

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 5 November 2014
Time: 3.00 pm

Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email william.oulton@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 Trevor Carbin	Cllr Christopher Newbury
Cllr Ernie Clark	(Chairman)
Cllr Andrew Davis	Cllr Horace Prickett
Cllr Dennis Drewett	Cllr Pip Ridout
Cllr John Knight (Vice-Chair)	Cllr Jonathon Seed
Cllr Magnus Macdonald	Cllr Roy While

Substitutes:

Cllr Nick Blakemore	Cllr Stephen Oldrieve
Cllr Rosemary Brown	Cllr Jeff Osborn
Cllr Terry Chivers	Cllr Graham Payne
Cllr Russell Hawker	Cllr Fleur de Rhé-Philippe
Cllr Keith Humphries	Cllr Jerry Wickham
Cllr Gordon King	

AGENDA

Part I

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

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

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

To approve and sign as a correct record the minutes of the meeting held on 24 September 2014.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

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

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 2.50pm 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 (acting on behalf of the Corporate

Director) no later than 5pm on Wednesday 5 November. 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 **Right of Way Applications**

6a **West Ashton 1 (Part) Rights of Way Modification Order 2014**
(Pages 5 - 46)

7 **Planning Applications**

To consider and determine the following planning applications:

7a **14/04399/FUL - Land off Lewington Close and Longford Road, Melksham, Wiltshire** *(Pages 47 - 60)*

7b **14/05120/FUL - Land North of Goose Street, Southwick, Wiltshire** *(Pages 61 - 70)*

7c **14/07674/FUL - Land at 347 Snarleton Lane, Melksham, Wiltshire, SN12 7QP** *(Pages 71 - 82)*

7d **14/08400/FUL - Plot adjacent to 'Beechwood', Bratton Road, West Ashton, Trowbridge, BA14 6AZ** *(Pages 83 - 94)*

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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WESTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 24 SEPTEMBER 2014 IN THE COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Trevor Carbin, Cllr Terry Chivers (Substitute), Cllr Ernie Clark, Cllr Andrew Davis, Cllr Gordon King (Substitute), Cllr John Knight (Vice-Chair), Cllr Christopher Newbury (Chairman), Cllr Horace Prickett and Cllr Pip Ridout

107 Apologies for Absence

Apologies for absence were received from Councillors Dennis Drewett, Gordon King, Jonathon Seed and Magnus Macdonald.

Councillor Drewett was substituted by Councillor Terry Chivers.
Councillor Macdonald was substituted by Councillor Gordon King.

108 Minutes of the Previous Meeting

The minutes of the meeting held on 3rd September 2014 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on the 3rd September 2014.

109 Chairman's Announcements

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

110 Declarations of Interest

There were no declarations of interest.

111 Public Participation and Councillors' Questions

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

112 Planning Applications

The Committee considered the following application:

113 14/05253/FUL: Land West of Ganbrook Farm, Little Chalfield, Wiltshire

Public Participation:

Charles Potterton spoke in objection to the application.
Christopher Morley spoke in objection to the application.
Sarah Morley spoke in objection to the application.

Peter McLaren spoke in support of the application.
Anthony Fuller spoke in support of the application.
Adam Tucker spoke in support of the application.

John Kirkman spoke as a consultee on behalf of CPRE in objection to the application.

The Planning Officer outlined the report which recommended the application for approval subject to conditions. The site description and an overview of the proposed development were also given. The Planning Officer outlined the relevant planning policy, consultation and relevant planning considerations. The Senior Landscape and Design Officer gave more detail in respect to the applications impact on the landscape. In response to a question, officers gave more detail regarding the views of one of the consultees, namely English Heritage.

Members of the public were invited to speak on the application as listed above.

Councillor Terry Chivers, as the local member, spoke in objection to the application. The main issues were noted as: the level of objection in the community, highways issues, and cumulative effect. The debate focused on the impact of the proposed development on the character of the area. A motion was put forward to refuse the application. At the end of the debate it was;

Resolved

To refuse planning permission for the following reasons:

- 1. The proposal by reason of its size and scale would result in a dominant and uncharacteristic form of development which introduces a series of uncharacteristic utilitarian structures across the open field together with security fencing and cameras causing unacceptable visual harm to the landscape character and appearance of the site and the wider landscape setting. This would conflict with policies C1 and C34 of the West Wiltshire District Plan (1st Alteration) and with policies CP42(i) and CP51 of the emerging Core Strategy (April 2014 tracked changes version) and with the Government's Planning Policy guidance that recognises that large scale solar farms can have a damaging effect on the landscape.**

In response to a request the following votes were recorded in favour of the resolution to refuse permission: Councillors Ernie Clark, Terry Chivers and John Knight.

114 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: Times Not Specified)

The Officer who has produced these minutes is Will Oulton, of Democratic Services, direct line 01225 713935, e-mail william.oulton@wiltshire.gov.uk

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

5 NOVEMBER 2014

WILDLIFE AND COUNTRYSIDE ACT 1981

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

The Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014

Purpose of Report

1. To:
 - (i) Consider the evidence and duly made objection relating to the above Order.
 - (ii) Recommend that the Order be submitted to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it is not confirmed.

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network fit for purpose.

Background

3. In January 2013 the Council received an enquiry regarding the route of Footpath 1 West Ashton in association with the exchange of contracts for the sale of Manor View, Bratton Road, West Ashton. Footpath 1 was revealed as passing through Manor View and its garden. The solicitors acting for the owners of Manor View applied to the Council for an Order under Section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement. The application seeks to delete that section of Footpath 1 which runs through the property and add the route currently available for the public to use and signed by the Council as a public footpath. The alternative route runs along the south eastern and north eastern boundaries of Montrose and 17a Bratton Road, as shown on the plan attached at **Appendix A**.
4. The Council has a duty to investigate applications of this nature and to make an Order if, on the balance of probability, it is reasonably alleged that public rights exist over the claimed route and to delete a way if evidence comes to light that there is no public right of way of any description on the Definitive Map.

5. Officers considered all the evidence available to them and concluded in a Decision Report attached at **Appendix B** that the Definitive Map ought to be modified to reflect the change as shown on the plan attached at **Appendix A**.
6. On 29 July 2014 a Definitive Map Modification Order was made under Section 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 seeking to bring the changes referred to in paragraph 3 above into effect. The Order was duly advertised and an objection was received to the making of the Order from Mr Francis Morland.

Main considerations for the Council

7. Wiltshire Council is the Surveying Authority for the county of Wiltshire excluding the Borough of Swindon. Surveying Authorities are responsible for the preparation and constant review of definitive maps and statements of public rights of way. Section 53(2)(b) of the Wildlife and Countryside Act 1981 states:

As regards every 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.

8. The events referred to in subsection 2 of the 1981 Act which are relevant to this application are:

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

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic;
- (ii) that there is no 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.

9. The Definitive Map Orders: Consistency Guidelines produced by The Planning Inspectorate make the circumstances of when an error in the Definitive Map can be corrected:

“The Definitive Map and Statement are conclusive as to the status of highways described, generally without prejudice to the possible existence of higher rights (DEFRA circular 1/09). This conclusively is not, however, a

permanent feature: as Lord Diplock put it in *Suffolk CC v Mason* (1979) The entry on the definitive map does not necessarily remain conclusive evidence forever. It had been held, in the case of *Rubinstein v Secretary of State for the Environment* (1989), that once a right of way was shown on a definitive map, it could not be deleted, but the judgments in *Simms & Burrows* 1981 made it clear that Section 53 of the *Wildlife and Countryside Act 1981* allowed both for the addition or upgrading of rights of way on the discovery of new evidence, and for their downgrading or deletion. In his judgment Purchas LJ stated that he could see no provision in the 1981 Act specifically empowering the local authority to create a right of way by continuing to show it on the map, after proof had become available that it had never existed. Parliament's purpose, expressed in the *Wildlife and Countryside Act 1981*, he said, included the duty to produce the most reliable map and statement that could be achieved, by taking account of changes in the original status of highways or even their existence resulting from recent research or discovery of evidence. Parish/community councils usually provided the information regarding the routes to be added to the *Definitive Map and Statement* and the status of those routes. It is not uncommon for witnesses (e.g. local inhabitants, parish/community councils or user organisations) to assert that the parish/community council's imputes to the definitive map process are not reliable. It is variously argued that they did not have the proper guidance, to that they misinterpreted it, and these assertions then form the basis of the case for the modification. The Memorandum attached to Circular No 81 was distributed down to parish council/parish meeting level and the legal presumption of regularity applies. Unless claimants can demonstrate otherwise, it should be assumed that a parish/community council received this detailed guidance and complied with it. The diligence with which a parish/community council met the remit is a different question. The Council minutes can be a useful source of information on this procedure, and other local highway issues which have arisen since the relevant date. As the minutes are a public record of the perception of the parish/community council at that time, and therefore probably also represent the perception of parishioners, they may carry significant evidential weight. Other procedural guidance was issued to surveying authorities in Circulars 91/1950, 53/1952 and 58/1953.

In *Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] the judge commented that modification of the definitive map requires the discovery of evidence. An inquiry cannot simply re-examine evidence considered when the definitive map and statement was first drawn up; there must be some new evidence, which, when considered together with all other evidence available, justifies the modification.

When considering whether a right of way already shown on a definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all. See section 4 of Circular 1/09.

Trevelyan confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of Trevelyan that;
‘Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that it is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.’

10. The Council must consider all available relevant evidence.
11. West Ashton Parish Council claimed Footpath 1 at the preparation stage of the Definitive Map and Statement. On a form dated 20 May 1952 the path was described as derelict and was drawn imprecisely by the parish council on the maps provided by Wiltshire County Council to the parish council for the survey. The parish council subsequently asked Wiltshire County Council to amend what it said was a drawing error on the Definitive Map for West Ashton Footpath 1 where it junctions with Bratton Road. An amendment was made but at the 1:25000 scale of the map used to portray the alteration it is difficult to interpret the change.
12. The current parish council supports the change to the route of the footpath as shown at **Appendix A**.
13. The photographs submitted with the application show the alternative route proposed as a well established and defined route which appears to have existed for many years. The route is signed and maintained by Wiltshire Council. There is no evidence of a path through the curtilage of Manor View.
14. A consultation on the change proposed on the Plan at **Appendix A** was undertaken with the usual statutory and non statutory consultees and no objections were raised.
15. When Mr Morland wrote to the Council on 14 August to object to the Order he did not state the grounds on which he objected to it. Officers asked Mr Morland to give the reasons for his objection, which he did on 15 September. Mr Morland believes the Order contains a significant number of errors and other shortcomings which he believes render it unfit for purpose but he has also brought to officers’ attention mapping evidence which is directly relevant to the issues for the Council to consider. Mr Morland states:

‘To date I have only been able to access an incomplete set of historical Ordnance Survey maps available at Trowbridge Library, which include only two at a scale of 1:2500 (Wiltshire Sheet 38.12 Second Edition dated 1901

and Ordnance Survey Sheets ST8755 and ST8855 dated 1970) and others at smaller scales dated 1890, 1949, 1960, 1975 and 1988.

The provisional conclusions I draw from these and my site visits are as follows:

A footpath running eastwards from Bratton Road at Grid Reference ST 87966 55591 in Plot 67 was shown on the 1890 and 1901 maps and on the Definitive Map of 1953.

Subsequently, its route was blocked/obstructed/encroached upon by the construction of a building in Plot 67, at or close to the present site of the large house at 19 Bratton Road known as Homefield, and a different route to Bratton Road was brought into use, which terminated at point B and which was added to the Definitive Map at its first modification in about 1968 in circumstances I am not familiar with.

Subsequently, a house known as Montrose was built a little to the south-east of that route, not shown on the 1960 map but marked on the 1970 map.

Subsequently, that house was demolished and the bungalows now known as Manor View and Montrose, were constructed in its grounds (not shown on the 1975 map but marked on the 1988 map). It does not appear that the line of the footpath was blocked/obstructed/encroached upon either of these bungalows when first constructed; but at some later date (not recently) a garage extension was added on the south-east side of Montrose across the line of the footpath, which did sever it.

Meanwhile, an alternative route through the grounds of the house known as Montrose, first shown on the 1949 map, came into use and came to be believed by some to be the recorded right of way. That followed a more easterly route than the footpath to be added A – C, but the large modern house numbered 17A and known as Springfields (built since the 1988 map) now sits over and across that route. I have seen no evidence that that route was anywhere less than two metres in width.

Until the construction of Springfields, I have seen no evidence that most of the route A – C is of any significant age or any sufficient status to justify the Modification Order that has been made. The pieces of land in question appear to be in more than one ownership at present but may have all been in a single title at an earlier date and the title deeds dividing up that title may indicate more clearly how the present situation arose.'

Comment on the objection

16. Officers agree the 1953 Definitive Map showed Footpath West Ashton 1 on the route mapped by the Ordnance Survey on the County Series maps up to and including the 1926 edition. An alternative route was mapped by the Ordnance Survey, as shown on the 1949 map Mr Morland has referred to, but officers do not have any information as to when this route came into existence and who used the path. No evidence about public use has been submitted to the Council regarding this route. The Council only has the map produced at the Second and Special Review of the Definitive Map in 1972 resulting from

the 1968 parish council request to amend the route which it can rely upon. As Mr Morland points out, the route shown on the Second and Special Review map could have been available for public use until the line of the path was obstructed by the construction of the garage at Manor View which occurred after 1972. Looking at the Consistency Guidelines produced by the Planning Inspectorate outlined in paragraph 9 above which need to be applied in considering deleting a right of way from the Definitive Map, there is not sufficient evidence to prove that on a balance of probabilities the section of Footpath West Ashton 1 at Manor View ought to be deleted.

17. Mr Morland points out that he has not seen any evidence of use as a public footpath of the route, shown A – C on the plan at **Appendix A**, until the construction of Springfields 17A Bratton Road and this property has been built since 1988. Officers have no evidence of use of this route before Springfields was built, and no evidence was provided with the application, therefore it is not possible for the Council to conclude public rights exist over the claimed route.
18. In 'A Guide to definitive maps and changes to public rights of way' produced by Natural England the legal considerations to be taken into account in matters relating to definitive map modification orders are made clear. The guide, which is targeted at members of the public, states:

“Definitive map modification orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. So also is the need for public access, locally, if the order alleges that public rights do not exist.”

Evidence is the key

The definitive map is a legal recognition of existing public rights to walk, ride and use vehicles. As such, any proposal to modify it by means of a definitive map modification order to add a right of way has to be judged by the legal test: ‘Do the rights set out in the order already exist?’. If they do, then the map must be modified, regardless of any effect on anyone’s property interests, or whether or not the routes physically exist at the present time on the ground. Similarly, if the evidence in support of the order proves to be sufficient, and the test is not satisfied, then the map remains as it is, however desirable it may seem for the public to have those additional rights.

Evidence is also the key where the proposal is to remove some or all of the rights recorded on a way already shown on the map. In this case it must demonstrate clearly that a right of way, of that status, did not exist when it was first shown on the definitive map, and that an error was made.”

Safeguarding Considerations

19. Safeguarding considerations are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981. However, it is not considered a refusal to make the Order applied for will result in any detrimental effects upon safeguarding.

Public Health Implications

20. The implications of the proposal on public health are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981; however, it is not considered the proposed change will have any adverse implications on public health.

Environmental Impact of the Recommendation

21. The Environmental impact of the recommendation is not a consideration that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981; however, it is not considered the proposed change will have any environmental impacts.

Risk Assessment

22. Issues relating to health and safety are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981. It is not considered there is a reputational risk to the Council carrying out this statutory duty correctly.

Financial Implications

23. The continual review of the definitive map and statement are statutory processes for which financial provision has been made.
24. When 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 or representations that are not withdrawn, it must be forwarded to the Secretary of State for determination. It may be determined by written representations which would be no significant additional cost to the Council, a local Hearing with additional costs to the Council in the region of £300, or a Public Inquiry, with additional costs in the region of £5,000. The financial provision referred to in paragraph 23 above would cover these costs.

Legal Implications

25. Wiltshire Council has a legal duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly.

Options Considered

26. That:
- (i) The confirmation of the Order is supported as made.
 - (ii) The confirmation of the Order is supported with modifications.

- (iii) The confirmation of the Order is objected to.

Reasons for Recommendation

27. Under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map. This burden of proof has not been satisfied.

Recommendation

28. That the Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014 is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order is not confirmed.

Tracy Carter
Associate Director, Waste and Environment

Report Author:
Barbara Burke
Definitive Map and Highway Records Team Leader

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

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

Appendices:

Appendix A - Order Plan
Appendix B - Decision Report



KEY

Section of West Ashton Footpath 1 to be deleted A — B

Section of Footpath to be added A - - - C

Westholme Farm



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DECISION REPORT

Wildlife and Countryside Act 1981, Section 53

Report seeking approval to correct a drawing mistake on the Definitive Map relating to a short section of footpath 1 West Ashton

Purpose of the report

1. To seek approval for the making of an order under section 53 of the Wildlife and Countryside Act 1981 to correct a drawing error on the definitive map regarding the position of a short section of footpath 1 West Ashton as shown on the plan attached at Appendix 1 to this report.

Background

2. In January 2013 the council received an enquiry regarding the route of footpath 1 West Ashton in association with the exchange of Contracts for the sale of Manor View, Bratton Road, West Ashton. Footpath 1 was revealed as passing through Manor View and its garden.
3. Solicitors on behalf of the owners of Manor View applied to the council for an order under section 53 of the Wildlife and Countryside Act 1981 to delete that section of footpath 1 which runs through the property and add the route currently available for the public to use and signed by the council as a public footpath. The alternative route runs along the south eastern and north eastern boundaries of Montrose and 17a Bratton Road as shown on Appendix 1 to this report.
4. A statement from Mrs Morris, the owner of Manor View was submitted in support of the application, attached at Appendix 2 to this report. In her statement Mrs Morris explained a footpath currently exists on the ground between the properties Montrose and 17a Bratton Road. The path is signed and maintained by Wiltshire Council and this has been the case in her experience since 2006. Photographs of the alternative path are attached to the statement. Also attached to the statement are the title documents and plans for the property Montrose and 17a Bratton Road lodged with the Land Registry. These documents clearly show the strip of land from Bratton road to the field at the rear over which the footpath runs. The title documentation makes clear reference to the fact that 17a Bratton Road is 'subject to....any private or public rights of way affecting the said property'. The reference stems back to 1979 and therefore one can be certain that the footpath was in its present position between Montrose and 17a Bratton Road at that time.

5. The Warminster and Westbury Rural District Council area definitive map showed footpath 1 leaving the West Ashton to Bratton Road approximately 100 metres south of the vicarage. At the Second and Special review of the definitive map in 1972 on the application of the parish council the route of footpath 1 was amended to exist from the West Ashton to Bratton Road in the vicinity of Manor View, 17a Bratton Road and Montrose. Due to the small scale of the Second and Special Review map at two and a half inches to the mile it is not possible to see in detail the change at this location. A property in the plot containing 17A Bratton Road appears to have been built by the late 1940s or 50s and the plot within which Montrose has been constructed was a separate enclosure at that time with no footpath shown by the Ordnance Survey as passing through it. No footpath has ever been shown on an Ordnance Survey map passing through the plot Manor View is built upon. It would seem on the lack of evidence to the contrary that the change proposed at the Second and Special review in 1972 sought to reflect the line existing on the ground between Montrose and 17A Bratton Road and recorded by the Land Registry.

Legal considerations

6. Wiltshire Council is now the Surveying Authority for the county of Wiltshire excluding the Borough of Swindon. Surveying Authorities are responsible for the preparation and constant review of definitive maps and statements of public rights of way. Section 53(2)(b) of the Wildlife and Countryside Act 1981 states-

As regards every 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.

7. The events referred to in subsection 2 above which are relevant to this case are:

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

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over

which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic;

- (ii) that there is no 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.

8. The Definitive Map Orders: Consistency Guidelines produced by The Planning Inspectorate make the circumstances of when an error in the definitive map can be corrected:

‘The Definitive Map and Statement are conclusive as to the status of highways described, generally without prejudice to the possible existence of higher rights (DEFRA circular 1/09). This conclusively is not, however, a permanent feature: as Lord Diplock put it in *Suffolk CC v Mason* (1979) The entry on the definitive map does not necessarily remain conclusive evidence forever. It had been held, in the case of *Rubinstein v Secretary of State for the Environment* (1989), that once a right of way was shown on a definitive map, it could not be deleted, but the judgments in *Simms & Burrows* 1981 made it clear that section 53 of the Wildlife and Countryside Act 1981 allowed both for the addition or upgrading of rights of way on the discovery of new evidence, and for their downgrading or deletion. In his judgment Purchas LJ stated that he could see no provision in the 1981 Act specifically empowering the local authority to create a right of way by continuing to show it on the map, after proof had become available that it had never existed. Parliament’s purpose, expressed in the Wildlife and Countryside Act 1981, he said, included the duty to produce the most reliable map and statement that could be achieved, by taking account of changes in the original status of highways or even their existence resulting from recent research or discovery of evidence.

Parish/community councils usually provided the information regarding the routes to be added to the Definitive Map and Statement and the status of those routes. It is not uncommon for witnesses (e.g. local inhabitants, parish/community councils or user organisations) to assert that the parish/community council’s imputes to the definitive map process are not reliable. It is variously argued that they did not have the proper guidance, to that they misinterpreted it, and these assertions then form the basis of the case for the modification. The Memorandum attached to Circular No 81 was distributed down to parish council/parish meeting level and the legal presumption of regularity applies. Unless claimants can demonstrate otherwise, it should be assumed that a parish/community council received this detailed guidance and complied with it. The diligence with which a parish/community council met the remit is a different question. The Council minutes can be a useful source of information on this procedure, and other local highway issues which have arisen since the relevant date. As the minutes are a public record of the perception of the parish/community council at that time, and therefore probably also represent the perception of

parishioners, they may carry significant evidential weight. Other procedural guidance was issued to surveying authorities in Circulars 91/1950, 53/1952 and 58/1953.

In *Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] the judge commented that modification of the definitive map requires the discovery of evidence. An inquiry cannot simply re-examine evidence considered when the definitive map and statement was first drawn up; there must be some new evidence, which, when considered together with all other evidence available, justifies the modification.

When considering whether a right of way already shown on a definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all. See section 4 of Circular 1/09.

Trevelyan confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of *Trevelyan* that;

‘Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that it is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.’

9. The Council must consider all available relevant evidence.

Evidence considered by the council in support of modifying the definitive map

10. West Ashton Parish Council claimed footpath 1 at the preparation stage of the definitive map and statement. On a form dated 20th May 1952 the path was described as derelict and was drawn imprecisely by the parish council on the maps provided to the parish council for the survey. The parish council subsequently asked Wiltshire County Council which was the surveying authority in 1972 to amend what it said was a drawing error on the definitive map for West Ashton footpath 1 at the location which is the subject of this report. The parish council support the change to the route of the footpath as shown at Appendix 1 to this report.
11. The photographs submitted with the application show the alternative route proposed as a well established defined route of some antiquity obviously signed and maintained by Wiltshire Council. There is no evidence of a path through the curtilage of Manor View.
12. A consultation on the change proposed on the Plan at Appendix 1 was undertaken with the usual statutory and non statutory consultees and no objections were raised.

Safeguarding Considerations

13. Safeguarding considerations are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981.

Public Health Implications

14. The implications of the proposal on public health are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981, however it is not considered the proposed change will have any adverse implications on public health.

Environmental Impact of the Recommendation

15. The Environmental impact of the recommendation is not a consideration that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981, however it is not considered the proposed change will have any environmental impacts.

Risk Assessment

16. Issues relating to health and safety are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981.

17. Wiltshire Council has a duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly. Now evidence has been brought to the council's attention that there is an error in the definitive map which ought to be investigated it would be unreasonable for the council not to seek to address this fact. If the council fails to pursue this duty in this case it is liable to complaints being submitted through the council's complaints procedure potentially leading to a complaint to the Ombudsman. Ultimately a request for judicial review could be made.

Financial Implications

18. The continual review of the definitive map and statement are statutory processes for which financial provision has been made.
19. 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 or representations that are not withdrawn, it must be forwarded to the Secretary of State for determination. It may be determined by written representations which would be no significant additional cost to the council, a local Hearing with additional costs to the council in the region of £300, or a Public Inquiry, with additional costs in the region of £5000. The financial provision referred to in paragraph 18 above would cover these costs. There are no indications that any objections or representations will be received.

Decision

20. The judgement given by the Court of Appeal in R v Secretary of State for the Environment ex parte Burrows and Simms (1991) 2 QB 354 held, in effect that if evidence comes to light to show that a mistake had been made in drawing up the definitive map, such a mistake can be corrected in either of the three ways envisaged in Section 53(3)(c) of the Wildlife and Countryside Act 1981.
21. Under Section 53(3)(c)(i) the Surveying Authority is not required to prove 'beyond all reasonable doubt' that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not, that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map.
22. From the records the council holds it would appear an error was made at the preparation stage of the definitive map in 1953. An attempt was made to correct the error in 1972 however to provide clarity of the revised route required a plan to a larger scale than that used for the purpose at Second and

Special review map. This lack of clarity in the council's records is adversely affecting the owner of Manor View and their ability to sell their property.

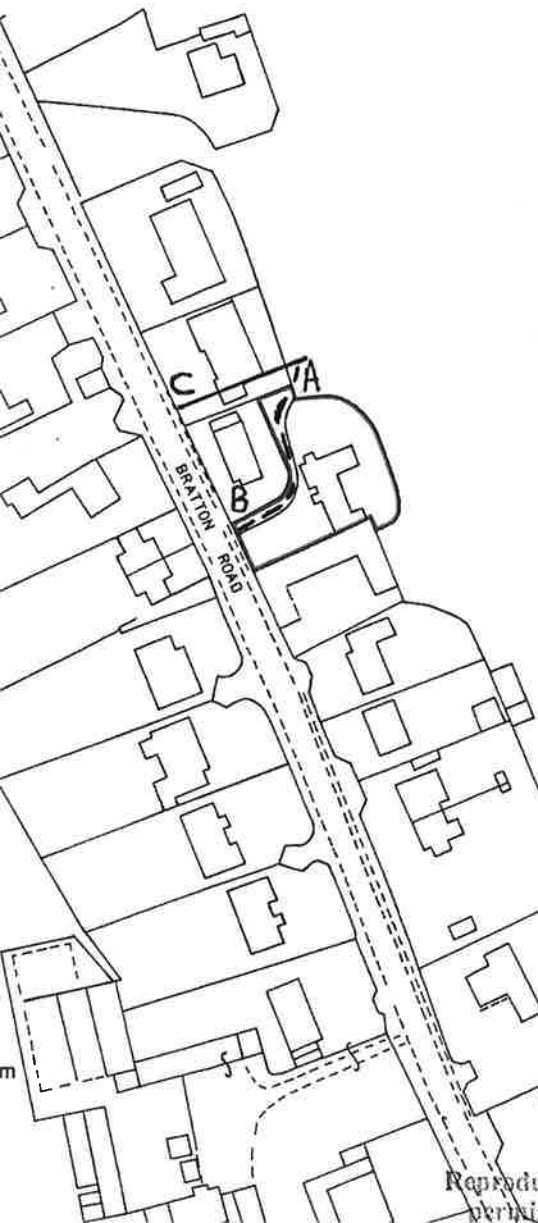
23. No evidence has been discovered by council officers to confirm that West Ashton footpath 1 as currently shown on the definitive map through the grounds of Manor View is correct. Taking all the evidence before the council into consideration relating to West Ashton footpath 1, officers believe that an order ought to be made under section 53 of the Wildlife and Countryside Act 1981 to amend the definitive map and statement as shown on the plan at Appendix 1 to this report.

Barbara Burke

Definitive Map and Highway Records Team Leader

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T ASHTON FOOTPATH 1



KEY A—C Path to be deleted
A---B Path to be added

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**Application for Modification Order of Definitive Map for Wiltshire
(Wildlife and Countryside Act 1981)**

WITNESS STATEMENT

-of-

KAREN JULIET MORRIS

1. I, Karen Juliet Morris of Manor View, Bratton Road, West Ashton, Trowbridge, Wiltshire, BA14 6AZ make this statement in support of the application I bring for a Definitive Map Modification Order in respect of the footpath known as "West Ashton 1" (or "WASH1").
2. I purchased my home, Manor View, aforesaid with my then husband, Richard Hall in April 2006. I was not familiar with the property until we viewed it in the run up to buying the property.
3. At the time of our purchase we instructed solicitors to act for us in respect of the transaction. Our solicitor, Richard Coates of Forrester & Forrester, now Forrester Sylvester Mackett, instructed a search agent to undertake a local search against the property. One of the questions in the local search was:

"Is any public path, bridleway or road used as a public path or byway which abuts on, or crosses the property shown in a Definitive Map or revised Definitive Map prepared under Part IV of the National Parks and Access to the Countryside Act 1949 or Part III of the Wildlife and Countryside Act 1981? If so, please mark its appropriate route on the attached plan."

The answer to such question was:

"Yes – Definitive Footpath No 1 shown coloured pink on the attached plan."

At page 1 of the Exhibit "KJM1" hereto is a copy of such plan. (Please note that the handwritten letters superimposed thereon relate to paragraph 4 below). This accorded with my actual knowledge of the footpath.

4. At pages 2 to 7 of the Exhibit "KJM1", are a series of photographs taken by my solicitor in September 2013. The approximate position from where each photograph was taken is marked on the plan at page 1 of "KJM1", as follows:

- a page 2
- b page 3
- c page 4
- d page 5
- e page 6
- f page 7

Such footpath has not changed to any material extent since 2006 when I first became acquainted with it.

5. The entrance to the footpath shown in photographs appearing on pages 2 and 3 appears to be quite old. It has been constructed in quite a formal way, although I do not know who was responsible for its construction. The finger post at the start of the footpath is an official one, I suspect having been erected at some point in the past (the long ago past by the look of it) by the local authority. It is certainly the case that over the years I have been aware of Council workers inspecting and maintaining the footpath.

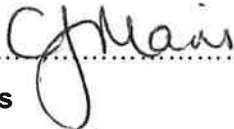
6. At pages 8 to 12 of "KJM1" are title documents and plans obtained from the Land Registry in respect of the properties neighbouring mine. Firstly, Montrose owned by Mr and Mrs Bradley and secondly, 17a Bratton Road, owned by Mr and Mrs Metcalfe. I supply these documents as they clearly show the strip of land from Bratton Road to the field at the rear, over which runs the footpath. This "footpath land" is in fact owned by Mr and Mrs Metcalfe and their title documentation makes clear reference to the fact that their property is, "subject to any private or public rights of way affecting the said property". That reference stems back to 1979 and therefore one can be certain that the footpath was like it is now at that time. As will be seen from the photographs at pages 4 to 7 of "KJM1", the footpath is enclosed on both sides. Although Mr and Mrs Metcalfe own the footpath land, it is separated from their garden, no doubt to give them the privacy they would naturally want and expect.

7. I understand that the provenance of the Land Registry plans is from the Ordnance Survey. I do not have the survey dates of the plans, but from the notation thereon, the Ordnance Survey plans were prepared before 1995.

8. In late 2012/early 2013, I tried to sell my home. The solicitors acting for the prospective purchaser obtained a local search in respect of my property and discovered that the Definitive Map shows the line of the footpath not to be where it actually is, but in fact running through my property and indeed right through my garage. At page 13 of "KJM1" is a copy of the plan being the search result. This caused my prospective purchasers to withdraw and subsequently I have instructed my solicitors to ascertain the correct position and establish liability, for it has been discovered that the local search obtained when I bought my home was prepared negligently. The search agency did not inspect the Definitive Map, something they should have done.
9. The footpath WASH1, as depicted on page 13 of "KJM1" is shown on the Definitive Map as running through my property. My solicitor has now made a personal inspection of the Definitive Map and a photograph of the relevant part of the Definitive Map is at page 14 of "KJM1". The footpath is shown as being straight, not doglegged as it actually is. It is possibly the case that my home, Manor View, Montrose and 17a Bratton Road were not built at the time the plan was originally drawn. I do not know, but I guess that Manor View, Montrose and 17a Bratton Road were all built after the Second World War.
10. A working copy of the Definitive Map (upon which one cannot rely but which shows modern landscape) and which is at page 15 of "KJM1", shows the footpath cutting through my property and not taking the dogleg course between Montrose and 17a Bratton Road. To be absolutely clear, no footpath has ever actually run through my home.
11. I ask for the Definitive Map to be adjusted to reflect the current and longstanding course of the footpath WASH1. At present, the line of the footpath is a serious blight on my home.
12. Whether the footpath WASH1 was every straight, as shown in the Definitive Map, or was always doglegged, is probably unascertainable. I understand that the Definitive Map was originally drawn incorrectly in 1952 as the start of the footpath from Bratton Road was changed when there was a revision to the Definitive Map in 1972. I suggest that this "correction" was itself wrong.
13. During the course of investigations, my solicitor has obtained plans from the files relating to planning applications which have been submitted over the years in respect of my neighbouring properties. At page 16 of "KJM1" is an Ordnance Survey plan, apparently

from 1947. It clearly shows the footpath in question taking a line around the back of Montrose in a very similar fashion to the current route. At page 17 of "KJM1" is an architect's plan for Montrose dating from 1996. Again, this shows the start of the footpath at Bratton Road, on the other side of Montrose.

I believe that the facts stated in this witness statement are true.

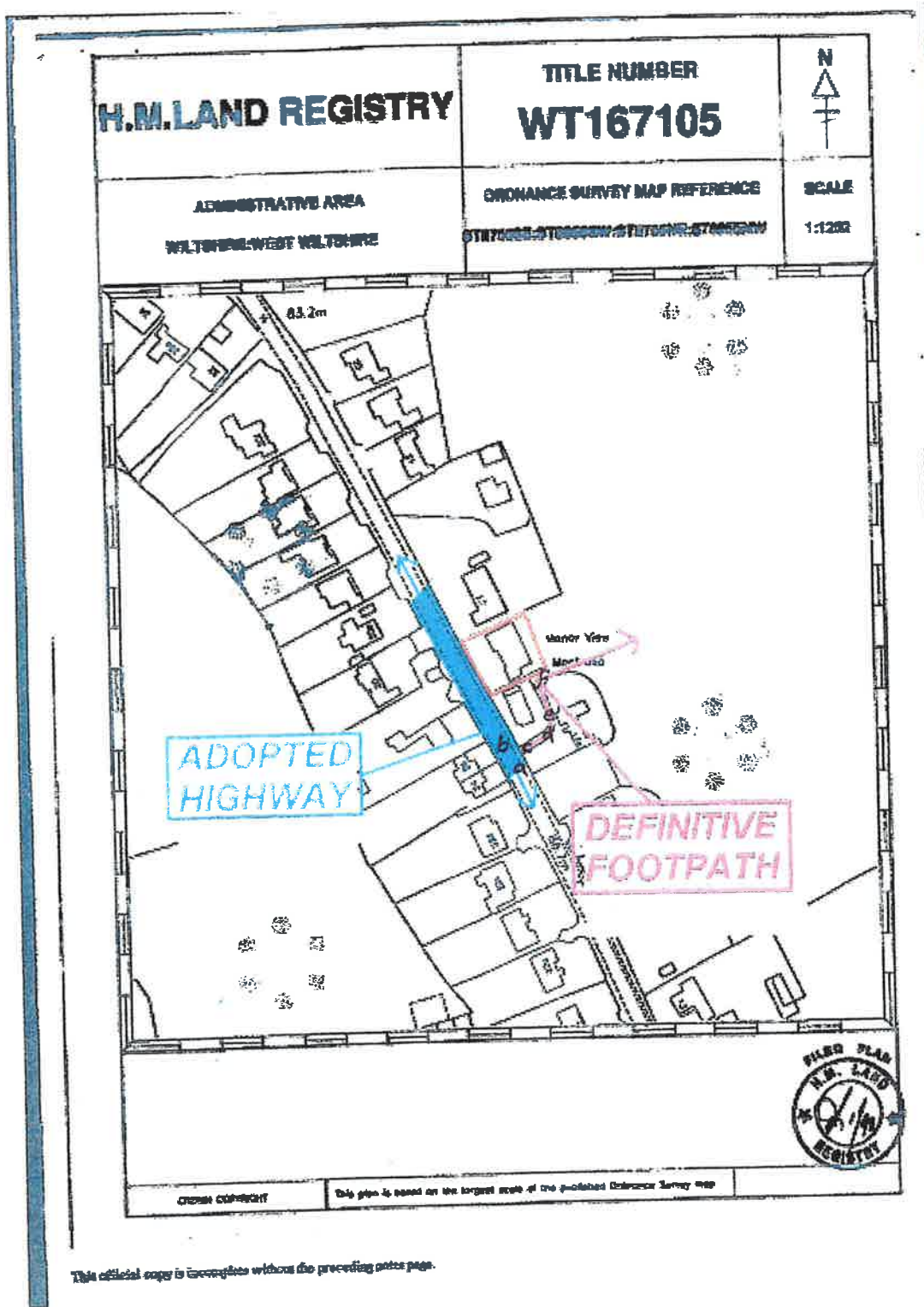
Signed 

Karen Juliet Morris

Dated 4/12/13

**Application for Modification Order of Definitive Map for Wiltshire
(Wildlife and Countryside Act 1981)**

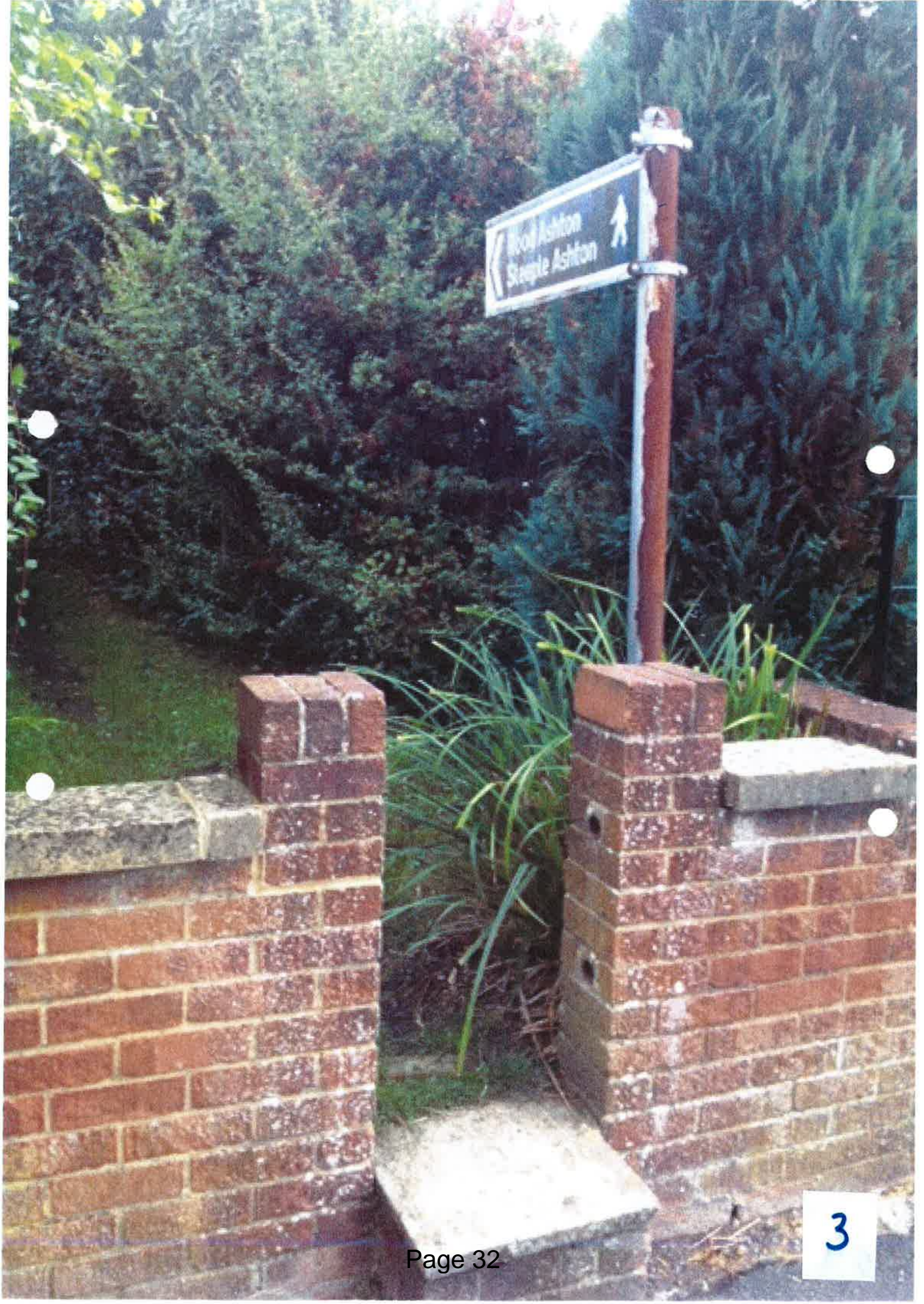
EXHIBIT “KJM1”



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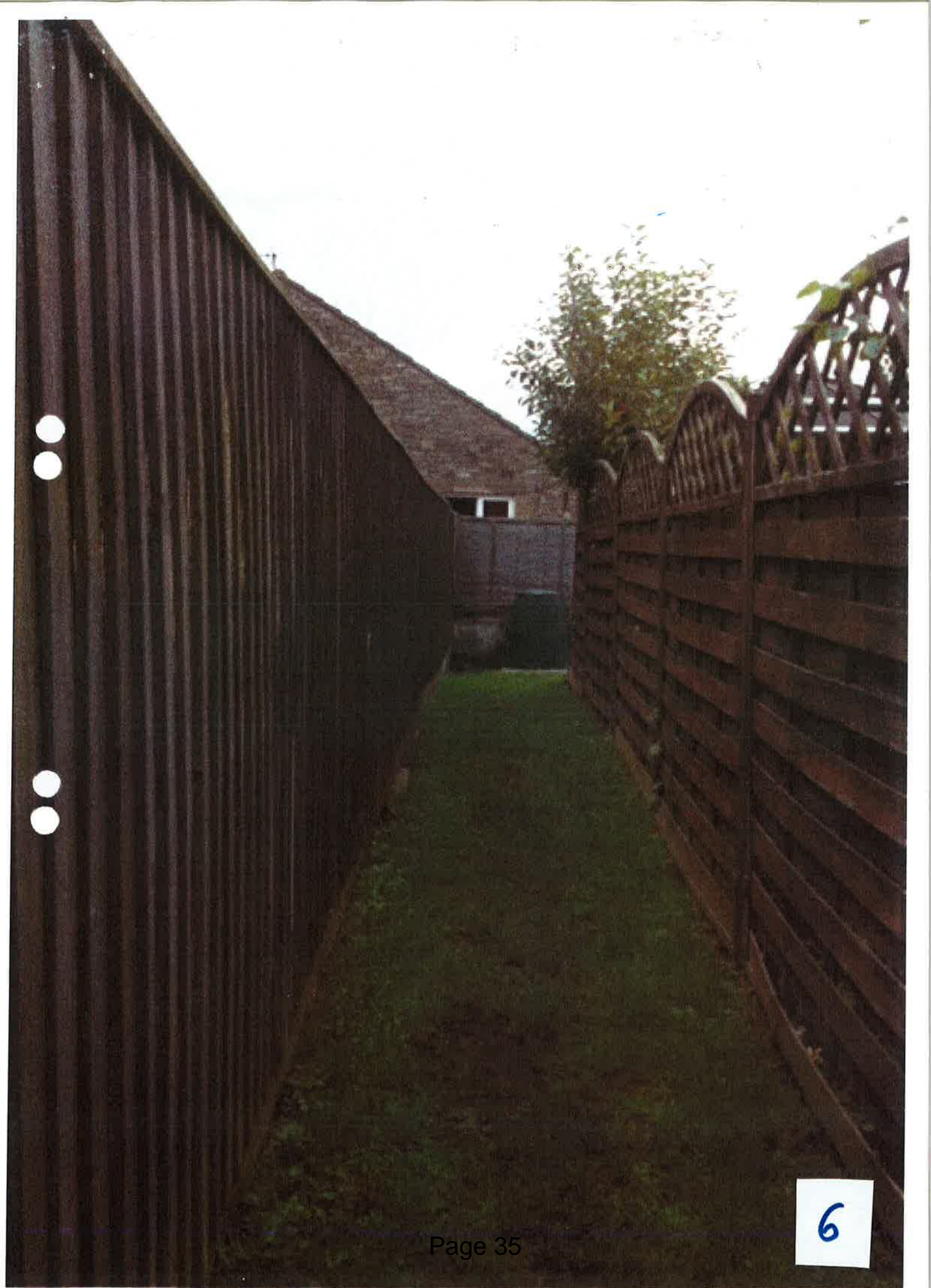
2

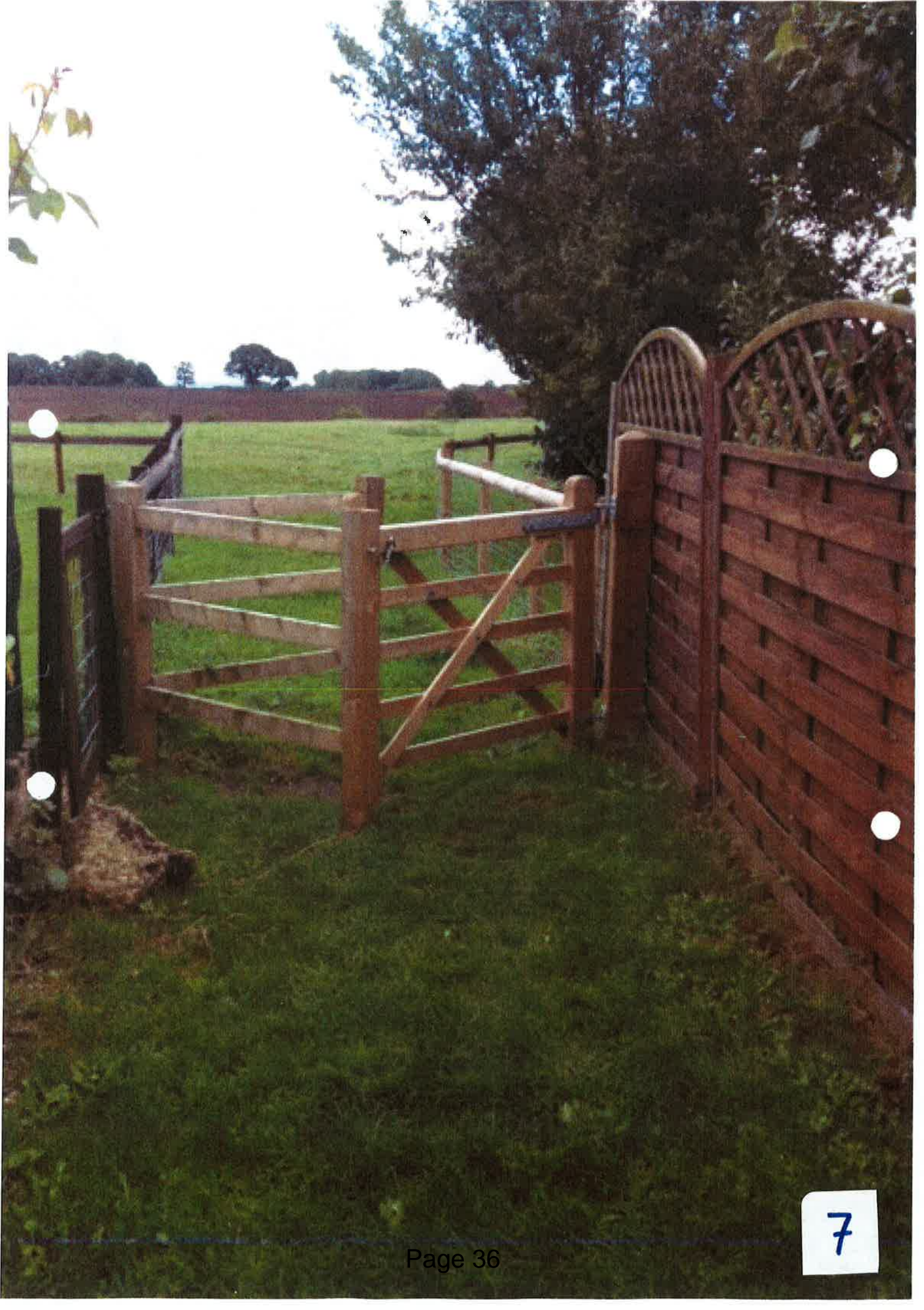






5







Official copy
of register of
title

Title number WT149940

Edition date 11.05.2009

- This official copy shows the entries on the register of title on 08 MAY 2013 at 14:51:07.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 May 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1-A guide to the information we keep and how you can obtain it.
- This title is dealt with by Land Registry, Weymouth Office.

A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (14.02.1996) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Montrose, Bratton Road, West Ashton, Trowbridge, (BA14 6AZ).
- 2 (14.02.1996) The Conveyance dated 19 September 1958 referred to in the Charges Register contains the following provision:-

"PROVIDED that the Purchaser and his successors in title shall not become entitled to any easement or right of light or air or other easement or right which would restrict or interfere with the free use of the said adjoining and neighbouring land or any part thereof by the Vendor or any person deriving title under her for building or any other purposes."

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (18.09.2003) PROPRIETOR: JACQUELINE MARY BRADLEY and DAVID IAN BRADLEY of 24 Bratton Road, West Ashton, Trowbridge, Wiltshire BA14 6AZ.
- 2 (18.09.2003) RESTRICTION: No disposition by a sole proprietor of the land (not being a trust corporation) under which capital money arises is to be registered except under an order of the registrar or of the Court.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (14.02.1996) The land is subject to the following rights reserved by a Conveyance of the land in this title and other land dated 7 January 1931 made between (1) Arthur Harper Bond (Vendor) (2) Percy Somers Joce and (3) Frederick William Rogers (Purchaser):-

There were reserved in fee simple to the Vendor and his assigns the owner or owners from time to time of all such hereditaments respectively as were conveyed to the Vendor by the deed first mentioned in the Sixth Schedule to the abstracted deed and were not conveyed by abstracted deed all such quasi-easements or rights of way water drainage or watercourse and other rights in the nature of easements or profits a prendre as were then or usually enjoyed by or in respect of such hereditaments respectively over through or from all or any of the hereditaments conveyed by the abstracted deed respectively.

- 2 (14.02.1996) A Conveyance of the land tinted pink on the filed plan dated 19 September 1958 made between (1) Lorna Kathleen Rogers (Vendor) and (2) Gilbert George Derrick (Purchaser) contains the following covenants:-

"The Purchaser hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will henceforth at all times hereafter observe and perform all and singular the restrictions and stipulations contained in the First Schedule hereto

THE FIRST SCHEDULE above referred to

1. The Purchaser will within three months from the date hereof erect and for ever thereafter maintain on the north and east and south sides of the property hereby conveyed as indicated by the letters A-B B-C and C-D on the said plan a stockproof fence consisting of oak wooden posts with at least two strands of plain or barbed wire and chain-link fencing at least four feet in height above the surface of the land

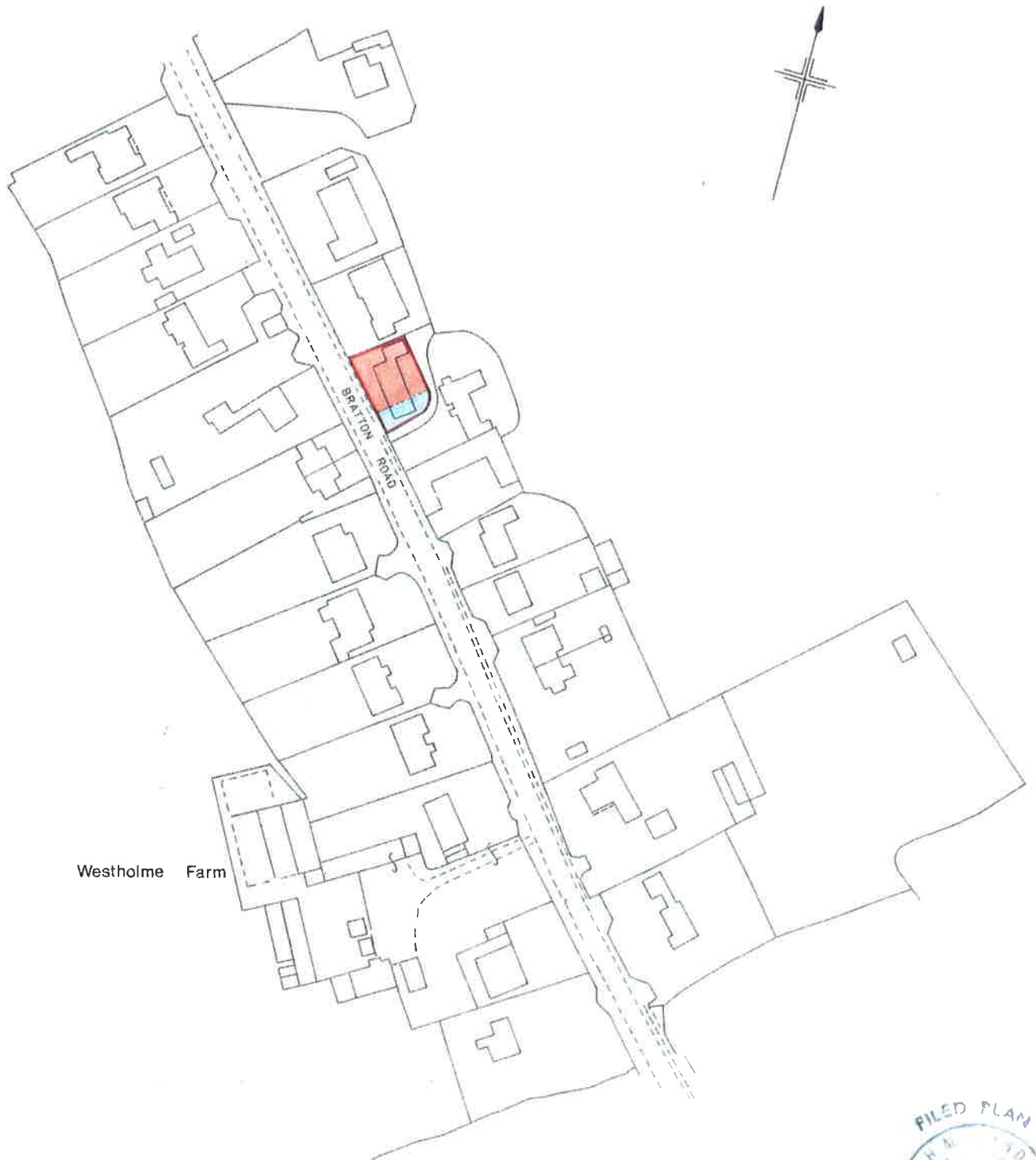
2. No buildings of any kind other than a private dwellinghouse with appropriate offices and outbuildings to be appurtenant thereto and occupied for the purposes thereof shall be erected on the land hereby conveyed and no trade business or manufacture shall be carried on upon the said land or any part thereof."

NOTE: The boundaries A-B, B-C and C-D referred to are the north western, north eastern and south western boundaries of the land tinted pink on the filed plan respectively.

- 3 (01.03.1996) The land tinted blue on the filed plan is subject to such restrictive covenants as may have been imposed thereon before 14 February 1996 and are still subsisting and capable of being enforced.

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		WT 149940	
ORDNANCE SURVEY PLAN REFERENCE	ST 8755	SECTION B	Scale 1/1250
COUNTY	WILTSHIRE	DISTRICT	WEST WILTSHIRE
			© Crown Copyright





Official copy of register of title

Title number WT147473

Edition date 14.04.2010

- This official copy shows the entries on the register of title on 08 MAY 2013 at 14:49:32.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 May 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Weymouth Office.

A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (14.12.1995) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 17a Bratton Road, West Ashton, Trowbridge (BA14 6AZ).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (14.04.2010) PROPRIETOR: RICHARD JOHN METCALFE and CHRISTINE ANN METCALFE of Springfields, 17a Bratton Road, West Ashton, Trowbridge, Wiltshire BA14 6AZ.
- 2 (14.04.2010) The price stated to have been paid on 9 April 2010 was £307,500.

C: Charges Register

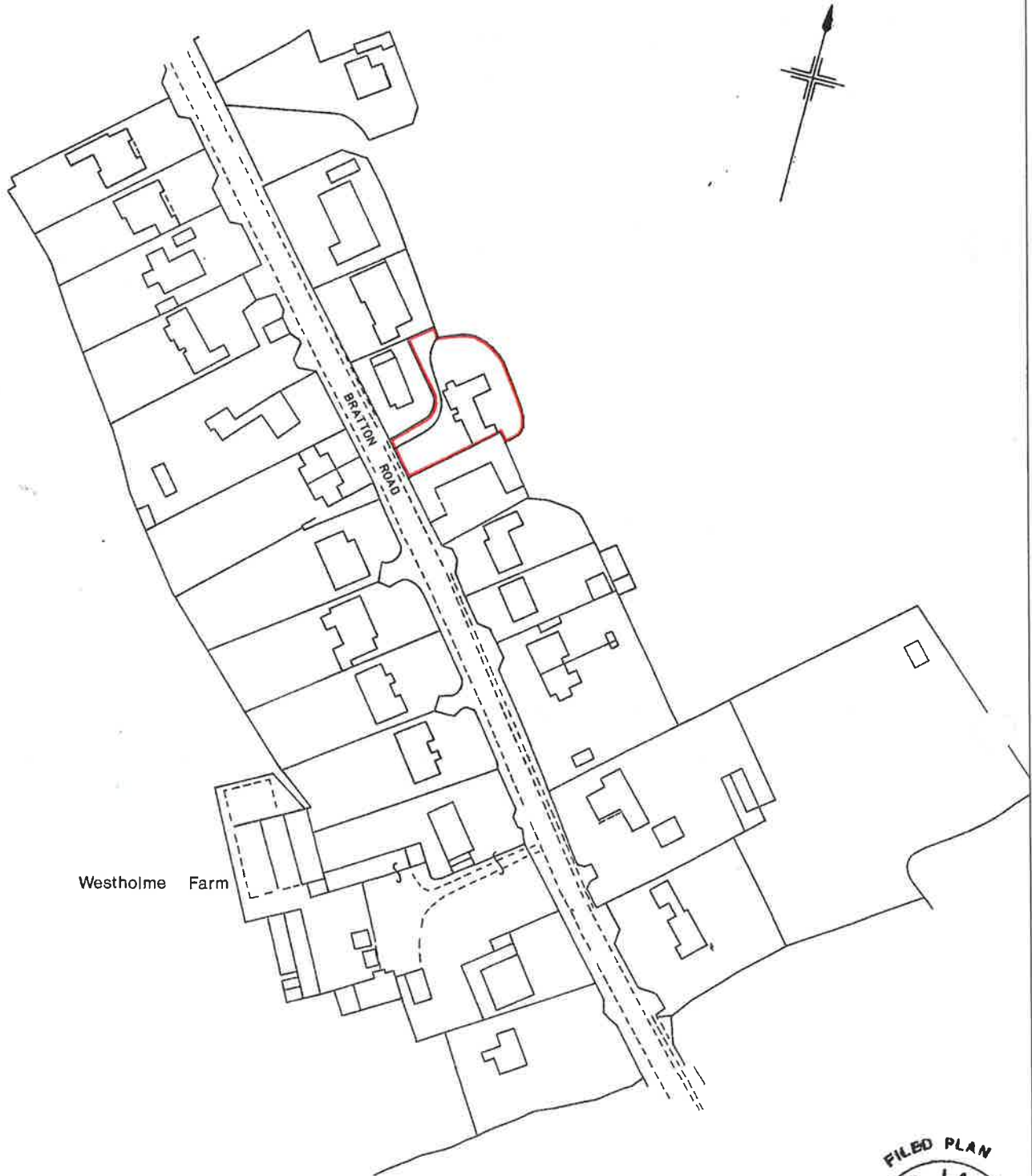
This register contains any charges and other matters that affect the land.

- 1 (14.12.1995) By a Conveyance dated 18 August 1979 made between (1) Lorna Kathleen Rogers and (2) Eric Rogers Brown the land the land in this title was conveyed subject as follows:-

"SUBJECT TO any private or public rights of way affecting the said property."

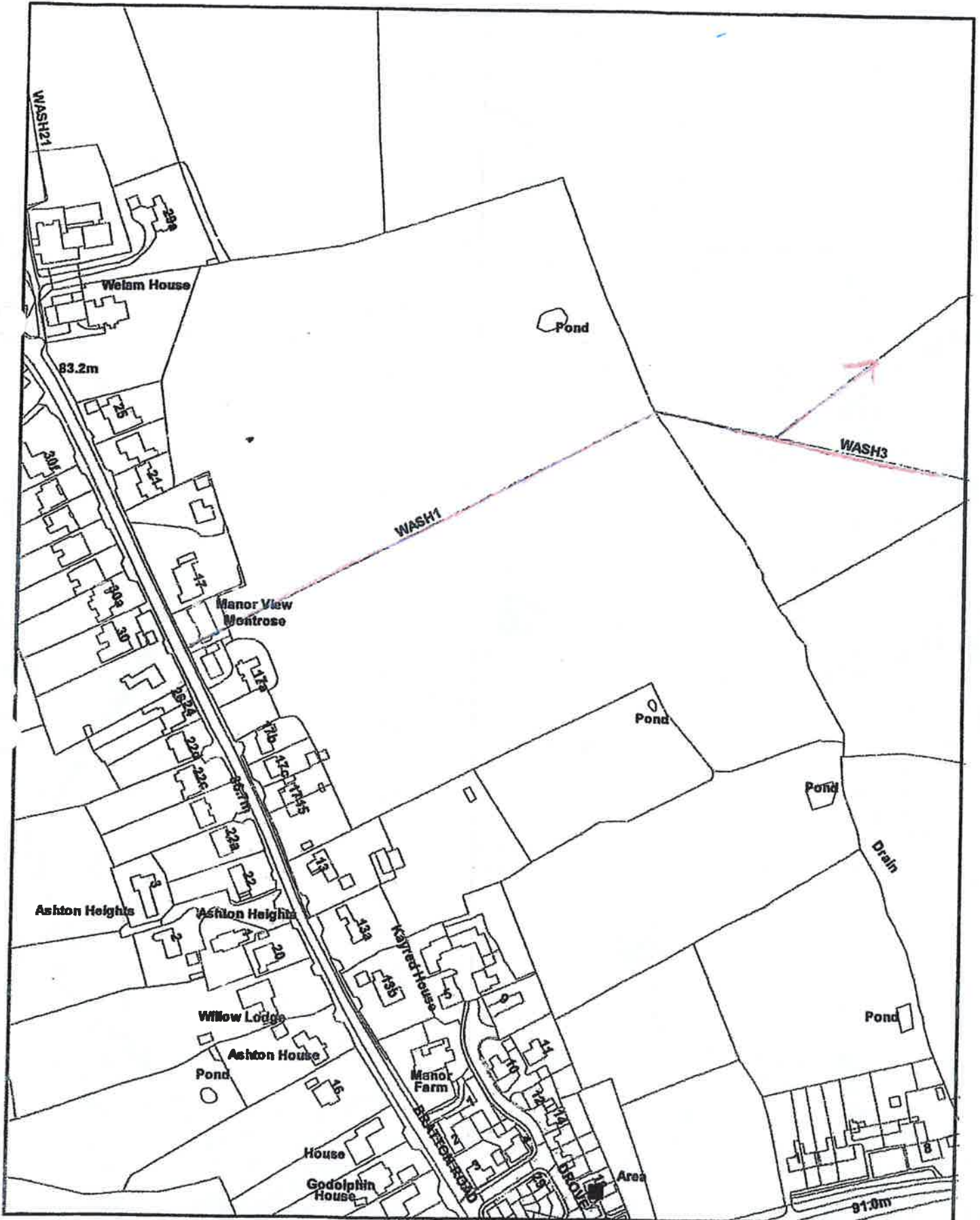


H.M. LAND REGISTRY		TITLE NUMBER	
		WT 147473	
ORDNANCE SURVEY PLAN REFERENCE	ST 8755	SECTION B	Scale 1/1250
COUNTY	WILTSHIRE	DISTRICT	WEST WILTSHIRE ✓
			© Crown Copyright



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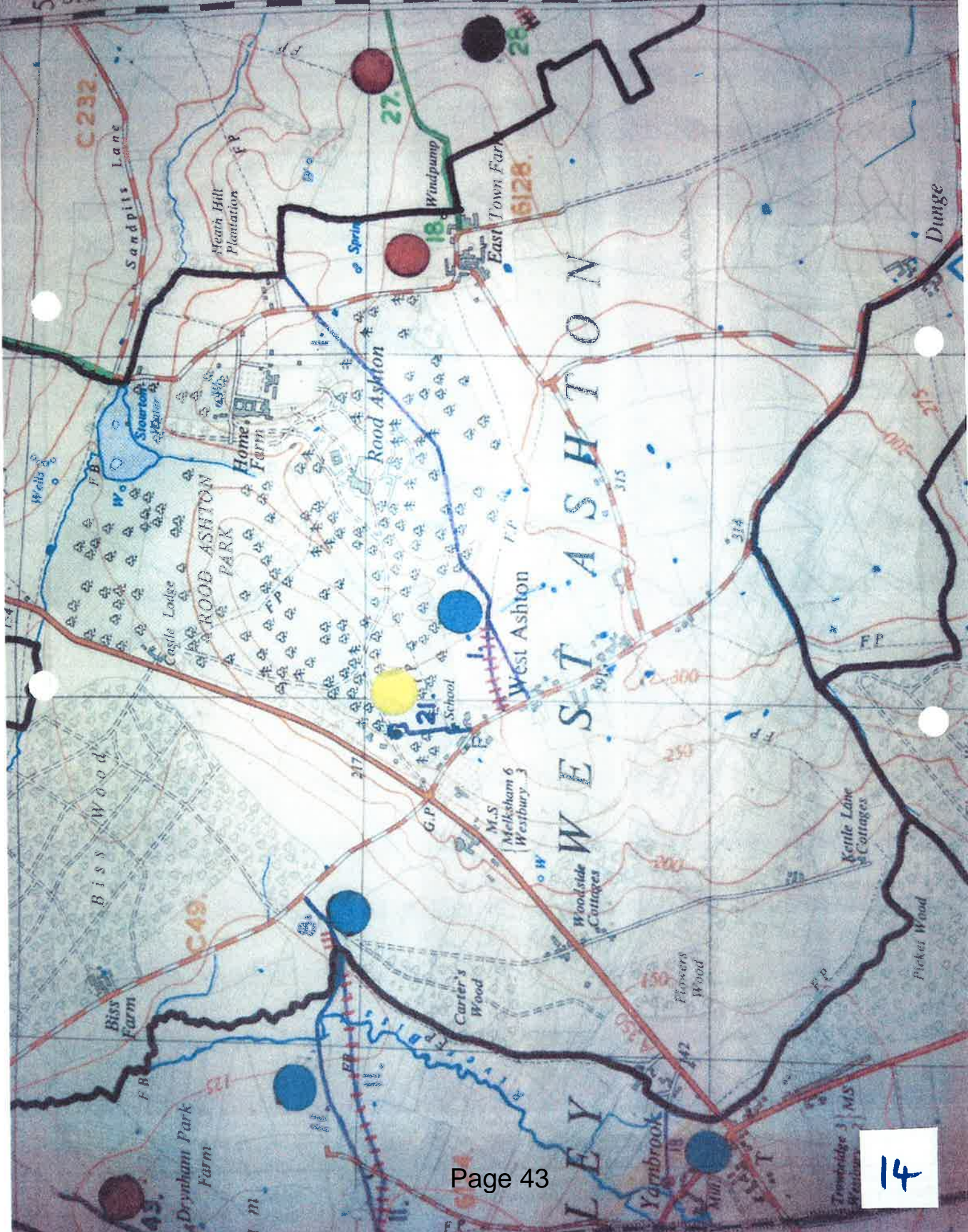
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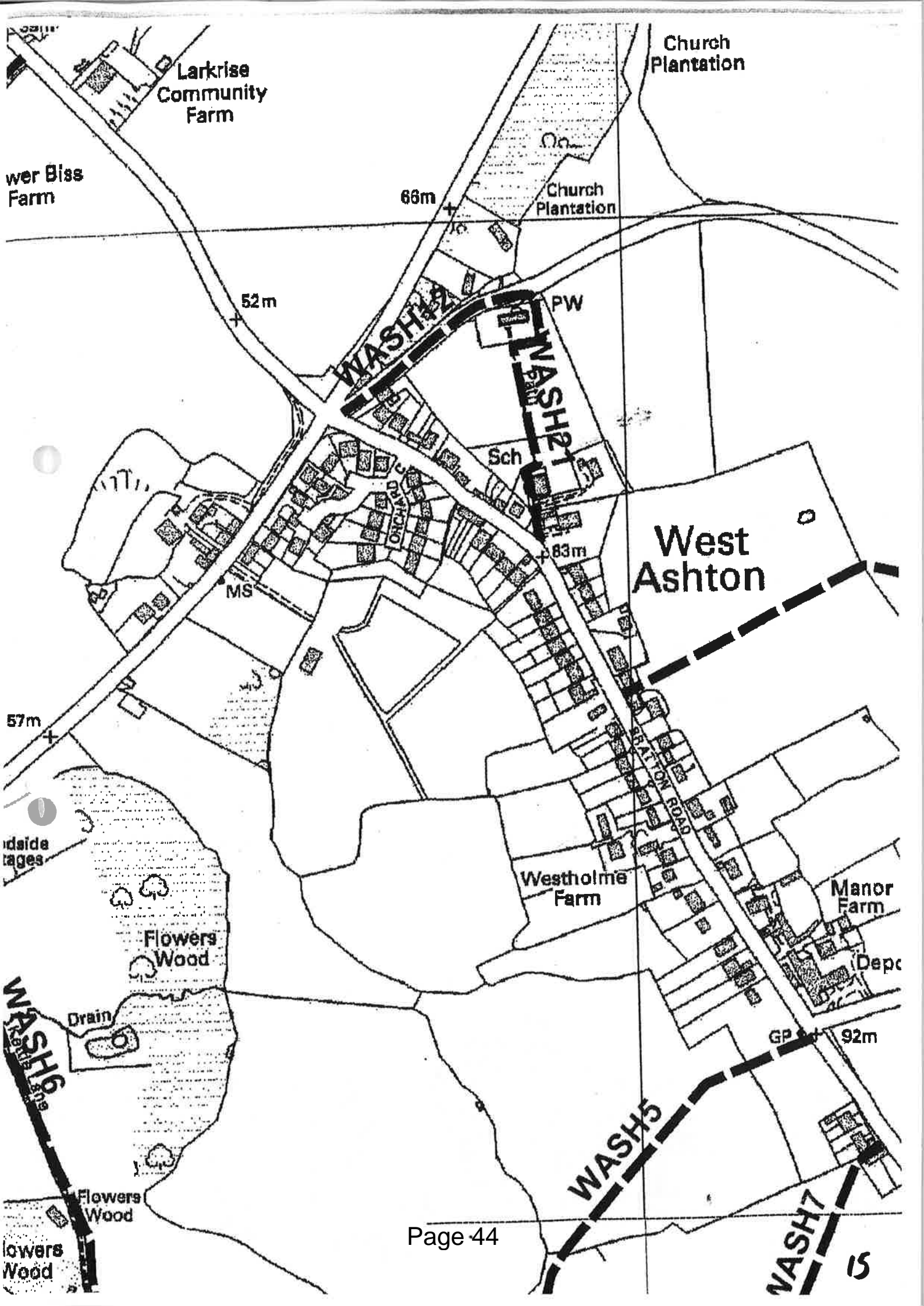
57 STEEPLE ASHTON

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14



Larkrise
Community
Farm

Church
Plantation

wer Biss
Farm

66m

Church
Plantation

52m

WASH 1

PW

Sch

West
Ashton

83m

MS

57m

side
tages

Flowers
Wood

Westholme
Farm

Manor
Farm

(Depc

Drain

GP

92m

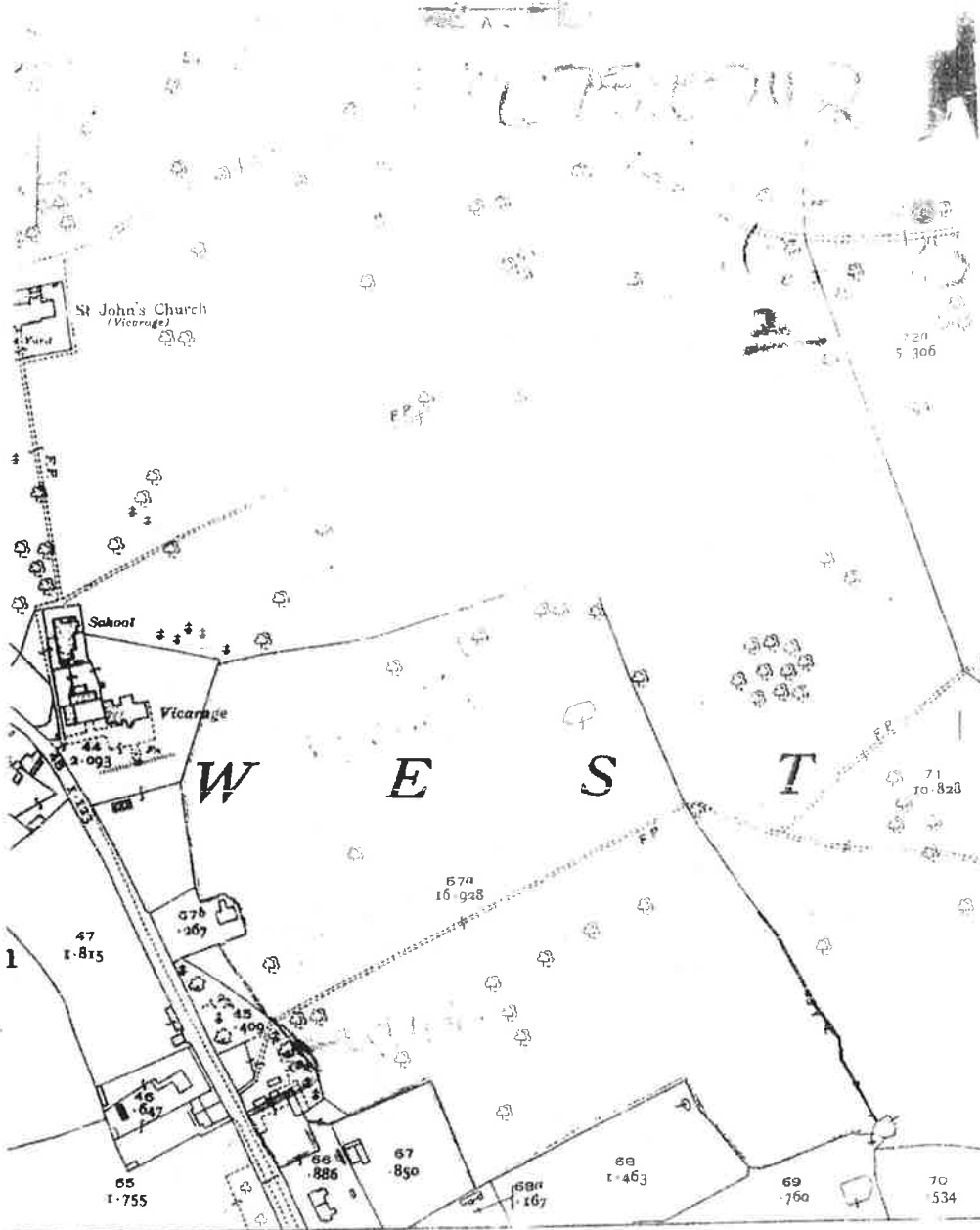
WASH 6

WASH 5

WASH 7
15

Flowers
Wood

Flowers
Wood



WILTS XXXVIII.12.



Printed and Published by the Director General at the Ordnance Survey Office 1947.

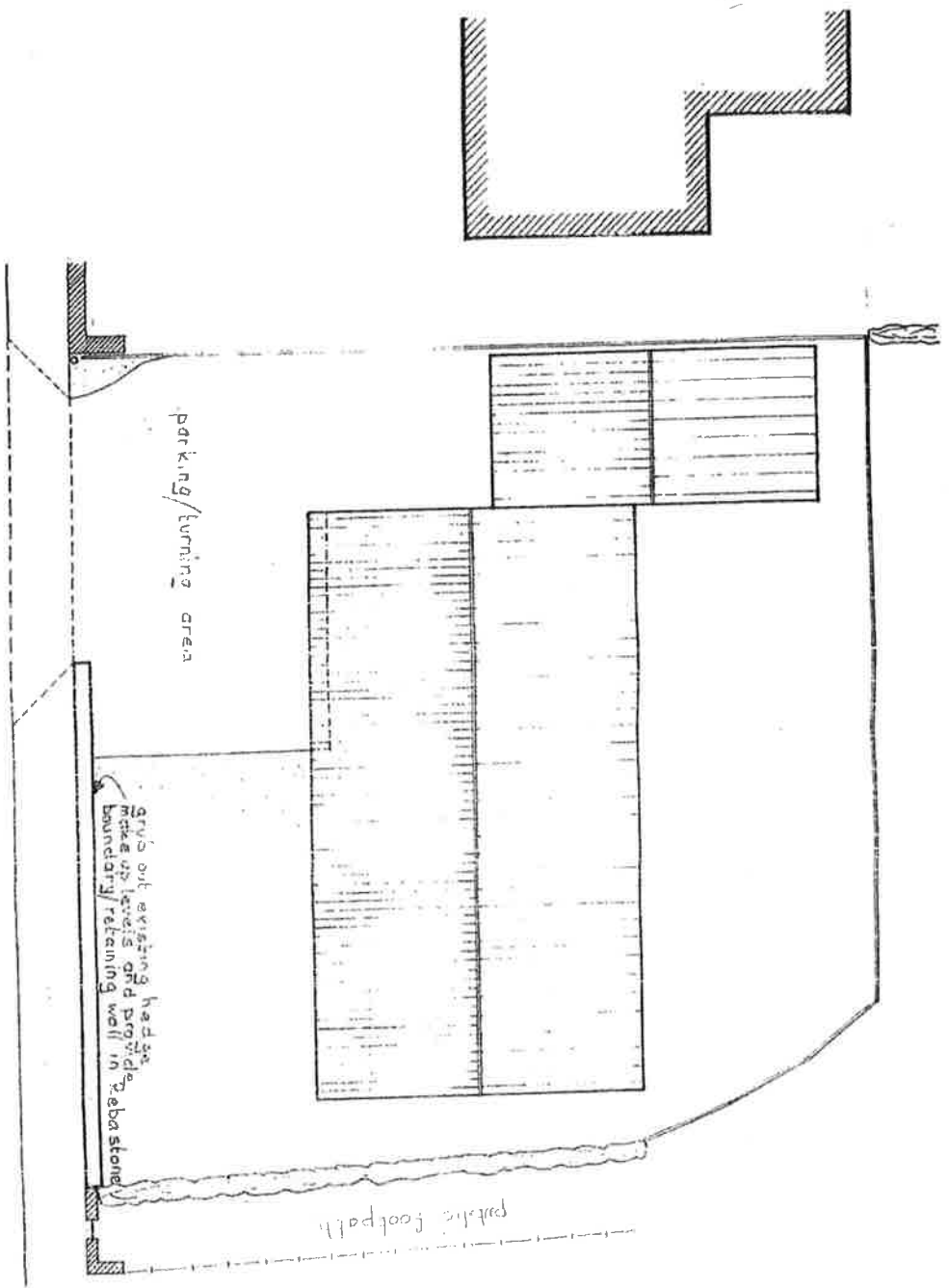
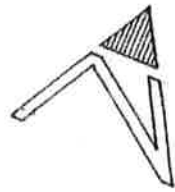
A 5

A 5

A 4

16

W03/1497



to Trowbridge

BRATTON ROAD

to Bratton

ALTERATIONS & EXTENSIONS TO MONTROSE, BRATTON ROAD, WEST ASHTON

Block plan

Scale: 1:100

WEST WILTSHIRE DISTRICT C.
 AMENDED PLAN

ON REF. No. W03/1497
 HAS BEEN APPROVED FOR
 PURPOSES AS A MINOR

8.5.96

CRS: BMS

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	5 th November 2014
Application Number	14/04399/FUL
Site Address	Land off Lewington Close and Longford Road Melksham Wiltshire
Proposal	Demolition of the existing bungalow and construction of four x 3 bed houses and seven x 2 bed houses and one x 1 bed house with associated roads and parking. Also the provision of a play area off Lewington Close
Applicant	Mr Mick Latham
Town/Parish Council	MELKSHAM (TOWN)
Ward	MELKSHAM SOUTH
Grid Ref	390402 162962
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Jon Hubbard for consideration of the scale of development, visual impact upon the surrounding area, the relationship to adjoining properties, and the design of the development.

1. Purpose of Report

To consider the above application and to recommend that planning permission be Granted, subject to the completion of a S106 Agreement.

2. Report Summary

The key issues are:

- The principle of development in this locality;
- Landscaping and Potential impact on neighbouring properties;
- Access; and
- Ecological considerations

Neighbourhood Responses:

There were 14 responses to advertising, including secondary responses on revised plans.

Melksham Town Council

Supports the application but highlights areas of concern, as discussed in section 7 below.

3. Site Description

The +-3000m² application site is comprised of the curtilage to No. 17a Longford Road and an elongated portion of land to the rear of No 11 Longford Road. The curtilage land is fairly extensive and is well planted with trees and shrubbery, and is surrounded largely by well-vegetated boundaries. The land is currently accessed via a “panhandle” private drive off of Longford Road to the south. The site is an isolated property in terms of the single access, but is set within a wider residential context of surrounding semi-detached or terraced dwellings in Peel Court, Semington Road, Longford Road, Kenilworth Gardens and Lewington Close.

The land falls within Melksham Town Policy Limits (Policy H1 to the West Wiltshire District Plan, 2004).

4. Planning History

None applicable to this site, apart from a 1985 outline application (W/85/00056/OUT) for a dwelling on portion of the site, which was refused.

5. The Proposal

The application is for the construction of four x 3 bed houses and seven x 2 bed houses and one x 1 bed house with associated roads and parking following the demolition of the existing bungalow. The scheme includes the provision of a separate play area off Lewington Close (which has been the subject of negotiation and discussion between the applicants, the Local Member and Melksham Town Council). Access would be retained from the existing “panhandle” from Longford Road to the south, but the majority of the dwellings would be served by a connection with Lewington Close to the north.

6. Planning Policy

West Wiltshire District Plan 1st Alteration (2004) (WWDP)

C31a Design
C32 Landscaping
H1 Town Policy Limits
H24 New Housing Design

Emerging Wiltshire Core Strategy

National Planning Policy Framework

7. Consultations

Melksham Town Council

The Council supports the principle of the development, but has raised questions regarding loss of amenity particularly in relation to impacts on Kenilworth Gardens and Peel Court properties, density of development, and highways and ecological impacts. These comments are discussed in more detail in Section 9 below,

Highway Officer

The officer had concerns with the initial layout that was submitted in terms of parking, passing areas and turning. Following the submission of the revised plans the officer found the extension to Lewington Close and the overall parking provision to be acceptable subject to conditions in relation to the submission of highway and related infrastructure construction details (and their completion), access and parking provision prior to occupation.

Housing

The officer advises that, under current planning policy approaches, no affordable housing contribution would be sought from this application. As the application is from a Registered Housing provider, these new homes are likely to be for affordable housing (although there is no Policy requirement for them to be) and Housing Officers therefore support the proposal. It is also confirmed that the mix and size of the units proposed reflect current affordable housing demonstrable need/requirements. The total number on the Housing register in the Melksham Community Area is 907, of who 502 are in priority housing need.

Drainage

The officer notes that the site is within Flood Zone 1 according to the Environment Agency classification (lowest flood risk). No objections.

Environmental Health

No loss of amenity likely, other than potential noise and dust during the construction phase. The authority can limit construction hours under the Control of Pollution Act 1974. An informative is recommended.

Wessex Water

No objection, noting only that new water supply and waste water connections will be required from Wessex water to serve the development and that separate systems of drainage will be required.

Education

Based upon there effectively being 11 new open market units a need for 3 primary and 2 secondary places is generated at the designated area schools which are Aloeric Primary and Melksham Oak Secondary. The Officer discusses existing provision and future pupil projections at both levels and concludes that a developer contribution will be required towards secondary infrastructure expansion of 2 places at the 2014/15 capital cost multiplier of £19084 each. The assessment is however specific to the site location, housing number and mix available, and any changes would necessitate a new assessment.

Ecologist

Requested an additional bat survey and a mitigation strategy for the relocation of slow worms. This information was provided and the officer raises no objections, subject to conditions. The details are discussed further in the planning considerations below.

Open Space Officer

The officer is satisfied with the proposals for the play area shown on the approved plans, as well as the equipment that is proposed provided that Melksham Town Council is in agreement. The provision of the area will need to be secured by way of a S106 Agreement.

Spatial Planning

The officer sets out the Policy context referencing the NPPF, Policies H1 (Town Policy Limits), C38 (Amenity) of the West Wiltshire District Plan, 1st Alteration 2004. The emerging Core Strategy, in particular Core Policies 2 (Development Limits) and 15 (The Strategy for Melksham) is also of relevance. The officer concludes that the application proposals are consistent with both the adopted development plan and emerging Wiltshire Core Strategy with the proposed site falling within the settlement framework boundary for Melksham. No Policy objections are raised, subject to there being no other site specific impacts that would significantly and demonstrably outweigh the benefits of the development.

8. Publicity

The following is a summary of the objections received:

- Bat survey and Phase I Habitat Survey inadequate in terms of timing, methodology, buildings surveyed;
- Loss of hedge would mean loss of habitat;
- Overdevelopment of the site;
- Loss of privacy and amenity to neighbouring properties;
- Footpath would lead to loss of privacy and potential security issues because it could become a through-route;
- Rotation of buildings would enhance renewable energy options;
- Increased parking congestion;
- Play area is too far away from development;
- Loss of trees and replacement with parking harmful to surrounding amenity;
- Development including terraced units out of keeping with spacious feel to surrounding area;
- Potential for future loft space conversions to further overlook surrounding properties;
- Loss of view towards open countryside beyond the historic Spa buildings;
- Loss of light, privacy and overbearing on No. 6 Peel Court;
- Understand more houses are required, but shouldn't be on an already established property with loss of green oasis;
- Revised plans do not address issues at 6 Peel Court;
- Replacing the one bungalow with a single new dwelling would be acceptable, avoiding loss of green corridor; and
- Removal of trees will affect privacy at 3 Peel Court.

Some of the above objections were relayed by objectors to Mr Duncan Hames (MP) who wrote to Council requesting that they be considered.

9. Planning Considerations

Principle of Development

The NPPF states that “*planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise*” and that “*in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development*”.

The site lies within Melksham Town Policy Limits where, in general, the principle of new residential development would be acceptable subject to the criteria that apply under Policy H1 of the West Wiltshire District Plan, 2004 and with other WWDP Policies, with due consideration for the increasing weight attached to the emerging Core Strategy and the NPPF. The site lies within the development limits envisaged in the Core Policy and, by definition, this would be a sustainable location in terms of the NPPF.

The observations of the Spatial Plans officer in response to consultation confirm the acceptability of the principle of development on the site.

Landscaping and potential loss of neighbouring amenity

Melksham Town Council, whilst supporting the principle of the development has raised questions regarding loss of amenity particularly in relation to impact on privacy in Kenilworth Gardens, loss of privacy and sunlight at no. 6 Peel Court as well as the impact arising from the loss of the hedge on Kenilworth Gardens.

Following discussions with the agents in the light of pre-application advice as well as comments received on the proposals, alterations were made to the plans, which included increasing separation distances with neighbouring dwellings and alterations to landscaping proposals.

With specific reference to Kenilworth Gardens, separation distances would now be between 25m and 27m between rear-facing elevations to the new and existing dwellings. This would in all cases exceed the 21m privacy “rule of thumb” guideline that is generally applied between upstairs habitable rooms (and which is frequently reduced given space constraints in modern estate development). Garden depths to the new dwellings abutting the Kenilworth Garden rear amenity spaces would be approximately 10m, which is wholly reasonable. It is therefore considered that no unacceptable amenity, overshadowing or privacy impacts would arise for the dwellings in Kenilworth Gardens that abut the new dwelling plots.

The dwelling at No.6 Peel court lies some 16m west of the site at the nearest point on the boundary. The closest new dwelling would be approximately 17.5 m away with a gable end, containing no windows, facing west. There is open ground of approximately 8m in depth between the boundary to the nearest proposed dwelling and the rear garden boundary to No. 6. Given the location of No.6 to the west, the distance between the proposed new dwelling and its boundaries (and the existing dwelling itself) and where there would be no windows to the gable of the new dwelling facing No.6, it is considered that no unacceptable overshadowing or loss of privacy would arise in respect of that property. Similarly, No.3 Peel Court, being some 33m from the nearest of the proposed dwellings, would not experience any unacceptable overlooking potential, a matter raised in an objection letter.

To the south, existing neighbouring dwellings would be some 28 to 30m distant from the nearest new units, with rear gardens plus access paths to the new plots allowing for 9m between rear facing elevations and the existing boundaries to the elongated rear gardens that they would face, with a number of existing trees to the boundaries being retained.

To the north there is a dwelling with limited garden space (No.20 Lewington Close) where the potential existed for loss of light to rear windows and garden space due to the relative orientations of the new and existing dwellings. Following discussions the agents agreed to reduce the ridge level at the northern end of the development by providing for a 1 bedroomed dwelling with rooms to the roofspace. The 25 deg “rule of thumb” vertical angle from rear facing windows of the existing dwelling to the new ridge to provide for adequate lighting to this property to the north would be met.

In view of the above evaluation, the relationship to surrounding properties is considered to be wholly acceptable.

The density and form of the development has been objected to (“overdevelopment of the site”) by neighbours. The proposal, including parking and landscaping would result in development of approximately 40 units/ha., providing for a mixture of 1, 2 and 3 bedroom dwellings, with 2 bedroom units predominating, of a familiar modern character, all with private garden spaces varying between 36m² and 80m² in extent. (Pre-NPPF, guidance in the form of PPS3 advocated a *minimum* development density of 30 units/ha. in the interests of efficient use of land, albeit that this guidance was subsequently superseded). Whilst it is acknowledged that part of the adjacent context includes larger, fairly generous plots to Kenilworth Gardens and Longford Road, the proposal is effectively an extension to the

Lewington Close development with its mixture of terraced and semi-detached dwellings on modest plots. The new development would furthermore form a uniform cluster of dwellings of a common design theme with slightly less prominent buildings (in terms of ridge height) than Lewington Close, but not out of keeping with the subdivisional characteristics of that estate area.

With regard to landscaping, the site as it exists contains a number of trees and large shrubs which would be unavoidably lost. None of the trees on site however carry any protection status and, in the light of neighbour and Parish comments a landscaping scheme has been submitted, to include tree planting and native hedging to eastern boundary (replacing Leylandii) which would provide for a degree of screening and softening of the boundary treatment that would include a 2.1m high close-boarded fence.

The distance of the play area from the site is raised by an objector. This open space falls within the Lewington Close precinct and has resulted from efforts by the Local Member in discussions with the Town Council and applicants specifically to provide a local facility with equipment. The Open Space officer is satisfied with the open space as well as the proposed equipment.

Highways and Access

The Highway Officer, having received additional information and details is satisfied with parking and access provision. The main parking area would be accessed from the north, via Lewington Close. 23 Parking spaces would be arranged around a turning head that would accommodate manoeuvring for a refuse vehicle. The area would be softened to a degree by surrounding planting and trees to separation islands. The highway officer raises no objections in relation to additional traffic or parking issues that are raised by the Town Council and objectors. The proposal would effectively be an extension to the Lewington Close cul-de-sac.

Concerns were also raised by objectors with regard to the creation of a pedestrian “through-route” from Longford Road to Lewington Close and potential security issues. The proposals would retain the southern access as a private driveway serving only Plots 4 and 5 parking (one garage and one parking space per unit). A gated pedestrian pathway from the main parking area would provide access to Plot 3. No public thoroughfare would therefore be provided through the development from north to south.

Ecology

The site vegetation and the presence of the vacant dwelling gave rise at pre-application stage to the Ecologist noting the possible presence of protected species and the need for a Phase I Habitat Survey. This was submitted, but additional information was requested by the Ecologist. An objector had also raised concerns about the surveys as well as loss of habitat.

Additional documentation on bats (including a method statement in support of a license application to Natural England) and the re-location of slow worms was submitted at the request of the Ecologist. With regard to the bats the Ecologist noted: *“As a competent authority under the Conservation of Habitats and Species Regulations 2010, the Local Planning Authority (LPA) must have regard to the EC Habitats Directive’s requirement to establish a system of strict protection and to the fact that derogations are allowed only where the three conditions (the “three tests”) under Article 16 of the Habitats Directive are met. In order to comply with its duty under the Habitats Regulations, the LPA will need to take all three tests into account in its decision (see Judicial Review, Woolley vs. Cheshire East Borough Council, 2009).* Following evaluation of the “3 Tests” the Ecologist concluded that, subject to conditions in relation to planting, lighting, the provision of bat boxes and the

submission of an ecology management plan, there would not be an objection. In respect of reptiles, a revised "Reptile Mitigation Strategy" was submitted. This includes a re-location strategy which satisfied the Ecologist's requirements, again provided that a relevant condition is imposed. It is considered, therefore, that the habitat and ecology issues arising from the application can be adequately addressed by way of conditions.

10. Conclusion

In view of the above evaluation of the proposal, it is considered that the development should be granted approval, subject to the completion of a S106 agreement and conditions.

RECOMMENDATION

Planning Permission be granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion a legal Agreement to secure:

- 1) An index-linked financial contribution towards secondary education infrastructure expansion of 2 places; and
- 2) The transfer of ownership of the proposed public open space to the Melksham Town Council and to secure the provision of the play equipment on that site.

Subject to the following conditions:

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

REASON:

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

- 2 The materials to be utilised within this development shall accord with the schedule of materials as described within the planning application form, registered 16 April 2014 and the revised drawings received on 12 August 2014.

REASON:

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

- 3 All soft landscaping comprised in the approved details of landscaping on Plan 3731/01 Rev K 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 estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. The development shall not be occupied until the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture have all been constructed and laid out in accordance with the approved details, unless an alternative timetable is agreed in the approved details.

REASON:

To ensure that the roads are laid out and constructed in a satisfactory manner.

- 5 The development hereby permitted shall not be occupied until the first five metres of the access onto Longford Road, measured from the edge of the carriageway, has been widened to 5m (this access width shall include increasing the length of the lowered kerbs and footway crossover) and shall be consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON:

In the interests of highway safety.

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

times thereafter.

REASON:

In the interests of highway safety.

- 7 The development hereby approved shall be carried out in strict accordance with the revised 'Bats - Method Statement template to support a licence application' for 17a Longford Road, Melksham (reference WML-A13.2 (03/14)) prepared by Middlemarch Environmental Ltd and received by the local planning authority on 25th September 2014, as modified by any relevant Natural England bat licence relating to this development. The installation of the new bat roost features shall be supervised by a professional ecologist.

REASON:

To ensure adequate protection and mitigation for European protected species (Common pipistrelle, Brown long-eared and Serotine bats).

- 8 The cavity wall bat roost and its access point and the bat tubes will be available for bat use before the first occupation of the dwellings associated with the development hereby approved and shall be retained as permanent features for the lifetime of the development, as modified by any Natural England Licence relating to this development.

REASON:

To protect and maintain the bat roost mitigation.

- 9 No external lighting shall be installed to the south elevation of Plot 6 or the north elevation of Plot 5 unless it is required for health and safety purposes, whereupon lighting shall be controlled by a passive infra-red sensor; all other security /external lighting shall be controlled by passive infra-red sensor and all street lighting installed on site shall be low level and downward directional to minimise light spillage.

REASON:

To prevent illumination of the alternative cavity wall bat roost provided as mitigation in the southern elevation of Plot 6 and to keep the lighting of the whole site to a minimum for continued foraging/commuting bat usage.

- 10 Prior to the commencement of works associated with the development hereby approved, a Landscape and Ecology Management Plan shall be prepared and submitted to the local planning authority for approval. The approved plan shall be complied with during and after the completion of the development hereby approved.

REASON:

To ensure the appropriate management of retained trees, hedgerows and newly planted vegetation, and the maintenance of new bat roosts.

- 11 The development hereby approved shall be carried out in accordance with the revised Reptile Mitigation Strategy prepared by Middlemarch Environmental Ltd and received by the local planning authority on 19th September 2014. The Strategy shall be implemented in full unless otherwise agreed in writing with the local planning authority.

REASON:

To ensure adequate protection and mitigation for slow worms.

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

3731/01 Rev K received on 12 August 2014;

3731/02 Rev E received on 12 August 2014; and

3731/03 Rev E received on 12 August 2014.

REASON:

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

- 13 INFORMATIVE: Any noise during the construction phase should be limited to 0730-1800hrs Monday to Friday and 0800-1300 on Saturdays and not at all on Sundays

and Public Holidays.

Appendices:

Background Documents Used in the Preparation of this Report:

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Item 1 - 14/04399/FUL: Land off Lewington Close and Longford Road Melksham



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REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	5th November 2014
Application Number	14/05120/FUL
Site Address	Land North Of 3 Goose Street Southwick Wiltshire
Proposal	Change of use and development of 3 residential single storey dwellings with private access drive (Re-submission of W/13/00647/FUL)
Applicant	Mrs H O'Brien
Town/Parish Council	SOUTHWICK
Ward	SOUTHWICK
Grid Ref	384260 154924
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Prickett for consideration of the scale of development, the visual impact upon the surrounding area, relationship to adjoining properties, and environmental/highway impact. The request was for Committee consideration only in the event that refusal is recommended.

1. Purpose of Report

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

2. Report Summary

This is a resubmission of an application refused under planning reference 13/00647/FUL for the following reasons:

1 The proposed residential development is located outside of the defined village policy limits in an area of open countryside. No rural occupation or other exceptional circumstances have been presented which would outweigh the harm associated with the development. The proposals therefore constitute an unwarranted extension of urbanisation into the countryside to the detriment of the visual openness and quality of the countryside contrary to policies C1, H19 and H22 of the West Wiltshire District Plan 1st Alteration (2004).

2 *The proposed unit to "Plot C" would, because of its design, siting, and poor relationship to the dwelling to the south "Berryfield Farm", have an un-neighbourly impact on that dwelling as well as on the future occupiers of "Plot C" due a sense of lack of privacy and an unnecessarily cramped situation. The proposal is therefore contrary to Policy C38 of the West Wiltshire Local Plan 1st Alteration 2004.*

3 *The proposal, located outside of village policy limits, is contrary to the National Planning Policy Framework (Section 4 paras. 29, 30 & 37) and the emerging Core Strategy for Wiltshire (Policy 60), which seek to reduce the need to travel, influence the rate of traffic growth and reduce the environmental impact of traffic overall in support of sustainable development.*

The key issues therefore are whether or not the revised plans address the reasons for refusal, and whether or not there has been any change to the Policy environment that indicates that the decision should be revisited.

Southwick Parish Council - Supports the proposals for the reasons cited within section 7 below.

Neighbourhood Responses: Three letters of objection were received.

3. Site Description

The application site of approximately 0.49 ha in extent is located to the south of Southwick and to the east of "Goose Street" (the road to North Bradley). It is agricultural land, roughly rectangular in shape and is fairly level.

The site lies outside of Village Policy Limits. To the east is open countryside. To the west on the opposite side of the road there is linear development within VPL, whilst to the south there are two dwellings. To the north is the "Lewis Court" development, within VPL.

4. Planning History

79/00102/HIS : Detached dwelling : Refused : 10.04.1979

W/13/00647/FUL : Change of use and development of 3 residential single storey dwellings with private access drive : Refused : 03.06.2013

5. The Proposal

The proposal is for the development of three single storey dwellings of fairly substantial footprint (2 at just over 200m² and 1 at +-300m²). The +200m² units would comprise four bedrooms, two reception rooms, - a "study", kitchen and utility room plus an integral double garage. The 300m² would provide for similar levels of accommodation but with larger floor areas (in general) to the rooms.

Access would be via a centrally located private driveway serving all three units, off of Goose Street.

6. Planning Policy

West Wiltshire District Plan, 1st Alteration 2004

C1 - Countryside protection

C31a- Design

C32 - Landscaping

C38 - Effects of development on neighbouring properties
H17 - Village Policy Limits
H19 - Housing in the Countryside
H22 - Rural Exception Sites

National Planning Policy Framework

Emerging Wiltshire Core Strategy

7. Consultations

Southwick Parish Council

Supports the proposal on the grounds that it is appropriate in-filling of the site and the proposed dwellings will add to the variety and mix of dwellings in Southwick.

In addition to the Parish comments, Councillor Prickett called the case in to Committee, but only in the event that refusal was recommended.

Highways

The Officer notes that this is a re- submission of the previous application 13/00647/FUL. The site is located outside of the Housing Policy Boundary and the proposal is therefore contrary to the sustainability policies contained within the National Planning Policy Framework, the Adopted Wiltshire and Swindon Structure Plan 2016 and the emerging Core Strategy for Wiltshire, which aims to reduce the need to travel, especially by private car. Refusal is recommended on sustainability grounds.

However, if the application is permitted due to Policies that may be in favour of the development and over-ride the above refusal reason, then I would require the following:-

1. The access road shall be 4.5m for the first 5m and thereafter can be reduced to 4m, this shall be illustrated clearly on a scaled drawing.
2. The submitted Site Plan suggests a visibility splay of 2.4m by 120m is achievable; a indicative plan shall be submitted to illustrate the splay..
3. In line with Wiltshire Council's Parking Strategy, 3 spaces are required per dwelling (please note that garages are not considered to be car parking spaces).

Ecologist

The ecologist notes that no ecological assessment or tree survey has been submitted. The DAS states that all boundary hedgerows (apart from the one adjacent to main road) and a tree within the site, will be retained as part of the proposed development. A tree survey is recommended so that a management strategy can be prepared for the protection of trees and hedgerows. The officer suggests that this is done prior to permission, with conditions as follows to be attached:

1. *Prior to the commencement of works associated with the development hereby approved, protective fencing shall be erected in locations to be agreed in writing with the local planning authority and shall be retained until the completion of all building operations on the site.*

REASON: in order to safeguard hedgerows and trees worthy of retention.

2. *Prior to the commencement of the development hereby approved, details of the replacement hedgerow, including its species composition, structure, aftercare maintenance and management, shall be submitted to the local planning authority for*

approval. The approved details shall be complied with and the replacement hedgerow shall be planted within 12 months of the completion of the development.
REASON: to compensate for the loss of the roadside hedgerow

3. *Prior to the commencement of work associated with the development hereby approved, a hedgerow management plan, which shall include details of timing of its implementation, shall be submitted to the local planning authority for approval. Management shall be carried out in accordance with the approved plan.*
REASON: to ensure the longevity of existing hedgerows

With regard to Protected Species the Ecologist recommends informatives.

Housing Officer

Officers note the locality outside the existing Housing Policy Development Boundary for Southwick. The usual expectation would therefore be that this site could only be developed as a rural exception site i.e. only developed for 100% affordable housing, subject to demonstrable affordable housing need. In the event that the site has widespread local support and is considered suitable for housing development rather than an exception site, officers believe that under the West Wiltshire Local Plan rural H2 policy a 50% affordable housing contribution at nil subsidy would have been sought. However, officers also note that a revised housing policy has been prepared for the CS which recommends that on sites of 1-4 dwellings no affordable housing contribution will now be sought. Although this policy has not yet been adopted it does define the Council's intended direction of travel on affordable housing based on up-to-date evidence. Officers understand that this is the policy that is now being implemented on planning applications submitted from 28th February 2014 onwards. The proposal is for the development of 3 new dwellings and therefore, under current approaches, officers would not now be seeking an affordable housing contribution. It is finally noted that the latest Housing Register statistics show households in priority need as: Wiltshire wide: 11,209; Southwick: 25

Wessex Water

No objection but notes that new connections would be required.

Wiltshire Fire and Rescue

Invite attention to fire protection and safety considerations.

8. Publicity

3 Neighbour responses were received, containing the following objections/observations:

- There have been two previous refusals, one in 1979 and one in 2013 and circumstances and the proposals are little changed;
- The site is outside village settlement limits and encroaches on green belt land. This is at odds with Government policy not to develop land designated as green belt.
- Hedge management as currently undertaken won't be possible since a tractor with attachment currently carries this out. Who would be responsible for this in future.
- Loss of privacy where boundary hedge would be retained, but no fencing would provide privacy during winter months. The existing use is limited and does not affect privacy – a new bungalow would.
- Direct overlooking from property "B" onto 5 Lewis Court.
- The loss of open field forever and a significant section of the natural hedgerow adjacent to the road will also be lost.

- Error in orientation of north arrow.
- Little change to plans from what was previously refused other than relationship to Berryfield Farm.
- Approval would set a precedent for development outside of Village Policy Limits.
- The dwelling to the south east is not a modern building but is in fact a barn conversion.
- No evidence that this type of development is required in Southwick (CS Policy 44 and 45).
- There does not appear to be local support for this. Greater pressure on local school and increased traffic.
- No employment increase beyond building stage (CP1);
- CP29 aims at avoiding development between villages and Trowbridge;
- The land is designated as Agricultural land;
- Harmful effect on Berryfield Farm due to impact on kitchen which is “hub of family life”. Plans are not geo-referenced so developer may alter positions. Trees planted by developer do not mean that future residents won't remove them. The annex could potentially be harmed by planting too close to the historic foundations. It is understood that Berryfield Farm has no right to a view and that as the conservatory, which links the kitchen to the annex, has a poly-carbonate roof, no right to light can be claimed, should the developer place a fence and hedge close to the windows that overlook the proposed development. Nevertheless a reduction in quality of life would result as the room provides the informal living space, link to the back door and safe play area for children.
- Support by the Southwick Parish Council is erroneous confusing the strict definition of 'infill' land an interpretation of 'land that is between other things'. This view means that all green land between villages and towns would disappear. Infill land is 'land within a built up area that can be considered for further construction.' The site is designated for agriculture, is not in a built up area and there is no existing construction. A change of use should be refused.
- Application is a minor alteration to the plan submitted last year that was also rejected. Same objections apply again, including those of Cllr Prickett; and
- The guiding policy document (WWDP) disallows applications such as this.

9. Planning Considerations

Policy Considerations: Reasons 1 and 3 of refusal issued under reference 13/00647/FUL

The Local Planning Authority is required to determine planning applications in accordance with the policies of the development plan, unless material considerations indicate otherwise.

The application site lies outside of Village Policy limits and by definition in the Open Countryside.

Currently Local Plan policies constrain new residential development to being within Town or Village Policy limits (Policies H1 or H17 of the West Wiltshire District Plan, 1st Alteration 2004 respectively) or to rural exception sites for affordable housing under Policy H22, or for bona fide agricultural or forestry related dwellings (Policy H19). The proposal is for market housing and would be in conflict with the development plan in this locality where no affordable housing or agricultural/forestry justification exists.

With regard to the emerging Core Strategy, Core Policy 1 (Settlement Strategy) read in conjunction with Core Policy 2 (Delivery Strategy) seeks to define where development will be the most sustainable across Wiltshire. Southwick is classified as a "Large Village" in the CS.

The NPPF states that "... decision-takers may also give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan [the more advanced the preparation, the greater the weight that may be given], and the extent to which there are unresolved objections to relevant policies [the less significant the unresolved objections, the greater the weight that may be given] and the degree of consistency of the relevant policies in the emerging plan with the NPPF."

Under the supporting text to Core Policy 1 it is stated that: "At Large Villages the existing settlement boundaries will be retained, and development will predominantly take the form of small housing and employment sites within the settlement boundaries. Small housing sites are defined as sites involving less than 10 dwellings (i.e. not a major application). *Development outside the settlement boundary will be strictly controlled. Relaxation of the boundaries will only be supported where it has been identified through a community-led planning policy document, such as a neighbourhood plan, which includes a review of the settlement boundary to identify new developable land to help meet the housing needs of that community*" (Writer's emphasis).

There is thus specific scope within the Core Strategy for the amendment to boundaries but this "*will be the prerogative of the community to carry out this review through an appropriate planning process which might include a neighbourhood plan*". This in turn aligns with the NPPF emphasis on community involvement and the presumption in favour of sustainable development in that context: "66. Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably." The CS also makes provision for 100% affordable rural exception sites under CP47 which "*...allows for the allocation of or granting of planning permission for small sites comprising of affordable housing only as an exception to normal policies.*"

It is also the case that the appointed Planning Inspector for the CS examination concluded that existing settlement boundaries are out of date and should be reviewed. Council is therefore undertaking a review through the preparation of the "Wiltshire Housing Site Allocations Development Plan Document (DPD)." This process is still however under way, with consultations having recently closed (22 September 2014). Policy officers will be taking this forward towards the preparation of a series of maps that detail initial proposals for revised settlement boundaries, with an adopted DPD being the aim. Until adoption however there remains no clarity on whether or not the application site would be included in within any revised Southwick development limits. From the perspective of the proposed DPD therefore, there is also no policy justification for the development of the site for residential use at present.

Whilst noting that the Parish Council has supported the proposal, the application documentation confirms that the proposals are not for a rural exception site under the WWDP, and makes no reference to any engagement towards proposed incorporation of the site within policy limits in terms of a "community-led planning policy document" as envisaged by the emerging Core Strategy CP1. There is therefore no justification in terms of existing or emerging policy to allow the proposals. The objections received furthermore indicate opposition to the proposals from the local residents in the immediate environs.

At present the Village Policy limit coincides with the northern boundary of the site with the "Lewis Court" development lying beyond that boundary. To the east are open fields and to the south is the "Berryfield Farm" dwelling and a residential conversion of a farm building. To the west on the opposite side of the road lie the dwellings at No 4 and 6 Goose Street, also within Village Policy limits. In policy terms the site however remains greenfield land outside of any defined settlement boundary. Albeit that the site is bounded by settlement limits to

the north and west it would still result in the loss of the open countryside, extending urbanisation to the south of the village limits..

The proposal is for market housing with the supporting document suggesting the possibility of a "negotiated commuted sum towards affordable housing" being mooted in the supporting document. No exceptional circumstances have been demonstrated to indicate why the proposal should be considered contrary to development plan policies. In this context the proposal cannot be seen as infill and does not meet rural exception site criteria. Furthermore the Highway Officer has again recommended refusal on the basis of the transport and highway implications of the site being outside of Village Policy Limits without any exceptional justification and thereby, by definition, being contrary to policies aimed at confining development to sustainable locations. In the light of these factors, it is considered that Reasons 1 and 3 of the previous refusal have not been overcome.

Reason 2 for previous refusal

With regard to neighbouring amenity, Reason 2 of the previous refusal referred specifically to the relationship between the development that was proposed on "Plot C" and the dwelling to the south, "Berryfield Farm". The siting and consequent relationship were considered to have the potential to be harmful to both the existing and proposed dwellings.

The revised plans would relocate the unit on "Plot C" eastward by some 7m, so that the building would not, as before, be directly in front of the "Berryfield Farm" (3 Goose Street) dwelling north facing elevation. The neighbour has again objected in terms of potential impacts on amenity, but it must be accepted that the applicant could outside of this planning application erect boundary treatments or extend hedging to the site that would obscure any low-level views to the north from the dwelling. The re-location has furthermore resulted in no windows to habitable rooms (which would in any event be at ground-floor level) facing directly towards the existing dwelling. The new single storey dwelling on Plot C would be to the north of the "Berryfield Farm" curtilage, with no unacceptable overshadowing therefore arising.

The proposed design and siting for the dwellings on the other two plots would achieve wholly acceptable separation distances between the proposed units and the Lewis Court Development, so that no unacceptable overshadowing or loss of privacy would arise within that group of dwellings. The new units would also be single storey in height, therefore having no potential for overlooking from any upper storey level. Neighbours raise concerns with potential visibility through hedges during winter, but this would be a matter that could be dealt with by way of a planning condition. Primary windows to the existing dwellings to the north face at 90 deg to the application site in the case of units closest to the boundary and no unacceptable harm in terms of privacy would therefore arise for future occupants of the new sites.

It is considered that the reason 2 for the previous refusal has been overcome.

10. Conclusion

The revised proposals do not constitute a rural exception site in accordance with the WWDP or the emerging Core Strategy, and the land is not being considered under a community-led planning policy document as envisaged under the CS. The revisions have however addressed the issues of the relationship between the proposed unit on Plot C and the property to the south. Whilst Reason 2 for the previous refusal has been overcome, Reasons 1 and 3 are considered to still apply.

RECOMMENDATION

Refusal for the following reasons

- 1 The proposed residential development is located outside of the defined village policy limits. No rural occupation or other exceptional circumstances have been presented which would outweigh the harm associated with the development. The proposals therefore constitute an unwarranted extension of urbanisation into the countryside to the detriment of the visual openness and quality of the countryside contrary to policies C1 and H19 of the West Wiltshire District Plan 1st Alteration (2004), and Core Policies 1 and 2 of the emerging Wiltshire Core Strategy.
- 2 The proposal, located outside of village policy limits, is contrary to the National Planning Policy Framework (Section 4 paras. 29, 30 & 37) and the emerging Core Strategy for Wiltshire (Policy 60), which seek to reduce the need to travel, influence the rate of traffic growth and reduce the environmental impact of traffic overall in support of sustainable development.

Appendices:

Background Documents Used in the Preparation of this Report:

Item 2 - 14/05120/FUL - Land north of 3 Goose Street, Southwick



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REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	5th November 2014
Application Number	14/07674/FUL
Site Address	Land at 347 Snarlton Lane, Melksham, Wiltshire, SN12 7QP
Proposal	Erection of two new dwellings
Applicant	Mr Jon Sutton
Town/Parish Council	MELKSHAM WITHOUT
Ward	MELKSHAM WITHOUT NORTH
Grid Ref	392074 163840
Type of application	Full Planning
Case Officer	James Taylor

Reason for the application being considered by Committee

The local ward member Cllr Terry Chivers has asked that should this application be recommended for approval by officers, it should be reported to the Western Area Planning Committee for Members to determine and to consider the following key issues:

- The scale of development;
- The visual impact upon the surrounding area;
- The relationship to adjoining properties; and
- The environmental or highway impacts.

1. Purpose of Report

To identify the material planning considerations; summarise the relevant policy and consultation responses; assessment the planning merits of the application and to make a recommendation to members of the committee.

2. Report Summary

The key planning issues to consider are:

- Principle of development
- Character, appearance and spatial form
- Impact on natural environment; including trees and landscaping, ecology and drainage
- Inappropriate backland development assessment
- Whether there would be a loss of an important visual gap or open space
- Services including water supplies and sewerage treatment.
- Highway safety impacts
- Neighbouring amenity

This application explores and assesses the key issues material to the determination of the application and concludes to make a recommendation for approval of planning permission subject to conditions.

3. Site Description

The application site is part of the residential curtilage of No. 347 Snarlton Lane which appears to be a farmhouse that has become enclosed by housing development. The site has a number of dilapidated outbuildings, areas of concrete hard standing and areas of overgrown brambles and grass.

The site is relatively flat and is located within the town policy limits of Melksham, but is not subject to any detailed relevant planning constraints. Access is from the unclassified Snarlton Lane which terminates approximately 100m to the east.

To the south and west of the application site is residential development that has occurred at Snarlton Lane over a period of many decades. To the north and east, further residential development has taken place within the last 5 years following the Council's approval for a "comprehensive mixed use urban extension comprising residential development of 670 dwellings and associated ancillary facilities and works including local centre, primary school, sports and recreation facilities and distributor road".

4. Planning History

W/74/00525/HIS	Addition to dwelling
W/04/01895/OUTES	Comprehensive mixed use urban extension comprising residential development of 670 dwellings and associated ancillary facilities and works including local centre, primary school, sports and recreation facilities and distributor road
W/08/02886/REM	Construction of 114 dwellings, highways and associated landscaping
W/08/03471/REM	Construction of 114 dwellings, access and associated landscaping
W/09/03109/REM	Submission of reserved matters pursuant to outline planning permission 04/01895/OUTES for the substitution and amendment of two units, plus amendments as required to satisfy Highway and Building Control queries
W/09/02443/FUL	Variation of condition 03 of permission 08/03471 to allow all windows serving bathrooms and toilets of the proposed dwellings to be obscurely glazed and of a design to allow for opening with exception of Plots 20, 21, 22, 23, 99 and 109 which shall remain obscurely glazed and fixed shut
W/11/02250/PREAPP	Community hall/changing facilities and associated parking
13/03764/PREAPP	Erection of 3 no. detached dwellings

5. The Proposal

As reported above, the 2013 pre-application enquiry considered the potential for erecting 3 dwellings on this site. However, such a proposal was not encouraged; and instead, officers suggested that a one or two house scheme may be worth further exploration.

Following the pre-app, the applicant submitted a 2-house application comprising one 3-bed and one 5-bed property. However, through negotiations, the scheme was further revised to comprise two 3-bed houses with garaging, private rear amenity space, 2 car parking spaces and access provision.

The walls to each unit would be a mix of brick and render with a tiled roof and uPVC window frames and doors. The proposed heights, massing and scale would be comparable to the modern units to the north and east.

The access for the existing dwelling would be moved to the western limits of the site and provide a 3.5 metre wide access to the new dwellings and a total of 7 car parking space for the existing and proposed units plus garaging for the proposed dwellings.

6. Planning Policy

West Wiltshire District Plan 1st Alteration (2004) (WWDP)

C31a: Design; C32: Landscaping; C38: Nuisance; H1: Further Housing Within Towns; U1a: Foul Water Disposal; U2: Surface Water Disposal.

Emerging Wiltshire Core Strategy (eWCS)

CP1: Settlement strategy; CP2: Delivery Strategy; CP3: Infrastructure requirements; CP15: Spatial Strategy: Melksham Community Area CP50: Biodiversity and Geodiversity; CP52: Green Infrastructure; CP57 Ensuring high quality design and place shaping; CP61: Transport and development; CP67: Flood risk; CP68: Water resources.

National Planning Policy Framework (2012) (NPPF) and Planning Practice Guidance (PPG)

7. Consultations

Melksham Without Parish Council: No objections “*on the condition that there is an improvement to the site access arrangements which are currently substandard as there is no allowance for turning into the entrance. There needs to be a correct splay, but currently there is a telephone pole preventing this. The Council would like to seek clarification with regard to this being moved and its exact end location. There are concerns over issues during construction with regard to deliveries, construction parking and working hours which need to be agreed prior to the commencement of any development in conjunction with a full and proper bat survey, as residents have seen a lot of bat activity in the area.*”

Council’s Highways: No objection subject to conditions.

Wessex Water: No objection and note that no surface water disposal would be allowed to foul sewer.

Council’s Ecologist: No objection subject to informatives.

Wiltshire Fire & Rescue Service: Standard advice provided on building control and fire safety matters.

8. Publicity

Public consultation consisted of individual neighbour letters and a site notice: 3 letters of objection were received which may be summarised as follows:

- Potential impact on bats and inadequate survey work for bats;

- Harm to wildlife more generally including nesting birds;
- Highway safety;
- Disruption, trespass and damage to private property during the construction phase;
- Loss of privacy to No. 346 Snarlton Lane from overlooking of rear garden, kitchen and bathroom; and.
- Flooding and surface water drainage concerns.

9. Planning Considerations

9.1 Principle of development

9.1.1 The site is located within the allocated area of the town policy limits of Melksham as defined by policy H1 of the adopted West Wiltshire District Plan – 1st Alteration. This policy sets out that the proposal is acceptable in principle subject to the detailed criteria set out in policy H1 of the local plan and any other material considerations such as the NPPF.

9.1.2 The site appears from historic aerial photographs to be a former farm yard that was adjacent to open countryside, but is now completely enclosed by housing development. The site is considered by officers to be a sustainable location and is an acceptable small scale residential windfall opportunity.

9.2 Character, appearance and spatial form

9.2.1 Officers recognise that to the north and east of the site, there is a relatively high density modern detached housing development. Some of those units though do benefit from larger plots than is typical of modern house building presumably reflecting the fact that they are water frontage properties and would have likely been marketed to reflect this. Between the new build and the application site is a landscaped buffer which ranges from approximately 1 metre to 5 metres in depth and wraps around the northern and eastern boundary of the application site. The new build housing makes an efficient use of land and provides for basic amenities of its occupiers with a degree of overlooking from the upper floor levels.

9.2.2 To the south and west, the spatial character is rather different with a long terrace of properties to the west which benefit from long, but quite narrow rear gardens. Although it is clear that the end of the terrace (property No 346 which adjoins the site benefits from a much larger plot. To the south, there is more of a mix, but essentially detached properties forming a ribbon development along Snarlton Lane, set in generous sized plots.

9.2.3 The spatial character of the general area is clearly mixed, but it is considered that the site, being a backland plot, relates more to the modern housing development to the north and east rather than those properties built along Snarlton Lane. The site is clearly capable of accommodating one dwelling comfortably. Taking on board the above, the second dwelling can on balance, be accommodated without any harm to the spatial character of the area. It would be an efficient use of land and would not be substantively out of keeping with the new build to the north and east.

9.2.4 It is important to stress that this assessment is based on the revised scheme for 2 relatively modest 3-bedroom properties.

9.2.5 The elevation treatments are acceptable and would not be out of keeping with the most recent development in the vicinity. After negotiation both plots are now for well proportioned 3-bedroom dwellings and previously raised officer concerns have been addressed.

9.3 Impact on the natural environment; including trees and landscaping, ecology and drainage

9.3.1 The Council's ecologist was made aware of the public comments which raised the potential impact on bats and nesting birds in particular. In response, the Council's ecologist has provided detailed comments of the potential impact to ecological interests. The ecologist has advised that the existing buildings "*have limited suitability for roosting bats and nesting birds, so no surveys are required in this instance*". "*Although there are no existing records in close proximity to the application site, there are records of slow worm for the eastern side of Melksham (residential garden)*". To ensure reptiles are not harmed as part of any development, an ecological informative is recommended. It is also recommended that "*the buffer planting should be protected during construction and retained in the long term*". The ecologist further advises that "*although there are existing records of Great crested newt in the wider area around the site, including to the northeast and southwest, the application site has become isolated from these due to the adjacent residential development to the immediate east and northeast (land at Snowberry Lane / Sandridge) and to the south (Clacker's Brook); the site is also isolated from other records due to the presence of the brook and roads, which form barriers to dispersal*". It is therefore "*concluded that great crested newts are unlikely to be present on the application site*".

9.3.2 The expert ecological advice provided concludes that this development proposal would not result in any significant or demonstrable harm to ecological interests, and in accordance with advice given, informatives are recommended. The existing landscaping buffer implemented to protect Snarlton Lane residents from the new housing development to the north would be retained and now conversely would help mitigate this proposed development from impacting significantly on the new build to the north and east. Officers recommend that a condition should be imposed on any permission to require a final landscaping scheme which would provide details of additional planting and protection measures for the existing and retained landscaping. This would also provide further opportunity to help mitigate any impact on No.346 Snarlton Lane – a property/plot, which would be more overlooked once the development is complete than they currently are. However, officers submit that the degree of additional overlooking to No. 346 would not be sufficient to merit refusal of the application for the reasons set out in section 9.8 below.

9.3.3 The foul drainage of the site to the foul sewer would not be objectionable. Whilst the applicant stated an intention to dispose surface water to the main sewer, this has been amended by way of using soakaways following negotiation and taking on board comments from Wessex Water. The local objection on this point is noted. In light of this and the basic nature of the drainage details, a condition is considered necessary and prudent to ensure that final details are adequate.

9.4 Inappropriate backland development assessment

9.4.1 The site is clearly of a backland form; however, the access arrangements are sufficient to avoid harm to the amenity of existing residents in terms of noise, lights and smells from additional traffic driving past them and manoeuvring. Subject to issues of overlooking and

neighbouring amenity being adequately addressed, officers advise that the development of this site in principle need not be considered inappropriate backland development within the meaning of Policy H1.

9.5 Whether there would be a loss of an important visual gap or open space

9.5.1 Whilst the site acts as a visual gap in the street/urban form, it does not substantially add to the public realm. As such and whilst regrettable, its erosion and loss would not be a significant issue. Any concern would be outweighed by the benefit of providing further housing within the established built form and making more efficient use of urban land.

9.6 Services including water supplies and sewerage treatment.

9.6.1 Wessex Water has indicated that connection to their services of foul drainage and water supply would not necessarily be an issue. An informative to encourage early engagement with Wessex Water is highlighted as being prudent.

9.7 Highway safety impacts

9.7.1 Local resident concerns in regards to highway safety are noted and have been carefully considered. The access has been moved to the western edge of the site frontage with Snarlton Road which is an unclassified public highway that terminates some 100 yards to the east. Traffic at this point is likely to be relatively light. It is noted that much of the local concern involves the construction phase and it is acknowledged that access for large vehicles would not be convenient to local residents. However, officers submit that any infill or backland development taking place within relative close proximity to existing occupied dwellings, the construction phase shall inevitably result in a degree of nuisance. It is important to limit the levels of nuisance where possible within the remit of planning. A Construction Method Statement condition which inter alia would limit the hours of construction work and minimising pollution is recommended. It is necessary however to assume that there would be no trespass or damage caused to third party land/property. Such concerns should they transpire, would be civil matters beyond the scope and remit of the planning authority.

9.7.2 Highway officers have assessed the application and raise no objection. A visibility splay of 2m x 30m in either direction has been demonstrated and accepted by the highway officer through negotiation. There is also no highway based objection to the telephone pole remaining (within the western visibility splay). Officers duly assert that this is a relatively lightly trafficked location and the road terminates circa 100m to the east. Officers further advise that any resulting highway impact relating to this 2-house scheme would not be severe as far as the appropriate NPPF test is concerned – whereby paragraph 32 stipulates that “*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*”.

9.7.3 The negotiated 2-house scheme satisfies the minimum parking standards of two spaces per dwelling. 3 parking spaces are shown for the existing dwelling and there is adequate space for turning for each property. The local concern raised about the access drive’s width is noted, however it is not considered to be sufficient grounds to justify a refusal as the resultant impact would not be severe. In any event, officers recognise that with a minor tweak made to the final landscaping, this could be resolved by way of condition. On the basis of the above, officers advise that there are no highway grounds to justify a refusal.

9.8 Neighbouring amenity impacts

9.8.1 Officers recognise that the proposed development would result in a degree of overlooking to existing properties/land. However, there would be acceptable separation distances with in excess of 10 metres provided to residential boundaries and over 21 metres between habitable room windows. The Council has adopted guidance on house alterations and extensions that sets these as benchmark distances. Whilst such guidance is not strictly applicable here given that the SPG relates to house alterations and extensions, it nevertheless provides a useful guide on how to avoid significant harm from overlooking within an existing built-up area.

9.8.2 Officers recognise that the house illustrated on plot 2 would have 1 habitable room window at first floor which would look in the general direction of No. 346 Snarilton Lane. However due to the orientation of the properties and the separation distance, there would be limited overlooking. Plot 1 would also have only 1 first floor habitable room window facing No. 346 Snarilton Lane. Again due to orientation and separation distance this would cause only limited overlooking. On this basis, it is not assessed that there would be significant demonstrable harm. Furthermore it is noted that the overlooking would affect rear garden ground, kitchen and bathrooms. Kitchens and bathrooms are not classed as habitable rooms; and whilst not strictly required, carefully designed/planned landscaping could help reduce any perceived issue.

9.8.3 It is noted that no other objections have been received with regard to overlooking. Nevertheless, the potential impacts to all the other neighbouring properties have been assessed. It is noted that the occupants of No. 36 Goldfinch Road have objected but limited their concern to the impact on bats without any mention of overlooking or indeed loss of light. Officers report that the proposed housing on plots 1 and 2 would result in some overlooking to the existing dwelling at No. 36 Goldfinch Road. However, it is assessed that the orientations submitted provide a compromise resulting in some limited harm to the amenities of existing and future occupiers. Even without a received written representation, the scheme would not result in significant demonstrable harm to residential amenity.

9.8.4 The garden spaces to each of the units are on balance, acceptable with sufficient private amenity space being provided for the proposed houses.

10. Conclusion

10.1 Through negotiation, a revised acceptable form of development is proposed. Any residual concerns raised above are not considered sufficient to merit refusal of the application; and that they need to be weighed against the benefits of allowing a housing development that makes more efficient use of land within the identified town policy limits of Melksham. The NPPF sets an unashamedly pro-growth agenda and this is a material consideration in the determination of this application because this is a sustainable form of development in a sustainable location; and as such, should be encouraged. There is no demonstrable breach of the relevant development plan policies or the policies of the NPPF; and as such, it must be recommended for permission.

RECOMMENDATION: Permission subject to 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 details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

3. 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 and immediately adjacent;
- 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) other vehicle and pedestrian access and circulation areas;
- h) all hard and soft surfacing materials;
- i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
- j) proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);

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

4. 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.

5. 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.

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

REASON: In the interests of highway safety.

7. No 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. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

8. No part of the development shall be first occupied until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

9. 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 materials;
- c) Storage of plant and materials used in constructing the development;
- d) The erection and maintenance of security hoarding;
- e) Wheel washing facilities;
- f) Measures to control the emission of dust and dirt during construction;
- g) A scheme for recycling / disposing of waste resulting from demolition and construction works;
- h) Hours of construction, including deliveries.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the demolition/construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

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

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

Topographic survey received 8 August 2014;
Proposed site plan received on 21 August 2014;
Elevations Plot 1 received on 21 August 2014;
Floorplans Plot 1 received on 21 August 2014;
Elevations Plot 2 received on 21 August 2014;
Floorplans Plot 2 received on 21 August 2014;
Location Plan received on 30 August 2014;

Access visibility play received 24 September 2014;

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

INFORMATIVES:

1. Further information on connection to Wessex Water infrastructure can be obtained from their New Connections Team by telephoning 01225 526222 for Water Supply and 01225 526333 for Waste Water.

2. There is a low risk that great crested newts / reptiles / badgers could occur on the application site. Great crested newts and all reptiles are legally protected and planning permission does not provide a defence against prosecution. In order to minimise the risk of amphibians/reptiles occurring on the site, the developer is advised to clear the site and vegetation in a sympathetic manner during the autumn (September/October) or spring months (April-May) and to maintain the vegetation at a short height to make it unsuitable for reptiles/amphibians until the construction works commence. If these species are found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or a Council Ecologist (01225 713875 / 718182).

Badgers are protected under the Protection of Badgers Act 1992 mainly for welfare purposes. If works are carried out in close proximity to a known badger sett, then a licence may be required. Please see Natural England's website for further information.

The applicant should note that under the terms of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species:

<http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/faq.aspx>

Item 3 - 14/07674/FUL - Land at 347 Snarlton Lane, Melksham



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REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	5 th November 2014
Application Number	14/08400/FUL
Site Address	Plot adjacent to `Beechwood` Bratton Road West Ashton Trowbridge BA14 6AZ
Proposal	Proposed dwelling
Applicant	Mr Mr M.Brown, Mr R. Brown, and Mrs LH Bere Brown
Town/Parish Council	WEST ASHTON
Ward	SOUTHWICK
Grid Ref	387990 155560
Type of application	Full Planning
Case Officer	Jemma Foster

Reason for the application being considered by Committee

Councillor Prickett has called the application to committee if recommended for Approval for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Environmental or highway impact
- Design – bulk, height, general appearance

1. Purpose of Report

To consider the above application and recommend approval.

2. Report Summary

- The main issues to consider are:
- Principle
- Design issues and impact upon character and appearance of the area
- Impact upon neighbouring amenity

- Access and Highways
- Other

3. Site Description

The site is located within the village policy limit of West Ashton and is currently a grassed area. There are properties to the north and west that run in a linear development along Bratton Road. These dwellings differ in material, size and design.

4. Planning History

14/02339/FUL – Proposed Dwelling – Refused at Western Area Planning Committee for the following reason:

The proposed dwelling by reason of its siting, size, height and design would have an adverse impact upon the character and appearance of the street scene and neighbouring amenity, contrary to Saved Policies C31a and C38 of West Wiltshire District Local Plan (Adopted 2004).

5. The Proposal

This is an application for the erection of a detached dwelling with associated new access, amenity and parking areas.

The difference between the current application and the previously refused application are:

Ridge has been dropped by 1 1/2 metres, the front dormer has been replaced with a floor to ceiling windows, first floor windows have been removed on the north eastern elevation, render has been introduced rather than brick, an insertion of an additional first floor window on the north western elevation and a ground floor window on the south eastern elevation. The style of roof has also been altered and the number of proposed bedrooms has been reduced from 3 to 2.

6. Planning Policy

West Wiltshire Local Plan

C31a Design

C32 Landscaping

C38 Nuisance

H17 Village Policy Limit

National Planning Policy Framework 2012

7. Consultations

West Ashton Parish Council: Object for the following reasons:

The previous reason for refusal has not been overcome for the following reasons:

Status of land – the land is considered to be agricultural – is it permissible to seek planning permission to build a dwelling on this site

Scale/design of development – the footprint remains the same and is in the same

place and the plot is still not large enough to accommodate a 2 bedroomed property and 2 parking spaces without imposing on the neighbours. The proposal is contrary to Policy H17 as it is not in keeping with the character and appearance of the spatial form of the development, it is not seamless in the current street scene, an additional entrance will create a ripple effect on parking in the village

Relationship to adjoining properties – The proposal will still dominate the adjacent bungalow and will have a detrimental effect on 19 Bratton Road in the autumn and winter months. The new application shows more trees/shrubs on the boundary which will have a negative light impact on No.19.

Wessex Water – The drainage for Beechwood runs across the rear of the bungalow which has not been addressed in the application

The Design Statement – This statement is incorrect - the proposal is not in line with number 19, West Ashton is not served by public transport, proposal does not respect neighbours, the applicant has no relationship within the village, the development is not acceptable, the parish council made no objection to a previous application which was subsequently sold at auction – there is no reason to conclude that this application will follow the same path, the plot is more suited to a garden.

Wiltshire Council Highways Officer – No Objection subject to conditions regarding access, gradient and visibility splays

Wiltshire Fire and Rescue – Proposal should comply with Building Regulations

Wessex Water – No Objections - New water and waste water connections will be required and further investigation will be required regarding sewers

8. Publicity

4 letters of objection have been received from the public with the following comments:

- Bratton Road is very busy. Cars park either side of the road making it extremely difficult to pull out of driveways. The increase of a further drive will cause further problems
- Due to the height of the wall and narrow exit pedestrians would also have limited view and warning of exiting vehicles.
- The majority of the dwellings in the street scene have wide driveways, many of which are shared, we also question the size of the turning area – is it sufficient for cars to turn as it will result in the cars reversing into the road
- Two bedroomed properties in the design proposed are not characteristic of the area
- We question whether the site is viable
- The site is an important visual gap from our house
- We will be even more overlooked due to the large windows

- The site sits above the road and thus will overlook properties opposite
- The size of the dwelling is out of proportion for the plot
- The site should be a garden
- Front door will overlook our garden and occupants will be able to look into seven of our upstairs windows and six downstairs windows which is an invasion of our privacy
- The proposed rooflight will overshadow onto our lawn
- Dominate the skyline and dwarf the properties either side
- There will be car fumes and nuisance in close quarters of our only garden
- Beechwood will have to face a 25ft high wall and roof within 4ft of the boundary with the addition of a 6ft high close boarded fence between them

9. Planning Considerations

9.1 Principle

The site lies within the Village Policy Limit where development is considered to be acceptable subject to the following criteria: (Policy H17):

The development would be in keeping with the character, appearance and distinctive spatial form of the settlement;

The development is in accordance with the District Plan 1st Alteration policies which seek to protect the natural environment, including water resources and flood risk and the built environment;

It would not create inappropriate backland or tandem development;

It would not result in the loss of an important open space or visual gap;

It can be satisfactorily serviced, there is adequate infrastructure, including water supplies and sewage treatment and it does not create highway problems.

The site is located within the Village Policy Limit, the principle of a change of use from agriculture to residential is considered to be appropriate and therefore is not considered to be a matter to refuse this application. It is important to note that the principle of the site being used for a dwelling did not form part of the previous reason for refusal and therefore it would be inappropriate to introduce this as a reason for refusal on this current application.

It is not considered that the proposed site would create inappropriate backland or tandem development and would not result in the loss of an important open space or visual gap as the road is characterised by linear residential development. The other issues highlighted above will be looked at below.

9.2 Design issues and impact upon character and appearance of the area

The site is characterised by dwellings of different sizes, materials and designs and are predominantly detached.

The proposal sees a detached dwelling which appears smaller than those around it due to its square nature. The materials see cream coloured rendered walls under a brown/red clay tile roof. As stated previously, the materials of the dwellings within the existing street scene differ and therefore the proposed materials are considered to be appropriate. The site access is to be cut into the existing land and graded suitable not to warrant any retaining walls which is considered to be acceptable as it mirrors existing accesses along the road. The reduction in roof height when compared to the previous application is considered to improve the proposed dwellings overall appearance in the street scene.

It is considered that the proposed dwelling would not have an adverse impact upon the character and appearance of the area and is considered to comply with Policy C31a.

Concerns have been raised regarding the size of the plot and whether it is large enough to enable a dwelling to be built. The plans show that a dwelling can be built on this site with areas for access, turning, parking and amenity space and is therefore considered to be appropriate. It is also worthy to note that existing dwellings known as 17b and 17c are on smaller plots than the one proposed.

The plans demonstrate the landscaping proposals which see large areas of grass, boundary fences, gravel and tarmac all of which are considered to comply with Policy C32. Concerns have been raised regarding proposed soft and hard landscaping which will reduce light to neighbouring properties, however these could be inserted without the need for planning permission and therefore would not warrant a reason to refuse this current application.

9.3 Impact upon neighbouring amenity

C38 which relates to nuisance and states:

Proposals will not be permitted which would detract from the amenities enjoyed by, or cause nuisance to neighbouring properties and uses. Consideration will be given to such issues as any loss of privacy or overshadowing, levels or types of traffic generation, the storage of hazardous materials, the generation of unpleasant emissions such as odour, fumes, smoke, soot, ash, dust or grit, the extension of existing unneighbourly uses and the creation of an untidy site. Development will not be permitted if the amenities of its occupiers would be affected adversely by the operation of existing or proposed neighbouring uses.

The proposed dwelling lies just under 1 metre from the boundary with the adjacent dwelling known as 17 Bratton Road. It is located approximately 3.6 metres to the neighbours garage and approximately 7.6 metres from the dwelling where a obscure glazed window is located. It is acknowledged that this is close but due to the

proposed dwelling being single storey with the roof slanting away from the neighbouring dwelling, together with the fact that the proposed dwelling lies adjacent to the neighbours drive and garage, the proposal is not considered to impact upon this neighbouring dwelling in terms of being overbearing. The proposed dwelling also lies north west of the existing property and therefore it is not considered that overshadowing would warrant a refusal reason.

The proposed dwelling is located approximately 12.6 metres south of number 19 Bratton Road and approximately 3 metres to the neighbouring boundary which is adjacent to access of number 19. It is therefore considered that the proposed dwelling would not be overbearing to number 19 Bratton Road. It is acknowledged that the proposed dwelling would cause some overshadowing to the garden of number 19 but due to the ridge height being relatively low it would not be sufficient to warrant a reason to refuse the application.

The proposed ground floor windows are considered not to overlook neighbouring properties by reason of them being at ground floor level. Fences measuring 1.8 metres high are proposed on the boundaries of number 17 and 19 Bratton Road and the proposed windows to the front elevation are over 30 metres from the properties on the opposite side of the road (32 and 34 Bratton Road). The proposed rooflights on the north west elevation serves an en-suite bathroom which can be conditioned to be obscure glazed and stair well which would not overlook number 19 Bratton Road. The rooflight on the south eastern elevation is located below 1.7 metres from the internal floor level and serves a bedroom and therefore would overlook the garage of number 17 Bratton Road. As this rooflight would be located on an angle due to the roof slope it would only overlook the neighbours garage and not their private amenity space and as such is considered to be appropriate. The proposal is therefore considered to comply with Policy C38.

9.4 Access and highways

The submitted plans demonstrate that sufficient parking, turning, access and visibility splays can be achieved from the proposed development which meet highway requirements and therefore it is considered that the proposal would not have a detrimental impact upon highway safety.

Concerns have been raised regarding whether cars will be able to leave the site in a forward gear. The Highways officer has confirmed that there is sufficient space for cars to park and turn on site.

9.5 Other

The Fire and Rescue Service have requested that the proposed dwelling complies with Building Regulations. This is not a material planning matter that can be taken

into consideration when making a recommendation on this application.

Some issues have been raised that are not considered to be materials planning considerations when making a recommendation on this application and these include location of man hole covers, car fumes, viability, personal connections to the village and if the site will be sold on via auction. With regards to foul sewerage and utilities, Wessex Water have raised no objections to the proposed development and the application was not previously refused on this matter and therefore it would be inappropriate of the Local Planning Authority to raise this as a reason to refuse the application.

10. Conclusion

It is considered that the proposal has overcome the previous reason for refusal and complies with the relevant policies of the Local Plan and is therefore recommended for Approval.

RECOMMENDATION: Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, 13604-200-01T, 1309: 07 received on 5th September 2014

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

3. Before the development hereby permitted is first occupied the rooflights serving the en-suites on the north western and south eastern elevation shall be glazed with obscure glass only to an obscurity level of no less than level 3 and the windows shall be permanently maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

4. The soft landscaping shown on the approved drawings 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.

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

5. No part of the development hereby permitted shall be first occupied until the access, turning area, parking spaces and visibility splays have been completed in accordance with the details shown on drawing number 1309/07 received by the Local Planning Authority on 5th September 2014. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

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

REASON: In the interests of highway safety.

7. No 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.

8. The gradient of the access hereby approved shall not at any point be steeper than 1 metre for a distance of 15 metres from its junction with the public highway.

REASON: In the interest 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), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the north east, north west or south east roofslopes of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

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Item 4 - 14/08400/FUL - Plot adjacent to 'Beechwood' Bratton Road West Ashton



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