

AGENDA

Meeting: Southern Area Planning Committee
Place: Sarum Academy, Westwood Rd, Salisbury SP2 9HS
Date: Thursday 30 April 2015
Time: 6.00 pm

Please direct any enquiries on this Agenda to David Parkes, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718220 or email david.parkes@wiltshire.gov.uk

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

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Membership:

Cllr Fred Westmoreland (Chairman)	Cllr Mike Hewitt
Cllr Christopher Devine (Vice-Chairman)	Cllr George Jeans
Cllr Richard Britton	Cllr Ian McLennan
Cllr Richard Clewer	Cllr Ian Tomes
Cllr Brian Dalton	Cllr Ian West
Cllr Jose Green	

Substitutes:

Cllr Trevor Carbin	Cllr Helena McKeown
Cllr Terry Chivers	Cllr Leo Randall
Cllr Ernie Clark	Cllr Ricky Rogers
Cllr Tony Deane	Cllr John Smale
Cllr Dennis Drewett	Cllr John Walsh
Cllr Peter Edge	Cllr Bridget Wayman
Cllr Magnus Macdonald	Cllr Graham Wright

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AGENDA

Part I

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

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes** (*Pages 7 - 30*)

To approve and sign as a correct record the minutes of the meetings held on 19 March 2015 and 9 April 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 Chair.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda (acting on behalf of the Corporate

Director) no later than 5pm on Thursday 23 April 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.

- 6a **WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53 THE WILTSHIRE COUNCIL TEFFONT PATH No. 9 RIGHTS OF WAY MODIFICATION ORDER 2014** *(Pages 31 - 256)*
- 6b **COMMONS ACT 2006 - SECTION 15(1) AND (3) APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN - THE COMMON / BROWNS COPSE FIELD / BLUEBELL WOOD / VILLAGE HALL FIELD THE FIELD, WINTERSLOW** *(Pages 257 - 456)*
- 7 **Planning Appeals** *(Pages 457 - 458)*
To receive details of completed and pending appeals.
- 8 **Planning Applications**
To consider and determine planning applications in the attached schedule.
- 8a **14/10095/FUL - Land to the rear of 33 Bedwin St & Belle Vue Road, SP1 3YF - Erection of 4 (1 x 5 bed and 3 x 4 bed) dwellings with associated car parking and landscaping and demolition of existing garages** *(Pages 459 - 472)*
- 8b **14/11884/FUL - Gorley, Marina Road, Salisbury, SP1 2JN - Sever land and erect 1 No 2 bed dwelling with parking for existing property** *(Pages 473 - 480)*
- 8c **15/01784/FUL - Adjacent to Rapiers Rest, Romsey Road, Whiteparish, Salisbury - Demolition of garages and erection of 3 bed dwelling with alterations to existing access** *(Pages 481 - 490)*
- 9 **Urgent Items**
Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

Part II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt

information would be disclosed

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SOUTHERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING
HELD ON 19 MARCH 2015 AT SARUM ACADEMY, WESTWOOD RD,
SALISBURY SP2 9HS.**

Present:

Cllr Christopher Devine (Vice Chairman), Cllr Richard Britton, Cllr Richard Clewer, Cllr Jose Green, Cllr George Jeans, Cllr Ian Tomes, Cllr Ian West, Cllr Peter Edge (Substitute), Cllr John Smale (Substitute) and Cllr Bridget Wayman (Substitute)

28 Apologies for Absence

Apologies were received by Cllr Brian Dalton who was substituted by Cllr Peter Edge.

Apologies were received by Cllr Mike Hewitt who was substituted by Cllr Bridget Wayman.

Apologies were received from Cllr Fred Westmoreland (Chairman) and Cllr Chris Devine (Vice-Chairman) was in the Chair for the duration of the meeting.

Apologies were received from Cllr Ian McLennan.

29 Minutes

Decision:

To confirm and sign the minutes of the last meeting held on 26 February 2015 as a correct record with amendment to minute no. 26b, which had stated that the Local Member, Cllr Bridget Wayman, was not present. Cllr Wayman was present and this has now been corrected.

30 **Declarations of Interest**

There were none.

31 **Chairman's Announcements**

The Chairman explained the meeting procedure to the members of the public.

32 **Public Participation and Councillors' Questions**

The committee noted the rules on public participation.

33 **Planning Appeals**

The committee received details of the appeal decisions as stated in the agenda.

34 **Planning Applications**

34a 14/11591/FUL - 22 Cholderton, Salisbury, SP4 0DL - Single storey rear extension

Public Participation

Mr David Shearer spoke in objection to the application.

Mrs Jackie Shearer spoke in objection to the application.

Mr Alistair Heath spoke in objection to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. Questions were asked about the blockage of natural light, the direction the property was facing and the listing of extensions to the property. The retention of a brick extension was also raised.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr John Smale, spoke in objection to the application. Cllr Smale discussed the scale of the extension in relation to the neighbouring properties. The grade II listing of the cottages in a conservation area was also raised. Cllr Smale stated that it was unfortunate that the applicant did not discuss the application with their neighbours to find an appropriate solution to their planning issues.

The Chairman stated that the site visit showed an aesthetically pleasing row of Victorian cottages, of which there was only a few left in the county. The

grade II listing of this property was discussed and the impact the proposed extension would have on the property's character. The height of the extension was discussed by Members. The potential loss of light in the neighbouring property was raised. The scale and dominance of the potential extension was debated by Members. The planning history of the site was discussed to provide context to the application. The pitch of the roof was also raised. Members who had been on the site visit to the property highlighted the potential loss of light in the neighbouring kitchen at 23/24 Cholderton.. The shape of the proposed extension was also discussed.

Resolved:

To refuse planning permission for the following reasons:

- 1 The proposed extension by reason of its size and height in attached and adjoining listed buildings would constitute an over addition to the rear of the property detracting from the special character of the listed building contrary to core policy 57 and 58 of the Wiltshire Core Strategy.**
- 2 The proposed extension by reason of its height and proximity to the No 23/24 Cholderton (Staddlestone Cottage) would have an adverse effect on the amenities of No 23/24 Cholderton in particular overshadowing a contrary to core policy 57 (vii) of the Wiltshire Core Strategy.**

34b 14/11599/LBC - 22 Cholderton, Salisbury, SP4 0DL - Single storey rear extension

Public Participation

Public speaking for this application was taken in Minute No. 34a.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Technical questions for this item were taken in Minute No. 34a.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr John Smale, spoke in objection to the application.

Resolved:

To refuse planning permission for the following reasons:

1. The proposed extension by reason of its size and height in relation to the attached and adjoining listed buildings would constitute an overly large and tall addition to the rear of the property detracting from the special characteristics of the listed building contrary to core policy 57 and 58 of the Wiltshire Core strategy

34c 14/12193/FUL - 4A and 4B The Crescent, Hillview Road, Salisbury - Extension to east elevation to create 2 x 2 bed flats

Public Participation

Mrs Ros Liddington spoke in objection to the application.
Mrs Nicola Allerton spoke in objection to the application.
Mr Nick Allerton spoke in objection to the application.
Mr David Sharp spoke in support to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. Excavation work was discussed and clarification was provided in regards to the neighbouring properties. The potential removal of trees and the location of a pedestrian access were also discussed. The location of the retaining wall was raised. The withdrawal of the previous scheme and the relevant officer concerns were highlighted.

Members raised a recent Cabinet decision that related to parking strategy, specifically to the number of parking spaces required at new residential buildings. Members sought legal advice as to the relevance and content of this Cabinet decision. The solicitor present at the meeting advised that it would be necessary to defer the decision to investigate the position and provide legal advice accordingly.

An item of late correspondence was circulated at the meeting.

Resolved:

To defer the item to a later date due to legal advice from the solicitor present at the meeting.

34d 14/12107/FUL - Stonehenge Visitor Centre , Amesbury, Wiltshire SP4 7DE - Resurfacing of an area of overflow car park

Public Participation

Mrs Janice Hassett spoke in objection to the application.
Mrs Linda Kilroy spoke in support to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. The location of a new access onto the A360 was raised – it was explained that this was a temporary works exit. The parking requirements of the Visitor's Centre were discussed, as well as issues that the current parking facilities faced. The conditions within the report – in relation to lighting and the temporary access – were discussed. The surface of the car park would be similar to the existing material, a tarmac surface with drainage. The input of English Heritage within the report was discussed and legal advice was sought on this issue.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr Ian West, spoke in objection to the application. Cllr West discussed local concern to this application. The Councillor also discussed the representations that could be found on the Wiltshire Council website, both for and against the application. The potential removal of trees on the site was raised. Cllr West stated this proposal was too heavy of a price to pay and that the travel plan/system was a major issue.

Members discussed the impact of the tarmac on the existing environment and on the landscape. The management of the overflow car park was discussed. The potential for using a coloured tarmac to lessen the visual impact was raised. Highways issues were also discussed, in relation to the approach to the Visitor's Centre. The landscaping of the site and the need to address the impact of this development was discussed.

The appropriate design for the surrounding setting for this World Heritage Site was discussed and the need to protect green space was stated. The isolation of Stonehenge in relation to the parking facility was discussed. Members considered the need for a condition in relation to the colour of the tarmac that could be used. The potential for boosting a major tourist attraction in the county was discussed. Another application for 50 staff parking spaces and a parking booking system were raised. Wiltshire Council Core Policy 6 and 59 were raised by the Local Member.

The Chairman stated the need to reduce the harshness of the visitors centre

with appropriate landscaping. Cllr Devine stated that it was necessary for English Heritage to reconsider their approach.

Resolved:

To refuse planning permission for the following reasons:

The surfacing of the overflow car park by reason of its appearance and lack of landscaping would be a prominent and intrusive addition to the World Heritage Site detracting from its open and undeveloped character contrary to core policies 6 and 59 of Wiltshire Core strategy.

35 Urgent Items

There were no urgent items

(Duration of meeting: 6.00 - 8.15 pm)

The Officer who has produced these minutes is David Parkes, of Democratic Services, direct line (01225) 718220, e-mail david.parkes@wiltshire.gov.uk

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

SOUTHERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 9 APRIL 2015 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Fred Westmoreland (Chairman), Cllr Christopher Devine (Vice Chairman),
Cllr Richard Britton, Cllr Richard Clewer, Cllr Brian Dalton, Cllr Jose Green, Cllr Mike Hewitt,
Cllr George Jeans, Cllr Ian West, Cllr Ricky Rogers (Substitute) and Cllr John Walsh
(Substitute)

36 Apologies for Absence

Apologies were received from Cllr Ian Tomes who was substituted by Cllr John Walsh

Apologies were received from Cllr Ian McLennan who was substituted by Cllr Ricky Rogers.

37 Minutes

The minutes for the previous meeting were not available for approval due to officer illness.

38 Declarations of Interest

Cllr Ian West declared a non-pecuniary interest as Chairman of Winterbourne Stoke Parish Council.

Cllr Fred Westmoreland declared a non-pecuniary interest as a representative of an Area Board on the Stonehenge Management Group.

Cllr Christopher Devine declared a non-pecuniary interest as his wife rents a stable near Matrons College Farm.

39 Chairman's Announcements

The Chairman explained the meeting procedures to those in attendance.

40 **Public Participation and Councillors' Questions**

The committee noted the rules on public participation.

41 **Planning Appeals**

The committee received details of the appeal decisions as detailed in the agenda.

42 **Planning Applications**

In order to prepare the members for the changes introduced by CIL regulations and the effect they would have on the applications the legal officer had prepared a short paper on the subject. This was introduced by the officer and members were asked if they had any questions. There were no questions at this stage.

In addition, the Legal Officer explained orally, to the whole meeting, that the certain elements identified in the draft heads of terms of the Matrons Farm, Alderbury/Whaddon application would not be available under s 106 as a consequence of the introduction of the pooling regulations (these were specified as including education, highways, leisure by ref to page 10 of the agenda.). It was also explained that Wiltshire Council intended to adopt CIL in early/mid May 2015. The amount of contributions that could be received from the developer would depend upon whether CIL had been adopted before the final reserved matter in the application had been concluded at which point CIL would be triggered. If the CIL had not been adopted by this point the only contributions would be via a fully CIL compliant S106. This would mean reduced contributions.

Through the Chair the meeting agreed that it was content to delegate any such matters arising from the above to the appropriate officer.

It was also pointed out, when it became apparent that, the committee was moving to resolve the application be granted that they should indicate that permission was being granted on the understanding that one of two scenarios could exist as to the payment of contributions (S106 alone or S106plus CIL). This was in order to avoid a challenge on the basis that planning permission was given pre the adoption of CIL and a new scenario now existed that had not been in the minds of the committee when planning was granted. Again through the Chair, it was indicated that any matters rising in this respect could be dealt with by delegated powers.

43 **13/02543/OUT - Matrons College Farm, Castle Lane, Whaddon, Salisbury, SP5 3EQ - Erect 28 dwellings and Local Health Centre on land to north**

and north east of Matron's College Farm, change of use of land south east of Matron's College Farm from agricultural to allotments, develop new access adjacent to Oakridge Office Park

Public Participation

Elizabeth Neville spoke in objection to the application.

Sandra Richardson spoke in objection to the application.

Dr Rachel Clapton spoke in support to the application.

Julian Kirby spoke in support to the application.

Jon Gateley spoke in support to the application.

Cllr Kim Diprose spoke on behalf of Alderberry Parish Council in objection to the application.

The Planning Officer presented his report to the Committee which recommended that permission be refused.

Members of the Committee then had the opportunity to ask technical questions of the officer. The presenting officer highlighted a letter within the pack that discussed the delivery of the Health Centre and other new relevant information. Members asked if there was another allotment site in the area and the size of said allotments.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr Richard Britton, spoke on the application. Cllr Britton stated that work was being done towards developing the Alderberry Hub and clarified the definition of the word 'hub'. Cllr Britton stated that this application was against the provisions of the core strategy and the national planning strategy. Cllr Britton stated that there was a need for the medical centre and that the additional work done by the applicant had been helpful. The Local Member discussed the commercial incentive to deliver this project and the need to see documentary evidence of the financial case. It was stated that Members could not be sure how the running costs of this development would be met and that evidence was required to provide reassurance. Cllr Britton recommended that the item be deferred as more information was required.

Members debated the financial viability and deliverability of the project. The suitability of the site for development and the importance of affordable homes in the area was discussed. The existing development on the site was raised and the medical need in the area was highlighted. Clarification was sought in regards to the potential for a non-determination appeal from the applicant should the item be deferred again. The need to prioritise the health facility over the residential dwellings was raised. Members discussed the structure of potential funding for the development, with reference to the input of AGE UK. The logistics of visiting the potential medical centre were discussed and the draft S106 Heads of Terms were referred to.

Cllr Richard Britton wished his dissent for the decision to be recorded.

Resolved:

To delegate to the Area Development Manager to APPROVE planning permission, subject to a S106 agreement, with the following conditions:

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

(a) The scale of the development;

(b) The layout of the development;

(c) The external appearance of the development;

(d) The landscaping of the site;

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

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. No more than 8 market dwellings comprised in the proposed development hereby permitted shall be occupied before construction works to provide the Local Health Centre building are completed and the proposed allotments have been laid out and implemented to a specification to be agreed by the Local Planning Authority.

REASON: To secure the programming and phasing of, and an orderly pattern to the development.

5. No building on any part of the development hereby permitted shall exceed 2.5 storeys in height.

REASON: In the interests of amenity having regard to the characteristics of the site and surrounding development.

6. 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.

7. 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) indications of all existing trees and hedgerows on the land;**
- (b) details of any to be retained, together with measures for their protection in the course of development;**
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;**
- (d) finished levels and contours;**
- (e) means of enclosure;**
- (f) car park layouts;**
- (g) other vehicle and pedestrian access and circulation areas;**
- (h) hard surfacing materials;**
- (i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);**
- (j) proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);**

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

8. 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.

9. 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 building(s) 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.

10. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

No equipment, machinery or materials shall be brought on to the site for the purpose of the development, until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with British Standard 5837 (2005): Trees in Relation to Construction, has been submitted to and approved in writing by the Local Planning Authority, and; the protective fencing has been erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed

in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

In this condition —retained tree means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.

REASON: To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

11. No development shall commence on site until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

REASON: To ensure the proper management of the landscaped areas in the interests of visual amenity.

12. No development shall commence on site until provision has been for open space, amenity areas and play areas in accordance with details to be approved in writing by the local planning authority (prior to the commencement of development).

REASON: To ensure a satisfactory provision of recreational and other open space throughout the development in the interests of the amenity of future residents

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no vehicular access shall be made direct from the site to Castle Lane.

REASON: In the interests of highway safety.

14. 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.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), the area of the site and the proposed building referred to as the Local Health Centre shall be used solely for purposes within Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment)(England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: To prevent a change of use of the proposed Local Health Centre to an alternative use that would not provide a service to the local community

16. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from access/driveways), 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 until surface water drainage has been constructed in accordance with the approved scheme.

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

17. No development shall commence within the area indicated (proposed development site) until:

* A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and

* The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

18. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 on weekdays and 08:00 to 13:00 on Saturdays. No burning of waste shall take place on the site during the construction phase of the development.

REASON: In the interests of neighbouring amenities

19. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been undertaken and until:

(a) The Local Planning Authority has been provided with written confirmation that, in the opinion of the developer, the site is likely to be free from contamination which may pose a risk to people, controlled waters or the environment. Details of how this conclusion was reached shall be included.

(b) If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary.

(c) In the event of unexpected contamination being identified, all development on the site shall cease until such time as an investigation has been carried out and a written report submitted to and approved by the Local Planning Authority, any remedial works recommended in that report have been undertaken and written confirmation has been provided to the Local Planning Authority that such works have been carried out. Construction shall not recommence until the written agreement of the Local Planning Authority has been given following its receipt of verification that the approved remediation measures have been carried out.

REASON: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.

20. The development hereby approved be implemented in accordance with section 5 of the Ecological Impact Assessment (Species Ecological Consultancy, July 2013) and the Dormouse Mitigation Strategy (Species Ecological Consultancy, *new date inserted* 2014). All documents submitted for reserved matters applications should demonstrate how the above reports will be implemented in so far as it is relevant to the document in question.

Reason: To ensure adequate mitigation in respect of protected species and nature conservation interests.

21. Before works commence a scheme of Ecological Works for the Construction Period will be submitted for planning authority approval providing details of how the works will be undertaken to provide compensatory habitat and avoid impacts to protected and sensitive species. The works will be undertaken in accordance with the approved scheme.

Reason: To ensure adequate mitigation in respect of protected species and nature conservation interests.

22. Before works commence, details of a Landscape and Environment Management Plan shall be submitted to the planning authority and approved in writing. The plan will identify:

- **ecological habitat features which will be retained and managed with the primary aim of enhancing biodiversity for the lifetime of the development**
- **locations of key species of interest for which the site will be managed**
- **other landscape features which will be maintained for amenity purposes**
- **a programme of management works required to maintain the habitat, species and landscape features, identifying annual works and less frequent works**
- **an estimate of the numbers of hours required for annual works (which will be organised to keep costs roughly similar from year to year), one off works will require additional time**
- **monitoring requirements and procedures for reviewing the LEMP including reviews by specialist ecological professionals**

Development shall be carried out in accordance with the Landscape and Environmental Management Plan thereby agreed.

Reason: To ensure adequate mitigation in respect of protected species and nature conservation interests.

Details of S106 agreement unless subsequently subject to CIL:

I. 40% on-site provision of affordable housing (representing 11 dwellings, of which 75% (8 units) would be rented units and 25% (3 units) would be shared equity units)

II. The provision on site of an equipped children's play space measuring at least 231 sqm, together with the provision of an area of casual open space on site extending to at least 385 sqm

III. The provision of 0.2ha of allotments (on site)

IV. A financial contribution towards providing 6 additional secondary school places in the district of approximately £120,000 (specific destination of which to be confirmed)

- V. A financial contribution of £24,213 towards improvements in leisure facilities (probably a CIL contribution)
- VI. A contribution of £92,400 made towards improvements to off-site Highways (probably specific to the proposed development and therefore S.106)
- VII. The provision of the on-site Local Health Centre facility
- VIII. Ecological mitigation and management (to be agreed, but specific to the application site)
- IX. A financial contribution (to be agreed) towards waste and recycling (specific to the application site)

44 **14/12106/FUL - Stonehenge Visitor Centre, Amesbury, Wiltshire, SP4 7DE - Change of use from agricultural land and creation (temporary consent 2 years) of a 26 space coach park and associated ancillary works**

Public Participation

Janice Hassett spoke in objection to the application.

David Hassett spoke in objection to the application.

Jan McKernan spoke in objection to the application.

Kate Davies spoke in support to the application.

Dominic Watkins spoke in support to the application.

Cllr Mike Lucas (Chitterne Parish Council) spoke in objection to the application.

Cllr Carole Slater (Shrewton Parish Council) spoke in objection to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. Clarification over the potential removal of a tree belt was provided. Members asked if the green travel plan had been implemented. The number of cars using parking bays was discussed. The scale of the development was raised, as well as a recent metro count. The planner officer did not have the metro count figures to hand but confirmed that they had been considered by the Highways Officer. The booking procedure for visitors parking at the site was raised. The proposed temporary surface – compacted gravel – could be removed without disturbing the archaeology of the site.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr Ian West, spoke against the application. Cllr West discussed the views of Winterbourne Parish Council, stating that more visitors to the site would be positive but raised concerns in regards to more vehicles using unsuitable roads to visit the site. Winterbourne Parish Council encouraged a more sustainable method of transport to the site. Cllr West made

reference to other representations who had both supported and objected to the application. Cllr West made reference to previous visitor figures and the potential removal of tree lines, as well as highways concerns. The Local Member made reference to previous visitor centre's success in dealing with the number of visitors it received. Cllr West raised peak traffic in Shrewton High Street and the severe impact that this had on local people. The diversion of A303 traffic onto local roads was raised. The potential visual impact on the world heritage site was debated, as well as the materials that would be used.

Members discussed the need to find an appropriate solution to the issues caused by visiting coaches. Members raised concerns in regards to congestion on the surrounding roads. Coaches being parked in lay-bys and related safety concerns were highlighted. The management of the site and the impact on local people was discussed. The scale of the proposed car park was debated and the need for an appropriate travel plan was raised. The need for appropriate landscaping was discussed and the ecological impact of the material used was highlighted.

The logistical difficulties of transporting an estimated 1M people to and from the site were raised. The aesthetic issues with the proposal were discussed. Queuing on the A360 and A303 to get into the site was raised, as well as the lack of parking spaces at the site. The core strategy and the need to support the local economy was raised and the need to improve auxiliary facilities was stated. The need to weigh up the benefits and impacts of this development was raised. The contribution to the local economy of those using the coaches was debated. The temporary nature of the application was highlighted. The land between the current and proposed car park was raised and it was explained that this was proposed for a staff car park which was removed from the scheme. The need to support the World Heritage Site was highlighted by Members.

Resolved:

To APPROVE planning permission with the following conditions:

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

Updated Planning Statement dated February 2015 received 19/02/15

Parking Strategy Statement dated 19/02/15 received 19/02/15

Drainage Strategy dated 18/02/15 received 19/02/15

Response to Wiltshire Highways comments dated 19/02/15 received 19/02/15

Response to Environment Agency comments dated 24/03/15 received 24/03/15

Heritage Impact Assessment dated December 2014 received 23/12/14

Heritage Impact Assessment Addendum dated February 2015 received 19/02/15

61034252-DR-C-502 Rev T02 dated 18/02/15 received 19/02/15

61034252-DR-C-503 Rev T02 dated 18/02/15 received 19/02/15

61034252-DR-C-504 Rev P02 dated 05/01/15 received 05/01/15
61034252-DR-C-506 Rev T02 dated 18/02/15 received 19/02/15
61034252-SK-C-500 Rev P01 dated 18/02/15 received 19/02/15
61034252-DR-C-000 Rev T01 dated 11/02/15 received 19/02/15
61034252-DR-C-001 Rev T02 dated 18/02/15 received 19/02/15
61034252-DR-C-100 Rev T02 dated 18/02/15 received 19/02/15
61034252-DR-C-501 Rev T02 dated 17/02/15 received 19/02/15
61034252-SK-C-501 Rev P01 dated 16/03/15 received 25/03/15
61034252-SK-C-502 Rev P01 dated 16/03/15 received 25/03/15
8982-1-TM1 Rev 0 dated 06/01/15 received 19/02/15
8982-2-TM2 Rev 2 dated 10/02/15 received 19/02/15
8982-3-VS2 Rev 1 dated 04/02/15 received 19/02/15
8982-4-TM1 Rev 2 dated 10/02/15 received 19/02/15
8982-6-VS1 Rev 0 dated 08/01/15 received 19/02/15
8982-7-TM1 Rev 0 dated 13/02/15 received 19/02/15

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

(2) No development shall commence within the area indicated (proposed development site) until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

Further Recommendations: The work should be conducted by a professionally recognised archaeological contractor in accordance with a written scheme of investigation approved by this office and there will be a financial implication for the applicant.

(3) Before construction works commence, a method statement prepared by a professional ecologist will be submitted for planning authority approval demonstrating the measures that will be put in place to ensure that breeding birds are not disturbed or harmed during the construction period. The works will be undertaken in accordance with the recommendations of the approved method statement.

REASON: To avoid harm to ground nesting birds during the breeding season

(4) Prior to the commencement of the development details for temporary parking of coaches displaced from the development area during the course of the works shall be submitted to and approved by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

REASON: To ensure an adequate supply of coach parking at the Stonehenge Visitor Centre site during the works.

(5) The coach park expansion hereby permitted shall be removed in its entirety and the land restored to its former condition on or before 09/04/2017 in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.

REASON: In order for a permanent and sustainable solution to be found to coach parking for the Stonehenge Visitor Centre.

45 14/12193/FUL - 4A and 4B The Crescent, Hillview Road, Salisbury - Extension to east elevation to create 2 x 2 bed flats

Public Participation

Nick Allerton spoke in objection to the application.

Nicola Allerton spoke in objection to the application.

Ros Liddington spoke in objection to the application.

David Sharp spoke in support to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. The definition of subservient was clarified. The number of flats and number of parking places was stated.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr Ian Tomes, provided a written notice which Cllr John Walsh read on his behalf. Cllr Tomes believed this was overdevelopment of the site. The statement referred to the impact on neighbouring amenities and the access to the site. Cllr Tomes made reference to the consequences of extra cars being parked at the site and the potential for conflict and strain on neighbours. The impact on the conservation area was also highlighted.

Members discussed the surrounding location of the site and the potential for overdevelopment. Concerns were raised in regards to parking and the impact of additional vehicles. The removal of trees on the site was also discussed. The need to maintain the character of the area was emphasised by Members. A lack of parking locally - due to double yellow lines - was stated. Members debated the impact on neighbouring properties. The locality of the site to public transport stations was raised and the sustainability of the proposal was discussed. The unenforceable nature of car parking on the private road was highlighted. The

scale of the proposed development was seen as being too great by some members.

Landscaping concerns were also raised, as well as the impact on the conservation area. Discussions continued to the practicalities of living at the site and the likely difficulties of entering, turning around and leaving The Crescent. Members raised the need for the replacement of a bank of earth that had been removed.

Resolved:

To REFUSE planning permission for the following reasons:

1. The proposed development, by reason of its size (height and width), the amount of excavation works/tree removal required to enable the development, and the number of additional residential units created at the site, would result in a cramped form of overdevelopment for this small, narrow parcel of land, which would be harmful to the character of the existing property, the semi-detached pairing and the wider Crescent which is designated as a Conservation Area. As such the proposal is considered to be contrary to Core Policies 57 and 58 of the Wiltshire Core Strategy.

2. The proposed development, by reason of its location at the top of a narrow and congested private driveway with limited parking for motorised vehicles, would provide insufficient parking for future occupiers of the site, and is likely to result in unauthorised parking and obstruction on-and-around the existing parking spaces/ the vehicular access leading to the site. The scheme is therefore considered to result in an adverse impact on the amenities of properties along the Crescent, contrary to Policy 57 of the Wiltshire Core Strategy.

46 **15/00150/FUL - Stonehenge Campsite, Berwick Road, Winterbourne Stoke. SP3 4TQ - Erection of a log cabin for use as a reception building for the campsite**

Public Participation

Rosemary Gairdner spoke in objection to the application.

Grace Douse spoke in objection to the application.

Mr W Grant spoke in support to the application.

The Planning Officer presented his report to the Committee which recommended that permission be granted subject to conditions.

Members of the Committee then had the opportunity to ask technical questions of the officer. The size of the proposal was clarified as a single story development.

An item of late correspondence was circulated at the meeting.

The Local Member, Cllr Ian West, spoke in objection to the application. Cllr West raised the conservation area and discussed the number of buildings on the site. Cllr West stated this proposal was unsuitable and intrusive due to the size, height and roof materials of the building.

Members then continued by debating the application. The need to preserve the countryside was discussed, as well as any relevant planning history. The visual impact of the building on the surrounding landscape was discussed. The need for a reception area at the camping site was discussed. The height of the log cabin was raised, as well as the existing design of the site. The need for a potential condition in relation to painting the cabin was raised, as well as lighting conditions.

Resolved:

To APPROVE planning permission for the following reasons:

In pursuance of its powers under the above Town & Country Planning Act 1990, the Council hereby grant PLANNING PERMISSION for the above development to be carried out in accordance with the application and plans submitted (listed below), subject to compliance with the condition(s) specified hereunder:-

- 1. The cabin hereby permitted shall only be used as a reception building in connection with the running of the campsite and for no other purposes. The building shall not be converted to habitable accommodation.**

REASON: The site lies within an area where it is against the policy of the Local Planning Authority to allow permanent accommodation without a special agricultural (or other proven, local) need.

- 2. This development shall be in accordance with the submitted drawings**
 - Elevations, dated 28/05/14 and received to this office on 27/01/15**
 - Floor Plan, dated 26/01/15 and received to this office on 27/01/15**
 - Block Plan, dated 08/01/15 and received to this office on 15/01/15**

REASON: For the avoidance of doubt.

There were no urgent items

(Duration of meeting: 6.00 - 10.18 pm)

The Officer who has produced these minutes is David Parkes, of Democratic Services, direct line (01225) 718220, e-mail david.parkes@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

30 APRIL 2015

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL TEFFONT PATH No. 9 RIGHTS OF WAY MODIFICATION
ORDER 2014

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2014” made under Section 53 of the Wildlife and Countryside Act 1981 (see **Appendix 1** – Order).
 - (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 has received two applications for an order to modify the definitive map and statement in respect of Teffont Path No. 9. One application was made in 2005 and the other in 2014. A location plan is appended at Appendix 2 – Location.
4. The Council has a duty to determine these applications which adduce both historical evidence and evidence from users of the way.
5. Teffont Path No. 9 is a long route leading from the Old Dinton Road at Teffont in a northerly direction to join the Ox Drove, byway open to all traffic Teffont Path No. 12. The route is a historic route forming part of a road linking Teffont Magna with Wylve and was recorded in the Mere and Tisbury Rural District Council area definitive map and statement as a bridleway eight feet wide.
6. The evidence adduced by the applicants in both the 2005 and the 2014 applications seeks to show that, on the balance of probability, this record is wrong and that higher rights and a greater width subsist and should be recorded in the definitive map and statement.
7. Evidence of significant weight has been investigated including an Inclosure Award dated 1800 arising out of an agreement between landowners and other interested parties in 1799 and a further Act of Parliament and resultant Inclosure Award dated 1837.

8. A part of the route pre-dated the process of the enclosure of the common lands at Teffont and the enclosure of lands in 1800 and 1837 established the whole of the route as a public road (“Wyly Road”) with defined widths. The road is then consistently recorded in a range of documents including estate maps of the Earl of Pembroke and Montgomery and commercial maps including the Ordnance Survey over a period ranging from 1801 to 1945.
9. The user evidence adduced relates to use of the whole width of the way, including the verges, in the period 1956 to 2014 and can be found at **Appendix 3D**.
10. Officers have investigated the evidence adduced, and some additional historical documents held at the Wiltshire and Swindon History Centre, and consider that on the balance of probabilities, that is, it is more likely than not, that the way should be recorded as a restricted byway with a width of 33 feet for the southern section and 30 feet for the northern section. Details of the evidence and the investigation can be found in the Council’s Decision Report (see **Appendix 3** – Decision Report and Appendices A-D).
11. As a result of this decision an Order (**Appendix 1**) was made and duly advertised. The Order attracted one representation in support and four objections and as a result must now be sent to the Secretary of State for Environment, Food and Rural Affairs for determination through the offices of the Planning Inspectorate.
12. Full details of the representation and four objections are appended at **Appendix 4** along with the case officer’s comments. Some additional evidence was also adduced at this stage and this is presented at the end of **Appendix 4**.
13. Matters such as desirability, need, the environment, health and safety, privacy, security and cost are all irrelevant for the application of s.53 of the Wildlife and Countryside Act 1981 and the matter must be decided on the evidence alone.

Main Considerations for the Council

14. 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 2 (pages 3 to 9) of the decision report attached at **Appendix 3**.
15. 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 –

 - (ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or,*
 - (iii) *that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”*

16. Section 32 of the Highways Act 1980 states:

“32 Evidence of dedication of 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.”

17. 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

18. 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

19. 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

20. 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

21. 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

22. 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

23. 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.
24. 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.
25. 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 £6,000 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).
26. 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. Equally the Council may claim its costs from any other party who they deem to have acted in an unreasonable manner.

Legal Implications

27. 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). There would be no further cost to the Council.

Options Considered

28. 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 4**), as well as that considered in the decision report dated 1 December 2014):
 - (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

- 29. The Order has been made on the grounds that there is sufficient evidence for it to be shown, on the balance of probabilities, that Teffont Path No. 9 should be recorded in the definitive map and statement as a restricted byway with widths of 33 feet and 30 feet as detailed in the Order.
- 30. 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 4**.

Proposal

- 31. That “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015”, be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally Madgwick

Rights of Way Officer

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

None

Appendices:

- Appendix 1 - “The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015”
- Appendix 2 - Location Plan
- Appendix 3 - Decision Report (1 December 2014)
- Appendix 3.A - 1801 Inclosure Consolidation Act Extracts and notes
- Appendix 3.B - 1822 Local Act for Inclosing Lands at Dinton and Teffont Magna
- Appendix 3.C - 1837 Dinton and Teffont Magna Inclosure Award Transcript
- Appendix 3.D - Summary of Witness Evidence
- Appendix 4 - Representation and Objections
- Appendix 5 - 1800 Teffont Magna Inclosure Award Transcript

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WILDLIFE AND COUNTRYSIDE ACT 1981**THE DEFINITIVE MAP AND STATEMENT FOR THE MERE AND TISBURY RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981****THE WILTSHIRE COUNCIL TEFFONT PATH No. 9 RIGHTS OF WAY MODIFICATION ORDER 2015**

This order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement for the Mere and Tisbury Rural District Council area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of events specified in section 53(3)(c)(ii) & (iii) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

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

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

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 8th December 2014
2. The Definitive Map and Statement for the Mere and Tisbury Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the plan attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

THE COMMON SEAL of
WILTSHIRE COUNCIL was
hereunto affixed this 13th day
of January 2015

}
}
}
}


Principal Solicitor
S.W. SLATER



in the presence of:

SCHEDULE

PART I

MODIFICATION OF DEFINITIVE MAP

Parish	Path No	Description of path or way to be upgraded	Modified under Section 53(3) as specified
Teffont	9	Length of restricted byway shown by a broken line and small arrowheads marked A to B to C on the plan annexed hereto. Width A to B 33 feet Width B to C 30 feet Approximate length 2.5 kms	53(3)(c)(ii) & (iii)

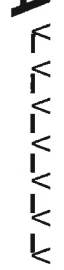
SCHEDULE

PART II

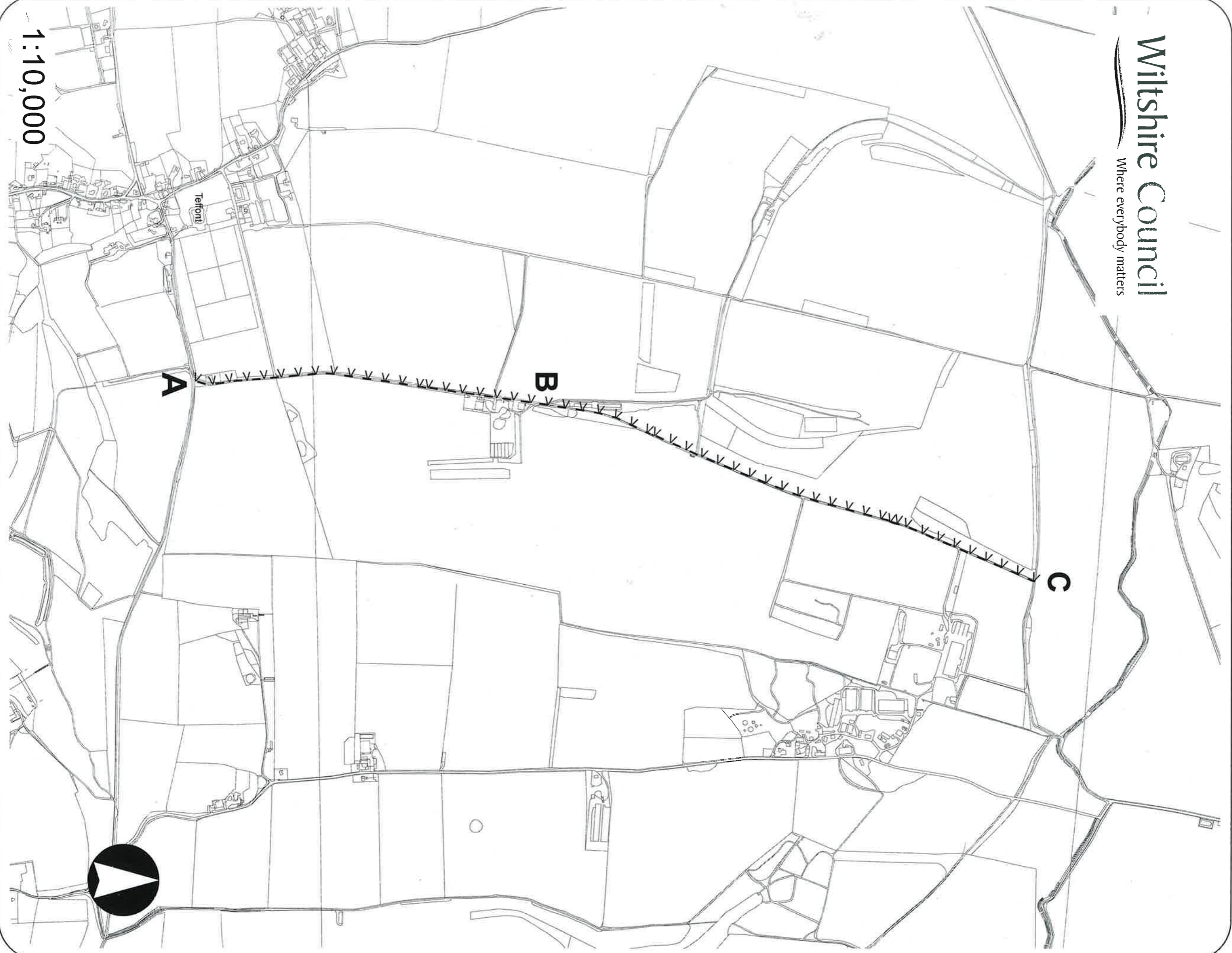
MODIFICATION OF DEFINITIVE STATEMENT

Parish	Path No	Description of path	Modified under Section 53(3) as specified
Teffont	9	<u>RESTRICTED BYWAY</u> From the Dinton Road, C.277, leading north and north north east past Teffont Field Buildings to its Junction with the Ox Drove, path No. 12. Width: From the Dinton Road for 1006 metres to OS Grid ref. ST99523 33470 33 feet. From ST99523 33470 to path No. 12 30 feet. Approximate length 2.5 kms	53(3)(c)(ii) & (iii)

TEFFONT PATH No. 9 - ORDER PLAN

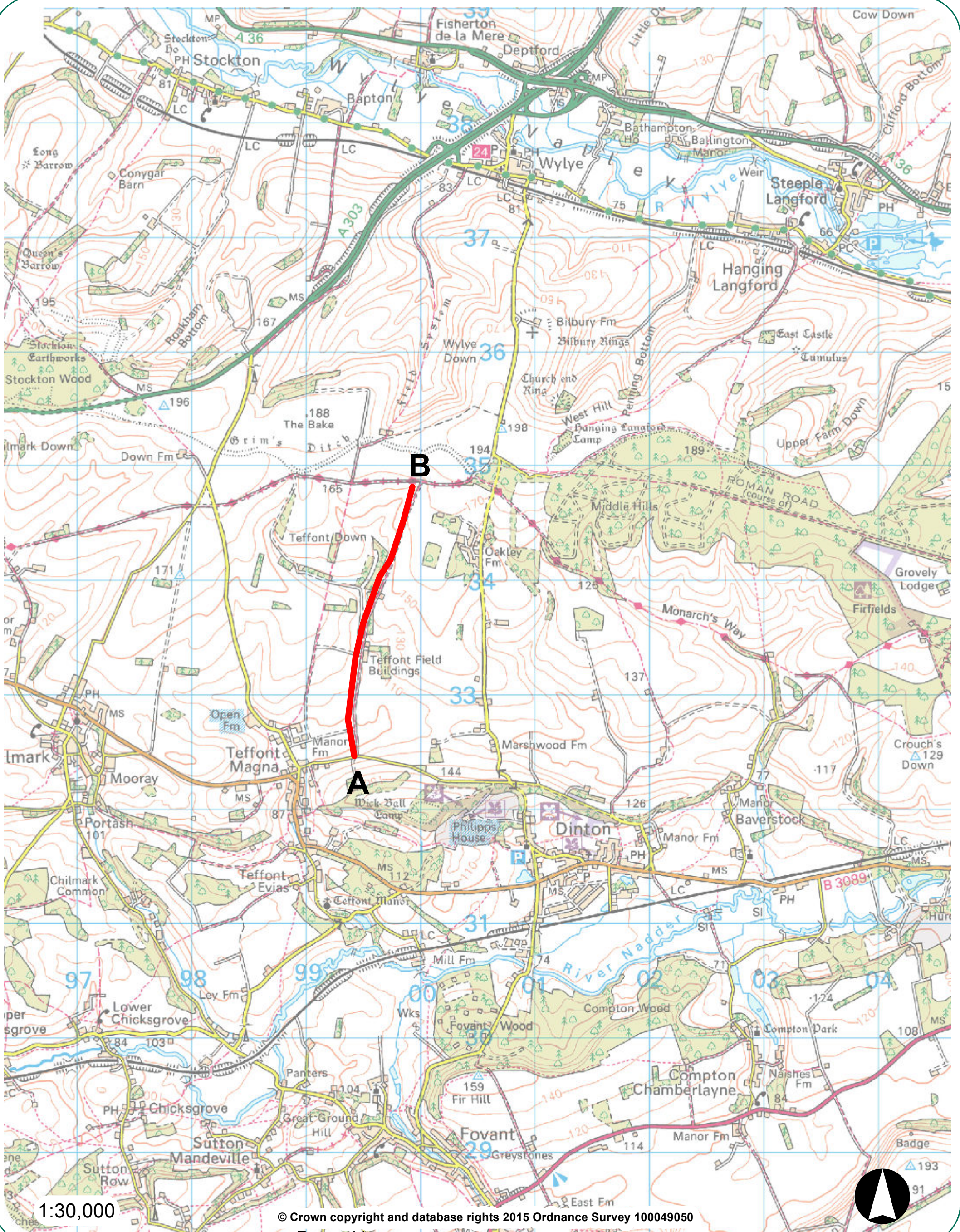
Route to be upgraded to restricted byway 33 ft wide **A**  **B**
Route to be upgraded to restricted byway 30 ft wide **B**  **C**

Wiltshire Council
Where everybody matters



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WILDLIFE AND COUNTRYSIDE ACT 1981 s.53

DECISION REPORT

TEFFONT PATH No. 9

1.0 The Applications

- 1.1 Wiltshire Council is in receipt of 2 applications for definitive map modification orders affecting Teffont path no. 9. One was received in March 2005 (application no. 2005/19) and the other in August 2014 (application no. 2014/05). The 2005 application is for an order to record the way as a byway open to all traffic and relies on historical documentary evidence and the 2014 application is for an order to add additional width to the route of Teffont 9 and relies on a mixture of evidence from users of the way and from historical documents.
- 1.2 Applications that rely on the evidence of users of the way are prioritised by the Council and as a result the 2014 application was allocated to an officer for determination soon after receipt. Following the discovery of evidence the Council is charged with a duty to consider all other relevant evidence available to them (s.53 Wildlife and Countryside Act 1981 (WCA81)) and it was therefore considered expedient to determine the 2005 application concurrently.
- 1.3 This report considers both applications and all relevant evidence available to the Council relating to Teffont path no 9 (TEFF9).

1.4 The 2005 Application 2005/19

Application date: 08.03.2005

Applicant: Mr Steve Gunning, 1 Green Terrace, Seymour Estate,
Trowbridge, BA14 8JD

Application to: Upgrade to a byway open to all traffic the bridleway number 9 in the parish of Teffont Magna.

Application Form of Application for Modification Order (Schedule 7 Regulation 8(1))

Contents: Form of Certificate of Service of Notice of Application for Modification Order (Schedule 9 Regulation 8(4)). Notice served

on Mr Waddington, Manor Farm, Teffont Magna, SP3 5QY
Map extract from Ordnance Survey 1:10000 sheet showing
Teffont 9 highlighted in pink.

Summary of Evidence with brief descriptions including transcript
of the relevant section of the Dinton and Teffont Magna Inclosure
award 1837

- 1.5 Although notice was served on Mr Waddington by name (the current landowner and owner in 2005) the address used was that of neighbouring property Manor Farm, Teffont which at the time was owned and occupied by Lord Sharman.
- 1.6 It is not clear from the correspondence received at the time that Mr Waddington received the notice although on the 11th March 2005 Wiltshire County Council answered a request from a neighbour of Mr Waddington, Mr Peter Durtnall (whose property abuts Teffont 9) for information and a copy of the application.
- 1.7 Around that time officers also answered requests for information from Mr A N Deane, Fitz Farmhouse, Teffont (16.03.05), Mr Dare, Hurdcott Farm, Barford St Martin (21.03.05), Mr I Dawson, Font House, Teffont (23.03.05), Mr Fisher, Wrens Cottage, Teffont (29.03.05), Lord Sharman, Manor Farm Livery, Teffont Magna (11.03.05) and Mrs L Nelson, 1 Riverside Cottages, Teffont Evias (15.09.05).
- 1.8 The letter from Mr Fisher in March 2005 was also copied to Mr Robert Key, MP for Salisbury, Cllr Richard Willan, Wiltshire County Council, Councillor Sara Willan, Salisbury District Council and The Chairman, Teffont Parish Council.
- 1.9 Additionally in November 2013 Wiltshire Council further to a telephone conversation with Mrs Waddington confirmed in writing (by e.mail) to Mrs Waddington that an application had been received on the 8th March 2005 and included a copy of the evidence summary that formed part of the application.

1.10 **The 2014 Application 2014/05**

Application date: 22.08.14 Copy to Wiltshire Council
26.08.14 Certificate of Notice served on Mr E Waddington and Mr
D Wood
30.08.14 Certificate of Notice served on Mr P Durtnall and W G
Fry and Son

Applicant: Wiltshire Bridleways Association, c/o 20 Coombe, Enford, SN9
6DE

Application to: *“Wiltshire Bridleways Association seek a modification to the
statement width of Teffont 9 along its entire length between GR
ST994325 (C277 road) and GR SU000349 (TEFF12/Ox Drove)*

specifically to include within the width the public right of way the area of the bell mouth of the entrance of the track leading from Manor Farm Livery Teffont Magna, Salisbury, Wiltshire, SP3 5QY.”

Width: Thirty feet (30ft)

Application Contents: Form 1 Notice of Application for Modification Order (22.08.14)
Form 3 Certificate of Service of Notice of Application for Modification Order. Notice served on Mr E Waddington, Waddington Farms, Field Buildings, Teffont, SP3 5RD and Mr D Wood, Manor Farm, Teffont Magna, SP3 5QY (both 26.08.14)
Form 3 Certificate of Service of Notice of application for Modification Order. Notice served on Mr P Durtnall, Hillcrest, Old Dinton Road, Teffont Magna, SP3 5QX and W G Fry and Son, Totterdale Farm, Tisbury Row, Salisbury, SP3 6RS (both 30.08.14)
Map extract from Ordnance Survey 1:25000 sheet showing Teffont 9 highlighted in pink.
Witness statements from 23 users. NB One further letter and form were submitted subsequent to the application making a total of 24 users.
Summary of Evidence (historical documents and user)
Copy of letter from the Council dated 06.05.14
Copy of plan and summary of evidence from 2005 application
Photographs – aerial 2004 and 3 images from 2011 and 2012

1.11 Copies of all application papers were sent to Mr Waddington, Mr Wood and Mr Durtnall on the 1st October 2014.

2.0 Enabling Legislation

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

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

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

- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be*

requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

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

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

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

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

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

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

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

2.5 Section 53(5) WCA 1981 allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

2.6 Schedule 14 to this Act states:

Form of applications

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

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

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

Notice of applications

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

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

2.8 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006 see para 12) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.

2.9 The application, when received in 2005, in line with Defra advice and practice, appeared compliant with Schedule 14. Subsequent investigations by officers revealed that it is possible that Mr Gunning failed to serve notice on the landowners despite certifying that he had (the notice was sent to the landowner, Mr Waddington, but at the address of the neighbouring farm) though it was clear that even if the application being general knowledge in the

village had failed to come to his notice by 2013 Mrs Waddington was definitely aware of the application.

- 2.10 In 2007 and 2008 the High Court and the Court of Appeal considered issues relating to the compliance of applications to Schedule 14. In [2008] EWCA Civ 431 (The Queen on the Application of Warden and Fellows of Winchester College and Humphrey Feeds Limited v Hampshire County Council and The Secretary of State for Environment Food and Rural Affairs) Lord Justices Ward, Dyson and Thomas considered compliance where there had been a failure in the service of notice on landowners (in addition to compliance in relation to copies of evidence adduced). At paragraph 70 in agreeing with the earlier findings of George Bartlett QC ([2007] EWHC 2786 (Admin) in this case LJ Dyson states:

“...I conclude that Parliament cannot fairly be taken to have intended that, if a paragraph 2(2) certificate is wrongly issued, it must follow that a determination on which it is based is invalid. The facts of the present case show that the better approach is to examine the consequence of the defect in the certificate. If they are serious and the defective certificate has caused real prejudice, then it may be that the determination on which it is based should be declared to be invalid. But in my judgment, on the facts of this case the judge reached the correct conclusion on this issue and for the right reasons.”

- 2.11 Officers consider that in this case, because the landowner has definitely been aware of the application since 2013 and has been consulted prior to any determination by the Council that no prejudice has been caused by the possible failure of the 2005 service of notice by the applicant.
- 2.12 Following the Winchester Case’ ([2008] EWCA Civ 431) the Lord J Ward, Dyson and Thomas found that **if** the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) then strict compliance with Schedule 14 would be required in respect of the presentation of “copies of any documentary evidence ...which the applicant wishes to adduce in support of the application”. This is required in Section 67(6) for Section 67(3) to apply.

However Dyson J, in paragraph 55 of his decision went on to say:

“I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6) it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the “trigger” for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3)”

- 2.13 As a result it is now considered that this application does not satisfy the requirements of Schedule 14 with regard to the evidence adduced. Schedule 14 states that copies of evidence may be adduced by the applicant but in this case Mr Gunning had not included copies of any evidence, just a list of documents and a short transcript. The application is therefore not fully compliant with Schedule 14 in this regard. The application was also made too late to qualify for a s.67(3) exemption, the cut off date is 19 January 2005 and this application was received in March 2005.
- 2.14 Since then the NERC Act 2006 s.67(3) exemption cannot apply it is permissible for authorities to waive a failure to comply and to proceed.
- 2.15 The NERC Act 2006 permits further exemptions to the extinguishment of public vehicular rights, however, in all cases it is necessary to establish whether, on the balance of probabilities, the route carried a right for the public to use a mechanically propelled vehicle before the 2nd May 2006. Only then is it appropriate to consider whether any savings apply. As a result NERC Act 2006 will be covered later in this report (section 16).
- 2.16 The 2014 application is based on the evidence of users and historical evidence. The Council may consider historical documents under s.32 of The Highways Act 1980 (see para. 2.4 above) but the evidence of users may be taken as evidence of acceptance by the public (common law dedication), ongoing use of an existing way or evidence of presumed dedication under s.31 of the Highways Act 1980.
- 2.17 S.31 of the Highways Act 1980 gives that a public right of way may be deemed to have been dedicated if the public have used the way, uninterrupted, for a period of 20 years or more in a manner that was 'as of right'. This is without permission, force or secrecy. Deemed dedication in this way may also be defeated by a number of other means including the placing and maintenance of notices, statutory deposits made by landowners and notices given to the highway authority regarding the maintenance of signs.
- 2.18 The 2014 application user evidence is considered later in this report (Section 14 category F evidence) but details of s.31 of the Highways Act 1980 are given here:

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

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

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

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

—

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

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

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

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

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

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

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

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

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

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of

a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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

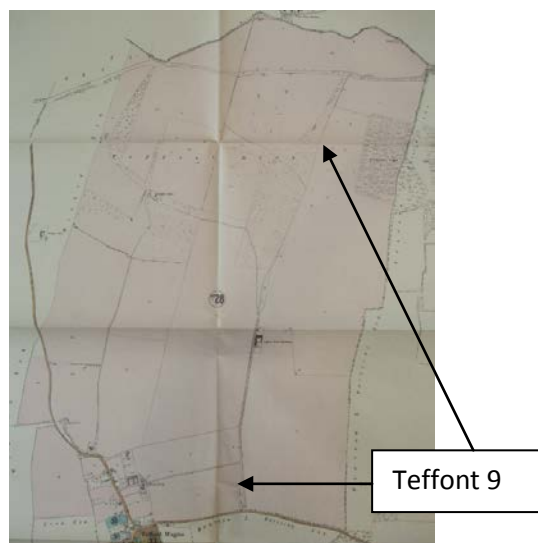
(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.

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

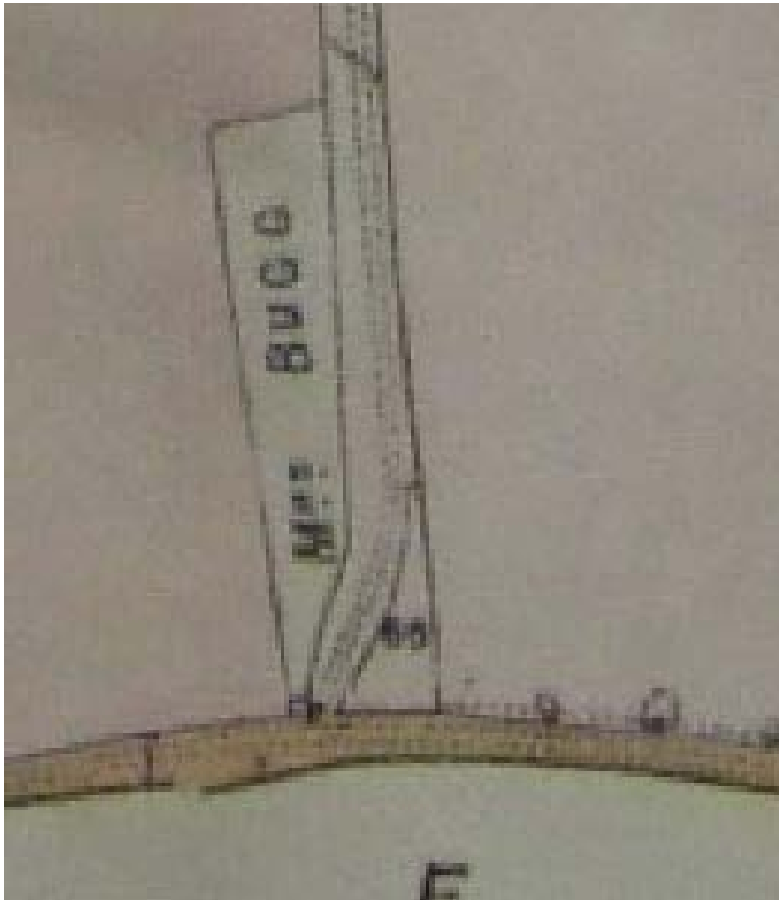
(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.

3.0 Land Ownership

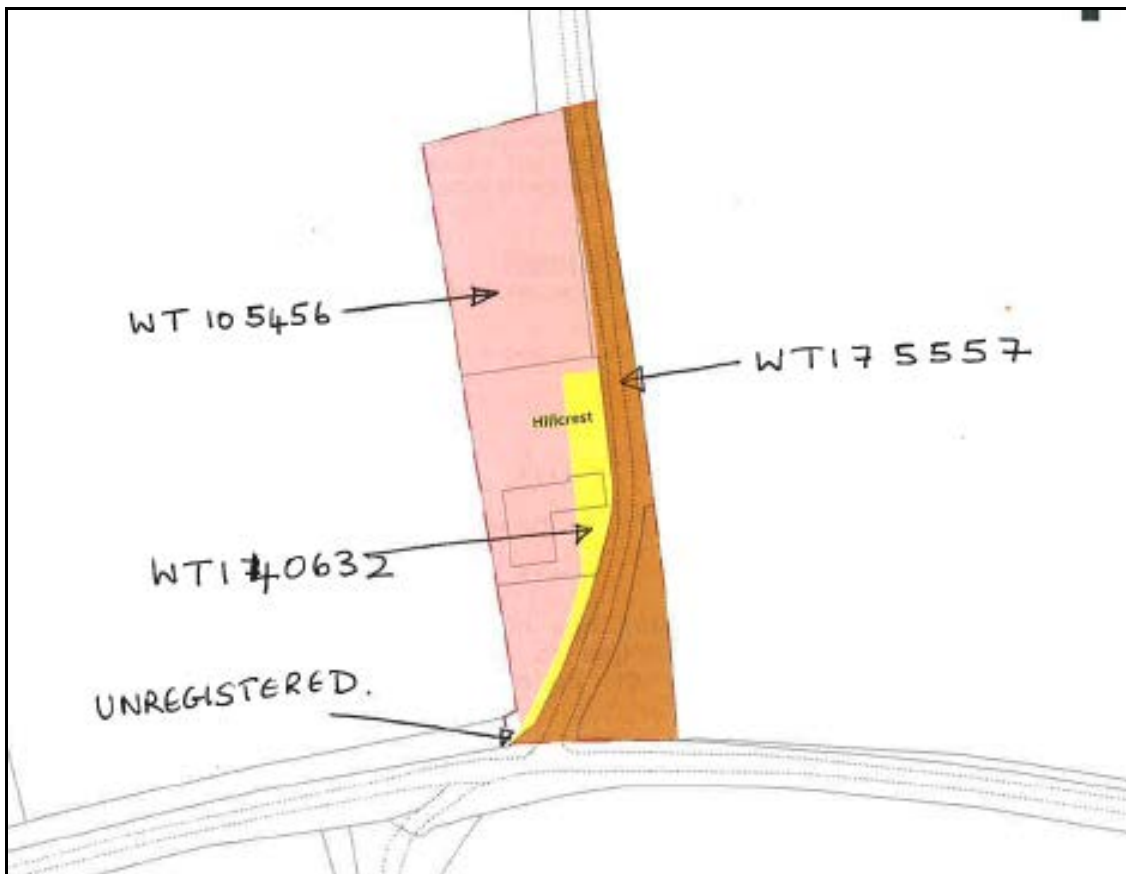
- 3.1 Historically the route of Teffont 9 and the surrounding lands were owned by the Earl of Pembroke and Montgomery and formed part of a large estate. The estate was broken up into a number of lots in 1918 and offered for sale; the route of Teffont 9 and surrounding lands formed part of a property called Manor Farm at that time. See land coloured pink on the plan below:



- 3.2 The southern end of Teffont 9 meets the Old Dinton Road (the turnpike road until 1814) and here a small parcel of land abuts the claimed route in different ownership (Mrs Bugg) and not offered in the sale:



- 3.3 The land shown in pink was retained as one estate from its sale in the early 1900s until 1998 when the then owner, Mr Crook, offered the land for sale as a whole or in six lots. The land was eventually divided and sold to four purchasers namely Mr and Mrs Sharman, Mr Waddington, “the Frys” and Mr Maitland Robinson.
- 3.4 Teffont 9 and the wider claimed route was in the Lot bought by Mr Waddington and remains in his ownership today. It is registered as Title no. WT175557.
- 3.5 The southern end of Teffont 9 (see 3.2 above) remains as separate parcels of land with registered titles WT10546 and WT140632 belonging to Mr P Durtnall. WT140632 was a later addition to Land Registry’s records (WT10546 was filed in 1991 and WT140632 was filed in 1995). The small parcel of land on the opposite side of Teffont 9 that was part of Mrs Bugg’s property at 3.2 now appears as part of Mr Waddington’s title WT175557 and part of the Earl of Pembroke’s land that is the roadway (Teffont 9) now forms part of Mr Durtnall’s title WT105456.



4.0 Current Records

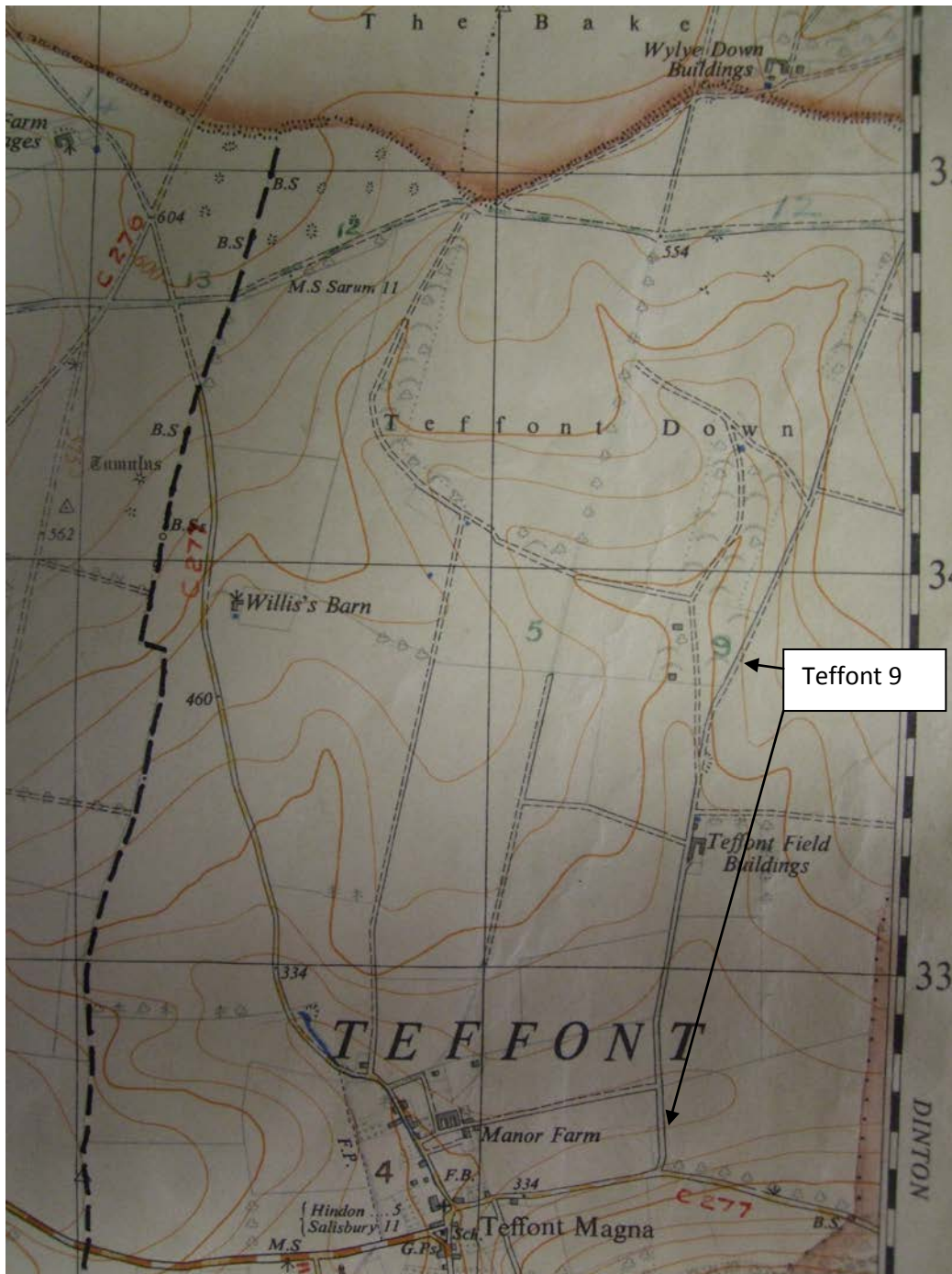
4.1 Teffont path no. 9 was recorded in the Mere and Tisbury Rural District Council area definitive map and statement dated 1952 and has remained unaltered since that time.

4.2 The definitive statement reads:

Teffont 9 B.R. From the Dinton road, C.277, leading north past Teffont Field Buildings to its junction with the Ox Drove, path No. 12.

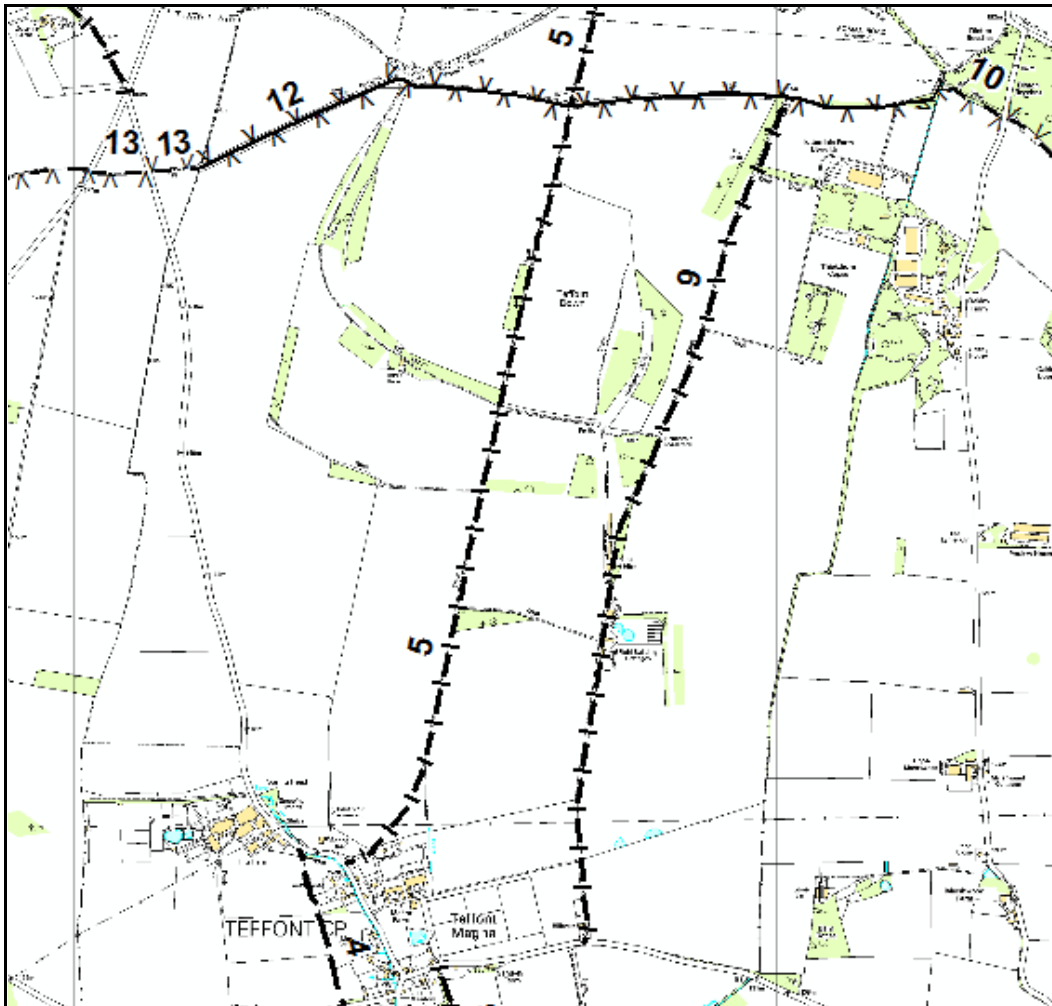
Approximate length 1.5 miles Width 8 feet

4.3 The definitive map for the Mere and Tisbury Rural District Council area dated 1952 has suffered very badly from fading of the ink used. As a result the green line of Teffont 9 is not very clear though the green no. 9 can still be seen as can green shading with the naked eye. The original scale of the map is 1:25000.





4.4 The working copy of the definitive map shows the way as below:



5.0 Site Visit Photos 29.08.14





Teffont 9 leading north. Junction with track towards Manor Farm on left, access to fields on right



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north



Teffont 9 leading north past Teffont Farm Buildings (house)



Teffont 9 leading north past barn at Teffont Farm Buildings



Teffont 9 leading north after barn



Teffont 9 leading north



Teffont 9 leading north



All above and next page - Teffont 9



Teffont 9 - Locked gate with open gate to side at junction with Ox Drove



Teffont 9 – junction with Ox Drove (Teffont 12)





- 5.1 The tarmac surface was laid by Mr Waddington sometime around 2000. The locked gate across the route and the side gate at the Ox Drove (north) junction were erected around 2006.
- 5.2 Photographic evidence has been adduced dated 1994 (from witness 11 Mrs J R De Berneus Nicholson) and 1998 (from Mr D Wood and Mr Waddington) showing the nature of the surface of the track at these times.

5.3 1994



5.4 1998



6.0 Initial Consultation

6.1 Wiltshire Council conducted an initial consultation for both applications. The following letter was circulated on the 1st October 2014:

“Wildlife and Countryside Act 1981 s.53

Applications for Definitive Map Modification Orders Affecting Teffont Path no. 9

Wiltshire Council has recently received an application for an order to modify the definitive map and statement to show Teffont path no. 9 as a bridleway 30 feet wide. This application is supported by evidence of use by 24 witnesses and historical evidence. Additionally, in March 2005, Wiltshire County Council received an application for an order to modify the definitive map and statement to show Teffont path no. 9 as a byway open to all traffic. This application is supported by historical evidence.

The council prioritises any application that adduces evidence from users and as a result the 2014 application will now be investigated. As some of the evidence adduced is common to the 2005 application and as the updating of the definitive map is a duty of the Council, it is inevitable that evidence relating to both applications will be investigated and it is hoped that both applications will be determined.

Public rights for mechanically propelled vehicles that were not recorded in the definitive map and statement as a byway open to all traffic on the 2nd May 2006 (or the subject of a fully compliant application made before the 20th January 2005) were extinguished by the Natural Environment and Rural Communities Act 2006; though there were some savings. As part of this consultation I would be grateful to receive any evidence that any savings apply. If they are not, on the balance of probabilities, found to apply, the highest status that Teffont 9 could carry for the public is that of restricted byway. A restricted byway has a right for the public to pass and repass on foot, horseback, leading a horse, cycling or in a horse drawn cart or carriage. To support this status it would need to be found that on the balance of probabilities higher rights than bridleway subsist. The legal test for the recording of a greater width is the same.

Officers have not yet started to investigate the evidence adduced by either application but would welcome any evidence that you may have relating to Teffont path no. 9. This may be in the form of deeds, documents, maps, plans, photographs or recollections additional to those already adduced. I would be grateful to receive these (or copies of, or to arrange sight of) by Friday 7th November 2014.

If you have any queries relating to this matter please do not hesitate to contact me. Please find enclosed a map showing the route affected.”

6.2 In addition to this copies of the applications and all supporting documents were sent to Mr and Mrs Waddington, Mr Durtnall and Mr Wood.

6.3 The consultation was sent to the following:

The Auto Cycle Union

Commons, Open Spaces and Footpaths Society

Wiltshire Bridleways Association

Wiltshire Cycling Touring Club

British Horse Society (national and Wiltshire)

Clerk to Teffont Parish Council

Wiltshire Councillor Bridget Wayman

Byways and Bridleways Trust

British Driving Society

Wiltshire Council Senior Rights of Way Warden Nick Cowen

Ramblers (Wiltshire)

Trail Riders Fellowship

Mr B Riley

Mr S Gunning (applicant 2005)

Mr N Beardsley (applicant on behalf of Wiltshire Bridleways Association 2014)

Mr P Durtnall (landowner)

Mr D Wood (adjoining land owner)

Mr E Waddington (landowner)

W G Fry and Son (adjoining landowner)

Mr A Burgess (witness)

Mrs P Fisher (witness)

Dr J Fox Hayler (witness)

Mr R Faulkner (witness)

Mrs S Beech Caldicott (witness)

Mr E Long Fox (witness)

Dr S Vile (witness)

Mrs A Stone (witness)

Ms G Green (witness)

Dr E Fisher (witness)

Mrs J R De Berneus Nicholson (witness)

Mr J Fisher (witness)

Mr John Fisher (witness)

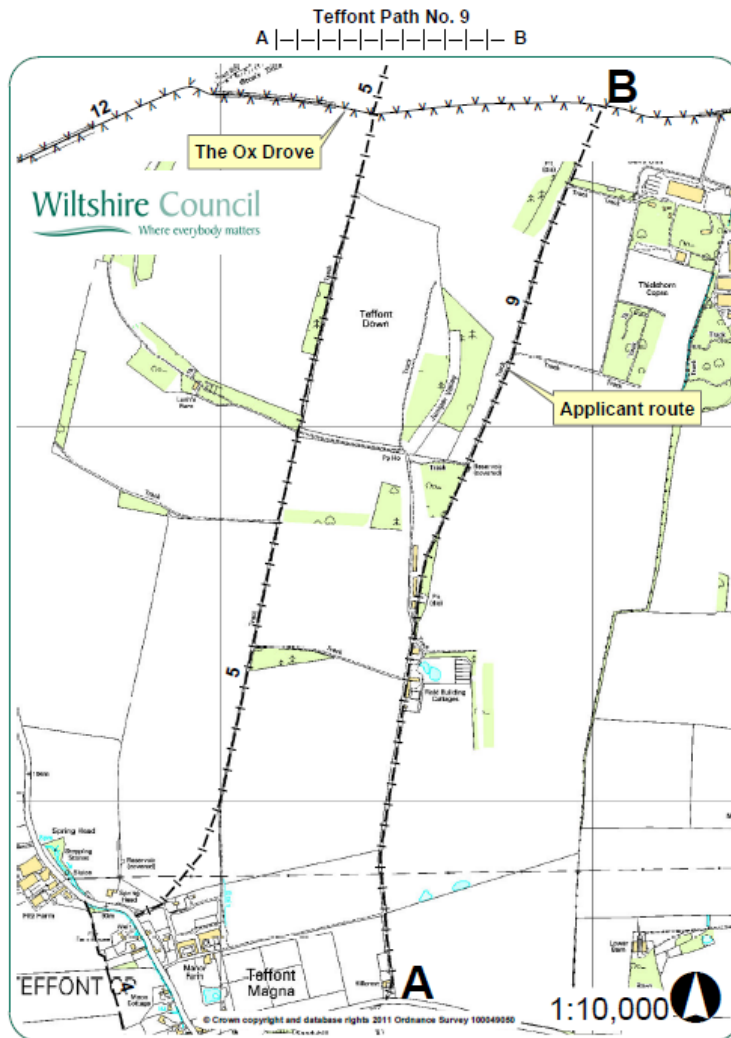
Mrs C Large (witness)

Mrs C M Bernard (witness)

Mrs H Wakeford (witness)

- Miss K McNamara (witness)
- Mrs D Verdon – Smith (witness)
- Ms M Corrie (witness)
- Miss A Collins (witness)
- Mr S Nathan (witness)
- Mrs C Marking (witness)
- Mrs J Nathan (witness)
- Ms Z Faulkner (witness)

6.4 The plan circulated was as below:



Responses

6.5 **Mr B Riley** 06 October 2014

“Thanks for your letter re Teffont 9. You already have a list of the maps and documents examined for 2005/19, so I thought it might be useful for you to know which maps and documents I did not have time to look at. These were:

Original Parish Claim; Finance Act Maps; Take Over Map; Railway Deposited Plans (if any); and the Survey Book for the 1801 Map.

I am not aware of any MPV use of Teffont 9 by the public during the relevant periods”.

Officer’s comments: The suggested documents have been viewed and are included in the historic evidence section. Mr Riley’s comment relating to MPV use supports this report’s subsequent findings that any public MPV rights have not been preserved by s.67(2)(a) of the Natural Environment and Rural Communities Act 2006.

6.6 **Mr D Wood** 28 October 2014

Mr Wood submitted the witness statements of Georgina Green, Pamela Fisher, Lord Sharman, Richard Long-Fox and Stuart Crook as considered by Mr Justice Morgan in the recent court case [2014] EWHC 1358 (Ch) David and Philippa Wood v Edward Alexander Waddington.

Submission of documents dating from the sale of Manor Farm sometime in the 1930s.

“I have recently been passed an interesting set of documents dating from the sale of Manor Farm from the Pembroke Estate (sometime in the 1930s). I attach a scan of the map which was part of the sale documentation and a scan of the corresponding schedule. Both are A3 and I only have an A4 scanner so please forgive the partial scan.

Of interest is that the roadway along which TEFF9 now runs is described in the Schedule (item 64) as a ‘Roadway’ with its state is given as a ‘Road’. By contrast the track from Manor Farm is described as a ‘Cartway’.”

Officer’s Comments: Sales particulars have been viewed and are included in the historic evidence section. The witness statements provided were prepared and submitted in relation to a case regarding various private rights that had, or had not, passed with Manor Farm following the sale and division of the lands in 1998. Inevitably much of what is contained in the statements refers to other routes (for example the Manor Farm track leading west of Teffont 9, also known as the Small Sands track, the width of a route near to Manor Farm and matters relating to the southern end of Teffont 5), however, the witness statement of Lord Sharman provides helpful background as to how access was between the years 1998 and 2009. Lord Sharman makes it clear that access to Teffont 9 from his property was important to him and his business and that at no time had he ever been challenged by Mr Waddington of his, or his client’s, use of the wider extent and verges of Teffont 9. The judge concluded that no private right to do this subsisted. However, the judge did not address the

question of whether any public right subsisted to enable Lord Sharman (or the current owner of Manor Farm) to do this. Given that the use of the connection occurred without permission or challenge during this period it is more likely than not that people considered they were exercising a public right to do this (in other words, that the verges were part of the highway).

6.7 **Mrs S Vile** 6 November 2014

"I know that you have my 'user evidence form' submitted during the summer. Thank you for the letters sent on 29 August and 1 October 2014 offering me the opportunity to make further comments or provide further evidence regarding the above matter.

Further to that I can only re-iterate the following:

Since 1965 I have made use of that path, with frequent use being made up to 1983, but much less often since. The majority of use was made on foot, occasionally on a borrowed horse. Sometimes we walked the whole length of the path, and I have marked this on both your maps using a green marker pen. This would be as part of a long circular route also including the 'Ox Drove', Path no. 5 and portions of road. Much more frequently, even daily at times, we walked a shorter circular route marked in pink on the maps. This incorporated a short section of Path no. 9 from which we turned west onto a private track through the centre of Manor Farm, who maintained an open free and clear access from Path no. 9 to their farm track. This shorter route was much more suitable for walks with young children – either myself with my siblings, or later when I was helping neighbours by taking their children for walks.

For most of the period when I have made use of Path no. 9, it was a rough track, used by walker and horse riders. It would be suitable for mountain bikes, and was used by farm vehicles accessing various field and other tracks leading from it. However, one would not have driven a normal car on this path."

Officer's Comments: Mrs Vile has used the verges of Teffont 9, at least when on her shorter walks, to access the Manor Farm track. There is no mention of her seeking permission from Mr Waddington to do so. It is noted that Mr Waddington refers to the Manor Farm track as the Small Sands track.

6.8 **Mr P Durtnall** 07 November 2014

Scan of letter follows:

Thank you for your letter of 1 October 2014.

I have lived at Hillcrest for about 20 years. My property borders the first 100 metres of Teff 9 from Old Dinton Road.

I believe this is an unfortunate case of a very determined individual manipulating others for his personal benefit. The alleged difficulties have been created or grossly exaggerated in order to stir up public support for his private and commercial ambitions. This application may have come from Wiltshire Bridleways Association but it originated from owner of Manor Farm Livery.

Tarmac Surface of Teff 9

The bridleway Teff 9 has been used by the public for walking, cycling and horse riding for many years. The tarmac surface laid by Mr Waddington in 2000, on his private road over which Teff 9 passes has actually improved the access for walkers and cyclists.

The width of the tarmac is about 10 feet from Old Dinton Road for about 1000 metres and the Definitive Map actually describes the bridleway as 8 feet wide. The witness statements claiming difficulty in riding "in the centre section" of the tarmac track are absurd. The only difficulty, perhaps for a small number of novice riders is only in the first 40 metres down the slope of the tarmac surface from Old Dinton Road. Horses with metal shoes, in dry conditions may slip as the front hooves have a braking function. In wet conditions the surface is perfectly acceptable. Riding up this

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gradient presents no difficulty in wet or dry conditions as the horse is driving up the slope with its back legs. This professional advice was given to me by the Manor Farm Livery manager. The simple remedy, if a remedy is needed at all is to resurface the centre section with a suitable non-slip coating. That is all that is needed for Teff 9 to fulfil its function as a bridleway.

Public Access

The vehicular gate at the Ox Drove end of Teff 9 is locked but the adjoining horse gate has always been accessible. Any references to this as a problem are spurious.

The occasional event of a farm vehicle passing the few horse riders who actually use Teff 9 in a day is not a problem. All vehicles slow down and use the verge to pass safely. If a horse rider feels the need to move onto the verge to assist the passing vehicle then this has been perfectly acceptable.

The only difficulty has been the wanton use of the verges by a few awkward horse riders trotting or cantering, trying to prove a point which is totally unnecessary. If this is allowed then the only result would be the cutting up and poaching of the verges which spoils this lovely part of the countryside for other users. Any occasional animosity stems from an aggressive approach by a very small minority of horse riders and the reaction from the landowner. I note that within the witness statements submitted with this claim, the majority do not show any sign of personal animosity and at least one is positive about the landowner's helpful nature.

This is a public right of way enjoyed by walkers and cyclists of all ages. I would be very concerned for people's safety if a minority of riders assumed the right to canter or gallop along it. Opening Teff 9 to a 30 feet wide horse motorway width would be unsafe for the majority of users.

Safety on shooting days is paramount and this includes the public's right to safely pass along the bridleway of Teff 9. At no stage are any bridleways blocked. If a bridleway may be affected then shooting only starts if it is not being used. If shooting is already in progress for a few minutes, then a member of the public arriving on the scene may be politely asked to wait until it is clear. However if that person insists on the right to pass then the shoot is stopped until the person has safely passed by. Any suggestion of a problem is no more than another spurious attempt to create local conflict and generate local support for this privately driven claim.

Manor Farm Livery track is a private access not a public access. The only way to use it is to pay money to the livery owner one way or another. Any claimed access to or from Manor Farm Livery along their private track onto Teff 9 is not open to the general public who would not benefit from this claim. Including any form of special concession to the livery owner in his request for a special "bell mouth" access from Teff 9 for his private and commercial use or a "realignment" of the claimed 30 feet width in this Wiltshire Council publically funded process would be a misuse of public funds.

I am unsure why the livery owner would want to force an access along his track and out onto Teff 9 for his commercial horse riding clients and villagers on foot who have paid for a licence. This track is also his neighbour's established grain lorry and agricultural vehicle access route. His objection letter of 30 January 2012 to Wiltshire Council on the subject of the neighbour's grain drier planning application states "I am very concerned that any additional heavy traffic will, if allowed to pass

through Manor Farm, increase to unacceptable levels the risk of an accident on my property. My fear is that such an accident might very well involve a child or an animal here. I believe that the planning process would be open to serious criticism were it to permit that situation to arise". Why is the livery owner trying to force an access which he believes to be dangerous? In fact, the new alignment of the farm vehicle's access track onto Teff 9, created by the neighbouring farmer at his expense has made this section of Teff 9 safer for public use.

Witness Statements

The witness statements submitted in support of the claim do no more than show that the current Definitive map width of 8 feet has been used by the public for generations. There is no dispute here. This width is sufficient as a bridleway and has no need to be increased to 30 feet in order to perform its function.

I note that the Natural England guidance notes refer to the 20 year period for presumed dedication of public use and I assume that this is the purpose of all the witness statements. However, periods in which it is known to have been with the permission or licence of the landowner are excluded. It is well known that the generous owners of Manor Farm from 1963 to 1991 gave permission for "villagers" to walk along all the tracks over the whole of Manor Farm. This is the same, specific group that have submitted these witness statements. The permission did not extend to the general public. The new owner in 1991 made it clear that he would not allow this general village activity to continue on his farm. In 1998 Manor Farm was sold in separate lots. The new owners of the farm house created a livery business and erected gates to stop villagers walking past their home and onto Teff 9. In 2009 the current owner only allowed access to villagers who purchased a licence from him. Therefore there has not been a continuous period of 20 years where the "general public" have enjoyed access without landowner's permission or a licence from the landowner.

The witness statements are very interesting but I do not believe that they prove anything.

Existing properties

Some of the various maps and Inclosure Awards quoted in the claim from the livery owner are over 200 years old. It is clear from the maps of with the Awards of 1800 and 1831 that land use has now changed. To revert to the 1800s could lead to the loss of gardens from a number of Teffont properties. Clearly Hillcrest could be affected but it can also be seen that village houses by Teffont Magna church fronted directly onto the public highway and yet they now have front gardens. It is a shame that the personal ambition of the livery owner could lead to further distress among villagers from whom he has gained support.

Width of Teff 9

I have measured the distance between the hedgerows either side of Teff 9 at the point where the livery owner wants to force an access. I find it to be at least 32 feet and more in some places. It is

clear that even if Wiltshire Council decide to confirm the width of 30 feet in accordance with the 1831 Award then it will in equity have to be centred between the hedgerow borders. The livery owner will still have to cross his neighbour's land or more to the point his neighbour has the right to plant a hedge on his own land through which pedestrians and horse riders cannot pass. The livery owner will not achieve his personal goal of creating a private access onto the public bridle path at the expense of public resources. To extend the 1831 Award across the neighbour's private land for the benefit of the livery owner would presumably require a New Path Creation Order which is not within the terms of this application for a Modification of an existing path.

Modification of the Bridleway

The application is for a bridle way 30 feet wide based on the 1831 Award of a "Publick Carriage Road". I believe that the breadth of 30 feet would have included allowance for a drainage ditch for practical purposes and therefore the actual road surface would have been less than 30 feet. Clearly a horse or cart cannot travel in a ditch so it cannot have been part of the original useable surface. It is clear from inspection that drainage ditches on one or both sides of the bridle way have been used for generations to manage the rainwater flow off the adjoining farmland. The current landowner has actually maintained and reinstated the ditches for this specific purpose. There has been no two way horse drawn farm cart traffic for generations and this "Wyly Road No. III" is no longer used for its original purpose as the main public road from Teffont Magna to Wylye. I believe that if a Modification Order is to be made then it should reflect modern times and revise the 1831 Award in line with the 1951 Definitive Map bridle way 8 feet wide. This is what is needed and used by the public.

In the livery owner's summary of evidence attached to his claim he refers to his bitter dispute with his neighbour. A difference of opinion with his neighbour first arose about a year after he arrived in the village and he has battled on various fronts against his neighbour since then. In this claim he has referred to his recent legal action against his neighbour in the High Court. The Judge said no to the livery owner but unfortunately the livery owner is now continuing his battle in the Court of Appeal. The livery owner is trying to glean part of the High Court transcript in support of this claim. The arguments were not stated from both sides on the Teff 9 issue and it was not tested in the High Court. I believe it is misleading for the livery owner to try to influence Wiltshire Council in this way.

I have to be critical of the livery owner for what I believe to be the obscene amounts of money in legal fees, public resource and private time that he has caused to be spent in his single minded determination to force an additional access from his small holding of about 30 acres of land when he already has two vehicular and one bridleway accesses with another application for a further equestrian access onto Old Dinton Road under consideration.

Abraham Laslo, the renowned American psychologist said *"if all you have is a hammer then everything looks like a nail"*. I sincerely hope that the livery owner will learn not to treat everyone who disagrees with him in this manner.

This claim adds nothing to the convenience or enjoyment of a substantial section of the public or of local residents on the existing bridleway of Teff 9 as required in the grounds for making an order and

the tests to be satisfied. I understand that Wiltshire Council have the option to take no action at all with this claim. This would be a sensible decision in the circumstances of this claim.

Officer's Comments: Matters such as the surface, safety and desirability are not matters for consideration in s.53 of the Wildlife and Countryside Act 1981. Further there is no requirement to only walk a horse on a bridleway and the public would normally be expected to proceed on a horse at any speed appropriate for the conditions and safety.

Mr Durnall is correct in identifying that the public used the Manor Farm track by permission and that no public rights are likely to have been acquired, however, it is clear that when granting that permission since 1998 both Lord Sharman and Mr Wood both considered that Teffont 9 could be accessed in this way. No evidence has been adduced as to whether Mr Crook (or the Pitcairns) considered the matter of whether permission would be needed to access the verges of Teffont 9 when the land was in one ownership.

It is agreed that land use has changed significantly since the beginning of the 19th century, however, no legal orders have been found affecting the public rights awarded in either award (1801 and 1837) and these remain legal events in themselves. This is not to say that further legal orders may not be made that do affect these rights, but none have occurred to date.

Mr Durnall is incorrect in stating that the Council has an "option to take no action at all with this claim" as the determination of such applications and the continual review and updating of the definitive map and statement are statutory duties contained within s.53 of the Wildlife and Countryside Act 1981.

6.9 **Teffont Parish Council** posted 5 November 2014 received 20 November 2014

"Further to your letter dated 1st October 2014 I would like to inform you of the views of Teffont Parish Council.

*With regards to the proposal concerning the application to make this a BOAT. **Teffont PC do not support this proposal.***

With regards to the proposal to reinstate the path to the original width of 30 feet.

Teffont PC wish to support this proposal.

This route was historically a sheep drove and drove routes were 30 feet wide. The reinstatement of this path to the original width would improve safety for both walkers and riders."

Officer's Comment: The Parish Council is correct in identifying that drove routes were wide routes, however, officers are not aware of any width requirement for them, indeed, the Ox Drove was awarded at 110 feet wide.

Although a wider route may have benefits for walkers and riders in terms of safety these are not considerations for the Council under this legislation.

The Parish Council has adduced no evidence for the preservation of any public MPV rights.

6.10 **Edward Waddington** 20 November 2014

A submission containing the following letter, the witness statement of Stephen James Coombes (as submitted in the High Court of Justice in the case of David and Philippa Wood and Edward Alexander Waddington), photographs dated 1998 showing Teffont 9, a submission from Mr Wood to the Planning department, Salisbury regarding an application for a new grain barn, a notice of approval of full planning permission for change of use of redundant agricultural buildings to use for equestrian purposes at Manor Farm, an Accessway Licence between David Wood and Philippa Wood and Edward Waddington, unsigned and undated but drawn up in 2012, a photograph of Teffont 9 at its junction with the Manor Farm track and a colour copy of an aerial photograph of Teffont Field Buildings dated June 1959.

The letter forms the core of Mr Waddington's objection and is as follows:

“BACKGROUND

I am a working farmer and I feel privileged to be a custodian of the countryside. In 1998 when Manor Farm was lotted, I bought the agricultural farmland and workers cottages. The Sharmans bought Manor Farm House, the agricultural buildings, Small Sands field and 2 cottages. In 2009 the Sharmans sold Manor Farm House and Small Sands field to David and Philippa Wood. It was approximately 35 acres as the Sharmans retained the 2 cottages.

The Sharmans submitted 2 planning applications for the change of use of redundant agricultural buildings for a groom's flat S/1999/1742 and for a livery /1999/1987. “Approval of Full Planning Permission” was granted on the 20th January 2000, see attached.

Point 3 of S/1999/1987 specifically states that the permission granted is for stabling and ancillary equestrian activities but shall exclude any form of riding school. Prior to the Sharmans obtaining this permission there was no equestrian element at Manor Farm, Teffont Magna.

David Wood is a businessman who has confirmed that the equestrian centre is a “*lifestyle business*” and he does not rely on the income it generates. After he bought Manor Farm he submitted an application under the guise of a “*Riding Arena*” which in effect is an indoor riding school of Olympic sized dimensions designed for teaching dressage. This can be seen in their local advertising and on their website www.manorfarmliveryteffont.co.uk

I would like to make it absolutely clear that prior to the Woods' ownership, I have never seen riders using the verge or evidence of riders using the verge and there was never any problem regarding the width or surface of the bridlepath TEFF9 which has been tarmacked since 2000. Although the application for a modification has come through the Wiltshire Bridleways Association, it has been instigated and fuelled by David Wood who is looking to achieve what he failed to gain through litigation.

David Wood is Chairman of the local Parish Council and this is just one in a long list of issues that I have had to deal with. I have had to endure the Woods cutting off the water to my ponds which has still not been reinstated, their continued attempt to gain vehicular access along Teff 9 and their wish to own my field Home Ground, directly opposite Small Sands.

I understand from the September 2014 Minutes of the Teffont Parish Council meeting that Point 14/076, Councillor P. Fisher is looking into the farm and large vehicles using the Old Dinton Road and Warminster/Wyley Road. I can only assume their next step will be to try and alter the route taken by my farm traffic.

Teff 9

The width of Teff 9 was recorded in 1951 as 8ft and in 2000 I had the track tarmacked to a width of approximately 10ft. I have always regularly maintained the bridle path and I mow a strip either side of the tarmac and leave the rest of the verge to nature. Allowing the wild grasses and natural vegetation to flourish gives maximum benefit to the flora and fauna on the farm. These grasses bring in a wide array of insects and particularly bats which feed in the evenings all the way along from Field Buildings to the Old Dinton Road. Once a year after the wild grasses and cow parsley have seeded I cut it back in order to control the thorn bushes. I would suggest an Environmental Survey would be required to establish the detrimental impact which could be made by widening Teff 9.

When I moved here in 1998 the village had problems with flooding so I cut grips into Big Sands to alleviate the flooding problem by taking the rain water on to my own land. It also improved Teff 9 as the erosion by the rain water caused the bridle path to become deeply pot holed. I believe it was much safer for walkers, cyclists and even riders after it was tarmacked and I certainly did not receive a single complaint after the change of surface. This slipping of the horses appears to be a recent phenomenon.

The Sharmans bought Manor Farm House at the same time as I bought the farm and I can confirm that the Sharmans did not allow locals to use their land without their permission. Gates were quickly erected to stop villagers walking past their house to access Teff 9 or walking past their house to access the Warminster Road. I note that the witnesses who use Small Sands Track to access Teff 9 have been keen to confirm that they did so with the

owner's permission. For the avoidance of doubt, riders have not been riding on the verges or accessing the track across my land for a period of 20 years.

There has been a ditch running along the beginning part of TEFF9 since I purchased the farm and recently I have extended part of this ditch due to the excessive rain water coming down from the Old Dinton Road into Big Sands. I also took the mouth of the Small Sands track across my own land in order to make it wider and improve visibility for farm traffic going from Small Sands track onto Teff 9, see attachment.

I have access at all times for all agricultural and sporting traffic along Small Sands track and if riders are now complaining about the width of Teff 9 then I am surprised they are not more nervous about using Small Sands track when a farm vehicle is also driving along, particularly as until recently there was no verge on either side. Please see the attached letter of objection from David Wood regarding my application to build a grain store after my lease with the Sharmans expired and also David Wood's "Accessway Licence" which he offered to favoured villagers and which he also wanted me to sign to restrict my access.

After losing in High Court, David Wood contacted Wiltshire Council. I believe the majority of the witnesses are either friends of the Woods, fellow Parish Councillors, family of other witnesses or sympathetic individuals. I question that there is a problem for riders using Teff 9, even at the beginning where the gradient is at its steepest. Perhaps it would be prudent to obtain statements by riders who have nothing to gain by supporting this modification order and they may confirm that the verges of Teff 9 have never been included as part of the bridle path and that this has not caused the riders any problems.

Having read the witness statements in support of the modification order I am struck by the similarity in all of them. It is also interesting to read that 15 of the statements all mention that they used Teff 9 to access Manor Farm Equestrian Centre and this is the genesis of this modification order. It is Mr Wood's personal campaign for riders to cross my land in order to access Wood's private track leading to the equestrian centre and thereby enhancing his business and making it more appealing for riders of all capabilities.

It is important for Manor Farm Equestrian Centre to be able to market their business with "direct" access on to the bridle paths as Mrs Nathan writes in her statement "*access from Manor Farm was part of the livery agreement*".

It is interesting that only since these witnesses have been rallied and informed of the possible extra width of Teff 9 that they now seem to claim they have always used the bridle path to its maximum width of 30ft.

I question Mrs P Fisher's comments when she states "*the track was used for sheep by the sheppard before the farm was broken up soo I think it should be 30 feet*". Who is the shepherd she is referring to? I also question Zillah Faulkner's comment in her letter of 17th

September 2014 when she writes “*obstructions had been put along part of the verges on this stretch of road just to prevent riders even attempting to let their horses step on the grass*”. For the avoidance of doubt, this is simply not true.

John Fisher comments in his statement that he is requesting the bridle path to be re-instated to 30 feet. This is because since 1952 and probably longer, Teff 9 has been a definitive width of 8 feet and this is the width which has been used without complaint until David Wood sought

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to make mischief for his personal benefit. Mrs D Verdon-Smith writes in her statement “*I am informed that there was an Act of Parliament awarding a width of 30ft*” and finally retired Teffont Parish Council Clerk, Zillah Faulkner writes regarding Teff 9, “*it has now been discovered had a legal status width of 30ft*”. Until the witnesses were advised of this possible widening, all users of Teff 9 have abided by the 8ft measurement and have been happy to do so.

I believe Teff 8 is of a similar gradient to Teff 9 and this has recently been tarmacked by David Scott, a Councillor of Teffont Parish Council and no complaints have been made by riders as to the surface of this bridle path which is also the Scotts’ personal drive leading to their home from which they run a busy bakery business.

Since I have lived in Teffont, Teff 9 has always been used with common sense and courtesy. If a farm vehicle is unable to pass a rider safely then the vehicle driver will pull over onto the verge. If there is a problem with riders using Teff 9 due to the farm traffic then I do not understand why the Woods have developed their 35 acres into such a large equestrian venture which clearly they find incompatible with the mechanised farming business which was established generations before the livery began.

After the High Court Judgement, Georgina Green, a witness in court for David Wood and a witness for the modification order, submitted an application to Teffont Parish Council which was to be heard on the 12th May 2014. Please see the attached agenda point 14/020 “*To consider whether to support a proposal from Ms G Green*” requesting “*the ancient carriage/bridleway number 9 to include the entrance to the Wood's track to Manor Farm..... as a result of the court case it seems unreasonable that people are now no longer to allowed cross a tiny patch of land..... It is ludicrous that this is now no longer possible.*”

Prior to the meeting David Wood was advised the matter had not followed correct procedure and consequently the item was not raised at the Parish Council meeting. David Wood instead chose to go through the Wiltshire Bridleways Association.

The witnesses spuriously claim that vehicles drive quickly along Teff 9. However, given that this is a farm with young families (including my three young children aged 5, 8 & 11 all riding scooters and bicycles along Teff 9), dogs and game birds, it would hardly be used in a fast manner and certainly nowhere near as fast as 60 mph which is the speed limit for the Old Dinton Road which is regularly used as the route of choice for the grooms of Manor Farm Livery to exercise the horses.

Impact of Modification Order

I have lived in the countryside all my life and I feel strongly that others should enjoy it too. However, I want to keep the riders to a sensible level and if the connection between Manor Farm equestrian centre and the local network of bridle paths is agreed then this would

Significantly increase the horse traffic because the equestrian centre would be particularly attractive for novice riders, pony trekkers, event training and endurance bringing in riders from far and wide in their horse boxes. Commercial equestrian access across my land from Small Sands field would provide the opportunity for a circular route, the ideal distance for novice riders to complete a reasonable hack. This increase in disturbance would render my business almost unmanageable. The increase in the numbers of novice riders on the bridleway would further enhance the risk of accident or damage because of the rider's inability to deal with sudden appearances of farm machinery or, indeed, the surprise of the flush of a covey of partridges exploding out of a hedge or ditch line. It would also make the farm work more difficult during planting and harvest time by slowing machinery around the farm, particularly during tricky season's weather wise when time is at a premium.

Horses are notoriously unpredictable and I can provide several examples where highly experienced and competent riders have been killed when their horses have been spooked by a stationary tractor, digger and even a cyclist.

These are all issues which were deliberated in High Court and why my conveyancing was carried out in order to protect the farm which I bought in 1998. I have done my utmost to support the riders in the local community but the widening of the bridle path will intensify the use of the bridle paths due to the commercial public access and, as David Wood confirmed in his witness statement at trial, "*some of our clients come in daily to ride their own horses out onto the adjacent bridleways..... I have never seen more than four horses being ridden out together*" but this can be happening numerous times a day.

Partridge in particular are more prone to disturbance than pheasants because they are an open ground bird and only comfortable in areas where they can see predators coming and make their escape in good time. Wild partridge are in serious decline across the country but we have a number of wild grey partridge at Teffont due to the natural habitat and the planting and environmental measures I take. The wild and reared birds nest in spring in grass banks and in the bottom of hedgerows, often alongside tracks and paths.

Partridge will not tolerate increased disturbance on a regular basis and consequently will move elsewhere.

The conservation element involved with the farm has seen a huge rise in song bird numbers, particularly corn buntings and a rise in the number of rare plant species including wild orchids and cowslips due to scrub clearance as part of the management of the downland for the partridge.

Modification Order

With regards to mechanically propelled vehicles using Teff 9, the only unauthorised users are David and Philippa Wood and their staff from the equestrian centre. Other than that there have not been any unauthorised vehicles regularly using this bridle path unless it has been

with my permission and I do not believe Teff 9 was saved from the Natural Environment and Rural Communities Act 2006. I understand Teff 9 may be widened on the basis of the 1831 Award of a "Publick Carriage Road". *The Award of Commissioners for dividing allotting and c Teffont Magna Wilts* 2nd September 1800. However, the requirements necessary for the villagers in the 1800's were significantly different from those required nowadays. On the 1831 map there was no Manor Farm House, no farm cottages along Teff 9 and it bears little resemblance to the infrastructure now in situ. Due to the changes over time the needs of the villagers have altered considerably and buildings have since been erected. It is for these reasons I believe the requirement width was accordingly amended to reflect these changes and consequently the 1951 Definitive Map stipulated a reasonable width of 8ft which has subsequently been enjoyed by the public for decades. It should be noted that in 1831 Small Sands track belonging to the Woods, did not even exist and if one is to revert to the maps and documentation of the 1800's to satisfy individuals who chose to cherry pick and substantiate their claims through antiquated Awards, then many land registry documents may be subject to change and people may find their gardens or private land being reclaimed.

I believe that supporting this modification order which will absorb a significant amount of public funds, in order to satisfy a few individuals, would be the wrong decision to make. The outcome could have serious repercussions by setting precedence and thereby enabling a small minority to cause unnecessary problems in the countryside. If any action should be taken by the Council then it should be the action to extinguish any possibility of widening Teff 9 and ensure that it remains at its current width of 8ft, as confirmed in the 1951 Definitive Map and Statement.

Enclosures:

1. Approval of Full Planning Permission
2. Letter of Objection re Grain Store
3. Accessway Licence
4. Aerial photograph of June 1959 showing a narrow width use of Teff 9
5. Photographs of Teffont in 1998 showing no use of the verges by the riders
6. Photo of new access to Teff 9 from Small Sands Track
7. Aerial photograph dated 1959"

Officer's Comment:

Mr Waddington clearly states that he has never seen riders using the verge (or evidence of their use) in the period up to Mr Woods purchasing Manor Farm. This is the period 1998 – 2009.

Mr Waddington confirms that Teffont 9 was tarmacked by him in 2000 and he has not received complaints that it is slippery in the period leading to the 2014 application.

Much of the letter relates to the activities of Manor Farm and the grant of planning permission relating to its use as a livery yard. Matters relating to this, in addition to whether or not it may attract more novice riders, whether it is being run as a riding school or whether or how any clients of Manor Farm use Teffont 9 is not a matter for this investigation.

Further matters relating to the environment, drainage, upkeep of the verges and the wildlife that they attract and support are also not matters for this investigation which is related solely to the Council's duty to consider relevant evidence (in this instance primarily under s.32 Highways Act 1980) and to keep the definitive map and statement up to date (s.53 Wildlife and Countryside Act 1981). The Council does then have a duty to maintain the majority of those highways so recorded and, so far as is consistent with the proper exercise of those functions to conserve biodiversity under s.40 of the Natural Environment and Rural Communities Act 2006. For example, should the greater width of Teffont 9 be recorded as public highway in the definitive map and statement, the Council would have to have due regard to conserving biodiversity in any future management of it.

Likewise the recording of the greater width is a duty (if it is so shown to subsist on the balance of probabilities) and is independent of the situation on the ground today. Mr Waddington considers that land registry documents may be subject to change, however, this is unlikely to be the case as it is a feature of rights of way that a public right may subsist over land which is privately owned, indeed, in the vast majority of cases this is so. On the contrary it is the documents on which the Council may rely (Inclosure Awards) that form the basis of the boundaries of titles registered today.

Mr Waddington envisages a situation where people may find their gardens or private land being reclaimed. This is unlikely to be the case and in cases where ancient highways have been enclosed for periods of time without objection applications for orders under s.116 of the Highways Act 1980 are often successful in having highway rights stopped up as being unnecessary.

Additional Information

6.9 On the 21st October 2014 officers wrote to Mr Waddington, Mr Durtnall and Mr Wood informing them of the discovery of a significant document that did not form part of the 2005 application.

“Wildlife and Countryside Act 1981 s.53

Applications for Definitive Map and Modification Orders Affecting Teffont Path no. 9

Further to my letter dated 01 October 2014 I have been able to make some progress investigating the historical evidence relating to Teffont 9 as adduced by the application for a definitive map modification order 2005/19. Although the Council's assessment of this evidence will be published in its decision report in due course, in the interim I thought it may be helpful for interested parties to be aware of an earlier agreement and award relating to land in Teffont that was not adduced as part of the application but which is being

considered (the Council has a duty to consider available relevant evidence). The document is entitled “The Award of Commissioners for dividing allotting and c Teffont Magna Wilts” 2nd September 1800 and is held at the Wiltshire and Swindon History Centre, Chippenham document reference 2057/115. The document is available there for public viewing.

*(Further to our conversation by ‘phone this afternoon please find enclosed a copy of a User Evidence Form (copy also e.mailed). It is certainly not necessary to submit these but it can be helpful to any case (even one which may end up relying on historical evidence) to read about people’s experiences, memories of the route and, as I said, see photographs of the route.) * This paragraph added to Mr and Mrs Waddington’s letter only.*

If you have any queries please do not hesitate to contact me.”

7.0 Historic Records

7.1 A route on the line of Teffont 9 can be seen on maps dating from 1801 to the present day. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on fifty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.

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

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate’s Consistency Guidelines:

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/guidance> (as revised to date of report) and Chapter 6 of the book ‘Rights of Way A Guide to Law and Practice – Fourth Edition’ by John Riddall and John Trevelyan.

Abbreviations: Wiltshire and Swindon History Centre, Chippenham (WSHC), The National Archive, Kew (TNA), House of Lords Record Office (HoL

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

8.0 General Context *notes primarily from Victoria County History Vol VIII (1965)*

8.1 Teffont Magna was originally a chapelry of Dinton and a civil parish with Dinton since the 19th century. It was ecclesiastically dependent upon Dinton until 1922 and in 1934 Teffont Magna (or Upper Teffont) combined with Teffont Evias to form the civil parish of Teffont.

- 8.2 After the dissolution of the monasteries (1536 – 1541) Teffont Magna was acquired with Dinton by William Herbert who later became the Earl of Pembroke and Montgomery. He retained the land until 1919/1920 when it was sold to Lord Bledisloe and in 1950 the son, Charles Hiley Bathurst, sold the land to John Jacob Astor who soon broke it up and sold it in several lots.
- 8.3 The ancient parish of Teffont Magna formed 1734 acres and measured approximately two and half miles north to south and one mile wide. Grovely Wood and the earthwork Grims Ditch form the northern boundary with Thickthorn Wood on the downs being the most westerly offshoot of Grovely Wood (Thickthorn was recorded in 1567 as being approximately 10 acres in extent).
- 8.4 Thickthorn Wood and field is at the north easterly end of Teffont 9 and along with the Ox Drove at the northern end and the turnpike road and Jack Thorns enclosures at the southern end provide clearly identifiable surviving reference points for various descriptions of Teffont 9 found in historical documents.
- 8.5 The Roman road from Mendip lead mines to Old Sarum passes through the north of the parish and the green way called the Ox Drove (now Teffont 12), of possibly greater antiquity, runs in roughly the same direction (west to east) across the parish just to the south of it.
- 8.6 Although an ancient road, The Ox Drove was awarded at inclosure in 1837 at a width of 110 feet as a public carriage road and driftway and is today recorded as a byway open to all traffic. The northern end of Teffont 9 meets it.
- 8.7 Teffont 9 has the Old Dinton Road at its southern end. This road was turnpiked around 1760, becoming the 'old turnpike' in 1814 when a new road was constructed to the south linking Dinton Pound with Sparks's Bridge, Teffont.
- 8.8 The old enclosures known as Jack Thorns predate enclosure by agreement in 1800 and form the west side of Teffont 9 at its junction with the Old Dinton Road.
- 8.9 The centre of habitation in Teffont Magna lies to the west of Teffont 9 and village water was obtained from Springhead (north west of Manor Farm) from 1896 until 1962 when mains were installed in the village.
- 8.10 Turning to the management of lands, early records (for example the Domesday survey) do not exist for Teffont Magna as its lands were surveyed with those in Dinton. In 1567 a survey showed no separate demesne there but records show that Teffont Magna had 3 open arable fields including 80 acres of sheep pasture on Teffont Down.
- 8.11 A survey in 1631 showed 15 copy holders in upper Teffont most of whom had small closes as well as unenclosed strips in common fields. Nearly all had, besides grazing rights on the downs, an acre of Thickthorn Wood (north end of Teffont 9).

- 8.12 In 1650 for the first time demesne lands in Teffont were leased as a separate estate. They comprised a small close of arable land in which stood a barn, a coppice, another small close and 66 acres of arable land in common field – namely 22 acres in West Field, 28 acres in Middle Field and 16 acres in east Field. There was also grazing on the downs for 270 sheep and an allotment out of Teffont Common for fuel. There was a dwelling house attached and hence forward this formed a separate estate which enlarged and was called Manor Farm.
- 8.13 This is the same Manor Farm currently owned by Mr Wood and the same whose land abuts Mr Waddington’s land lying west of the southern end of Teffont 9 above the inclosures formerly called Jack Thorns (part of which now comprise the property of Mr Durtnall called Hillcrest).
- 8.14 A map dated 1801 (pursuant to the 1800 agreement) shows the open fields still in being but the 3 field system has been modified. Consolidation of the rest of the lands was done by the joint Inclosure award for Dinton and Teffont Magna in 1837.
- 8.15 Historically agriculture has been virtually the only employment in Teffont Magna.

9.0 Category A Evidence

- 9.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e. arising from an Act of Parliament which specifically required the identification and verification of public rights of way).
- 9.2 Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.
- 9.3 Although there is some evidence of inclosure in Teffont Magna before 1800 (for example the old enclosures known as Jack Thorns and closes near to Manor Farm) it is clear that the pattern of the modern landscape was formed by an Award dated 1800 arising out of an agreement made in 1799 and an Award dated 1837 arising out of Acts of Parliament dated 1801 (general act), 1821 (general act) and 1822 (local act).

9.4 **Inclosure by Agreement 1800**

Agreement 1799 WSHC 2057/I/26

Copy of Award 1800 WSHC 2057/I/26

Award and Plan 1800 WSHC 2057/I15

(Post award - Plan 1801 WSHC 1553/122)

(Post award - Book of Reference for Plan 1553/122 WSHC 2057/5/I13)

9.5 **2057/I/26 Agreement dated 1799**

This document is entitled “Copy of Agreement for dividing and allotting the Common Lands and c Teffont Magna”. The agreement is made *between “The Right Honorable George Earl of Pembroke and Montgomery on the one part and The President and fellows of Magdalen College Oxford The Reverend William Dean Clerk Henry Penruddocke Wyndham Esquire William Wyndham Esquire Walter Fitz Robert Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayler Elizabeth Lackham widow Robert Fitz Edward Larkham William Cowdry Waterman widow and the several other persons whose names are hereunto subscribed and seals affixed of the other part”*

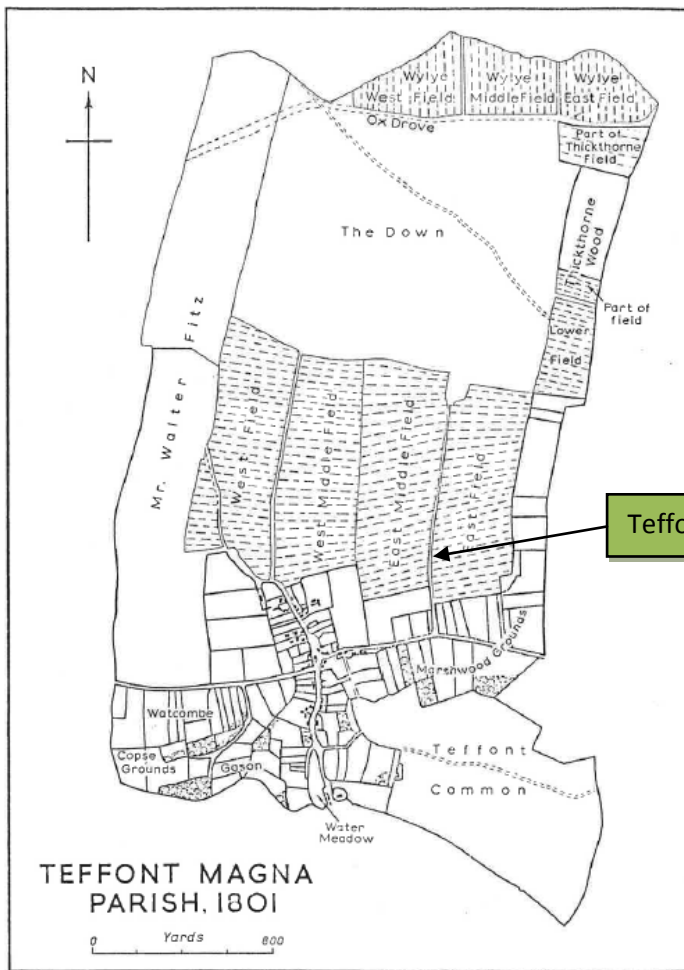
- 9.6 The purpose of the agreement was to divide the Cow down and Sheep down (“*now incumbered in part with furze*” (approximately 700 acres) into 4 or 5 fields and a common tenantry sheep down and also to permit other alterations to lands “*Provided also that in case any of the owners of Lands within the said Parish of Teffont Magna shall be desirous to exchange any of their messuages lands or hereditaments old inclosures or other lands in the same Parish it shall be lawful for them to do so...*”

9.7 **2057/I15 Enclosure Award dated 2nd September 1800**

The award is entitled “The Award of Commissioners for dividing allotting and C Teffont Magna Wilts”

- 9.8 The document describes an agreement made in 1799 (see 9.5 above) between the Right Honorable George Earl of Pembroke and Montgomery and the President and Fellows of Magdalen College, the Reverend William Dean and various freeholders and leaseholders. The Earl of Pembroke was the Lord of the Manor and Magdalen College entitled to the great and small tithes.

The award details a new division and allotment and the Commissioners were John Seagrim and Thomas Charlton. The agreement created four “several fields of an equal size as near as may be for the purpose of being used in common or tenantry and called by them East ffield, East Middle ffield, West Middle ffield and West ffield. See representational map below:



Map from Victoria County History Vol. 8

- 9.9 Teffont path no 9 leads from the Turnpike Road north between East Middle Field and East Field to The Down. It is awarded as a public Road or driftway of width 33 feet.
- 9.10 The effect of the award was to enclose the more southerly cow down leaving the northern part (labelled The Down in the representational map above) as down.

Page 4 of the award sets out the roads:

"...And we do hereby further award order and direct a public Road or driftway to and for each of them the said several owners and proprietors of the said several and respective allotments and pieces or parcels of land hereby allotted and awarded to each and every one of them respectively as herein before mention and to and for his or their respective tenants or ffarmers of their said several allotments to go pass and repass on ffoot and on horseback and with coaches various cattle carts and carriages at his and their will and pleasure for ever hereafter through over and along the same without any let hindrance or molestation of or from any or either of the other or others in them their respective heirs tenants and assigns of the breadth of thirty three ffeet leading from the Turnpike Road through an Inclosure belonging to the Earl of Pembroke called Jack Thorns in the occupation of Oliver Smith and

between the East ffield and East Middle ffield to the Common Down as the same is already staked meted bounded and marked by us”.

This is today recorded as the southern section of path Teffont no. 9.

“And we de hereby further award Order and Direct another public Road or driftway with the like liberty of going passing and repassing at all times of their will and pleasure to and for them the said several owners and proprietors and their respective tenants and ffarmers and in like manner as last herein before mentioned of the breadth of twenty ffeet branching out of the last herein before described public Road or Driftway and leading between the allotment in East ffield hereby awarded to Robert ffitz for or in respect of his life hold Estate and other allotments in the same ffield hereby awarded to Joan Macey and the Earl of Pembroke for or in respect of his Estate in the Occupation of Elizabeth Lackham to a Ground or Enclosure called Teffont Ground and to an allotment hereby awarded to Oliver Smith in respect of his freehold estate AND WE Do award Order and Direct a private carriage Road or Driftway to and for the use of the said William Wyndham his heirs and assigns and his and their respective tenants or ffarmers of the allotment hereby awarded to him in Teffont Common for ever hereafter on all occasions to pass and repass on ffoot or on horseback and with coaches carious carts and carriages in through and over and along the same of the breadth of ffifteen feet leading from his said allotments in Teffont Common along the Church Road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Beatley (?) Close leading in to the turnpike Road without any hinderance or molestation of and from the said Oliver Smith and George Macey or either of them their heirs or assigns or their tenants or tenant of the said allotments in Teffont Common AND WE DO further award order and direct one other private Carriage Road or Driftway to and for the use of the said Luke Toomer his heirs and assigns and his and their respective tenants and ffarmers of the allotment awarded to him on Teffont Common for ever hereafter on all occasions to pass and repass on ffoot or on horseback and with coaches wains carts and carriages in through over and along the same of the breadth of fifteen feet leading from his said allotment in Teffont Common along the Church road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Beatley (?) Close leading into the Turnpike Road without any hindrance or molestation of and from the said Oliver Smith and George Macey or either of them or their heirs or assigns or their tenants or tenant of the said allotment in the said common AND WE DO further award order and direct one other private carriage road or driftway to and for the use of the said Oliver Smith his heirs assigns and his or their respective tenants or ffarmers of the allotments hereby awarded to him in Teffont Common forever hereafter on all occasion to pass and repass on ffoot or on horseback and with coaches wains carts and carriages in through and over and along the same of the breadth of ffifteen ffeet leading from his said allotment in

the Common along the Church Road and through and over the allotment hereby awarded to the said George Macey in the said common to the head of the lane by Beatley (?) Close leading into the Turnpike Road without any hindrance or molestation of and from the said George Macey his heirs or assigns or his or their tenant of the said allotment in the said common AND WE DE hereby further award order and direct that the several persons whose names are written in the second schedule hereunto annexed marked with the letter B their heirs executors administrators or assigns...

From the Award:

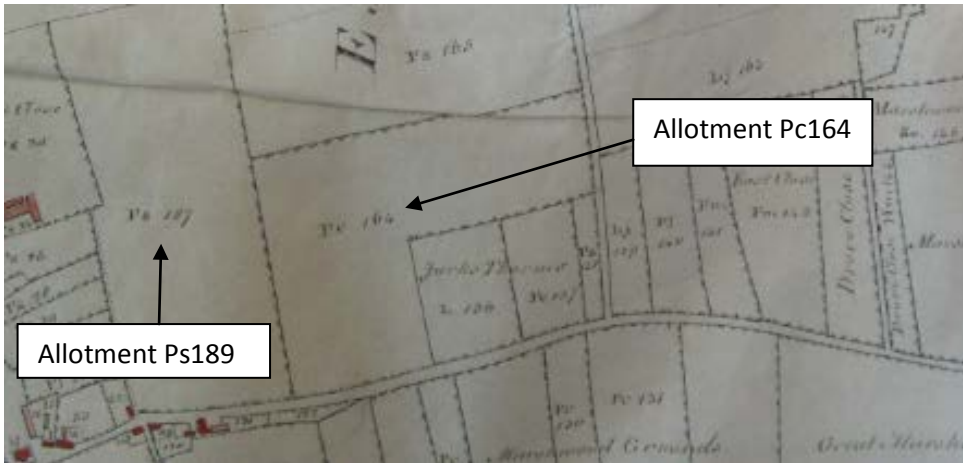
“provided also that in case of any of the owners of Lands within the said Parish of Telford Magna shall be desirous to exchange any of their messuages Lands or hereditaments old inclosures or other lands in the same parish it shall be lawful for them to do so”

“upon each and every of the said several allotments and Divisions in and by this present Award allotted set out and awarded as and for the ? and Property of each of them the said several Proprietors of and in the said open or Common Tenantry fields open Common Downs and other Commonable Places and old Inclosures and of which such survey and admeasurement as aforesaid hath been made by us the said Surveyors and for the assuming unto each and every of them the said Proprietors the peaceable and quiet Enjoyment and Possession of the said several allotments and Divisions allotted to them as aforesaid and in all such other Rights Priviledges and Advantages which in and by the present Award is of ? meant and intended to be awarded and allotted unto and for the use and Benefit of each of the said Proprietors as aforesaid And also for the further better and more effectually adjoining unto the other or others of them the making ? abiding by performing and executing by each and every other and others of them of all and every The Rules Regulations Orders Matters and Things hereby awarded ordered adjudged and determined to be done and executed by each and every of them touching the said allotments and Division hereby awarded and allotted unto each and every of them and touching Ways Roads and Passages to made Course of Husbandry to be used fences be made and all such exchanges Regulations Orders Rules Matters and Things in and by this present Award awarded ordered and adjudged and to be done performed executed observed and kept by each of them the said several Proprietors as by the other or others of them their or either of their Heirs Executors or Administrators or their or either their counsel learned in the Law shall be reasonably devised or advised and required In Witness whereof we the said John Seagrim and Thomas Charlton have hereunto set our Hands and seals the second day of September in the fortieth year of the Reign of our sovereign Lord George the Third by the grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith and in the year of our Lord one thousand and Eight hundred. Signed by Jn Seagrim and Thomas Charlton.”

- 9.11 The award also directs in great detail matters relating to water, husbandry, ploughing, wheat, barley, grazing rotations and patterns of grazing. Cow pasturing on the downs was to cease.
- 9.12 The award was signed by John Seagrim and John Charlton on 2nd September 1800.
- 9.13 Schedule A details allotments and to whom the award refers and Schedule B lists those to whom fence responsibilities were given and to whom the award refers.
- 9.14 A detailed map forms part of the award.



2057/115 Length of inclosed section (first awarded public road or driftway) = 50 chains



South end of Teffont 9

9.14 The map key is as follows:

Earl of Pembroke

- Ps Oliver Smith
- Pl John Lush
- PL Edward Larkham
- Pp Mary Larkham
- Pc Henry Macey

Leaseholds

- Sm Joan Macey
- L Edward Larkham
- W Dorothy Waterman
- Lj John Lush
- Hm Edward Mould
- Fm Mary Fitz
- Le John Lush

Freeholds

- F Walter Fitz
- So Oliver Smith
- M Edward Mould
- La Edward Larkham
- Lu John Lush
- Mg George Macey
- Luke Tamer
- G John
- Ww William Wyndham

Pw H G Wyndham Esq
Hj John Hayter

- 9.15 Allotments are described with reference to their boundaries. Hence in the region of Manor Farm, Enclosures were taken in exchange:

Ps189 (Oliver Smith) *“An allotment of arable land bounded on the East by the East Middle ffield and another allotment next hereinafter mentioned on the west by Barn Close and other old enclosures on the north by the West Middle ffield and on the south by the Turnpike Road”*

Pc164 (Henry Macey) *“one other allotment of arable land bounded on the East by a Drove Way and by an allotment to the said Earl for his tenants at Dinton on the west by the last described allotment to the said Earl on the north by the East Middle ffield and on the south by old enclosures called Jack Thorns the aforesaid allotment for the Dinton tenants and the Turnpike Road”*

Schedule A lists allotments and both Pc 164 and Ps 165 are allotted.

- 9.16 The southern section of Teffont 9 is awarded as a Public Road or driftway from the Old Turnpike Road (The Old Dinton Road) north through the enclosed grounds to the Common Down at a width of thirty three feet. The Public Road is detailed as *being “to and for each of them the several owners and proprietors...and to their respective tenants and farmers....to pass and repass on ffoot, horseback, with coaches various cattle carts and carriages at their will and pleasure for ever and hereafter through over and along without let or hinderance....”*
- 9.17 The use of the road is for all in the award (see 9.10 for transcript) or at least the owners, proprietors, tenants and farmers of the 24 allotments adjoining it. Additionally the route provided access to The Down which was still used in common and to Thickthorn Wood which was historically divided between copyholders. Additionally a pre-inclosure map of 1773 (see Category E evidence Andrews and Dury’s Map of Wiltshire) shows the northern section of Teffont 9 leading to the Ox Drove and the down – the enclosures created by the award disturb the old route shown by Andrews and Dury in 1773 and it is averred that the awarded southern section of Teffont 9 replaces the ancient route . This is further supported by the description in the 1800 award of the allotment Pc164 (currently part of Mr Wood’s Manor Farm) as having a Drove Way at its eastern boundary. It would have been a necessity to have a droveway allowing access from the Turnpike Road to the cow and sheep downs before enclosure and the evidence supports the existence of a more ancient route from the village to the downs part of which formed a boundary with Pc164. It is likely that the awarding of the route as a public Road and driftway (and not the more common private carriage roads and driftways) reflected this wider use.

- 9.18 A total of 5 roads were awarded in 1800. 2 Public Roads or Driftways (Teffont 9 and a route leading from it not recorded as a public right of way today - leading from Teffont 9 east to Teffont Ground) and 3 Private Carriage Roads or Driftways. These 3 are south of the Turnpike in the region of Teffont Common.
- 9.19 The first Public Road and Driftway (Teffont 9) was awarded at a width of 33 feet, the second at a width of 20 feet. The three private carriage roads and driftways were awarded at a width of 15 feet.
- 9.20 The award of 33 feet is an unusual measurement in the context of the award but it is likely to refer back to the more ancient measurement, the perch. 33 feet equals 2 perches. Officers have viewed an earlier (mid 18th century) enclosure award covering another Wiltshire parish (Purton) that makes their award of roads in perches and the unit was generally in more common use in earlier times. Hence it is possible, but not demonstrated, that the route being two perches wide refers to an earlier reference to this route.

9.21 **Plan only 1553/122**
Book of Reference for Plan 2057/5/113

The plan is the same as the award plan entitled “A Plan of the Manor of Teffont Magna in the County of Wilts the Property of George Earl of Pembroke and Montgomery. Survey by Jn Charlton. 1801.” Drawn at a scale of 6 chains to 1 inch.

- 9.22 The map identifies “Jack Thornes” and “Thickthorne Field” – old enclosures predating and surviving the enclosures of 1800 and 1837. These enclosures are also identifiers for the location of Teffont 9 in various descriptions.
- 9.22 The map appears to be numbered as the plan accompanying the Agreement Award and the Book of Reference contains detail of allotments using the same nomenclature. For example Ps 165 is described as “Common Field Arable Land – late Cawdreys” and Pc164 is described as an “Allotment to be enclosed “. Lj 139 is “enclosed arable” and Im138 “Part of Earl of Pembrokes Inclosure called Jack Thorns allotted to him in lieu of Right in Teffont Common”.
- 9.23 The Book of Reference contains entries from 1801 and has then been updated for example in some cases 1834 and 1844. It appears to have been used for estate management purposes by the Earl of Pembroke after the enclosure process.

9.24 **Parliamentary Enclosure**

Documents:

- 1) **An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts 2nd July 1801 WSHC 41 Geo III 109 (1801 Inclosure Consolidation Act or 1801 General Act) **APPENDIX A (notes)****

2) **An Act for dividing, allotting and inclosing lands in the Parish of Dinton 24th June 1822** (*1822 Local Act*) **APPENDIX B**

HoL HL/PO/PB/1/1822/3G4n180 and WSHC X4/18

3) **An Act to amend the Law respecting the inclosing of Open Fields, Pastures, Moors, Commons and Waste Lands in England 19th April 1821** WSHC 2057/124 (*1822 General Act*)

4) **Dinton and Teffont Magna Inclosure Award 1837** WSHC EA150 (*Award*) and WSHC 2069/16 Certified copy of Award - transcript **APPENDIX C**

- 9.25 The inclosure of part of Teffont Magna by agreement in 1800 caused the southern part of the cow and sheep downs to be inclosed creating closes on the downs to the east of Manor Farm and formally awarding the public road at a width of 33 feet that is now recorded as part of Teffont 9 (albeit as a bridleway and at a lesser width).
- 9.26 A number of small allotments were also created in the 4 large fields therein created leaving the down to the north and north east of Manor Farm unenclosed.
- 9.27 This system of land management and arrangement of enclosures and roads appears to have persisted for just over 20 years before further enclosure was required to complete the enclosure of the parish (including the remaining sheep down) and to more satisfactorily manage the multiple allotments in the four large fields created by the 1800 agreement.
- 9.28 In 1822 an Act of Parliament empowering commissioners to do this gained Royal Assent and a copy of this Act is appended at B (and hereafter referred to as “the 1822 Local Act”). The commissioners appointed to bring about this enclosure and allotment were John Charlton of Stourton and John Seagrim of the Borough of Wilton and they were empowered to act under the terms of the 1822 Local Act, the 1801 Inclosure Consolidation Act (see 9.24 for full title – Appendix A for relevant extracts) and the 1822 General Act (see 9.24 for full title).
- 9.29 The 1822 Local Act laid out procedures to be followed in the event of the incapacity or death of either commissioner, the appointment of umpires, details of requirements for public notices and meetings, details relating to disputes and costs, the power to extinguish rights of common, the requirement to make allotments to the vicar, power to re-allot lands already allotted, power to order depasturing of lands pastured in common, details of fencing arrangements for allotments, details for managing exchanges and details of how the Award is to be deposited and appealed.
- 9.30 Nothing in the 1822 Local Act alters or relates to public roads and the provisions of the 1801 Inclosure Consolidation Act apply.
- 9.31 Inclosure changes the local landscape by forming and allotting enclosures or closes. It alters the manner by which people may get around their lands and their parish and alters the way people travel through the parish on a longer journey. The

commissioners did not have specific powers to stop up existing highways without recourse to the justices at Quarter Sessions and as a result it was common practice to form enclosures around existing or ancient highways wherever possible.

9.32 As well as being a statutory provision it was also a matter of practicality that caused commissioners to first set out and agree the highway network before moving on with the allotment of the land enclosed by their creation.

9.33 Before looking specifically at the chronology of events in the Dinton and Teffont Magna Inclosure award dated 1837 it is useful to look at the general procedure followed to bring about enclosure, the formation of the highway network and the titles, deeds and subsequent conveyances of the plots of land that derive from the process.

9.44 **Process and Procedure for Parliamentary Enclosure** (From A Crosby “The Process and Procedure for Parliamentary Enclosure)

- Preliminary discussions between landowners and possibly tenants
- Canvassing support
- Publication of a notice declaring the intention to enclose and to seek parliamentary authority
- Public meeting of proprietors to adopt resolution to petition parliament
- Petition to the House of Commons; Bill prepared by local MPs
- Obtaining consents; the views of all proprietors of land had to be sought
- Counter petitions and opposition
- ‘State of Property’ document submitted
- Draft Bill prepared, checked by enclosure lawyers and presented in the House of Commons, usually by a local MP
- Passing of the legislation – Royal Assent. The Bill becomes an Act.
- The commissioners begin work, hold meetings, appoint surveyors to do detailed design and laying out work, issue notices, make orders such as any road closures needed), direct fencing, ditching etc as required.
- Design stages including drafting maps
- Negotiation about claims, compensations, allocation of land for public uses such as highways, gravel pits, poor allotments etc

- Prepare enclosure map
- Draw up Enclosure Award
- Implementation involving pegging out new boundaries, construction of new hedged or fences, ditches, denying access to common land.
- Obtain costs
- When all the work has been implemented to the satisfaction of the commissioners a fair copy of the map and award were signed and sealed and enrolled. That is given full legal force and in effect confirmed irrefutable title to land – and – in theory at least – to highways and other routes. Copies deposited with Clerk of the Peace and other parties – perhaps the Lord of The Manor, major proprietor etc

9.46 The Chronology for the events leading up to the Dinton and Teffont Magna Inclosure Award 1837 are as follows:

The award was enrolled with the Clerk of the Peace for Wiltshire on February 11th 1837.

Chronology

1800 Cow Down and other lands inclosed by agreement in Teffont Magna. Southern section of Teffont 9 awarded as a public Road and driftway at a width of 33 feet.

From text of award:

1822 Private act passed for inclosure in Dinton and Teffont Magna

1822 John Charlton and John Seagrim appointed commissioners

25.11.1822 First meeting. Notice places in Salisbury and Winchester Journal 11.11.1822 and on the door of Dinton Parish Church (10.11.1822)

John Charlton and John Seagrim took oaths (enrolled with Award). Appointed John Hayward of West Lavington as an umpire. He took an oath on this day and this is enrolled with the Award.

5th meeting John Charlton and John Seagrim nominated Charles Pearson Charlton as surveyor and instructed him to produce a survey.

After divers meetings held by John Charlton and John Seagrim to consider and examine claims, allegations, objections and to settle and ascertain rights they “did set out appoint the several public carriage roads and highways” in a way that “appeared most commodious to the public”.

- 27.07.1823 Maps showing the roads were deposited with the Clerk of the County John Swayne for inspection. Salisbury and Winchester Journal notice 04.08.1823.
- 27.08.1823 Meeting to be held to hear from anyone aggrieved or injured by the setting out and appointment of the public roads
- 1823 – 1824 John Charlton and John Seagrim finished their divisions and allotments but John Charlton died before the award was prepared and enrolled
- 15.11.1826 Meeting to be held at the Pembroke Arms Inn, Wilton to appoint a commissioner to replace John Charlton. Notice given by William Wyndham and William Barnes in the Salisbury and Winchester Journal on 28.10.1826 and on the Dinton parish church door on 28.10.26.

William Wyndham and William Barnes appointed Charles Pearson Charlton as a commissioner in place of John Charlton. He took the oath on 15.11.1826

Further to more meetings John Seagrim and Charles Pearson Charlton instructed their clerk to prepare the award. This was done and the award approved and ordered to be engrossed but further applications were made for other exchanges between certain owners and proprietors and the engrossment was suspended while John Seagrim was taken severely ill. He died in May 1832.

- 29.08.1832 William Woodcock was appointed as commissioner to act with Charles Pearson Charlton and took the oath on 4.12.1832 (annexed to award).

William Woodcock and Charles Pearson Charlton revised the surveys, valuations and proceedings of John Seagrim and Charles Pearson Charlton and judged them fair and just.

Charles Pearson Charlton undertook to correct the maps and plans but died in May 1834 and all proceedings were again suspended.

- 20.06.1834 Meeting held by William Masten Barnes and William Douty (by notice in the Salisbury and Winchester Journal on 06.06.1834 and on Dinton parish church door 05.06.1832) and appointed James Poole to be a commissioner in place of Charles Pearson Charlton and he took the oath.

James Poole had for many years worked with John Charlton and Charles Pearson Charlton during the progress of the division and allotment and had assisted in the preparation of maps and plans.

He carefully revised and examined the whole and James Poole and William Woodcock held meetings and duly informed themselves that proprietors and persons had long ago entered into and were in possession of the allotments.

1837 James Poole and William Woodcock declared that maps A and B should be enrolled with the award.

11.02.1837 Award and Plans enrolled with Jn Swayne, Clerk of the Peace in the County of Wilts.

9.47 **Public Notices** A number of public notices in the Salisbury and Winchester Journal have been viewed (11.11.1822, 18.11.1822, 25.11.1822, 04.08.1823, 28.10.1826). The notices support that due process was followed.

04.08.1823

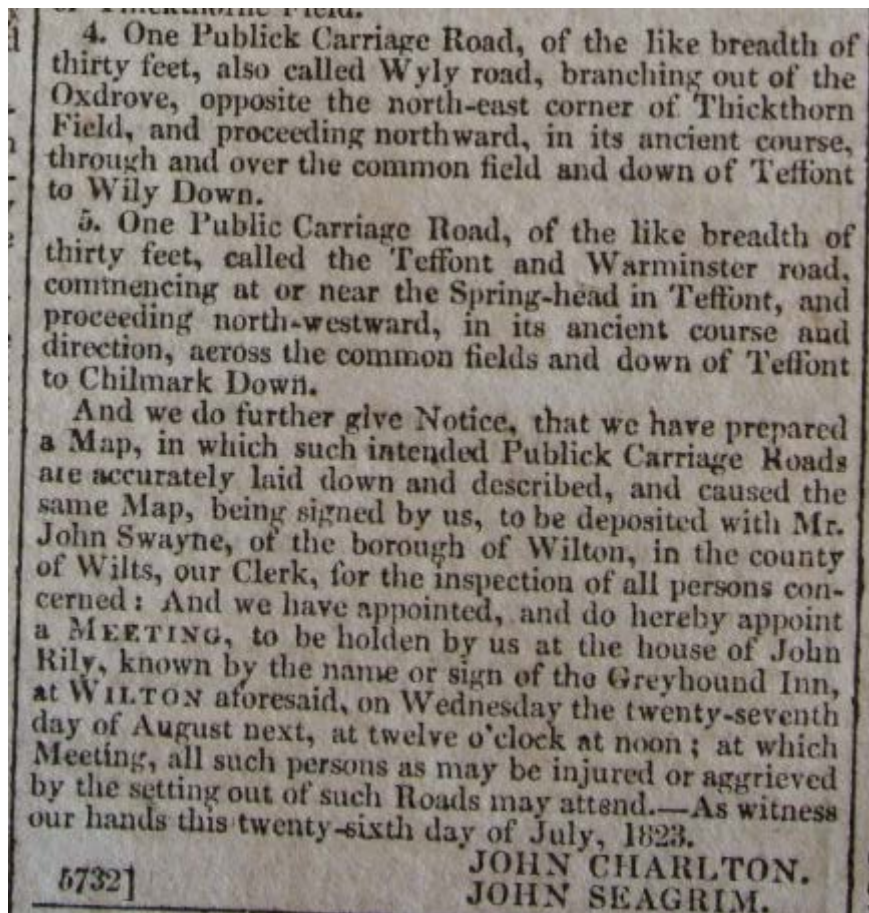
DINTON INCLOSURE.
WE, JOHN CHARLTON & JOHN SEAGRIM, the Commissioners named and appointed in and by an Act of Parliament for allotting and inclosing Lands in the parish of Dinton, in the county of Wilts, by virtue and in execution of the power given, as well by the said Act as by a certain Act of Parliament passed in the forty-first year of the reign of his late Majesty King George the Third, intituled "An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure, and for facilitating the mode of proving the several facts usually required on the passing of such Acts," Do hereby give Notice, that we have set out and appointed the following **PUBLICK CARRIAGE ROADS** through and over the Lands and Grounds in the said first-mentioned Act, intended to be divided and allotted in manner directed by the last-mentioned Act. The general lines of which Publick Carriage Roads are hereafter described (that is to say),

No. 1. One Publick Carriage Road and Driftway, called the Oxdrove, of the breadth of one hundred and ten feet, commencing at New Inn Lane, in Dinton, and proceeding westward, in its ancient course, through and over the downs of Dinton and Teffont, to Chilmark Down.

2. One Publick Carriage Road, of the breadth of thirty feet, called the Dinton and Warminster road, commencing near the north-west corner of an old inclosure called Little Wayfield, in Dinton, and proceeding north-westward, in its ancient course, through and over Dinton Down and the common fields and down of Teffont, to Dapton Down.

3. One Public Carriage Road, of the like breadth of thirty feet, called the Wily road, branching out of the old turnpike road from Salisbury to Hindon, at Jackthornes, in Teffont, and proceeding northward, in its ancient course, through and over the common fields and down of Teffont to the Oxdrove at the north-west corner of Thickthorne Field.

Teffont 9



9.48 Roads

The award sets out 1 Public Carriage Road and Driftway (110 feet wide), 4 Public Carriage Roads (30 feet wide), 11 Private Roads (20 feet wide) and 1 Public Footpath (6 feet wide).

Public Carriage Road and Driftway number I is "The Ox Drove".

Public Carriage Road number II (2) is the "Dinton and Warminster Road".

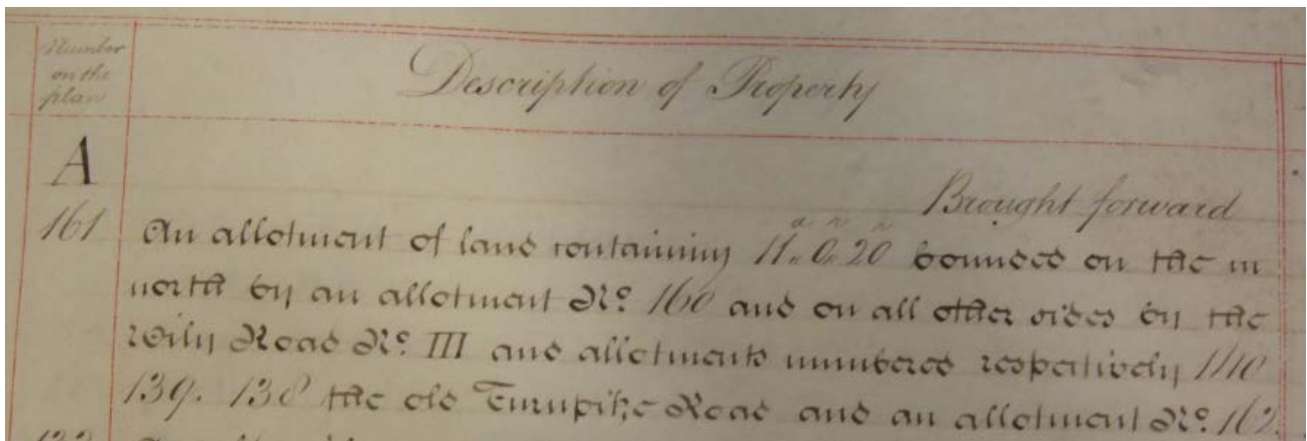
Public Carriage Road number III (3) is "The Wyllye Road" **This is Teffont 9**

Public Carriage Road number IV (4) is "The Wyllye Road" – a continuation north of the Ox Drove

Public Carriage Road number V (5) is "The Teffont and Warminster Road"

9.49 Allotments in the region of Teffont 9

Land allotments are shown on the Plans and are numbered. Roads are shown on the Plans also numbered and named as above. The Award has a detailed table of descriptions of the allotments. Below is an example:



“161 An allotment of land containing 11.0.20 (a.r.p) bounded on the north by an allotment No. 160 and on all other sides by the Wily Road No. III and allotments numbered respectively 139, 138, the Old Turnpike Road and an allotment No. 162.”

The following allotments form the western boundary of Public Carriage Road no. III Wyllye Road:

140, 161, 160 and 159

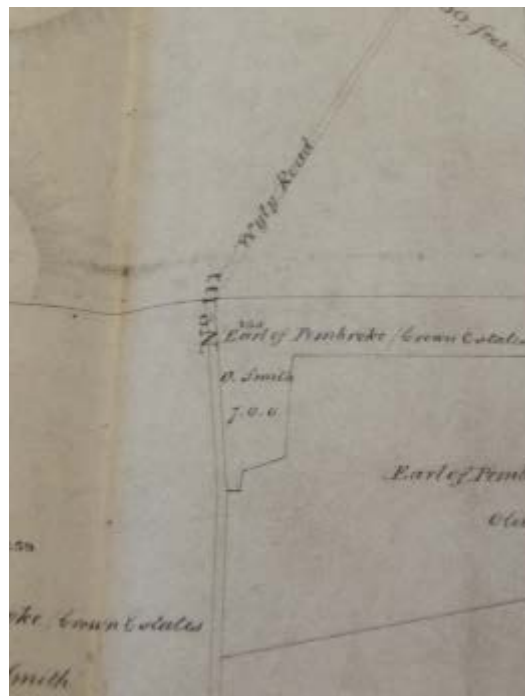
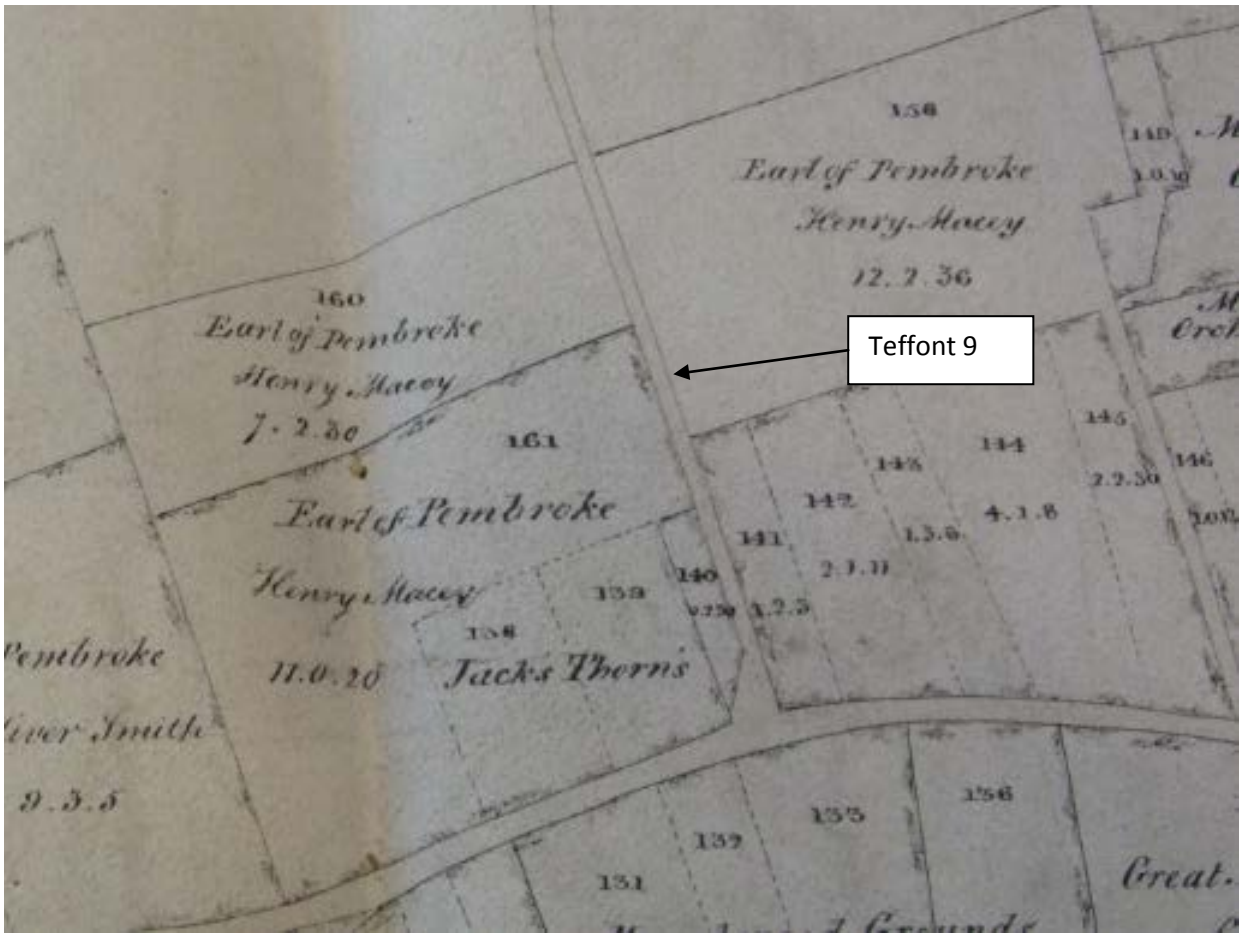
The following allotments form the eastern boundary of Public Carriage Road no. III Wyllye Road:

155, 156, 157, 158 and 141

Wyllye Road leads through allotment no. 185 but does not form a boundary to it (it is described as “being bounded by the Public Road called the Ox Drove No. 1”)

Descriptions for all of the above allotments include the following:

- 140 “bounded on the east and south by the Wily Road no III...”
- 161 “bounded on the north by allotment 160 and on all other sides by the Wily Road no. III and allotments...”
- 160 “bounded on the east by the Wily Road no III...”
- 159 “bounded on the east by the Wily Road no III...”
- 155 “bounded on the west by the Wily Road no III...”
- 156 “bounded on the west by the public road called the Wily Road no III...”
- 157 “bounded on the west by the public road called the Wily Road no III...”
- 158 “bounded on the west by the Wily Road no III...”
- 141 “bounded on the west by the Wily Road no III...”

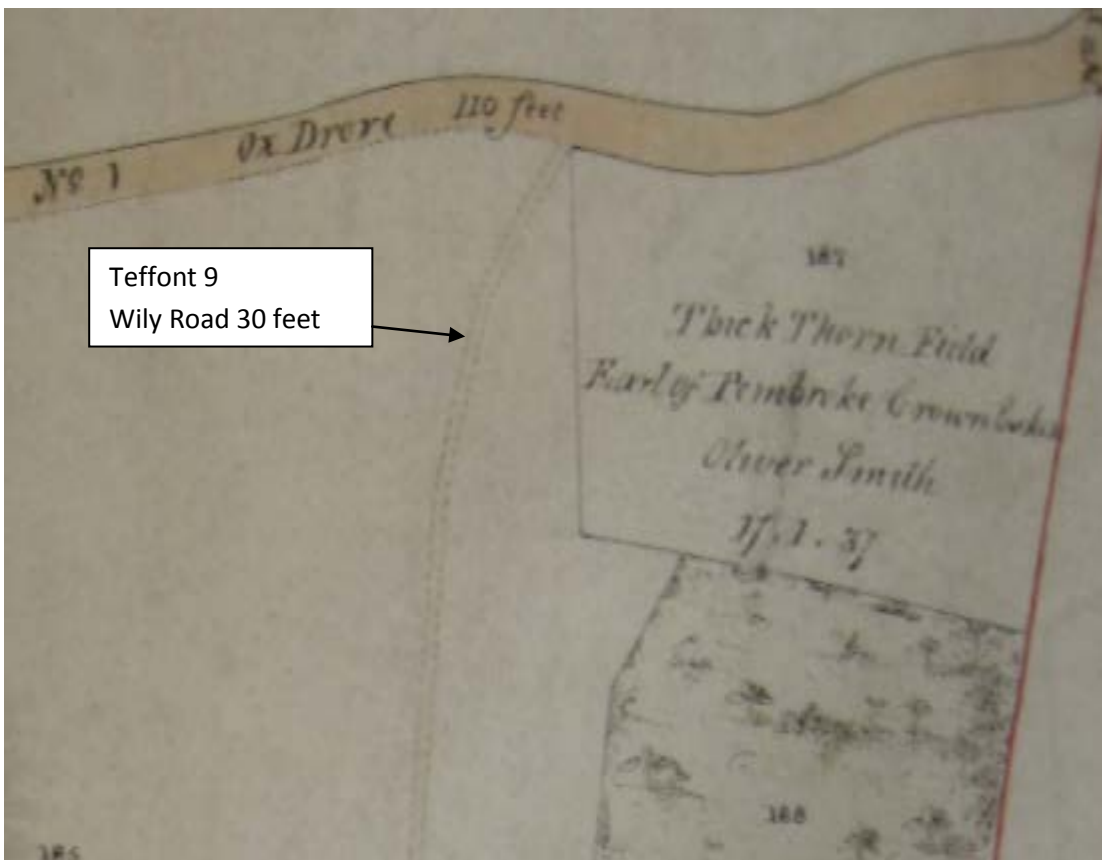


9.50 **Description**

The award describes No. III One Publick Carriage Road as:

“of the breadth of thirty feet called the Wyle Road branching out of the Old Turnpike Road from Salisbury to Hindon at Jackthorns in Teffont and proceeding northward in its ancient course through and over the common fields and Down of Teffont to the Oxdrove at the north west corner of Thickthorn ffield.”

The Old Turnpike Road is today called the Old Dinton Road but is shown on the plan as The Old Turnpike Road. Jackthorns are old enclosures at the corner of the Old Turnpike Road and the Wily Road no III and are clearly labelled on the enrolled plan. Thickthorn ffield is also clearly labelled on the enrolled plan and the Wily Road no III is labelled twice along its length.



- 9.51 With regard to the roads the Commissioners were required to “set out and appoint” the proposed “public carriage roads or highways” ascertain them on the ground with marks and bounds, prepare a map on which the routes could be inspected and then advertise and convene a meeting at which any local persons aggrieved by the proposals could lodge an objection. Commissioners were required to appoint a surveyor who was to be responsible for “the first forming and completing such parts of the [public carriage roads] as shall be newly made, and for putting into complete

repair such parts of the same have been previously made” (S.9 1801 Inclosure Consolidation Act).

- 9.52 The 1801 Inclosure Consolidation Act required application be made to the Justices for a certificate to record the routes so created as being repairable by the public at large.
- 9.53 S. 9 of the Act required application to be made to Justices in Special Sessions (rather than Justices acting in the general Quarter Sessions) and Justices acting outside of Quarter Sessions, at Special or Petty Sessions, were not required to keep notes of their proceedings nor submit records of the meetings to any higher court. (*Rights of Way Law Review 2003 9.3 p 160*)
- 9.54 There are no known records in Wiltshire of the certification of any highways by Justices sitting at Special Sessions and accordingly no certificate for III. The Wily Road - Teffont 9 has been found.
- 9.55 As a result it is not known whether application was ever made to the Justices. Certainly a presumption of regularity would apply as the award of the road was within the powers of the Commissioners, was clearly formed and made up, hedges planted and adjoining land parcels described within the award, formed and continue to be subject to deeds and registered titles. Indeed the adjacent landowners rely upon the Act and Award as the basis of their title to the land and the existing publicly maintained highway network in many cases arise from it. Further the process was a clear indication of the intention of the landowners, at that time, to provide certain land for use by the public in return for the inclosure of the formerly common land, to their advantage.
- 9.56 Looking beyond the presumption of regularity the certification procedure sits uncomfortably with these highways. Alex Lewis LLB in her article “Inclosure: Justices Certificates” *Rights of Way Law Review Nov 2003 s.9.3 p.161* observes that prior to the 1801 act the pre inclosure roads would have been repairable by the parish (the southern part of Teffont 9 pre-dates parliamentary enclosure) yet the 1801 Act required a certificate to be obtained before the roads are repairable by the very body of people whose responsibility they were before inclosure. Further, the 1835 Highways Act altered the way maintenance responsibility was acquired by the public, making all pre-1835 highways repairable at public expense (as ancient highways). Hence because the Dinton Inclosure Award was not enrolled until 1837, and because the Award recognised that the roads and allotments had long been laid out, it is a fact that they were public highways by 1835 and hence repairable by the public at large anyway.
- 9.57 **The Hedgerows**

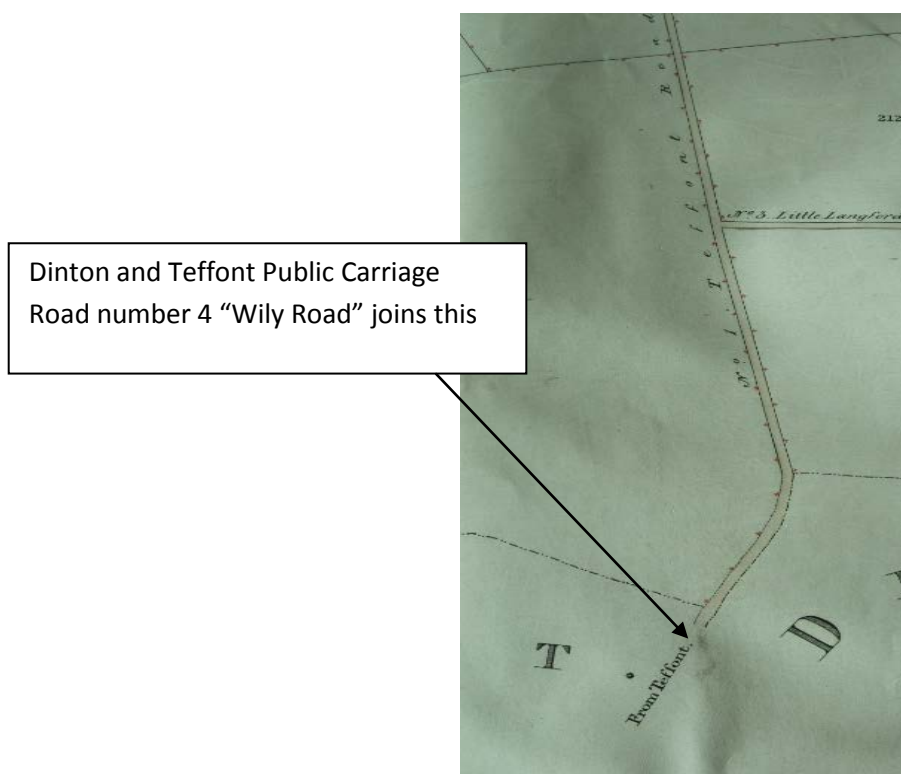
The 2014 application relates to recording a width for Teffont 9. The evidence from the Inclosure Awards of 1800 and 1837 support that the way was awarded to the public at two widths, 33 feet for the southern section and 30 feet for the whole length as a result of the 1837 award. Maps used for both awards support that there were no changes to the boundaries of the southern part of Teffont 9 for the 1837 award (and it could not have been practicable to do so for the sake of 3 feet) and both awards support that the boundaries of the land forms the highway boundary.

- 9.58 No historical evidence has been viewed or adduced to contradict this.
- 9.59 In an article entitled Hedgerow protection by Graham Watson LL.B Rights of Way Law Review October 1997 s.9.3 p. 85 – 88 it is stated that case law has established that where a hedgerow runs beside a highway it will normally be presumed to have been planted in relation to that highway so that a public right of passage and repassage will include the land up to the hedge. *"In Offin v Rochford Rural District Council [1906] 1 Ch 342 Warrington J stated: "...if you find a fence by the side of a highway, then prima facie that fence is the boundary of the highway, unless you can find some reason for supposing that it was put up for a different purpose."* Thus hedgerows are indicators of rights of way and there is a rebuttable presumption that the highway extends between them. Officers are not aware of any other purpose for these hedgerows other than to define the boundary between the fields and the highway.
- 9.60 Officers are aware that Mr Justice Morgan sitting in the High Court of Justice at Bristol ([2014] EWHC 1358 (Ch) and hearing a case on the application of Mr and Mrs D Wood of Manor Farm against their neighbour Mr E Waddington of Teffont Field Buildings recently determined that the bridleway Teffont 8 did not extend beyond the central tarmac strip to include the verges.
- 9.61 The case related to whether Manor Farm had a right of access from its land to Teffont 9 (through the hedge line and onto the bridleway 'verge'). Morgan J determined that it did not. The decision is understood to be the subject of an appeal.
- 9.62 Mr Justice Morgan was not provided with a copy of either Dinton/ Teffont Magna Inclosure awards (though reference was made to an award at para 23 of the judgement) and neither party relied on inclosure in their evidence. No mention was made to the judge of the 2005 application or the evidence it adduced relating to width and the case did not turn on historical evidence. Although user evidence for the verges will be discussed later officers consider that the judgement has no relevance for these investigations. It related solely to the existence of a private right for Manor Farm.
- 9.63 **Wylie Inclosure Award 1861** WSHC EA187
Wylie Inclosure Commissioners Minute Book WSHC 2057/I/24

The Dinton and Teffont Magna Inclosure award 1837 awards Public Carriage Roads numbers 3 and 4 as “The Wily Road”. Number 3 is the route now recorded as Teffont 9 and number 4 is a short section of road which now forms part of road C.24 to Wyllye. It leads north from the Ox Drove to the parish boundary.

- 9.64 Although today the C.24 continues south to Dinton, in 1837 it did not (the public road past Marshwood is a later public road) and the route connecting Wyllye with Teffont involved using awarded route number 4, part of the Ox Drove and then south down awarded route number 3 – Teffont 9 and into Teffont on the old turnpike. It is therefore sensible to look at the Wyllye award to see whether a road was awarded there to link up with this route as the road to Teffont.
- 9.65 It is noted that J Poole was a commissioner for both the Dinton and Teffont award and the Wyllye award.
- 9.66 Three public roads (all public carriage roads and driftways) and 7 private carriage roads and driftways were awarded in Wyllye and the road connected to Wyllye Road number 4 in the Dinton and Teffont award is awarded as public carriage road and driftway number 1 at a width of 30 feet and labelled as “The Teffont Road” and labelled “from Teffont” at its southern end where it leaves Wyllye parish.
- 9.67 The award states: “No. 1 One Public Carriage Road and Driftway of the width of Thirty Feet called the Teffont Road branching out of the public highway from Bapton to Hanging Langford between Homestead and Gardens to near the North East Corner of an allotment to the said Earl of Pembroke numbered 174 in the said Map and extending southward in its ancient course and direction until it enters the Chapelry of Teffont Magna in the Parish of Dinton near Mr Wyndham’s Beech Trees”.
- 9.68 The commissioners’ minute book records a number of events including: July 27 1840 “attended their adjourned meeting employed in subdividing the allotments and making map of proposed new public roads staking out same and preparing description of such Roads to be published and advertised.” Duly advertised Salisbury Wiltshire Herald August 01 1840.
- 9.69 At a meeting at The Bell Inn, Wily as advertised to hear objections from aggrieved persons, “No person attended to make any objection to any or either of the public carriage Roads and Driftways proposed and intended to be set out”.
- 9.70 The procedure was repeated for the private carriage roads in October 1846 and no one objected to those either. A further meeting was held in 1860 to resolve an objection with Public Road number 2 and private road number 2 to allow for a wooden sheep bridge and on September 5th 1861 the commissioners finally met and the examined the engrossment of the award produced by the clerk on the 4th September and executed the same on the 5th September 1861.

9.71 Extract from map:



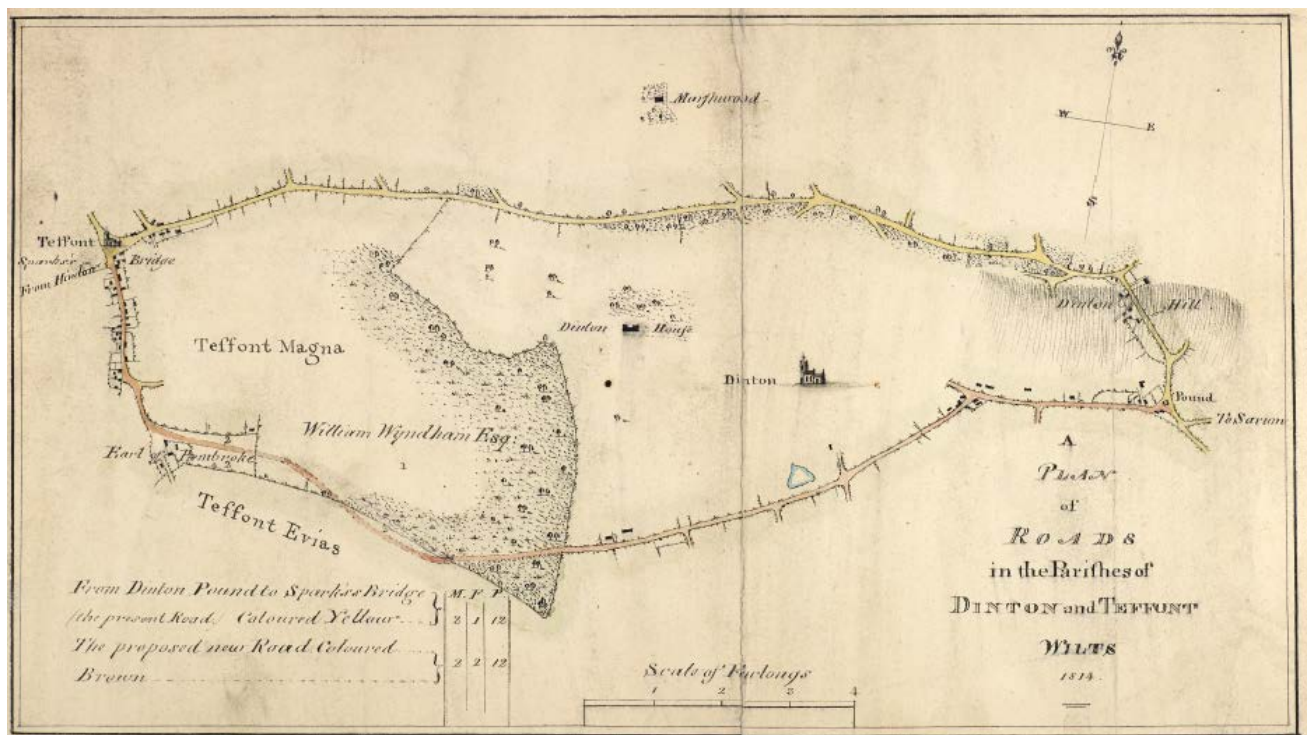
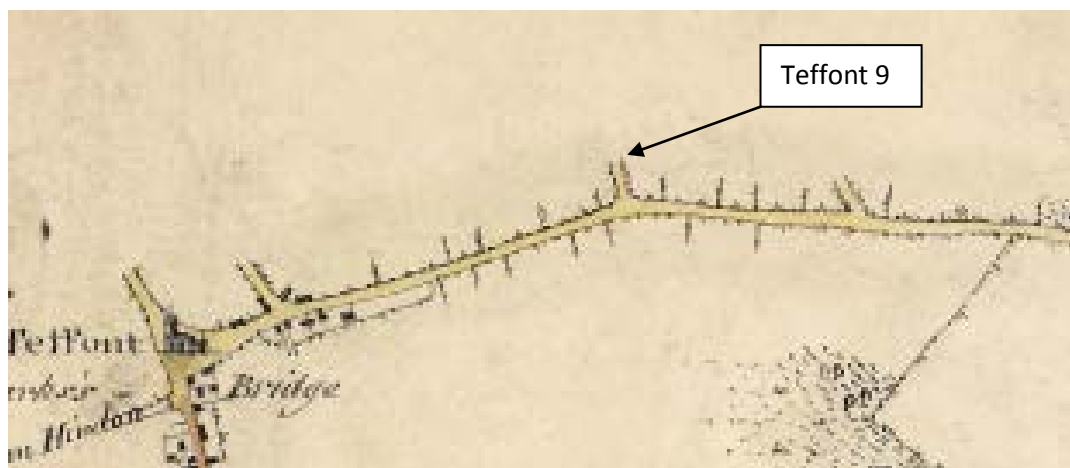
9.72 The Wylie evidence is consistent with the route of Teffont 9 being part of the road linking Wylie (Wily) with Teffont at this time. The 1861 award in Wylie refers to the route as being on its "ancient course and direction". The award of the width is also consistent (30 feet).

9.72 **Other Category A Evidence**

In Wiltshire Quarter Sessions records have been searched and indexed for highway references and no entries relating to the route of Teffont 9 have been found. Additionally no applications or orders for diversions, closures or creations from 1750 – 1971 relating to the route of Teffont 9 have been found. No Orders relating to the route have been found in other public records to date of report.

9.73 The southern end of Teffont 9 meets the Old Dinton Road. This road was the turnpike road until the early 1800s. In 1814 a plan and book of reference was deposited with the Clerk of the Peace of the County of Wiltshire (30.09.1814) detailing the new road that was to be created leading from Dinton Pound to Sparks's Bridge, Teffont Magna (these documents are held at WSHC A1/370/46HC). The documents were then presented to Parliament as the Fisherton Road Bill dated 8th May 1815. These documents are held at the House of Lords Record Office HL/PO/PB/3/plan19 (Act 55 GeoIII c.62) and have been viewed.

- 9.74 The plan deposited both with the Clerk of the Peace and with Parliament shows a road joining the “present road” at the position of Teffont 9, however, a number of other junctions are also represented on the plan and officers consider that other than supporting that a road on the route of Teffont 9 existed at this time – and was sufficiently significant to be represented – the document has little evidential weight despite being a Category A piece of evidence.
- 9.75 The new road had been built by the time the 1837 Dinton and Teffont Inclosure Award plan was made as this shows “The Old Turnpike” and “The New Turnpike”.
- 9.76 Excerpts from the deposited plan:



9.77 In Wiltshire Petty and Special Sessions Justices' minute books have also been indexed for highway references. Although no entry relating to Teffont 9 has been found the following entry relating to the adjoining route in Teffont, the Ox Drove has been noted: It provides a useful insight into how the extent of the highway (the Ox Drove was awarded at 110 feet) was viewed in 1896.

28.5.1896 Game trespass in gorse in the oxdrove, Teffont. Farmer's statement "*The oxdrove is a free right of way to the public, but is let with the farm to me.*"

9.78 No deposits plans for railways or canals affect the area close to Teffont 9 (the closest is south of Teffont Evias).

10.0 Category B Evidence

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

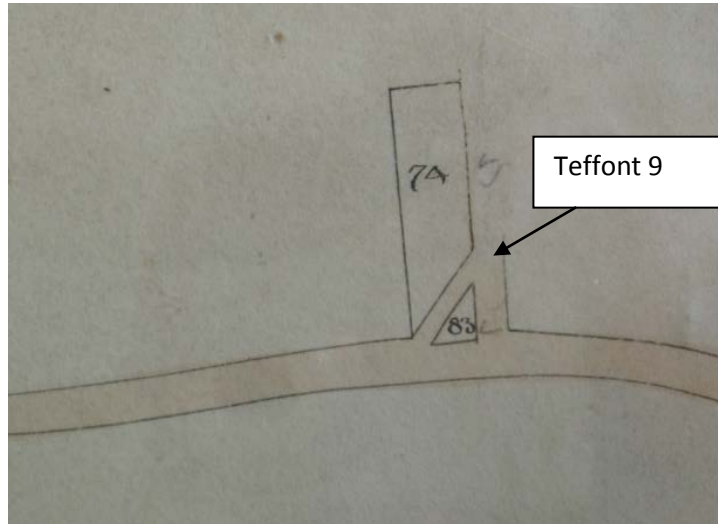
10.1 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly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

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

10.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians by Roger J P Kain and Hugh C. Prince*) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.

10.4 **Dinton and Teffont Magna Tithe Award 1840** WSHC TA/Dinton

The apportionment is dated 28.04.1840 and the map is dated 1840. The map was made by J Poole, Sherbourne, Dorset and is drawn at the scale of 6 chains to one inch. The map is drawn in some part to the suggested standard, with roads coloured sienna, watercourses blue, inhabited properties in red, uninhabited properties in grey. Only roads that form apportionment boundaries are shown (the Ox Drove is omitted) and hence a short length of Teffont 9 is shown branching out of road C.277 where it abuts two apportionments and is shown coloured sienna. The remainder of the surrounding land is owned by the Earl of Pembroke.



10.5



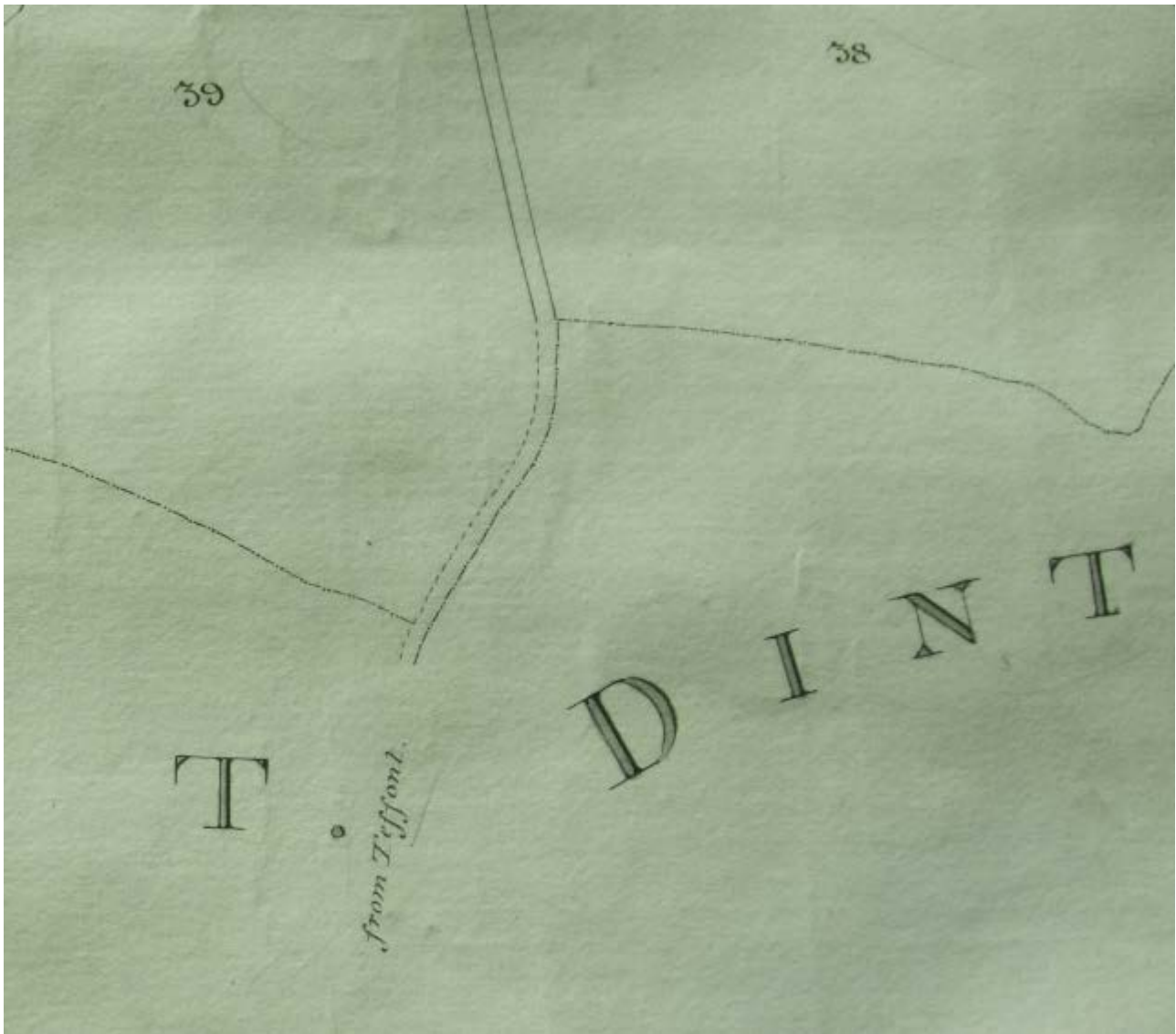
10.6 The junction of Teffont 9 with the old turnpike road (the Old Dinton Road) is often depicted on maps as being splayed in the manner it is on the tithe map. This arrangement would have reflected its utility as a droveway if sheep (or cattle) were being herded from Teffont to the downs as the inviting ‘funnel’ shape would have greatly assisted herding from that direction. The tithe map records the two parcels here as follows:

Number on plan	Owner	Occupier	Description
74	Joseph Mullens	John Macey	Jackthorns
83	Earl of Pembroke	James Mullens	Garden

10.7 The roads are un-numbered and are not included in the tithe apportionment.

10.8 **Wily Tithe Award 1841** WSHC TA/Wylye

The Apportionment for Wily (Wylye) is dated 22.09.1838 and the map is dated 1841. It was drawn at a scale of 6 chains to one inch by J Poole, Sherbourne, Dorset and shows houses, water meadow channels. No roads are shown coloured but are shown with destinations on some routes where they leave the parish. The route corresponding with the road to Teffont (as referred to in the 1861 Wily Inclosure award as being on its ancient course and direction) is labelled “From Teffont”.



10.9 The roads are un-numbered and included under a heading “Roads, Rivers, Waste and c” and are free from tithe (or rent charge).

10.10 Inland Revenue Finance Act 1909/1910 Records

Plans WSHC L8/10/59 and L8/10/65

Valuation Book WSHC L8/1/154

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

and common land were generally carefully identified and included in the documentation.

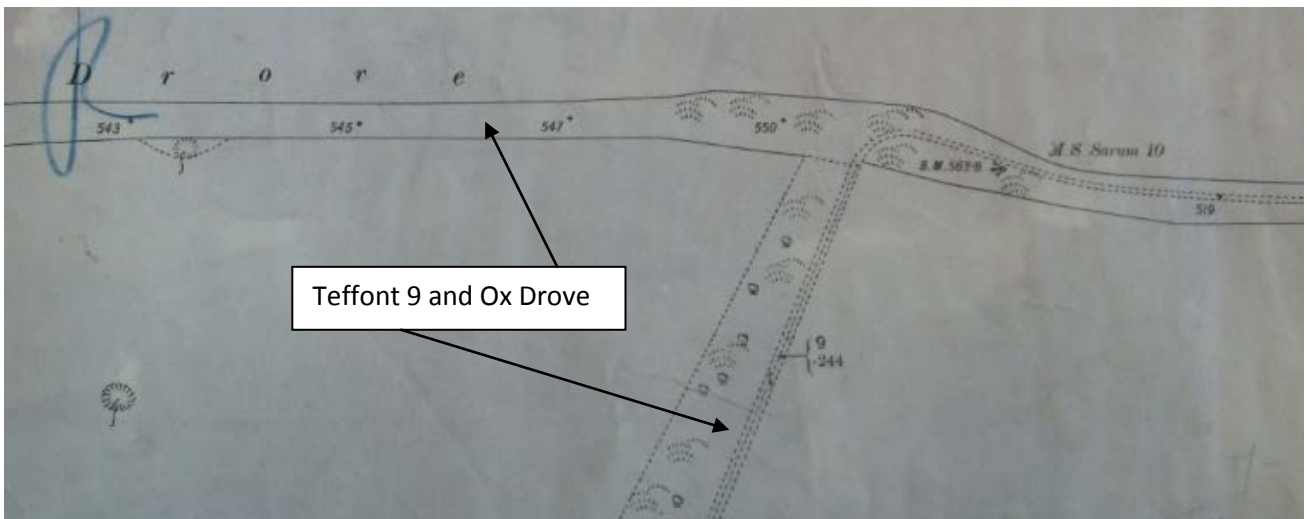
- 10.11 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 "An Edwardian Land Survey: the Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

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

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

- 10.12 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and undoubtedly provide the most accurate record of the landscape that we have for that time. Sheets 65.1, 65.5 and 59.13 (L8/10/65 and L8/10/59) have been viewed.
- 10.13 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 10.14 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that "No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority".
- 10.15 The route of Teffont 9 (and the Ox Drove and other tracks in the area) are coloured blue (65.5) or purple (65.1 and 59.13) and are all included in hereditament no 312. 312 is The Earl of Pembroke's Manor farm, Buildings and Land and covers 1067 acres. The valuation book records no deductions for rights of way or easements.

10.16



10.17 The Valuer was J Groome of Dinton, Salisbury. It is unlikely that a local person would not have been aware of the public rights of way in the area, especially one so historically significant and wide (110 feet) as The Ox Drove and officers can not

Page 74 of 115

explain why the valuation does not allow for any relief as a result of them. It is however noted that the maps have a large blue letter “R” written on top of them and in previous cases with large estates (for example the War Department lands on Salisbury Plain) this has denoted that records are kept separately. These additional records have not survived.

10.18 The Finance Act plans held by the Wiltshire and Swindon History Centre are working copies. The Record plans are held by the National Archive at Kew. Officers have been able to view images of these (provided as part of Natural England’s Lost Ways Project) and these show the same representation as the working copies.

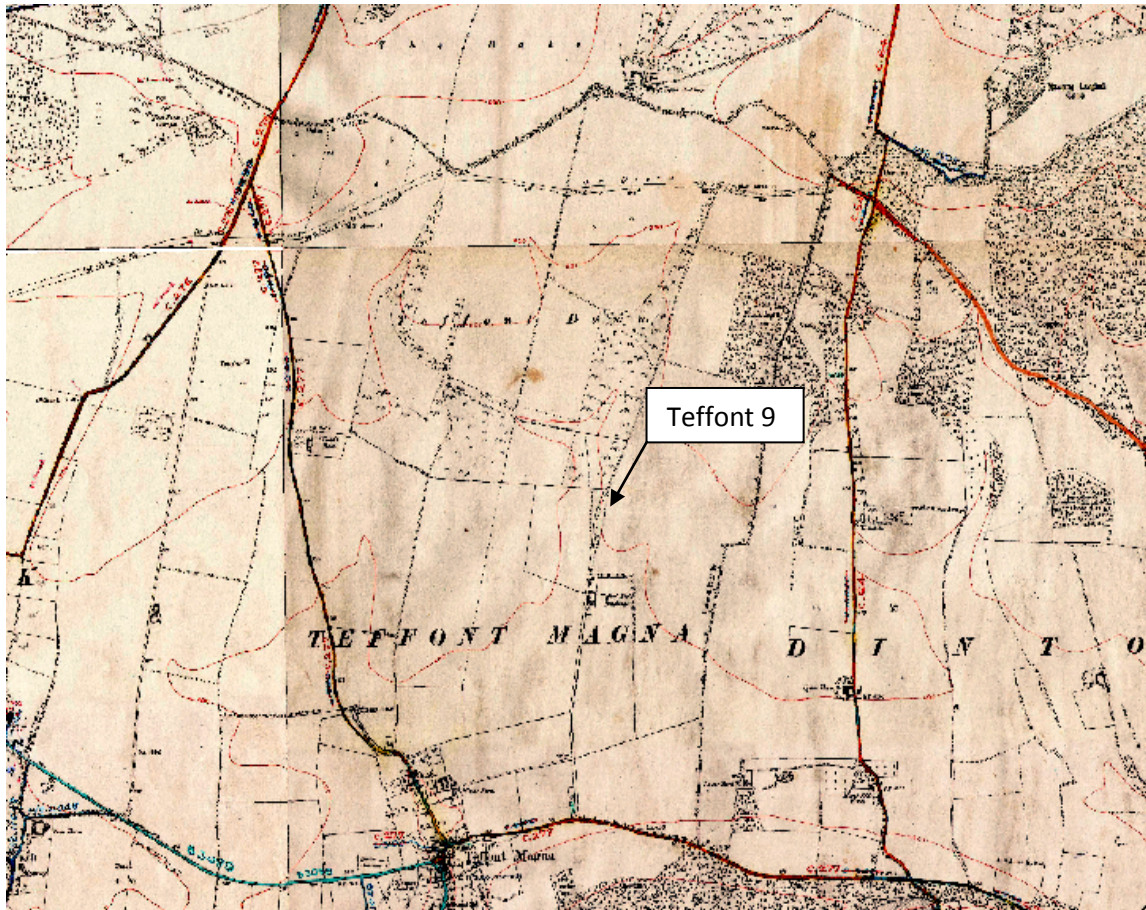
11.0 Category C Evidence

Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

11.1 Rural District Council Highway Takeover Maps and County Council Highway Record

As a result of the Local Government Act 1929 the responsibility for the maintenance of rural roads was passed from Rural District Councils to the County Council. In Wiltshire the maps transferring this information are known as Takeover Maps. This information was then used to produce the County Council’s Highway record. Teffont 9 is not shown as a road for which either the RDC or the CC had maintenance responsibility. It is noted that the Ox Drove is not shown on either map either. This is often the case with ‘down tracks’ in Wiltshire. Tracks over chalk downland would have received little or no maintenance and it is noted that the non-representation of Teffont 9 (and the Ox Drove) in these records is by no means unusual.

11.2 This is consistent with the comment in the Court of Appeal in *Eyre v New Forest Highway Board (1892)* “*The duty to repair an ancient highway was always co-extensive with the right of passage of the public. The liability of the parish attached though there were thousands of instances in which it was never exercised.*”



Excerpt from Wiltshire County Council Highway Record c.1930 plus later amendments

11.3 Parish Council

The National Parks and Access to the Countryside Act 1949 required Wiltshire County Council (WCC) to draw up a definitive map and statement of public rights of way. The initial stage of this was for WCC to provide maps and 'cards' to Parish Councils and request that they survey their rights of way. The information provided by parish councils provided the basis for the Draft Map.

11.4 The Draft Map was publicly advertised and held by Parish Councils and objections and representations could be made. Changes may have been made to the draft map by agreement or as the result of a recommendation of an Inspector or other person appointed to deal with the matters. The amended map was called the Provisional Map.

11.5 Objection could be made to the Provisional Map but only by landowners and only through the courts. The Provisional Map then became the Definitive Map (and statement).

11.6 Records relating to the Teffont Parish Council claim have been inspected and the following was recorded on the claim card for Teffont 9.

“Footway and bridleway from Teffont Field Buildings in a Northerly direction to its junction with path No 12 (Ox Drove)”

Surface *“mostly grass hard surface”*

“Width 8 feet”

Fenced or Open? *“Open”*

Repaired by Parish, District, Borough or County Council? *“Yes”*

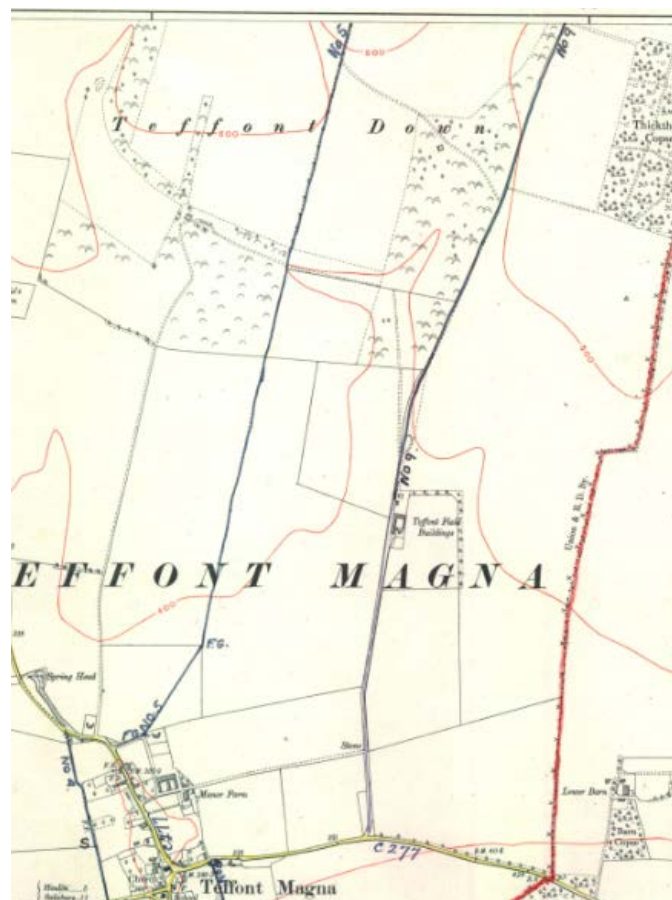
Approximate period of uninterrupted user: *“Time out of mind”*

Observations: *“This right of way was mentioned in the Dinton – Teffont award”*

Date of survey 14/2/51 walked by T I Phillips

11.7 For comparative purposes the Ox Drove was also claimed as a Bridleway and Footway. The width claimed was 10 feet. The card also records that the surface was concreted by the RAF and USA in 1942 and that it had been used at all times except during the 1939 – 1945 war. The card states “This is part of the old historic Roman roadway from Old Sarum”.

11.8 Excerpt from parish claim map



11.9 It is noted that rights of way in Teffont were claimed with relatively minimal widths (for example the Ox Drove was claimed at a width of 10 feet when the awarded width is 110 feet and Teffont 9 was claimed at a width of 8 feet when the awarded width in the 1837 award the parish referred to is 30 feet).

11.10 One possible reason for this is the guidance issued to parish councils for the definitive map process. "Surveys and Maps of Public Rights of Way" the memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers' Association; recommended by the County Councils Association and approved by the Ministry of Town and County Planning, gave the following advice (paragraph 5):

"If the surveying authority require particulars to be furnished of the width of any public paths, these should be given in the schedule, as far as possible. If, for example, a way was set out by an enclosure award as a public footpath 4 feet wide, or a public bridleway 8 feet wide, these widths can and should be specified."

11.11 The Institute of Public Rights of Way Management in their Good Practice Guide on the ascertainment and recording of widths observe that some authorities chose not to record widths at all while others chose only to record those where there was solid documentary evidence (such as an inclosure award). Less explicable are those case where authorities chose a notional width with apparently no supporting evidence; but the use of the examples of four feet for the width of a footpath and eight feet for the width of a bridleway may explain why these are common widths found in statements in these cases.

11.12 Recorded widths in Teffont (Mere and Tisbury Rural District Council definitive statement 1952)

Footpaths		Bridleways		Roads Used as Public Paths	
Path no.	Width in feet	Path no.	Width in feet	Path no.	Width in feet
2	2	3	10	12	10
4	2	5	6		
6	3 – 6	8	6		
7	2 – 6	9	8		
13	2				
15	2				

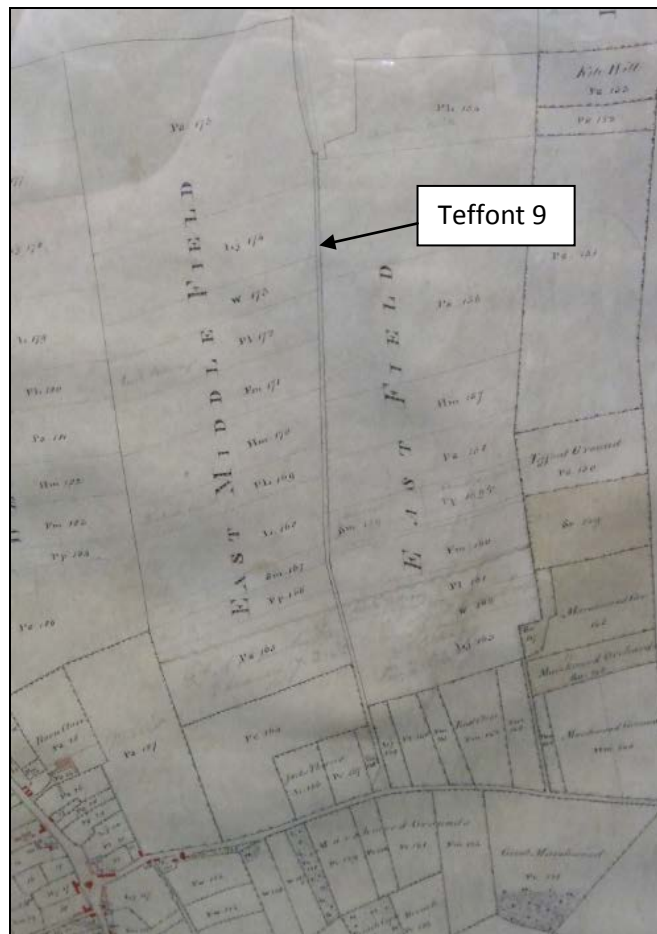
12.0 Category D Evidence

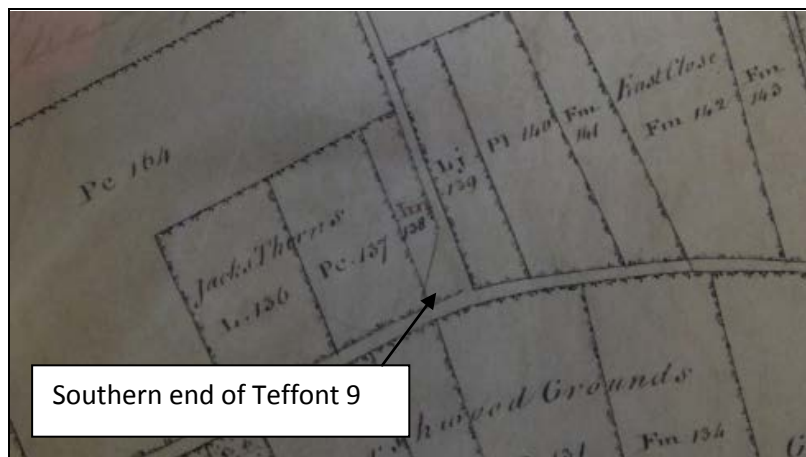
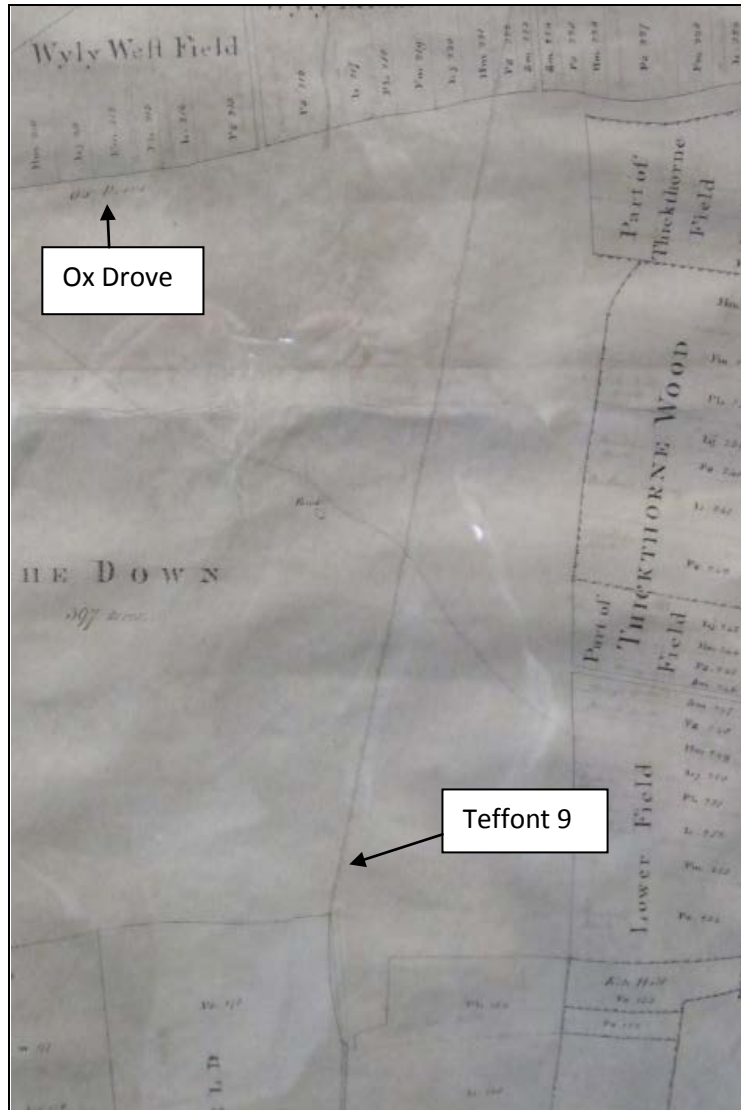
Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

12.1 A Plan of the Manor of Teffont Magna 1801 WSHC 1553/122 Book of Reference 2057/5/113

This document is entitled “A Plan of the Manor of Teffont Magna in the County of Wilts the Property of George Earl of Pembroke and Montgomery. Survey by J A Charlton 1801”. The map is drawn at the scale of 6 chains to one inch. Teffont 9 is shown bounded by East Middle Field and East Field (both of which are subdivided into strip fields) leading to The Down. Old inclosures Jack Thornes and Thickthorne Field are identified. The length of Teffont 9 that is shown is approximately 50 chains.

12.2 The plan is similar to the plan with the Inclosure Agreement of 1800 and with the Book of Reference (which has been updated at various times) appears to have been used for estate purposes by the Earl of Pembroke.



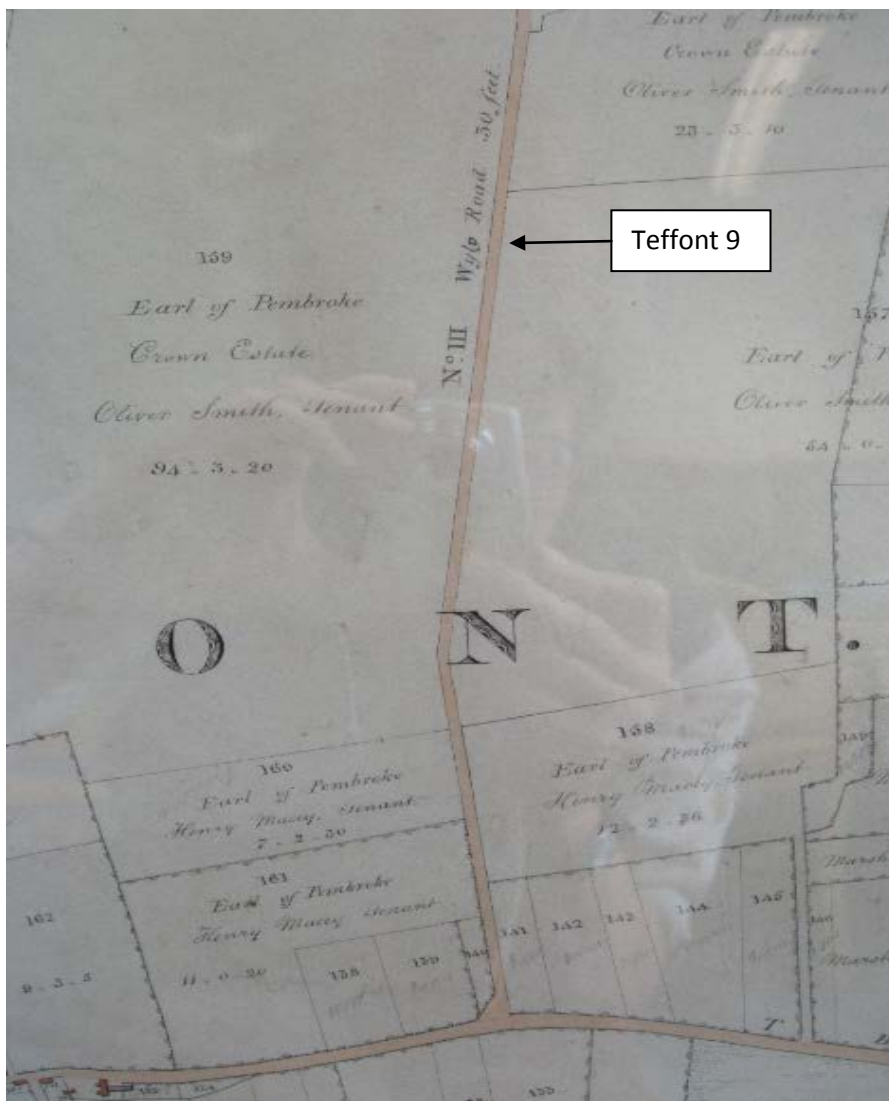


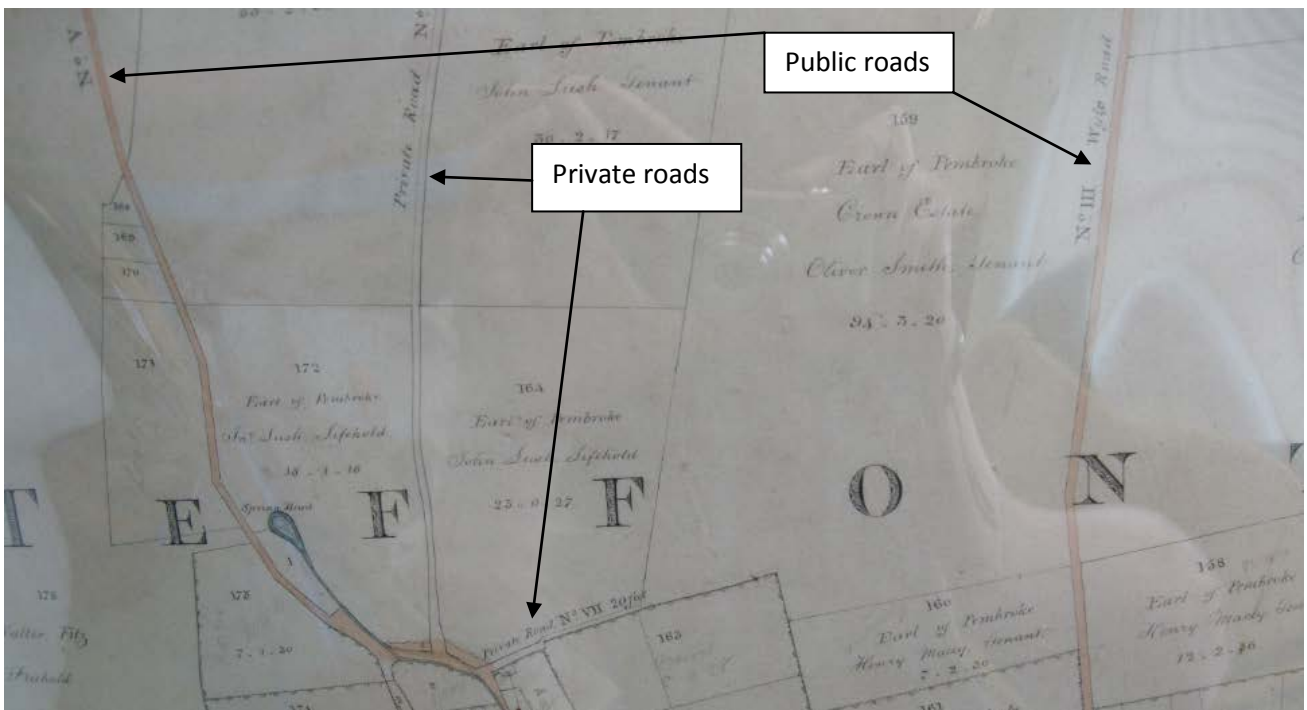
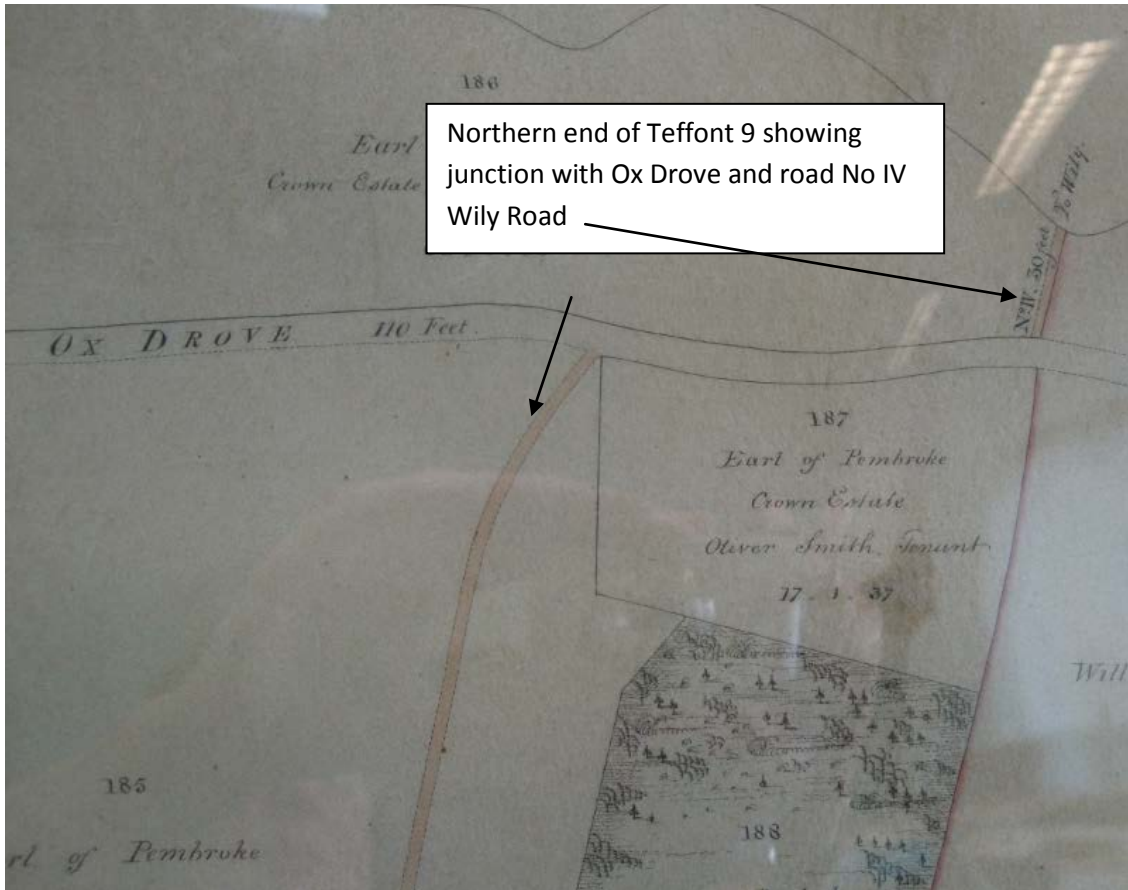
12.3 These documents are also discussed at 9.21 – 9.24 as they were clearly drawn up and used after the 1800 Inclosure Agreement came into effect.

12.4 **Map of the Manors of Dinton and Teffont 1827** WSHC 2069/I5

The map is entitled “Map of the Manors of Dinton and Teffont in the County of Wilts 1827” and is drawn at the scale of 6 chains to one inch. Underneath the scale bar the map is inscribed with the name I Poole, Landsurveyor, Sherborne, Dorset 1836.

12.5 The map is finely detailed, public roads are shown sienna and private roads are shown without colour. One notable exception to this is that the Ox Drove is shown uncoloured. Teffont 9 is shown coloured sienna and labelled “No III Wily Road 30 feet”. Other roads are labelled and private roads are labelled as such (in addition to being colourless). The route has no gates.





12.6 The map is closely related to the enrolled map for the 1837 Dinton and Teffont Magna Inclosure Award. It is known that the execution of parliamentary inclosure in Dinton and Teffont Magna took from 1822 to 1837 to achieve and it is possible that this map was dated 1827, after the roads were laid out and agreed, but before the

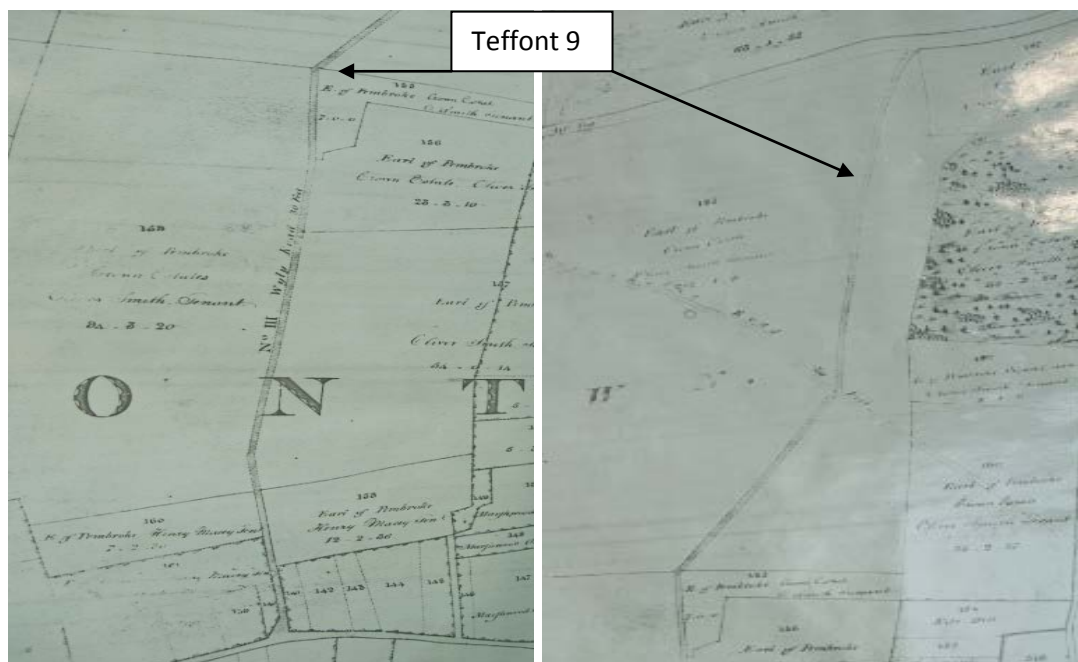
award was finalised and enrolled (1837). Certainly the dates would support that this map was drafted over that period.

12.7 The map is held by the Wiltshire and Swindon History Centre as a map deposited by the parish (catalogue ref no 2069) and not a map that formed part of the estate papers (catalogue ref no 2057). This would suggest that the map may have been used for parish consultation or parish records, or perhaps, both.

12.8 **Maps of the Manors of Dinton and Teffont 1828** (ex open access) WSHC X6/80 copy. Original held at Somerset Heritage Centre

This map is similar to the map discussed above but is dated 1828 and signed by I Poole, Landsurveyor, Sherborne, Dorset 1836. Again the map would appear to be related to the enclosure process, perhaps as a draft plan.

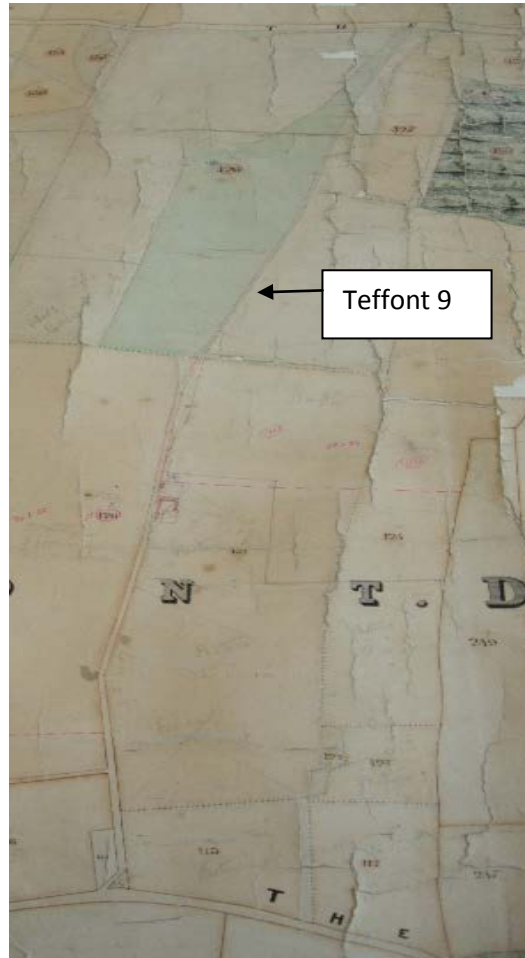
12.9 This map originated from the Wyndham family archives and is held at Somerset's record office. Officers have only viewed a copy of the map which is in black and white. However, the route of Teffont 9 appears to be shaded and is labelled "No III Wyly Road 30 feet". The route has no gates.

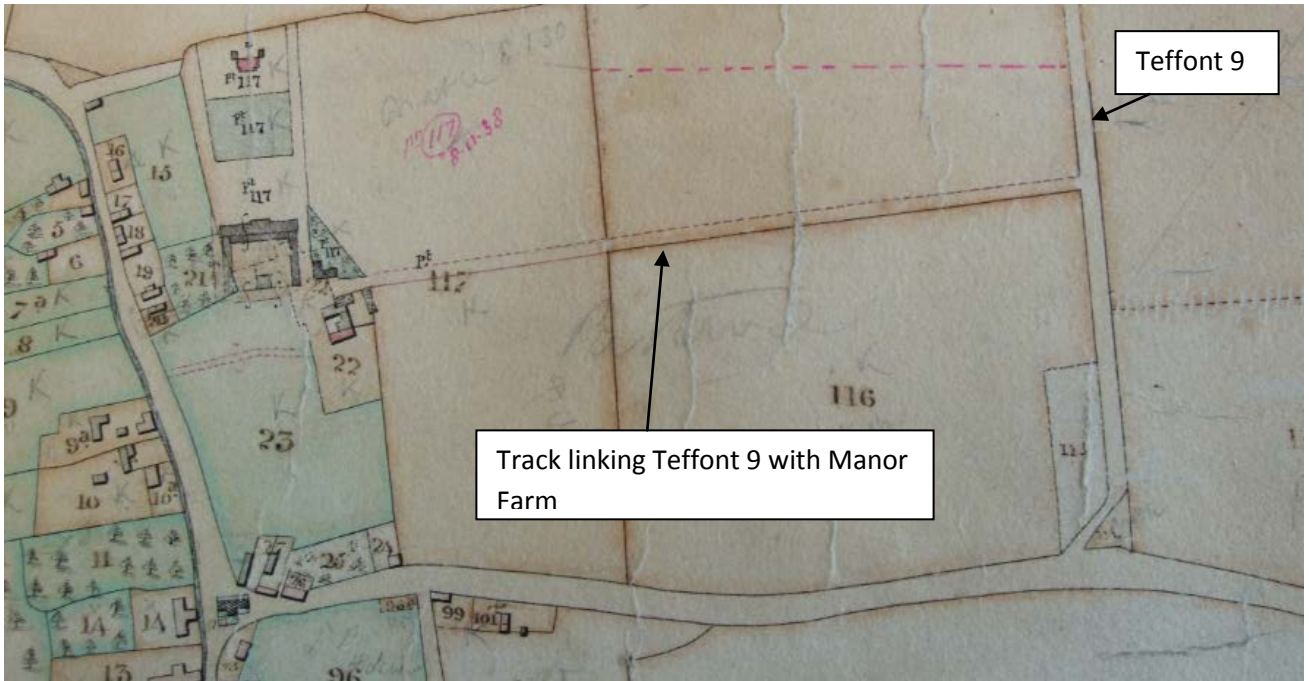


12.10 **Map of the Parish of Dinton and Teffont 1843** WSHC 2057/PI/26L

This map is entitled "Map of the Parish of Dinton and Teffont in the County of Wilts 1843". The map is highly detailed and coloured and carries the inscription "This map is drawn on the same scale as the tithe apportionment map" and is by J Poole, Land Surveyor, Sherbourne 1843.

- 12.11 There are three very distinct surveys of Teffont available, there is the 1801 map showing the effect of the 1800 Inclosure by agreement, the 1837 map showing the 1837 parliamentary inclosure changes and there is this map which shows the effect of the new enclosures on the landscape (larger fields and new roads and enclosures).
- 12.12 The representation of Teffont 9 is consistent between all three maps and here is shown in its entirety leading between the Old Dinton Road and the Ox Drove. It does not have any gates.







12.13 This map is catalogued with the Earl of Pembroke's estate papers and annotations to the map in both pencil and red pen suggest that it was a document used by the estate.

12.14 The map is important because it is the first document to record the track to Manor Farm meeting Teffont 9. This area was not mapped on the Tithe Survey map but this map does not post date the tithe map by much (3 years). It allows us to date the construction of the track to Manor Farm as being between 1823 and 1843 and it is noteworthy that in 1843 it did not connect with a public highway at the western end, just Manor Farm.

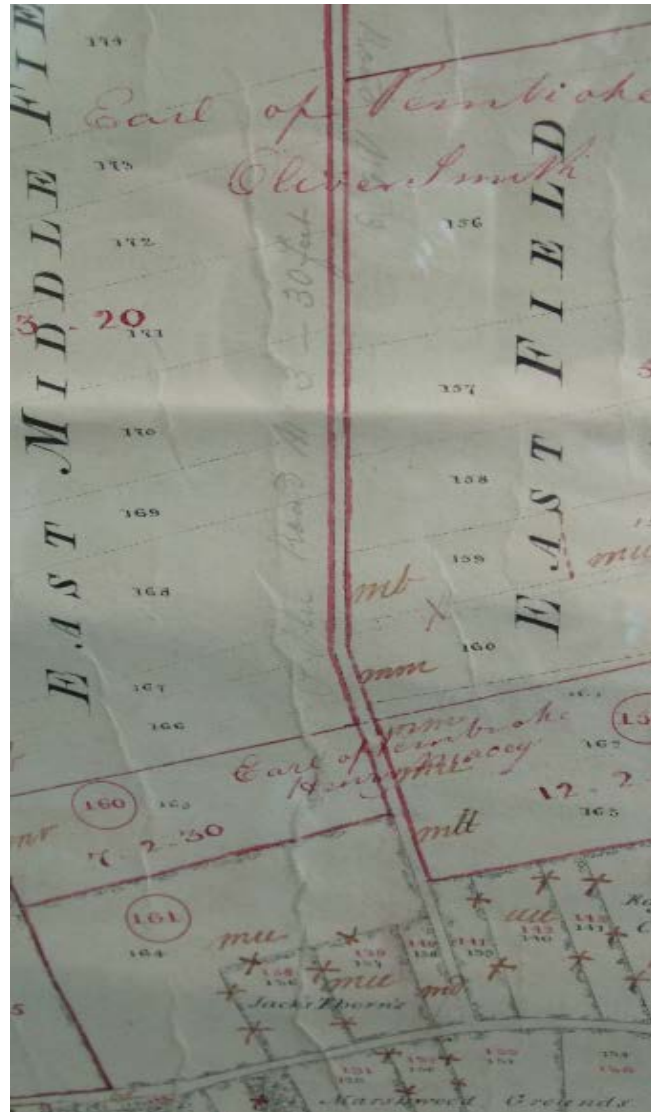
12.15 **Map of the Manor of Teffont Magna 19th century** WSHC 2057/P1/32H

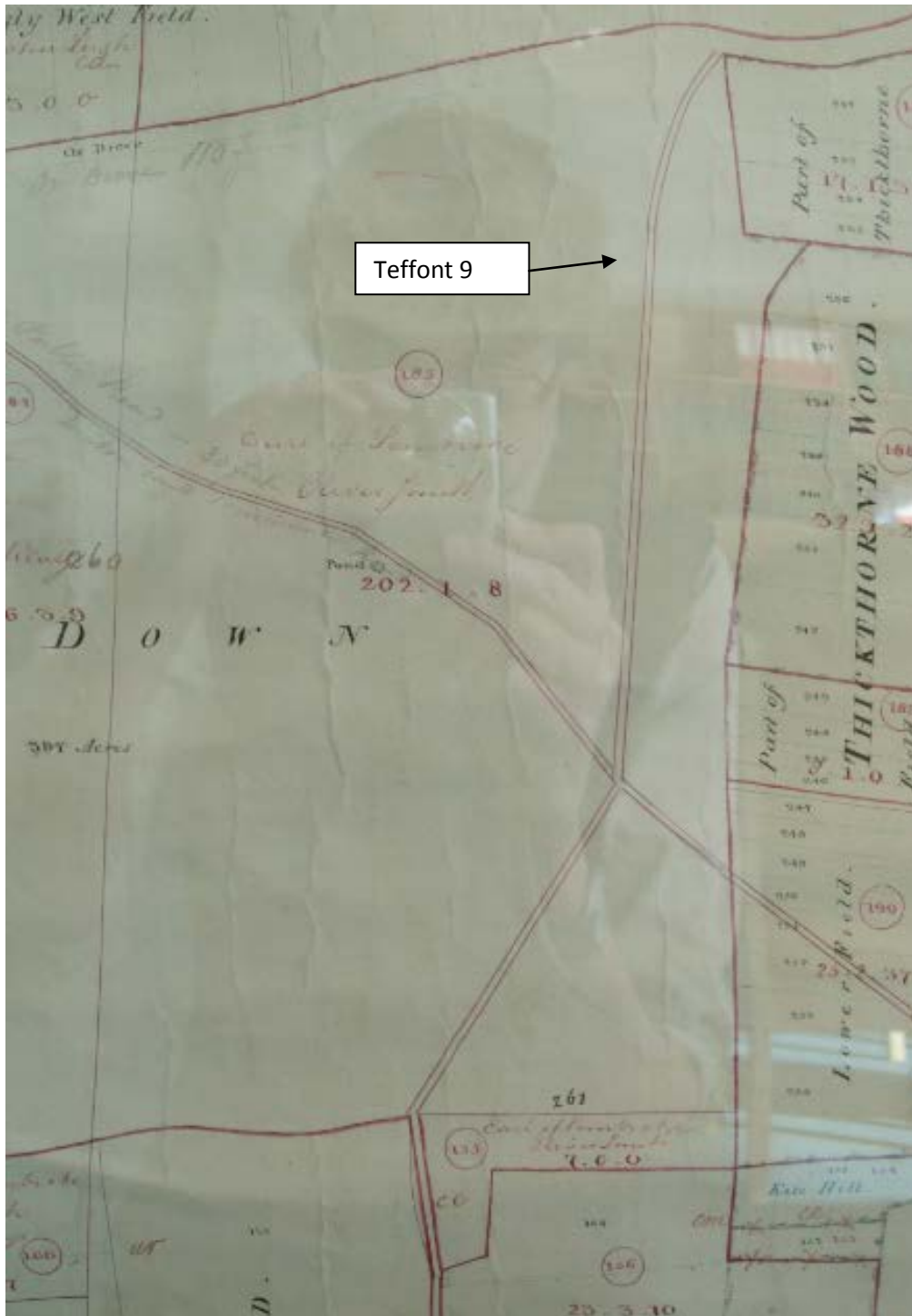
The Map is entitled "Map of the Manor of Teffont Magna in the County of Wilts" and is undated and unsigned. The map is catalogued with the Earl of Pembroke's estate

Page 86 of 115

papers and appears to be a copy of the 1801 map (showing inclosures created by the 1800 agreement) with alterations in accordance with the 1837 parliamentary inclosure written over the top in red pen.

12.16 The whole length of Teffont 9 is shown as a road and outlined very clearly in red ink. There are two pencilled inscriptions “Public Road No 3 – 30 feet” and “Wyly Road No.3 “.





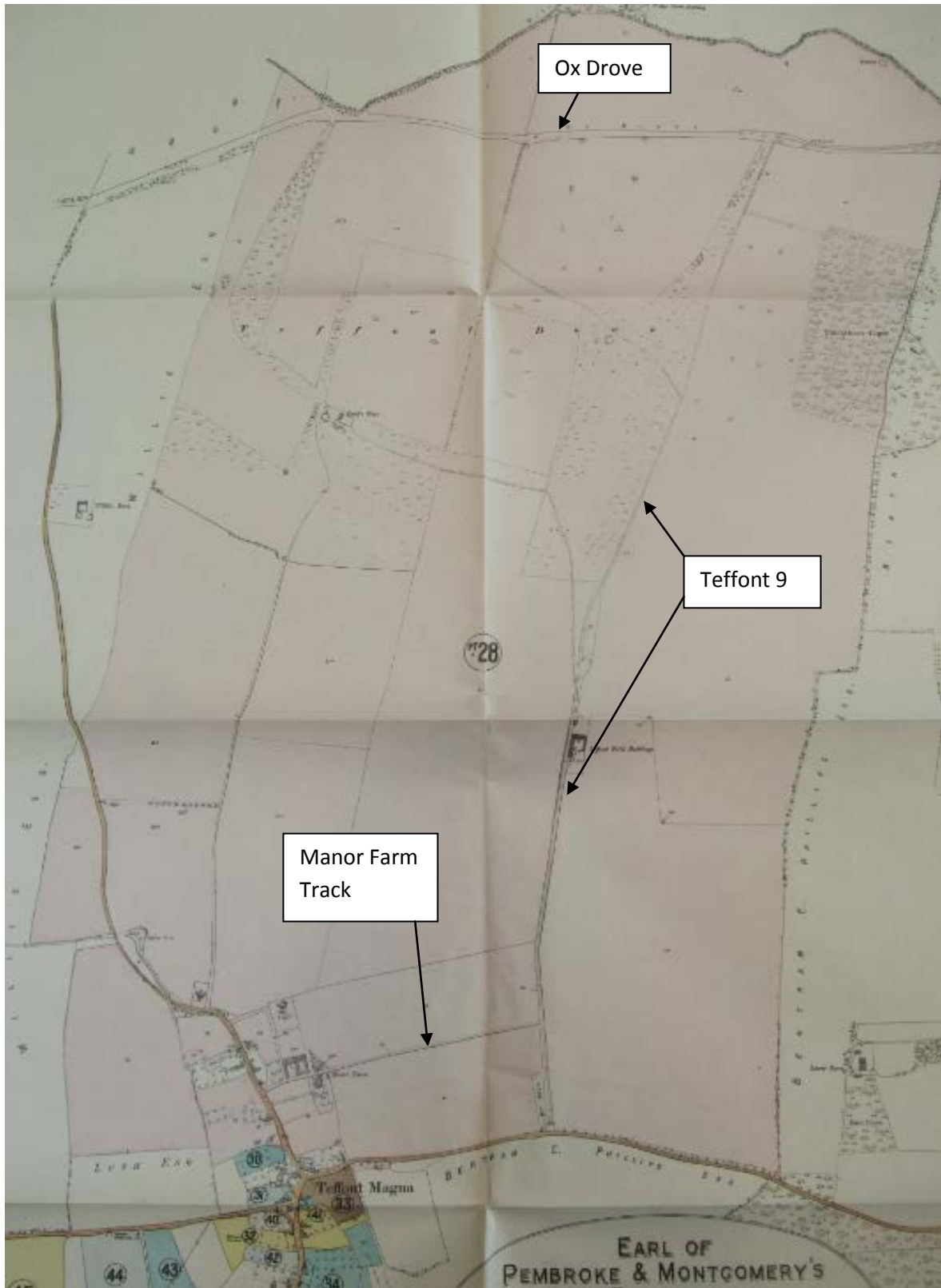
12.17 Although the purpose of this document is not clear, it is useful in confirming the identity and route of Teffont 9 post inclosure. It is noted that the Manor Farm track is not shown suggesting that this map is dated between 1822 and 1843 and not “mid 19th century” as catalogued.

12.18 **Sales Catalogue Manor Farm 1918 WSHC 2132/28**

On the 13th and 14th November 1918 J Carter Jonas and Sons held a sale at The White Hart Hotel, Salisbury to sell outlying portions of the Wilton Estate (the Earl of Pembroke's estate). Manor Farm including 1065 acres of land (but excluding the Manor House) was Lot 28 in the sale but was subsequently withdrawn. However, the land was catalogued and listed.

12.19 The route that is Teffont 9 was included in the sale (shown coloured pink) but was separately numbered along with other parcels as follows (numbering is from Ordnance Survey base map):

O.S. Parcel no.	Description	State	Current representation in modern records
6A	Part Ox Drove	Grass	Byway Open to All Traffic Teffont 12
9	Track	Roadway	Bridleway Teffont 9 north
23	-	Roadway	Bridleway Teffont 9 central
62	Cartway	Roadway	Manor Farm Track
64	Roadway	Road	Bridleway Teffont 9 south



12.20 **Sales Catalogue 1962** WSHC 2630/9

Teffont 9 (and the Manor Farm Track) are shown on the underlying Ordnance Survey 1:10560 map but there is no mention of the route in any text or annotation.

12.21 **Sales Catalogue c.1930** Submitted by Mr D Wood

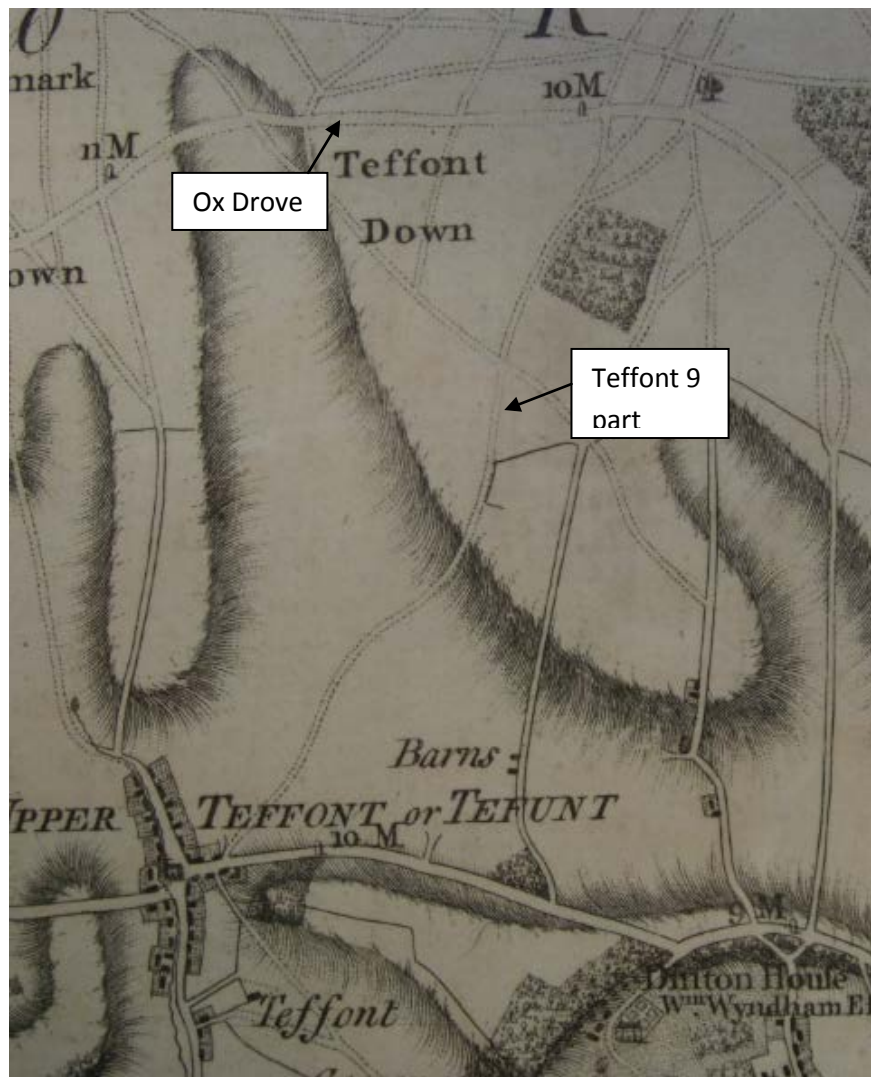
This is considered to be an extract from a sale catalogue from the 1930s when part of the Earl of Pembroke's estate was sold. The plan and table of parcel numbers appears similar to the 1918 sale catalogue. Teffont 9 is listed as a Roadway and Road whereas the Manor Farm Track is listed as a Cartway and Roadway.

13.0 **Category E Evidence**

Evidence in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.

- 13.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury , John Cary , C & I Greenwood and the Ordnance Survey.
- 13.2 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 13.3 **Andrews' and Dury's Map of Wiltshire 1773** The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same.
- 13.4 The map shows an unenclosed road leading from Teffont Magna village leading north east and then generally north to join the Ox Drove. The map shows a number of other entrances to the downs from the turnpike road but it is considered that none of them coincide with Teffont 9 - contrary to the 2005 applicant's interpretation of the map.
- 13.5 The route from Teffont Magna north to the Ox Drove pre-dates inclosure of the downs and the southern section would have been severely affected by the 1800 inclosure award though the northern section appears unchanged by inclosure.
- 13.6 The 1800 Inclosure Award describes a droveway as being part of the eastern boundary of an allotment (now land belonging to Manor Farm) and it is possible that

this is a reference to the more ancient route as shown by Andrews and Dury (and the Ordnance Survey's surveyor in 1808 – who showed both the ancient route and the inclosure route).



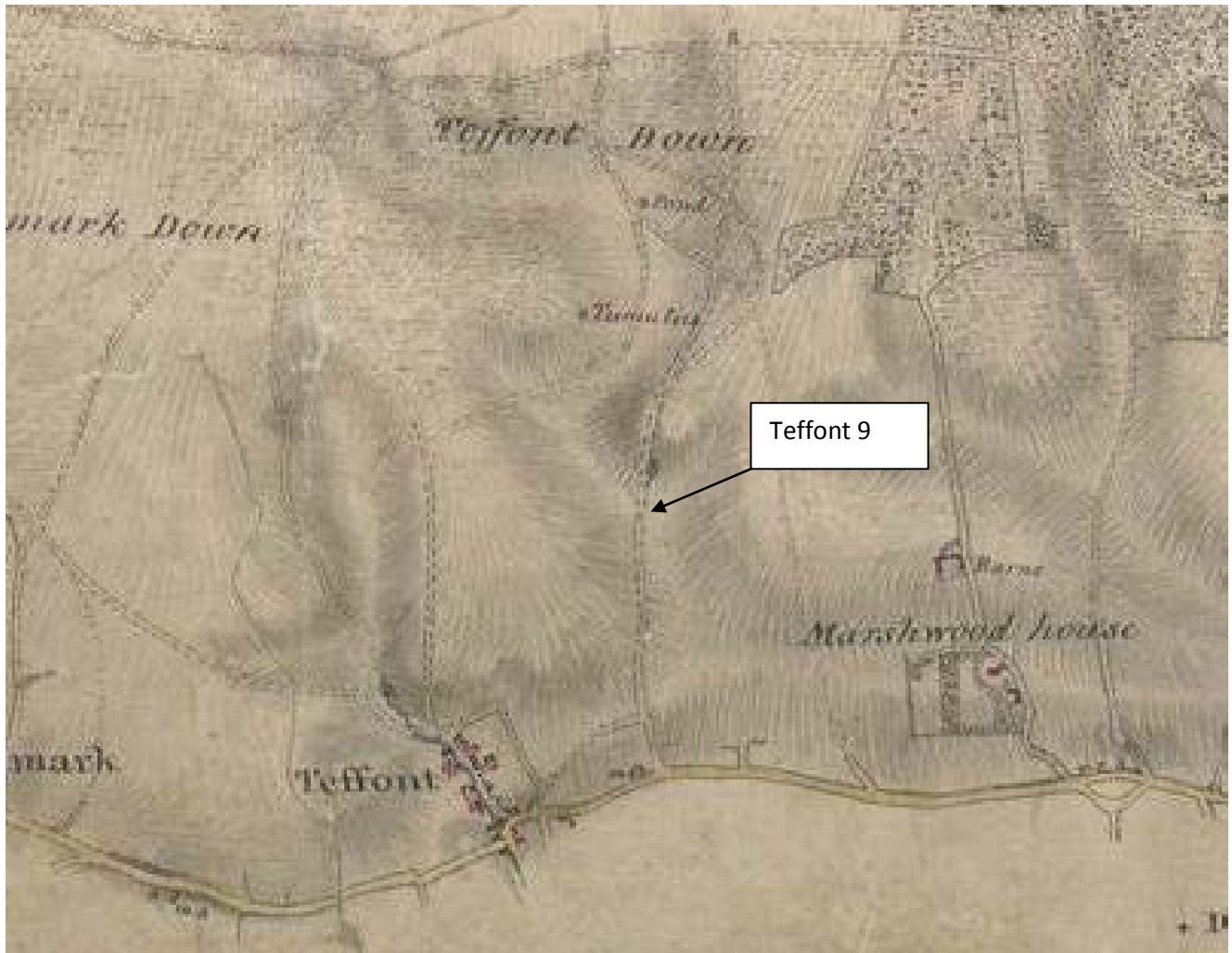
- 13.7 The 1773 map was revised in 1810 and re-titled to make it clear that it showed Cross Roads. Parts of Teffont 9 are shown as Cross Roads in this map. The Map is entitled "A Topographical Map of the County of Wilts describing the Seats of Nobility and Gentry, Turnpike and Cross Roads, Canals and c. Surveyed in 1773. 2nd Edition revised and corrected." WSHC A1/524/2MS



13.8 Ordnance Survey Surveyor's Drawing No. 63 Surveyed 1808

In preparation for the production of a map covering the whole of England at the scale of 1 inch to 1 mile the OS surveyed the country at a scale of 2 inches to 1 mile.

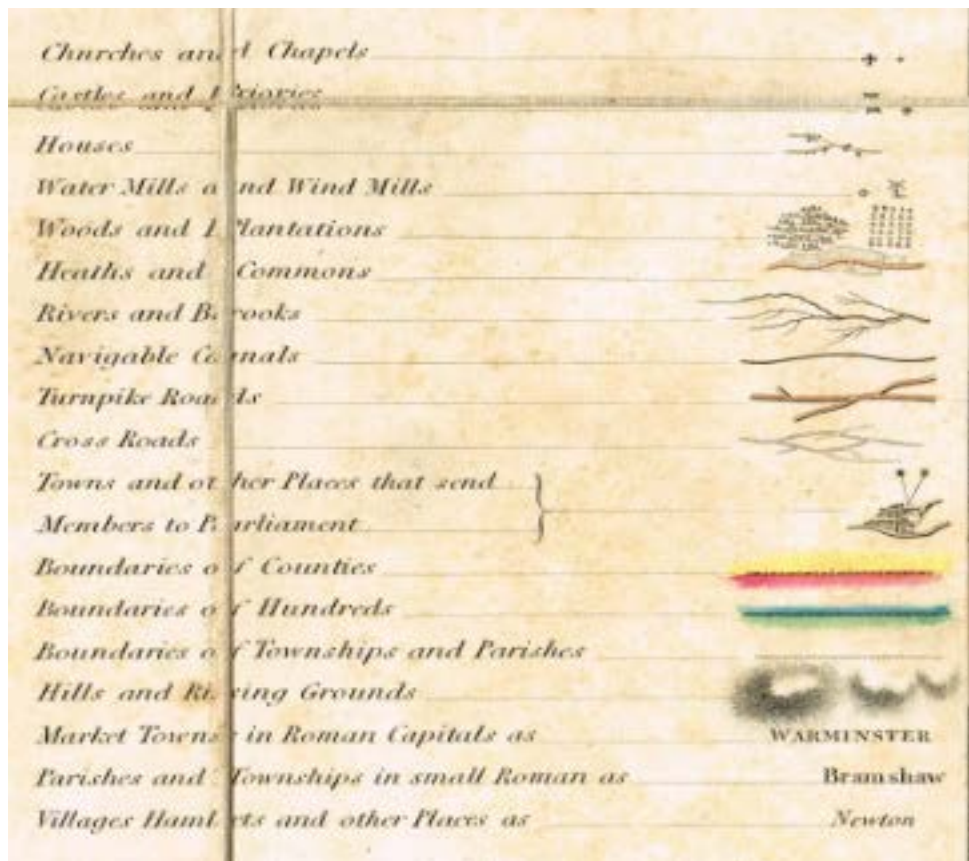
13.9 The resultant drawings provide a depiction of the landscape at the time but do not differentiate between public or private roads, however, the route of Teffont 9 is represented in the same manner as minor roads.



13.10 The surveyor recorded the route of Teffont 9 north from the Turnpike as detailed in the 1800 inclosure award and the route of the section northwards across the down as shown by Andrews and Dury in 1773. He also records a route linking the village with Teffont 9 east of Manor Farm, again partly as recorded by Andrews and Dury. However, this route was clearly not part of the inclosure process (it would have crossed newly made inclosures) and does not survive to be recorded on later maps. It is not possible to say whether the junction with Teffont 9 shown here is at the same point as the pre- 2014 Manor Farm Track junction. It is possible that it is.

13.11 **C and I Greenwood's Map of Wiltshire 1820**

Greenwood's maps relied on a survey independent of Andrews' and Dury and the Ordnance Survey and can be a useful source of information. The maps were produced at a scale of 1 inch to the mile, in full colour and have a key. The route of Teffont 9 is shown as a 'Cross Road'.



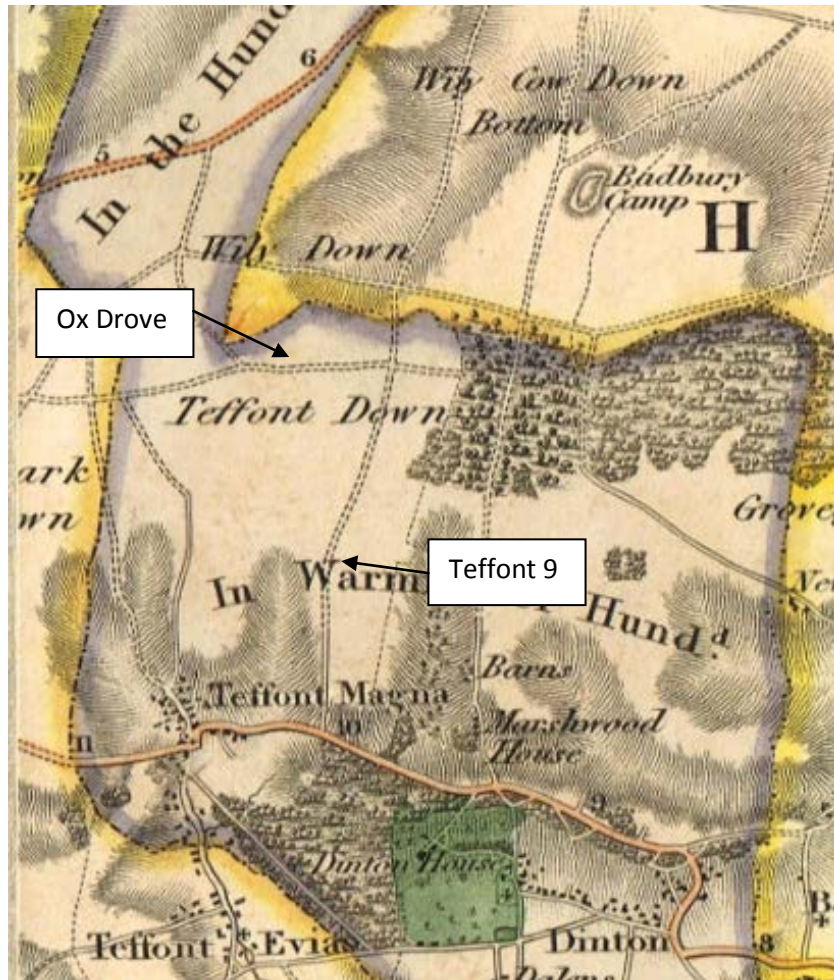
13.12 The Council is guided by the Planning Inspectorate’s Consistency Guidelines (para 2.24 to 2.30) for the definition of a cross road.

“In modern usage the term cross road/crossroads is generally taken to mean the point where two roads cross. However old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.”

13.13 Howarth J’s comments in the case of Hollins-v-Oldham 1995 concluded that the category known as ‘cross road’ must mean a public road in respect of which no toll was payable. The judge gave his reason for this view, stating:

“This latter category, it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use.”

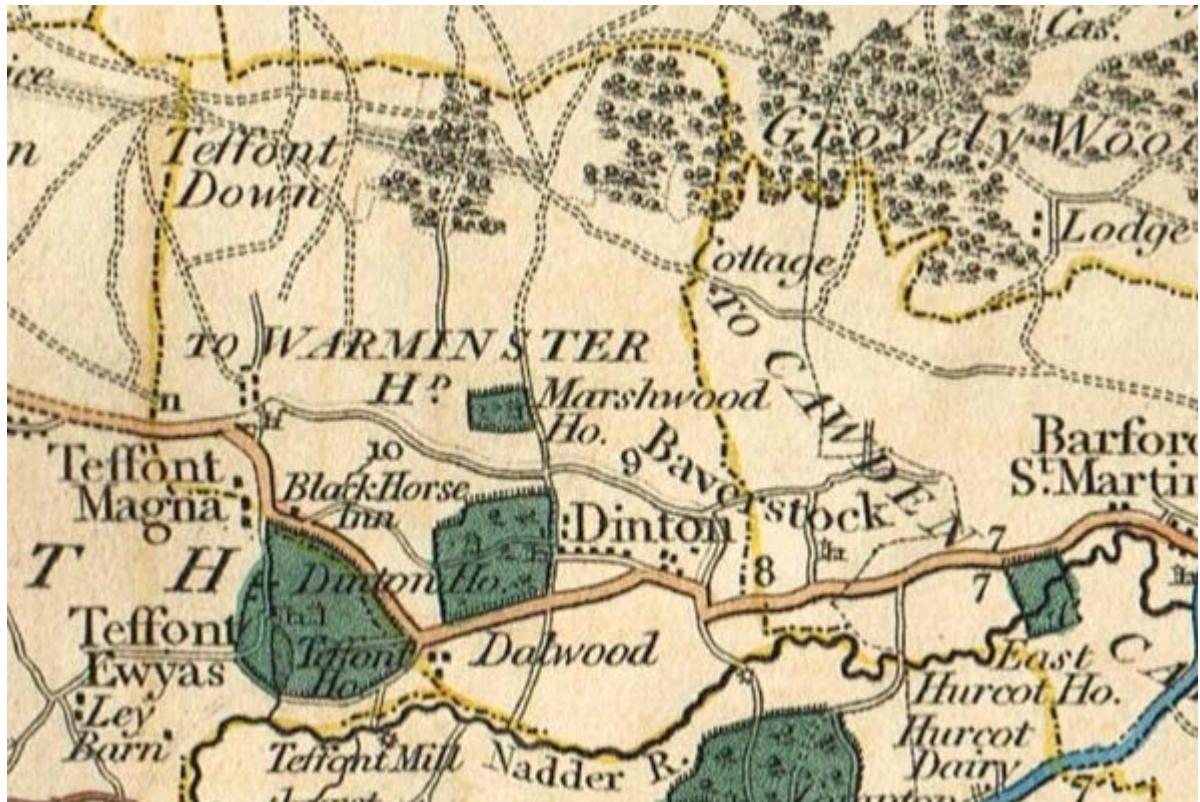
13.14



13.15 Greenwood's Reduced Map of Wiltshire corrected to 1829 also shows Teffont 9 as a "Cross Road".

13.15 J Cary's Maps 1823 and 1832

The representation of Teffont 9 on both maps is the same. Both maps show the new turnpike south of the old turnpike (the Old Dinton Road) as a road coloured sienna. The maps do not show the entire length of Teffont 9 though do show a route to the north joining the Ox Drove.



13.16 Other Commercial Maps

The applicant for the 2005 application adduced a number of other commercial maps as supporting evidence for the application. The maps cover the period 1829 to 1945 and have not all been viewed by officers at date of report. The maps, taken individually have relatively low evidential weight but taken as a body of evidence do show a consistent representation of Teffont 9 by these map makers throughout this period. The maps are largely of small scale (between 2 and 6 miles to one inch).

13.17 The Ordnance Survey maps present the most detailed body of map evidence and will be discussed further, however, the list of commercial maps adduced by the applicant are as follows:

Colt Hoare's Map of Dunworth Hundred 1829	Minor road
Pigot's Map of Wiltshire 1831 and 1840	"Cross Road"
Walker's Map of Wiltshire 1836 and 1841	Minor road
Dispatch Atlas Half Inch Map of the Great Western Railway	Minor road
Weller's Map of Wiltshire 1862	"Road"
Post Office Map of Wiltshire 1875	Minor road
Ordnance Survey 1:10560 Map 1889 (sheet 59) and 1890 (sheet 65)	"Minor Road"
Philips' Cyclists' Map of Wiltshire c.1890	"Cross Road"
Dotesio's New Half inch Touring Cycling and Rambling Map 1890	Minor road
Ordnance Survey 1" Map Revised New series sheet 298 1898	"Unmetalled road"

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 65/1, 65/5 and 59/13 cover the applicant route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

- 13.19 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 13.20 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 13.21 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information as they were printed relatively late in the series.
- 13.22 **First Editions LXV.1 1886, LXV.5 1884 & LIX.13 1884**

Sheet 65.5 covers the southern end of Teffont 9 where it joins the Old Dinton Road (the former turnpike) and shows it shaded and coloured sienna as a carriage drive

and road. It is separately numbered and measured and clearly depicts the Manor Farm Track joining it at an ungated junction.

Sheet 65.1 covers the central part of Teffont 9 and the survey for this map was made in 1886 (two years later than sheet 65.5). The route is shown separately numbered and measured as a road but is significantly also shaded as a “metalled Public Road for wheeled traffic kept in good repair by Highway Authority”. This is a clear difference to the earlier sheet 65.5 and may reflect a response to the surveyor’s instruction at 2 below.

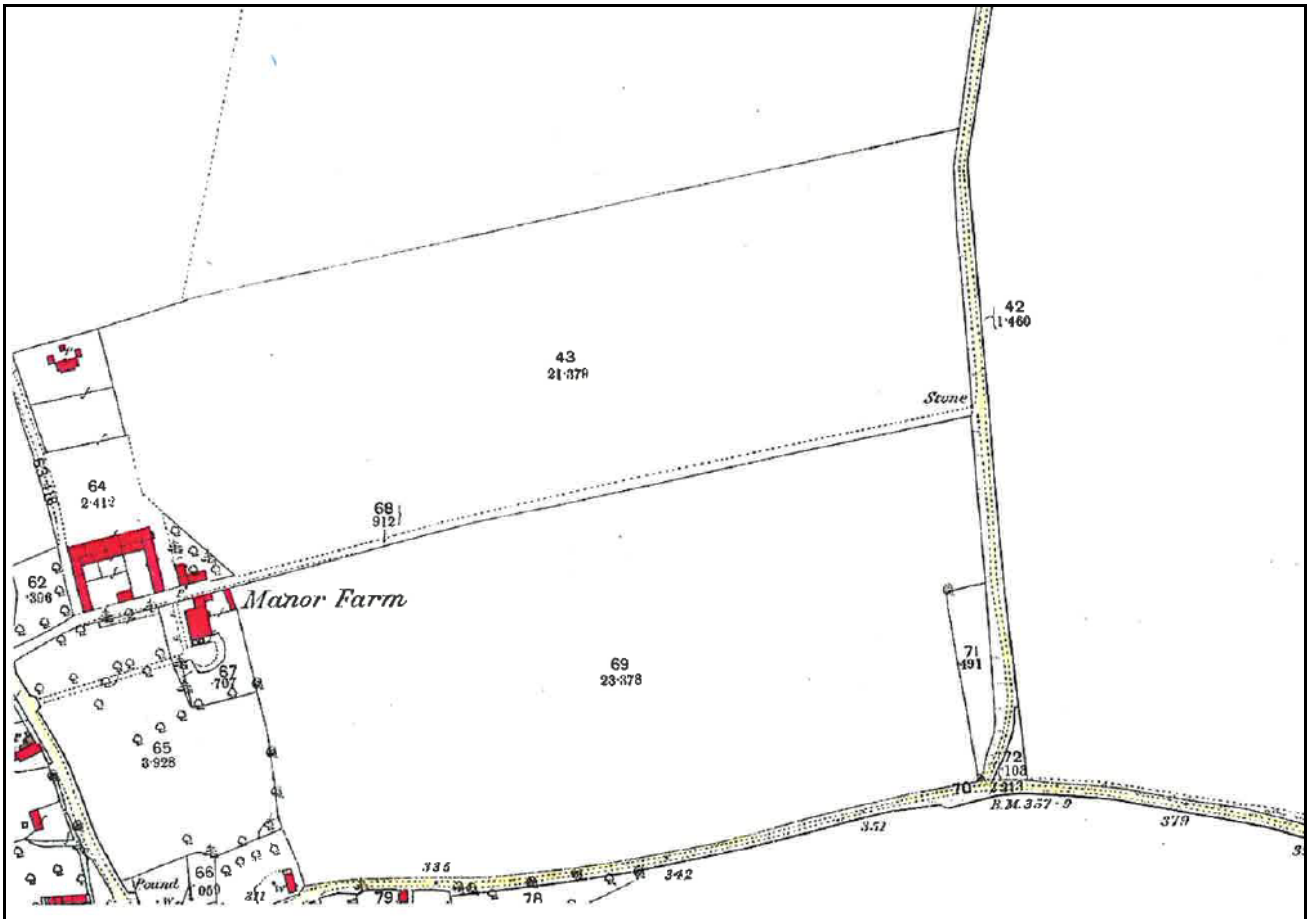
Sheet 59.13 covers the northern end and junction with the Ox Drove and was surveyed in 1884. The route is separately numbered and measured as a road.

13.23 Whilst the 1:2500 maps carried the Ordnance Survey disclaimer (“the representation on this map of a road track or footpath is no evidence of the existence of a right of way”) it is clear from instructions to surveyors that the OS wished the maps to be as accurate as possible in this regard at this time. The Ordnance Survey has two relevant instructions to surveyors in place at the time of the surveys:

1) Carriage Drives (and roads) were tinted sienna on 1:2500 plans produced about 1880 and again from 1884 onwards. The instruction was probably cancelled about 1899.

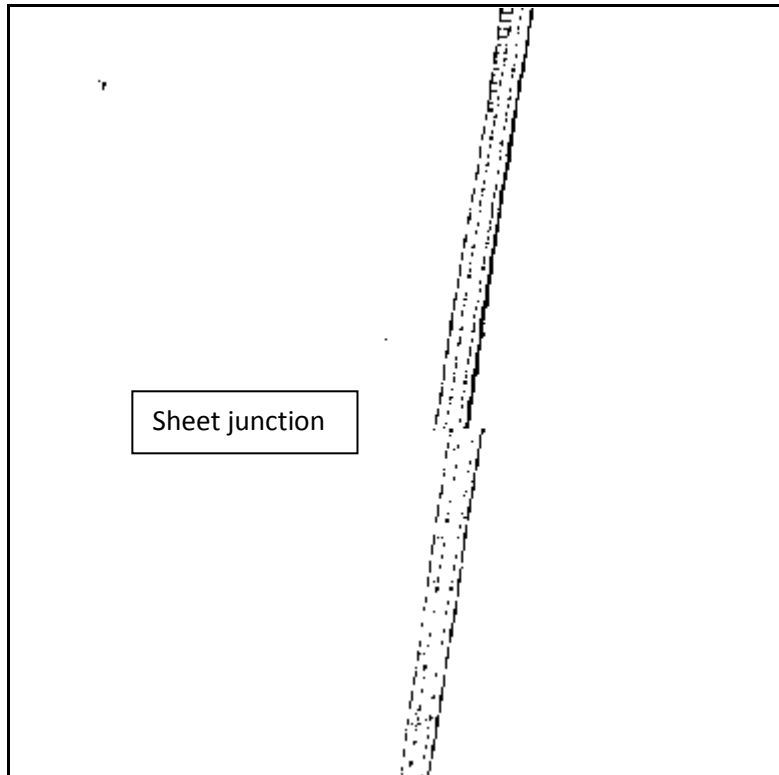
2) In 1885 it was directed that metalled carriage drives will be in future shaded as 2nd class roads, but shading not so prominent as on public roads. Carriage drives could include approaches to country houses and farm access roads.

13.24 Extract from First Edition Sheet 65.5

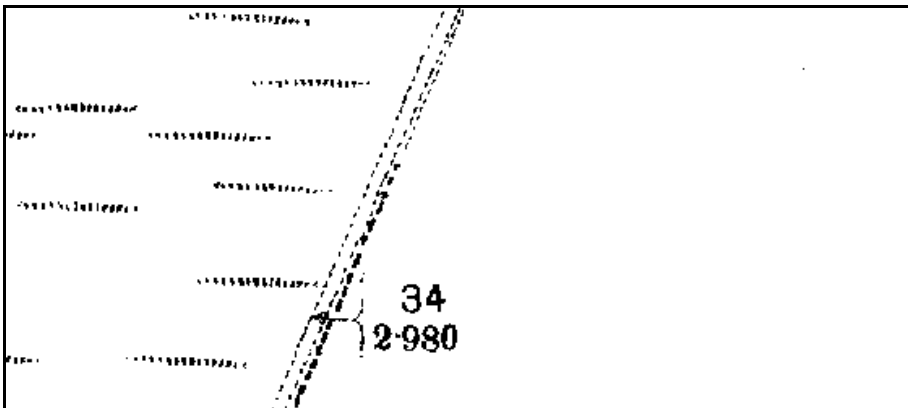


13.25 It is noted that only the central section is shown metalled but that the verges are included in the measurement of the road and not the adjoining land parcels.

13.26 Junction of Sheets 65.5 and 65.1 showing shading to road edge.

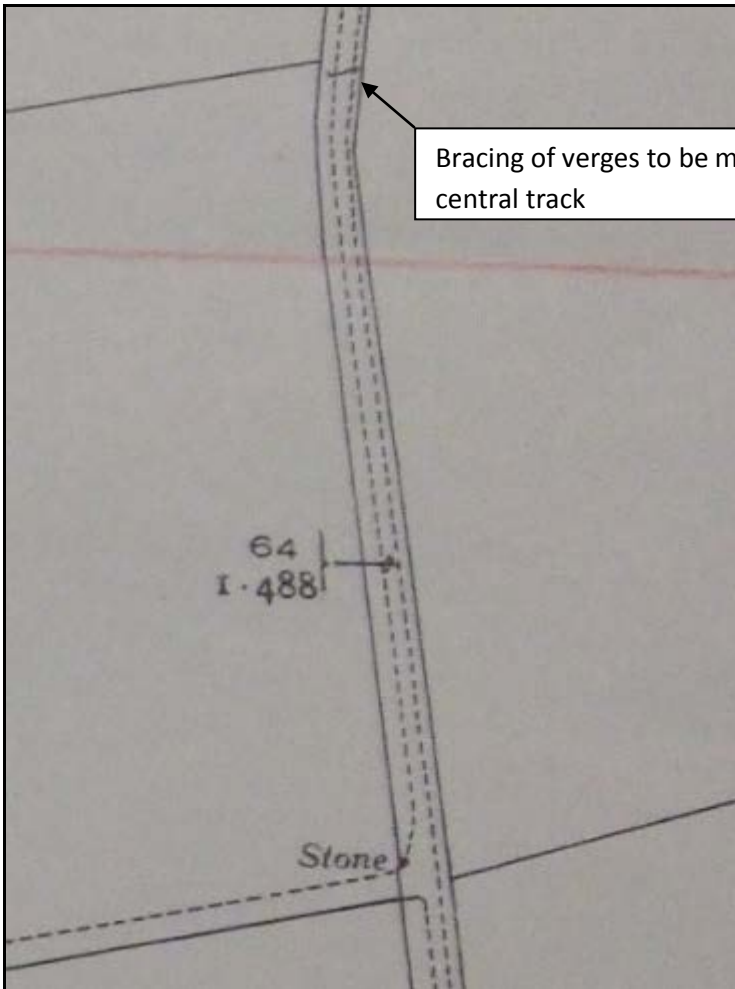


13.27 On all sheets the verges are measured as part of the road. This is consistent throughout all editions viewed.

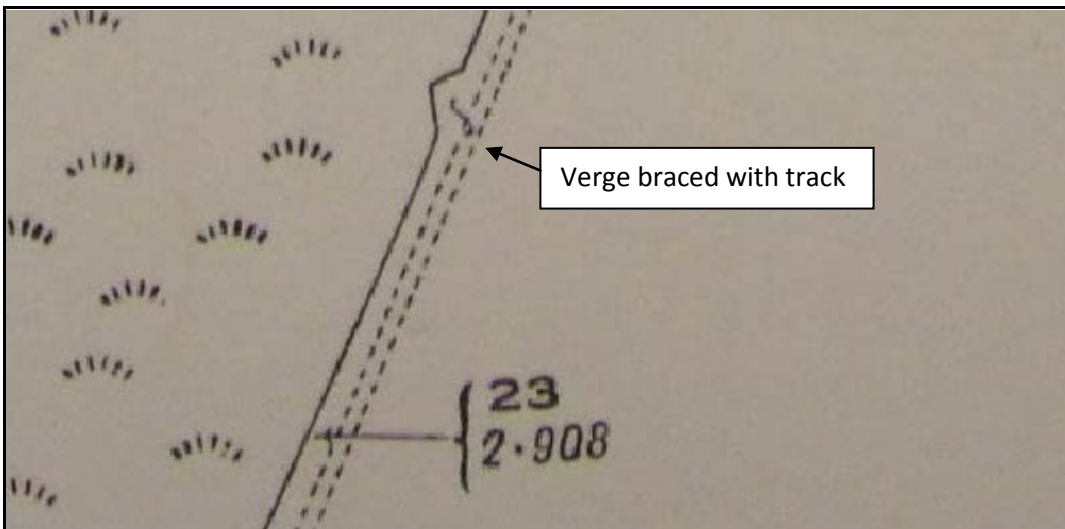


First Edition (also shows

end of metalled section by change in line shading) Sheet 65.1



Third Edition (1939) Sheet 65.5



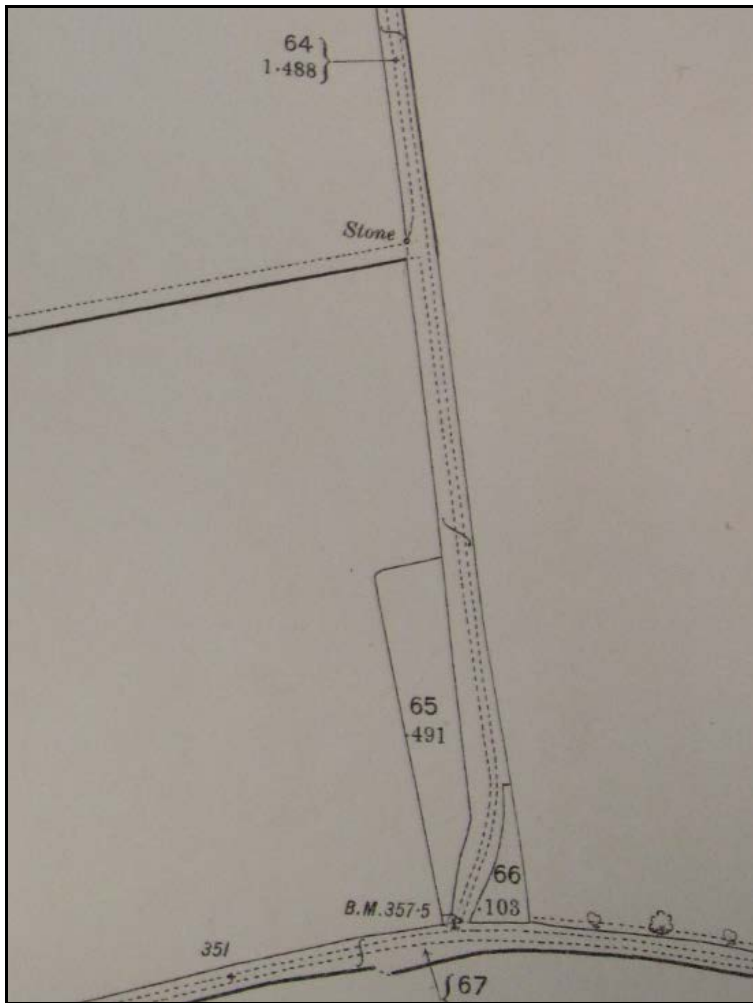
1925 Edition

Sheet 65.1

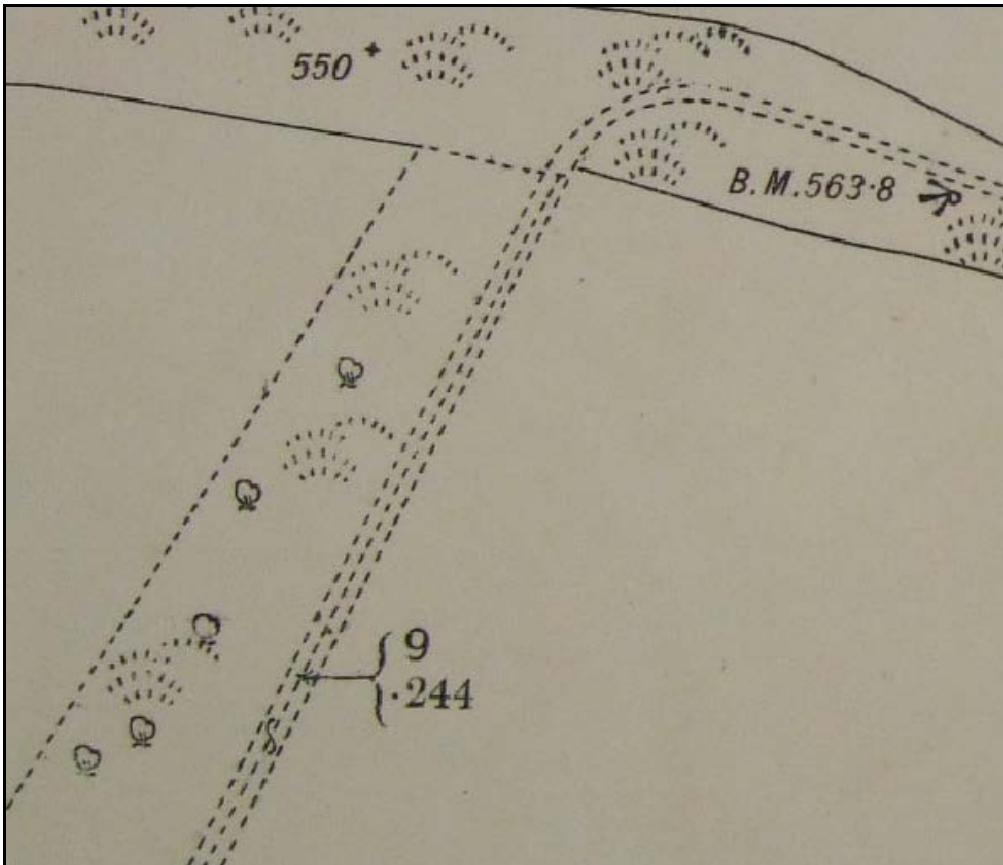
13.28 Second Editions 1:2500 All sheets revised 1899

Teffont 9 is shown as a fenced road to Field Buildings, then unfenced across the Down. The whole length is separately numbered and measured and approximately half a mile is shaded as a “metalled Public Road for wheeled traffic kept in good repair by Highway Auhthority”. No gates. Not marked as ‘F.P.’ or ‘B.R.’.

13.29 It is noted that although the shading appears on Teffont 9, it also appears on the Manor Farm Track. Since no evidence supporting that this track carries any public rights has been viewed to date it is doubtful that this was kept in repair by the Highway Authority. It may that the surveyor was recording what he saw on the ground (i.e. a well maintained and accessible track) without further investigating whether the route was or was not maintained by the highway authority.



Sheet 65.5 1884/1901



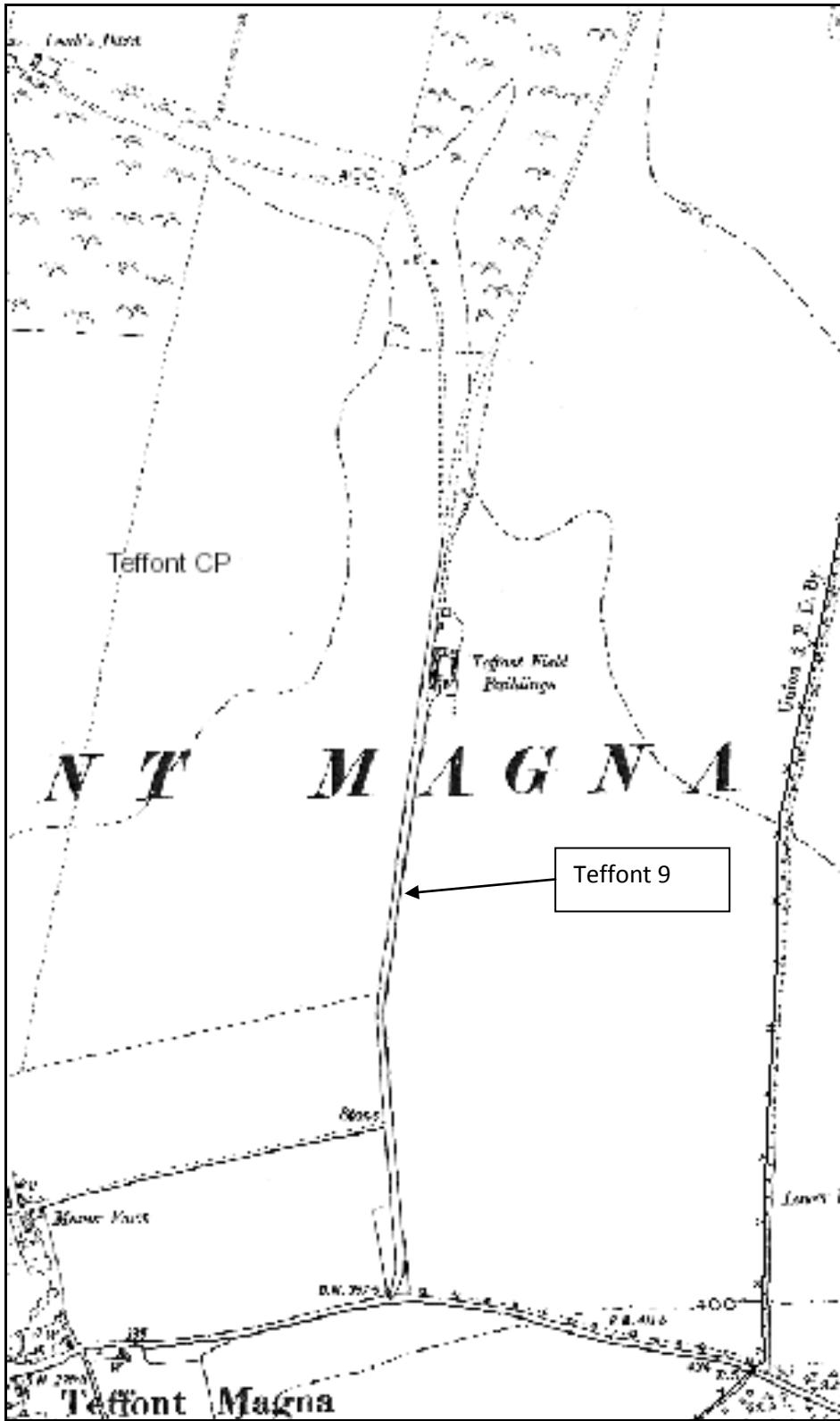
Sheet 59.13 showing Teffont 9 joining the Ox Drove. 1884/1901. Note bracing of verge with road parcel.

13.30 Later Editions

Editions of 1924 and 1925 and 1939 have been viewed for all sheets and all show a consistent representation of the route as a through road separately numbered and measured.

13.31 Ordnance Survey 1:10560 (six inch) Survey Sheets 59 and 65 Surveyed 1886

The base survey data for the six inch series is taken from the 25 inch (1:2500) series and it is rare to see any differences in the data. However, the six inch series does have a key and all editions viewed show the route of Teffont 9 as a "Minor Road" unfenced north of Teffont Field Buildings.



1:10560 Second Edition

14.0 Category F Evidence

- 14.1 This evidence category includes local reputations or any consultation responses that are not covered elsewhere.
- 14.2 There was a change in the law in 2006 relating to the use of mechanically propelled vehicles (MPVs) on routes that were not already recorded in the definitive map and statement as byways open to all traffic (this will be addressed later in this report as part of the Council's decision) but it is noteworthy that no evidence to support the continuation of any public mechanically propelled vehicular rights post 2006 has been adduced by any party (including vehicular user groups) despite the question being specifically asked at the consultation stage.
- 14.3 The 2014 application adduced a significant amount of category F evidence in the form of user evidence forms (UEFs) and these are summarised at APPENDIX D.
- 14.4 A total of 24 people submitted evidence relating to their use of the way, the evidence covered the period 1956 to 2014 and use was mainly by people on horseback or walking. Some people had cycled the route and one person had driven a car along it. All users had used the route for recreation and all had also used the Manor Farm Track, accessing it from the bridleway Teffont 9 in either direction.
- 14.5 Of the 24 users 21 considered the width was 30 feet with some referring to the 1837 inclosure award and others referring to their use of the verges. Anyone accessing the Manor Farm Track would have had to use the verge to get there from the central tarmac strip of Teffont 9.
- 14.6 A number of riders commented on the slippery surface of the central tarmac strip and consider that it is necessary to use the verges to both avoid passing traffic and to ride somewhere that isn't slippery. One rider describes their pony falling on the tarmac. The narrow gate at the Ox Drove end is also mentioned as being hazardous.
- 14.7 Matters such as the slippery surface and the need to avoid traffic are not matters for consideration under the Wildlife and Countryside Act 1981. The matter of the gate is also not strictly a matter for the Wildlife and Countryside Act though the width of the highway is. It is noted that no maps show the route of Teffont 9 as being gated at this end and it is clear from the positioning of the open gate (accessible from the verge) that the width of the highway was considered to include the verge when the gate was installed.
- 14.8 The matter of access to the Manor Farm Track is not strictly a matter for this report as no evidence of any weight supports that public rights subsist along this track. It appears to have been built around 1830 though parts of it may be earlier (OS 2 Inch drawing 1808). Early maps show it going only to Manor Farm though later maps and the evidence of users show that it became a through route subsequently.

- 14.9 It was not created as a result of any inclosure awards and was not claimed by the Parish Council (or any other party) when the definitive map and statement was drawn up in the 1950s. No application has been made to add it since that time. Additionally all users of the track describe doing so with permission, either from the Pitcairns, Mr Crook, Lord Sharman or Mr Wood.
- 14.10 At the time the Pitcairns and Mr Crook owned the land (before 1998) over which the Manor Farm Track ran they also owned the land over which Teffont 9 ran. Since it is clear that all use of the Manor Farm Track was by permission it is not appropriate to consider the application of s.31(1) of the Highways Act 1980 since any claim would fail by virtue of use not being 'as of right'. However, it is not clear whether witnesses thought they were also asking for permission to get to the centre section of Teffont 9 or whether the Pitcairns and Mr Crook thought they were granting permission to use the verge of Teffont 9 at this point.
- 14.11 If permission was also sought and granted for the verges of Teffont 9 when the land was owned by the Pitcairns and the Crooks then the evidence of use only becomes 'as of right' in 1998 when the land was divided. There is no record of Mr Waddington ever having been asked for permission for the public on foot or horseback to use the verge to access the Manor Farm Track. This period of use has now been stopped by the blocking of the way, as a result the period of use is only 16 years and s.31(1) could not be satisfied.
- 14.12 However, it is averred that users of Teffont 9 did not consider they were seeking permission to use the verge as they are generally clear in their responses that they have always considered the verges to be part of the route. It may be that the Pitcairns and Mr Crook also thought the verges were part of the route as certainly Mr Crook did not make provision for the crossing of them when dividing the land and separating the Manor Farm Track from the land over which Teffont 9 leads even though there was clearly a connecting track.
- 14.13 It is also notable that one user recalls use of the route as a driveway for sheep. The 1800 Inclosure Award awards the route as a public Road or driftway. The online Oxford Dictionary gives the definition of driftway as being "a broad route along which cattle or sheep used to be driven.." It is difficult to see how, if Teffont 9 was only 8 feet wide, sheep could have been driven on only the central section.
- 14.13 Taken as a body of evidence the user evidence may not prove decisive for this case as the historical evidence is strong (and it is not possible to dedicate a highway when it is already a highway) but it is a clear indication of local custom and practice for the period 1956 to 2014.

15.0 Decision relating to public rights pre 2nd May 2006

- 15.1 The southern part of the route (c. 50 chains) that is currently recorded as Teffont 9 was awarded in 1800 as a “public Road and driftway” at a width of 33 feet for a length of 50 chains (50 chains = 3300 feet = 1006 metres) north from the turnpike road. The route arose from an Inclosure Award dated 1800 which confirmed that the way “is already staked meted bounded and marked by us”.
- 15.2 The whole of Teffont 9 was awarded as a “Publick Carriage Road” at a width of 30 feet. This arose from an Act of Parliament.
- 15.3 Nothing has been viewed that suggests that either award was not properly carried out and that either of these two actions was beyond the powers (ultra vires) of the Commissioners. The maps and descriptions accompanying both awards are clear and unequivocal of the position of the awarded routes as being on the course of Teffont 9.
- 15.4 A number of supporting documents have been viewed which support that the awards were carried out and that the landscape changed as a result. Documents supporting this have come from both parish council, the former landowner’s estate and registered title of lands inclosed.
- 15.5 A number of points have been raised during the consultation period but none adduce any further evidence to be considered. It is clear that a number of issues relating to access have arisen in this area but none of these are relevant to the duty of the Council under s.53 of the Wildlife and Countryside Act 1981 which relates solely to the correct recording of public rights.
- 15.6 It is therefore considered that on the balance of probabilities the route of Teffont 9 is an ancient road and that until the 2nd May 2006 a public vehicular right existed along it.
- 15.7 It is now necessary to consider the effect of the Natural Environment and Rural Communities Act 2006.

16.0 Natural Environment and Rural Communities Act 2006

- 16.1 On the 2nd May 2006 **the NERC Act 2006** commenced and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:
 - (1) (a) *was not shown in a definitive map and statement, or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The relevant date in England means January 2005

(5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –

(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or

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

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

16.2 It is appropriate to consider each exemption in turn:

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

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

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

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

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

Public vehicular rights are not preserved by this section.

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

It is known that this road was a road by 1800 and the northern section 1837, a time before mechanically propelled vehicles existed.

I conclude that the requirements of Section (2)(c) NERC Act 2006 are not met.

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

Public MPV rights have not been preserved by this section.

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

The mechanically propelled vehicle did not exist as a distinct class of highway user before the 2nd May 2006, hence it is very difficult to consider this section. It is likely that as mechanically propelled vehicles became more common (in the mid 1800s)

people started using them on roads that would support their use. Although Teffont 9 is a relatively well drained route that had a metalled (stone laid) surface on the southern section in the late 1800s, it does have a significant gradient where it climbs from the old turnpike road (Old Dinton Road) to the Ox Drove. It is likely that the new turnpike road was made in 1814 because of the gradient on the Old Turnpike Road and as a result the majority of traffic would not have been passing the southern end of Teffont 9. Although the route of Teffont 9 (awarded Publick Carriage Road no. III) would have served a similar purpose for travellers as the awarded Publick Carriage Road no V it was road no V that was brought up to a standard suitable for MPVs (it is now the C.277 Teffont to Chilmark road) and not Teffont 9. Possibly because of its better connectivity with the new turnpike road and the housing in the village.

Since the distinct category didn't exist and since prior to 2006 the right to drive a horse drawn carriage was the same as the right to drive a motorised one it is not considered that the right was created by any actual MPV use, any such use was merely use continuing.

Public MPV rights are not preserved by this section

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

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

An application was not made before the relevant date (20 January 2005).

16.3 It is concluded that the public's right to drive a motor vehicle over the route was extinguished on the 2nd May 2006. However, as the route was a public vehicular highway prior to this date, section 67(5) of the NERC Act 2006 applies with respect to private access rights to property:

(5) Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –

(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or

(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

This is in addition to any granted easements or consents that the Council is unaware of.

17.0 Environmental Impact of the Recommendation

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

18.0 Equality Impact

18.1 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility.

18.2 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. This would offer a significant improvement to the network for carriage drivers.

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

19.0 Legal Implications

19.1 The making of a definitive map modification order to correctly record the applicant route is in line with the Council's duty contained within s.53(2) of the 1981 Act to keep the definitive map under continual review. It is not likely that the Council would be challenged if acting in pursuit of this duty. Additionally the 2005 application has been unresolved for so long (9 years) that the Council is at greater risk of legal action if it does not resolve the matter than if it does.

- 19.2 It is noted that landowners Mr and Mrs Wood and Mr Waddington are involved in litigation regarding private access rights and clarity over the definitive map and statement would greatly assist the courts.
- 19.3 If the Council fails to make an Order it may be subject to judicial review. This could have significant cost implications (c. £50000).
- 19.4 If the Council makes an Order which receives objections it may be liable to pay subsequent costs if it acts in an unreasonable manner at public inquiry. Costs awards of this nature are rare and may be in the region of c.£10,000.
- 19.5 Any final decision made on an order that has been objected to is made by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) and not Wiltshire Council. Hence any challenge to that decision is against the SoSEFRA and not the Council.

20.0 Risk Assessment

- 20.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 20.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 20.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 20.4 Advice from the Planning Inspectorate is that a byway open to all traffic application should not be refused as the Schedule 14 appeal process is not open in a case where evidence subsists and the Council has a duty to make an Order. The Schedule 14 appeal procedure is only open to applicants where the Council refuses to make any order. The applicant's appeal route is thereby through objection to the Council's order. Officers consider it highly unlikely that the 2005 applicant would object to a restricted byway order as the effect of the NERC Act 2006 is generally well known and understood.

21.0 Financial Implications

- 21.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 21.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000).
- 21.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. No works to the route are currently identified.

22.0 RECOMMENDATION

- 22.1 **That an Order to record Teffont Path no. 9 as a restricted byway with a width of 33 feet extending for 50 chains north of the Old Dinton Road and with a width of 30 feet for the remainder leading north to the Ox Drove is made and duly advertised. If no objections are received the Order should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick

Rights of Way Officer

01 December 2014

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1801 Inclosure Consolidation Act

41 GeoIII cap.109

Prior to this Act, each Parliamentary Inclosure was authorised by its own individual local Act, each with its own terms and conditions. This 1801 Act provided a common framework and standard conditions for subsequent Inclosures. Each still required a local authorising Act, which could vary the rules, but the 1801 Act greatly standardised the process.

The 1801 Act is quite wordy, in the style of the day. Here I have extracted sections likely to be of interest to highways researchers. Many other sections are represented by their marginal notes (here in italics) which give a good idea of their full effect. Text is taken from Tomlin's 1884 'the Statutes of the UK & GB', Vol I, which volume can be found in Berkshire Record Office.

Ross Kennedy, April 2003

An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure ; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts.

- I. *(No person shall act as a Commissioner under any future Inclosure Act, (except signing Notice of first Meeting and administering Oath,) until he shall have taken the Oath herein prescribed)*
- II. *(Commissioners declining to act shall give Notice to the others; No Commissioner shall purchase Lands within the Parish where Inclosures are made, for five Years after their Award)*
- III. *(Commissioners shall inquire into the Boundaries of Parishes, and if not sufficiently ascertained, they shall fix them, giving previous Notice of their intention so to do. Commissioners shall cause a Description of Boundaries to be delivered to one Churchwarden, &c. of the respective Parishes, and the Lords of the Manors, &c. Persons dissatisfied may appeal to the Quarter Sessions. Decisions at the Sessions shall be final.)*
- IV. *(A Survey, Admeasurement, Plan, and Valuation of the Lands &c. to be inclosed shall be made, and kept by the Commissioners, which shall be verified by the Persons making them.)*
And be it further enacted, That a true, exact, and particular Survey, Admeasurement, Plan and Valuation, of all the Lands and Grounds to be divided, allotted, and inclosed by any such Act, and also of all the Messuages, Cottages, Orchards, Gardens, Homesteads, ancient inclosed Lands and Grounds, within any such Parish or Manor, shall be made and reduced into Writing, by such Commissioner or Commissioners, or by such other Person or Persons as he or they shall nominate and appoint, as soon as conveniently may be, for the purposes of such Act; and the Number of Acres and decimal Parts of an Acre, in Statute Measure, contained in all the Lands and Grounds directed or authorized to be divided, allotted, and inclosed, and also in all the ancient inclosed Lands, Grounds and Homesteads aforesaid, and of each and every Proprietor's distinct Property in the same respectively, at the Time of making such Survey and Admeasurement, shall be therein set forth and specified; and that the said Survey, Admeasurement, Plan, and Valuation, shall be kept by such Commissioner or Commissioners; and the Person or Persons who shall make such Survey, Admeasurement, Plan, and Valuation, shall verify the same upon Oath or Affirmation, at any meeting to be held after the making thereof (which Oath or Affirmation the Commissioners, or any one of them, are and is hereby empowered and required to administer); and the Proprietors and their respective Agents, and all Persons interested therein, shall at all reasonable Times have Liberty to peruse and inspect such Admeasurement and Plan only, and to take Copies thereof and Extracts therefrom respectively.
- V. *(until the Division shall be completed the Lands may be entered by the Commissioners, or any Persons they may appoint, to make Surveys &c. Maps made at the time of passing Acts may be used, without making new ones, if the Commissioners shall think fit)*

- VI. *(Claimants of Common, &c. in Land to be inclosed, shall deliver to the Commissioners Schedules of Particulars, or shall be excluded, which Claims may be inspected, and Copies taken. Objections to Claims shall be delivered at or before the Meeting appointed for that Purpose, or shall not be received except for special Cause)*
- VII. *(Commissioners are not hereby authorized to determine Disputes touching Title to Lands; but shall assign the Allotments to the Person in actual Seisin or Possession. Disputes as to Title shall not delay Inclosures)*
- VIII. *(Commissioners before making Allotments shall appoint publick Carriage Roads, and prepare a Map thereof to be deposited with their Clerk, and give Notice thereof, and appoint a Meeting, at which, if any Person shall object, the Commissioners, with a Justice of the Division, shall determine the matter. Where Commissioners may be empowered to stop up any old Road, it shall not be done without the Order of two Justices, subject to Appeal, to Quarter Sessions.)*

Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted, and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the Inspection of all Persons concerned; and as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any Person who may be injured or aggrieved by the setting out of such roads to attend; and if any such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such Inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such Person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgement upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the Case make require : Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice as aforesaid.

- IX. *(Carriage Roads shall be fenced on both Sides according to Directions of Commissioners. No Person shall erect any Gate across any Road, or plant any Trees on the Sides, at less than 50 Yards distance. Commissioners shall appoint Surveyors, whose Salary and the Expence of making the Road, (above the Statute Duty,) shall be raised as other Expences, and paid before Execution of the Award. Surveyors subject to the Controul of the Justices, and shall account to them for Monies received. Justices may levy Rates. Surveyors neglecting to complete Roads within a limited Time shall forfeit £20 and the Inhabitants shall not be chargeable (except to Statute Duty), till the Roads are declared to be completed at a Special Sessions.)*

And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road, or to plant any Trees in or near to the Hedges on the Sides thereof, at a less Distance from each other than fifty Yards ; and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyor or Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Part of the same as shall have been previously made; which Salary (if any) and also the expence of forming, completing, and repairing such Roads respectively, over and above a Proportion of the Statute Duty on the Roads so to be repaired, shall be raised in like Manner as the Charges and Expences of obtaining and passing any such Act, and of carrying the same into Execution, shall thereby directed to be raised, and shall be paid to such Surveyor or Surveyors on or before the Execution of the Award of such Commissioner or Commissioners ; and in case the same shall be thereby provided to be raised by Sale of any Part of the Lands so to be divided and inclosed, that then such Commissioner or Commissioners shall make a conditional Rate upon the Owners and Proprietors of the same, in case the Produce of such Sale should prove insufficient for the Purposes aforesaid; and such Surveyor or Surveyors shall, and he or they is and are hereby directed to be in all Respects subject to the Jurisdiction and Controul of the Justices of the Peace acting in and for the County in which such Roads shall respectively lie, and shall account to such Justices in like Manner for all Monies so to be by him or them received and expended, and for the Re-payment of any Surplus which may remain in his or their Hands to such Persons as shall have been made liable to contribute thereto, according to the Proportion so as above ascertained by such Commissioner or Commissioners ; and such Justices shall have the like Powers of levying any such rate as may by them be thought necessary for the purposes aforesaid, according to the Proportions previously ascertained by such Commissioner or Commissioners, as if such Surveyor or Surveyors had been appointed under or by virtue of the General Highway Act passed in the thirteenth Year of the Reign of his present Majesty ; and in case such Surveyor or Surveyors shall neglect to complete and repair such Roads respectively within the Space of two Years after such Award, unless a further Time, not exceeding one Year, shall for that Purpose be allowed by such Justices, and then within such further Time, he or they shall forfeit the Sum of Twenty Pounds, and the Inhabitants at large of the Parish, Township, or Place wherein such Roads shall be respectively situate, shall be in no wise charged or chargeable towards forming or repairing the said Roads respectively, except such Proportion of such Statute Duty as aforesaid, till such Time as the same shall, by such Justices in their special Sessions, be declared to be fully and sufficiently formed, completed, and repaired, from which Time, and for ever thereafter, the same shall be supported and kept in Repair by such Persons, and in like Manner as the other publick Roads within such Parish, Township, or Place, are by Law to be amended and kept in Repair.

X. *(Commissioners shall appoint private Roads, &c.)*

And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds and Land Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out in pursuance of such Act, as he or they shall think requisite, giving such Notice and subject to such Examination, as to any private Roads or Paths, as are above required in the Case of publick Roads, and the same shall be made, and at all Times for ever thereafter be supported and kept in Repair, by and at the Expence of the Owners and Proprietors for the Time being of the Lands and Grounds directed to be divided and inclosed, in such Shares and Proportions as the Commissioner or Commissioners shall in and by his or their Award order and direct.

XI. *(Grass and herbage on Roads shall belong to the Proprietors of the Lands adjoining ; and all Roads which shall not be set out shall be allocated and inclosed. No Turnpike Road shall be altered without the Consent of the Trustees.)*

And be it further enacted, That after such publick and private Roads and Ways shall have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road ; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which shall not be set out as aforesaid, shall for ever be stopped up and

extinguished, and shall be deemed and taken as Part of the Lands and Grounds to be divided, allotted, and inclosed, and shall be divided, allotted, and inclosed accordingly ; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some public Meeting called for that purpose on ten Days Notice, be first had and obtained.

XII. (*Commissioners in making Allotments, shall have due regard to the Situation of Houses as well as the Quantity and Quality of Land*)

And be it further enacted,

XIII. (*Commissioners may direct small Allotments to be laid together and ring-fenced, and stocked and depastured in Common by the Proprietors.*)

And whereas ...

XIV. (*Allotments shall be in full Compensation for all Rights in the Lands, which shall cease on Notice from the Commissioners affixed on the Church Door.*)

And be it further enacted,

XV. (*Commissioners may exchange Allotments, Messuages, Lands, &c. with the Consent of the Proprietors, or if belonging to Churches, &c. with the Consent of the Bishop and of the Patron.*)

And be it further enacted, ...

XVI. (*Commissioners may make Allotments in Severalty to joint-tenants, or Tenants in common.*)

And be it further enacted, ...

XVII. (*Persons shall accept their Allotments in a limited Time, or forfeit their Right.*)

And be it further enacted, ...

XVIII. (*Guardians, &c. may accept for incapacitated Persons, and Tenants for Life shall accept of Allotments. Non-acceptance of Guardians, &c. shall not prejudice the Rights of incapacitated Persons who shall accept in a limited Time after enabled to do so.*)

Provided Always ...

XIX. (*Before Execution of the Award, Allotments may be ditched and inclosed, with the Consent of the Commissioners.*)

And be it further enacted, ...

XX. (*Trees &c. shall be allotted with the Lands whereon they stand, the Parties paying to the Owners such Sums as the Commissioners shall direct; but in Case of Neglect the Owners may cut them down and take them away.*)

And be it further enacted, ...

XXI. (*Where money is to be paid for Lands, &c. and which ought to be laid out in other Purchases to be settled to the same Uses, the Commissioners may thereout defray a Proportion of the Expences of passing the Act, and putting it in Execution, &c.; and if the Surplus amount to £200 it shall, as soon as may be, be laid out in other Purchases, and in the mean Time be paid into the Bank and applied under the Direction of the Court of Chancery.*)

And be it further enacted, ...

XXII. (*If such money be less than £200, and upwards of £20, it shall at the Option of the Person entitled to the Rents, be paid into the Bank, or to two Trustees to be approved of by the Commissioners, for the same purposes.*)

Provided always ...

XXIII. (*If less than £20 it shall be applied to the Use of the Person entitled to the Rents of the Lands, &c.*)

Provided Also ...

- XXIV. (*If any Person does not accept, inclose and fence his Allotment as the Commissioners shall direct, they may cause it to be inclosed and fenced and let, and receive the Rents until the Expences are satisfied, or they may charge them upon the Proprietor.*)
And be it further enacted, ...
- XXV. (*During seven Years after fencing Allotments, Fences may be erected on the Outside of the Ditches, and the Materials carried away by the Proprietors.*)
And be it further enacted, ...
- XXVI. (*No standing Fences or Hedges shall be destroyed till the Execution of the Award, without Consent of Commissioners, and if assigned as a Boundary Fence, shall be left uncut, the Persons entitled to the Allotments making Compensation therefore.*)
And be it further enacted, ...
- XXVII. (*Where the Boundary of any Common Fields, &c. shall be fenced by any Mound, &c. the Proprietors of adjoining Allotments shall not be compelled to fence them; but such Boundaries shall be maintained by the Proprietors as before, or as the Commissioners may appoint.*)
Provided always ...
- XXVIII. (*Persons destroying, &c. Fences, &c. put up under the Authority of any Act, shall forfeit £5 and the Proprietor of the Lands, &c. may give Evidence.*)
And be it further enacted, ...
- XXIX. (*Whole Expences of obtaining and carrying any Act into Execution, shall be to be paid by the Proprietors, the Commissioners may, on neglect, cause the same to be levied by Distress or may take Possession of the Allotments, and receive the Rents, till satisfied*)
And whereas ...
- XXX. (*Guardians, Tenants for life, &c. may charge Allotments with Expences, if not exceeding £5 per Acre; and if Persons in Possession shall advance the Money, the Commissioners may mortgage the Lands to them for Reimbursement.*)
And be it further enacted, ...
- XXXI. (*Commissioners may deduct from Allotments or Charity or School Lands, what shall be deemed equal to the proportionable Share of the Expences, and allot the same to Persons undertaking to pay.*)
And whereas ...
- XXXII. (*Where the Expences of obtaining and carrying any Act into Execution shall be to be paid by sale of Part of the Lands, Commissioners shall set out and sell a Part, and the Purchasers shall immediately make a deposit, which shall be forfeited, if Purchase Money be not duly paid.*)
And be it further enacted, ...
- XXXIII. (*Commissioners may summon Witnesses; Penalty for Non-attendance, &c. from £10 to £5.*)
And, for the better enabling ...
- XXXIV. (*Witnesses shall not be obliged to travel above eight miles.*)
Provided always, ...
- XXXV. (*After Allotment Commissioners shall draw up their Award, which shall be read and executed at a Meeting of the Proprietors, and proclaimed the next Sunday in the Church, and then considered as complete. Award shall be inrolled in one of the Courts at Westminster, or with the Clerk of the Peace, and may be inspected, and Copies obtained. Award and Copies shall be legal Evidence, and Award shall be binding on all Parties interested. Commissioners may annex Maps to the Award, which shall be deemed Part thereof*)
And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such

Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned, or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of the Roads, Ways, Footpaths, Watercourses, Watering Places, Quarries, Bridges, Fences, and Land Marks, set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions, and Determinations, as the said Commissioner or Commissioners shall think necessary, proper, or beneficial to the Parties ; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the Presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete ; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End that Recourse may be had thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid ; and a Copy of the said Award, or any Part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be paid than Two-pence for every Sheet of seventy-two Words ; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence ; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid ; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods, and Perches, together with the Names of the respective Proprietors at the Time of such Division and Allotment ; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.

XXXVI. *(Commissioners shall keep Account of all Monies, which may be inspected at their Clerks Office gratis. Penalty on neglect from £10 to £5.)*

And be it further enacted, ...

XXXVII. *(Monies raised shall be deposited as directed by a Majority in Value of Proprietors, and not issued without Order from Commissioners.)*

And be it further enacted, ...

XXXVIII. *(The Rector or Vicar with the Consent of the Bishop of the Diocese, and of the Patron of the Living, may lease Allotments for 21 years, upon certain Conditions.)*

And be it further enacted, ...

XXXIX. *(Penalties shall be recoverable before one Justice. And applied according to Direction of the Commissioners.)*

And be it further enacted, ...

XL. *(Saving of the Rights of Lords of Manors.)*

And be it further enacted and declared, that nothing in such Act shall lessen, prejudice, or defeat the Right, Title, or Interest of any Lord or Lady of any Manor or Lordship, or reputed Manor or Lordship, within the Jurisdiction or Limits whereof the Lands and Grounds thereby directed to be divided and allotted are situate, lying, and being, of, in, or to the Seigniories, Rights, and Royalties incident or

belonging to such Manor or Lordship, or reputed Manor or Lordship, or to the Lord or Lady thereof, or to any Person or Persons claiming under him or her, but the same (other than and except the Interest and other Property as is or are meant or intended to be barred by such Act) shall remain, in as full, ample, and beneficial Manner, to all Intents and Purpose, as he or she might or ought to have held or enjoyed such Rights before the passing of such Act, or in case the same had never been made.

XXI. (General Saving.)

Saving always to the King's most Excellent Majesty, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, and his, her, and their Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest, (other than and except such as are hereby intended to be barred, destroyed or extinguished) as they, every, or any of them, had or enjoyed of, in, to, or out of, or in respect of the said Lands, Grounds, and Premises so directed to be divided, allotted, and inclosed, or exchanged as aforesaid, before the passing of such Act, or could or might have had or enjoyed in case the same had never been made.

XXII. (Two Justices may take Affidavits of the Notices required having been given, &c. in the Forms in the Schedule, without Stamps)

And be it further enacted, ...

XXIII. (Persons forswearing themselves shall be deemed guilty of perjury.)

And be it further enacted, ...

XXIV. (How far this Act shall be binding.)

Provided always, and be it enacted, That all and every the Powers, Authorities, Directions, and Provisions in this Act contained, shall be only so far effective and binding in each particular Case, as they or any of them shall not be otherwise provided and enacted in any such Act hereafter to be passed as aforesaid.

SCHEDULE to which the ACT refers

- (A) FORM of AFFIDAVIT of NOTICES
- (B) FORM of AFFIDAVIT of CONSENT
- (C) FORM of AFFIDAVIT of ALLEGATIONS in the BILL
- (D) FORM of AFFIDAVIT of ADMEASUREMENT

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AN

A C T

For dividing, allotting and inclosing Lands in the
Parish of *Dinton*, in the County of *Wilts*.

[ROYAL ASSENT, JUNE 24, 1822.]

WHEREAS there are within the parish of *Dinton*, with the Preamble.
Chapelry of *Teffont Magna*, in the county of *Wilts*, divers open
common fields, common meadows, common downs and other com-
monable lands and grounds :

And whereas The Right Honorable *George Augustus* Earl of
Pembroke and *Montgomery* is lord of the manor of *Dinton* and *Teffont*,
otherwise *Teffont Magna*, in the parish of *Dinton* aforesaid :

And whereas the said *George Augustus* Earl of *Pembroke* and *Mont-*
gomery, *William Wyndham*, Esquire, and divers other persons respec-
tively, are owners of messuages, lands and tenements within the said
parish, and proprietors of, or interested in, the said lands and grounds :

And whereas the President and Scholars of *Magdalen College* in the
University of *Oxford* are patrons of the rectory of *Dinton* aforesaid,
with the Chapel of *Teffont Magna* annexed, and the Reverend *Henry*
Linton, Doctor of Divinity, is the present vicar or incumbent thereof,
and as such is entitled to certain glebe lands to the said rectory
belonging :

And whereas it would be of great benefit and advantage to the
several persons interested in the said lands and grounds if the same
were divided, and specific parts and shares thereof allotted to the
several proprietors and other persons interested, agreeably to their
several and respective estates, rights and interests therein, in order

No. 6.

A

that

that such allotments may be inclosed and held in severalty ; but such beneficial purpose cannot be effected without the aid and authority of Parliament :

And whereas an Act passed in the forty-first year of the reign of his late Majesty King *George* the Third, intituled “ An Act for “ consolidating in one Act certain Provisions usually inserted in Acts “ of Inclosure, and for facilitating the Mode of proving the several “ Facts usually required on the passing of such Acts :”

2d Geo. IV.
cap. 23.

And whereas another Act was passed in the second year of the reign of his present Majesty King *George* the Fourth, intituled “ An “ Act to amend the Law respecting the inclosing of open Fields, “ Pastures, Moors, Commons, and Waste Lands in *England* :”

May it therefore please Your MAJESTY,

Commission-
ers appoint-
ed.

That it may be enacted, and be it enacted by the KING's Most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, that *John Charlton* of *Stourton*, in the county of *Wilts*, gentleman, and *John Seagrim* of the borough of *Wilton*, in the same county, gentleman, shall be and they are hereby appointed Commissioners for dividing and allotting all the open common fields, common meadows, common downs and other commonable lands and grounds in the parish of *Dinton* aforesaid, and for carrying this Act into execution, subject to such of the powers, authorities, directions, regulations, restrictions and provisions, contained in the said recited Acts as are not altered, varied or otherwise provided for by this Act.

Appoint-
ment of new
Commission-
ers on vacan-
cies.

And be it further enacted, That in case the said *John Charlton*, or any Commissioner to be appointed in his place as hereinafter is mentioned, shall refuse to act, or if he shall, before the powers and trusts reposed in the said Commissioners shall have been fully executed, die, neglect or refuse to act, or become incapable of acting as a Commissioner, it shall be lawful for the major part in value (such value to be ascertained by the surviving or continuing Commissioner for the time being) of the several persons interested in the said lands and grounds to be divided and allotted by virtue of this Act (except the lord or lords for the time being of the manor of *Dinton* and *Teffont*, otherwise *Teffont Magna* aforesaid), who shall by themselves

or their respective agents attend the meeting or meetings to be appointed for that purpose (of which meeting and the intent thereof notice shall be given by any two or more persons so interested as aforesaid, at least ten days previous to such meeting, by affixing such notice on the door of the parish church of *Dinton* aforesaid, and by inserting the same in the newspaper called the *Salisbury and Winchester Journal*, if then published, and if not, then in some other newspaper usually circulated in the said county of *Wilts*) by writing under their respective hands from time to time to appoint some other fit person (not interested in the said division) to be a Commissioner in the place of the said *John Charlton*, and so from time to time as often as any vacancy shall happen by the like death, neglect, refusal, or incapacity of any Commissioner to be appointed in the place of the said *John Charlton* as aforesaid; and if the said *John Seagrim*, or any Commissioner to be appointed in his place as hereinafter is mentioned, shall refuse to act, or if he shall before the powers and trusts reposed in the said Commissioners shall have been fully executed die, neglect, or become incapable of acting as a Commissioner, it shall be lawful for the lord or lords of the said manor of *Dinton* and *Teffont*, otherwise *Teffont Magna*, for the time being, by writing under his or their respective hand or hands, to appoint some other fit person (not interested in the said division) to be a Commissioner in the place of the said *John Seagrim*, and so from time to time, as often as any vacancy in the commission shall happen by the like death, neglect, refusal, or incapacity of any Commissioner, to be appointed in the place of the said *John Seagrim* as last aforesaid; and every person who shall be nominated and appointed a Commissioner as aforesaid shall, after taking the oath in that behalf prescribed by the said first recited Act, have such and the like powers and authorities in all respects for carrying this Act and the said recited Acts into execution, and shall be subject and liable to the like rules, regulations and restrictions as if he had been originally nominated and appointed a Commissioner in and by this Act.

Provided always, and be it enacted, That if either of the said Commissioners hereby appointed, shall refuse or neglect to attend at the first meeting appointed to be holden for carrying this Act into execution, and duly qualify himself by taking and subscribing the oath prescribed in that behalf; or if either of the said Commissioners shall, at any time after the said first meeting, wilfully absent himself from any three following successive meetings appointed to be holden

Commissioners neglecting to attend meetings, to be considered as a refusal to act.

by

by virtue of this Act, or having been absent from two successive meetings, shall not attend during the whole of the third or next succeeding meeting, such meetings being known to him either by his being present at the appointment thereof, or notice thereof in writing under the hand or hands of the clerk to the said Commissioners, or of any three or more of the persons interested in the said lands and grounds to be divided and allotted by virtue of this Act, having been delivered to the said Commissioner, or left at his usual place of abode, and such Commissioner not having been prevented by sickness, or other reasonable cause, to be allowed by the other Commissioner, from attending or continuing at such meetings or meeting; or if any person who shall hereafter be nominated and appointed a Commissioner, as by this Act is directed, shall not attend and qualify himself to act as a Commissioner in the execution of this Act, at the first meeting of the said Commissioners, after his nomination or appointment, or shall thereafter wilfully absent himself from three following successive meetings, to be holden by virtue of this Act, or having been absent from two successive meetings, shall not attend during the whole of the third or next succeeding meeting, such meetings being known to him either by his being present at the appointment thereof, or notice thereof in writing under the hand or hands of the clerk to the said Commissioners, or of any three or more of the persons interested in the said lands and grounds, having been delivered to the said Commissioner, or left at his usual place of abode, and such Commissioner not being prevented by sickness, or other reasonable cause to be allowed by the other Commissioner, from attending or continuing at such meetings or meeting, then, and in every of such cases, such absence or non-attendance shall be deemed and taken to be a refusal to act within the intent and meaning of this Act.

Umpire.

And for the purpose of settling and determining any difference or dispute which may arise between the Commissioners, touching or concerning any of the matters or things to be by them determined and performed, or executed in pursuance of the said recited Acts or of this Act, Be it further enacted, that the said Commissioners shall, and they are hereby authorized and required, at the first meeting to be held by them, for the putting this Act into execution, by writing under their hands, to choose, nominate and appoint some proper and skilful person, (not interested in the said division,) who shall be willing, and consent to act as an umpire; and if the said Commissioners cannot agree in the choice of a person to act as umpire, then the vicar for the time being of the parish of *Dinton* aforesaid, shall, and he is hereby

hereby authorized, by writing under his hand, to choose, nominate and appoint some such fit and skilful person, (not interested as aforesaid,) who shall be willing and consent to act as umpire, which umpire so to be chosen, nominated and appointed, is hereby authorized and required to hear and determine every such difference or dispute as may arise between the Commissioners touching any act, matter or thing relating to the said division, allotment and inclosure, or any of the purposes of the said recited Acts or this Act; and the judgment and determination of the said umpire therein shall be deemed and considered to be the judgment and determination of the Commissioners, and shall be final and conclusive upon the Commissioners, and upon all other persons concerned in the said division, allotment and inclosure, so far as the judgment and acts of the Commissioners are by the said acts, or either of them, made final and conclusive.

And be it further enacted, That if the umpire so to be appointed as aforesaid, or any future umpire to be appointed as hereinafter is mentioned, shall neglect or refuse to act under this Act, or shall die or become incapable of acting before the powers and trusts reposed in the said Commissioners shall have been fully executed, then the said Commissioners shall, before they proceed further in the execution of this Act, and they are hereby authorized, by writing under their hands, to appoint some other fit person (not interested in the said division) to be an umpire in the place of the umpire so neglecting or refusing to act, or dying, or becoming incapable of acting; and if the Commissioners cannot agree in the choice of a person to supply the place of an umpire on any such vacancy, then the vicar for the time being of the parish of *Dinton* aforesaid, shall and he is hereby authorized, by writing under his hand, to appoint some such fit person to be an umpire in the place of the umpire so neglecting or refusing to act, or dying or becoming incapable of acting; and every umpire to be appointed in the manner hereinbefore directed, in the place of the umpire so neglecting or refusing to act, or dying or becoming incapable of acting, shall have the like powers and authorities as are by this Act vested in the umpire hereby directed to be first appointed.

Appoint-
ment of
umpire on
vacancies.

Provided also and be it enacted, That no person shall be capable of acting in the execution of this Act as umpire, until he shall have taken and subscribed an oath in the form following, that is to say:

“ I, *A. B.* do swear that I will faithfully, impartially
 “ and honestly, according to the best of my skill and ability,
 No. 6. B “ execute

Oath of
umpire.

“ execute and perform the trusts, powers and authorities vested
 “ and reposed in me as umpire, by virtue of an Act passed in
 “ the third year of the reign of his Majesty King *George* the
 “ Fourth, intituled [*here set forth the title of this Act*] according
 “ to equity and good conscience, and without favour or affec-
 “ tion, prejudice or partiality to any person or persons whom-
 “ soever.

“ So help me *GOD*.”

Which oath it shall be lawful to and for the said Commissioners, or either of them, to administer, and they are hereby required to administer the same, and such oath so taken and subscribed by such umpire, with a duplicate thereof, shall be annexed to and enrolled with the general award of the said Commissioners.

Commissioners to give notice of meetings.

And be it further enacted, That the said Commissioners shall, and they are hereby directed to cause public notice to be given of the time and place of their first and every other meeting for the execution of this Act, at least eight days before any such meeting shall be holden (meetings by adjournment excepted); and that the said Commissioners may, and they are hereby authorized to adjourn any such meeting from time to time, and place to place, as they shall see occasion; and in case both the said Commissioners shall not meet at the time and place appointed for any such meeting, or to which any such meeting shall be adjourned, it shall be lawful for the Commissioner present at such time and place, or if no Commissioner shall attend, for the clerk to the said Commissioners, to adjourn such meeting to any future day, not exceeding twenty-eight days from the day of adjournment, to be holden at the same or any other convenient place, and so from time to time until both the said Commissioners shall meet, and the Commissioner or clerk making such adjournment is hereby required to give notice thereof to the absent Commissioner or Commissioners; provided that all meetings for putting this Act into execution shall be held within the parish of *Dinton* aforesaid, or within eight miles thereof.

One Commissioner or clerk may adjourn.

In what manner notices to be given.

And be it further enacted, That all notices required by the said first recited Act, to be given by the said Commissioners, and the notices hereby required to be by them given of their meetings for the execution of this Act, shall be given by writing, to be affixed on the door of the parish church of *Dinton* aforesaid, and by advertisement in some newspaper usually circulated in the said county of *Wilts*.

No. 6.

And

And be it further enacted, That if any dispute or difference shall arise between any of the parties interested, or claiming to be interested in the lands and grounds hereby directed to be divided and allotted, touching or concerning the respective shares and proportions which they or any of them shall have, or claim to have therein, or touching or concerning any other claims or objections, rights or interests relating to the said division and inclosure, it shall and may be lawful to and for the said Commissioners, and they are hereby respectively authorized and required, upon proper and sufficient inquiry and evidence, to examine into, hear and determine the same; provided that nothing herein contained shall authorize the said Commissioners to determine the title to any lands, tenements or hereditaments whatsoever, nor to determine any right between any of the parties interested in the said lands and grounds contrary to the possession of any such parties, except in case of encroachments within twenty years, as are hereinafter mentioned; but in case the said Commissioners shall be of opinion against the right of the person or persons so in possession, they respectively shall forbear to make any determination thereupon, until the possession shall have been duly taken from such person or persons by ejectment or other due course of law.

Commissioners to determine differences;

but not titles nor rights contrary to possession.

And be it further enacted, That in case the said Commissioners or umpire shall upon the hearing and determination of any claim or claims, objection or objections, to be delivered to the Commissioners in pursuance of the said first recited Act, or of this Act, see cause to award any costs, it shall and may be lawful to and for the said Commissioners and umpire, and they and he are and is hereby empowered upon application made to them or him respectively for that purpose, to settle, assess and award such costs and charges, as they or he respectively shall think reasonable, to be paid to the party or parties in whose favour any determination of the said Commissioners or umpire respectively shall be made, by the person or persons, body or bodies politic or corporate, whose claim or claims, objection or objections shall be thereby disallowed or overruled; and in case the person or persons, body or bodies politic or corporate, who shall be liable to pay such costs and charges, shall neglect or refuse to pay the same on demand, then and in such case it shall and may be lawful to and for the said Commissioners and umpire respectively, and they and he are and is hereby respectively authorized and required, by warrant under their or his hands and seals, or hand and seal respectively directed to any person whomsoever, to cause such costs and charges to be levied by distress and sale of the goods and chattels of the person or persons,

Power to award costs.

persons, body or bodies politic or corporate, so neglecting or refusing to pay the same, rendering the overplus (if any) upon demand to the person or persons, body or bodies politic or corporate, whose goods and chattels shall have been so distrained and sold, after deducting the costs and charges attending such distress and sale.

Persons dissatisfied with Commissioners' determination may try their rights at law.

Provided always and be it further enacted, That in case any person or persons, body or bodies politic or corporate interested or claiming to be interested in the said intended division or allotment, shall be dissatisfied with any determination of the Commissioners or umpire touching or concerning any claim or claims of common or other rights or interests in, over or upon or out of the lands or grounds hereby intended to be divided or allotted, or any part or parts thereof, or any objection or objections to such claim or claims, it shall be lawful for the person or persons, body or bodies politic or corporate so dissatisfied to cause an action to be brought upon a feigned issue against the person or persons, body or bodies politic or corporate, in whose favour any such determination shall have been made, within three calendar months next, after the determination of the said Commissioners or umpire shall have been notified in writing to the party or parties against whom such determination shall have been so made, or to his, her or their known agent or attorney, and thereupon ~~the person or persons, body or bodies politic or corporate~~ so dissatisfied shall proceed to a trial at law at the then next or the following assizes to be holden for the said county of *Wilts* after such action or actions shall have been commenced, and the defendant or defendants in such action or actions shall, and he, she or they is and are hereby required to name an attorney or attorneys who shall appear thereto, or file common bail and accept of one or more issue or issues whereby such claim or claims, and the right or rights thereby insisted on may be tried and determined (such issue or issues to be settled by the proper officer of the court in which such action or actions shall be commenced in case the parties shall differ about the same), and the verdict or verdicts which shall be given in such action or actions shall be final, binding and conclusive upon all and every person and persons, body and bodies politic or corporate whomsoever, unless the court wherein such action or actions shall be brought shall set aside such verdict or verdicts, and order a new trial to be had therein, which it shall be lawful for the court to do, and that after such verdict or verdicts shall be obtained and not set aside by the court, the said Commissioners shall and they are hereby required to act in conformity thereto and to allow or disallow the claim or claims thereby determined

mined according to the event of such trial or trials : Provided always, that if no such action at law shall be commenced as aforesaid, or if any such action shall be commenced, and the plaintiff or plaintiffs therein shall not proceed to trial within the time hereinbefore limited for that purpose, then the determination of the said Commissioners shall be binding, final and conclusive to all intents and purposes whatsoever.

Provided always and be it enacted, That if any of the parties in any action or actions to be brought and prosecuted in pursuance of this Act, shall die pending the same, such action or actions shall not abate by reason thereof, but may be proceeded in as if no such death had happened ; and if any person or persons, in whose favor any such determination as aforesaid shall have been made, and against whom any such action or actions might have been brought, if living, shall die before any action or actions shall have been brought, and before the expiration of the time hereinbefore limited for bringing such action or actions, it shall be lawful for the person or persons, body or bodies politic, corporate or collegiate respectively, who might have brought such action against the person or persons so dying, to bring the same within the time so limited as aforesaid, against such person or persons as if actually living, and to serve the clerk of the said Commissioners with notice of such action or actions, in the same manner as the party or parties might have been served therewith if living ; and it shall be incumbent on the heir or heirs, or other person or persons who shall claim the benefit of such determination as aforesaid, to appear and defend such action or actions, in the name or names of the person or persons so dead, and proceedings shall be had therein in the same manner as if such person or persons had been actually living ; and the rights of all parties shall be equally bound and concluded by the event of such action or actions.

Actions not to abate by the death of a party.

Allowing actions to be brought after the death of parties.

Provided always and be it enacted, That no such difference, dispute or proceeding, touching the title to any lands, tenements or hereditaments, shall impede or delay the said Commissioners in the execution of this Act; but the division, allotment and inclosure hereby directed to be made, shall be proceeded in notwithstanding any such difference, dispute or proceeding.

Trials not to suspend the execution of the powers of the Act.

And be it further enacted, That it shall be lawful for the said Commissioners at any time, when they in their judgment shall think it convenient and proper, by notice for that purpose under their hands,

Commissioners may extinguish or suspend rights of common.

hands, to be affixed on the door of the parish church of *Dinton* aforesaid, on some *Sunday* before, and there to remain until after divine service, to order the right of common in, upon and over the lands and grounds hereby directed to be divided and allotted, or any of them, to be extinguished either in whole or in part, or to be suspended, and from and after the time to be mentioned in and fixed by any such notice, all such right of common as shall thereby be directed to be extinguished or suspended, shall cease and be extinguished; or shall be suspended according to, and as shall be expressed in, and directed by, such notice.

Encroachments.

And be it further enacted, That all inclosures and encroachments which shall have been taken in and made from the said lands and grounds hereby directed to be divided and allotted (save and except such as have been peaceably and quietly enjoyed for the space of twenty years last past or upwards, before the passing of this Act, without any interruption or payment of any acknowledgment), shall be deemed part and parcel of the lands and grounds to be divided and allotted in pursuance of this Act; and in case any difference or dispute shall arise touching any such inclosures or encroachments being deemed part or parcel of the said lands and grounds so to be divided and inclosed, such differences and disputes shall be examined into and determined by the said Commissioners.

Road to be set out from the glebe lands.

And be it further enacted, That the said Commissioners shall, and they are hereby authorized and empowered to set out and allot unto and for the impropiators and vicar of *Dinton* aforesaid for the time being, and their lessees, a road or drift-way, to and from the glebelands belonging to the said vicarage, through and over certain lands belonging to the said *George Augustus* Earl of *Pembroke* and *Montgomery*, in the parish of *Dinton* aforesaid, in the several possessions of *Samuel Jesse*, *Joel Doughty* and *William King*, into a certain road within the said parish, (which branches out of the highway leading from *Salisbury* to *Hinton*) at or near a certain barn belonging to the said Earl, in the possession of *Walter Bailey*.

Allotment to the vicar for his glebe lands.

And be it further enacted, That the said Commissioners shall, and they are hereby authorized and required to set out and allot unto and for the vicar of *Dinton* aforesaid and his successors, in lieu of his glebe lands in the said common fields and right of common thereunto belonging, such plot or plots, parcel or parcels of the lands and grounds by this Act authorized to be divided and allotted, as shall in

the judgment of the said Commissioners be a full equivalent and compensation for such glebe lands, and all right of common thereunto belonging.

And be it further enacted, That the said Commissioners shall divide, assign, set out, and allot all the lands and grounds by this Act directed to be divided and allotted unto and amongst all and every person and persons, body and bodies politic, corporate or collegiate, having any right or interest in, to, over or upon the said lands and grounds, in such shares and proportions as the said Commissioners shall adjudge and determine, to be proportionate to the value of, and a full compensation and satisfaction to him, her or them respectively, for his, her or their respective rights and interests in, to, over and upon the same lands and grounds. Allotments to proprietors.

Provided always and be it further enacted, That in case any person or persons, body or bodies politic, corporate or collegiate, corporations aggregate or sole, or other proprietor or proprietors, shall, prior to the passing of this Act, have inclosed any part of the lands and grounds hereby directed to be divided and allotted, then it shall be lawful for the said Commissioners, and they are hereby authorized and required to allot and award to such person or persons, body or bodies, corporation or corporations, or other proprietor or proprietors as aforesaid, all such lands as and for his, her or their proportion and allotment of the lands and grounds hereby directed to be divided and allotted, and such further share or proportion of the said lands (if any) as in the judgment of the said Commissioners, such person or persons, body or bodies, corporation or corporations, or other proprietor or proprietors as aforesaid, shall be entitled to by virtue of this Act; but if the said Commissioners shall be of opinion that such person or persons, body or bodies, corporation or corporations, or other proprietor or proprietors as aforesaid, is not, or are not entitled to so large a share or proportion of the said lands and grounds, as the whole of the lands and grounds so previously inclosed as aforesaid, then the said Commissioners shall make such deduction therefrom as may be necessary to reduce the same, to his, her or their due share or proportion of the lands and grounds hereby directed to be divided and allotted, according to his, her or their rights and interests therein, so as such reduction be made with as little injury and inconvenience in regard to situation, and in all other respects as circumstances will admit. Lands already inclosed how to be allotted.

And whereas it would tend to facilitate the general plan or scheme Inclosed of lands to be

allotted in
certain cases.

of division and arrangement of the lands and grounds hereby directed to be divided and allotted, if the old enclosed or other lands or grounds not hereby directed to be divided and allotted were in certain cases made allottable: Be it therefore further enacted, that it shall be lawful for the said Commissioners, at the request and by and with the consent of the owner or owners thereof, in such cases as they shall deem it expedient, to allot any old enclosed or other lands or grounds, not hereby directed to be divided; and if the owner or owners of such old enclosed or other lands or grounds be entitled to an allotment under this Act, by reason of his property or interest in the lands and grounds hereby directed to be divided and allotted, to increase the allotment or allotments of such proprietor or proprietors, to an extent proportionate to the value of the lands so to be allotted; and in case such proprietor or proprietors shall not be entitled as aforesaid to any allotment or allotments in the lands and grounds hereby directed to be divided and allotted, then the said Commissioners shall and they are hereby authorized and required to allot unto him, her, or them, such part of the said lands and grounds hereby directed to be divided and allotted, as shall be equal in value to and a fair compensation for the land or ground to be allotted as aforesaid.

Parts of
lands may
be ordered
to be depas-
tured in
common.

Provided always and be it further enacted, That it shall be lawful for the said Commissioners, and they are hereby authorized and empowered upon request to them made by any two or more of the several persons interested in the lands and grounds to be divided and allotted by this Act, by writing under their hands and upon a view and consideration of the premises, to award, order and direct that such part or parts of the said lands and grounds as the Commissioners shall think proper and necessary shall hereafter be cultivated, fed and depastured in common: and the said Commissioners shall and they are hereby authorized and empowered to direct that all such part or parts of the said lands and grounds as shall be by them so ordered to be cultivated, fed and depastured in common as aforesaid, shall be cultivated, fed, depastured and enjoyed in such course of husbandry as the said Commissioners shall deem to be the best improved course of husbandry that the respective soils and situations are capable of, and the same shall be opened, broke, stocked and depastured, and also shall be shut up or unstocked on such days and at such times respectively as the said Commissioners shall direct or appoint; and also that the same shall be stocked and depastured with such sort and number of neat cattle, sheep or other stock for the share and proportion of each proprietor or occupier respectively

tively as the said Commissioners shall judge most equitable and beneficial for the whole and for the several proprietors interested therein.

And be it further enacted, That the allotment to be made to the said vicar of *Dinton*, for his glebe lands and right of common as hereinbefore directed, shall be inclosed and fenced on all such parts as shall not be directed to be fenced by any of the other proprietors, and as shall not adjoin upon any ancient inclosure, brook or watercourse, which may be of itself a sufficient fence with quicksets and ditches, with proper oak posts, and three rails of oak, ash or elm, or other durable wood, on each side of such quicksets, the expences whereof, and also of maintaining, preserving and repairing the said ditches, quicksets and fences, for the space of five years after the same shall have been planted and made, shall be borne and defrayed by the owners and proprietors of the lands and grounds hereby directed to be divided, allotted and inclosed, in such parts and proportions as the said Commissioners shall order or direct.

For fencing the vicar's allotment.

And be it further enacted, That all and every person and persons, body or bodies politic, corporate or collegiate, corporation or corporations aggregate or sole, or other proprietor or proprietors (except the said vicar of *Dinton*) to or for whom any allotment or allotments of any part or parts of the said common fields, common meadows and other commonable lands hereby directed to be divided, allotted and inclosed, shall be made under and by virtue of this Act, shall respectively at his her and their own expence, fence in and inclose the same in such manner and within such time as the said Commissioners shall in and by their respective general awards or any other writing under their hands direct and appoint.

Allotments to be fenced.

And be it further enacted, That it shall be lawful for any person or persons who shall be entitled to any allotment or allotments under or by virtue of this Act to give, grant, bargain, sell, demise, mortgage, limit, convey and assure the same, for all or any part of his, her or their estate or interest therein or right thereto, at any time before the execution of the respective general awards of the said Commissioners; and every such gift, grant, bargain, sale, demise, mortgage, limitation, conveyance and assurance shall be of the same force and validity as if made after the execution of the said award.

Proprietors may sell their allotments before the execution of the award.

And be it further enacted, That it shall be lawful for the vicar of *Dinton* to grant leases.

Power to the vicar to grant leases.

No. 6.

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the said parish of *Dinton* for the time being, by indenture or indentures under his hand and seal, with the consent and approbation of the bishop of the diocese and the patrons of the said vicarage, to lease or demise all or any part or parts of the allotment or allotments to be allotted to such vicar in right of his said vicarage, by virtue of this Act, to any person or persons whomsoever, for any term not exceeding twenty-one years, to commence within twelve calendar months from the passing of this Act, so that there be thereby reserved and made payable, by four equal quarterly payments to such vicar, the best and most improved rent or rents that can be reasonably gotten for the same, without taking any fine, foregift, premium, sum of money, or other consideration, for granting any such lease, and so that no such lessee, by any such lease or demise, be made dispunishable for waste by any express words to be therein contained, and so that there be inserted in every such lease power of re-entry on non-payment of the rent or rents to be thereby reserved, within a reasonable time, to be therein limited after the same shall become due, and so that a counterpart of such lease be duly excuted by the lessee or lessees to whom such lease shall be so made as aforesaid, and every such lease shall be valid and effectual, any law, usage, or any thing in the said recited Acts to the contrary notwithstanding: Provided always, that whenever any lease or leases so to be granted by any such vicar, shall by any means become forfeited or void, or be surrendered before the expiration by effluxion of time of the term or terms thereby granted, then and in such case, and as often as the same shall so happen, it shall and may be lawful for the vicar for the time being of the said vicarage, by and with such consent and approbation as hereinbefore mentioned, to grant a new lease of the lands so demised, for such term or terms of years as shall at the time or times of such avoidance be then to come and unexpired of the original lease or leases, subject nevertheless to the provisions and conditions contained in such original lease or leases, and then remaining unperformed and capable of having effect.

Lands held by different tenures by the same proprietors, to be distinguished.

And be it further enacted, That where any person or persons shall be seised or possessed of lands or other hereditaments in the said parish of *Dinton*, held by different tenures or for or by or under different estates or titles, the said Commissioners shall and they are hereby authorized and required, upon the request of the persons so seised or possessed respectively, to enquire into and ascertain and determine, by the examination of witnesses on oath or other sufficient evidence, the respective lands or other hereditaments held by such different tenures,

or

or for, by or under such different estates or titles respectively, and to set out distinct allotments of the lands and grounds hereby directed to be divided and allotted in respect of the lands or other hereditaments held by such different tenures, or for, by or under such different estates or titles respectively; and the said Commissioners are hereby authorized and required upon such request as aforesaid to distinguish, ascertain and set out by metes and bounds the buildings and old inclosures in the said parish held by such several tenures, and for, by or under such different estates or titles, and all the lands and other hereditaments to be so ascertained, distinguished and set out, shall be declared, set forth and described in the general award of the said Commissioners.

And be it further enacted, That where the proprietor or proprietors of any allotment, land or other hereditaments in the said parish of *Dinton* shall hold his, her or their respective lands and hereditaments by different tenures, or by or under different estates or titles, and where from want of the necessary information before the said Commissioners, or from any other cause, the general award of the said Commissioners shall have omitted to distinguish the lands or other hereditaments holden by such several tenures, or for, by or under such different estates or titles, or to set out and award several and distinct allotments for any such respective lands or other hereditaments as hereinbefore is required, it shall be lawful for the said Commissioners, and they are hereby authorized at any time and from time to time within twelve calendar months after the date and execution of their general award, upon request in writing to them made by the respective proprietors of any such lands or other hereditaments, to do all such acts as shall be necessary for supplying any such omission; and for that purpose to examine witnesses, and to proceed as if their award had not been made, and by any deed or instrument under their hands and seals to distinguish, ascertain and set out the lands and hereditaments held by different tenures, or for, by or under different estates or titles respectively, in the same manner as they are hereby authorized and required to do in cases where such lands and hereditaments are directed to be ascertained, distinguished and set out by their general award; and every such separate instrument shall be enrolled in the same place as the general award shall be enrolled, and evidence thereof shall be given in the same manner as by the said first recited Act and this Act, or either of them respectively, is directed concerning the said general award of the said Commissioners; and all the expences which shall be reasonably incurred in or about any such subsequent inquiry and separate instrument as aforesaid shall be paid by

Lands held by different tenures or titles, omitted to be distinguished by the award, may be afterwards distinguished by a separate instrument.

by the person or persons who shall have requested the said Commissioners to make and execute the same, or by his, her or their heirs, executors or administrators.

Exchanges.

And be it further enacted, That it shall be lawful for the said Commissioners to set out, allot, and award any lands, tenements or hereditaments, within the said parish of *Dinton*, in lieu of, and in exchange for any other lands, tenements, or hereditaments, in the same parish, or within any adjoining parish, township or place, so that every such exchange be ascertained, specified, and declared in the general award of the said Commissioners, and be made with the consent of the respective owners or proprietors of the lands, tenements, or hereditaments which shall be so exchanged, whether such owners or proprietors shall be bodies politic, corporate or collegiate, corporations, aggregate or sole, or tenants in fee simple, fee tail, general or special, or by the curtesy of *England*, or for any life or lives, or for years determinable upon any life or lives, and also by and with the consent of the lessor or lessors of any leasehold hereditaments, and not otherwise, or with the consent of the guardians trustees, feoffees for charitable or other uses, husbands, committees, or attornies of or for any such proprietors as aforesaid, who at the time of making such exchanges shall be respectively infants, femes covert, lunatics, or under any other legal disability, or who shall be beyond the seas, or otherwise disabled to act for themselves, himself, or herself, such consents to be respectively testified by writing under the hands of the consenting parties, or under the seals of any of them, being corporations aggregate; and every such exchange so to be made shall be for ever good, valid, and effectual in the law to all intents and purposes whatsoever: Provided, that no such exchange shall be made of any lands, tenements, or hereditaments held in right of any church, chapel, or other ecclesiastical benefice, without the consent testified as aforesaid of the patron thereof and the lord bishop of the diocese in which such benefice shall be situate, and that no such exchange shall be made of copyhold lands or tenements, without the consent of the lord or lords of the manor or manors whereof the same shall be holden: Provided also, that every person or persons to whom any copyhold lands or tenements shall be allotted in exchange, shall within twelve calendar months next after the execution of the said award be admitted tenant or tenants of the copyhold lands or tenements so allotted.

Commissioners may vacate leases, or direct increase of rent.

And be it further enacted, That it shall be lawful for the said Commissioners, if they in their discretion shall so think fit, to determine all and every or any lease or leases, agreement or agreements at rack

rent now subsisting for any term of years or from year to year, or at will, of any part or parts of the lands and grounds hereby directed to be divided and allotted, or of the rights of common belonging thereto, and of all or any part of the lands and hereditaments within the parish of *Dinton* aforesaid which shall be exchanged by virtue of this Act, as to the whole or any part of the premises comprized in any such lease or leases, agreement or agreements, at such time or times as the said Commissioners shall direct; and it shall be lawful for the said Commissioners to adjudge and determine what satisfaction shall be made by the respective lessors or landlords to the lessees or tenants respectively for the determination of their interests in such lands or hereditaments either by the payment of a gross sum, or (where other lands or hereditaments are or shall be comprized in the same) by a reduction and apportionment of the rent to be paid during the remainder of the term for the residue of the premises in such lease or demise comprized, and every such lease and demise shall, upon the compliance of the lessor with the direction and order of the said Commissioners for the determination thereof, and not otherwise, cease and determine accordingly: Provided always, that if there shall be any such lease or leases of lands, part of which shall lie in the said parish of *Dinton*, and part in any adjoining parish or place, all and every such lease or leases may be vacated; but where any lands shall have been taken in exchange, which lands shall be under lease, and wholly situate in any adjoining parish or place, the lease of such last-mentioned lands shall not be vacated: Provided also, that in all cases wherein the said Commissioners shall not determine any such leases or agreements as aforesaid, the tenants shall hold and enjoy such lands and grounds as shall be allotted in lieu of their former lands and rights of common respectively for and during the residue of their respective holdings, upon paying such further advanced rents to the lessors or landlords thereof as the said Commissioners shall think reasonable between landlord and tenant, and by writing under their hands direct or appoint, and which said advanced rents shall be paid and may be recovered at such times in such manner and by such remedies, ways and means as the rents originally reserved would or might have been payable or recoverable in case this Act had not passed.

Provided always and be it further enacted and declared, That nothing in this Act contained shall extend or be construed or adjudged to extend, to revoke, make void, annul, or alter any settlement, deed, will, or lease, or to prejudice any person having any

No. 6. E right

Settlements, &c. not to be affected, or wills revoked.

Allotments and exchanged lands to remain to the same uses.

right or claim of dower, jointure, annuity, rent, debt, charge, or incumbrance whatsoever, in, out of, upon, or affecting any of the lands, tenements or hereditaments hereby directed to be divided and allotted, or which shall be exchanged, or assigned on any partition or in compensation for any other estate or right in pursuance of this Act respectively, but that as well the lands allotted as the tenements and other hereditaments which shall be assigned in exchange of, or on partition, or in compensation for any other estate or right by virtue of this Act, shall immediately after such allotment, exchange, partition or assignment remain and enure, and the several persons to whom the same shall be allotted, assigned, or given in exchange or on partition as aforesaid, shall thenceforth stand and be seised and possessed thereof respectively, to, for and upon such and the same uses, estates, intents, trusts and purposes respectively, and subject and liable to such and the same wills, settlements, limitations and remainders, conditions, charges and incumbrances, in all respects as the several lands, tenements and hereditaments, in respect whereof such allotments, exchanges, partitions and assignments shall have been made, should or would have stood severally limited, settled, vested, or subject or liable to, or been held by, in case the same had not been allotted, exchanged, parted or assigned as aforesaid, and this Act had not been made, save and except such leases and tenancies at rack rent, as shall become void by virtue of this Act, and except where any other of the provisions of this Act are to the contrary, and subject nevertheless to all such mortgages and sales as shall be made by authority of this Act, or of the said first recited Act.

Course of husbandry until inclosure.

And be it further enacted, That in the meantime, and until such division and allotment shall be made as aforesaid, the lands and grounds hereby directed to be divided and allotted, shall be stocked with such beasts and cattle only, and cropped with such sorts of corn, grain, pulse, turnips or grass-seeds, and in such proportions, and for and during such periods of time as the said Commissioners shall from time to time, by any writing or writings under their hands in that behalf, order, direct, or appoint, any usage or custom to the contrary notwithstanding, of which said order and direction so to be made, twenty-eight days' notice at the least shall be given, by affixing the same to the door of the parish church aforesaid.

Money advanced to be repaid with interest.

And be it further enacted, That the money which shall be advanced by any person or persons, for the purpose of defraying the expence of applying for and obtaining this Act, or which, after the passing of this

No. 6.

this Act, shall be advanced or lent to the said Commissioners for carrying the same into execution, shall be paid, with lawful interest, to the person or persons who shall have advanced the same, his, her or their executors or administrators, out of the first money to be raised for defraying the expences of obtaining and executing this Act.

And be it further enacted, That the said Commissioners and the umpire acting in the execution of the trusts and powers hereby vested in them, shall each be allowed and paid in satisfaction for his trouble and expences the sum of three guineas, and no more, for every day on which he shall be employed in travelling to, attending in or returning from (but not exceeding one day in travelling to or returning from) so acting, and that the clerk to be employed by the said Commissioners shall be allowed and paid, in satisfaction for his trouble and expences, such sum not exceeding three guineas, as the Commissioners shall direct, for every day on which he shall be employed in travelling to, attending in, or returning from acting (but not exceeding one day in travelling to, or returning from so acting); and that at all meetings to be held in pursuance of this Act, the Commissioners, umpire and clerk, and every proprietor and other persons attending such meetings, shall pay their own expences.

Allowance of Commissioners, umpire and clerk.

And be it further enacted, That the costs and charges of, incident to, and attending the obtaining and passing of this Act, of dividing and allotting the lands and grounds hereby directed to be divided and allotted, and all other expences of carrying this Act into execution, shall be borne and defrayed by the said *George Augustus* Earl of *Pembroke* and *Montgomery* and *William Wyndham*, their respective heirs, executors and administrators, in equal shares and proportions, and shall be paid at such time and place, and to such person or persons as the said Commissioners shall, by any writing under their hands, direct or appoint, and the same shall and may be levied and recovered by the means and in the manner provided by the said first recited Act.

Expences of the Act.

And be it further enacted, That once in every year during the execution of this Act (such year to be computed from the day of passing of this Act) the said Commissioners shall, and they are hereby required to make a true and just statement or account of all sums of money by them received and expended, or due to them for their own trouble and expences in the execution of this Act, and such statement or account when so made, together with the vouchers relating thereto, shall be by them laid before any one of his Majesty's justices

Settling the Commissioners' accounts.

of the peace for the said county of *Wilts*, not interested in the said division and allotment, to be by him examined and balanced; and such balance shall be by such justice stated in the book of accounts to be kept in the office of the clerk to the said Commissioners, and no charge or item in such accounts shall be binding on the parties concerned, or valid in law, unless the same shall have been duly allowed by such justice.

Award to be deposited in the parish church.

And be it further enacted, That the general award to be made by the said Commissioners, when enrolled in the manner directed by the said first recited Act, shall, together with such plans and surveys as may be annexed thereto, be deposited in the parish church of *Dinton* aforesaid.

Appeal.

And be it further enacted, That if any person or persons shall think himself, herself or themselves aggrieved by any thing done by the said Commissioners in pursuance of the said first recited Act, or of this Act (other than and except such determinations of the Commissioners or umpire, as are by the same Act, or this Act, declared to be final, binding or conclusive, and except in cases where an issue at law may be tried, as hereinbefore is mentioned), then and in every such cases, he, she or they may appeal to any general quarter-sessions of the peace, to be holden for the said county of *Wilts*, within three calendar months next after the time when the cause of complaint shall have arisen, giving to the said Commissioners, or one of them, and to the party or parties concerned, notice in writing of such appeal, and of the matter thereof, within twenty-eight days after the cause of complaint shall have arisen; and fourteen days at the least, before such general quarter-sessions; and the justices (not interested in the premises) in such sessions assembled, are hereby required to hear and determine the matter of every such appeal, and to make such order therein, and to award such costs and damages, as to them in their discretion shall seem reasonable, and by their order or warrant to levy the costs and damages which shall be so awarded by distress and sale of the goods and chattels of the party or parties made liable to pay the same; rendering the overplus (if any) to the owner or owners of such goods and chattels, after deducting the reasonable charges of such warrant, distress and sale; and every order and determination of the said justices upon every such appeal, shall be final and conclusive to all parties concerned, and shall not be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at *Westminster*, or elsewhere;

where ; but in case such appeal shall appear to the said justices to be frivolous, vexatious, or without foundation, then and in such case the said justices shall award such costs to be paid by the appellant or appellants, as to them in their discretion shall seem reasonable, and such costs shall be levied in manner last aforesaid.

Provided always and be it further enacted, That nothing in this Act shall prejudice, lessen or defeat the right, title or interest of the lord or lords, lady or ladies of any manor or manors within the limits and jurisdiction whereof the lands and grounds hereby intended to be divided and inclosed are situate, of in or to the seignories, royalties, rights and services incident or belonging to such manor or manors ; but the lord or lords, lady or ladies of the said manor or manors shall and may from time to time, and at all times hereafter, hold, receive, take and enjoy all rents, fines, services and profits of courts and all other rights, royalties and privileges to such manor or manors respectively, incident, appendant, belonging or appertaining in as full, ample and beneficial manner, to all intents and purposes, as he, she or they might or ought to have held and enjoyed the same in case this Act had not been made.

Manorial rights reserved.

Saving always to the KING's Most Excellent MAJESTY, his heirs and successors, and to all and every other person and persons, bodies politic and corporate, and his, her and their heirs, successors, executors and administrators, and all persons claiming under or in remainder after them all such right, title or interest (other than and except such as is and are hereby meant and intended to be compensated for, barred and extinguished) as they, every or any of them could or ought to have had and enjoyed of, in, to or out of the lands and grounds hereby directed to be divided and allotted in case this Act had not been made.

General saving.

And be it further enacted, That this Act shall be printed by the several printers to the KING's Most Excellent MAJESTY, duly authorized to print the Statutes of the United Kingdom, and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices and others.

Act to be printed by the King's printer.

AN
A C T

FOR

Dividing, allotting and inclosing
Lands in the Parish of *Dinton* in the
County of *Wills*,

3 GEO. IV.
Sess. 1822.

[ROYAL ASSENT, JUNE 24, 1822.]

ODDIE, ODDIE, AND FORSTER,

*Carey Street,
Lincoln's Inn Fields.*

GEORGE BRAMWELL,

Dinton and Teffont Magna Enclosure Award 1837

To all to whom these presents shall come We James Poole of Sherbourne in the County of Dorset Gentlemen William Woodcock of Fuggleston St. Peter in the County of Wilts Gentlemen and the several other persons whose names are hereunto subscribed and seals affixed as parties exercising these presents send greeting whereas a certain Act of Parliament was made and passed in the third year of the reign of his late Majesty King George IV entitled an act for dividing allotting and inclosing lands in the Parish of Dinton in the County of Wilts and after reciting that there were within the Parish of Dinton with the chapelry of Teffont Magna in the County of Wilts divers open common fields common meadows common downs and other commonable lands and grounds and that the Right Honourable George Augustus Earl of Pembroke and Montgomery was Lord of the Manor of Dinton and Teffont otherwise Teffont Magna in the Parish of Dinton aforesaid and that the said George Augustus Earl of Pembroke and Montgomery William Wyndham Esquire and divers other persons respectively were owners of messuages lands and tenements within the said Parish and proprietors of or interested in the said lands and grounds and that the precedent and scholars of Magdaline College and the University of Oxford were patrons of the Rectory of Dinton aforesaid with the Chapel of Teffont Magna annexed and the Reverend Henry Linton Doctor in Divinity was the then vicar or incumbrent thereof and as such was' entitled to certain glebe lands to the said Rectory belonging and reciting that it would be of great benefit and advantage to the several persons interested in the said lands and grounds if the same were provided and in the civic parts and shares thereof allotted to the several proprietors and other persons interested agreeably to their several and respective estates rights and interests therein in order that such allotments might be inclosed and held in severalty but that such beneficial purpose could not be effected without the aid and authority of Parliament and reciting that an act passed in the forty-first year of the reign of his late Majesty King George III entitled an act for consolidating in one act certain provisions usually inserted in acts of inclosure and for facilitating the mode of proving several facts normally required on the passing of such acts and also reciting that another act was

End of Page 1

passed in the second year of the reign of his present Majesty King George IV entitled an act for amending the law respecting the inclosing of open fields pastures moors commons and wastelands in England (*J Poole and Wm Woodcock signatures inserted*)

It is by the now written act amongst other thing enacted that John Charlton and John Seagram both since deceased should be then were thereby appointed commissioners for dividing and allotting all the open common fields common meadows common downs and other commonable lands and mounds in the Parish of Dinton aforesaid and for carrying the now written act into execution subject to such of the powers authorities regulations restrictions and provisions contained in the full recited acts as were not altered varied or otherwise provided for by the act now in recital

And it was thereby further enacted that in the case of the said John Charlton or any commissioners to be appointed in his place as thereafter mentioned should refuse to act or if he should before the powers and trust reposed in the said commissioners should have been fully executed die neglect or refuse to act it should be lawful for the major part in value such value to be

ascertained by the surviving or remaining commissioners for the time being of the several persons interested in the said land and grounds to be divided and allotted by virtue of the now written act except the Lord or Lords for the time being of the Manor of Dinton and Teffont otherwise Teffont Magna aforesaid who should by themselves or by their respective agents attend the meeting or meetings to be appointed for that purpose of which meeting and the intent thereof notice should be given by any two or more persons so interested as aforesaid at least ten days previous to such meeting by affixing such notice on the door of the Parish Church of Dinton aforesaid and by inserting the same in the newspaper called The Salisbury and Winchester Journal is then published and if not then in some other newspaper usually circulated in the said County of Wilts by writing under their respective hands from time to time to appoint some other fit person not interested in the said division to be a commissioner in the place of the said John Charlton and so from time to time as often as any vacancy should happen by the like neglect refusal or incapacity of any of the commissioners to be appointed the place of the said John Charlton aforesaid and if the said John Seagram or any commissioners to be appointed in his place as thereafter mentioned should refuse to act or if he should before the powers and trusts reposed in the said commissioners should have been fully executed die neglect or become incapable of acting as a commissioner it should be

End of Page 2

lawful for the Lord or Lords of the said Manor of Dinton and Teffont otherwise Teffont Magna for the time being by writing under this or their respective hand or hands to appoint some other fit person not interested in the said division to be a commissioner in the place of the said John Seagram and so from time to time as often as any vacancy in the commission should happen by the like death neglect refusal or impartiality of any commissioners to be appointed in the place of the John Poole William Woodcock John Seagram as last aforesaid and every person who should be nominated and appointed a commissioner as aforesaid should after taking the oath in that behalf prescribe by the said therein first recited act have such and alike powers and authorities in all respects for carrying the act now in recital and the said therein written acts into execution and should be subject and liable to the like rules regulations and restrictions as if he had been originally nominated and appointed a commissioner and by the act now in recital and after bearing enacting and declaring what should be deemed and taken to be a refusal to act within the intent and meaning of the said act now in recital

It was further enacted that the purpose of settling and determining any difference or dispute which might arise between the commissioners touching or concerning any of the matters or things to be by them determined and performed or executed in pursuance of the said act that the said commissioners should and they were thereby authorised and required at the first meeting to be held by them for the putting the said act into execution by writing under their hands to those who nominate and appoint some proper and skillful person not interested in the said division who should be willing and consent to act as an umpire and if the said commissioners could not agree in their choice of a person to act as an umpire then the vicar for the time being of the Parish of Dinton aforesaid should and he was thereby authorised by writing under his hand to those nominate and appoint some such fit and skillful person not interested as aforesaid who should be willing and consent to act as an umpire which umpire so to be chosen nominated and appointed was thereby authorised and required to hear and determine every such difference or dispute as might arise between the said commissioners concerning any matter act or thing relating to the said division allotment and inclosure or any of the purposes of the said hereinbefore recited or now reciting acts and the judgement and determination of the said umpire therein to be determined and considered to be the judgement and determination of the commissioners and should be final and conclusive upon the said commissioners and upon all other persons concerned in the said division allotment and inclosure so far as the judgement and acts

End of Page 3

of the commissioners were by the said acts or either of them made final and conclusive

And after therein enacting as to the appointment of a new umpire in case the umpire so to be appointed should neglect or refuse to act under the now reciting act or should die or become incapable of acting before the powers and trusts reposed in the said commissioners should have been fully executed it is provided that no person should be capable of acting in the execution of the said act as umpire until he should have taken and subscribed an oath in the form and to the effect in the now recited act set forth and it was further enacted that the said commissioners should and they were thereby directed to cause public notice to be given of the time and place of their first and every other meeting for the execution of the now recited act at least eight days before any such meeting should be holden (meetings by adjournment accepted) and that the said commissioners might and they were thereby authorised to adjourn any such meeting from time to time from place to place as they should see occasion and it was provided that all meetings for putting the now recited act into execution should be held in the Parish of Dinton aforesaid or within eight miles thereof and it was further enacted that all notices required by the said hereinbefore recited acts of the forty-first year of his late Majesty's reign to be given by the commissioners and the notices required by the now recited act to be by therein given of their meetings for the execution of the said last mentioned act should be given by writing to be affixed on the door of the Parish Church of Dinton aforesaid and by advertisements in some newspaper usually circulated in the said County of Wilts and it was further enacted that all inclosures and encroachments which should have taken place in and made from the said lands thereby directed to be divided and allotted save and except such as had been peaceably and quietly enjoyed for the space of twenty years then must pass or upwards before the passing the now reciting act without any interruptions or payment of any acknowledgement should be deemed part and part of the lands and grounds to be divided and allotted in pursuance of the said act and in case any difference or dispute should arise touching any such inclosures or encroachment being deemed part of the said lands and grounds to be divided and enclosed such differences and disputes should be examined into and determined by the said commissioners

And it is further enacted that the said commissioners should and they were thereby authorised and required to set out and allot unto and for the vicar of Dinton aforesaid and his successors in lieu of his glebe lands in the said common fields and right of the common thereunto belonging

End of Page 4

with plot or plots parcel or parcels of the land and grounds by the now reciting acts authorised to be divided and allotted as should in the judgement of the said commissioners be a full equivalent and compensation for such glebe lands and all right of common thereunto belonging and it was further enacted that the said commissioners should divide assign set out and allot all the lands and grounds by the now reciting act directed to be divided and allotted unto and amongst all and every person and persons body and bodies politic corporate or colleagit having any right or interest into over or upon the said lands and grounds in such shares and proportion as the said commissioners should ajudge and determine to be proportionate to the value of and full compensation and satisfaction to him or them respectively for his her or their respective rights and interest into over and upon the same lands and grounds

And it was further enacted that in case any person or persons body or bodies politic corporate or colleagit **Page 192** aggregate or sole or other proprietor or proprietors should prior to the passing of the now reciting act

having closed any part of the lands and grounds thereby directed to be divided and allotted then it should be lawful for the said commissioners and they were thereby authorised and required to allot an award to such person or persons body or bodies corporation or corporations or other proprietor or proprietors and aforesaid all such lands as and for his her or their proportion and allotments of the land and grounds thereby directed to be divided and allotted and such further share and proportion of the said land if any as in the judgement of the said commissioners such person or persons body or bodies corporation or corporations or other proprietor or proprietors as aforesaid should be entitled to by virtue of the now reciting act but if the said commissioners should be of the opinion that such persons or persons body or bodies corporation or corporations or other proprietor or proprietors as aforesaid was not or were not entitled to so large a share or proportion of the said lands of the whole of the lands and grounds so previously inclosed as aforesaid the said commissioners should make such deduction there from assumed to be necessary to reduce the same to his her or their due share or proportion of the lands and grounds so thereby directed to be divided and allotted according to his her or their rights of interests therein so as such reduction be made with as little injury and inconvenience in regard to situation and in all other respects and circumstances would have met and reciting that it would tend to facilitate the general plan or scheme of division and arrangements of the lands or grounds thereby directed to be divided and allotted if the old inclosed or other lands or grounds not thereby directed to

End of Page 5

be divided and allotted were in certain cases made allottable it was further enacted that it should be lawful that the said commissioners at the request and by and with the consent of the owner or owners thereof in such cases as they should deem as expedient allot any old inclosed or other lands or grounds not thereby directed to be divided and if the owner or owners of such old inclosed or other lands or grounds was entitled to an allotment under this act by reason of his property or interest in the lands and grounds thereby directed to be divided and allotted to increase the allotment or allotments of such proprietor or proprietors to an extent proportionate to the value of the lands so to be allotted and in case such proprietor or proprietors should not be entitled as aforesaid to any allotment or allotments in the land and the grounds thereby directed to be divided and allotted then the said commissioners should and they were thereby authorised and required to allot unto him her or them such part of the said lands and grounds thereby directed to be divided and allotted and should be equal in value to and in their compensation for the land or ground to be allotted as aforesaid and it was further enacted that it should be lawful for the said commissioners to set out allot and award any land tenements or heredicaments within the said Parish of Dinton in lieu of and in exchange for any other lands tenements or heredicaments in the same parish or within any adjoining parish township or place so that every such exchange was ascertained specified and declared in the general award of the said commissioner and was made with the consent of the prospective owners or proprietors of the land tenements or heredicaments which should be so exchanged whether such owners or proprietors should be bodies corporate or colleagit corporations aggregate or sole or tenants in the fee simple fee-tail general or special or by the courtesy of England or for any life or lives or for years determinable upon any life or lives and also by and with the consent of the lessor or lessors of any leasehold heredicament and not otherwise or with the consent of the guardians trustees fee seised for charitable or other users husbands committees or attorneys of or for any such proprietors as aforesaid who at the time of making such exchanges should be receptively infant femes covert lunatics or under any other legal disability or who shall be beyond the fees or otherwise disabled to act for himself or herself with consent to be respectively testified by writing and the hands of the consenting parties are under the seal of any of them being corporations aggregates or every such exchange so to be made should be forever good valid and

effectual in the law to all intents and purposes whatsoever provided that no such exchange should be made of any land tenements or heredicaments held

End of Page 6

in right of any church chapel or other ecclesiastical benefits without the consent testified as aforesaid of the patron thereof and of the Lord Bishop of the Diocese in which such benefits should be situate and that no such exchange should be made of copyhold lands or tenements without the consent of the Lord or Lords of the Manor or Manors whereof the same should be holden provided also that every person or persons to whom any copyhold lands or tenements should be allotted in exchange should be then twelve calendar months next after the execution of the said award be admitted tenant or tenants of the copyhold lands or tenements so allotted and it was further enacted that the costs and charges of incident to and attending the obtaining and passing the now reciting act and dividing and allotting the lands and grounds thereby directed to be divided and allotted and all other expenses of carrying the said act into execution should be borne and defrayed by the said George Augustus Earl of Pembroke and Montgomery and William Wyndham their respective heirs executors and administrators in equal shares and proportions and should be paid at such time and place and to such person or persons as the said commissioners should by and writing under their hands direct or appoint and the same should and might be levied and received by the means and in the manner provided by the said first therein before and herein recited at

And whereas the said John Charlton and John Seagram in pursuance of the directions of the said recited act of the third year aforesaid did give public notice in the Salisbury and Winchester Journal being a newspaper usually circulated in the said County of Wilts of Monday the eleventh day of November One thousand eight hundred and twenty two and also in writing upon the principle door of the Parish Church of Dinton on Sunday the tenth day of the same month of November immediately before Divine Service that they intended to hold their first meeting carrying the said into execution at the house of Thomas Harrison known by the name or sign as The Lamb Inn at Hindon in the said County of Wilts being within the distance of eight miles from the Parish of Dinton aforesaid on Monday the twenty fifth day of November then next at eleven o'clock in the forenoon and the said John Charlton and John Seagram did meet in pursuance of such notice and at such their first meeting before they or either of them acted as the commissioner in the execution of any of the powers given to and reposed in them and by the said recited act of the forty first year of the reign of his said late Majesty King George III which oaths are

End of Page 7

annexed to this award and intended to be enrolled therewith as by the same act is directed and whereas at the said first meeting the said John Charlton and John Seagram immediately after having taken the oath described by the said recited act of the forty first year of his late Majesty's reign and before they proceeded in the powers and trusts vested in them by the said act of the third year of his present Majesty did by writing under their hands annexed to this award and intended to be enrolled therewith those nominate and appoint John Hayward of West Lavington in the said County of Wilts Gentlemen a proper and skillful person not interested in the said division to be an umpire between them in case of any difference or dispute and the said John Hayward did on the same twenty fifth day of November One thousand eight hundred and twenty two take and subscribe the oath described in the said recited act of the third year aforesaid which oath is also annexed to this award and intended to be enrolled therewith as by in the same act is directed

And whereas at their said fifth meeting the said John Charlton and John

Seagram did nominate and appoint Charles Pearson Charlton since deceased to be their surveyor for the purposes of the said recited act and whereas in pursuance of the said recited act of the forty first year aforesaid the said John Charlton and John Seagram caused a true exact and particular survey and measurement and plans to be taken and made by the said Charles Pearson Charlton of all the land and ground directed or authorised to be divided allotted and inclosed by the said recited act of the third year aforesaid and also of all the messuages cottages orchards gardens homesteads ancient inclosed lands and grounds within the said Parish and Manor and the said survey and measurement and plans were reduced into writing and the number of acres and decimal parts of an acre in statute measure contained in all the said lands and grounds so directed or authorised to be divided allotted and inclosed and also in all the ancient inclosed lands grounds and homesteads aforesaid and of each and every proprietors distinct property in the same respectively at the time of making such a survey and measurement and plans were therein set forth and specified and the same were verified upon the oath of the said Charles Pearson Charlton

And whereas the said John Charlton and John Seagram hold divers meetings by virtue of or under the said recited act of the third year aforesaid for the purpose of executing the several powers therein reposed in them or expressed or intended so to be pursuant and subsequent to public notices given as the said of the third year aforesaid directs and carefully viewed and surveyed the said open common fields common meadows common downs and other commonable lands and grounds by the said

End of Page 8

act of the third year aforesaid directed to be divided set out and allotted respectively and duly considered the same and made a just compartial and distinct valuation of the said open common fields common meadows common downs and other commonable lands and grounds and deliberately heard examined and considered the several claims and allegations and also the objections thereto respectively made before them at their several meetings specially appointed for that purpose by and on the part on behalf of all and singular the owners proprietors and parties interested therein and also settle and ascertain the several and respective rights properties and interests of the said owners proprietors and parties interested therein and before they proceeded to make any of the divisions and allotments directed in and by the said recited act of the third year aforesaid did set out and appoint the several public carriageroads and highways through and over the lands and grounds intended to be divided set out and allotted in such dirruptions as upon the whole appeared most commodious to the public and of such dimation and breadth as are hereinafter particularly described and ascertained the same by marks and bounds and prepared maps in which such roads were accurately laid down and described and signed and deposited the said maps with the Clerk for the inspection of all parties concerned and caused notices to be given thereof as by the said act of the forty first year of the reign of his late Majesty is directed and whereas the said John Charlton and John Seagram finished their division and allotment of the said open and common fields common meadows common downs and other commonable lands and grounds and caused maps or plans thereof to be prepared by the said Charles Pearson Charlton for the purpose of drawing up their award pursuant to the said recited act but the said John Charlton died before such award could be prepared and the several powers and trusts reposed in him and the said John Seagram were fully executed and whereas in pursuance of the said recited Act of the third year of the Reign of his late Majesty William Wyndham and William Barnes being the persons interested in the lands and grounds to be divided and allotted by virtue of the said Act Did on the eighteenth day of October One Thousand eight hundred and twenty six give notice that a meeting would be holden at the house of John Musselwhite the Pembroke Arms Inn situate at Wilton in the said County of Wilt on Wednesday the fifteenth day of November then next at twelve o'clock of all persons interested in the said

Inclosure for the purpose of appointing a commissioner for carrying the said Act into execution in the room of the said John Charlton deceased which notice was affixed on the door of the parish church of Dinton aforesaid on the twenty second day of the same month of October and was inserted in the said

End of Page 9

Newspaper called the Salisbury and Winchester Journal on the (*signatures of J Poole and Wm Woodcock inserted*) twenty eighth day of the same month of October and at such meeting so holden on the said fifteenth day of November the said William Wyndham and William Barnes being the whole of the persons interested in the said lands and grounds to be divided and allotted by the said Act who were then present neither of them being the Lord of the said Manor of Dinton and Teffont otherwise Teffont Magna aforesaid did by writing moor their hands appoint the said Charles Pearson Charlton a fit person not interested in the said Division to be a Commissioner for dividing and allotting the said open common fields common meadows common downs and other commonable lands and grounds in the Parish of Dinton aforesaid and for carrying the said Act into execution in the room and place of the said John Charlton deceased and the said Charles Pearson Charlton did on the same fifteenth day of November one thousand eight hundred and twenty six take out and subscribe the oath prescribed in the said recited act of the third year in aforesaid which said appointment of the said Charles Pearson Charlton and the oath so taken and subscribed by him are also annexed to this award and intended to be inrolled herewith AND WHEREAS the said Charles Pearson Charlton whilst acting as such surveyor as aforesaid attended the said John Charlton and John Seagrim during their valuation and division and allotment of the said open common fields common meadows common downs and other commonable lands and grounds by the said Act directed to be divided and allotted and thereby became well acquainted with the whole of their proceedings in the execution of the said recited Act and the said John Seagrim and Charles Pearson Charlton having held divers meetings at Wilton aforesaid pursuant and subsequent to public notices given as the said Act of the third year aforesaid directs and having considered proposals for several of the exchanges thereafter set out allotted and awarded and having duly weighed and considered the same gave instructions to their clerk to prepare their award and which was accordingly prepared and submitted to their perusal at a meeting held for that purpose pursuant to the said recited Act and the same was approved of by the said John Seagrim and Charles Pearson Charlton and ordered to be engrossed but further applications having been afterwards made for other exchanges between certain owners and Proprietors of lands the engrossment of the said award was suspended and in consequence thereof and of the severe illness of the said John Seagrim which terminated in his death in or about the month of May one thousand eight hundred and thirty two no further proceedings were had in carrying the said Act into execution AND WHEREAS in pursuance of and by virtue (*signatures of J Poole and Wm Woodcock inserted*) and in exercise of the power and authority given to and vested in them by the said recited act of the third year of his late Majesty

End of Page 10

The Right Honourable James Edward Earl of Malmesbury, the Rights Honorable William Lord of Fortesbury (?) Lord of the said ? and the Honourable Robert ? now Earl of Pembroke and Montgomery Did by writing under their respective hands bearing date the twenty ninth day of August One Thousand eight hundred and thirty two appoint the said William Woodcock (a fit person not interested in the said Division to be a Commissioner for dividing and allotting the said open common fields common meadows common downs and other commonable lands and grounds in the Parish of Dinton aforesaid and for carrying the said Act into execution in the room and place of the said John Seagrim deceased and the said William Woodcock did on the fourth day of December One thousand eight hundred and thirty two at a meeting of the said commissioners take and subscribe the Oath prescribed in the said recited Act of this third year aforesaid and which said appointment of the said William Woodcock and the oath so taken and subscribed by him are also annexed to this award and

intended to be enrolled herewith AND WHEREAS the said William Woodcock held several meetings with the said Charles Pearson Charlton pursuant and subsequent to public notice given as the said Act of the third year aforesaid directed and carefully revised the whole of the surveys valuations and other proceedings of the said John Seagrim John Charlton and Charles Pearson Charlton in the execution of the said recited Act and duly considered the same and fully satisfied himself that the said valuation was and is a fair just and impartial valuation and the said William Woodcock also duly considered the division and allotment of the said lands and grounds proposed to be made by the said John Seagrim and John Charlton and the several exchanges proposed by the several proprietors and approved by the said John Seagrim John Charlton and Charles Pearson Charlton respectively and fully satisfied himself that the same were able fair just and impartial and having concurred with the said Charles Pearson Charlton in regard to the Award so drawn up by and under the directions of the said John Seagrim and Charles Pearson Charlton the same was thereupon engrossed and the said Charles Pearson Charlton undertook to correct the Maps and plans to be affixed ? to previously to a meeting to be fixed by them for reading over and executing the said award in the presence of each of the proprietors as might choose to attend on the occasion But in Consequence of the sudden death of the said Charles Pearson Charlton in the month of May one thousand eight hundred and thirty four all further proceedings were again suspended AND WHERAS (*signatures of J Poole and Wm Woodcock inserted*) in pursuance of the said recited Act of the third year of the reign aforesaid William Masten Barnes and William Douth (being two persons interested in the lands and grounds by the said Act intended to be divided and allotted Did on the thrity first day of May last give notice that a meeting would be holden at the house of the said John Musselwhite at wilton aforesaid on Monday the twentieth day of June then next at eleven o'clock in the forenoon of all persons interested in the said inclosure for the purpose of appointing a Commissioner

End of Page 11

Under the provisions of the said Act in the place of the said Charles Pearson Charlton deceased which notice was affixed on the Parish Church of Dinton aforesaid on Sunday fifth day of June and was inserted in the said newspaper called the Salisbury and Winchester Journal on the sixth day of the same month of June last and the said William Masten Barnes and William Douth being the whole of the persons interested in the saidlands and grounds to be divided and allotted by the said Act present at the said meeting on the said twentieth day of June last neither of them being Lord of the said Manor of Dinton and Teffont under their hands appoint the said James Poole a fit person not interested in the said division to be a commissioner for dividing and allotting the said open common fields common meadows common downs and other commonable lands and grounds in the parish of Dinton aforesaid and for carrying the said Act into execution in the room an dplace of the said Charles Pearson Charlton deceased and the said James Poole did upon the same day take and subscribe the Oath presecrbed in the said recited Act of the third year aforesaid which said appointment of the said james Poole and the oath so taken and subscribed by him and also annexed to this award and intended to be enrolled herewith And whereas the said James Poole was for many years employed in the offices of the said John Charlton and Charles Pearson Charlton during the progress of the said division and allotments and assisted them in preparing the maps and plans of the said intended division and inclosure and the survey books and valuations of the said lands and grounds and thereby in some measure became acquainted with the proceedings under the said recited act and since his appointment as commissioner has carefully revised and examined the whole thereof and is satisfied with the fairness justice and impartiality of valuation division and allotments and also of the several exchanges proposed to be made and under the said act and approved of by the said John Charlton Charles Pearson Charlton John Seagram William Woodcock as aforesaid and the said James Poole and William Woodruff have since also held divers meetings and

duly informed themselves of all other matters and things relating to the said division and allotments proper and requisite to be waived and considered in order to do equal justice to all parties concerned and whereas the said several proprietors and persons interested in the said division and allotment have long ago entered into and are now in possession of the several allotments and exchanged land set out and allotted to them respectively by the said commissioners and are satisfied therewith now therefore know ye that we the said James Poole and William Woodcock having completed the division and allotment of the said open common fields common meadows common downs and other commonable lands and grounds and also that the land and old inclosures proposes to be given back by the several owners and proprietors thereof for the purpose of allotments pursuant to the purport and direction of the said recited act of the third year aforesaid and having done all other things necessary in our judgement for carrying the said recited act into execution according to the true intent and meaning thereof

End of Page 12

do by virtue of the powers and pursuant to the directions of the recited act forty first year of the reign of his said late Majesty make publish and declare this our award or instrument in writing under our hands and seals of an concerning the said division and allotment in the manner and form following that is to say and first we the said commissioners do hereby declare that the several maps or plans hereunto annexed marked with the letters A and B and signed with our respective hands and which we do hereby declare and direct the considered and taken as part of our said award and to be enrolled therewith were formed drawn up and completed under the direction of the said John Charlton and John Seagram the better to describe the several new allotments and divisions made and premises exchanged by virtue of the said recited acts and that we have examined and do approve the same maps or plans and we do hereby declare that we have caused the several allotments by some aid and premises exchanged to be marked in such maps or plans with certain figures numbers and marks to which we have hereinafter referred and we have also caused to be marked in the said maps or plans the several public and private carriageroads ways and footpaths hereinafter set out and appointed to be made in through and over and by the sides of the same allotments and we do hereby declare that in making and setting out all such allotments hereinafter by as set out divided allotted and awarded due regard has been made in regard to the quantity quality situation and convenience thereof and that the same are laid as convenient as could be to the messuages buildings and inclosed grounds of the respective proprietors to whom such allotments are made and we the said commissioners do also declare that all the satisfaction and information of the several owners and proprietors of all and singular the messuages or tenaments estates lands and heredicaments in the said Parish of Dinton which have been or are affected or altered by the said division an allotment or exchanges we have prepared a terrier or account of all unsingular the messuages or tenaments homesteads closes and pieces or parcels of land of and belonging to them respectively as well those which have not been or are affected or allotted in consequence of the said division and allotments as those which are intended to be allotted to them respectively in and by this our award which terrier or account is contained in the first schedule to this our award to which we have hereinafter referred and for the better description of the several messuages or tenaments lands heredicaments and premises exchanges I any or either of the said owners and proprietors with any other owner or proprietor same exchanged premises are described and set forth in the second schedule to this our award and we do hereby declare and direct stubsted to several schedules shall be considered and taken as part of this our award and be enrolled therewith and by virtue and in pursuance o~ the power and authority in as given and reserved and by the said act of Parliament of the forty first year of the reign of his said late Majesty we the said commissioners have set out and appointed and by these

End of Page 13

presents do set out and appoint ascertain and describe the several **Public Carriage Roads and Highways** and also the several **Private Roads and Public Footpath** in through and over land by the side of the several allotments made by virtue of the said recited act of the third year aforesaid and in such directions and of such breadths and dimensions as are hereinafter particularly mentioned and described viz!

No. I One Publick Carriage Road and Driftway called the Ox Drove of the breadth of 110 feet commencing at New Inn Lane in Dinton and proceeding westward in its ancient course through and over the downs of Dinton and Teffont to Chilmark Down (now Teffont 10 and Dinton 10 Byway Open to All Traffic)

No. II One Publick Carriage Road of the breadth of thirty feet and called the Dinton and Warminster Road commencing near the north west corner of an Old inclosure called Little Wayfield in Dinton and proceeding in north westward in its ancient course through and over Dinton Down and the common fields and downs of Teffont to Bapton Down (now part unrecorded and part road C.64)

No. III One Publick Carriage Road of the breadth of thirty feet called the Wylve Road branching out of the Old Turnpike Road from Salisbury to Hindon at Jackthorns in Teffont and proceeding Northward in its ancient course through and over the common fields and Down of Teffont to the Oxdrove at the north west corner of Thickthorn ffield (now Teffont 9 Bridleway)

No. IV One Publick Carriage Road of the like breadth of thirty feet also called Wylve Road branching out of the Oxdrove opposite the north east corner of Thickthorn ffield and proceeding northward in its ancient course through and over the common fields of Teffont to Wylve Down (now north section of road C.64)

No. V One Publick Carriage Road of the like breadth of thirty feet called the Teffont and Warminster Road commencing at or near the Spring Road in Teffont and proceeding north westward in its ancient course and direction across the common fields and down of Teffont to Chilmark Down (now road C.277)

No. VI One Private Road in Teffont of the width of twenty feet (J. Poole. Wm Woodcock) commencing near west mead in the public road from Teffont to Warminster and extending northerly over allotments to the representations of John Lush No 164 and 172 and between allotments to Robert Henry now Earl of Pembroke no. 165 and 166 and an allotment to the representatives of John Lush no. 167 to an allotment to the said representatives no. 181 (not in definitive map or highway record)

No. VII One Private Road in Teffont of the width of twenty feet also commencing near West Mead in the Public Road from Teffont to Warminster and extending north easterly over an allotment to the representatives of John Lush no. 164 to an allotment to the said Earl no. 159 (western end now part of Teffont 5 Bridleway)

No. VIII One Publick Footpath of the width of six feet commencing near a tenement formerly called the Black Horse Inn at Teffont and branching out of the Old Turnpike Road and extending south and eastward over allotments to William Wyndham Esquire no. 191. 192 and 195 and old inclosures called the Park belonging to William Wyndham Esquire in Dinton to Dinton Church (now Teffont 8 bridleway)

No. IX One Private Road of the width of twenty feet branching out of the Turnpike Road from Hindon to Sarum and extending in its ancient course south and west through and over certain lands called the common grounds to Catherine fford Lane (not in definitive map or highway record)

No. X One Private Road of the width of twenty feet extending out of the

private Road no. IX and extending in its ancient course southwardly between two pieces of land called Green Beach (?) and Ten acres to the south west corner of Ten acres and from there eastwardly to a meadow called Beaches (?) in the occupancy of Mary Wright (not in definitive map or highway record)

No. XI One Private Road of the width of twenty feet branching out of the private Road no. IX and extending westward on the south side of a meadow in the occupation of William Barnes to a meadow called Common Ground in the occupation of James and William King (not in definitive map or highway record)

No. XII One Private Road of the width of twenty feet branching out of the old Turnpike Road from Hindon to Sarum and extending northeastward on the north west side of hydes (?) Coppice to allotments to Samuel Jesse no. 476, 477, 478, 479 and 483 (not in definitive map or highway record)

No. XIII One Private Road of the width of twenty feet branching out of the Old Turnpike Road from Hindon to Sarum and extending north and north east between and over allotments to the said Earl of Pembroke numbered respectively 469, 470, 468, 471, 467, 472, 466, 354, 554, 556 and 557 for estates in the several occupations of Samuel Jesse William King Walter Bailey and James and William King to an allotment to the said Earl of Pembroke no. 559 (now part restricted byway Dinton 11)

No. XIV One Private Road of the width of twenty feet branching (J poole, Wm Woodcock) out of the private Road no. XIII and extending north and west between allotments to the said Earl of Pembroke numbered respectively 473, 553, 556, 552, 551 and 550 for estates in the several occupations of Walter Bailey, William Barnes James and William King Samuel Jesse and Joel Douty respectively to an allotment to the Reverend Doctor Linton for glebe no. 485 (not in definitive map or highway record)

No. XV One Private Road of the width of twenty feet branching out of the private Road no. XVI at the north west corner of Rye Close and extending easterly over an allotment to the said Earl of Pembroke no. 544 to an allotment to the said Earl of Pembroke no. 545 (not in definitive map or highway record)

No. XVI One Private Road called the Marshwood Road of the width of twenty feet branching out of the Old Turnpike Road from Dinton to Sarum and extending north and north east through and over allotments numbered respectively 486, 487, 488, 489, 490, 491, 503, 544, 521, 543, 522, 542, 523, 541, 540 and 536 to the public Road called the Ox Drove (not in definitive map or highway record) NB The road that is now the C.64 is NOT this one.

No. XVII And One Private Road of the width of twenty feet commencing at Oakley Coppice and extending east and north over allotments numbered 534 and 535 to the public road called the Ox Drove. (not in definitive map or highway record)

Which said several private Roads are so set out for the use of the several and respective proprietors and occupiers of land adjoining and through and to which the same respectively lead.

And we the said Commissioners in virtue and in pursuance of the power and authority to us given and reserved in and on the said Acts of Parliament hereinbefore recites and referred to have set out allotted and awarded and by these present do set out allot and award Unto and for The Reverend Henry Linton Doctor in Divinity Vicar of Dinton aforesaid and his successors in lieu of his Glebe lands in the said common fields and Rights of Common thereunto belonging the several plots and parcels of lands and grounds particularly mentioned and described in the said ffirst ? to this our award as allotments to the said Henry Linton for glebe and numbered respectively 227, 211 * 484, 485, 486 and 488 which said several allotments together with the messuages or tenements homesteads those pieces or parcels of land mentioned and described in the said first ? under the said Henry Linton as Vicar of Dinton the proprietor thereof comprise the whole of the messuages or tenements homesteads closes pieces or parcels of land belonging to him as Vicar of

Dinton aforesaid and are in the judgement of us the said Commissioners a full equivalent comparison and satisfaction as well for the said glebe lands in the said open Common fields Common meadows (J poole Wm Woodcock) Common Downs and other commonable lands and grounds by the said cited Act recited to be divided and allotted and all right of common thereunto belonging as for the messuages or tenements closes pieces or parcels of land belonging to the said Henry Linton as Vicar of Dinton which have not been as one varied or affected by the said Division

End page 16

And allotment and the several other inclosed and other lands and grounds theretofore belonging to the said Henry linton as Vicar of Dinton aforesaid and at the request and by his consent allotted to any other person or persons in and by this award.

The award continues with details of land allotments, an Oath taken by William Wyndham and William Barnes, also by Trustees of the Right Honorable Robert Henry earl of Pembroke and Montgomery. Also by William Masten Barnes and William Douty.

Also enrolled are sworn statements by John Charlton, John Seagrim, John Hayward, Charles Pearson Charlton, William Woodcock and James Poole.

Also enrolled are two maps. Plan A showing allotments and roads and Plan B showing exchanges in Teffont.

The Award carries a number of declarations as follows:

"January 15 1837 - The execution of this Award was proclaimed and published in the Parish Church of Dinton in the County of Wilts." M Terry Curate

"Signed sealed and delivered by the within named James Poole and William Woodcock in the presence of Jn Swayne, Wilton"

"Signed sealed and delivered by the within named William Wyndham William Masten Barnes Thomas Barnes James Humley Walter Fitz and the said Walter Fitz as chapel warden of Teffont in the presence of Thomas Hale, Wilton, Wilts"

"Signed sealed and delivered by the within named Robert Henry Earl of Pembroke and Montgomery in the presence of Henry Bicknell Solicitor Grocers Hall London"

"In pursuance of an Act of Parliament made and passed in the 41st year of the reign of his Late majesty King George the Third intituled "an Act for consolidating in One Act certain provisions usually inserted in Acts of Inclosure and for facilitating the mode of proving the several Acts usually required on the passing of such Acts the foregoing award or instrument in writing ingrossed and written on parchment and signed and sealed by the Commissioners therein named together with the oaths thereunto annexed was this Eleventh day of February in the year of our Lord One thousand eight hundred and thirty seven inrolled with the Clerk of the Peace of the County of Wilts" signed by Jn Swayne, Clerk of the Peace in the County of Wilts.

Notes from Database and associated book by Roger Kain, Richard Oliver and John Chapman The Enclosure Maps of England and Wales 1595 - 1918 (Cambridge University Press 2004)

Map scale 6 chains to one inch. Two maps 109 x 120 (Plan A) and 66 x 93 (Plan B). Map maker Charles Pearson Charlton. Quality of execution of map - Good. Turnpike roads indicated by name, foot and bridleways present un-named. Tenurial info: leasehold; all types of tenure noted. Lakes and ponds shown by colour or line work. Inhabited properties coloured carmine, uninhabited properties coloured grey. Woods shown by symbol and name and by tinted grey fleck. Coppices shown as woods are. Parkland shown by symbol and name.

Commons shown by name, some hachure. Hedges shown with indication of ownership. Large houses only named. Post enclosure field allotment and allotment acreages complete.

Sally Madgwick
Rights of Way Officer October 2014

This transcript is taken from EA150 Wiltshire and Swindon History Centre
A certified copy of the award as a transcript (including allotments) is held
at Wiltshire and Swindon History Centre at catalogue no. 2069/16

Number	Name	Address	Dates of use	Years of use
1	Mr Arthur John Burgess	1 Well Cottages, Compton Chamberlayne, SP3 5DA	1960s – 2012	c.50
2	Mrs Pamela Mary Fisher	Wrens Nest Cottage, Old Dinton Road, Teffont Magna, Salisbury, SP3 5QX	1956 – 2014	58
3	Dr Judy Fox Hayler (nee Long-Fox)	28 Overton Shaw, East Grinstead, RH19 2HN	1963 – 2014	51
4	Mr Robin Faulkner	The Old Rectory, Teffont, Salisbury, SP3 5RS	1986 – 2014	28
5	Mrs Sarah Gabrielle Beech Caldicott	Chantry Cottage, Tisbury, Salisbury, SP3 6JQ	1983 – 2005	22
6	Mr Edward Richard Long – Fox	Hill Meadow, Teffont Magna, Salisbury, SP3 5QX	1965 – 2008	43
7	Dr Sadie Vile	45 Diamond Road, Watford, Herts, WD24 5EN	1965 – 2008	43
8	Mrs Alice Stone	80 High Street, Ansty, Salisbury, Wiltshire, SP3 5QD	1990 – 2014	24
9	Ms Georgina Green	Rose Cottage, Teffont Magna, Salisbury, Wiltshire, SP3 5QY	1981 – 2014	33
10	Dr Eleanor Fisher	77 Pitcroft Avenue, Reading, RG6 1NN	1967 – 2014	47
11	Mrs Jennifer Ruth De Berneus Nicholson	Lintern Close, The Street, Teffont Magna, Salisbury, SP3 5QP	1983 – 2014	31
12	Mr Jonty Fisher	46 Chestnut Lane, Amersham, Buckinghamshire, HP6 6EP	1969 – 2014	45
13	Mr John Fisher	Wrens Cottage, Teffont Magna, Nr Salisbury, SP3 5QX	1968 – 2014	46
14	Mrs Charlotte Large	11 Tisbury Row, Tisbury, Salisbury, Wiltshire, SP3 6RZ	1999 – 2002	3
15	Mrs Catherine Margaret Bernard	Oakley Farmhouse, Dinton, Salisbury, Wiltshire, SP3 5EU	2000 – 2014	14
16	Mrs Harriet Wakeford	Colliers Hill, Bayton, Kidderminster, Worcestershire, DY14 9NZ	1986 – 2001	15
17	Miss Keri McNamara	Farleigh Cottage, The Street, Teffont Magna, Salisbury, SP3 5QT	1998 – 2014	16
18	Mrs Diana Verdon – Smith	Dowtys, Dinton, Salisbury, SP3 5ES	2008 – 2012	4
19	Ms Mary Corrie	Fitz Farmhouse, Teffont, SP3 5QY	1999 – 2014	15
20	Miss Amy Collins	South View, Millbrook Lane, East Knoyle, Wiltshire, SP3 6AW	2011 – 2014	3
21	Mr Stephen Nathan	Cannons Farm, Charlton Musgrove, Somerset, BA9 8HW	2002 – 2007	5
22	Mrs Caroline Marking	Stop Farm, Fonthill Gifford, Tisbury, Wiltshire, SP3 6QJ	2003 – 2014	11
23	Mrs Judith Nathan	Cannons Farm, Charlton Musgrave, Somerset, BA9 8HW	2002 – 2007	5
24	Zillah Faulkner	The Old Rectory, Teffont, Salisbury, SP3 5RS	1995 – 2009	14

NB: Witness no 13 and no 24 is in the form of a letter. Witnesses nos. 1, 6, 7, 14, 17, 21, 22 and 23 did not submit maps with original form. The following submitted them in response to a letter circulated 29 August 2014: 6, 17, 21, 23

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
1	Recreation	2 to 3 per annum	Walking and leading horse	8 feet	Is aware of the public record 1837 Enclosure Award
2	Recreation walking with dog	Regularly	Walking (mostly) and cycling	30 feet	<i>“The track was used for sheep by the shepherd before the farm was broken up so I think it should be 30 feet” “I have for many years used the access to the bridleway from Manor Farm House along that track, it has recently been blocked..” “Waddington Farms ate claiming the verges and don’t let horse riders use them there have been a lot of incidents with different riders...” “Although Waddington Farms may own the land the bridleway runs through the whole width was used and I have always believed it to be 30 ft wide. It would have been that for the sheep.” “there are documents in the archives which relate to the 1837 Right of Way being 30 ft and granted at that time it is only presently been a problem. I and many others think it should be that, in other words reinstated.”</i>
3	Recreation	As a child/teenager approx 6 times per year	Walking and riding a horse	9 metres with verge	<i>“The bridleway runs from Old Dinton Road north to the Ox Drove, across a working farm. In the 1960s – 80s this was an unmade-up track with a grassy ridge down the middle with wide verges and pot holes. There was access from Manor Farm and the route passed Teffont Field Buildings before bearing slightly right up the hill to the Ox Drove.”</i>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
4	Exercising and training horses ponies and riders including enjoyment of the countryside. With wife and two daughters.	At least three times per month especially in the early days	Riding a horse and walking	30 feet <i>"To be reinstated please to its original 30 foot width. It will be much safer rather than potentially lethal now. I had always assumed and used it as full width to be enjoyed by all users"</i>	<p><i>"..my habitual use of the verges up to Jan/Feb 2013 allowed vehicles to pass safely."</i> <i>"In Jan/Feb 2013 when the owner firmly requested that riders remain on the tarmaced area of the bridleway. However I would use the verges if necessary for safety "</i></p> <p>Is aware of the Dinton and Teffont Magna Inclosure Award by Act of Parliament 1837.</p> <p><i>"circa 2003 I was asked to wait when riding and leading another horse while they finished a (shooting) drive; I also used the verge to wait." "The firm request in Jan/Feb 2013 for bridleway users to keep to the tarmac has caused problems. A driver of a trades van was firstly astonished and then became angry when he passed me by going on the verge."</i></p> <p><i>"The tarmaced hill at the Southern end often causes horses to slip and slide which is especially dangerous when the dog barks and there are unexpected sounds. Due to the potential to slip and the hardness riders prefer to ride on softer and thus safer and kinder surfaces than this type of smooth artificial surface".</i></p> <p>The witness notes that he was away on active service for some of the period 1986 – 2014.</p> <p>Supplied photograph showing mowed verges dated May 2014.</p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
5	Mostly exercising horses on a circular route	Every week	Riding a horse	30 feet <i>"to be restored to a width of 30 feet as it was originally granted in 1837"</i>	<p><i>"..I was able to use the full width including the verges which I needed when I was leading a horse".</i></p> <p>Have you ever been stopped or turned back when using the way or do you know anyone else to whom this happened?</p> <p><i>"Not in my time (1983 – 2005) and there were never any problems at all including when the full extent of track and verges"</i></p> <p>Is aware of the Teffont Inclosure Award 1837 and Act of Parliament</p>
6	Recreational walking with dog	About 4 times per year	Walking with dog	30 feet	<p><i>"Around 2005 on one occasion I was pushing my wife along TEFF 9, I was asked by the Gamekeeper to wait for the guns to complete that particular session."</i></p> <p><i>"A gate was installed at the Ox Drove end around 2006"</i></p> <p><i>"In work I am currently doing on the history of Teffont I have read - and have copies of – the 1837 Dinton and Teffont Enclosure"</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
7	Recreation and exercise	<p>1965 – 1983 frequently, sometimes daily (school holidays)</p> <p>1983 – 2008 once or twice a year</p>	Walking and occasionally on horseback	<p>30 feet</p> <p><i>“we would like to the public right of way to be restored to 30 feet (9.12 m) as originally granted in 1837”</i></p>	<p><i>“The right of way in question is “TEFF 9”, an ancient carriageway, awarded for public use at a width of 30 feet by Act of Parliament in 1837. It runs from the “ancient turnpike road” now known as Old Dinton Road, initially due north from ST994324 and eventually joins “the Ox Drove” at SU000348. For most of my life it has been an unmade track but it has now been made up with tarmac, I understand this was around 2000. It was always completely open and ungated until a gate was added at the Ox Drove end to prevent free vehicle access as it is listed as a bridleway. I understand this was gated in 2005. In my memory there has always been free access to the private track running west to Manor Farm from Junction at ST994327.”</i></p> <p><i>“Owners of Manor Farm in 1960s/1970s/1980s gave permission to turn off TEFF9 at Grid ref ST994327 and go west through Manor Farm. This made TEFF9 part of a short route much more useful when walking with small children”</i></p> <p><i>“When I used TEFF9 frequently, the owner was a working farmer who saw all those walking and knew riders using the bridleway”.</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
8	Recreation – walking and riding and leading a horse	Twice a month	Walking and riding a horse	30 feet along its whole length	<p><i>“We used to ride on the verges prior to 2000. The bridleway used to be a track and is now a tarmacked road (single road) with increased farm vehicles and no passing places. The vehicles also travel at greater speeds due to the surface of the bridleway.”</i></p> <p><i>“a gate is across the bridleway at the “old ox drove “ end but a small open gate is used to the side.”</i></p> <p>Photos of the locked gate obstructing the bridleway and the small side gate attached to user evidence form.</p> <p>Accessed Manor Farm from Teffont 9 to June 2014 when prevented by barbed wire and a hedge.</p> <p><i>“The bridleway needs to be widened to make full/proper use of this gate to the width of 9.12 metres as was originally granted by an Act of Parliament in 1837. The sign says “bridleway only, no through road for vehicles” however, the bridleway is heavily used by the Waddington family, shoot vehicles, game keepers, quad bikes and large farm machinery/tractors which incidentally my current horse is very wary and needs room to pass them or I need to stand safely to the side so they can pass me safely.”</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
9	Recreation – exercising horse and cycling and walking	Twice a month at least	Cycling, riding and walking	Needs to be restored to 30 feet	<p><i>“It was a farm track when I first came to the village in 1981. It is now a road surface. From the Old Dinton Road access is steep and the road is slippery and unsafe for a horse to walk on. The grass verge is now very narrow and greatly reduced. Poles have been on the verge beside the Durtnalls bungalow causing further restrictions. For the rest of the route to Teffont Field Buildings there are no passing places for horses or ponies when a vehicle approaches. This was not the case prior to 2000”.</i></p> <p><i>“When it was wider prior to 2000 it was possible to use the whole width of the track. Some of the verges now have fence posts over them.”</i></p> <p><i>“The bridleway was a track with a grass centre and verges”.</i></p> <p><i>“Riders using the right of way have been asked to keep off the grass verges.” “By kind permission of Mr and Mrs D Wood Manor Farm Teffont both my daughter and I have in the past accessed the bridleway from Manor Farm but in June 2014 the access was blocked..”</i></p> <p><i>Permission to use Teffont 9 was “not appropriate as it is an ancient right of way. Although I have been given permission by the Woods and previous owners of Manor Farm to access the bridleway from their private road...this goes back over 30 years.”</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
10	Recreation	<i>"I was brought up in the village and regularly used it as a childI now return at weekends and holidays"</i>	Mainly running, walking, occasionally cycling and dog walking	<i>"I'm really not sure – it is a wide track that is passable by vehicles"</i>	<p><i>"Over the years the track has had gates added and an increasing impression of private property where one is not welcome – even though it is a bridleway. I am used to doing a small 'loop' from my parents house in Teffont Magna past Manor Farm onto the track in question, turning right up the hill onto Old Dinton road. This is no longer possible. I was shocked when I tried to take my 8 yr old on this loop the other day and we had to turn back because a trench had been dig with barbed wire added."</i></p> <p><i>"As a child I and my family freely used the tracks, especially to play in what was once a football pitch with access off the bridleway. Today I have permission from the owner of Manor Farm to access the bridleway past Manor Farm. It is not necessary to have permission to sue the bridleway itself."</i></p>
11	Horse riding	At least once a week	Riding a horse	<i>"30 feet (9.12 metres) along its length as was originally granted in 1837"</i>	<p><i>"Prior to 2000 it was an unmade farm track passing a private bungalow on the west side by Old Dinton Road..."</i></p> <p><i>"Prior to 2000 walkers and riders could use the full width of the bridleway and horses could canter on the verges. The length to Teffont Field Buildings has now been tarmacked as the current landowner now lives there. The tarmac is very slippery in places and there is a large increase in traffic but riders are now not allowed on the verges so we</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
11 contd					<p><i>All have to use the same 8 foot wide tarmac track”</i></p> <p><i>“It is now difficult to use Teff 9 within its statement width of 8 feet on horseback due to the tarmac and especially at the Old Dinton Road end where there is a steep slope which is extremely slippery. To prevent accidents riders have to use the grass verge which the landowner now objects to.”</i></p> <p><i>“Up until this year, and having continuously ridden this bridlepath since 1983, at no time was the width of the path ever designated as being only 8 feet wide”.</i></p> <p><i>“Teff 9 has always been a public bridleway previous owners of Manor Farm have also allowed local people to use with consent the track across Manor Farm in order to access Teff 9 at GR ST 994 327”.</i></p>
12	Recreation	As a child more or less daily, as an adult whenever visiting parents (regularly)	Walking, cycling and car	30 feet (9.12 metres)	<p><i>“Until relatively recently the path was an unmade track...just over 10 years ago (approx 2000) it was tarmaced over to a width of around 4 metres with grass verges. There were no gates along its entire length until the one where the path joins the Ox Drove was put up (about 5 years after the path was tarmaced)”</i></p> <p><i>“Prior to the tarmac being laid it was regularly used along its whole length by walkers, cycle and horse riders (the latter often for a good canter on the unmade surface). The tarmac makes the bridleway more of a road so the verges are more urbanised and the traffic is much faster.”</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
12 contd					<p><i>“For all my life the landowners of the Manor Farm (Pitcairn, Crook, Sharman and currently; Wood) have consensually permitted access to TEFF9 via from Manor Farm.”</i></p> <p>Included OS map dated 1890s showing Teffont 9</p> <p><i>“Teffont and the surrounding villages used to have football teams. Teffont village football pitch was situated in the field on the corner where the path from Manor Farm meets bridleway Teff 9... The landowner at the time (Pitcairn) provided the football pitch for a few years on a permission basis. It was accessed via the gate coming off bridleway Teff 9. Many villagers used to walk, drive, motorcycle and cycle to (and onto) the pitch via the Manor farm route.</i></p> <p><i>As a schoolboy I would regularly go and play on the pitch with my friends; indeed one of my best school friends lived in Teffont Field Buildings and the route from his house to Manor farm was a good test route for homemade g0-carts as any traffic was slow and infrequent due to the unmade surface.</i></p> <p><i>As a boy I also learnt to cycle using the circular route through Manor Farm, to the bridleway, up the Old Dinton road and back down into the village.”</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
13	Walking with dog	Variable since 1968	Walking with dog, cycling	30 feet	<p><i>"I am writing in support of those people requesting the bridleway being re-instated to its original width of 30 feet that the sheep used to use not many years ago".</i></p> <p><i>"I have enjoyed shorter walks with my Jack Russell, the main one being through Manor Farm to the bridleway (Grid ST994327) up to Old Dinton Road and down the hill back home. This walk is always referred to by my family as going round the block".</i></p> <p><i>"recently a locked gate has appeared at the bellmouth (Grid ref ST994327) stopping myself and others, children, walkers and cyclists using that route. Now a JCB has dug a ditch, a hedge has been planted and barbed wire has replaced the gate. The inhabitants of Manor farm House, past and present, have never minded this private track being used by villagers so it is shocking to find it blocked at the bridleway end..."</i></p>
14	Recreation	Only a few times	Riding a horse	<i>"I used both track and verge about 9 m"</i>	<i>"As a friend of a Manor Farm Livery tenant I was permitted to use the track across Manor Farm in order to access Teff 9.."</i>
15	Recreation	Roughly 12 times a year – all members of the family	Riding horse (and family on cycles)	<i>"it is approx. 4 metres wide and has been tarmaced"</i>	<i>"I have not changed my route but the manner in which I ride it has changed...I no longer canter this route"</i>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
15 contd				<i>since I have known it</i>	
16	Exercising a horse	1986 – 1996 c.12 times per year less frequently	Riding a horse	Restored to 30 feet	<p><i>“Teff 9 is an ancient carriageway. It was allowed public use at a width of 30 feet...pre-2000 it was a track. Post 2000 it was tarmaced to a width of 4 m and has grass verges.....we have always been allowed access to the bridleway from Manor Farm.”</i></p> <p><i>“I wouldn’t use it to lead out a child as the speed of vehicles has increased due to the tarmaced surface and it’s too narrow. When I was a child it was considered safe as the farm traffic drove slowly due to the nature of the surface.”</i></p> <p><i>“The people at Manor Farm (Pitcairns, Crooks, Sharmans and Wood) have permitted locals access on the track across Manor Farm to access Teff 9”</i></p>
17	Recreation	Weekly from 1998 to 2010	Riding a horse	Currently 2 – 3 m, applying to widen to 9.12 m as originally granted in 1837	<p><i>“Tarmac is very difficult to use. Been <u>very</u> rudely told not to ride on the verges which is the only section of the path suitable for horses. Horses have been spooked by very large farm vehicles which cannot avoid as cannot ride on the verge...should include the verge”</i></p> <p><i>“Have been granted permission by the landowners of the adjacent manor Farm to ride and walk along a track joining the bridleway in question.”</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
18	Exercising and delivering horses	4 times per year on horse more often on foot	Horse riding and walking	Reinstatement of original width of 30 feet	<i>"I am informed that there was an Act of Parliament in 1837 awarding a width of 30 feet throughout the length of Teffont 9"</i>
19	Recreation – hacking	Weekly though less since the top gate	Riding a horse (and with son riding a pony)	The bridleway is enclosed by hedges – however the verge may have grown. It is needed since the tarmac is dangerously slippery and unsafe for horses with shoes	<p><i>"It recently has a gate at the Ox drove end with a very narrow side gate that is impossible to open from a horse. The bridle path has very slippery tarmac at the Old Dinton Road which is unsafe for horses and my son's pony slipped over when riding on it. OK if we use the verge"</i></p> <p><i>"After my son's pony fell on the slippery tarmac at end near Dinton Old Road, I asked the owners of Manor Farm if I could avoid this and ride back via their road. This has now been closed off. Also the relatively new gate by the Ox Drove has caused me to ride up and then have to turn around rather than continuing onto the Ox Drove."</i></p> <p><i>"The Sharmans at Manor Farm gave me permission to sue their access road onto the bridleway. The newer owners, the woods, continued their permission."</i></p> <p><i>" Villagers who have been in the village longer than me tell me the bridleway was a stony path with a central grass track that riders used to canter along"</i></p>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
20	Recreational riding	3 – 4 times a week on average	Riding a horse	Want bridleway to be restored to full width of 30'	<p><i>"It is an ancient carriage way – awarded public use with a width of 30'.</i></p> <p><i>"Will avoid at times due to high levels of farm traffic – not wide enough to pass easily, they go much faster – Waddington Farm cars and shoot traffic use as road..when hot weather tarmac becomes very slippy and difficult to ride on"</i></p> <p><i>"the landowner does not want us to ride on verge – no passing places...landowner has erected a gate entrance of Manor Farm – can't access Teff 9 which previously have done."</i></p> <p><i>"Were permitted to use track across Manor Farm in order to access Teff 9 at GR ST 994327"</i></p>
21	Recreational circular rides	2 or 3 times per week	Riding a horse	Approximately 30 feet	<i>"Permission to use the bridleway is not necessary as a user of Manor Farm livery we had automatic access to bridleway Teff 9 from stables"</i>
22	Recreation	Weekly	Riding a horse	<i>"The bridleway has been narrowed by about 8 m to make a private drive rather than</i>	<i>"It is well known that the landowner and his wife are abusive and intimidating to horse riders. They rev engines when driving past horses and have been unpleasant to my daughter and others who have been quite scared of riding on this path"</i> <i>"Have permission to use track from Manor Farmhouse to bridleway...<u>DO NOT</u> need permission to sue bridleway it is a <u>PUBLIC RIGHT OF WAY</u>"</i>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
22 contd				<i>A bridleway. Traffic is much faster and it is more dangerous. With urbanised verges it is not possible to get off the tarmac. Owner not happy if a horse stands or walks on verge”</i>	
23	Exercising my horse	4 to 5 times a week	Riding a horse	Approx 30 feet including verges	<i>“Never (stopped or turned back) and don’t know of anyone who has. It was all very friendly and the Waddingtons were very amenable” “Permission was not required (it is a public bridleway) and access from Manor Farm was part of the livery agreement”</i>

Witness no	Nature of use	Frequency of use	Means of use	Width	Comments
24	Horse riding	Regularly	Riding a horse	30 feet	<p><i>“Many of us used to ride along some of the grass verges leading to ‘Field Farm Buildings’. Everyone presumed it was naturally part of the Bridleway, until a few years ago when the present owners made it known that all riders were nto to ride on the grass verges. This Bridleway is in the open countryside in the AONB and is continually used by large numbers of riders who come from all areas and not just Teffont.”</i></p> <p><i>“...greatly appreciate WBA’s positive action to have Teffont 9 restored back to its original legal status width of 30ft.”</i></p>

ALL users report seeing other users of the way walkers, horse riders and cyclists.

APPENDIX 4

Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

Representations and Objections

The advertisement period for the above order ran from 22 January 2014 to 06 March 2014 inclusive. During this time 1 representation in support and 4 objections were received. Additionally some additional evidence was adduced and investigated and this is included at the end of this appendix.

Representation

Mr B Riley 26 January 2015

“Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

I wish to record my support for this Order, which if confirmed, will constitute another small step towards achieving an accurate and up to date Definitive Map and Statement.

Having viewed the original documents cited in support of the Order, it is clear that the historical evidence more than satisfies the statutory tests.

You may wish to evaluate three additional maps (images sent separately) which also show, on the balance of probability, that the Order route is an ancient public carriage road.

These are:

- 1. Philip’s District Map, Cycling Edition 1893: Shown as a “Cross Road”, as are the local minor public roads and byways.*
- 2. The London Guarantee Touring Map, Salisbury District, c.1914 (George philip) : Shown as part of the local minor road network in the same way as nearby unclassified (and some classified) roads and byways.*
- 3. The Automobile Association Touring Department Map, Sheet 33, 1924 (Bartholomew): Shown as an uncoloured road – “The uncoloured roads are inferior and not to be recommended”. This description is akin to local authority signs on unsealed unclassified roads which read “Unsuitable for motors”. In other words ‘use at your own risk’.*

Individually these maps are not important but they all accord with other maps listed in support of the Order.

If the Order is opposed, I anticipate that I would attend any subsequent inquiry to support the Council’s Order.”

Officer’s comment:

The three additional maps have been inspected and all show the route of Teffont 9 as described by Mr Riley. These additional 3 maps add to the considerable list of commercial maps listed at page 97 and 98 of Appendix 3 (Decision Report) dating from 1773 to 1945.

Objections

1. Mrs S Kilgour 24 February 2015

"I am writing to object to the modification order issued by Wiltshire Council in respect of Teff 9 a bridleway/footpath.

I feel it is totally unnecessary to widen any part of the path, it is also a ridiculous waste of taxpayers money, it is also a ridiculous waste of time especially when there must be more important things for the Council to deal with ie the state of the main road through Teffont which is in an appalling state.

As far as Teff 9 path way is concerned I have ridden, walked and even cycled along it as have many others who live nearby. There is nothing wrong with its width or its current state of repair. It is perfectly fit for use if some of the largest farm vehicles used in this area can get from one end to the other without any problem then I can see no reason to widen it.

I would also like to question who will pay for such a task I would not like think that my council tax is going to pay for this, if it is the landowners whose property the path goes through then I think they would rather not waste money on such a pathetic action either."

Officers wrote to Mrs Kilgour enclosing a copy of the Decision report and inviting her to withdraw her objection as the content of it was irrelevant to the provisions and considerations of s.53 of the Wildlife and Countryside Act 1981. She wrote again in a letter dated 4th March 2015:

"Further to your letter 25th February and in reference to the modification order of Teffont 9 to restore it to its original width of 30 ft.

I would like to continue with my objection and add some further points, after reading the documents you kindly sent me I find there are a few comments made by so called users of Teff 9 that I find need some clarification.

Firstly I would question that many of the witness statements are very if not the same in wording therefore looking extremely scripted and biased, rather than their own individual thought. The common comment is about being given permission was given by past owners of manor farm when it was one whole plot so access to Teff 9 wasn't really an issue. The last owner (Lord Sharmen) gave only a select few the privilege to sue the short cut through track to teff 9 and Mr Waddington did not contest this as he and Sharmen were on good terms. It is only since the current owner of the manor house Mr wood has been on the scene that any issue with the state of the bridleway or access to it have arisen. I must also reiterate a point made by Mr Waddington and Mr Durtnall I believe, that access rights for Mr Wood to cross from his track to Teff 9 were refused in a court row last year, and I believe because he lost he is now trying every other route possible to get what he wants, because while this application has been in process he has put in planning for a gateway from manor farm track up the westerly side of Mr Durtnalls property (in the old football pitch) to the old Dinton road and a hunting hate and surfaced slope the gradient I would think is the same as the entrance to the

bridleway some 50 ft or so away to the east)which many witnesses quote as being not suitable even dangerous) this planning has been given and work is under way or may be complete by now.

Another point to note is that the many so called users of this permission approach Teff 9 from manor farm track and turn RIGHT UP the hill towards the old Dinton road and then back down to the village church this is known as going round the block so are not using the full length of the bridleway in its proper use.

The comment about the size of the hunting gate at the northerly end of the way is not right, it is sufficient as deemed by the bridleways association when it was put in and is left open to make access even easier (I note a similar gate further down the byway heading east from Teff5 is actually smaller and looks more difficult to open, but no opposition has been made about this one).

The comment made by witness 9 referring to poles on the floor blocking the verge are not so and they do not appear in the many photos you have documented in the Decision Report. There is a consistent report of the slope at the entrance to Teff 9 on the old Dinton road being dangerous especially now it is tarmac ked. I have ridden down this on a few occasions and had no issue at all, I note that ALL RIDERS RIDE AT THEIR OWN RISK this is a common statement put up in stables county, country and worldwide, riding is a dangerous hobby and riders should be self aware and not complacent, it would also be a very boring hobby if all the bridleways were absolutely perfect and no risk what so ever existed, there would be no excitement, thrill or enjoyment. I think as far as the issues with vehicles passing and the shoot in progress at times then a mutual respect for each other should exist I do not tolerate rudeness from those who think themselves above everyone else, (these people give other countryside users a bad reputation).

I believe that most of the evidence given by the 24 witnesses is of an irrelevant nature as you so deemed my own points of view, so with that in mind I hope a rebuttal letter was sent to all other correspondence of no relevant evidence.

To close I reiterate I would like my objection to remain, primarily because of the ongoing legal issue the widening of teff 9 will almost certainly allow The Woods to gain access to Teff 9 via Mr waddingtons property, Which I do not agree with, Mr Woods is trying to bully his way in getting WHAT HE WANTS this is his general attitude to everything it seems."

Officer's Comment:

It is difficult to see any points of relevance in Mrs Kilgour's objection since although she challenges the integrity of the users of the way who submitted evidence at the application stage (and at the consultation stage), the points are irrelevant to the matter before this committee in terms of the historical evidence base on which this Order was made . A challenge to the integrity of user evidence may be relevant where a matter turns on that evidence (perhaps in the case of a deemed dedication under s.31(1) of the Highways Act 1980 or a dedication at common law relying on the user evidence in the period covered by the witnesses, but that is not the case here. In any event views relating to the size of the hunting gate, the nature of the sport of horse riding and the qualities of the characters of individuals are not matters for the Council to consider in this case.

2. Edward and Antonia Waddington 05 March 2015

“

TEFF 9 DEFINITIVE MAP MODIFICATION ORDER

We are writing to object to the making of the above Order on the following grounds:

1. There is not sufficient evidence to show, on the balance of probabilities, that the way in question has been dedicated as a public right of way of higher status or greater width than currently recorded on the definitive records either under common law or under s31 Highways Act 1980.
2. The totality of the evidence is not sufficient to show on the balance of probabilities that a right of way subsists along the Order route as claimed. In particular, the evidence does not establish on the balance of probabilities that the route of Teffont 9 is an ancient public carriageway.

We reserve the right to add to or to amend these grounds of objection.

”

Officer's Comment:

It is considered that the above objection meets the terms of the notice and is a duly made objection to the Order. However, it does not specifically challenge the Council's interpretation or bring to the Council any new evidence to consider. It is considered that there is a sufficiency of evidence relating to Teffont 9 to show that on the balance of probabilities the route should be recorded as a restricted byway as shown in the Order.

3. Matthew Fry (W. G. Fry and Son) 06 March 2015

“TEFF 9 DEFINITIVE MAP MODIFICATION ORDER

We are writing to object to the making of the above Order on the following grounds:

1. There is not sufficient evidence to show, on the balance of probabilities, that the way in question has been dedicated as a public right of way of higher status or greater width than currently recorded on the definitive records either under common law or under s31 Highways Act 1980.
2. The totality of the evidence is not sufficient to show on the balance of probabilities that a right of way subsists along the Order route as claimed. In particular, the evidence does not establish on the

balance of probabilities that the route of Teffont 9 is an ancient public carriageway.
We reserve the right to add to or to amend these grounds of objection.”

Officer’s Comment:

It is considered that the above objection meets the terms of the notice and is a duly made objection to the Order. However, it does not specifically challenge the Council’s interpretation or bring to the Council any new evidence to consider. It is considered that there is a sufficiency of evidence relating to Teffont 9 to show that on the balance of probabilities the route should be recorded as a restricted byway as shown in the Order.

4. Mr P Durtnall 06 March 2015

“

The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

I am writing to object to the above Order which was made on 13th January 2015.

1. The first 50 metres or so of the proposed public carriageway going northwards from Old Dinton Road do not follow the evidence as shown in the Wiltshire Council’s report. On the balance of probabilities the way in question has been dedicated as a public right of way of no higher status or greater width than currently recorded on the definitive records of 8 feet wide.
2. The totality of the evidence is not sufficient to show on the balance of probabilities that a right of way subsists along the Order route as claimed. What may have been privately agreed between the various parties in 1799 and documented in 1800 was superceded by an Inclosure Award in 1837 based on an Act of Parliament. This Award had the power to set out, appoint, divert, turn and stop up public carriageways and highways.
3. Wiltshire Council has declined to precisely identify the route of their DMMO on the ground prior to the end of the 42 day objection period.
4. The purpose of this DMMO is not for the convenience or enjoyment of a substantial section of the public or local residents. The Teff 9 bridle way is 8 feet wide and perfectly accessible to all riders and pedestrians who wish to pass along its length.

I reserve the right to add to or to amend these grounds of objection.

”

Officer’s Comment

Point 1: The area of concern for Mr Durtnall is the first 50 metres from the Old Dinton Road northwards along Teffont 9 to a point approximately level with his garage. Although

the 1800 Inclosure award plan shows the route of Teffont 9 as being straight at this point it is clear from the Earl of Pembroke's estate map drawn up the year after inclosure (1801) that a 'funnel' shape better reflected the course of the road at this point. This is reflected in the 1808 Ordnance Surveyors drawing, the 1827 Map of the Manors of Dinton and Teffont, the 1837 Inclosure award plan, the Tithe Act plan and apportionment, the parish map of 1843 and subsequent Ordnance Survey drawings leading up to the current day when the path on the ground has a similar shape. The width of the public road at this point is 33 feet and would be recorded in the definitive statement, the line on the definitive map does not reflect width or represent the centre line.

Point 2: Mr Durtnall appears not to accept that the award of the Commissioners made pursuant to an agreement in 1800 is binding in the same way as the subsequent inclosure arising out of Acts of Parliament. Full transcripts of the agreement and award from 1800 have been provided to Mr Durtnall and it is difficult to see why he does not accept that an agreement, formerly drawn up and acted upon, between all parties, including the owner of the land, does not constitute a lawful act. The award was clearly executed and agreed upon and a landowner may dedicate any way he wishes over his land and subject to the acceptance by the public through use, that way may become a public right of way. Traditional means of access from the village of Teffont to the downs and beyond to Wylve was prevented by the 1800 enclosures; the new public road detailed in the 1800 award came into existence and formed the way to the downs and beyond to Wyle after 1800 and is well shown in documents pre-dating the Parliamentary inclosure.

Point 3: Wiltshire Council is not required to accurately survey the land or to peg out any right of way within the 42 day objection period. The Order plan is produced at a larger scale than is required (the Order plan is at the scale of 1:10000 whereas the definitive map for this area is at the scale of 1:25000 and clearly shows Teffont 9 leading between fenced or hedged boundaries.

Point 4: The purpose of the DMMO is to correct the definitive map and statement. This is the legal record for public rights of way. The question of the adequacy of width for a bridleway (or any right of way) is irrelevant for the application of s.53 of the Wildlife and Countryside Act 1981.

Additional submissions and evidence viewed during the advertisement period:

- 1) Three User evidence forms were submitted. These were from:
Mr J C Atterton, Wisteria Cottage, Teapot Street, Wylve, Warminster, BA12 0OT
Mr R A Lovell, Gilston House, Salisbury Road, Chilmark, Salisbury
Mr D J Jones, High Street, Codford, Warminster, BA12 0ND

Mr Atterton, a retired farm manager, believed the way to be a bridleway which he had used between the years 1970 and 2015 while travelling from home for business at Manor Farm.

He used the way between 40 and 50 times a year in a Land Rover or walking and saw others walking, riding and cycling. He believes the way to be 8 feet wide and he has always used the same route. He has worked for Mr and Mrs Waddington as a casual worker. He had never asked permission to use the way or been told he could not. No map was submitted. Not aware of any documentary evidence.

Mr Lovell, a vermin controller, described the route of Teffont 9 in detail and included a detailed hand drawn map. He first used the way through his work and used it from 1992 to 2015 as a means of going to work on the farm. He used it weekly by several means and saw others walking and riding a horse. He believes the way to be 8 feet wide and always following the same route though he also used entrances to fields in association with his work. He recalled seeing various signs on tracks leading away from the bridle path. He worked for the current and previous owner of the land and knew the way well. He was given permission to use the way by the previous owner. Not aware of any documentary evidence.

Mr Jones, a farm manager for 14 years (Potter Pitcairn Partnership) knew the way between 1978 and 1992 and used the route of Teffont 9 to get to work. He describes the way as “approx. 8 feet wide bordered by ditches and hedges for most of its length. During my time as manager verges were left as wildlife habitat”. A hand drawn map was included. He used the way walking and with farm vehicles and occasionally saw a walker or horse rider. His employer instructed him that public use was a restricted bridleway. He had turned vehicles away for illegal use of the track as requested by his employers. Not aware of any documentary evidence.

Officer’s Comments:

All three of these users of the way have used it while in the employ of the landowner and were clearly well aware of the route during that time. They confirm that the public have not used the way with vehicles in more recent times (post 1970) which is in agreeance with other evidence.

2) Teffont Parish Council Minutes 05.05.1953

The minutes of the meeting of Teffont Parish Council on the 5th May 1953 state:

“A discussion took place on the widths of the road of (sic) the Ox Drove and the road leading from the old Turnpike past the Manor Farm Buildings to its junction with the Ox Drove. It was decided not to take any action on this matter.”

Officer's Comments:

No further information has been found as to the detail of the discussion about widths but it is noted that the Parish Council referred to Teffont 9 as "the road" in the same way it referred to the Ox Drove road (now Byway Open to All Teffont 12).

3) Survey of Teffont c.1800 WSHC 2057/S113

This is a full and detailed survey of Teffont Magna in a terrier form using allotment numbers and details from the 1800 award. For example Pc164 is described as "allotment to be enclosed". It contains some detail relating to earlier leases in note form and has been updated where leases were surrendered or people died. The document was clearly a working document for the Earl of Pembroke's estate – for example one dwelling has entries dated 1800, 1801, 1819 and 1856.

It is useful in confirming the execution of the 1800 Inclosure Award, for example:

"The above was allotted to H ? Wyndham Esq. in lieu of cutting wood in Teffont Common a Right belonging to Dinton Farm. An annuity of £10 per year is paid to Mr Wyndham's tenant for the same and to continue for the life of Mr Wyndham, when Dinton Farm will fall into hand."

4) Map of Wyly 1796 WSHC 2057/PI/8

The map shows a road leading out of Wylye parish towards Teffont but not labelled as such. No part of Teffont Magna is shown.

Sally Madgwick
Rights of Way Officer
17 March 2015

Wiltshire and Swindon History Centre ref. 2057/I/15 and 2057/I/26

Catalogue ref. 2057/I/15 contains the signed and sealed copy of an inclosure award for Teffont Magna dated 2nd September 1800 entitled "The Award of Commissioners for dividing allotting and c Teffont Magna Wilts". The award is a large folded parchment document containing the award, schedules A and B of allotments and a map.

Catalogue ref. 2057/I/26 contains a copy of the award held at 2057/I/26. The copy appears to be an accurate copy (from comparing passages chosen at random). The matters relating to highways have been transcribed from the original award (2057/I/15) and are reproduced within this transcript having been first compared with the copy. For ease of reading and transcription the contemporary copy has been used for the remainder of the transcript.

"2nd September 1800 The Award of Commissioners for dividing allotting and c Teffont Magna Wilts

*To all whom these Presents shall come we John Seagrim of the Borough of Wilton in the County of Wilts Gentleman and Thomas Charlton of Stourton in the said County of Wilts Gentleman Surveyors Commissioners and arbitrators nominated and appointed under and by virtue of the agreement hereinafter recited Send greeting **Whereas** in and by a certain memorandum of an agreement entered into the second day of October which was in the year of our Lord one thousand seven hundred and ninety nine and expressed to be made between the Right Honorable George Earl of Pembroke and Montgomery and so forth of the one part and the President and Fellows of Magdalen College Oxford the Reverend William Dean Clerk Henry Penruddocke Wyndham Esquire William Wyndham Esquire Walter Fitz Robert Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham widow Robert Fitz Edward Larkham William Cowdry Dorothy Waterman widow and the several other persons whose names are thereunto subscribed and seals affixed of the other part **After reciting** that there were within the parish of Teffont Magna in the County of Wilts several open Common or Tenantry Fields and the Lands of the several owners proprietors and occupiers thereof lay in divers small parcels intermixed and dispersed and in their then situation incapable of any considerable improvement and also certain open Common Downs and other Commonable Lands over which the Occupiers of Land within the said Parish were intitled to Right of Common but which were then of small value And also reciting that the said George Earl of Pembroke and Lord of the Manor of Teffont Magna aforesaid And that the said President and Fellows of Magdalen College Oxford were entitled to the Tythes both great and small arising renewing and increasing within the said Parish but not to any Commonable Glebe Land or Rights of Common and the said William dean was the then incumbent on before thereof And reciting that the said George Earl of Pembroke Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several persons whose names are*

thereunto subscribed and seals affixed were owners Proprietors or occupiers of and interested in the said open Common Tenantry fields open Common Downs and other Commonable places within the said Parish and it would be to their general Benefit and advantage if by a new division and allotment of the said open Common or

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Tenantry fields the Lands of the several Owners Proprietors and Occupiers were laid out more conveniently together in fewer and larger pieces or parcels according to their respective Rights and Interests therein and certain parts of the open Common Downs and other commonable places divided and allotted and certain parts thereof laid in Severalty and inclosed.

It was therefore *thereby mutually agreed by and between all the said Parties to those Presents that a new Division and Allotment of the said open Common or Tenantry Fields should be made and that certain parts of the said Common Downs and other commonable Lands should be divided and specific allotments made to the said Proprietors and certain parts thereof laid in severalty and inclosed in manner hereinafter mentioned (that is to say) The open Common or Tenantry Fields which then lay in three fields in each of which the several Proprietors had divers small pieces or parcels of Land lying dispersed and intermixed with the Lands of the others to be laid in three or four fields (by and at the discretion of the Persons to be nominated and appointed as hereinafter was mentioned as Surveyors or Commissioners for the purpose of dividing the said Lands) of equal size as near as might be and one or more allotment or allotments in each of such fields to be allotted and set out to each of the said Parties Proprietors of Lands within the said Parish in proportionate parts or shares according to their respective Estate and Interests in those fields or in proportion to their respective Estates and Interests in the whole of the said Lands intended to be divided and allotted in case the said Surveyors or Commissioners should think proper to allot to any or other of their a greater portion of Land in those fields in lieu of the Right and interest of such Person or Persons in the Commons intended to be divided and allotted. Which Fields when so laid out divided and allotted should be used as a Common or Tenantry Field and be fed with Sheep as usual and the Sheep Leazes to the same to be apportioned in like manner – The Common called Teffont Common containing about two hundred and fifty acres and also the Common called Thickthorn containing about fifty acres to be divided allotted and set out in like manner to and amongst the said several proprietors in severalty and be inclosed in such manner as the said Surveyors or Commissioners to be appointed as aforesaid should direct unless they should judge it expedient to allot the said Commons in Severalty to any one or more person or person proprietors of Lands within the said Parish in lieu of Lands in other parts of the said Fields and Downs which they might do and a certain part of the open Common Downs then used partly as a Sheep Down and partly as a Cow Down containing in the whole about seven hundred acres (that is to say)*

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Such part and parts thereof then incumbered in part with Furze as the Surveyors or Commissioners should think proper not exceeding three Hundred Acres in the whole to be laid out in four or five fields at their discretion and be divided allotted and set out to and amongst the said Proprietors of Lands in like manner as therein before is mentioned of and concerning the said open Common or Tenantry Fields and the residue of the said open Common Downs then used partly as a Sheep Down and partly as a Cow Down to be and continue a Common Tenantry Sheep Down to and for all the Proprietors and Occupiers of Land within the said Parish And that part of the open common Down Land which was then used as a Cow Down no longer to be used as such but to be thrown to and considered and taken as part of the Sheep Down Except such part thereof as should be included in the three hundred acres above mentioned and from thenceforth to be fed with Sheep only in Common with the residue of the said Sheep Down That the Right of feeding cows on the said Cow Down and also the Right of Common on the said Commons called Teffont Common and Thickthorn as well as on all other Lands to be divided and allotted in Virtue of those Presents should cease and be extinguished at and from such Time and Times as the said Surveyors or Commissioners should by their (end of Page 1 of original award)

***award** to be made in writing under their Hands of and concerning the premises aforesaid order or direct **And in case** any or either of the proprietor or proprietors of any estate or estates within the said Parish should be desirous of having his her or their whole Estate in the said parish in severalty or any part thereof over and above what was before proposed and agreed to be laid in Severalty and should in due Time signify such desire to the said Surveyors or Commissioners such Surveyors or Commissioners should be empowered to put such Estate and Estates or part or parts thereof respectively in Severalty accordingly and to make such Orders and Directions for enclosing the same as they might think proper provided it might be done so as to leave such a quantity of Land as and for a Common or Tenantry Field within the said Parish as in the opinion of such Surveyors or Commissioners should be sufficient to maintain and keep a Common or Tenantry Flock of Sheep thereon Provided also that in case any of the Owners of Lands within the said Parish of Teffont Magna should be so desirous to Exchange any of their messuages Lands or Hereditaments old Inclosures or other Lands in the same Parish it should be lawful for them to do so And in that case such exchanges should take place as the said Surveyors or Commissioners should be their award appoint but no such exchange should be made by any Owner holding by Copy of Court Roll or by any lease without the consent in writing of the person or persons under whom*

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*Such Lands should be so held nor should any Exchange under these Presents take effect unless approved by the said Commissioners as reasonable and adequate and so expressed in their award or in some instrument in writing under their Hands and seals **And the said** George Earl of Pembroke The President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and*

the several other persons whose names are thereunto subscribed and seals affixed Did further mutually consent and agree to and with each other his Executors and Administrators by these presents That in order to make the Division and allotments pursuant to the true intent and meaning of these presents and of the Parties thereto two proper and sufficient persons should be nominated and appointed as Surveyors or Commissioners for that purpose are by the said Earl of Pembroke and the other by the said President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed or the major part of them And the said George Earl of Pembroke did thereby covenant promise and agree to and with the other and others of the said Parties that he the said George Earl of Pembroke would nominate and appoint a Surveyor or Commissioner on his behalf on or before the first day of January next ensuing the date thereof And the said President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed did for themselves jointly and severally promise and agree to and with the said George Earl of Pembroke and his Executors and Administrators that they the said President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed or the major part of them should and would nominate and appoint

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A Commissioner on their Behalf for the purpose aforesaid on or before the said first day of January next And it was further mutually consented and agreed by and between the said George Earl of Pembroke the President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed That the Expenses of preparing those presents and of all other Deeds Instruments and writings concerning the said intended Division and allotments and also the charges and Expenses of the said Surveyors or Commissioners and also the Expenses of surveying measuring and planning the said Lands and all other incidental Expenses touching the Premises should be borne by the said several Persons interested in the Premises in proportion to their several Estates and Interests in the said Lands and agreeably to a Pound Rate which the said Surveyors or Commissioners (to be appointed as aforesaid) were to be authorised

to make for that purpose And it was further mutually agreed that each Party on appointing his surveyor or Commissioner as aforesaid should enjoin such Surveyor or Commissioner to proceed in the immediate execution of the Business and engage him as far as might relate to his own personal services to compleat the Division and Allotment so far at least as to enable the several Owners Proprietors and Occupiers to enter upon their respective allotments on or before the tenth Day of October One Thousand and Eight hundred and also to make up and sign their final Order or Award of an concerning the same within twelve months from the date thereof And the said George Earl of Pembroke President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed did thereby further covenant promise and agree to and with each other that they the said George Earl of Pembroke President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed

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And each of them

(End of Page 2 of original award)

*would well and truly of and to and abide by the order or award to be made by the said Commissioners to be appointed as aforesaid and accept the Division and allotments to be made to them of the said Lands in lieu of the Lands and Rights of Common to be given up according to the true intent and meaning of these presents as in and by the said in part recited Memorandum of Agreement reference being thereunto had will more fully and at large appear. **And whereas** in pursuance and part performance of the said recited agreement the said George Earl of Pembroke did nominate and appoint the said John Seagrim to be the Surveyor or Commissioner on his Behalf to make the Division and Allotments pursuant to the said recited agreement And the said President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman and the several other persons whose names are thereunto subscribed and seals affixed t the said recited agreement or the major part of them Did nominate and appoint the said Thomas Charlton to be the Surveyor or Commissioner on their behalf to make the Division and Allotment pursuant to the said recited agreement And whereas several of the owners and proprietors of Lands Grounds and Premises within the said Parish of Teffont Magna were desirous of exchanging certain old Inclosures and other Lands and Grounds lying in the same Parish and being unable from the mixt state of their property and Inequality in point of value to make such Exchanges in the usual Way specifically with each other the said Owners and Proprietors of Lands Grounds and*

*Premises intended to be exchanged have given up the said old Inclosures and other Lands intended to be exchanged to the Intent that the same may be thrown together and have agreed to take each in lieu thereof such part or portion of the whole assign and by the Schedule hereunto annexed or hereunder written expressly allotted to the several Estates **Now know ye** that we the said John Seagrim and Thomas Charlton Surveyors and Commissioners nominated and appointed in manner aforesaid have held divers Meetings by virtue and under the said agreement for the purpose of executing the Powers thereby in us reposed or expressed or intended so to be and have caused a true and perfect survey admeasurement and Plan to be taken and made of the said open Common or Tenantry Fields open Common Downs and other Commonable places by the said agreement meant and intended to be by us divided set out and allotted and also of the Homesteads and other ancient Inclosures of the said several Proprietors by John Charlton of Stourton*

End of Page 6 of copy document

*Aforesaid Land Surveyor a Person appointed by us for that purpose and have caused such Survey admeasurement and Plan to be reduced into writing and the Number of acres roods and perches which the same Lands contain is therein ascertained and set forth And we have also in further pursuance of the said Agreement caused the said open Common or Tenantry Fields to be divided and laid into four several fields of an equal size as near as may be for the purpose of being used in Common or Tenantry and called therein by the several names of East field East Middle Field West Middle Field and West Field and apportioned the sheep leazes to the same in manner hereinafter mentioned And have also laid aside the said Commons called Teffont Common and Thickthorn for Inclosure and awarded and directed them accordingly to be set apart for Inclosure in manner hereinafter mentioned And have cause one hundred and forty acres of the said Sheep and Cow Down uncumbered with furze (as are and by the same recited agreement for such purpose directed to be broken up and converted into Tillage Ground) to be divided and laid in five several fields of an equal size as near or may be and called them by the several Names of the Lower Field Thickthorn Field Wyly East Field Wyle Middle Field and Wyly West Field And we have carefully observed and examined the said survey admeasurement and Plan and also the open Common or Tenantry Fields open Common Downs and other Commonable places and old Inclosures meant and intended to be divided set out and allotted as aforesaid and have duly considered the same and made a just impartial and distinct Valuation of all and singular the said open Common or Tenantry Fields open Common Downs and other Commonable Places and old Inclosures and have deliberately heard examined and considered the several allegations made before us at our several meetings by and on the Part and Behalf of all and singular parties interested therein and having duly informed ourselves as above and of all other matters and Things relating to the said intended Division and Allotment proper and requisite to be weighed and considered in order to do equal justice to all parties concerned **We** the said John Seagrim and Thomas Charlton (by virtue and in further pursuance of the Powers and trusts given or expressed or intended to be give into and reposed in us in and by the said recited agreement) **have** awarded allotted and set out and by this present **Award** or Instrument in writing proper*

*stamped parchment signed and sealed by us **Do** award allot and set out unto each of them the said George Earl of Pembroke President and Fellows of Magdalen College Oxford The Reverend William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham*

End of Page 7 of copy document

William Cowdry Dorothy Waterman Joan Macey Joseph Mullens The Chapelwardens of the Chapel of Teffont Magna aforesaid and for and

in lieu of all such Right of Tithe Interest and Estate in the said several open or Common or Tenantry Fields open Common Downs and other commonable Places and also in the said old Inclosures so intended to be divided set out and allotted as aforesaid as they the said George Earl of Pembroke President and Fellows of Magdalen College Oxford William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Waterman Joan Macey Joseph Mullens The Chapelwardens of the Chapel of Teffont Magna and

are severally and respectively seized possessed of or in anywise intitled unto and for and in lieu of such right of (End of Page 3 original award)

*common as they respectively now are intitled unto of into about of the same the several and respective allotments pieces or parcels of Land with such Right of Common as in the first Schedule have under written or hereunto annexed marked **A** are particularly written mentioned and set forth by us the said Surveyors Commissioners or arbitrators as and for the those Property and Right of each of them the said several proprietors of and in the same open Common or Tenantry fields open Common Downs and other commonable places and old Inclosures so intended to be divided set out and allotted **which** said several allotments we have caused to be severally admeasured divided set out and allotted by Stakes Metes and Bounds unto and amongst the several Owners and Proprietors interested according and in proportion to their several and respective Rights Shares and Interests therein **And** in making such Divisions and allotments we have due Regard as well to the qualities conveniences and situations as to the quantity of Land contained therein respectively and also to the Homesteads or other ancient Inclosures **And** we do approve of the Exchanges mentioned in the said Schedule hereunder written or hereunto annexed and do consider the same as reasonable and adequate and do award and allot to the several person the several and respective allotments Pieces or parcels of Land in the said Schedule hereunder written or hereunto annexed marked **A** given and received in Exchange as therein expressed such exchanges as were made by any of the Proprietors holding by Copy of Court Roll or by any Lease having been made with the Consent in writing of the person or persons under whom such Lands were held **and we do hereby** further award order and Direct a public Road or driftway to and for each of them the said*

several owners and proprietors of the said several and respective allotments and pieces or parcels of land hereby allotted and

End of page 8 of copy document

awarded to each and every one of them respectively as herein before mentioned and to and for his or their respective tenants or farmers of their said several allotments to go pass and repass on foot and on horseback and with coaches various cattle carts and carriages at his and their will and pleasure for ever hereafter through over and along the same without any let hindrance or molestation of or from any or either of the other or others in them their respective heirs tenants and assigns of the breadth of thirty three feet leading from the Turnpike Road through an Inclosure belonging to the Earl of Pembroke called Jack Thorns in the occupation of Oliver Smith and between the East field and East Middle field to the Common Down as the same is already staked meted bounded and marked by us
And we do hereby further award Order and Direct another public Road or driftway with the like liberty of going passing and repassing at all times of their will and pleasure to and for them the said several owners and proprietors and their respective tenants and farmers and in like manner as last herein before mentioned of the breadth of twenty feet branching out of the last herein before described public Road or Driftway and leading between the allotment in East field hereby awarded to Robert Fitz for or in respect of his life hold Estate and other allotments in the same field hereby awarded to Joan Macey and the Earl of Pembroke for or in respect of his Estate in the Occupation of Elizabeth Lackham to a Ground or Enclosure called Teffont Ground and to an allotment hereby awarded to Oliver Smith in respect of his freehold estate AND WE Do award Order and Direct a private carriage Road or Driftway to and for the use of the said William Wyndham his heirs and assigns and his and their respective tenants or farmers of the allotment hereby awarded to him in Teffont Common for ever hereafter on all occasions to pass and repass on foot or on horseback and with coaches various carts and carriages in through and over and along the same of the breadth of fifteen feet leading from his said allotments in Teffont Common along the Church Road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Heathy Close leading in to the turnpike Road without any hindrance or molestation of and from the said Oliver Smith and George Macey or either of them their heirs or assigns or their tenants or tenant of the said allotments in Teffont Common AND WE DO further award order and direct one other private Carriage Road or Driftway to and for the use of the said Luke Toomer his heirs and assigns and his and their respective tenants and farmers of the allotment awarded to him on Teffont Common for ever hereafter on all occasions to pass and repass on foot or on horseback and with coaches wains carts and carriages in through over and along

End of Page 9 of copy document

the same of the breadth of fifteen feet leading from his said allotment in Teffont Common along the Church road and through and over the allotments hereby awarded to the said Oliver Smith and George Macey in the said common to the head of the lane by Heathy

*Close leading into the Turnpike Road without any hindrance or molestation of and from the said Oliver Smith and George Macey or either of them or their heirs or assigns or their tenants or tenant of the said allotment in the said common AND WE DO further award order and direct one other private carriage road or driftway to and for the use of the said Oliver Smith his heirs assigns and his or their respective tenants or farmers of the allotments hereby awarded to him in Teffont Common forever hereafter on all occasion to pass and repass on foot or on horseback and with coaches wains carts and carriages in through and over and along the same of the breadth of fifteen feet leading from his said allotment in the Common along the Church Road and through and over the allotment hereby awarded to the said George Macey in the said common to the head of the lane by Heathy Close leading into the Turnpike Road without any hindrance or molestation of and from the said George Macey his heirs or assigns or his or their tenant of the said allotment in the said common AND WE Do hereby further award order and direct that the several persons whose names are written in the second schedule hereunto annexed marked with the letter **B** their heirs executors administrators or assigns* (End of page 4 original award)

*respectively shall within the space of six calendar months from the Date of this Award at their several and respective Costs and Charges make the fences against the several allotments as expressed and mentioned opposite their respective names in the said second schedule hereunto annexed marked **B** such fences to be either Quick or Dead at the option of the several Persons their heirs and assigns hereby awarded and directed to make the same **And we** have also marked and set out and do hereby award and direct that a piece of Land lying against the Spring head called the Water Halve Rate part and parcel of the said Walter Fitz Freehold estate shall be common to those who have Sheep Leazes herein and hereby awarded to them in the Tenantry or Common Fields for watering their said Sheep **and** we do hereby further award order and direct that such Course of Husbandry shall be used in and upon the said Lands and Grounds hereby divided set out and allotted (that is to say) **We** do hereby order and direct that the Common or Tenantry Field Land called the East Field East Middle Field West Middle Field and the west Field be cropped in a regular course of four fields in the following manner (that is to say) We do order and direct that the Fallow or Summerfield to be opened broke stocked*

End of Page 10 of copy document

*Or depastured with Sheep yearly and every year on the third day of May and continue to be opened broke stocked or depastured with Sheep until the tenth day of October yearly provided nevertheless that care be taken not to injure any wheat that may happen to be sown in the said field by feeding or dividing over the same **and we do** further direct that the several Occupiers on or after the twenty fourth day of June may enter upon their several allotments to manure plough manage and prepare the same for an ensuing wheat crop nevertheless however we direct that the several occupiers may have liberty to carry out their Dung at any time from the preceding ninth day of October til the twenty fifth day of March from which time they are to be debarred from carrying out Dung except after the fold until the twenty fourth day of June **And we do** further order and direct that the Wheat Stubble Field shall be stocked with sheep yearly on the twenty fourth day of September or*

sooner if the Wheat shall be sooner cleared out of the fields and continue to be stocked until the fourth day of July then next ensuing at which time it shall be hained up for the Barley or Lent (?) Crop but care should be taken that no injury be done to any person by feeding or driving over any Barley or other Lent (?) Given which shall be sown in the said field previous to the fourth day of July and that yearly or at any time after the Tenth day of October preceeding the Occupiers of Land may enter on their allotments for the purpose of ploughing and preparing their Land for the then ensuing Barley or Lent (?) crop and to sow in such Lent crop at least two bushels and an half of Hop and Ray Grass seed and five Pounds of Broad Clover Seed to every acre of Land sown with the Lent Crop **And we do** hereby further order and direct the Barley or Lent Corn stubble field to be stocked with sheep on the tenth day of October yearly or immediately after the field is cleansed of the Lent Corn and shall remain Commonable for sheep until the first day of December then next ensuing at which time it shall be shut unstocked or hayned up for a Crop of Hay to be mown the ensuing year unless fed off as specified in the Clover Field **And we do** further order and direct that each occupier of the Clover Field shall have liberty to feed his own allotment of Land with sheep or other Cattle until the twenty fourth day of June yearly or until the field is cleared of the Hay should the occupier prefer feeding his own Land with Sheep or other cattle to hayning it up for a crop of Hay **and** that the said clover or grass field after being so fed or mown for Hay shall be opened broke or stocked with sheep only yearly and every year on the such twenty fourth day of Jun or on such earlier day as shall happen on which the same shall be cleared of the Hay and that the same shall remain commonable for sheep until the fourteenth day of March at which time it shall be shut up or unstocked until the third day of May ensuing when it will

End of Page 11 of copy document

be as aforesaid again opened broke stocked or depastured as a summer field **and we do** hereby further order and direct that the Common or Tenantry Down Field Land called the Lower field Thickethorn Field Wyly east Field Wyly middle field and Wyly West field be cropped in a regular course of five fields in the following manner (that is to say) **We do** order and direct that the Fallow or Summer Field be opened broke stocked or depastured with sheep yearly and every year on the third day of May and continue to be so opened broke stocked or depastured with sheep until the fourth day of October yearly when the respective Occupiers are to be at liberty to enter upon the same and prepare for a crop of turnips and we do further order and direct the Turnips on the respective allotments to be fed off by the sheep of the several occupiers by the fourth day of May yearly from and after which time the Land may be broke up and prepared for an ensuing wheat crop **and we do** further order and direct the wheat stubble the Barley or Lent corn Stubble and the Clover Fields to be opened broke stocked and depastured in the same course and manner as is hereinbefore ordered and directed for opening breaking stocking and depasturing the Home Fields called the East Field East Middle Field west Middle Field and West field **and we do** further order and direct the following Rules and Regulations touching the fold (that is to say) We order and direct that the sheep shall be folded by them in proportion to the quantity of Land in course for wheat as follows (that is to say) that every occupier of Land in the said

field and so alternately each folding to begin and go regularly through the field each person to carry the fold to his respective allotment the said folding to commence yearly on the third day of May when the sheep enter on the (End of page 5 original award)

Summer field and continue to fold in them until the sheep go to hay **and we do** further order and direct that although the Number of Sheep leazes are by this our said award by us made as aforesaid placed and appointed to the said several Estates yet we hereby determine that the same may nevertheless be varied in equal proportions at any future period upon our agreement for the same at the annual Court Baron or other meeting held for that purpose **and we do** order and direct that the Cow down shall from the Day of the date hereof be a sheep down and be fed in common with the present sheep down other than and except such part and parts of the said Cow Down and sheep down herein and hereby directed to be broken up and converted with Tillage and aforesaid **and we do** further order award and direct that such allotments Pieces and Parcels of Land so aforesaid marked designed and set forth in and by the said Schedule marked letter **A** as and for the share of each of them the said several Proprietors of and in the said several open Common or Tenantry Fields open Common Downs and other Commonable places in and by the said articles

End of Page 12 of copy document

Directed to be by us allotted to an amongst them the said several proprietors as aforesaid and of which the said Survey admeasurement Valuation and Estimation have been taken by us the said John Seagrim and Thomas Charlton the said Surveyors and arbitrators as aforesaid shall be in full bar (?) Satisfaction and Extinguishment of all Rights of Soil and all Lands Grounds Rights of Common and other Rights of belonging to the said several Persons to and for whom such allotments and Divisions in and by the said Schedule marked **A** mentioned are set out to in for or upon the said open Common or Tenantry fields open Common Downs and other commonable places **and that** from henceforth all Right of Common belonging to or claimed by any of them the said persons for whom such allotment or Divisions are made as aforesaid in over or upon the said Lands so hereby ordered and awarded to be divided and allotted shall cease determine and be void **and we do** further award order adjudge arbitrate and determine that such part of the said Open Common Downs as are used in and by the said articles of Agreement directed to remain in severalty shall from henceforth be fed and depastured with sheep only and not with cows and that all Right of Commoning for cows in or upon such Lands is to remain in Tenantry as aforesaid and also on all and every the said open Common or Tenantry fields open Common Downs and other commonable places within the said Parish shall from henceforth cease and be abolished **and we do** further award order and direct that they the said George Earl of Pembroke The President and fellows of Magdalen College Oxford The Reverend William Dean Henry Penruddocke Wyndham William Wyndham Walter Fitz John Fitz Oliver Smith John Lush Edward Mould Luke Toomer John Gardner George Macey John Hayter Elizabeth Larkham Robert Fitz Edward Larkham William Cowdry Dorothy Bateman Joan Macey Joseph Mullens the Chapelwardens f the Chapel of Teffont Magna aforesaid and do and shall within twenty one days from the tenth day of October next ensuing the date of this present award accept of his her or

their respective allotments particularly mentioned and described in the Schedule hereunder written or hereunto annexed marked A and each and every of them do and shall at the request Costs and Charges of the Person or Persons intituled thereunto under this award make do and execute and cause and procure to be made done and executed all and every such deed and Deeds Conveyances and other assurances in the Law whatsoever for the mutually granting releasing conveying and assuring each unto the other or others of them his her and their respective Heirs executors administrators and assigns respectively all such estate Right Title Interest Claim and Demand whatsoever which they the said several Proprietors or any or either of them now have or hath or can shall or may at any time hereafter have Claim Challenge or demand into

End of Page 13 of copy document

*Upon each and every of the said several allotments and Divisions in and by the present award allotted set out and awarded as and for the share and Property of each of them the said several Proprietors of and in the said Open or common Tenantry fields open Common downs and other commonable Place and old Inclosures and of which such survey and admeasurement as aforesaid hath been made by us the said Surveyors and for the assuring unto each and every of them the said Proprietors the peaceable and quiet Enjoyment and Possession of the said several allotments to and Divisions allotted to them as aforesaid and in all such other rights Privileges and advantages which in and by this present award is and also meant and intended to be awarded and allotted unto and for the use and Benefit of each of them the said Proprietors as aforesaid **and also** for the further better and more effectively adjoining unto the other or others of them the making doing abiding by performing and executing by each and every other and others of them of all and every the Rules Regulations Orders Matters and Things hereby awarded ordered adjudged and determined to be done and executed by each and every of them touching the said allotment and Divisions hereby awarded and allotted unto each and every of them and touching ways Roads and Passages to be made Curse of Husbandry to be used fences to be made and all such exchanges Regulations Orders Rules Matters and Things in and by this present award awarded ordered and adjudged and to be done performed executed observed and kept by each of them the said several Proprietors as by other or others of them their or either of their heirs Executors or administrators or their or any or either their counsel learned in the Law shall be reasonably desired or advised and required **In witness** whereof we the said John Seagrim and Thomas Charlton have hereunto set out hands and Seals the second day of September in the fortieth year of the reign of our sovereign Lord George the third by the grace of god of the United Kingdom of Great Britain and Ireland King defender of the Faith and in the year of our Lord one thousand and Eight hundred.”*

Signed Jn Seagrim Thomas Charlton

(End of page 6 of original award)

The first Schedule to which the within written award refers

A

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
	Earl of Pembroke in respect of his Estate called the Seven Yard Lands in the Occupation of Oliver Smith	- Enclosures taken in Exchange -			
Pc 109	First allotment	A cottage house Rickhouse yard and garden late William Wyndham Esquire freehold	-	-	25
Ps 26	Second allotment	A meadow called Kentons Mead late part of Robert Fitz Lifehold Three yard Lands	1	0	37
Ps 10	Third allotment	A Meadow part of Edward Larkhams Lifehold Estate	-	2	20
Ps 28	Fourth allotment	A Little Meadow part of Dorothy Watermans Lifehold Estate	-	2	10
Ps 29	Fifth allotment	An orchard called Moulds Orchard part of Walter Fitz freehold Estate	-	3	37
Pc 133	Sixth allotment	A Close of arable Land called Breach part of Dorothy Watermans Lifehold Estate	2	2	27
Pc 130	Seventh allotment	A close of arable Land called Marshwood Ground part of John Lush's Lifehold Estate	1	3	8
Pc 129	Eighth allotment	A close of arable Land called Marshwood Groun part of the Estate called Priests belonging to the said Earl in the occupation of Elizabeth Larkham	3	2	17
Ps 150	Ninth allotment	A close of arable Land called Teffont Ground part of William Wyndhams Freehold Estate	5	0	32
PI 81	Tenth allotment	A close of arable Land called Holt part of the Earl of Pembrokes Estate called Pottways in the occupation of John Lush	2	2	18
Ps 152	Eleventh allotment	A close of arable Land called Kite Hill part of Oliver Smiths freehold Estate	1	3	36
Ps 153	Twelfth allotment	A close of arable Land called Kite Hill part of Walter Fitz Freehold Estate	4	2	28
Pc 132	Thirteenth allotment	A close or Coppice of wood land called Breach Coppice Part of Walter Fitzs freehold Estate	2	2	27

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Ps 242	Fourteenth allotment	An allotment part of Thickthorne and part of the Common Down adjoining the same	6	2	20
Ps 187	Fifteenth allotment	---Arable Land to be in Severalty An allotment of arable Lands bounded in the East by the East Middle Field and another allotment next hereinafter mentioned on the west by Barn Close and other Inclosures on the north by the West Middle Field and on the south by the Turnpike Road	13	2	35
Pc 164	Sixteenth allotment	One other allotment of arable Land bounded on the east by a Drove Way and by an allotment to the said Earl for his tenants at Dinton on the west by the last described allotment to the said Earl on the north by the East Middle Field and on the south by old Inclosures called Jack Thorns the aforesaid allotments for the Dinton Tenants and the Turnpike Road	9	3	20
Ps 151	Seventeenth allotment	One other allotment of arable Land bounded on the East by Dinton Parish on the west by the East Field on the north by Kite Hill Close and on the south by Teffont Ground	19	2	0
Ps 156	Eighteenth allotment	----arable Land to be in Common or Tenantry In the Home Fields four allotments (viz) An allotment of arable Land in the East Field	14	0	6
Ps 175	Nineteenth allotment	An allotment of arable Land in the East Middle Field	24	0	32
Ps 186	Twentieth allotment	An allotment of arable Land in the West Middle field	15	1	3
Ps 197	Twenty first allotment	An allotment of arable Land in the west field	15	1	35
Ps 254	Twenty second allotment	In the Down fields five allotments (viz) An allotment of arable Land in the Lower Field	8	0	0
Ps 232	Twenty third allotment	An allotment of arable Land in Thickthorn Field	8	0	0
Ps 227	Twenty fourth allotment	An allotment of arable Land in Wyly East Field	8	0	0
Ps 216	Twenty fifth allotment	An allotment of arable Land in Wyly Middle Field	8	0	0
Ps 215	Twenty sixth allotment	An allotment of arable Land in Wyly West Field	8	0	0

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Pz 161	Earl of Pembroke in respect of his Estate in the occupation of John Lush	Commons of pasture for the Three hundred and thirty sheep – arable Land to be in Common or Tenantry – In the Home Fields four allotments (viz)	4	0	6
	First allotment	An allotment of arable Land in the East Field			
	Second allotment	An allotment of arable Land in the East Middle field			
	Third allotment	An allotment of arable Land in the West Middle field			
PI 172	Fourth allotment	An allotment of arable Land in the West Field	5	2	15
PI 176			9	3	21
PI 201			5	2	15
	Earl of Pembroke in respect of his Estate in the occupation of Edward Larkham	Common of Pasture for sixty sheep Enclosures taken in exchange			
PL 52	First allotment	A close of pasture Land called Bell Guys part of Walter Fitzs Freehold Estate	-	2	36
PL 53	Second allotment	A meadow called Little Mead part of Edward Larkhams Lifehold Estate	-	1	13
PL 54	Third allotment	A close of Pasture Land called Little twenty acres part of Joan Maceys Lifehold Estate	-	-	38
PL 99	Fourth allotment	An orchard called Chevrills part of the said Earls Estate in the occupation of Oliver Smith	1	1	7
PL 259	Fifth allotment	An allotment part of Teffont Common bounded on the east by part of the said Common allotted to Oliver Smith s freehold Estate on the west by an orchard belonging to the Earl of Pembroke and by the High Road on the North by old Inclosures and on the fourth by Lower Teffont Manor	1	1	1
PL 238	Sixth allotment	An allotment part of Thickthorne and part of the Common Down adjoining the same	4	2	24
PI 134	Seventh allotment	Arable Land to be in Common or Tenantry In the Home Fields four allotments (viz) An allotment of arable Land in the East Field	9	0	0
PL 169	Eighth allotment	An allotment of arable Land in the East Middle Field	4	1	4
PL 180	Ninth allotment	An allotment of arable Land in the West Middle Field	4	3	8

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
PI 202	Tenth allotment	An allotment of arable Land in the west field	4	2	20
PL 251	Eleventh allotment	In the Down Fields five allotments (viz) One allotment of arable Land in the Lower field	2	2	0
PL 235	Twelfth allotment	One allotment of arable Land in Thickthorne field	2	2	0
PL 230	Thirteenth allotment	One allotment of arable Land in Wyly East field	2	2	0
PL 218	Fourteenth allotment	One allotment of arable Land in Wyly middle field	2	2	0
PL 213	Fifteenth allotment	One allotment of arable Land in Wyly West Field	3	0	0
Pp 198	Earl of Pembroke in respect of his Estate in the occupation of Elizabeth Larkham Widow first allotment	Common of Pasture for One hundred and twenty sheep An allotment of arable Land to be inclosed bounded on the east by the Warminster Road on the west by Walter Fitzs freehold allotment on the north by a Droveaway from Walter Fitzs freehold allotment and on the south by Elizabeth Larkhams freehold allotment	7	1	30
Pp 159 *	Second allotment	Arable Land to be in Common or Tenantry In the Home fields four allotments (viz) An allotment of arable Land in the East field	2	1	4
Pp 166	Third allotment	An allotment of arable Land in the East Middle field	3	1	13
Pp 184	Fourth allotment	An allotment of arable Land in the West Middle Field	3	1	4
Pp 194	Fifth allotment	An allotment of arable Land in the West Field	3	1	29
Sm 112	Joan Macey in respect of her Lifehold Estate First allotment	Common of Pasture for forty eight sheep Enclosures taken in exchange A close of pasture Land called Calms Close part of the Earl of Pembrokes Estate in the occupation of Oliver Smith	-	3	15

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Sm 43	Second allotment	An orchard part of the Earl of Pembrokes Estate in the occupation of Oliver Smith	1	0	4
Sm 61	Third allotment	A close of arable Land called Earth Pitts part of the Earl of Pembrokes Estate in the occupation of Oliver Smith	3	3	20
SM 159	Fourth allotment	Arable Land to be in Common or Tenantry In the Home Fields four allotments (viz) An allotment of arable Land in the East Field	2	0	17
Sm 167	Fifth allotment	An allotment of arable Land in the East Middle field	2	1	4
Sm 185	Sixth allotment	An allotment of arable Land in the West Middle field	2	1	0
Sm 195	Seventh allotment	An allotment of arable Land in the West Field	1	3	20
Sm 247	Eighth allotment	In the Down fields five allotments (viz) An allotment of arable Land in the Lower field	1	1	0
Sm 246	Ninth allotment	An allotment of arable Land in Thickthorne Field	1	1	0
Sm 224	Tenth allotment	An allotment of arable Land in Wyly East Field	1	1	0
Sm 225(3?)	Eleventh allotment	An allotment of arable Land in Wyly Middle Field	1	1	0
Sm 208	Twelfth allotment	An allotment of arable Land in Wyly West Field	1	1	0
L 135	Edward Larkham in respect of his Liefhold Estate called the Home Living } First allotment	Common of Pasture for forty eight sheep Arable Land to be in Common or Tenantry In the Home Fields four allotments (viz) an allotment of arable Land in the East field	4	0	24
L 168	Second allotment	An allotment of arable Land in the East Middle Field	2	3	12
L 179	Third allotment	An allotment of arable Land in the west Middle field	3	1	10
L 203	Fourth allotment	An allotment of arable Land in the west Field	3	0	10
L 252	Fifth allotment	In the down fields four allotments (viz) An allotment of arable Land in the Lower field	1	0	26

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
L 234	Sixth allotment	An allotment of arable Land in Thickthorn field	1	0	26
L 229	Seventh allotment	An allotment of arable Land in Wyly East field	1	0	26
L 217	Eighth allotment	An allotment of arable Land in Wyly Middle field	1	0	26
L 214	Ninth allotment	An allotment of arable Land in Wyly West field	1	1	13
L 51	Edward Larkham in respect of his Lifehold Estate called Obeins First allotment	Common or Pasture for forty eight sheep Enclosures taken in Exchange A close of Pasture Land part of the Earl of Pembrokes Estate in the occupation of Edward Larkham	-	3	0
L 155	Second allotment	Arable Land to be in Common or Tenantry In the Home Fields four allotments (viz) An allotment of arable Land in the East field	4	0	24
L 168	Third allotment	An allotment of arable Land in the East Middle field	2	3	13
L 179	Fourth allotment	An allotment of arable Land in the West Middle field	3	1	10
L 263	Fifth allotment	An allotment of arable Land in the West field	3	0	10
L 252	Sixth allotment	In the Down fields five allotments (viz) An allotment of arable Land in the Lower field	1	0	26
L 234	Seventh allotment	An allotment of arable Land in Thickthorn field	1	0	26
L 229	Eighth allotment	An allotment of arable Land in Wyly East field	1	0	26
L 217	Ninth allotment	An allotment of arable Land in Wyly Middle field	1	0	26
L 214	Tenth allotment	An allotment of arable land in Wyly west field	1	1	13
L 66	Edward Larkham in respect of his Lifehold Estate called Kings First allotment	Common of Pasture for forty Eight sheep Enclosures taken in exchange a close of arable Land called earth Pittes belonging to the Earl of Pembrokes Estate in the occupation of John Lush	1	0	32

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
L 241	Second allotment	An allotment part of Thickthorn and part of the Common Down adjoining the same	5	2	26
L 155	Third allotment	Arable Land to be in Common or Tenantry In the Home fields four allotments (viz) An allotment of arable Land in the East Field	4	0	24
L 168	Fourth allotment	An allotment of arable land in the East Middle Field	2	3	12
L 179	Fifth allotment	An allotment of arable Land in the West Middle field	3	1	10
L 203	Sixth allotment	An allotment of arable Land in the West Field	3	1	10
L 252	Seventh allotment	In the Down Fields five allotments (viz) An allotment of arable Land in the Lower Field	1	0	26
L 234	Eighth allotment	An allotment of arable Land in Thickthorn Field	1	0	26
L 229	Ninth allotment	An allotment of arable Land in Wyly East field	1	0	26
L 217	Tenth allotment	An allotment of arable Land in Wyly Middle Field	1	0	26
L 214	Eleventh allotment	An allotment of arable Land in Wyly West Field	1	1	13
W 127	Dorothy Waterman in respect of her lifehold Estate First allotment	Common Pasture for Forty Eight sheep } Enclosures taken in exchange A close of arable Land called Jack Thorns part of the Earl of Pembrokes Estate in the occupation of Edward Larkham	2	1	13
W 162	Second allotment	Arable Land to be in Common or Tenantry In the Home fields four allotments (viz) an allotment of arable Land in the East field	3	0	36
W 173	Third allotment	An allotment of arable Land in the East Middle Field	4	2	12
W 177	Fourth allotment	An allotment of Arable Land in the West Middle Field	6	2	4
W 200	Fifth allotment	An allotment of arable Land in the West Field	4	2	21
	John Lush in respect of his Lifehold Estate	} Enclosures taken in Exchange			

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Lj 64	First allotment	A close of arable Land called Earth Pitts part of the Earl of Pembrokes Estate called Priests in the occupation of Elizabeth Larkham widow	1	2	16
Lj 59	Second allotment	A close of arable Land called Piched Close or Rye Close part of the Earl of Pembrokes Estate in the occupation of Oliver Smith	1	1	24
Lj 239	Third allotment	An allotment part of Thickthorn and part of the Common Down adjoining the same	2	3	20
Lj 163	Fourth allotment	Arable Land to be in Common or Tenantry in the Home fields four allotments (viz) an allotment of arable Land in the East field	6	0	24
Lj 174	Fifth allotment	An allotment of arable Land in the East Middle Field	9	2	0
Lj 178	Sixth allotment	An allotment of arable Land in the West Middle field	11	2	32
Lj 199	Seventh allotment	An allotment of arable Land in the west Field	9	0	0
Lj 250	Eighth allotment	In the Down fields five allotments (viz) An allotment of arable Land in Lower Field	2	2	0
Lj 243	Ninth allotment	An allotment of arable Land in Thickthorn field	2	2	0
Lj 231	Tenth allotment	An allotment of arable Land in Wyly East Field	2	2	0
Lj 220	Eleventh allotment	An allotment of arable Land in Wyly Middle Field	2	2	0
Lj 211	Twelfth allotment	An allotment of arable Land in Wyly West Field	2	2	0
Hm 144	First allotment	Common of Pasture for one hundred and twenty sheep } Enclosures taken in Exchange A close of arable Land called Drove Close part of the earl of Pembrokes estate in the occupation of Oliver Smith	1	0	12
Hm 236	Second allotment	An allotment part of Thickthorn and part of the Common Down adjoin the same	5	3	32
		Arable Land to be in Common or Tenantry In the Home Field four allotments (viz)			

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Hm 157	Third allotment	An allotment of arable land in the east Field	6	3	0
Hm 170	Fourth allotment	An allotment of arable Land in the East Middle Field	6	3	14
Hm 182	Fifth allotment	An allotment of arable Land in the West Middle Field	6	3	25
Hm 204	Sixth allotment	An allotment of arable Land in the west Field	9	3	15
Hm 249	Seventh allotment	In the Down Fields five allotments (viz) an allotment of arable Land in the Lower Field	2	2	0
Hm 244	Eighth allotment	An allotment of arable Land in Thickthorn Field	2	2	0
Hm 226	Ninth allotment	An allotment of arable Land in Wyly East field	2	2	0
Hm 221	Tenth allotment	An allotment of arable Land in Wyly Middle Field	2	2	0
Hm 210	Eleventh allotment	An allotment of arable Land in Wyly West Field	3	0	0
Fm 11	Robert Fitz in respect of his Lifehold Estate First allotment	Common of Pasture for one Hundred and twenty sheep Enclosures taken in exchange An orchard part of Joan Maceys Lifehold Estate	1	0	2
Fm 143	Second allotment	A close of arable Land called Green Drove Close part of William Wyndhams freehold Estate	2	2	3
Fm 142	Third allotment	A close of arable Land called East Close part of Walter Fitzs freehold Estate	4	1	8
Fm 76	Fourth allotment	A close of arable Land called Teffont Post part of the Earl of Pembrokes Estate in the occupation of Oliver Smith	1	3	13
Fm 237	Fifth allotment	An allotment part of Thickthorn and part of the common down adjoininh the same	1	1	20
Fm 150	Sixth allotment	Arable Land to be in common or Tenantry In the Home fields four allotments (viz) An allotment of arable Land in the East field	5	1	18
Fm 171	Seventh allotment	An allotment of arable Land in the East middle field	6	3	13
Fm 183	Eighth allotment	An allotment of arable Land in the West Middle Field	6	2	33
Fm 196	Ninth allotment	An allotment of arable Land in the West Field	6	0	25

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
		<i>In the Down fields five allotments (viz)</i>			
Fm 253	Tenth allotment	An allotment of arable Land in the Lower Field	3	2	0
Fm 233	Eleventh allotment	An allotment of arable Land in Thickthorn Field	3	2	0
Fm 228	Twelfth allotment	An allotment of arable Land in Wyly East Field	3	2	0
Fm 219	Thirteenth allotment	An allotment of arable Land in Wyly Middle Field	3	2	0
Fm 212	Fourteenth allotment	An allotment of arable Land in Wyly West Field	4	0	0
		Common of Pasture for one hundred and forty four sheep			
Pc 108	William Cowdry in respect of his Lifehold Estate First allotment	} Enclosures taken in exchange an orchard part of William Wyndhams freehold Estate	-	3	8
PS 240	Second allotment	An allotment part of Thickthorn and part of the Common Down adjoining the same	2	3	4
		Arable Land to in Common or Tenantry	5	3	0
Ps 158	Third allotment	<i>In the Home Fields four allotments (viz)</i> an allotment of arable Land in the East Field			
Ps 165	Fourth allotment	An allotment of arable Land in the East Middle Fields	9	1	24
Ps 181	Fifth allotment	An allotment of arable Land in the West Middle Field	8	1	12
Ps 205	Sixth allotment	An allotment of arable Land in the West Field	13	1	30
		<i>In the Down field five allotments (viz)</i>			
Ps 248	Seventh allotment	An allotment of arable Land in the Lower Field	2	0	0
Ps 245	Eighth allotment	An allotment of arable Land in Thickthorn Field	2	0	0
Ps 225	Ninth allotment	An allotment of arable Land in Wyly East Field	2	0	0
Ps 222	Tenth allotment	An allotment of arable Land in Wyly Middle Field	2	0	0
Ps 209	Eleventh allotment	An allotment of arable Land in Wyly West Field	2	2	0
		Common of Pasture for Ninety six sheep	1	1	1
Lc 198	John Lush in respect of his Copyhold Estate first allotment	An allotment in Common or Tenantry in the West Field			

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Pc 164 *	Earl of Pembroke in respect of his several estates at dinton in lieu of the Right of cutting wood in Teffont Common First allotment	An allotment of arable Land to be inclosed bounded on the east by a close of arable Land called Jack Thorns on the west and north by an allotment of arable Land belonging to the earls Estate in the occupation of Oliver Smith and on the south by the Turnpike Road	1	1	1
Pw 123	Henry Penruddocke Wyndham Esquire in lieu of cutting wood in Teffont Common which Right belomnged to his Lifehold Estate at Dinton held under the Earl of Pembroke First allotment	A small garden and a close of arable Land called Jack Thorns part of Joan Maceys Lifehold Estate	2	2	15
Pw 124	Second allotment	A close of arable Land called Common Lane Ground part of John Lushs Lifehold Estate	1	3	24
Pw 125	Third allotment	A close of arable Land called Heathy Close part of William Cowdrys Lifehold Estate	3	0	22
F 206	Walter Fitz in respect of his Freehold Estate First allotment	An allotment of arable Land bounded on the east by Gardners Moulds Larkhams and the Earl of Pembrokes allotments and by the West Common Field on the west by Chilmark Parish on the north by down land allotted to the said Walter Fitz and on the south by the Turnpike Road	124	0	0
F 207	Second allotment	An allotment of Down Land late part of the Common Down bounded on the east by the tenantry or Common Down on the west by Chilmark Parish on the north by Bapton Parish and on the south by arable land allotted to the said Walter Fitz	121	0	0

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity A R P
So 256	<p><i>Oliver Smith in respect of his freehold estate</i></p> <p><i>First allotment</i></p>	<p><i>An allotment in Teffont Common bounded on the East by an allotment or portion of the said Common lately allocated or set out to william Wyndham Esquire for his own Estate and for an estate lately pruchased by him of John Macey late ? on the west by an allotment or portion of the said Common allotted to George Maceys Freehold Estate and by William Smiths freehold orchard and Edward Cheverells and Mary Bakers Cottage gardens and by an allotment or protion of the said Common allotted to the Earl of Pembrokes Estate in the occupation of Edward Larkham on the north by the earl of Pembrokes Robert Fitzs and Wm Wyndhams Inclosures and on the south by the parish of Lower teffont</i></p>	93 3 21
So 149	<p><i>Second allotment</i></p>	<p><i>An allotment of arable Land to be in severalty bounded on the east by Dinton Parish on the west by the East Common Field on the north by Teffont ground and on the south by Bevis's Marshwood Ground and late George Maceys orchard</i></p>	5 2 32
So 146	<p><i>Third allotment</i></p>	<p><i>A close of arable Land called Marshwood Orchard part of the said Oliver Smiths freehold yard Land</i></p>	3 0 26
So 147	<p><i>Fourth allotment</i></p>	<p><i>A close of Pasture or Orchard ground called Sheeppouse Orchard part of George Maceys freehold Estate</i></p>	1 0 10
M 191	<p><i>Edward Mould in respect of his Freehold Estate</i></p> <p><i>First allotment</i></p>	<p><i>An allotment of arable Land to be inclosed late part of the common fields bounded on the east by several Home Inclosures on the west by Walter Fitzs freehold allotment on the north by Elizabeth Lacrkhams freehold allotment and on the fourth by John Gardners and John Lushs freehold allotments</i></p>	8 1 35
La 192	<p><i>Elizabeth Larkham in repsect of her freehold Estate</i></p> <p><i>First allotment</i></p>	<p><i>An allotment of arable Land to be inclosed late part of Common fields bounded on the east by several Home Inclosures on the west by Walter Fitzs freehold allotment on the south by the Earl of Pembrokes allotment in the occupation of the said Elizabeth Larkham and on the south by Edward Moulds freehold allotment</i></p>	8 9 10

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
Lu 189	John Lush in respect of his freehold estate First allotment	An allotment of arable land to be inclosed late part of the Common Fields bounded on the east by Land Mead and Georges Orchard on the west by John Gardners freehold allotment on the south by Edward Moulds freehold allotment and on the south by the Turnpike Road	5	3	20
Ww 258	William Wyndham Esquire in respect of his freehold Estate First allotment	An allotment part of Teffont Common bounded on the east and north by Dinton Parish on the west by allotments in the said Common belonging to Luke Toomer and oliver Smiths freehold Estates and on the south by Lower Teffont Parish	48	0	0
Hj 40	John Hayter in respect of his leazes in Teffont Common First allotment	A close of pasture land called Burrows Plot belonging to the earl of Pembrokes Estate in the occupation of Oliver Smith	0	1	36
Hj 41	Second allotment	An orchard called Pottways Orcahrd belonging to the earl of Pembrokes Estate in the occupation of John Lush			
Lm 138	Joseph Mullens in respect of his Rights of Cutting Fuel on a certain portion of Land in teffont Common First allotment	An allotment of arable Land to be inclosed part of the Earl of Pembrokes Inclosure called Jack Thorns	-	2	30
	Chapel Wardens of Teffont Magna in respect of their Estate called the Chapel Halve				

Mark and Number on the Plan	Proprietors Names Estates and Number of Allotment	Description of the Allotments	Quantity		
			A	R	P
203 *	First allotment	An allotment of Land in the West Field	-	2	36
204 *	Proprietors of Land in the Common Fields in respect of their estate called The Barr Second allotment	an allotment of arable Land in the West Field	-	2	7
T 257	William Wyndham Esquire in respect of his Freehold Estate late Luke Toomers first allotment	An allotment part of teffont Common to be inclosed bounded on the east by an allotment in the said common belonging to William Wyndham Esquire on the west by an allotment in the said Common belonging to Oliver Smith on the south by a footpath crossing from Teffont to Dinton Church and on the south by Lower Teffont parish		11	3 9
G 190	John Gardner in respect of his freehold estate First allotment	An allotment of arable Land to be inclosed bounded on the east by John Lushs Freehold allotment on the west by Walter Fitzs Freehold allotment on the north by Edward Moulds freehold allotment and on the south by a hedge and some waster Land near the Turnpike Road		5	1 20
Mg 255	George Macey in respect of his freehold Estate First allotment	An allotment part of Teffont Common to be inclosed bounded on the east by a coppice called Breach Coppice and by Oliver Smiths allotment part of the said Common on the west by lesses Lintorn and the Earl of Pembrokes ? on the north by William Cowdrys the Earl of Pembrokes and Dorothy Watermans Inclosures and on the south by Walter Fitzs and William Smiths Inclosures		13	1 28

The second Schedule B to which the within written award refers

<i>Names of the Proprietors and of their Estates</i>	<i>The Number of allotments to and mark and number in the Plan</i>	<i>Fences</i>
<i>William Wyndham Esquire for his Freehold Estate</i>	<i>For his allotment Ww 258</i>	<i>To make the Fence against the west side of his allotment in Teffont Common</i>
<i>Ditto for Late Toomers</i>	<i>For his allotment T 257</i>	<i>To make the Fence against the west side of his allotment in Teffont Common</i>
<i>Oliver Smith for his Freehold Estate</i>	<i>For his allotment So 256</i>	<i>To make the Fence against the west side of his allotment in Teffont Common</i>
<i>Ditto</i>	<i>For his second allotment So 149</i>	<i>To make the fence in his freehold allotment of arable Land to be inclosed against the East Field</i>
<i>John Lush for his Freehold Estate</i>	<i>For his allotment Lu 189</i>	<i>To make the Fence on the west and north sides of his allotment of arable Land to be inclosed</i>
<i>John Gardner for his freehold estate</i>	<i>For his allotment G 190</i>	<i>To make the Fence on the west and north sides of his allotment of arable Land to be inclosed</i>
<i>Edward Mould for his freehold Estate</i>	<i>For his allotment M 191</i>	<i>To make the fence on the west and north sides of his allotment of arable Land to be inclosed</i>
<i>Elizabeth Larkham for her freehold estate</i>	<i>For her allotment La 192</i>	<i>To make the fence on the west and north side of her allotment of arable Land to be inclosed</i>
<i>The Earl of Pembroke for his freehold Estate in the occupation of Elizabeth Larkham</i>	<i>For her first allotment Pp 193</i>	<i>To make the Fence on the west and north sides of his allotment of arable Land to be inclosed in the occupation of Elizabeth Larkham</i>
<i>Walter Fitz for his freehold Estate</i>	<i>For his first allotment F 206</i>	<i>To make the fence on his allotment of arable Land to be inclosed against the West Common Field</i>
<i>The Earl of Pembroke for his Freehold Estate in the occupation of Oliver Smith</i>	<i>For his fifteenth allotment Ps 187</i>	<i>To make the fence in his allotment of arable Land to be inclosed in the occupation of Oliver Smith adjoining Barn Close against the West Middle Field against the East Middle Field and against George Maceys freehold allotment of arable land</i>

<i>Names of the Proprietors and of their Estates</i>	<i>The Number of allotments to and mark and number in the Plan</i>	<i>Fences</i>
<i>Ditto</i>	<i>For his seventeenth allotment Ps 151</i>	<i>To make the fence in his allotment of arable Land against Dinton in the occupation of Oliver Smith against the East Common Field</i>
<i>Ditto</i>	<i>For his fourteenth allotment Ps 242</i>	<i>To make the fence in his allotment in Thickhorn in the occupation of Oliver Smith on the south west and north sides thereof</i>
<i>Ditto for his freehold Estate in the occupation of Edward Larkham</i>	<i>For his sixth allotment PL 238</i>	<i>To make the fence in his allotment in Thickhorn on the west and north sides thereof</i>
<i>William Cowdry for his Lifehold Estate</i>	<i>For his second allotment Ps 240</i>	<i>To make the fence on his allotment on Thickthorne on the west and north sides thereof</i>
<i>John Lush for his Lifehold Estate</i>	<i>For his third allotment Lj 239</i>	<i>To make the fence in his allotment in Thickthorne on the west and north sides thereof</i>
<i>Edward Larkham for his Lifehold Estate called Kings</i>	<i>For his Second allotment L 241</i>	<i>To make the fence in his allotment in Thickthorne on the west and north sides thereof</i>
<i>Robert Fitz for his Lifehold Estate</i>	<i>For his fifth allotment Fm 237</i>	<i>To make the fence in his allotment in Thickthorne on the west and north sides thereof</i>
<i>Edward Mould for his Lifehold Estate</i>	<i>For his second allotment Hm 236</i>	<i>To make the fence in his allotment in Thickthorne on the west and north sides thereof.</i>

John @ Seagrim -----Thomas @ Charlton sealed and delivered by the within named (being first duly stampd) in the presence of Henry Ford Junr and William Tabor

NB The symbol @ has been used here to represent the signature and seal of John Seagrim and Thomas Charlton

The award plan contains a key to the allotments as follows:

Earl of Pembroke

Ps	Oliver Smith	Pl	John Lush	PL	Edward Larkham
Pp	Mary Larkham	Po	Henry Macey		

Leaseholds

Sm	Jean Macey	L	Edward Larkham	W	Dorothy Waterman
Lj	John Lush	Hm	Edward Mould	Fm	Mary Fitz
Le	John Lush				

Freeholds

F	Walter Fitz	So	Oliver Smith	M	Edward Mould
La	Edward Larkham	Lu	John Lush	Mg	George Macey
	Luke Toomer	G	John Gardner	Ww	William Wyndham
Pw	H P Wyndham Esquire			Hj	John Hayter

Other detail:

The award is entitled "*Dated 2nd Sept 1800 The Award of Commissioners for dividing allotting & C Teffont Magna Wilts*".

Also on cover is: "*Sealed and delivered by the within named being first duly stampd in the presence of Henry Ford Jun and Willaim Tabor*".

The award is bound together and a whole sealed and signed by John Seagrim and Thomas Charlton.

The map is signed by Thomas Charlton and John Seagrim. The map is 6 chains to one inch.

The award covers the whole of Teffont Magna.

Each page of the award has one three shilling stamp on it and page one has six stamps of various values on it.

Transcription and notes by Sally A Madgwick

09 February 2015

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WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

30 APRIL 2015

COMMONS ACT 2006 – SECTION 15(1) AND (3)
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE
COMMON / BROWNS COPSE FIELD / BLUEBELL WOOD / VILLAGE HALL FIELD /
THE FIELD, WINTERSLOW

Purpose of Report

1. To:
 - (i) Consider a report and recommendation, dated 10 March 2015, made by Mr Stephen Morgan of Landmark Chambers, appointed by Wiltshire Council as an independent Inspector to preside over a non-statutory public inquiry, held in November/December 2014, to consider an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land known as The Common / Browns Copse Field / Bluebell Wood / Village Hall Field / The Field, in the parish of Winterslow, as a town or village green.
 - (ii) Recommend that Wiltshire Council accepts the Inspector's recommendation.

Relevance to Council's Business Plan

2. Working with the local community to provide an accurate register of town and village greens, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received an application, dated 3 February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow known as The Common / Browns Copse Field / Bluebell Wood Field / Village Hall Field / The Field, as a town or village green. The application was also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within two years of the cessation of use. The application was made by Mr T Crossland on behalf of the group "Winterslow Opposed to Over Development" (WOOD).
4. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant included the following comments:

"Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastimes for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011."

5. The application was accepted as a complete and correct application on 29 August 2012. The application was accompanied by 63 completed witness evidence questionnaires. Following the service of formal notice of the application, posting of notice of the application on site and in one local newspaper and placing the application on public deposit, objections and representations were received, as follows:

Objections:

- 1) Petition from residents of Highfield Crescent - undated
- 2) Letter with enclosures from Mrs P Sheppard - 14/01/13 (joint landowner)
- 3) Letter with enclosures from Mr R Sheppard - 27/04/13 (joint landowner)
- 4) Letter with enclosures from Mr R Sheppard – 30/04/13
- 5) “Objectors Response” from Mr and Mrs Sheppard – 27/02/13

Representations:

- 1) Letter from L E Rogers – 16/04/13
- 2) E-mail from Councillor Christopher Devine – 13/05/13
- 3) E-mail from Barbara Coombs, Principal Legal Executive, Wiltshire Council – 08/08/14

6. The claimed land is located to the south-west of Middleton Road, Winterslow (please see location plan at **Appendix A**) and occupies an area of approximately 18 acres, laid to grass and woodland with open access from public rights of way located on the north and south perimeters of the site (please see application plan attached at **Appendix B**). The majority of the land is owned by Mr Richard and Mrs Patricia Sheppard of Weston Hill Farm, Winterslow; a small part of the application land in the north-west corner of Brown’s Copse is owned by Wiltshire Council; Scottish and Southern Electric PLC own an electrical sub-station located at the south-east of the application land and two small parts of the land within the copse are unregistered (please see land ownership plan at **Appendix C**). The Council as landowner did not formally object to the registration of the land in their ownership.
7. Wiltshire Council considered the evidence and the objections received, within a report to the Associate Director of Waste and Environment, dated 31 January 2014 (please see report attached at **Appendix D**). Officers recommended that given the substantial dispute of fact in this case it would be advisable to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.
8. This recommendation was accepted and Wiltshire Council appointed Mr Stephen Morgan of Landmark Chambers (London), as Inspector to preside over a non-statutory public inquiry and having considered documentary and oral evidence to write a report containing a recommendation to Wiltshire Council as the determining authority. The inquiry was held in Winterslow on Tuesday 25 to Friday 28 November 2014 (inclusive), re-convening on Tuesday 16 December 2014 for closing submissions and an accompanied site visit at the close of the inquiry, on that day.

Main Considerations for the Council

9. Following consideration of the available documents and the hearing of evidence given in chief; in cross-examination and in re-examination at the public inquiry, the Inspector presented a report to Wiltshire Council, dated 10 March 2015 (please see report attached at **Appendix E**), in which he made the following recommendation:

“For the reasons set out in Section 5 of this Report, I recommend to the Registration Authority:

The Application by Winterslow Opposed to Over Development (WOOD) under section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown’s Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”

10. There is no obligation placed upon the determining authority to follow the Inspector’s recommendation (although if the Committee decide not to follow the Inspector’s recommendation they must have good reasons for not following the recommendation) and Members of the Committee are requested to consider the Inspector’s report and the available evidence in order to determine whether or not the application land should be registered as a town or village green.
11. Under the Council’s constitution one of the functions of the Area Planning Committee is, where an objection has been received and has not been resolved, to consider matters of local importance within the area such as the registration of town and village greens. In this case, the owners of the application land objected to the registration of the application land as a village green and have to date not withdrawn their objection following the public inquiry which took place in November/December 2014.
12. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of town and village greens and determining applications to register new greens. The application to register land off Middleton Road, Winterslow as a town or village green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens. Section 15 of the Commons Act is set out in full at part 7 of the Decision Report attached at **Appendix D**.
13. Sections 15(1) and (3) of the Act, state:

“15 Registration of greens

 - (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
 - (3) This subsection applies where-*
 - (a) A significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
 - (b) they ceased to do so before the time of the application but after the commencement of this section; and*
 - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).”*

Safeguarding Considerations

14. There are no safeguarding considerations as those relating to safeguarding are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Public Health Implications

15. There are no public health implications as considerations relating to public health are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Environmental Impact of the Proposal

16. Considerations relating to the environmental impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Equalities Impact of the Proposal

17. Considerations relating to the equalities impact of registering land as a town or village green, are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Risk Assessment

18. The holding of a non-statutory public inquiry and the production of the subsequent report and recommendation to Wiltshire Council from an Independent Inspector, have reduced the risk to the Council of a potential legal challenge as the evidence has been heard, tested and considered.

Financial Implications

19. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
20. Where the Council makes a decision to register land as a town or village green it must give a reason for its determination as this decision is potentially open to legal challenge. The legal costs of a successful legal challenge against the Council could be in the region of £40,000 - £100,000.
21. There is currently no duty for Registration Authorities to maintain land registered as a town or village green.

Legal Implications

22. If the land is successfully registered as a town or village green, the landowner could potentially challenge the Registration Authority's decision by an appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('1965 Act'), which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the court to rectify the registration of the town or village green without limit of time. The application which could be made many years after the decision potentially enables the Court to hold a re-hearing of the application and consider the facts and law and could lead to de-registration of the land.
23. Where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant, although the decision of the Council may be challenged through judicial review, for which the permission of the court is required and the application must be made within three months of the date of

the decision. A landowner could also use judicial review proceedings to challenge the Council's decision to register their land as a town or village green.

24. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered to be appropriate for a Registration Authority to hold a non-statutory public inquiry. However judicial cases have confirmed that it is the authority's duty to determine an application in a fair and reasonable manner and recent judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In *R (Cheltenham Builders Ltd) v South Gloucester District Council* the court decided that the holding of a non-statutory inquiry in some circumstances would be necessary as a matter of fairness. In *R (on the application of Naylor) v Essex County Council (2014)* the Court confirmed that a public inquiry was one means by which a registration authority may obtain evidence other than from the applicant and any objector or by which it may test or supplement that which it has received in written form.

Options Considered

25. Members of the Committee need to consider whether to:
- (i) Accept the Inspector's recommendation that the application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown's Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council
 - (ii) Accept the Inspector's recommendation, but with modification supported by the available evidence, e.g. modifying the area of land to be registered
 - (iii) Not accept the Inspector's recommendation and refuse the application to register land in the parish of Winterslow as a town or village green
 - (iv) Not accept the Inspector's recommendation and resolve to register all the claimed land as described in the application made under Section 15(1) of the Commons Act 2006 and described known as The Common / Browns Copse Field / Bluebell Wood Field / Village Hall Field / The Field, as a town or village green.
26. Where Members do not resolve to accept the Inspector's recommendation and make an alternative decision, clear reason for this decision must be given as the decision of the Registration Authority is potentially open to legal challenge by both the applicant and Landowner.

Reason for Proposal

27. In the Winterslow case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, was in dispute. It is the duty of the determining authority to determine the application in a fair and reasonable manner. Due to the substantial dispute of fact in this case, Wiltshire Council determined to hold a non-statutory public inquiry where the facts of the case would be likely to be resolved by the inquiry process through witnesses giving oral evidence in chief and through cross-examination and re-examination, including consideration of documentary evidence by the Inspector.

28. Following the close of the inquiry, the Inspector presented a 123 page recommendation to Wiltshire Council, dated 10 March 2015 and which contained the following recommendation:

“For the reasons set out in Section 5 of this report, I recommend to the Registration Authority:

The Application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown’s Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”

29. Officers consider that the full and detailed report is a correct and accurate reflection of the documentary evidence and evidence given by witnesses at the public inquiry and that the Inspector’s recommendation should be accepted.

Proposal

30. That Wiltshire Council accept the Inspector’s recommendation and the application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Browns Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.

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

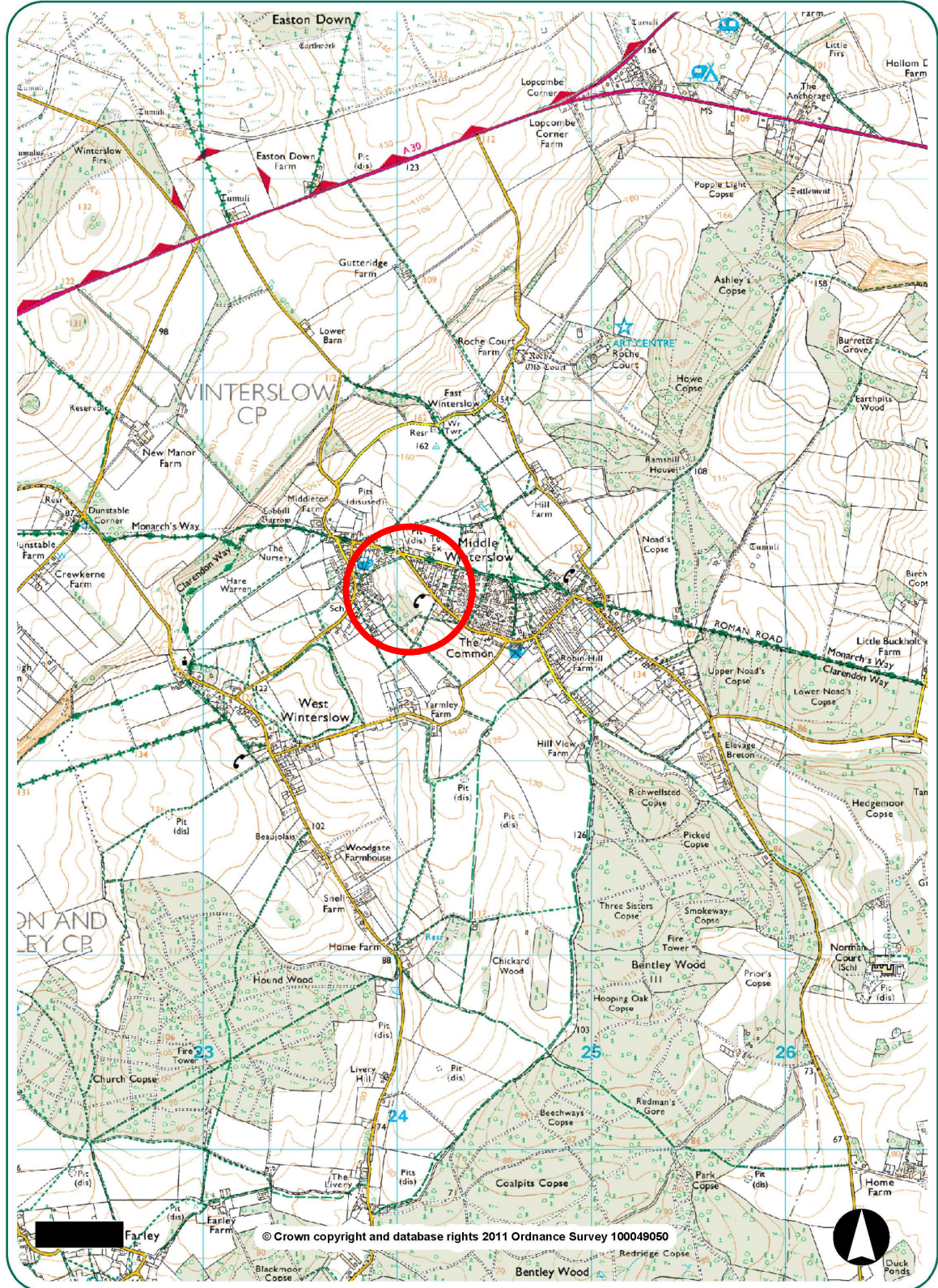
Appendix B – Application Plan

Appendix C – Land Ownership Plan

Appendix D – Wiltshire Council Report on the Recommendation to Hold a Non-Statutory Public Inquiry (31 January 2014)

Appendix E – Inspectors Report (Mr Stephen Morgan, Landmark Chambers – 10 March 2015)

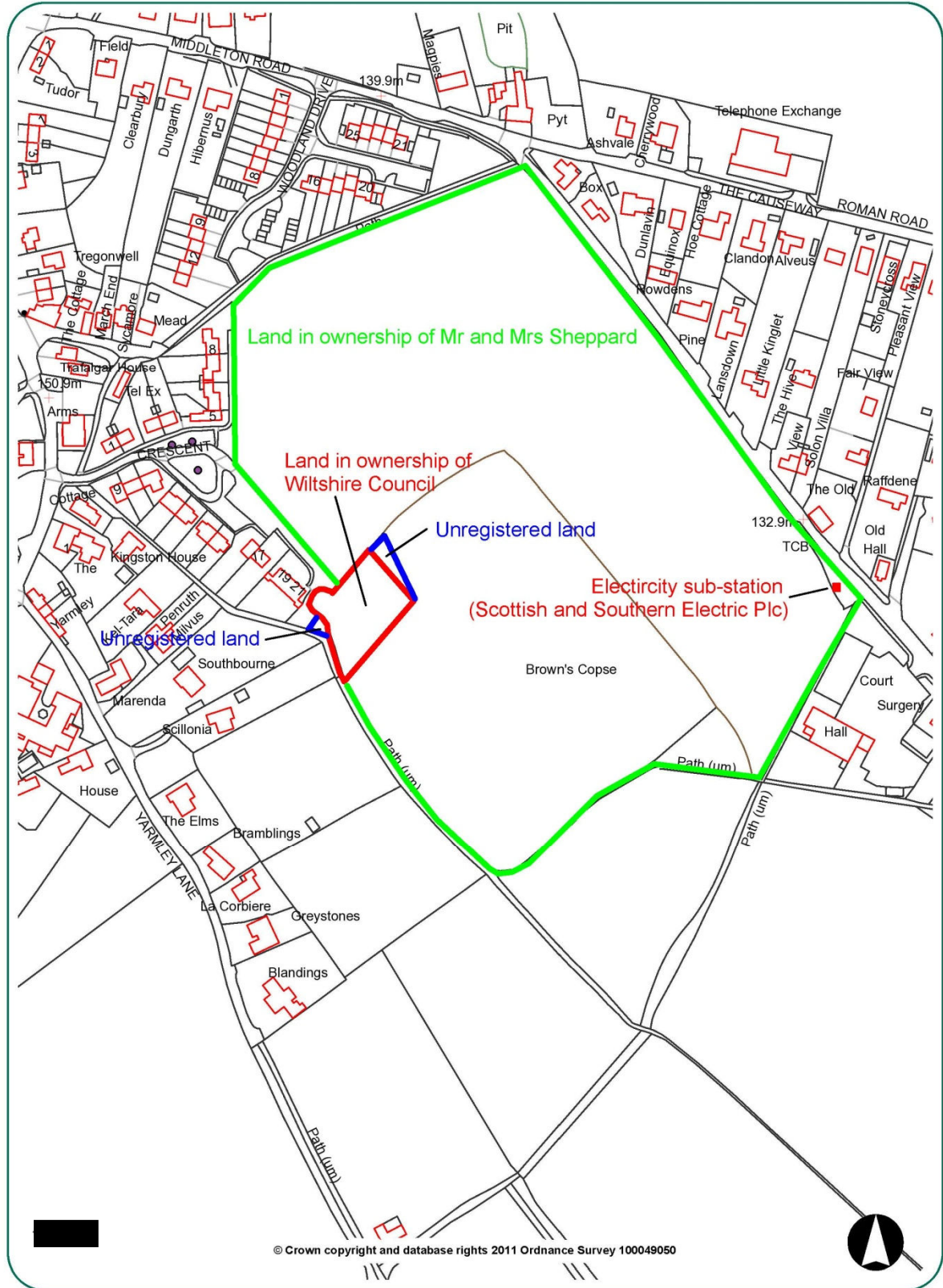
APPENDIX A – LOCATION PLAN



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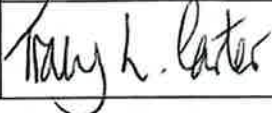
APPENDIX C – LAND OWNERSHIP PLAN



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COVERING PAGE FOR DECISION REPORT ON APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE COMMON/BROWNS COPSE FIELD/BLUEBELL WOOD FIELD/VILLAGE HALL FIELD/THE FIELD, WINTERSLOW

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sarah Marshall (Solicitor – Highways)	 <i>As noted subject to legal privileged comments</i>	22 April 2014
	Barbara Burke (Definitive Map and Highway Records Team Leader)	 <i>Good, agree</i>	23.04.2014
	Richard Broadhead (Rights of Way and Countryside Manager)	 <i>Agreed, noted comments made as requested by JM.</i>	23.04.2014
	Ian Brown (Head of Environment Services)		19.05.2014
	Tracy Carter (Associate Director – Environment and Leisure)		23.5.2014
From:	Janice Green		
Date of report:	31 st January 2014		
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 dated 3rd February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green. It is possible to apply for land to be registered as a town or village green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

The application is also made under Section 15(3) of the Act, where use of the land for recreational purposes has ceased and the application is made within two years of the cessation of use.

The application form requires the applicant to provide a summary of the case for registration. The applicant included the following justification:

"Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastime for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011."

The application was accompanied by 63 completed witness evidence questionnaires and following notice of the application, 2 objections and 3 representations were received.

On examining the evidence received, Officers noted a number of areas of dispute within the claim. It is the registration authority's duty to determine an application in a fair and reasonable manner and where there is serious dispute, or if the case is of great local interest, it is open to the authority to hold a non-statutory public inquiry. Substantial dispute of fact is likely to be resolved by the inquiry process, i.e. through witnesses giving oral evidence and through cross examination. The determining authority may appoint an independent Inspector to preside over the inquiry and to produce a report with recommendations. There is no obligation upon the determining authority to follow the recommendation made.

Officer's Recommendation:

To hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.

DECISION REPORT
COMMONS ACT 2006 – SECTION 15(1) AND (3)
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE
COMMON/BROWNS COPSE FIELD/BLUEBELL WOOD FIELD/VILLAGE HALL
FIELD/THE FIELD, WINTERSLOW

1. Purpose of Report

- 1.1. To consider the evidence submitted with an application made under Section 15(1) and (3) of the Commons Act 2006, to register land adjacent to Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green.

2. Location Plan

Wiltshire Council
Wiltshire Council

Winterslow Location Plan



3. Application Plan



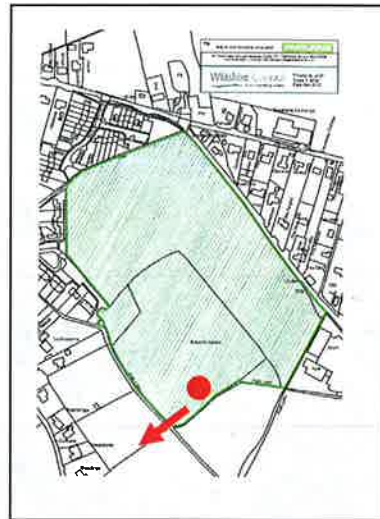
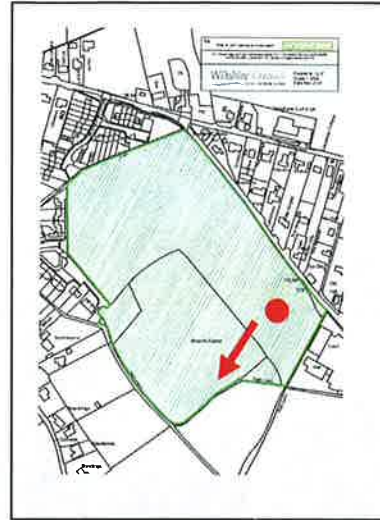
Supplied by Streetwise Maps Ltd
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Licence No: 100047474

4. Photographs



Decision Report
Commons Act 2006 – Section 15(1) and (3)
Application to Register Land as a Town or Village Green – Land off Middleton Road, Winterslow





Decision Report
Commons Act 2006 – Section 15(1) and (3)
Application to Register Land as a Town or Village Green – Land off Middleton Road, Winterslow

5. Applicant

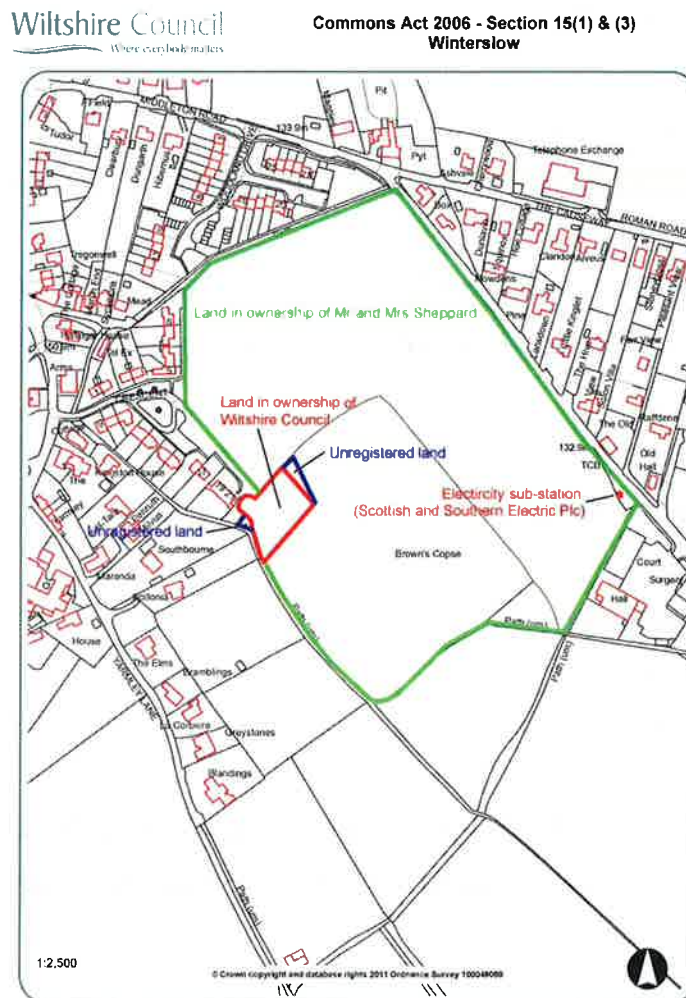
- 5.1. Winterslow Opposed to Over Development (WOOD)
C/O Mr T Crossland
Box Cottage
Middleton Road
Winterslow
Wiltshire SP5 1QJ

6. Registered Landowners

- 6.1. Mr Richard and Mrs Patricia Sheppard
Weston Hill Farm
Winterslow
Wiltshire SP5 1RL
(Land ownership outlined in green on the plan of the application land below).
- 6.2. A small part of the application land to the west, is owned by Wiltshire Council
(land ownership outlined in red on the plan below):
- Wiltshire Council
C/O Property Services
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
- 6.3. Scottish and Southern Electric own an electrical sub-station located at the
south-east of the application land (please see land ownership plan below):

Scottish and Southern Electric Plc
Mapping Services
PO Box 6206
Basingstoke
Hampshire RG24 8BW

- 6.4. Two parts of the land (outlined in blue on the plan below) are unregistered according to Land Registry searches. Notice of the application was posted on site on 6th December 2012, addressed *“To every reputed owner, lessee, tenant or occupier of any part of the land described below, (in the schedule), and to all others whom it may concern.”* Additional landowners of the unregistered land have not come forward.



Decision Report
Commons Act 2006 – Section 15(1) and (3)
Application to Register Land as a Town or Village Green – Land off Middleton Road, Winterslow

7. Legal Empowerment

7.1. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of Town and Village Greens and determining applications to register new Greens. The application to register land off Middleton Road, Winterslow, as a Town or Village Green, has been made under Section 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens, and states:

“15 Registration of greens

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where-

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) they continue to do so at the time of application.*

(3) This subsection applies where-

- (a) A significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).*

(4) This subsection applies (subject to subsection (5)) where-

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
 - (b) they ceased to do so before the commencement of this section; and*
 - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).*

- (5) Subsection (4) does not apply in relation to any land where-*
 - (a) planning permission was granted before 23 June 2006 in respect of the land;*
 - (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and*
 - (c) the land-*
 - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or*
 - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.*

- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.*

- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-*
 - (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in*

subsection (6), those persons are to be regarded as continuing so to indulge, and

(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.

(8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.

(10) In subsection (9)-

“relevant charge” means-

(a) In relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);

(b) In relation to land which is not so registered-

(i) a charge registered under the Land Charges Act 1972 (c. 61);
or

(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20); which is not registered under the Land Charges Act 1972;

“relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.”

8. **Background**

- 8.1. Wiltshire Council are in receipt of an application dated 3rd February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green.
- 8.2. The application is also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within two years of the cessation of use.
- 8.3. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant includes the following comments:
- “Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastimes for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011.”*
- 8.4. The application was accepted as a complete and correct application on 29th August 2012. The application was accompanied by 63 completed witness evidence questionnaires. Following the posting of notice of the application on site and publication in one local newspaper 2 objections and 3 representations regarding the application, were received.
- 8.5. The claimed land is located to the south-west of Middleton Road, Winterslow and occupies an area of approximately 18 acres, laid to grass and woodland

with open access from public rights of way located at the north and south perimeters of the site.

9. Public Consultation

- 9.1. Wiltshire Council served notice of the application upon the landowner Mr R Sheppard and other interested parties, on 6th December 2012. Notice was also posted on site and placed in the Salisbury Journal on 6th December 2012. The application was also placed on public deposit in Wiltshire Council Offices. All parties were given 28 working days to make representations or objections regarding the proposals.
- 9.2. Please note that landowner notice was served upon Mr R Sheppard. In fact Mr Sheppard is a joint owner of the land with his wife Mrs P Sheppard, however it is considered that Mrs Sheppard has not been prejudiced by this error and she has submitted a joint objection with her husband Mr R Sheppard.
- 9.3. It was later noted that small parts of the application land were in the ownership of other parties, i.e. Wiltshire Council owned a small part of the application site to the western side and Scottish and Southern Electric Plc owned an electrical sub-station located at the south-east of the site. Therefore notice of the application was served upon Wiltshire Council and Scottish and Southern Electric on 25th October 2013, giving them 28 working days to respond to the proposals. It is considered that neither Wiltshire Council or Scottish and Southern Electric have been prejudiced by this delay.
- 9.4. Following notice of the application 2 objections and 3 representations regarding the application were received (Wiltshire Council were also copied correspondence sent to Mr R Sheppard from Mr John Glen MP regarding the system of registering land as a town or village green in general, however this

has not been included as a formal objection or representation as it was not addressed to Wiltshire Council). The following consultation responses were received (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Newbury House, Trowbridge):

Residents of Highfield Crescent – Correspondence undated:

“We are writing with reference to the application to register land adjacent to Middleton Road, Winterslow for village green status. While we do not want to see any development here we do want to correct the wrong information you have clearly been given.

We are Winterslow born and bred and have lived in Highfield Crescent overlooking this field for 40 years so know exactly what happens here and for much of that time it was cultivated. It was only when it was left fallow or set aside that certain people thought it their right to use it as a dumping ground for their rubbish, a dog walking area and as a short cut even though the area is adequately served with footpaths.

It has not been used as a sports field and the statement saying that it has been used by “a significant number of inhabitants as a right of lawful sports and pastimes” is a complete puzzle to us and as far as we are concerned is at best stretching the truth or worse, complete lies. Winterslow has sufficient areas for sports and other pastimes namely the Recreation Ground and the large area known as Barry’s fields.

People continued to trespass in the field even when the landowner put up notices stating it was not public land. They tore them down and even cut the fence the council put up on the boundary with Highfield Crescent so they could gain access to the field.

We have seen how people have wilfully treated this area, abusing the farmer’s tolerance and even walking through the field when it was planted with crops.

As previously stated, we do not want to see this land built on but we do defend the landowners right to stop people trespassing on what was always an agricultural field and for it not to have village green status forced upon it."

This correspondence is signed by 19 residents of Highfield Crescent, 1 resident of The Flood, 1 resident of Weavers Close, 1 resident of Middleton Road and 2 residents of Southbourne.

L E Rogers – Correspondence dated 16th April 2013 –

"I have lived in Winterslow all my life and I am now 97 years old.

In my lifetime the field has always been cultivated with various crops. The Copse has always been worked for hazel for hurdles and spars.

Until the set aside came in a programme which lasted several years. Only in the last couple of years has it been ploughed and planted."

The landowners Mr and Mrs Sheppard also copied to the Council several letters which they had written on the matter:

Statement from Mrs P Sheppard to the Chairman of Winterslow Parish Council (undated). I understand this to be a presentation to the Parish Council meeting –

"Mr Chairman

I just wanted to take this opportunity to say a few words regarding "The Land" that is on the agenda for discussion tonight.

Many in this room will know The Land is owned by my husband, Richard Sheppard and I.

Many years ago part of The Land was made available for "the original council houses". In addition to that, in 1992 land was gifted for "the village hall" we're standing in, "tennis courts" and "extensive car park".

Plans were then drawn up in our home by several of the doctors for the Dr Surgery, again on land provided by us. I'm sure you would all agree these are tremendous assets for the village.

There are some that call themselves villagers who should be ashamed of themselves for suggesting we have any intent of spoiling the village we love. Many of these are here today and gone tomorrow...unlike us.

If and when a planning application is received there is a due process to be followed. It cannot be pre-determined at this stage.

Considering the evidence which has now been produced regarding the past use of this land, I think it would be very unwise for the parish council to take sides in this matter.

We have instructed solicitors to review this evidence and will pursue through the courts if necessary.

We are not asking for special treatment, just a fair hearing as all the other developments receive.”

Letter from Mrs P Sheppard to Councillor Devine – Correspondence dated 14th January 2013

“As you are aware there is an action group called WOOD, I understand that you support this group?

At this week’s PC meeting I made a speech and so there is no ambiguity I enclose a copy of it for you, I have also sent a copy to the Clerk so that there is no misunderstanding as to what I said on behalf of the family.

I also attach a copy of the letter that has been sent to Wiltshire Council by 20 residents who live around our field. It is self explanatory and confirms, as we have and will continue to maintain, that at no time has anyone used the field for recreation purposes, nor has permission ever been given.

From our own point of view we are aghast at the attitude of people who believe they have a right to try and take our land. You may know historically that we have been generous benefactors to Winterslow donating free of charge land for the village hall and car park, the tennis courts. We also made the land available for the doctors surgery. Please therefore consider this, what right does this action group, who have collectively contributed nothing to the village, have to create a pack of lies saying our land has been used for other

purposes when it has not. The PC are not supporting this group, and we would like you to consider your own position on this. Anyone who supports this group is in effect supporting a pack of lies with regards to use of our land, and those in authority should, in our opinion, play no part in this sorry saga. I am sorry to have to write to you in this way but all we seek is fair play, this action from WOOD is skulduggery, appointed Councillors should not be associated with it, indeed they should be against such spurious and unethical actions. An example has been set by those who live around the field and see it daily, they recognise fair play, yes they have their own views on development but they are honest people.

Should any planning application ever go to Wiltshire Council for this field there is legislation under the planning system to deal with it, the land was earmarked not by my family but by the old regime of SDC in the SHLAA for 150 dwellings. No number has been suggested by us. There is a proper arena for such a debate on planning matters, it should not be taken over by a small but loud group of instigators who are out to cause as much trouble as they can for us.

There are few people in Winterslow that have the links to the village and the commitment to it that we have shown over many decades. We are private and honest people and seek good relations with everyone, to this end it is reasonable of us to expect you to be neutral at worst but you should be supportive of us because we have shown our good will and generosity to this village over such a long period of time and will continue to do so.

I will copy this letter to both the PC, the Chief Executive of WC and John Glen MP.”

Richard and Patricia Sheppard – Correspondence to Councillor Devine dated 22nd April 2013 –

“This is to inform you that we have submitted our defence to the spurious claim to Wiltshire Council from the WOOD action group.

You will know that the Sheppard family have contributed massively towards the facilities and housing for Winterslow, yet we have been forced to spend £5000 to defend ourselves and our land.

We are aghast that we have been forced into this position by actions we consider are based on a fabrication of the facts by a small group of people who consider they represent the masses, they do not, they are not elected and should not be given any credence whatsoever.

When we read the 63 (witness) forms we were saddened by the amount of fabrication and lies used in an effort to try and take our families land from us, this cannot be right or just. They refer to Brownies using the field, yes with our permission, Bonfire night, again with our permission, they try to weave a picture saying these events were regular. This is simply not the case, we know the history of our land better than anyone, particularly the newcomers to the village, these instigators are wrong. We still cannot believe that people accepted our generosity in allowing them to use our land, but then on the back of this, claim rights over it.

A large amount of the 63 forms are from people who have only lived in the village for a short time, one is even from a 7 year old child!!! It is interesting that they all say that they have used the land as a short cut walk from one end of the village to the other. We do not dispute this. There is a statutory declaration to cover this use which has been in place for many years. This was made between our family and Wiltshire Council allowing an unofficial footpath link. It is not a piece of common land that they can simply come along and take, it is our land and that is a true fact.

Had we known this was going to happen we would never have entered into the statutory declaration and would have stopped everyone using our land for this use. Interestingly, quite a few people recognise there were "No Public Right of Way" signs erected as our photographs prove, but others say that there were never any in place. You and many others know there were signs in place, the land is private and they know the proper and honest history. There

has never been any public use of this land in the way this action group is trying to pretend there has been.

As you indicated in our phone call to us, we would appreciate your further support to ensure this application is not registered. We would be grateful if you could let us know the position of Wiltshire Council on this matter.”

(Copy to John Glen MP).

John Glen MP – Correspondence to Mr and Mrs Sheppard dated 24th April 2013 –

“Many thanks for your recent letter appraising me of the recent Village Green application in Winterslow. I was extremely dismayed to read of the difficulties you have experienced at the hands of the village green system.

It may interest you to know I recently helped take the Growth and Infrastructure Bill through Parliament that seeks to amend the village green application system to address the problems it presents to legitimate landowners – who are understandably distressed at experiences like yours. Unfortunately this will only apply to new applications once the Bill receives Royal Assent. Village Greens are an important tool within the planning process to designate a space valued by the community, but they are not the only one. They are also, sadly, frequently abused – approximately 48% in 2009 were triggered by a planning application or inclusion within a local plan: as a result, only 40% are successful.

When the National Planning Policy Framework was introduced, a new Local Green Space designation was introduced within it. The intention is to try and rationalise two very separate systems, so sites that could perhaps be designated village or town greens could be safeguarded within local plans – removing the overlap and associated bureaucracy of a separate application system you discuss.

We have no intention of undermining legitimate spaces people wish to protect for a whole variety of reasons, and we have indeed introduced new mechanisms to do so. However, the current system does not work with a grain

of the planning system and is too often used for spurious purposes. I personally would rather see greater use of the provisions within neighbourhood planning than the village green system. Your experience highlights to me how important such reforms are. Whilst I have no direct influence over the matter, I will happily discuss the matter with Cllr Devine and Wiltshire Council and ensure your views are taken into full consideration."

E-mail from Councillor Christopher Devine dated 13th May 2013 –
"As a resident of Winterslow from 1992 until 2005 I was well acquainted with the usage of the footpath in question and the area referred to as the 'common'. In relation to the questions posed I reply as follows:

- *Q: For what purpose was the land used by people?
A: Almost exclusively as a footpath from the village hall to the village shop/recreation ground or for dog walking.*
- *Q: What numbers of people were using the land and how frequently?
A: It was used regularly, but, often the area was empty. Normally only a single person would be seen at any one time.*
- *Q: The number of years that use has continued over the land?
A: During my period in the village, 1992 to 2005.*
- *Q: Were people using the land as of right, i.e. without force, without secrecy and without permission?
A: Yes, although it was generally acknowledged that it was private land, but, the owner would not object if it was used as a short cut.*
- *Q: Was use of the land by local residents or by people from outside the area?
A: I only ever saw local residents use it.*
- *Q: How the land was managed, e.g. was it cropped, was any signage erected etc?*

A: During the period I was a resident, the land was left fallow and cut regularly, but, signage was erected at regular intervals, which stated it was private land with no right of way.”

Additionally the landowner submitted a large bundle of evidence in objection to the application, (too large to include here), but available to be viewed in full with the Rights of Way and Countryside Team, Newbury House, Trowbridge. The objectors main grounds for objection are summarised as follows:

- The burden of proof in satisfying the registration authority that the application land is eligible for registration as a town or village green, lies with the applicant, the standard of proof being the balance of probabilities. With regard to the standard of proof, Lord Bingham advises in *R v Sunderland City Council, ex parte Beresford* [2004] 1 AC 889 “As *Pill L.J* rightly pointed out in *R v Suffolk County Council, ex parte Steed* [1996] 75 *P&CR* 102,111: “It is no trivial matter for a landowner to have land registered as a town green...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.” The applicant must prove all the necessary elements for registration of the land as a town or village green.
- No sufficient user by local inhabitants. The application land was known by the objectors to be used as a crossing point but was not in general use as a destination in itself for informal recreation and any proven user for these purposes would have been occasional or trivial anyway and thus non-qualifying.

- Such use as there had been would not have brought the existence of the claimed right to the attention of the landowner – a number of villagers have even written to the Council challenging the user relied on by the applicant
- Such user did not constitute lawful sports and pastimes in that the overwhelming majority of users were purportedly exercising only public rights of way on tracks crossing the application land. The pending application to modify the definitive map and statement of public rights of way to introduce new public rights of way over the application land, offer a strong evidential basis for the contention that a reasonable landowner could not have believed that users were exercising a public right to use land beyond the tracks for lawful sports and pastimes and the same would apply in the case of walkers who casually or accidentally strayed from the tracks without deliberate intention to go on other part of the field.
- The application land is being used as a short cut from one side of the village to the other, instead of using Middleton Road and that such user will not be referable to use as a green.
- Any proven user is not “as of right”, being at times over the relevant 20 year period, by force, stealth or with express or implied licence of the landowner.
- User is by force and thus non-qualifying in the case of access obtained through the fencing or the boundary with Highfield Crescent, which was cut in order to facilitate access onto the application land. It is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for damage, it would be wrong and not in the public interest that people should be rewarded with rights whose acquisition is only made possible by unlawful activities of others.

- Use by force is not confined to physical force. It includes use which is contentious and a landowner may render use contentious by erecting prohibitory signs or notices in relation to the use in question.
- In R (Oxfordshire & Buckinghamshire Mental Health Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council and others [2010] EWHC 530 (Admin), (Warneford Meadow) the court rejected a case where a challenge to the registration of land as a town or village green was made on the grounds that “No Public Right of Way” signage had been erected over the land. However the facts of this case are distinguishable from the Winterslow case and in the Warneford Meadow case there had been a finding that the landowner had no objection to recreational access to the land, but objected to the creation of public rights of way.
- The objectors contend that the signs erected in 2009 cannot be said to relate solely to the nearby paths and there is no reason why they should not be taken objectively to refer to recreational use of the whole of the application land where the land had not been used for such purposes and where the whole of the application land was covered by a Section 31(6) Highways Act 1980, statutory declaration.
- The fact that the 2009 signage did not refer to the wider user of the application land was unnecessary in that users knew, or ought to have appreciated from the notices that the landowners were objecting to and contesting their use of the land and is consistent with the following matters:
 - (i) there is an absence, or virtual absence of any general recreational user in this case which was not the position in the Warneford Meadow case;

- (ii) the size of the application land where limited signage at both ends of the field was more than adequate to cover a prohibition affecting the entire field as were the deposits under Section 31(6) of the Highways Act 1980;
 - (iii) the collective view of those who lived close to the application land and who signed a letter to Wiltshire Council whose view it was that “people continued to trespass in the field even when the landowner put up notices stating that it was not public land. They tore them down...”;
 - (iv) the response of the locals to such signage which was torn down, and
 - (v) the objectors subsequently ploughed the field and erected more robust prohibitory signage which is unlikely to have happened if all they had intended by erecting the signage in 2009 was to prevent new rights of way claims;
- In any event and without prejudice to the foregoing, any user of the paths after 2009 must be discounted in the accrual of either the lesser burden on the application land (i.e. use of paths as public rights of way) or the greater burden involving user of the application land as a new green.
 - The objectors also reserve the right to argue that any objection on their part to a lesser burden on the land must have by implication and without more included objection to the greater burden notwithstanding what was said about this in the Warneford Meadow case.
 - The claim based on the claimed user gave rise to an implied license.

Comments from Wiltshire Council as landowner:

E-mail from Barbara Coombs, Principal Legal Executive, Legal Services, Wiltshire Council, dated 18th November 2013 –

“It seems that part of the land is owned by Wiltshire Council and is not considered to be Public Open Space. I suspect that it is what might be called ‘housing amenity land’ – open areas of land on a Council housing estate. I do not have any details about whether our ‘housing’ colleagues accept that this area of land has been used by the public as of right for lawful sports and pastimes for the relevant period of time.”

E-mail from Sarah Holloway, Technical Officer, Environment and Leisure, Wiltshire Council, dated 23rd October 2013 –

“The land was not included in the District Council Open Spaces Study, nor is it on the list to be surveyed as part of the Current Open Spaces Study. Therefore it appears it is not Public Open Space.”

Wiltshire Council as a landowner have made no objection to the proposals and no correspondence regarding the proposals has been received from Scottish and Southern Electric Plc as the additional landowner.

9.5. As part of the statutory procedure (Regulation 6(3)), where objections are received, they must be forwarded to the applicant allowing reasonable opportunity for dealing with the matters raised. Therefore on 22nd May 2013, the applicant was forwarded the following documents:

- 1) Objectors response to village green application from Mr Richard Sheppard – dated 11th March 2013
- 2) Letter with enclosures to Wiltshire Council from Mrs P Sheppard – dated 14th January 2013
- 3) Letter with enclosures to Wiltshire Council from Mr Richard Sheppard – dated 27th April 2013

- 4) Letter with enclosures to Wiltshire Council from Mr Richard Sheppard dated 30th April 2013
 - 5) Petition letter from residents of Highfield Crescent – undated
 - 6) E-mail from Councillor Christopher Devine – dated 13th May 2013.
- 9.6. Officers allowed the applicant a reasonable opportunity to respond to the objections and comments received, in writing not later than 5:00pm on Friday 5th July 2013. No further comments regarding these matters were received from the applicant and the matter now falls to be determined by Wiltshire Council as Commons Registration Authority.

10. Main Considerations for the Council

- 10.1. Under Section 15(1) of the Commons Act 2006, it is possible to apply for the land to be registered as a town or village green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and in this particular case, under Section 15(3) of the Act, where use of the land has ceased not more than two years prior to the application date.
- 10.2. It is important to understand the previous management of the land in order to understand how the public may have used it. We have evidence from L E Rogers, of Coppice View, in his letter dated 16th April 2013, that the land was always cultivated with various crops and the copse was also worked for hazel for hurdles and spars. After that the landowners Mr and Mrs Sheppard provide evidence that the field was set aside in 1988. In 2009 signs were erected on the land stating that there was no public right of way. On 4th April 2011 the land was rough ploughed, ploughed again on 23rd January 2012 and sown with linseed on 16th April 2012. “Private Property – Please Keep Off” signs

were erected on 11th June 2012 and the linseed crop was harvested in October 2012.

The evidence

- 10.3. The legal tests set out under Section 15(1) and (3) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. The burden of proof lies in the balance of probabilities, i.e. the Registration Authority is not required to prove beyond reasonable doubt that rights exist, just that it is more likely than not. The burden of proving that each of the statutory qualifying requirements are met lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim.

Significant number of inhabitants

- 10.4. The meaning of the word “significant” has never been defined, but was considered at the High Court in R (McAlpine) v Staffordshire County Council (2002). It was held that this did not mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers.
- 10.5. In this case the Council received 63 completed witness evidence questionnaires from individuals who claim to have used the land. All but 4 of the witnesses are residents of Winterslow and those 4 are former residents. The witness evidence questionnaires also make reference to use of the land with family members and others being seen using the land. They also refer to community events such as bonfire night celebrations, part of the village fete on the land and organised events being carried out over the land by the

Rainbows, Brownies, Guides, Cubs, Scouts, pre-school children and the Duke of Edinburgh Award, however the landowners claim that use for community events was undertaken with their permission only and therefore this evidence may not be taken into account.

- 10.6. Officers consider that given the size of locality identified (Winterslow parish, which covers approximately 4,800 acres and has a population of 2,300 (Winterslow Parish Plan 2010)), the number of witnesses and their evidence of use with family members and others seen using the land for lawful sports and pastimes, are sufficient to suggest general use by the local community.

Of any locality or of any neighbourhood within a locality

- 10.7. A town or village green is subject to the rights of local inhabitants to enjoy general recreation activities over it. The “locality” or “neighbourhood within a locality” is the identified area inhabited by the people on whose evidence the application relies (although it is acknowledged that there is no requirement for most of the recreational users to inhabit the chosen “locality” or “neighbourhood within a locality”, as long as a “significant number” do, other users may come from other localities and/or neighbourhoods), however, it is the people living within this identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.
- 10.8. The definition of “locality” and “neighbourhood within a locality” were reiterated in the recent case of Paddico (267) Ltd. v Kirklees Metropolitan Council (2011) as follows: a “locality” being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a “neighbourhood” does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate.

- 10.9. In this case the applicant has identified “Winterslow Parish” as the “locality”. There is no map of the identified locality included with the application, however this is not necessary where an administrative/geographical area is identified by name. Winterslow parish qualifies as a “locality” as an administrative district with legally significant boundaries.
- 10.10. This identified neighbourhood is supported by witnesses, all of whom, apart from 3 former residents and 1 non-reply, consider themselves to be local inhabitants in respect of the land. Please note that 1 resident of Salisbury, Lucy Clark, is a former resident of Winterslow, but considers herself still to be a local inhabitant in respect of the land. 60 of the witnesses are resident of Winterslow (please note that Evelyn and David Houghton have jointly completed one evidence form).
- 10.11. When asked what recognisable facilities are available to the local inhabitants of the locality, witnesses included: School catchment area; local school; pre-school; Residents Association; Community Centre (village hall); local church or place of worship; sports facilities; cricket pavilion and pitch; recreation ground; local shop; area policeman; doctors surgery; community activities; neighbourhood watch; a central feature; scout hut; post office; 2 pubs; social and recreational events; copse; plantation and open spaces/fields in and around village.
- 10.12. In his representation, dated 13th May 2013, Councillor Christopher Devine confirms that whilst resident of Winterslow from 1992 – 2005, he only ever saw local residents on the land.
- 10.13. The applicant has successfully discharged the burden of proof with regard to identifying a “locality”.

Have indulged as of right

10.14. Use “as of right” means use without force, without secrecy and without permission. In the Town/Village Green case of *R v Oxfordshire County Council Ex p Sunningwell Parish Council* (2000), Lord Hoffman commented on use as of right:

“It became established that such user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner...The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited time.”

10.15. Lord Hoffman rejected the necessity for subjective examination of the state of mind of the users (i.e. did they believe they were exercising a public right).

“My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. in Hue v. Whiteley has led the courts into imposing upon the time-honoured expression “as of right” a new and additional requirement for which there was no previous authority and which I consider to be contrary to the principles of English prescription.”

10.16. This was considered in the Supreme Court Judgement *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents)* (2010), Lord Brown concluded:

“I see no good reason whatever to superimpose upon the conventional tripartite test for the registration of land which has been extensively used by

local inhabitants for recreational purposes a further requirement that it would appear to a reasonable landowner that users were asserting a right to use the land for the lawful sports and pastimes in which they were indulging. As Lord Walker has explained, there is nothing in the extensive jurisprudence on this subject to compel the imposition of any such additional test. Rather as Lord Hope, Lord Walker and Lord Kerr make plain, the focus must always be on the way the land has been used by the locals and, above all, the quality of that user.”

10.17. As Lord Kerr clarifies on this point, there is in his opinion:

“...no overarching requirement concerning the outward appearance of the manner in which the local inhabitants used the land is to be imported into the tripartite test...If the use of the lands has taken place in such circumstances, it is unnecessary to inquire further as to whether it would be reasonable for the owner to resist the local inhabitants’ use of the lands.”

10.18. Therefore there is no requirement upon the determining authority to consider, as part of their examination of use “as of right”, the state of mind of users, or how use would appear to the landowner, i.e. was use sufficient that it would appear to a reasonable landowner that a right was being asserted against them, in order for the landowner to challenge such use. The main focus should be on how the land has been used by local people and the quality of the user evidence.

Permission

10.19. The witness evidence questionnaire asks users if they have ever been given permission to use the land, or requested permission to use the land during their period of use. The following responses were given at Appendix 1 to this report.

10.20. The majority of use has taken place without permission. Only 2 users claim to have sought or been granted permission to use the land. Jeanette Soloman sought permission for activities on the land from the owner, between 2009 and 2011 (the witness gives no explanation for this, however it does coincide with the landowners claim that they erected notices on site saying “no public right of way” in 2009 and the ploughing and cultivation of the land in 2011). Felicity Rickard was given permission to collect straw from the land, but no dates for this are given.

10.21. Some users believed that they did not require permission to use the land and that the area was already open to the public. Several users state that the landowner did see them using the land, but at no point did the landowner advise them that permission was required to use the land.

10.22. In a letter to Councillor Devine, dated 22nd April 2013, the landowners Mr and Mrs Sheppard make comment on the 63 completed user evidence and state that: *“They refer to the Brownies using the field, yes with our permission, Bonfire night again with our permission...”* It would appear that some of the pastimes over the land had been carried out with permission, in particular the organised/community events and therefore these events should be disregarded as evidence.

Without force

10.23. None of the users claim to have used force to enter upon the land, although the landowner claims that in the case of access obtained through the fencing on the boundary with Highfield Crescent, the fence was cut in order to facilitate access onto the land. Their contention is that it is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for causing damage as it would be wrong and not in the public

interest that people should be rewarded with rights whose acquisition is only made possible by the unlawful activities of others.

10.24. It is the Officers view that it would not be necessary for users of the land to enter by force, for example breaking down fences or damaging locks, as the land is accessible from several points and is not fenced against the public footpaths to the north and the south perimeters. In evidence none of the witnesses make reference to stiles or gates (locked or unlocked), when accessing the land.

10.25. The landowners in their evidence make the point that use by force, does not just mean by physical force but also where use is deemed contentious, for example by erecting prohibitory signs or notices in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.26. The landowners did erect signs over the land in 2009, but this referred to use of linear routes across the land and stated “No Public Right of Way” rather than referring to the wider public recreational use of the land.

Without secrecy

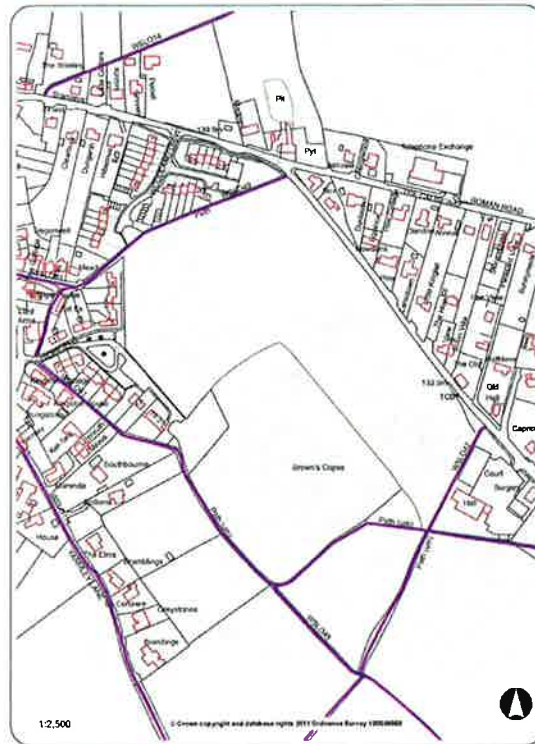
10.27. 13 witnesses claim to have been seen by the landowner whilst using the land, however, on these occasions the landowner/s either said nothing to them or just passed the time of day. At no point did the landowner advise that the land was private (see table at Appendix 1). However it is not clear from the evidence what activities were taking place when they were seen by the landowner/s. They may have been using linear routes, the use of which the landowners appear to have been aware of, as evidenced by their deposition with the Council of a plan and statement and subsequent statutory declarations under Section 31(6) of the Highways Act 1980 and erecting "No Public Right of Way" signage over the land in 2009.

10.28. In conclusion Officers are satisfied that, based on the evidence, use of the land has been as of right.

Have indulged in lawful sports and pastimes

10.29. The lawful sports and pastimes claimed to be engaged in upon the land are included in the table attached at Appendix 2 to this report. In practice, use of the land for dog walking, childrens play and general informal recreation will normally suffice as qualifying user under Section 15 of the Commons Act 2006.

10.30. Further, in order for the land to be successfully registered as a town or village green, it must be established that there is use of the land generally rather than use being concentrated on a linear route/s across the land, which could give rise to a claim for public rights of way rather than a town or village green. There are no recorded public rights of way directly over the land, however there are several rights of way on the perimeter of the site, please see plan below (footpaths are recorded as purple lines):



10.31. Many of the witnesses make reference to their use of the land as a through route on their way to the shop, village hall, doctors surgery, pubs, to take the children to school/pre-school etc, avoiding traffic on Middleton Road. Use for these purposes suggests the use of linear routes rather than more extensive use of the land. When aerial photographs are examined a number of unrecorded routes over the field can clearly be seen (photograph taken 2005/2006, when the land was in the set aside scheme).



10.32. Simultaneously with the claim to register the land as a village green, an application was made to Wiltshire Council to claim several public rights of way over the land, based on evidence of user for a 20 year period. This claim was defeated as the landowner had deposited with Wiltshire County Council a statement and plan dated 30th April 1998 and subsequent statutory declarations dated 16th June 1998 and 5th August 2008, under Section 31(6) of the Highways Act 1980. The landowners recorded within the plan all admitted public rights of way over their land (Weston Hill Farm). The plan and statement had the effect of negating any claim for new rights of way over the land based on user evidence, by demonstrating the landowners non-intention to dedicate any new rights of way over their land within the duration of the plan and statement and subsequent renewals, being in effect. 29 of the witnesses who have submitted evidence in support of the rights of way claim over the land, have also submitted witness evidence forms in support of the village green claim over the land.

10.33. Wiltshire Council are also in receipt of a petition letter signed by mainly residents of Highfield Crescent, Winterslow, which overlooks the land in question, in which they state:

“It was only when the land was left fallow or on set-aside that certain people thought it their right to use it as a dumping ground for their rubbish, a dog walking area and as a short cut even though the area is adequately served with footpaths.

It has not been used as a sports field and the statement saying that it has been used by “a significant number of inhabitants as a right of lawful sports and pastimes” is a complete puzzle to us and as far as we are concerned is at best stretching the truth or worse, complete lies.”

10.34. As at paragraph 10.22 some events such as those organised by the Brownies etc. and the Bonfire night celebrations, must be disregarded as the landowners have advised that they gave permission for these events to be held on their land and therefore they cannot be “as of right”.

10.35. The witness evidence from all parties regarding use of the land for lawful sports and pastimes, is at odds and it is very difficult to reach a conclusion when all this evidence is taken together. Although there is a large amount of evidence that users may have simply used linear routes over the land to reach a specific destination, as a shortcut, or to avoid traffic on Middleton Road (which is not qualifying use in a village green claim), there is evidence that a number of other activities were taking place over the land such as sledging, bird watching, berry picking etc (please see activities table attached at Appendix 2), when the use relating to linear routes across the land and use for community events which have taken place with permission, are removed. Additionally residents of Highfield Crescent refute that any qualifying activities have taken place at all. Councillor Devine supports this view in his statement dated 13th May 2013 and states that between 1992 and 2000 the land was

almost exclusively used as a footpath from the village hall to the village shop/recreation ground or for dog walking.

On the Land

- 10.36. All witnesses who have completed evidence questionnaires have confirmed their use of the land by attaching and signing a plan outlining the area in question. However, it would appear that the witnesses have not individually marked on this map the areas of the land which they have used, (they have marked the location of their own properties). A public inquiry could bring out the areas of the land which individuals have used, through cross-examination.
- 10.37. This application is made under Section 15(1) of the Commons Act 2006 and also Section 15 (3) which applies where use of the land has ceased but the application is made within 2 years of the cessation of use. Use of the land appears to have ceased in 2011 when the land was rough ploughed, before being ploughed again in 2012 and then being sown with linseed. The landowners, in their statement, advise that the land was rough ploughed on 4th April 2011 to deter trespass. Prior to that the land had been in set aside since 1988. Many of the witnesses make reference to 2011 as a cut off point after which they were prevented from using the land due to ploughing. The “Private Property – Please Keep Off” signs were erected in 2012, after public use had ceased.
- 10.38. The landowners have claimed in their evidence that the grass in the field was topped once a year. “Topping” is the process of chopping and mulching everything growing in a field, using a topper, a piece of machinery which takes everything down to a certain height. It is usually carried out at times of the year before the weeds go to seed. It is also considered that during the period of set aside, 1988-2011, a policy of less intervention over the land was undertaken by the landowner as part of this scheme. It is considered that the

process of topping would not have been sufficient to prevent the public undertaking lawful sports and pastimes over the land (save for the day on which the process of topping the land was undertaken).

10.39. The wooded area also appears to have been subject to public use. 12 witnesses walked to the local copse (some of these to view the bluebells), 1 witness would cycle in the copse which now has well defined cycle routes and the same witness has built dens and rope swings in the woods with his son. 2 further witnesses make mention of playing in Browns Copse. However, although 12 witnesses mention walking to the local copse, they do not elaborate on whether they entered the wood or just viewed the bluebells from the edge of the wood. Only three witnesses mention entering the wood. This appears to be insufficient evidence to register the Browns Copse part of the application land and it is recommended that if the application is successful, Browns Copse should be excluded from the registration land.

10.40. It would appear that part of the application land is not in the ownership of Mr and Mrs Sheppard. Wiltshire Council own a small part of the application land to the west of the area claimed. Notice was served upon Wiltshire Council who made no comment on use of the land by the public for recreation purposes and made no objections to the proposals.

10.41. It was found that Scottish and Southern Electric Plc owned an electrical substation at the east of the application land. Notice was served upon Scottish and Southern Electric who made no comment on the use of the land by the public for recreational purposes and made no objections to the proposals. However, Officers conclude that it is unlikely that the public would have accessed the electricity sub-station to carry out lawful sports and pastimes over this area of the application land. Therefore if the application is successful it is recommended that the sub-station should be excluded from the registration.

For a period of at least 20 years

10.42. To satisfy the 20 year user test, with use ending in 2011 when the land was ploughed and cultivated, the period of user in question is 1991 – 2011, with application made no later than two years following the cessation of use (in this case the application is dated 3rd February 2012). During this period the land was in set-aside with no crops over the land. Please see user evidence chart at Appendix 3 to this report.

10.43. 24 users have used the land for the whole of the period in question. In order to qualify it is not necessary for the land to have been used by all of the witnesses for the full 20 year period in question, rather the evidence may have a cumulative effect.

10.44. It is the Officers opinion that the applicant has satisfied the 20 year user test.

11. Comments on the objections

11.1. The landowner had made a number of objections as outlined at section 9 of this report. Officers would like to make the following comments relating to the landowners main points of objection:

1) Burden of proof – The applicant must prove all the necessary elements for registration of the land as a town or village green.

Officers would agree with this statement, in order for an application to register land as a town/village green to be successful all the component parts of the legal test as set out at Section 15(1) and (3) of the Commons Act 2006, must be satisfied and the burden of proof lies with the applicant.

2) No sufficient user by local inhabitants – i.e. the land was used as a crossing point (this is accepted by the objectors), but was not in general use itself as a destination in itself for informal recreation:

The facts of the case in this matter are disputed in evidence submitted by users and objectors.

3) Such use as there had been (i.e. occasional or trivial and thus non-qualifying) would not have brought the existence of the claimed right to the attention of the landowner:

This is disputed by the witness evidence. Wiltshire Council are in receipt of a large number of statements from members of the public, giving evidence that activities such as children playing, picnicking, sledging, picking blackberries etc. were being undertaken during the 20 year period of user in question and this amount of evidence, cannot be viewed as “trivial” or “occasional” activities (in the opinion of Officers).

13 of the witnesses also claim to have been seen by the landowner when using the land. However, they do not state what activities were being undertaken when they were seen by the landowner at that moment in time and as we have seen a great deal of the use appears to have been associated with use of linear routes across the land to get from A to B. It is possible that the landowners were not aware of the wider use of the land for recreational purposes, but were aware of use of linear routes, as in 2009 they erected signage stating “No Public Right of Way”.

The facts of the case in this matter are again disputed in the evidence submitted by users and objectors.

4) Such user does not constitute lawful sports and pastimes in that the overwhelming majority of users were purportedly exercising only rights of way on tracks crossing the land:

It is agreed that aerial photographs do show a number of tracks over the land and many of the activities undertaken over the land do relate to the

use of linear routes rather than recreational use of the whole of the land, however, once activities of this nature are removed, and community activities for which permission was sought from the landowners, Officers consider that there are a number of other activities which are claimed to have been exercised over the land which satisfy the test of legal sports and pastimes.

Where users have casually or accidentally strayed from the tracks without deliberate intention to go onto other parts of the field, Officers would agree that this does not constitute the exercise of lawful sports and pastimes on the land.

Wiltshire Council are also in receipt of a petition from local residents claiming that lawful sports and pastimes have not been exercised over the land.

The facts of the case in this matter are disputed in the evidence given by users and objectors.

5) The application land is being used as a short cut from one side of the village to the other, avoiding Middleton Road and that such user will not be referable to use as a village green.

Please see above. Again the facts of the case in this matter are disputed in the evidence given by users and objectors.

6) Any proven user is not “as of right”, being at times over the 20 year period, by stealth or with express or implied licence of the landowner.

Please see paragraphs 10.14 – 10.22 of the report regarding use “as of right”. Again the facts of the case in this matter are disputed in the evidence given by users and objectors.

7) User is by force and thus non-qualifying in the case of access obtained through the fencing or the boundary with Highfield

Crescent which was cut in order to facilitate access onto the application land. It is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for damage, it would be wrong and not in the public interest that people should be rewarded with rights whose acquisition is only made possible by unlawful activities of others:

In evidence the witnesses make no reference to the use of force to access the land and it is the Officers opinion that the use of force would not have been necessary in order to access the land, as it is open to public rights of way at its northern and southern perimeters.

8) Use by force is not confined to physical force. It includes use which is contentious and a landowner may render use contentious by erecting prohibitory signs or notices in relation to the use in question:

The landowners erected signage advising the public that there were no rights of way over the land (other than the routes at the edge of the land recorded on the definitive map of public rights of way) in 2009. This does not address the use in question, i.e. wider recreational use of the land.

Whilst this protects the landowner against rights of way claims, it does not protect against a town/village green claim i.e. the act of erecting signage to advise the public that there was no right of way, does not bring home to the public that their right to use the land for recreational purposes, was being challenged.

However, the action of erecting this signage may also suggest that whilst the landowners were aware of the use of linear routes over the land, they may not have been aware of the wider use of the land for recreational purposes, i.e. use was insufficient to bring it home to the landowners that rights were being asserted against them and subsequently they did not erect signs prohibiting all access until June 2012, following the application to register the land as a town or village green dated 3rd February 2012.

9) Recent caselaw rejected a challenge to the registration of land as a town or village green on the grounds that “No Public Right of Way” signs had been erected, however the Oxfordshire case is distinguishable from the Winterslow case.

Please see above.

10)The fact that the signs erected in 2009 did not relate to the wider user of the application land was not necessary as users knew or ought to have appreciated that the landowners were contesting their use:

Please see above.

11)The claimed user gave rise to an implied license:

Please see paragraphs 10:14 – 10:22 of the report regarding use “as of right”. Again this fact is disputed in the evidence given by users and objectors.

11.2. Where there are so many points of dispute regarding the evidence, it is prudent to hold a public inquiry where there is substantial dispute of fact which is likely to be resolved by the inquiry process through witnesses giving oral evidence and through cross-examination.

12. Risk Assessment

12.1. None.

13. Environmental Impact

13.1. None

14. Legal Considerations

14.1. If the land is successfully registered as a town or village green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). The case of Piper Land Development (Solihull) Ltd v The Rhondda Cynon Taf County Borough Council and Richard Jones (20th December 2011), is the first known example of a landowner employing Section 14(1)(b) of the 1965 Act where they are disappointed by a decision to register land. Importantly, an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit to bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration.

14.2. Alternatively where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant, however the decision of the Council may be challenged through judicial review, for which permission of the court is required and application must be made within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a town or village green.

15. Equality Impact

15.1. None.

16. Financial Implications

- 16.1. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
- 16.2. It is possible for the registration authority to hold a non-statutory public inquiry into the evidence, appointing an Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry, however it is the authority's duty to decide an application reasonably and fairly and the authority's decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute or if the matter is of great local interest. Even where a non-statutory public inquiry is held, there is no obligation on the authority to follow the recommendation made.
- 16.3. The costs of holding a non-statutory public inquiry are estimated as follows:

Description of work	Estimated Time	Fees
Initial read and drafting Directions		£1000.00
Ad hoc advice & directions		£125.00 per hour – for a maximum of 10 hours work
Site Visit		£1000.00
Preparation for Inquiry and first day	Time estimate 1-2 Days	£4000.00 based on three days prep
Preparation for Inquiry and first day	Time estimate 3-5 Days	£6000.00
Refreshers		£1000.00
Writing Report (1-2 days)		£2500.00
Writing Report (3-4 days)		£6000 for up to 50 hours work
Expenses	Hotels capped @ £100.00 per night	Mileage @ 45p per mile

- 16.5. Based on the rates quoted above (12 College Place, 2012), the costs of holding a non-statutory public inquiry are estimated at between £11,100 (for a 2 day inquiry) and £15,800 (for a 5 day inquiry). The costs of holding a non-statutory public inquiry in the Winterslow case, will be met from the usual budget available for statutory public inquiries.
- 16.6. The costs of a successful legal challenge to the Council's decision could greatly exceed this amount and could be in the region of £40,000 - £100,000.

17. Options to Consider

17.1. To:

- (i) Grant the application to register the land if it is considered that the legal tests for registering a town or village green, as set out under Section 15(1) and (3) of the Commons Act 2006, are met fully, or
- (ii) Refuse the application if it is considered that the legal tests for registering a town or village green, as set out under Section 15(1) and (3) of the Commons Act 2006, are not fully met, or
- (iii) Hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry to examine the evidence and to provide a report and recommendation to the determining authority.

18. Reasons for Recommendation

- 18.1. In the Winterslow case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, is in dispute. It is the duty of the determining authority to determine the application in a fair and reasonable manner, it is therefore

considered prudent to hold a public inquiry where there is substantial dispute of fact, which is likely to be resolved by the inquiry process through witnesses giving oral evidence and through cross-examination, particularly where the authority's decision is open to legal challenge. It is open to Wiltshire Council to appoint an independent inspector to preside over the inquiry and to produce a report with recommendations to the determining authority. There is no obligation upon the determining authority to follow the recommendation made.

19. Proposal

- 19.1. To hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 31st January 2014

Decision Report
Commons Act 2006 – Section 15 (1) and (3) - Winterslow

APPENDIX 1
Use as of Right – Permission and Secrecy

	Name	Permission given or requested (Q 28 & 29)	Ever seen by landowner (Q 26)
1	Rachel Andrews	No	Yes more than likely – said nothing
2	Mrs Carol Andrews	No	Probably
3	Michael Andrews	No	To the best of my knowledge “no”
4	Philip Beagle	No	Yes – said nothing or just a general time of day greeting
5	Paul Bookham	No	Yes – said nothing
6	J Briggs	No	Yes – said nothing
7	Colin Campbell	No	Not known
8	Malcolm Cassells	No	No idea
9	Lucy Clark	No	N/A
10	Jan Clarke	No	No
11	Helen Coombe	No	I don't know
12	Jeremy Coombe	No	Not known
13	Anna Crossland	No	Don't know
14	Lynne Crossland	No	Don't know
15	Tim Crossland	No	Don't know
16	Luke Day	No	No
17	Oliver Day	No	Possibly, I am not aware though
18	Sarah Day	No	Not sure
19	Simon Day	I have never thought we needed any consent for use of the land. Until recently I fully believed that it was public, common land.	Not to my knowledge although he must drive past the land on frequent occasions – I have never had any comment from him on my use of the land
20	Alastair Dunlop	No	No
21	Chris Fisher	No	No
22	Penny Fooks	No	I doubt it - no
23	Susannah Fountain		I am presuming the owner has ploughed the field

Decision Report
Commons Act 2006 – Section 15 (1) and (3) - Winterslow

APPENDIX 1
Use as of Right – Permission and Secrecy

24	Paula Gibson	No	Don't know as don't know the owner
25	Janice Gong	No	Not as far as I am aware
26	Michael Gong	No – thought it was common land	Don't know
27	Lynda Green	No	No
28	Michael Green	No	No
29	Roberta Head	No	Yes – said nothing or just general greeting
30	Claire Hoare	No	I don't know
31	Jonathan Hoare	No	I don't know
32	Evelyn & David Houghton	No	?
33	Julia House	No	Not known
34	Anne Jones	No	No
35	Anthony Levitt	No	Don't know
36	F J Marsh	No	I am not aware if he has
37	P D Marsh	No	No
38	R Maylin	No – but unwritten understanding that it was a public area	No
39	Claire McDonald	No	Do not know
40	Ian McDonald	No – permission assumed	
41	Carolyn Morgan-Jones	No	Yes – nothing said
42	Michael Morgan-Jones	No	Yes – nothing said
43	Peter Nightingale	No	Do not know – never been spoken to
44	Paula Page	No	Don't know
45	Rick Page	No	Don't know – said nothing if seen
46	G Paton	No	?
47	Jan Paton	No	Unsure
48	Sue Phillips	No	Yes – said nothing
49	William Phillips	No	Yes – passed time of day
50	David Platt	No	Not that I am aware

Decision Report
Commons Act 2006 – Section 15 (1) and (3) - Winterslow

APPENDIX 1
Use as of Right – Permission and Secrecy

51	Kay Putman	No – but I didn't know any was needed	Don't know
52	Jean Radnedge		
53	David Rickard	No - accepted	Yes
54	Felicity Rickard	No permission sought for activities on the land. Yes permission given to collect straw	Yes - waved
55	Susan Rieden	No	No
56	Doreen Rivett	No	Do not know
57	L E Rogers	No	No
58	Jeanette Soloman	Yes – permission sought for activities on land from the owner 2009-2011	Yes – just passed the time of day
59	Mrs C Stevens	No	Don't know
60	Deborah Sykes	No	Unknown
61	Christopher James Waters	No	Yes – said nothing
62	Lesley Waters	No	Probably
63	Sandra Cassells	No	Probably

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Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Activities Undertaken	Witness <i>(Please note the witness evidence forms have been numbered 1 – 63, the number relates to the witness evidence form)</i>
Walking dogs	1,2,4,5,6,7,8,9,11,13,14,15,21,22,25,26,29,30,31,32,34,39,40,41,42,44,45,48,51,55,58,60,61,62,63
Sledging	1,2,3,5,14,15,19,21,24,35,42,51,53,60
Walking to local copse (to view bluebells)	1,3,9,12,14,18,19,32,38,40,51,59
Walking various other FP's	1,4,59
Local recreation ground	1,11
Playing with friends (early 90's)	1
Walking	1,2,3,4,5,10,12,13,14,16,18,19,20,21,22,23,24,26,27,28,29,35,37,39,41,42,44,45,46,47,50,51,53,54,59,62
Nature spotting/wildlife	1,14,19,21,32,34,36,42
Open space	4,29,32,33,37,39
Wood	4
(Safe) Route to shop	4,13,24,33
Berry gathering	4,29,59,62
Running	5,11,14,26,44,46,50
To access pub	13,19,48
To access pub/shops/school/sports field	5
To access school	13,19,25,30,31,33,36,37,44,46,47,48,49,60,63
To access shop	25,29,30,31,32,33,44,46,47,48,62
To access tennis courts	38
Kite flying	5,21,51,62
Football	5,19
Rugby	5
Cricket	5
To get to doctors surgery	6,19,32,34,38,39,41,42,50,51,59
To get to village hall (safe access)	6,12,13,14,18,19,25,27,28,33,38,39,41,42,44,50,51,59,63
To access local shop avoiding road	7,25,62
To access recreation ground	25
To take children to school (in past)	8,20
To use path to cross field	9
To play as a child	9
As a (safe) shortcut	9,26,40,41
Shortcut to the other side of West Winterslow avoiding road	10,22,54
To get to Saxon Leas visiting friends	11
Circular walk	12
Cycling	13,14,15,16,46
Access to different parts of the village	14
As safe path around village (circuit)	17,43,45,56
Drama club (in the past)	17

Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Scouts (present)	17
Frisbee	19
Cycling in copse – now well defined cycle routes	19
Den building and rope swings within copse (with son)	19
To get to mobile library	19
To get to Methodist Hall (used for cubs/scouts)	19
Children playing	19,45,48
As a visitor to enjoy local village environment	20
Jogging	22
Cycling	23,26,45
Fitness Class	23
General exercise	25
Part of Village walk	26
Ball games	26
Regularly used FP's	29
Watching the children whilst playing	30,31
To reach pre-school	32,33
To avoid traffic and pavement free road	32,37,61
Safe route to visit friends	33,51
To access village facilities (safe access)	34,35
Walking across car free space	36
Safe walk to the Causeway	39
Bird watching	40,50
Recreation	42,49
Access to neighbours	46,47,59
Pleasure/Leisure activities	46,47
Access to common	50
Bat watching	50
Skiing	53
Well known common land	60
Family Activities	Witness
Walking dogs	1,2,4,5,7,9,13,14,15,21,29,30,31,34,39,40,42,45,55,60
Sledging	1,2,3,5,6,14,15,19,21,24,35,42
Walking to local copse (to view bluebells)	1,9,14,18,36,38
Walking various other FP's	1,4
Local recreation ground	1
Walking	2,4,5,10,14,16,18,19,21,23,24,29,34,35,41,42,44,45,46,50,53,54,62
Open space	4
Wood	4
Route to shop (post office)	4,33,46,47,61
Berry gathering	4,29
Running	5,10,14,25,46,50,54
Kite flying	5,11,21,54
Football	5,19

Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Rugby	5
Cricket	5,48
Playing	6,19,30,31
Kite flying	6
To play in Browns Copse	6,51
Access to shop avoiding road	7,22,29,30,31
Walking to village hall (safe access)	8,14,18,19,38,39,51
To cross the field	9
To play as a child	9
As a shortcut	9,61
When at Brownies used the field for walking and other activities	11
Used as access during Duke of Edinburgh activity	11
Exercises connected with work for particular Brownie badges	12
Cycling	13,14,15,16,19,46,62
Walking to Village facilities	13,19,22
Access to different parts of the village	14
Viewing nature	14,19,21
Safe path around village	17
Den building etc	19
Frisbee	19
Cycling in copse – now well defined cycle courses	19
To access school	19,20,22,30,31,37,46,47
To access village hall	19,22,40,51,59,63
To access village pubs	19,51
To access doctors surgery	19,38,40,51
To access tennis courts	38,39,40
To access mobile library	19
To access Methodist Hall (used for cubs / scouts)	19
In winter walking home from events at Village Hall avoiding Weston Lane	25
Safe walking off road	26,61
Recreation	26
Enjoying open space	26,29
Regularly used FP's	29
To visit friends	33,51
Bird watching	40
(Safe) exercise	40,41
To visit neighbours	46,47
Pleasure/Leisure activities	46,47
Rounders	
Social and recreation purposes	59
Community Activities	Witness
Walking dogs	1,4,5,25,26,29
Sledging	1,3,4,5,14,22,29,35,47,50,52,58,59,62

Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Walking to local copse	1
Walking various other FP's	1
Local recreation ground	1,41,42
Playing with friends (early 90's)	1
Walking	1,5,14,35,41,42,59
Nature spotting	1
Children playing	4,14,29,45,52
Running	5,14
Kite flying	5
Football	5
Rugby	5
Cricket	5
Occasional use as part of village fete	8
Brownie camps	4,29
As a Brownie/Guide organised groups visiting the copse and using paths from 1988 onwards	9
Brownies/Cubs/Scouts (Walking) and Duke of Edinburgh (Orienteering)	11,38
Cycling	14,59
Viewing nature	14
Nature walks by pre-school	14,30,31,33
Bonfire night celebrations	16,17,18,19,32,46,47,50,51,62
Local scouts/cubs hiked across it	21,51
Ramblers	23
Walks organised by village hall	26
Picnics	26
Pony rides during village fete	33,61,62,63
School children "Walking Bus"	38,47
Informal games	45
Brownies & Rainbows visit Browns Copse to see bluebells, look at trees (Nature study)	51,54
Overflow car park for village hall	61
Seasonal Activities	Witness
Walking all year round	1,2,10
Sledging	1,2,3,4,5,8,9,10,14,16,17,18,19,21,22,24,29,30,31,35,36,37,38,47,50,51,52,58,60,61,63
Running	1,14
Walking	3,5,14
Horse riding	3,14
Kite flying	5
Bonfire night on Nov 5 th	8,46,47,63
Wildlife and flower spotting (spring)	16,17,18,19
Snowballing	25,37,38
Building snowmen	26,37
Summer walks	26

Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Picking blackberries	32,53
Picking sloes	32,53
Nature study	53
Activities Seen	Witness
Children playing	1,2,3,4,5,6,7,9,10,11,12,13,14,15,16, 17,18,19,20,21, 22,23,24,25,26,27,28,29,30,31,32,33,3 4,35,36,37,38,39,40,41,42,43,45,46,47, 48,49,50,51,52,53,54,55,56,58,59,60,6 1,62
Dog walking	1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,17, 18,19,20,21, 22,23,24,25,26,27,28,29,30,31,32,33,3 4,35,36,37,38,39,40,41,42,43,44,45,46, 47,48,49,50,51,52,53,54,55,56,57,58,5 9,60,61,62,63
Picking blackberries	1,2,3,4,5,6,8,9,11,13,14,15,17,21,22, 23,24,26,27,28,29,30,31,32,33,34,35,3 6,37,38,39,40,42,43,46,47,48,49,52,53, 54,55,56,57,58,59,60,61,62,63
Picking sloes	60
Bird watching	1,2,3,4,5,9,12,13,14,18,19,21,22,23,29, 33,34,36,41,42,43,45,46,47,48,50,51,5 2,53,54,56,58,59,60
Picnicking	1,9,13,19,21,36,45,49,53
Kite flying	1,2,3,4,5,6,9,10,11,13,14,15,19,21,23,2 5,27,28,29,32,34,36,38,39,40,41,42,45, 46,47,49,50,51,53,54,58,59,61,62
People walking	1,2,3,4,5,6,8,9,10,11,12,13,14,15,16, 17,18,19,20,21,22,23,24,25,26,27,28,2 9,30,31,32,33,34,35,36,38,39,40,41,42, 43,44,45,46,47,48,49,50,51,52,53,54,5 5,56,58,59,60,61,62,63
Bonfire parties	1,2,3,6,8,9,14,27,28,33,34,36,37,43,46, 47,50,51,53,54,61,62
Bicycle riding	1,2,3,4,5,6,8,9,11,13,14,15,16,17,19, 20,22,23,25,26,27,28,29,31,35,38,43,4 4,45,46,47,49,51,53,54,56,58,59,60,61, 62,63
Fishing (only when flooded)	2
Drawing and painting	5,21,34,36,41,42,50,60
Team games	5,16
Community celebrations	5,36,47
Football	5,16,19,21,34,36,38,48,58
Cricket	5,48
Sledging	9,32,41,42
Nature study	9

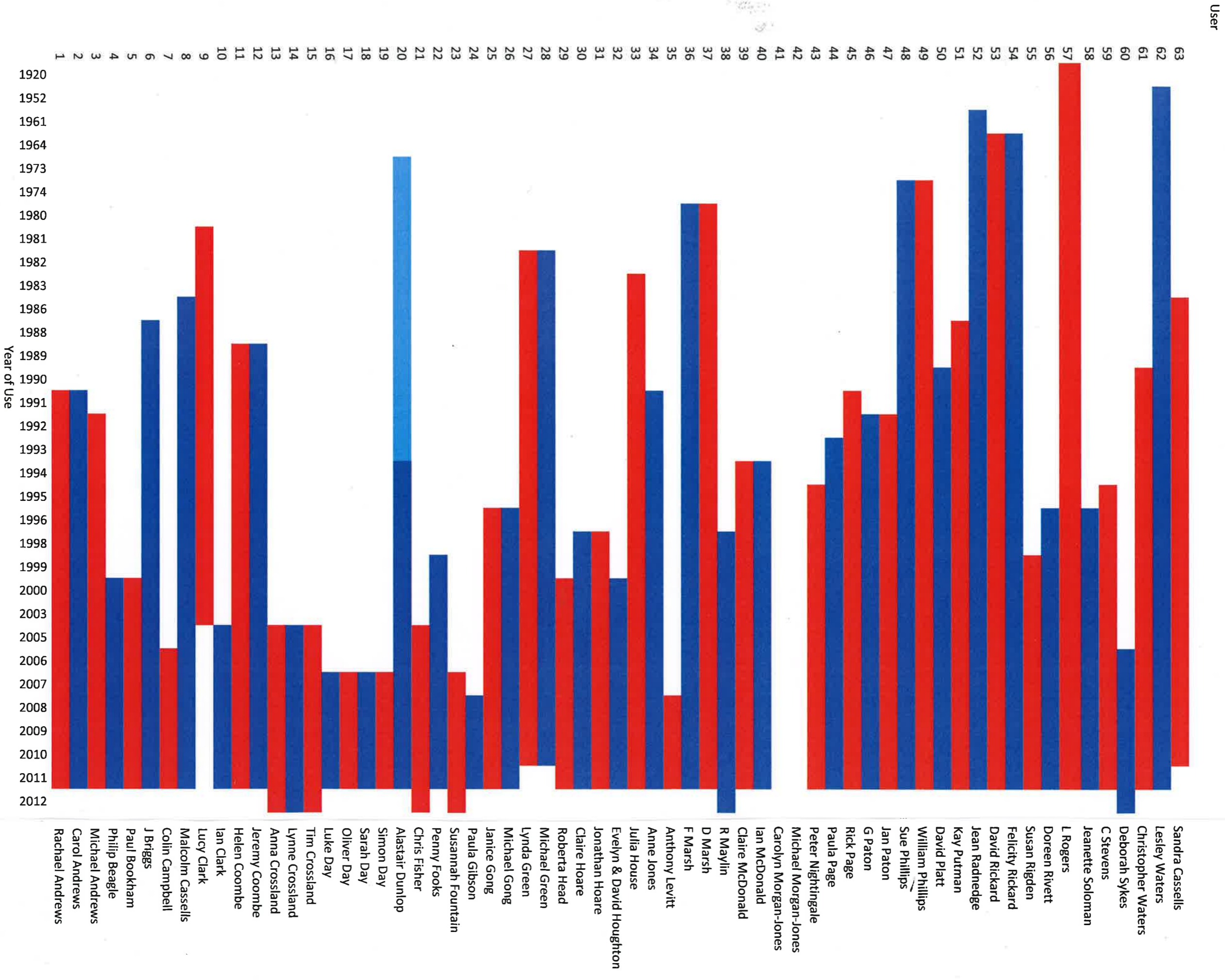
Decision Report
Commons Act 2006 – Section 15(1) and (3) - Winterslow

APPENDIX 2
Activities Undertaken

Frisbees	10
Running	11
Rounders	30,31,36,48
Photography	32
Fetes	33,38
Pony rides	33
Horse riding	58
Sledging	38
Snowball fight	38

Note: 32 = x 2 Witnesses

52 = Missing page – Q9 -17



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**APPENDIX D – WILTSHIRE COUNCIL REPORT ON THE RECOMMENDATION
TO HOLD A NON-STATUTORY PUBLIC INQUIRY (31ST
JANUARY 2014)**

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**APPLICATION (REF: 2012/5) BY WINTERSLOW OPPOSED TO OVER
DEVELOPMENT (WOOD) UNDER SECTION 15 OF THE COMMONS ACT
2006 TO REGISTER LAND KNOWN AS THE COMMON/BROWN'S
COPSE FIELD/BLUEBELL WOOD FIELD/VILLAGE HALL FIELD/THE
FIELD, WINTERSLOW AS A TOWN OR VILLAGE GREEN**

**INSPECTOR'S REPORT TO THE COMMONS
REGISTRATION AUTHORITY**

**Commons Registration Authority
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN
Ref: JG/PC/255 2012/5**

CONTENTS

	SUMMARY	2
1.	INTRODUCTION	4
2.	THE APPLICATION	8
3.	CASE FOR THE APPLICANT	10
4.	CASE FOR THE OBJECTORS	44
5.	ASSESSMENT & CONCLUSIONS	83
6.	RECOMMENDATION	123

SUMMARY

- S1.** The Applicant, Winterslow Opposed to Over Development (“WOOD”), seeks registration of Brown’s Copse Field (“the Application Land”) as a town or village green (“TVG”) under section 15(3) of the Commons Act 2006. The Applicant has to demonstrate on the balance of probabilities that the land has been used for lawful sports and pastimes (“LSP”) in a way that satisfies the criteria within section 15(3).
- S2.** The Application is objected to by the owners of almost all of the Application Land, Richard and Patricia Sheppard.
- S3.** The relevant 20-year period is that ending on 4 April 2011. The Objectors do not dispute that Winterslow CP is a qualifying locality.
- S4.** The Application Land consists of readily accessible agricultural land that was in “set aside” throughout the relevant period. It is concluded that the main use of the land has been for transiting on foot to and from different parts of the village. The main use of the Land for LSP has been dog walking on the field and there have also been other qualifying uses.
- S5.** However, the Applicant has not demonstrated sufficiency of qualifying use for the Application Land as a whole throughout the 20-year period. That applies overall, taking into account the evidence of LSP as well as the degree of use of the Application Land that was clearly not for LSP and also that which it would have been difficult for a reasonable landowner to interpret as an assertion of village green rights. Moreover, there is also a particular concern with regard the earlier part of the 20-year period.
- S6.** That conclusion is reached taking into account the LSP use that has clearly taken place in the Copse. It is concluded that the Copse has been an attraction and destination in its own right. Sufficiency of LSP use of the Copse itself as of right has been demonstrated throughout at least the relevant 20-year period. The only exception to this relates to the north-west corner, which is in separate ownership to the Objectors and appears to have been fenced off and separate from the remainder of the Copse.

- S7.** The two signs put up in 2009 did not in the circumstances make any use of the Application Land for LSP contentious. The breaches of the Highfield Crescent fencing, relied upon by the Objectors, have no direct bearing on the overall assessment and the other conclusions reached.
- S8.** Accordingly, this Report **concludes** that the Application satisfies the criteria within section 15(3) of the Commons Act 2006 only in respect of the Copse but not in respect of that part of the Copse in the north-west corner owned by Wiltshire Council.
- S9.** The **recommendation** to the Registration Authority is, therefore, that WOOD's Application to register the Application Land as a TVG should be approved only in so far as it relates to Brown's Copse, with the exception of that part of the Copse owned by Wiltshire Council.

1. INTRODUCTION

- 1.1 This Report relates to a piece of agricultural land and adjacent copse within the attractive village of Winterslow in Wiltshire. The land was “set aside” (in terms of the Common Agricultural Policy of the EEC) in 1988. There is a dispute over the future use of the land that has divided opinion in the village and there have been conflicting accounts of how the land has been used since that time.
- 1.2 Against this background, I am instructed by Wiltshire Council in its capacity as the Registration Authority (“the RA”) for the purposes of the Commons Act 2006 in respect of the application by Winterslow Opposed to Over Development” (“WOOD”) under section 15(3) of the Commons Act 2006 (the Application). The Application was made on that group’s behalf by Mr. Timothy Richard Crossland. It was dated 3 February 2012 but accepted by the RA as complete on 29th August 2012 (as reference no. 2012/5).
- 1.3 By the Application WOOD seeks to register land, stated in the application form to be usually known as “The Common/Brown’s Copse Field/Bluebell Wood Field/Village Hall Field/The Field, Winterslow,” as a town or village green (TVG). The names are given in the alternative but I will refer to it either as the Application Land or where appropriate Brown’s Copse and the field, as it includes both the Copse and adjacent field. The Application Land extends to about 7¼ hectares (about 18 acres).
- 1.4 My instructions from the Registration Authority were to hold a non-statutory public inquiry to consider the evidence and submissions relied upon by the Applicant and the Objectors and to report on these with a recommendation as how to determine the Application.

The Inquiry

- 1.5 Accordingly, I held an at Inquiry Barry's Fields Sports Ground, Weston Lane, West Winterslow on 25th to 28th November 2014. The Inquiry reconvened at the same venue on Tuesday 16th December for Closing Submissions and the accompanied site visit.
- 1.6 Directions were provided prior to the Inquiry, giving guidance on the submission of evidence and documents and on the procedure proposed for the Inquiry. The parties provided the evidence (including supporting documentation) in advance of the Inquiry, for which I am very grateful. Some additional documents were provided by each party at the Inquiry.
- 1.7 The Applicant was represented at the Inquiry by his Alexander Greaves of Counsel. Mr. Greaves called 15 witnesses in support of the Application. The Applicant also relied upon other witness statements and documents, as detailed in section 3 of this Report, which I have taken into account.

Objections

- 1.8 The Application was objected to by Mr. and Mrs. Sheppard of Weston Hill Farm, Winterslow, the registered owners of all but three small areas of the Application Land. Other representations in response to the Application were also received and I have taken those into account.
- 1.9 The Objectors were represented by William Webster of Counsel. Mr. Webster called 11 witnesses, as detailed in section 4 of this Report. He also relied upon other witness statements and documentation, which I have taken into account.

Site Visits

- 1.10 I visited the site and the surrounding area prior to and during the Inquiry. As indicated above, I carried out an accompanied site visit after the close of the Inquiry on the afternoon of Tuesday 16th December 2014.

The Statutory Basis of the Application

1.11 The Application was made under section 15(3) of the Commons Act 2006 and the claimed use as of right was stated to have ended on 4th April 2011.

1.12 The statutory framework is dealt with more fully in section 5 of this Report. However, at this stage it should be noted that section 15(1) provides (as applicable to this application) that:

Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

Subsection (3) (in the form that applies to this Application) applies where:

- (a) **a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;**
- (b) **they ceased to do so before the time of the application but after the commencement of this section; and**
- (c) **the application is made within the period of two years beginning with the cessation referred to in paragraph (b)**

The Scope of the Inquiry and this Report

1.13 I am very aware of the very strong feelings of both sides in this case. That is often so, particularly where the land is being considered for development, as in this case. However, as I made clear at the Inquiry, a TVG Inspector's role is to consider whether the Applicant can demonstrate on the balance of probabilities that the statutory criteria within section 15 of the Commons Act 2006 are met. The relative merits of the claimed use relied upon and the possible development of the site are not relevant to whether section 15(3) is complied with and I have not taken such matters into account.

- 1.14 My role is therefore limited to considering the evidence and submissions against the statutory criteria and making a recommendation to the Registration Authority as to the determination of the Application.

The Structure of the Report

- 1.15 The remainder of this Report is now set out as follows:

2. THE APPLICATION & APPLICATION SITE
3. THE CASE FOR THE APPLICANT
4. THE CASE FOR THE OBJECTORS
5. ASSESSMENT AND CONCLUSIONS
6. RECOMMENDATION

I have provided a Summary at the outset and I hope that this will assist with the reading and understanding of this Report. I stress, however, that the Summary needs to be read and understood with the remainder of the Report. The Report is of necessity somewhat lengthy, given the extent and nature of the evidence and issues.

- 1.16 However, before addressing those matters, I would like to record my thanks to the advocates and witnesses. I am grateful for the way in which they all conducted themselves, presented their cases and their evidence and the courtesy shown, and the unstinting assistance given, to me by all. In addition, the parties and I were very greatly aided by the RA, which was represented by Mrs. Sarah Marshall, a solicitor with the Wiltshire Council and Miss Janice Green and Miss Alison Roberts, who are both Rights of Way officers employed by the Council. Their assistance to all of us was very much appreciated and greatly assisted in the preparations for, and efficient running of, the Inquiry.

2. THE APPLICATION

2.1 The Application (reference no. 2012/5) was made on behalf of WOOD by Mr. Timothy Richard Crossland pursuant to section 15(3) of the Commons Act 2006.

2.2 The Application was made on Form 44, dated 3rd February 2012 and it is stated in Section 4 that the claimed LSP use as of right ended on 4th April 2011. It is also stated that there was a period of statutory closure during the foot and mouth outbreak in 2001 that has to be disregarded in accordance with section 15(6) of the 2006 Act.

2.3 In section 5 of the Form, it is stated that the name by which the land is usually known is:

“The Common/Brown’s Copse Field/Bluebell Wood/Village Hall Field/The Field”

Its location is given as:

“Adjacent to Middleton Road, Winterslow”

At the Inquiry the Applicant clarified that the Application Land did not include any of the adjacent metalled footpaths or the grass public footpath along the edge of the village hall.¹

2.4 Section 6 of the Application Form asks for the locality or neighbourhood within a locality in respect of which the application is made. This is given as:

“Winterslow Parish”

A Plan of the Winterslow CP, showing the Application Land in relation to it, is found in Tab 2 of the Applicant’s Bundle of Evidence) (this is what I have referred to below as Applicant’s Bundle A – AB/A Tab 2).

¹ The footpaths in the area shown on the map of Winterslow CP in App/A Tab 2 and the Plan with the s.31(6) Statutory Declaration at Ob/A Tab 7 p.28M. See Applicant’s Closing Submissions at paragraph [7] p. 3.

2.5 The justification for the Application is set out in Section 7, which states:

“Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastimes for a period of at least 20 years and 5 months under section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011.”

2.6 Section 8 of the Application gave the owners of the land as “Mr. Richard Sheppard and Wiltshire County Council”. In fact, the position is as follows:

- (1) The registered landowners of almost all of the Application Land are Mr. Richard and Mrs. Patricia Sheppard. This is subject to three exceptions.
- (2) An area in the north-west corner of Brown’s Copse is owned by Wiltshire Council. The Council, in its capacity as land owner, wrote to the Applicant on 29th October 2014 asking them to exclude their land which is held for housing purposes from the Application.
- (3) There is a small triangle of land that abuts the north-eastern end of the Council’s land that is unregistered. There is a much smaller area abutting the north-western corner of the Council’s land that is also unregistered.
- (4) In the south-eastern corner of the Application Land is an electrical sub-station owned by Scottish Electric.

2.7 In addition to the objections from Mr. and Mrs. Sheppard, three representations were received by the RA. The letter (signed by 24 residents) from residents of Highfield Crescent stated that whilst they did not want to see any development on the Application Land they did want to correct information the RA had been given. They stated that the land not been used as a sports field and that Winterslow has sufficient areas for sports or other pastimes. It was, the residents further said, only when

the land was left fallow or set aside that certain people thought it right to use it as a dumping ground for their rubbish, a dog walking area and as a short cut though the area is adequately served with footpaths. There was also correspondence from L E Rogers, several letters from the Objectors and a letter from John Glen MP. In addition, there was an email from Councillor Christopher Devine. Although, an email from Wiltshire Council's Legal Services was received, there was no objection from them as landowner and no correspondence from Southern Electric Plc.

2.8 The Applicant was provided with, and given the opportunity to comment on, the objections and related correspondence. However, no further comments were received from the Applicant.

2.9 The Application was considered by the RA in a decision report dated 31 January 2014.² This stated that it is the RA's duty to determine an application in a fair and reasonable manner and where there is a serious dispute, or if the case is of great local interest, it is open to the authority to hold a non-statutory inquiry held by an independent Inspector, who would then prepare a report with recommendations. The decision report recommended that course of action accordingly. The report (on p. 6) contains a useful plan showing the land ownership of the Application Land (referred to in paragraph 2.6 above).

3. CASE FOR THE APPLICANT

3.1 The Applicant provided two bundles of documents and a bundle of legal authorities. The first bundle of documents, which I shall refer to hereafter as "AB/A" (Applicant's Bundle A), included:

- (1) In respect of each of the witnesses to be called at the Inquiry:
 - (a) A signed and dated statement;
 - (b) An evidence questionnaire; and

² Applicant's Bundle B Tab 11 – AB/B Tab 11

- (c) Supporting photographic evidence, where applicable.³
- (2) Signed and dated statements and questionnaires of 7 others relied upon but called as witnesses. ⁴
- (3) Other Evidence questionnaires relied upon.⁵

3.2 The Applicant provided an Outline of the Case and Opening Speech. The matters referred to included:

- (1) The statutory test and how the Application meets it.
- (2) The nature of the Application Land and that agricultural land and the Copse can be registered, as there is no requirement that it resemble a traditional village green.
- (3) It is not in dispute that the vast majority of the claimed user is from inhabitants who live, or have lived, within the locality during the relevant period.
- (4) Sufficiency of use does not require that LSP be carried on sufficiently frequently throughout daylight hours or at all times of the year.
- (5) Furthermore, it is not necessary for the local inhabitants to have set their feet everywhere on the Application Land. The fact that LSP is predominantly confined to areas which are most readily accessible does not prevent the registration of the whole land. In this respect, it is clear that the natural state of land may cause its accessibility to fluctuate during the relevant period.
- (6) Assertion to a reasonable landowner of a right to engage in LSP is not necessarily inconsistent with the user predominantly taking place on informal paths.⁶
- (7) Qualifying use must “as of right”. LSP that is by force is not qualifying use. Use by force is not simply confined to physical force

³ AB/A Tab 4

⁴ AB/A Tab 5

⁵ AB/A Tab 6

⁶ See paragraphs [19]-[22] on pp.7-9 of the Applicant’s Outline Legal Submissions.

and use will be by force where the landowner had made it clear that such use is contentious.

- (8) The facts of this case are on all fours with *R (Oxfordshire and Buckinghamshire Mental health Trust) v Oxfordshire CC* [2010] EWHC 530 and the wording of the signs is identical.
- (9) The fencing relied upon by the Objectors that was put up at the top of the field by Highfield Crescent, was put up by the Council and not the landowners. In any event, the vast majority of the Application Land remained entirely open and accessible.
- (10) The statutory depositions under the Highways Act have no effect on whether user was “as of right”. More importantly, those depositions would not have been communicated to the reasonable person exercising LSP over the Application Land.
- (11) It is clear from the evidence questionnaires and detailed statements that qualifying user occurred throughout the relevant 20-year period.⁷

3.3 The following witnesses gave evidence at the Inquiry in support of the Application:

Glyn Paton

Philip Beagle

David Rickard

Dr Ian Flindell

Julia House

Simon Day

Penny Fooks

Christine Stevens

Paul Hardiman

Jeanette Solomon

Tim Crossland

Elizabeth Page

⁷ See paragraph [37] on pp. 13-4 of the Applicant’s Outline Legal Submissions. See also the Applicant’s Closing Submissions at [11]-13] on pp.5-6.

Dr Kay Putman

Barry Clark

Michael Yates

3.4 I now summarise the key points of the oral evidence of each of these witnesses. In doing this, I use the following abbreviations:

EQ: Evidence Questionnaire

In-chief: Evidence given in-chief

XX: Cross-examination by the opposing advocate

Re-ex: Re-examination by the witness' advocate

Glyn Paton⁸

Mr. Paton moved to The Flashett, near the telephone box on Middleton Road, in 1992. He said that he was aware of the Application Land as soon as he moved in, as he would go across it to the shops. His two daughters were 3 and 10 years old when they moved in (and thus 2 and 9 in 1991, as pointed out in xx of Mr. Paton). His main access onto the land was from the entrance in the south-east corner (OB-A Tab 5 at p.23H) or from the path behind the village hall (but not 23G)

His and his family's use of the Application Land

They used the land as a recreational area and not just for walking the dog, which they had between 1999 and 2008 (he had originally said 1994 to 2002). He used the area between Middleton Road and Brown's Copse to train the dog. The children crossed the land to school but not with him as he was working (as confirmed under xx but in comparison to his answer to Q.15 on his EQ). At the weekends, he used the land as a route to the village shop (to pick up the papers) and to go to the pub and as a place of recreation and enjoyed the wildlife – e.g. bluebells, anemones and celandines. Most of the time they would have the dog with them.

⁸ AB/A Tab 4 p.124

The wildlife was predominantly in the Copse but certain areas didn't have bluebells. There was not one area of the wood that they would use regularly but would tend to use the part towards the centre. There were many ways they would get into the Copse – at least 4 ways from their house. When the land had been ploughed up, they still used the Copse. He said that from time to time they would have family walks and that most weeks they would visit the Copse, except when they were away on holiday. Mr. Paton said the paths accounted for around 5-10% of the Copse. In re-ex, Mr. Paton said that there was a main path in the Copse but there were also lots of paths diverging off – there was a diagonal path that was slightly wider. He also explained in re-ex that since 2011 the Copse was more trodden on as people can't use the field and the main path was wider than in 2009/10. He said that the Copse was predominantly hazel coppice and there were shrubs throughout.

Mr. Paton said that he would spend about 10 minutes on the land, if just crossing but may stop for a chat. But if going into the Copse they could be there for up to 1hr. he said that there were dens in the Copse.

He had used the paths around the outskirts of the land – he used those to get onto the land. He also used the path along the eastern edge of the Copse and had accessed the Copse from that path. He said that (referring to the aerial photo at OB-A Tab 9 p.71) there were at least 7 tracks across the land.

The children used the land until they were teenagers. He said that when his youngest daughter (born in 1989) comes home she regularly goes for a walk in the Copse.

Under xx, M. Paton said that they had used a variety of paths from Middleton Road, depending upon how muddy the land was, to go to and from the school. He also accepted (under xx) that his main/predominant use was (besides dog walking) of the land was to transit and most people would say that it was used for transit. He said (under xx that he recalled that the tracks were pronounced, as shown on the aerial photos at OB/A tab 5 at pp. 23/23A.

Use of the land by others

Mr. Paton referred to dog walking and said under xx that this was not just dogs running off. He said there had been a bonfire on the land. He also referred to others sledging – he said they didn't have a steeper field elsewhere.

He said that he would bump into people on the Land – neighbours and friends – he mentioned the Hendersons, who had a dog and who they would regularly meet. He also mentioned the Ryans, Phil and Mandy and the Glovers, Sue and her husband, who had now sadly passed away.

He said that it was not just small children that use the woods and he saw dens in the Copse all the time.

Challenges and Signs

Mr. Paton said that he didn't know who the landowners were. He had never been challenged on the land and there had been no interruptions in his use. He didn't think that he needed permission to go on the Land.

He hadn't seen any signs until the big ones were put up in 2011. He said that he would have gone past the earlier signs as he went onto the land where post 2 is. He said that he didn't have a dog in 2009 (when the two posts were erected) but did go on the land on Saturdays and/or Sundays having come from the village shop.

Under xx, when referred to the two 2009 posts (position seen on photograph in OB-A at Tabs 9 & 10 pp. 71-3), he confirmed that he couldn't remember the signs. He said he would have gone past the post 2 position but not post 1. He didn't see the post at the top of the field but repeated that he had go that way every week.

Philip Beagle⁹

Mr. Beagle lives at the Old Post Office on Middleton Road. He first became aware of the Application Land in 1999/200 when he visited. He parked in the village hall car park and saw people using the field. He moved to his current property from Salisbury in 2000.

His and Family's Use of the Application Land

Mr. Beagle said that he would walk his dogs on the land at least twice a day – this would begin at 7.30 am or earlier in the summer. He also ran on the land. He had dogs from 2000 onwards. He now has 2, the youngest is just over 3 years old. He had 3 dogs for a short period. When running they would do circular runs and the dogs would go with them. They would walk the dogs as well.

He would access the land from Middleton Road by the telephone box – as shown on the photograph at p.23i of OB/A Tab 5. He used that entrance before the field was ploughed. He amended the plan showing the tracks over the path submitted with the modification order application, showing more tracks.

When walking the dogs they would go onto the land by the telephone box and either go up the field along the inside of the hedge along Middleton Road towards the top corner or go straight across from the telephone box entrance into the Copse. The Copse was hazel with thinnest bushes. It was regularly cut – every year or twice a year. There were bluebells with kids doing things – rope swings in the southern part. He remembered a blue nylon rope swing and swings are a fairly regular feature – he would say they were there 80% of the time. It is the point where children stop off at on the way home from school. On the dog walking route they would usually come out onto the path and possibly go up to the water tower and around or back along Yarnley Lane and through the village.

⁹ AB/A Tab 4 p.31

He trained each dog for about 6-9 months (3 different ones over the years). This was done on the eastern part of the land as it was less steep and shielded from the Road.

They used to collect sloes from adjacent to Middleton Road and blackberries that grew on all perimeters of the field including the eastern side of the slope, east and north of the Copse and east and north of the field, including the southern corner.

Under xx, Mr. Beagle accepted that whilst the grass was growing it was not as easy to walk through – in June/July it would be 1ft and 2ft tall by September. Mr. Beagle said that the grass lay down when it rained, when it was suggested to him that it was 2ft when not even standing up straight. He said that there were flatter areas and it was not fair to say that anyway in May to June. When it was put to him that people would not be able to walk through the grass, Mr. Beagle said that may be so for 4-6 weeks of the 52 weeks, but it may be less than that. When it was suggested to Mr. Beagle that there would have been thistles and brambles, he said that might have been so in one or two places.

Activities By Others

He saw children using swings in the Copse. He saw Chris Waters (his neighbour) walking his dogs. He saw others walking and training dogs - Bill and Mandy – they had a golden retriever and used to meet up with another lady with a border terrier and with others. Kids would ride their bikes on the paths. When there was snow, there were snow ball fights and sledging. He saw someone flying a kite once. He saw blackberrying.

Mr. Beagle said it was an open field with some very prominent tracks (2m wide) and some less prominent. Many people used the land. He said there were a dozen tracks from the centre of the field. However, people didn't stick to the tracks – they walked on the grass, which was at various times fairly short. If the ground was wet, one would tend not to stray off the tracks.

He said that there were other activities almost everywhere – sledging on the top steeper end of the field; showmen almost anywhere; bikes were ridden along the bottom and along eastern edge of the Copse. He had seen a bench, which was not useable, in the bushes that had been on the pavement.

It was suggested to Mr. Beagle that the aerial photographs showed no other signs of activity, other than the tracks of LSP. He didn't agree that this meant there was no LSP taking place as he said there would be a "dispersal" effect – you wouldn't see the tracks from children on bikes that had gone across the ground once or twice and these would not show on a satellite photograph. Mr. Beagle said (in re-ex) that he had walked over virtually every inch of the land and the transit routes would not affect his use.

It was also put to Mr. Beagle under xx that the land was between important destinations in the village – in the SE the village hall, doctors' surgery and in the NW the shop, pub and school. Mr. Beagle said the children going to the nursery would be just as likely to go down the tarmac path (to the west of the Copse) as across the field. He also said that he didn't use the Surgery and people tend to get out of a car when visiting that facility. With regard to the village hall, it was suggested to Mr. Beagle that the activities included the Badminton Club, dance classes, functions, parties, and the Truffles Coffee Shop was open on Mon-Fri 10am-12 noon. He said in re-exam that most people came to the village hall on foot, with a percentage by car. He said that the Hall was fairly busy.

Challenges and Signs

He saw no signs but did see post on the ground. He said that there was no post by his entrance onto the land or on coning out from the Copse. He saw a post on the ground near the village hall – he saw that once or twice but it was not there long. His use during the relevant period was not interrupted.

He had met the landowners on the land once or twice and just said hello. There were pleasant greetings. He didn't know who they were at the time. They never said anything to him about using the land. He met then coming out of the top end of the Copse.

Under xx, it was suggested to Mr. Beagle (referring to point 7 on photograph at p.23F at Tab 5 of OB/A) that the post at the southern end (Post 1) was only 20 yards from where he entered the field. He said that it was "maybe 30 yards". It was suggested to Mr. Beagle that the post would have been there on at least 28 occasions when he entered the field. He said that he might have been away in Feb and March 2009. He said that he didn't recall seeing the posts sticking up. He saw post in the bushes lying down. Mr. Beagle said that when entering and going across the land he would not go past the post – he would turn right along the hedgerow or go straight across to the Copse. The evening walk would have been in the dark and in the morning, it would have been low light. In re-ex, Mr. Beagle said that the 4 current signs in neon red were fairly hard to miss unlike the initial 2 posts.

Photo 23B (OB/A Tab B) showing the broken fence in the north-west corner of the Application Land was put to Mr. Beagle, who said that his access onto the land was in the south-east corner by the village hall.

David Rickard¹⁰

Mr. Rickard has lived opposite Middleton Road since 1964. The land was cornfield when they moved in until it was set aside in the 1980s. Since then, the field has been left idle. There is no disincentive for people to wander through into the field to enjoy the wildflowers etc. The obvious entrance was from the right of way near to the Village Hall.

¹⁰ AB/A Tab 4 p. 142

His own and his family's use of the Application Land

He has used the land with his children (born in 1966 and 1969) and his 4 grandchildren who are in their teens now but visit regularly. He has used the land to cross from the Village Hall car park up towards the shop going into Woodlands Drive to avoid using path around the Copse and it is a more interesting route to view wildflowers and to avoid Middleton Road. They paths used varied but mainly go on a path up through the middle of the land but children, he said, don't stick to the main path. They would bring kites and radio controlled aircraft onto the field – they would travel about 20 yards at the most and usually end up in tree.

In the Copse, they would swing from the trees using a rope. They would use one of the big trees not in the centre but more to the field side of the Copse. There has been a rope swing there for the last 20 years.

Under xx, it was pointed out to Mr. Rickard that he said in answer to Q.15 of the EQ that he used the land “occasionally”. He said that he would go across 2 or 3 times for shopping or wander over there with family or friends. He confirmed that his children would have been 25 and 32 in 1991 and had left home by then. (being in Birmingham and near Andover). He described Middleton Road (in his Statement (AB/A Tab 4 p. 142) as “incredibly dangerous”. He agreed under xx that although in some case he did actually carry out activities on the land he did mainly use it to get from one side of the field to the other. In re-ex, Mr. Rickard said that when he went into the Copse he was not using it to cross and he occasionally saw others; other children. It was almost a public amenity, he said.

Use of the Application Land by Others

Children always wandered into the Copse and played there.

Challenges and Signs

Mr. Rickard said that nothing prevented him using the land. He was not aware of any signs until 2011. He only really accessed the land from the car park (point 5 on photo at p. 23F – OB/A tab 5) and he didn't see signs or posts in that area. He confirmed that he was aware of the current signs – assaying the land was Private.. The land had been set aside and not fenced.

Dr. Ian Flindell¹¹

Dr. Flindell has lived in the village since 1994. He has 4 children born in 1979, 1984, 1987 and 1989. It is only the two younger children who have used the field. He lives at the other end of the village and has no direct view of the land.

His and his family's use of the Application Land

He personally didn't use the land other than to cross to the village hall. He did take the dog onto the land in 1997 and met several others doing so, which was good for socializing the dog. Under xx, he said that this was not a regular occurrence – it was during the summer and once a week then. They had quite a large garden but their dog didn't meet others there. They went anywhere on the land. That was for 5 years or so.

They went into Copse and took pictures of the bluebells. The younger boys go to the Copse in the Summer and build dens. From time to time boys sledge on the land and met other children. On occasions, they had gone there everyday for a couple of weeks. They also go to Plantation Woods on the other side of the village, which has a footpath through it. In the Copse, there are paths all around; they exit through the Copse onto the field (having entered the Copse from the footpath on the west side).

¹¹ AB/A Tab 4 p.74

He could remember the brambles in the west corner of the field by Highfield Crescent between there and Woodland Drive.

Signs and Challenges

Dr. Flindell said that he had no concerns about his children going onto the land as he had assumed that it was public amenity land. He didn't know that it belonged to Mr. Sheppard. He wasn't aware of any indication that he shouldn't be on the land. He didn't remember seeing any notices. Under xx (taken to pp.72 & 73 of OB/A Tabs 9 &10), Dr. Flindell confirmed that he had no recollection of seeing the post during the 2 weeks in Feb 2009. He said that possibly the bottom post was there but he never saw it. With regard to the bottom post (referred to photo on p. 75), he said that could possibly remember the rubbish but not the post – that was the area where the brambles are.

He saw the remains of the fence along Highfield Crescent, with there being wire on the ground (see photograph on p.51 of AB/A Tab 4). He didn't remember the tree shown in that photograph though. Under xx (taken to photograph 23B in OB/A Tab 5), Dr. Flindell said that he believed that there were bits of old rusty wire at that point in the broken fence from 1995/6/7. In re-ex, he gave the date as between 1993-2000. He didn't recall the fence being reinstated – there was a gap in the posts as well. He said that his impression was that there had been a boundary there at one time but it had not been maintained. He didn't remember any fencing between the Copse and the field. There were possibly a few posts between the copse and the adjacent footpath.

With regard to the gate on the southern boundary (at point 5 of photograph 23F – OB/A Tab 5), he could see no other reason why the gate was there other than to allow access onto the land.

Julia House¹²

Mrs. House lives at Gunville Hill. She has a daughter and a son born in 1989 and 1992. She has known the Application Land since 1993. She said that she didn't know the copse and the field were part of the same land – she hadn't realised that the Copse was privately owned, although she knew that the field was.

Her Use of the Application Land

She used the land from 1993 until 2003 at least once per week when child minding. Her use after 2003 was more intermittent/occasional. She entered the land from the south – by the tennis courts through the gate or by the telephone box.

She looked after 6 children at a time, who were mostly local. There had been about 25 from Winterslow over that period. They walked up to school in the village not using the field and then back using the field and going to the Village Hall. They would alternate the route for out and back. Under xx, Mrs. House said that they would go up to school on the bus and walk back but depending upon the weather and also what the children wanted to do. After lunch, they had between 1-3. They would sometimes go into the Copse – entering at the top. She used to look after quite young children. They would play on the path on the field where the grass was shorter. They would play hide and seek in the longer grass. Boys under 3 like to hit with sticks. The girls prefer craft –they play pickup acorns in the copse rather than on the field. The older children liked the woods and the younger ones liked the short grass.

Asked under xx about what they did in wet weather, Mrs. House said that “it was ok with wellies as it was nice for the children to go into the muddy wood”. She said that if it was dry, they would go on the field and if muddy go into the wood. This was about 3 times per week. On Wednesday, they always walked back because of the hour-long activity.

¹² AB/A Tab 4 p.96

Use of Application Land by others

She used to regularly meet friends, including those who are dog walkers including Lizzie Dixon, Caroline Henderson, Kate Church, Gill MacKay, Linda Mace – they are all from Winterslow.

They would meet other children when child minding. 2 of her friends (Kate Church and Linda Mace) were child minders so they would sometimes go together.

Under xx, Mrs. House said that people would always be playing in the woods and that it was used more for activities than the field. The field was used for chatting, dog walking and playing. When it was suggested to her in xx that the main use of the field was walking across it, she said that was so for adults but children would play on the field as it was a nice open space. When it was put to her, again in xx, that there were no photos of children playing on the land, she replied that she wouldn't think of taking photographs. She added however that there were photographs of sledging and that it snows regularly and there are one or two periods when the snow settles but not every year. She remembered the first year when the field was packed with sledgers. The last time she could remember her daughter using the field for sledging was in 2010 for 3-4 days. She also referred to the wildlife on the land at different times of the year.

Signs and challenges to use

She saw the sign on the post near to the Village Hall; but as everyone else was using the land, they just carried on, as it was causing no harm. She didn't know how long the sign was there. She read the wording, which said no right of way. She imagined that it was not an official route.

She didn't realize that the Copse was part of the same land. She considered that the sign was referring to the field and not the Copse. There was fencing only by the Village Hall. There was fencing on the periphery by Highfield Crescent and hedges along the road.

Under xx about the posts, she said that she understood that they meant this was not an official route – so it is not a footpath but she could wander around the field. She did not accept that “No ROW” meant “I don’t want you on my field”. She said no it meant that it was “just not official”. Mrs. House stated that the sign was not saying no access but just that there was no right of way. She said that she was unaware that the signs had been removed by force on 203 occasions, as was put to her under xx.

Simon Day¹³

Mr. Day lives with his family at Middleton and has lived in Winterslow since 2007 (at Garlands from July 2007-2008 about ¼ to 1/3 of a mile away. When they moved to the village, their children were 5 and 8 years of age and learning to ride a bike.

His and his family’s use of the Application Land

For the first couple of years they used the land 2-3 times a week. Under xx, Mr. Day said that the children walked back and forth during term time and had quality time in the field if walking back. Their mum would stop and talk, but you would see less fathers doing that. On Thurs/Friday, it was Mr. Day who would go with them to school and they would stop and play on the land. In the later years, it was more that purpose every few weekends. If parents or friends came down or children wanted to play in the woods, they would go there. As the children got older, they would let them go into the woods on their own. Mr. Day said that he would walk around the field (with friends or parents) and end up walking through the woods. Under xx, he said that he is on the land now every third weekend – mainly in the summer/drier times. The children would go on their bikes in the wood even in the wet weather. The copse was more used than the field. When they were younger, he saw a lot more people in the field and people milling around.

¹³ AB/A Tab 4 p.64

So initially, they used the land to cross over to the school. They went from the SE corner and up the path. 3 times a week he would go from the shop through the field. They would sometimes go into the woods and play there with bits of wood they would find and make dens. In the woods, the children would play with friends. Quite a lot of children were taught to cycle on the field.

In the summers of 2009, 2010 and 2011, Mr. Day and his wife used the tennis courts by the Village Hall (usually on a Sunday) and the boys would play in the field where they could keep an eye on them.

He referred to playing football occasionally in the field, as well as Frisbee even when the grass quite long.

His use of the field stopped when the field was ploughed.

Under xx, Mr. Day was referred to his answer to Q.14 of his EQ where he stated "This piece of land is integral to all the main village facilities...". He accepted that the Village store had a lottery terminal and an off licence and that it opens longer (until 8pm) since 2005 and is well stocked.

Others' use of the Application Land

Quite a lot of children were taught to cycle on the field. Mr. Day referred to his marked photograph (AB/A Tab4 p.73) and the blue box area shown on that.

If they saw friends on the field, they would have a kick about normally in the blue area (on the p.70 aerial photograph) where the grass was shorter.

Mr. Day said "now and again" they would see people walking dogs and it was nice to meet them and to get chatting.

Mr. Day did say "It is mainly people and dog walkers crossing that you see." He didn't remember a bonfire on the land.

Signs and challenges on use

Mr. Day didn't recall any signs. He thought that this was public land and it does not, he said, appear to be privately owned. There is no physical barrier to entering the land. There is fencing only along the road and the village hall. However, there is an access point in the fence by the village hall, which is a fence for the village hall and not the field.

When asked (in-chief) whether he had seen the recent signs, Mr. Day replied "not really, no".

Penny Fooks¹⁴

Mrs. Fooks has lived at Saxon Leas since May 2007, having moved to Winterslow in 1990 at the top of Gunville Hill (having moved from Suffolk in that year).

Use of Application Land by her and her family

Mrs. Fooks used the land going to the Village Hall, shops and to visit friends. It is a good way of accessing other parts of the village. There were a lot of things going on in the Village Hall. When living in Saxon Leas, crossing the Application Land was the main route to the shops, friends etc. Her son was more interested in nature – picking things up and taking them home. He said that he would play in the Copse – making dens; playing hide and seek. There were rope swings in the Copse in that corner. At the weekend's her son would go down there but not her.

Her son, who was born in 1995, went to a nursery school out of the village and to the primary school in the village when nearly 5 in 2000 until 2007. When he started primary school, they had to make the trek to school on other side of the village bus sometimes and sometimes she cycled with him on the back of her bike at first up Middleton Road (because the road was dangerous, as she said when xx). Sometimes they walked. In the average week, they would sometimes walk three times and sometimes

¹⁴ AB/A Tab 4 p.75

more – they would often walk home. When going to school he was not recreating. On the way back, he would like going into the Copse. When asked under xx whether he would play in the field, Mrs. Fooks said “more in the Copse”. He was 12 years old in 2007 and went to secondary school out of the village but he still went to the woods – he is very passionate about the woods and other woods too.

She said in he written statement that she has a friend’s dogs after that friend had had a stroke – a couple of times per week for a period of 4 months December 2009- March 2010.

Use of the Application Land by others

Mrs. Fooks has seen children playing in the Copse and spilling out into areas around.

There was a walking bus from the Village Hall to the school but she was not sure what route that would take.

She saw dog walking, people going for walks; she also saw an archer. It was just people who live in the village - they would walk around the land. You were very likely to bump into or see 1 other person – you could see someone using one or other of the paths. There were 7 or 8 paths, and tracks into the Copse – going up to rope swing.

Signs and challenges

Access was prevented in 2011. She saw stakes without signs for a week. She has no idea what they were for; there was one at the top end and another one in the south-west corner. There was a stake in the south-east corner. The other sign was green and there for a week. She said that she remembered not understanding what it was. She continued to use the land when the steak was there but didn’t use the land when the other signs were erected. She had understood that Mr. Sheppard had given he land to the village, as he had done for the Village Hall.

Under xx Mrs. Fooks said that she could not remember what the green sign on the posts said. She said in her written statement that she remembered being very puzzled and surprised when access to the field was prevented in 2011. She confirmed that she couldn't believe that she no longer could walk across the land. When pressed she accepted that she must have read the sign (with the wording as shown at p. 5 of OB/A). When it was put to Mrs. Fooks did it not convey to her that the landowner did not welcome her on that land, Mrs. Fooks answered "I imagine so".

Christine Stevens¹⁵

Mrs. Stevens moved into Winterslow Parish in the early 1980s (1983/4). Sometimes they would walk into the village from Latcombe Corner. She has lived at 11 Woodlands Drive since August 2009. From that property, she has a lovely view, she said, overlooking the land with the Copse on the rights. Previously she had lived 2 miles out of the village. She has two sons born in 1977 and 1979 who went to the local primary school in the village. She was recovering from a life-threatening illness in 1995

Use of Application Land by Mrs. Stevens and her family

They accessed the land from Daddy King's Path, by the Village Hall or by Woodlands Drive. The children would play on the field in 1986/7. She didn't know whether there were crops then. Under xx, it was put to her (by reference to OB/A Tab 8 p.51) that there was barley and wheat on the field in 1986/7. Mrs. Stevens said that her sons said to her recently that there was a hole in the field. She said that they all used the Copse. They used to come into the village regularly. Sometimes they would walk and sometimes drive to the village and then walk – sometimes on the Copse and the land. It was a delight – the bluebells, other wildflowers, wildlife including woodpeckers and owls. There is a primrose bank along the Middleton Road side. There was a bank of wild orchids in the middle of

¹⁵ AB/A Tab 4 p.160

the field. There was a flatter area to the east. They moved into Woodland Drive and used the field and Copse.

They used the land much more (“almost on a daily basis”) after 2009, once they had moved into Woodland Drive.

Under xx, Mrs. Stevens said that before they moved into their current address they used the land possibly twice a week – she said they went into the Copse (cf. Q15 of her EQ – AB/B Tab 4 p.164 – in re-examination when asked whether the Questionnaire allowed her to distinguish periods, Mrs. Stevens said that she didn’t think so). However, with regard to the field she said that she really couldn’t remember whether twice, three times or four times – it was going back too far to remember. She said that she walked around the perimeter and across the field. When asked whether that was sticking to the established tracks, Mrs. Stevens said that she often used to but she also walked along Middleton Road side, where there was the bank of flowers. She also picked blackberries and sloes – the blackberries were along the edge of the Copse. In re-ex, Mrs. Stevens said that she picked sloes at the end of autumn for about a month (August-September) before there was a frost.

She was asked about her answers at Q. 14 of her EQ (AB/A Tab 4 p. 164) in comparison to her oral evidence. Mrs. Steven answered, unconvincingly in my view, that there is a limit to what you can say in small boxes.

Use of Application Land by others

She saw children on bikes (3 -4 times a week) – they were on the tracks but not all the time. People walked across the field. She saw children sledging, mostly from the top end of the field. There was the newspaper delivery across that would cut across the field.

Signs and Challenges

There had been nothing to prevent their use. There were no fences – she had never seen a fence on that field – there was something along Highfield Crescent side.

There have been signs in the last 2 seasons after the land was rough ploughed –then Private Property signs went up (OB/A Tab 11).

She was aware that Mr. Sheppard owned the land, as she was on the PC but she had never been told not to use it. She saw Mr. Sheppard in the Copse once and she asked him whether she could gather some sticks and Mr. Sheppard said ok if done from the school path.

Paul Hardiman¹⁶

Mr. Hardiman moved to Woodland Drive in 1999, having lived outside the village before that. His house is end-of-terrace and gives him a full view. Mr. Hardiman is a retired police officer who had worked shifts, which included doing 7 consecutive nights. His partner had 2 children (then 4 and 6 years old) he had 3 of his own children (DoB 1988, 1991, 1994) who came to visit him regularly – most weekends and in the week. That relationship ended in 2006 but he still lived there in 2010-2011 in an alternative address in the villa in Gunville Road. They did brownies, guides and scouts in the village. That was 2 evening a week and every other weekend. The Brownies met at the village hall; the Scouts and Guides met at the Methodist Hall, on the Common by the Lions Head public house. Mr. Hardiman is a Cub leader. To his knowledge, there had been no formal cub use of the land.

Use of Application Land

They entered the land from the steps in Woodland Drive (see photo 4 on p.74 of OB/A Tab 10).

¹⁶ AB/A Tab 4 p. 85

The children used the land as an adventure playground – it had rough terrain and was wild like Dartmoor. They liked getting dirty and rushing around on bikes. They played there with other friends from the village. It was their play area. They used it in the dark. The Copse was the children’s regular playground. They played hide and seek and run around and explore.

He used the entire field and on occasions ventured into the Copse to see the bluebells etc. He sometimes went with the children into the Copse and sometimes they were unattended.

Under xx, Mr. Hardiman appeared to accept (when he answered “You are making a point”) that when the children were older they were not using the land as a destination in itself.

Use of Application Land by others

Although it was less when raining, there were generally people on the land most days. There was use throughout the seasons but greater use in the summer and during lighter evenings.

Under xx, when it was suggested that the predominant use of the land was as a place of transit and that Middleton Road was “nasty”, Mr. Hardiman said that there was a mixture of transit and recreational use of the land but and that you wouldn’t choose to use Middleton Road to go to and from the village. He said his use was 50/50.

There was dog walking on the land most times of the day/evening and people chatting. There were school children going home; joggers (across the land); walkers. There were berries around the Copse – sloes and blackberries along the Middleton Road side – hazel saplings in Copse and blackberries grow everywhere.

It was put to Mr. Hardiman in xx, and he agreed, that for most of the period ending in 2011 there were well worn tracks across the field. He also agreed that it was a convenient crossing point. In re-ex, Mr. Hardiman said that there remained substantial groups he used the field

(and not just the tracks), which was (he clarified to me) quite regularly. He said it was used for chatting, a gathering place, dog walkers, children on their bikes, going into the woods.

Signs and Challenges

He saw the signs in 2011 (the Private property ones in OB/A tab 11) when he moved back. He noticed that the field had been ploughed. He saw no other signs before then. He saw the rubbish pile (of garden waste) in photo 4 of OA/A Tab 10 – that was always there, he said. However, he never saw the post on that waste.

Under xx, he said that he would go onto the land 4 times a week. He was taken to the post and sign that was there in Feb 2009 (OB/A Tab 10 p.73) – it was pointed out that this was very close to his home. He was also referred to Mr. Sheppard saying that the posts were torn out and re-erected on 2-3 occasions and after 2 weeks he gave up. Mr. Hardiman said that he saw no post. He said that some of journeys (across the land) were in darkness – when going to the Scouts. He was referred to the wording (on p.5 of OB/A) which said “No Public Right of Way” and in xx it was said this is what the “very small sign says. WCC put the sign up.” Mr. Hardiman was also referred in xx to what Penny Fooks said about the sign – people were puzzled, she said, when they saw the signs. It was suggested to him that he was bound to see it.

Jeanette Solomon¹⁷

Mrs. Solomon has lived in the area for 59 years, having gone to the local Primary School in the village. She used to live in Weston lane but moved away and then back in 2006 to her current address in Livery Road. However, in her EQ at Q.36 (AB/A Tab 4 p.157) she stated that she had carried on the activities on the land for 14 years.

¹⁷ AB/A Tab 4 p.151

Use of Application Land

She entered the land from the footpath next to Bluebell Wood. She cut into the field just before the railings to the Village Hall. She did a circular route around the wood – diagonally to NW corner and back onto the blue footpath.

In her EQ (at Q.15) Mrs. Solomon said that she walked her dog on the land at least once a day. Under xx, she said that it was at least twice a day but her dog died in 2011. It was suggested to Mrs. Solomon that she had embellished and exaggerated her evidence. She denied this saying that she was busy. She went through the EQ quietly.

After she moved back in 2006, she parked by Bluebell Wood in Highfield Crescent. The circuit took about 20-25 minutes unless she met someone and had time to talk to them. She did this 2-3 times a day. If she had plenty of time, she would walk from home but the majority of the time she drove. She did an evening walk too as she felt safe there.

Use of Application Land by Others

She met people but couldn't remember their names. A person with 3 dogs; a lady with 2 black Labradors; gentleman with Springer spaniels – Mr. Beagle. Children built wigwam in the Copse. She saw coppicing in the wood – 4 or 5 times from 2006. She saw children going through or playing in the wood. By playing, they were running around, especially when leaves had fallen as they would kick up the leaves.

Signs and Challenges

In about 2009, she asked the owner whether she could collect wood for her then new Jet Master Fire. He was happy, she said, for her to do so. She didn't ask permission to go in the wood, as people were going into the wood. She assumed that it was a right of way. There were no signs and she collected small bundles of wood (kindling not logs as she clarified

under xx) from near where she parked her car in Highfield Crescent. Under xx, she said that she did this perhaps once or twice a week.

Nothing stopped her use. There was only a fence by the Village Hall but that didn't affect her at all. The only sign was pick up dog mess but that was not on the land. She has seen the recent signs (see OB/A Tab 11), which are very visible at both ends, she believes. On being shown photo 23B (OB/A Tab 5), Mrs. Solomon said that she remembered seeing fencing but she imagined it had been like that for some time. She didn't recall seeing any repairs there. On being shown a picture of the northern post (OB/A Tab 10 p.74), she said that she did not remember seeing it when she walked. There was nothing on it. She didn't recall the other (southern) post (p.73) either – but she didn't walk that way – she walked where the white (snow) is around the edge of the Copse.

Under xx, she said that she didn't recall anyone telling her about what the 2009 signs said. She said that she wasn't sure whether she had seen the sign. She then said she might have seen it but there was nothing on it as far as she could tell. She said that was plus the fact that people were still walking I there. Mrs. Solomon went on to say that she can assume that it said perhaps that you should not be walking on there.

Tim Crossland¹⁸

Mr. Crossland made the Application on behalf of WOOD. He moved to Winterslow, to his current address in Middleton Road, with his wife and two daughters (who are now 17 and 13, having been born in 1997 and 2000) in August 2005. There some of his photos of his daughters with the application form. He was advised by the Open Spaces Society that designation would protect the land from development. The land can be seen from his property. The person they purchased it from told them that it was common land.

¹⁸ AB/A Tab 4 p. 52

Use of the Application Land

They have used the land from when they moved in. They walk the dog there twice a day. They enter the land on the FP at the corner of Middleton Road and the Causeway (Point E shown on photo 23E at OB/A Tab 5) and walk across the field to the Copse and the dog runs about there. They went both straight across the land and diagonally across. The dog ran around – they would throw balls. The children ran about. This was around the area to the East of the Copse. He would walk the dog either after work or during the lunch break. His wife walked the dog in the morning and he did later.

The children ran around to the east and north-east of the Copse. He taught his elder daughter to ride her bicycle alongside the Copse – that was when she was 9 years of age, in 2006. They sledged on the north-west part of the land. They picked blackberries along the northern footpath and north-east corner of the Copse.

At the weekend he would go to the village shop and pub as well as stopping and doing things on the land.

Use of the Application Land by others

Mr. Crossland referred to walking his 2 dogs on the land – the dogs ran about. He regularly saw people on the land from his house – it was, he added, normal to see people on the land – their use of the land varied – at the start and end of the school day people would walk through the land. There also people walking dogs, flying kites (see the photograph on p.63 of OB/A Tab4) and occasionally kicking a football around. In response to my question, Mr. Crossland said that he saw kite flying not frequently – 2 to 3 times a year. Under xx, Mr. Crossland was asked whether he was sure that the photo did not show snow.

Mr. Crossland said that the main activity on the land was people walking dogs – not just walking through the land but stopping and walking around. Under xx, he accepted that people walking through the land

would stick to the paths to avoid the grass. He said that when the grass was long (in June and July certainly) most people kept to the tracks. He said that the longer grass did not worry him. Mr. Crossland also said that he had said all along that the majority are traversing and are going to and from sites but I also said people are using it for recreational purposes. In re-ex, Mr. Crossland was asked how substantial the remaining recreational use on the land was. He replied that that regularly took place on the land rather than just walking through – it was primarily dog walkers like themselves and they would go into the longer grass.

Referring to the School Calendar photograph on p.54 of AB/A Tab 4), he said that the bluebells were fairly seasonal (Mr. Crossland was a Governor of the School at the time).

Signs and Challenges

He said that nobody stopped him using the land and nothing prevented access to it. It was ploughed on 4th April 2011 and people stopped using it then. He said the fence by Highfield Crescent was there when he moved to the village – he referred to a concrete post, metal, wires.

He didn't know when the more recent "Private Property – Please Keep Off" signs had appeared. He said that he understood those to mean that he should not go onto the land – no entry. The earlier 2009 signs meant, he said, that the owner does not want a footpath put onto his land.

He was referred to the plan of the tracks (p.30 of OB/A tab 8) under xx and asked which track he thinks the landowner was referring to in his 2009 sign. Mr. Crossland said he didn't know and one would have to ask the land owner but he would say the track between B & F or E (both through I). It was then suggested to him that on his approach the owner wanted to stop that but was happy for people to wander over his land. Reference was made to Penny Fooks saying that people were puzzled by the sign and he was asked whether he had been puzzled. Mr. Crossland said he didn't know why the sign was put up. When it was said that Mrs. Fooks said that the effect of the sign was that trespassers in the field were

unwelcome, Mr. Crossland disagreed with that interpretation. When it was put to him that he was saying that the landowner was permitting this, he replied that the owner could have put a fence up.

Elizabeth Page¹⁹

Mrs. Page has lived in Livery Road since 1986 and before that in Middleton Road from 1976.

Use of the Application Land

During the relevant period her main use was when her son William (who was born in 1989) was at his first 3 years of school starting in 1994 – he was minded by Julia House (who also gave evidence to the Inquiry as recorded above) from 1996 to 1997 for one day a week whilst she was working. She sat with Mrs. House in the field near the Copse while her son played in the wood for 3/4 hr while Mrs. House's daughter had a ballet class in the Village Hall. He would play with dens in the wood that others had made as he was too young then to actually make a den.

Under xx, Mrs. Page confirmed that it was only early years that she would meet up with Mrs. House on the land and pick her son. In re-ex, she said that she had been on the Village Hall Committee since 2007-2011. She said there were people on the land until it was ploughed to the same extent as before. She didn't think the use changed (from the early years). When xx on this answer Mrs. Page accepted that she would only have a view from the table tennis room of the Village Hall and also from the car park. She said that she did see people throwing balls for dogs.

Use of the Application Land by others

People would walk across and people would exercise their dogs. It was a good space in the middle of all of the houses. It was a good place to throw

¹⁹ AB/A Tab 4 p.114

things for dogs to run after rather than just go along with a dog on a lead. This would mainly take place near the Village Hall where the land was flatter. There were people walking through – there would be a stream coming back from school. They would come from Woodland Drive along the eastern side of the Copse or diagonally across the land into the corner by the Village Hall.

Signs and Challenges

Mrs. Page knew it was Mr. Sheppard's land but it was just used as common land. She never saw the owners on the land.

Sometimes the fence was breached by Highfield Crescent. She was not sure how long the fence had been there. It was there 5-10 years ago and in a better state but she couldn't say before that. There was fencing around the Village Hall too but not elsewhere.

Dr. Kay Putman²⁰

Dr. Putman moved to Winterslow in 1988. She lives near to the village shop on The Flood.

Use of the Application Land

She uses the land weekly (cf. Q.15 of her EQ – AB/A Tab 4 p. 136 “several times a week”) to go to the Church or collect prescriptions from the Doctors' Surgery. She uses the diagonal path to cross the land. She enters the land from the path shown in photo p.74 (OB/A Tab 10) but not using the steps.

She used the Copse when her son (DoB 1990) was small. When he was a little older, he would go into the Copse. There were dens there but he would make his own. Her son used the land from when he was 9 years old

²⁰ AB/A Tab 4 p.133

(1999) to 2012 when he was 12 years old perhaps but it was difficult to recall. Her use continued until the land was ploughed in 2011.

Once it was obvious that there were paths, she would take her son across the field as she is interested in flowers. What was of interest depended upon the time of the year? From May to June, most flowers were out. There were brambles in the autumn; on the hill towards the shop was where there were most. Low growing brambles were found by the diagonal footpath in the north-west part of the field. Some years it was full, others not. It was quite wet at the bottom of the field. Someone said they had seen an orchid, she had not.

They did blackberrying in the north-west corner on the northern boundary of the Copse in most years and she made jam in the autumn

Use of the Application Land by others

She met people on the land who she knew to be local. It was mostly dog walkers – including people playing with dogs. There were ball games and children cycling bikes. The area used would vary as people moved around.

Under xx, Dr. Putman said “certainly when snowing a lot of people would use it”. It was then put to her that there were 3 main snow events – Feb 2004; Jan/Feb 2009; and Jan 2010. Dr. Putman said that they would sometimes get a day of snow. It was further suggested in xx that snow was an exceptional event. Dr. Putman said that the first year there (1988) they had heavy snow. Then they had bad snow when her son was 3 in 1993/4; there was one snow event at Christmas 1997/8 when he was 7 (5 snow events).

Under xx, Dr Putman accepted that most people kept to the tracks when the grass was growing.

Signs and Challenges

She assumed that they could use the land as there was nothing to say that they could not. She did remember the pile of garden waste, which varied in height. She did not recall seeing the northern post shown on p.74 of OB/A Tab 10 even though near to her access point (point 2 on 23A of OB/A tab 5). When asked in-chief whether she was still using the field at that time (Feb 2009), Dr. Putman replied “probably”. Under xx, she said that she may have been away. With regard to the southern post, Dr. Putman said that she tended not to go out at that point as she went into the Village Hall along the side of the Copse. When asked in-chief about the wording of the 2009 signs (p.5 of OB/A) she said that would suggest the path had been closed. Under xx, she agreed that if she had seen the sign it would have suggested to her that trespassers were not welcome anywhere in the field. In re-ex, she said that she thought the copse was separate from the field.

Barry Clark²¹

Mr. Clark has lived with his 2 sons (DoB 3/11/94 & 21/04/97) in Middleton Road since February 2008. He has always had a dog apart from for a short period. When he visited before purchasing the property, he was aware of the field straight away, as his dogs need exercising everyday. Mr. Clark was the Applicant in January 2013 for the modification order to the Definitive Map and Statement.

Use of the Application Land

He uses the land at least once a week and sometimes everyday. He enters the land from the metalled footpath behind the Village Hall and goes in to the field into the Copse. He also walks across the field going in at point 1 (having parked at Highfield Crescent) photo 23A – OB/A Tab or at 23B (there being a gap there during the time he has used the land). Under xx,

²¹ AB/A Tab 4 p. 41

Mr. Clark said that he mainly enters the land by the Village Hall but would have used all the entry points 1-4 at one time or another.

He varies the route for the dog walk so the dog doesn't get bored. He goes all over the field with the part bordering Middleton Road that he used the most. Other uses included playing in the snow (see photo of 4 Feb 2009 at AB/A Tab 4 p. 51B) – but that was not often – in the north-western corner. Under xx he said that his walking of the dogs was not just as part of a trip to the shop - it was not incidental to that, although he might combine the two sometimes.

Mr. Clark said, under xx, that he would often be off the tracks on the field – to recover the training aid he used for the dogs or just walking across. He also said under xx that he did not remember the grass as being 2-3 ft long. He said he would seasonally see the grass longer but not to 2-3 ft. He further said that when the grass was dense he wouldn't trample on it but the dogs would. He said also that when it was wet he would wear boots or wellingtons.

Under xx, Mr. Clark was asked about his reference to keeping his dogs under control on the Application Land given his conviction for his dog, Kasha, not being under control and biting someone in Newquay in Cornwall (see OB/A at Tab 13 p.98B). As a result, the dog was put down. In re-ex he said that had never happened before and he was very conscious of safety as he had been bitten by an Alsatian when he was in his twenties. When it had become obvious what the problem was, the dog was put down. I make it clear that I have not considered this aspect relevant to my assessment of Mr. Clark's evidence.

Use of the Application Land by others

Mr. Clark said that he would almost always another person or people using the field and the Copse – typically with a dog or dogs and sometimes with children. He say Mrs. Kay, Mike Taylor. He would recognise other faces but not know their names.

He said that there was not much playing when people were crossing the land on the way to school but they were more relaxed on the way back home. The main route used for that was diagonally from the south-east corner to the north-west corner by Highfield Crescent.

He said that the use was predominantly for dog walking but there were some other activities – people playing with children in the field and the copse. He considered the copse and the field all one of the same area. There were several exits from the Copse – including the end nearest Highfield Crescent. The Copse had hazel; there were hide outs but he was not sure whether his own sons made any of these.

When I asked Mr. Clark about the split of use between the field and the copse, he said in more relaxed time there would be as many in the field as in the wood – you would often see youngsters in the field who might have been in the copse.

Signs and Challenges

No permission was ever given and no one ever approached him to say that he shouldn't be on the land. He didn't see any signs until those that said "Private Property" (see p.76 of OB/A Tab 11). When asked in-chief what he would have thought if he has seen the wording on the 2009 signs (OB/A p.5) he said that he would have understood it as the landowner not wanting it to be used as a route. He said that he thought it might relate to quad bikes given the noise they make – if it becomes an unrestricted byway it can be used for all sorts of mechanized vehicles which chew up the ground and cause noise problems. However, he accepted (in answer to my question) that there had been no problem with quad bikes.

Mr. Clark was taken in xx to the photos on pp.73 and 71 of OB/A Tabs 9 & 10. He confirmed that he never saw the posts which were it was said up for 2 weeks in Feb 2009. "X marked the spot" (as Mr. Webster put it) on the photo on p.71 where Mr. Clark would walk closest to the post at the southern end of the field but he said that it was not his view point and that it was difficult to prove a negative. He was also taken to the

photographs (on p.75 of OB/A Tab 10) of the waste with post 2 (the northern post) and said that his mental picture would have been green waste. It was further suggested to him that the posts were prominent and unusual but he had said that he was not looking at it like a policeman on patrol. In re-ex (referred to photo at p. 74 of OB/A Tab 10), he said that he entered the field via the steps at that point and photo 2 (p.73) shows the sign is not visible to all in the field.

4. CASE FOR THE OBJECTORS

4.1 As indicated above (in Section 2), two Objections and three representations regarding the Application were received by the RA:

- (1) Undated petition from residents of Highfield Crescent
- (2) Letter with enclosures from Mrs. P Sheppard dated 14 January 2013.
- (3) Letter with enclosures from Mr. R Sheppard dated 27 April 2013
- (4) Letter with enclosures from Mr. R Sheppard dated 30 April 2013
- (5) "Objector's response" from Mr. and Mrs. Sheppard dated 27 February 2013.²²

4.2 From the Objectors' Response on behalf of Mr. and Mrs. Sheppard²³, I summarise the key points of objection as follows:

Right of Way and not LSP

- (1) The Objector's "primary contention" is that the Application Land is being used as a short cut from one side of the village to the other and that such user will not be referable to use as a green.²⁴
- (2) The Application Land has been used extensively as a short cut (avoiding Middleton Road – which has no pavements) from one side of the village to the other. The locations of the Village Hall, the

²² AB B at Tab 14

²³ AB B at Tab 14 p.1.

²⁴ AB B at Tab 15 p.10 at (d).

Doctor's surgery, the two pubs (the Lord Nelson and the Lion's Head), two places of worship close to the Lion's Head and the village shop should in particular be noted.²⁵

- (3) However, in 1998 and 2008 statements, maps and statutory declarations were deposited under section 31(6) of the Highways Act 1980. The effect of this was to preclude within the periods mentioned in the section the existence of public rights of way over their land other than those currently noted in the Definitive Map and Statement ("DMS").
- (4) Further, on 20 January 2012 those applying to register the land as a TVG applied under section 53 of the Wildlife and Countryside Act 1981 to the County for an order modifying the DMS to record a number of new footpaths crossing the Application Land.
- (5) The village has other open spaces.
- (6) Brown's Copse at around 7 acres (2.83 hectares) is not physically part of the land, although it is included in the Application Land. The public's use of this wood is negligible.
- (7) On the advice of the Council in around February 2009, the Objectors erected two signs notifying that there was no public right of way across the land. The signs stated:

WILTSHIRE
COUNTY COUNCIL
NO PUBLIC
RIGHT OF WAY
THANK YOU

These signs could not fail to be seen by those walking across the Land. Unfortunately, the signs were forcibly removed within days and were found lying some distance away from their original locations. The posts were re-erected on 2 occasions.

- (8) On 4th April 2011 the Objectors ploughed the Application Land in order to make it more difficult for locals to trespass on the land – the ploughing was deliberately rough and only the most determined of walkers could use the field. The field was ploughed

²⁵ See Objectors' annotated aerial photograph at AB Tab 15 p.27.

again on 23 January 2012. On 16 April 2012, it was sown with linseed.

- (9) The Farm has been arable since the war and the last crop of wheat was in 1988 when the Application Land was placed in the set aside scheme. It was in that scheme until ploughed in 2011 and sown with linseed in 2012, as noted above.
- (10) The character of the land bears little or no resemblance to the ordinary perception of what one might consider to be a typical TVG and local inhabitants would be under no illusion of this.
- (11) The RA should consider the correspondence including the Residents' Petition which refers to the Land being used by certain people as a dumping ground for their rubbish, dog walking area and as a short cut even though the area is adequately served by footpaths.
- (12) At the Parish Council meeting on 4 April 2013 5 individuals (including 2 Parish Councillors) said that they saw the "no right of way" signs in place in 2009 and the comment by Councillor Devine that because of the signage "his officers" would not be supporting the Application.
- (13) With regard to the statutory criteria, the Objectors contend:
 - (i) There has been no sufficient user by local residents. It would not have brought the existence of the claimed right to the attention of the landowner – a number of villagers have even written to the RA challenging the user relied upon by the Applicant.
 - (ii) In an event, the overwhelming majority of the users were purportedly only exercising public rights of way on tracks crossing the Application Land as shown on the aerial photographs and the application to modify the DMS.

User not been "as of right"

- (14) Use following access obtained through the fencing on the boundary with Highfield Crescent is non-qualifying as it is user by force. It is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for causing the damage.
- (15) The user by force exclusion also applies where the use has been made contentious by the landowner erecting prohibitory signs or notices. This is the case with the signs erected in 2009, referred to above. Any notices must be sufficient to make clear that any use of the land was not consented to and would be regarded as a trespass – see *Taylor v Betterment Properties (Weymouth) Ltd* [2012] EWCA Civ 250. The facts are readily distinguishable from *R (Oxfordshire & Buckinghamshire Mental Health Foundation Trust and Oxford Radcliffe Hospitals NHS Trusts) v Oxfordshire County Council and others* [2010] EWHC 530 (EWHC) (the Warneford Meadows case) In that case there had been a finding that the landowner had no objection to general public recreational access to that land as a whole – his objection was to the creation of public rights of way. The Objectors refer in particular to paragraphs [17]-[57] of the Judgment in that case.
- (16) On no sensible analysis of the facts, could the signs be said to be directed solely to the paths nearby and there is no reason why they could not be taken objectively to refer to recreational use of the whole of the Application Land, where the whole of the Land is affected by the section 31(6) deposits anyway. The notices only make sense if they refer to the Land as a whole and the fact that they were damaged by, it must be assumed, certain local inhabitants is very arguably indicative of the fact that such persons considered such signs to relate to more than just rights of way on the paths. The land owners ought to have appreciated from the

notices that the landowners were objecting to and contesting their whole use of the Application Land.

- (17) The Objectors reserve the right to argue that any objection on their part to a lesser burden on the land must have by implication and without more included objection to the greater burden notwithstanding what was said about this at [55] in the *Warneford Meadows* case.
- (18) The Objectors also argue that the claimed user gave rise to an implied licence.

4.3 The evidence provide by the Objectors to the Inquiry (found in Objectors' Bundle A – OB/A) included:

- (1) Plan showing existing public rights of way, informal tracks, housing policy area in relation to the Application Land: OB/A Tab 3. The wider rights of way in the Parish are shown on the plan at OB/A Tab 4.
- (2) Aerial and ground photographs of the Application Land: OB-A Tab 5 pp.21-23. Photograph showing local amenities: OB/A Tab6 p.24.
- (3) Section 31(6) Declarations: OB/A Tab7
- (4) Application by Barry Clark for a Modification Order under section 53 of the Wildlife and Countryside Act 1981
- (5) Aerial photograph showing the position of the two posts and the 4 signs erected by the Objectors: OB/A Tab 9 p.71
- (6) Photographs of the posts: OB/A Tab10 pp.73-75.
- (7) Photographs of the 4 signs: OB/A Tab 11 pp.76-80
- (8) Minutes of meetings of Winterslow PC: OB/A Tab 12
- (9) Statements of Objectors' witnesses attending the Inquiry: OB/A Tab 13
- (10) Statements and letters from witnesses not attending the Inquiry: OB/A Tab 14.

4.4 The Objector called the following witnesses:

John Fry
Rosemary Hazard
Steven Dixon
Sally Loader
Clive Broadly
Michael Yates
Janet Fry
Angela Sillence
David Read
Richard Sheppard
Patricia Sheppard

I now summarise the main points from the evidence of these witnesses.
As for the Applicant's witnesses, I use the following abbreviations:

EQ: Evidence Questionnaire
In-chief: Evidence given in-chief
XX: Cross-examination by the opposing advocate
Re-ex: Re-examination by the witness' advocate

John Fry²⁶

Mr. Fry of Nestyn, Middleton is a retired builder and funeral director who was borne in West Winterslow. He owned the Lion's Head Public from 1991-2007 (but only lived there to 1994). As a teenager, he lived with his parents at his current address. He said there was a butcher's shop on the corner of Middleton Road and the Causeway until about 1995. Under xx, it was suggested to him that none of the addresses that he had lived at (having been in the village all of his life) overlooked the Application Land. Mr. Fry agreed that was so during the relevant period. Mr. Fry stated that he was against the taking of people's land.

Knowledge of the Application Land

²⁶ OB/A Tab 13 p.100/101

He was very familiar with the field, he said. He was involved in development. He moved the post office 2004/5 from Middleton Road (near to Stern Close). He did all the maintenance for the Parish Council and the Church.

Mr. Fry said that there was always a fence across the field at Highfield Crescent. The Village hall was completed in 1991. Sometimes he would walk across the field – under xx, he accepted that although he knew it was private land he saw others doing it. He said that use (by him) was not very frequent. He was aware that he was trespassing as was everyone else in the village. From Middleton Road he would walk up to Woodlands Drive. Referring to the aerial photograph at OB/A Tab 5 p.23, Mr. Fry said that the land was wet in the winter; there was a watercourse that went straight through the middle to the Village Hall – there was often a watercourse on the other routes which was like a rive and unable to walk them. So, he would normally use the diagonal route, as that was the driest. Now and again he would take his dog to the land.

Under xx, he said that the land had always been known as private property. He didn't particularly find using it was a short cut and it was easier in the dark to use the path. He said that his most common route was along Middleton Road to the pub in the car. It was suggested to him that the view from Middleton Road was not good, given the thick hedgerow. He said that he also walked down the school path behind (to the west of) the copse. He said he had glimpses of the field but he didn't pay particular attention. He said there might have been one or two people on the land. When asked whether it could have been more, Mr. Fry replied "No". He did see children playing in copse but not on the field. There were ropes up in the trees in the Copse for years but no one ever trusted them – they have not been used for years. He said at least 2 were put up. He said that he walked alongside the copse but didn't go in unless it was dry.

With regard to the Village Hall which he locked up that closes at 10 pm at the latest, when there is no dance. It often closes earlier – sometimes at 5 or 6pm (on 2 nights) or 8pm (on 2 nights).

Under xx, he clarified that he walked the dog more now as he had more time. Up until 2011, he did not do so very often – probably only once a week. He would only go onto the field in 1 in 20 walks, as he knew he was trespassing and it was wet.

Mr. Fry referred (in-chief) to a 1990s' meeting, saying that he was one of the few that stood up for Mr. Sheppard when there was a planning application for 25 houses in the bottom right hand corner of the field by the telephone box. Mr. Fry said that he spoke up not for the housing but it was common knowledge that this is a development village. That was decided in the 1950s. Highfield Crescent Council Housing was built in the 1950s. Mr. Fry again emphasized that everyone knew that it was private property. He said that 2/3 of the village trade was in his pub for drink and food and everyone knew.

When the land was set aside, Mr. Fry said, the grass was wispy but grew to about 2-3ft high. It was not for hay/silage. He said the paths were always there, although he was not sure when photo on p. 71 (OB/A Tab 9) was taken. – he was told that it was about 2007. He said that he was building a garage at that time to the west of the copse and he had to remove footings. He asked Mr. Sheppard if he could he go across his field with his dumper truck to the Village Hall. So, he went into Yarnley Road then into Highfield Close, through the gap in the fence (see photo 23B in OB/A Ta5) – down the field along the front of the copse then through the gap behind the Village Hall.

The wood was coppiced regularly. Different parts were done but there was something (in terms of coppicing) going on in most years. It was complete about every 10 years.

Use of the Application Land by others

Before 2007-2011 it was basically a dog toilet used by very few people. Some people used it all the time; it was used regularly by very few people. Others would walk across it with their dogs.

Under xx, Mr. Fry accepted that people walked across the land on the paths. He said that all he was disputing was that they knew that they were trespassing.

Mr. Fry said, under xx, that if the dogs got to the fields they used it as a toilet and most did it in the Village Hall. It was suggested to him that people were using the land for dog walking and most people would park in the Village Hall car park to do so. Mr. Fry replied "Yes – to let them go to the toilet." When it was put to him that there was nothing wrong with that, Mr. Fry said that they were driving to the Village Hall, letting the dog out and back into the car and off they would go.

Mr. Fry was asked about the dog bin on the edge of the field by the Village Hall. He said that had been pulled out of concrete. It was put there because of dog mess up the path.

Mr. Fry agreed, under xx, that he had seen children playing on the fields. He said some had probably been on the bikes. He said that he had seen them a couple of times over 20 years. It was put to him that this was despite only walking his dog on the field 1 in 20 times (not going very often) and that it was reasonable to assume that at other times there would have been bikes.

It was put to Mr. Fry that even though the land was private it was still used by people knowing that Mr. Sheppard tolerated it. Mr. Fry said that Mr. Sheppard was too nice a person and he (Mr. Fry) would say to him that he should get some pigs to stop people using the land. He was too nice a person to approach people to stop them.

Mr. Fry said that was only one informal path initially, in 1991.

Signs and Fences

Mr. Fry said that around the area there were plenty of signs all over. He was referred to the photographs showing the 2009 posts at pp. 71-74 of OB/A Tabs 10 & 11. He said that he saw the posts. When asked in-chief whether he looked at the sign he replied "Not particularly. I didn't need

to. It was obvious what it said – Keep Out or Private Property. I knew that.” He said further that the posts were prominent but the Notice was not. He didn’t bother to read it or, if he did, he couldn’t remember what it said. He said that you couldn’t miss the post. Mr. Fry also said that these were not the first signs and that there were always signs. They were always torn up, he said, after a short time. However, when referred to the picture of the 2009 post in the waste heap Mr. Fry said that he did not know anything about that but could remember seeing it in the rubbish.

He was asked about the larger more recent “Private Property” signs (see p.76 of OB/A Tab 11) and said that there had been concern about the wording on the bottom, which referred to chemicals having been applied to the land, so that part was obliterated.

He accepted that there were no fences save for the one by Highlands Crescent.

Under xx, it was suggested that he had said that he had seen both posts even though he only went on the land rarely and the signs were only there weeks. When asked about what he thought the 2009 signs said, he confirmed that he thought they said Keep Out/Private Property. He said that he was sure that he saw the posts and that he also saw the signs in the rubbish.

When asked in xx about the other signs that he had seen, Mr. Fry said that was after 1991. It was put to Mr. Fry that Mr. and Mrs. Sheppard do not say they put up any signs other than the 2009 ones and the later Private Property signs. Mr. Fry reiterated that there had been several signs over the years. He said that there had always been a lot of talk about development on this land. He said there were White signs saying Private Keep Out in the woods and on the land. He said that a man who had 3 Dulux dogs and who had lived next to the track near the steps. He said the signs were pulled up within a matter of days – he didn’t know how long they were up. Kids came into the pub, Mr. Fry said, and laughed about it. It was then put to Mr. Fr that the recent Private Property signs were still there and he replied that they were certainly a lot better than before.

Rosemary Hazard²⁷

Mrs. Hazard lives at Highfield Crescent – 4 houses up from the location of OB/A Tab 5 p.108. She worked part-time from 2000 as a caretaker for the PC.

Knowledge of the Application Land

With regard to the fencing near her home, there has always been fencing – sometimes it was filled and sometimes broken. The rest of the fence was sometimes broken but repaired by residents. Mrs. Hazard said that she walked through the gap in the fence in 1987 but she couldn't be sure whether wire up or down. She couldn't remember from when the fence was permanently open but it was a long time ago, say 10 years. She said that in 2004 there probably was a fence and before then it had been in place – probably after when Mr. Fry went through with his dumper truck. There is a fence now but you can't walk through because of brambles. She said that it was probably when the field was set aside and people went through. She said that she imagined that people forced their way through. She said it was in tact in 1988.

Under xx, Mrs. Hazard said she couldn't remember whether there were two strands in 1987 when she climbed through. She reiterated that she thought the gap was open from when the land was set aside as people were coming and going in and out, including the walking bus.

Mrs. Hazard said that she used the land to walk her two dogs after 1991. She entered through the gap, when she worked at the Central Stores, and walked straight across the land. Under xx, she said that she worked there for 36 years (from 9-12, 1-5 for 4 days a week; she looked after her grandson on Fridays). She walked down the side of the copse and back up on the tarmac path (to the west of the copse). When the field went back into cultivation, she went down the school path and into another scrubby

²⁷ OB/A Tab 14 p.108

field. She never saw anyone cutting the fence (and was working until 2008). It was put to Mrs. Hazard in xx that the fencing was to fence off the Estate and not the field. Under xx also, Mrs. Hazard said that she wouldn't go through the Copse – she would however go in from the school path onto the land and other people went into the wood too. She said that some come from other areas to see the blue bells. She said that you get a nice view from the path; she said at the top end was beech trees – and oak, holly, ash and some hazel. She said that it was very pretty and people go in and enjoy the clearings. There was other wildlife, she agreed, such as celandines, anemones and primroses and also wild raspberries and crab apples. She said there always rope in the woods but she said not a swing – she said it is not very often that it has sticks at the end. She said that more often than not the “bigger kids” (teenagers) throw the rope back up into the tree. Teenagers and younger children would use the swings. She said that she didn't see people picking blackberries but they obviously would – it is clear that people are picking these (in dog pooh corner).

She was referred in her xx to her statement where she states that the land has not been used for sports and pastimes. She accepted that people walk dogs; she never saw any kite flying or blackberry picking, as said above. It was not a very big area – corner piece. She said that she only sees children playing in the field on her day off. She added that right opposite the School is a playground with a roundabout, swings – hundreds use that and fly kites. You wouldn't do that in a field when you don't know what was in there, she said. It was then put to Mrs. Hazard that she would have been at work.

Under xx, Mrs. Hazard said that she walked the dog in the morning. She said that she was using it on a daily basis until 2011. She would have used it on occasions (but not often) to go to the P.O. and the Doctor's Surgery.

Use of the Application Land

Mrs. Hazard was referred to the tracks on photo 23 (OB/A Tab 5 p.23) and was asked whether that was the way people walked. She answered "that is where people came in".

Under xx, she confirmed that in one year local authority contractors came in from the bottom and did a wide, smooth diagonal path and up to Woodland Drive and Highland Crescent and did a swathe on the scrubby fields off the school path.

She agreed that there were lots of dog walkers. She said that they parked at the Village Hall and the dogs went off through gate into the field and always did "a quick job". There were 4 on a daily basis. They came specially to the land with their dogs. She said the grass could be long but others went through it, although she didn't because of the burrs and you didn't know what you were walking through. She also referred to the dip in the land along Middleton road – she it was quite a dip that got very wet. She said in the morning there were more people on the land as they would walk through the field on the way to school. Not everyone was with children so not all people were going to school. She accepted that some were just walking a dog on the field. In re-ex, Mrs. Hazard said people walking their dogs were mainly going up the middle of the field and possibly through the Crescent as nearest to the school – people were mainly using the tracks.

When asked whether there were lots of paths, she said that she didn't recall as many as shown the plan at AB/A Tab 8 p.40A.

Signs

Mrs. Hazard recalled the post 1 at the bottom of the field (See p.73 bottom photo) but not the other post. She said that she didn't read the sign when it was in the ground but did when it was thrown into the bracken. When she was asked what she understood the sign to mean, Mrs. Hazard said "the same as everybody else" - no trespassers on this land. She knew that the Sheppards' own the land – friends –she has known him since they

were teenagers. She was asked whether she had seen the top post but she said that she didn't see it. She was also asked why she didn't read the wording on the other post whilst it was standing – she said that it was out of her way. It was suggested to her that it might be because of the small lettering. In re-ex, Mrs. Hazard said that that she thought that she was likely to see the post at the top end of the field, as it was a quite tall round post.

Under xx Mrs. hazard said that she did recall the post in the field for 3 days – it was put up and then disappeared. She could remember how long the post was up for the second time it is still where it is lying now. She said that she thought that the signs related to the whole area. The village, she said, is very likely to love that wood and I had been Richard I would have fenced it off. It was then put to her that he didn't fence it off and tolerated the use of it. Mrs. Hazard responded that he was a good man, a Christian and a gentleman. Then it was put to her that he did tolerate people playing on the ropes in the woods and Mrs. Hazard said "yes".

Steven Dixon²⁸

Mr. Dixon has lived in Winterslow all of his life, since 1962. He now lives in Livery Road and has done since 1991. He had been told by Mr. Sheppard that he had put signs up before (before the recent "Private Property" signs) but that they didn't last long.

Knowledge of the Application Land

Mr. Dixon can't see the Application Land from his property. He passes the land most days. He had worked just past the Old Post Office a couple of times – 4 to 5 years ago – in say 2010. He had two jobs lasting one week in total. He parked in his drive. He could see into the field (see photo 23H in OB/A Tab 5).

²⁸ OB/A Tab 13 p.103

He had topped Mr. Sheppard's field at their house every now and then and put a fence back up in the summer. He said that he would do it as Mr. Sheppard is such an honest and straight man.

Use of the Application Land

He only ever sees dog walkers on the field – they walk all over the place like the tracks that they had.

Sally Loader²⁹

Mrs. Loader has lived at her current address in Highfield Crescent since 1989. Her house is directly opposite Mr. Crossland (on Middleton Road on the other side of the field), half-way between points 1 and 2 (photo on p.23A of OB/A Tab 5). She has been in the village since 1965. Her mother had lived in the village since then too. She walked to hers on the diagonal path from the Crescent – she wouldn't have gone through the fence.

Knowledge of the Application Land

She has a view from her kitchen window out onto the field and also views from front bedroom, landing and the front door. She was aware that it was agricultural land owned by Mr. Sheppard. Under xx, she acknowledged the conifer tree in front of her kitchen window and accepted that it was green all year round. She said that she can see either side of it and that it covers the middle third of the window. She said that she doesn't think that it was there 20 years ago but has been there for the last 10 years possibly. Under xx, also she said that she couldn't see what was happening in the Copse from her home.

The field had been in arable use when she lived in Hibernus in Middleton Road, which is close directly to what is now Woodland Drive, but was then just scrubland. She does not own a dog. Once a year she has walked her son's unsocial dogs as there is a fast route away. She was aware of

²⁹ OB/A Tab 14 p.120

Mandy who had been referred to. She parked in the Village Hall and waked across the middle of the field at lunchtimes as she only had a lunch hour so it was not a long drawn out walk. She has also used the land as a shortcut going from the gap at 23B by the grit bin down to the gateway just below the telephone box in the other corner.

In the summer, the grass grew to at least 2-3ft. high.

Since 4 August 2014, she has worked at the Central Store in the village. In Feb 2009, she was working in Salisbury in a residential home for people with cerebral palsy. She left home at 6.30 am. One day she would leave at 2pm and get back at 10pm. She did alternate weekends. August 2008-Feb 2009, she was home. From March 1996 to August 2008 she had worked for Friends Provident in Salisbury; 7am to 3pm and home by 3.30pm. She had bank holidays and every weekend off. Before 1996 she worked for Cadburys for approximately 2 years and would leave home at 8.30am and be back home by 5pm generally for 4 days a week.

Use of the Application Land

She said her children were 10 and 8 years old when they moved into Highfield Crescent and would have been more likely to have been in the recreation ground, which now has a skateboard track. She said, in answer to my question, that in 1989/91 the recreation ground in the village had a roundabout and not much else and no skateboard track then but was flat and grassed and more suitable for cycling.

She was asked, under xx, about her statement that the land was never used for sports and pastimes. Mrs. Loader said that she didn't know what is included in lawful sports and pastimes. She said that the most consistent use of the land is for dog walking because you don't have to pick up the mess. She walked her son's dogs but she wouldn't come across small children but did frequently see other dogs. People both with dogs on and off the lead would stick to the paths, she said. She did see people throwing toys (fairly in frequently) for the dogs and by and large the dogs would retrieve those objects.

She said that it is the bottom by the doctor's surgery and Village Hall where the children played – it was flatter there and easier to use.

She said that she used the copse fairly infrequently but she would have looked at the bluebells. She had seen a rope swing in the wood – near the bottom end, which is the flattest part but she had not seen children playing in the copse. More recently she had walked with her grandchildren in the copse but had not seen anyone else.

There were blackberries along the northern edge of the copse but not on the eastern side and she was not aware of sloes on the field.

Signs and Fencing

She didn't recall the state of the fencing at 23B in 1989. She started crossing the field probably from 1989 onwards. She said that she wouldn't have gone through the fence as she had a perfectly good footpath. What broke it was the number of people going under it.

There have been signs. They were never of any importance to her as she didn't think that she had any right to be in that field. She didn't remember reading post 1 on p.73 (OB/A Tab 10) and she suspects that she would not have done so. She would probably have read the post (photo 4) at northern end off Woodland Drive but it wouldn't have given her any surprises. She said that she assumed that it was saying something to the effect not a right of way. There is a difference, Mrs. Loader said, between no RoW and you will be prosecuted if trespassing. I suppose, she added, that it was just an acknowledgement that not a RoW and the public not supposed to be on the land. Under xx, she accepted that there is a difference between a sign that said no RoW and one that said no trespassing and since the latest set of signs she had not set a foot on the land. She would not have claimed a RoW, as she has always known the land as agricultural land belonging to a farmer. She accepted that the 2009 signs wouldn't have meant to her that the owner would not tolerate dog walking as had been tolerated before; and she didn't think the signs meant that people couldn't go into the copse and look at the bluebells. So

she and others continued to use the land as before until the Red Signs (2012 – Private Property) went up and by and large the usage has stopped.

Clive Broadley³⁰

Mr. Broadley moved to the village in 1976 and lived there ever since, having originally lived just off The Flood in Middleton Road. His current address is in Youngs Paddock and he can't see the land from there. He said in his written statement that he had only heard the Application Land referred to as Richard Sheppard's Field and the woodland area as Brown's Copse or the Bluebell Wood or just the Copse.

Knowledge of the Application Land

He walked his dog in the field but, he said earlier in his evidence, not frequently (but see below). He had crossed the land on route to the shop or going to the recreation ground to play.

He said that they took their children to watch the land being harvested. He uses the land roughly monthly but he would have sight of the bottom end of the land because of the route he took. He also said that he used the land reasonably frequently primarily as a short cut. He used it as a shortcut going between the two posts put up in 2009.

Use of the Application Land

When asked under xx whether people used the land straight away after it was set aside, Mr. Broadly said that he could not remember. He did see others walking their dogs on the land when he went there. He walked his dog in the evenings and occasionally at the weekend but not normally. He did see people throwing balls and toys etc for their dogs. He said that there was not necessarily someone there evening times walking their

³⁰ OB/A Tab 13 p.105

dogs. He didn't see those that park in the Village Hall and walk there dogs but they do now.

He would see children sometimes crossing the land to the wood but not playing football. He would see them occasionally (but not in an organised sense) fooling around in the field but they do that in many other fields in the village. When asked how frequent children tobogganing was, he said that he didn't know but he would have thought that was pretty rare. He said that it was a farming community.

He has only seen one rope in the Copse and that was periodically thrown up into the trees. At one point Mr. Broadley said that the rope swings were there more recently – in the last couple of years. Mr. Broadley said that he had seen them on one particular beech tree off the path. He said that there were now more pathways. He had seen dens in the wood but never seen children playing in them.

He said that it was different now as it used to be extensively coppiced. He said (under xx) that the coppicing of the wood had stopped in the last 4 years or maybe slightly earlier than that. In re-ex, he said that the coppicing opened up the woods.

He also said that the use has been broadly the same over the 20 years and that was pretty much confined to dog walking.

Signs and Fences

Mr. Broadley said that Mr. Sheppard maintained (cut) the hedgerows and boundaries – the fence down the side of Middleton Road was badly dilapidated. He didn't personally see Mr. Sheppard putting up fencing. There are fence posts in Woodland Drive along the footpath. The fence had pretty much fallen into disrepair by 1988 – there were remnants – he never saw repairs from 1988 onwards, not that he could recall.

He saw the two 2009 posts when he was short-cutting across the land (as referred to above). He remembers the words “No Public Right of Way”. When put to him in xx, he said that he personally does not distinguish

between trespass and No PRoW. He said, when asked again under xx, that after he saw those signs he did not continue to use the land but others did, he said. He was asked whether he had heard Mrs. Loader's evidence that people continued to use the land and her interpretation, Mr. Broadley said that was not his interpretation of the signs. He accepted that the 2012 Red signs were "certainly clearer – larger" – it was put to him that there were 4 such signs with larger, longer wording. Mr. Broadley said that the "No PROW" signs were clear too. When asked how long the posts were in situ, he said that he couldn't remember but he remembered them disappearing.

Mr. Broadley said that his own interpretation was that the 2009 signs applied to the field

Mr. Broadley accepted that it was toleration by the owner of people using the land uninvited.

Michael Yates³¹

Mr. Yates was born in the village in 1947 and used to live in the Red Lion Public House. He currently resides with his wife in Highfield Crescent. Most of the time, he said, he was at work. When it was put to Mr. Yates, in xx, that the statement was his and his wife's, Mr. Yates said that was so and he told his wife what to put down – she would go to Woodland Drive to cut a lady's hair.

Knowledge of the Application Land

He could see about $\frac{3}{4}$ of the field from his home in Highfield Crescent. There were no trees in his view.

The Council cut the grass in Highfield Crescent 6-7 times a year.

His parents live nearby and he has walked over the land maybe 6 times. He said that he normally drives because he is lazy.

³¹ OB/A Tab 13 p. 102

When pressed on how long this went on for, Mr. Yates said he couldn't remember walking there that many times. It was put to Mr. Yates that he said that he was not there for more than a couple of minutes. He explained that he had worked (until made redundant in 2008/9) at Porton Down on its maintenance and he left the house at 6.30 am and home by 16.45 Monday to Friday. He didn't work very often on Saturdays other than for about an hour – so basically he saw the land at the weekend. He said that there has always been one main path through the Copse. He has seen rope swings in the Copse but no one was playing on them at the time. The kids have got to go somewhere in the summer holidays.

Use of the Application Land

In his letter, he stated that during the 20 years 1991-2011 the land has never been used for organized activities or pastimes. He also said in that letter that the land got used as a short cut for many people, when it was set aside. Most people that walked across the field were not born and bred in the village. Also most were dog walkers too lazy to pick up their dog mess.

He saw no one playing – no children. He saw people going straight down fields on bikes – but couldn't see the bottom. He has seen kids coming to and from the Copse with mattresses for their dens. He has been there several times. When Mr. Sheppard's father was about, he would just clip them on the ear; that is what it was like then, Mr. Yates added.

People walked dogs on there too. There were loads of dog walkers, Mr. Yates said (under xx – and clarified in answer to my question that was at weekends), but he never saw anyone throwing objects for them. Some people used to park in the Crescent to walk their dogs, notwithstanding the signs. He caught a couple of lads during the summer holidays with a bonfire, which he reported to the Council. He had noticed recently dog walking early in the morning (7am) and in the evening. There used to be a chain link fence, which was cut. Mr. Yates said that he could hear children

in the Copse but not on the field. They mainly play in the Copse in the summer time (when the mattresses were taken there) and he had never seen much outside that time. In the winter it would be wet and muddy.

He had seen blackberrying in the corner (the right hand side from where he lives). There are good years and bad years for this.

Signs and Fences

Mr. Yates said that the field had a fence all the way along near Highfield Crescent in 1988 – used to be a fence on the north side of Daddy King’s Path. After then, it was cut by someone, but he didn’t know whom. Under xx, it was suggested to Mr. Yates that the fence at the top of Highfield Crescent, which was put in by the Council, was to stop people walking into the Crescent. He replied that it was also to stop people walking onto the field. It was then put to him that it was about keeping the Crescent tidy rather than keeping people off the field and he agreed. He agreed that he took pride in his garden.

The District Council used to come across the Common. They gang mowed the land about a year or a year and a half after the field was set aside. He wasn’t sure how soon this happened after the land was set aside bit it may have been 1 year or 1 year and a bit. The gap in the fence was restored but within a few weeks it was torn down. They put a wooden post in. Looking at photo 23B he said that he had repaired it once himself with wire. He said that he had also repaired the fence outside his own property (which is about 100 yards from that gap) several times and still did.

He said that he had seen a sign by Woodland Drive (photo 4 on p.74 at OB/A Tab 10) but couldn’t remember one by the Village Hall. He said that it was not there for long and he didn’t read it. He said it doesn’t look as though there is anything on that post. When shown the photographs on p.75 of OB/A, he said that it looks like the same post. He had heard about what the signs say from other people. Several people talked to him about the posts. When asked (in-chief) what was common knowledge about the

posts, Mr. Yates said that he had no idea – it was just private land – people already knew that it was private land, he replied. Mr. Yates said, under xx, he took no notice of the signs on the posts, he knew that it was private property. It was only when the bigger ones went up that he took notice. When it was suggested to him that the Sheppards were allowing people to use the land (they were tolerating the use), Mr. Yates said “Yes, they are good people. I don’t know who took that decision.” He said that he rarely saw them, just now and again walking down the back path – “I couldn’t tell what he was thinking”, Mr. Yates added.

Under xx he said that there were little bits of rubbish when the post was there. He said that he still sees the post, although there were bits of waste – bottles etc. When it was suggested that perhaps his recollection was not that strong, Mr. Yates said that he can only remember seeing it maybe once. He reiterated that he did not see the post at the bottom of the field – he said the bottom ½ of the field he couldn’t – he couldn’t see the Village Hall.

He said that he knew the land belonged to Richard (Sheppard) and, if he had told him to stay away, Mr. Yates would have done so – “as simple as that”. When asked whether his impression was that they were tolerating the use, Mr. Yates said that people were still walking across the land. He never used the land once the 2012 Red Lettered signs went up – before that he said that he used the land about ½ dozen times a year.

Janet Fry³²

Janet Fry lives were her husband, who also gave evidence as recorded above, in Middleton Road. She has lived in Winterslow continuously since 1978. It should be noted that Mrs. Fry commented on the new photographs from the Applicant (63B-63F), which were withdrawn and are not now relied upon, so I do not record that part of her evidence. She

³² OB/A Tab 14 p.118

looked after the Village Hall for 2 years from 2007-09/10 and spent a lot of time there.

Knowledge of the Application Land

She is a dog owner and has walked around the land for the last 50 years. As she also says in her statement, since the land was set aside in about 1991 people have walked across it as trespassers and she has not witnessed any games or organised activities on the land.

She visited her parents in Highfield Crescent every day. She parked there (to take them out) on a fortnightly basis. She also drove for LINK, so went past that entrance regularly.

Use of the Application Land

She had never seen people throw toys for the dogs on the land. She said that she had walked across the land twice or three times but not with the dog. She went to open the Village Hall at 7.45 am and saw people letting their dogs out in the morning. They were only on the land for 10 minutes. 2 of those were regular in the main. Mrs. Fry said that you would see people in Highfield Crescent parking – only one car or person walked her dog religiously there.

She accepted that people were doing it on a daily basis and that Mr. Sheppard tolerated this but he was not very happy about it, she said, as they had had conversations about it.

She said that she had been into the Copse – she looked to see where the swings were and she saw one blue rope wrapped around a beech tree. She said that she hadn't seen swings in the past. She said that, if she walked through the Copse, she had gone through the main path. With the grandchildren, she went on the School path. She has not seen children playing in the Copse but she had heard them. She has seen the bluebells (out for 6 weeks). There was a different way in those days. When asked about dens in the wood, Mrs. Fry said that she had seen lots of rubbish – corrugated metal, pieces of wood. She didn't recall dens as Mr. Yates had

referred to. She would go into the Copse about every 10 days and walked the area probably 3 times a week.

She had seen sloe picking on the edge of Highfield Crescent over towards the north side of the Copse – they were white in the Spring. You could see this from the Highfield houses.

Under xx, Mrs. Fry said that people would have used the School path to go to school and, when it was put to her that lots of people had described going back and forth along the diagonal path, Mrs. Fry said that she would not describe it as lots. She said that no body would see anyone cross that field on a daily basis. She said 20 or 30 dog walkers a day (as was put to her in xx) was too high.

Signs and Fences

She said that she would not have come across the post at the Village Hall end. She knew the top area very well. Her parents lived at 8 Highlands Crescent until her father died in 1994. When she had lived in the Causeway she would use Daddy King's Path. When shown photo 23B (showing the gap in the fence) she said that she knew exactly where that is, as she parked there if she collected her parents. She said that there was always a fence but it was cut through, although she never waked through there herself. She said (in chief) that she recalled it when it was closed up not long after seeing it open. She remembers it being cut again. Mrs. Fry said that it hade been left open for quite some time since then. Under xx, Mrs. Fry said that she couldn't remember from when it was open but that it was closed when the land was in cultivation. She said that she didn't think that people realised that it was set aside (which happened in 1988) for some years. From 1990, it was put to Mrs. Fry in xx, use of the land by people walking started. She said that she couldn't recall walking until later. Also under xx, she said that the Council mended the fence several times – she said that later she notice green wire but she couldn't say when that was – it was a long time ago to remember.

Under xx, Mrs. Fry said that she had seen other signs put up before the posts and bigger than the posts but not as big as the 2012 Private Property signs in red letters. When they were removed, she said that she did inform Mr. Sheppard. Everyone knew that it was private land and it was morally wrong, Mrs. Fry said. There was plenty of free space in the village and the land doesn't need to be used. She said that she was giving evidence for the owner and community, as that they don't all agree with WOOD – she didn't know who they were. She said that there was strong feelings in the village, as she did a lot of community work. People are reluctant to give evidence. When asked about the other spaces, Mrs. Fry referred to Shrippl Play Park (a large area she said), Stone Close, Barry's Field and the Tennis Court. It was put to her that you can't walk dogs on these areas – Mrs. Fry said that you could in the recreation ground. She also said that the Application land is not a dog walk – dogs walk 3 miles a day and people just used to let dogs go to the toilet.

She was asked about the wording on the 2009 signs. She said that it was obvious that you would be stopped if you went that way. She said that she only saw the southern post in the hedge and not standing. She agreed that it must have been removed within a couple of days otherwise she would have seen it, as she walked that way (p.71 Post 1). She agreed that the writing on the sign was very small. She said that what a landowner should do is put signs up regularly saying Private Land and Mr. Sheppard did that. It was put to her that it said "No PROW" and that was ambiguous – Mrs. Fry said "Is it? She was asked that given there so many paths, which one is being referred to?

Angela Sillence³³

Mrs. Sillence has lived in Bentley Way since September 2010. Before then she lived in Roman Road and has been part of the Winterslow Community

³³ OB/A Tab 13 p.103

since 1963 when she moved to Winterslow with her parents. She moved back into the village in 2004 from Firsdown.

Knowledge of the Application Land

It is not land that she had walked on or used. She had no view of the land from her house but she drives past it every day both ways along Middleton Road. When it was suggested to her in xx that there is thick hedgerow, she responded that was in the Summer and it was quite open when all the leaves had gone and when winter comes. She accepted that it was pretty dense but that there were gaps, although she accepted that you couldn't see through into the field in the Summer. She said she could have glimpses into the field but accepted that she would not know what was going on the rest of the field.

She had not been into the Copse for many years or on the School path. 2 years ago, she said, she walked past the Copse and saw bluebells. She had never seen the Copse in such a mess – full of footprints – this was early in 2010. Before that, it was long before 1991 that she had seen it and the Copse was beautiful and well coppiced. She never went into the Copse. She saw hazel cut back and bluebells there. She couldn't remember large trees.

Use of the Application Land

She said there were no organised sports or activities on the land. She had never seen people dog walking even though she had driven by everyday for years. She couldn't remember people walking across the land. She said that Mr. Beagle mentioned Mr. Walters – he was always on the path with a dog. Mr. Walters lives next to where Mr. Beagle lived, just to the left of the old PO and set back on the bank.

David Read

Mr. Read lives in Titherley Road on the eastern outskirts of the village.

Knowledge of the Application Land

Mr. Read said that he was very familiar with the field, although he had not used it at all himself. His father and brother had coppiced the wood. His father's employer bought the coppicing rights. It was last cut 6 or 7 years ago or possibly more by his brother. He would help – this was less than 20 years ago. He only recalls seeing one person coming through the wood. He would be there for 3-4 hrs or more during the day - probably from 9am onwards until probably mid afternoon – 2.30/3.00. Coppiced all year round. He said under xx that this could be 3-4 times a year maybe. They were largish trees but not large. When he was asked whether it was oak, beech and holly in the Copse, Mr. Read said that sounds about right. But very few oak and not many large trees at all – one or two largish. It is a Copse and not a wood.

Mr. Read was asked about his statement that it was a completely spurious claim and it was put to him that people have given evidence that they have seen people using the land. Mr. Read said that the spurious claim is stating that it is common ground. He said that he disagrees with the principle of taking away someone else's land. He had that with his own land years ago, twice.

Use of the Application Land

He had not observed others using the land. He had not seen dogs on the land. He doesn't recall any dens on site. He hadn't seen any rope swings – he doesn't like those as eventually it kills the branch the rope is tied to.

Richard Sheppard³⁴

Mr. Sheppard lives with his wife in Weston Lane, Winterslow. He is a retired arable farmer. He finished farming and sold the farm in 1998 but still owns some of the Farm land, including the Application Land.

³⁴ OB/A Tab 13 p.96

Cropping Records

Mr. Sheppard referred to his cropping records for Brown's Copse field (OB/A Tab 8 p.51) and said that he has very good records, as these are required. These show the last crop (until recently) to have been of S.Wheat and sown in March 1988 and the land Set Aside 1989-98 and cut every year. The grass was topped annually had to be left there. In an average years this was done in September. He said that he didn't do that himself at that time. Some patches, Mr. Sheppard said, were more lush and up to 2-3ft. The average was 1½ - 2½ ft. over the field.

Tracks and Soakaway

Mr. Sheppard said that after he drives over there each year to cut the grass he could see the paths. The main ones can be seen from each of the entrances – OB/A Tab 8 p.70 shows the main tracks. Mr. Beagle's plan (out in during the Inquiry to reflect his oral evidence) added some but they couldn't be seen on the ground. Those shown on the map on p.70 can be seen on the aerial photographs at OB/A Tab 5 pp. 21 &22. He also said that when they dug the soakaway on the boundary with the Village Hall, people walked further out as they could walk over that. The soakaway (a 2ft. 6 in. circular hole covered by mesh) is not fastened down and he didn't cut that area. The detachable weld mesh is still there (it is not a cover as such, Mr. Sheppard explained) – there was a steel grid there for a long time.

Mr. Sheppard said that the tracks got more definite over time. That is what instigated the need to sign the statutory declarations. When asked (in-chief) whether he had taken any action before 1998, Mr. Sheppard said that Mr. Fry was certain that he saw signs and he (Mr. Sheppard) could remember someone who worked for him who made them up. They were a foot square and hand made. The words were painted on plywood – red painted letters on the face of the sign. When asked whether he had seen any of these, Mr. Sheppard said that he must have done and he had a

mental picture of them now. He thinks that they would have been up near Highlands Crescent or near the post off Woodlands drive. He remembered seeing the sign in the grain barn. He thought that it just said "Private Land". They had bright red lettering on a silver background.

Section 31(6) Declarations

These were to protect their land from trespassers. The first in 1998 was for the period 1998-2008. During that period they were topping annually; cutting the hedges every year. They normally used a contractor at that time but the annual cutting he or his son did or if he was busy he would use someone who could come in and do it. He said that he did get a contractor in occasionally.

When asked (in-chief) what he understood the legal effect of the Declarations was (see OB/A Tab 7 pp. 28K & L), Mr. Sheppard said that it would stop any other footpaths being formed or claimed on that land. Mr. Sheppard said that he was concerned that the footpaths were getting longer, more defined so he took advice from Wiltshire Council's rights of way department.

Under xx Mr. Sheppard said that he had assumed that he was safe from rights of way being established. It was put to him that, if people continued to use the land he tolerated it, as he thought that he was safe. He said "yes". Asked whether the surveyors told him about village green law, Mr. Sheppard said "no". He said that he first knew of it when the TVG application was made. It was put to Mr. Sheppard, and he agreed, that therefore all that time he was protected against rights of way being established and didn't know about TVG so tolerated people using and walking over the land assuming that he was protected. He agreed that he knew people were using the land for walking dogs. He played tennis at the Village Hall courts (at various times – but not very early). Mr. Sheppard said that he never saw anyone parking and then walking their dogs but if the parking and dog walking took place before 9am, he accepted that he

would not necessarily have seen it. He went to the Doctor's Surgery normally between 10-11/12 noon.

The 2009 Signs on the two Posts

Mr. Sheppard said that when topping in 1988 he was aware of the tracks and that it took probably 2-3 years for the tracks to be formed and by 1991 there were tracks – several tracks. One or two of these were not here at the beginning. He said that he could see people using the land. With reference to the plan of the tracks at 40A (of AB/A Tab 4), Mr. Sheppard said that did not remember all the tracks that Mr. Beagle suggested.

He contacted Wiltshire to ask how he could keep people off his land and asked them what could he do? They said that they had signs and suggested that he put posts on his land. He received the signs in the post. He thought that people would think again before walking on the field – the whole field – that is why he put them at either end of the field. This was to protect from people walking on the land.

With reference to photos of the southern post on p.73 of OB/A Tab 10, Mr. Sheppard said that he took the photos on the 7 February 2009. The post was moved approximately a week later and he re-erected it straight away – he put them in deep and hard but not in concrete – about 2ft. 6in. into the ground and an ordinary person would struggle to remove them. With regard to the post at the top of the field near to Woodland Drive, he had to re-erect it a week later more deeply in the ground. Mr. Sheppard said that he didn't know quite know what to do and he did give up on the posts at that time. He had taken photographs as proof that they were there. Referred to the photograph of the post in the waste on p.75 (OB/A Tab 10 p.75), he said that he came across that post after the first or second time. He re-erected the post on 13 February and on the 16 February found in the rubbish. The top post was up for up to 9 days.

The bottom post erected was also on 7th February and removed at the same time. It was found then on the 13th February. Referring to p. 72

(OB/A Tab 9), he said that the first time it was removed it was found not far from the hole close to Middleton road. The second time it had been removed it was found in the Copse.

Mr. Sheppard said that when he was erecting the posts he saw a lady who always used the land. He said that he warned her quite strongly and she went off. He doesn't know that lady's name and she has not given evidence at this Inquiry.

Under xx, he was asked how people would distinguish Footpath Signs from private, as the signs didn't say that unfortunately. He said that he looked at the tracks on the ground – that is where most feet seemed to have travelled. It was suggested to him (in xx) that some people wouldn't think that it was prohibiting them from using the land. Most right thinking people, responded Mr. Sheppard, would understand that they were not allowed on the land – they had not been invited onto the land. It was put to Mr. Sheppard that possibly 50/50 of those would think this prohibits use. Mr. Sheppard said “possibly”. He also said that some who say they didn't see the signs must have, if using it as regularly as they say.

Asked under xx about the erection of the posts, Mr. Sheppard said that he erected them both (at both ends of the field) on the same day, 7th. February 2009. When he went back a week later, they had been pulled out of the ground. It was put to him that he didn't know then how long they were lying on the ground and he replied that he had kept an eye on the site – driving around the village every day. He then said that he went back to the site every day in between. He found one on the rubbish and subsequently the other one was in the Copse. They were re-erected on the 13th February. It was put to Mr. Sheppard that the posts were up for at most 9 days (and not as long as was put to Mr. Beagle in xx). It was also suggested to Mr. Sheppard that there was a difference between seeing a sign from 50ft away and seeing it in a photo. Mr. Sheppard replied that they were obvious to anyone entering the field – you couldn't fail to see them, he said - they were not next to the edge of the field. It was put to Mr. Sheppard that people walking at the back of the Village Hall and onto the

land wouldn't see the sign. Mr. Sheppard said that if they were on the tarmac path they would not. He reiterated that if someone was using the land regularly they would have notice the signs. It seems, he added, that a lot of people didn't go and have a look – most people would go and look at the posts. People who used the land in the summer may not have seen the signs.

When it was again put to Mr. Sheppard that people didn't know what the meaning of the signs was, Mr. Sheppard said people must have – otherwise, why did they pull the signs out of the land, he asked. It was then suggested to him that the majority of people wouldn't have understood. Mr. Sheppard didn't agree – he said that if people know there are signs they should know that they are not being invited onto the land. Why, asked Mr. Sheppard, would anyone put a sign on their land? It was suggested to Mr. Sheppard that the overall impression was that their use was tolerated and not objected to. Later in his xx Mr. Sheppard accepted that they could have been clearer signs.

Mr. Sheppard was referred to his statement (OB/A Tab 13 p.98) where he referred to discussions in 2012 leading to the putting up of the four signs. When asked, Mr. Sheppard declined (as he was entitled) to say who was advising him but did confirm that he was being advised on TVG. He was referred to pp. 444/5 of AB/B tab 15 which showed the cost of the 4 signs was £433.54 (£208.54 + £225.00). With regard to the earlier signs, Mr. Sheppard said that they were silver with red writing and he was referred to Mr. Fry saying that they were, as he recalled, black and white signs. Under xx he was asked whether it was possible that the signs were not put up. Even if they were put up, it was also put to him, he could not say how long they were up for. Mr. Sheppard said no he couldn't say but added that they probably went up when the footpath started to be established.

Highfield Crescent Fencing

Referring to the fence shown on photo 23B (OB/A Tab 5), Mr. Sheppard said that he did not see it every day. It was there at the time of set aside in 1988. He wouldn't think that it was breached in 1988 as the land had been arable and people didn't walk over it. He didn't have animals on the land so there was no stock proof fence. The fencing was a boundary for the houses. Nearly every dwelling that he knows has a fence to indicate the boundary. Regarding Mr. Yates' evidence (re. breaching of the fence), Mr. Sheppard said that was as good an account as one can find. Mr. Sheppard said that at the time he put the signs up in 2009 he again phoned Salisbury DC or Wiltshire asking them to put new wire along there. The fencing was repaired by the District Council in 2009 and he saw that they had done a good professional job.

He walked across the land from time to time. It was breached after the Council had repaired it. He didn't take any steps to repair it. He said that he had to top the field right up to the fence. When asked (in chief) whether it was breached in 2009/10, Mr. Sheppard said that he wouldn't be surprised – he said that they would have cut it again even if it had been repaired. He said that, if he had re-erected the post (with the sign), it would have been dismissed as easily as the others.

It was put to him (under xx) that what we are concerned about is not knowing what he was trying to do but how it would have appeared to people using the land. Mr. Sheppard said that is why he put the signs up. He said, when asked, that he didn't put up fencing because it was very expensive – it would have cost thousands of pounds, which he didn't have. Under xx he was referred to his evidence that the fence was renewed in 2009. Mr. Sheppard agreed that the fence was put up to fence off the estate. He said that he was sure that it was some of the residents of Highfield Crescent who told him people were using the gap so he should do something about it. It was put to Mr. Sheppard (in xx) that users wouldn't necessarily think the repairing of the fence was an indication that they shouldn't be going onto the land. He replied "true".

Under re-ex, Mr. Sheppard said that the fence posts (in the north-west) were originally concrete. He said that the wire would have been under tension, when first put up. He thought that there were 4 strands – it was smooth and not barbed wire. They were robust to keep people in Highfield Crescent

April 2011

He still found that this was happening – people coming onto the land. Whenever he met anyone on the land, he would tell them in no uncertain terms that they shouldn't be on the land. Sometimes they were peaceable, sometimes not. The main protagonist, was a Mr. Simpson. Mr. Sheppard didn't know whether he had anything to do with WOOD.

Mr. Sheppard said that he probably spoke to about 12 people over the years.

Mr. Sheppard said that he then decided to plough the land and did so on 4th April 2011. He said that he was “cheesed off” – “That is all you get for trying to do a kindness”, Mr. Sheppard said.

He also decided to put up new signs having spoken to Salisbury Planning Department. So he erected 4. When asked (in chief) why he had originally (in 2009) erected 2 and now 4, Mr. Sheppard said that because it became more and more clear that people were not taking notice of the 2 smaller signs.

Communal Events

Mr. Sheppard said that the only time he gave permission for a communal event was for one afternoon for 2 years (between 1991-2011) for pony rides for the village fete.

Bonfires

He said that it was only the burning of rubbish that he allowed. I person lived in the Crescent and 1 in Woodland Drive. He said that he probably

bumped into them when he was walking up there but he did give his permission on the understanding that they cleared up after.

The Copse

He said that there are mid-sized trees. Hazel shoots have been coppiced over the years but he didn't know how far back this went. He thinks it started when he was a child but he was not sure. These were cut again at intervals of about 10 years. In any one year a $\frac{1}{4}$ of the Copse would be coppiced. It was never clear felled. When he had organised it, the guy advised that the already thick hazel should be taken out. Some got really big. That is how the cycle began. Between 1991-2011 there was coppicing every year but not recently. They would only really do it in winter, when there were no leaves and the sap was down. This has fallen away because the gentleman's wife was seriously ill and died and he decided to retire. So it needs a cut. It was last done about 5 years ago.

When Mr. Sheppard's father owned it, there was shooting there - that was in the 1960s. He died in 1970.

Mr. Sheppard said that he does walk past the Copse regularly. He goes along school path - about 4 times a week and he meets people on the path. He sometimes sees people in the Copse but not often.

Under xx, he clarified that the Coppice was coppiced until around 2009. He said that something was done most years and in some years they did a bigger patch. It was done during the winter months and early spring when, as he said in chief, no leaves or sap. He confirmed that there would not be coppicing in summer or the summer holidays. He accepted that there could have been playing in the Copse when coppicing probably not happening.

He said that he saw dens very occasionally and he had built them himself when he was a kid. He had seen a rope swing but he had seen it used. There had always been a few but not with any great frequency. He thought that his father put up signs in the 1960s. He accepted, under xx,

that he tolerated use of copse but said he told people in the Copse to get out who were cutting things down – he got cross. He made sure that they knew he was the owner and they had no right to be in there. Mr. Sheppard said that if he didn't recognise the person, he told them. When it was put to him that there were lots of people that he recognised and he didn't tell them, Mr. Sheppard said that he didn't need to, as they knew it. He said that he occasionally saw people walking on the field but not regularly.

He was asked, in xx, whether he thought about putting the posts up in the Copse. He replied that he was concerned about the field, even though there were tracks in the Copse.

Use of the Application Land

Under xx, Mr. Sheppard said that he didn't see people walking dogs on the land regularly. He did tell quite a number of people that they had no right to be on the land. He told them that they had no right to be on the land as it is private. I wasn't prepared to sit in a chair there 24 hours a day. He reiterated that he spoke to about a dozen people.

Mr. Sheppard accepted that if he had known about TVG law he would have taken a very different stance.

He was asked about the path along the north side of the Copse and blackberrying and sloes. Mr. Sheppard said that there was not an established pattern. People say that they walked everywhere but, said Mr. Sheppard, there was no proof. He said that there may have been tracks. Referred to photo 23, he acknowledged the faint line from the telephone box to the Copse

Note of Parish Council Meeting on 4 February 2013

The meeting was in respect of the Modification Order at Middleton Road (see pp. 90/91 in OB/A Tab 12). Mr. Sheppard was referred to the Note at p. 88 of OB/A Tab 12. He said that it was his note. He declared an interest in respect of the meeting. He was Chairman of the PC for 3 years. All said

that they remembered seeing the original signs in place in 2009. When asked whether the PC supported the TVG Application, Mr. Sheppard said that they will not get involved with WOOD.

Patricia Sheppard³⁵

Mrs. Sheppard read her statement in which she states that she has lived in Winterslow for 48 years and that she had an intimate knowledge of the use of the Application Land. She can't see the land from their house in Weston Lane and it is impossible to keep watch all the time other the land. That is why they decided to erect the four further signs. Her husband was there however very frequently – but 24/7 was impossible.

Mrs. Sheppard said that she would drive around the village on most days. She would go to the Doctor's Surgery quite regularly as she had an elderly mother (who died in 2006) and an elderly Aunt (who died in 2011). She would go to Highfield Crescent once a week, on a Friday. She couldn't remember when that started - less than 5 years with Aunt and a bit longer with mother.

Mrs. Sheppard also used to visit a Mrs. Perry who died in 2006. She used to go and see her each Saturday afternoon – she would sit with her and talk. They used to sit near the window because Mrs. Perry's sight was not good. She never saw anyone using that access. On Sunday morning she would pick Mrs. Perry up for church and take her back home after.

Mrs. Sheppard said that she was not aware of anyone on the land. She did go onto the land and saw tracks. She did know people were using it. She did go into the Copse and see tracks that just meandered through the wood. She saw no dens abut did see a rope swing. When asked whether she ever did anything to stop people using the wood, Mrs. Sheppard said that they just felt people should have the experience of seeing the blue bells in there. It was educationally important that people had that opportunity. Yes, she therefore accepted that people used the Copse and

³⁵ OB/A Tab 13 p.99

she personally took no steps to stop that. She explained further that it was not their mission to stop people going into the Copse as long as they went in through the top path and she had no objection to them going from the path.

She said that she (unlike her husband) didn't play tennis. When she was asked whether she saw dog walkers on bottom part of the field, Mrs. Sheppard said might have seen the odd one at the end nearest to the Village Hall. When she was asked whether that would be first thing, she said that it wouldn't be late and probably between 9.30/10am. She accepted therefore that, if people were walking their dogs before work, then she wouldn't have seen that. She was asked whether she would go there at lunchtime. Mrs. Sheppard replied that she would sometimes go out between 10.30/11 am – she would walk from the house and cut through Barry's Field. She said that they could cut through the bluebell wood, if they chose to. In the Copse she rarely saw anyone coming and going. She has observed in the afternoon a couple of mums rushing up to the school. If she was in the field, she may pass someone. She would say good morning but make the point that it was private land. She said this was very rarely- maybe 5 times or a bit more. She said that she never saw blackberrying in the field and she never gave permission ("certainly not") for anyone to be on the land apart from the donkey rides. Bonfires were organised once. She had heard brownies had used the land but she didn't see that and she did not personally give them permission.

With regard to the two posts in 1999, she accepted her husband's evidence on this. She did not know how long they were up. She said that they were removed within a couple of days. When asked under xx about that, Mrs. Sheppard said that she drove past and one day there were there – a few days later they were not. It could have been less than a week. When asked whether she was looking to see if the posts were still there, she said that she was as she could see past the Surgery as the view opens up there.

With regard to the Note on p.89 of OB/A Tab 12, she confirmed that was her husband's note.

It was said to Mrs. Sheppard (in xx) that they are aware that she had very strong feelings as she had made that clear. She was referred to her letter to Cllr. Devine and it was suggested that she was putting pressure on him to support her. (see OB/A Tab 12 p.85). She was referred in particular to the 4th. Paragraph of that letter. She said that she did not look at it like that (i.e. putting pressure on the Councillor). When it was put to her that she made it difficult for him to support the TVG application, Mrs. Sheppard replied that was a decision for him to make.

She was also asked about the petition. It was suggested that the Community was divided – some people supporting her and her husband and some supporting the Application. Mrs. Sheppard said that it was the minority who are supporting the Application. It was then put to her that some people don't want to give evidence as seen from some people not turning up.

5. ASSESSMENT AND CONCLUSIONS

5.1 This section is set out as follows:

- (1) The Legal Framework
- (2) Assessment of the issues arising against that framework
- (3) Conclusions

THE LEGAL FRAMEWORK FOR DETERMINATION OF AN APPLICATION UNDER SECTION 15 OF THE COMMONS ACT 2006

5.2 As noted in section 1 of this Report above, section 15(1) provides (as relevant to this Application) that:

Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

Subsection (2) applies where-

- (a) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and**
- (b) They continue to do so at the time of the application.**

Subsection (3) applies where -

This subsection applies where-

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;**
- (b) they ceased to do so before the time of the application but after the commencement of this section; and**
- (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).**

(It should be noted that since this Application was made the period in (3)(b) has been changed in England to 1 year – section 14(2) of the Growth and Infrastructure Act 2013, taking effect on 1 October 2013).

5.3 The burden of proof lies on the Applicant to demonstrate that the statutory criteria are satisfied. The standard of proof is the civil one – that is “on the balance of probabilities” or, put simply, that it is more likely than not. The approach of Pill JL in *R v Suffolk County Council, ex parte Steed* [1996] 75 P&CR 102, 111 is relevant:

However, I approach the issue on the basis that it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green and that the evidential safeguards present in the authorities already cited dealing with the establishment of a customary right (class B) should be imported into a class C case. Use, as of right, and as inhabitants of Sudbury, for sports and pastimes must be “properly and strictly proved”.

This approach was endorsed by Lord Bingham in *R v Sunderland City Council, ex parte Beresford* [2004] 1 AC 889 at [2] who referred to Pill Ely’s words and continued:

It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met.

I consider this endorsement is still relevant, although *Beresford* has been both distinguished and not followed or to be relied upon in *R (on the application of Barkas) v North Yorkshire CC* [2014] UKSC 31.

5.4 From section 15(3)(a) and the relevant case law, it can be seen that an application has to satisfy the following elements:

- (1) The application land has to have been used for lawful sports and pastimes.
- (2) The use has to have been by a significant number of people who come from:
A locality; or
Any neighbourhood within a locality.
- (3) That use has to have been carried out for at least 20 years up to when it ceased and the application to register has been made within the statutory period from the use ceasing (s.15(3)).
- (4) That use has to have been “as of right” throughout that period.

The land which forms the basis of the application has to have been used for lawful sports and pastimes

5.5 The expression “*lawful sports and pastimes*” was considered in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 A.C. 335. It was held that “sports and pastimes” is not two classes of activities but a single composite class, so an activity that was a sport or pastime falls within it. It was further held that dog walking and playing with children are, in modern life, the kind of informal recreation, which may be the main function of a village green³⁶. Flying kites, picking

³⁶ [2000] 1 A.C. 335, 357A-D.

blackberries, fishing and tobogganing have been considered to fall within “sports and pastimes”.

- 5.6 Not all use that falls within the meaning of “lawful sports and pastimes” is sufficient, however. In *White v Taylor* (No.2)(1969) 1 Ch 160 at 192 Buckley J held:

...But the user must be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed.

The use must be to a sufficient extent; use which is “*so trivial and sporadic as not to carry the outward appearance of user as of right*” is to be ignored: *Sunningwell* [2001] 1 A.C. 335, 375D-E.

- 5.7 It is necessary to distinguish the use of footpaths from use for sports or pastimes. That distinction is important in this case, where there are tracks across the path and a application for a modification order was made in respect of the land under section 53 of the Wildlife and Countryside Act 1981 a short time before the TVG application was made.

- 5.8 In *Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 at [102]-[110] (the *Trap Grounds* case) in the High Court Lightman J stated that where the public use defined tracks over land this will generally only establish public rights of way unless the user is wider in scope or the tracks are of such character that user of them cannot give rise to a presumption at common law as a public highway, but user of such tracks for pedestrian recreational purposes may qualify. The House of Lords [2006] 2 AC 674 at [68] (as well as the Court of Appeal) on appeal held that it would not be appropriate to give any guidance on the evidentiary matters relating to the use of tracks and the other land. The Objectors also refer to the Judgment of Sir Nicholas Browne-Wilkinson in *Dydfed CC v Secretary of State for Wales* [1989] 59 P & CR 275, 279:

“...There is no rule that use of a highway for mere recreational purposes is incapable of creating a public right of way. Such use for purely recreational walking would be a use of the path as a footway and give rise to the possibility of deemed dedication in the absence of evidence that the owner of the land had no intention to dedicate.”³⁷

5.9 Given the importance of this issue to WOOD’s Application, I set out the approach in *R (on the application of Laing Homes Ltd) v Buckinghamshire County Council* [2003] EWHC 1578 (Admin) at [102] – [110], where Sullivan J. held as follows:

102. As noted above, the Footpath Order confirmed the existence of footpaths all around the perimeters of each of the three fields (the paths cut across the south western corners of Fields 1 and 3). For obvious reasons, the presence of footpaths or bridleways is often highly relevant in applications under section 22(1) of the Act: land is more likely to be used for recreational purposes by local inhabitants if there is easy access to it. But it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way — to walk, with or without dogs, around the perimeter of his fields — and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.

103. Dog walking presents a particular problem since it is both a normal and lawful use of a footpath and one of the kinds of “informal recreation” which is commonly found on village greens. Once let off the lead a dog may well roam freely whilst its owner remains on the footpath. The dog is trespassing, but would it be reasonable to expect the landowner to object on the basis that the dog’s owner was apparently asserting the existence of some broader public right, in addition to his right to walk on the footpath?

*104. The landowner is faced with the same dilemma if the dog runs away from the footpath and refuses to return, so that the owner has to go and retrieve it. It would be unfortunate if a reasonable landowner was forced to stand upon his rights in such a case in order to prevent the local inhabitants from obtaining a right to use his land off the path for informal recreation. The same would apply to walkers who casually or accidentally strayed from the footpaths without a deliberate intention to go on other parts of the fields: see per Lord Hoffmann at p.358E of *Sunningwell* . I do not consider that the dog’s wanderings or the owner’s attempts to retrieve his errant dog would suggest to the reasonable landowner that the dog walker believed he was exercising a public right to use the land beyond the footpath for informal recreation.*

105. While the Inspector was not obliged to carry out a field-by-field analysis, he was obliged to grapple with the principal point made in the Claimant’s analysis: that looking at the 20-year period, walking, including

³⁷ Objectors Authorities Tab 5

dog walking, was the principal activity, and that it was largely confined to the footpaths around the perimeter of the fields. If that use was discounted, the other activities over the remainder of the fields were not of such a character and frequency as to indicate an assertion of a right over the entirety of the 38 acres for 20 years, not least because the other paths (across the fields) only began to evolve after 1993 and so were not claimed as footpaths (10.17). In paragraph 14.24 the Inspector appears to have accepted the Claimant's analysis, up to a point: noting that in addition to walking on the paths that developed around the field boundaries, some of the other activities such as blackberrying would have taken place on or near the boundaries, rather than across the fields as a whole.

106. But when the Inspector concluded in paragraph 14.25 that there was abundant evidence of continuous use by local people of the whole surface of the fields he relied "in addition to the dog walking and playing with children" referred to in Sunningwell , also upon "general walking (i.e. without dogs)" as being among the many activities that took place on the fields.

107. Thus the Inspector considered whether the whole, and not merely the perimeter of the fields was being used, but he did not deal with the issue raised in the Claimant's analysis: how extensive was the use of the fields if the use of the footpaths around their boundaries for walking and dog walking (making allowance for the fact that dogs off the lead may stray, see 10.18) was discounted, such use being referable to the exercise of public rights of way, and not a right to indulge in informal recreation across the whole of the fields.

108. I accept that the two rights are not necessarily mutually exclusive. A right of way along a defined path around a field may be exercised in order to gain access to a suitable location for informal recreation within the field. But from the landowner's point of view it may be very important to distinguish between the two rights. He may be content that local inhabitants should cross his land along a defined route, around the edge of his fields, but would vigorously resist if it appeared to him that a right to roam across the whole of his fields was being asserted.

109. I do not suggest that it will be necessary in every case where a footpath crosses or skirts an application site under the Act to distinguish between the exercise of a right of way and the use of a site for informal recreation. The footpath may be lightly used as such and the evidence of non-footpath use may be substantial. But the present case is most unusual in that there were recently confirmed footpaths around the perimeters of all three Fields. These footpaths were not lightly used. The Footpath Inspector had concluded that there was "unchallenged evidence of considerable weight that their routes have been in such use as would satisfy section 31 of the [Highways Act] 1980 ". The Claimants drew the Inspector's attention to evidence from one of GAG's witnesses "that the majority of people in the fields stuck to the boundary footpaths" (10.16).

110. It is no accident that the Inspector's list of activities in paragraph 14.25 commenced with dog walking and general walking (i.e. without dogs). On any view of GAG's evidence set out by the Inspector in Chapter 7 of his Report these were the principal activities throughout the 20-year period. A

number of the other activities were very occasional, such as kite flying, or of limited duration, e.g. use by the Cub Scouts appears to have ceased in 1987 (7.67). I do not underestimate the difficulties confronting the Inspector but he does appear to have relied upon the extensive use of the perimeter footpaths as such, for general and dog walking, in reaching his conclusion that there was abundant evidence of the use of the whole of the fields for lawful sports and pastimes for the 20-year period (14.25). To Laings, as a reasonably vigilant, and not an absentee, landowner those walkers would have appeared to be exercising public rights of way, not indulging in lawful sports and pastimes as of right. For these reasons the claim also succeeds on ground (1)

- 5.10 The Objectors also bring my attention to the analysis of Vivian Chapman QC in his Inspector's report in the *Radley Lakes* application (13/10/2007) at [304&5]:³⁸

"It seems to me that the heart of the guidance given by Lightman J is that all depends on whether the use would appear to the reasonable landowner as referable to the exercise of a right of way along a defined route or referable to a right to enjoy recreation over the whole of a wider area of land. if the appearance is ambiguous, it should be ascribed to the lesser right, ie a right of way."

- 5.11 With regard to the extent of coverage of the application land by qualifying user, not every part of the application land has to have been used. However, the evidence must be such so as to indicate use as of right for lawful sports and pastimes of the land as a whole. In *R (Cheltenham Builders) v South Gloucestershire Council* [2003] EWHC 2803 at [29] Sullivan J. stated that a "common sense approach is required when considering whether the whole of a site was so used".

- 5.12 The approach of the House of Lords in the *Trap Grounds* case is also instructive. Lord Hoffman stated:

66 Secondly, Mr. Chapman dealt with the inaccessibility of a good deal of the scrubland:

"The city council argue that the scrubland is now so overgrown that the majority of it is inaccessible and that this in itself precludes registration as a green. As noted above, my estimate is that about 25% of the total area is reasonably accessible, the rest consisting of trees and scrub. In my view, the question whether land has become a town or village green cannot be

³⁸ Objectors' Opening Submissions at [29] on p.9 and Tab 11 of Objector's Authorities at p. 58

determined by a mathematical assessment of the amount of the land which is open to recreation. ... Where the recreational use is informal and consists of activities such as walking, with or without dogs, children's play, exploring and watching wild life, I do not see why much more densely vegetated land should not be capable of being subject to recreational rights, either by custom or prescription. In my view, it is necessary to look at the words of the statutory definition and to ask whether the scrubland, considered as a whole, is land which falls within that definition. In my view, the evidence proves that the recreational use of the scrubland is, and has been over the relevant 20 year period, sufficiently general and widespread, by way of use not only of the main track but also of minor tracks, glades and clearings, to amount to recreational use of the scrubland viewed as a whole."

67 This is not an application for judicial review of Mr. Chapman's decision and your Lordships are not invited to express a view on whether, on the facts, he was entitled to reach the conclusions which he did. For my part, in the absence of an inspection or at least photographs of the site, I would be very reluctant to do so. If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land area would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk.

The use has to have been by a significant number of people who come from:

A locality; or

Any neighbourhood within a locality

Significant Number

- 5.13 In *R (Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 76 at para. 71 Sullivan J held that a "significant number" need not be considerable or substantial. It was held that it was a matter of impression for the decision-maker on the evidence and what mattered was that the number of people using the land in question had to be sufficient to indicate that their use of the land signifies that it is a general use by the local community for an informal recreational use, rather than occasional use by individuals as trespassers.

- 5.14 Given the issues arising in this case and the submissions made, particular note should also be taken of paragraphs 72 and 73 of Sullivan J's judgment in the *Alfred McAlpine Homes* case:

72. The inspector concluded in paragraph 7.1 that substantial use had been made of the meadow for informal recreation for more than 20 years before the application. He referred specifically to six of the witnesses who could give evidence covering the whole of the 20-year period. Mr. Wolton's criticisms of the inspector's conclusions are not well founded. It is quite unrealistic to refer simply to the six witnesses or to deal with the matter on the basis that they are only six out of 20,000 or one out of 200, and that such numbers are not significant. I accept that, if all of those six witnesses had said that they had not seen others on the land over the 20-year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the fact of the matter is that they did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the meadow over the 20-year period.

73. It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period. In the present case, however, the evidence of the six witnesses who were able to cover the whole 20-year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20-year period, some of them going back almost 20 years, some going back to times before the 20-year period began.

- 5.15 This aspect is often referred to as part of the issue of "the quality of user" and has been addressed in several authorities since then. In the Court of Appeal decision in *Leeds Group plc v Leeds City Council* [2011] 2 WLR Sullivan LJ, as he had by then become, held:

Quality of user

28. I agree with Mr. Laurence that this ground of appeal is better described as the quality of user point. It is based on certain passages in the speeches of Lord Walker of Gestingthorpe JSC and Lord Hope of Craighead DPSC in R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70. In para 30 Lord Walker JSC referred to the general proposition that had been relied on by Mr. Laurence:

"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, so that the landowner has to choose

between warning the trespassers, or eventually finding that they have established the asserted right against him.”

In para 36 Lord Walker JSC said that in the light of the authorities he had “no difficulty in accepting that Lord Hoffmann was absolutely right, in Sunningwell [2000] 1 AC 335, to say that the English theory of prescription is concerned with ‘how the matter would have appeared to the owner of the land’ (or if there was an absentee owner, to a reasonable owner who was on the spot).”

Any Locality or any Neighbourhood within a Locality

5.16 As seen above, section 15(3)(a) provides:

A significant number of the inhabitants of any locality, or of any neighbourhood within a locality

This repeats the insertion of “neighbourhood within a locality” into section 22 of the CRA 1965 (by section 98 of the Countryside and Rights of Way Act 2000), and was intended to apply more flexibility to the issue of “locality” and mitigate the strict legal test that had been applied in some cases. The Court of Appeal confirmed in *Leeds Group Plc v Leeds City Council* [2011] EWCA Civ 1447 (the second Leeds Group Plc case) that:

- (1) It was common ground that Parliament's intention in enacting s.98 was to remove the evidential difficulty posed by the need for users to be predominantly from an administrative area known to the law.
- (2) The enactment of s.98 was to strike a balance between two competing interests; users who wished to apply for the registration of land as a TVG and landowners whose land might be the subject of such application.
- (3) The new policy contained in s.22(1A) of the 1965 Act applied in its entirety to all applications made on or after January 30, 2001, when s.98 came into force.

5.17 A “locality” is however not an arbitrary line on a map; it means an administrative unit and a “neighbourhood” within a locality means an area with a sufficient degree of cohesiveness, as held by Sullivan J in *R (Cheltenham Builders Ltd) v South Gloucestershire DC* [2003] EWHC 2803

(Admin). What can constitute a locality includes a county, a city a town or borough, a parish (civil and ecclesiastical) and an electoral ward.³⁹

That use has to have been carried out for at least 20 years up to the date of the application

- 5.18 The House of Lords in *Oxfordshire County Council v Oxford City Council* [2006] 2 WLR 1235 confirmed that under the previous provisions, sections 13 and 22(1A) of the Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000), the user as of right had to continue to the date of the application. As noted above, section 15 of the Commons Act 2006 provides for this situation but also situations where the recreational use has ceased (sections 15(3)-(7)).

That use has to have been as of right throughout that period

- 5.19 To be “as of right” the use must have been carried out:

- (i) Without force (*nec vi*)
- (ii) Without secrecy (*nec clam*)
- (iii) Without permission (*nec precario*).

The phrase “*as of right*” is based upon the acquisition of rights by prescription. The whole law of prescription and the whole law that governs the presumption or inference of a grant or covenant rest upon acquiescence by the land owner: as held by Fry J in *Dalton v Angus & Co.* (1881) 6 App. Cas. 740, 773 as cited by Lord Hoffman in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335 at 351B-C.

- 5.20 *Sunningwell* related to an application to register 10 acres of glebe land. The House of Lords decided that, where a use had to be established *as of right*, user that was apparently *as of right* could not be discounted merely because many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge

³⁹ See Gadsden on Commons and Greens (Second Edition) at 14-26 on pp. 519-520

that it did not. It was also held that toleration of the recreational use was not inconsistent with user *as of right*.

5.21 If the user has been by coercion or if the user is contentious in the sense that the owner continually and unmistakably protests against it, there is no acquiescence and the user is considered to be by force and cannot be “as of right”⁴⁰. This will apply if the circumstances are such as to indicate to the user, or to a reasonable user with the user’s knowledge of the circumstances, that the owner actually objects and continues to object and backs his objection by physical obstruction or by legal action. Signs can, depending on the wording and circumstances, have a similar effect. Physical obstruction includes fencing and gates; the legal effect will in any case depend upon the nature and circumstances of such obstructions and actions.

5.22 In *Taylor v Betterment Properties (Weymouth) Ltd* [2012] EWCA Civ 250, LJ Patten held:

63 It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger on Redcar (No. 2)) that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. Mrs Taylor is not entitled in effect to rely upon this conduct by limiting her evidence to that of users whose ignorance of the signs was due only to their removal in this way. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious.

5.23 In *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] LGR 631 (the *Warneford Meadows* case) HH Judge Waksman QC (sitting as a Judge of the High Court) considered Pumfrey J's dictum in *Smith v Brudenell-Bruce* in the context of an application to register a meadow adjoining the Warneford Hospital in Oxford as a town or village green. The land in question was

⁴⁰ *Smith v Brudenell-Bruce* [2002] 2 P&CR 4 at [12].

crossed by a public footpath alongside which was a notice stating: “No public right of way”. This was said to have prevented any public use of the meadow itself from being as of right. The judge held that the notice had not rendered such use contentious because, reasonably read, it had to be taken to refer to the user of the footpath rather than the meadow land generally. He was not therefore concerned with a case where the notice had been placed in an inaccessible position or where (as in the present case) the notices had been removed. But in his judgment he set out some general principles. Having referred to *Smith v Brudenell-Bruce* and to *Redcar (No 2)* he said this:

21 By way of contrast in Oxfordshire County Council v Oxford City Council [2006] Ch 43, the relevant sign read:

Oxford City Council.

Trap Grounds and Reed Beds.

Private Property.

Access prohibited

Except with the express consent

Of Oxford City Council

22 From those cases I derive the following principles:

(1) The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known;

(2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;

(3) The nature and content of the notice, and its effect, must be examined in context;

(4) The notice should be read in a common sense and not legalistic way;

*(5) If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the Court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user. Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey J in *Brudenell-Bruce (supra)* to ‘consistent with his means’. That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to*

see why that should absolve him without more.¹ As it happens, in this case, no point on means was taken by the Authority in any event so it does not arise on the facts here.

In my judgment the following principles also apply:

(6) Sometimes the issue is framed by reference to what a reasonable landowner would have understood his notice to mean' that is simply another way of asking the question as to what the reasonable user would have made of it;

(7) Since the issue turns on what the user appreciated or should have appreciated from the notice, it follows that evidence as to what the owner subjectively intended to achieve by the notice is strictly irrelevant. In and of itself this cannot assist in ascertaining its objective meaning;

(8) There may, however, be circumstances when evidence of that intent is relevant, for example if it is suggested that the meaning claimed by the owner is unrealistic or implausible in the sense that no owner could have contemplated that effect. Here, evidence that this owner at least did indeed contemplate that effect would be admissible to rebut that suggestion. It would also be relevant if that intent had been communicated to the users or some representative of them so that it was more than merely a privately expressed view or desire. In some cases, that might reinforce or explain the message conveyed by the notice, depending of course on the extent to which that intent was published, as it were, to the relevant user.

The Objectors invite the registration Authority to consider [17] to [57] of the judgment of HH Judge Waksman QC.⁴¹

5.24 Against this legal framework I now turn to consider the Application, having regard to the statutory criteria and the contentions on behalf of the Applicant and the Objectors. I first identify the issues that arise and then set out my assessment of those.

THE ISSUES

5.25 It is of course necessary for the Applicant to demonstrate that, on the balance of probability, each criterion within section 15(3) of the Commons Act 2006 is satisfied, as set out above.

5.26 It is not in dispute that:

⁴¹ See para. 36 of the Objectors Opening Submissions

- (1) The Applicant is entitled to rely upon section 15(3) of the Commons Act 2006 and the relevant 20-year period is from 4 April 1991 to 4 April 2011.
- (2) Winterslow CP constitutes a valid locality for the purposes of section 15(3).⁴²

5.27 Two key (but not by any means the only) elements of the Objectors' case against registration can be summarized as:

- (a) The Applicant has not demonstrated sufficient of qualifying LSP use of the Application Land, which has been mainly used for highway purposes rather than LSP to a degree that was significant over the whole of the land. The Applicant added to and clarified its submissions on the Copse in a short Supplemental Closing Submission sent on 17th December 2014, after the close of the Inquiry.
- (b) Any use has in any event not be "*as of right*" by reason of the signage erected in February 2009 (year 18 of the relevant 20-year period). Further, use of the land following access through the breaches in the fencing at Highfield Crescent is by force and to be discounted.

5.28 Having regard to the evidence and the submissions of the parties, I consider that the following key issues arise:-

- (1) The Sufficiency of Qualifying User of the Whole of the Application Land during the Relevant 20-Year Period

Has the Applicant satisfied the requirement to demonstrate that a significant number of inhabitants from the agreed locality have used the land for LSP?

If so, has the Applicant demonstrated sufficient use of the whole land (applying a common sense approach as referred to in

⁴² The Winterslow PC is shown on the plan at AB/A Tab 2

paragraph 5.8 above) by those inhabitants continuously over the relevant 20-year period?

Only qualifying use is to be taken into account and not uses that are permitted/licensed. Further, and significantly, the sufficiency of use of the whole land needs to take account of the fact that the land has been used for people to walk to and from one side of the village to the other.

(2) The By Force Issue

Is the qualifying use “as of right” or:

- (i) Is it by force by reason of the two signs erected on posts in 2009?
- (ii) Is it by force by reason of the field being accessed through the gaps in the fence at Highfield Crescent?

I now set out my assessment of each of these issues. I provide my overall conclusions at the end.

ASSESSMENT

The Sufficiency of Qualifying Use of the Whole of the Application Land During the Relevant 20-Year Period

5.29 An appropriate starting point for consideration of this issue is the recognition of the following key characteristics of the Application Land during the relevant 20-year period:

- (i) Both the field and the Copse are open and readily accessed from different directions. Even though there are no public footpaths over the land, they very closely related to the land. The only areas of fencing are those around Highfield Crescent and the village hall.
- (ii) Having been set aside in 1988/9, which is not disputed, the land was not cropped and only grass grew on the major part of the field until it was ploughed in April 2011, as Mr. Sheppard explained. The field was then ploughed again and linseed sown in 2012.

- (iii) Key village facilities are located on both “sides” of the Application Land. There is for example the school, village shop and a public house (the Lord Nelson) broadly to the north/north-west with the village hall, tennis courts and doctors surgery and another public house (the Lion’s Head formerly owned by Mr. Yates, who gave evidence at the Inquiry) to the south/south-east.
- (iv) In addition, there is of course significant housing close to and around the Application Land. Much of the housing is on the opposite side to the School and village shop.
- (v) My strong impression was that the Copse is also an attraction and destination in its own right, as was seen from the evidence from some of the witness for both the Applicant and the Objectors. The Copse constitutes a little under 40% of the overall area of the Application Land.

5.30 The Objectors’ primary contention (on this issue) is that any proven use of the field would have had to them, as reasonably vigilant landowners, the objective appearance of the exercise of public rights of way over defined routes, rather than LSP over the whole of a much wider area of land.⁴³ They say that any use outside of these tracks would have been occasional and/or ancillary to the exercise of putative rights of way over the land. The Objectors also contend that several problems arise with relying on the Applicant’s evidence to discover the pattern of use over the relevant period.⁴⁴

5.31 The Applicant, however, contends that evidence given at inquiries will invariably represent only a fraction of the actual use of the land and it is reasonable to infer that in reality that general pattern of user was followed by a much greater number of local inhabitants. The Applicant further contends that there is a presumption of continuing user unless evidence to the contrary suggests otherwise. The Applicant also contends

⁴³ See [8] on p.4 of the Objectors’ Closing Submissions

⁴⁴ See [2] on pp. 2-3 of the Objectors’ Closing Submissions

that the locally controversial nature of the Application encouraged by letters and public statements from the Objectors makes it reasonable to assume that less evidence of users was given than might otherwise have been expected.⁴⁵

5.32 Having heard and reviewed the evidence and submissions in detail, my overall impression (illustrated by specific reference to some but not all of the evidence that I have taken into account) is as follows:

(1) A significant proportion of those on the field during the relevant period have been crossing the land to and from in particular the school, the shop, the doctors' surgery, the two public houses and the village hall. This is hardly surprising given the location and open nature of the field. The nature of Middleton Road would in my view also encourage walkers to try and avoid using that route. The tracks seen on the land throughout the relevant period are consistent with that. Mr. Paton said that, besides dog walking, the field was used mainly to cross and accepted that most people would say that it was used for transit. Mr. Rickard said that he mainly used the field to get from one side of the field to the other. Dr. Flindell's own use was consistent with using the field to cross. Mrs. House said that the main use of the field by adults was for crossing but that children would play on the field as it was "a nice open space". Mr. Day said that it is mainly people and dog walkers crossing that you see. Mr. Clark said that the main route across the land was diagonally from Highland Crescent to the south-east corner, although it should be noted his evidence only covers 2008 onwards. Mr. Fry (for the Objectors) had used the same route.

Mr. Hardiman estimated the split of transit and recreational use was 50/50. Taking account of the evidence overall, and each party's comments on the witnesses, my own distinct impression is

⁴⁵ Applicant's Closing Submission at [2] - [6] on pp. 1-3

that the transit uses would have been greater than that, and probably noticeably so.

- (2) When walking across the land in such a way, such use would have appeared to a reasonably vigilant landowner as the exercising of a right of way and not a greater right than that. I apply that also to those crossing but observing their surroundings on the way. If they remain on their “route” across but stop to observe the wildlife adjacent to the path or across the field then in my view it would be difficult for a reasonable landowner to interpret that as asserting a greater right than a right of way.
- (3) There appears no doubt that some users of the land would have strayed from their path and that use might properly be considered by a reasonably vigilant owner as asserting a greater right, namely that consistent with a village green. However, whether that was sufficient in itself or combined with other assertions of such a right, has to be carefully considered taking into account the significant number of users on the land not asserting such a right.
- (4) Further, my impression of the oral evidence was that many of those on the land would have had dogs with them. That impression was re-enforced when I reviewed the EQs and statements of those who have not given evidence at the Inquiry. Mrs. Hazard said (in-re-ex) that people walking their dogs were mainly going up the middle of the field and mainly using the tracks. I have little doubt that many of the dogs would have been let off the lead and ran around. I have also no doubt that there would have been a mixture of that happening whilst the owner walked straight across the field and those where the owner stopped and/or walked around the fields as the dog exercise over the field.
- (5) Consistent with that, was the evidence of the throwing of objects for dogs to retrieve. Mr. Broadley (for the Objectors) had witnessed this, although Mr. Yates and Mrs. Fry (also for the Objectors) had not. In my view, even if that activity were being carried on by those people who were walking straight across the

field, such an activity would be, and be perceived by a reasonable landowner to be, more akin to an assertion of a greater right. My impression of the evidence was that this was often more than just a dog owner retrieving an errant dog in a way that it would be unreasonable to a land owner to attribute an assertion of a greater right to (adopting the approach of Sullivan J in *Laing Homes* (at [104])). I also take into account that there has also been some dog training and socializing on the field.

- (6) There is clear evidence in my view also of a small number of people regularly parking in the morning at the Village Hall and letting their dogs out briefly to go to the toilet on the southern part of the field close to the Village Hall car park. I have considered this to be LSP, albeit I have also taken into account the short duration and confinement to the southern area of the land of this particular aspect of dog walking. However, as recorded above, that is by no means the only evidence of dog walking on the field.
- (7) There have been other uses on the field but in my view less regularly and less extensively than the walking across and the dog walking. These would have included infrequent kite flying (Mr. Crossland refers to this happening 2-3 times a year, although that is post 2005); riding of bikes; the infrequent kick around on the shorter grass (Mr. Day); “fooling around” by children – including hide and seek in the longer grass; infrequent frisbee (Mr. Day); infrequent flying of model aircraft. Mrs. Fooks saw an archer. People would run over and perhaps to a limited extent around the field, the latter being more referable to LSP, if it was not reasonably perceived as someone just running across/through the land.⁴⁶ Dr. Putman used the land for observing nature, as did others. Mr. Crossland taught his daughter to ride alongside the Copse, when she was 9 years old in 2006.
- (8) My impression of the evidence was that the field was not used to any great extent for ball games, picnics, informal gatherings.

⁴⁶ See paragraph 45 on pp. 13-4 of the Applicant’s Closing Submissions

However, I do accept that people would stop and chat together – if that was done whilst people were crossing the land only, then that would not qualify. If they chatted otherwise than whilst transiting the land in a direct way, then that might well constitute LSP. It may have been difficult, however, for a reasonable land owner to distinguish the two so as to interpret this as an assertion of a greater right than that of a right of way.

- (9) I note the evidence of Mrs. House relating to her use (at least once per week) with children between 1993-2003. The children would play in the long grass at the southern end of the field – the girls tended, she said, to collect things for craft, whilst the boys ventured into the Copse to play with sticks and on the rope swings. Mr. Crossland also referred to his daughters running around at the bottom of the field to the east of the Copse. That was between 2005-08.
- (10) My impression also was of seasonal blackberrying (August – September – alongside and at the corner of the Copse near Highfield Crescent and along inside of Middleton Road) and sloe picking (Autumn when there had been a frost – also along the inside of Middleton Road) as well sledging and snowball fights when the winter weather brought snow and ice. Although the former are seasonal and the latter only occurred on a few years in the relevant 20-year period (but may have lasted on each occasion for 3-4 days), these activities are LSP and cannot be ignored. The tobogganing took place more on the northern part of the field, where there is the steepest slope. They have to be taken into account in the overall assessment of how the use of the land by local inhabitants would have looked to the reasonably vigilant landowner. The seasonal nature of such activities and of LSP generally (with seasonal fluctuations in the degree of use) is a feature and of course does not itself preclude registration.⁴⁷

⁴⁷ See paragraphs [46] – [52] on pp. 14-15 of the Applicant's Closing Submissions

- (11) With regard to the Copse, I agree with the Applicant's characterization of this as "somewhat of a magnet" for children living nearby.⁴⁸ Indeed, I would go further than that as I consider the Copse to be an inherent attraction to children and many adults too, and there was a lot of evidence consistent with that. That was exemplified perhaps by Mrs. Hazard's description of the Copse and her wish to have her ashes scattered there. That was also consistent with others, including Mr. Paton.
- (12) As indicated above, my very strong impression is that to many people the Copse was a destination in its own right. That was in my view more so than the field. The main, but as recorded above not only, attraction of the field was for crossing to and from the different parts of the village.
- (13) In terms of the attraction of the Copse, Mrs. House's evidence was consistent with that – she had not realised that the Copse was part of the same land and was privately owned. Many witnesses referred to for example the bluebells, celandines, wood anemones, primroses, wild raspberries and crab apples in the Copse. It was an obvious "stopping off" point for play for children on their way home – Mr. Beagle specifically referred to this. It seems clear that children would even go in there in less inclement weather (see the evidence of e.g. Mrs. House, Mr. Day [albeit only re. 2008-11]). The main non-crossing use of the land, which Mr. Rickard referred to, was of the Copse by children. Mrs. House said that there would always be people playing in the woods and that it would be used more for activities than the field. Mrs. Fooks' son played "more in the Copse" and she saw children playing in the Copse and "spilling out into the areas around".

5.33 However, that overall impression is not itself sufficient to demonstrate compliance with the section 15(3) criteria. From that overall impression, therefore, I now consider whether the Applicant has demonstrated on the

⁴⁸ Paragraph 33 on p.11 of the Applicant's Closing Submissions.

balance of probability that the land as a whole has been used for LSP by a significant number of local inhabitants for the relevant 20-year period.

5.34 This discounting of non-qualifying use is not an altogether easy exercise to carry out where as here a significant, and in my view the main, use of the land is for crossing on foot, as if exercising a right of way. The onus is upon the Applicant to demonstrate compliance with the statutory requirement. I also have to take into account that the law of prescription is based upon how it would have appeared to the owner. Acquiescence by the owner is the foundation of prescription.⁴⁹ Although Mr. Sheppard, and Mrs. Sheppard to a lesser extent, was by no means an absentee owner and did observe and go to the Application Land and of course live nearby, I have used the test of the vigilant land owner and assumed a more frequent observation and checking of the land.

5.35 Looking at the land as a whole and the evidence as a whole:

- (1) I note the criticism by the Objectors that of the witnesses giving evidence at the Inquiry in support of the Application, only 2 users cover periods for 20 or more years and 5 for between 10-15 years.⁵⁰
- (2) However, it is important to look at the totality of the oral evidence - the oral evidence presents itself, as is common in TVG cases, as a jigsaw of different and often overlapping periods in terms of the evidence given. It is also important to take into account, as I have done, where these witnesses refer to seeing others on the land using it for LSP. There are also the other statements and EQs and documentation to be taken into account.
- (3) Nonetheless, I do have serious concerns, as detailed below, about the totality of that evidence with regard to demonstrating the use of the Application Land as a whole throughout the whole of the 20-year period. I have concerns about some exaggeration of the

⁴⁹ See *Barkas* [2014] UKSC 31 at [17] - [19].

⁵⁰ Objectors' Closing Submissions at [4]-[5]

recreational uses, as I judged it, in respect of certain elements of the Applicant's evidence. For example, although I would not wish to overstate this, I share to some extent the Objectors' concern as to the way the additional photographs of the Copse were submitted and then withdrawn.⁵¹ I had specific concerns also about Mrs. Stevens' evidence on recreational use, which, and I mean no offence to her, seemed exaggerated to me. Also, I was not entirely convinced that Mr. Hardiman's recollections were a fully accurate reflection of the likely position. I should make it clear that in no case I am suggesting there was any deliberate misleading by, or bad faith on the part of, these witnesses. However, it is natural that a witness' evidence may be influenced (often sub-consciously) by their desire to maintain the current use of the land.

- (4) Although not of course determinative and again on its own not to be given too much significance, I note the lack of photographs of LSP being carried out on the land. There were relatively few photographs produced in support of the Application and those that there were related to the later part of the relevant 20-year period. Such photographs are, in my experience, commonly produced in support of TVG applications.
- (5) As indicated above, it is my clear impression that apart from the Copse the main attraction of the Application Land was the use of the field to transit as if using a right of way. The January 2012 application to modify the MDS and the Highways Authority's analysis of the evidence supporting that is consistent with that impression.⁵²
- (6) If no dog walking that qualified as LSP had taken place on the Application Land during the 20-year period, there would in my view be no doubt that remaining evidence of LSP was not itself sufficient to show, on the balance of probability, qualifying use of

⁵¹ Objectors' Closing Submissions at [2.3] on p.2

⁵² AB/B Tab 12 at BB2 pp.1-7

the whole land by a significant number of local inhabitants in terms of how it would be seen by the reasonable landowner.

- (7) However, the field clearly was attractive to dog walkers and I don't doubt a lot of that use has been of a nature that qualifies as LSP as would have been perceived by a reasonable land owner aware of TVG rights. That use has to be considered together with the other qualifying LSP uses.
- (8) However, even considering the totality of the qualifying evidence, my overall impression is that the Applicant has not demonstrated sufficiency of use for the Application Land as a whole throughout the 20-year period. That impression applies overall, given the degree of use of the Application Land that was clearly not LSP and that which it would have been difficult for a reasonable land owner to interpret as an assertion of village green rights.
- (9) Moreover, I also have particular concern with regard the earlier part of the 20-year period, as detailed below. This in itself is, in my view, reason alone for concluding that the statutory criteria have not been met in this respect.

5.36 With regard to the earlier part of the relevant 20-year period in respect of the field, I note the following:

- (1) The last crop was sown in 1988. Thus the land was not used for the growing of a crop for 2 years or over before the start of the 20-year period.
- (2) There is no convincing evidence of the field being used for LSP or walking even prior to it being set aside, although I am aware that there was some claim of that in support of the modification order. This is therefore not a piece of land, other than the Copse, that has a history of recreational use for any significant period prior to the commencement of the 20-year period.
- (3) So the LSP itself has come in essence from a "standing start". Although I accept that it may be possible that qualifying user by a significant number of local inhabitants might in some

circumstances build up to a sufficient level quite quickly, I would be surprised if that happened in this case. I would have expected that any use of the land would have build up over time as people saw others on the land and got used to the idea that they could go onto it with apparent impunity.

(4) What I consider would have been be more likely in this case would be that people would have started using the field as a short cut, given the location of the site in relation to the housing and village facilities and the character of Middleton Road as referred to above. In my view, that traversing use would be likely to have build up over time. Likewise I would expect, given the creation of the tracks to cross and the openness of the land that over time people would also use it for wider recreational uses, within the meaning of LSP and in particular dog walking.

(5) My clear impression of this being the likely position in this case is supported by the following:

(a) Although I fully acknowledge that one has to look at the evidence as a whole and I have done so, I consider it important to note that few witnesses for the Applicant covered the full 20-year period. Indeed many covered a much shorter period.

(b) The two witnesses for the Applicant who appeared at the Inquiry that did cover that period were Dr. Putman and Mr. Rickard. I mean no disrespect to either by saying that Mr. Rickard's evidence of LSP on the field was not strong. Dr Putman was patently to my mind an honest witness. However, the evidence on LSP was not in my view particularly specific or convincing with regard to the use of the field. I again emphasise that this evidence has to be, as I have done, considered along with all other evidence. However, my particular concern in this context is the evidence of use of the field for qualifying purposes in the early part of the 20-year period i.e. from 1991- mid 1990s.

- (c) In terms of the 15 oral witness, the following witnesses (additional to Dr Putman and Mr. Rickard) gave evidence that cover some part of the 1990s:
- (i) Mr. Paton who said that the main use was to cross the land.
 - (ii) Dr. Flindell referred to use of the field since the summer of 1994 but didn't take his dog there until 1997.
 - (iii) Julia House gave evidence of the use of the land since 1993: and her evidence related mainly to the use of the field near to the Village Hall and the Copse.
 - (iv) Christine Stevens said that children would play on the field in 1986/7 – in a “hole in field” – when the wheat there. I have concerns regarding the reliability of that evidence and in any event I have taken into account the possibility of children occasionally playing in the crops in concluding there was no meaningful LSP on the land prior to it being sat aside in 1988/9.
 - (v) Elizabeth Page didn't use the land before 1994/6.
- (d) I have considered the other EQs and letters/statements in support of the Application. The Applicant has said that some people have chosen not to give evidence because of the Objectors' response to the TVG Application. I am not in a position to comment or draw any conclusions on that but I would note that this can happen to both sides' potential witnesses, particularly where there is division within the community. Nonetheless, I have taken full account of the evidence in written form on behalf of the Application. This has of course not been tested and the weight I can give to them therefore has to reflect that. In any event, I note and have taken into account that:

- (i) David Acton, Carol and Michael Andrews and Rose Maylin were witnesses originally listed to attend the Inquiry but in the end were not able to but their written evidence is relied upon (see AB/A Tab 4). The Andrews' statement refers to people crossing the land and dog walkers at the weekend. They say over the years that they regularly used pathways to cut across the field to visit the Copse to view the Bluebells and taking their grandchildren to look at the flowers in the woods. They do refer to activities on the field (see also their answer to Q.23 of their EQ), in addition to dog walking but the evidence is not specific as to the years other than saying they have lived in Middleton Road for the past 28 years. The answer to Q.14 of their EQ is "For walking mainly. Sledging." Mr. Acton refers to using the field many times between 1992 and 1995 to fly model aircraft and model rockets. Rose Maylin has lived in Winterslow since 1998. So neither of those cover the early/ middle 1990s period.
- (ii) Of the 7 statements and EQs of witnesses that the Applicant had not intended and did not call (Tab 5 of AB/A), 3 cover some part of the 1990s. One (F.M.Marks) deals with the period from 1994 and it is not clear what recreation of the land took place by that individual beyond walking across the land. The statement of David Platt refers (for the 1990s period) to his wife and her 2 children moving in with him in Woodland Drive and the children growing up using the open space to go to and from various activities such as tennis and badminton in the village hall and playing with friends. Mr. Platt's answer to Q.14 of his EQ (p.205) refers to him walking and

running on the land to gain access to the Common, Surgery and Village Hall without having to go on the road. Jean Radnege (p.210) moved into Woodland Drive in 1991 and again refers to using the land as a short cut. Although she refers to LSP uses, it is not clear exactly when these took place and how often.

- (iii) Of the EQs in of AB/A Tab 6, many do cover the earlier period but again they are not specific enough and have not been tested so do not change my overall impression regarding lack of sufficiency either overall or during this earlier part of the 20-year period.
- (e) I have also considered the evidence in support of the Objectors (and taken account of the Applicant's submissions on this) in so far as relevant to this aspect and note in particular:
 - (i) Mr. Fry said that initially there was only one informal path in 1991.
 - (ii) Mrs. Hazard said that she used the land to walk her dogs after 1991. However, it was not clear to me how long after and she did not provide detailed evidence of LSP at that time.
 - (iii) Mrs. Loader started crossing the field in 1989. However, her evidence did not support LSP at that time to any meaningful degree.
 - (iv) Mrs. Fry was asked (in xx) to confirm that use of the land by people walking started in 1990 – she said that she couldn't recall walking until later.
 - (v) The Applicant states that it is clear that the field was in regular use by 1990/1.⁵³ It is further contended that Mr. Sheppard confirmed that there were a number of well-established tracks across the field by

⁵³ Applicant's Closing Submissions at [12] on p.6

1991 and accepted their presence that it was in regular use at that point. It is important to consider Mr. Sheppard's evidence (as well as the other evidence) on the aspect as a whole to draw the appropriate impression and conclusion. Mr. Sheppard said that when topping in 1988 he was aware of the tracks and that it probably took 2-3 years for the tracks to be formed and by 1991 there were tracks – several tracks. However, Mr. Sheppard also said that the tracks got more definite over time. That is why he took action in 1998. So although he indicated tracks perhaps at the outset, clearly the use of the land was growing. This does not provide in any event itself a lot of support however for the LSP at that early time in the relevant period.

- (vi) I also note that there are no aerial photographs of the 1990s presented by either party in respect of the TVG Application. However, there were 1981 and 1991 aerial photographs referred to in relation to Mr. Clark's application for a modification order to the DMS. At paragraph 17 of the Highways Authority's Decision Report it is stated:

The aerial photograph taken in 1981 in Wiltshire Council's possession shows the field in which the claimed paths cross has been ploughed and cropped with no routes show on the line of the claimed paths. The 1991 aerial photograph shows the route of the existing path Winterslow 42 very clearly defined but no other clearly defined routes are shown on the claimed footpaths. The aerial photographs are attached as BB3.⁵⁴ I acknowledge that aerial

⁵⁴ OB/A Tab 8 at p.38; see also the Modification Order Inspector's comments on this at [22] – OB/A Tab 8 at p. 67

photographs are not definitive even for tracks/paths but this does offer some further support my overall impression of what the position was likely to have been.

(vii) I also take into account the Applicant's reference to Mr. Fry's recollection of the development meeting in the Village Hall in about 1994-95 where some people suggested that the Application Land was common land.⁵⁵ That is not inconsistent with my overall impression.

5.37 The land has to be looked at as a whole and of course not every foot of the land has to be covered by LSP.⁵⁶ I have taken into account the Applicant's submission on this and reference to the relevant passages in the *Trap Grounds* case on this, as recorded above. I have also taken into account the Applicant's contention that "there is a presumption of continuing user unless evidence to the contrary suggests otherwise".⁵⁷ However, any such presumption has to be considered in the context of the burden on the Applicant to demonstrate compliance with the statutory criteria. In any event, in my view the evidence has not demonstrated sufficient qualifying use of the Application Land as a whole taking into account the use of the Copse throughout the 20-year period and in particular during the early years. For the avoidance of doubt, I should make it clear that I have reached this view without discounting any use as being contentious.

5.38 With regard to the Copse, the Objectors contend (in their Closing and Supplemental Closing Submissions) that any proven use of it would have had the objective appearance of the exercise of public rights of way over defined routes rather than LSP to a degree that was significant over the

⁵⁵ Applicant's Closing Submissions at 69(b) on pp.20-21

⁵⁶ Applicant's Closing Submissions at paragraph [57] on p.17

⁵⁷ Applicant's Closing Submissions at [2] on pp.1-1

whole of the land. Reliance is placed on Mr. Paton's evidence that around 5-10% of the Copse was made up of the paths.

5.39 The Copse of course was not itself subject to the change in the agricultural regime. As the Applicant said, and as was my distinct impression, the Copse has been in regular for LSP use for long before 1991.⁵⁸ I of course recognise that whilst the land was in arable production it does not seem that people, certainly in any meaningful number, would have accessed it from the field. However, it was open and unfenced from the school path throughout the 20-year period and for very many years before, as I understood. Thus in my view the Copse can be in respect of use throughout the 20-year period be distinguished from the field. Further, whilst the field was in arable use and probably for a little period beyond, the Copse would have been even more of an entity unto itself than when the field was used for people to cross and for LSP. The evidence on the use of that area seems much clearer to me.

5.40 Whilst the Objectors strongly contend otherwise, there has been sufficient qualifying LSP use of the Copse itself to indicate to a reasonable owner that a village green right was being asserted of the Copse as a whole (applying the approach in the *Trap Grounds* case), even if at times not all parts were accessible by reason of the vegetation. I have taken into account the coppicing regime, with that activity mainly in winter, but that in no way alters my overall impression with regard to use of the Coppice. I accept and find convincing the Applicant's Supplemental Submissions on this issue.

5.41 Mr. Sheppard did not understand, and had not been advised upon at that time, the distinction between such rights and rights of way. My clear impression of his evidence and that of Mrs. Sheppard was that unless someone was doing anything untoward in the Copse they would have and did tolerate that use. In many ways, whilst they will not thank me for my

⁵⁸ Applicant's Closing Submissions at paragraph [12] on p.5

conclusion on this, the owners are to be commended, as it was clear (particularly from Mrs. Sheppard's words at the Inquiry) that they always considered it entirely appropriate and fair that the enjoyment of that area should not be kept from others. Hence they have clearly tolerated the use of the Copse for recreational purposes.

5.42 However, I of course have based my assessment, as does the RA, on the evidence and the statutory criteria. For the avoidance of doubt, therefore, on that basis it is my view that on the balance of probability the use of the copse as a whole throughout the 20-year period to 4th April 2011 was sufficient for the owners, if they had been aware of such rights, to recognise that they were being asserted.

5.43 For the further avoidance of any doubt, I should again make it clear that I have considered whether the use of the Copse for LSP throughout the 20-year period makes the use of the land as a whole sufficient. For the reasons given above in respect of the field I do not consider that can on the evidence be properly concluded.

5.44 I therefore accept the Applicant's submission with regard to the Copse.⁵⁹ I also note that the Applicant contended that if, contrary to their principal contention, the LSP use was not considered sufficient to over the whole Application Land the RA would be entitled to register only that part of the land upon which the statutory test has been satisfied.⁶⁰ I was invited to consider this option in that event.

5.45 Finally, I should further make it clear that I have been referring so far to the land in the Copse owned by the Objectors. I noticed on my site visit that there would appear to have been fencing and between their land in the Copse and that of the Council. The Council's land is a distinct and largely inaccessible part of the Copse. I have no evidence before me of

⁵⁹ Applicant's Closing Submissions at [91] on p.28.

⁶⁰ Applicant's Closing Submissions at [10] on pp. 4-5

that north-western part of the Copse being accessed and used for LSP. Therefore, on the evidence available, although the Council has not objected as such to their land being registered in my view it should not in any event be included in any land to be registered as a TVG. I am very grateful to both the Applicant and the Objectors who have expressed, in their Supplemental Submission, views on this aspect that are consistent with what I observed and understood.

Conclusion on the Sufficiency of Use Issue

- 5.46 The main use of the land has been for transiting to and from different parts of the village. The main use of the Land for LSP has been dog walking on the field and there have also been other qualifying uses on the field but to a greater extent in the Copse.
- 5.47 However, the Applicant has not demonstrated sufficiency of qualifying use for the Application Land as a whole throughout the 20-year period, even taking into account the use of the Copse. That lack of sufficiency of LSP use relates overall given the degree of use of the Application Land that was clearly not LSP and that which it would have been difficult for a reasonable land owner to interpret as an assertion of village green rights. However, there is also a particular concern with regard the earlier part of the 20-year period.
- 5.48 The exception to this conclusion is the Copse. This has an attraction and destination in its own right. In the circumstances a reasonable landowner could not be expected to attribute the use of the Copse to the land as a whole and thus interpret this as an assertion of right over the whole Application Land. Sufficiency of LSP use of the Copse as of right has been demonstrated throughout at least the relevant 20-year period.

5.49 The only exception to this relates to the north-west corner of the Copse, which is in separate ownership to the Objectors and appears to have been fenced off and separate from the remainder of the Copse.

The By Force Issue

The 2009 Signs Issue

5.50 There is no dispute that two posts each with a small green notice of about 5 x 4 inches were in place for a number of days in February 2009. The position of these posts is seen on the plan and aerial photograph in OB/A Tab 9. Their position both in the ground and when removed is seen in the photographs in OB/A Tab10.

5.51 What is disputed is the period of time that they were in place for, the visibility of the posts and signs and the effect of them with regard to use of the field. It is accepted by the Objectors that they were not directed to the use of the Copse.⁶¹

5.52 The problem that Mr. Sheppard was seeking to address was people walking over his land. He spoke to Wiltshire Council's rights of way department, which advised him to erect the signs that they gave him on posts. This he did with his son on 7th February 2009 and re-erected on 13th February. The signs stated:

WILTSHIRE
COUNTY COUNCIL
NO PUBLIC
RIGHT OF WAY
THANK YOU

⁶¹ Paragraph 29(j) on p.33 of the Objectors' Closing Submissions

5.53 The Applicant contrasts this wording, in my view correctly, with the wording on the 4 much larger red and white signs erected in June 2012 stating:⁶²

PRIVATE
PROPERTY
PLEASE KEEP OFF

5.54 Although Mr. Sheppard believes the signs were up from the 7th February continuously until the 13th February 2009 (as he said he went back to check every day between 7th and 13th February), there is some evidence that would suggest otherwise.⁶³

5.55 Many people said that they did not see the posts or signs. Some did see them and some saw just one. I am not entirely surprised that some people stated that they did not see them, although I am a little surprised how many. That may partly be the result of a combination of factors such as the short period of time that they were in place; the time of the year; the fact that some users were only on a limited part of the field and/or they were on the land when the light was not good. I also find it more difficult, to understand that some people who saw the posts did not realize that they displayed signs. I accept the signs themselves were very small and not obvious but I would have thought natural curiosity would lead most people (if not all) to ascertain the purpose of a post that suddenly appeared, sticking well up from the ground.

5.56 It is not the fault of Mr. Sheppard that the signs were torn down. I also expect that the posts were removed by someone who took issue with the owners' challenge of their use of the land. However, there is no direct evidence on this and it would be inappropriate of me to speculate on the motives of those responsible.

⁶² OB/A Tab 11

⁶³ See e.g. Applicant's Closing Submissions at [73] on p.22

5.57 I have carefully taken into account the submissions of both parties and the *Betterment* and *Oxfordshire Mental Health Trust* cases. Based on those legal authorities, the fundamental question is what the notices conveyed to those using the field.

5.58 In my view, even if they had remained in the ground and displayed, the notices were not effective in rendering the recreational use contentious. I have reached this conclusion having regard, in particular, to:

- (1) The submissions made by the Objectors, including the specific relevant factors referred to and relied upon in paragraph 24.⁶⁴
- (2) Whilst some users understood the sign to be excluding all trespassers, I do not accept that should be assumed to apply to the reasonable user standing in the position of the actual user. It cannot be assumed that the users were aware of the section 31(6) declarations and the significance of these.
- (3) Given the background of the clear tracks across the paths that appear to have increased during the 1990s and 2000s, the reasonable user would in my view be likely to read it as referring to rights of way rather than wider recreational use rights. As the Applicant points out, their position next to the diagonal footpath used as the main short cut across the field, is consistent with that.⁶⁵
- (4) In my view the signs did not contest the recreational use and in any event at best the wording was ambiguous.
- (5) It is also my view that there was something that readily could have been done by the owners that was proportionate. Indeed, it was done in terms of the 4 red and white signs. However, those of course are not relevant to the claim in respect of the 20-year period.

⁶⁴ In particular [16]-[25] on pp. 6-10 of the Objectors' Closing Submission

⁶⁵ Applicant's Closing Submissions at [83] on p.26

5.59 Although I have considered and reached my conclusion on the wording in the context of this case, I do note that the wording of the sign in the *Oxfordshire Mental Health Trust (Warneford Meadow case)* case is the same. The Objectors contend that the circumstances of the two cases are distinguishable.⁶⁶ The Objectors refer in particular to paragraphs 13, 22, 41, 49, 52 and 53 of the Judgment in that case. I note that in paragraph 41 of the Judgment reference is made to the Inspector's Report, where he found that the purpose of the signs was to prevent two paths from acquiring the status of public rights of way and that the landowner had no objection to general public recreational access to the Meadow but only to the creation of public rights of way. However, as noted in paragraphs 22(7) & (8) of the Judgment, it was held that of itself the subjective intention of the owner cannot assist in ascertaining the meaning of a notice. Further, as the Inspector went on to say (in paragraph 41) if the signs had intended to forbid general access to the Meadow, he did not understand why they did not say so. Therefore, in my view I do not see the distinction that the Objectors rely upon and indeed the passages referred to do not, in my opinion, assist the Objectors but are consistent with the Applicant's position and my own conclusion on this aspect.

5.60 The Objectors also put forward a default position. That position is that any objection from them to a lesser burden (rights of way) must by necessary implication also have included objection to the more onerous burden (TVG rights). Given the approach in the current legal authorities and in particular in the *Warneford Meadow* case, I cannot accept that submission.

5.61 I should also make it clear, in case it was being made as a separate point, that I am unable to accept the submission made by the Objectors that "as a pure matter of law" section 31(6) means that any use for LSP cannot be as of right. Such an interpretation would in my view be contrary to the

⁶⁶ Objectors' Closing Submissions at [22]- [23]

distinction recognized in the legal authorities between TVG rights and rights of way.

5.62 In my view, it is likely that there were earlier signs. Several witnesses referred to these. However, the evidence on them is too vague to assess whether it can properly be concluded that they rendered the use contentious. I have therefore not taken these into account. The Objectors do not rely upon them.

The Breaching of the Highfield Crescent Fence

5.63 There seems to be no dispute that there has been for many years a gap in the fence at Highfield Crescent as seen in photograph 23B (OB/A Tab 5). Mr. Yates also referred to another gap in front of his house and to his having repaired that.

5.64 As the Applicant says, the fence did not belong to them and was not repaired by them. The principle from the *Betterment* case is that it would be a direct infringement of the principle that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. However, the difficulty in this case was that the fencing did not amount to any demonstration from the owners themselves, save possibly in respect of the repairs in 2009 when Mr. Sheppard asked the Council to repair the fence. Further, the land could be readily accessed without breaking through a fence from north, south, east and west.

5.65 For those reasons, I have not discounted any of the Application Land for LSP as contentious by reason of the fencing along Highfield Crescent. Even if I had, any discount of use on that basis would not have altered my overall Conclusions with regard to the use of the Copse as a whole (apart from the north-west part), and that area only, for LSP being in accordance with section 15(3).

OVERALL CONCLUSIONS

- 5.66 The Application Land consists of readily accessible agricultural land that was in set aside throughout the relevant period and a Copse, with the latter making up about 40% of the overall site. My clear impression was that main use of the land has been for transiting to and from different parts of the village. There has also undoubtedly been LSP uses carried out on the Application Land and the Copse. The main use of the Land for LSP has been dog walking on the field and there have also been other qualifying uses.
- 5.67 However, the Applicant has not demonstrated sufficiency of qualifying use for the Application Land as a whole throughout the 20-year period. That relates overall given the degree of use of the Application Land that was clearly not LSP and that which it would have been difficult for a reasonable land owner to interpret as an assertion of village green rights. Moreover, I also have a particular concern with regard the earlier part of the 20-year period.
- 5.68 The exception to this conclusion is the Copse. This was, during the relevant period, an attraction and destination in its own right. Sufficiency of LSP use of the Copse as of right has been demonstrated throughout at least the relevant 20-year period. The only exception to this relates to the north-west corner, which is in separate ownership to the Objectors and appears to have been fenced off and separate from the remainder of the Copse as both the Applicant and Objectors have helpfully agreed.
- 5.69 The two signs put up in 2009 did not in the circumstances make any use of the land for LSP contentious. The breaches of the Highfield Crescent fencing relied upon by the Objectors issue has no bearing on my overall assessment and I have reached the above conclusions taking no account of the effect of these breaches.

5.70 Accordingly, I conclude that the Application only satisfies the criteria within section 15(3) of the Commons Act 2006 in respect of the Copse but not in respect of that part of the Copse in the north-west corner owned by Wiltshire Council.

6. RECOMMENDATION

6.1 For the reasons set out in section 5 of this Report, I recommend to the Registration Authority:

The Application by Winterslow Opposed to Over Development (WOOD) under section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown's Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.

STEPHEN MORGAN

Landmark Chambers

London EC4A 2HG

10 March 2015

**APPENDIX E – INSPECTOR’S REPORT (MR STEPHEN MORGAN, LANDMARK
CHAMBERS - 10 MARCH 2015)**

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APPEALS

Appeal Decisions

Application Number	Site	Appeal Type	Application Delegated/ Committee	Appeal Decision	Overturn	Costs
14/07668/PNCOU	Barn 12 m north of the Cones, Landford	WR	DEL	ALLOWED		

Outstanding Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee	Overturn
S/2013/0255	Park Cottage, Milton, East Knoyle	H (RE-DETERMINATION)	DEL	
14/01426/FUL	Kinghay Stables, Colls Lane, West Tisbury	WR	DEL	
14/05650/FUL	253 Church road, Milston, Durrington	WR	DEL	
14/09608/PNCOU	Former Piggery, Butterfurlong, West Grimstead	WR	DEL	
ENF61/11	Land at Caravan on Land at, Lime Yard, West Grimstead	ENF		
14/09688/PNCOU	Livery Hill Farm, Livery road, Winterslow	WR	DEL	
14/07785/FUL	Gilkin, Cuffs Lane, Tisbury	WR	DEL	

New Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee	Overturn
14/06525/FUL	Clearway Garage House, Firsdawn	H	DEL	

- WR Written Representations
- HH Fastrack Householder Appeal
- H Hearing
- LI Local Inquiry
- ENF Enforcement Appeal

17th April 2015

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REPORT FOR SOUTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	30 April 2015
Application Number	14/10095/FUL
Site Address	Land to the rear of 33 Bedwin St & Belle Vue Road Salisbury SP1 3YF
Proposal	Erection of 4 (1 x 5 bed and 3 x 4 bed) dwellings with associated car parking and landscaping and demolition of existing garages
Applicant	Mr M Quigley
Town/Parish Council	SALISBURY CITY
Ward	ST EDMUND AND MILFORD
Grid Ref	414562 130276
Type of application	Full Planning
Case Officer	Warren Simmonds

Reason for the application being considered by Committee

The application was called to Committee by Cllr McKeown due to concerns in respect of:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design - bulk, height, general appearance
- Environmental or highway impact
- Car parking
- Sewer capacity concerns

1. Purpose of Report

To consider the above application and to recommend to Members that planning permission be APPROVED, subject to Conditions.

2. Report Summary

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

1. Principle of development
2. Suitability of the proposed access and other Highways considerations
3. Impact upon residential amenities
4. Impact on the existing character and appearance of the conservation area and adjacent listed buildings
5. Ecological, archaeological and environmental impacts

The application (as originally submitted) generated a total of 32 representations from the public, as follows:

- No representations in support of the proposed development
- Thirty two representations objecting on grounds including
 - I. Highway safety and traffic generation
 - II. Loss of parking/insufficient parking provision
 - III. Overdevelopment
 - IV. Overlooking and overshadowing of adjacent properties and uses
 - V. Loss of open space
 - VI. Adverse impact on the existing character of the conservation area

Salisbury City Council objected to the original application.

In March 2015, in response to concerns raised in consultee and third party objections, the applicant submitted a substantially revised and reduced scheme and the application was re-advertised and consultees re-notified.

The revised scheme generated a total of 9 representations from the public, as follows:

- 1 representation in support of the proposal
- 8 representations objecting to the proposal on grounds including:
 - i. Adverse impact on the historic character of the area/conservation area
 - ii. Loss of green space
 - iii. Overdevelopment/excessive scale
 - iv. Loss of site as a wildlife refuge
 - v. Loss of trees
 - vi. Traffic generation/Highway safety

Salisbury city council has not provided a revised response to the amended scheme.

3. Site Description

The application site constitutes a parcel of land within the conservation area and housing policy area of Salisbury. The site is accessed off Belle Vue Road (to the immediate west of number 2 Belle Vue Road) and currently comprises single storey block garaging with enclosed open areas to the east. There are residential dwellings and buildings in other uses on all sides of the site, including a number of listed buildings, notably along Endless Street to the west, Bedwin Street to the south and School Lane to the east.

English Heritage has confirmed (letter dated 26th March 2015) the application site is not within a medieval chequer.

4. Planning History

S/1999/0365 - Erect 16 housing units for rent in two blocks following demolition of existing buildings (relates to 38-44 Endless Street) Approved 08.08.2000

S/2004/2063 – Demolition of single storey rear extension, alterations and conversion of day centre to form 9 independent apartments. Erection of 6 garages to rear (all with tandem parking), retention of 3 parking spaces to the rear of no. 68/70, provision of garden area to rear and roof. Approved with Conditions 01.12.2004

5. The Proposal

The application is for full planning consent and proposes the erection of 4 (1 x 5 bed and 3 x 4 bed) dwellings with associated car parking and landscaping following the demolition of existing garages.

The revised scheme (submitted March 2015) constitutes a substantially revised and reduced scheme over that originally submitted, whereby the three detached three storey town houses and large detached 'converted barn' style buildings have been significantly reduced in scale and mass, and revised in style and detailing and the scheme is now in the form of one detached and a pair of semi-detached two storey Victorian style dwellinghouses (with no accommodation at second floor level), and a larger detached two storey Victorian 'villa' style dwellinghouse with single storey 'extension' towards the southern end of the site.

6. Local Planning Policy

The Wiltshire Core Strategy (WCS) was adopted in January 2015, relevant policies of which include:

CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP50 (Biodiversity and Geodiversity), CP57 (Ensuring high Quality Design and Place Shaping), CP58 (Ensuring the Conservation of the Historic Environment) & CP64 (Demand Management)

Saved SDLP policies D4, H8, R2

7. Summary of consultation responses

WC Highways – No Highway objection subject to Conditions

WC Archaeology – No objection subject to Condition

Wessex Water – Standard letter of advice, additional correspondence confirming no issues in respect of sewerage capacity are anticipated

Salisbury City Council – Object (to original scheme – no response to revised scheme)

Conservation officer – “I don’t consider that the revisions address the concerns raised, nor the advice of their heritage consultant. I would suggest that a modestly scaled courtyard/mews type development could work here, preferably (in my view, at least) of an unashamedly modern (but good quality) design and materials, and would probably work better as linked/attached structures than detached houses. The copying of late C19 villas and townhouses is uncharacteristic for such a location away from the street”.

English Heritage - Any scheme should be of a modest domestic scale to harmonise with the general context in which this site is located and to the character and appearance of the conservation area: Consultation response provided in full at Appendix (i) attached to this report.

Public Protection officer (Environmental Health) – No objection, subject to Conditions

WC Urban Design – No response received

Public Open Space officer – Standard response received

WC Drainage engineer – No objection, subject to Conditions

District Ecologist – No objection, Informative suggested

Housing officer – No affordable housing provision required for this development

8. Publicity

The application was advertised, and subsequently readvertised (amended scheme March 2015) by site/press notice and neighbour consultation letters.

The application (as originally submitted) generated a total of 32 representations from the public, as follows:

- No representations in support of the proposed development
- Thirty two representations objecting on grounds including
 - I Highway safety and traffic generation
 - II Loss of parking/insufficient parking provision
 - III Overdevelopment

- IV Overlooking and overshadowing of adjacent properties and uses
- V Loss of open space
- VI Adverse impact on the existing character of the conservation area

Salisbury City Council objected to the original application.

In March 2015, in response to concerns raised in consultee and third party objections, the applicant submitted a substantially revised and reduced scheme and the application was re-advertised and consultees re-notified.

The revised scheme generated a total of 9 representations from the public, as follows:

- 1 representation in support of the proposal
- 8 representations objecting to the proposal on grounds including:
 - i. Adverse impact on the historic character of the area/conservation area
 - ii. Loss of green space
 - iii. Overdevelopment/excessive scale
 - iv. Loss of site as a wildlife refuge
 - v. Loss of trees
 - vi. Traffic generation/Highway safety

Salisbury city council has not provided a revised response to the amended scheme.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 Principle of the proposed development

The application site is located within the defined limits of development (the H8 Housing policy boundary of Salisbury) where, except as provided by other policies of the local plan, residential development is acceptable in principle.

9.2 Suitability of the proposed access and other Highways considerations

The proposed access to the site is from Belle Vue Road, utilising an existing hard-surfaced access and driveway/service road to the immediate west of number 2 Belle Vue Road. The existing access is used by a variety of neighbouring landowners and users of the existing lock-up garaging on and adjacent to the application site.

The proposal includes the demolition of the block of garages to the immediate west of the open areas of the site and the construction of four dwellinghouses with associated parking and landscaping.

The Highways officer has considered the proposed development and has provided a consultation response raising no Highway objection, subject to Conditions. The proposed access and parking arrangements for the development are therefore considered satisfactory.

9.3 Impact upon residential amenities

The application site is bounded on the northern, western and southern sides by existing residential development in the form of houses and flats. The creation of an additional residential use is considered compatible with the existing uses surrounding the site.

The revised proposal comprises of three 4-bed detached two storey Victorian style dwellings, each with off-street parking spaces at the front (west) and proportionate enclosed gardens to the rear (east), together with a detached 5-bed dwelling (plot 4) in the style of a Victorian 'villa' at the southern end of the site (also with off-street parking at the front and an enclosed rear garden. Plot 4 has a detached, open-sided car port within the front curtilage.

The buildings to the immediate north of the application site (closest to plot 1) are garage blocks that are unrelated to the application proposal.

By reducing the scale and mass of the proposed dwellings, and in reducing plots 1 to 3 from three stories to traditional two storey form (with no accommodation within the roof voids), and by reason of the revised siting of plot 1 (moved slightly further to the west), it is considered the revised scheme has incorporated sufficient measures to preserve the amenity of the closest neighbouring occupiers to the north.

In considering the impacts of the proposed development on the amenity of existing neighbouring residential occupiers and uses, it is considered that by reason of the separation distance, scale and general relationship between the proposed dwellings and the closest neighbouring properties, the proposed development would not result in undue impacts on the amenity of neighbours through overlooking or overshadowing.

9.4 Impact on the existing character and appearance of the conservation area and adjacent listed buildings

The application site is relatively well screened in wider views through the conservation area, however there are glimpsed views into the site, including a view from the St Edmund's Church churchyard over the brick wall adjacent to St Edmund's School, which provides the impression of an undeveloped interior with trees.

There are other glimpsed views from Belle Vue Road, one of the tarmac parking area and garages and another terminated by a cottage, neither of which are considered particularly significant.

Following concerns raised previously in respect of the impact of the proposed development (scheme as originally submitted) on the existing character of the surrounding conservation area, and on adjacent listed buildings, and following subsequent direct liaison between the applicant and English Heritage, the applicant has provided a Heritage assessment (Appendix ii, attached) of the site and surrounding area which has been used to inform the siting, design, scale and massing of the revised scheme.

The Heritage Assessment took into account the significance of views into the site from the surrounding area, and the character and settings of listed buildings adjacent to the application site. The Heritage Assessment identified that the southernmost third of the application site is the most sensitive to development, whereas the northern two thirds are less sensitive, and development to create residential units of a modest domestic scale may be acceptable.

The Heritage Assessment also identified that the removal of the row of modern concrete blockwork garages would constitute an enhancement of the site, and provided guidance on what design and materials for new development would be appropriate.

Within the revised consultation response of English Heritage (Appendix i), it is accepted that the application site does not form an historic chequer as was erroneously stated in their previous consultation response. The submitted Heritage Assessment is welcomed, and it is opined the impact of the proposed development from views from the churchyard could be further mitigated by a scheme of planting. The consultation response concludes that a scheme of modest domestic scale would be acceptable within the site, however concerns are retained in respect of the impact of the development as proposed on the surrounding conservation area.

In his revised consultation response the conservation officer suggests that a modestly scaled courtyard/mews type development could work here, preferably of an unashamedly modern (but good quality) design and materials, and would probably work better as linked/attached structures than detached houses. In the opinion of the conservation officer, the copying of late C19 villas and townhouses is uncharacteristic for such a location away from the street.

Whilst there would appear to be a difference of opinion between English Heritage and the conservation officer in respect of what style and form development should take (i.e. harmonious with the context of the Victorian suburb vs. unashamedly modern), both accept that modestly scaled development would be acceptable.

Taking into consideration the generally well-screened location of the application site, and the modest scale and high quality design of the proposed development which has taken account of the important view(s) into the site from the surrounding conservation area, it is considered the proposed development would not unduly affect the existing character of the conservation area or the character and setting of adjacent listed buildings.

9.5 Ecological, archaeological and environmental impacts

The proposal has been assessed by the Council's Ecologist who raises no objection, subject to a standard Informative in respect of breeding birds. The proposed development raises no material planning concerns in respect of impacts on nature conservation or protected species.

The Public Protection (Environmental Health) Officer has assessed the proposal and raises no objection subject to Conditions in respect of contaminated land investigation and remediation, working hours (construction) restrictions and no burning during construction.

The Assistant County Archaeologist has assessed the results of preliminary archaeological field work investigation of the application site and raises no objection subject to a Condition requiring a written programme of archaeological investigation, and the approval of a programme of archaeological work.

10. S106 contributions

No S.106 contributions are relevant to the proposed development.

11. Conclusion

The proposed development constitutes new residential development within the defined limits of development and housing policy boundary of Salisbury, where, except as provided by other policies of the local plan, residential development is acceptable in principle.

The proposed development is considered acceptable in terms of the proposed Highways, access and parking provision and would not result in undue impact on the amenity of neighbouring residents and uses.

The proposed development would not adversely affect the existing character of the surrounding conservation area or the character and setting of adjacent listed buildings.

The proposed development is otherwise considered accordant with the development plan, including local plan policies CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP50 (Biodiversity and Geodiversity), CP57 (Ensuring high Quality Design and Place Shaping), CP58 (Ensuring the Conservation of the Historic Environment) & CP64 (Demand Management) of the Wiltshire Core Strategy, and saved SDLP policies D4, H8, R2, as well as national guidance contained within the NPPF & NPPG.

RECOMMENDATION

That the application is APPROVED, 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:

Drawing number jw662-202 Rev.E dated June 13 as deposited with the local planning authority on 09.03.15, and

Drawing number jw662-205 Rev.E dated June 13 as deposited with the local planning authority on 09.03.15, and

Drawing number jw662-203 Rev.E dated June 13 as deposited with the local planning authority on 09.03.15, and

Drawing number jw662-204 Rev.E dated June 13 as deposited with the local planning authority on 09.03.15.

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

3. No part of the development hereby approved shall be first occupied 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.

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

4. No development shall commence on site until details of secure covered cycle parking have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved details and made available for use prior to the first occupation of the development hereby permitted and shall be retained for use at all times thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

5. No development shall commence on site until a scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

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 and any diversion of the existing storm sewer (if necessary) which currently crosses the site, 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. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been undertaken and until:

- a) The Local Planning Authority has been provided with written confirmation that, in the opinion of the developer, the site is likely to be free from contamination which may pose a risk to people, controlled waters or the environment. Details of how this conclusion was reached shall be included.
- b) If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary.

In the event of unexpected contamination being identified, all development on the site shall cease until such time as an investigation has been carried out and a written report submitted to and approved by the Local Planning Authority, any remedial works recommended in that report have been undertaken and written confirmation

has been provided to the Local Planning Authority that such works have been carried out. Construction shall not recommence until the written agreement of the Local Planning Authority has been given following its receipt of verification that the approved remediation measures have been carried out.

Reason: In the interests of public health and safety

8. No construction or demolition shall take place on Sundays or Public Holidays or outside the hours of 07.30 to 18.00 Monday to Friday and 08.00 to 13.00 on Saturdays.

Reason: In the interests of amenity

9. No burning of waste shall take place on the site during the demolition and construction phase of the development.

Reason: In the interests of amenity

10. No development shall commence within the area indicated (proposed development site) until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

Further Recommendations: The work should be conducted by a professionally recognised archaeological contractor in accordance with a written scheme of investigation approved by this office and there will be a financial implication for the applicant.

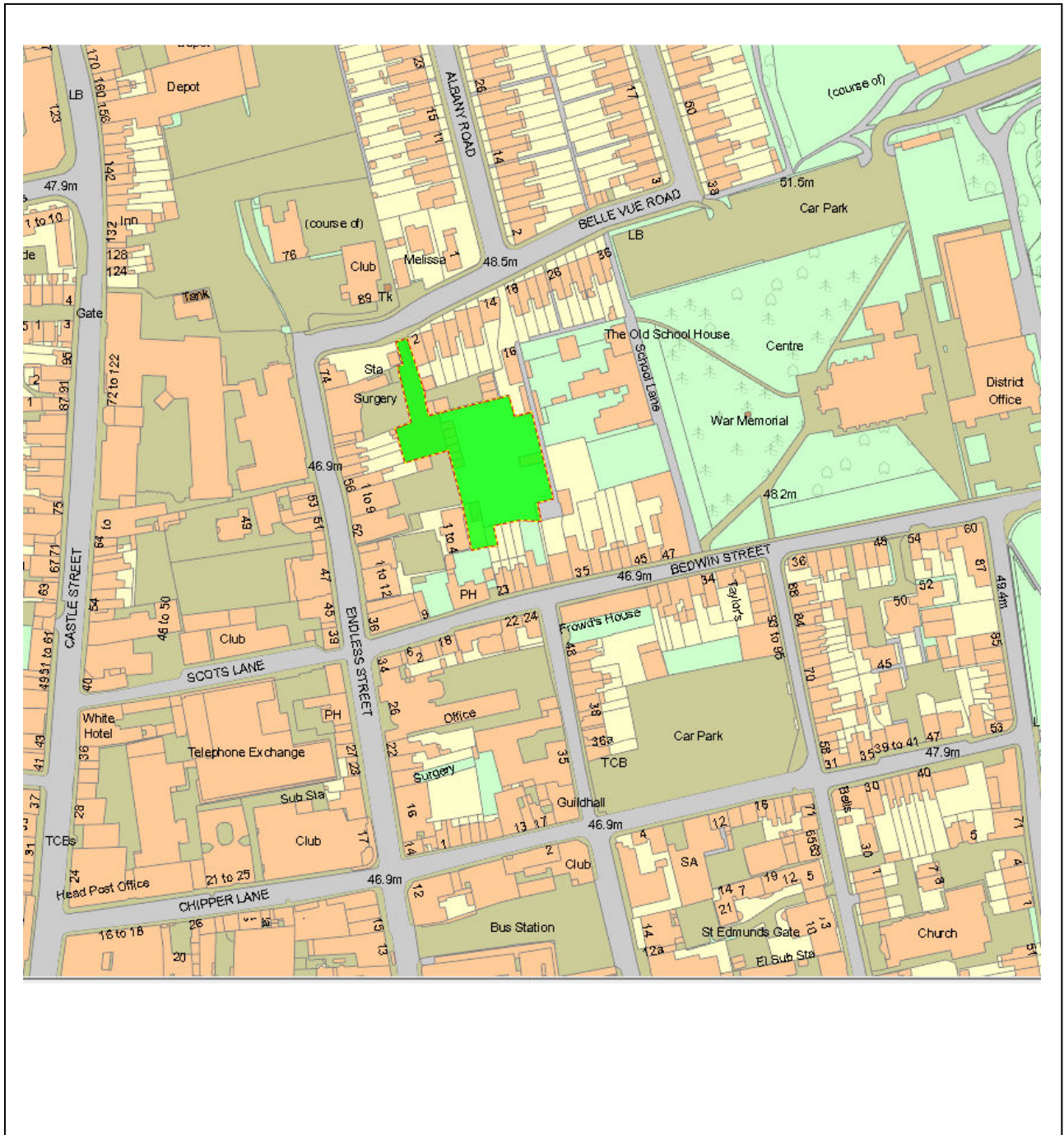
INFORMATIVES:

The adults, young, eggs and nests of all species of birds are protected by the Wildlife and Countryside Act 1981 (as amended) while they are breeding. The applicant is advised to check any structure or vegetation capable of supporting breeding birds and delay removing or altering such features until after young birds have fledged. Damage to extensive areas that could contain nests/breeding birds should be undertaken outside the breeding season. This season is usually taken to be the period between 1st March and 31st August but some species are known to breed outside these limits.

The applicant's/landowners' attention is directed to the advice contained in the letter provided by Wessex Water dated 4th November 2014.

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Application Number	14/10095/FUL
Site Address	Land to the rear of 33 Bedwin St & Belle Vue Road, SP1 3YF
Proposal	Erection of 4 (1 x 5 bed and 3 x 4 bed) dwellings with associated car parking and landscaping and demolition of existing garages
Case Officer	Warren Simmonds



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.2

Date of Meeting	9 April 2015
Application Number	14/11884/FUL
Site Address	Gorley Marina Road Salisbury SP1 2JN
Proposal	Sever land and erect 1 No 2 bed dwelling with parking for existing property
Applicant	Landmark Estates GBR Ltd
Town/Parish Council	SALISBURY CITY
Ward	ST MARTINS AND CATHEDRAL
Grid Ref	415129 129490
Type of application	Full Planning
Case Officer	Warren Simmonds

Reason for the application being considered by Committee

The application has been called-in to SAC by Cllr Tomes due to concerns in respect of the visual impact of the proposed development on the surrounding area, the relationship to adjoining properties and environmental/highway impact.

1. Purpose of Report

To consider the above application and to recommend to Members that planning permission be APPROVED subject to Conditions.

2. Report Summary

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

1. Principle of development;
2. Scale, design & materials;
3. Impact on the amenity of neighbours;
4. Impact on the character and appearance of the surrounding area;
5. Highway considerations;

The application generated a total of seven representations from third parties, all were objecting to the proposal, citing grounds as summarised below:

- Overdevelopment
- Out of keeping with neighbouring properties

- Overbearing
- Overlooking/overshadowing
- Loss of trees
- Insufficient parking provision
- Unsuitable access/Highway safety concerns
- Query over rights to use rear access track

Salisbury City Council objects to the proposal on grounds of overdevelopment.

3. Site Description

The application site consists of approximately 216 square metres of land currently forming the majority of the rear (south) garden of number 3 Marina Road, Salisbury. The land is currently laid out as a linear garden with relatively mature planting, including mature side boundary hedges and few trees, including overgrown conifer trees at the far end (south) boundary, adjacent to a pre-fabricated single garage and small area of hardstanding sufficient to park one small car.

Access to the site (and to the existing single garage/parking space) is via an unnamed, unmade track to the south which intersects with the A36 Southampton Road approximately 35m to the south east of the application site.

4. Planning History

S/2004/2402	Living room extension and internal alterations	Approved 10.12.04
14/01268/FUL	Erection of 3 storey 2 x 1 bedroom flats with garages on ground floor	Refused 24.04.14

5. The Proposal

The application proposes the sub-division of the existing rear garden of number 3 Marina Road, and the erection of a detached two bedroom dwelling with access via the track to the south and the provision of 1 x off-street parking space for the new dwelling, and 1 x off street parking space for number 3 Marina Road.

6. Local Planning Policy

Adopted Wiltshire Core Strategy (WCS) Core Policies CP1, CP2, CP57 & CP64
 Saved local plan policy H8 (as saved in Appendix D of the WCS)
 NPPF & NPPG

7. Summary of consultation responses

WC Highways – No Highways comments
 Highways Agency – No objection
 Public Protection Officer – No objection subject to Conditions
 WC Archaeology – No objection, subject to Condition
 Wessex Water – Standard letter of advice
 WC Housing Development Officer – No objections, no affordable housing provision required
 Salisbury City Council – Objects to the proposal on grounds of overdevelopment

8. Publicity

The application was publicised by site notice and neighbour notification letters. The application generated a total of seven representations from third parties, all were objecting to the proposal, citing grounds as summarised below:

- Overdevelopment
- Out of keeping with neighbouring properties
- Overbearing
- Overlooking/overshadowing
- Loss of trees
- Insufficient parking provision
- Unsuitable access/Highway safety concerns
- Query over rights to use rear access track

Salisbury City Council objects to the proposal on grounds of overdevelopment.

9. Planning Considerations

9.1 Principle of development

The application site is located within the defined limits of development and H8 Housing Policy boundary of Salisbury, where, except as provided by the other policies of the Local Plan, residential development will be permitted and is acceptable in principle. In these respects it is considered the proposed development constitutes a sustainable form of development and accords in principle with Core Policies CP1 & CP2 of the adopted Wiltshire Core Strategy (WCS), and saved policy H8 of the Salisbury District Local Plan (as saved within Appendix D of the WCS).

9.2 Scale, design & materials

The application site consists of the southernmost part of the rear garden of number 3 Marina Road. The immediate surrounding area is predominantly residential, with bungalows on Marina Road to the north, and older two storey early 20th Century houses along Tollgate Road to the east. Further to the west are the larger buildings relating to the Wiltshire College campus, and further to the east (on the opposite side of Tollgate Road) are commercial premises (Mercedes garage).

The application proposes the subdivision of the garden to provide a plot for a detached single dwellinghouse with vehicular and pedestrian access from the track to the south. The proposal preserves a pedestrian walkway (along the eastern side boundary) from the southern boundary to the retained portion of the rear garden of number 3 Marina Road.

The proposed dwelling is of modest scale and of 1.5 storey form, under a pitched roof (providing accommodation within the roof void, providing two double bedrooms and a bathroom at first floor level).

The materials for the proposed dwelling consist of external brickwork under a half-hipped tiled roof. Taking into consideration the modest scale of the proposed dwelling, and the appropriate materials proposed for the walls and roof, it is considered the proposed development would be compatible in terms of the scale, design and character of surrounding properties and would integrate satisfactorily in relation to other properties and the overall landscape framework.

9.3 Impact on the amenity of neighbours

Comments and objections in third party representations received relate to the impact of the proposed development in terms of:

- Overdevelopment
- Out of keeping with neighbouring properties
- Overbearing
- Overlooking/overshadowing
- Loss of trees
- Insufficient parking provision
- Unsuitable access/Highway safety concerns
- Query over rights to use rear access track

The proposed dwelling is of relatively modest 1.5 storey form and has been designed to minimise the impact of the development on adjoining neighbours via overlooking and overshadowing. The immediately adjoining land uses are the residential gardens of neighbouring properties.

The application site is not within a conservation area, and there are no protected trees within or adjacent to the site.

There are no side facing casement windows within the proposed dwelling. There is a single roof window within the east and west facing roof planes, each serving a first floor bathroom and a void over the internal staircase respectively (therefore neither roof window serves a habitable roof). A Condition could be imposed to ensure the side facing windows are glazed with obscure glazing to ensure there are no undue impacts on the amenity of neighbours to the east and west from overlooking.

The South facing (front) elevation of the proposed dwelling faces the southern boundary with the access track. It is considered the windows within the south elevation would not unduly overlook adjoining neighbours.

The north facing windows within the rear elevation of the proposed dwelling would face onto the rear elevation of number 3 Marina Road, however it is considered that by reason of the separation distance between the proposed and existing houses on Marina Road, together with the presence of existing mature boundary screening features, the proposed windows within the north elevation would not result in undue overlooking of neighbouring properties.

9.4 Impact on the character and appearance of the surrounding area

By reason of the modest scale and appropriate external materials proposed for the new dwelling, taken together with the screening effect of existing mature boundary features and other natural screening in the locality, it is considered the proposed development would not result in an undue adverse impact on the character of the surrounding area.

9.5 Highway considerations

It is noted that the application site already has a single garage at the southern end, and that at least two other properties on Tollgate Road are using the access track from the A36 to access garages to the immediate east of the application site.

The application proposes access to the site via the unmade track to the south (with access to/from the A36 Southampton Road). The proposal would create off-street parking provision for two vehicles – one for the proposed new dwelling and one for number 3 Marina Road.

The Wiltshire Highways officer has declined to comment on the application as the access is from the A36 which is within the remit of the Highways Agency.

The Highways Agency has assessed the proposed development and are content the proposal will have no detrimental effect on the Strategic Road Network and has provided a consultation response of 'No objection'.

The issues of ownership and rights of access over the track have been brought up in third party representations. These are essentially civil matters and do not constitute a material planning consideration in the determination of this application.

10. S106 and Community Infrastructure (CIL) contributions

No S.106 contributions are considered relevant to the proposed development.

In due course this development could be subject to the **Community Infrastructure Levy**. Wiltshire Council is in the process of preparing a Community Infrastructure Levy (CIL) charging schedule. CIL is a charge that local authorities can place on new development in their area. The money generated through CIL will contribute to the funding of infrastructure to support growth. Wiltshire Council is on course to adopt CIL in early summer of 2015.

Once CIL has been adopted by the Council, the landowner (or whoever has assumed liability for the development) would be liable to make payment to Wiltshire Council for this type of development. At the moment the charging schedule is in draft form only. However, it gives an indication of the level of contribution that would be required in respect of the development proposal.

11. Conclusion

The application proposes a sustainable form of development that would result in the provision of an additional modest single dwellinghouse within a predominantly residential area, without undue impacts on the amenity of neighbours, the existing character of the surrounding area, adverse impacts in terms of Highway safety or other material planning concerns.

12. RECOMMENDATION

It is recommended the application be APPROVED, 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:

Drawing number 8504/100 Revision A, dated 05.01.15, as deposited with the local planning authority on 05.01.2015, and
Drawing number 8504/101 Revision A, dated 05.01.15, as deposited with the local planning authority on 05.01.2015.

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

- 3 No development shall commence on site until details 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 within the area indicated (the application site) until:
- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
 - b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

Further Recommendations: The work should be conducted by a professional archaeological contractor in accordance with a Written Scheme of Investigation agreed by this office. There will be a financial implication for the applicant.

- 5 No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 on weekdays and 08:00 to 13:00 on Saturdays. No burning of waste shall take place on the site during the construction phase of the development.

REASON: In the interests of neighbouring amenities

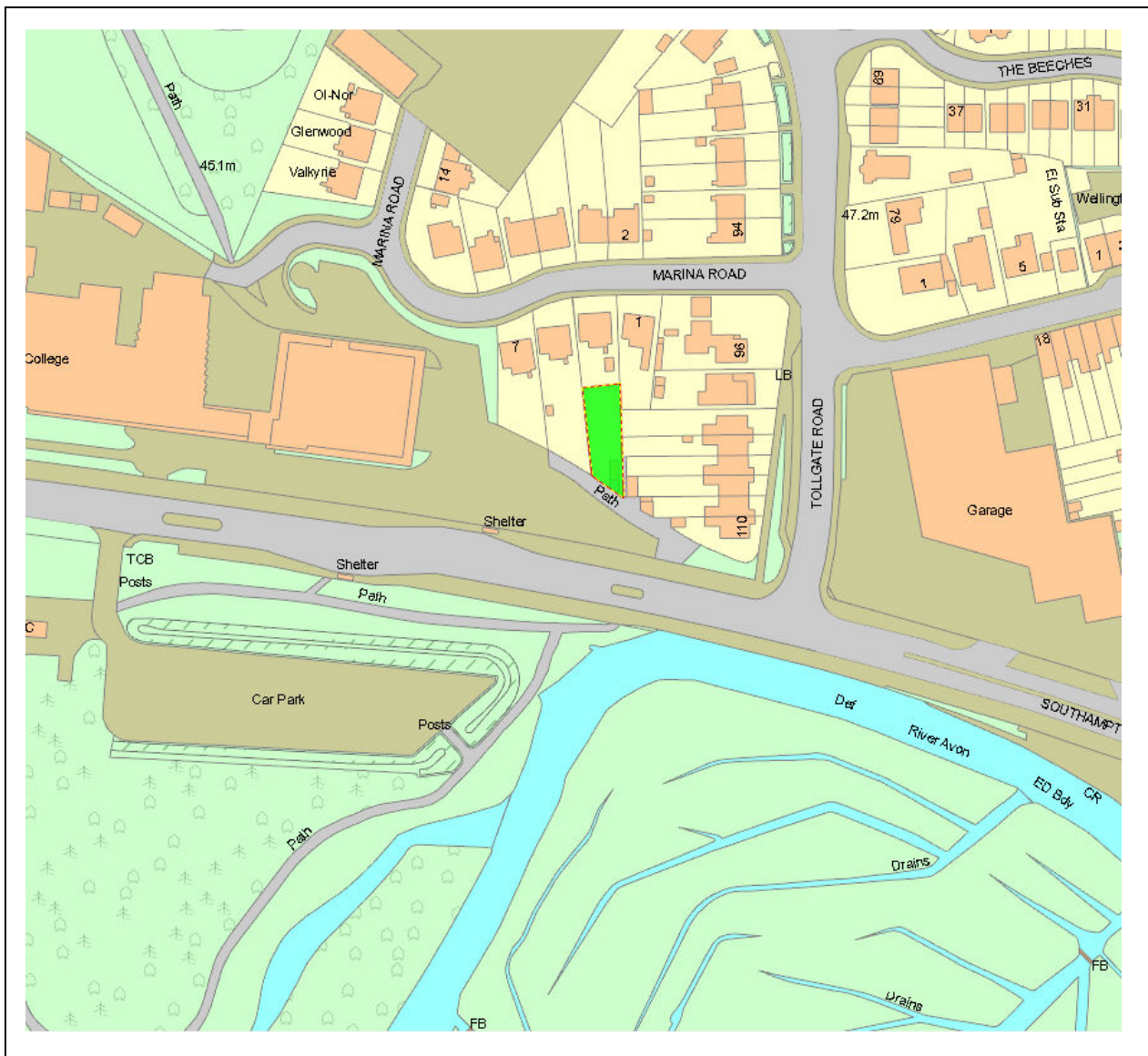
- 6 Before the development hereby permitted is first occupied the roof window(s) in the east and west facing roof planes shall be glazed with obscure glass only and the windows shall be permanently maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted above ground floor ceiling level in the east or west facing side elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

Application Number	14/11884/FUL
Site Address	Gorley, Marina Road, Salisbury, SP1 2JN
Proposal	Sever land and erect 1 No 2 bed dwelling with parking for existing property
Case Officer	Warren Simmonds



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Date of Meeting	30 th April 2015
Application Number	15/01784/FUL
Site Address	Adjacent to Rapiers Rest, Romsey Road, Whiteparish, Salisbury
Proposal	Demolition of garages and erection of 3 bed dwelling with alterations to existing access
Applicant	Mrs L Clewer
Town/Parish Council	Whiteparish
Grid Ref	
Type of application	FULL
Case Officer	Mr Matthew Legge

Reason for the application being considered by Members

As the applicant is related to Councillor Clewer, under the Council Scheme of Delegation, this application needs to be considered by Committee, as there is a letter of objection to the application.

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that planning permission be **GRANTED subject to conditions**

2. Report Summary

- Principle of development
- Impact upon visual amenity
- Highways implications
- Ecology
- Neighbour amenity
- Planning obligations

Parish Council have raised a concern and an objection. *(Note: submitted revised plans have aimed to address the concerns of the Parish Council)*

1 third party letter raising issues

3. Site Description

The site is within the retained settlement boundary for Whiteparish. The application site forms part of a larger garden area associated with the dwelling house known as Rapiers Rest. The application site backs onto open agricultural land and front the main highway (A27) through the village of Whiteparish.

4. Proposal

This application proposes the demolition of garages and erection of a 3 bedroom dwelling with alterations to existing access to create separate vehicular access for the Rapiers Rest and the new dwelling. The already approved scheme (associated with 14/028894/FUL) was for a two storey property which has a ridge height of 1.1m higher than the scheme as now proposed. The proposed total floor area is larger than the approved scheme, and the overall design approach is more contemporary than the approved design.

5. Planning History

14/02894/FUL: Demolition of triple and single garage, alterations to access and development for replacement garage with store. New 2 storey dwelling with garage and associated drive works. AC

S/2013/0335/OUT: Demolition of triple and single garage, alterations to access and development for replacement double garage with store. New 2 storey dwelling with garage and associated drive works. AC

S/1995/1679: 2 storey extension living accommodation. AC

S/1983/0862: O/L application - Erection of 1 dwelling with garage and construction of new access. REF

6. Relevant Planning Policy

Adopted policies; R2 as saved within Appendix D of the adopted Wiltshire Core Strategy.

Wiltshire Core Strategy:

CP1 (Settlement Boundary)

CP2 (Delivery Strategy)

CP24 (Southern Wiltshire Community Area)

CP50 (Biodiversity)

CP57 (Design)

National Planning Policy Framework (NPPF)

National Planning Policy Guidance (NPPG)

7. Third party responses

A representation letter from Medlands (across the road from the application site) has commented:

“Significant change to original plan. Roofline higher than adjacent dwellings. Increase in size of proposed building. Will impact upon our enjoyment of current view considerably”

8. Consultee responses

Parish Council – Objection: Concern over location of air source heat pump. (*Following the removal of the air source heat pump from the application, the PC objection appears to have been overcome*).

Wiltshire Council Housing – No requirement for affordable housing

Wiltshire Council Highways – No objection subject to conditions

Wiltshire Council Ecology – Support subject to conditions

9. Planning Considerations

9.1 Principle

This application site has recently received an approval to construct a detached dwelling house under planning reference 14/02894/FUL. This recent approval is still able to be developed and as such the principle of a new dwelling house within the application site is established. The site remains within the settlement boundary of the village which is established by the adoption of the Wiltshire Core Strategy as a “Large village”, where housing development may be acceptable.

A refusal of the proposal on an “in principle” basis would therefore be difficult to justify.

9.2 Design and impact on wider area

The immediate area can be characterised by a ribbon of development along the main highway. Dwellings in the locality are mainly detached and largely constructed out of brick with tile roofing. The approved scheme and this amended scheme are both for a detached dwelling which is faced in brick on all prominent elevations. Both schemes incorporate an attached double garage with on-site parking and turning areas.

A detailed site layout plan and floor plan have been submitted which demonstrate that the proposal is appropriate in terms of its scale and resulting impact on the overall character and appearance of the area. The size of the proposed plot is comparable to other neighbouring plots in the area and it is not considered that the character of the area would be unacceptably affected.

The dwelling would have a ridge height higher than both of its neighbours. However, the difference is not significant and so would not result in harm to the character of the area. Indeed this application proposes a dwelling house which has a ridge height of 1.1m lower than the scheme as already approved.

The proposed design of the dwelling is considered to have an acceptable impact on the character of the application site and the wider character of the area. The Parish Council are noted to have raised no objection to the design and massing of the proposed dwelling house.

9.3 Impact on residential amenities

The site is located adjacent to Ebble Cottage, to the immediate west. The eastern elevation of Ebble Cottage is of a largely blank roof elevation albeit two side roof dormers with associated single light windows which currently face and look directly into the application site. The previously approved scheme was adjusted so as to limit the impact of the new dwelling on the amenities of Ebble Cottage.

This revised application proposes to construct the two storey element of the proposed house at a maintained distance of 6.6m off the western boundary (with Ebble cottage). The only openings which will face Ebble Cottage are a utility room door, a ground floor roof light and two sunpipe openings within the side roof pitch of the main two storey dwelling, which improves upon the approved scheme which had a first floor window facing Ebble Cottage. Given the limited number of openings and the proposed limited bulk on, or close to the boundary, it is considered that the proposed dwelling will not result in any harm to the amenities of the occupiers of Ebble Cottage.

Following concerns from the Parish Council the air source heat pump has been completely removed from the proposal.

The proposed application dwelling will be sited to the rear of the neighbouring dwelling at Rapiers Rest and as such the proposed dwelling will be visible from the rear elevation and rear amenity area of this neighbouring dwelling. However the number and size of 1st floor openings which face towards Rapiers Rest is considered to be limited and amounts to only one single light dressing room window. There is a 1.8m high close boarded fence proposed along this joint neighbouring boundary and as such the proposed eastern ground floor openings will be largely screened from direct neighbouring views. The impact on the amenity of Rapiers Rest is considered to be limited as a result of this application. Officers note that this application has not received any comments from the occupiers of Rapiers Rest.

This application has received a letter of objection from the property which is located opposite the new vehicular entrance and is as such across the road from the application site. This opposite neighbouring dwelling (Medlands) has raised concern that the proposal represents a significant change to original plan, and that the roofline is higher than adjacent dwellings which will impact upon the enjoyment of current views out from the Medlands.

The separation distance between the two storey element of the proposed dwelling house and Medlands is about 70m, and this is considered to be sufficient so as to not result in any harm to the amenities of Medlands or any other neighbouring property opposite. There is no entitlement to a view across other land and so this could not be a justifiable reason for refusing planning permission.

9.4 Highways, Parking & turning

The approved scheme included a shared vehicular access for both the application dwelling and Rapiers Rest. This revised scheme now proposes two separate vehicular accesses which are located next to each other allowing a separate access onto the A27.

Following the receipt of additional submitted information WC Highways has raised no objection subject to conditions.

9.5 Ecology and impact on National Park

The WC Ecologist has commented "*Whiteparish has a number of ponds that support great crested newts which are a European protected species. The closest pond where GCN have been recorded to Rapiers Rest is the one near the community centre which is 440m from the development site. There are several ponds within 250m of the application site where the status of GCN is uncertain and therefore there is a risk that newts could be present within the development during their terrestrial phase.*

Ahern Ecology has prepared a Great Crested Newt Method Statement, (Feb 2015) detailing the measures that will be undertaken to minimise the risk of newts being harmed during the construction phase. While the statement is acceptable in principle it requires survey work to be undertaken in ponds in third party ownership and there is no indication that authorisation for the surveys will be forthcoming. If the applicant can demonstrate that permission for these surveys is unlikely to be withheld, I recommend that compliance is made a condition of any permission and that the results of GCN surveys / eDNA tests are submitted for planning authority approval. The applicant should note that the GCN surveys and eDNA tests are seasonally restricted."

The WC Ecologist has also recommended a condition to be imposed upon any approval requiring further information to be provided. With this condition it is considered that the proposal will not result in demonstrable harm to protected species.

Given that the site benefits from an extant consent, and that the above issue has already been assessed, it is considered that a refusal of the scheme based on ecology related reasons would be difficult to justify.

9.6 S106 matters

On the 28th November 2014, the Government published changes in guidance pertaining to affordable housing and tariff-style contributions. As a result of this it is no longer possible to seek tariff style contributions through S106 for developments that have 10 houses or fewer and have a maximum gross floor space of no more than 1000 sqm. This application falls within this category and as such no contributions can be sought.

10 Conclusion

The principle of a new dwelling house on this site has been established by virtue of the existing planning permission (14/02894/FUL). The proposed design and massing of the revised dwelling is considered to have an acceptable impact on the character of the immediate area. The proposed dwelling is not judged to result in any demonstrable harm to the amenity of neighbouring dwellings. This application has resulted in no objection from either WC Highways or WC Ecology.

Consequently, given the existence of an extant consent for a dwelling on this site, and the support from statutory consultees, approval is recommended.

RECOMMENDATION: Planning Permission be GRANTED, 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 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.

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

REASON: In the interests of highway safety.

4. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the accesses/driveways), incorporating sustainable drainage details, has been submitted to and approved in writing by the local planning authority. The development shall not be brought into use/occupied until surface water drainage has been constructed in accordance with the approved scheme.

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

5. Any gates to close the access shall be set back a minimum of 4.5 metres from the edge of the carriageway and made to open inwards (away from the highway) only.

REASON: In the interests of highway safety.

6. The gradient of the new access shall not at any point be steeper than 1 in 15 for a distance of 4.5m from its junction with the public highway.

REASON: In the interests of highway safety.

7. No construction work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 on weekdays and 08:00 to 13:00 on Saturdays.

No burning of waste shall take place on the site during the demolition and construction phase of the development.

REASON: In the interest of neighbouring amenity

8. Before works commence, the results of pre-commencement great crested newt / eDNA surveys as described in the Great Crested Newt Non-Licensed Method Statement (contained in section 2 of Great Crested Newt Method Statement, Ahern Ecology, Feb 2015) will be submitted for LPA approval together with an amended method statement to take account of the findings of the surveys. The works will be completed in accordance with the approved method statement or as otherwise specified in a Natural England licence superseding the permission.

REASON: To ensure the development complies with the Habitats Regulations 2010 which protects Great Crested Newts.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the east and west side elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

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

DRG No. Location Plan A (Proposed Site)	25/02/2015
DRG No. Location Plan B (Rapiers Rest Site)	25/02/2015

DRG No. 01515 2 Rev A	13/04/2015
DRG No. 01515 3 Rev B	16/04/2015

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

INFORMATIVE

The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the Council's Vehicle Crossing Team on vehicleaccess@wiltshire.gov.uk and/or 01225 713352.

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Application Number	15/01784/FUL
Site Address	Adjacent to Rapiers Rest, Romsey Road, Whiteparish, Salisbury
Proposal	Demolition of garages and erection of 3 bed dwelling with alterations to existing access
Case Officer	Mr Matthew Legge



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