

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Council Offices, Monkton Park, Chippenham
Date: Wednesday 11 March 2015
Time: 3.00 pm

Please direct any enquiries on this Agenda to Libby Beale, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718214 or email elizabeth.beale@wiltshire.gov.uk

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

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Membership:

| | |
|-----------------------------------|----------------------|
| Cllr Tony Trotman (Chairman) | Cllr Sheila Parker |
| Cllr Peter Hutton (Vice Chairman) | Cllr Toby Sturgis |
| Cllr Christine Crisp | Cllr Philip Whalley |
| Cllr Mollie Groom | Cllr Terry Chivers |
| Cllr Chris Hurst | Cllr Howard Marshall |
| Cllr Mark Packard | |

Substitutes:

| | |
|--------------------|----------------------|
| Cllr Desna Allen | Cllr Dennis Drewett |
| Cllr Glenis Ansell | Cllr Howard Greenman |
| Cllr Chuck Berry | Cllr Jacqui Lay |
| Cllr Mary Champion | Cllr Linda Packard |
| Cllr Ernie Clark | Cllr Graham Wright |
| Cllr Bill Douglas | Cllr George Jeans |

AGENDA

1 **Apologies**

To receive any apologies for absence.

2 **Minutes of the previous Meeting** (*Pages 5 - 22*)

To confirm and sign as a correct record the minutes of the meeting held on 18 February 2015.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chairman.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person **no later than 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 no later than 5pm on Wednesday 4 March 2015**. 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 **Rights of Way applications**

To consider and determine the following application:

- 6a **The Wiltshire Council (Parish of Purton) Path no.161 Definitive Map and Statement Modification Order 2014.** *(Pages 23 - 112)*

7 **Planning Applications**

To consider and determine the following planning applications:

- 7a **14/11318/VAR- Wiltshire Golf & Country Club, Vastern, Royal Wootton Bassett, Swindon, SN4 7PB** *(Pages 113 - 124)*
- 7b **14/12103/FUL - St Andrews Church, West Street, Castle Combe, Wiltshire, SN14 7HT- APPLICATION WITHDRAWN** *(Pages 125 - 134)*
- 7c **15/00267/FUL - Land rear of Bay Tree Cottage, The Butts, Biddestone, SN14 7DT** *(Pages 135 - 146)*
- 7d **13/01483/FUL - 1 Chestnut Road, Chippenham, Wiltshire, SN14 0EY** *(Pages 147 - 152)*

8 **Urgent Items**

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

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NORTHERN AREA PLANNING COMMITTEE

MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 18 FEBRUARY 2015 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM.

Present:

Cllr Tony Trotman (Chairman), Cllr Peter Hutton (Vice Chairman), Cllr Christine Crisp, Cllr Chris Hurst, Cllr Mark Packard, Cllr Sheila Parker, Cllr Toby Sturgis, Cllr Nick Watts, Cllr Philip Whalley, Cllr Terry Chivers (Substitute) and Cllr Jacqui Lay (Substitute)

Also Present:

Cllr Chuck Berry, Cllr Howard Greenman, Cllr Bob Jones MBE and Cllr Alan Hill

16 **Apologies**

Apologies for absence were received from:

Cllr Simon Killane, who was substituted by Cllr Terry Chivers.

Cllr Mollie Groom, who was substituted by Cllr Jacqui Lay.

17 **Minutes of the Previous Meeting**

Hilary Ford spoke against the accuracy of the minutes of the last meeting in relation to item 14d. The Chairman made a statement explaining how the determination of the application was reached at the meeting and the content of the minutes. Amendments to be made to the minutes were explained.

Resolved:

To confirm as a true and correct record and sign the minutes of the meeting on 28 January 2015 subject to the following amendments in relation to item 14d:

- ***'Margaret Carey, Box Parish Council'***;
- **A reference to *'grey crested newts'* to be corrected to *'Great crested newts'***;
- **To amend condition 2 from:**

'Within three months of the date of this permission the hard standing, access, mobile home (including any fixtures and ancillary pipe work), horse trailer and any other trailers or buildings not shown as approved on the approved plans shall be removed from the site.'

to read:

'Within 3 months of the date of this permission, the hard standing, access, the mobile home (including any fixtures and ancillary pipe work), horse trailers or buildings and any other trailers or buildings not shown on the approved plans together with the 2 containers on site shall be fully removed from the site.';

- To add the following to the summary of the debate:

'Advice given by the legal officer and planning officer allowed members to come to a majority decision to accept the officer's recommendation'.

18 **Declarations of Interest**

There were no declarations of interest.

19 **Chairman's Announcements**

There were no Chairman's announcements.

20 **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

21 **Planning Applications**

21a **14/11864/VAR- Westinghouse Recreation Ground, Park Avenue, Chippenham, Wiltshire, SN15 0HB- APPLICATION WITHDRAWN**

This application was withdrawn in advance of the meeting.

21b **14/08305/REM - Marden Farm, Calne, Wiltshire, SN11 0LJ**

The officer introduced the report which recommended that planning permission be granted, subject to conditions, as amended by the late observations. It was explained the application was for reserved matters following the granting of Outline planning permission at appeal. There was a legal dispute over ownership on the site however the Committee was advised it could proceed to determine the application. A layout was shown and the officer commented a high quality level of public open space was provided.

There were no technical questions.

Cllr Alan Hill spoke in objection to the application and requested determination be deferred.

The planning offer confirmed permission granted at appeal did not link the outline permission for housing in a planning or legal agreement with the full permission for the Dementia care facility and so permission could be granted separately by the Committee for the housing.

The local member, Cllr Christine Crisp, spoke in objection to the development without the Dementia Care facility and expressed disappointment in the behaviour of the developer and the consequences of the decision made at appeal.

In the debate that followed the Committee expressed frustration that the Dementia care facility was not part of the plans but did not agree on planning reasons for refusal.

Resolved:

To grant planning permission subject to the following conditions:

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

REASON: To comply with the provisions of Section 91 of the Town 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:**

ESD0806 - Free Standing Wall Detail

ESD0900 - Post and Rail Detail

ESD0906 - Close Board Fence Detail

ESD0922 - Ball Top Railing Details

Received 29 August 2014

SS001 rev B - Street Scenes

SS002 rev B - Street Scenes

APT_01 rev A - Apartments Plan 01

APT_02 rev A - Apartments Plan 02

APT_03 rev A - Apartments Elevation

BR001 - Bat Roost

Parking Schedule

Received 19 November 2014

House Type Booklet (C) [unless otherwise superseded]

EF_LETC_S.1.0 rev C - Letchworth (Plan)

EF_LETC_S.1.0 rev A - Letchworth V1 (stone)

Received 6 January 2015

SL001 rev M - Site Layout

EP001 rev D - Enclosures Plan

MP001 rev E - Materials Plan

SH001 rev D - Adoption Plan

AP001 rev D - Storey Heights Plan

SL002 rev E - Slab Level Plan

TP001 rev C - Vehicle Tracking Plan

TF001 rev B - Indicative Surface Finishes Plan

394-P-04 rev C - Drainage Strategy

394-P-07 rev C - Bus Vehicle Tracking

394-P-06 rev A - Visibility (Planning)

Received 21 January 2015

RED19412-11 rev I - Landscape Proposals 11 (1of6)

RED19412-11 rev I - Landscape Proposals 11 (2of6)

RED19412-11 rev I - Landscape Proposals 11 (3of6)

RED19412-11 rev I - Landscape Proposals 11 (4of6)

RED19412-11 rev I - Landscape Proposals 11 (5of6)

RED19412-11 rev I - Landscape Proposals 11 (6of6)

RED19412-13 rev F - Landscape Proposals 13 (1of2)

RED19412-13 rev F - Landscape Proposals 13 (2of2)

RED19412-14 rev E - Landscape Proposals 14 (1of2)

RED19412-14 rev E - Landscape Proposals 14 (2of2)

RED19412-15 rev F - Landscape Proposals 15 (1of6)

RED19412-15 rev F - Landscape Proposals 15 (2of6)

RED19412-15 rev F - Landscape Proposals 15 (3of6)

RED19412-15 rev F - Landscape Proposals 15 (4of6)

RED19412-15 rev F - Landscape Proposals 15 (5of6)

RED19412-15 rev F - Landscape Proposals 15 (6of6)

RED19412-16 rev B - Landscape Proposals 16

RED19412-spec rev A - Landscape Specification

BX01 5500 Removable Bollard Specification

Received 30 January 2015

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

- 3. 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.

- 4. No dwelling hereby approved shall be first occupied until the allocated parking area shown on the approved plans (titled 'Site Layout' numbered RHSW.5375.02.SL001 revision L and Parking schedule B) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.**

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

- 5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.**

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

6. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

REASON: To ensure that the development is served by an adequate means of access.

7. No development shall commence on site until details of traffic calming features to be formed on the access road have been submitted to, and approved in writing by, the Local Planning Authority (indicative locations on drawing 'Site Layout' numbered RHSV.5375.02.SL001 revision L). No part of the development shall be occupied or first brought into use until the traffic calming features have been provided in accordance with the approved details. The traffic calming features shall be kept clear of obstruction and available at all times thereafter.

REASON: To enable vehicles to pass/stand clear of the highway in the interests of highway safety.

8. No development shall commence on site until details of the footway / (Hogging path) connecting to the bridge to the location of the diverted Public Footpath (CALW 20) have been submitted to, and approved in writing by, the Local Planning Authority. The construction of the footway shall be constructed in accordance with a programme to be agreed with the Local Planning Authority. The footway shall be provided in accordance with the approved details and programme. The footway shall be kept clear of obstructions at all times thereafter.

REASON: To provide pedestrian and cycle access to local facilities.

9. 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 first 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.

10. The allotment car parking shall be secured by gates. The gates shall open inwards and away from the highway only. The gates shall be locked at all times and only accessible by authorised members related to the allotment (titled 'Site Layout' numbered RHSW.5375.02.SL001 revision M).

REASON: In the interests of highway safety and to prevent abuse by unauthorised car parking.

11. No part of the allotment hereby approved shall be first brought into use until the allotment parking area shown on the approved plans (ten car parking spaces) has been consolidated, surfaced and laid out in accordance with the approved details (titled 'Site Layout' numbered RHSW.5375.02.SL001 revision L). This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

12. No more than 94 dwellings shall be occupied until the controlled access link on The Rise has been completed in accordance with drawing ref 394-P-05 rev A ('Restricted Access – Planning, received 22 January 2015). Prior to the opening of the controlled access link onto The Rise a full package of construction details shall be submitted and approved in writing by the Local Planning Authority. The removable bollard shall be secured in situ and only removed only to allow access by vehicles as authorised under a Prohibition of Driving Traffic Order under the Highways Act, after which time it shall be immediately replaced in situ. This arrangement shall be maintained as such thereafter in perpetuity, unless otherwise warranted by the extension of bus routes through the site and agreed in writing by the Local Planning Authority.

REASON: To ensure the access between the site and The Rise is not used by vehicles to the detriment of residential amenity.”

13. No development shall commence on site until a scheme of phasing of landscaping has been approved in writing by the Local Planning Authority. The landscaping shall be carried out in the first planting and seeding season following occupation of the buildings or the completion of the development, whichever is the sooner within that particular phase; 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.

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

- 14. The mitigation measures detailed in the approved Landscape, Ecological and Arboricultural Management and Monitoring Plan (EAD Ecological Consultants, December 2014) shall be carried out in full prior to the first occupation of the development or in accordance with the approved timetable detailed in the Ecological Assessment.**

REASON: To mitigate against the loss of existing biodiversity and nature habitats. **POLICY:** National Planning Policy Framework paragraph 118.

- 15. No development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. In particular, the method statement must provide the following:**
 - a) A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;**
 - b) A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;**
 - c) A schedule of tree works conforming to British Standard 3998: 2010;**
 - d) Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;**
 - e) Plans and particulars showing the siting of the service and piping infrastructure;**
 - f) A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works and the method of construction of access including details of any no-dig specification;**
 - g) Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and**
 - h) Details of all other activities, which have implications for trees on or adjacent to the site.**

All works shall subsequently be carried out in strict accordance with the approved details.

REASON: In the interests of protecting important trees on site.”

16. INFORMATIVE TO APPLICANT:

As part of the Section 38 Agreement (Highways Act), the council will require the following legal orders:

- Prohibition of Driving Traffic Order at the emergency access.
- A scheme of waiting restrictions in order that a bus can negotiate the site without parked vehicles obstructing access.
- A traffic order for a 20mph Zone.

17. INFORMATIVE TO APPLICANT:

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

18. INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private

property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

19. INFORMATIVE TO APPLICANT:

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

20. INFORMATIVE: As part of the Section 38 Agreement under terms of the Highways Act, the council will require a Prohibition of Driving Traffic Order at the controlled access onto the Rise.

21c 14/08888/OUT - Land at Arms Farm, High Street, Sutton Benger, SN15 4RE

Mr Dury spoke on behalf of Mr and Mrs Richardson in objection to the application.

Hugh Bellars and Arlene Warren spoken in objection to the application.

Nathen McGloghlin spoke in support of the application.

Norman Davis, Sutton Benger Parish Council, spoke in objection to the application.

The planning officer introduced the report which recommended that planning permission be refused and drew attention to an additional reason for refusal in the late observations. The application had originally been for 60 dwellings and had been reduced to 28. The indicative layout of the site was shown in addition to photographs of the street scene and a description of the surrounding area.

The Committee then had the opportunity to ask technical question and it was confirmed the development was outside the settlement boundary and there was a five year land supply.

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

The local member, Cllr Howard Greenman, spoke in objection to the application.

Following comments raised the planning officer confirmed the outline application demonstrated the development would be far enough from existing neighbouring properties to avoid an adverse impact on them. It was noted issues such as the retention of hedges could be resolved at a reserved matters stage and comments from the Conservation officer were considered a material consideration.

In the debate that followed Members considered there had been much development in this area and this application may constitute overdevelopment. The planning officer advised he could not confirm whether the boundary treatment approved under the previously consented scheme was close-boarded fencing. Councillors advised the community to develop a Neighbourhood Plan to help ensure housing was provided in appropriate locations. Some Members expressed concerns the site could be of archaeological importance. The Committee noted relatively few houses needed to be found in the wider Chippenham area, this application was outside the framework boundary and considered overdevelopment of the site in the village with inadequate services and facilities to support additional residential development.

Resolved:

To refuse planning permission for the following reasons:

- 1. The site is located in the countryside outside of the limits of development of Sutton Benger as defined on the Policies Map and by virtue of its scale and location would conflicts with the sustainable development strategy of the plan as expressed in Core Policies 1, 2 and (community area strategy policy) of the Wiltshire Core Strategy. The proposed residential development does not fall to be determined under any of the 'exception policies' defined at paragraph 4.25 of the**

plan within Core Policies 10 & 44 of the Core Strategy, or relate to a site allocated in the development plan for residential use. It would therefore constitute unsustainable development in the countryside.

2. In light of the above, the Council has been unable to secure a Section 106 Agreement in respect of financial contributions associated with the proposed development, contrary to Policies CP43 & CP3 of the Wiltshire Core Strategy and policies H4, CF3 & CF2 of the adopted North Wiltshire Local Plan 2011.
3. Whilst it is acknowledged that some new housing needs to be built in Wiltshire, the location, quantity of new structures and means of access would be harmful to the setting and integrity of the heritage assets. The proposals are thereby contrary to the NPPF para 17 (10) as they would not conserve the heritage assets in a manner appropriate to their significance, paragraph 131 as they would not sustain or enhance the significance of the heritage assets or put them to a viable uses consistent with their conservation, would not make a positive contribution to local character and distinctiveness, para 132 as the proposed development would not conserve the heritage assets due to the harm caused within their setting, and para 134 as the development would lead to less than substantial harm to the significance of the designated heritage assets and although there is some public benefit by building new housing, this does not outweigh the harm caused to the heritage assets and will not secure their optimum viable use, the proposal would therefore be contrary to Core Policy 58 in the Wiltshire Core Strategy Adopted 2015.

21d 14/10601/FUL- Chelworth Lodge, Cricklade, Swindon, Wiltshire, SN6 6HP

Mark Clarke spoke in objection to the application.

Cllr John Coole, Cricklade Town Council spoke in objection to the application

The officer introduced the report which recommended that the application be refused. The application was for the construction of 7 employment buildings; aerial photographs and a site plan were shown. It was explained planning permission existed for gypsy and traveller pitches on the site, however the current application was considered new build development in open countryside and unsustainable. The officer drew attention to the late observations.

The Committee then had the opportunity to ask technical questions during which it was verified the permission would not permit residential occupancy and the existing permission did not establish a precedent for the development proposed by this application. Work on the gypsy site had not commenced.

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

The local member, Cllr Bob Jones, spoke in objection to the application.

In the debate that followed the Committee expressed support for the officer's reasons for refusal and requested inclusion of inconsistency with Core Policy 19 of the Wiltshire Core Strategy in the reasons for refusal. Additionally, Members anticipated an increase in HGV use on the site and considered the road network unsuitable to this use. It was considered the design of the site would not be a positive contribution to the character of the area.

Resolved:

That planning permission be refused for the following reason:

- 1. The proposal is not within or adjacent to any settlement identified in the plan and is located in the open countryside, nor will it support sustainable farming and food production. It is therefore inconsistent with criteria i, ii, and iii of Core Policy 34 and Core Policy CP19 of the Wiltshire Core Strategy. In addition, it is not considered that the proposal would be of strategic importance to the Wiltshire economy, and therefore does not qualify as an exception to the general approach to employment land provision under criteria iv of Core Policy 34. The proposal does not meet provisions for additional employment land and is therefore contrary to Core Policy 34 of the Wiltshire Core Strategy**
- 2. The proposal does not fall into any of the circumstances set out in Core Policy 48 under which development in rural areas will be supported. The proposal is for new industrial units in the open countryside and therefore is contrary to Core Policy 48 of the Wiltshire Core Strategy.**
- 3. The proposal, located remote from residential areas and services, and poorly served by public transport, is contrary to Core Policy 60 of the WCS as well as the key aims of NPPF which seek to promote sustainable development and reduce growth in the length and number of motorised journeys.**
- 4. The character of existing local countryside in this area is permanently changing into a sprawling urban area, which pays little respect to appropriate local distinctiveness in terms of design or character. Further incremental and piecemeal industrial development at this site or at other local green field infill locations along the rural roads in this area will eventually lead to unacceptable cumulative change. Local receptors will experience to varying degrees, changes in views of additional industrial units, a new formal highway access and entrance splay with entrance signage, security fencing, outdoor storage of materials and parked vehicles, additional lighting, noise and moving traffic, which on balance is considered to generate unacceptable change and harm to the character of the countryside. Accordingly, the development is considered to be in conflict with Core Policy 51 and 57**

of the WCS as well as the key aims of NPPF which seek to deliver high quality design and enhance local landscape character and distinctiveness and also biodiversity wherever clear opportunities exist.

21e 14/04529/FUL- Home Farm Business Centre, Minety, Malmesbury SN16 9PL

Geraint Jones spoke on behalf of Mr and Mrs Freedman in objection to the application.

Andrew Pywell spoke in support of the application.

The planning officer introduced the report which recommended that planning permission be granted, subject to conditions, as amended by the late observations and verbal submissions. It was explained there was a related but separate application, 14/04555/FUL, as item 6f on the agenda. The application currently under consideration was retrospective and locally contentious; attention was brought to the objections in the late observations. Aerial photographs and a site plan with access were shown. It was highlighted that the legal status of passing bays was disputed however land ownership was not a material planning consideration. The application was for the re-use of existing buildings and was, on balance, considered sustainable. Highways officers had not raised an objection to the scheme. Conditions, amendments to conditions and issues raised in the late observations in relation to both this application and application 14/04555/FUL were explained.

There were no technical questions.

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

The local member, Cllr Chuck Berry, spoke in objection to the application.

In the debate that followed the Committee agreed traffic movement as a result of the application would cause significant harm to the residential amenity of neighbours. It was considered that lorries would obstruct the bridleways and, even with the provision of passing bays, the access road would not be suitable for the passing of two HGVs, access to the site was therefore inadequate. The Committee felt the economic benefit of the development was not significant enough to outweigh harm caused to the amenity of residents and bridleway users. It was commented the development was, on balance, unsustainable.

Resolved:

To refuse planning permission for the following reason:

The development proposed would generate traffic movements to and from the site utilising a site access that results in significant harm to existing residential amenities and the amenities of users of the right of way through disruption, disturbance and vehicular conflict on the site access route. The significant harm to residential amenities and the amenities of users of the

rights of way is not outweighed by the economic benefits of development and the proposals are on balance considered to be unsustainable. The proposals are contrary to Paragraphs 14, 17 & 58 of the National Planning Policy Framework and Policies CP34, CP48 and CP57 of the Adopted Wiltshire Core Strategy January 2015.

21f 14/04555/FUL- Home Farm Business Centre, Minety, Malmesbury SN16 9PL

Geraint Jones, speaking on behalf of Mr and Mrs Freeman, raised no objection to the application.

Andrew Pywell spoke in support of the application.

The officer introduced the report which recommended that the application be granted subject to conditions as amended by the late items and verbal submissions. The application was retrospective and photographs of the covered parking were shown. No concerns had been raised by the highways officer and it was confirmed the parking would service the wider site, not only activities in the B1 and B8 uses considered under the previous agenda item for application 14/04529/FUL.

There were no technical questions.

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

The local member, Cllr Chuck Berry, spoke in support of the application.

In the debate that followed the Committee expressed support for the officer recommendation and it was confirmed that the covered parking area could not be used for storage.

Resolved:

To grant planning permission subject to the following conditions:

- 1. Within two months of the date of the decision notice the parking areas shown on the approved plans (Block Plan 0823/13/06 A dated May 2014 and Existing Parking and Turning Areas, Figure 4) shall be consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.**

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

- 2. Within two months of the date of the decision notice full construction details for the widening of the vehicle access of the private road and / Hornbury Hill C76 (as outlined in PFA Technical Note para 2.12) shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the**

approved details, within two months of the date of approval in writing by the Local Planning Authority.

REASON: In the interests of highway safety.

3. Within two months of the date of the decision notice a full and detailed scheme of signage along the private road requesting motorists to give way to bridleway users shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the approved details, within two months of the date of approval in writing by the Local Planning Authority and retained in perpetuity thereafter.

REASON: In the interests of highway safety.

4. The use hereby permitted shall only take place between the hours of 08.00am and 18:00pm on Mondays to Saturdays and not on Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

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

0823/13/04

0823/13/05/A

0823/13/06/A

0823/13/07/A

PFA Technical Note 1 Fig 4

All dated May 2014

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

INFORMATIVES:-

WP6 ALTERATIONS TO APPROVED PLANS

1. Any alterations to the approved plans, brought about by compliance with

Building

Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

WP13 PUBLIC SEWERS

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

WP18 PERMISSION NOT AUTHORISING WORK ON LAND OUTSIDE THE APPLICANT'S CONTROL & PARTY WALL ACT

3. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

4. The applicant is advised that the Permission granted does not relate to the Shipping

Containers located on site at the time of determination and that the matter has been referred to the Council's Enforcement Team for Investigation.

22 Urgent Items

There were no urgent items.

(Duration of meeting: 3.00 - 5.10 pm)

The Officer who has produced these minutes is Libby Beale, of Democratic Services, direct line 01225 718214, e-mail elizabeth.beale@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

NORTHERN AREA PLANNING COMMITTEE

11 MARCH 2015

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL (PARISH OF PURTON) PATH NO.161 DEFINITIVE MAP AND
STATEMENT MODIFICATION ORDER 2014

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014”, under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to Council’s Business Plan

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council is in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Purton, between Hoggs Lane and Footpath No’s 110 and 112 Purton. The application is dated 1 August 2002 and made by Mrs Patricia Vincent of Pavenhill, Purton on the grounds that public footpath rights can be reasonably alleged to subsist over the claimed route, on the balance of probabilities, based on user evidence, and should be recorded on the definitive map and statement of public rights of way, as such.
4. The application is made in the correct form (as set out within Schedule 14 of the Wildlife and Countryside Act 1981) and is accompanied by 14 user evidence forms with maps attached and a petition signed by 62 people who claim to have walked the route for the number of years stated. A further eight witness evidence forms, with maps, were submitted after the making of the application.
5. The claimed footpath is located in the parish of Purton, through a field lying to the west of Hoggs Lane and to the north of Pavenhill, which is presently used for the grazing of horses (please see **Appendix A**). The route commences at the south-east corner of this field (the Hoggs Lane entrance) and leads in a north-westerly direction for a distance of approximately 372 metres, before continuing north-north-west alongside the field boundary for approximately 42 metres, to its junction with Footpath No’s 110 and 112 Purton, at Francomes Hill (please see Order map attached at **Appendix B**).

6. The land is presently owned by Mr and Mrs Graham Fletcher of Sherford Road, Swindon who have owned the land since 2001. Prior to the ownership of Mrs and Mrs Fletcher, the late Mr David Akers owned and tenanted the land (25 years ownership and 10 years tenanted, no dates supplied).
7. Wiltshire Council undertook an initial consultation regarding the proposals in May 2010 requesting further evidence/information regarding the use of the claimed route. As a result of this consultation a further eight completed witness user evidence forms were returned to Wiltshire Council, giving a total number of 22 user evidence forms, (please note that this total includes a duplicated evidence form from Miss Moira Hayward) and the present owners and the son of the previous owner completed landowner evidence forms.
8. Following its investigation of all the available evidence, officers of Wiltshire Council produced a decision report in which they made a recommendation to senior officers that the claimed path should be added to the definitive map and statement of public rights of way, on the grounds that a right for the public on foot could be reasonably alleged to subsist, on the balance of probabilities (please see decision report at **Appendix C**). Senior officers approved this recommendation on 27 March 2014.
9. Wiltshire Council subsequently made a Definitive Map Modification Order to add the claimed path to the definitive map and statement of public rights of way, as path No.161 in the parish of Purton, on 24 April 2014.
10. Following the making of the Order Wiltshire Council received the following correspondence (full copies of this correspondence are attached at **Appendix D**):
 - (i) Letter of objection from Mr G Fletcher (the landowner) - 3 June 2014.
 - (ii) Letter of support from Mr F J and Mrs E A Sheppard (neighbouring property) – 6 June 2014.
 - (iii) Letter of objection from Mrs R A Clifford and Mr P J Akers (parties with an interest in the land) – 14 July 2014.
 - (iv) E-mail of support from Mrs Hazel Woodbridge – (neighbouring property) – 15 July 2014.
 - (v) Letter of objection from Margaret Entwistle – (tenant of the land in question) – 16 July 2014.
 - (vi) Letter of objection from Mrs Pauline Cameron (party with an interest in the land) – 17 July 2014.
 - (vii) E-mail of support from Dr Richard Pagett – 23 July 2014 (outside formal consultation period).
 - (viii) Further e-mail of support from Mrs Hazel Woodbridge – 23 July 2014.
 - (ix) Further e-mail of clarification in support from Dr Richard Pagett – 25 July 2014.
11. Due to the outstanding objections, the Order now falls to be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are therefore respectfully requested to consider the objections received, against the legal tests for making a Definitive Map Modification Order, under Section 53 of the Wildlife and Countryside Act 1981, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State, for determination. Officer's comments on the objections are included at **Appendix E**.

Main Considerations for the Council

12. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act are outlined at part 7 (pages 6 – 10) of the decision report attached at **Appendix C**.
13. The Order is made under Section 53 (3) (c) of the Wildlife and Countryside Act 1981, based on:

“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.”
14. Evidence is the key and therefore any objections to the making of the Order, must challenge the evidence available to the Surveying Authority. The authority is not able to take into account any other objections such as the suitability of the way for use by the public and environmental impacts.

Safeguarding Considerations

15. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such Order must be confirmed based on the relevant evidence alone.

Public Health Implications

16. Considerations relating to the public health implications of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Environmental Impact of the Proposal

17. Considerations relating to the environmental impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

18. Considerations relating to the equalities impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Risk Assessment

19. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council’s attention that

there is an error in the definitive map and statement 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, 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

20. The determination of Definitive Map Modification Order applications and the modifying of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore, the costs of processing such Orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
21. Where objections are made to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
22. Where the case is determined by written representations, the costs to the Council are negligible; however, where a local hearing is held, the costs to the Council are estimated at £300 - £500 and a public inquiry could cost between £1,500 and £3,000 if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 - £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).
23. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

24. The determination of an Order, which has received objections, is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State (although the Council would be considered by the Court to be an "interested party" in any such proceedings).

Options Considered

25. Members of the Committee should now consider the evidence received in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for determination and members may determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members having considered the available evidence and the objections received are as follows (please note that the available evidence now includes all submissions made at the formal objection period (please see **Appendix D**), as well as that considered in the decision report dated 29 November 2013):
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed without modification;

- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed with modification;
- (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case it should recommend that the Order is not confirmed.

Reason for Proposal

- 26. The Order has been made on the grounds that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot subsists, on the balance of probabilities.
- 27. Following the making and advertising of the making of the Order, no further evidence has been submitted which would lead officers to change this view, please see comments on objections, as set out in **Appendix E**.
- 28. At the confirmation of an Order there is a more stringent legal test than the “reasonably alleged” test which is sufficient at the making of the Order. The test is whether public rights subsist on the balance of probabilities. Officers consider that since the making of the Order, additional evidence has been provided sufficient to satisfy the more stringent test and therefore the Order appears capable of confirmation.

Proposal

- 29. That “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Janice Green

Rights of Way Officer

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

None

Appendices:

Appendix A – Location Plan

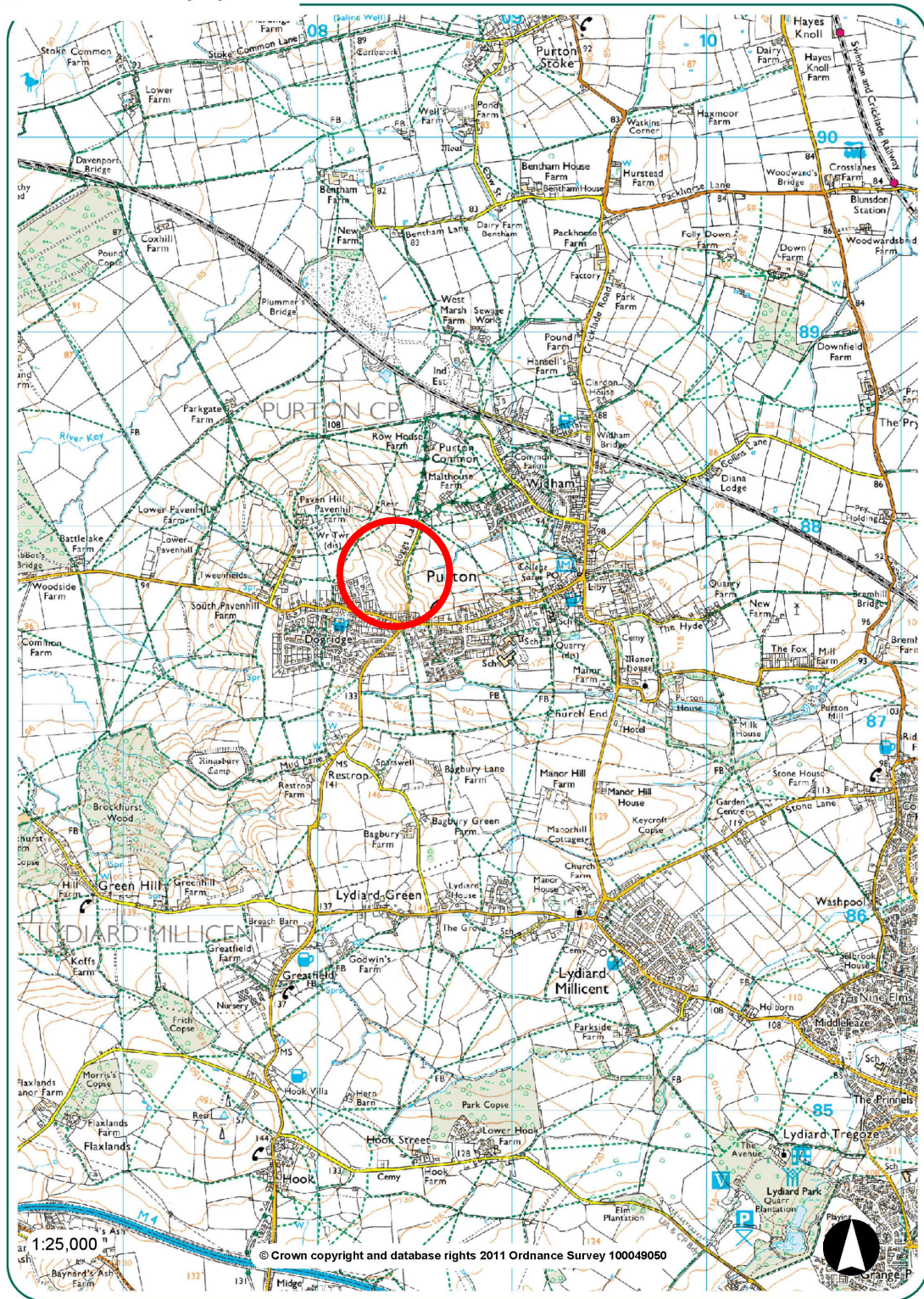
Appendix B – “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014

Appendix C – Decision Report (29 November 2013)

Appendix D – Correspondence received in the formal objection period

Appendix E – Officers comments on the objections

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**APPENDIX B – THE WILTSHIRE COUNCIL (PARISH OF PURTON) PATH NO.161
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
2014**

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE CRICKLADE AND
WOOTTON BASSETT RURAL DISTRICT COUNCIL AREA DATED 1952**

**THE WILTSHIRE COUNCIL (PARISH OF PURTON) PATH NO.161 DEFINITIVE
MAP AND STATEMENT MODIFICATION ORDER 2014**

This Order is made by the Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to that authority that the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

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

The Authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

- 1) For the purposes of this order the relevant date is 24th April 2014.
- 2) The Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
- 3) This order shall take effect on the date it is confirmed and may be cited as The Wiltshire Council (Parish of Purton) Path no.161 Definitive Map and Statement Modification Order 2014.

SCHEDULE

PART I

Modification of Definitive Map

Description of path of way to be added

That length of footpath as shown by a broken black line with short intervals on the attached plan, leading from point A at OS Grid Reference SU 0845-8757, at its junction with Hoggs Lane, north-west for approximately 372 metres to point B at OS Grid Reference SU 0821-8787 and then leading north-north-west for approximately 42 metres, to point C at OS Grid Reference SU 0819-8791, to its junction with Footpath no.110 Purton and Footpath no.112 Purton, having a width of 1.82 metres.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

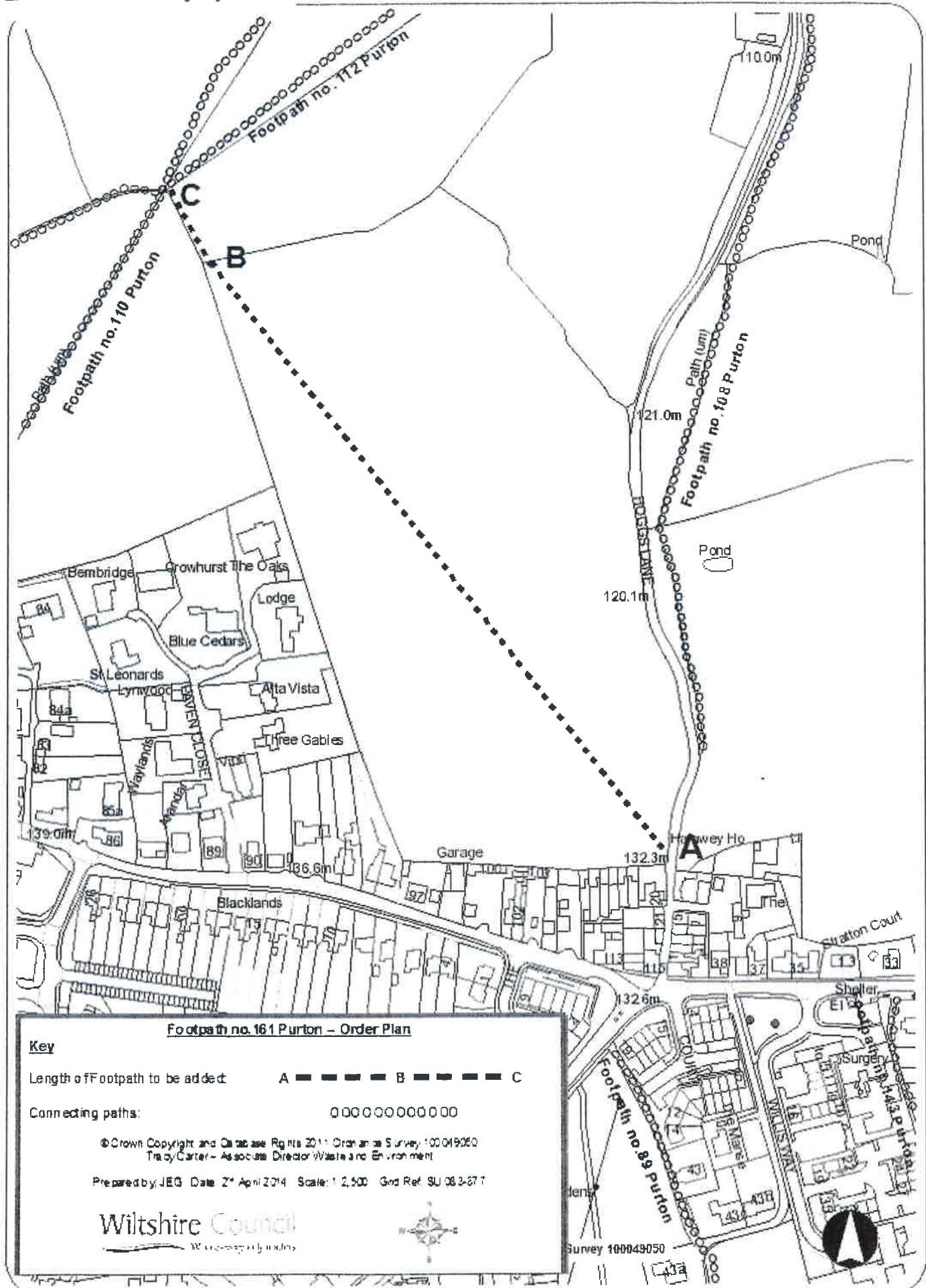
| <u>Parish</u> | <u>Path No.</u> | <u>Modified Statement to read:-</u> | <u>Modified under Section 53(3) as specified</u> |
|---------------|-----------------|--|--|
| Purton | 161 | <u>FOOTPATH.</u> From its junction with Hoggs Lane at OS Grid Reference SU 0845-8757, leading north-west for approximately 372 metres, to OS Grid Reference SU 0821-8787, before leading north-north-west for approximately 42 metres to OS Grid Reference SU 0819-8791, at its junction with Footpath no.110 Purton and Footpath no.112 Purton. | 53(3)(c)(i) |

Approximate length: 414 metres.
Width: 1.82 metres.

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
24th day of April 2014 }
in the presence of: }


Principal Solicitor
Page 35 LATER





Footpath no. 161 Purton – Order Plan

Key

Length of Footpath to be added: A ———— B ———— C

Connecting paths: 000000000000

© Crown Copyright and Database Rights 2011 Ordnance Survey 100049050
Tracy Carter – Associate Director Waste and Environment

Prepared by JEG Date 2nd April 2014 Scale: 1:2,500 Grid Ref SU 083-877


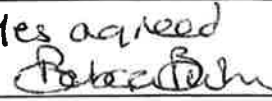
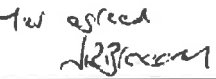
Wiltshire Council
Where everybody matters

Survey 100049050

APPENDIX C – DECISION REPORT (29 NOVEMBER 2013)

COVERING PAGE FOR DECISION REPORT ON APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – PURTON (OFF HOGGS LANE)

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

| | | Signature | Date Signed Off |
|------------------------|--|--|--|
| To: | Sarah Marshall (Solicitor – Legal) |  | 20 March 2014 Approved (subject to comments in email) |
| | Barbara Burke (Definitive Map and Highway Records Team Leader) | yes agreed  | 27/3/14 |
| | Richard Broadhead (Rights of Way and Countryside Manager) | yes agreed  | 27/3/14 |
| | Ian Brown (Head of Environment Services) | copy for information only | — |
| | Tracy Carter (Associate Director – Environment and Leisure) | N/A | — |
| From: | Janice Green | | |
| Date of report: | 29 November 2013 | | |
| Return to: | Janice Green, Rights of Way (Ext. 13345) | | |

Nature of Report: This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers).

Executive Summary:

Wiltshire Council are in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981 and dated 1st August 2002, to add a footpath to the definitive map and statement of public rights of way, off Hoggs Lane, Purton. The application is supported by 14 user evidence forms and a petition signed by 62 individuals. Following an initial consultation carried out by Wiltshire Council in 2010, a further 8 witness evidence forms were received, along with landowner evidence forms completed by the present landowner and the previous landowner.

Following an assessment of the evidence, Officers are satisfied, on the balance of probabilities, that “a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path...”

Officer's Recommendation:

That an order be made under Section 53 of the Wildlife and Countryside Act 1981, to record the claimed route, off Hogs Lane, Purton, as a footpath on the definitive map and statement of public rights of way and if no objections are received, Wiltshire Council may itself confirm the order as an unopposed order.

Decision Report

Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – Purton (Off Hoggs Lane)

1. Purpose of Report

- 1.1. To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way at Purton, between Hoggs Lane and Footpath no's.110 and 112 Purton.

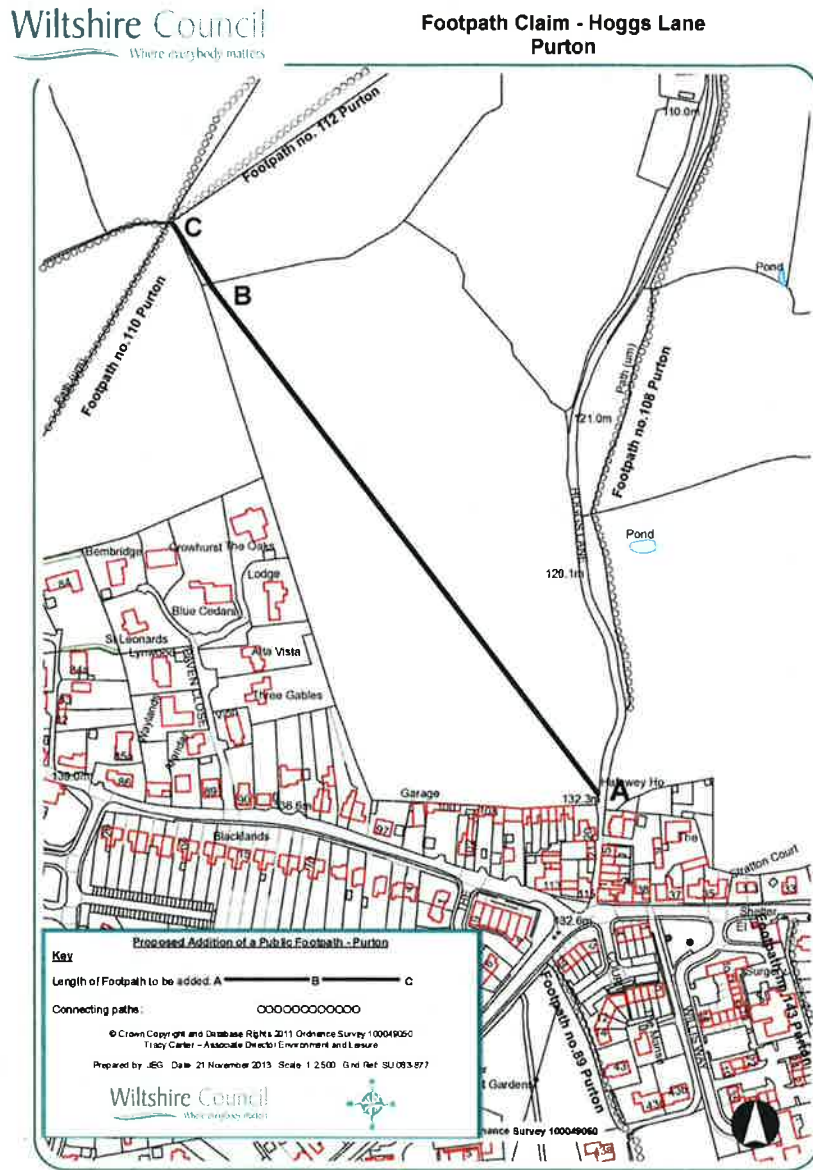
2. Location Plan

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Purton Location Plan



3. Application Plan



4. Photographs



SU 0845-8756, looking north-west.
 Point A, Hoggs Lane entrance with chained and padlocked gate.



SU 0845-8756, looking north-west.
Point A. An improvised barrier of metal and wood has been constructed adjacent to the gate. Alongside this construction is a section of ruinous wall, with a strand of barbed wire loosely strung across the top.



SU 0845-8756, looking south-east.
The metal barrier adjacent to the gate off Hoggs Lane, showing the ruinous section of wall adjacent, with a strand of barbed wire loosely strung across the top.



SU 0837-8764, looking north-west.
The claimed route leads through a field to the rear of properties at Pavenhill, presently used to graze horses.



SU 0821-8788, looking north-west.
Point B at Francomes Hill. Stile in the field boundary fence, temporarily repaired with twine to prevent stock escaping.



SU 0821-8788, looking north-north-west from point B (Francomes Hill).
The used route appears to have a metalled surface at this point.

5. Registered Landowner

- 5.1. Mr Graham Fletcher & Mrs Roseanne Fletcher
17 Sherford Road
Swindon
Wiltshire
SN25 3PR

6. Background

- 6.1. Wiltshire Council are in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Purton, between Hoggs Lane and Footpath no's 110 and 112 Purton. The application is dated 1st August 2002

and made by Mrs Patricia Vincent of Pavenhill, Purton, on the grounds that public footpath rights can be reasonably alleged to subsist over the claimed route, on the balance of probabilities, based on user evidence, and should be recorded within the definitive map and statement of public rights of way as such. The application form (which consists of forms 1 and 3) is accompanied by a plan drawn at a scale of 1:2,500, highlighting the claimed route and 14 user evidence forms, with maps. Also enclosed with the application was a petition:

“The field off Hoggs Lane is up for sale and does not show any right of way in this field. The undersigned have walked this path for the number of years stated and would like to keep the path for recreation and access to adjoining footpaths”.

The petition was signed by 62 people who also indicated for how many years they had individually used the route. The petition was originally submitted to Purton Parish Council by Mrs Vincent, on 27th March 2001, prior to the formal application to Wiltshire County Council. A further 8 evidence forms, with maps, were submitted after the making of the application.

- 6.2. The claimed route is located in the parish of Purton, which lies to the west of Swindon, between Cricklade to the north and Royal Wootton Bassett to the south. The claimed route leads from the field entrance in Hoggs Lane, at OS Grid Reference SU 0845-8756, in a north-westerly direction across a field to the rear of properties in Pavenhill, Purton, presently used for the grazing of horses, for a distance of approximately 390 metres, before continuing north-north-west alongside the field boundary for approximately 40 metres, to its junction with Footpath no's 110 and 112 Purton, at Francomes Hill, as shown on the application plan at 3 above, between points A, B and C.
- 6.3. Currently, at the Hoggs Lane entrance (point A), there is a chained and padlocked metal gate, adjacent to which there is an improvised barrier of metal and wood. Alongside this construction there is a ruinous section of wall with a strand of barbed wire loosely strung across the top, over which Officers believe the public to be accessing the claimed route. At point B there is a broken stile in the field boundary fence which has been temporarily repaired with twine. The level of grazing over the route means that there is no particularly defined route

on the ground in the southern field, however to the north of the stile located at point B, where the path leads north-north-west along the field boundary at Francomes Hill, to its junction with the Footpath no's 110 and 112 Purton, the path appears to have a metalled surface (please see photographs attached at 4).

- 6.4. Wiltshire Council undertook an initial consultation regarding the proposals in May 2010, with a closing date for any further evidence/information to be received by Friday 25th June 2010. A further 8 user witness evidence forms were returned to Wiltshire Council and the present owners and the son of the previous owner completed landowner evidence forms, as a result of this consultation. Please note that all correspondence relating to the claim is available to be viewed with the Rights of Way Team, Environment and Leisure, Wiltshire Council, Newbury House, White Horse Business Park, Trowbridge, Wiltshire, BA14 0BX.

7. **Main Considerations for the Council**

- 7.1. The definitive map and statement of public rights of way are conclusive evidence as to the status of the highways described, however this is generally without prejudice to the possible existence of higher rights / additional rights not recorded. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 section 53 (2) (b) applies:

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

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

and statement as appear to them to be requisite in consequence of that event.

7.2. The event referred to in subsection 2 (as above) relevant to this case is:

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

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

7.3. Section 53 (5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

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

7.4. Schedule 14 of the Wildlife and Countryside Act, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

The prescribed scale is included in the *“Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993”*, which states that *“A definitive map shall be on a scale of not less than 1/25,000.”*

- 7.5. The application to add a right of way to the definitive map of public rights of way, off Hoggs Lane, Purton, has been correctly made in the prescribed form and is accompanied by a map drawn at the scale of 1:2,500 and 14 witness evidence forms and the petition (plus 8 witness evidence forms submitted following the application).
- 7.6. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:
- “(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) Where the owner of the land over which any such way as aforesaid passes*
-
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*
(a) *a map of the land on a scale of not less than 6 inches to 1 mile and*
(b) *a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;*
And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –
(i) *within ten years from the date of deposit*
(ii) *within ten years from the date on which any previous declaration was last lodged under this section,*
to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.
- (7) *For the purpose of the foregoing provisions of this section, 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above 'the appropriate council' means the council of the county,*

metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the land is situated in the City, the Common Council.

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

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

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

7.7. Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

“Evidence of dedication of a way as highway

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

8. Documentary Evidence

- 8.1. As part of Wiltshire Council's investigations, Officers have studied documentary evidence, including the provenance and purpose of the documents, to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at Appendix 1 to this report.
- 8.2. The documents examined do not record the existence of the claimed route. This does not necessarily mean that the route does not exist and evidence of use must now be carefully examined in order to conclude whether or not public rights have been acquired and a public footpath can be said to subsist or be reasonably alleged to subsist, on the balance of probabilities.

9. User Evidence

- 9.1. The application was accompanied by 14 witness evidence forms with maps attached and a petition signed by 62 people who had used the route for a various number of years. A further 8 evidence forms with maps were received by Wiltshire Council following receipt of the application (one form from Mrs Moira Hayward is duplicated). Landowner evidence forms were also completed by the present landowners Graham and Rosemary Fletcher (form dated 28th September 2002) and Mr Philip Akers, son of the former owner and tenant, Mr David Akers, (form dated 22nd October 2010).
- 9.2. Section 31 of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Bringing into question

- 9.3. In order to demonstrate a 20 year user period, there must be a date upon which the use of the path by the public was brought into question.

- 9.4. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question contained in the case of Fairey v Southampton County Council [1956], and quotes him as follows:

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney-General against the landowner in the courts claiming that there is a public right of way: or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way.

But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some other way makes it clear to the public that he is challenging their right to use the way."

- 9.5. In the Godmanchester case, Lord Hoffmann says of Denning LJ's interpretation:

"As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases."

- 9.6. With reference to the claimed route, at Hoggs Lane, Purton, the present landowners Mr Graham and Mrs Rosanne Fletcher have owned the land over which the claimed route passes, for 2 years prior to completing their landowner evidence form on 28th September 2002. Land registry records state that their freehold ownership commenced in May 2001. Within their evidence they advise that they erected notices stating that the way was not public in February 2001

(property conveyance can be a lengthy process and the landowners may have felt in a position to be able to erect signs in February preceding the commencement of their freehold). It is claimed that this notice was removed by vandals.

- 9.7. No evidence of the wording of this notice or photographs were submitted by the landowners and only one user makes reference to such a notice. Mr Peter Griffin in interview confirmed that he had seen a sign when the new owners (Mr and Mrs Fletcher) purchased the land, stating that there was no public access. Prior to this he had only seen signs preventing public access at the time of the foot and mouth crisis. Was this sufficient to bring home to the public that the land was private and there was no public right of way over the land? Denning L J (as quoted in the Godmanchester case) clearly states that challenge must be by *"...some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it..."* Only one witness recalls the notice and it is clear that public use continued after this time.
- 9.8. Additionally, in their landowner evidence Mr and Mrs Fletcher confirm that they closed the path in February 2001 with what was intended to be a permanent barrier at the Hoggs Lane entrance, (with the notices referred to at 9.6.), however this was removed by vandals. This was erected alongside the locked double gates to block a gap in the wall (they suggest that the wall had been demolished by members of the public). On a site visit in 2011, Officers recorded a barrier of wood and metal erected to fill the gap in the wall alongside the gates off Hoggs Lane, alongside which is a ruinous section of wall with a strand of barbed wire loosely strung across the top, by which Officers believe the public are accessing the route. In his landowner evidence form, Mr Philip Akers confirms that *"He (his father) always locked the gates but the walkers climbed over the wall."*
- 9.9. In interview Mrs Vincent recalled a *"long bar"* being erected when the wall and fence were broken. In her witness evidence form, Moira Hayward has confirmed that a piece of metal was put in and now she can no longer use this route due to the obstruction as she has difficulty walking. On the site visit in 2011, Officers

noted that the wall adjacent to the barrier was ruinous with a single strand of barbed wire loosely strung across the top which is easy to step over for an able bodied person and does not appear to prevent public access to the field, however it is considered that it would prevent less able bodied users from entering the field.

- 9.10. Prior to the ownership of Mr and Mrs Fletcher, the late Mr David Akers owned and tenanted the land for a number of years (25 years ownership and 10 years tenancy, no dates supplied). His son Mr Philip Akers, on 22nd October 2010 completed a landowner evidence form and claims that no signs were ever erected stating that the route was not public and to his knowledge there have never been any stiles or gates on the path during his fathers ownership and tenancy of the land. He also confirms that no section 31(6) plan and statement was deposited over this area to negate the landowners intention to dedicate rights of way, which has been confirmed by Officers.
- 9.11. Overall I consider that the erection of the notice and barrier in 2001, subsequently removed by vandals, was not sufficient to bring home to members of the public that the way was private. As Denning states in the Fairey case, challenge must be sufficient to bring home to the public that their right to use the way is being challenged, and also the public certainly did not acquiesce in any challenge, they continued to use the route, where Denning suggests that public acquiescence in this challenge tends to show that they have no right of way. Few of the witnesses have referred to the notice and barrier and these actions have not prevented public use of the route, therefore I consider them insufficient to bring the right of way into question.
- 9.12. Where there is no such defining event, under Section 31 (7) (a) of the Highways Act 1980, it is possible that the application may serve as the trigger to bring the use of the route into question and it is considered that this would be applicable here. The claim was perhaps triggered by a change of ownership of the land, the petition shows that path users had noted that there was no right of way recorded over the land at the point of sale and perhaps feared that a new ownership would lead to access being prevented sending the petition to the Parish Council in 2001 (when the land was for sale). However, the sale of the land is not in itself a

physical interruption to use of the land and for this reason the 20 year user period should be calculated retrospectively from the application date of 1st August 2002, i.e. the user period in question is 1982 - 2002.

Foot and Mouth signage

9.13 There are 4 claims that notices were erected on site in 2001 to close the path due to the foot and mouth outbreak from Mr Graham Price; Mr Peter Griffin; Mrs Patricia Vincent, who recalled that the notice was erected by the Parish Council although there had been no livestock in the field since about September 1999 and Mrs Deborah Wicks, who confirmed that she didn't use the route during the foot and mouth outbreak when official signs were put up notifying the closure of the footpath.

9.14. We have photographic evidence of the notice erected, which stated:

*“Wiltshire County Council
Advisory Notice
Please stay off this right of way during the
current outbreak of foot and mouth disease
Thank you for your co-operation”.*



9.15. This notice was erected either by Wiltshire Council, or the Parish Council (with signs provided by Wiltshire Council). These parties did not knowingly erect such notices on routes not recorded on the definitive map. Possibly due to the level of use it was presumed that the route was recorded on the definitive map and it would suggest that the landowner was aware of this use.

9.16. The closure of the footpath due to the foot and mouth crisis does not constitute an interruption to the period of continuous use (see Planning Inspectorate Advice Note 15, which concludes that a break in use solely because of the implementation of measures under the Foot and Mouth Order 1983, is unlikely to be classified as such an interruption, in the view of the Planning Inspectorate and DEFRA):

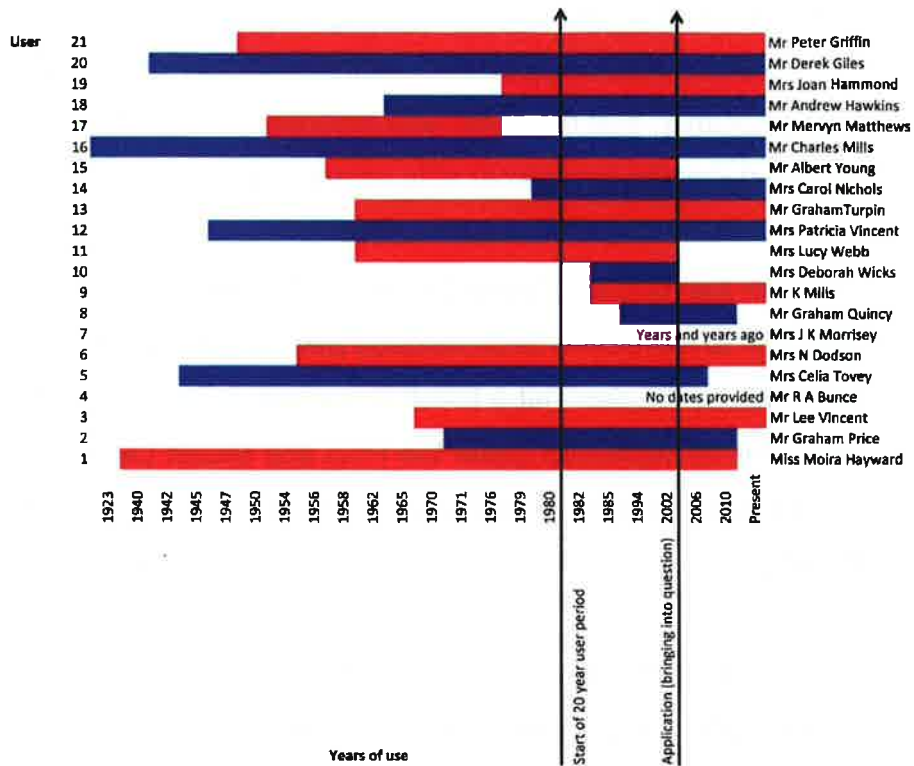
"...it does not seem that the temporary cessation of use of way solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classed as an "interruption" under section 31(1)."

9.17. The pictures show the claimed route at the Hoggs Lane entrance, showing the double closed gate (it is not possible to see if the gates are locked), a "For Sale" sign on the gates and a sign on the gate post advising the public not to use the right of way due to the outbreak of foot and mouth. The for sale sign dates these photographs to 2000, which coincides with the foot and mouth outbreak at this time.

Twenty year user

9.18. Please see the chart below which shows the level of user outlined within the 21 witness evidence forms:

Application to record a Public Footpath off Hoggs Lane, Purton
User Evidence



9.19. Two user evidence forms have been discounted, one gives no dates of use and one witness has simply underlined the dates given in the example on the witness evidence form. For the period of use in question i.e. 1982 – 2002, of the 21 witness evidence forms submitted, (one form is duplicated and two forms are discounted as above), 18 users have used the route during this 20 year period, 15 for the full 20 year user period without interruption. 15 users were still using the route after the time of application in 2002. The claimed route appears to have a long public user, with use established before the 20 year user period in question.

9.20. I have not included the results of the petition within the evidence chart above. Although 62 witnesses have signed the petition, they have indicated their length of use, but have not included the specific dates during which they have used the route. However the petition can give useful supporting evidence of levels of use, the longest user being 80 years, the least being 4 years.

9.21. In addition to their own use, witnesses refer to use with other family members and others seen using the route:

| User | Used with family | Others seen |
|------|--|---|
| 1 | Yes - from a young age family used this path as an access to Upper Pavenhill to visit family and friends (also for recreation) | Yes - walking |
| 2 | | Yes – lots of walkers |
| 3 | | Yes – at least 1 person most times, sometimes see several people |
| 4 | | |
| 5 | Yes | Yes – lots of walkers |
| 6 | | Yes - walking |
| 7 | Yes – as a family walked many times across the fields and have never been stopped | Yes - walking |
| 8 | | Yes – first used as saw others using the route from windows. Others seen frequently - walking |
| 9 | | Yes – walking and cycling. Path is defined and people use it everyday |
| 10 | | Yes - walking |
| 11 | | Yes - walking |
| 12 | Walked as a child (55 years ago) (presumably with parents/family members) | Yes – 8 times out of 10 sees someone walking |
| 13 | | Yes - many seen dog walking |
| 14 | Yes – used for recreation with friends | Yes – other regular walkers seen each day |
| 15 | | Yes – it is a popular walk, meet other walkers on this path most times used |
| 16 | | Yes – many seen, some walking with dogs |
| 17 | | Yes - walking |
| 18 | | Yes – walking dogs |
| 19 | | Yes – walking dogs. |
| 20 | Used as a child (presumably with | Yes - walking |

| | | |
|----|--|------------------------------|
| | parents/family members) | |
| 21 | Used as a child (presumably with parents/family members) | Yes – lots of people walking |

9.22. 4 witnesses make reference to using the route with family/friends, 3 witnesses walked the route as a child (presumably with family, albeit prior to the more recent user period in question of 1982-2002), and all but one of the witnesses have seen others walking the route, including one witness who has seen others cycling the route. On a site visit in 2011, persons were observed by Officers walking the claimed route.

9.23. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and consistency, is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Cleveland Borough Council* UKSC 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC who “...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...” Lord Walker goes on to quote Lindley L J in the case of *Hollins v Verney* [1884] giving the judgement of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person...the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance is intended.”

9.24. All of the witnesses are local inhabitants of Purton, however, use wholly or largely by local people may sufficient to show use by the “public”. The Planning Inspectorate Consistency Guidelines make reference to *R v Southampton (Inhabitants)* 1887, in which Coleridge LJ stated that “*user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only the local residents ever use a particular road or bridge.*”

9.25. On the balance of probabilities, the evidence suggests a route of long user by the public and the level of use was sufficient to make the landowners aware that a right was being asserted against them.

Gates and stiles

9.26. Prior to the new land ownership in 2001, the former landowners son, Mr Philip Akers, completed a landowner evidence form on behalf of his late father who owned the land over which the claimed route passes for 25 years and then 10 years as the tenant (no dates given). He states that in his fathers ownership and tenancy of the land, the gates at the Hoggs Lane end of the route were always locked, but that walkers accessed the claimed route by climbing over the wall. It was his understanding that the gates were locked to keep vehicles out and the cattle in (rather than to keep path users out). This is supported by 2 of the witnesses who mention problems with travellers. Mr Albert Young recalls that the gates at the Hoggs Lane end were locked when travellers became a very big problem and Mr Andrew Hawkins agrees that the double gates off Hoggs Lane were now locked due to travellers.

9.27. In interview Peter Griffin confirmed that 25-30 years ago there were wooden gates on the route and that the present gates were locked for the safety of stock, but users just climbed over it.

9.28. Mrs Vincent supports this in interview. She recalls a wooden gate when she was a child, with a wall and fence alongside which they climbed over and the gate was always easy to open. The present metal gates were erected when the wooden gate broke. These gates were only locked when stock were in the field and following the deterioration of the wall, no land management was carried out to repair it.

9.29. The photographs of the notice erected at the Hoggs Lane entrance to the route, dated 2000, preventing public access during the foot and mouth outbreak, also show a gap to the east of the gates with a broken down wall and a broken down fence post and what appears to be a trodden path alongside the gate, however from the angle of the photograph, it is very difficult to see if there was a gap

through which members of the public were accessing the route, or whether users stepped over/climbed part of the fence.

9.30. Users make the following references to gates and stiles:

10 references to the gates at Hoggs Lane, 7 references to locked gates at Hoggs Lane (one statement that the gates were not locked until the field went up for sale and two references to the gates being locked to prevent access to the field by travellers), 14 references to the stile at the top of Francombes Hill, 2 references to a stile at the Hoggs Lane end, 1 reference to a stile at Hoggs Lane end now broken and one reference to a stile at Hoggs Lane now removed and not replaced and 3 references to a stile at the junction with Purton 110/112 and 1 reference to a gateway at the junction with Purton 110/112.

9.31. There are differing opinions on whom erected the stile at point B: one claim that the stile with step was erected by locals due to the cattle, and one claim that it was erected by landowner (prior to the stile there was a fence or barbed wire at this point).

9.32. There appear to have been sheep in the field at some time and possible electric fencing. Mrs Moira Hayward claims that she changed her route only when the sheep were fenced in the field, at which time she walked around the perimeter. Mrs Deborah Wicks also makes reference to the sheep fencing, but that rubber piping was placed over the electric fence in order for the public to cross over it.

As of right

9.33. In order to establish a right of way, public use must be "as of right", i.e. without force, without secrecy and without permission. The meaning of "as of right" was explored in the case of R v Oxfordshire CC ex parte Sunningwell Parish Council [1999] (town and village green registration). It had been considered in the case of Hue v Whiteley 1929, that the state of mind of users should be considered within the "as of right" test, however in Sunningwell Lord Hoffman doubted what Mr Justice Tomlin had meant by this and stated:

“My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. In Hue v. Whiteley [1929] 1 Ch.440 has led the courts into imposing upon the time-honoured expression “as of right” a new and additional requirement of subjective belief for which there was no previous authority and which I consider to be contrary to the principles of English prescription. There is in my view an unbroken line of descent from the common law concept of nec vi, nec clam, nec precario to the term “as of right” in the Acts of 1832, 1932, and 1965.”

“In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But this is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use the footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years’ user, it is almost inevitable that user in the early years will have been without any very confident belief in the existence of a legal right, but that does not mean that it must be ignored.”

- 9.34. It was held that use “as of right” does not require the public to believe they are using the way as of right.

Without force

- 9.35. Use by force would include breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate.
- 9.36. From the evidence given, it would appear that users did not use force to enter the route from the Hoggs Lane end, but simply climbed over what was there. It is not believed that climbing over the gate or the barrier to the east of the gate amounts to force. The landowner claims that the wall was demolished by

members of the public, however the landowner did not carry out any land management to prevent public access, i.e. maintaining fences/walls etc, this is confirmed by the user evidence provided by Mrs Patricia Vincent in interview. The landowner also claims that the notice advising that the route was not public and barrier erected in 2001, were removed by vandals, however again the landowner has taken no action to maintain the notice and barrier.

- 9.37. There is no other evidence to suggest that any means of force was used to access the field.

Without secrecy

- 9.38. It would appear that the witnesses used the route in an open manner and the landowner was aware of use, speaking to many path users. 19 users suggest that the owner was aware of use for a number of reasons: the presence of a well worn path; the number of people using the path and at any time of day; the owner built a proper stile (at Francombes Hill): farmer saw public when feeding animals; the path was obvious in all seasons, the path has always been used as a footpath; the field has been used for tobogganing in the winter and during the foot and mouth crisis notices were erected asking the public not to use the route.
- 9.39. In the landowner witness evidence form, Mr Philip Akers claimed that the route was used as a footpath and not as a general dog walk. He claims that his father saw people using the route on most days during his ownership and tenancy. He did not turn back or stop anyone using the route. This is confirmed by the user evidence forms with no accounts of users having been challenged when using the route.
- 9.40. The present landowners have confirmed that they have seen members of the public using the claimed route: around 10 people per day using the southern field and one person in the northern field. The current tenant of the field states that she has been persuaded so far to give free access to all of the land which she rents from Mr Fletcher. This has been against her wishes at times due to damage caused to fences and stiles and the upset caused to animals when the fields are used for tobogganing.

9.41. In the Sunningwell case, Lord Hoffman says that the use must have been open and in a manner that a person rightfully entitled would have used it, that is not with secrecy. He observes that Lord Blackburn, in discussing the dedication of a highway in Mann v Brodie [1885] *"...is concerning himself, as the English theory required with how the matter would have appeared to the owner of the land. The user by the public must have been, as Parke B said in relation to private rights of way in Bright v Walker 1 CM and R211, 219, 'openly and in a manner that a person rightfully entitled would have used it.'* The presumption arises, as Fry J said of prescription generally in Dalton v Angus and Co App-Cass 740,773, from acquiescence." This would allow the landowner the opportunity to challenge the use, should they wish to do so.

Without permission

9.42. If express permission is given to use the route the user is not "as of right" however, in the case of implied permission, in R (Beresford) v Sunderland CC [2003], (town and village green registration case), Lord Scott stated that a licence to use the land could not be implied from the mere inaction of the landowner with knowledge of the use of his land:

"I believe this rigid distinction between express permission and implied permission to be unacceptable. It is clear that merely standing by, with knowledge of the use, and doing nothing about it, i.e. toleration or acquiescence, is consistent with the use being "as of right"...But I am unable to accept either that an implied permission is necessarily in the same state as mere acquiescence or toleration or that an implied permission is necessarily inconsistent with the use being as of right. Indeed I do not for the reasons I have given, accept that even an express permission is necessarily inconsistent with use as of right."

9.43. Mr Philip Akers claims that his father did not require people to ask permission to use the route. Since their period of land ownership began in late 2000, Mr and Mrs Fletcher have never required anyone to seek permission (as per the landowner evidence form), to use the route and have confirmed that they have

granted free access to both of their fields to all local residents, against the wishes of their tenants. However, in his letter to Wiltshire Council, dated 22nd August 2002, Mr Fletcher states *"I believe that the current permissive use can continue to work for many years to the benefit of the whole community"*. This statement is at odds with the evidence in the landowner evidence form and that given by witnesses, the majority of whom have not sought permission to use the route. Relating this to the words of Lord Scott in the Beresford case, it would appear that the landowners were aware of use, but tolerated this use, which does not give rise to implied permission. Additionally there are no signs erected on site advising the public that the route is a permissive path only.

- 9.44. Only one user claims to have sought permission from the landowner. Mrs Patricia Vincent states that permission was sought from Mr David Akers, the previous owner, as she and her husband would look out and keep an eye on his cattle and telephone him if there were any problems as he lived 8 miles away. It is possible that this permission relates to use of the land for the purpose of looking after the cattle, rather than use of the claimed right of way.
- 9.45. Also Mr Charles Mills worked on the farm in question from 1929 to the early 1930's. His use of the route spans from about 1923 onwards. He used the route prior to beginning work on the farm and post working on the farm. It is possible to say that during his time working on the farm he had implied permission of the landowner for the purposes of carrying out his work.

The claimed route

- 9.46. All evidence forms show the same route claimed. Only a small number of users have varied this route. Mr Giles did not always use the same route as there are other routes that can be used to gain access to the same field; Mr Griffin changed his route 10 years ago (in 1992), he followed the tractor route, particularly once the grass got long; Moira Hayward confirmed that she changed her route when the sheep have been fenced and used a different route around the perimeter; Mr K Mills varied his route sometimes; Mr C Mills more or less used the same route; Patricia Vincent more or less used the same route but used a route from her garden into the field and Mr Graham Price has not always

used the same route, sometimes he accesses the field from a neighbours garden (at Pavenhill) to join the route in the middle of the field.

9.47. On the plan attached with the landowner witness evidence form, Mr Philip Akers shows the route on a slightly different alignment to the claimed route, showing a route which is closer to the field boundary and is further south-west.

9.48. All users have used the route on foot, only one witness recalls seeing someone cycling on the route, however this is the only reference to cycling. Therefore the route should be recorded as the status of footpath.

Width

9.49. In the making of an order to add a new footpath to the definitive map and statement of public rights of way, a width must be recorded within the definitive statement, based on evidence. There is no width recorded in documentary evidence as the route is not recorded in any documents examined by Wiltshire Council. The width must therefore be based on user evidence of the actual used width of the path. Witnesses have recorded the following path widths:

| Witness | Width | Witness | Width |
|----------------|---|----------------|---|
| 1 | Normal path width Approx 1 metre | 12 | 1 to 4 metres. It is unfenced |
| 2 | 2 feet wide approx (0.61 metres) | 13 | Fences changed due to wear. Path width 2 metres |
| 3 | 1.2 metres wide | 14 | Up to 2 metres |
| 4 | | 15 | 1 metre? Normal field footpath over pasture |
| 5 | | 16 | 1-4 metres |
| 6 | No specified width until the last 50 metres which is single track | 17 | No change |

| | | | |
|----|--------------------------|----|----------------|
| 7 | Approximately 2-3 metres | 18 | Approx 1 metre |
| 8 | | 19 | Approx 1 metre |
| 9 | Approximately 2-3 metres | 20 | Half metre |
| 10 | Approx 1 metre | 21 | 2 metres |
| 11 | | | |

9.50. The witnesses give varying paths widths. Officers have therefore taken an average width from those users who provided width figures (based on the maximum extent given) which gives an average width of 1.82 metres to be recorded as the definitive width of the footpath.

Landowners Intention

9.51. Once use is established as of right, without interruption for a period of 20 years or more, there is a presumption that dedication has taken place, unless during the period this period, there was in fact no intention on the landowners part to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case 1956:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must, in Lord Blackburns words, take steps to disabuse these persons of any belief that there was a public right...”

In the same case, Lord Neuberger of Abbotsbury went further on this point:

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicates that the intention referred to in the proviso to section 1(1) of the 1923 Act was intended to

be a communicated intention. That analysis was accepted and recorded in textbooks, and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act."

Lord Hoffman went on to say:

"I think that upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way would reasonably have understood the owner's intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to "disabuse" [him] of the notion that the way was a public highway."

- 9.52. It is confirmed that no section 31(6) Highways Act 1980 deposit and plan has been lodged with Wiltshire Council by the present landowner, or previous landowners to negative their intention to dedicate.
- 9.53. The present landowners Graham and Rosanne Fletcher have owned the land from September 2000. They do not believe that the path is public and they have seen around 10 people a day using the southern field and 1 person a day using the northern field. They have made the following representations to the Council:

Correspondence from Mr Graham Fletcher to Wiltshire County Council, dated 22nd August 2002:

"We have recently received notice of an application to establish a public footpath across our field in Hoggs Lane.

I do not believe that this application is in the best interests of either ourselves or the residents of Purton.

We have tried as far as possible to maintain the 'status quo' where local people have free access to all parts of the field, subject to them not causing significant

damage to crops or harm to any animals. This has generally worked well with the existing use of paths which are kept to a width of less than 1 metre, and therefore do not greatly reduce the area available for agriculture.

If this legal application for a public footpath is progressed it will force us to take a completely different attitude to use of the fields. If passed it would set a precedent which could allow any other path (of which there are many) to become public property.

This would make use of the land for agricultural purposes no longer viable. We would therefore have no choice but to restrict public entry purely to the legally enforced area. All other points of entry would need to be closed.

The footpath was closed with a barrier last year due to the foot and mouth outbreak. This barrier was not removed by ourselves, and no notice was issued stating that the footpath had been reopened to the public. The barrier was forcibly removed by members of the public without authority, and therefore I do not consider that the path has been formally reopened.

We also believe that the footpath has been closed to the public at some other times during the last 20 years. It is however difficult to establish details of previous use of the field. The last owner is no longer living, and we cannot trust other local residents to give an unbiased opinion. We are endeavouring to find other sources of information, but it is difficult and time consuming obtaining reliable sources.

I believe that the current permissive use can continue to work for many years to the benefit of the whole community.

I would therefore ask you to refuse the application.”

Correspondence from Mr Graham Fletcher to Wiltshire County Council, dated 30th September 2002:

“Since I received your letter I have conducted a survey of people using the footpath. It appears that there are around 10 people who use part of the footpath on a daily basis, and another 10 who use part or all the path much less regularly. All of the daily users are dog owners, as are most of the less regular users. All of the daily users live within 200 yards of the field, as do most of the less regular users.

There are approximately 100 houses within the 200 yard radius. Of this number one would expect around one in five to have a dog, and it is reasonable to assume that most of these people would use this footpath either occasionally or regularly.

Statistically it has been shown that on average people move house every five years and that only one in ten remain in the same house for more than 20 years. It would be reasonable therefore to conclude that less than 10 percent of current users of this path (i.e. 2 people) have lived within walking distance of this path for 20 years.

It is therefore with some incredulity that I read your letter that 77 people have claimed to be users of the footpath over a period of 20 years. I have definite evidence that some of the people on this list have not even lived in Purton for 20 years.

If you are able to prove the validity of the applicants (perhaps using the electoral register), then we would be prepared to accept the Modification Order without objection subject to a maximum width of the footpath of 1 metre (this being the width currently in use)."

E-mail from Mr Graham Fletcher to Wiltshire Council, dated 23rd June 2010

"I am very much opposed to this application. I have granted free access to both my fields to all local residents. This has been very much against the wishes of my tenants.

There have been many cases of vandalism to fences and stiles. The ponies have also been distressed at times when large numbers of people have been present on the field such as when the snow was on the ground, and the field was used for tobogganing.

If this application is pursued I will take the following actions-

- 1. Access to all areas other than the public footpath will be denied.*
- 2. I shall be forced to close all private accesses on to the field in order to retain my legal rights of ownership of the land.*
- 3. I shall allow my tenant to erect a fence along the line of the footpath to prevent access to other areas.*
- 4. Anyone found using other parts of the fields will be asked to leave.*

5. *Tobogganing on the snow will be banned. Anyone doing so will be asked to leave.*

I am a reasonable person and have tried to act in the best interests of the local community.

If some people are intent on stealing this land from me then I shall be forced to defend my rights.

I hope that common sense will prevail and that everyone can continue enjoying this wonderful amenity."

E-mail from Mrs Margaret Entwistle – (Tenant of the land over which a footpath is claimed), to Wiltshire Council, dated 25th June 2010:

"Regarding the application for public footpath across the field which I rent off Hoggs Lane in Purton. I am opposed to this application as it will increase the number of people using this footpath route. I have been persuaded so far to give free access to all of the land which I rent from Mr Fletcher.

This has been against my wishes at times due to the damage caused to fences and stiles, and the upset caused to my animals when the field are used by tobogganing.

If this application is granted it will be necessary for me to erect a fence along the entire length of the footpath. This will cost in the region of £1000.00. I will expect the county council to contribute at least half the cost of this fence.

I will also expect the council to maintain all the fences and stiles on to or adjacent to the footpath. I hope that this will not be necessary and that people can continue to enjoy the freedom to use this area of the countryside."

9.54. In an e-mail dated June 2010, Mr Fletcher states *"I have granted free access to both my fields to all local residents"*. This is supported by the tenant whose e-mail dated June 2010 states *"I have been persuaded so far to give free access to all of the land which I rent from Mr Fletcher"*. This action appears to be inconsistent with lack of intention to dedicate.

9.55. In his letter dated 22nd August 2002, Mr Fletcher states *"I believe that the current permissive use can continue to work for many years to the benefit of the whole community."* There are no notices on site to advise the public that the path is permissive only and this statement contradicts the witness evidence statements,

in which none of the witnesses refer to permission being sought to use the path. Additionally in their landowner evidence form, Mr and Mrs Fletcher confirm that they have never required members of the public to seek permission to use the route. As we have seen in the words of Lord Scott in the Beresford case, where a landowner is aware of use, toleration cannot give rise to an implied permission.

- 9.56. Mr Fletcher also makes reference in his letter dated 22nd August 2002, to the path being closed at other times during the last 20 years, however no evidence on this point has been provided by the landowners, although it is acknowledged that this evidence is difficult to obtain and given the Fletcher's relatively short period of ownership prior to the claim.
- 9.57. The landowner does claim to have erected signs to advise that there was no public right of way in February 2001, and an intended permanent barrier at the Hoggs Lane entrance to prevent access, however the landowner admits that these were removed by vandals. Whilst sub-section 31(3) of the Highways Act allows the erection of such notices as evidence of a landowners non-intention to dedicate, it also requires that these notices are maintained after 1st January 1934, or any later date on which it was erected. It would appear that these notices have not been maintained once removed and did not come to the attention of the majority of path users (all but one). Section 31(5) of the same act advises that where such notices are torn down, the owner of the land may give notice to the appropriate council that the way is not dedicated as highway, which is (in the absence of proof to a contrary intention), sufficient evidence to negative the intention of the landowner to dedicate the land as a highway. The landowner did not take such action.
- 9.58. At present there is no evidence before the Council of the landowners non-intention to dedicate the land as a public right of way, to defeat the presumption that dedication as a public right of way has taken place.

Conclusion

- 9.59. In conclusion, the witness evidence points towards a well used route from Hoggs Lane, linking to the further rights of way network, Footpath no's 110 and 112 Purton. The previous landowner appears to have been aware of the public using

the route and taken no action to prevent or challenge this use. The present landowners also claim to be aware of the use and have taken little action to prevent or challenge use, i.e. sufficient to bring home to the user that their right to use the land is being challenged, i.e. to allow them to meet this challenge, as use continued following the erection of a barrier and notice in 2001 and users of the route only appear to have become aware that this was not a recorded right of way at the time of the sale of the land, i.e. the land being for sale without a recorded right of way over it, and this resulted in a petition to the Parish Council, on the grounds of public use of the route, on 27th March 2001.

- 9.60. The level of use does appear sufficient to make it clear to the landowner that a right is being asserted against them, to allow them to challenge this use. Therefore a presumption of dedication as a public right of way has taken place and there is insufficient evidence of the landowners non-intention to dedicate.

Common Law Dedication

- 9.61. Section 5 of the Planning Inspectorates Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute, there should be consideration of the matter at common law.
- 9.62. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some time in the past. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway and the public showing their acceptance of the route by using the way. Whilst the principles of dedication and acceptance remain in both statute and at common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.

10. Safeguarding Considerations

- 10.1. Considerations relating to safeguarding anyone affected by the making and confirmation of an order made under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be confirmed based on the relevant evidence alone.

11. Public Health Implications

- 11.1. Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

12. Environmental Impact of the Proposal

- 12.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

13. Equalities Impact of the Proposal

- 13.1. Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

14. Risk Assessment

- 14.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

15. Financial Implications

- 15.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, is a statutory duty for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
- 15.2. Where a definitive map modification order is made and objections received and not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, each of which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000 if Wiltshire Council supports the order (where legal representation is required by the Council) and around £300 if it does not support the order (where no legal representation is required by the Council as the case is presented by the applicant).

16. Legal Considerations

- 16.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make an order.

17. Options Considered

- 17.1. Where the Council considers that there is sufficient evidence, on the balance of probabilities, for it to be alleged 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, restricted byway or a byway open to all traffic and

not sufficient of the landowners intention to dedicate, the Council must make an order to add the right of way to the definitive map and statement of public rights of way.

18. Reasons for Proposal

- 18.1. There is sufficient evidence for it to be reasonably alleged that a right for the public on foot subsists, on the balance of probabilities. There are 15 witnesses who have used the claimed route, as of right, for a period of at least 20 years from 1982 to 2002, the date of the public right to use the path being brought into question (i.e. the date of application), plus 3 other users who have used the route for part of this time period. This evidence is considered sufficient to bring home to the landowner that a public right is being asserted against them, allowing the landowner to challenge this, should they wish to do so.
- 18.2. The previous landowner did nothing to prevent public access and despite erecting notices and a barrier in early 2001, the present landowners have since that time done little or nothing to prevent public access and admit that they have granted free access to both of their fields to all local residents.
- 18.3. Therefore a public right is presumed to have been dedicated after the 20 year user and in the absence of evidence of the landowners non-intention to dedicate. Having investigated the available evidence, Officers are satisfied, on the balance of probabilities, that a public footpath can reasonably be alleged to subsist.

19. Proposal

- 19.1. That an order be made under Section 53 of the Wildlife and Countryside Act 1981, to record the claimed route off Hoggs Lane, Purton, as a footpath on the definitive map and statement of public rights of way and if no objections are received, Wiltshire Council may itself confirm the order as an unopposed order.

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

None.

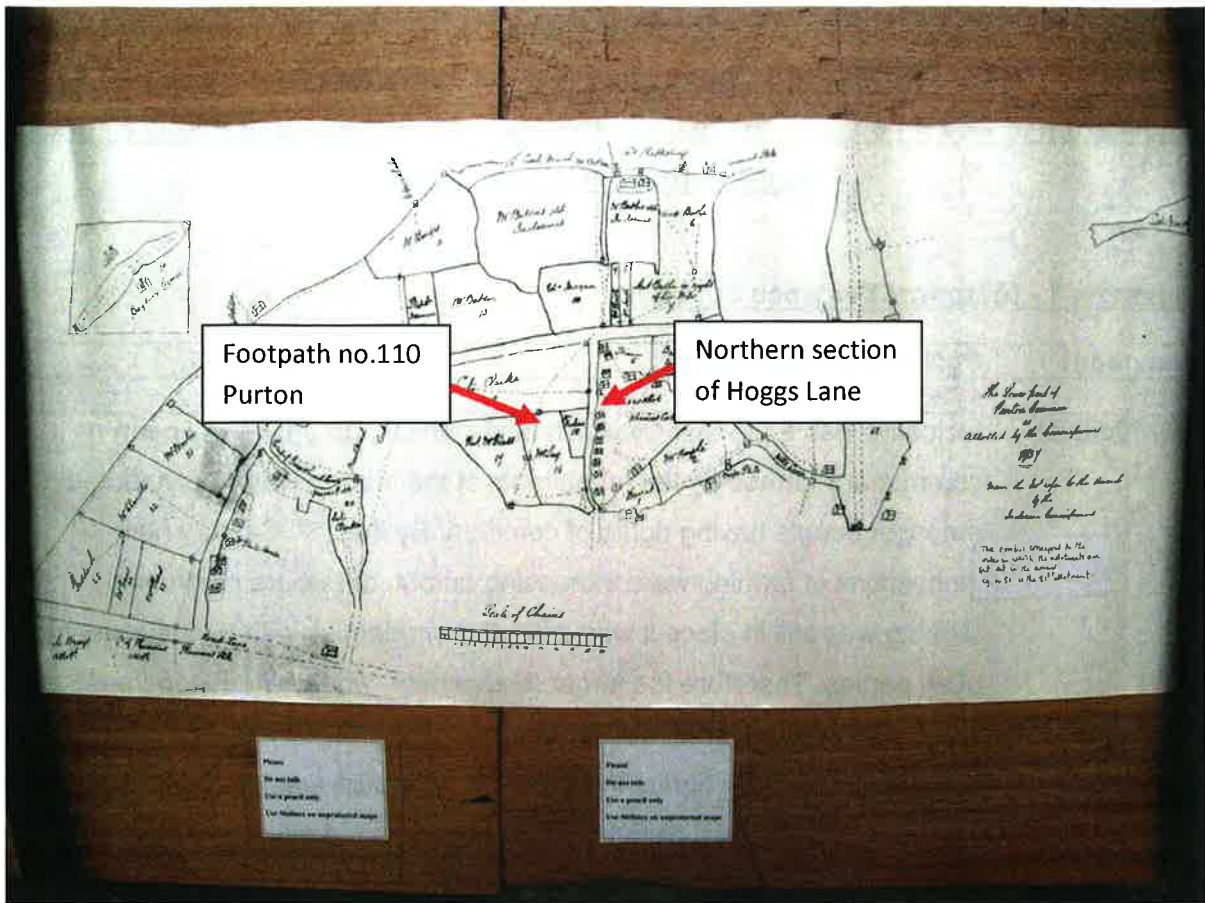
Decision Report

Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – Purton (Off Hoggs Lane)

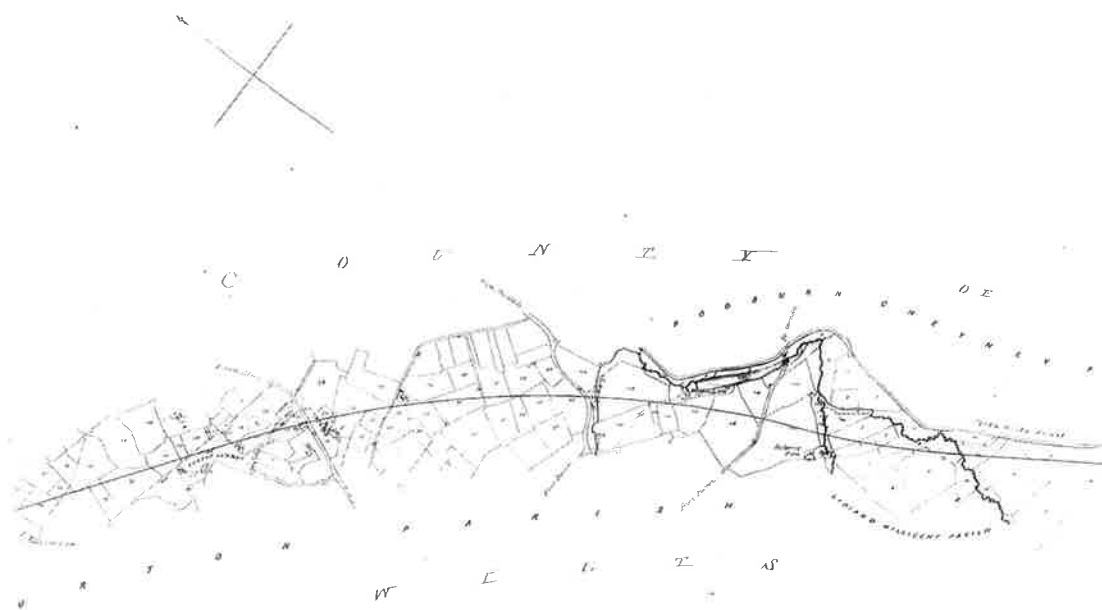
Appendix 1 - Historical Evidence Summary

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| Document | Purton Inclosure Award |
| Date | 1738 |
| Significance | <p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was still in place it was difficult to modernise without the agreement of all parties. Therefore the larger landowners, who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights. Prior to 1801 inclosure was dealt with by local acts for specific areas, from which a local inclosure award was produced to allocate lands within the parish. (Post 1801 local acts generally operated with the Inclosure Consolidation Act of 1801.</p> <p>Inclosure award documents can provide strong evidence of the existence of public rights as the act gave the commissioners powers to set out, ascertain and appoint public and private roads, highways, bridleways and footways over the land to be enclosed.</p> <p>The Purton Inclosure Award is accompanied by 3 hand drawn map excerpts, 1) Plan of Purton Stoke Common as allotted by Inclosure Commissioners 1737 (to the north of Purton), 2) Part of the Upper part of Purton Common as awarded 1737 and 3) "<i>The Lower Part of Purton Common as allotted by the Inclosure Commissioners 1737 the plot nos refer to the Award by the Inclosure Commissioners</i>".</p> |
| Conclusion | <p>The plan covering the lower part of Purton Common is relevant, which clearly shows the northern section of Hoggs Lane, however the plan does not include lands as far south as the claimed route, therefore the claimed route is not shown on the map excerpts and is not referred to within the award. The land affected may not have been inclosed, or subject to old inclosures not part of this award. No information regarding the claimed route is gained from this document.</p> |



| | |
|---------------------|--|
| Document | Quarter Sessions Records |
| Significance | Quarter Sessions were minor criminal courts held at different locations throughout the county. They were also the administrative body of each county before the establishment of County Councils. The Highways Act of 1555 placed a duty to maintain public highways to a suitable standard, with the parish councils. If the parish failed to fulfil this duty it could be indicted for non-repair of highways. The indictment was expressed as a Grand Jury presentment, drafted by the Clerk of the Peace. These indictments are believed to be particularly reliable, as much importance was placed on the precise wording of the documents. It was difficult to introduce changes to a standard form and if the Counsel for the defence could find the slightest flaw in the indictment, the action could fail. |
| Conclusions | No reference to the claimed route has been discovered within the Quarter Sessions Records. |

| | |
|---------------------|--|
| Document | Railway and Canal plans |
| Date | 1835 and 1836 |
| Significance | Railway and canal plans are also reliable documents as individual railway schemes were the subject of special acts of parliament, which required documents to be placed on deposit within the public domain. It was important for the railway developers to provide accurate information relating to their schemes in order to prevent opposition. |
| Conclusions | <p>The plan of the proposed railway from Cheltenham to Swindon 30th November 1835 has been examined. Only the northern section of Hoggs Lane is shown and recorded as "42 Occupation Road". The claimed route is south of the proposed railway and is therefore not shown on the map or recorded within the book of reference.</p> <p>The Cheltenham to Swindon Railway amended plans showing proposed deviations, 18th July 1836, records the north of Hoggs Lane in the same manner, however the claimed route is south of the proposed railway and is therefore not shown on the map or recorded within the book of reference (the book of reference shows details as per the 1835 book of reference).</p> <p>There are no canal plans deposited for the Purton area.</p> |

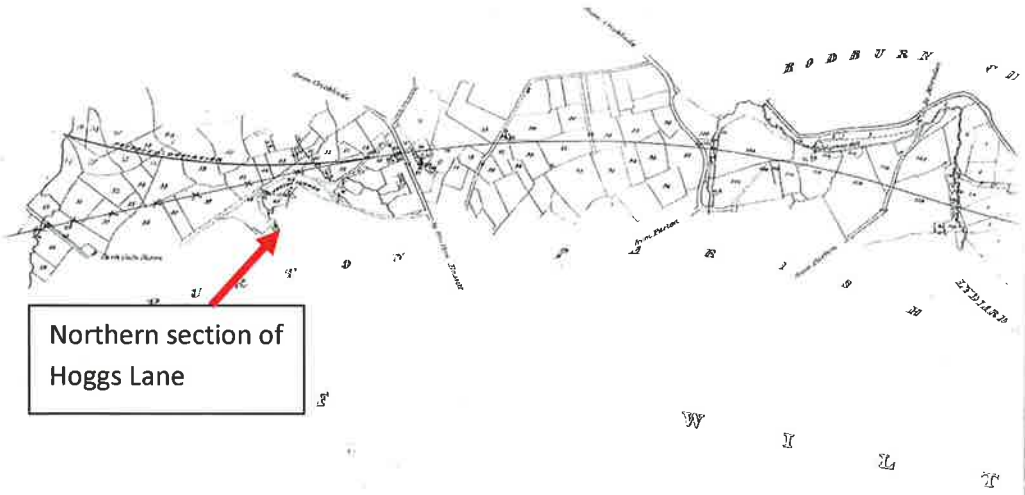


Plan of proposed railway from Cheltenham to Swindon 30th November 1835

Parish of Swanton continued

| | | |
|--------------------|----------------------|-----------------|
| 36 Acre | Joseph Seid | George Day |
| 37 Acre | Do | Do |
| 38 Acre | Robert Moton | Sam Wilson |
| 39 Pasture | Do | Do |
| 40 Acre | Do | Do |
| 41 Acre | Abraham Peaty | Self |
| 42 Occupation Road | Hoggs Lane | |
| 43 House & garden | James Peary | James Keblewick |
| 44 Acre | Thomas Peary | Self |
| 45 Pasture | William Baker Bayley | Richard Row |
| 46 Acre | Do | Do |
| 47 Acre | Richard Jacob Moton | John Gough |
| 48 Acre | Do | Do |
| 49 Occupation Road | | |
| 50 Pasture | Do | Do |
| 51 Acre | William Peary | Self |
| 52 House & garden | Do | Self |
| 53 Pasture | William Peary | John Gough |

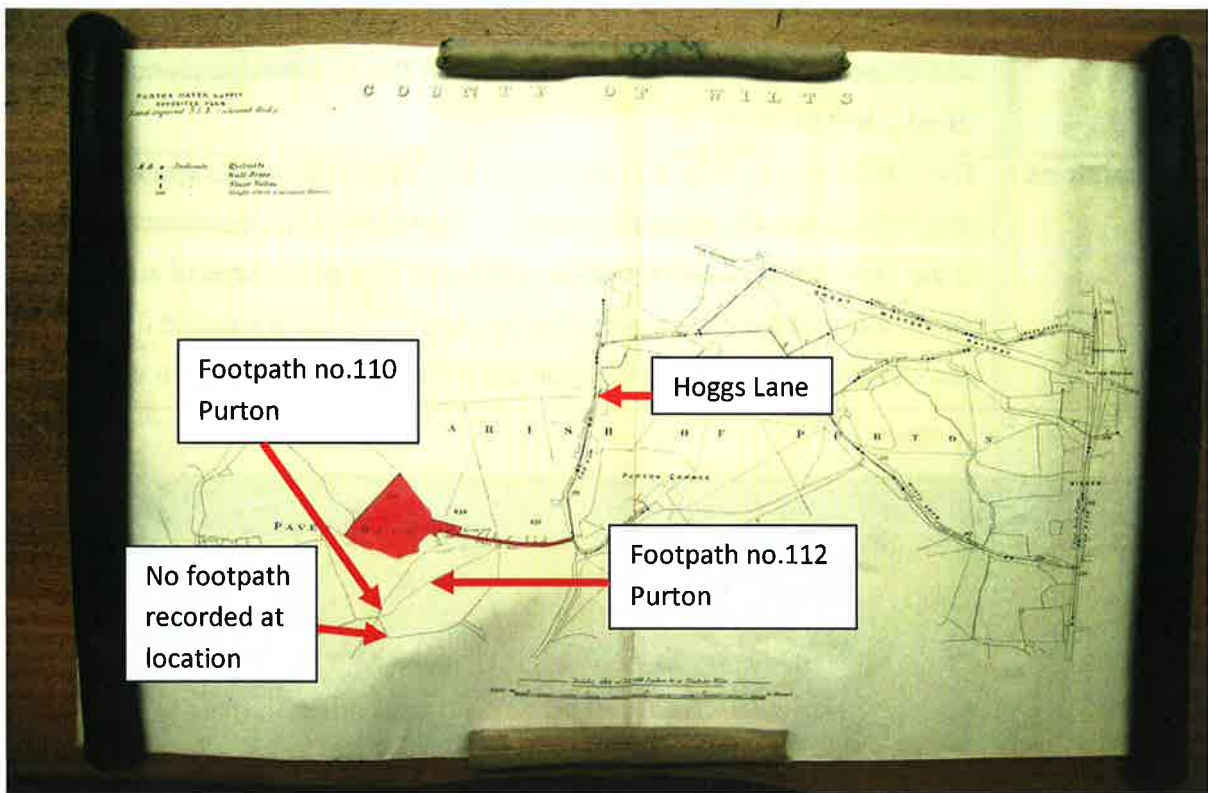
Book of Reference for proposed railway from Cheltenham to Swindon 30th November 1835



In evidence to an Act passed in the present Session of Parliament entitled "An Act for making a Railway from Cheltenham and from Gloucester to join the Great Western Railway near Swindon to be called the Cheltenham and Great Western Union Railway" with a Branch to Cirencester.
I do hereby certify this Plan or Plan to be one of the Plans or Plans required to be authenticated by the said Act.
Witness my hand and seal this 16th day of July 1835.

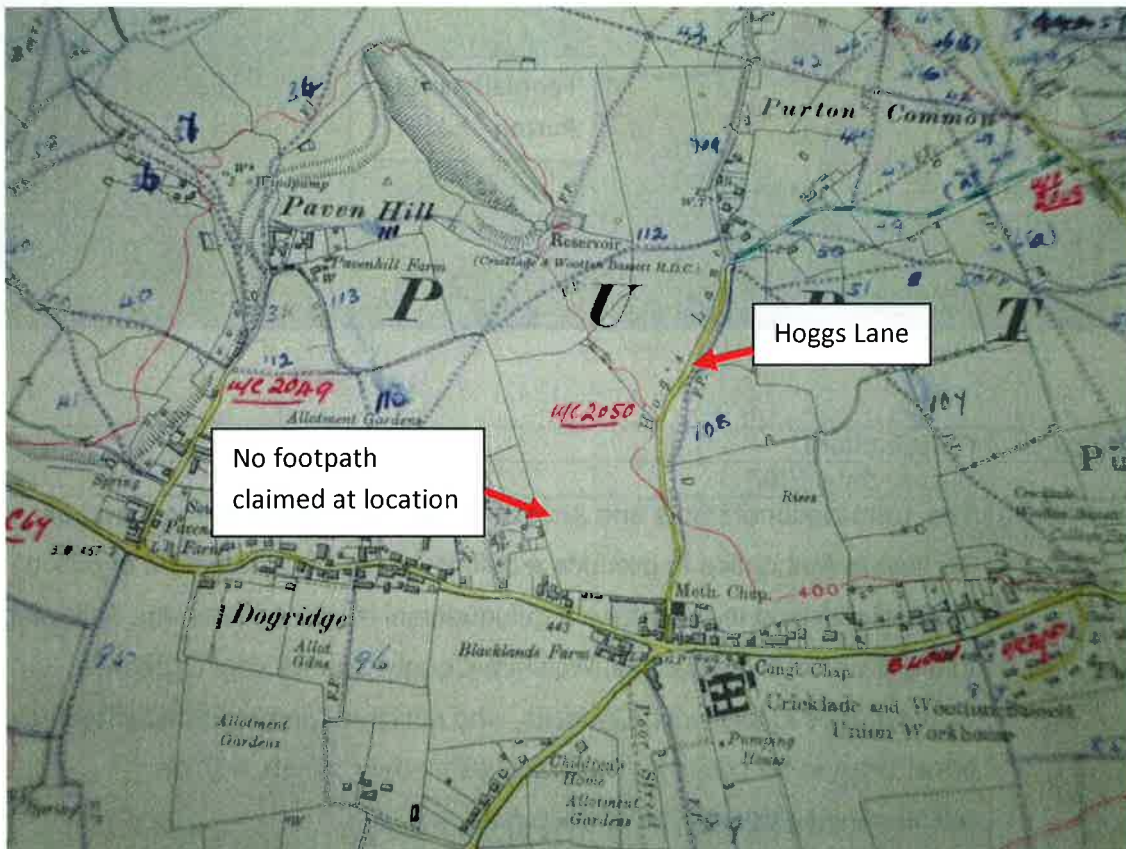
Plan of Cheltenham to Swindon Railway – amended plans showing proposed deviations 18th July 1836

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|---------------------|---|
| Document | Purton Water Supply |
| Date | 1896 |
| Significance | These plans detail part of a proposed water supply to Purton, deposited with and signed by the Clerk of the Peace in 1896. |
| Conclusions | The northern part of the field though which the application route passes, is shown but the application route is not recorded. Other paths and tracks are shown, one track is highlighted and described as a right of way, but there is no indication as to whether this right of way or other tracks shown are public or private. |



| | |
|---------------------|--|
| Document | Parish claim |
| Date | Survey date 1950 |
| Significance | The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map. Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey maps to all Parish Councils, who surveyed and recorded what they considered to be public rights of way within their parish, with an accompanying description of each path. |

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| | <p>Parish Councils were required to convene a meeting at which the public rights of way information, to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p> <p>This was a public process and if the recording or non-recording of a route was objected to there would be evidence of this in correspondence and subsequent reviews.</p> |
| Conclusions | <p>The Parish survey map and statement for Purton records footpath no's. 110 and 112 but not the application route. There is no correspondence relating to the claimed route and it can be concluded that at the time of survey the Parish Council did not consider the claimed route to be a public right of way and despite public consultation, no objection to its non-inclusion was made.</p> |

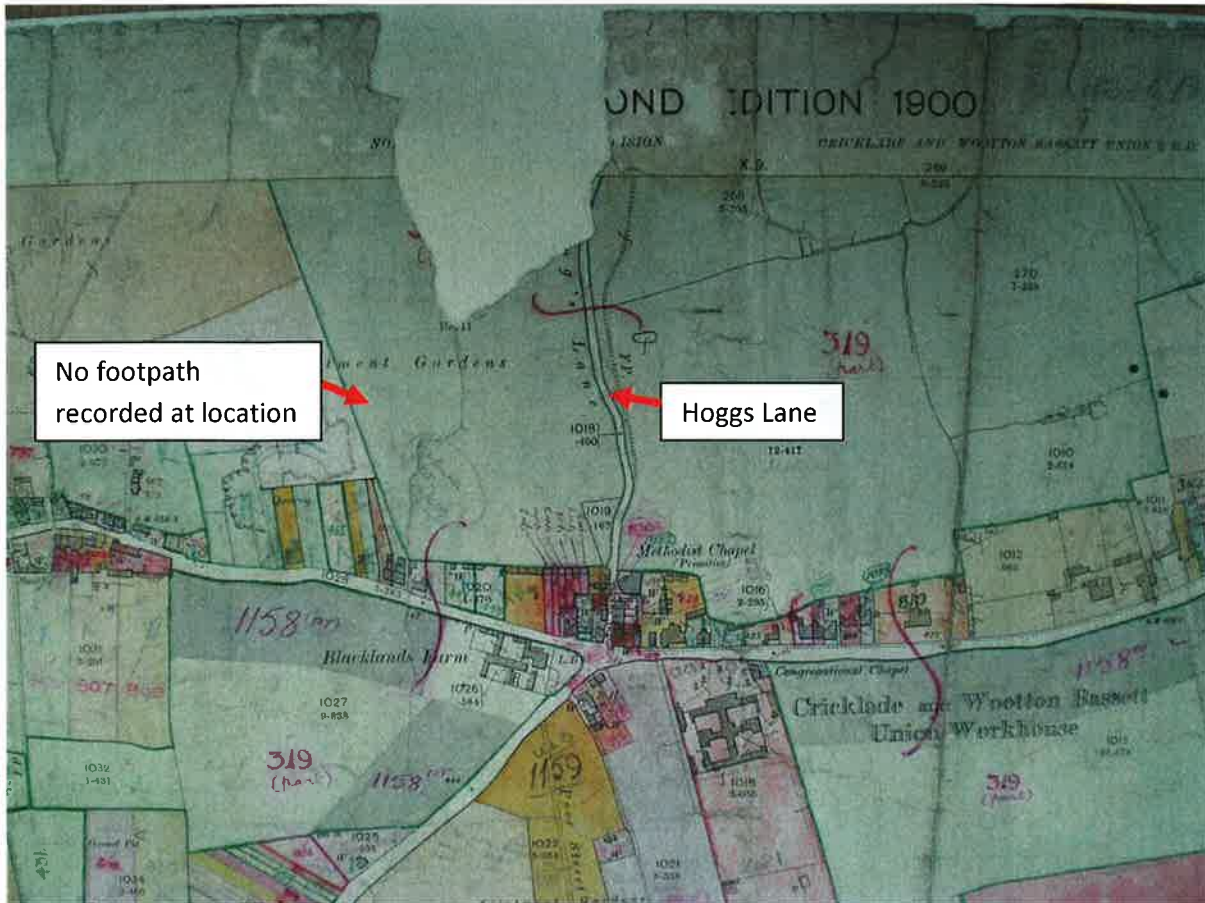


| | |
|---------------------|--|
| Document | Tithe Award – Purton |
| Date | 1840 |
| Significance | <p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain comprising an agreed proportion of the annual profits of cultivation or farming. This form of payment gradually began to be replaced by monetary payment and this was formally recognised by the Tithe Commutation Act of 1836 which regularised this system.</p> <p>Although the tithe map and award was not produced for the purposes of recording highways, the commissioners did have an interest in recording them as they could provide information on map orientation and plot boundaries and the presence of a highway could also affect the productivity of land.</p> |
| Conclusions | <p>Within the Purton Tithe Award Hoggs Lane is shown coloured sienna and the relevant plot number is 955, recorded as Francombe Hill and described as “<i>arable</i>”. There is no reference to the claimed footpath over this land, i.e. that at the time of compilation of the document, landowners, occupiers and Tithe Commissioners did not record a public right of way. It should also be noted that the existing Footpaths 110 and 112 Purton, which are recorded within the inclosure award map, are not recorded within the tithe award.</p> <p>Perhaps the existence of these rights of way did not affect the productivity of the land and the Commissioners did not record them for this reason. This document should be considered alongside other documentary evidence.</p> |



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|---------------------|---|
| Document | Finance Act 1910 |
| Date | 1910 |
| Significance | The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments, for the purposes of levying a tax upon the value of land. It has been referred to as the “Second Domesday” as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence. Rights of way across land could be excluded from the land as a tax benefit. Land holdings (hereditaments) are illustrated on OS base maps, coloured, numbered and referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land we would expect them to be shown excluded from the hereditament, or a deduction made for rights of way within the book of reference. |
| Conclusions | The field through which the claimed route leads is part of hereditament 319 which is recorded as “ <i>House, Buildings and Land. Blacklands Farm</i> ”, within the Book of Reference. The application route is not shown on the base map, however there are deductions made for rights of way or user over this parcel of land, however there are footpaths shown on the map elsewhere within the hereditament, it is possible that the deductions for rights of way |

refer to routes other than the claimed route.



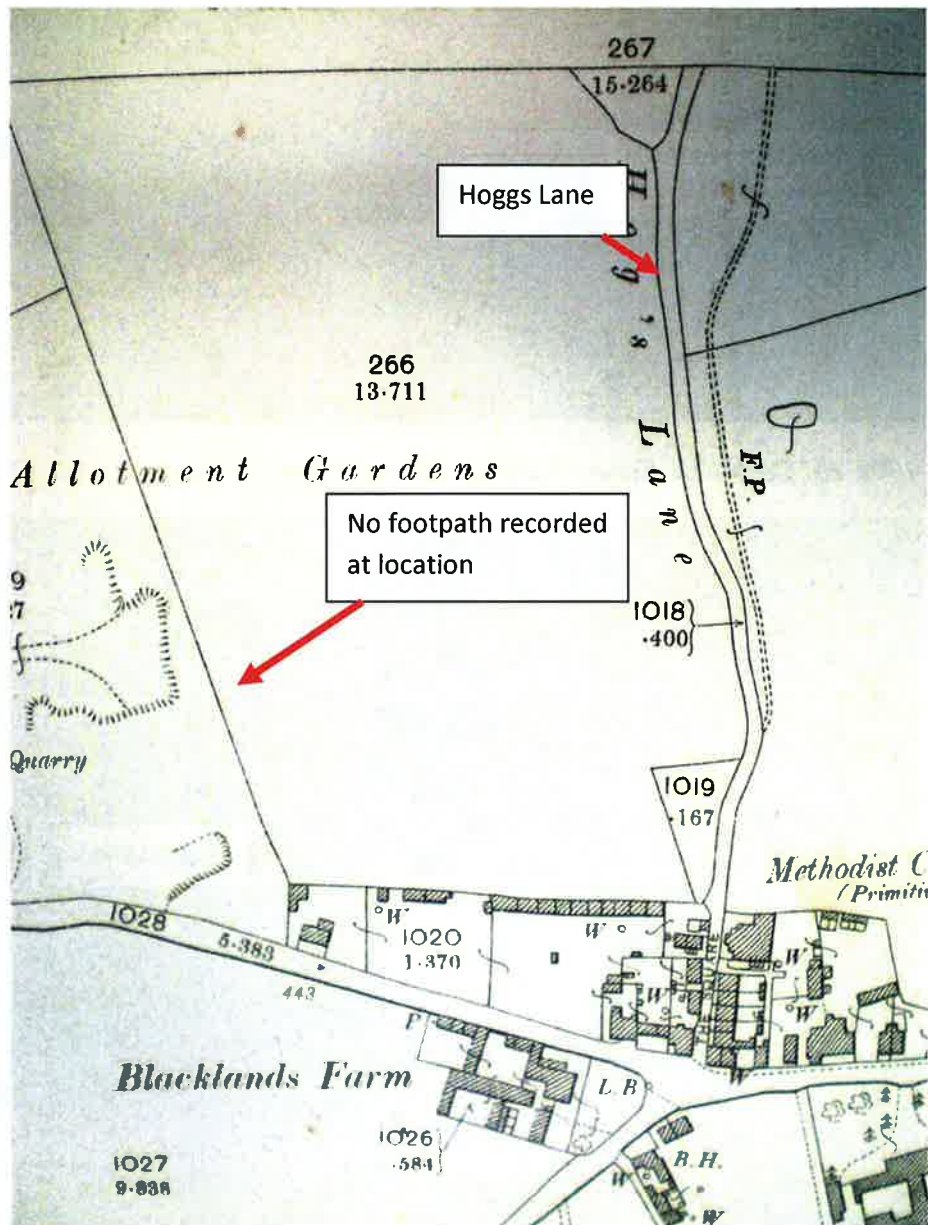
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|---------------------|---|
| Document | Highway Board Records |
| Date | 1929 |
| Significance | In 1929 County Councils took on responsibility for maintaining highways from the Highway Boards which were administered by the Rural or Urban District Councils. Before the Highway Boards came into being, parishes were responsible for maintaining the highways in their area. The compilation of the takeover maps was not a process undertaken in the public domain and the recording of highways relied upon routes which Surveyors either had a record or memory of maintaining. |
| Conclusions | No reference to the claimed route is made within the Highway Board records. The application route was not discussed at the meetings of the Highway Boards, however the plans were not produced with public consultation and therefore there was no opportunity for public objection to the recording or non-recording of routes. |



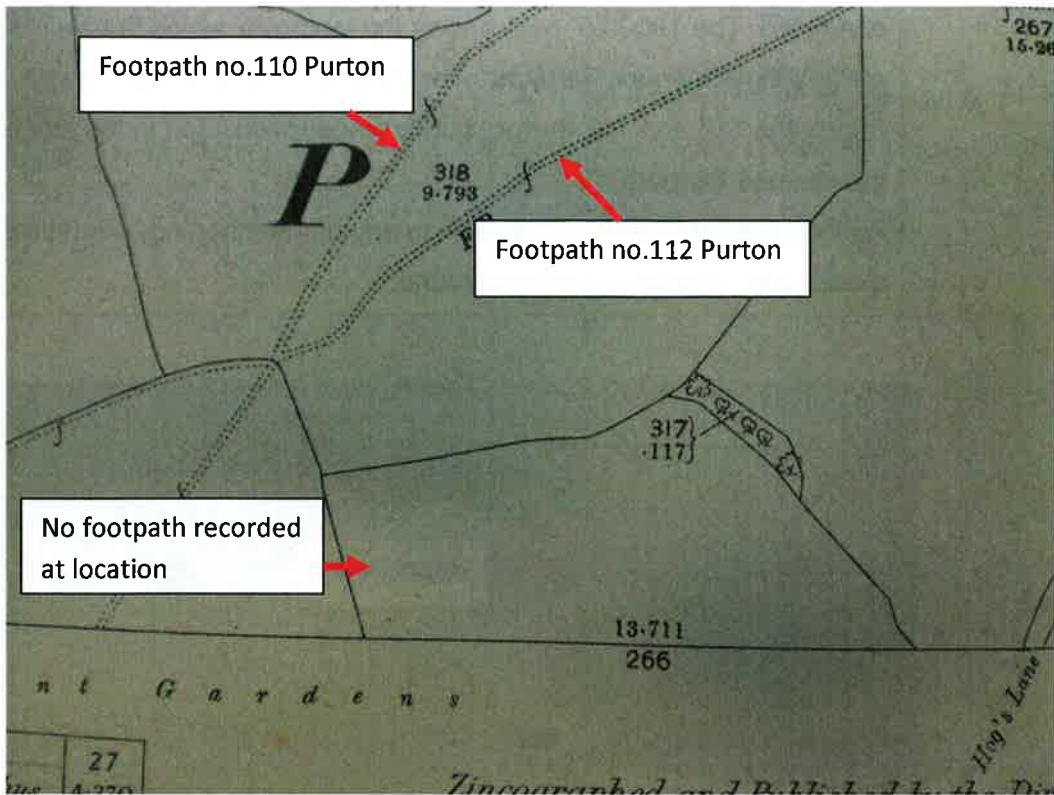
| | |
|---------------------|---|
| Document | Ordnance Survey Maps |
| Date | 1887, 1900 and 1923 |
| Significance | The Ordnance Survey was founded in 1791 due to the demand from the military for accurate maps of Southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps varying in scale and level of detail to meet the changing needs for accurate and updated maps of the country. The maps are produced from new surveys and are topographical, showing only physical features visible to the surveyor at the time of survey. These maps do not prove the legal status of routes shown. Officers have examined Ordnance Survey maps from 1900 and 1923 (25 inches to one mile) and 1887 (6 inches to one mile). |
| Conclusions | The application route is not shown on any of the Ordnance Survey maps |

examined. The 1900 25" map shows the land over which the claimed route passes as "Allotment Gardens". The maps examined record Hogs Lane, Footpaths 110 and 112 Purton, but no route is recorded in the location of the claimed footpath.

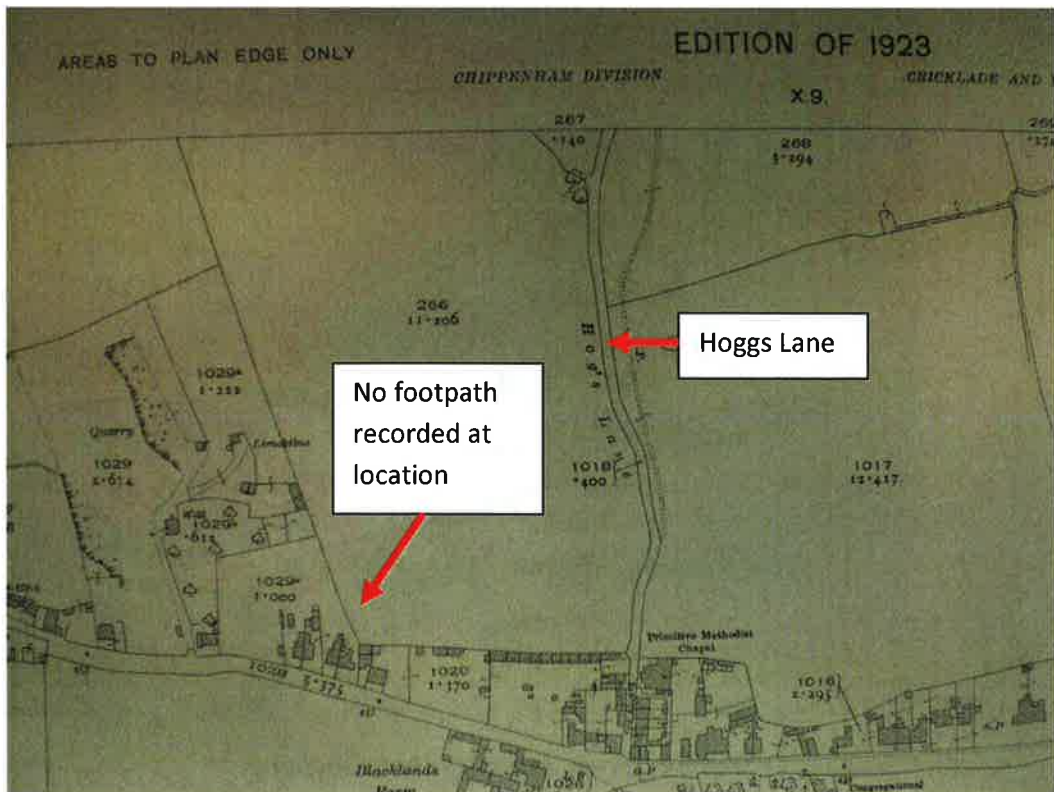
As the claimed route is not shown on any of the mapping, it is unlikely that a path was in evidence on the ground.



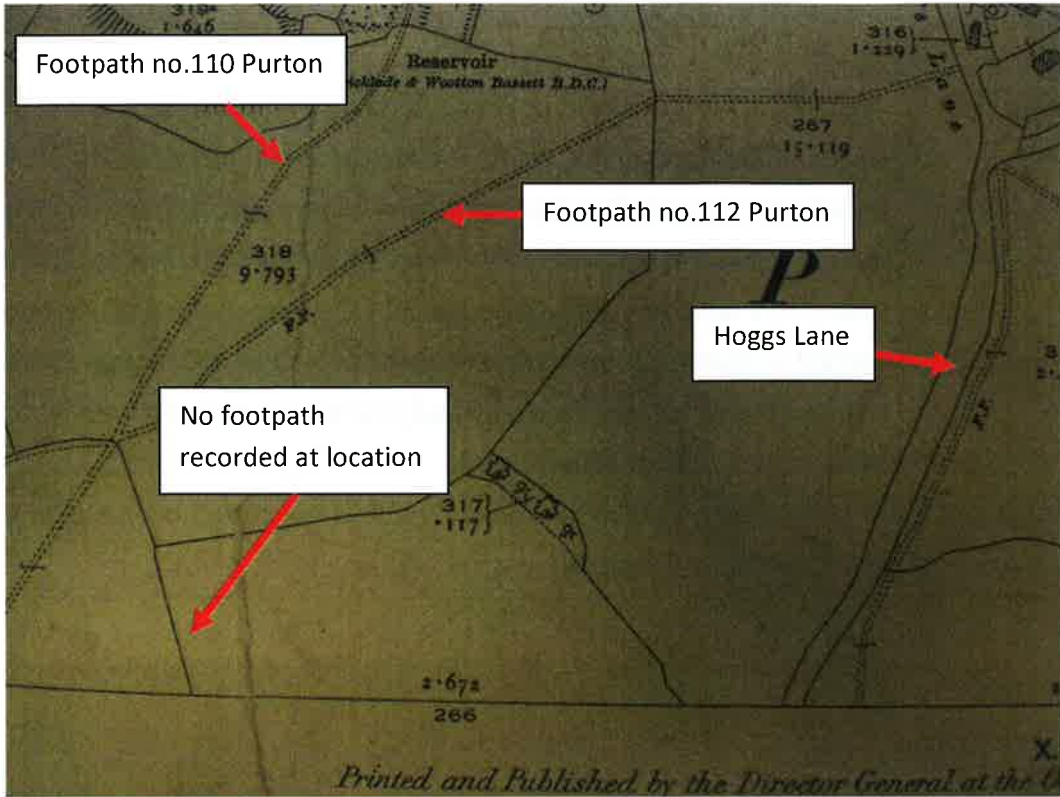
1900 25" Ordnance Survey Map (southern section)



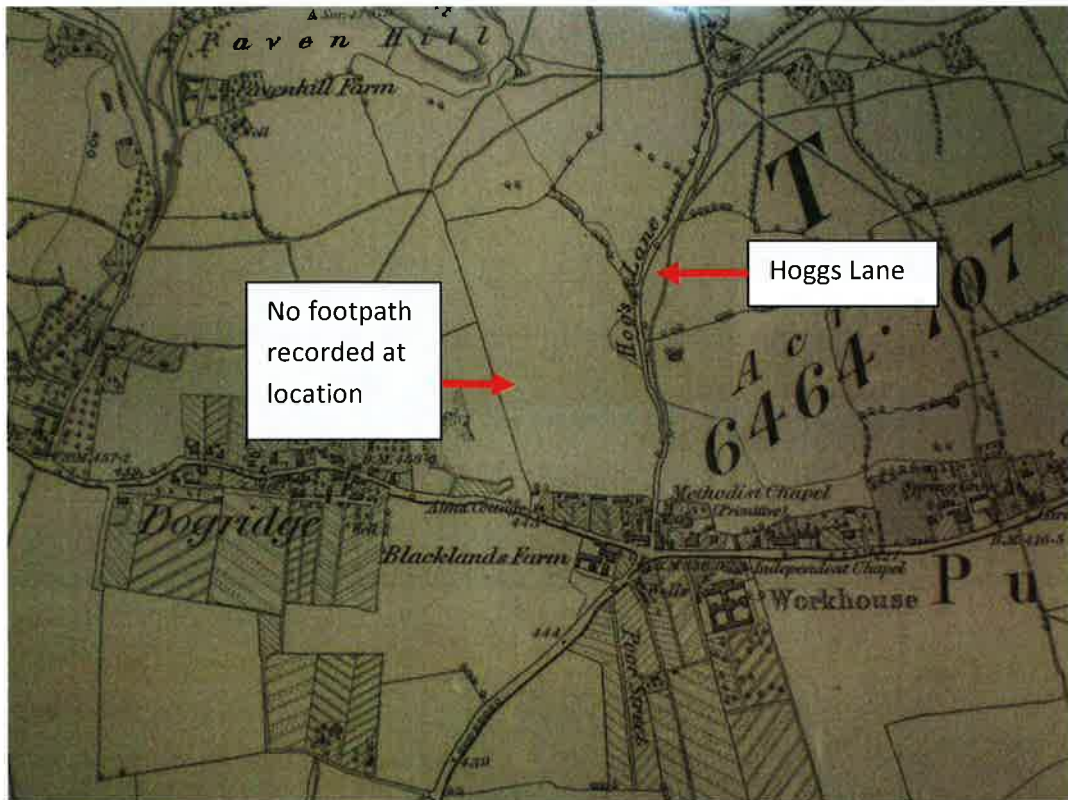
1900 25" Ordnance Survey Map (northern section)



1923 25" Ordnance Survey Map (southern section)



1923 25" Ordnance Survey Map (northern section)



1887 6" Ordnance Survey Map

| | |
|---------------------|---|
| Document | Andrews & Dury's Map of Wiltshire |
| Date | 1773 |
| Significance | Andrews and Dury's map of Wiltshire dated 1773 is a commercial map based on original survey. Commercial maps were produced for profit and intended for sale to the whole of the travelling public at the time. This and the constraints of the scale of the map made it unlikely that footpaths and bridleways would be shown. Additionally the map makers would not have wished to encourage trespass onto private land or encourage vehicles onto a footpath which could cause difficulty for the landowners from whom the map makers sought subscriptions. |
| Conclusions | Therefore as expected the claimed route is not shown on this plan and this document is inconclusive. |



APPENDIX D – CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION PERIOD:

| | | | |
|----|---|-----------------------------------|-----------|
| 1) | 3 rd June 2014 | Mr G Fletcher (present landowner) | Objection |
| 2) | 6 th June 2014 | Mr F J & Mrs E A Sheppard | Support |
| 3) | 14 th July 2014 | Mrs R A Clifford & Mr P J Akers | Objection |
| 4) | 15 th and 23 rd July 2014 | Hazel Woodbridge | Support |
| 5) | 16 th July 2014 | M Entwistle (tenant) | Objection |
| 6) | 17 th July 2014 | Pauline Cameron | Objection |
| 7) | 23 rd and 25 th July 2014 | Dr Richard Pagett | Support |

Mr & Mrs Fletcher
17 Sherford Road
Swindon
Wiltshire
SN25 3PR

3rd June 2014

Dear Ms Green

I am writing to lodge a formal objection in respect of the application made under the Wildlife and Countryside Act 1981 s53 to add a footpath to the definitive map of public rights of way with is intended to run across my property in Purton, off Hoggs Lane.

I have now been made aware through the current tenant that since last week a notice of an order has now been placed at the property although as of yet we have received no notification by post to our home address. as you are likely aware, the Supreme Court has in R (on the application of Barkas) vs. North Yorkshire County Council & Another [2014] UKSC 31 recently ruled that the judgement in R (on the application of Beresford) v Sunderland City Council [2003] UKHL 60, the authority on which the order cites, was wrong and therefore can no longer be relied on.

In any case, I have made it expressively clear that use of the land by the public has been by right as opposed to as of right. As I have stated in my letter in 2002, public use has been granted permissively and I believe I have made this clear to the community. Since the precedent in Beresford has been overturned implied permission can now give way to being held as permission by right. It would not have been reasonable for me to grant permission individually to each and every person that enters the property and the law does not require me to do so. I have been aware of the use of the land by the community and allowed it continue on the clear inference that it was no means unconditional but rather dependent on my consent. I believe I have been clear and direct that access to the property was granted in the understanding that it could be revoked should it affect our own use and enjoyment of the land. When there have been breaches of the permission granted, I have been quick to deal with them.

Furthermore, establishing a public right of way would directly interfere with my use and intended future use of the land. The land is currently used for the purpose of grazing livestock and it is my belief that creating a public footpath would be damaging. There has already been instances where animals have been tampered with and there would also be a public safety aspect should we decide to place cattle in the field.

I am now taking legal advice on the matter, please accept this letter in the first instance as my official objection to the order.

Yours sincerely

Mr G Fletcher

Constables, 20 Hoggs Lane, Purton, Wiltshire SN5 4BU
Telephone: 01793 771018 e-mail: francis@sheppard.org

Miss Janice Green
Rights of Way Officer
Waste and Environment
Wiltshire Council
County Hall
Bythesea Road
TROWBRIDGE BA14 8JN

6th June 2014

Dear Miss Green

Footpath 161 Modification Proposal, Hoggs Lane, Purton, SN5 4BU

We write in support of the above as outlined in the public notice pinned to the post at the top of Hoggs Lane.

From our address you will see that our property adjoins the field across which the proposed modified footpath runs. When purchasing this property 37 years ago, one of the many attractions was the then seemingly already established access to and across this field.

A couple of times since 1977 we have approached Purton Parish Council informally to ask whether and how an official footpath could be established across this field – indeed I also remember mentioning it in passing when I was elected to serve on the Parish Council between 2001 and 2002.

Over all those years it has been a very regular footpath in all but official name for all in our community and we are delighted that it's rightful status is about to be finalised.

Yours sincerely

Francis Sheppard
Libbie Sheppard

Mr F J and Mrs E A Sheppard

Mrs R A Clifford
Rose Brook Farm
Minety
Malmesbury
Wiltshire
SN16 9RJ

Monday 14th July 2014

Miss Janice Green
Rights of Way Officer
Waste & Environment
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Janice,

Re: Your letter dated 26th June 2014. Ref: JG/PC/189. The Wiltshire Council (Parish of Purton) Path no: 161 Definition Map & Statement Modification Order 2014

I write to object to the above application to add a public footpath leading from Hoggs Lane, in a north westerly direction and then north, north west to join its junction with footpaths no: 110 and 112. My reasons for this are as follows.

My Father owned this particular field prior to its previous owner, during the 1980's and 1990's. Throughout his ownership he continuously tried preventing and challenging many resident regarding trespassing on this particular piece of ground and dog fouling. Un permitted access to this field has been an ongoing problem for decades, not to mention the potential risk to unborn animals the dog excrement may have and continues to cause.

I do not feel it is necessary to create an additional footpath when there are already two existing footpaths 110 and 112 either side of this field, within a very short walking distance of where the proposed footpath 161 is intended to go. I am frustrated by the fact that many of the residents whose properties back onto the field take it as their right to use this field, when they are trespassing. At the back of these houses most residents have gates which open directly into the field giving them immediate access to ground they should not even be on. I feel this is down to idleness as they can't be bothered to walk down the road and get on the approved footpath routes. If there is no footpath the ground is private hence it should remain a no entry zone.

It is a known problem that the risk of disporia in unborn cattle is on the increase largely due to the amount of dog fouling. Putting a footpath across the centre of this

field could lead to increasing these numbers for this farmer. Causing financial loss and inconvenience. This is something which is preventable and we should be looking to preserve the natural environment we live in without potentially causing further problems, particularly when there are alternative routes which are easily accessible to residents.

People who access this field at the moment are trespassing and do so at their own risk if there are animals grazing. Approval of a footpath would lead to the owner becoming liable should anything happen at any time i.e. if a dog were to chase or attack any livestock at anytime. Animals should of course be kept on leads at all times however this is not always the case for some owners. Loss of livestock would have a further knock on effect to the farmer and he would also incur liability arising from the issue which occurred. This again is avoidable when there are neighbouring footpaths to use.

I believe the current owner purchased this field as a premium price due to the fact there was and is no footpath in place. Should at any time in the future a planning application be made on this ground an established footpath would cause many problems and certainly effect its final value.

My siblings and I all have an interest in this property although this is not the only reason I am objecting to this application. The practical and environmental issues highlighted above are also of great concern. We really should be concentrating on respecting other people's property and using the approved routes already available. An additional path through the centre of this field is unnecessary.

I trust you will consider my views carefully together with all the other 'for and against' comments.

I look forward to hearing from you with a decision.

Yours sincerely

Received.
Please also take this as a letter of objection from
Mrs R A Clifford my brother Philip.
Many thanks.
Befford.

P Z Jakers
Mr P. JAKERS.

Green, Janice

From: Wilts And Glos BDS [wiltsandglosbds@gmail.com]
Sent: 15 July 2014 14:12
To: Green, Janice
Subject: Proposed pathway across field at the top of Hoggs Lane. Path 161

Importance: High

Dear Janice

The above pathway is opposite my house and have lived here since 1985 and have observed the daily comings and goings of various people in the village who have walked the pathway across the field for years long before I arrived here. I am anxious to support the path please can you let me know whether you require a more letter or whether an e-mail will suffice. I have a painter here at the moment who has walked the field all his life and would like to send his support. If there is anything else I can do please let me know.

I understand that the owner is objecting (saw her this morning and had a chat) what a shame but she seems to be under the impression that she is going to have to take out very expensive insurance. Out of curiosity what is the legal requirement for insurance in the case of a footpath going across land?

I will be at the access meeting to-morrow so if you want to relay a message to me via someone else that's fine.

Many thanks
Hazel

(Woodbridge)

Green, Janice

From: Green, Janice
Sent: 23 July 2014 17:03
To: 'Hazel Woodbridge'
Subject: RE: Footpath

Dear Mrs Woodbridge,

Thank you for your e-mail, just to confirm safe receipt. Your comments and the attached photograph are very helpful. I will shortly be putting together a report for the Northern Area Planning Committee and your evidence will be included and given full consideration.

Thank you for your help,

Kind regards,

Janice

Janice Green
Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court Trowbridge BA14 0XA
Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Please note my working days are Wednesday, Thursday and Friday

Web: www.wiltshire.gov.uk

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From: Hazel Woodbridge [<mailto:hazelwoodbridge@hotmail.com>]
Sent: 23 July 2014 16:56
To: Green, Janice
Subject: Fw: Footpath
Importance: High

Dear Janice

My neighbour Francis Sheppard has found the attached on Google Earth which very clearly show the diagonal path across the field that has been worn by walkers over the years. The path slightly below is where the pony go into the next field for their water.

I was talking to a neighbour who has ponies just down the road in Vastern Hill and she has told me that recently that she and another neighbour who has fields adjoining the footpath field has had their fences cut and their horses let out. When I spoke to Ann Fletcher the other day about the path when the police were there she was blaming walkers for fence damage but clearly there is a local problem.

The fences around the field are in terrible condition I am not sure why the ponies don't get out. When I first came here in 1985 the field was let by the owner Miss Walker to Mr Akers from Charlton as Grass

Keep and he grazed cattle out there for several years during the spring/summer. I think then he eventually purchased it and then on his death it was sold after a while to the Fletchers. Just prior to it being sold for about a year or so we had Gypsy Cobs out there belonging to Mr Downs from Wantage. Margaret Entwistle has had her ponies out there 365 days a year for several years. At no time has there been any break in the use of the path. When it snows it is the village sledging field!

If there is anything more I can help with please let me know.

Best wishes

Hazel

PS Can't find my photo which shows the path a few years back I am sure it will turn up eventually.

From: Francis Sheppard

Sent: Monday, July 21, 2014 11:49 AM

To: 'Hazel Woodbridge'

Subject: Footpath

Google photo attached as is a copy of my letter.

Francis Sheppard

E: francis@sheppard.org

T: 01793 771018

M:07976 268919



Margaret Entwistle
35 Witts Lane
Purton
Wilts
SN5 4EX

Wednesday 16th July

Dear Ms Green

I am writing to notify you of my wish to object to the proposed public right of way over the field at Hogg's Lane, property of Mr & Mrs Fletcher.

I am the current tenant, having used the property for the last 6 years to graze my horses. I wish to object to the plan to grant a public right of way on the grounds that it would be objectively interfere with my use of the land and would result in damage to my property and livestock.

I have been in discussion with Mrs Fletcher over the continual abuse of the property by the residents of the village since I had erected fencing in order to keep my animals safe and away from the public. I have had to deal with the fences being broken and vandalised, resulting in my animals being able to get out where they could become injured. I have tried to divide the field in two to accommodate a permissive right of way as the Fletcher's had allowed but again, the fences and style I installed have been removed and damaged which has incurred both stress and financial loss on my behalf.

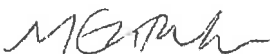
Due to this continuous abuse I now have serious concerns over the welfare of my animals. Failure to restrict my horses puts them at risk of laminitis. I have also heard that the villagers themselves have expressed that they have no regard for my 'old ponies'.

In addition to this, the villagers broke through my fencing to toboggan when there was snow on the ground with no consideration for my animals or property. This resulted in the loss of two foals and a mare. Because of this, I was urging Mrs Fletcher to seriously consider revoking the permissive footpath and not allowing any public access at all to the Hogg's Lane Field since the historical and intended use of the land was being compromised.

It is my strongly held belief that a public footpath would make it impossible for me to continue to use the land for its designated purpose of grazing livestock. A public right of way would require me to partition off parts of the field to protect my animals and as I have experienced, the residents vandalise the fences I erect and let out my horses which is highly dangerous both for them and the general public. I am also concerned that there would be further damage to my property from the abuse by the residents which would only get worse if more boundaries were installed.

Please accept this first letter of objection, I am also requesting an extension for further objection as I did not receive notification of your intention till last week.

Yours sincerely



M Entwistle

Chestnuts
1 Field View
Little Somerford
Chippenham
Wilts
SN15 5LA

17th July 2014

Rights of Way & Countryside Team
Waste and Environmental
County Hall
Bythesea Road
Trowbridge
Wilts
BA14 8JN

To Janice Green

Thank you for your letter regarding the land at Hoggs Lane Purton and the order to add a public footpath to the definitive map and statement of public rights of way. I would like to object to this footpath going straight across the middle of this field. You state that the footpath would have a width of 1.82 meters which is a huge width and great loss of crops and farming land to the owner. Why can this footpath not go around the outside of the field? This would lead to less crops ruined or lost due to its use. There is perfect flat ground around the outside close to the houses to the left of the entrance or much more demanding walking around to the right of the field from the entrance. This field has certainly been walked straight across for many years without any concern for the owners or their crops. I would be very interested to see the witness evidence for this application.

I await to hear from you
Yours sincerely



Pauline Cameron

Green, Janice

From: Dr Richard Pagett [secure@richardpagett.com]
Sent: 24 July 2014 13:37
To: Roberts, Ali
Cc: Green, Janice
Subject: RE: Footpath 161 Modification Proposal, Hoggs Lane, Purton, SN5 4BU

Many thanks

From: Roberts, Ali [mailto:Ali.Roberts@wiltshire.gov.uk]
Sent: 24 July 2014 13:27
To: secure@richardpagett.com
Cc: Green, Janice
Subject: RE: Footpath 161 Modification Proposal, Hoggs Lane, Purton, SN5 4BU

Dear Dr Pagett,

I have forwarded your email on to Janice Green for her attention.

Regards,

Ali Roberts (Miss)
Rights of Way Officer
Wiltshire Council
County Hall, Trowbridge
Email: alison.roberts@wiltshire.gov.uk
Telephone: 01225 756178
Web: www.wiltshire.gov.uk
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From: Dr Richard Pagett [mailto:secure@richardpagett.com]
Sent: 23 July 2014 11:38
To: rightsofway
Subject: Footpath 161 Modification Proposal, Hoggs Lane, Purton, SN5 4BU

Dear Miss Green

I realise that I might have missed the deadline by a little but I have been abroad almost constantly for several weeks in Burkina Faso, Ghana, Nigeria and Mozambique, so may I request a little latitude if possible please? Thank you.

I have noted the above proposal and write in support of it.

My wife and I have lived in Hoggs Lane since 1989 and in Purton for even longer. During all that time the track across the field has been used as a de facto public footpath/right of way.

I have been associated with the parish council for many years and was chairman, 2001-04, and during this time, this usage/access has never been questioned or doubted (parish council minutes to 1967 will validate that).

The path provides enormous amenity and that kind of enjoyment generally was recently evidenced within the Purton Parish Plan (2014) which noted that (p 32) "Feedback from the questionnaire stated that there should be more done to encourage the use of footpaths...". Page 65 and onwards in the parish plan also testify to the value of the footpaths in the parish.

The formalising of this route is completely in accordance with the wishes of the residents of Purton, and is further substantiated within the emerging Neighbourhood Plan. It is also aligned with the aspirations of the Wiltshire Core Strategy.

I fully support the proposed Modification.

Yours sincerely

Richard Pagett

Dr Richard Pagett
Huntersbrook House
Hoggs Lane
Purton
Wiltshire
SN5 4HQ

Home: +44 (0) 1793 771557
Mob: +44 (0) 7973 501 590
Fax: +44 (0) 1793 388 776

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Green, Janice

From: Green, Janice
Sent: 25 July 2014 12:16
To: 'secure@richardpagett.com'
Subject: RE: Footpath Claim - Purton

Dear Dr Pagett,

Thank you for your clarification on this point, this is very helpful.

I will of course keep you updated on progress.

Kind regards,

Janice

Janice Green

Rights of Way Officer
Wiltshire Council Waste and Environment
Plot Court Trowbridge BA14 0XA
Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Please note my working days are Wednesday, Thursday and Friday

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From: Dr Richard Pagett [<mailto:secure@richardpagett.com>]
Sent: 25 July 2014 11:51
To: Green, Janice
Subject: RE: Footpath Claim - Purton

Many thanks for accepting the support letter

As indicated in the letter, it is a false positive, since 1967 (at least) the minutes contain no reference to any concern about the use of the proposed footpath. As you know, there is a tendency to complain so I am sure if the route was a problem in the past of present concern would have been expressed

Kind regards
Richard Pagett

From: Green, Janice [<mailto:janice.green@wiltshire.gov.uk>]
Sent: 25 July 2014 11:32
To: secure@richardpagett.com
Subject: Footpath Claim - Purton

Dear Dr Pagett,

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Purton) Path no.161 Definitive Map and Statement Modification Order 2014

Thank you for your e-mail dated 23rd July and your representations in support of the above-mentioned order. Your comments are very helpful and although they arrived just outside the formal consultation period, I am of course very happy to take them forward for consideration.

We have received a number of objections to the making of the order and as a result the case will now be determined by the Secretary of State for Environment, Food and Rural Affairs. Before the case is submitted to the Secretary of State, a report will be taken forward to the Wiltshire Council Northern Area Planning Committee whose members will consider all the evidence (including all representations and objections received), to determine the Wiltshire Council recommendation to be attached to the order before it is forwarded to the Secretary of State, i.e. that the order should be confirmed where the Council continues to support the making of the order, or that the order should not be confirmed where the Council no longer supports to making of the order.

The Northern Area Planning Committee is a public meeting and you will have opportunity to speak at the meeting should you wish to do so. I will of course notify you of the date of the meeting once this case has been timetabled into the schedule of meetings.

Your comments are very helpful and I would certainly be very interested to receive further details of the Parish Council meeting minutes which make reference to the claimed route, as mentioned in your e-mail.

I hope this is helpful, but please do let me know if you should require any further information at this time.

Kind regards

Janice Green

Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court Trowbridge BA14 0XA
Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

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APPENDIX E – OFFICERS COMMENTS ON OBJECTIONS

| Objector | Objection | Officer comments |
|----------------------------------|---|---|
| Mr G Fletcher (landowner) | <p>The supreme court has in R (on the application of Barkas) vs. North Yorkshire County Council & Another [2014] UKSC 31 recently ruled that the judgement in R (on the application of Beresford) v Sunderland City Council [2003] UKHL 60, the authority on which the order cites, was wrong and therefore can no longer be relied on.</p> | <p>The ruling in the Beresford case related to land maintained by the local authority and that where the public had used such land for more than 20 years with the authorities knowledge, the use was “as of right”. The Barkas case brought this judgement into question.</p> <p>In the Barkas appeal the question before the Lords was that where land is provided and maintained by the Local Authority pursuant to Section 12(1) of the Housing Act 1985 or its statutory predecessors, is the use of the land by the public for recreational purposes “as of right” within the meaning of Section 15 of the Commons Act 2006?</p> <p>The Court ruled that so long as land is held under a provision such as Section 12(1) of the 1985 Housing Act, members of the public have a statutory right to use the land for recreational purposes; therefore, use of the land is “by right” rather than “as of right”, therefore, the implication in the earlier judgement in Beresford can no longer be relied upon.</p> <p>Officers do not consider that the judgement has a bearing upon the Purton Case as it relates to land provided and maintained by the Local Authority pursuant to Section 12(1) of the Housing Act 1985 or its statutory predecessors and the land at Purton is not held as such, being in private ownership.</p> |
| | <p>Use of the land by the public has been by right as opposed to as of right. Public use has been granted permissively and I believe I have made this clear to the community (as the landowner).</p> | <p>In its investigation of the available evidence, Officers found no supporting evidence that the present landowners had granted permission to members of the public to use the claimed route. In the landowner evidence form and in previous letters to the Council the landowners state that they have never required anyone to seek permission to use the route and confirm that they have granted free access to both of their fields to all local residents, against the wishes of their tenants. However, in a</p> |

| Objector | Objection | Officer comments |
|----------|---|---|
| | | <p>letter to Wiltshire Council dated 22 August 2002, Mr Fletcher states <i>"I believe that the current permissive use can continue to work for many years for the benefit of the whole community"</i>. No evidence of how this permission was communicated to members of the public has been presented by the landowners and the majority of witnesses claim that they have not been given permission to use the route.</p> <p>Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work.</p> |
| | <p>Since Beresford has been overturned implied permission can now give way to being held as permission by right. It would not have been reasonable for me to grant permission individually to each person and the law does not require me to do so.</p> | <p>Officers consider that the Beresford judgement relates to land held and maintained by the local authority. The judgement regarding what is considered "as of right" on such land is overturned by the more recent judgement in Barkas. Officers do not consider that these judgements are relevant to the Purton case as the land is not held or maintained by the Local Authority. With regard to implied permission, in its investigation of the available evidence Officers have not discovered persuasive evidence of implied permission over the land. Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work.</p> |

| Objector | Objection | Officer comments |
|---|--|--|
| | I have been aware of the use of the land by the community and allowed it to continue on the clear inference that it was by no means unconditional but dependent on my consent. | Officers have not discovered persuasive evidence provided by the landowners or path users that public use was dependent upon the consent of the landowners. Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work. |
| | I have been clear and direct that access to the property was granted in the understanding that it could be revoked should it affect our own use and enjoyment of the land. | Please see comments above. |
| | Where there have been breaches of the permission granted, I have been quick to deal with them. | Please see comments above. There is no evidence of users being challenged when using the route and the landowners have not provided individual accounts of users being challenged by them. |
| | Establishing a public right would directly interfere with my use and intended future use of the land. The land is currently used for grazing livestock and a footpath would be damaging. Animals have already been tampered with and there would be a public safety aspect if we decided to put cattle in the field. | In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. |
| Pauline Cameron (interest in the land) | The footpath width of 1.82m is huge and a great loss of crops and farming land to the owner. | Please see comments above. A width of 1.82 metres is an average of the widths stated by witnesses, where there is an absence of historical documents which may provide evidence of a width. We must therefore rely upon the width actually used by the public. |
| | Why can't the footpath go around the outside of the field? This would lead to less crops ruined or lost through use of the path. There is perfect flat ground around the outside close to the houses to the left of the entrance, or more demanding walking around to the right of the field from the entrance. | The provision of a suitable alternative route cannot be taken into account. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The route contained within the Order is consistent with |

| Objector | Objection | Officer comments |
|--|--|--|
| | | the route claimed by witnesses. If a Definitive Map Modification Order is confirmed and the route is successfully recorded on the definitive map, the landowner may then apply for a diversion of the footpath under separate legislation. |
| | The field has certainly been walked straight across for many years without any concern for the owners or their crops. | The objector acknowledges that the path has been walked for many years and in determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. |
| Margaret Entwistle (tenant of the land) | The proposed footpath would objectively interfere with my use of the land (to graze horses) and would result in damage to my property and livestock. | Officers would certainly agree that incidents which result in damage to property and livestock are certainly very distressing and would urge that the tenant to report such incidents to the police. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. |
| | Continual abuse of property by the residents of the village since I erected fencing to keep my animals safe and away from the public. I have had fences broken and vandalised resulting in my animals being able to get out where they could become injured. | Please see comments above. |
| | I have tried to divide the field in two to accommodate a permissive right of way as the Fletcher's had allowed but again the fences and style I installed have been removed and damaged which has incurred both stress and financial loss on my behalf. | Please see comments above. |
| | Due to continuous abuse I now have serious concerns over the welfare of my animals. Failure to restrict my horses puts them at risk of laminitis. I have also heard that the villagers themselves have expressed that they have no regard for my 'old ponies'. | Please see comments above. |

| Objector | Objection | Officer comments |
|--|--|---|
| | Villagers broke fencing to toboggan when there was snow on the ground with no consideration for my animals or property. This resulted in the loss of 2 foals and a mare. Because of this I was urging Mrs Fletcher to seriously consider revoking the permissive footpath and not allowing any public access at all to the Hoggs Lane Field since the historical and intended use of the land was being compromised. | Please see comments above. |
| | It is my strongly held belief that a public footpath would make it impossible for me to continue to use the land for its designated purpose of grazing livestock. | In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. |
| Mrs R A Clifford & Mr P J Akers | My father owned the field prior to the present owner, in the 1980's and 1990's. Throughout his ownership he continuously tried preventing and challenging many residents regarding trespassing on this piece of ground and dog fouling. | We are in receipt of a landowner evidence form completed by Mr Philip Akers (son of the late Mr David Akers who was the previous landowner), which states that his father was aware of the use of the route and he saw people on foot most days. He never required people to ask permission before using the route and no plan and statement under Section 31(6) of the Highways Act 1980 was ever deposited with Wiltshire Council to prevent public rights being claimed. Mr Philip Akers claimed that his father, nor anyone on his behalf, ever turned anyone back or tried to stop people using the route and no signs or notices stating that the way was not public were erected during Mr Akers land ownership. |
| | Un-permitted access to this field has been an ongoing problem for decades, not to mention the potential risk to unborn animals which dog excrement may have caused and continues to cause. | The objector acknowledges that access to the field has been without permission. In its investigation of the available evidence, Officers have found little evidence that the landowners have challenged public use of the path. Mr and Mrs Fletcher claim to have erected notices stating that the way was not public in February 2001; however, no evidence of the wording or photographic evidence of the notice has been provided by the landowner and only one witness recalls seeing such a sign. |

| Objector | Objection | Officer comments |
|----------|---|--|
| | | <p>The barrier erected by the landowners in 2001, has not prevented public use and appears not to have been maintained. There are no accounts of users being challenged whilst using the route, provided by either path users or the landowners. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p> |
| | <p>It is not necessary when there are two existing footpaths 110 and 112 either side of the field within a very short walking distance of the proposed footpath.</p> | <p>The provision of a suitable alternative route cannot be taken into account. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p> |
| | <p>Frustrated that many of the residents whose properties back onto the field take it as their right to use the field, when they are trespassing. At the back of the houses most residents have gates which open directly onto the field giving them immediate access to ground they should not be on. I feel this is down to idleness as they can't be bothered to walk down the road to get to the approved footpath. If there is no footpath the ground is private hence it should remain a no entry zone.</p> | <p>Even if a footpath is added to the definitive map and statement of public rights of way, it will not give additional rights to those residents who have put gates into the fences at the back of their gardens, to walk over private land from their garden gates to reach the public right of way.</p> |
| | <p>Disporia in unborn cattle is on the increase largely due to the amount of dog fouling. Putting a footpath across the centre of the field could lead to an increase causing financial loss and inconvenience. This is preventable and we should be looking to preserve the natural environment without potentially causing further problems, particularly where there are alternative routes which are easily accessible to residents.</p> | <p>Dog walkers should pick up after their dogs, it is an offence and carries a £1,000 fine; however, this is something which is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p> |

| Objector | Objection | Officer comments |
|----------|---|--|
| | People who access this field at the moment are trespassing and do so at their own risk if there are animals grazing. Approval of the footpath would lead to the owner becoming liable if anything should happen, i.e. if a dog were to chase or attack livestock. | Dogs should be kept on a lead near livestock; however, this is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. |
| | Animals should of course be kept on leads at all times however this is not always the case for some owners. Loss of livestock would have a further knock on effect to the farmer and they would also incur liability arising from the issue which occurred. This is again avoidable as there are neighbouring footpaths to use. | Dog owners should behave responsibly around livestock and pick up after their dogs; however this is something which is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The provision of suitable alternative routes cannot be taken into account. |
| | I believe that the current owner purchased the land at a premium price due to the fact that there was and is no footpath in place. Should at any time in the future a planning application be made on this ground, an established footpath would cause many problems and certainly effect its value. | In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. If the land is developed in the future, there are legal powers available to the Council, by which a footpath may be extinguished or diverted under the Town and Country Planning Act 1990, where it is considered necessary to do so to enable development to continue. |
| | My siblings and I have an interest in this property although it is not the only reason I am objecting to the application. The practical and environmental issues highlighted above are of great concern. We really should be concentrating on respecting other people's property and using approved routes already available. An additional path through this field is unnecessary. | In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The provision of suitable alternative routes cannot be taken into account. |

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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

| | |
|----------------------------|--|
| Date of Meeting | 11 th March 2015 |
| Application Number | 14/11318/VAR |
| Site Address | Wiltshire Golf & Country Club Vastern Royal Wootton Bassett Swindon SN4 7PB |
| Proposal | Variation of Condition 1 of 09/01057/S73A To Allow Flexible Use for Retirement Accommodation (Resubmission of 14/08313/VAR). |
| Applicant | Wiltshire Leisure Village Ltd |
| Town/Parish Council | ROYAL WOOTTON BASSETT |
| Division | WOOTTON BASSETT SOUTH- Cllr Hurst |
| Grid Ref | 405165 181235 |
| Type of application | Full Planning |
| Case Officer | Sam Croft |

Reason for the application being considered by Committee

Applications called in by Councillor Hurst to consider the relationship of the development to adjoining properties.

1. Purpose of Report

To consider the above applications and to recommend that planning permission is REFUSED.

2. Report Summary

The application relates to 30 lodges of which 5 have already been constructed and 25 are yet to be implemented. Accordingly, this report has to consider both of these elements as they are assessed differently in planning terms. In the report it sets out where certain issues are applicable to the each element or not as may be the case. On this basis a recommendation will be provided in respect to both elements at the end of the report.

The main issues relating to the application:

- Principle of development
- Sustainability

- Viability of existing units of accommodation with the currently attached conditions
- Viability and need for development with the proposed conditions
- Highways
- Visual Impact
- Affordable housing

Royal Wootton Bassett Town Council have objected the application.

3. Site Description

The Wiltshire Golf and Country Club is located to the south west of the town of Royal Wootton Bassett. The proposal site lies outside the Limits of Development as shown on the Core Strategy Policies Map, and is therefore considered to be in the open countryside. The main complex at The Wiltshire, including the leisure and hotel facilities associated with the site, is located in a prominent position on the crest of a hill, whilst the tourist lodges are located on lower land in the valley to the north. Development at the site is visible, in part, from Royal Wootton Bassett (to the north east). The site is predominantly surrounded by agricultural fields. The site is detached from Royal Wootton Bassett which is located 650m to the north east of the boundary of the site. The northern edge of the golf course site, between the site and the existing town, is characterized by a swathe of mature trees beyond which are agricultural fields and then the railway line which skirts to the south western edge of the town.

On 25 February 2009 planning permission was granted at appeal (APP/J3910/2076748) for tourism development (Phase 2) comprising 30 units at Wiltshire Golf and Country Club, Vastern, Royal Wootton Bassett, Wiltshire. The development constituted an extension of existing 44 units that had already been constructed at this site, which included a 58 bedroom hotel and leisure facilities. Both permissions were subject to condition restricting the development for holiday accommodation only and that it shall not be occupied from January 31st to February 28th inclusive in any year. Subsequently these conditions were subject to an application for variation (N/09/01056/S73A and N/09/01057/S73A). Following permission, the new conditions it read as follows:

“The development hereby permitted shall be used for tourist accommodation only and the use shall be carried out in complete accordance with the measures included within the Occupancy Monitoring Statement dated 20th May 2009 submitted with this application, or any alternative version of the Statement that may be subsequently approved by the Local Planning Authority in the form of a planning application in that regard.

REASON:

To ensure that the development is only occupied as **tourist accommodation only and not for permanent residential accommodation, which would not normally be permitted in countryside locations such as this.**

Subsequent, applications N/11/04172/S73 and N/11/04174/S73 for the use of Phase 1 and Phase 2 lodges for retirement accommodation were made in 2011, but withdrawn.

It is understood that since the original permission was granted in 2009, 49 lodges have been constructed to date of the 74 consented. This application specifically relates to Phase 2 of the development of which 5 have been constructed and 25 are yet to be built. In addition the

site now accommodates a hotel (58 rooms) and conference and leisure facilities (including gym, swimming pool, sauna, spa etc) and 18 hole golf course and associated 9 hole short course (27 holes in total). It is noted that there is also an extant consent for an extension to the existing hotel to provide a further 50 rooms ultimately delivering net 101 rooms in total.

4. Planning History

N/08/00706/FUL Tourist Accommodation (30 Units)

N/09/01057/S73A Variation of Condition 6 to Planning Permission 08/00706/FUL Relating to Occupation as Tourist Accommodation

5. The Proposal

The application proposal incorporates the variation of the existing Phase 2 permissions for tourist accommodation, in the form of holiday lodges, so that they may also be occupied as accommodation for people in their retirement.

The varied conditions would read:

1. *Each unit of the development hereby permitted shall be occupied only as either:*
 - a) *Tourist accommodation, which is not the occupier/s' primary place of residence; or*
 - b) *By persons aged 55 or over who are not in any paid employment;*
 - c) *By persons living as part of a single household with persons falling into (b) above; or*
 - d) *By persons who were living as part of a single household with persons falling into (b) above, who have since died.*

2. *Prior to commencement of the development hereby permitted, a written register of the names and main home addresses of the occupiers of each unit shall be submitted to the Local Planning Authority. The register shall, thereafter: be maintained in accordance with the details in the applicant's Occupancy Monitoring Statement (OMS) dated 21st August 2014 and; made available to the Local Planning Authority following a written request in accordance with the provisions set out within the OMS.*

REASON:

To ensure that the development is only occupied as tourist accommodation or retirement accommodation for people aged 55 and over, and not for unrestricted permanent residential accommodation, which would not normally be permitted in countryside locations such as this.

The application proposal incorporates the variation of the existing Phase 2 permissions for tourist accommodation, in the form of holiday lodges, so that they may also be occupied as accommodation for people in their retirement.

6. Local Planning Policy

National Planning Policy Framework Sections 1, 6 and 7

Planning Practice Guidance

Adopted Wiltshire Core Strategy

- CP1 Settlement Strategy
- CP2 Delivery Strategy
- CP3 Infrastructure Requirements
- CP19 Spatial Strategy: Royal Wootton Bassett and Cricklade Community Area
- CP43 Providing Affordable Homes
- CP46 Meeting the Needs of Wiltshire's Vulnerable and Older people
- CP57 Ensuring High Quality Design and Place Shaping
- CP60 Sustainable transport

7. Summary of consultation responses

Royal Wootton Bassett Town Council – The Planning Committee objected to the use of these dwellings for retirement accommodation, due to the distance from any amenities and services which may be important to those of retirement age, such as GPs surgeries. Anyone living at the Golf and Country Club on a permanent basis would require a vehicle in order to be able to travel to essential services. It was felt that the use of the existing dwellings as retirement accommodation was not sustainable, and could lead to the isolation of inhabitants who find themselves unable to use a vehicle. Whilst the Committee did not object to the change to use to flexible accommodation, it was felt that utilising these dwellings specifically as retirement accommodation was not suitable and should therefore be objected to.

Highways – No objection.

New Housing – Affordable housing contribution required.

Public Rights of Way – There should be no significant impact on the nearby rights of way network.

8. Publicity

The application was advertised by neighbour letter and site notice and no letters of objection were received from members of the public.

9. Planning Considerations

As previously set out, the application relates to 30 lodges of which 5 have already been constructed and 25 are yet to be implemented. Accordingly, this report has to consider both of these elements as they are assessed differently in planning terms. In the report it sets out where certain issues are applicable to the each element or not as may be the case.

Principle of development

The proposal seeks a variation of conditions restricting occupancy of 30 holiday units, 5 of which have already been built. The proposal is not for the erection of new development and as such the general principle of built form in this location is not available for consideration. The issue for assessment is whether there is justification to amend the condition and allow the units to be used for general housing albeit limited for retirement use. These matters are discussed in detail below.

The Council in determining any application is duty bound to act reasonably and determine the applications that are submitted on the basis of relevant material considerations and circumstances.

In respect to residential development in this location, other than in certain circumstances, WCS sets out that is a clear presumption against development outside the defined limits of development of the Principal Settlements, Market Towns, Local Service Centres and Large Villages. Core Policy 2 of the WCS sets out that development outside of the limits of development will only be permitted where it has been identified through neighbourhood plans or a subsequent development plan document which identifies specific sites for development. This development should be adjacent or well related to the limits of development. The site is located 650m from Royal Wotton Bassett and is surrounded by fields and with the nearby railway forming a clear man-made barrier. Accordingly the site would not be considered to be adjacent or well related to the limits of development.

The National Planning Policy Framework (NPPF) was introduced as a principal material consideration in the determination of planning applications in March 2012. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking.

The NPPF is clear in stating that 'planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

Paragraph 17 of the NPPF sets out the core planning principles and paragraphs 18-219 constitute what sustainable development means in practice.

The NPPF also seek to restrict residential development in the open countryside. Paragraph 55 states that "to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances".

The rural countryside location of the proposed development would create a physically isolated residential development, given its distance from Royal Wootton Bassett. In addition none of the special circumstances listed under paragraph 55 are met by this proposal. The proposal therefore runs counter to the provisions in the NPPF.

It is noted that the approved tourist accommodation represents the 'fall-back' position for this application and similarly constitutes restricted residential development (Use Class C3) in the open countryside. However, the proposed use as retirement accommodation is considered differently in policy terms, than that of tourist developments as it is in effect general needs housing. The WCS sets out in Core Policy 46 the Strategy's approach to meeting the need of Wiltshire's vulnerable and older people. However, Core Policy 46 is clear that specialist accommodation that may be provided through the policy comprises nursing accommodation, residential homes and extra care facilities encouraging this to be provided at the settlements

within Core Policy 1, such as the principal settlements and market towns. Only in exceptional circumstances, the provision of specialist accommodation outside but adjacent to these settlements will be considered provided they meet relevant criteria listed in the policy. Given that the proposal is not for specialist accommodation, in open countryside as established above, and not adjacent to the settlement of Royal Wootton Bassett, it is clear that it does not meet the specific requirements of the policy.

It is therefore clear that despite permission having been granted for tourist accommodation in the open countryside their use as retirement dwellings would not be considered to be appropriate in terms of the Core Policy 46 of WCS.

Sustainability

In respect to all 30 units the proposed use as retirement accommodation is considered differently in policy terms, than that of tourist developments already permitted. In effect the restriction to retirement accommodation should be considered in the same way as open market housing albeit restricted to use by people over the age of 55.

The proposal site lies outside the Limits of Development as shown on the Core Strategy Policies Map. Core Strategy Core Policy (CP) 2 allows for development outside settlement boundaries where they are permitted by other policies of the plan i.e. CP34, CP37, CP39, CP40, CP44, CP46, CP47 and CP48, or where they are brought forward through a neighbourhood plan or the proposed Wiltshire Housing Site Allocations DPD. The principle of a settlement boundary approach is justified in terms of providing plan led clarity to what development may go where. This approach has been endorsed by the Inspector examining the Core Strategy in his final report and by other Inspectors when considering specific proposals at appeal.

Core Policy 46 the Strategy's approach to meeting the need of Wiltshire's vulnerable and older people does not apply to the current proposal.

As the proposal does not comply with Core Policy 46 it would need to be considered on the basis of open market housing. In such circumstances, Core Policy 2 is clear that that development outside settlement boundaries will only be permitted where they are permitted by other policies of the plan or where they are brought forward through a neighbourhood plan or the proposed Wiltshire Housing Site Allocations DPD. The proposal would not comply with any other of the exception policies and the site is not being brought forward through a neighbourhood plan or Site Allocations DPD. Therefore despite the extant planning permission for tourist accommodation in the open countryside, their use as retirement dwellings assessed as open market housing, would be considered unsustainable in policy terms and in particular contrary to Core Policy 2 of WCS.

The location of the application site, being outside the settlement framework boundary of Royal Wotton Bassett, and therefore in open countryside, is contrary to planning policy whether assessed in the respect to the Core Policy 2 or Core Policy 46 of the WCS.

Viability of existing units

This is only of relevance to the 5 units already constructed. The applicant has not sought to argue that the use for holiday accommodation is unviable, as has been the approach with

similar application across Wiltshire, they merely argue that there is a justification for allowing a wider range of uses on the site and that there is a need for retirement housing within the area. Therefore there is not a “viability argument” to set aside the policy consideration in this case.

It is noted that the intention is that the lodges could be used as either tourist or retirement accommodation. However, evidence relating to why the existing lodges are no longer viable for that permitted use, including marketing to identify demand for the permitted and proposed uses, would be expected to be provided in order to demonstrate that the application is appropriate. This is as a result of the in principle policy position described above that retirement dwellings would not be appropriate in this location. Information has been provided in respect to the need for retirement accommodation in the district which is dealt with in greater detail below.

Viability and need for development with the proposed conditions

The Planning Statement, which accompanied the applications, identifies at paragraphs 6.2 – 6.10 the significant growth in the numbers of the population living longer, and the growth in population resulting from the ‘baby boom’ in the post World War II era. In terms of the growth of population in the over 55 age group, this has been specifically referenced for the Royal Wootton Bassett and Cricklade Community Area and identifies that the overall number of people aged 55 and above in this area and the proportion of the overall population increased significantly between 2001 and 2014 and is projected to continue to do so through to 2026.

The Office for National Statistics (ONS) latest pension trends publication (2012) which shows the proportion of people at each age leaving the labour market. The applicant stated that it shows that there is a wide spread of retirement ages and more specifically shows that 26.1% of women and 16.7% of men had left the labour market before age 60). In addition to this information no marketing identify the demand for the proposed uses has been provided, other than a list of similar developments permitted in the area. Accordingly, the assessment is purely based upon the trends referenced in the Planning Statement.

Despite these trends it remains questionable whether people will fully retire as early as 55; and therefore if it is appropriate to use this figure for assessing the need for further retirement accommodation. While the rise in total number of people in the age groups over 55 in the Royal Wootton Bassett Community Area is acknowledged in the Council’s Joint Strategic Assessment for the area, based on the Census data, this does not mean that there is necessarily a correlation with retirement age. The Joint Strategic Assessment for the Royal Wootton Bassett and Cricklade Community Area shows that it has just above the Wiltshire average percentage of its total population at retirement age and over (21.8%). Nationally, the ONS data shows that for men, the estimate of average age of withdrawal increased from 63.8 years in 2004 to 64.6 years in 2010. For women, it increased from 61.2 years in 2004 to 62.3 years in 2010. In addition the ONS latest pension trends publication (2012) shows that for men the age of labour market withdrawal peaks between 64 and 66 years and for women, the peak is between 60 and 62 years. Therefore, while it would be reasonable to assume that retirement age would be between 61-63 years, setting it at 55 appears to be relatively early, especially as the national population is evidently working

longer based on the increase of the average age of withdrawal in both men and women between 2004 and 2010.

On this basis, there does not appear to be strong evidence which would indicate that people will retire earlier, and that this is the case in the Royal Wootton Bassett and Cricklade Community Area, nor has evidence been provided that there is a specific market demand for these kinds of development. Therefore whilst there is a need for the provision of new housing to meet the specific needs of vulnerable and older people will be required in respect nursing accommodation, residential homes and extra care facilities, as set out in Core Policy 46 of the WCS, the proposal would not be considered to meet the specific needs of the area or Wiltshire as a whole.

Highways

The Highway Authority accepts that the levels of vehicle movements are comparable to the proposed use. Furthermore, the proposal includes a commitment to a door to door bus service and a bicycle pool which further assist in reducing vehicle movements when compared with the existing tourism use. Accordingly, no objection has been raised by the Highways Authority.

Visual Impact

There are concerns that the proposed development could impact upon the visual amenity of the area. The change of use to retirement dwellings, in contrast to a tourist accommodation that is unlikely to be occupied year-round, is likely to give rise to the proliferation of domestic paraphernalia including garden furniture, private vehicles, garden and play equipment and external storage that would not be anticipated as a consequence of the existing use. It may also be the case that occupier under the new condition might seek to alter existing boundary treatments to provide a greater level of privacy. However, it is considered that this could be sufficiently controlled by condition.

Affordable Housing

The Council's New Housing Team have stated that they would require an affordable housing contribution should the application be approved. Core Policy 43 of the WCS requires an affordable housing contribution as follows:

"On sites of 5 or more dwellings, affordable housing provision of at least 30% (net) will be provided within the '30% affordable housing zone' and at least 40% (net) will be provided on sites within the '40% affordable housing zone. Only in exceptional circumstances, where it can be proven that on-site delivery is not possible, will a commuted sum be considered."

The area outside Royal Wootton Bassett falls within the 40 per cent affordable housing zone. Currently, the proposal includes no provision for affordable housing on site nor has it been agreed that the applicant would accept an offsite contribution to affordable housing through the signing of a section 106 agreement and as such cannot be supported.

The new housing team have been in discussion with the applicant throughout the determination period in order to agree an appropriate affordable housing contribution given that some of the units have already been constructed and some are still awaiting construction. It was therefore agreed the applicant would submit evidence confirming the

differential in values between the extant consents and the proposals so that an informed conversation can be had in respect of an off-site contribution towards the delivery of affordable housing. The required information was submitted and was reviewed by the Council's New Housing Team and Properties Team.

On the basis of this information submitted and further discussions between the Council and the applicant it was agreed that an affordable housing contribution payment will be made as follows:

- 3 months after expiry of the Judicial Review period (or once all objections have been properly dealt with) the payment in respect of the 5 units already built which I calculate as amounting to £142,500 plus indexation.
- Occupation or sale, whichever the earlier, of each of the 25 units still to be built

The total sum of £817,500 plus indexation to be paid within 5 years of the grant of planning consent even if all the units have yet to be built. For the avoidance of doubt the total payment will reduce as each affordable housing contribution is made.

Conclusion (The Planning Balance)

On balance, this development proposal by way of variation of condition cannot be supported as it would constitute unsustainable development in the open countryside in the context of the WCS and the NPPF. In general, the provision of accommodation for older people is welcomed; however, this proposal is considered to be contrary to the requirements of Core Policy 46 of the WCS which requires such development to be of a particular type, in suitable locations and assist older people to live securely and independently within their communities.

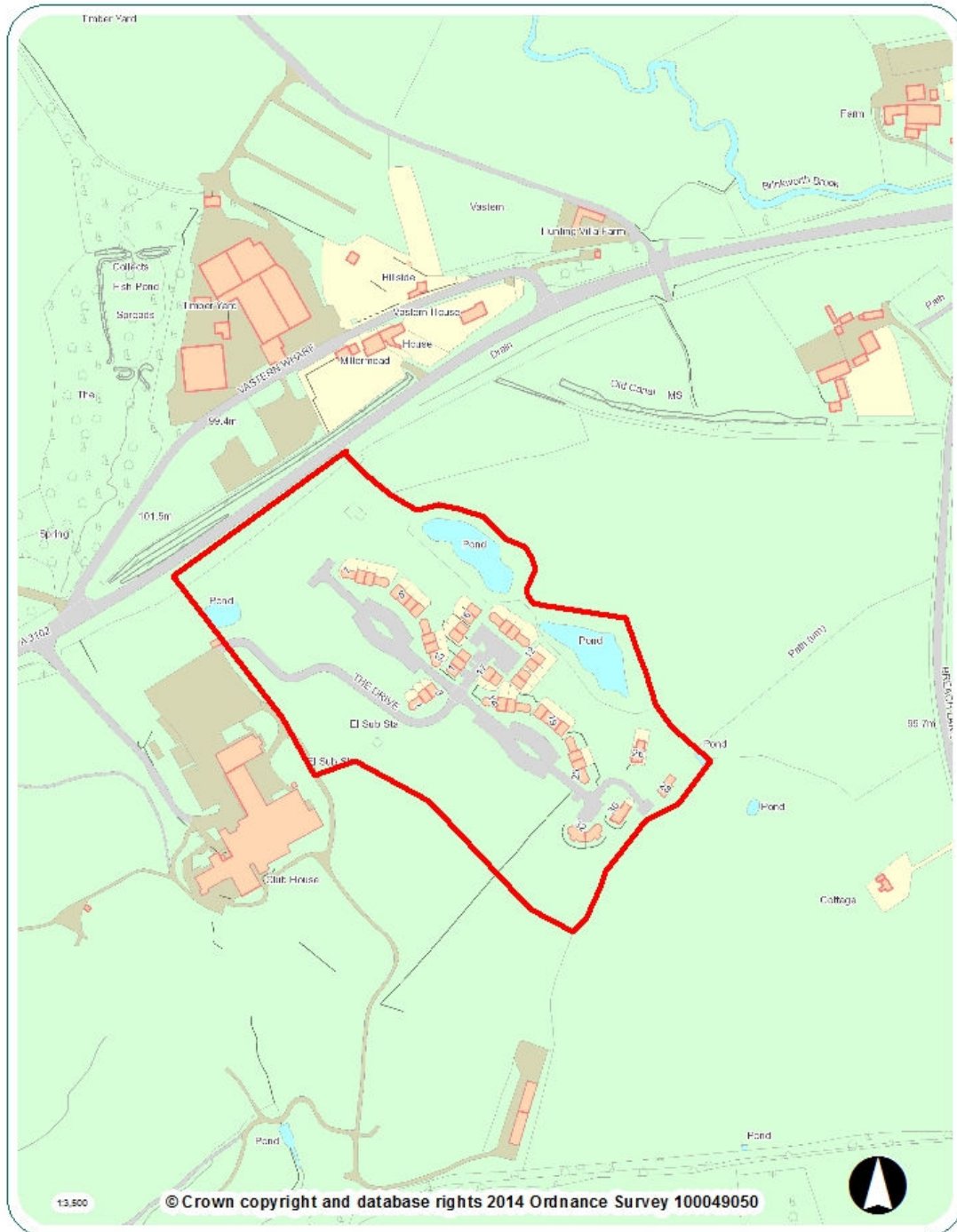
RECOMMENDATION

Planning Permission be REFUSED for the variation of condition for the following reason:

1. The site is located in open countryside outside of the limits of development defined for Royal Wotton Bassett in Core Policy 2 of the Wiltshire Core Strategy and defined on the Policies Map. Variation of the conditions attached to planning permission reference 09/01057/s73A would in effect lead to additional residential development in an area where this would not normally be considered acceptable. The proposal is not considered to represent sustainable development as it conflicts with the settlement strategy and delivery strategy of the plan as expressed in Core Policies 1, 2 and Core Policy 19 of the Wiltshire Core Strategy.

The proposal conflicts with the Delivery Strategy set out in Policy CP2 of the Wiltshire Core Strategy, which seeks to properly plan for sustainable development of housing sites in Wiltshire to deliver the identified needs in the Community Areas through a Site Allocations DPD and/or a Neighbourhood Plan. The site has not been brought forward through this process. The proposed residential development does not fall to be determined under any of the 'exception policies' explained at paragraph 4.25 of the plan or relate to a site allocated in the development plan for residential use. It has not been sufficiently demonstrated that there is specific need for such development in this location or that the existing is unviable.

The proposal would therefore conflict with Core Policies 1, 2 and 46 of the Wiltshire Core Strategy and the National Planning Policy Framework (particularly paragraphs 7, 17, 47, 50, 54 and 55) and Saved Policy H4 of the North Wiltshire Local plan (Appendix D of the Wiltshire core Strategy)



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APPLICATION WITHDRAWN

REPORT OUTLINE FOR AREA PLANNING COMMITTEES

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| Date of Meeting | 11 March 2015 |
| Application Number | 14/12103/FUL |
| Site Address | St Andrews Church West Street Castle Combe Wiltshire SN14 7HT |
| Proposal | Single Storey Extension To North Elevation, To Provide Disabled WC & Kitchen Facilities, New Vestry/Meeting Room & New Boiler Room. |
| Applicant | Mr M. Roberts Vertigo |
| Town/Parish Council | CASTLE COMBE |
| Division | BY BROOK – Cllr Jane Scott OBE |
| Grid Ref | 384154 177187 |
| Type of application | Full Planning |
| Case Officer | Alison Grogan |

Reason for the application being considered by Committee

Called in by Cllr Scott for the Committee to consider the application given the support of the local community.

1. Purpose of Report

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

2. Report Summary

The main issues are:

- Impact on the Grade I Listed building and its setting.
- Impact on the setting of the neighbouring listed buildings and archaeology
- Impact on the significance of the conservation area

3. Site Description

St Andrew's Church is a grade I listed building originating from the 13th Century. It is located in the centre of the village of Castle Combe, the Church is approached from the main entrance via the Market Place or by a gate off West Street to the rear of the building. There are listed buildings on either side of the main entrance and also along West Street opposing the churchyard.

There is a small existing modern boiler house which is set down into the ground against the outside of the North aisle. The boiler house is a mono-pitched structure set in the central bay between the buttresses and an oil tank is sited on the western side of this structure.

The Church is surrounded by listed buildings and tombs, is within the Conservation Area and also an Area of Outstanding Natural Beauty.

4. Planning History

No relevant planning history.

5. The Proposal

The proposal is to replace the existing boiler room with a new extension that will accommodate a disabled lavatory, kitchen/hospitality area and vestry/office, repositioning of an oil tank as well as a new boiler room. The kitchen/hospitality area will be immediately inside the extension when walking through the newly created door from the church. The lavatory will be to the left and the vestry/office to the right so that these facilities can only be reached by going through the kitchen.

In order to achieve adequate head room inside the new extension, the structure will have a flat roof rather than the existing mono-pitch roof, and there will be a parapet around the edge of the flat roof. The new boiler house will be on the eastern end of the extension, accessed externally and with new steps created to reach the door. The proposed extension will measure at the widest point approximately 3.5m and will have a length of approximately 10.7m. It will be dug into the ground so approximately 1.5m will be seen above ground level, which is approximately 1m higher than the highest point of the existing boiler room to be replaced.

The new oil tank is currently shown as being installed slightly to the left of the new extension, set down low against the wall of the north aisle, to the left of the 4th buttress

6. Planning Policy

National Planning Policy Framework 2012:
Achieving sustainable development – Core Planning Principles
Chapter 7 – Requiring Good Design
Chapter 12 – Conserving and Enhancing the Historic Environment

Wiltshire Core Strategy:
CP51 - Landscape
CP57 - Ensuring High Quality Design and Place Shaping
CP58 - Ensuring the Conservation of the Historic Environment

7. Consultations

Castle Combe Parish Council – Confirmation that the existing north facing windows would remain in full view. Clarification of the location and design of the wood pellet store if the

proposed heating system is installed. The window mullions in the proposed extension should be in stone.

English Heritage – (abridged version, full comments on file) Throughout the course of the pre-application discussions, we have supported the principle of the limited amount of new facilities in a modest extension on the north elevation to the church. However, we have also maintained throughout this process a degree of concern over the size of the extension..... The Visual Impact Assessment demonstrates that the extension will be dug down into the ground, therefore, reducing the height of the final addition. It has also been broken up by reducing the size of the boiler and toilets to a minimum. However, overall the extension will still be large and in covering up much of the north aisle externally, there will be harm. The northern side of the church and churchyard can only be seen from West Drive, however, this will still be an intrusive addition to this part of the church within the context of the Conservation Area and the churchyard itself, therefore impacting on the setting of the Church.....

Whilst these internal alterations do not form part of this application, we still need to consider what the implications of the extension will be on the remaining church and its significance. Internally, it would appear that the harm caused by the scheme will be the relocation of 5 no pews and the loss of some 19th century fabric on the north wall to create the new opening for the door. However, this harm will be outweighed by the benefit of restoring the north Chancel and Knights Chapel and the medieval screen between them. The harm from the impact of the extension externally is the issue that needs to be overcome and consequently we believe that this scheme should be judged against Paragraph 134 of the NPPF.

The Society for the Protection of Ancient Buildings – (Abridged version, full details on file) We have a number of serious concerns about this proposal. Whilst we acknowledge that a case has been made for the installation of WC and refreshment facilities at the church, we do not believe that the proposed solution is the best or indeed the only way through which these needs might be met. We would concur with the advice previously given by English Heritage and note our view that there is scope to make changes to the interior of the church in a way that would not necessarily have a negative impact on its significance..... In this case we are also concerned with regard to the design of the proposed extension and the impact that it will have on the visual appearance of the church as well as on its fabric. The existing north elevation of the church is extremely attractive with its simple symmetry and elegant proportions. In contrast, the proposed extension appears squat and bunker-like whilst also partially blocking the views of the fine aisle windows. We are also concerned that the pattern of fenestration on the proposed extension is visually disruptive as it does not relate to the aisle windows and note that the masonry detailing is disappointingly utilitarian. We would also comment that the sunken nature of the extension means that visitors walking around the church will be very aware of the roof and parapet gutters from their elevated position as well as the awkward junctions between the old and new fabric..... We remain unconvinced that the chosen location is the most suitable place for an extension and we do not feel that the proposed design enhances the architecture of this Grade I listed heritage asset. We therefore conclude that this scheme is likely to harm the character and appearance of this delightful church and we find that we are unable to support this proposal.

Senior Conservation Officer – (abridged comments) Whilst some form of new extension could be acceptable, the current proposal is considered to be unjustifiably large and inappropriately detailed which would harm the architectural and historic integrity of the heritage assets and their setting. Recommend refusal.

County Archaeologist – Support subject to condition relating to archaeological recording of all ground works (including service trenches) and any disturbance to the fabric of the church building during the course of the development.

Wiltshire Archaeological & Natural History Society – Generally in support but commented that any excavations are most likely to reveal artefacts related to burials and therefore a watching brief is essential. Additionally commented that contractors will have to cross and negotiate several monuments within the churchyard and the building itself and safeguards on these aspects must be written into any approval.

8. Publicity

The application was advertised by site notice, neighbour consultation and an advertisement in the Wiltshire Gazette and Herald on the 15th January 2015.

Thirteen letters in support and two letters of objection have been received from local residents. A summary of the key issues raised are detailed below:

- Impact from smells from the kitchen and increase in noise and disturbance.
- Existing problems with drainage and sewerage drains so any increase may exacerbate the situation.
- Unnecessary as there are already facilities in the village.
- Extension not in keeping with the heritage of the church and grave yard.
- The construction will cause a massive disruption to the Market Place.

One letter from the Manor House Hotel, generally in support but commenting that there are concerns regarding noise and disruption to their guests during construction and requesting assurances that their land and car parking would not be used by contractors.

9. Planning Considerations

Policy and Principle

One of the Core Principles of ‘the Framework’ is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. In determining planning applications, paragraph 131 of ‘the Framework’ includes a requirement for local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets. Furthermore, paragraph 132 of ‘the Framework’ states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. There is also a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

There is a statutory requirement to pay “special regard” to the desirability of preserving the setting of a listed building. That desire should be given “considerable importance and weight” in carrying out a planning balancing exercise, this principle is set out in the Barnwell Manor Case (Barnwell Manor Wind Energy Ltd v E. Northants DC, English Heritage, National Trust & SSCLG).

The Church is also located within an AONB and conservation area. The NPPF seeks positive improvement in conservation areas. Most explicitly paragraphs 126 and 131 require that local planning authorities should take into account “the desirability of new development making a positive contribution to local character and distinctiveness”.

Paragraph 9 says that pursuing “sustainable development involves seeking positive improvements in the quality of the...historic environment...”. The design policies further reinforce the objective of enhancement of an area’s character and local distinctiveness,

concluding that "Permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area..."

Compliance with both the statutory consideration and the NPPF policies therefore, generally speaking, requires account to be taken of the desirability of taking opportunities to enhance the character and appearance of a conservation area.

It is important to note that the application site is a grade I listed building which is the highest status of protection and less than 1% of all buildings have this status.

Harm

The proposed extension will measure at the widest point approximately 3.5m and will have a length of approximately 10.7m. It will extend across two and a half bays of the aisle, enveloping two of the buttresses and the area where the oil tank is currently located. The breakthrough to this extension is proposed to be created below the north-west window, which is the right hand aisle window when looking at the external elevation. This area of the building is purported to be a later rebuild and dates from the C19 but is important to the historic evolution of this building that any loss is justified. The loss of this historic fabric is considered to have less than substantial harm but the justification put forward, alternatives proposed and public benefit does not justify this alteration.

The extension will be dug into the ground, however, the Senior Conservation Officer has commented that the parapet would be higher than the lowest panes of the windows, thereby partly obscuring the cill and bottom pane on two of the three windows. This is considered to be harmful to the character and setting of the listed building, furthermore three different designs of windows are to be added in the north elevation of this extension, bearing no relationship in design or location to the large aisle windows behind them. The North Aisle is very visible from West Street as there are metal railings separating the churchyard from the road. Additionally, the road is higher than the church floor level so one looks down on the extension. These design features are considered to have an adverse harm on the setting of the listed building.

The Society for the Protection of Ancient Buildings, also raised concerns regarding the proposal partially blocking the views of the fine aisle windows and the design of the proposed fenestration not relating well to the existing windows. In response to these comments the agent submitted an artist's impression of images to demonstrate that the cills would still be visible when viewed from West Street. These images were forwarded to The Society for the Protection of Ancient Buildings, who responded that the images were useful in the sense that they serve to give an enhanced understanding of the scheme but unfortunately they did not help to address the concerns expressed in their letter of advice.

English Heritage have raised concerns regarding the scale of the proposed extension, a view that was shared by the Senior Conservation Officer. Overall the Senior Conservation Officer felt that the proposal was led by the quantity of accommodation that the applicants wish to house within it. During pre-application discussions, the Senior Conservation Officer advised that as with many other churches, some of the facilities, particularly the kitchen/hospitality area, could be accommodated within the body of the church, which would reduce the extension and result in a more usable layout than proposed.

The setting of this listed building also contributes to its significance. This includes the churchyard. The churchyard provides an attractive green space in which to view the church and for quiet reflection of the burial space. The burials are part of the historic and archaeological interest of the church.

Officers have looked at possible impacts from viewpoints around the site and from vantage points from the public highway, and it is considered that the proposed development will have a negative impact on the significance of this grade I Church, its setting and the settings of adjacent heritage assets and is therefore considered contrary to paragraph 132 of the NPPF.

The English Heritage (EH) publication 'New Work in Historic Places of Worship' (2012) advises that places of worship have generally been altered or rearranged a number of times in their history to meet changing needs and the evidence of change is often part of our appreciation of them. The Church has developed over time and the proposed extension would be the latest phase of its evolution. It would be subservient in scale and massing to the church, however, the design, detailing, scale and mass of the extension and its poorly designed parapet would diminish the prominence of the building and its architecture.

The proposal would also disrupt views of the church from many public and private vantage points. Many of these are key views of the church and provide (largely uninterrupted) views of this side of the church. They are not unimportant views of this heritage asset. Whilst it would be possible to see the entire upper parts of the church some of the important features such as lower parts of stone mullions and the cills of the church would be obscured. The disruption from the churchyard and road would detract from an appreciation of the special qualities of the Heritage Asset. This less than substantial harm to the significance of this designated asset also weighs against granting permission.

The NPPF in paragraphs 131 and 137 makes it clear that new development should enhance or better reveal the significance of heritage assets, which is consistent with policy CP58 in the Wiltshire Core Strategy. In this particular case it is considered that the proposed extension would be an intrusive addition covering much of the North aisle externally and as such would not comply with either national or local policy guidance. The PPG also advises that minor works have the potential to cause harm and English Heritage have confirmed that these works would comprise such harm.

Benefits

The scheme provides a package of benefits which can be given weight in the overall planning balance. These benefits include the Church being able to provide additional facilities, which may allow for the Church to be open longer and maintain public access to this historic building, particularly as the Church is also used to house museum displays which would be both a community and tourism benefit. This would also reduce the risk of the building being declared redundant and sustain the original use of the building for religious worship in the long term.

The proposed use of the church and the proposed improvements has been formulated over a considerable period of time and in consultation with the local community and Council officers. The new facilities within this building would mainly fill a gap in the provision of the facilities and the scheme would provide an opportunity for the building to be a major community asset and provide additional, more useable meeting facilities for local residents and community groups. The revenue generated would also benefit the local economy and provide additional income for the maintenance and upkeep of the church.

The scheme provides a package of benefits which can be given weight in the overall planning balance.

Impact on the Conservation Area

The majority of buildings in both Castle Combe village and Upper Castle Combe are listed and date from the late medieval period with 17th and 18th Century additions and rebuilding.

Built of natural stone with stone mullion windows and roofed in natural Cotswold stone slate incorporating a variety of architectural styles, such as gable frontage, mansard roofs and fine natural stone boundary walls set in predominantly rural landscape. Since the area was originally designated a conservation area in the 1970s great care has been taken with the evolution of the settlement.

The churchyard comprises one of the few areas of publicly accessible green space within the central part of the village. It makes a positive contribution to special character and appearance of the area. This is an area of high quality townscape and there is a separate duty under section 72(1) of the Planning, listed building and Conservation Act to pay special attention to the desirability of preserving or enhancing the character or appearance of this designated heritage asset.

The proposed development would not detract from the layout of the surrounding streets or diminish the dominating feature of the church tower. In many views into and across the site the new extension would largely be hidden. However, the proposed loss of a sizeable area of churchyard, poorly designed extension and the poor relationship between the proposal and the parent building would erode the townscape qualities of the Conservation Area.

Moreover, the adverse impacts upon the church that have been noted above would also diminish the contribution this important building makes to the special qualities of the Conservation Area. Whilst this would amount to less than substantial harm to the overall character and appearance of the conservation area it adds further weight to the refusal of this application.

Impact on the Area of Outstanding Natural Beauty

The site is within the AONB and paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty which have been given the highest status of protection in relation to landscape and scenic beauty.

The Church is within the built up area of the village and therefore it is considered that the proposal will not have an adverse impact on the wider natural beauty of the landscape and would not conflict with the key aims of the NPPF and policy CP51 of the Wiltshire Core Strategy.

10. Conclusion

The NPPF advises that harm to a Grade I listed building should be exceptional and permission should be withheld unless it can be demonstrated that such harm is necessary to achieve public benefits that outweigh the harm. In this instance, there are clearly public benefits of the scheme and there is much support from the local community. Whilst this support is noted and not set aside lightly, the Church is a nationally important building.

As set out above, the Court of Appeal judgement in *Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust & SSCLG* is a material consideration and whilst that case involved a very different proposal to the one under consideration, it established that there is a need to give considerable importance and weight to any harm to the setting of a listed building when carrying out the planning balance. Less than substantial harm does not equate to a less than substantial planning objection and there is a presumption that preservation is desirable.

The report identifies that the proposed development would result in less than substantial harm to the significance of a Grade I listed building and less than substantial harm to the

significance of other listed buildings. There would also be harm to the Conservation Area and conflict with local and national planning policies.

The harmful impacts that have been identified above would be long-lasting and the loss of important historic fabric and the setting of the building would be irretrievable. In summary it is concluded that the harm would not be outweighed by the public benefits of the scheme.

The adverse impacts upon the historic environment would be at odds with the environmental role of the planning system and the proposal would not comprise sustainable development. It would conflict with the provisions of the NPPF and the local plan and permission should not be granted for the proposed development.

Officers have given consideration to the scope to achieve the identified benefits of the scheme proposals without the harm or with mitigated levels of harm. It is considered that alterations to the scale design, character and layout of the proposed extension are possible which would at least partially address some of the identified harm and reduce the impact of the proposals whilst still achieving the identified aims of development and needs of the church and the overall benefits of the scheme.

RECOMMENDATION:

Planning permission be **REFUSED** for the reasons set out below:

- 1 The proposed extension would not conserve the heritage assets in a manner appropriate to their significance, contrary to paragraph 17 (10) of the NPPF. The proposal would not sustain or enhance the significance of the heritage assets which are already in viable use and would not make a positive contribution to local character and distinctiveness, contrary to paragraph 131 of the NPPF. The proposed development will have a considerable impact on the significance of this grade I Church, its setting and the settings of adjacent heritage assets and the Conservation Area contrary to paragraph 132 of the NPPF & Core Policies CP57 & CP58 of the Wiltshire Core Strategy . Furthermore, the harm caused, which would be less than substantial, would not be outweighed by public benefits of the proposal, including securing its optimum viable use and is therefore contrary to paragraph 134 of the NPPF. In addition, the proposal would not conserve or enhance the historic environment & conservation area contrary to policy CP57 & CP58 of the Wiltshire Core Strategy.

14/12103/FUL
St Andrews Church
West Street
Castle Combe
Wiltshire
SN14 7HT



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

| | |
|----------------------------|--|
| Date of Meeting | 11 March 2015 |
| Application Number | 15/00267/FUL |
| Site Address | Land Rear of Bay Tree Cottage The Butts Biddestone SN14 7DT |
| Proposal | New Dwelling (Resubmission of 14/10722/FUL) |
| Applicant | Mr John Penny |
| Town/Parish Council | BIDDESTONE |
| Division | BY BROOK- Cllr Jane Scott OBE |
| Grid Ref | 386068 173460 |
| Type of application | Full Planning |
| Case Officer | Mark Staincliffe |

Reason for the application being considered by Committee

The application has been called in by Cllr Jane Scott to consider the effect of the design, size and bulk of the development on the character of the conservation area, countryside setting and residential amenities of adjoining neighbours.

1. Purpose of Report

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

2. Report Summary

The main issues are:

- Principle of development
- Impact on the character and appearance of the conservation area and setting of adjacent Listed Building
- Impact on the residential amenities of adjoining properties
- Financial contributions

3. Site Description

The footprint of the new cottage is brought back from the road to allow it to reduce its visual weight on the street scene.

This application proposes the construction of a modest vernacular cottage on a section of a rear garden accessed from Challows Lane, Biddestone. The site itself is to the rear of Bay Tree Cottage which is a Grade II listed building and fronts onto The Butts and is located within the Biddestone conservation area, AONB and is clearly visible from both public and private vantage points.

The site was formally within the settlement framework boundary of Biddestone, however, these boundaries were removed on the adoption of the Wiltshire Core Strategy.

The lane begins in the center of the conservation area and its narrow nature is reflected in the single storey buildings fronting directly onto the lane, but as you continue toward this site the lane opens out and becomes more about individual houses set back from the road moving on to a more modern 'estate type' housing.

4. Planning History

| | |
|-----------------|--|
| 13/02178/FUL | Single Storey Side/Rear Extension |
| 13/02179/LBC | Single Storey Side/Rear Extension |
| N/11/01706/LBC | Internal Alterations to Staircase, Ground and First Floor Partitions and External Alterations to a Rear Door Opening |
| N/12/03081/TCA | Fell 1 Hawthorn & 1 Laburnam Tree |
| N/13/01202/FUL | Single Storey Side & Rear Extension to Provide Garden Room |
| N/13/01203/LBC | Single Storey Side & Rear Extension to Provide Garden Room |
| 13/05502/TCA | 30% Crown Reduction To 2 Prunus, 1 Silver Birch Tree, 1 Walnut Tree and 1 Willow Tree |
| 14/01898/PREAPP | Erection of 3 Bed Dwelling |
| 14/10722/FUL | New Dwelling (Withdrawn) |

5. The Proposal

The proposed development involves the demolition of the existing outbuilding and construction of a two storey detached dwelling with two off street parking spaces.

6. Planning Policy

Wiltshire Core Strategy:

CP10- The Spatial Strategy: Chippenham Community Area

CP43- Providing affordable homes

CP49- Protection of rural services and community facilities

CP51- Landscape

CP57- Ensuring High Quality Design and Place Shaping

CP58- Ensuring the Conservation of the Historic Environment

National Planning Policy Framework 2014:

Achieving sustainable development – Core Planning Principles

Chapter 7- Requiring Good Design

Chapter 8- Promoting healthy communities

Chapter 11- Conserving and enhancing the natural environment

Chapter 12- Conserving and enhancing the historic environment

7. Consultations

Housing- We can confirm therefore, that under current policy approaches, we would not be seeking an affordable housing contribution from this application.

Biddestone Parish Council- Object to the development as proposed. However, the Parish Council would support the principle of a dwelling in this location subject to appropriate size & design.

Public Open Space- This development generates a need for £5,820 in offsite Open Space Contribution to be used to upgrade facilities at Biddestone Green

Highways- I recommend that no highway objection is raised subject to the following conditions:

No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 43 metres in either direction from the centre of the access in accordance with the approved plans. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 900mm above the level of the adjacent carriageway.

No part of the development hereby approved shall be first brought into use until the parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

Amended Plans have been received. The consultation period expires prior to the committee meeting. Any additional comments will be presented as late items.

Conservation- Object- The application will have an adverse impact on the character and appearance of the Conservation area. No objection in relation to the setting of the Listed Building.

8. Publicity

The application was advertised by site notice and neighbour consultation. This resulted in the submission of 20 objections and 0 letters of support. A summary is set out below:

- Loss of privacy
- Inappropriate size & scale
- Loss of visual amenity
- Garden grabbing
- Over bearing impact on adjacent properties
- Loss of sunlight/daylight
- Poor design
- Adverse impact on the conservation area and setting of the listed building
- Outbuilding should be retained
- Should be a single storey dwelling
- Highway safety issues, parking area is unsafe
- Positioning in the street scene is poor
- Not consistent with established planning policies
- Overdevelopment of the site
- Plans are deceptive, indicates that the site is flat/level. It is not.

Amended Plans have been received. The consultation period expires prior to the committee meeting. Any additional comments will be presented as late items.

9. Planning Considerations

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act states that “*determination must be made in accordance with the plan unless material considerations indicate otherwise*”.

This is the starting point from a policy point of view. The Wiltshire Core Strategy forms the local component of the current development plan.

The site was situated within the settlement framework Boundary of Biddestone wherein the redevelopment of land for residential accommodation was acceptable in principle. However, the settlement framework boundary has been removed and any proposed development must be considered against core Policy 1 & Core Policy 2 of the Cores Strategy.

The proposal is for the construction of a new residential dwelling. As such, any new residential development must be considered against Policies CP1 & CP2 of the Wiltshire Core Strategy and Sections 1, 6 & 7 of the NPPF. These policies and guidance allow for residential development in principle providing the development is infill within the existing built area.

When making a decision on any application for development that affects a listed building or its setting, a local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Preservation in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged.

This obligation, found in sections 16 and 66 of the Planning (Listed Buildings and conservation Areas) Act 1990 (1), applies to all decisions concerning listed buildings. Decision-making policies in the NPPF and in the Core Strategy are also to be applied, but they cannot directly conflict with or avoid the obligatory consideration in these statutory provisions.

In the consideration of this application special attention to the desirability of preserving or enhancing the character or appearance of that area must take place. The House of Lords in the South Lakeland case decided that the “statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved.”

A development that merely maintains the status quo, perhaps by replacing a building that detracts from the character and appearance of the conservation area with a similarly detrimental building, would satisfy the statutory consideration.

Section 11 of NPPF states that the planning system should contribute to and enhance the natural environment by protecting and enhancing valued landscapes. At paragraph 111 of the NPPF it states that policies and decisions should encourage the effective use of land, provided that it is not of high environmental value. However, this must be balanced against the need to apply great weight to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty as these have the highest status of protection in relation to landscape and scenic beauty.

Effects on appearance of building

Since the submission of the original planning application minor changes have been made to the proposed development in an attempt to overcome concerns expressed by local residents. This has included the reduction in the height of the building (600mm)

The design of the new house is considered to be appropriate. The proposed dwelling is of simple proportions with a rectangular footprint and a traditional roof form. However, it also has sufficient detailing to add interest to the design. In particular the lintel and sill details and

the staggered roof form complement the overall design. It is considered that the design and appearance of the properties creates an attractive frontage that relates well with the street scene and countryside. As such the proposed design is considered to meet the requirements CP57 of the Core Strategy and section 7 of the NPPF.

Garden Size

The proposed garden area is comparable, if not larger to the gardens within the area and adjacent properties. Bearing in mind the size of the dwelling it is considered that the outdoor space provided satisfies the guidance for outdoor amenity space for a new dwelling. The proposal would allow for some outdoor space, sitting out, bin storage and for hanging out of washing, the proposal would also provide outdoor amenity space for a family to enjoy.

To ensure that adequate amenity space is retained it is deemed necessary to remove permitted development rights for rear extensions and outbuildings. This will allow the Council to control any future extensions and ensure that adequate amenity space is retained.

Impact on Neighbours

The concerns raised by immediate neighbours in relation to privacy, loss of sunlight/daylight and the overbearing impact of the proposed development are noted. To overcome these concerns the applicant has revised the proposed development and moved it away from the boundary.

To refuse permission based on its location in relation to its relationship with 'The Byre' would be difficult to substantiate. No habitable windows directly over look 'The Byre', The Byre is located to the West of the proposed dwelling and the proposed dwelling is sufficient distance from the proposal to ensure that it is not overbearing.

It is considered that the proposed development, on balance, would not cause harm to the residential amenities of surrounding properties. The development will not result in any significant loss of sunlight, daylight or privacy for adjoining properties.

Design and Impact on the Conservation Area

The site is located within the conservation area and is located within close proximity of a grade II listed building.

The NPPF seeks positive improvement in conservation areas. Most explicitly paragraphs 126 and 131 require that local planning authorities should take into account "the desirability of new development making a positive contribution to local character and distinctiveness".

Paragraph 9 says that pursuing "sustainable development involves seeking positive improvements in the quality of the...historic environment...". The design policies further reinforce the objective of enhancement of an area's character and local distinctiveness, concluding that "Permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area..."

Compliance with both the statutory consideration and the NPPF policies therefore, generally speaking, requires account to be taken of the desirability of taking opportunities to enhance the character and appearance of a conservation area.

The Council's Conservation Officer has raised an objection to the proposal and concluded that the proposed development would not have an adverse impact on the settling of the listed building but would have a detrimental impact on the character of the Conservation Area.

The existing single storey building is of poor quality design and in a condition of poor visual appearance. As set out above the proposed dwellings, though of a different design to the dwellings either side of the site is of a high quality design and sits comfortably within the street scene.

Paragraph 120 of the NPPF requires that development should preserve or enhance the established character of the conservation area. The existing site has already been separated from the existing listed building and is not attractive. The NPPF states that good design should contribute positively to making places better.

This part of the Conservation area and buildings beyond it have a diverse range of uses and buildings which span many centuries. This part of the conservation area has, over time, been developed by way of infill dwellings and conversion of existing outbuildings and has no distinct character, unlike the dwellings fronting onto the Butts. In general dwellings and buildings fronting onto Challows Lane do just that and there is very little relief from the public highway. However, some properties are set back from the road.

It is this diverse range of buildings and uses, together with the sloping topography, soft landscaping and expansive views beyond the settlement, which contribute to the character and appearance of this Conservation Area.

Whilst the properties fronting onto Butts comprises traditional housing the properties fronting onto Challows Lane are quite different. It comprises a traditional outbuildings, bungalows, chalet bungalows and mock barn conversions all of varying design, sizes and scale, appearance and materials. In particular, they include a variety of pitched roofs of various pitch, finish and ridge height.

The site is currently occupied by a part original, part poorly restored outbuilding of no particular architectural merit and the land is currently being used for informal external storage. Visually this site and the building has a degrading impact on the site, the street scene, the setting of the AONB and Conservation Area.

The proposed dwelling would respect the informal building lines that have been adopted within the street, and overall proportions and of context of the dwellings within the immediate street. The proposed dwelling would be of traditional proportions both vertically and horizontally and its fenestration would have a strong vertical emphasis. At second floor level this would include windows, which would be consistent with the modest sized windows on other properties within the locality. Similarly the proposed pitched roof would pick up on the design characteristics within the locality and conforming to principles set out within the Cotswold Design Guide (this is not a Wiltshire Council DPD but does set out good design principles for development within the AONB).

Overall the proposed dwelling would respect the topography of the street, the character of the area, and would improve the visual character of the area. It is acknowledged that the ridge height would be greater than that of the adjacent property, however, the proposal would form an interesting and appropriate transition between this, what appears to be a former outbuilding, and the varied and predominantly modern developments further to the West.

It is recognised that some of the modern buildings in the immediate area are uninspiring and in some instances have a negative impact on the character or appearance of the Conservation Area. However as with all buildings, whether traditional or contemporary, the success with which they blend in with and make a positive contribution to the street scene is dependent on the quality of the design and the precise nature and quality of the materials used.

In this instance the scheme is for a high quality building, which responds to local character and history and reflects the identity of local surroundings and materials. Provided it is constructed from high quality materials it would make a positive contribution to the character and appearance of the Conservation Area and would enhance the conservation area and AONB. It would therefore comply with the National Planning Policy Framework, both in relation to its design and its impact on the identified heritage assets/AONB. It would also comply with the conservation policies and advice set out in the Core Strategy.

Local residents have concerns with this approach and consider the proposed design, prominence within the street scene and conservation area result in negative impacts on the character of the area thus contrary to local and national planning policies. There is no predominant housing type fronting this road. The NPPF indicates that good design is fundamental to using land efficiently. For the reasons set out above the development is considered to be acceptable.

Setting of the Listed Building

The House of Lords in the South Lakeland case decided that the “statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved.”

The existing structure, boundary treatment and condition of the land is considered to be poor and as such has an adverse impact on the setting of the listed building. The proposed dwelling will be visible from the listed building but views of the listed building within the wider street scene context will be limited. Irrespective of the above it is considered that the proposed dwelling is of high quality and relates well to the context and setting of the adjacent listed building and thus improves the character of the area over and above the existing situation.

The proposal is considered to accord with CP58 of the Core Strategy and the NPPF.

Financial Contributions

On 28 November 2014, changes were made to the collection of s106 contributions and are now incorporated into the NPPG with effect from that date.

The changes mean that affordable housing and tariff-style contributions are no longer payable if the development site has 10 houses or fewer *and* a maximum combined gross floorspace of no more than 1000 sqm.

Following this change, the Council can no longer seek financial contributions towards affordable housing and tariff contributions on schemes of 1-9 units with a gross area of no more than 1,000sqm

RECOMMENDATION

Planning permission be **GRANTED** subject to the planning conditions set out below:

- 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 all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

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

- 3 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.

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

- a) location and current canopy spread of all existing trees and hedgerows on the land;
- b) full details of any to be retained, together with measures for their protection in the course of development;
- c) a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- d) means of enclosure;
- e) all hard and soft surfacing materials;
- f) minor artefacts and structures

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

- 5 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.

- 6 The development hereby permitted shall not be occupied until the the access and parking area has been consolidated and surfaced (not loose stone or gravel). The access and parking shall be maintained as such thereafter for the parking of vehicles associated with the use of the dwelling hereby approved.

REASON: In the interests of highway safety.

- 7 No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 43 metres in either direction from the centre of the access in accordance with the approved plans. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 900mm above the level of the adjacent carriageway.

REASON: In the interests of highway safety

- 8 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 those Orders with or without modification), no development within Part 1, Classes A-F shall take place on the dwellinghouse hereby permitted or within their curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

- 9 No development shall commence on site until details of the storage of refuse, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved refuse storage has been completed and made available for use in accordance with the approved details and it shall be subsequently maintained in accordance with the approved details thereafter.

REASON: In the interests of public health and safety.

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

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

- 11 No works shall commence on site until details of all rainwater goods and their means of fixing to the building have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the conservation area.

- 12 No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.

REASON: In the interests of visual amenity.

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

Drg No: 436/PL/S/1a

Drg No: 436/PL/3c

Drg No: 436/PL/7a

Drg No: 436/PL/8a

Drg No: 436/PL/D1

Drg No: 436/PL/D2

Drg No: 436/PL/D3

Drg No: 436/PL/D4

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

INFORMATIVE TO APPLICANT:

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

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

INFORMATIVE TO APPLICANT:

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



REPORT OUTLINE FOR AREA PLANNING COMMITTEES

| | |
|----------------------------|--|
| Date of Meeting | 11 March 2015 |
| Application Number | N/13/01483/FUL |
| Site Address | 1 CHESTNUT ROAD, CHIPPENHAM, WILTSHIRE, SN14 0EY |
| Proposal | Erection of Detached Dwelling |
| Applicant | Mr G Lyus |
| Town/Parish Council | CHIPPENHAM |
| Division | CHIPPENHAM LOWDEN AND ROWDEN- Cllr Linda Packard |
| Grid Ref | 391059 173833 |
| Type of application | Full Planning |
| Case Officer | Chris Marsh |

Reason for the application being considered by Committee

The application was considered by Committee on 31 July 2013, at which time Members resolved to delegate to Officers to approve the application subject to conditions and completion of a Section 106 legal agreement. However since that time changes to the National Planning Policy Guidance relating to planning contributions warrant reconsideration of the application.

As such, this report remains unchanged hereafter, except for the section headed 'S106 contributions' and its final recommendation.

1. Purpose of Report

To consider the above application and to recommend that the application is **APPROVED, subject to conditions.**

Chippenham Town Council have objected to this application, which has also attracted 15no. objections from neighbours of the site.

2. Main Issues

The main issues in considering the application are:

- Principle of development
- Impact on the character and appearance of the area
- Impact on the privacy and amenity of existing neighbours and potential occupants
- Impact on highway safety
- S106 contributions

3. Site Description

Chestnut Road is a cul-de-sac located a short distance to the South of the Bristol Road in central Chippenham, an area characterised by its distinctive 1930s semi-detached properties. No.1 occupies a corner position close to the junction between Chestnut Road and the adjacent Plantation Road and benefits from a generous triangular plot to the rear that serves predominantly as domestic garden. The land is at present bounded by a mature hedgerow to the pavement side and otherwise by close-boarded timber fencing to the neighbouring properties.

The site is located within the development framework boundary for Chippenham, and otherwise undesignated under the adopted development plan.

4. Relevant Planning History

There is no planning history relevant to the site.

5. Proposal

The proposed development comprises the subdivision of the plot in order to accommodate a new detached dwelling, more closely related to no.3 in terms of orientation and access than to no.1 itself. The proposed dwelling appears fairly similar in terms of style and proportion to the nearby properties, although obviously differing in terms of its detached form, and is to be set over a full two-storey scale with a hipped roof over, modest projecting porch and rear single-storey lean-to. The internal accommodation is to comprise of an open-plan lounge/diner toward the rear of the property with separate kitchen, hallway and WC at ground floor level and three bedrooms and a bathroom above. Externally, the dwelling is to be finished principally in painted render, with a brick plinth and matching central string course and a hipped concrete roman tile roof covering. Two allocated parking spaces, connected to a newly-created access directly adjacent to no.3, are arranged in tandem next to the building. The land to the rear is to be used in conjunction with the property as amenity space, with the existing garden space to the East retained as ancillary to no.1 and incorporating a suitable boundary treatment to be agreed later.

6. Consultations

Chippenham Town Council – objections, citing the highways impact and unsuitable design
Highways – no objection, subject to conditions
Public Open Space – confirmed that a contribution of £5,820 should be sought

7. Publicity

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

15 letters of objection received

Summary of key relevant points raised:

- Insufficiency of proposed parking provision
- Overdevelopment of the site
- Inappropriate design
- Overlooking and loss of light

Concerns have also been raised in respect of the potential impacts of construction work on sewerage and neighbouring foundations; however these are civil matters and not material planning considerations.

8. Planning Considerations

Principle of development

The site is located within the development framework boundary for Chippenham; within which new residential development is supported in principle. The plot is well connected to local services and transport, with the B-classified Bristol Road a short distance away.

Impact on the character and appearance of the area

Whilst the prevalence of semi-detached properties in the vicinity of the site cannot be ignored, the general form of the proposed dwelling is otherwise in keeping in terms of scale and proportion. Later development consisting of additional detached dwellings is not uncommon, and examples can be seen nearby at High Gables and Woodside, a short distance to the East, in the immediate area. The general scale and proportion of the proposed dwelling is considered to be entirely in accordance with the consistent template set by neighbouring properties, including the hipped roof that typifies many properties of that era. Likewise, the set-back position of the property and tandem parking arrangements are typical of the surrounding properties, including no.1 itself.

Following negotiation, the external finish has been amended so as to be predominantly painted render, similar to that of no.5 Chestnut Road, with brickwork contained to course detailing only. Other details including the front porch have been amended to reflect the hipped coverings to the ground floor bay windows directly opposite, although it should be acknowledged that a slight variation in architectural details – including bays and porches – already exists in the near vicinity. The proposed timber-framed fenestration is consistent with the original materials of the surrounding properties, as are the concrete tiles to be used for the roof covering.

Impact on the privacy and amenity of existing neighbours and potential occupants

Owing to the siting and orientation of the proposed dwelling, the scheme will not result in the detrimental loss of amenity to neighbouring properties. The dwelling is orientated in such a way as to avoid direct overlooking of adjacent properties, particularly the gardens of nos.3 and 1 Chestnut Road, with which the building is to have a relationship similar to those seen throughout the street. The main front and rear elevations maintain a separation of 17.5m and 12.5m respectively from the boundaries of the properties opposite and this is considered entirely adequate as well as in keeping with the general pattern of development seen in the vicinity.

Impact on highway safety

Whilst it is appreciated that Chestnut Road itself may suffer from sporadic parking problems, planning proposals can only address the direct impacts of development and cannot be expected to remedy a pre-existing situation. In this instance, the proposed level of parking and access arrangements are considered adequate for the development proposed. The level of parking provision at no.1 itself is not a relevant consideration, although it is worthy of note that the reduction in the size of this property may yield a slight reduction in vehicular movements.

For the above reasons, the Highways Officer has recommended that the proposed access and parking provision are adequate in relativity to the dwelling. Due to the very limited traffic flow through the cul-de-sac and visibility afforded by the highway verge, it is considered acceptable to reverse onto the driveway or out into the road. The ownership of the verge

remains unclear, however – being neither under the control of the applicant or the Council – and therefore obtaining access is dependent upon securing suitable rights in this regard. This is a civil matter and not relevant to the determination of the application.

S106 contributions

At the time of its initial consideration by Committee, the scheme attracted a financial contribution of £5,820 toward the provision of local off-site public open space in accordance with the development plan. As of 28 October 2014 however, the National Planning Policy Guidance (NPPG) stipulates that such contributions should not be sought for developments of fewer than 10 units and 1,000m², except in Areas of Outstanding Natural Beauty or designated 'Rural Areas'. The Guidance is a material planning consideration and as such it is not considered reasonable to pursue the contribution in this instance. The recommendation is amended accordingly.

Conclusions

It is considered that the application site is suitable for limited infill development of the type and scale proposed. The scheme demonstrates a suitable regard for its context in terms of layout, scale, design and materials and will not appear unduly out of place in the street scene. The proposed parking and access arrangements are adequate and will not result in detriment to highway safety, the current issues in respect of on-street parking being outside of the control of the applicant.

9. Recommendation

That the application is APPROVED for the following reason:

The proposed development, by virtue of its location, siting, scale, massing, design and materials, is acceptable in principle and will not harm the character or appearance of the site or its setting. The proposal will not result in detriment to residential amenity or highway safety and as such accords with Policies C3 and H3 of the adopted North Wiltshire Local Plan 2011 and Sections 6 and 7 of the National Planning Policy Framework.

And subject to the following conditions:

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

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

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

788/CAM/2013/1 rev A - Proposed Plans and Elevations

Received 16 July 2013

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

- 3 No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been inspected on site 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.

- 4 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.

- 5 No part of the development hereby permitted shall be first occupied until the access 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.

- 6 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.

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

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

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

- 9 **INFORMATIVE TO APPLICANT:**
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