

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Council Offices, Monkton Park, Chippenham,
SN15 1ER
Date: Wednesday 14 May 2014
Time: 6.00 pm

Please direct any enquiries on this Agenda to Eleanor Slack, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718255 or email eleanor.slack@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 Christine Crisp	Cllr Mark Packard
Cllr Bill Douglas	Cllr Sheila Parker
Cllr Mollie Groom	Cllr Toby Sturgis
Cllr Chris Hurst	Cllr Anthony Trotman (Chairman)
Cllr Peter Hutton (Vice-Chair)	Cllr Philip Whalley
Cllr Simon Killane	

Substitutes:

Cllr Desna Allen	Cllr Dennis Drewett
Cllr Glenis Ansell	Cllr Howard Greenman
Cllr Mary Champion	Cllr Jacqui Lay
Cllr Terry Chivers	Cllr Howard Marshall
Cllr Ernie Clark	Cllr Nick Watts

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 - 16*)

To approve and sign as a correct record the minutes of the meeting held on 23 April 2014.

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 Chairman.

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 7 May 2014**. 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 Wiltshire Council Heddington 5 (part) Rights of Way modification order 2014 (Pages 17 - 96)

To consider the attached Wiltshire Council Heddington 5 (part) Rights of Way modification order 2014.

7 Planning Applications (Pages 97 - 98)

To consider and determine planning applications in the attached schedule.

7a **14.02367.FUL and 14.02730.LBC - Church House, The Street, Grittleton, Chippenham, SN14 6AP (Pages 99 - 104)**

7b **14.02154.FUL - Rose Cottage, Corston, Malmesbury, SN16 0HD (Pages 105 - 110)**

7c **14.01293.OUT - Oak Hill House, Upper Seagry, Chippenham, Wiltshire, SN15 5HD (Pages 111 - 118)**

8 Urgent Items

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

Part II

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

None

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NORTHERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING
HELD ON 23 APRIL 2014 AT COUNCIL CHAMBER - COUNCIL OFFICES,
MONKTON PARK, CHIPPENHAM, SN15 1ER.**

Present:

Cllr Christine Crisp, Cllr Chris Hurst, Cllr Simon Killane, Cllr Jacqui Lay (Substitute),
Cllr Mark Packard, Cllr Sheila Parker, Cllr Toby Sturgis, Cllr Anthony Trotman (Chairman)
and Cllr Philip Whalley

Also Present:

35 **Apologies**

Apologies were received from Cllr Douglas and Cllr Groom.

Cllr Groom was substituted by Cllr Lay.

36 **Minutes of the previous Meeting**

The minutes of the meeting held on 2 April 2014 were presented.

Resolved:

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

37 **Declarations of Interest**

There were no declarations of interest.

38 **Chairman's Announcements**

There were no Chairman's announcements.

39 **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

40 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting and later published as an agenda supplement, in respect of applications **6a** and **6e** as listed in the agenda pack.

41 **13.00958.S73A - Oaksey Park, Lowfield farm, Oaksey, Wiltshire**

With the approval of the Chairman, application 13/00958/S73A, Oaksey Park, Lowfield Farm, Oaksey, Wiltshire was considered first.

The Chairman explained that prior to the Committee meeting further evidence had been provided which needed to be considered, and as a result of this further evidence it was unsafe to debate the item.

It was resolved to;

Defer the application.

42 **12.03594 - Octavian, Eastlays, Gastard, Wiltshire, SN13 9PP**

Sheena Audrey, Peter Davis, Charlotte Dines and Cllr Rod Taylor spoke in objection to the application.

Ben Pearce spoke in support of the application.

The officer introduced the report which recommended that planning permission be granted.

The application was for the construction of a building for the storage of fine wine which was 6,200 square meters in total, and was on a site of 17 hectares. The building proposed was substantial in size, being a total of 132 meters long, 70 meters wide and 11 meters high. An extensive landscaping scheme was proposed. The landscaping officer had confirmed that the impact of the building would be limited to particular viewpoints.

The Committee had the opportunity to ask technical questions of officers and it was confirmed that a drainage scheme did not form part of the application. The structure would sit on the existing site level and some areas of the ground level would be raised.

Members of the public addressed the Committee as detailed above.

The local member, Cllr Tonge addressed the Committee and spoke in objection to the application, noting the mass of the structure, its location in the countryside and its impact on the landscape.

In the debate that followed the Committee noted the size of the structure, its rural setting and the potential for the site to result in further above ground developments.

It was resolved to;

Refuse planning permission for the following reason.

By reason of its scale, massing and external appearance, the proposed building would not respect the character and distinctiveness of the rural locality and landscape. As such, the proposed development would be contrary to the provisions of Policies C3 and NE15 of the adopted North Wiltshire Local Plan 2011.

43 **13.05668.VAR.SS - Bassett Down Golf Club, Hay Lane, Bassett Down, Swindon, SN4 9QP**

John Ingleson spoke in objection to the application.

Rob Dance spoke in support of the application.

The officer introduced the report which recommended that condition 13 to planning permission 09/00079/COU be varied.

The officer explained that although the site itself was in Wiltshire, the adjacent road was maintained by Swindon Borough Council. Planning permission to extend the site had been granted in 2009, and condition 13 of that permission had set a start and completion date for the importation of fill to the site, which subsequently expired in December 2013.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that 282,000 cubic meters of fill was required to complete construction. 192,000 cubic meters had been delivered. Approximately 141 HGV movements would occur from the site each day.

Members of the public then addressed the Committee as detailed above.

The local member, Cllr Groom was absent and Cllr Lay spoke on her behalf. She noted the condition of the adjacent road and questioned its suitability for use by HGVs.

It was resolved;

That planning permission be GRANTED subject to conditions imposed under 09/00079/COU together with minor amendments to wording of conditions so as to reflect the fact that development has already commenced, including conditions 03 (Ecology), 08 (hours of operation), 12 (duration of construction phase) and additional condition 14 (survey of highway damage), to read as follows :

- 1) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.**

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 2) Development shall take place in complete accordance with the approved surface water drainage scheme for the site (prepared by DJP Consulting Engineers, April 2009), which was based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. In particular, run off from the site following development to not exceed Greenfield rates calculated on page 2 of the letter from DJP Structural and Civil Engineers dated 21 October 2009**

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity and ensure future maintenance of these.

- 3) Within 3 months of the date of this planning permission, an updated Landscape and Ecological Management Plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning authority. The Landscape Management Plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the Local Planning authority. The Scheme shall include the following elements:**

- a) design details of all water features to ensure they are designed to maximise the benefits for biodiversity. Lakes should have significant areas of shallows and be planted with native wetland plants
- b) suitably sized buffer strips of vegetation left between the water features and the main fairways. These strips should be left to develop with limited management. They will provide protection for the water features from intensive management such as fertilise spraying
- c) drainage channels and SUDS should be designed to maximise their benefits for biodiversity
- d) chemical treatments for green/fairways should be limited and sufficient distances from water features, should always be maintained during these operations to prevent them being impacted by direct application or spray drift.

Reason: To ensure protection of wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in line with national planning policy

- 4) The development hereby permitted shall be carried out in complete accordance with the approved Construction and Environmental Management Plan (prepared by MJ Church, dated 13th July 2011).

Reason: To minimise the impact on construction vehicles on Junction 16 of the M4

- 5) The importation of inert fill to the site shall take place in complete accordance with the Environmental Permit (permit number: EPR/AB3804CL), which transferred to the current operator (Earthline) by the Environment Agency on 13th October 2013.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 6) No materials other than inert waste and topsoil shall be imported into and deposited on the site.

Reason: To control the type of waste imported.

- 7) There shall be no screening or processing of inert waste material on the site at any time.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 8) No operations relating the formation of the course, including HGVs entering and leaving the site, shall take place except between the following times:**

07.30 – 17.00 Mondays to Fridays

No operations related to the formation of the course shall take place on Saturdays, Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 9) All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with, and use, effective silencers. No reversing beepers or other means of warning of reversing vehicles shall be fixed to, or used on, any mobile site plant other than white noise alarms or beepers where noise levels adjust automatically to surrounding noise levels.**

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 10) During the permitted working hours the freefield equivalent continuous noise level (LAeq, 1 hour) for the period due to normal waste importing and depositing operations shall not exceed 55dB as recorded at the boundary of any inhabited property.**

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase

- 11) The deposit of waste and all earthworks required to form the approved development shall be completed no later than 31st December 2016. Within a period of a further 12 months (i) all plant and machinery shall be removed from the site (except which the local planning authority agrees in writing is required for future maintenance of the site); and (ii) the temporary access road shall be closed and the restored in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.**

Reason: To enable the Council to control the development and monitor the site to ensure compliance with the planning permission.

12) In complete accordance with the submitted details, no more than 141 heavy goods vehicle movements to and from the site shall occur on any working day.

Reason: To limit the volumes of traffic in the interests of the amenity of residents on and near the approaches to the site.

13) Within 2 months of the date of this planning permission, a photographic survey of Hay Lane between the M4 junction and the site entrance shall be carried out. Upon completion of the construction phases, a post construction survey shall be carried out at the same locations. Details and results of both before and after survey shall have been submitted to the Local Planning Authority (who will liaise with Swindon Borough Council as the Highway Authority) within 3 months of the first use or occupation of the development. Those submitted details and results shall be accompanied by a plan and timing schedule for the repair of any damage identified and attributable to the construction of the development, to be carried out at the expense of the applicant, which shall have been agreed in writing with the Local Planning Authority beforehand.

Reason: So as to secure a scheme for the repair of the public highway following completion of substantive construction works.

44 13.06672 - 56 New Road, Chippenham, SN15 1ES

Mark Willis and Tony Gill spoke in support of the application.

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

He explained that the application was for the change of a retail unit into a gym. The proposal included an extension to the side and to the rear of the property and an alteration to the building frontage. The application included a noise assessment.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that further planning permission would be required for the installation of air conditioning units. The opening hours were not restricted through conditions. Environmental Health officers had not raised any concerns regarding noise levels. Although the building concerned was not listed, others in the vicinity were.

Members of the public then addressed the Committee as detailed above.

The local member, Cllr Caswell spoke in objection to the application. He noted that the proposed extension would create a unified frontage with the listed buildings adjacent to the site and that the fire escape had been moved as part of the proposal.

In the debate that followed the Committee noted the increased number of service businesses in the vicinity and the potential for the development to assist the night-time economy.

It was resolved;

To GRANT Planning Permission 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 & Country Planning Act 1990 as amended by the Planning & Compulsory Purchase Act 2004.

- 2. No development shall commence on site until details of the formal noise assessment as required by the Environmental Health Officer email dated 06.02.2014 and mitigation measures (if any) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and decibel rating.**

REASON: In order to prevent loss of amenity to the flats through the noise and to ensure the viability of the business from unnecessary enforcement action from Public Protection.

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

REASON: In the interests of visual amenity and the character and appearance of this part of the Conservation Area and adjacent Listed Buildings.

- 4. The following plans and documents were taken into account in the consideration of the application:**

Dwg No: 2472/01 Various	Dated
06.12.2013	
Dwg No: 2472/02A Plans and elevations as existing	
13.12.2013	
Part Superseded Dwg No: 2472/03A Plans & elevations as proposed	
13.12.2013	
Revised Dwg No: SK.01 New shop front with two glazing bars	
06.02.2014	
Additional Information on Ceiling Treatments	
21.03.2014	

INFORMATIVES TO THE APPLICANT:-

- 1. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside of their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.**

If you intend carrying out works in the vicinity of the site boundary, you are also advised it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 2006.

- 2. This permission does not permit the display of any advertisements which require consent under the Town**

45 13.07226 - 9 Gaston Lane, Sherston, Wiltshire, SN16 0LY

Mike Moss spoke in objection to the application.

Gina Butler spoke in support of the application.

The officer introduced the report which recommended that planning permission be delegated to the Area Development Manager to grant subject to a s106 agreement and conditions.

Outline approval for the construction a building on the site was previously granted, and the application before the Committee included slight amendments to the original plans.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that any external building materials would be subject to approval.

Members of the public then addressed the Committee as detailed above.

The local member, Cllr Thomson spoke in support of the application. He noted the need to minimise disruption to local residents and to improve the quality of the final build. He highlighted the need for an agreed finished floor level, a condition survey on the site lane and the need to ensure that a fire hydrant close to the site was clearly painted and left serviceable.

In the debate that followed the Committee noted the importance of achieving a high quality finish, the need to control deliveries to the site and to ensure that the garage was used for parking a vehicle.

It was resolved to;

DELEGATE to Area Development Manager for APPROVAL subject to the applicant entering into a legal agreement under S.106 of the Town and Country Planning Act 1990 in respect of the provision of a financial contribution towards public open space and affordable housing, as required by policies CF3 and H6 of the adopted North Wiltshire Local Plan 2011 and subject to the following conditions:

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

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

- 2) No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-**
 - a. location and current canopy spread of all existing trees and hedgerows on the land;**
 - b. full details of any to be retained, together with measures for their protection in the course of development;**
 - c. a detailed planting specification showing all plant species, supply and planting sizes and planting densities;**
 - d. finished levels and contours;**
 - e. means of enclosure;**
 - f. car park layouts;**
 - g. all hard and soft surfacing materials;**

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 3) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.**

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 4) No development shall commence on site until details of the finished floor levels and maximum height of the dwelling have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the agreed finished floor levels.**

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

- 5) Notwithstanding the submitted plans the front (North-East) and rear (south-west) elevations shall be constructed using natural stone and shall not be rendered. No development shall commence on site until details and samples of the natural stone to be used have been made available and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**
- 6) No development shall commence on site until details and samples of the materials to be used for the external roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

REASON: In the interests of visual amenity and the character and

appearance of the area.

- 7) No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans, 'Proposed Site Plan' 3909/53 Rev B. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 8) No development shall commence on site until visibility splays have been provided in accordance with the approved plan 'Proposed Site Plan' 3909/53 Rev B with the wall reduced in height to 1 metre for 3 metres either side of the access as demonstrated. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 1 metre above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage hereby permitted shall not be converted to habitable accommodation and shall be available to be used as a parking space at all times.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

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

REASON: To ensure that the development can be adequately drained.

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking

or re-enacting or amending that Order with or without modification), no habitable room windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the north west or south west elevations at first floor level of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

12) Before the development hereby permitted is first occupied the first floor hallway window in the north west elevation shall be glazed with obscure glass only and the windows shall be permanently maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

13) A pre-commencement site meeting shall be held and attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Authority to discuss details of the proposed work and working procedures prior to any demolition, site clearance and any development. Subsequently and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results and any necessary remedial works undertaken or required shall be submitted to and approved in writing by the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with best practice.

14) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;**
- b) loading and unloading of plant and materials;**
- c) storage of plant and materials used in constructing the development;**
- d) measures to control the emission of dust and dirt during construction;**
- e) measures to ensure that the condition of Gastons Lane is**

monitored and any damage attributable to construction activity is repaired – measures should include a survey of the highway prior to commencement of development and following completion of the development and measures to address any identified issues.

- f) hours of construction - to avoid undue disturbance to neighbouring residents in the early mornings, evenings or at weekends/and bankholidays, (including deliveries which should be restricted to not before 09:30 or after 15:00 on any weekday;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

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

- 3909/53 Rev B (Proposed site plan)
- 3909/51 Rev B (Proposed floor plans & elevations)
- 3909/54 (Proposed floor plan & elevations of garage)
- 3909/02 (Site location)

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

INFORMATIVES TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

The applicant should note that there is a fire hydrant close to the site and that it should remain accessible and serviceable at all times.

46 **Urgent Items**

There were no urgent items.

(Duration of meeting: 6.00 - 8.25 pm)

The Officer who has produced these minutes is Eleanor Slack, of Democratic Services, direct line 01225 718255, e-mail eleanor.slack@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

14 MAY 2014

WILDLIFE AND COUNTRYSIDE ACT 1981

WILTSHIRE COUNCIL HEDDINGTON 5 (PART) RIGHTS OF WAY MODIFICATION ORDER 2014

Purpose of Report

1. To:
 - (i) Consider a Definitive Map Modification Order (DMMO) which, if confirmed, will record the width of a section of footpath Heddington No. 5 (see **Appendix 1**).
 - (ii) Recommend that the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination and that Wiltshire Council supports the confirmation of the Order as made.

Description of the Route

2. Footpath Heddington No. 5 is a footpath leading from the Heddington Wick to Heddington Road (C.247) in a north-easterly and easterly direction to join footpath No. 4, north of Ivy Inn.
3. Although the path leads predominantly across fields, the short section near the C.247 leads between fenced and hedged boundaries.

Background

4. The route was claimed by the Parish Council in 1950 and added to the Definitive Map and Statement as a footpath in 1953. Reviews of the Definitive Map occurred in 1958 and 1972 (and post 1981 by continual review). Heddington footpath No. 5 has not been altered since its initial recording.
5. In March 2012 Wiltshire Council received an application to record the section of the path nearest to the C.247 as a byway open to all traffic. The Council was unable to consider this application within the statutory time frame of one year (it has over 180 of these applications outstanding) and the applicant appealed to the Planning Inspectorate to make Wiltshire Council determine the application.
6. In July 2013 The Planning Inspectorate directed Wiltshire Council to determine the application by the end of July 2014 (see **Appendix 2C**).

7. Officers of the Council have considered all relevant evidence available to them and have refused the application to record the short section of footpath No. 5 as a byway open to all traffic. The Council's decision report in this matter is at **Appendix 2**.
8. Officers considered there was an insufficiency of evidence to support that public vehicular rights subsisted over the application route and the application was refused.
9. However, where the Council finds evidence that shows that on the balance of probability the Definitive Map requires amending, it must, by order, proceed with that process. As a result of evidence investigated (see **Appendices 2, 2A and 2B**) it was considered that the public rights extended over the entire width of the route defined by the hedge and fenced boundaries and an Order was made to record the extent of public rights over that section (see **Appendix 1**).
10. The Order was duly advertised and has attracted one representation in support and one objection. As a result, unless these are withdrawn, Wiltshire Council may not proceed and confirm the Order. The Order must now be forwarded to the Secretary of State for Food, Environment and Rural Affairs, who, through the offices of the Planning Inspectorate, will determine the Order.

Main Considerations for the Council

The statutory requirements

11. In considering a DMMO made under Section 53 of the Wildlife and Countryside Act 1981 the Council must only consider the evidence available to it and may not consider matters such as desirability, need, the environment, suitability or health and safety.
12. 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 evidence initially adduced with the application and any other relevant evidence available to it. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
13. 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.”
14. The events referred to in Section 53(2)(b) relevant to this case are set out below in Section 53(3)(c)(iii):

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

16. Section 32 of the Highways Act 1980 permits the Council to consider historical evidence:

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

17. It is necessary for the Council to decide whether it considers that the evidence investigated continues to support that the public's right to pass and repass on foot extends across the entire width of the enclosed section of Heddington No. 5. The legal test is the balance of probability. A full report on the evidence investigated can be found at **Appendix 2**.

The Representation

18. This was made by the Wiltshire and Swindon Area Ramblers and states:

"On behalf of the Ramblers I support this Order on the grounds that it is in the public interest to have the footpath width accurately recorded on the definitive statement. This is in line with the duty of the Council under s.53(2) the Wildlife and Countryside Act 1981 to keep the Definitive Map under continual review."

The Objection

19. This was made by the adjoining property owner (The Coach House) and applicant for the application to record this section of path as a byway open to all traffic.

"1. A DMMO cannot lawfully change the start Point of a footpath.

2. This footpath starts and has always started at the point B on your Order Plan as per ALL OS maps from 1886 up to being 1st recorded on the DM and statement in 1953 and for decades afterwards. (2 excerpts from OS maps dated 1886 and 1961 provided).

3. In law a footpath must always start at the original 'Start Point'. A DMMO or Diversion Order cannot lawfully change this Start Point.

4. *The highway coloured purple on the Order Plan is not a footpath it is a Public Vehicular Way – this point is the subject of an imminent appeal which is to be submitted in 2 weeks.*
5. *The Order Plan is based on an out of date OS map which has also changed significantly.*
6. *The measurements you have included fail to record the width of the narrowest point – that at the front right hand corner of the Industrial building. This is essential to properly record the extent of the road.*

I require this inaccurate and unlawful DMMO be submitted to the Secretary of State for his determination if not first withdrawn by you.”

Comments on the Objection

20. Point 1: The purpose of a DMMO is to modify the Definitive Map. Any way shown in the Definitive Map is without prejudice to the existence of any higher or other right.
21. Point 2: The Definitive Map and Statement has always recorded the footpath as starting at the road and provides conclusive evidence in law of what is shown therein (s.56 Wildlife and Countryside Act 1956). Although Ordnance Survey maps show a path labelled “F.P.” commencing from a point north of the road, this is a function of the O.S.’s instructions to surveyors rather than a recording of public rights. The purpose of OS maps is to accurately record topography and not public rights and all Ordnance Survey maps carry a disclaimer relating to public rights and the representation of any road or track. It is the purpose of the Definitive Map to accurately record public rights and it is this document that is conclusive in law. Full details of both Definitive Map procedures and Ordnance Survey representation may be found at **Appendix 2**.
22. Point 4: An appeal against the Council’s decision in respect of the byway open to all traffic has now been filed with the Planning Inspectorate. This is irrelevant to this procedure.
23. Point 5: The Order is based on historical evidence relating to the width of the highway. In more recent times boundaries have changed at the north-eastern end of the enclosed section and there is less evidence to support that the full highway width extends to the section at the most easterly extent shown on maps today. It is therefore considered better to use an older map for the Order Plan.
24. Point 6: Representing the width in purple fully demonstrates the extent of the public right over the varying width of this path and is in line with the Planning Inspectorate’s Advice Note 16. The Advice Note does not recommended including reference to walls, buildings and so on as these features may change.
25. Once a DMMO is made there is no power to withdraw or abandon it and it must be forwarded to the Secretary of State for determination.
26. It is noted that the objector considers that the public right does extend across the full highway width but disagrees with the status recorded in this Order.

Safeguarding Considerations

27. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53 of the Wildlife and Countryside Act 1981 are not relevant considerations for this Order.

Public Health Implications

28. Considerations relating to any public health implications of the making and confirmation of an Order made under Section 53 of the Wildlife and Countryside Act 1981 are not relevant considerations for this Order.

Environmental Impact of the Recommendation

29. No environmental impact has been identified and environmental considerations are not relevant to these Definitive Map processes.

Risk Assessment

30. There is no risk associated with processing this Order in accordance with the 1981 Act as it is the Council's duty to do so.

Financial Implications

31. It is the Council's duty to maintain the Definitive Map and Statement and financial provision has been made for this.
32. Once the Order has been sent to the Secretary of State the Council will be advised by the Planning Inspectorate on how they wish to determine it. They may decide to use written representations (in which case there is no additional cost for the Council), to hold a local public hearing (in which case a small cost covering room hire of around £300 would be incurred) or a public inquiry (in which case costs arising from room hire would be incurred along with costs for legal representation of around £5,000).
33. Failure to adhere to process or acting in an unreasonable manner could result in an application being made against the Council for judicial review. Costs relating to judicial review processes can be in excess of £50,000.

Options Considered

34. To:
- (i) Forward the Order to the Secretary of State with the recommendation that it is not confirmed.
 - (ii) Forward the Order to the Secretary of State with the recommendation that it be confirmed with modifications.
 - (iii) Forward the Order to the Secretary of State with the recommendation that it be confirmed as made.

Reasons for Recommendation

35. No further evidence has been adduced to alter the Council's decision when it made the Order and accordingly it is appropriate that the Council supports the confirmation of the Order as made.

Recommendation

36. That the Wiltshire Council Heddington 5 (part) Rights of Way Modification Order 2014 be sent to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

Tracy Carter

Associate Director, Waste and Environment

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

Appendices:

Appendix 1 - Order

Appendix 2 - Decision report

Appendix 2A - Appendix A to decision report – Investigation dated 10.08.11

Appendix 2B - Appendix B to decision report - Investigation dated 06.09.11

Appendix 2C - Appendix C to decision report – Inspector's Direction

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE CALNE AND CHIPPENHAM
RURAL DISTRICT COUNCIL AREA DATED 1953 AS MODIFIED UNDER THE
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL HEDDINGTON 5 (part) RIGHTS OF WAY MODIFICATION
ORDER 2014**

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 Statement for the Calne and Chippenham Rural District Council area dated 1953 as modified under the provisions of the Wildlife and Countryside Act 1981 requires modification in consequence of the occurrence of an event specified in section 53(3)(c)(iii) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 15th January 2014
2. The Statement for the Calne and Chippenham Rural District Council Area dated 1953 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Part 2 of the Schedule and shown on the plan attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Heddington 5 (part) Rights of Way Modification Order 2014

THE COMMON SEAL of
WILTSHIRE COUNCIL was
hereunto affixed this 21ST day
of JANUARY 2014

}
}
}
}

in the presence of:


Senior Solicitor



78841

SCHEDULE

PART 2

MODIFICATION OF DEFINITIVE STATEMENT

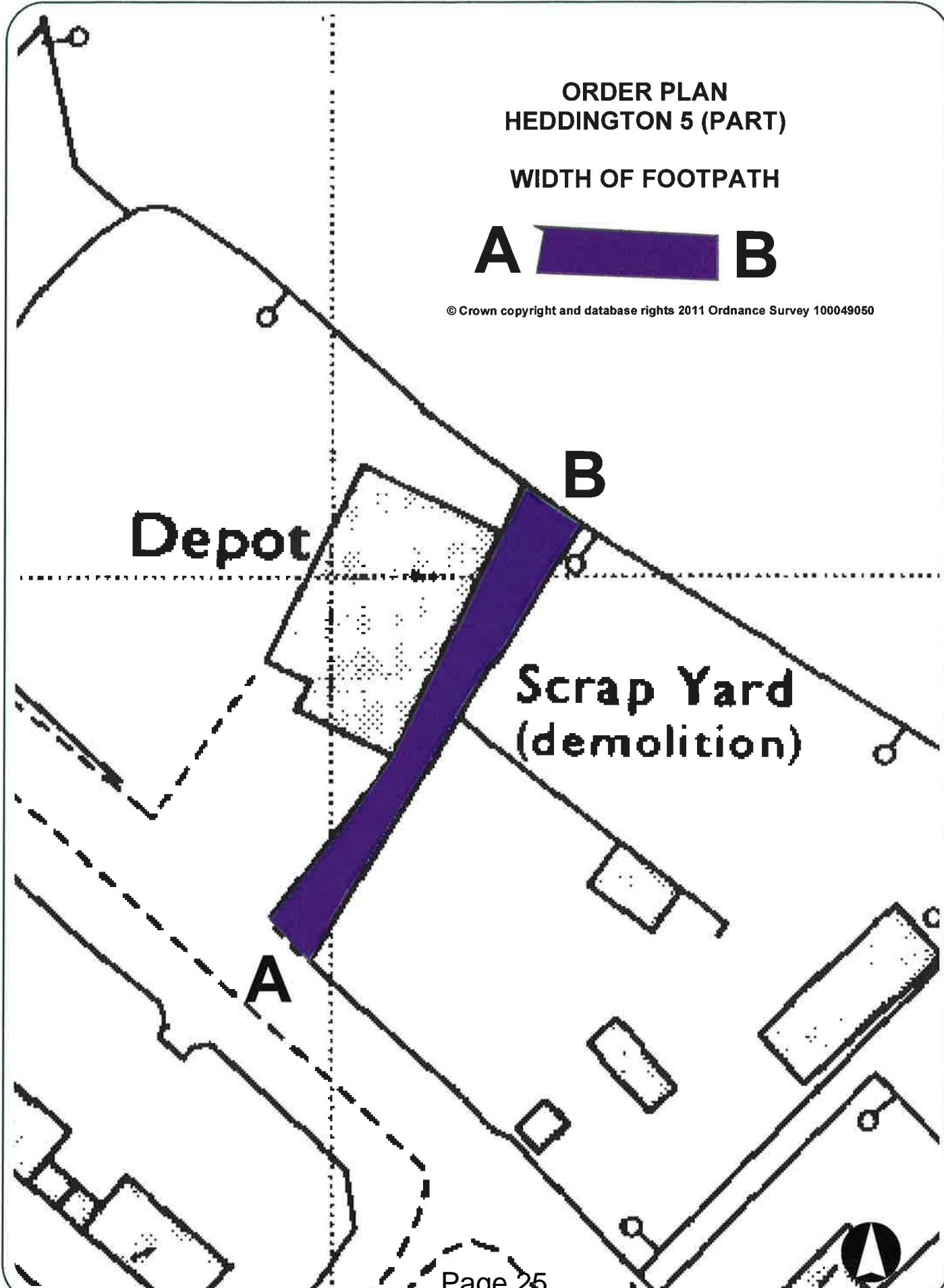
Parish	Path No	Description of path	Modified under Section 53(3) as specified
Heddington	5	<p><u>FOOTPATH</u> From the Heddington Wick to Heddington road, C.247, opposite Woolaway Bungalows, Heddington, leading north-east and east to path no. 4, north of Ivy Inn.</p> <p>Approximate length 274 metres</p> <p>Width: From C.247 to field gateway at OS grid ref. ST 9972 6651 varying between 5 metres at point A at the C.247 junction to 6.5 metres at point B at OS grid ref. ST 9972 6651 and as shown shaded purple on the Order Plan.</p>	53(3)(c)(iii)

ORDER PLAN
HEDDINGTON 5 (PART)

WIDTH OF FOOTPATH



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DECISION REPORT

Application 2012/04 Heddington 5 (part)

1 The Application

1.1 Details

- Application number:** 2012/04
- Application date:** 02/03/12
- Applicant:** Mr Andrew Fenwick, Coach House, Heddington, Calne
- Application to:** “Upgrading to Public Vehicular Carriageway or byway open to all traffic the footpath/bridleway/restricted byway leading from Church Road, Heddington, in a North Easterly direction alongside The Old Coachworks to the Field behind.”
- Width:** 5.5 metres to 3.8 metres to 6 metres
- Basis of Application:** That public rights exist that are higher than shown in the definitive map and statement.
- Application contents:** Form 1 Notice of Application for Modification Order
Form 2 Copy of Notice of Application for Modification Order
Form 3 Certificate of Service of Notice of Application - no landowners identified
Extract from a Finance Act Map 1910 showing an uncoloured section between hereditaments 69 and 21 coincident with the application route.

NB On the 6th March 2012 officers wrote to Mr Fenwick and gave permission for him to post notice of application on site. This was done on the 9th March 2012 and Mr Fenwick returned Form 3 confirming this and enclosed a photograph of the notice prominently displayed. Officers have subsequently found that the north eastern end of the claimed route is registered to Mr D Tyler of Home Farm (see para. 4.0 Land Ownership). However, Mr Tyler would have passed by the site notice and has been consulted at an early stage, it is therefore considered he has not been disadvantaged by this omission. (*Dyson L J para. 65 Winchester College and Humphrey Feeds Ltd and Hampshire County council and SoSEFRA [2008] EWCA Civ 431*).

2 Enabling Legislation

2.1 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 of public rights of way.

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

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

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

2.3 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 –

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

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

2.5 Section 53(5) WCA 1981 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.

2.6 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.*

Notice of applications

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*
 - (2) *If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*
 - (3) *When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*
 - (4) *Every notice or certificate under this paragraph shall be in the prescribed form.*

2.7 This application was not compliant with Schedule 14 when made as the applicant had failed to identify a landowner or occupier and had not requested permission to erect site notices. Permission to erect notices was given and this was carried out soon after. As a result it is considered that the application was Sch. 14 compliant on the 9th March 2013.

2.8 In any case a surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.

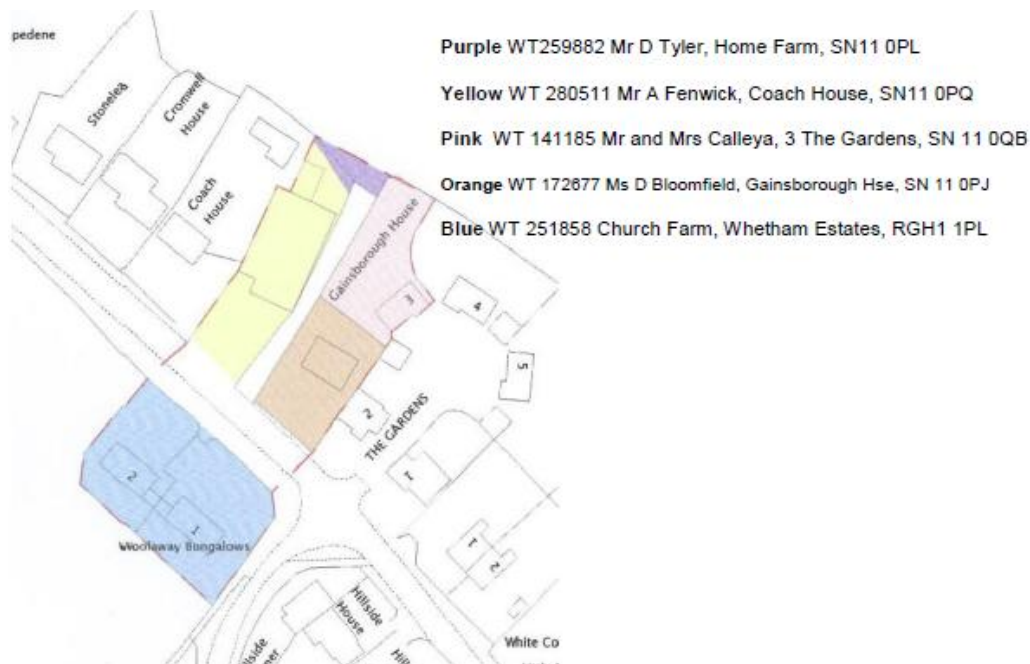
- 2.9 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.
- 2.10 The application was received in 2012 and is therefore not liable to an exemption under s.67(3) NERC Act 2006. However, the applicant route may be liable to other exemptions from the act if historic public vehicular rights are found.
- 2.11 For the NERC Act 2006 to apply it is first necessary to establish whether, on the balance of probabilities, a public vehicular right existed **before** the 2nd May 2006. If it did then it is necessary to investigate whether or not that right was extinguished by the 2006 Act. As a result NERC Act 2006 consideration will be discussed later in this report at section 15.
- 2.12 This report will now investigate evidence relating to whether a public vehicular right subsisted over the claimed route prior to the 2nd May 2006.

3.0 Background

- 3.1 In 2011 a fence was erected at the boundary of Heddington path 5 with the applicant's property, the Coach House (WT280511). In the course of investigating whether this fence formed an obstruction to the highway, officers of the Council looked at some historical documents relating to the way and produced 2 reports. These reports are appended here at Appendix A and B.
- 3.2 The reports found that the width of Heddington path number 5 at this point extended between land boundaries in different ownership (those boundaries having been laid out with respect to the highway) and that if there was any encroachment of the new boundary fence, it was de minimis.
- 3.3 The investigations did not reveal sufficient evidence relating to the existence of higher rights to provoke further action by the Council in line with its duties under s.53(2) of the 1981 Act.
- 3.4 Subsequent to this, (reports issued to Mr Fenwick in the latter part of 2011), an application to upgrade this section of Heddington 5 was received in March 2012.
- 3.5 The application was accepted by Wiltshire Council and entered onto its register of applications for modification orders.
- 3.6 The Council failed to determine the application within one year and the applicant appealed to the Planning Inspectorate (PINS) for a direction under Schedule 14 (3)(2) to the 1981 Act.

3.7 In July 2013 PINS directed Wiltshire Council to determine the application by the end of July 2014. A copy of the Inspector's decision is appended at Appendix C.

4.0 Land Ownership



4.1 The majority of the applicant route has no registered owner and local enquiry has not revealed who owns it. The Tithe Commissioners in their survey of 1840 identified that the applicant route formed part of land now owned by Mr Tyler of Home Farm but no records since that time have identified an owner.

4.2 The applicant for a DMMO and owner of WT280511 Mr Fenwick, claims long term use of the route for access to his property with vehicles and has lodged a statutory declaration to that effect with Land Registry who refer to it in the Register Entry for WT280511. However, there is no other evidence to support this and in a response to planning application no 11/02318/REM, a Mr Brown responded that he had been born in Heddington 70 years ago and had worked for companies on either side of the applicant route in the late 1950s and 1960s. He recalls that there was never access or right of way to WT280511 (coach works and yard), the only route past being the footpath.

5.0 Current records

5.1 **Wildlife and Countryside Act 1981 s.56**

(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely –

(a) where the map shows a footpath, the map shall be conclusive evidence that the public had thereover a right of way on foot, so however that this paragraph shall be

without prejudice to any question whether the public had at that date any right of way other than that right.

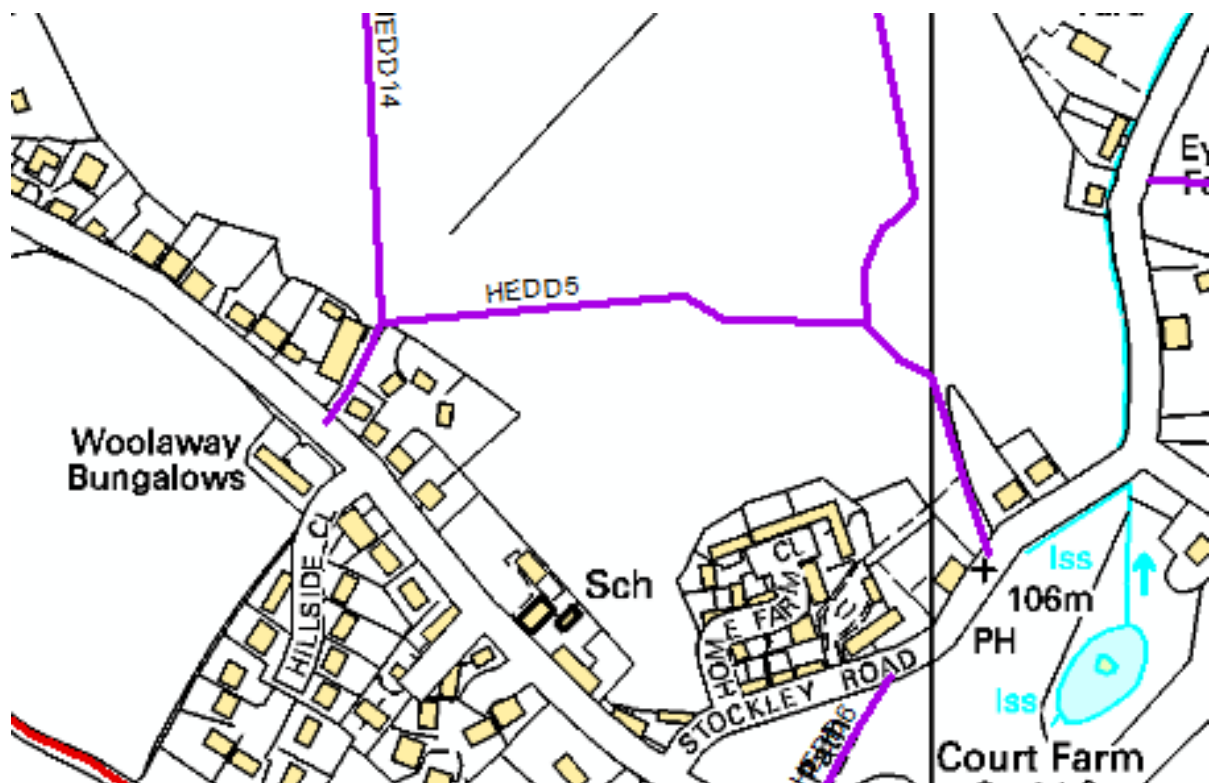
5.2 Heddington path no. 5 was claimed by the parish council in 1950 as a public right of way leading from the road (C.247) opposite Rectory Drive leading north and east to path number 4 north of Ivy Inn. The parish claim card states that there was a field gate near to the road end and the width was described as undefined but in answer to whether it was fenced or open the parish council responded that it was “open except for a small portion at road end”.

5.3 The route was added to the Calne and Chippenham Rural District Council definitive Map and Statement as Heddington footpath 5 in 1953. The path has remained unaltered since this time.

5.4 The statement reads:

F.P. From the Heddington Wick – Heddington road, C.247, opposite Rectory Drive, Heddington, leading north-east and east to path no. 4 north of Ivy Inn. Approximate length 300 yards.

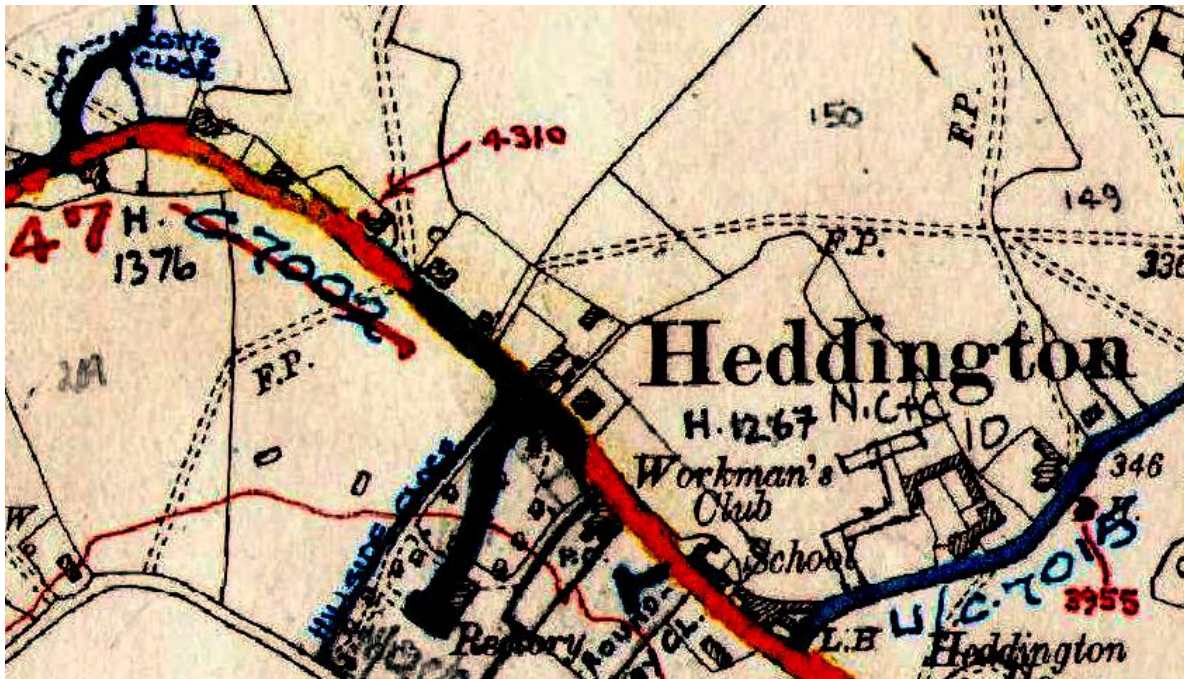
5.5 Working copy (footpaths in purple):



5.6 The applicant route was not handed over by Calne and Chippenham Rural District Council to Wiltshire County Council as a publicly maintainable road under the terms

of the Local Government Act 1929 and is not coloured or numbered as a publicly maintainable road in Wiltshire Council's highway record.

5.7 Wiltshire Council's Highway Record:



6.0 Initial Consultation

6.1 Photographs have been taken of the applicant route. It is a wide route leading north north west from the road to a field gateway. Length of this section = approx 50 m.



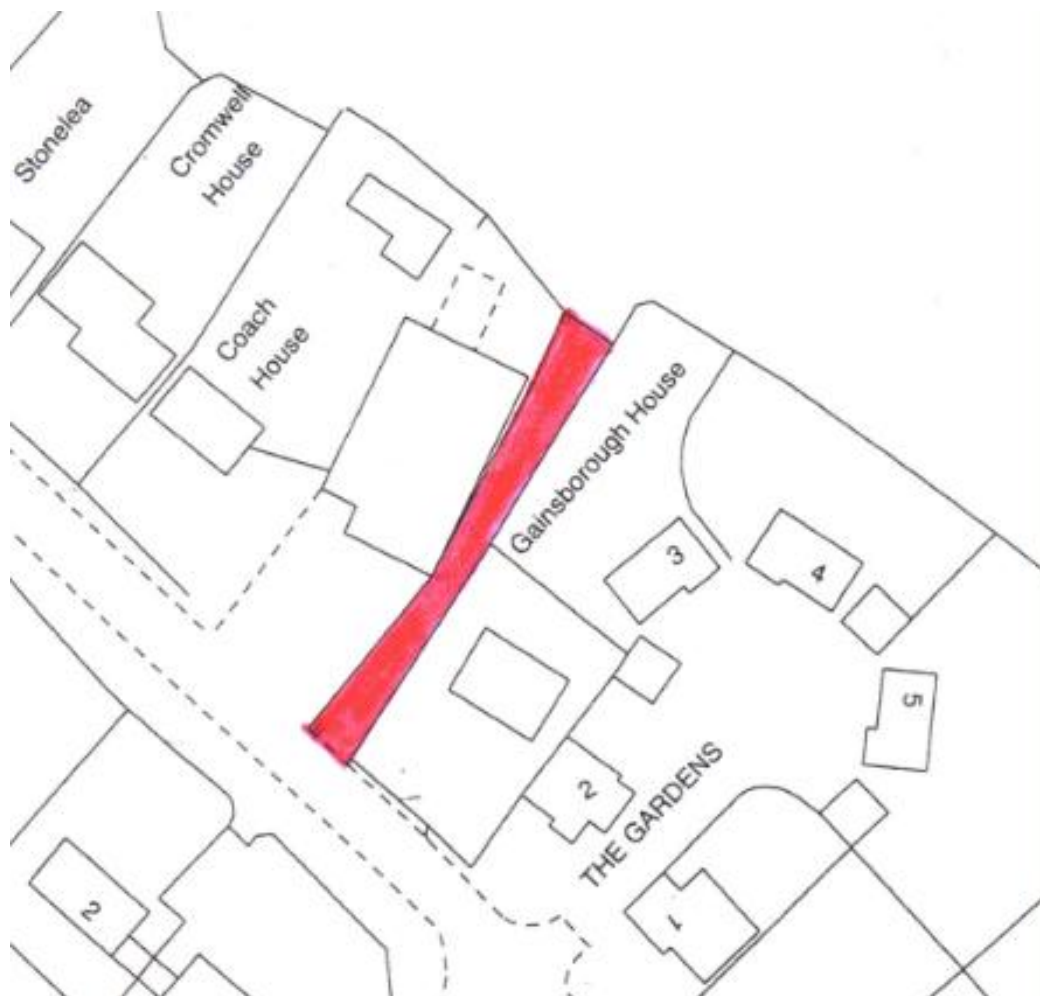
6.2 The following letter and plan was circulated on the 22nd August 2013:

“In March 2012 Wiltshire Council received an application for an order to modify the definitive map and statement to record part of Heddington footpath no. 5 as a byway open to all traffic. Further to an appeal to the Secretary of State for the Environment Food and Rural Affairs, Wiltshire Council has been directed to determine the application by the end of July 2014.

The application relates only to the length of footpath no. 5 that extends from the C.247 (the road leading west from Heddington towards Bromham) heading north west for a distance of approximately 25 metres to the field gateway. Please see attached plans (the claimed route is shown in red on the more detailed plan).

The applicant claims that this route is an ancient public vehicular highway and that such rights have been preserved and should be recorded in the definitive map and statement. The application relies on historical evidence and matters such as need, desirability, health and safety or the environment are not matters that may be considered.

If you have any evidence relating to this route (perhaps old maps, photographs or memories of use) I would be pleased to receive it. Please respond by Friday 5th October 2013.”



NB The plan circulated is the plan submitted as part of the application.

6.3 This was sent to the following:

The Auto Cycle Union
Commons, Open Spaces & Footpaths Society
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society (local and national)
Heddington Parish Council
Wiltshire Councillor Christine Crisp
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Senior Rights of Way Warden
Ramblers
Mr B Riley
Trail Riders Fellowship
Mr A Fenwick (applicant and adjoining landowner)
Mr D Tyler (landowner and adjoining landowner)
Owner/occupier Gainsborough House (adjoining landowner)
Owner/occupier no 3 The Gardens (adjoining landowner)
Mr A Roberts, Ramblers

6.4 Additional to the responses that follow, officers have also considered responses received to 4 applications for planning consent affecting the applicant route.

Application nos: 08/00341/OUT
 10/04628/REM
 11/02318/REM
 11/03636/S73

6.5 The proposed development uses footpath 5 as vehicular access to some of the houses and attracted over 94 responses. Not all respondents mentioned the right of way but those that did referred to it being only a footpath and did not recall or consider that any higher rights subsisted over it. Memories went back as far as 70 years.

6.6 **Wiltshire Bridleways Association 12.09.13**

“With reference to your letter of 22nd August 2013, regarding the application for an order to modify the definitive map and statement to record part of footpath Heddington no. 5 as a byway open to all traffic.

I write to state that the above was discussed at our committee meeting on 11th September 2013 and unfortunately, on this occasion, Wiltshire Bridleways Association is not aware of any evidence that would support this application.”

6.7 Mr M Brooks 07.05.13 (response in file from period immediately post application)

"I would like to register my objection to the proposed upgrading of HEDD5 to a public vehicle carriageway as proposed by my neighbour Mr Andrew Fenwick of Coach House, Heddington.

As background information, Mr Fenwick has been attempting to gain planning permission to use HEDD5 to provide a means of vehicle access to his land for many years, without success. If the planning background is relevant to your consideration, please contact Mr Simon Smith (the Wiltshire Council case officer) who has all the previous history."

6.8 Mr D Tyler, Kingsplay Farming Co Ltd 29.09.13

"The short length of track which is also the start of footpath no 5 has always been my access to the fields of Home Farm. This track has only ever been used by me since 1966 and my predecessors who have owned Home Farm for all farming operations.

The previous owners of the Coachworks, Mr Keen of Rimes Coaches tells me they at no time used this track.

In addition the previous owners of the gardens which was a demolition yard owned by the Barnes family verify no one other than the owners of Home Farm used this track. Mrs Barnes who is 93 will testify to this statement, she still lives on the site.

This application is an attempt to use this track as an entrance and right of way to a building site in order to obtain an extra property on site. This application must be refused."

6.9 Mr D W Brown 01.10.13

"I was born in the village in 1941, my family have farmed here for four generations. I left school at 15 and worked on a local farm for 2 years, in 1959 I was employed by B Barnes Demolition whose yard was on the right hand side of the lane opposite the coach works. When we wanted to unload timber in to the yard we first had to ask permission from Mr Lesley Perrett who was farming at Home Farm Heddington because the lane was Mr Perrett's access to agriculture land. After 4 years I changed my employment to G Keen and Sons coaches during my time driving coaches the lane was never used by the company and definitely no access to the rear of the workshop. This is firsthand knowledge that the lane between the coach works and Barnes Demolition Yard was access for Home Farm only."

6.10 Ms D Broomfield and Tennant 28.09.13

"We understand that the only 'evidence' to support the proposed change to the definitive map to show the section of HEDD5 as a Byway Open To All Traffic is that

the Finance Map of 1910 shows the land as uncoloured. Clearly this fact alone is insufficient to demonstrate that the land was designated highway at the time.

There are a number of other circumstances regarding this land/track that could account for why it was left uncoloured...it could even have been a mistake!

This narrow strip of land has a footpath running over it and agricultural access for one landowner (Home Farm), which would be strong reasons for the 1910 assessors to view it as having no commercial value.

Further, why would there be a highway that doesn't lead to anywhere?

The Public Right of Way claims form dated 1950 for Heddington path no. V states that there is a field gate near the road end; commensurate with the track being used by farm animals and not accessible by vehicles.

Mr David Brown has lived in Heddington all his life (born 1941) and his family has been in Heddington for 200 – 300 years. He has worked in Heddington since at least 1959 is adamant that vehicles have never been legally allowed on the track (with the exception of agricultural vehicles gaining access to Home Farm). He used to work at Barnes Demolition, which was the former use of the land on which Gainsborough House now stands, and also for George Keane Coachworks, where the current abandoned coachworks building is located. He swears that neither of these companies (either side of the track) were allowed their vehicles, or delivery vehicles, to use the track...even though it would have been more convenient to do so.

We therefore suggest that the balance of probabilities is strongly in favour of there never having been vehicle rights over this track and therefore no change should be made to the definitive map.”

6.11 Ramblers 02.10.13

“On behalf of the Ramblers I object to this application on the grounds that it neither benefits the walking public nor enhances the local footpath network, and I would urge you not to make the order.

The only evidence given that the claimed route is an ancient public vehicular highway is a rather narrow interpretation of just one old map. There is no supporting evidence provided by the applicant.

Indeed, none of the other maps that I have checked – 1835 Estate Map; 1841 Tithe Map; 1886 25” OS Map;

1900 25” OS Map; 1924 25” OS Map – show it as anything other than a fenced/hedged access track to the field.”

6.12 Heddington Parish Council 03.10.13

“ In reply to your letter of 22nd August 2013. Numerous individuals born and bred in Heddington and Stockley are prepared to confirm there has, in their lifetime, never been a

public vehicular access along footpath No. 5, apart from farmers' access from highway C247 to the field at the rear of the Gardens and the Old Coach Works.

Two residents of particular note are:-

Mrs. Barnes(93) who, with her late husband, ran a demolition yard to the east of footpath 5 where Gainsborough House and the Gardens now stand.

Mr. David Brown (71) who worked for both Barnes Demolition and Keen's Coaches on the west side of footpath 5. This is still known as "the old coachworks site" and has been the subject of a number of failed planning applications over many years.

Both Mrs. Barnes and Mr. D Brown have stated that there has never been a right of public vehicular access along footpath 5.

In addition to village residents, a member of the Keen family who ran the original coachworks has also stated that at no time during their years of trading was there ever a right of public vehicular access along footpath 5.

If you require further details please don't hesitate to contact me."

6.13 Mr M Brooks 03.10.13

"I am writing as a resident of Heddington in respect of the above. In summary, I do not believe there is a sound basis for regarding footpath Heddington no. 5 as a byway open to all traffic.

My family and I have lived in the village for 16 years. During this time Mr Fenwick has been a lone voice in the village claiming a variety of access rights over Heddington footpath no. 5. This is simply his latest attempt at gaining vehicular access over the footpath in order that he can legitimately gain access to his proposed residential development in the village.

During my time in the village it has been clear that footpath no. 5 only has vehicular rights of access in respect of agricultural use to access the fields beyond. Many villagers have lived in Heddington for much longer than I have (some back to the Second World war, long before Mr Fenwick came to the village). I believe they will be sending separate letters to you, explaining how businesses long before that of Mr Fenwick operated in the immediate area and none had vehicular access over footpath no. 5. This is supported by Parish Council records which show that the Police have been called in the past to remove vehicles illegally parked by Mr Fenwick along the footpath.

In addition to these personal recollections I would like to draw your attention to:

1. The Wildlife and Countryside Act 1981 – Definitive Map Orders: Consistency Guidelines (5th revision July 2013) states clearly in paragraph 11.9 that "it should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production on such ways was very much incidental to the main purpose of the legislation."

2. The logic of intentionally classifying the short section of footpath no. 5 as 'highway' defeats me. It simply leads to a field.

On the balance of probabilities, it is clear that Heddington footpath no. 5, and always has been, a footpath without vehicular rights for all traffic."

7.0 Evaluating Historic Records

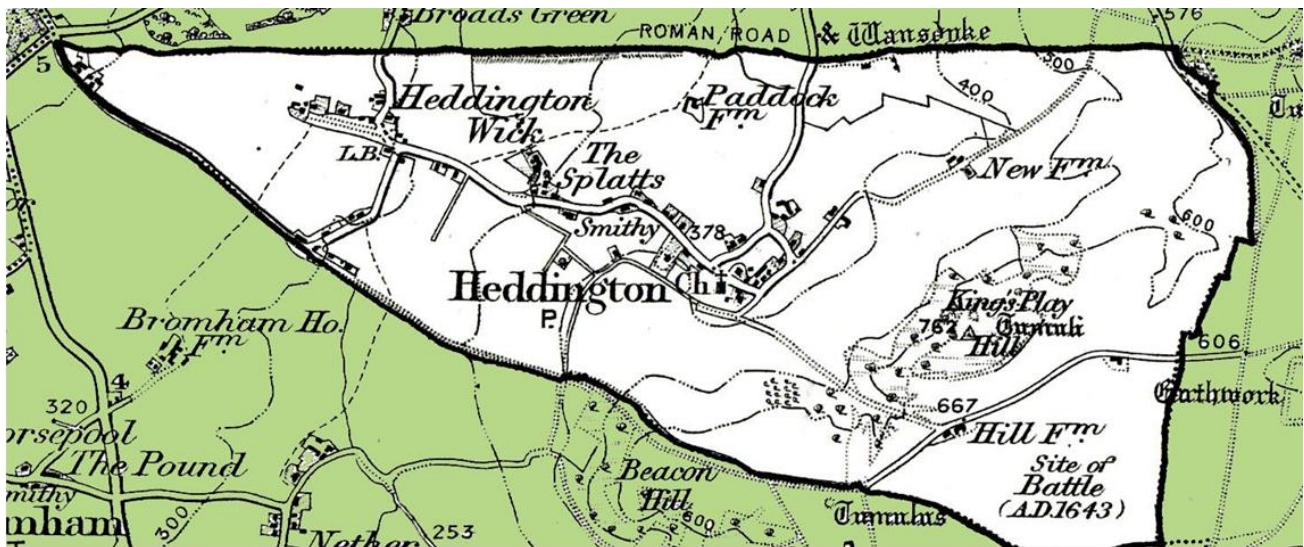
7.1 The physical feature of the applicant route has appeared on a number of historical documents. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on thirty commercial maps this does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament (s.32 Highways Act 1980 enables courts or tribunals to attach weight to evidence).

7.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines (as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Category	May provide evidence for	Examples
A	<p>Legal creation of a highway</p> <p>Reputation of a way as a highway</p> <p>Physical existence of a way</p> <p>Conclusive evidence of public rights</p>	<p>Inclosure Acts, awards and plans</p> <p>Orders creating, diverting or extinguishing highways</p> <p>Railway and canal acts and plans</p> <p>Definitive map and statement</p>
B	<p>Reputation of a way as a highway</p> <p>Physical existence of a way</p>	<p>Documents, maps plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights.</p> <p>i.e. Tithe Commission, Inland Revenue Finance Act</p>
C	<p>Reputation of a way as a highway</p> <p>Physical existence of a way</p>	<p>Includes local government records (highway board, county council, parish council)</p>
D	<p>Reputation of a way as a highway</p> <p>Physical existence of way</p>	<p>Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances</p>
E	<p>Reputation of a way as a highway</p> <p>Physical existence of a way</p>	<p>Commercial maps, some Ordnance Survey records</p>
F	<p>Reputation of a way as a highway</p> <p>Physical evidence of a way</p>	<p>Local repute, consultation responses</p>

7.3 General Context Vol VII Victoria County History (map: Ordnance Survey 1880)



Heddington is a small parish to the south of Calne highlighted in white on the map above. The Domesday survey of 1086 records that the parish had only 10 acres of meadow and 8 acres of pasture with a population of around 140 people. The manor was held under various moieties but a large part was held by Lacock Abbey (between 1236 and 1539) with ownership passing to the Crown after the dissolution of the monasteries. The manor was sold to the Partridge Family in 1570 where it remained until the early 17th century. From this time on, Heddington manor was divided and sold in numerous portions of land.

7.5 Widespread enclosure does not seem to have occurred in Heddington. Two agreements from the end of the 18th century affecting some of the parish lands appear to be the only surviving documents relating to enclosure.

7.4 It is a relevant feature of the applicant route that it has, throughout its history, been bordered by lands that are largely in different ownership. A short fenced route leading to fields appears to have been an enduring feature of the landscape and is represented on maps from 1773 onwards.

8.0 Category A Evidence

8.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e. arising from an act of parliament which specifically required the identification and verification of public rights of way).

8.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners

sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

8.3 Heddington Inclosure Agreements 1722 and 1757 (Wiltshire and Swindon History Centre 754/7 and EA6)

Neither agreement is accompanied by a map and the agreement of 1722 does not agree any paths or ways. The original document has been examined, read and transcribed as below:

NB A small section of the agreement has been damaged, this amounts to approximately 4 words at the beginning of some lines, the transcript records where damage has occurred. Where a word has not been readable by the transcriber (though not damaged) the word is represented like so: xxxxx.

“Articles of agreement xxxxx has made xxxxx fully agreed upon the fifth day of October 1722 by and between William Grubbe of Potterne in the County of Wilts Esq. and Walter Grubbe of the City of Bristol Gent Germanicus Sheppard of Calne in the said County of Wilts Gent Anthony Brooke of Heddington in the said County of Wilts Gent of the one part and John Reynalds of Heddington aforesaid Gent Nicholas Paarse Joseph Marshman Charles Hillier xxxx Coster Robert Frayling Richard Biggs Isaac Powell William Hughs John Hood and William Sloper all of Heddington aforesaid and yeoman John Laughton of the same place xxxx and Sarah Collier of the same place widow Francis Rogers of the University of Oxford a Master of Arts William Collier of xxxx in the said County of Wilts Gent John Townsend of the City of Bath xxx Burnard Walter of Marden in the said County of Wilts yeoman xxx Bear of Calne in the said County carpenter and Stephens of Rowde – hill in the County of Wilts on the other part. Whereas the feeding in the Common fields of Heddington aforesaid with sheep and other cattle lyes xxxxx in xxxxxx that the best advantage (some words damaged) made of the said xxxx the feeding belonging to the two great farms there (viz) that farm belonging to the said Walter Grubbs in the (some words damaged) his now for most for her life now in the possession of xxxx Coster and the farm belonging to the said Anthony Brook and now in his possession (some words damaged) the lands lyeing in the two fields called the Howells and part of the fields belonging to the tenants and freeholders in Heddington aforesaid (some words damaged) and xxx in so much that the best use cannot be made thereof unless the said lands be layed and put together NOW WITNESS ((some words damaged) in the said Common fields and lands in the said two fields called the Howells and other part of the fields belonging to the said tenants and freeholders and for other good and xxxx considerations it is mutually settled and agreed upon by and between the parties to these presents John Carpenter of Rowde in the County of Wilts Yeoman William Smith of Bromham in the said County Yeoman Ebenezer Kent of Potterne in the said County Yeoman

and Robert Galt of Cherhill in the said county Yeoman or any three of them shall have full power and authority to lay out xxx and divide the common pasture and feeding for the aforesaid two farms distinct and separate from the Common of pasture and feeding belonging to the other said tenants and freeholders of land with the said parish of Heddington. Then it is further agreed by and between all the said parties in these presents that a survey xxxx of the lands lyeing in the said two field called the Howells and other part of the lands belonging to the said tenants and freeholders shall at a portionable costs of all the aforesaid tenants and freeholders except the owners and proprietors of the two farms be had within three months next ensueing and that immediately from and after such survey and admeasurement shall be had and taken as a xxx xxxx the said John Carpenter and William Smith xxx Kent and Roger Bale or any three of them shall put lay together and all of each tenant and freeholders shall of land lyeing in the said two fields called the Bowells and in the other part of the fields belonging to the tenants and freeholders such manner as they the said John Carpenter William Smith xxx Kent and Roger Halt or any three of them shall think fit AND that from and after such distinct separation and dividing the feeding for the two farms as aforesaid and the laying together and allotment of the land in the said two fields called the Bowells and the other part of the fields belonging to the tenants aforesaid such and xxx of the parties hereto shall tend arrest the same allotment and xxx and ratify the same each to the other in such manner and by such ways and means as xxx xxx in the law shall advise xxx where of the parties to those presents their hands and seals have hereunto sett the day and year first above written.

Followed by 13 seals, signatures confirming sealing and delivery on reverse

8.4 The agreement of **1757** does not have a map and in relation to the roads says:

“The said Refferees Do hereby order set out and appoint the several public roads and ffoot paths or ways following that is to say a public horse and carriage road along or down a place called the Hill near said Thomas Hunt Grubbes old furlongs there to a Ground belonging to the said Rector called the Hook and leading towards Baton bridge as the same is now marked and fifty ffoot wide of ? of the ? or ditches adjoining thereto And also a horse or bridle road only in the east part of the said ffield extending from a place called Hickley Lodge to Blackland ffield as the same is now repaired and maintained in the same manner as the other public roads in the said parish of Heddington and by law required to be made repaired and maintained And also a footpath or way as now used extending from opposite a house called Follingtons now occupied by one William Green across part of the lands Allotted to Henry Brooks and Thomas Hunt Grubbs in that part of the said field under Knight Play across the ? road and through part of the said George Willy in the west part of the said ffield to the Turnpike Road above Hill and that proper and convenient Stiles shall be erected and provided by the proprietors of the Mounds and ffences it crosses and also another footpath or way in the east part of the said ffield extending from said John Hoods old furlong along Wansdyke to the road leading from Calne to Devizes. And also a private road or way adjoining to and on the side of Wansdyke through part of said John Hood from his allotment into the road leading from Blackland Field to Heddington and also another footpath or way now used leading from a ground called the Butty to the said part of Ground called the Hook.”

8.5 There is no evidence relating to the applicant route (or its continuation) contained within this evidence.

8.6 **Wiltshire Quarter Sessions Records**

There are no diversion, closure or creation orders relating to the applicant route from 1723 to 1971. Additionally Petty and Special Sessions Justices Minutes Books from 1787 to 1930 have been searched for highway references in Heddington and none relevant to the applicant route have been found.

8.7 **Calne and Chippenham Rural District Council Definitive Map and Statement 1953**

The applicant route was added to the Calne and Chippenham RDC definitive map and statement in 1953 as a footpath and has not been the subject of a legal order since that time or altered at definitive map reviews in 1958 and 1972.

8.8 **Deposited Plans for Public Undertakings**

The applicant route is not affected by any acts or plans related to public undertakings (for example railway or canal).

9.0 **Category B Evidence**

9.1 Category B evidence may be documents or plans drawn up as a result of legislation, and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.

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

9.3 Tithe surveys required careful mapping and examination of the landscape and land use. The maps and apportionment documents that resulted can offer valuable evidence of how the parish was at that time.

9.4 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses

on the nature of maps (*Tithe Surveys for Historians* by Roger J P Kain and Hugh C. Prince) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.

- 9.5 The tithe map for Heddington is dated 1841 and the apportionment is dated 26 May 1841. The map is drawn to a scale of 8 chains to one inch and was surveyed by William Bryan Wood, Surveyor, Barnbridge, Chippenham. The tithe commissioners' stamp dated 11 June 1842 is on the map and the map has been signed by Richard Hale and Aneurin Owen (assistant tithe commissioner). The map is additionally certified by William Blamire and I W Buller, tithe commissioners. The map shows water bodies, houses, woods, arable land coloured, grassland coloured, field boundaries and ownerships.
- 9.6 Roads are coloured sienna and separately listed in the apportionment.
- 9.7 The applicant route is shown as being part of land parcel number 148 (now a field belonging to Mr Tyler) and is bordered by land parcels 159 (now The Coach House), 156 (now Gainsborough House and no 3 the Gardens) and 157 (now a field belonging to Mr Tyler).

9.8 Entries are:

No	Owner	Occupier	Name and use
148	Ralph Heale Esq.	John Ruts	Great and Little Woods Pasture
156	Glebe	Occ. In hand	Stables and gardens
157	Brice Pearse Esq.	Isaac Clarke	Woods Pasture
159	Ralph Heale Esq.	Thomas Fell	Cottage and garden

- 9.9 The applicant route appears gated at the road and not at the point it is now and is represented as part of the field. The surveyor has shown other highway 'spurs' as road coloured sienna (for example the cul-de-sac that is now Scotts Close) but not the applicant route. The applicant route is clearly part of field no. 148.

9.10 Excerpt from the Tithe Map and apportionment 1841: Applicant route



Stable Sand	991. 1. 23
Meadow	
Pasture and	} 745. 2. 21
Homesteads	
Woods	4 . . .
Waste	29 . 1. 11
Roads	10 . 1. 20
	1710. 2. 35

9.12 **Inland Revenue Finance Act 1909/1910** In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were carefully identified and included in the documentation.

9.13 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 "An Edwardian Land Survey: the Finance (1909-10) Act and describes the process by which this was achieved.

"The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses".

"A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament."

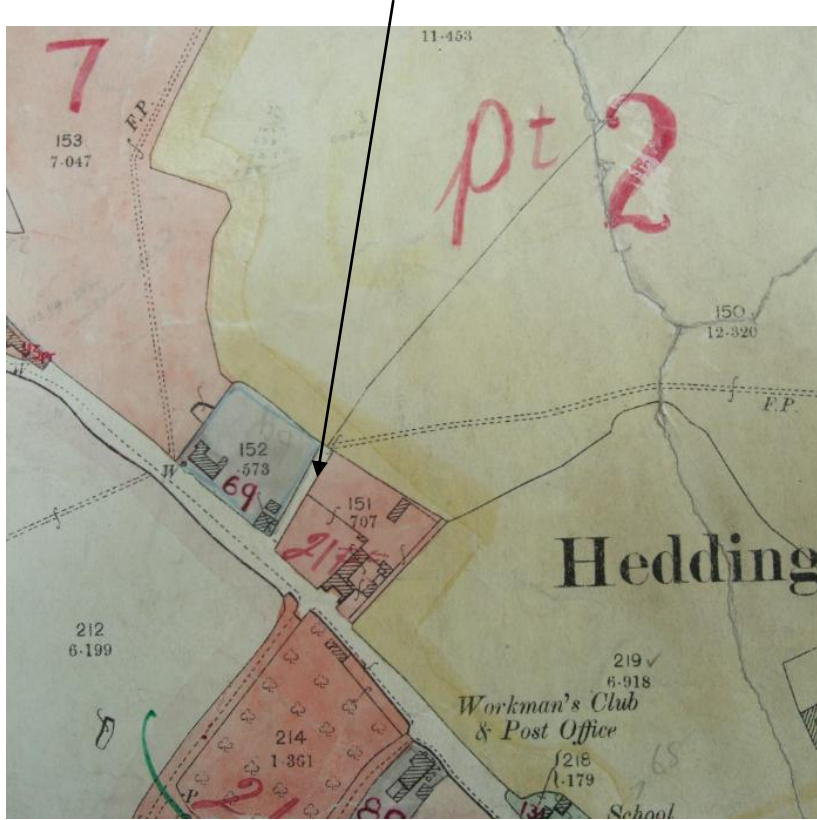
NB Heddington was assessed by G Peak Garland of Heddington.

9.14 The working copy of the Finance Act plans held at Wiltshire and Swindon History Centre (WSHC) have been viewed as has the record copy held at The National Archive at Kew. The base maps for these records are the Second Edition of the Ordnance Survey (OS) County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and undoubtedly provided the most accurate record of the landscape that we have for that time. Sheet 34.1(L8/10/34 and IR125/11/380/XXXIV.1) shows the applicant route.

9.15 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the Inland Revenue surveyor could show that something was un-connected with an adjoining feature.

- 9.16 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 (3) or s.35(1) of the Act which says that “No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority”. S.25(3) states that “The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject...any public rights of way”.
- 9.17 The Planning Inspectorate (PINS) Consistency Guidelines at 11.7 consider that the exclusion of a route from surrounding hereditaments may be good evidence that the way was considered a public vehicular highway since footpaths and bridleways were *usually* dealt with by deductions recorded in the forms and field books. However, PINS goes on to consider that there may be other reasons to explain its exclusion. “It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to an individual, being shown excluded from hereditaments; however this has not been a consistent approach.”
- 9.18 Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of ‘roadways’ from plans but do not explicitly spell out all the circumstances in which such an exclusion would apply.
- 9.19 Although it is clear that the applicant route is uncoloured and excluded from adjoining hereditaments in both the working and record copies of the plans it is also noted that the valuation book records deductions for public rights of way to the sum of £100 for hereditament no 2. This is a large hereditament of 184 acres and it is not possible to determine where the rights of way that were forming the deduction were.
- 9.20 It can be helpful to look at the practice of the surveyor in other parts of the parish. It is noted that in Heddington a number of other routes were left uncoloured that are not public rights of way in the definitive map and statement today and these include short roadways leading only to fields.
- 9.21 The value of Finance Act evidence has been recently considered by the courts in the case of *Fortune v Wiltshire CC [2012] EWCA Civ 334*. In this case the evidence of an excluded route was given due consideration with Lewison J concluding that the Finance Act records are “simply one piece of the jigsaw puzzle” to be considered along with other relevant material particular to each case.

9.22 Working Copy extract: Application route



9.23 Working copy extract: Other uncoloured route not in definitive map and statement (off Heddington path no. 10)



9.24 Record Copy extract:



9.25 The valuation book records the following in relation to the adjoining hereditaments:

No	Occupier	Owner	Deductions	PROW	Description
2	H J Pocock	Capt J E P Spicer	£100		Lower Farm
21pt	Revd J H Bland	Glebe	none		House and Land
69	Louisa Hunt	Louisa Hunt	none		Cottage and Garden

10.0 Category C Evidence

10.1 Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is, records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority.

10.2 These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance.

10.3 Parish Council Claims – National Parks and Access to the Countryside Act 1949

10.4 The National Parks and Access to the Countryside Act 1949 required Wiltshire County Council to produce a definitive map and statement of public rights of way. As a part of this process Parish Councils had to submit details of all the ways in their

parish that they considered to be public rights of way that should be included in the map and statement.

10.5 Although parish councils were directed to guidance on the matter and all parish councils submitted a claim in Wiltshire, there is significant variation in the extent and detail of the submissions between parishes.

10.6 Heddington parish council claimed the applicant route as a public right of way, fenced on both sides for this section. They recorded that the way was not repaired by parish, district, borough or county council. The way appeared on the draft and provisional maps, there were no objections to this and the way was added to the definitive map and statement as a public footpath.

10.7 **Calne and Chippenham Rural District Council Takeover Map**

As a result of the Local Government Act 1929 the rural district councils were required to hand over the maintenance responsibility for rural roads to the county council. In Wiltshire this procedure was recorded on a series of maps known as 'takeover maps'. The applicant route was not handed over to the county council and is uncoloured on the map (the adjoining road C.7002/C.247 is coloured).

10.8 **Wiltshire Council Highway Record**

Wiltshire County Council produced a record of publicly maintainable highways from the takeover maps and these maps are still in use today. Publicly maintainable roads are shown coloured. The applicant route is shown uncoloured.



10.9 **Rural District Highway Board Minutes**

There are no references to the applicant route.

10.10 Wiltshire County Council Roads & Bridges Committee Minutes 1894 – 1974

There are no references to the applicant route.

11 Category D Evidence

11.1 Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

11.2 WSHC 1553/98 Estate map Nicholas Pearse 1801

This is a highly detailed map drawn at a scale of 6 chains to one inch as surveyed by F Whishaw. The map is entitled “A Map of AN ESTATE at Heddington IN Wilts belonging to Nicholas Pearse Esq.” The map shows land to the east of the claimed route but not the route itself. Roads are shown coloured sienna.

11.3 The Glebe land is clearly shown to the west of where the route is now and the land beyond (that is now Mr Tyler’s land) is shown belonging to Walter Brooke.



Site of claimed route

11.4 WSHC 1553/99 Estate Map of Brice Pearse 1835

This is another well drawn and detailed map. It is drawn at a scale of 6 chains to one inch and was surveyed by W R Wood, Devizes. The map is entitled “Map of an

Estate in the Parish of Heddington in the County of Wilts belonging to Brice Pearse Esq. 1835". The map shows roads with destinations on them (e.g. "To Calstone"), buildings, field boundaries, vegetation type, land ownership and gates.

11.5 The applicant route is shown as a short fenced track leading to two fields, one in the ownership of the Trustees of R Heale and the other in the ownership of Brice Pearse. The property that is now Mr Fenwick's Coach Works is in the ownership of the Trustees of R Heale and the land that is now Gainsborough House is still shown belonging to the Glebe. The track is not coloured and does not have a destination on it.

11.6 Applicant route



11.7 The northern end of the applicant route has two gates drawn on it showing access to two fields from the route, one in the ownership of Brice Pearse and the other the Trustees of R Heale. No access is shown to either the Glebe land or the plot that is now the Coach Works. The photograph is less clear than the original document.



11.8 **WSHC 1720/607 Sales Particulars dated 1902**

The sales particulars for the sale of lands and properties belonging to the estate of Miss Elizabeth Clark deceased have been viewed. On the 30th July 1902 at The Bear Hotel land a number of lots were auctioned. Lot 11 was land that included The Coach House and Coach Works adjacent to the claimed route, but not the claimed route.

11.9 The land included in the sale is shown coloured blue on the sales plan and is described as a “superior freehold pasture land known as “Pontings” containing an area of 7a 0r 7p or thereabouts with capital Pond of Water, lying adjacent to the road from Heddington to Bishops Cannings and bounded by the lands of Captain Spicer and Mr W G Mitchell. It is now in the occupation of Mr H J Perrett on a Candelmas tenancy, at a rent apportioned for the purposes of this sale at £5.15s per annum together with two good brick built and thatched cottages with gardens adjoining the said land.”

11.10 A newspaper cutting included in the file recorded that lot 11 was bought at £425.

11.11 There is no mention of access to or from the applicant route and although the Bishops Cannings to Heddington road is described in the sales particulars as adjacent to lot 11 there is no reference to the applicant route being part of that road, nor is it logical that it would be.

11.12 Extract from Sales Particulars Plan A.



11.13 **WSHC 776/788 Sales Particulars dated 1918**

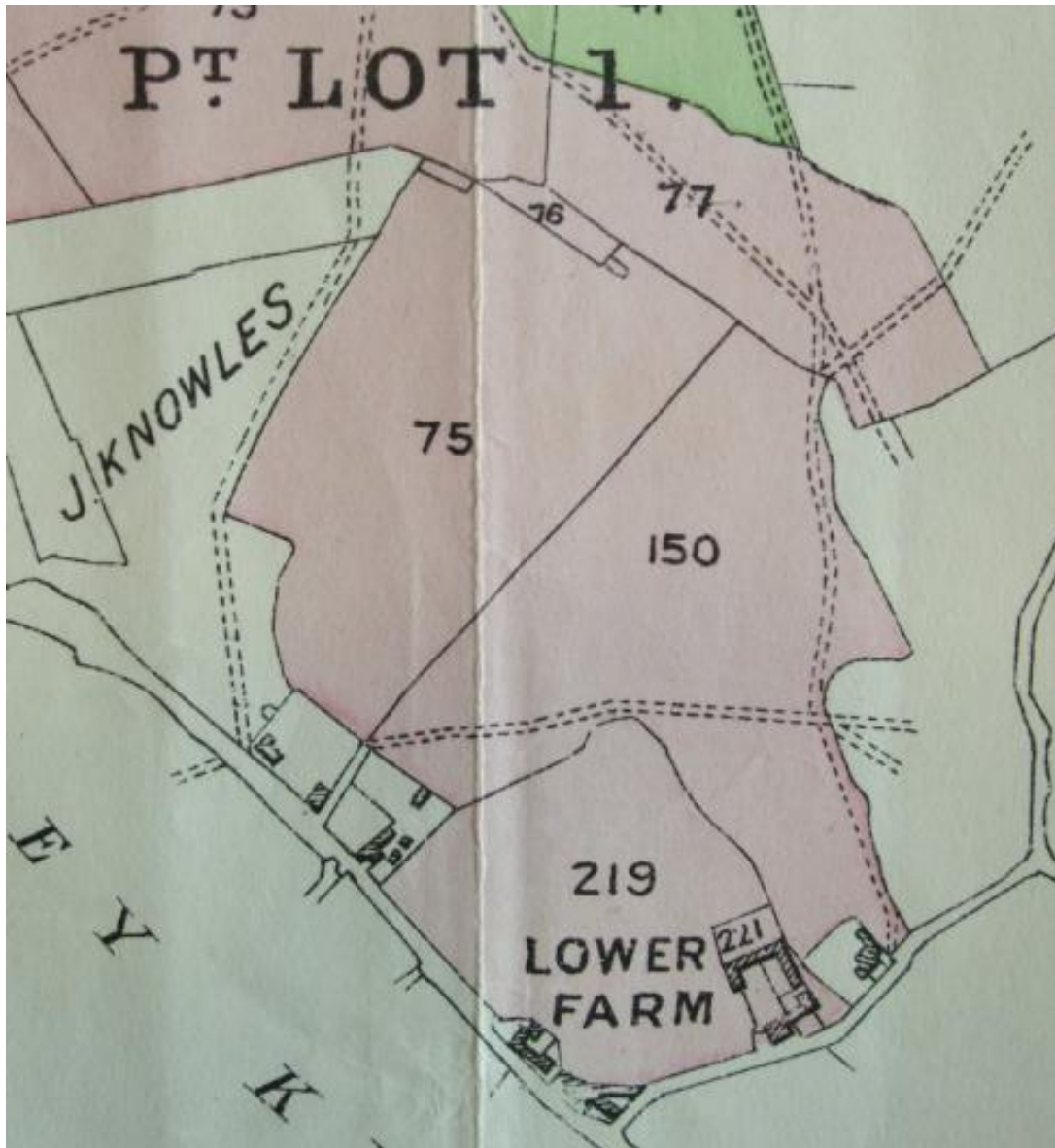
This sale of land and property at Heddington took place on the 21st June 1918 and Lot 1 was a property called Lower Farm. The land for sale included those fields north east of the claimed route (and now owned by Mr D Tyler) but not the claimed route which was excluded from the sale.

11.14 There is no further information in the sales catalogues regarding access to the land at this point. The exclusion of the claimed route from the land to the north east is clearly at odds with the Tithe Commissioners survey of 1841 which included the claimed route in the field, though it is possible that the claimed route simply wasn't part of this sale.

11.15 This map carries a disclaimer relating to its accuracy.

NOTE.
*This Plan is believed to be correct but
its accuracy is in no way guaranteed.*

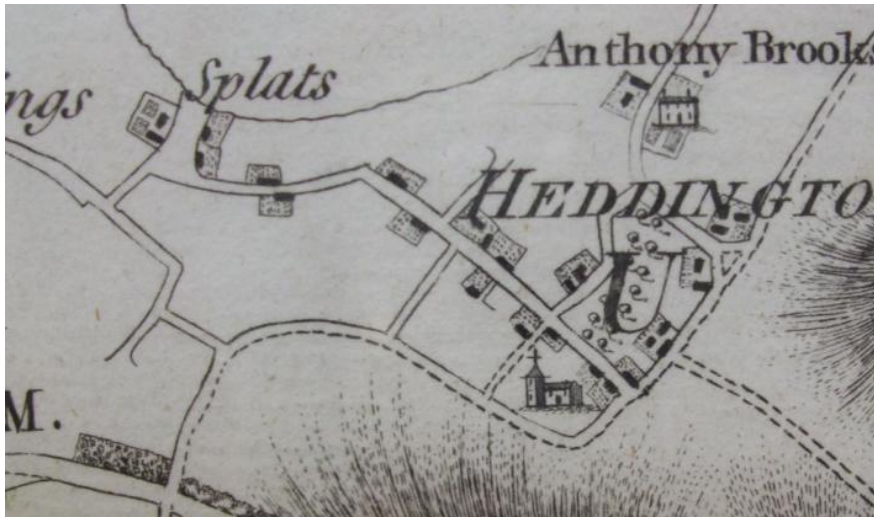
11.16 Extract from sales catalogue plan.



12 Category E Evidence

- 12.1 Evidence in this category includes commercial maps and Ordnance Survey (OS) maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.
- 12.2 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury , John Cary , C & I Greenwood and the Ordnance Survey. Neither Cary (1823 and 1832) or Greenwood (1820) show the claimed route.
- 12.3 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the OS were revised with reference to highway surveyors from the highway authority and parish councils.
- 12.4 **Andrews' and Dury's Map of Wiltshire 1773** The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same. The applicant route is shown as a hedged road leading to open land or fields. It is the style of the map makers to represent routes leading to enclosures in this manner and a good example of this is in the nearby tithing of Coate, Bishops Cannings. Here it is known that the routes lead to land that was divided at enclosure and that there was no public access at that time and that there are no public rights of way recorded today. Paragraphs 12.7 and 12.8 illustrate.
- 12.5 It is considered that the most likely explanation for the claimed route in Heddington being shown is this way is for the same reason.

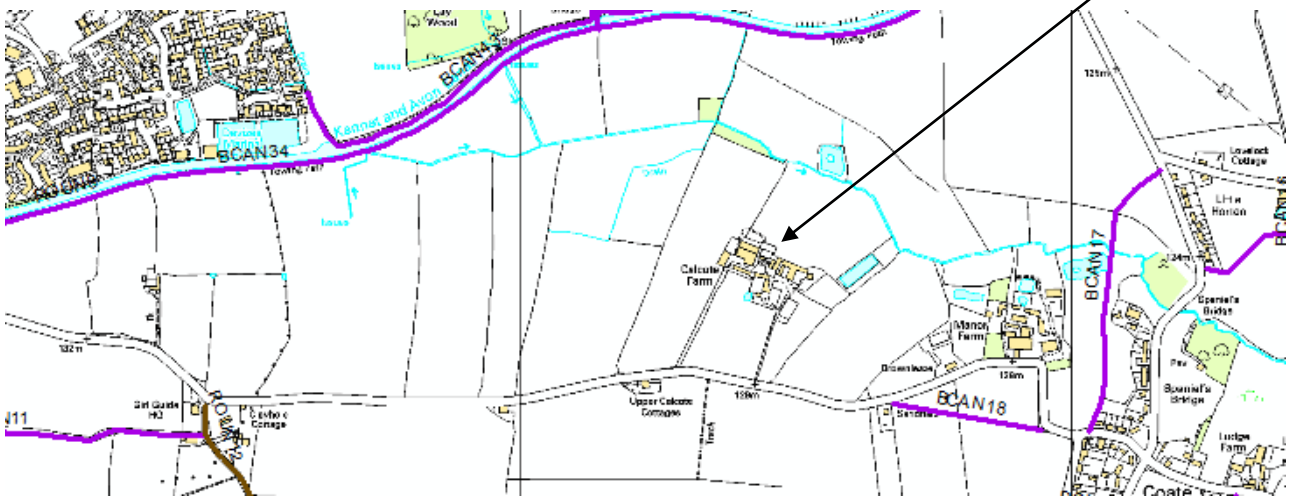
12.6 Extract from the map showing the applicant route:



12.7 Representation of routes in the same way at Coate, Bishops Cannings:



12.8 Current working copy of the definitive map showing area at 11.7: Corcutt Farm

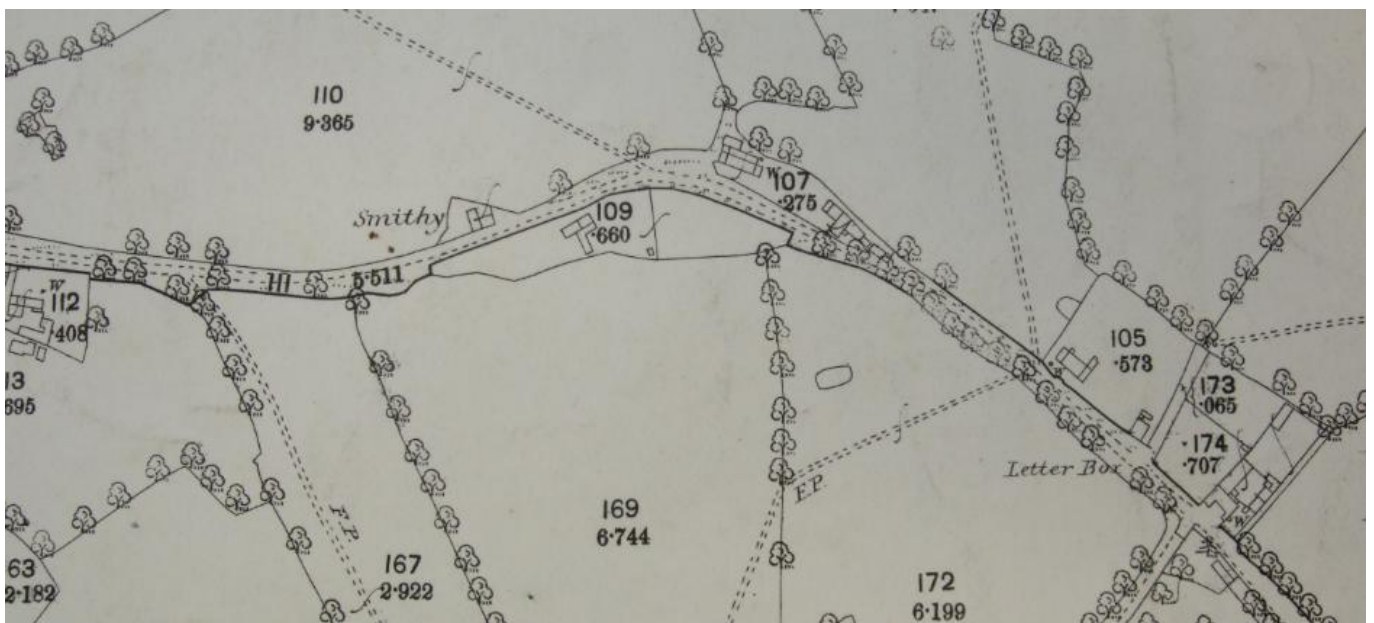
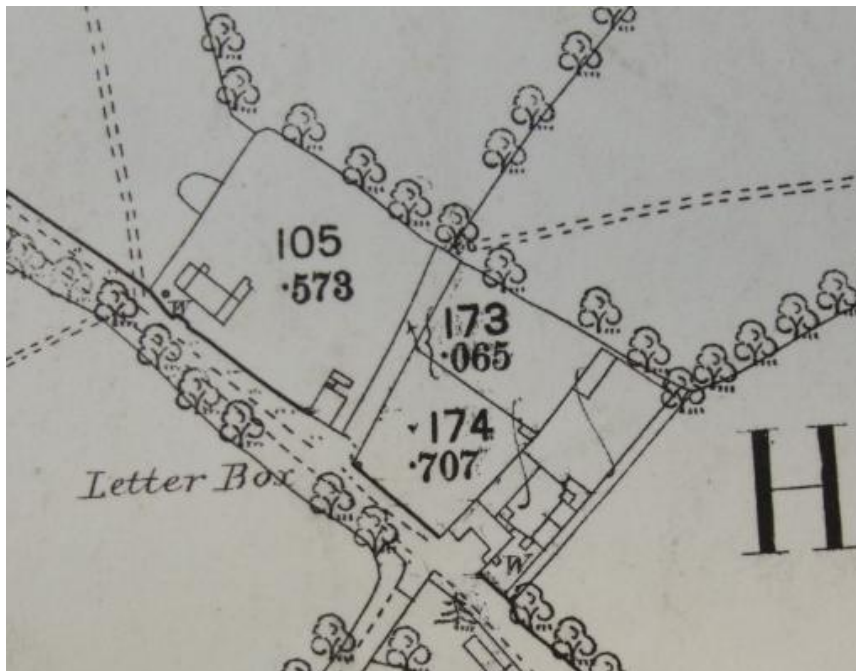


12.9 Ordnance Survey 1:2500 County Series mapping 1886 to 1924

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheet 34.1 covers the applicant route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

- 12.10 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, “but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 12.11 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 12.12 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet and land use information was dropped. Unfortunately the First Edition maps in this area do not show land use information as they were printed relatively late in the series.
- 12.13 The claimed route is shown on Sheet 34.1 and the First Edition of 1886 (surveyed 1884), the Second Edition of 1900 (surveyed 1884 reviewed 1899) and the Third Edition of 1924 (surveyed 1884 revised 1922) have been viewed.

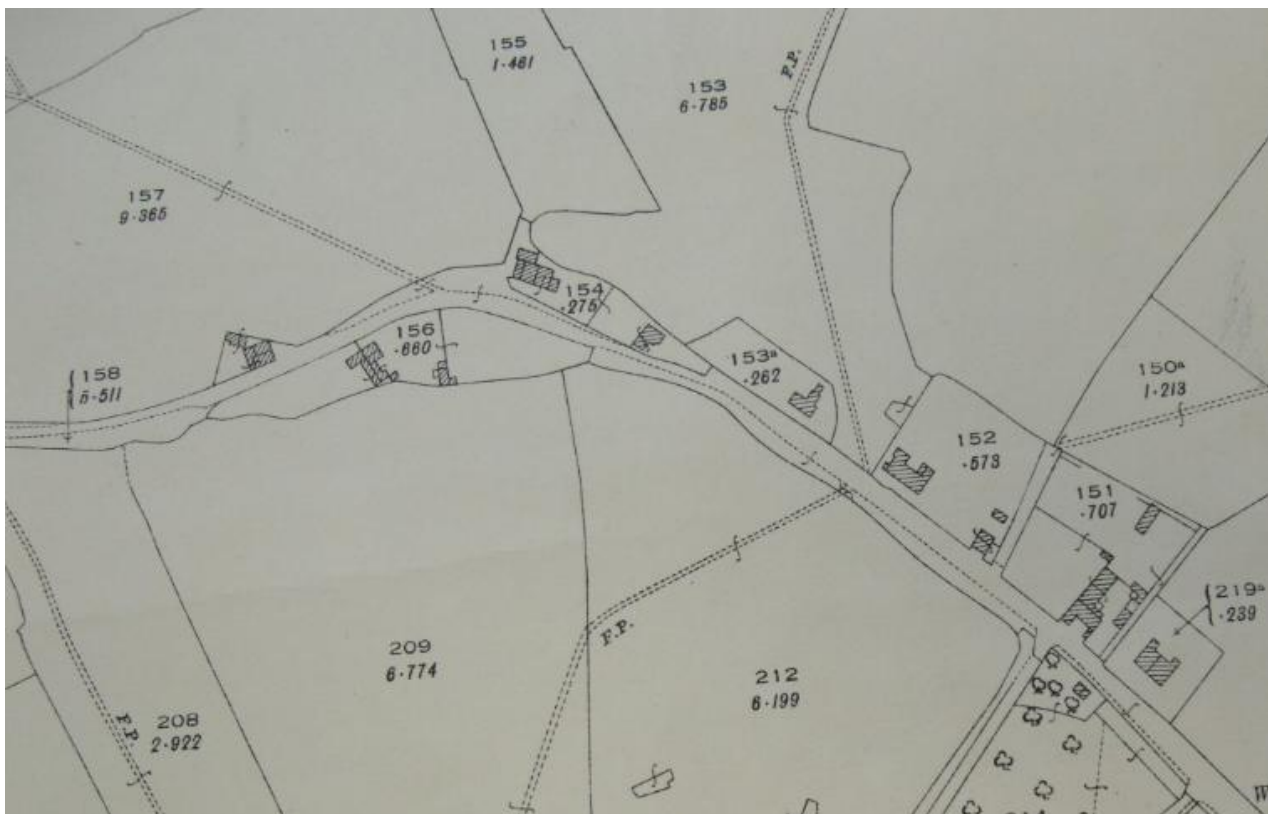
12.14 **First Edition 1886** The claimed route is braced with neighbouring land parcel 173. The adjoining road is separately numbered and measured (no. 111 5.511 acres).



12.15 **Second Edition 1900** The claimed route is braced with a different piece of land – parcel no. 150 – and the adjoining road is separately numbered and measured (no. 158 5.511 acres).



12.16 **Edition of 1924** The claimed route is shown braced with the adjoining field (no. 150a) which has been divided since the 1900 edition. The adjoining road is separately numbered and measured (no. 158 5.511 acres).



12.17 **Ordnance Survey 1:10560 Sheet 34 1889 Edition** This series of maps were produced as a reduction of the 1:2500 series and were based on the same survey. The claimed route is shown as a hedged feature and as a minor road.



12.18 **Ordnance Survey 1:63360 Series (one inch to one mile) – ‘Old Series’**

Between 1805 and 1874 the whole of England and Wales was covered by a series of maps produced at the scale of one inch to one mile (1:63360). In preparation for this the country was surveyed at a scale of 2 inches to one mile and the surveyor's drawing for this are available at the British Library. The drawing for Bradford, Wiltshire includes Heddington and is dated 1808. The drawing does not show the claimed route, though does show other cul-de-sac routes.



12.19 The corresponding 1 inch to one mile map does not show the claimed route.



12.20 Ordnance Survey Popular Edition 1919 One inch to one mile

The Popular Edition maps represented a departure in purpose by the Ordnance Survey. The 1" Popular series maps were a new series aimed at travellers on the roads and were undoubtedly aimed at motorists. They were the subject of frequent revision and the scheme took evidence from both the Royal Automobile Club and the Road Board. In practice the maps also went before the Rural District Council Surveyor. .

Yolande Hodson, in her book "Popular Maps" (ISBN 1-870598-15-6) states:

"Large-scale plans were not regarded as road maps; their primary function was to depict physical features and administrative features as accurately as the scale would allow. In contrast, the smaller scale showed a range of road classification, first by line-work, and then by line and colour. These conventions allowed the user to make an intelligent deduction of the suitability of routes for different purposes that would have been impossible at the larger scale. In this respect, the one-inch maps are an invaluable aid to the interpretation of roads on the large scale plans"

"Another demonstration of the map history rule is that the Popular Edition, rather than the 1:2500 plans, was, unquestionably, the largest scale at which road development was most faithfully portrayed, although its road classification system was unnecessarily complex as a result of inheriting principles which had been established in the days of more leisurely traffic; but most sheets had been "road-revised" at least twice at about a seven or eight year period."

12.21 The claimed route is not shown on the Popular Edition of 1919 Sheet 112. The adjoining road is shown as an "indifferent or bad winding road with over 14 feet of metalling". Roads in the parish that are now restricted byways (for example Heddington 8) are shown as "Minor Roads".



12.22 Note on the representation of footpaths on County Series (1:2500) Maps

From Ordnance Survey Maps – a concise guide for historians by Richard Oliver:

“Footpaths

From 1882 onwards footpaths were shown by ‘F.P.’, ‘the object of...F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic’ (from Southampton Circular 16.2.83).

In 1893 it was specified that ‘all footpaths over which there is a well known and undisputed public right of way were to be shown and also ‘private footpaths through fields (but not in gardens)...if they are of a permanent character. This will generally be indicated by their being made or gravelled or provided with stiles and footgates...all gravelled and paved paths in public parks, gardens and recreation grounds...the principal paths in market and allotment gardens...should be shown...Mere convenience footpaths for the use of a household, cottage or farm, or for the temporary use of workmen should not be shown, but paths leading to any well defined object of use or interest, as to a public well, should be shown.’

12.23 The Ordnance Survey showed a F.P. continuing from the claimed route but not along it. It was not the practice of the OS to show an F.P. over a fenced route though they did retain the ability to separately number and measure public roads. All maps

carried the disclaimer regarding the representation of rights of way and the mapping in this area is a clear example of why this was necessary. The claimed route was not shown as a public road (as it was not separately numbered and measured) but it could not be shown as a footpath (as it was fenced) although the continuation across the field was shown in this way.

13 CATEGORY F EVIDENCE

- 13.1 This evidence category includes local repute or any consultation responses that are not covered elsewhere.
- 13.2 There was a change in the law in 2006 relating to the use of mechanically propelled vehicles (MPVs) on routes that were not already recorded in the definitive map and statement as byways open to all traffic and this will be addressed later in this report as part of the Council's decision but it is noteworthy that no evidence to support the continuation of any public mechanically propelled vehicular rights post 2006 has been adduced by any party (including the applicant and vehicular user groups).
- 13.3 Responses received indicate that local memory of the route extend to back to at least the mid 1940s. All responses indicate that there has never been use of the applicant route by vehicles other than those of the farmer or by permission.
- 13.4 Whilst it is recognised that this evidence is not necessarily relevant where a historic right has already been established but the way has fallen into disuse (*Dawes and Hawkins 1860* 'once a highway, always a highway'), however it is relevant when considering the effect of the NERC Act 2006. In considering whether any public vehicular right that may have existed prior to 2nd May 2006 (s.67(2)(a) survives by virtue of the main use of the way being by MPVs in the period 2001 to 2006 this evidence may be considered.

14.0 Decision

- 14.1 The law requires that any evidence of higher rights, lesser rights or greater width must be shown 'on the balance of probabilities' to bring about a change to the legal record. This means that it is more likely than not that something is shown.
- 14.2 The application is to record the full width between physical boundaries of a section of Heddington footpath no. 5 as a byway open to all traffic and adduces evidence from the Finance Act 1909/1910 to support this.
- 14.3 Officers of the Council have examined this evidence and a considerable amount of other evidence available to them.

14.4 **Category A Evidence**

There is no evidence relating to the existence of higher rights on the claimed route in this category.

14.5 **Category B Evidence**

The Tithe Commission Survey is clear that the claimed route formed part of an adjoining field and was not part of the road network.

The Finance Act 1909/1910 Records exclude the claimed route from all hereditaments in the same manner that public roads are shown. This can be good evidence of the existence of public vehicular rights but is not conclusive. If the route was awarded at enclosure (though in this case no records of this survive) to provide access to more than one allotment this may be a reason for exclusion (see PINS Consistency Guidelines section 11). Additionally although case law has found Finance Act exclusions to be good evidence (*Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (ch)*, *Maltbridge Island Management Co v SSE (31/7/98)* and most recently *Fortune v Wiltshire CC [2012] EWCA Civ 334*) it is clear that it must be supported by other evidence; it is not of sufficient value on its own.

14.6 **Category C Evidence**

There is no evidence in this category supportive of any higher right over the claimed route. The Parish Claim (National Parks and Access to the Countryside Act 1949) is supportive of the existence of footpath rights over the entire width of the claimed path.

14.7 **Category D Evidence**

There is no evidence in this category supportive of any higher right over the claimed route. The claimed route is shown as a fenced route in an estate plan of 1835 giving access to two pieces of land in different ownership.

14.8 **Category E Evidence**

Although Andrews' and Dury's Map of Wiltshire dated 1773 shows a fenced route at a location that could be the claimed route (though its existence at this time is not supported by the 1801 Estate Plan), it was their practice to show fenced routes to fields that did not necessarily carry public rights in this manner.

14.9 There is a large amount of evidence supportive of the existence of the route as a fenced (or hedged) way and the Ordnance Survey has consistently recorded it in this way, but not as a public road or as part of the adjoining public road. A footpath continuing from the claimed route has been consistently shown and it is more likely than not that the public enjoyed access over the entire width of the claimed route on foot since it formed part of a through route for them.

14.10 There is no evidence supportive of any higher right over the claimed route in this category.

14.11 **Category F Evidence**

The applicant claims to have a private right of access to his property along the claimed route. Although this is only supported by a declaration made by himself it is not supportive of the existence of a *public* vehicular right. If a public vehicular right existed, the property would not need a private right.

14.12 There is insufficient evidence to show that the claimed route was a public vehicular highway before the 2nd May 2006 and this application must be refused. It is therefore not necessary to consider the effect of the Natural Environment and Rural Communities Act 2006. However, in the event that the Council is directed to make an order, it may be useful to consider whether any rights for MPVs (mechanically propelled vehicles) would have been retained and this can be found in section 15.

14.13 Notwithstanding paragraph 14.12, a significant amount of evidence has been found that shows that on the balance of probabilities the footpath extended over the whole width of the claimed route and that under the Council's duty in s.53(2) of the 1981 Act a definitive map modification order should be made to record this.

15.0 **Natural Environment and Rural Communities Act 2006**

15.1 On the 2nd May 2006 the **NERC Act 2006** commenced and **section 67(1)** of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8)

Subsections 2 to 8 are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

(2) Subsection (1) does not apply to an existing public right of way if –

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(List of highways maintainable at public expense),

(c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*

(d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*

(e) *it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

(3) *Subsection (1) does not apply to an existing public right of way if –*

(a) *before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*

(b) *before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*

(c) *before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*

(i) *was reasonably necessary to enable that person to obtain access to the land or*

(ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

(2) *The relevant date in England means January 2005*

(3) *refers to private rights*

(4) *For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

15.2 Given the effect of s.67(1) of this act, where public MPV rights are extinguished, it is appropriate to consider each exemption in turn:

(2)(a) *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.*

No evidence of use by the public in MPV has been submitted for the period 2001 – 2006.

The claimed route would not meet the requirements of Sec(2)(a) NERC Act 2006 .

(2)(b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(list of highways maintainable at public expense).*

The claimed route is shown in the definitive map and statement and is not shown in a list required to be kept under section 36(6) of the Highways Act 1980 (the Highway Record)

Public vehicular rights would not be preserved by this section.

(2)(c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.*

There is no evidence for the creation of the way and therefore any public vehicular rights would not be preserved by this section.

(2)(d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

Public MPV rights would not be preserved by this section.

(2)(e) *it was created by virtue of use by such vehicles during a period ending before 1930*

There is no evidence relating to any use by the public with MPVs and public MPV rights would not be preserved by this section

(3)(a) *(3) Subsection (1) does not apply to an existing public right of way over a way if –*

(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic.

The application was made 7 years after the relevant 'cut off' date.

15.3 There is no evidence to suggest that if a public vehicular right existed before the 2nd May 2006 it has been preserved.

16.0 Environmental Impact of the Recommendation

16.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for the consideration of issues relating to the environment.

17.0 Equality Impact.

17.1 The recording of the full width as a footpath is in line with the Council's duty under The Equality Act 2010. This is however not a material consideration contained within the Wildlife and Countryside Act 1981.

18.0 Legal Implications

18.1 The applicant has a right to appeal against the Council's decision to refuse the application under Schedule 14 to the 1981 Act. The appeal is dealt with by the Planning Inspectorate (PINS) on behalf of the Secretary of State, is routine and does not involve a significant amount of extra resources being used. PINS may decide to uphold the Council's decision not to make an order to record a byway open to all traffic. The applicant has a right to challenge the decision of PINS through the Courts.

18.2 If any appeal is successful the Council may be directed to make and advertise an order.

18.3 The making of a definitive map modification order to correctly record the width of the claimed route is in line with the Council's duty contained within s.53(2) of the 1981 Act to keep the definitive map under continual review. It is not likely that the Council would be challenged if acting in pursuit of this duty.

18.4 If the Council fails to make an Order to record the width it may be subject to judicial review for non adherence to its duty. This could have significant cost implications (c. £50000).

18.5 If the Council makes an Order which receives objections it may be liable to pay subsequent costs if it acts in an unreasonable manner at public inquiry. Costs awards of this nature are rare and may be in the region of c.£10000.

18.6 Any final decision made on an order that has been objected to is made by the Secretary of State for Food, Environment and Rural Affairs (SoSEFRA) and not Wiltshire Council. Hence any challenge to that decision is against SoSEFRA and not the Council.

19.0 Risk Assessment

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

- 19.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 19.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 19.4 The application for an order to record a byway open to all traffic is to be refused as a result of this decision and the applicant will be informed that his application has been refused but that the Council will proceed to make an order to record the width of the claimed route in line with its duty under s.53(2) of the 1981 Act.
- 19.5 The applicant may appeal this decision with the Secretary of State under sch. 14 to the 1981 Act which could lead to Wiltshire Council being directed to make an order. Officers consider that this is highly unlikely on the grounds that insufficient evidence supporting the application has been found to date.

20.0 Financial Implications

- 20.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 20.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to SoSEFRA for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000). There is no indication that any objections will be received.

21.0 RECOMMENDATIONS

- 21.1 That the application no. 2012/04 to record a byway open to all traffic over part of Heddington path no. 5 is refused.**
- 21.2 That the Order modifying the definitive map and statement to show that public rights on foot extend over the width of the claimed route appended at APPENDIX D is sealed and advertised in accordance with the provisions of Schedule 15 to the 1981 Act.**

Sally Madgwick

Rights of Way Officer

09 October 2013

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Heddington path 5 (part) at C.247 (between The Coach House land and Gainsborough house)

APPENDIX 2.A

Definitive Map and Statement

Heddington path number 5 was claimed by the parish council in 1950 as a public right of way leading from the road (C.247) opposite Rectory Drive leading north and east to path number 4 north of Ivy Inn. There was a field gate near to the road end and the width was described as undefined but in answer to whether it was fenced or open the parish council responded that it was “open except for small portion at road end”. Had been used from time immemorial.

The route was added to the Calne and Chippenham Rural District Council Definitive Map and Statement as Heddington path 5 in 1953.

F.P. From the Heddington Wick – Heddington road, C.247, opposite Rectory Drive, Heddington, leading north-east and east to path No. 4 north of Ivy Inn. Approximate length 300 yards.

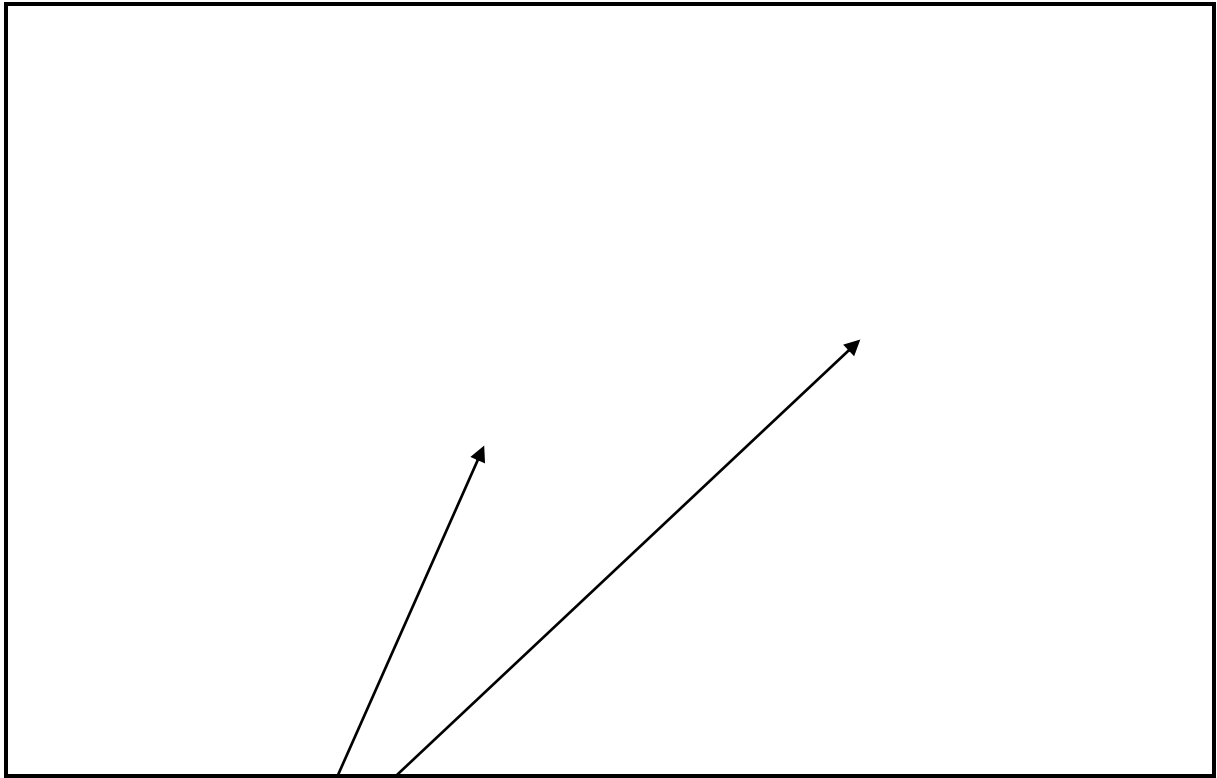
The path has remained unaltered since this time.

Historic Mapping

The path being claimed by the parish council was that shown by the Ordnance Survey and labelled F.P. in their County Series (1:2500) mapping.

The County Series map covering this area is Sheet number 34.1 and was first surveyed in 1884. To date only the Edition of 1924 has been viewed by officers (this is likely to be the

third edition) and the footpath is clearly shown leading into an enclosed lane section before joining what is now the C.247.



Route of footpath no. 5

The enclosed section is historic and can be seen on the tithe map of 1841 for Heddington:



It is further noted that the Inclosure agreements for Heddington do not have accompanying maps.

Comment on the width of the footpath

Officers consider it likely, on the balance of probabilities, that public highway rights have been acquired over the entire width of this section. This varies between approx 3.4 m and 5.7 m.

It is not possible to say whether property boundaries have been laid out with regard to this track but it is likely that investigations would reveal differing land ownership, making the likelihood of a clearly defined and respected boundary over time high.

There is nothing currently before officers that suggests anything other than this,

Further investigations would include:

- Land Registry registered title information
- Finance Act 1910 evidence
- Other OS mapping

Defining the width of the footpath

This section of the footpath is a clearly defined feature and appears to have been so for over 150 years. The eastern boundary with Gainsborough House has a well established hedge line containing some large and older trees. The garden of Gainsborough House is fenced beyond this boundary in keeping with common practice that the property boundary leads along the middle of the highway tree line.



The Western boundary leads beside the Coach House land and has recently been fenced. Most of the ancient hedge line has been disturbed along this boundary and a large workshop predominates. However, the remains of some old hedge line trees remain at the northern end and the new fence has clearly been placed on the Coach House side of the hedge line. i.e. not on the highway.



New fence

Old tree

stile to field

The fence has been built very close to the workshop building but it is questionable whether the fence is built on the highway since it is unlikely that the workshop building was built exactly on the boundary line. It is more usual to erect buildings a small distance inside boundaries to allow for maintenance of windows, gutters etc. If this is the case here then the fence is not on the highway. If the building is constructed on the boundary then the fence has been constructed on the highway.



If the new fence is not on the highway

There is no action to be taken

If the new fence is built on the highway

The principle concern must be the rights of the public (s.130 of the Highways Act 1980). The fence leaves a width of 3.3 metres at the narrowest point which means that the free passage of the public is not impeded by it. Its placement on the highway could however constitute a structure on the highway and the highway authority could require its removal. Officers consider it unlikely that given the constraints and tolerances of maps, it would be possible to conclude whether the building formed the highway boundary from records held by Wiltshire Council.

Other Highway Observations

The line of the C.247 past The Coach House and Gainsborough House appears irregular when on site. Stones on the verge at the Coach House, containers in front of the line of telegraph poles and a small fence and shrub outside Gainsborough house all have the appearance of highway encroachments.

Fence and shrub at Gainsborough House



Containers and stones at the Coach House



Containers and footpath 5



New fence on FP 5 ends here

Telegraph pole situated here

new fence and shrub

Whilst these items have the appearance of highway encroachments and all are in front of the line of telegraph poles it is noted that the highway has an irregular appearance on the County Series map (see page 1). Wiltshire Council's highway record was drawn at the scale of 1:10560 and is unlikely to give sufficient resolution to resolve this issue directly. However, if neither the Coach House nor Gainsborough House is subject to a way leave agreement with the relevant utility company there is an increased probability that this is highway land.

Wiltshire Council Rural Highway Record



Officers recommendation:

Footpath 5 – No immediate action is taken. View Title deeds, invite information relating to the construction of the workshop building. If these raise doubts as to the position of the fence, further historical research.

C.247 – No immediate action is taken. View title deeds, get statement of extent of highway from Wiltshire Council Highway Record team. Ask enforcement officer to investigate.

Footpath 14 – No immediate action is taken. Mr Fenwick raised issues relating to the availability of footpath 14. Officers went on site on 10 Aug 2011 and found the way signed as footpath from the road, the way open and available and the gate open. The route leads across an area of house driveway and garden and requires confidence to use, but could be walked. Ask rights of way warden to make sure route is fully available and consider way marking to give users confidence.

Sally Madgwick

Rights of Way Officer

10.08.11

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Further Investigation subsequent to Preliminary Report dated 10.08.11

Background

Heddington path 5 is recorded as a public footpath in the definitive map and statement and for a short length near its junction with the C.247 road leads between fenced boundaries. There is no width recorded for this path in the definitive statement.

In the preliminary report it was observed that this fenced section was clearly shown on the Heddington Tithe Map dated 1841 and with reference to later Ordnance Survey mapping pre-dated existing buildings adjacent to the highway. Given the historic nature of this path, where it leads between these boundaries it is considered that the width of the highway extends between these boundaries.

The report also observed that although the eastern boundary ('Gainsborough House') appeared well defined by well established trees suggestive of an ancient hedgeline, the western boundary ('Depot belonging to the Coach House') was less well defined exhibiting only the suggestion of a well established hedgeline at the northern end before leading past a large workshop building and a metal container type building at its junction with the C.247.

The owner of the adjacent land to the west, Mr Fenwick of The Coach House, has observed that a new fence has been erected along this boundary and considers it has been erected on the highway.

Wiltshire Council has the power to remove structures from highways and may require the person who has control of the structure to remove it. This is contained within s.143 of the Highways Act 1980 and relates to the Council's duty under s.130(1) of the Highways Act 1980 to "*assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it*".

It is noted that s.143 may not apply where a structure is authorised by a provision of the 1980 act. For example s.66 (3) permits a highway authority to provide and maintain such barriers, posts, rails, walls or fences as they think necessary for the purposes of safeguarding persons using the highway. Such structures must not interfere with any private rights of access.

Recent case law *Herrick v Kidnor and Somerset CC* [2010] EWHC 269 (admin) has confirmed that the public is entitled to the use and enjoyment of the whole width of a highway (para 53 'Thus in my judgment the public is entitled to use and to enjoy everything which is in law part of a footpath' Cranston J).

It is therefore necessary for officers to consider the width of the highway and to ascertain whether, on the balance of probabilities the fence is erected on it, or not.

Land Ownership - Current

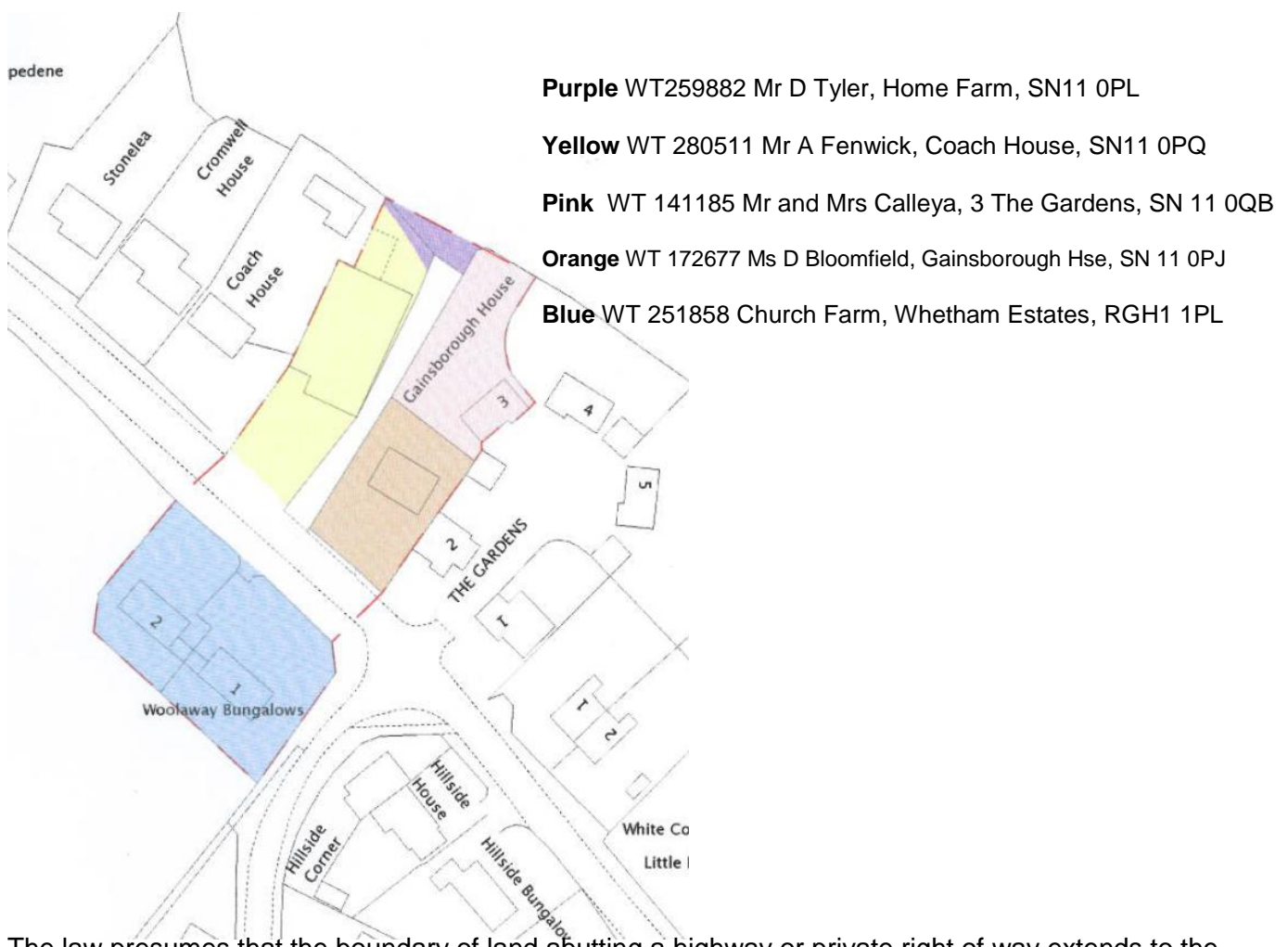
Copies of Register of Title and Title plans were requested from Land Registry for the enclosed section of Heddington path 5, part of the C.247 and adjacent properties;

There is no registered owner for the enclosed section of Heddington path 5 or the C.247. The surrounding land is owned as detailed below. No details of easements or access arrangements over Heddington path 5 were noted for any of the titles.

None of the titles exhibit a determined boundary and plans only show 'general boundaries'. A determined boundary is one that has been determined specifically pursuant to s.60 of the Land Registration Act 2002. General boundaries shown by Land Registry will not show if, for example, the boundary:

- Leads somewhere within a feature of the title plan
- Runs along one particular side of a feature
- Includes all or any part of a road or stream alongside a feature

Ref: *Land Registry Practice Guide 40 Oct 2005 and Land Registry Public Guide 19 – Title plans and boundaries*



The law presumes that the boundary of land abutting a highway or private right of way extends to the middle of the way (ad medium filium viae) subject to the rights of the highway authority. This presumption can be readily rebutted by conveyancing showing contrary ownership. In the case of Heddington 5, officers have not seen any conveyance rebutting this presumption for the enclosed section being considered. A conveyance or transfer abutting a roadway is presumed to include the roadway as medium filium viae, though it describes the land as bounded by the roadway or the plan excludes the roadway.

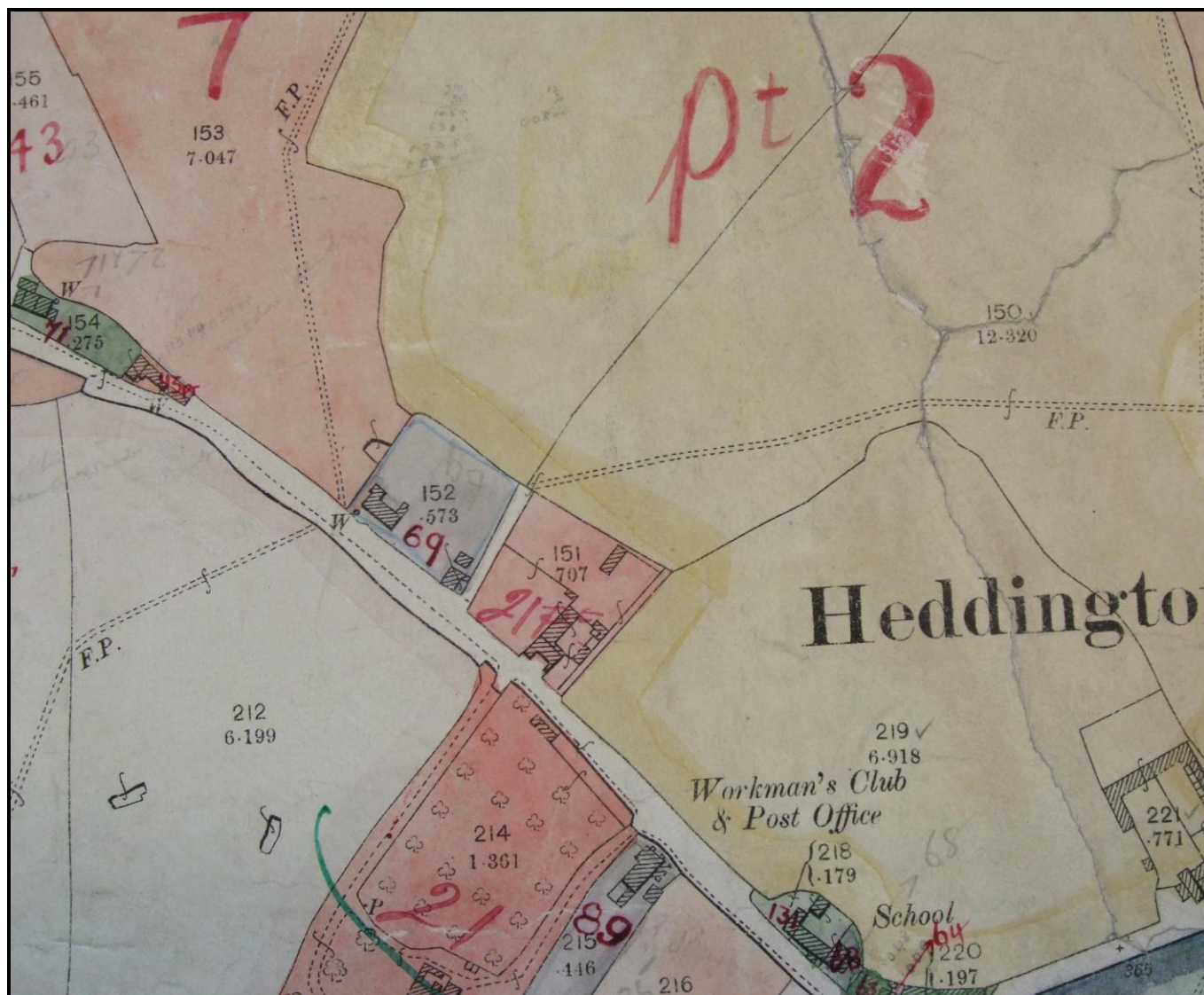
Land Ownership – Historic

The current representation of the land over which Heddington path 5 and the C.247 leads as not being owned by anyone identified is consistent with the 1909/1910 Inland Revenue Finance Act records.

This act required that all land was surveyed and assessed for taxation purposes. Although the Act was repealed approximately ten years later the Finance Act records provide a good source of data on land ownership and in some cases use, at this time. The process required land owners to fill out a form (Form 4) giving details of the property that they owned. A valuer appointed by the Inland Revenue would then visit individual properties, assess the land, record the buildings thereon and make note of any deduction to the value of the property – these may have included easements, public rights of way or rights of common. This information, recorded in a field note book was represented on a map that was hand coloured to show individual holdings (hereditaments) which were detailed in a valuation book.

The Finance Act map (working copy) and Valuation book for part of Heddington have been viewed.

Map (1900 Second Edition 1:2500 Ordnance Survey base map) WSHC L8/10/32



Valuation Book L8/1/42

Hereditament 21 Occupied by Geo. Duck and owned by F W Hubard

Hereditament 69 Occupied and owned by Louisa Hunt, cottage and Garden

Neither hereditament has any deductions charged against it.

Heddington path 5 is uncoloured and excluded from any hereditament in the same way that the C.247 is. The Finance Act 1909/1910 is not specific about the exclusion of public roads but it does allow for land that carries public rights to be allowed a deduction under section 35(1). This says that “no duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority”.

It is possible that the enclosed section of Heddington path 5 was excluded from the valuation for this reason though other reasons for exclusion are possible. One such possibility is where a route serves several allotments made at enclosure and whereby exclusion in this way provided an alternative way of allowing a deduction based on this.

Whatever the reason, it is clear that in 1910 the enclosed section of Heddington path 5 was not considered to belong to any of the adjacent landowners further suggesting that boundaries were laid out with respect to it.

Ordnance Survey Large Scale Mapping 1:2500 (25.344 inches to one mile)

Quoting from Ordnance Survey Maps a concise guide for historians by Richard Oliver:

The 1:2500 first edition has been aptly summarised thus by J B Harley “The...maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...field,...stream and building are shown, non- agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries...are shown;...hundreds of minor place names...appear on a map for the first time. Where appropriate, all topographical features are shown to scale...the...series is thus a standard of topographical authority.”

Three editions of Sheet 34.1 have been viewed.

First Edition 1885 Survey 1886 print

The enclosed section of Heddington 5 is shown as fenced on both sides, open at the road end. It is separately numbered and measured as parcel no 173 with an acreage of 0.065. The field beyond through which the path leads is parcel number 104 with an acreage of 12.255.

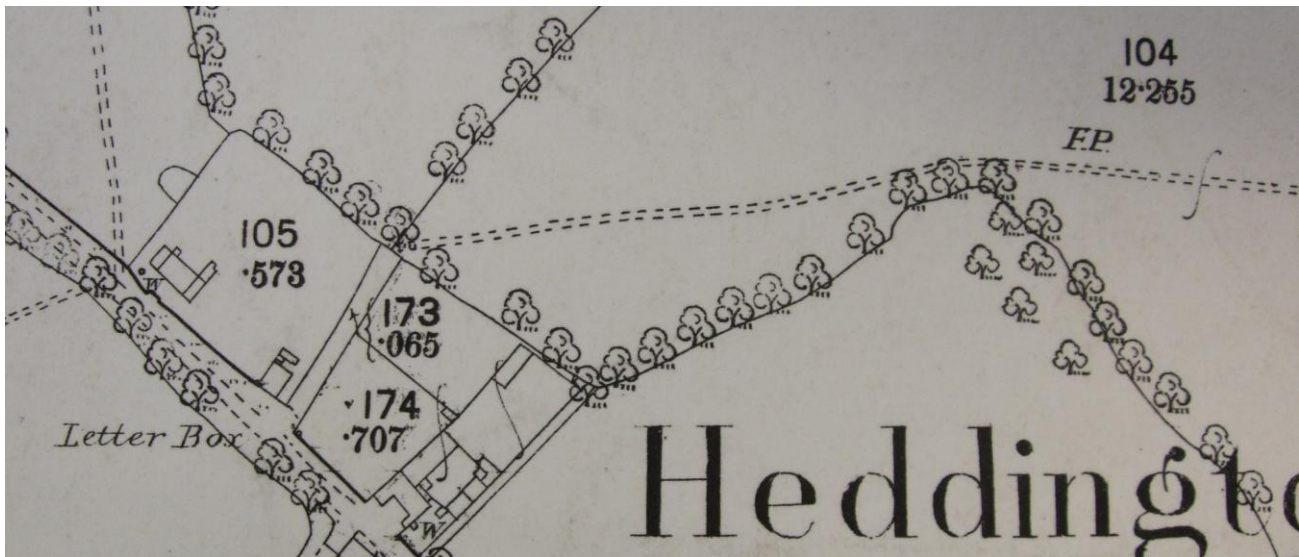
Second Edition 1900 print (1884 survey 1899 revision)

The enclosed section of Heddington 5 is now braced with the field beyond as parcel no 150 with an acreage of 12.320.

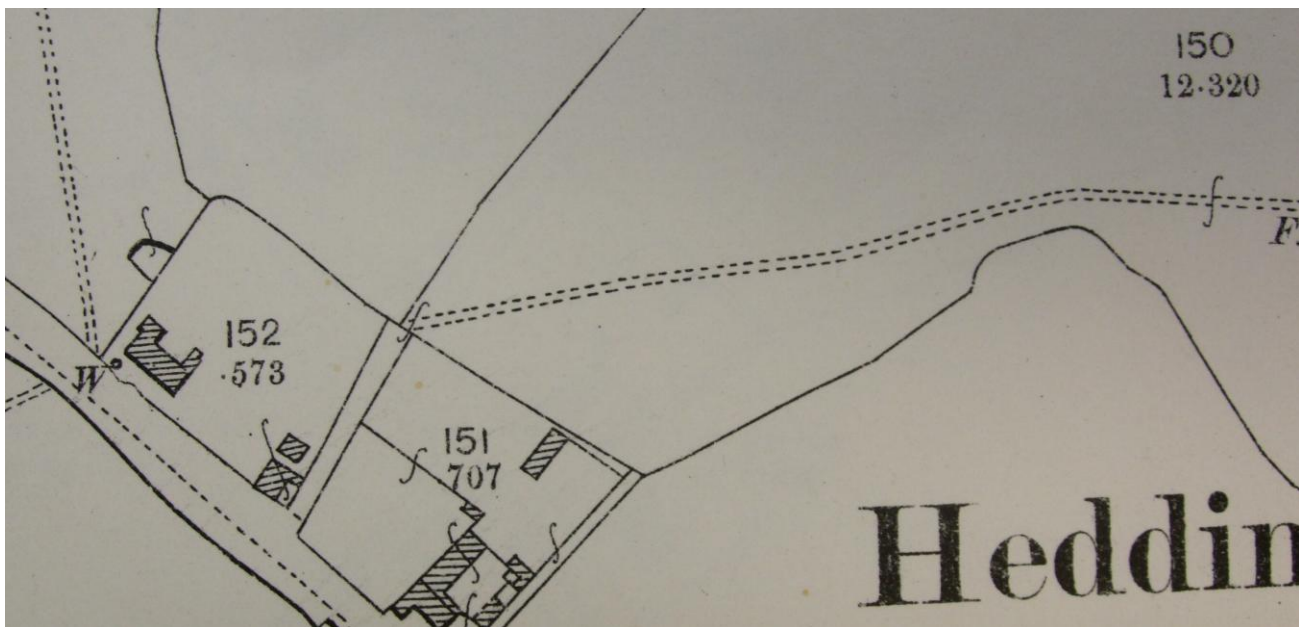
Edition of 1924 print (1884 survey 1922 revision)

The enclosed section of Heddington 5 is now braced with a smaller field parcel number 150a with an acreage of 1.213

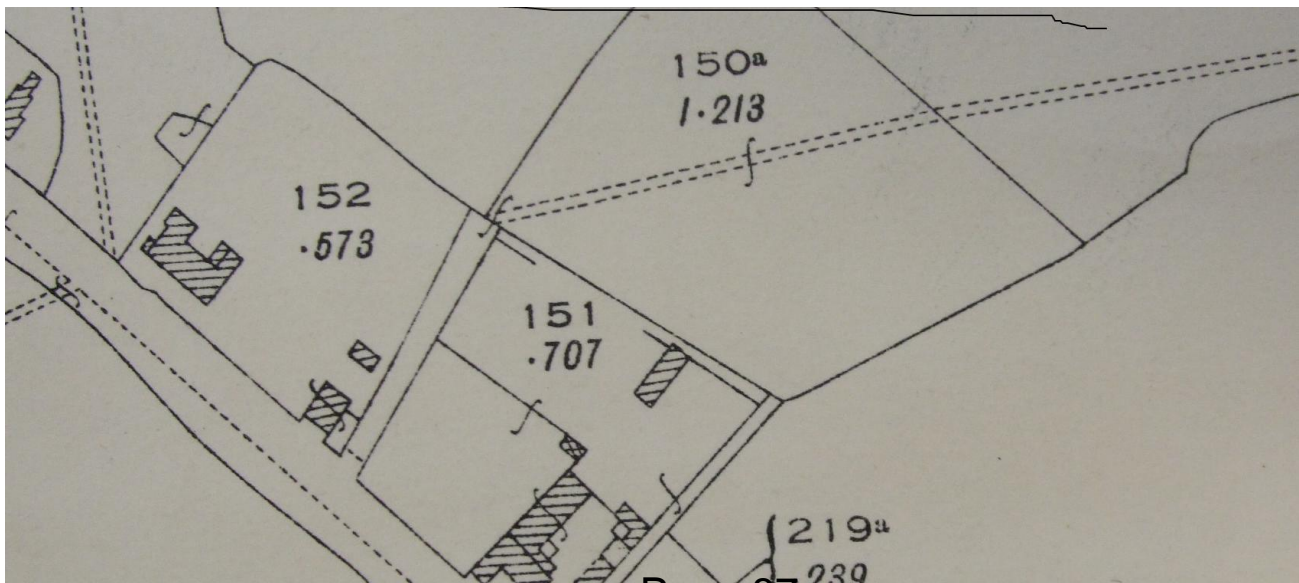
First Edition (not to scale)



Second Edition (not to scale)



Edition of 1924 (not to scale)



Conclusion

It is considered that the width of public highway extends between the historic boundaries as represented on maps dated 1841, 1885, 1900 and 1924.

Neither adjoining property has a legally defined boundary (as determined specifically pursuant to s.60 of the Land Registration Act 2002) and hence it is not possible to determine the boundaries of these properties beyond them being a 'general boundary'.

It is a general presumption that any highway boundary hedge or tree line is planted on an adjoining property, hence it would be appropriate to consider the width of Heddington 5 at this point as leading between the hedge lines. Although this is reasonably clear to the east it is not so to the west.

Officers have considered the inadvisability of measuring accurately from OS maps, the absence of legally defined boundaries and the absence of any clear developmental plans for the workshop building and consider that the erection of the fence represents a clear delineation of the highway that does not affect the use and enjoyment of the path for the public. It is suggested that any encroachment by the fence could be considered *de minimis*.

Sally Madgwick

Rights of Way Officer

06.09.11

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Sally Madgwick
Wiltshire Council
Department of Neighbourhood &
Planning
County Hall
Bythesea Road, Trowbridge
BA14 8JN

Your Ref: PC116/2012/04
Our Ref: FPS/Y3940/14D/1
Date: 19 July 2013

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Wiltshire Council

Non-determination of Wall to Wall Public Vehicular Highway to the East of The Old Coachworks, Heddington, running from Church Road in a North West direction for approximately 55 metres (The Access Road)

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to the application made by Mr A Fenwick on 17 May 2013 under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, seeking a direction requiring Wiltshire Council ("the Council") to determine the application to it, under section 53(5) of the Act, for an order to modify the authority's Definitive Map and Statement of public rights of way for the area so as to upgrade part of Footpath 5 to a Byway Open to All Traffic to include its full width between boundaries. I am satisfied that the terms of paragraph 3(2) have been met.
2. The Secretary of State having considered the application and after consulting the Council as required by the Act, has concluded that the application should be determined without further significant delay. Accordingly the Secretary of State in exercise of the powers vested in him by paragraph 3(2) of Schedule 14 to the 1981 Act hereby directs Wiltshire Council to determine the above-mentioned application not later than 31 July 2014.
3. I have sent a copy of this letter to Mr Fenwick and I enclose a copy of our letter to him for your information.
4. As soon as practicable after determining the application, you should give notice of the decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1) of Schedule 14. I should be grateful if you would inform me when notice of the decision is given.

Yours faithfully

S Doran

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

DIR DL2



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Mr A Fenwick
Coach House
Heddington
CALNE
Wiltshire
SN11 0PQ

Your Ref:
Our Ref: FPS/Y3940/14D/1
Date: 19 July 2013

Applicant

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
Wiltshire Council

Non-determination of Wall to Wall Public Vehicular Highway to the East of The Old Coachworks, Heddington, running from Church Road in a North West direction for approximately 55 metres ("The Access Road")

1. I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to your application on 17 May 2013 for a direction to be given to Wiltshire Council under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981. The direction you have sought would require the Council to determine your application for an order, under section 53(5) of the Act, to modify the Council's Definitive Map and Statement of public rights of way for the area so as to upgrade part of Footpath 5 to a Byway Open to All Traffic to include its full width between boundaries.
2. The Council was consulted about your request for a direction on 28 May 2013 as required by the Act. The Council's formal response was received on 3 June 2013.
3. The Secretary of State takes a number of issues into account in considering how to respond to such requests and whether he should direct an authority to determine an application for an order within a specific period. These issues include any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any actions that the authority has taken or expressed intentions to take or further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

Your case

4. You were advised by the Council that it had 176 Definitive Map Modification Order applications outstanding spanning over 20 years, and that your application was ranked 176, therefore the Council appears to be making little or no progress.
5. You believe yours is a strong case for priority treatment as The Access Road is the

approved access to and within a new brownfield housing development which has extant planning permission. The approved access has Highway's approval and detailed planning consent. However, uncertainty over the status and extent of The Access Road has prevented the sale of the site to a developer for over 4 years because without the approved access, the planning consent cannot be implemented. Any further delay, you say, could thwart development due to the expiry of the outline consent. New brownfield housing is, you argue, a top Government priority. You say it is not reasonable to cause the development to be delayed for several decades due to non-determination of the application. Because the planning consent is due to expire, you seek that the Council be directed to determine the application within 3 months.

6. You were advised by the Council in 1990 that it was obtaining a copy of the 1910 Finance Act Map to determine the status and extent of The Access Road, but have received no copy or determination. You refer to the Court of Appeal case *Fortune v Wiltshire Council* [2012] EWCA Civ 334 which clarified that significant weight should be given to the colouring of roads in 1910 Finance Act maps. You say the depiction of The Access Road in these records indicates it is most probably a vehicular way. Furthermore, it would appear to be an ancient vehicular highway for access to open lands prior to their inclosure.
7. You point out that, compared to their handling of your case, the Council dealt swiftly with another application to upgrade a Footpath in Heddington to Byway, making an order in 11 months.

The Council's Case

8. The Council's Statement of Priorities is contained in its Rights of Way Improvement Plan (ROWIP) 2008-2012 at pages 50-51. It sets out how definitive map modification order applications are prioritised. In summary, applications based on user evidence are prioritised, and other applications dealt with in order of receipt. There are exceptions, for example where a route is obstructed and cannot be used, where there are discrepancies between rights on the ground and those shown on the Definitive Map causing major conflict, where a route is at risk of being lost, to resolve anomalies, and where an application meets the aspirations of the ROWIP. A new ROWIP is currently being prepared and applications will (in future) be prioritised on a points system, however, the Council cannot say at this stage where this application will be placed in its new list.
9. The Council states it has limited staff resources and its staff members are engaged with other work in addition to definitive map issues. Thus, whilst the Council has sympathy for members of the public who apply for definitive map modification orders based on historical evidence, it is simply not possible with current levels of resources to meet expectations. In view of the level of resources and workload, the Council considers it likely that this application will not be determined for another 20 to 22 years. Nevertheless, its current position in the list is 168 indicating some progress from position 176 when originally made.
10. This application (reference 2012/4) is based on historical evidence. The Council is aware of issues concerning rights of way and highway boundaries near to Mr Fenwick's property and have produced 3 reports to address his concerns (copies of which have been provided). Had these investigations raised any concerns that the Definitive Map and Statement was incorrect with regard to Heddington Footpath 5, then, the Council says, it is under a duty under the 1981 Act to correct the Map and

Statement. However, these investigations did not, Council officers concluded, adduce sufficient evidence to show that on a balance of probabilities part of Footpath 5 should be recorded as anything other than a footpath. In addition, the Council refers to a complaint concerning Footpath 5 made by Mr Fenwick to the Local Government Ombudsman. The provisional view (a copy of which has been provided) was not to pursue the complaint.

11. Council Officers commented on access arrangements in respect of the proposed development at the planning application stage. No objections were raised in respect of the effect of the development on public rights, the issue of any private rights not being a matter for the Council.
12. The Council says there has been ample opportunity for officers to consider prioritising this application over others, but does not consider it fits any of the exceptions set out in its current ROWIP, there being no substantial public loss or public benefit involved.
13. The case referred to by Mr Fenwick related to an application based on user evidence made in 2002, which due to the circumstances at the time, the Council was able to deal with in a timely manner and an order made in 2004, and confirmed in 2011.

Consideration

14. The Secretary of State has considered the Council's system of prioritising applications for definitive map modification orders as set out in its Statement of Priorities contained in the current ROWIP, and finds it to be reasonable.
15. Having regard to your application, the Secretary of State notes that it does not fall into any of the categories identified by the Council which would cause them to prioritise it above others based on historical evidence that are waiting to be determined. Whilst it is noted that your application has progressed some 8 places up the list since it was made in 2012, it is also noted that the Council does not anticipate its determination until 2033 at the earliest.
16. The Secretary of State understands that the Council has limited staff resources currently available to it to deal with applications such as yours, but notes that its officers have investigated and reported on matters connected to the application route and/or its environs on three occasions. These investigations have included sourcing and examining historical evidence relevant to the status and width of the way (the basis on which your application is made). Furthermore, it seems the Council has already reached preliminary views on these matters. Thus although the Secretary of State notes that the Council is following the system of prioritisation set out in its ROWIP, it is not considered reasonable for the Council to take a further 20 to 22 years to determine the application in the light of the relevant research already undertaken and the findings made so far. However, the Secretary of State acknowledges the Council will require further time to fully investigate and determine the application, and proposes that they be given 12 months to complete this.

Decision

17. In the circumstances, the Secretary of State has decided that there is a case for setting a date by which time the application should be determined. In exercise of the powers vested in him by paragraph 3(2) of the Schedule 14 to the 1981 Act, the

Secretary of State has directed Wiltshire Council to determine this application not later than 31 July 2014.

18. A copy of the Secretary of State's letter of direction to the authority is enclosed, and a copy of this letter is being sent to the authority.

Yours faithfully

S Doran

Authorised by the Secretary of State for Environment, Food and Rural Affairs to sign in that behalf

DIR DL1

Wiltshire Council

Northern Area Planning Committee

14 May 2014

INDEX OF APPLICATIONS ON 14/05/2014

	APPLICATION NO.	SITE LOCATION	DEVELOPMENT	RECOMMENDATION
6a	14/02367/FUL & 14/2730/LBC	Church House The Street Grittleton Chippenham SN14 6AP	Form New Opening Between Existing Laundry Room & Pool Area, Pool Enclosure & Reroofing of Lean to Roof of Garden Outbuildings (Resubmission of 13/00107/FUL)	To refuse planning permission
6b	14/02154/FUL	Rose Cottage, Corston, Malmesbury SN16 0HD	Side extension, Internal Alterations and Enlarge Front Porch	To refuse planning permission
6c	14/01293/OUT	Oak Hill House Upper Seagry Chippenham Wiltshire SN15 5HD	Erection of 6 New Dwellings (Outline)	To refuse planning permission

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REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	14th May 2014
Application Number	14/02367/FUL & 14/2730/LBC
Site Address	Church House The Street Grittleton Chippenham SN14 6AP
Proposal	Form New Opening Between Existing Laundry Room & Pool Area, Pool Enclosure & Reroofing of Lean to Roof of Garden Outbuildings (Resubmission of 13/00107/FUL)
Applicant	Mr & Mrs M Fish
Town/Parish Council	GRITTLETON
Ward	BY BROOK
Grid Ref	386016 180077
Type of application	Full Planning
Case Officer	Mark Staincliffe

Reason for the application being considered by Committee

The application has been called into committee at the request of Cllr Scott to discuss the impact of the development on the conservation area and listed building.

1. Purpose of Report

To recommend the planning & listed building applications for refusal

2. Report Summary

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

- Principle of development
- Impact of the development on the character and appearance of the Conservation Area
- Impact of the development on the character and appearance of the Grade II listed building

The applications generated 1 letter of support from neighbours. Grittleton Parish Council supports the planning application.

3. Site Description

Church House is a substantial Grade II listed building within the Grittleton Conservation Area. The site is also within an Area of Outstanding Natural Beauty.

4. Planning History

N/07/02611/LBC	Minor Internal Alterations- APPROVED
N/09/02232/LBC	Demolitions, Internal and External Alterations and Extension to Existing Dwelling- APPROVED
N/09/02230/FUL	Extension Following Demolition of Early 20th Century Additions- APPROVED
N/13/00107/FUL	Proposed Pool Enclosure and Installation of Solar Panels and Associated Works- REFUSED
N/13/00109/LBC	Proposed Pool Enclosure, Installation of Solar Panels and Associated Works- REFUSED
N/13/00577/FUL	Demolition of Two outbuildings; Erection of Three Outbuildings; Re-landscaping of Rear Gardens Including Lawn Terracing; Replacement of Length of Cypress Hedge With Yew; Retrospective Application For Hard Tennis Court Surface Within Domestic Curtilage- APPROVED
N/13/00578/CAC	Demolition of Two outbuildings; Erection of Three Outbuildings; Re-landscaping of Rear Gardens Including Lawn Terracing; Replacement of Length of Cypress Hedge With Yew; Retrospective Application For Hard Tennis Court Surface Within Domestic Curtilage- GRANTED
N/13/00587/LBC	Propose to Demolish a Concrete Shed Attached to a Wall Contiguous With a Listed Building. Proposed to Erect a Glasshouse & a Stone, Potting Shed Against a Listed Kitchen Garden Wall- GRANTED

5. The Proposal

The application seeks consent for the construction of a pool enclosure and the reroofing of a garden outbuilding.

6. Planning Policy

National Planning Policy Framework

Section 7: Requiring good design

Section 12: Conserving and enhancing the historic environment

North Wiltshire Local Plan

C3 (Development Control Core Policy)

NE4 (Areas of Outstanding Natural Beauty)

HE1 (Development in Conservation Areas)

HE4 (Development, Demolition or Alterations involving Listed Buildings)

Wiltshire Core Strategy Draft Submission

Core Policy 57: Ensuring high quality design and place shaping

Core Policy 58: Ensuring the conservation of the historic environment

Planning Practice Guidance

Conserving and enhancing the historic environment

7. Consultations

Conservation: Object for the following reasons:

I do not support the proposals to enclose the swimming pool due to the inappropriate scale and design of the structure, its awkward relationship with existing structures enormity of the built footprint that would connect the house with ancillary structures. These proposals would cause significant harm to the character, appearance and setting of the listed building and would be contrary to NPPF (section 12). I recommend refusal.

Grittleton Parish Council: Support

8. Publicity

One letter of support was received:

We live next door to Church House and don't believe that the proposed development will have an adverse effect on the listed building itself. Furthermore, as it will be largely invisible to the surrounding properties I can see no reason not to support the proposal.

9. Planning Considerations

Background

The proposal relates to the construction of a pool enclosure and the reroofing of an existing outbuilding. An enclosure over the pool has previously been in situ but this has since been removed.

Planning permission was refused under delegated powers for a similar development in 2013. This decision was not appealed.

Policy

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on decision makers in considering whether to grant permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 16(2) of the same Act imposes a similar duty in respect of applications for listed building consent.

Chapter 12 of the National Planning Policy Framework (NPPF) requires that, when considering the impact of a proposed development on the significance of listed buildings, great weight should be given to their conservation, and that any harm or loss should require clear and convincing justification.

Under section 72 of the Act there is a requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of buildings in a conservation area. Consideration must also be given to the impact of the development on the character and appearance of the conservation area

Impact on the character and appearance of the listed Building and Conservation Area

The listing description focuses on the fine architectural details of the front elevation whilst the rear elevations are considered to be more modest. Nevertheless, part of the significance of this building, as a designated heritage asset, lies in its remarkably intact overall form.

Although the previous swimming pool enclosure would have appreciably increased this wing's scale as an addition to the building, it has gone and permission is required for its replacement. Moreover, Chapter 12 of the NPPF requires that, when considering the impact of a proposed development on the significance of listed buildings, great weight should be given to their conservation, and that any harm or loss should require clear and convincing justification, the fact that a structure was previously present is not sufficient justification to override established guidance.

As a matter of fact the proposed development would detrimentally alter the character of the property. The outbuildings would no longer be read as outbuildings as they would be linked to the main dwelling. The existing dwelling retains evidence of its origins and original layout, as a distinct separation between the outbuildings and the dwelling remains. The separation of the outbuildings from the principle dwelling clearly sets out the character and relationship and gives meaning to the outbuildings role and position within the layout of this group of buildings. The joining of the outbuildings to the existing dwelling would erode the historic importance of the building.

In addition, the swimming pool enclosure would result in a somewhat awkward appearance where it adjoins and engulfs the existing boot room/laundry room and the variation in eaves/ridge heights between the existing single storey projection and the proposal.

For the reasons set out above the proposed extension would therefore cause harm. Moreover, under section 72 of the Act there is a requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of buildings in a conservation area. In this regard Church House is an important element of the conservation area, and makes a significant contribution to the character and history of this village. Therefore, by harming this listed building in the way described above the proposal must also detract from the character and appearance of the conservation area

RECOMMENDATION

Planning permission is **REFUSED** for the following reason:

The proposal by reason of the scale, design and awkward relationship with the existing property and outbuildings would cause significant harm to the character, appearance and setting of the listed building. The proposal is therefore contrary to Policies HE4 and C3 of the North Wiltshire Local Plan 2011 and advice contained within sections 7 & 12 of the National Planning Policy Framework and the Planning Practice Guidance 'conserving and enhancing the historic environment'.

Listed building consent is **REFUSED** for the following reason:

The proposals will harm the significance of the heritage asset, its setting and its contribution to the local character and distinctiveness of the area. The proposed large flat roof with prominent roof lantern, enveloping the laundry room and uniting the house with its service buildings will be contrary to policies in the NPPF as they will not sustain or enhance the significance of the heritage assets, would not make a positive contribution to the economic vitality of the area or to local character and distinctiveness. The proposals would lead to less than substantial harm to the significance of the designated heritage asset but there are no public benefits of this proposal against which the harm could be outweighed. The proposed development is therefore contrary to paragraph 131 & 134 of the NPPF, Policy HE4 of the North Wilts Local Plan and Policy 58 of the Wiltshire Core Strategy Pre-submission document.

Listed Building Consent is **REFUSED** for the Following Reason:

The proposed development results in harm to the historic fabric, character and setting of the heritage assets at the site including the principle listed building. The development is not justified by any overriding material considerations or identified public interest. The proposals are in conflict with policies C3(ii) and HE4 of the North Wiltshire Local Plan 2011 and paragraphs 17, 131, 132 & 134 and Section 12 of the National Planning Policy Framework and PPS5 Historic Environment Planning Practice Guide paragraphs 79, 85, 87, 114 & 116 and S.66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990



REPORT TO THE AREA HUB PLANNING COMMITTEE

Date of Meeting	14th May 2014
Application Number	14/02154/FUL
Site Address	Rose Cottage, Corston, Malmesbury SN16 0HD
Proposal	Side extension, Internal Alterations and Enlarge Front Porch
Applicant	Mr Keith Metcalfe
Town/Parish Council	Malmesbury Town Council
Grid Ref	392459 184060
Type of application	Full Planning
Case Officer	Richard Sewell

Reason for the application being considered by Committee

The application is being presented to Committee at the request of Councillor John Thomson to consider the visual impact on the existing building and the benefit to the community

1. Purpose of Report

To consider the above application and to recommend that permission is refused.

2. Report Summary

The main issues when considering this application are :

- Impact on the existing dwelling and setting of the adjoined Grade II Listed Building
- Personal circumstances of the applicant balanced against the long term harm of the proposed extension

3. Site Description

The proposal site is situated in the village of Corston. The existing dwelling is situated in a prominent location within the village fronting the A429 highway. The proposal site is clearly visible from the highway when travelling through the village from both the north and south directions. The existing dwelling is a two storey semi detached cottage constructed of natural stone walls and interlocking clay double Roman roof tiles. Attached to the dwelling is large, white UPVC conservatory that extends along the side and rear elevations. The conservatory was permitted in 1997 and is a prominent feature of the dwelling despite being of poor aesthetic value. To the rear of the dwelling is a pitched roof, two storey extension with dormer window on the north west elevation. An existing pitched roof entrance porch is located on the front elevation of the dwelling as are two first floor windows and one ground

floor. The dwelling also features a separate pitched roof garage and front garden with patio area at the side.

Rose Cottage is a semi detached undesignated heritage asset adjoined to a house called Lynian, which is Grade II Listed and dates from the C17. The pair are set back from the road behind low stone walls. Lynian is two storeys plus an attic, with a steeply pitched roof. Rose Cottage, which is of a later period than Lynian, is two storeys but a smaller scale than its listed neighbour, so the ridge of the roof to Rose Cottage is not far above the eaves of Lynian. The ridgeline height of Lynian is 7.4m, which is 1.1m higher than Rose Cottage which has a ridge line height of 6.2m. The height of the conservatory is 4.7m and whilst the white frame of the conservatory stands out somewhat, care has obviously been taken to ensure that there was a similar step down in ridge heights from the cottage to conservatory as there was between the cottage and Lynian. This hierarchy of scale is further emphasised by the front elevations of Rose Cottage and the conservatory being set back from the front elevation of Lynian.

4. Planning History

13/04827/PREAPP- Two Storey Extension to Dwelling REFUSED

97/01825/FUL- Erection of Conservatory (Alternative to 96/00721/FUL) PERMITTED

96/00721/FUL- Erection of Conservatory PERMITTED

88/01348/FUL- Extension to Dwelling, Garage and New Access PERMITTED

5. The Proposal

The proposed extension to Rose Cottage is for a two storey side and rear extension and enlarged entrance porch on the front elevation. The proposed will create a living/dining room on the ground floor and two additional first floor bedrooms, one of which will be en-suite with dressing room. The existing conservatory is to be demolished to make way for the proposed extension. This would square off the entire footprint of the cottage, raise the ridge of the extension to match that of the existing dwelling and almost double the side of Rose Cottage and obliterate the existing proportions and floor plan. The proposals will result in a far more dominant structure that will reduce visibility towards the heritage asset when approaching the site from the north and will appear to double the length of the front elevation, dwarfing the front of Lynian.

Four additional windows are proposed on the front elevation with two on the first and two on the ground floors. Further to this, the existing porch will be enlarged by a lean to extension with the front elevation of the porch measuring 3.9m wide. The rear extension will require an additional pitched roof to allow the additional space required for the upstairs bedrooms. A dormer window is proposed on the first floor of the northwest elevation with an additional first floor window proposed at the gable end of the first floor. Below this on the ground floor, double doors and full length windows will look out into the garden. The materials of the proposed extension, doors and windows will match the natural stone, clay double roman roof tiles and UPVC windows the existing.

6. Planning Policy

NPPF Para 17 Core Planning Principles

NPPF Section 7: Requiring Good Design

NPPF Section 12: Conserving and Enhancing the Historic Environment

C3 Development Control Policy

H8 Residential Extensions

HE4 Development, Demolition or Alterations Involving Listed Buildings

7. Consultations

Malmesbury Parish Council- SUPPORT

Malmesbury & St Paul Without Residents' Association- SUPPORT

Conservation- OBJECTION.

The quantity of accommodation proposed will result in a substantial extension to this cottage that will harm the character, appearance and setting of the adjacent Listed Building. There are ways that an additional bedroom could be added to Rose Cottage that would be far less harmful to the heritage assets.

The proposed extensions at Rose Cottage would be contrary to paragraph 131 of the NPPF (2012) as they would not sustain or enhance the significance of the heritage assets and are not necessary for their viable use, they would not make a positive contribution to sustainable communities, including economic vitality and they would not make a positive contribution to local character and distinctiveness.

The proposals will lead to less than substantial harm to the significance of the designated heritage asset [Lynian] but there are no public benefits from this proposal and it is not necessary to secure its optimum viable use. The development is therefore contrary to paragraph 134 of the NPPF (2012).

The proposed extensions are over-large and inappropriately detailed. They would harm the significance of the Rose Cottage (undesignated heritage asset) and, due to its close proximity, the significance of the adjoining designated heritage asset (Lynian). This would be contrary to paragraph 135 of the NPPF (2012).

8. Publicity

4 letters supporting the application and 1 list containing 10 signatures also in support.

9. Planning Considerations

Long term impact on existing dwelling and adjoined Listed Building:

The materials of the proposed extension are considered to be an improvement to the white UPVC of the existing conservatory. There will be no significant impact on the privacy or amenity currently awarded to the surrounding properties. However, the size and scale of the extension does not respect the existing proportions of Rose Cottage. The continuous roof scape and extended front elevation will completely alter the external appearance and massing of the cottage and will detract from the visual aesthetic of the attached Listed building and overall street scene. Despite the proposed extension not extending out further than the existing footprint of the conservatory, it will almost double the footprint of the dwelling resulting in an over dominant development that significantly alters the historic cottage appearance. Such an enlargement results in the front elevation appearing stretched and out of proportion and the poor design of the north west elevation will be clearly visible from the highway. The enlarged entrance porch is considered excessive and an unnecessary feature on the front elevation. Both the size and scale of the proposed extension and entrance porch are considered to have a negative impact on the appearance of both the existing dwelling and the setting of the adjoined Grade II Listed Building.

Personal circumstances of applicant:

The applicant has pointed to the need to extend the existing dwelling to provide additional accommodation and living space for their disabled son who suffers from Kabuki Syndrome and autism. The applicant has stated that a master en-suite with dressing room is required for their son together with an additional fourth bedroom to provide accommodation for a carer to stay over when required. The proposed layout of the ground floor is to create a larger family living/dining area which the applicant has stated is also for their son. Pre-Application discussions between the Case Officer and applicant explored various options to provide the required additional living space and accommodation in a way that would be considered more acceptable in terms of design and scale. The applicant was informed that either a single story side extension or a reduction in size and scale of the proposed two storey extension would be the preferred options. Following a discussion with their builder, the applicant feels that neither option can provide the desired amount of additional accommodation or living space and so the proposal has remained the same.

It is not considered that the proposals would result in significant harm to existing residential amenities of neighbouring properties such that consent ought to be refused on this basis..

10. Conclusion

The personal circumstances of the applicant to provide additional living space and accommodation for a family member with unfortunate health complications are appreciated and have been taken into consideration as part of this assessment. The Case Officer is sympathetic to the needs of the applicant but feels that the design of the proposal results in significant harm to interests of acknowledged importance and has suggested to the applicant other alternative and less harmful options. In this case, the personal circumstances of the family have to be balanced against the harm that would arise from the proposed extension as this would continue to exist long after the personal needs of the applicant have ceased. In this instance, it is felt that the personal needs of the applicant do not outweigh the concerns in respect of the harm that would arise to the character and appearance of the existing property and adjoined Listed Building. Due to its prominent location fronting the highway, the proposed extension and alterations will have a detrimental impact on the rural village appearance of the locality. Despite not being a designated Conservation Area, this part of Corston is in an attractive setting and the proposed development is not considered to be in keeping with the character of the historic cottages in this area.

RECOMMENDATION

That planning permission be refused for the following reasons:

1. The long term visual impact of the proposed extension and entrance porch is considered significant enough to negate the personal circumstances of the applicant. Therefore, by way of its design, scale and location the proposal is not considered to be in keeping with the host dwelling and also not considered to show respect to the local character and street scene and is therefore contrary to Policies C3 and H8 and the NPPF Paragraph 17 and NPPF Section 7: Requiring Good Design.
2. The proposed extension does not preserve or enhance the character and appearance of the adjoined Grade II Listed Building or its setting. The public benefit of the proposal is not considered to outweigh the less than significant harm the proposed extension will have on the adjoined heritage asset. Therefore the proposed is considered contrary to Policy HE4 of the adopted North Wiltshire Local Plan 2011 and the NPPF Paragraph 17 and NPPF Section 12: Conserving and Enhancing the Historic Environment paragraphs 131, 134 and 135

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REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	14th May 2014
Application Number	14/01293/OUT
Site Address	Oak Hill House Upper Seagry Chippenham Wiltshire SN15 5HD
Proposal	Erection of 6 New Dwellings (Outline)
Applicant	Mr K Lloyd
Town/Parish Council	SEAGRY
Ward	KINGTON
Grid Ref	394604 180829
Type of application	Full Planning
Case Officer	Mark Staincliffe

Reason for the application being considered by Committee

The application has been called into committee at the request of Cllr Greenman as the community benefit in terms of underpinning parish sustainability outweighs the negative.

1. Purpose of Report

To recommend the planning application for refusal

2. Report Summary

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

- Principle of development
- Impact on the character and appearance of the area
- Highway safety
- Onsite/onsite drainage
- Impact on residential amenity

The application generated 12 letters of objection from local residents. Upper Seagry Parish Council support the planning application

3. Site Description

The site is located on the Eastern outskirts of the village of Upper Seagry, in close proximity to the settlement but beyond the development framework boundary. The land to which the application relates comprises some 0.24ha of residential garden and is otherwise undesignated under the adopted North Wiltshire Local Plan.

The land to the immediate North of the site has been developed to provide a 'courtyard development' consisting of a series of modern terraced properties, whilst the other dwellings within the locality are of various ages and designs, majority of these are set back from but front the highway.

The site itself is very spacious and has numerous mature trees on its boundary. The land to the South and East is characteristically open and consists of allotments, a village hall and open countryside. The characteristic of this part of the village is a transition of semi rural to rural with low density development located on very generous plots. At present vehicular access into the site is taken from Henn Lane adjacent to the rear gardens of The Court Yard.

4. Planning History

- N/04/00992/FUL USE OF DWELLING WITHOUT COMPLIANCE WITH CONDITION 2 OF PLANNING PERMISSION 78/0730/OL
- N/03/01998/TCA TREE FELLING AND SURGERY WORK
- N/04/00992/FUL NEW ACCESS INTO Paddock
- N/04/02261/FUL TWO STOREY REAR EXTENSION; ERECTION OF CONSERVATORY AND INSERTION OF DORMERS INTO EXISTING ROOFS

5. The Proposal

The application seeks consent for the construction of 6 new dwellings (3 Affordable Houses and 3 Open Market Houses). The application has been submitted in outline form with all matters reserved.

6. Planning Policy

North Wilts Local Plan

- C3: Development Control Core Policy
- NE15: The Landscape Character of the Countryside
- H4: Residential Development in the Open Countryside
- H7: Affordable Housing on Rural Exceptions Sites
- CF3: Provision of Open Space

Wiltshire Core Strategy

- CP44 (Rural Exceptions Sites)
- CP48 (Supporting Rural Life)

NPPF

- Section 1: Building a strong, competitive economy
- Section 3: Supporting a prosperous rural economy

Section 6: Delivering a wide choice of high quality homes
Section 7: Requiring good design
Section 11: Conserving and enhancing the natural environment

National Planning Guidance

7. Consultations

Public Open Space I have estimated the cost using a dwelling mix of 3 no. 2 beds and 3 no. 3 beds. This generates a POS requirement of 342m² and equates to an offsite contribution of £16,130.

It should be noted that due to the viability concerns I have used a calculation which is based on the cost POS, rather than a profit based calculation. The calculator referenced in Policy CF3 of the local plan would generate a requirement for £30,100.

Drainage: Awaiting comments- These will be reported as a late item.

Seagry Parish Council: Following a very lengthy (but useful) discussion the Parish Council decided (by a narrow majority) to recommend approval to the planning authority.

Indoor Sports Facilities: The Sport England Facilities Calculator estimates the amount of demand a given population creates for swimming pools, sports halls, indoor bowls and artificial turf pitches taking into account known local (in this case North Wiltshire) levels of physical activity and converts this demand on indoor leisure facilities into a financial contribution.

For this development, working on 2.3 people per dwelling the Calculator recommends the following contribution based on 6 dwellings:

Halls	£2,660
Indoor Bowls	£276
Artificial Turf Pitches	£309

Arboriculturist & Landscape: I note on Page 10 of the Planning Justification dated February 2014 that reference is made for the retention of trees on site. It states:-

In all cases the various layouts were guided by the desire to maintain the existing tree boundaries and all new development has been shown outside the surveyed canopies.

For this reason, I have no objections in principle to this development, but I would request the following information, if a Reserved Matters application was submitted:-

- Full Tree Survey (which is not included in this outline application);
- Plan showing all trees to be removed and retained;
- Plan with all retained trees with their Root Protection Areas
- Arboricultural Method Statement;
- Plan showing position of utility services in relation to trees;
- Details of hard and soft landscaping design.

Housing: This application is outside the framework boundary of Seagry. This application could be considered under Policy H7, but only as an affordable housing site, no open market.

Policy H7 “Affordable Housing on Rural Exceptions Sites” states:

As an exception to normal planning policies small affordable housing developments will be permitted outside and adjoining the Framework Boundaries of all villages in the District provided that:

- i) There is a demonstrable local need for affordable housing which cannot otherwise be met; and
- ii) The scheme must be capable of implementation and proper management to ensure that the benefits of the provision of affordable housing to meet local needs will be held in perpetuity.

I have reviewed the housing register and there are currently 13 households seeking an affordable home in Seagry and the adjoining villages as a 1st preference, not including bronze band (people who are adequately housed, but may be interested in a shared ownership product). To support any exception site a rural housing need survey is required, to demonstrate point (i) above.

Highways: The site location is outside the planning policy boundary for Upper Seagry and could be seen to be the equivalent of buildings in the open countryside.

However, I am mindful of the actual built limits and the pedestrian and public transport facilities. Upper Seagry has limited community facilities and work/shopping facilities but does have a school. As such the location of the proposal does raise highway concerns in regards to sustainability.

If this policy objection is set aside I am minded to make the following comments:

- Adequate access can be created to accommodate the vehicle movements associated with 6 dwellings.
- The access road should have a width of no less than 5.5m and visibility of 2.4m x 43m in each direction.
- Internally the applicant should be designing car parking spaces with adequate visibility. From the indicative plan it looks as if the corners of the buildings could negatively affect the necessary visibility.
- The parking standards should meet current adopted standards of 2 spaces (no garages) per 2-3 bed and 3 spaces for a 4 bed and above.
- Adequate turning should also be provided.
- I would think that it is unlikely we would be looking to adopt the development as it does not offer any particular highway benefit and as such there should be a provision of an adequate bin storage area for road side pickup.
- If we are not to adopt the development the applicant shall be expected to enter in to a S220 notice with the Highway Authority and a S106 agreement detailing a management company for the road.

8. Publicity

12 letters of objection were received. The objections are summarised below:

- The density is too high and out of character with the surrounding area
- The entrance to the site is too close to the junction Henn Lane and is therefore dangerous.
- Insufficient car parking proposed
- Flooding occurs near the proposed access, this issue should be resolved
- The development is likely to result in the loss of the trees on site

- Has the look of a commercial suburban development
- The development is outside the village boundary
- The justification is based on a perceived need for affordable local housing, based on an outdated study and takes no account of recent developments in the local area.
- The increase in hard surfaces will increase run off and flooding.
- Housing will be located very close to the plot boundary; this will overshadow and overlook back gardens and habitable windows.

9. Planning Considerations

Background

The proposal relates to the erection of six dwellings, each with associated access, parking and domestic curtilage. At this outline stage, no design details are provided, although the indicative plans would indicate three detached and 3 terraced family houses of a relatively urban layout and appearance.

Each is to be positioned towards the extremities of the site fronting onto the new access road with a parking area immediately to the front of each property. The single private access from the adjacent highway will serve these properties as well as the existing dwelling on site.

Three plots will be of comparable size and three having a small curtilage. The built development will not address the street, with rear and side elevations being the predominant feature when viewed from public vantage points. The larger detached dwellings would appear to have detached garages and the terraced dwellings will have allocated parking spaces. As with all other details, the design of the dwellings is a reserved matter. However, the indicative plans would indicate two-storey dwellings.

Policy

It is considered that the proposed development fails to accord with either of the settlement strategies defined in the adopted Local Plan or emerging Core Strategy in respect of the provision of new housing. Similar applications have recently been refused on the grounds that they represent development of open market housing outside of the development framework boundary.

The proposal cannot be regarded as a rural exception site under Policy H7 of the adopted Local Plan. In this instance, there is no evidence to suggest that the site has been selected by a sequential process, that the proposed units relate to local demand nor, crucially, that proposals have been generated in conjunction with the Parish Council and a housing association or other suitable provider.

For the reasons given above, the proposal can only be considered in relation to Policy H4 of the Local Plan, which refers to residential development outside of framework boundaries. Clearly the proposed dwellings fall outside of the village framework boundary and lack any other material justification for their erection.

Flooding

Local residents have raised concerns relating to flooding adjacent to the site and the implication of the new development on this identified issue.

It is important to note that the site is not within a flood zone, a flood risk assessment is therefore not required. For the avoidance of doubt, comments have been requested from the Council's drainage Officer to determine if there is an issue.

Should planning permission be granted for the development it is likely that a condition relating to the need to provide details of a sustainable urban drainage system would adequately overcome the concerns raised by local residents. Comments relating to drainage will be reported as a late item.

Layout

Although the scheme for the whole site was submitted in outline, The indicative layout highlights strong reservations that the overall design would fail to meet the requirements of local and national policy and The Urban Design Compendium 2 to achieve a high quality of design and layout in all new developments. Policy C3 of the local plan requires, amongst other things, development to respect the local character and distinctiveness of the area with regard to design, size, scale, density, massing, siting and layout. This policy is consistent with section 7 of the NPPF and should therefore be afforded full weight when determining this application.

In broad terms, the desire to accommodate six dwellings would dominate this semi rural site, such that the housing layout would inevitably appear squeezed onto this small plot. This in itself is likely to create other problems of residential amenity, poor layout, inadequate amenity space, frontages dominated by hardstanding and parking.

The applicants' desire to accommodate the number and size of units proposed, with frontage parking and very little landscaping results in a disjointed parcelling of this land resulting in a cramped illustrative residential layout. The pattern of development shown on the indicative plans does not reflect the grain or character of the area and is at odds with it.

Furthermore, the scheme would introduce an unwarranted suburban appearance to the immediate surroundings. It is likely that the proposal would introduce large areas of hardstanding, new kerbs and lighting detrimentally affecting the established character of the area. The indicative layout plan also indicates a disappointing lack of variation that exacerbates this generic, suburban effect with little regard for the traditional pattern and character of typical local properties and the layout of the area. These concerns are echoed and significant reservations are held as to the degree of sympathy afforded to the local context by the current approach.

Settlement Boundary

The emerging Wiltshire Core Strategy (CS) would remove the Framework Boundary for Upper Seagry and designate it as a 'small village'. CS Policy CP2 would support development meeting local housing needs but limit development to infill within the existing built area subject to considerations of existing character and form of development. However, only limited weight can be attached to the Core Strategy because it is awaiting an Inspector's report following examination.

5 Year Land Supply

In accordance with the NPPF (para. 49), the Wiltshire Core Strategy must provide a five year supply of housing against housing requirements.

The applicants claim that the Council is unable to demonstrate a five year supply of deliverable housing land and argue that this is a reason to override policies of the local plan. The Council can demonstrate a sufficient supply of land for new housing for the North and West Wiltshire Housing Market Area. There is no shortfall in provision. Far from it, current proposals boost significantly the supply of housing. There appears to be no justification on this basis to set aside well founded Development Plan policies aimed at protecting the countryside and managing the use of greenfield sites.

Furthermore, the development proposed is unlikely to have any significant impact on the delivery of housing towards the Council's five year land supply.

10. Conclusion

For reason of the inadequacy of the proposal to come forward as a robust affordable housing exception scheme and unacceptability as new residential development outside of the framework boundary in any other capacity, under the current adopted Local Plan or emerging settlement strategy, it is considered that the proposal is unacceptable in principle.

The indicative scheme also appears to bear other negative implications for the character of the immediate area, the scheme is likely to introduce a suburban appearance to this characteristically rural-fringe setting. Methodology on how the scheme has evolved was submitted with the application and this fails to overcome the concerns set out above. Until indicative plans are submitted demonstrating a comprehensive layout and design that would accord with the character of the area, reservations are held in this respect also.

RECOMMENDATION

Planning permission is **REFUSED** for the following reasons:

The proposed development, by reason of its location, siting and lack of justification as a rural exception site represents an unwarranted residential development outside of the development framework boundary contrary to Policies H4 and H7 of the adopted North Wiltshire Local Plan 2011 and Policies CP2, CP10 CP44 and CP48 of the emerging Wiltshire Core Strategy.

The development, by reason of its layout and aspect represents a detrimental intrusion into the adjacent countryside and fails to accord with Policies C3 and NE15 of the adopted North Wiltshire Local Plan 2011 and Sections 6, 7 and 11 of the National Planning Policy Framework.

In accordance with the NPPF there is a deliverable 5 year supply of land for housing in place and there are no other material considerations that outweigh this position. As such, the balance of considerations is such that planning permission should not be granted having regard to policies H1 & H4 of the North Wilts Local Plan and CP2, and CP10 of the Draft Wiltshire Core Strategy and guidance in the National Planning Policy Framework, in particular at paragraphs 12, 14, 17, 47, 49, 150, 183, 184, 185, 196, 209, 210, 211, 212, 214, 215, 216.

The proposed development does not make any provisions for securing affordable housing on the site or financial contributions towards open space on the site, community facility, indoor leisure provision. The application is therefore contrary to Policies C2, H5 and CF2 & CF3 of the North Wiltshire Local Plan 2011.

