Lords in *R(Beresford) v Sunderland City Council* [2004] 1 AC 889 (paras 5,6 and 7) Lord Bingham says:

*“I can see no objection in principle to the implication of a licence where the facts warrant such an implication...a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants’ use of the land is pursuant to his own permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants’ use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use...Authority, however, establishes that a licence to use land cannot be implied from mere inaction of the landowner with knowledge of the use to which his land is being put...In *R v Oxfordshire County Council, Ex p Sunningwell District Council* [2001] 1 AC 335 it was held by the House that the landowner’s toleration of local inhabitants’ user of the land in question was not inconsistent with such user having been as of right, and so did not prevent registration of the land in question as a town or village green.”*

Additionally, Lord Walker of Gestinhorpe, at para 85 says:

“The fact that the City Council and its predecessors were willing for the land to be used as an area for informal sports and games, and provided some minimal facilities (now decaying) in the form of benches and a single hard cricket pitch, cannot be regarded as overt acts communicating permission to enter. Nor could the regular cutting of the grass, which was a natural action for any responsible landowner. To treat these acts as amounting to an implied licence, permission or consent would involve a fiction....”

6.3 Without interruption

Section 31(1) of the Highways Act 1980 specifies that the use by the public must be without interruption for the 20 year period and it is noted that the period of use covers the period February 2001 to July 2001, a period when the majority of rights of way were closed to the public during an outbreak of foot and mouth disease. Wiltshire County Council acted at that time under the powers of the Foot and Mouth Disease Order 1983 and the order permitted closure of some land regardless of the presence of rights of way. The Planning Inspectorate has issued a revised Advice Note 15 on this topic (June 2009) which concludes that “it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an “interruption” under section 31(1) of The Highways Act 1980.

The submitted evidence, supports that the public have used the claimed route, on foot, for a full period of 20 years as of right and that the requirements of section 31(1) are satisfied subject to there being sufficient evidence that there was no intention during the period to dedicate it. Evidence of non intention to dedicate may be found as follows:

- (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.

No evidence of such notices has been discovered. Some users refer to a recent notice regarding 'dog mess' but neither users or landowners refer to signs inconsistent with the dedication of the way as a highway.

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

No evidence of such notices has been discovered.

- (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.*

The Highway Authority (Wiltshire County Council and latterly Wiltshire Council) has not received any such notice and no evidence of such notice being served has been discovered.

- (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 –

- (iii) within ten years from the date of deposit*
(iv) 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.

Officers have searched archive deposits dating back to 1932 and no deposit, statement or statutory declaration has been made affecting the claimed route.

6.4 Without secrecy

No users claim to have used the paths secretly and use has been frequent and during daylight hours. In his submission dated 07 March 2012 Mr Perry states that "only occasionally I saw any

dog owners – often challenging them about using paths other than the existing public footpath”. Mr Perry was not at the property on weekdays or for periods of the year when he was at his house in Spain. Ms Wraight did not become aware of the use until late in the summer of 2011. Mr Smith bought Crab Mill Farm in March 2011 and became aware of the use later in the summer; he notes that the property has not been inhabited since March 2011.

It is considered that owing to absence from their properties landowners may not have been aware of the extent of the public use. However the nature of the public use would appear to have been without secrecy as it was noticed by Mr Perry on the occasions he was there and was apparent to both Ms Wraight and Mr Smith when they were at their properties.

6.5 Without force

No users claim to have used force to access the claimed routes. Users report that a gate formerly existed on the southern leg but that it was never locked and fell into disrepair (witness no. 2 thinks ‘about 5 years ago’). Other users refer to this as a ‘disused gate’, ‘an old gate in the hedge’, ‘a gate in place when the land was used for cattle’ and ‘a gate that has always been open’. It is clear that force was not needed to access the southern leg.

Use of the perimeter route requires that users cross a fence line between land owned by Ms Wraight and Mr Smith. Users record that to cross this fence line there was ‘a broken fence’(several) and ‘a low fence that needs stepping over’.

This fence was not in position in 1971, 1974 or 1981 (evidence from aerial photographs) but was apparent in 1992 and 1994. Hence it is likely that some sort of fence was in existence throughout the relevant period. Ms Wraight states that she erected the fence in 1985 but this pre-dates the Crabb Mill purchase of the land.

There are no claims that force was needed to cross the fence and no evidence that the fence was damaged so as to cause problems for anyone grazing the land. There are no reports of the fence being repaired and the fence was clearly not a bar to access as use continued.

There are clear conflicts relating to the evidence of the fence on the perimeter route and this form of evidence is best given verbally and subject to cross examination.

6.6 The character of the way

It is a requirement of s.31(1) that the way may be any way “*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*”. Examples of ways that may not be of such character include ways where public use is specifically prohibited (for example a motorway) or a discontinuous length of highway wholly unconnected with the highway network. There is however no requirement that a way must be of utility value or perhaps provide a shorter or more direct route. A way may be a cul-de-sac and may end at a place of public resort. Osborne Clark’s submission (4.1) in this respect is incorrect.

Lightman J in *Oxfordshire County Council v Oxford City Council* ([2004] Ch253) said that the true meaning and effect of the exception of “a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication” is that “the user must be as a right of passage over a more or less defined route and not a mere and indefinite passing over land”. The exception could also apply to routes that did not connect to highways or lead to a place of popular resort.

6.7 Subjective belief

It has been suggested that anyone using the land would have known it was private and that they were not using a public right of way and hence their use cannot be considered to have been 'as of right'.

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

Neither is the state of mind of the user a consideration, all that may be considered is whether that use has gone on, without permission, without force and without secrecy. This point was addressed by Lord Hoffman in the House of Lords in the case of *Regina v Oxfordshire County Council and others ex parte Sunningwell Parish Council* [2000] 1 AC 335. In his judgement Lord Hoffman dismisses any additional requirement of subjective belief for the satisfaction of 'as of right':

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

7.0 Widths, Conditions and Limitations

Users report one gate on the southern leg and a broken down fence on the perimeter route. They refer to the broken down fence as needing to be stepped over in a manner similar to a low stile.

Witnesses claim a width ranging from 0.5 metre to 4.5 metres. The mean width is 1.5 metres.

8.0 Decision

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. 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 J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

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

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence

that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

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

There are contradictions in the evidence given. Objectors to the application consider that use has been interrupted by stock grazing and fencing and that use was not without force or permission. There is credible evidence that the land has been managed for stock and it would be difficult to apply Test A without further testing of the evidence under cross examination.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This may only be defeated by incontrovertible evidence. Incontrovertible evidence is that contained within s.31(3)(4)(5) and (6) of the Highways Act 1980.

The Council is not aware of any incontrovertible evidence and Test B must apply.

9.0 Legal Considerations and Risk Assessment

If Wiltshire Council refuses to make an order the applicant may lodge an appeal with the Secretary of State who will consider the evidence and may direct the Council to make the order. Given recent experiences of officers and the application of *Norton and Bagshaw* as referred to above it is considered highly likely that Wiltshire Council would be directed to make an order as there is no incontrovertible proof to defeat Test B.

Failure to progress this case to determination within a year of application may result in the applicant seeking a direction from the Secretary of State. As Wiltshire Council prioritises user based applications it is likely that the Council would be directed to make a determination.

If the order, when made and advertised receives objections which are duly made it must be forwarded to the Secretary of State for determination. Through their agent, the Planning Inspectorate (PINS), the order may be determined by way of written representations (no additional cost to the Council), a local hearing (cost £200 to £500) or a public inquiry (cost £1500 to £3000 if Wiltshire Council supports the order; around £300 if it does not).

Statute is clear as to the Council's duty in this matter and it is considered unlikely that judicial review would be sought by any party if the statute is adhered to. Costs arising from judicial review of the Council's processes or decision making can be high (in the region of £20,000 to £50,000).

10.0 Equality Impact

Consideration of the Equality Act 2010 is not relevant to application of s.53 of the Wildlife and Countryside Act 1981. If the path is recorded in the definitive map and statement it must be as used and accepted by the public though any further improvements to access could be pursued by negotiation with the landowner as appropriate.

11.0 Other Considerations

The route claimed by the applicant has not been available to the public since late in 2011. Officers have considered whether it would be appropriate to negotiate access while the application is being considered or the provision of a permissive route. However, the applicant considers that a public right has been acquired and it is the nature of such a right that it is forever. A permissive route

would not be and does therefore not provide an appropriate consideration. It is also noted that if a right of way has been acquired, a permissive route is not needed, even if the right is unrecorded.

It is considered that the best course of action for all parties is to resolve the issue of whether public rights subsist over the claimed route in as efficient and timely manner as possible, as provided by the statute.

It is recommended that an Order should be made under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding footpaths as claimed to the definitive map and statement and that if no duly made objections or representations are received during the statutory period of advertisement that the order is confirmed

Sally Madgwick
Rights of Way Officer

07 June 2012

This page is intentionally left blank

DMMO Application number 2012/02 Lea and Cleverton, Crab Mill Farm User Evidence Form (UEF) Summary (Rel. Period 1991 – 2011) APPENDIX 3

UEF No.	Name	Address	Years of Use	Total Use in Relevant period	Route Used
1	Maurice Moss	13 Pembroke Green, Lea, Malmesbury, SN16 9PB	1971 – 2011	20	Application routes
2	James McManus	The Cottage, Crab Mill Lane, Lea, Malmesbury, SN16 9NF	2001 – 2012	10	Application routes
3	Thomas Coleman	18 Pembroke Green, Lea, Malmesbury, SN16 9PB	1985 - 2012	20	Perimeter route only
4	Andrew Heron	Ashbourne House, Crab Mill Lane, Lea, Malmesbury, SN16 9NF	1986 – 1993 2003 - 2011	10	Perimeter route only
5	Stuart Masson	2 Rushcroft Close, Lea, Malmesbury, Wiltshire	2001 – 2011	10	Application routes plus easterly field
6	Christopher Daws	Coombe, Crab Mill Lane, Lea, Malmesbury, SN16 9NF	2010 – 2011	1	Perimeter route only
7	Michael Porter	Hazelea, The Street, Lea, Malmesbury, SN16 9PA	1991 – 2011	20	Application routes
8	Valerie Suter	Rose Cottage, Lea, Malmesbury, Wiltshire	1984 – 2011	20	Perimeter route
9	Paul Holmes	West View, Lea, Wiltshire, SN16 9PF	1999 – 2012	12	Application routes
10	Kate Roy	Ashmidie House, Crab Mill Lane, Lea, Malmesbury, SN16 9NF	2011 – 2012	1	Perimeter route
11	Susan Bobbett	Ashdene, The Street, Lea, Malmesbury, Wiltshire	1987 – 2011	20	Perimeter route
12	Sarnia Wilson	Yew Tree House, Lea, Malmesbury, SN16 9PA	2005 – 2011	6	Application routes
13	Jeanna Ind	Cleverleys, Coombe Green, Lea, SN16 9PF	2008 – 2011	3	West field perimeter only
14	Alan Francis	The Villa, Lea, Malmesbury, Wiltshire	2003 – 2011	8	West field perimeter only
15	Margaret Knight	2 The Cedars, Lea, Malmesbury, SN16 9FE	2010 – 2011	1	Perimeter route only
16	Karsten-Eric Keilholz	6 The Crescent, Lea, Malmesbury, SN16 9NE	2010 – 2012	1	Perimeter route only
17	Neil Seymour	27 Pembroke Green, Lea, Malmesbury, Wiltshire	1995 – 2011	16	Application routes
18	Mr and Mrs Saxty	6 Pembroke Green, Lea, Malmesbury, Wiltshire	1972 – 2011	20	Southern limb only
19	Yvonne Collingwood	26 Pembroke Green, Lea, Malmesbury, Wiltshire	1971 – 2012	20	Application routes
20	Brain Gore	Vixen Lodge, The Street, Lea, Malmesbury, SN16 9PA	2003 – 2012	8	Southern limb only
21	Janice Cole	9 Pembroke Green, Lea, Malmesbury, SN16 9PB	1993 – 2012	18	Southern limb only
22	Mr and Mrs Kerstar	Churchwood House, Crab Mill lane, Lea, Malmesbury	2007 – 2011	4	Application routes
23	Susan Seymour	27 Pembroke Green, Lea, Malmesbury, Wiltshire	1995 – 2011	16	Application routes
24	Terence Bobbett	Ashdene, Lea, Malmesbury, SN16 9PG	1987 – 2011	20	Perimeter route only
25	Stuart Suter	Rose Cottage, Lea, Wiltshire, SN16 9PF	1984 – 2012	20	Perimeter route only
26	Gill Porter	Hazelea, The Street, Lea, Malmesbury	1991 – 2011	20	Application routes
27	Richenda Milton-Daws	Coombe, Crab Mill Lane, Lea, Malmesbury, SN16 9NF	2010 – 2012	1	Perimeter route only
28	Julie Masson	2 Rushcroft Close, Lea, Malmesbury, SN16 9YJ	2001 – 2012	10	Perimeter route only
29	J Walmsley	28 Pembroke Green, Lea, Malmesbury, SN16 9PB	2000 – 2012	11	Application routes
30	P Summersell	23 Pembroke Green, Lea, Malmesbury , SN16 9PB	2005 – 2012	6	Perimeter route only
31	Jean Jones	3 Rushcroft Close, Lea, Malmesbury, SN16 9YJ	2007 – 2011	4	Perimeter route only

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
1	40	20	Yes, others walking	Recreation	No	No	No	No	Daily	Yes, the public could be seen walking
2	11	10	Friends and neighbours walking dogs	Recreation	Broken gate about 5yrs ago. Never locked, then in hedge (on Southern leg)	No	No	Yes at end Sept 2011 at broken gate	Daily	Yes, walkers can clearly be seen from Crab Mill and the owner had lived there for over 20 yrs. Also had conversations with owner of Crab Mill Farm.
3	27	20	Yes, walking and exercising dogs	Recreation	Gate, not locked	No	No	Area closed during F & M	Twice daily	Yes, footpath has been regularly used and can be clearly seen
4	14	10	Yes lots of people walking	Walking the dog	No	No	No	Not personally but the owner said the land was private in Oct 2011	Fortnightly 1986 – 1993 Daily 2003 – 2011	Yes, used by many residents of lea on a regular occurrence often daily
5	10	10	Yes, many others walk daily	Dog walking	Open gate on southern leg. Stiles on def. route LECL3 <i>Sign is at Crab Mill Lane junction (southern leg)</i>	A4 paper saying dog mess should be cleared Autumn 2011	No	Not personally but heard that dog walkers were stopped and told they could use perimeter route autumn 2011	Daily	Yes. Owner of Crab Mill farm (some years ago) talked to him and mentioned he had seen him feedings swans. Didn't pass any objection.
6	1	1	Yes, other walkers. Routes clearly well used.	Recreation and exercise	No	No	No	No	Every day or two	Yes, the ways are within view of the residences

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
7	20	20	Yes, many people use the path for walking	Recreation and shopping	Disused gate on southern leg	Not answered	Not answered	No but has heard that others have in the last few months	2 or 3 times per week	Yes. The owners have lived in properties adjoining the land for many years. They have allowed public access and not put up obstacles or attempted to control access before new owners have prompted the change in attitude.
8	27	20	Yes. Many other walkers	Recreation	No. Lowered section of fence at one point, easy to step over.	No	No	Yes in November 2011 by the owner of Crabb Mill	1984 – 2008 01 times per year 2008 – 2011 about 150 times per year	Yes. Has come into contact with the owner of Crabb Mill on a few occasions since coming to Lea and walking on this path was not mentioned. Also she must have been aware of people walking because you can see her land from her house.
9	13	12	Saw 1 to 3 other walkers daily in 2011	Recreation and dog walking	Old gate in the hedge	No	No	No	Daily in 2011 2 to 3 times per year previously	Yes. Well trodden path clearly visible from Crab Mill and on Google maps.
10	1	1	Yes walkers	Recreational dog walking	No	No	No	Yes, November 2011 was told on private property (near brook)	Daily	Yes. Because a lot of people use it to walk their dogs.
11	24	20	Yes walkers – knew to use route by observing others	Recreation	No	No	No	No	Several times per week	Yes, met the new owners whilst out walking the dog

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
12	6	6	Yes many people walking dogs and children	Walking dog or walking to Malmesbury	No	No	No everyone used them	No	No	Yes. It is only newcomers that have moved in that don't know the ways of living in a village
13	3	3	Yes walking	Recreational dog walking	A gate that has always been open	No	No	No	Daily	Yes
14	8	8	Yes	Recreational dog walking	No	No	No	No but we stopped when we heard that the new landowner was not going to be as accommodating as the previous	Twice daily	Yes I would have assumed that the previous owners would have informed them
15	1	1	Yes also dog walking	Recreational dog walking	No but there was a broken fence on the perimeter route	No	No	Not personally but others have been told that they should not be using the paths	Daily	Yes it has been a well established dog walk for a long time
16	2	1	Used by many people walking	Dog walking	Not answered	no	No	Not personally but has heard others have been stopped by the new owner	Almost daily	Yes. There is very obviously a path that can be seen also on Google earth
17	16	16	Yes other walkers	Recreational walk	Broken open gate	No	No	Not personally but has heard others recently told not to walk	Daily in summer, weekends in winter	Yes, because they told some people not to use it

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
18	39	20	Yes other walkers	Recreation and wildlife observation	No	No	No	Not personally but others have	Fortnightly or weekly	Yes until recently there were no fences
19	43	20	Yes walkers	Recreation	No	No	Yes "I have walked the fields around Lea with permission..."	No	Daily	Yes they were asked by me before I did so
20	9	8	Yes walkers	Recreation and leisure	Not answered	Not answered	Led by other villagers and told it was a right of way	No	Daily	Yes as the path was a well trodden way
Page 57	19	18	Yes walkers	Recreation	Gate in place when land used for cattle which for many years has not happened	No	Yes, met with Mr and Mrs Baker of Southfield Farm who said they could walk anywhere on their land	No	Daily	Yes, as had spoken to Mr and Mrs Baker in 1993. Had been seen many times by previous owner.
22	4	4	Yes many people walking or dog walking	Recreational walking	Not answered	No	No we have just followed where everybody else went	No but have heard that a number of villagers have been spoken to	Twice a week	Yes, the old owner never objected. There are two owners, one owner has been there for many years but has bought some extra land and suddenly objected to walkers. A completely new owner has come in the other property and put up fences in a number of places.

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
23	16	16	Yes lots of walkers	Recreational walk	Broken open gate on southern leg	No	No	"I heard that someone (I can't remember who) was told by a woman (?who) that they could not walk on the land. That was a couple of months ago"	Daily in summer, weekends in winter	Yes, local common knowledge
24	24	20	Yes walkers	Recreational dog walking	No	No	No	No	4 to 5 times per week	Yes, my wife passed them
28	20	20	Yes many other people walking every day	Recreation	No – one place where low fence needs stepping over on perimeter track. Open gate on southern leg.	No	No	No	1984 – 2008 10 times a year 2008 – 2011 180 times a year	Yes because sections of the path are in full view of the owner of Crab Mill
26	20	20	Yes many walkers use the path	Recreational dog walking or en route to Malmesbury	Disused gate	No	No	"Have used the path for 20 yrs without being stopped or turned back. Walkers have only been stopped in the past few months when new owners moved in"	3 times a week	Yes they have a good view of the path from their home

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
27	2	1	Yes walking	Walking a circular route with dog	No	No	No	Not when using the route but when using Lea and Cleverton path 3 (Nov 2010)	4 times per week	"Yes, my understanding when we first arrived here was that all these fields belonged to the same landowner as owns the fields crossed by LECL4 and LECL5. I believed the owners to be entirely aware of the use made of the fields and not at all unhappy about it."
28	11	10	Yes walking dogs	Dog walking and exercise	Gates always open on southern leg	Autumn 2011 laminated A4 sheet requesting dog mess to be cleared up – Crab Mill Lane	No	Not personally but have been told that others have been challenged in autumn 2011	1 or 2 per week	Yes the route is well used and in plain view of Crab Mill Farm and Crab Mill
29	12	11	Yes almost invariably meets someone else on the path often with dogs	Recreational walk	Not answered	No	No	No	Sometimes daily normally weekly in summer monthly in winter	Yes The path is commonly and frequently used and has been obvious. You invariably meet someone on it and it would be impossible not to know of use
30	7	6	Many others walking	Dog walking, blackberry and slow picking and picnics	Open broken gate on southern leg and broken fence on perimeter	No	No	Approached by female Jan 2012 and requested to stop using path. Other anecdotal accounts	About 5 times per week	Yes the path has been so well used it would have been very unlikely that it could have been missed

No	Total Yrs	Yrs in rel period	Other Users	Nature of own use	Gates or stiles	Signs	Permission	Challenge	Frequency of use	Landowner aware
31	4	4	Yes always other dog walkers	Dog walking	Broken fence on perimeter path	No	No	No	10 – 30 times per year	Yes, frequently used and obvious path created by footfall would be clearly apparent from aerial view

WIDTH OF CLAIMED PATH

Witness	Width	Witness	Width
1	1 – 3 m	21	1 m
2	1 – 3 m	22	1 m
3	1 m	23	wide enough to walk on
4	1 m	24	FP width
5	1 m	25	2 – 3 m
6	2 m	26	2 – 3 m
7	2 – 3 m	27	0.6 m
8	2 – 3 m	28	1 m
9	n/a	29	1 m
10	1.5 m	30	1 m
11	FP width	31	1 m
12	0.5 m		
13	1 – 4.5 m		
14	1 m		
15	1.5 m		
16	0.5 m		
17	2 m		
18	3 m		
19	2 m		
20	2 m		

n = 27 X = 1.5 metres Mean width = 1.5 metres

Application Routes : 12 witnesses (4 x 20 year)

Two Field Perimeter Route : 26 witnesses (9 x 20 year)

Southern Leg (Crab Mill Lane to LECL3) : 31 witnesses (10 x 20 year)



Ms. S Madgwick
Wiltshire Council
Rights of Way and Countryside
Neighbourhood Services
County Hall
Bythesea Road
Trowbridge, Wiltshire
BA14 8JN

Our reference DJS/0963656/O14489503.1/DJS

Your reference SM/PC 141

20 November 2012

Dear Ms. Madgwick

**Wildlife and Countryside Act 1981, s53
The Wiltshire Council (Parish of Lea and Claverton) Path no 34, 35 and 36 rights of way
modification order 2012 dated 18 October 2012 ("the Modification Order")**

I refer to the Modification Order. I am instructed on behalf of my clients, Mr and Mrs Smith of Crab Mill Farm to **object** to the Modification Order.

I attach a copy of my letter dated 11 May 2012 and the supporting statement, which set out in summary form the legal grounds and factual basis for my clients' objection.

My clients intend to adduce substantial evidence from a number of witnesses, including their tenant of the agricultural land, adjoining owners and their predecessors in title to challenge the evidence that will be given by the supporters of the Modification Order. There are obvious disputes of fact between the witnesses for and against the Modification Order. On that basis, we take the view that the issue can only fairly be determined at a public inquiry.

I should be grateful if you would confirm that the Council intend to ask the Secretary of State to appoint an inspector to hear the evidence at an inquiry. If the Council were minded to adopt a different method of determining the dispute, I should be grateful if you would give me advance notice of that intention, together with the grounds for making it, in order that we can respond appropriately.

I await your reply.

Yours sincerely

David Shakesby

Associate

T +44 117 9173326

F +44 117 9173327

E david.shakesby@osborneclarke.com

Ms. S Madgwick
Wiltshire Council
Rights of Way and Countryside
Neighbourhood Services
County Hall
Bythesea Road
Trowbridge, Wiltshire
BA14 8JN

Our reference DJS/0963656/O14489503.1/DJS

Your reference SM/PC 141

11 May 2012

Dear Ms. Madgwick

Wildlife and Countryside Act 1981, s53
Application for an order to add public footpaths to the definitive map and statement at Lea, Malmesbury

I refer to the application to add public footpaths to the definitive map and statement ("the Application") across my clients' land. I attach a statement from my client Mr Kevin Smith setting out his evidence. I set out below our legal submissions. I adopt the definitions used in Mr Smith's statement.

The Application

1. The Application is made pursuant to s53 of the 1981 Act and s31 of the Highways Act 1980. The routes claimed can only be added to the definitive map and statement if:
 - (a) the public has used the route(s) for an uninterrupted period of at least 20 years "as of right"; and
 - (b) there is not sufficient evidence to rebut the presumption arising from s31 of the 1980 Act that the landowner intended to dedicate the land as highway; and
 - (c) the route must be capable of subsisting as a highway at common law.

The evidence in support of the Application

2. The evidence submitted in support of the Application raises a number of issues:
 - (a) Witness number 2 (Mr McManus) records that there was a broken gate ("the Gate") across the Southern Leg which was not locked. It presumably therefore had to be opened or climbed over. There is a reference to conversations with Mr and Mrs Perry, which indicates that his use was permitted or tolerated.
 - (b) Witness number 3 (Mr Coleman), 5 (Mr Masson), 7 (Mr Porter), 8 (Mrs Suter), 9 (Mr Holmes), 13 (Mrs Ind), 17 (Mr Seymour), 21 (Mrs Cole), 23 (Mrs Seymour), 25 (Mr Suter), 26 (Mrs Porter), 28 (Mrs Masson), and 30 (Summersell) all also refer to the Gate.

- (c) Witness number 7 (Mr Porter) refers to Mr and Mrs Perry "allowing" public access for many years, which indicates permission.
- (d) Witness number 8 (Mrs Suter) refers to a "lowered section of fence", which has to be climbed over. This would presumably (although it is unclear) be at the point of divergence between the Cul-de-sac and the Eastern Route. This section of fence is also mentioned by witnesses 15 (Mrs Knight), 25 (Mr Suter), 30 (Summersell) and 31 (Mrs Jones).
- (e) Witness 14 (Mr Francis) indicates that when he heard that the new owners were not going to be "as accommodating" as Mr and Mrs Perry, he stopped using the routes. That indicates that he understood there to be a revocable permission.
- (f) Witness 19 (Mrs Collingwood) records that she asked for and was given permission before she started using the routes some 43 years ago.
- (g) Witness 21 (Mrs Cole) records that she was given permission to walk on the land.
- (h) Witness 22 (Mr and Mrs Kerstar) records that Mr and Mrs Perry never objected. This indicates permission or toleration.

Intention to dedicate

3. We say that the applicants cannot establish an intention on the part of the landowner to dedicate the land in perpetuity as a highway. This is for the following reasons:
 - (a) the Southern Leg used to have a gate across it; and
 - (b) the Southern Leg has been regularly fenced off with electric fencing (see Mr Smith's statement); and
 - (c) the evidence, even from the Applicants suggests that a significant part of the use was with express permission. Further witnesses give the impression that they understood there to be implied permission; and
 - (d) the gate, electric fencing and the inaccessibility of parts of the land whilst being grazed all potentially amount to interruptions to the claimed period of use.
4. As a consequence, we say that the applications cannot show an intention to dedicate, and conversely my client can rebut any presumption that may have arisen of an intention to dedicate.

As of right

5. The meaning of the term "as of right" is well settled. It means *nec vi, nec clam, nec precario*, or "without force, without secrecy and without permission".
6. The witness evidence shows that witnesses climbed over or opened the Gate, climbed under electric fencing, or climbed over a broken down section of fence. All such use is "with force" and therefore cannot be "as of right". In addition, it would have been obvious to any reasonable objective observer that persons using the routes were not doing so as of right.
7. The evidence of express or implied permission referred to above is fatal to the Application - see *R v Secretary of State for the Environment ex parte Bilson* [1999] QB 274.

Southern Leg

8. The Southern Leg is a deviation from two sections of existing highway. Essentially it cuts the corner between Crabb Mill Lane and the existing footpath.
9. A deviation from an adjoining highway or a recreational walk along a longer route, as opposed to the shorter and more convenient route of a footpath proper between two points cannot be claimed as a public footpath. See *British Museum Trustees v Finnis (1833) 5 C&P 460* and *Bilson (above)*.

The Cul-de-sac

10. The law does not recognise that a cul-de-sac can be a highway; a highway must lead from one place to another. Dedication will not be inferred in such circumstances and it could only be expressly dedicated - see *Attorney General v Antrobus [1905] 2 Ch 188*.
11. Further or alternatively, there is no point of interest, viewing point or other reason in relation to the claimed footpaths to depart from the general rule in *Antrobus*.

Grazing licences

12. For a period of 22 years between approximately 1989 and 2011 a nearby farmer (Mr Baker) took a grazing licence of the land affected by the Application (both my clients' land and that now belonging to Mrs Wright) for each growing season in that period (approximately March to October).
13. During the growing season, all of the relevant land was occupied by Mr Baker. Mr Baker had control of the land during those periods, but he had no authority to dedicate the land as a highway in perpetuity.
14. As a consequence, Mr Baker's occupation during each year operated either as an interruption to a qualifying period of use so that there has never been a 20 year qualifying period of use, or further or alternatively, it is evidence that the landowner did not intend to dedicate the land in perpetuity as highway.

Conclusion

15. My client submits that for all of the reasons set out above, none of the routes can be confirmed as additions to the definitive map and statement. In particular, for the reasons set out in paragraphs 8 to 10 above, the two sections of route over my clients' land (the Southern Leg and the Cul-de-sac) cannot, as a matter of law, have been dedicated as highway. If those two sections cannot have been dedicated then it is equally impossible for the Eastern Route to have been dedicated as there would be no lawful means of accessing it from my client's land.
16. For all of the reasons set out above, we respectfully request that the Application be rejected and the Highway Authority determine that there is no need to hold an Inquiry.

Yours sincerely



David Shakesby

Associate

T +44 117 9173326

F +44 117 9173327

E david.shakesby@osborneclarke.com

IN THE MATTER OF S53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981

AND IN THE IMATTER OF AN APPLICATION TO ADD PUBLIC FOOTPATHS TO THE DEFINITIVE MAPP AND STATEMENT AT LEA, MALMESBURY

STATEMENT OF KEVIN JOHNSTON SMITH

1. My name is Kevin Johnston Smith. I own Crabb Mill Farm, Lea, Malmesbury ("the Property") together with my wife Emma Corden Child. We completed the purchase of the Property from Mr and Mrs Perry on 18 March 2011. The registration of our title to the Property was completed on 30 March 2011. A copy of the registered title number WT285936 and the plan showing the extent of the Property is attached to this statement.
2. We became aware that walkers were trespassing on the Property (the property has been empty since we acquired it, as we intend to refurbish it completely) in or about the summer of 2011.
3. As soon as practicable, we took steps to erect new fences and gates in order to prevent access. We also spoke to a number of people that we saw trespassing on our land and told them that they were trespassing and that they were not permitted to deviate from the existing footpath.
4. During the course of acquiring the Property one of the key attractions was the stretch of river and the fishing rights. We made extensive enquiries via our lawyers to satisfy ourselves that we would acquire the stretch of river and the fishing rights. There is a fishing lodge next to the river, which adds significantly to the Property (including in monetary terms), but which is spoiled if it is not private.
5. For the purposes of this statement, I will refer to the stretches of alleged footpath which are the subject of the application to add footpaths to the Definitive Map and Statement ("the Application") as follows:
 - (a) The stretch between points A and B on the plan supplied by the Council I will refer to as "the Southern Leg";
 - (b) The stretch between points C and D (returning to C), I shall refer to as "the Cul-de-sac"; and
 - (c) The stretch between the point where it leaves the Cul-de-sac (and our land) to point E, I shall refer to as "the Eastern Route".
6. During the course of acquiring the Property we were told on a number of occasions by Mr and Mrs Perry that:
 - (a) there were no public or private rights of way over the Property (other than Crabb Mill Lane); and
 - (b) there were no public or private rights of way in the course of being acquired; and
 - (c) there were no overriding interests over the Property (other than a number of interests that are irrelevant for these purposes).



7. When giving their answers to these questions, Mr and Mrs Perry knew that we were concerned to ensure that the access to the river, the fishing lodge and the field that is the subject of the Cul-de-sac route was private.
8. My understanding is that for the whole of the period that Mr and Mrs Perry owned the Property, they entered into a grazing agreement with Mr Trevor Baker each year. This happened for approximately 22 years until 2011. Mr Baker's practice was to take an early cut of hay or silage in each growing season and then to graze the regrowth with cattle rather than taking a second cut of hay or silage. When livestock were on the fields, Mr Baker would erect electric fencing along Crab Mill Lane in order to prevent cattle straying onto the road. In order to access the Southern Leg, the witnesses supporting the Application would have had to cross the electric fencing. In addition, at point "X" on the attached title plan there is a gate, which used to be across the Southern Leg. Before this gate was removed (it is now lying in the hedge adjacent to the route), members of the public would have had to climb over the gate, or open it to use the route.
9. I also understand that it would be very unlikely (it would have been dangerous) that any of the witnesses (most of them are dog walkers) would have taken dogs through any of the fields, particularly the field containing the Cul-de-sac, when it was being grazed by cattle with calves.

Signed: _____

Date: _____

15/05/2012

Wiltshire Council
Northern Area Planning Committee
20th February 2013

Forthcoming Hearings and Public Inquiries between 06/02/2012 and 31/08/2013

Application No	Location	Parish	Proposal	Appeal Type	Date
11/04126/OUT	Land South of Filands, Malmesbury, Wiltshire.	Malmesbury/St Paul Without	Outline Application For Residential Development Comprising of 180 Dwellings and Provision of Land for Primary School	Public Inquiry	22/01/2013
11/04162/FUL	Phase 3, Brynards Hill, Bincknoll Lane, Wootton Bassett, SN4 8SY	Wootton Bassett	Phase 3 - Erection of 43 Dwellings with Associated Roads, Sewers, Landscaping, Parking, Garages and Associated Works.	Public Inquiry	06/03/2013
12/00365/S73A	Lidats Meadow, Grittenham, Chippenham, Wiltshire, SN15 4JW	Brinkworth	Retention of Rural Occupation Workers Temporary Dwelling with Treatment Plant. Retention of Existing Caravan and Container. Retention of Hardcore Area and 3 Earth Bunds. Retention and Improvements of Existing Access (Revision of 11.02825/FUL).	Informal Hearing	12/03/2013

Planning Appeals Received between 16/01/2013 and 06/02/2013

Application No	Location	Parish	Proposal	DEL or COMM	Officer Recommendation	Appeal Type
12/00871/FUL	Southernwood Farm, Sheldon, Chippenham, Wiltshire, SN14 0RE	Chippenham Without	Demolition of Existing Buildings and Erection of 2 No. B8 Storage Buildings	DEL	Refusal	Written Representations
12/01009/FUL	58 Bristol Road, Chippenham, Wiltshire, SN15 1NS	Chippenham	Erection of Proposed Detached Dwelling & Provision of Parking	DEL	Refusal	Written Representations
12/01348/FUL	Land at 12 The Close Gastard, Corsham, Wilts. SN13 9PX	Corsham	Erection of Detached Dwelling, Conservatory, Carport/Workshop, Parking and Amenity Space	DEL	Permission	Written Representations
12/02230/FUL	58 Bristol Road, Chippenham, SN15 1NS	Chippenham	Erection of Proposed Detached Dwelling & Provision of Parking(Resubmission of N/12/01009/FUL)	DEL	Refusal	Written Representations
12/03701/FUL	Knole, Box Hill, Rudloe, Wiltshire, SN13 8HN	Box	Extensions & Alterations to Form Two Storey Dwelling; Detached Garage & Store	DEL	Refusal	Written Representations
11/02688/FUL	Land at Abbey View Farm, Malmesbury, Wiltshire, SN16 9DA	Malmesbury	Erection of Permanent Agricultural Workers Dwelling and Agricultural Building	DEL	Refusal	Informal Hearing

Application No	Location	Parish	Proposal	DEL or COMM	Appeal Decision	Officer Recommendation	Appeal Type
12/01527/FUL	4 Patterdown, Chippenham, Wiltshire, SN15 2NP	Chippenham	First Floor Extension to Garage	DEL	Allowed with Conditions	Refusal	Written Representations
12/01601/FUL	1 The Fox, Purton, SN5 4EF	Purton	Extension of Residential Curtilage and Diversion of Farm Track and Footpath	DEL	Allowed with Conditions	Refusal	Written Representations
12/01637/FUL	The Old Forge, Corsham, Wiltshire, SN13 0PS	Corsham	Detached Single Garage	DEL	Allowed with Conditions	Refusal	Written Representations
12/00889/FUL	Land Adjacent to 8 Tern Close, Calne, Wiltshire, SN11 8NG	Calne	Two Dwellings & Associated Works (Revision to N/11/04061/FUL)	COMM	Appeal Dismissed	Refusal	Written Representations
12/01764/FUL	Land Adjacent to 8 Tern Close, Calne, Wiltshire, SN11 8NG	Calne	Erection of Two Dwellings & Associated Works	DEL	Appeal Dismissed	Refusal	Written Representations
11/02688/FUL	Land at Abbey View Farm, Malmesbury, Wiltshire, SN16 9DA	Malmesbury	Erection of Permanent Agricultural Workers Dwelling and Agricultural Building	COMM	Appeal Withdrawn	Refusal	Informal Hearing

Agenda Item 8

INDEX OF APPLICATIONS ON 20/02/2013

	APPLICATION NO.	SITE LOCATION	DEVELOPMENT	RECOMMENDATION
8a	12/03960/FUL	38 Gloucester Street, Malmesbury, Wiltshire, SN16 0AA	Change of Use from Retail and Part Residential to 1 Residential Dwelling	Permission
	12/03961/LBC	38 Gloucester Street, Malmesbury, Wiltshire, SN16 0AA	Internal and External Alterations in Association with Change of Use to Residential Dwelling.	Consent

This page is intentionally left blank

Agenda Item 9

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	20 th February 2013		
Application Number	12/03960/FUL & 12/03961/LBC		
Site Address	38 Gloucester Street, Malmesbury, SN16 0AA		
Proposal	Change of Use from Retail and Part Residential to 1 Residential Dwelling Internal and External Alterations in Association with Change of Use to Residential Dwelling		
Applicant	Mr & Mrs Burton		
Town/Parish Council	Malmesbury		
Electoral Division	Malmesbury	Unitary Member	Councillor Killane
Grid Ref	393226 187267		
Type of application	FUL & LBC		
Case Officer	Kate Backhouse	01249 706 684	Kate.backhouse@wiltshire.gov.uk

Reason for the application being considered by Committee

Councillor Killane has called the planning application to be considered by Committee to allow Councillors to have the opportunity to hear neighbour concerns and to assess the impact of the conversion of the retail unit to residential.

1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

2. Report summary

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

- Principle of Development
- Impact on Highways
- Loss of Retail Unit

The application has generated objections from Malmesbury Chamber of Commerce; and 4 letters of objection from the public.

3. Site Description

The site is situated on the Gloucester Road in Malmesbury, which is also located within the Malmesbury conservation area. The property lies opposite Malmesbury Abbey Grounds, with residential properties to the north and a mix of mostly residential and some retail to the south. The site is also within the town centre secondary frontage area. The retail unit is currently vacant and for sale. The property is grade 2 listed and features a retail unit formerly in A1 Use at ground floor level and a 3 bed residential unit split over ground, first and second floor levels.

4. Relevant Planning History		
Application Number	Proposal	Decision
08/02666/LBC	Renewal of Previous Permission (03/01246/LBC) Internal and External Alterations to Form 2 Living Units from Existing Living Accommodation Ancillary to Shop	Permission
08/02665/FUL	Renewal of Previous Permission (03/01247/S73) Internal & External Alterations to Form 2 Living Units from Existing Living Accommodation Ancillary to Shop	Permission
08/00295/COU	Change of Use of Shop and Store to Residential Plus Alterations to Rear Elevation	Withdrawn
08/00306/LBC	Internal and External Alterations Associated with Change of Use from Shop to Residential	Withdrawn
03/01246/LBC	Internal and external alterations to form two living units from existing living accommodation ancillary to shop. renewal of 98.0053.lb	Permission
03/01247/S73	Internal and external alterations to form two living units from existing living accommodation ancillary to shop. renewal of 98.0052.f	Permission

5. Proposal

The applicant seeks permission for the conversion of the existing shop with accommodation into one dwellinghouse with associated internal and external alterations

6. Planning Policy

Adopted North Wiltshire Local Plan 2011
 C3 - Development Control Policy
 R2- .Town Centre Secondary Frontage Area
 H3 – Residential Development within Framework Boundaries
 HE1 – Development in Conservation Areas
 R6 – Existing Local Shops and Services
 HE4 – Development, Demolition or Alterations involving Listed Buildings

7. Consultations

Malmesbury & St Paul Without Residents' Association – In an exception to normal opposition for change of use of retail properties, the Association have supported the application. The current state of the building and sums of monies involved in the restoration preclude it from being an attractive commercial venture.

Malmesbury Town Council – Support the application

Malmesbury Chamber of Commerce – objects to the loss of any retail unit to residential as it will harm the future of trade within the town centre.

English Heritage – No comments

8. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

4 letters of letters have been received, in summary the following concerns have been raised:-

- Loss of retail
- Will harm viability and vitality of town
- Will set precedent for future change of use
- Contrary to Malmesbury Conservation Area Plan
- Lack of Consultations
- Has been marketed unrealistically

9 Letters of support have been received, in summary the following points have been raised:-

- The building is in a bad state of repair and needs investment
- The building is grade 2 listed and within a Conservation Area therefore in accordance with the Malmesbury Conservation Area Plan should be preserved and prevented from deteriorating
- Not within the main High Street of Malmesbury where shops should be preserved. Is located within the secondary shopping area.
- The repairs necessary are unviable for a commercial premises
- The building is in a sensitive location opposite the Abbey and should be restored
- The proposed alterations are of a high standard

8. Planning Considerations

Principle of Development

The planning application site lies within the defined framework boundary of Malmesbury and the Malmesbury conservation area thus any development should satisfy the policies outlined in C3, H3 and HE1 of the North Wiltshire Local Plan 2011. Extensive pre-application discussions were entered into, prior to this application being submitted.

Site description

The application site is situated just off the centre of the town. The site is part of a terrace of properties of varying designs. The rear of the building is heavily overgrown and has a terrace before sloping steeply down. The building is situated within the Malmesbury conservation area and has had several alterations and changes of use over the years. At the bottom of the garden lie 3 parking spaces which the proposed development would retain.

The first floor of the building although empty has residential permission with the second floor being completely empty and in a very bad state of repair. The building as a whole has been left to fall into a very poor state. The property leaks at numerous points and extensive works have been undertaken without the benefit of listed building consent which this application seeks to address. At first floor, the level of work required is apparent. There are holes through the walls, the floor is unsafe and the dormer window is held in by what appears to be expanding foam and plastic sheeting. An original beam transverses the room which needs to be retained to preserve the historic fabric of the building which has caused some interested parties to withdraw from the property as this would prevent the top floor being used as a bedroom therefore preventing subdivision of the top floors into separate flats.

Proposed works

Various sympathetic internal and external alterations are proposed in accordance with guidance at pre-application stage from the Councils Conservation Officer. To the rear of the property, the

replacement lean-to extension has a slate tiled roof with the end most part of the gable having glazed side panels to either side of the balcony. As demonstrated in the submitted photographs there are numerous balconies within the terrace of varying designs and the proposed balcony will not cause any additional overlooking especially given the opaque panels to the side.

Impact on Highways

Highways Officers confirmed at pre-application stage that there were no objections due to the town centre location of the property and that any purchaser would be aware of the situation when purchasing the property. The building does in fact benefit from 3 parking spaces which historically have been used in connection with the residential accommodation which will continue.

Public Open Space

Given that the number of bedrooms will not alter due to the constraints of the listed building, no public open space payment is required.

Loss of retail unit

The secondary shopping area within which the building is sited does not specifically protect existing retail uses as Policy R1 (Town Centre Primary Frontage Areas) does. Policy R2's purpose is to allow for some retail or town centre uses in those areas which will not adversely affect the viability of the town centre (the area defined by Policy R1). The proposal is therefore considered against R6 – Existing Local Shops and Services.

The agent has provided robust evidence that the marketing of the premises has been pursued over a two year period from September 2010 at a reasonable price however this has proved unsuccessful.

As noted in the supporting statement within R6 11.15, the Council acknowledges that it would be unreasonable to resist a change of use where local patronage is such that a business is no longer viable. It is clear that the business is no longer viable and every reasonable attempt to market the premises has been made in accordance with R6 (i). As an Authority we would normally require premises to be marketed at a realistic rate unsuccessfully for a period of a year to demonstrate that the business was not viable. In this instance the property has been marketed for over 2 years which is in excess of the Councils normal requirements.

It is acknowledged that the preservation of the viability and vitality of the Town Centre is of importance however planning policy allows for changes of use when it has been demonstrated that the existing use is no longer viable. Consideration is given to whether permission would set a precedent for future changes of use following representations received, however every planning application is considered on its own merits and in this instance the applicant has gone beyond what the Council would expect in terms of marketing. Additionally, the extremely poor state of the building means that it is imperative that works are undertaken swiftly to preserve the historic fabric and also the character and appearance of the conservation area. The Malmesbury Conservation Area Plan, in accord with the North Wiltshire Local Plan refers both to the need to ensure the vitality and viability of the Town Centre, but also the need to preserve and protect listed buildings and conserve and enhance the Conservation Area. As noted above the premises have been marketed for an extensive period of time unsuccessfully during which time the building has unfortunately fallen into a very poor state of repair. The proposed works are of a high quality and will restore the building to a high standard. The loss of any retail unit is regrettable however in this instance the extensive marketing in connection with the necessity of securing the future of the building would make it unreasonable to refuse the application and will achieve objectives for preservation of the heritage asset in accord with the NPPF and NWLP.

Other matters

Comments have been received that a nearby resident failed to be consulted when others situated further away had.

The applications were advertised by press ad, site notices and neighbour letters. Neighbour letters were issued in accordance with the Councils adopted policy on neighbour consultation. (Available on request).

The application is therefore recommended for approval subject to conditions.

9. Recommendation

12/03960/FUL

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

In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the environmental conditions of the area. The proposed conversion is considered to be acceptable in the context of the surrounding area and would preserve the character and appearance of this part of the Malmesbury Conservation Area. The property has been marketed for a period of over 24 months without success and therefore the change of use is considered to be acceptable in this instance and is in accord with policies C3, H3, R6, R2 and HE1 of the North Wiltshire Local Plan 2011.

Subject to the following conditions:

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

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

2. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Plans;

Existing elevations and sections
Site location plan
Existing floor plan
Associated photographs
Property marketing
Proposed elevations and sections
Heritage asset statement
Design and access statement
Proposed floor plans

Date stamped 28.11.12

REASON: To ensure that the development is implemented as approved.

12/03961/LBC

Listed Building Consent be **GRANTED** for the following reason:

The proposed development by reason of its scale, design and siting is considered to be an acceptable addition to the property and the proposed alterations would not unduly affect the fabric or setting of the listed building. The proposed development is in keeping with the character and appearance of the area and would secure the future of the building and this will achieve objectives for preservation of the heritage asset in accordance with the National Planning Policy Framework and the North Wiltshire Local Plan 2011. The proposals are thus considered to comply with section 12 of the National Planning Policy Framework (2012) and with S.16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Subject to the following conditions:

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

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

2. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Plans

Existing elevations and sections
Site location plan
Existing floor plan
Associated photographs
Property marketing
Proposed elevations and sections
Heritage asset statement
Design and access statement
Proposed floor plans

Date stamped 28.11.12

REASON: To ensure that the works are implemented as approved and in the interests of the listed building.

3. Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority
- (i) Large scale details of all external joinery including metal-framed glazing (1:5 elevation, 1:2 section) including vertical and horizontal cross-sections through openings to show the positions of joinery within openings, depth of reveal, heads, sills and lintels;
 - (ii) Large scale details (1:5 elevations, 1:2 sections) of new dormer construction, including window;
 - (iii) Large scale details of proposed balcony structure (1:10 elevations 1:5 sections);

- (iv) Large scale details of all internal joinery, including staircases (1:5 elevation, 1:2 section);
- (v) Full details of proposed rooflights, which shall be set in plane with the roof covering;
- (vi) Large scale details of new fireplace to living room;
- (vii) Full details of external flues, background and mechanical ventilation, soil/vent pipes and their exits to the open air;
- (viii) Full details of proposed meter and alarm boxes;
- (ix) Large scale details of proposed eaves and verges (1:5 section);
- (x) Full details of proposed internal service routes;
- (xi) Full details of external decoration to render, joinery and metalwork; and
- (xii) Full details and samples of external materials.

The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

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

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

5. Notwithstanding the submitted details (3799/51E) the new window to the west elevation of the first floor snug shall be a timber, double-hung sash window to match those on the first floor front elevation.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

