

WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

DECISION REPORT

GREAT HINTON 34

NB All documents (including any user evidence forms, responses to consultations and correspondence) are available to be viewed at the Council's offices at Ascot Court, Aintree Avenue, White Horse Business Park, Trowbridge, BA14 0XA; please contact Sally Madgwick on 01225 713392.

1.0 APPLICATION

Application number: 2004/33

Date of application: 12th August 2004

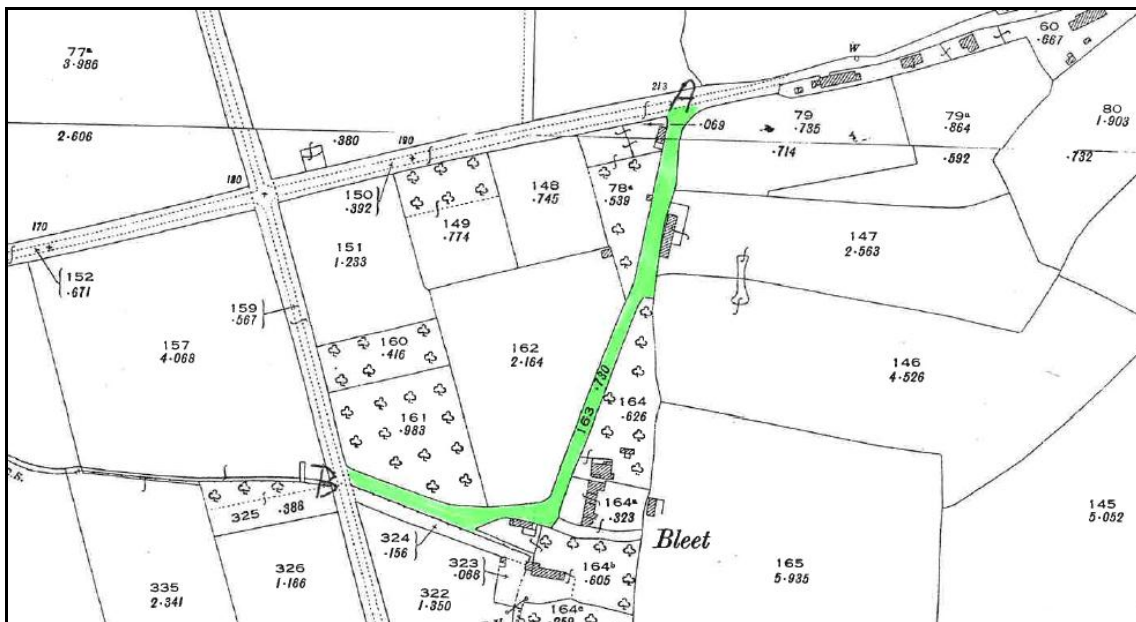
Applicant: Mr G Field
5 Bleet
Great Hinton
Trowbridge
BA14 6EA

Application for: An Order modifying the definitive map and statement for the area by recording the width of the bridleway Great Hinton 34 as shown shaded green on an extract from the 1:2500 Ordnance Survey Map (considered to be an Edition of 1924)

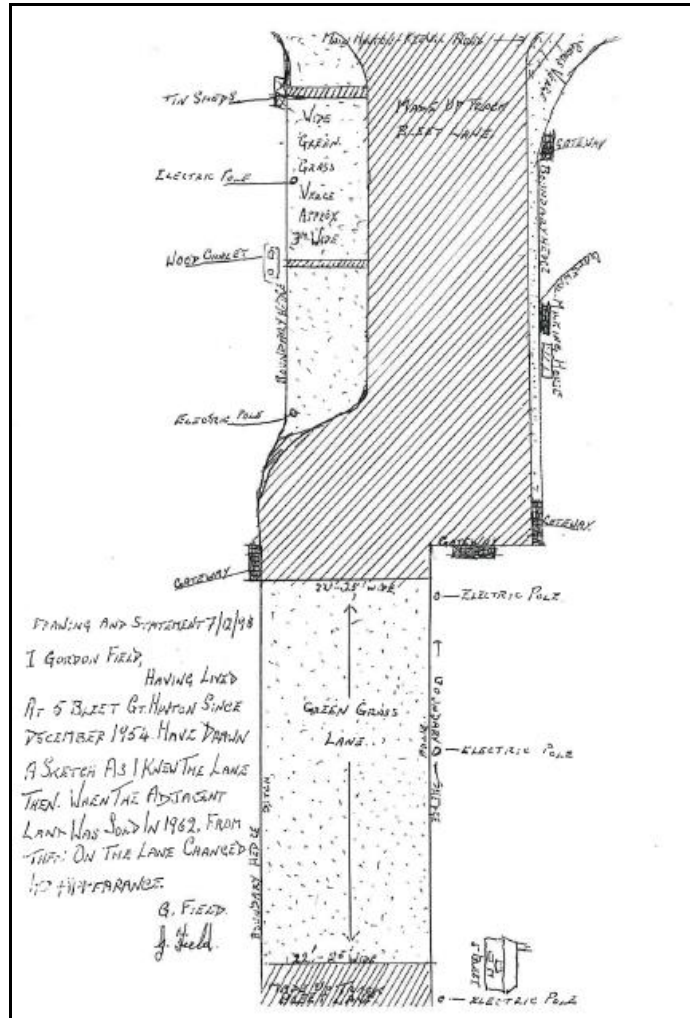
Application comprises: Form 1 Notice of Application for Modification Order
Plan at scale c.1:2500 showing the claimed width in green
Form 3 Certificate of Service of Notice of Application for Modification Order. Notice served on:
Mr P D Noad, Treetops, Great Hinton
Mr R Newman, Close Farm, Great Hinton
Hand drawn plan signed by Mr Field stating that has lived at 5 Bleet since December 1954 and claiming that the lane had changed its appearance when the adjacent land was sold in 1962.

Background to application: From at least 1990 onwards Wiltshire Council has been aware of issues raised by the applicant relating to drainage and width of this route

Application map



Evidence Adduced by Applicant



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 –

(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 This application is considered to be largely compliant with Schedule 14. The ownership of the land over which Great Hinton 34 leads is not clear and although the applicant served notice on two of the adjoining landowners (and is himself another) there are additional properties adjoining the lane who may claim ownership. These have been included in the initial consultation and are therefore now aware of the application and have been given the opportunity to comment.
- 2.9 In *R (Warden and Fellows of Winchester College and Humphrey Feeds Ltd) v Hampshire County Council and SoSEFRA [2008] EWCA Civ 431* The Court of Appeal at paragraph 70 found that a deficiency in a paragraph 2(2) certificate is not fatal to an application if no prejudice has been caused. Since all adjoining landowners have had ample notice of the application and an opportunity to adduce evidence or to comment any failures in the service of notice by the applicant are not considered to have caused prejudice.

3.0 Land Ownership

- 3.1 The applicant (who lives in a property adjoining Great Hinton 34) considers that the route is owned by the following:

Mr P D Noad, Treetops, Great Hinton
Mr R Newman, Close Farm, Great Hinton

- 3.2 Lands belonging to Close Farm are unregistered with Land Registry; the route of Great Hinton 34 is also unregistered with Land Registry.
- 3.3 Use and maintenance of the way was awarded to the adjoining land owners at Inclosure in 1818 and accordingly it is considered that on the balance of

probabilities, the sub soil of the land over which Great Hinton 34 leads remains in the ownership of the adjacent landowners. The surface of the highway is vested in the highway authority, the extent of this in terms of the width is the subject of this application.

- 3.4 For the purposes of consultation and notice of the application the following were also notified:

The Owner or Occupier, 3 Bleet, Great Hinton
The Owner or Occupier, Tintalite, Great Hinton
The Owner or Occupier, Bleet Cottage, Great Hinton
S Noad, Hinton Services, Bleet, Great Hinton

4.0 Current Records

- 4.1 Great Hinton 34 is recorded as a bridleway in the definitive map and statement.

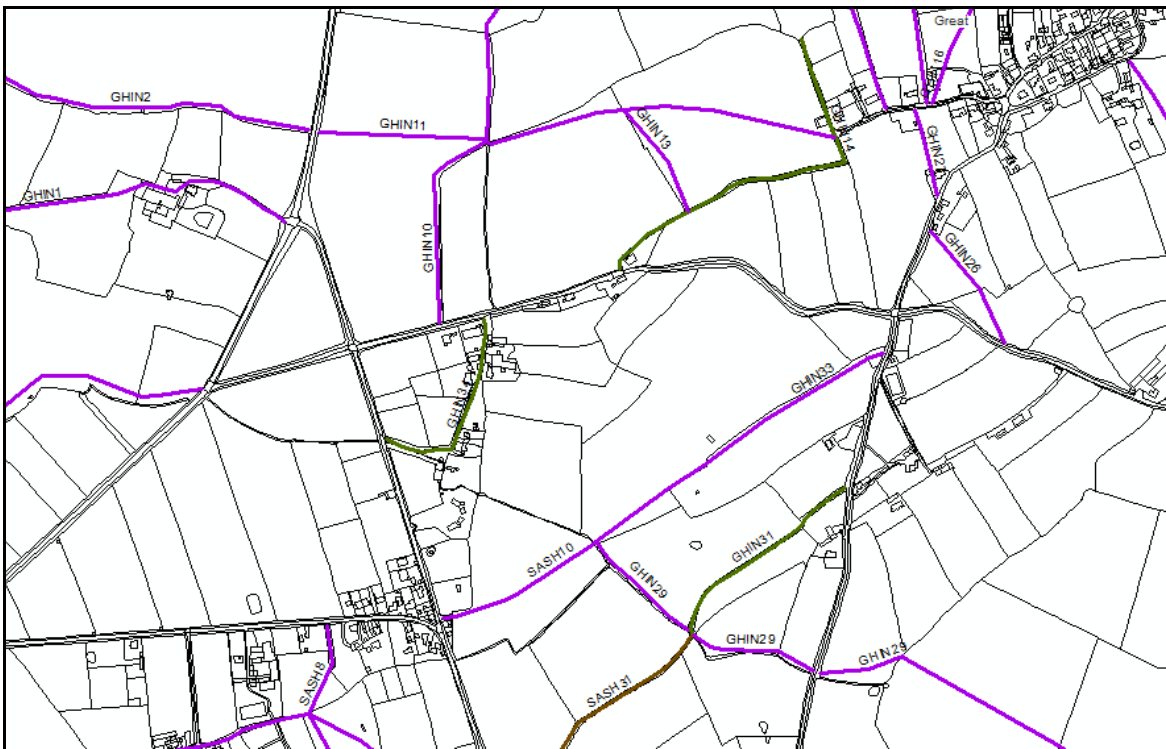
BRIDLEWAY From the Haghill – Steeple Ashton road, C.19, at Bleet leading east – south – east and north – north – east to the Keevil road, C.218, at Cold Harbour.

Approximate length 302 metres

- 4.2 The route was a former Road Used as a Public Path (Carriage Road Bridleway). It was added to the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 without objection and was reclassified during the Council's Second and Special Review of the definitive map in 1972. The Parish Council requested bridleway and the County Council at that time did not find any inclosure or tithe evidence to suggest this was inappropriate. It was reclassified as a bridleway without objection.
- 4.3 An Order was made to update the definitive map in 1991 entitled: The Wiltshire County Council (Sheets ST 85 NW, ST 85 NE, ST 85 SW, ST 85 SE, ST 84 NE, ST 95 SW, ST 8456 – 8556, ST 8457 – 8557, ST 8458 – 8558, ST 8657 – 8757 and ST 8658 – 8758) Rights of Way Modification Order No. 7 1991 (ref no 324) and the map shows the right of way (A1 to B1) as below:

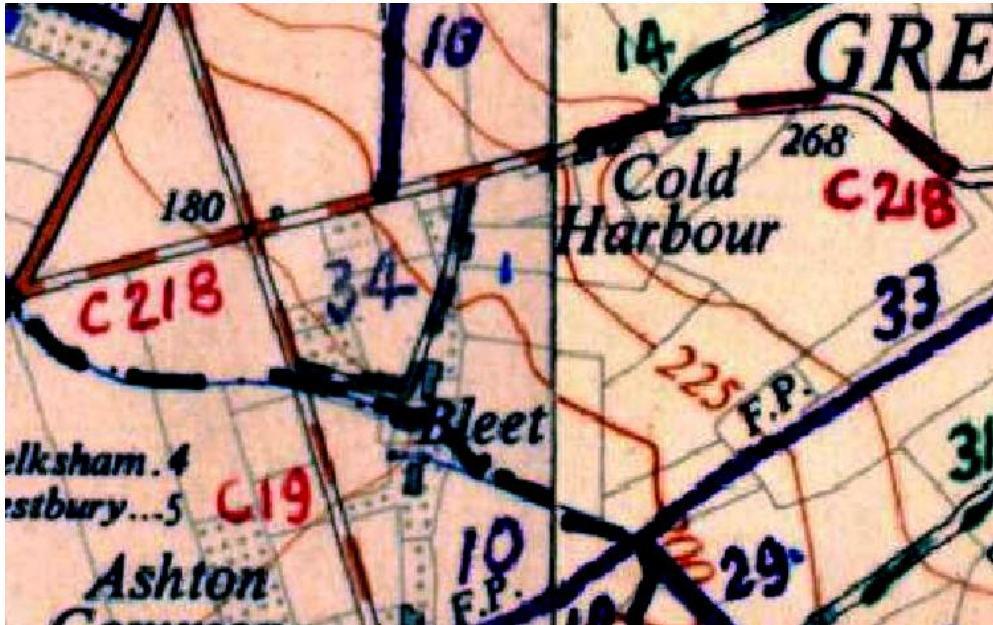


Extract from working copy:



Footpaths = purple, Bridleways = green, Restricted byways = red, Byways Open to All Traffic = brown

4.4 An extract from the original definitive map dated 1953 shows the course of the RUPP Great Hinton 34 as a green pecked line:



5.0 Aerial Photographs

Aerial photographs from 1991, 2001, 2006 and 2014 have been viewed and all record significant activity with cars and buildings at the northern (Cold Harbour) end of the Great Hinton 34 while the rural character of the southern and western sections remains.

2001



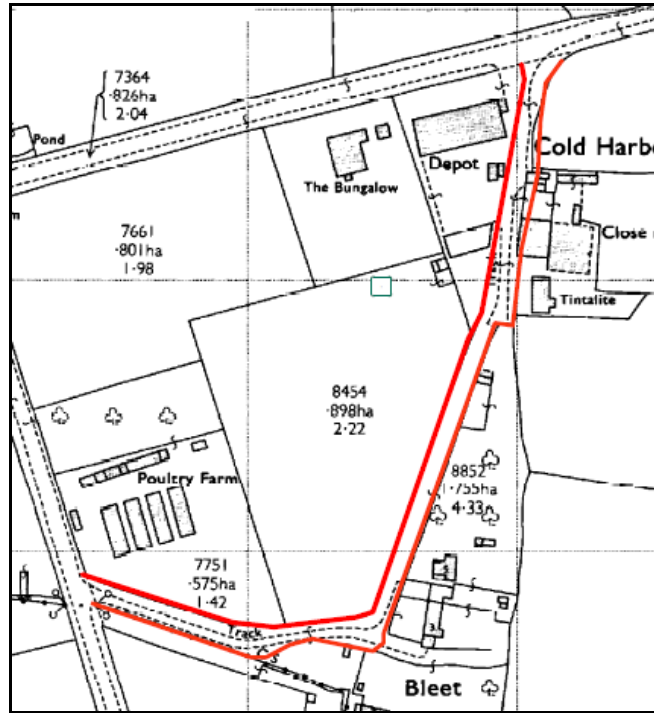
2006



2014



- 5.1 Using the Council's Arc GIS system it is possible to overdraw the boundaries of the applicant route from the historic Ordnance Survey mapping and then to overlay those lines onto more modern mapping or aerial photographs to reveal any changes to the route in the last 100 years or so.
- 5.2 **Historic route (from 1901 Ordnance Survey 1:2500 map) overlaid in red onto c.1980 OS survey plan:**



5.2 Historic route (from 1901 Ordnance Survey 1:2500 map) overlaid in red onto 2014 aerial photograph



6.0 Photographs of the Route

Officers of the Council made site visits and conducted historical research into the route in 1998. These photographs show the route walked from the west (Common Hill) to Cold Harbour in the north and were all taken in 1998 except for the first and last ones which are images taken c.2013



Great Hinton 34 at Common Hill (western) end



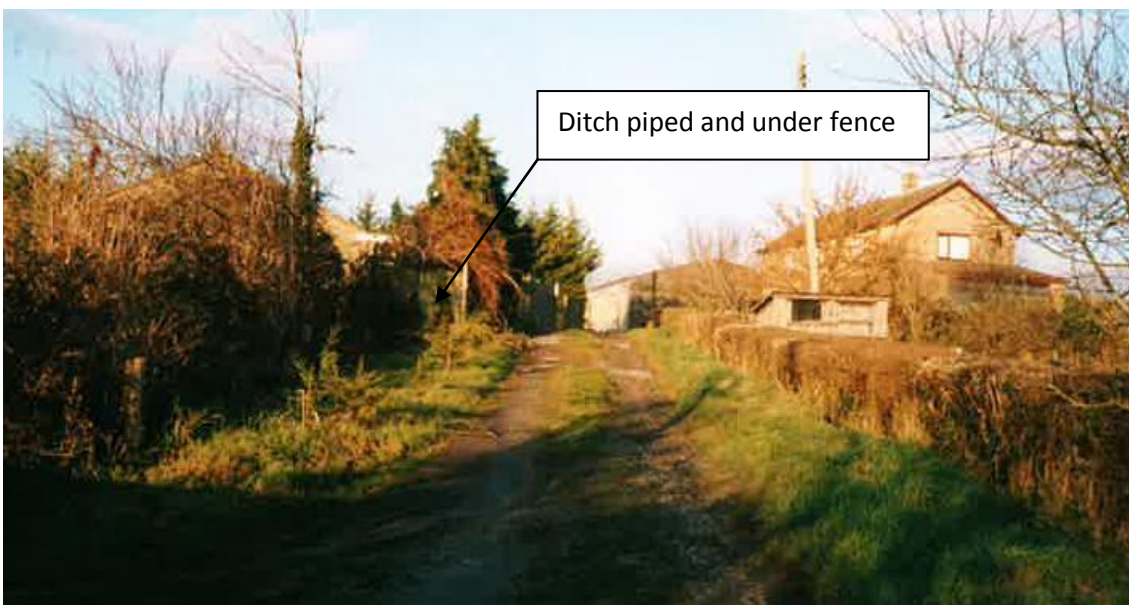
Great Hinton 34 leading east towards cottages at Bleet



At Bleet cottages route turns north north east



Route leads north towards Cold Harbour





Close up of fencing and piped ditch



Route continues north towards Cold Harbour between buildings



Junction of Great Hinton 34 with C.218 at Cold Harbour. Area on left hand side now developed.

7.0 Correspondence 1990 - 2015

Correspondence held on file includes notes, photographs and correspondence dating from 1998 and 1999 from officers of the Council investigating a complaint relating to alleged encroachment by Mr Noad. It is clear from the correspondence that the owner of Close Farm, Mr Williams, and Mr Field were both aware of the investigations at the time and were invited to apply for a definitive map modification order to record a width in 1999 and again in 2001.

7.1 The file also contains copies of correspondence between Mr Field's solicitor and Mr Noad's solicitor relating to a dispute about drainage from the bridleway in 1990. It is not clear what was resolved but the exchanges provide some useful background information about the route including:

- Mr Field had lived at 5 Bleet since 1954 and dug ditches in the lane which was grass at that time.
- By 1985 the ditches were not visible to either party though Mr Noad claims there were none from 1965 onwards.
- A representative of the Council was alleged to have said the bridleway should be 12 feet wide.
- Wessex Water laid a water main under the surface of the bridleway in about 1988.
- Mr Noad had built up the level of the road. The increased levels had caused Wessex Water to raise the level of their sewage manhole on two occasions.

7.2 In 2004 Wiltshire County Council wrote to The Planning Officer at West Wiltshire District Council stating that:

"We have concluded that the width of Bridleway 34 is as described on the Ordnance Survey County Series, an extract of which I enclose."

7.3 In 2005 the Council wrote to a Mr Underwood who was acting as an agent for a planning application submitted on behalf of Mr Noad and informed him that:

"...The evidence supports the legal presumption of the highway boundary being within the fence lines shown on the enclosed map. I understand from my colleague the lane, as marked upon this plan, has been encroached upon at this site as can be evidenced by the wooden fence which protrudes into the lane in the vicinity of the bungalow and possibly other structures...."

7.4 In 2009 Mr Field wrote to the Chief Executive of Wiltshire County Council regarding his application for a DMMO. Mr Field was advised of his rights to appeal to the Secretary of State for non-determination of his application within 12 months of receipt and in 2015 Mr Field made a Schedule 14 appeal to the Secretary of State.

- 7.5 In 2015 an Inspector from the Planning Inspectorate directed Wiltshire Council to determine Mr Field's application on the grounds that *"it is not reasonable for an authority to take 16 years to determine this type of application."*

"In the circumstances the Secretary of State has decided that there is a case for setting a date by which the application should be determined. In exercise of the powers vested in her by paragraph 3 (2) of Schedule 14 to the 1981 Act, the Secretary of State has directed Wiltshire Council to determine your application not later than 1 August 2017."

8.0 Consultation 2016

The following letter was circulated on the 28th June 2016:

"Wildlife and Countryside Act 1981 s.53

Application to record the width of bridleway Great Hinton 34 at Bleet

Wiltshire Council has been directed by the Secretary of State for the Environment Food and Rural Affairs to determine an application made in 2004 to record the width of the public bridleway that leads from Cold Harbour, Great Hinton south to Bleet and then west to Common Hill (at OS Grid reference ST 8974 5848).

The applicant seeks to record the width as shown in green on the attached plan (the plan is at the scale of approximately 1:2500) and relies on evidence of the historic width of the lane pre-dating the sale of the adjacent land in 1962.

The Council must consider all relevant evidence that is made available to it and you are therefore invited to submit any evidence or observations that you have on the matter.

I would be grateful to receive responses by 5th August 2016. If in the meantime you have any queries please do not hesitate to contact me."

- 8.1 The letter was accompanied by a copy of the application plan (para. 1).
- 8.2 The letter and plan were sent to the following:

The Auto Cycle Union	Commons, Open Spaces & Footpaths
Wiltshire Bridleways Assoc.	Cyclists Touring Club
British Horse Society	Great Hinton Parish Council
Wiltshire Councillor J Seed	British Horse Society Wiltshire
Byways and Bridleways Trust	British Driving Society
Wiltshire Council Senior Rights of Way Warden P Millard	
The Ramblers T Lewis	The Ramblers B Micklam
Trail Riders Fellowship B Riley	Applicant G Field
The Owner/Occupier Close Farm	The Owner/Occupier 3 Bleet
The Owner/Occupier Treetops	The Owner/Occupier Tintalite

P M Underwood
Hinton Service S Noad

J Cheal Mogers Drewett (acting for Mr Field)
The Owner/Occupier Bleet Cottage

9.0 Consultation responses

9.1 Paul Millard, Wiltshire Council Senior Rights of Way Warden 01 July 2016

“We resurfaced the section of bridleway from Common Hill road up to 5 Bleet, Great Hinton, Trowbridge, Wiltshire, BA14 6EA this was in response to complaints received from an elderly resident who was in poor health and had reported that a rapid response paramedic had got his vehicle stuck whilst accessing or leaving his property and that this was potentially something which could mean he was denied urgent medical assistance.

The track was resurfaced with road planings tilted and raised above the verges so that rain water could flow off the track. I would think we resurfaced to a width of three meters.

To enable the works to take place some of the tree branches overhanging the bridleway were trimmed back to allow for the boom of the digger to operate safely. We have in the last 6 years also replaced the bridleway finger on the finger post.

I will ask the contractor for the exact date of the works and up date you.”

9.2 Bill Riley, Trail Riders Fellowship 01 July 2016

“Thank you for your letter of 28 June 2016 together with a plan referring to an application to record the width of Great Hinton BR 34 (a former RUPP).

The County Series 25” OS Maps 1885 – 1924 all show the width of the highway to extend from fence to fence, so the application is well founded and I am pleased to support it.”

9.3 Steve Noad, Hinton Services 22 July 2016

“Good to meet with you today, I am pleased that you have now made a site visit and have more of an understanding having viewed the areas in question as I think it was very important to have done so.

I have attached copies of the photos you requested and also for your information a copy of the Wessex Water Waste Network dated 07/04/14.

After having spoken with Richard Newman a little more, as we recalled and as per the map you have, the tin building in Mr G Fields paddock was on the edge of the said bridleway, it has occurred to us, that obviously his gate has been replaced for a metal one, myself and Richard recall that prior to that gate there was only an 8ft wooden gate with wooden posts. if you took the position of where that would have been and eye it with existing wooden post and the tin building, you would then have

a straight line and would gain approx. 4ft on the width of the lane. I recall when I was a young lad living here that Mr Fields did have the hedge at the top part of the lane either out or stripped right back and that would be when the new barbed wire fence was erected and post. As can obviously be seen the hedge has been moved and allowed to gain width as the water main is now in the hedge which was once in the lane.

I do think it is a very important point that my father had a site meeting about where he could legally place his fence prior to doing so with a council representative, and placing it in the current position on that advice. Again as from the photos it can be seen that the position of this is over the ditch which is now piped.

I hope this information proves useful.

Again very nice to meet with you, I know my mother, Richard and Joyce are also pleased that they have that meeting also.”



Wessex Water pipeline shown in red.



Aerial view of north end c. 1960s. Lane is clearly shown as a vehicular track with verges and ditches to the side.



9.4 Alan Kind 25 July 2016

“Re: consultation regarding the width of BR 34 at Bleet, Wiltshire.

Notes.

1. *The settlement at Bleet: it existed before inclosure in 1818? If yes, then there must have been some sort of road to / into the settlement, leading from and to the principal road(s)?*
2. *Given the character of Bleet, that ‘access road’ was probably a public road, but because the inclosure award private road (now the bridleway) appears to be wholly ‘internal’ to the lands being inclosed, the award has probably extinguished any prior public rights.*
3. *The irregular shape of the inclosure private road is more consistent with an ‘ancient road’ than a newly made inclosure road.*
4. *Whatever the pre-inclosure history, the outcome of the inclosure process has to be taken at face value unless there is evidence (‘facts and legal context’) to the contrary.*
5. *The award set out a private road 20 feet wide. If for some unknown reason the road was made wider, then as regards the ‘private right of way’, it is a reasonable presumption that the fencing of the road was made to separate the right of way from the adjoining fields. Inclosure awards usually had a ‘fencing clause’ for public and private roads.*
6. *By 1842 (tithe) and 1885 (OS) the road was mapped in the shape and layout that is today. By 1952 the road had the local reputation of being a minor public vehicular highway (per *Fortune v. Wiltshire Council*) but no width was recorded in the definitive statement.*
7. *In this situation it does not matter that the road was subsequently reclassified as a bridleway: that is an administrative matter in the absence of sufficient evidence to underpin the 1952 local reputation (as a RUPP).*
8. *So, at some time between 1818 and 1952 the road was dedicated as a public highway. The 1952 designation of RUPP was some evidence that, at the time, the local view was that this dedication was as a public vehicular road.*
9. *It would not be unreasonable, or unusual, for a 20-foot-wide (or at a somewhat greater, and irregular, width) private carriage road to be dedicated (generally evidenced by long public user) as a public carriage road. A 20-foot width for private vehicles is the sort of width needed for passing and repassing by public vehicles.*
10. *It would be reasonable and appropriate therefore to presume a width for the RUPP that reflects,*
 - 10.1. *The physical character of the road,*
 - 10.2. *The pre-dedication user of the road, and,*
 - 10.3. *The post-dedication (presumed) user of the road.*

11. *Remember that in the RUPP reclassification process there was no burden of proof to prove bridleway status; the burden was to prove vehicular status; the 'default status' was bridleway. This route is a bridleway where dedication as a bridleway was not an evidential matter.*
12. *Who could dedicate the public rights? It does not really matter at this distance in time. There is no burden to show that the recorded dedication as a RUPP was a valid dedication. That was found to be so via the original (unchallenged) definitive map process.*
13. *But the issue of ownership and dedication has a bearing on the width. Even though the road and adjoining plots were 'awarded', unless there is evidence to the contrary each streetward landowner as regards the awarded private road owns the soil of the road usque ad medium filum. There is nothing to prevent, e.g. a single landowner with an inclosure-awarded footpath across his allotted land expressly, or impliedly, dedicating a higher right of way over that footpath.*
14. *The dedication of the public right of way that was recorded as a RUPP in 1952 has to originate in post-1818 dedication, and that dedication was made by all the streetward landowners, usque ad medium filum. It is improbable that a set of 'half width' dedications (which aggregate to make the whole way dedicated) were dedications for less than the awarded 10-foot-width that each facing landowner owns. The character of the ownership is itself indicative of the extent of the dedication.*
15. *When did dedication take place? Obviously it was after 1818 and before 1952. The 1952 survey sheets may assist, but in the absence of knowledge of then-recent dedication (which you would think would have been known and recorded in 1952) the presumption must be that dedication took place 'time out of mind'. In 1952 time out of mind was around 1882. 1882 fits well with the route as shown by the Ordnance Survey in 1885 et seq.*
16. *Taking the known facts of the case, and applying the usual presumptions (see the attached 'Notes on the Width of Public Rights of Way') the presumption in this case is that the width of the RUPP in 1952 was and is the width of the road as shown by the large-scale OS maps from (about) 1885 onwards to 1952."*

9.5 Mr G Field 4th August 2016

- “1. *Mr G Field, the applicant, applies to have the true width of BR 34 recorded.*
2. *It is asserted by the Applicant that the true width is as shown on the copy OS Map attached, coloured green.*
3. *The 1818 Inclosure Map showed the lower part of BR 34 as being of a width of 20 ft, but the maps tend to show the route widening in its northern section. Thus, it is asserted that as a minimum, the width of BR34 is 20 ft, but at the northern end, as shown coloured green on the attached plan, the true width is considerably wider than that.*

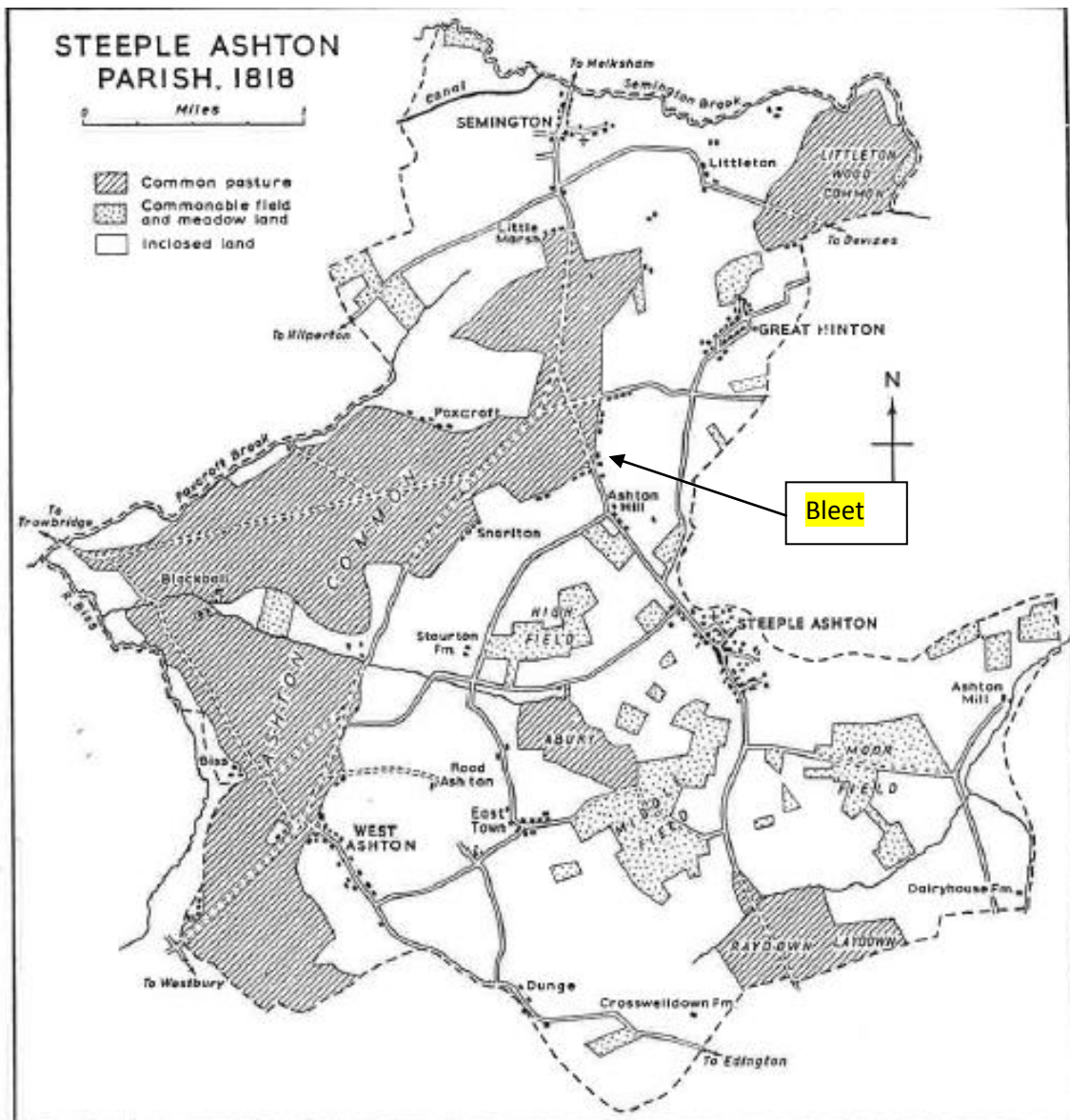
4. *If it is established (and we ask that it should be so established) that the true width includes parts of the track now encroached upon, the encroachments and obstructions must be removed.*
5. *In the Wiltshire letter to the ombudsmen of 29th October 2001 they said: "In this case we believe that prima facie evidence exists to support Mr Field's claim about the width of the track". It remains to be seen exactly what that prima facie evidence consists of, but we now call upon Wiltshire Council to adduce that evidence, and to rely upon it in ruling upon the true width of the track being as coloured green on the attached OS map.*
6. *As to status of the route, it is a public bridleway and remains so. It has been suggested informally in previous correspondence that higher rights may exist, but that was before the NERC Act of 2006, since when any byway rights will have been extinguished. The Applicant purchased his property (no 5 Bleet adjoining BR34) in 1976. The Local Search done as part of that purchase process contained Wiltshire County Council's confirmation that "The track coloured brown on the plan is shown as a road used as a public path on the definitive map of public rights of way. Under the second special review of rights of way this track will be reclassified as a bridleway." The track coloured brown is the same as the track coloured green on the attached plan. The reclassification process had thus been gone through and clearly any question of the bridleway being subject to higher rights would have been investigated at the time and rejected.*
7. *In conclusion, the Applicant seeks to have the true width of BR34 recorded, and that it should be the same as the width shown green on the attached plan."*

NB The plan referred to is the same plan as the application plan shown at paragraph 1.

10.0 General Context *Some notes taken from Victoria County History Vol 8*

Great Hinton is a small village and civil parish south of Melksham and includes the hamlets of Bleet and Cold Harbour. It was a separate tithing of Steeple Ashton parish until it became a separate civil parish in the late 19th century.

- 10.1 Much of the land in the parish of Steeple Ashton (including Great Hinton) had been enclosed by the late 16th century except for some woods and commons, the map below shows the extents of the inclosed land and the common land in the area in 1818:



- 10.2 The claimed route of Great Hinton 34 was not in existence at this time though a number of cottages and buildings were in place at the edge of Ashton Common and these buildings form the hamlet of Bleet that is in existence today. It was only when the Common was inclosed that Bleet Lane (Great Hinton 34) was created.
- 10.2 The population of Great Hinton has varied relatively little between 1801 (174 people) and 2011 (171 people) and there does not appear to have been significant residential development at Bleet since the hamlet was formed by the inclosure of the common.
- 10.3 The claimed route of Great Hinton 34 is shown on Ordnance Survey County Series sheets 39.1 and 39.5 and on the National Grid series maps ST9059 – 9159, 9058 – 9158 and ST 85 NE : ST 95 NW.

11.0 Historical Records

11.1 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 twenty 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.

11.2 The value of relatively low evidential weight documents should not be underestimated though where it is considered that they add synergy to the evidence as a whole. The Planning Inspectorate's *Definitive Map Modification Orders: Consistency Guidelines* state:

“There is a distinct and important difference between the ‘cumulative’ and ‘synergistic’ approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers all produced within the same decade or so) could be regarded as mere repetition. Thus their cumulative weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents.”

11.3 That said, 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:

<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines>

(as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

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

12.0 Category A Evidence

12.1 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 plans for public undertakings (i.e. arising from an Act of Parliament which specifically required the identification and verification of public rights of way).

12.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

12.3 The land over which Bleet Lane (Great Hinton 34) leads was formerly the eastern edge of Ashton Common which was inclosed by an award arising out of an Act of Parliament in 1818. Bleet Lane was created at that time and gave access to not only the cottages that had previously been built at the edge of the common but also to inclosures so formed. The clauses of the 1801 'General Act' also apply.

12.4 **An Act for Inclosing Lands in the Parish of Steeple Ashton in the County of Wilts 21st May 1813** WSHC ref. no A1/215/70
Steeple Ashton Inclosure Award WSHC EA107
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 *'The General Act 1801'* 41 GeoIII cap. 109

Prior to the 1801 Act each Parliamentary Inclosure of an area was authorised by its own individual local Act, each with its own terms and conditions. The 1801 Act introduced standard terms and conditions for inclosures to proceed under and although a local authorising Act was still needed (which enabled local variations to be applied) the 1801 Act greatly standardised and streamlined the process.

12.5 Section VIII of the 1801 Act empowered commissioners to set out and appoint "publick Carriage Roads and Highways through and over the Lands and Grounds intended to be divided" and Section X empowered commissioners to set out and appoint "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...".

12.6 Section X further states that the making and repair of these private roads shall be the responsibility of the owners and proprietors of the land and grounds divided and inclosed. Section XI states that the grass and herbage on the roads shall belong to the Proprietors of the Lands adjoining on either side and as far as the Crown of the Road.

12.7 The 1801 Act specifies a minimum width of 30 feet for public carriage roads and this is echoed in the Local Act of 1813 at Section XVII. Neither the 1801 Act or the Local Act makes provision for minimum widths for private roads though Section XXIV does empower commissioners to make alterations to private roads already set out.

12.8 The Commissioners were thus empowered to make an award of public and private roads, public and private footways and bridleways. In the case of Steeple Ashton the Award is extensive and the Commissioners awarded the following:

- 9 Public Roads (2 @ 60 feet wide and 7 @ 30 feet)
- 25 Public Footways (23 @ 4 feet wide, 1 @ 15 feet and 1 @ 16 feet)
- 1 Public bridleway (30 feet wide)
- 4 Private Footways (3 @ 4 feet wide and 1 @ 6 feet)
- 68 Private Carriage Roads and Driftways (all between 15 and 20 feet wide)

12.9 Great Hinton 34 is awarded as “Private Road Bd” as follows:

“And whereas the said Commissioners in further execution of the powers invested in them and in and by the said public Act did set out and appoint such private carriage roads and driftways public bridleways and public and private footways as they judge necessary in over upon and through being by the sides of the allotments hereinafter made and set out by them in pursuance of the said public Act as they thought requisite giving such notice and subject to such examination as hereinbefore mentioned and concerning the several public carriage roads and highways set out and appointed by them in manner aforesaid and the said commissioners together with the said Wm Whittaker at a meeting duly holden for that purpose and by the said public Act did require order and finally direct how all the aforesaid public carriage roads and driftways public bridle and public and private footways should be set out all which said private carriage roads and driftways public bridle and public and private footways as set out appointed and finally directed is also pursuant to the direction of the said public Act hereinafter described (that is to say) ...

.....

Private Road Bd ONE private carriage road and driftway 20 feet wide marked Bd on the said map leading from Keevil turnpike road near Cold Harbour southward and westward to the Hag Hill Road.

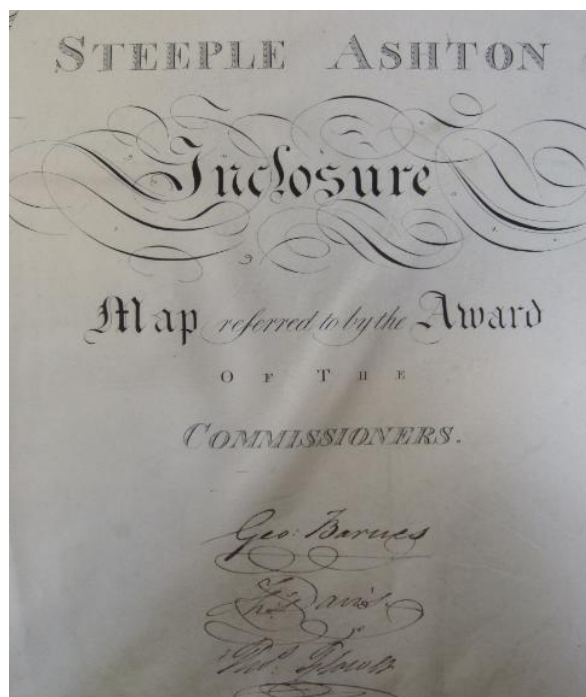
.....

AND the said Commissioners do hereby award order and direct that the several private carriage roads and driftways hereinbefore set out and awarded by them in manner aforesaid which from henceforward and forever hereafter be and remain to and for the use of the several owners and occupiers or proprietors for the time being of the allotments old enclosures lands and premise which adjoin the same or to which the same respectively lead except in all cases where it is hereby otherwise specially provided and that the several private carriage roads and driftways public

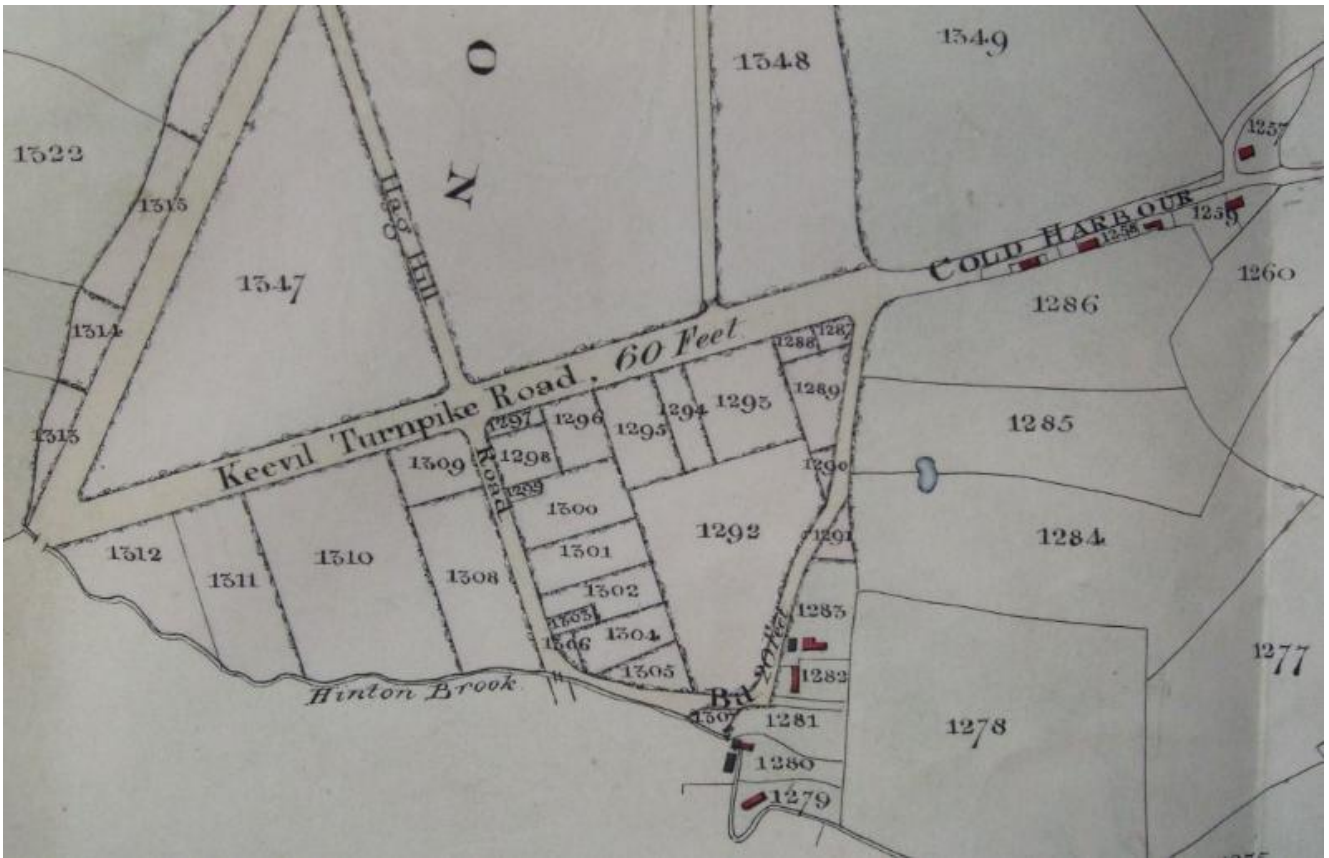
bridleways and public and private footways so set out and awarded as hereinbefore mentioned shall from time to time and at all times forever hereafter be supported and kept in repair by and at the expense of the owners and proprietors for the time being of the lands and grounds by the said Act directed to be divided and enclosed in such shares and proportions by the said Commissioners have in and by certain schedules hereinafter written or contained ordered and directed concerning the same.

AND the said Commissioners do hereby award that the grass and herbage arising growing or renewing in upon from and out of and over the several public and private roads and ways hereby set out and appointed in manner aforesaid shall forever belong and be the sole right of the proprietors of the lands grounds and premises which shall respectively adjoin the said roads and ways on either side thereof as far as the crown or centre of the roads and ways except where any of such roads and ways are hereby declared to pass through or over any allotments hereby awarded or where any such roads and ways are bounded on one side only by allotments in which case the grass and herbage of such last mentioned roads and ways shall wholly belong to and be fed by the owners and occupiers of such allotments only.”

- 12.10 *“The several Roads and Footways in and near Hinton Common and Little Marsh Common respectively marked Bd, Be, Bf, Bg, Bh, Bi, Bk, Bl, Bm, Bn, Bo, Bp, Bq, Br, Bs, Bt and Bu to be for ever hereafter kept in repair by and at the expense of the several persons in respect of their several allotments and the shares and proportions mentioned and expressed in the rate or schedule next hereunder written and by and at the expense of the future owners and proprietors of such allotments for the time being in the like proportion.”*



12.11 The map annexed to the award shows the route inscribed "Bd 20 feet":



12.34 **Other Category A Evidence – Railway and Canal Plans, Quarter and Petty Sessions**

The area is not affected by any plans relating to canals or railways. No mention of the route has been found in any records of Quarter or Petty Sessions relating to obstruction or repair or closure or diversion of the route

12.35 It is noted that the Vestry Minutes (the highway authority at the time) in 1869 make reference to an application to the Justices in Petty Sessions under the provisions of s.31 of 25 & 26 Vic c.61 (Highways Act 1862) to declare certain private carriage roads repaired at the expense of the parish to be declared public highways. The roads were Drove Lane and Moorfield Lane (Bb and As on the inclosure award). Further reference in 1874 was found to another road called the “Strand” being put in repair by the owner and thereafter repaired by the Board. However, no reference to Bleet Lane or Bd was found.

13.0 **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 include records from the Tithe Commissioners and the Inland Revenue.

13.1 **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.

13.2 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.

13.3 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.

13.4 Roger J P Kain and Richard Oliver in *The Tithe Maps of England and Wales* at page 23 note that the portrayal of features on tithe maps is very variable across parishes and that advice to the privately commissioned surveyors was itself imprecise and that although the official instructions required that surveyors should include such detail on their maps as it is usual to find on estate maps, there was no statutory requirement to do this.

13.5 There are however general conventions that are observed and at page 24 Kain and Oliver observe that:

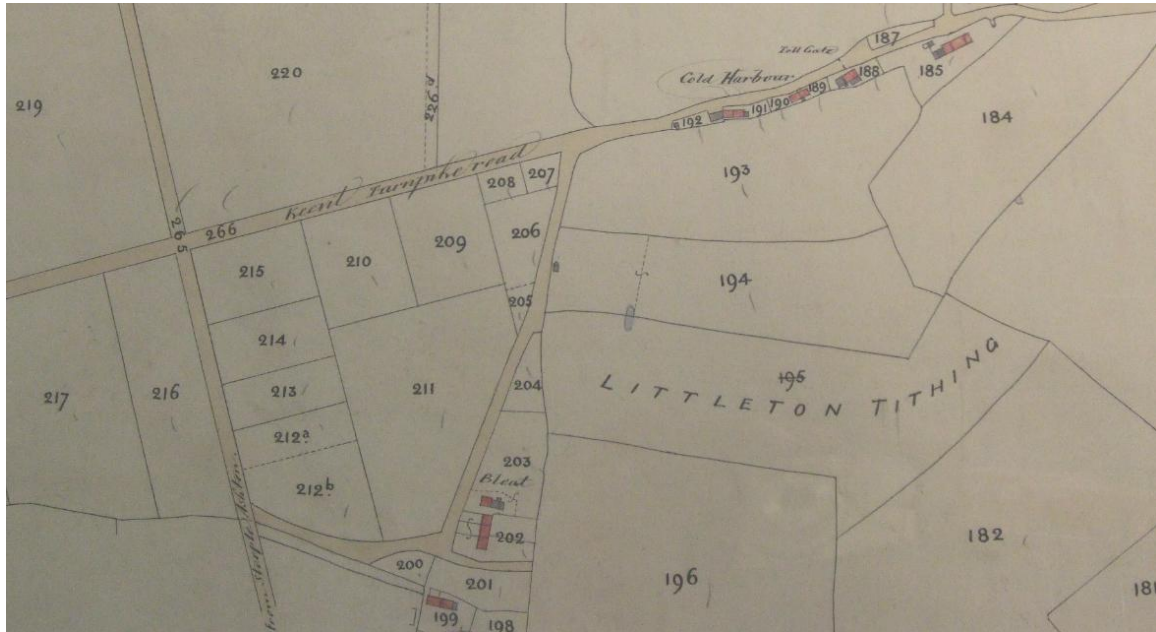
“Roads are usually shown on tithe maps as they normally bounded individual tithe areas. Only very rarely is their status as public or private indicated with any certainty, though the general convention of colour filling public roads in sienna is often followed.”

“Foot and Bridleways ...are sometimes explicitly annotated as such, but more usually they are indicated by single or double pecked lines.”

13.6 **Great Hinton Tithe Map and Apportionment 1842** WSHC TA/Great Hinton

The apportionment is dated 06.01.1842 and the map is dated 1842. It is drawn at the scale of 3 chains to one inch and is sealed by the Tithe Commissioners Wm Blamire and Rd Jones as a First Class Map. The map was surveyed by H G Buxton of Devizes and has construction lines. It shows water bodies, parsonage, houses, woods, plantations, orchards, foot and bridleways, road names, toll gates, road and path ownerships and widths. It is noted that only 6% of Wiltshire's tithe maps were sealed as First Class maps; a First Class map being a map that was accepted as legal evidence of all of the matters it portrayed rather than Second Class maps which were accepted by the Tithe Commissioners as evidence of only those facts of direct relevance to tithe commutation (*p708 Kain and Oliver 'The Tithe Maps of England and Wales'*).

13.7 The route of Great Hinton 34 is clearly shown on the same route as in the 1818 Inclosure Award and is coloured sienna as a road leading through “Bleat”. Unlike other roads however it is not numbered and hence there are no details in the apportionment relating to it and any measurement of it. It could be included in the category of “Roads, waste and water & O” at 14 Acres, 3 roods and 0 perches” as being free of tithe.



13.8 Inland Revenue Finance Act 1909/1910 Records
Plans WSHC L8/10/39
Valuation Book WSHC L8/1/112

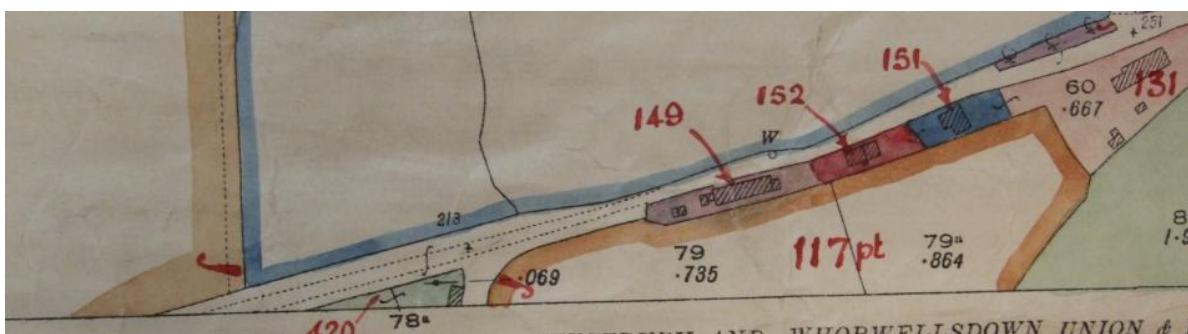
In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area 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. The surveyor for the Great Hinton survey was a Wm Bray from Steeple Ashton.

13.9 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 provide the most accurate record of the landscape that we have for this area at that time. Sheets 39.1 and 39.5 have been viewed.

13.10 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-inforcing 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.

- 13.11 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”.
- 13.12 However, the Planning Inspectorate’s Consistency Guidelines at Section 11 advises caution when considering routes that have been excluded from the survey and notes that there are some cases where a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual has been shown to be excluded from hereditaments.
- 13.13 The whole length of Great Hinton 34 is shown uncoloured and excluded from the valuation by clear broken braces. The northern end of the route extends onto map sheet 39.1 and the valuer has drawn this small length onto the adjoining sheet in addition to showing it on its own sheet.



- 13.14 It is noted that the valuer represents some other lanes or tracks as coloured with the colouring changing at the mid-point according to the adjacent hereditaments. It is

not clear why this approach was not used at Bleet though it would have been complicated to do so. Additionally, if the exclusion was because the road was in the control of the highway authority (invoking s.35 of the Act) then it would have been inappropriate to do so. Also see paragraph 13.12 for another possible reason.



14.0 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.

14.1 Records in this category can be difficult to identify as they are often contained within minute books or written records rather than depicted on maps or plans.

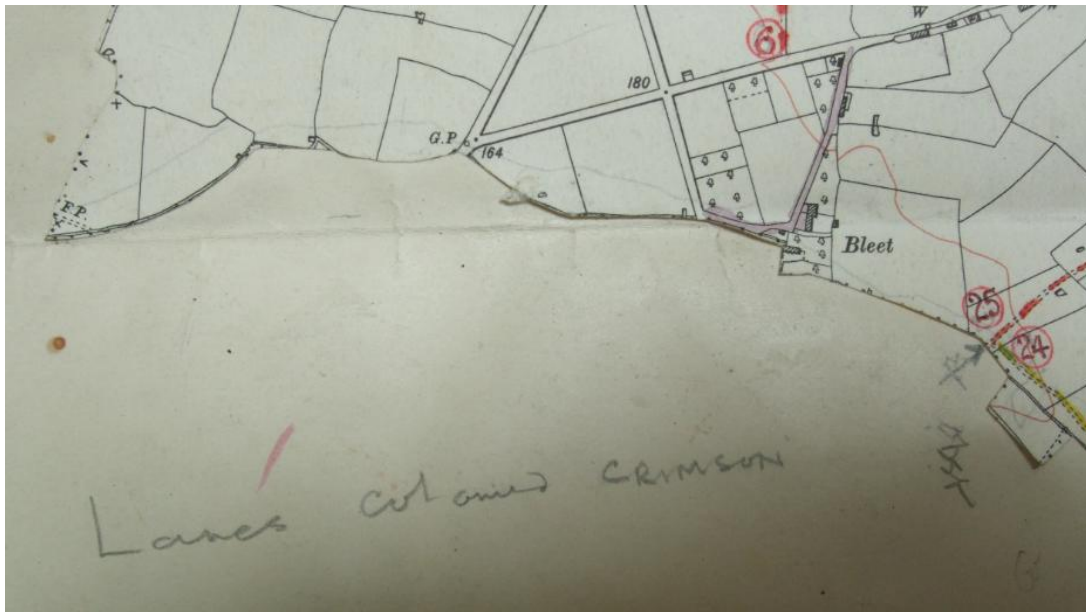
14.2 Parish Council

i) Rights of Way Act 1932 Register of Public Rights of Way WSHC 452/22

In response to changes to the law regarding public rights of way in the Rights of Way Act 1932 and to general and ongoing pressure from the Open Spaces Society many local Councils set about producing maps showing public rights in their area. Although the survey did not result in legally defined public rights in the same way as the later one did (as a result of the National Parks and Access to the Countryside Act 1949) the records provide useful information about how Parish and Rural District Councils viewed public rights at that time.

14.3 The submission of Great Hinton Parish Council in 1934 showed “Lanes coloured crimson” in addition to footpaths as pecked lines. The lanes were not numbered in the same way as the paths were but were listed in the Register according to their

name. Great Hinton 34 was shown as a lane and coloured crimson on the map (as were other green lanes Stoggy Lane, Back Lane, Gypsy Lane and Colestreet Lane).



14.4 The Register has an additional page for lanes and states:

“In addition to the foregoing there are the following Green Lanes not repairable by the public”

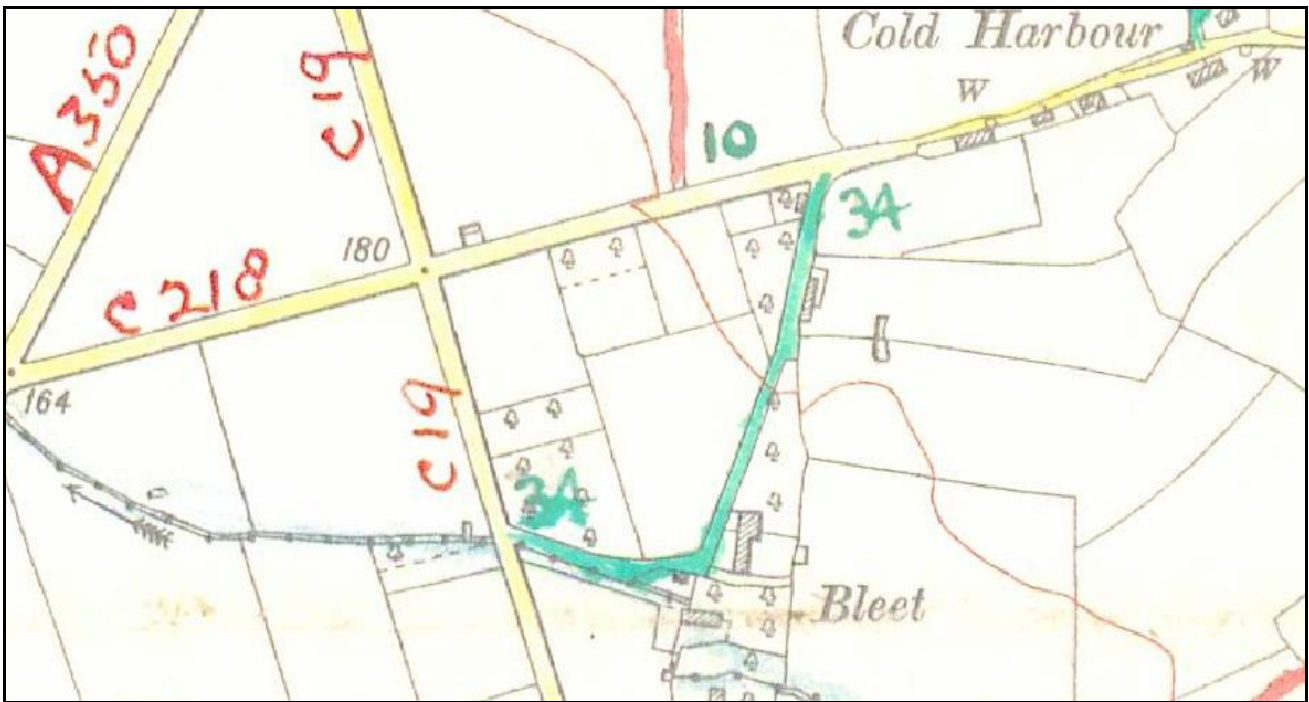
“ Yds

534	<i>Colestreet Lane</i>	<i>A grass track fenced with hedges at Hag Hill</i>
365	<i>Gypsies Lane</i>	<i>A grass track fenced with hedges</i>
200	<i>Catchcroft Lane</i>	<i>A grass track fenced with hedges</i>
380	<i>Lane at Bleet</i>	
580	<i>Stoggy Lane</i>	<i>Partly metalled</i>
166	<i>Lane at Back of Hinton House</i>	
480	<i>Back Lane as far as Catchcroft Lane</i>	

ii) National Parks and Access to the Countryside Act 1949 Parish Survey

The initial step in the process of producing the definitive map and statement was for parish councils to again survey their public rights of way and to make a claim to the County Council for them. They were to be declared footpaths, bridleways or Roads Used as Public Paths (RUPPS) though in some cases the term for RUPP in the statement was substituted for Carriage Road Footway (CRF) or Carriage Road Bridleway (CRB).

14.5 Great Hinton Parish Council claimed Great Hinton 34 as a *“carriage way or Bridleway from Road C.19 at Bleet in a north westerly direction to Road u/c 218 at Coldharbour.”*



14.6 The route was shown on the draft and provisional maps as a RUPP, the Council received no objections and the way was thus shown as a RUPP in the Warminster and Westbury Definitive Map and Statement 1953.

iii) **Parish Council Minutes** WSHC 452/1, 452/2, 452/3. 452/4

It is noted that the Minute Book for the years 1933 to 1953 is missing and subsequent minutes reveal that it disappeared along with the Clerk in 1953. This is unfortunate for this case insomuch that any discussion relating to the definitive map has been lost.

14.7 Although it is clear that Great Hinton Parish Council (and parish meeting) discussed rights of way with frequency and that some lanes were discussed very regularly (Gypsies Lane, Stoggy Lane and Back Lane), the lane at Bleet was not one of these. No specific reference was found to the lane though a reference was found to the cleaning of the brook at Bleet, however, the minutes do not record whether the concern was for purposes of the highway or not.

March 27 1924 *“Mr Rogers raised the question of the cleaning of the Brook at Bleet and the matter was referred to the Parish Council.”*

14.8 The Parish Council were consulted in 1968 when the County Council performed its Second and Special Review of the definitive map. The minutes record that the parish council did not want any changes:

March 29 1968 *“After much discussion it was decided to keep all these the same status as before.”*

14.9 Wiltshire County Council Surveyors Parish Correspondence WSHC F4/300

The following letter and memos relating to Great Hindon 34 were found:

14 November 1985 from County Surveyor to Commander Hocking

"...I assume the track to which you refer is the one leading from the C.19 eastwards to Bleet, and not the access to the Poultry Works 100 yards further south.

On this assumption, the track in question is shown on the definitive map of rights of way as a 'Road Used as a Public Path'. At the review of the map it is proposed to be shown as a bridleway and no objection has been received to this. In other words, the only proven public rights over the track are on foot and on horseback and the County Council only has a duty to maintain the track in a fit condition for this purpose. However, there may well in addition be private rights for the landowner to drive vehicles to his property, and of course with these private rights goes a private liability for maintenance. If the owner is contemplating works to maintain the track, then the County Council would be prepared to contribute 10% of the cost in respect of the public rights, subject to the works being approved in advance."

19 July 1985 from County Surveyor to County Secretary and Solicitor

"Bleet Lane, Great Hinton

Referring to your memorandum of the 21st June 1985 my Area Highway Engineer has inspected the site and finds that although works have taken place within an area of the Depot at the Cold Harbour end of the track there is still an immediate width of 4.75 metres available which I consider to be sufficient for highway needs."

14 April 1986 from Area Highway Engineer to County Surveyor

"Bridleway at Bleet.

With reference to your memo of 22 November 1985, you will be aware that surplus cold planning material was made available for this site in early January, and MSC staff levelled the material later in the month. Recent inspection indicates conditions are now reasonably satisfactory."

15.0 Category D Evidence

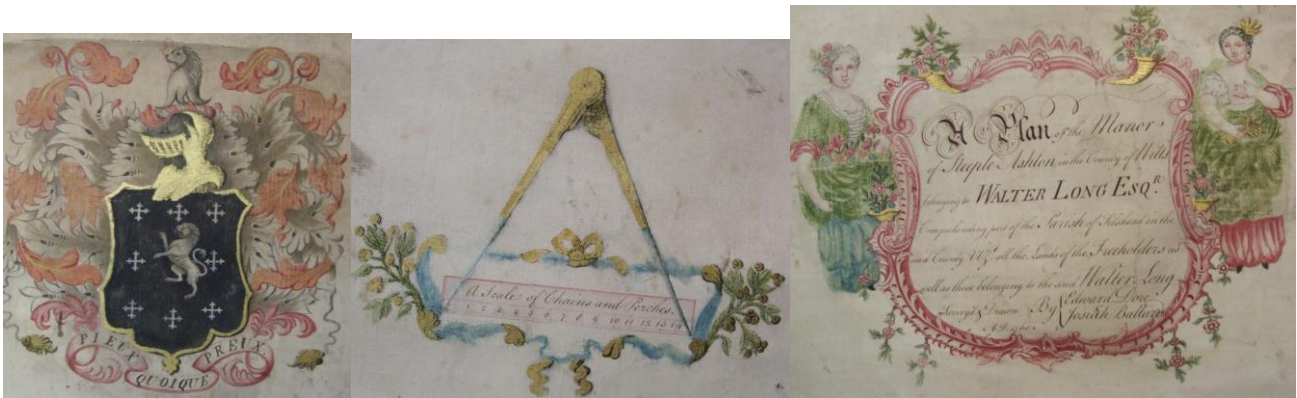
Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

15.1 **Plan of the Manor of Steeple Ashton belonging to Walter Long 1760**

WSHC Ref. no. 1252/1L

This is a large scale map (3 chains to one inch) of extraordinary quality. It is entitled “Plan of the Manor of Steeple Ashton in the County of Wilts belonging to Walter Long Esq Comprehending part of the parish of Tilshead in the said County Viz all the Lands of the freeholders as well as those belonging to the said Walter Long”

- 15.2 The map was surveyed and drawn by Edward Dore and Josiah Ballard and is dated 1760. The map is drawn on a grid with grid lines and shows considerable detail and embellishment in gold leaf.



- 15.3 The legend refers to there being a book but no book appears to have survived.

“Note all the Letters and Numbers in the under Columns shews each Close or Closes belonging to each farm as plac’d in the Mapp & Refers to the Page in the Book but in the Commons Fields & c where the Red Numbers are pac’d the Pieces are found from the Numbers in the Book”

- 15.4 The map shows “the separation between Ashton and Hinton tithing”. The water courses at Bleet and the roads are clearly shown and labelled i.e. “To Semington”, “Common Lane” “Road from...”, “New Road” etc. Buildings, hedges, trees and water is shown and existing enclosures are named i.e. “Ewe Meads”, “Portway” etc.
- 15.5 The map clearly shows the unenclosed common (Ashton Common) and the roads across it. For example the roads at either end of Great Hinton 34 are shown. The cottages at Bleet are shown but there is no road, they are merely dwellings at the edge of the Common. The unenclosed common is the land that was inclosed in 1818 (see section 12).



Cottages at Bleet

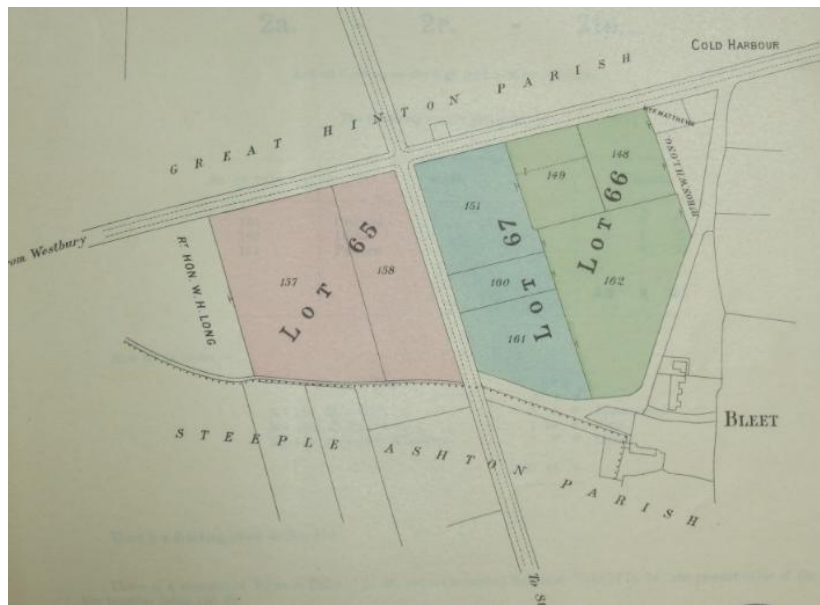


Red line shows route of Great Hinton 34 as created at inclosure in 1818.

15.6 **Sales Particulars 1907** WSHC ref. no. 776/28

Land adjoining Great Hinton 34 was offered for sale in 1907 when outlying lands of the Erlestoke Estate were sold.

- 15.7 Plan No. 8 accompanying the sales particulars show that Lots 66 and 67 adjoined Great Hinton 34 but that the lane was not offered in the sale, or referred to in the description despite it being an obvious access point for one of the closes in Lot 66.



16.0 **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.

- 16.1 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 early county maps produced by Andrews and Dury, John Cary and C & I Greenwood and also those of the Ordnance Survey.
- 16.2 It must also be considered that even when surveys produced by the Ordnance Survey 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 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.

16.3 Andrews' and Dury's Map of Wiltshire 1773

This map was produced at the scale of 2 inches to one mile over 18 sheets and the area of Bleet is covered by Sheet 10. The map pre-dates the inclosure of the Common and although the cottages at Bleet are shown Great Hinton 34 is not shown though the local road network is in broad agreement with the estate map of 1760.



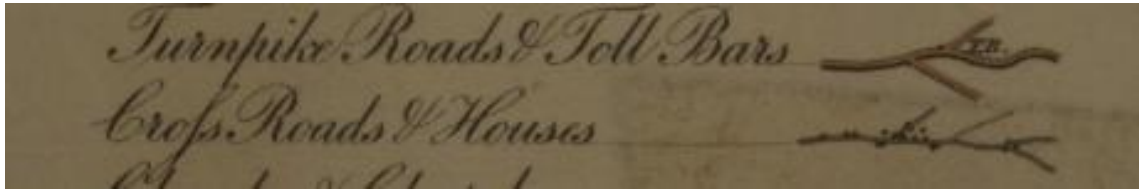
16.4 Ordnance Survey – Surveyor's Drawing 1807 – British Library

In preparation for the production of the first countrywide 1 inch to 1 mile maps (now known as 'the old series') the Ordnance Survey surveyed the country at the scale of 2 inches to 1 mile. The cottages at Bleet are shown, as is the edge of the Common, however, as with Andrews' and Dury's map of 1773, this survey pre-dates the 1818 inclosure and accordingly the route of Great Hinton 34 is not shown.

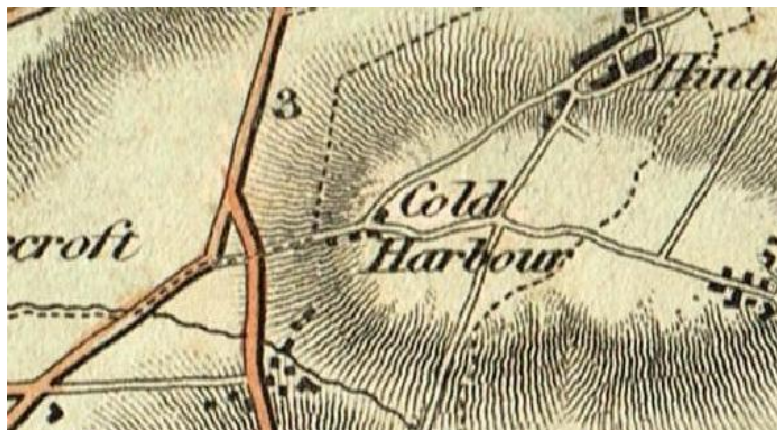


16.5 **C and I Greenwood's Map of Wiltshire 1820** WSHC Ref. no 3.3

This county map, again from an independent survey was produced at the scale of one inch to the mile in 1820. The map has a scale and shows, amongst other things, Turnpike Roads and Cross Roads, Rivers and Brooks. The map does not show footpaths and bridleways.

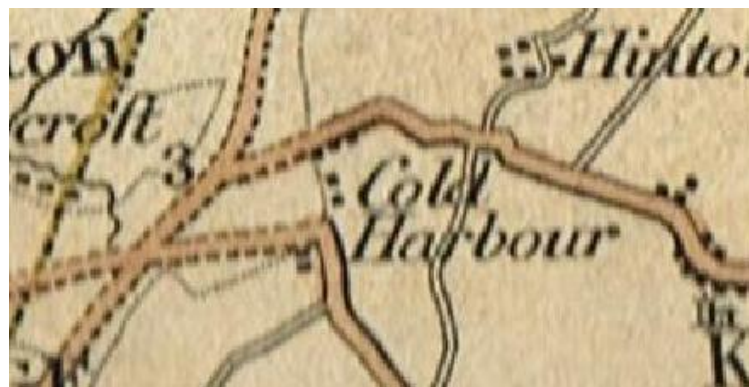


16.6 The map shows the cottages at Bleet but with no connecting road. The map was printed in 1820 and was clearly the result of earlier surveys, however, the reason for the omission could be because the way was not considered public at this time.



16.8 **John Cary's Half Inch Map Sheet 18 1832** (WSHC Ref. no 3.4)

The route of Great Hinton 34 is not recorded as a 'parochial road'.



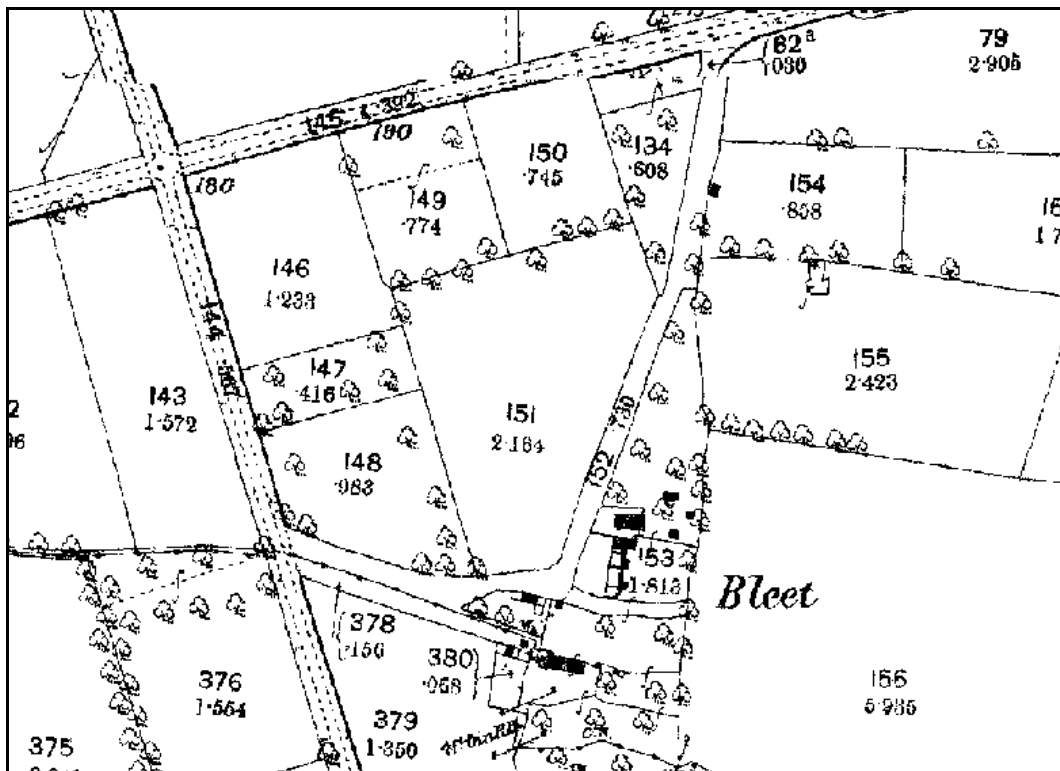
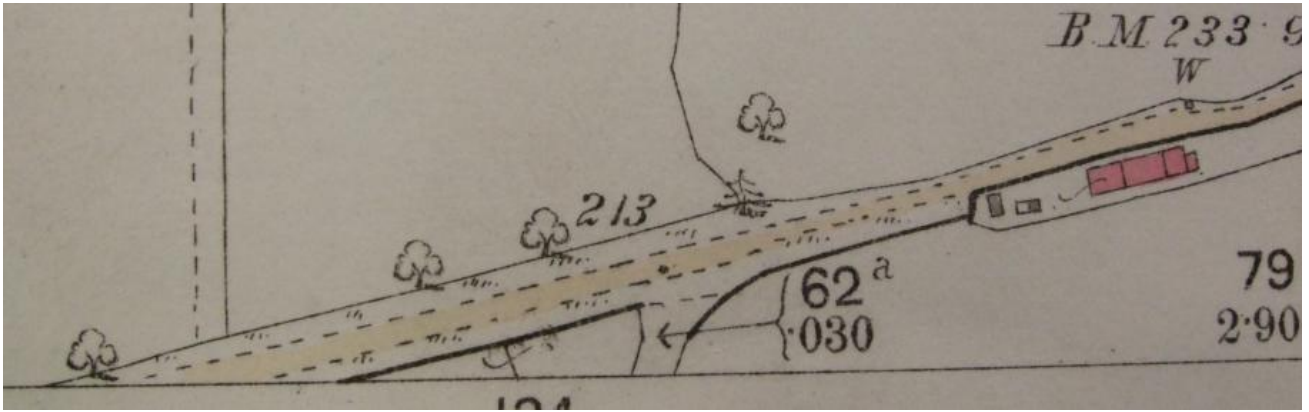
16.9 Ordnance Survey Mapping – The County Series 1:2500 1878 - 1924

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 39.1 and 39.5 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”.

- 16.10 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”
- 16.11 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 16.12 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975).

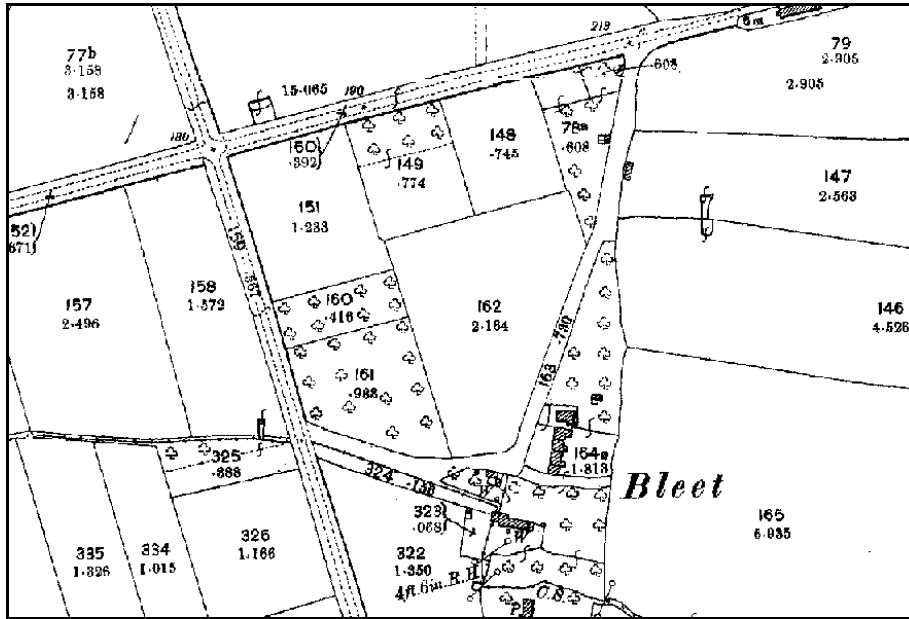
16.13 First Edition 1885 survey

The route is separately numbered and measured (parcel no 152 in the south on sheet 39.5 and 62a on sheet 39.1) but is not coloured sienna on sheet 39.1 (no colour copy of 39.5 has been viewed). NB An Instruction to Surveyors issued by the Ordnance Survey in 1884 required all carriage drives that were metalled and kept in repair to be coloured.



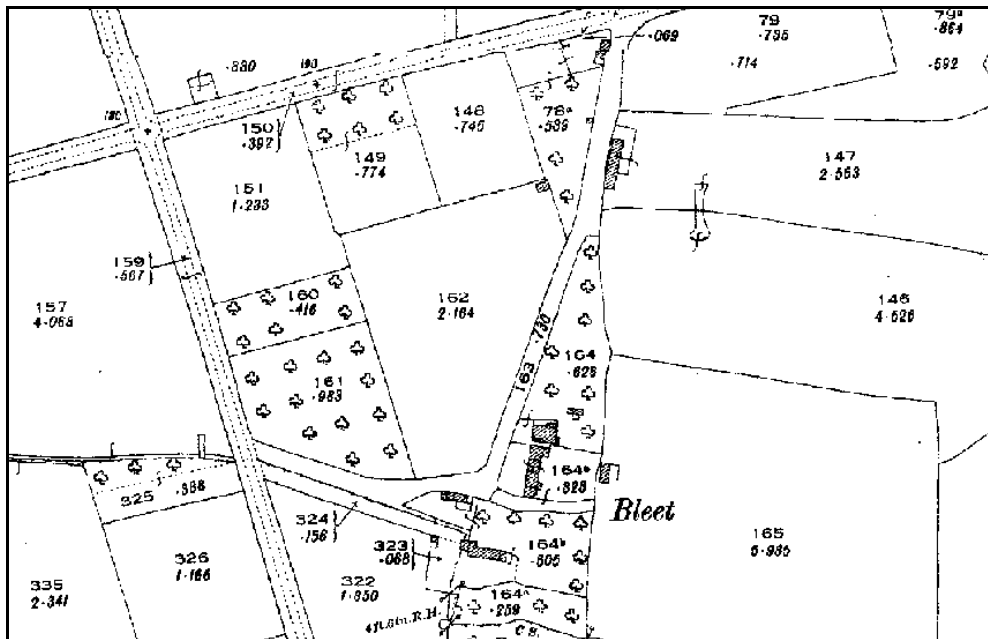
16.14 Second Edition 1885 survey, 1899 revision, 1901 publication Sheets 39.1 & 5

The route is separately numbered and measured as per the First Edition. It is noted that the route is not shaded in the same way as adjoining roads. A circular issued by the Ordnance Survey in 1884 required that from 1884 all metalled public roads for wheeled traffic kept in good repair by the Highway Authority should be shaded.



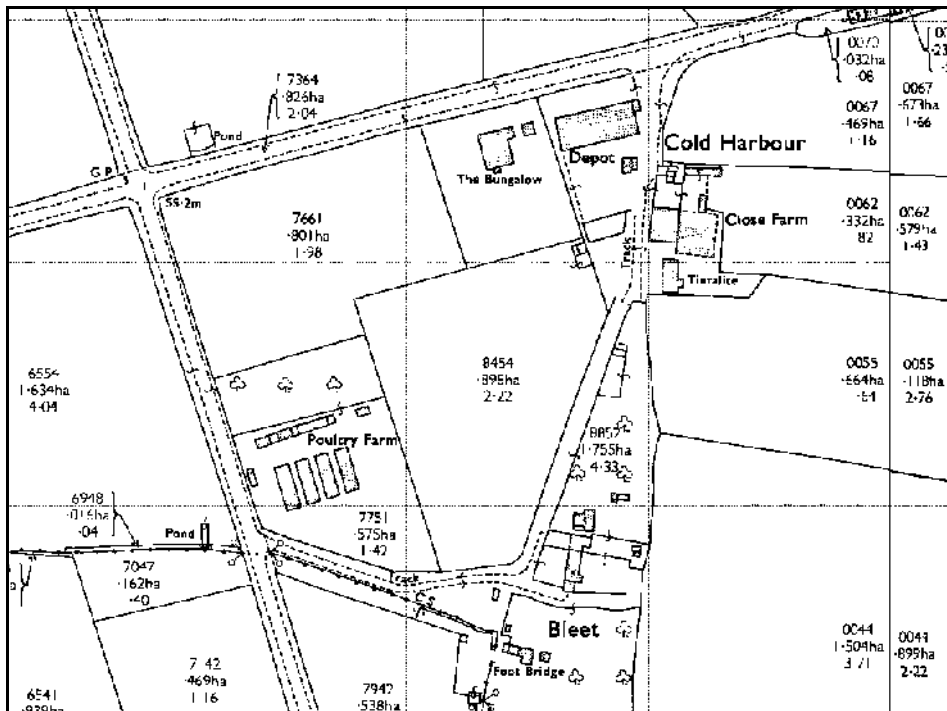
16.15 Edition of 1924 1885 survey, 1922 revision Sheets 39.1 & 5

The route appears unchanged.



16.16 National Grid Series 1:2500 c.1980

By the latter part of the century the route has a defined track at the southern end accessing the cottages and there has been significant development at the northern end.



17.0 Category F Evidence

Evidence in this category includes any user or anecdotal evidence.

- 17.1 The applicant adduced a hand drawn plan showing the northern section of the route (see section 1.0) stating *“I Gordon Field, having lived at 5 Bleat, Great Hinton since December 1954 have drawn a sketch as I knew the lane then. When the adjacent land was sold in 1962 from then on the lane changed appearance.”*
- 17.2 The sketch plan shows utility poles at the edge of the highway and a *“wide green grass verge approx 3 m wide”* at the northern end. The plan shows the section of lane north of 5 Bleat to the part where it widens as being grass from side to side with no central carriageway but with ditches close to the hedges.

18.0 Legal and Financial Considerations

- 18.1 The determination of Definitive Map Modification Orders (DMMOs) and the continual review of the definitive map are statutory processes for which financial provision has been made. In determining applications for DMMOs the Council is acting in pursuit of its statutory duty and cannot be challenged in so doing (subject to due process being followed). In this instance the Council has been directed to determine this application by 01 August 2017.
- 18.2 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 £4000).

- 19.3 If the application is successful and the historic width of the highway is found to be public the Council must consider the extent of any obstruction to it and has a duty to enforce that width.

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 Additionally if the Council refuses the application the applicant has a right to appeal the decision to the Secretary of State. Where the Secretary of State agrees with the applicant the Council will be directed to make an Order.

21.0 Environmental Impact of the Recommendation

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

22.0 Equality Impact

- 22.1 The recording of the width of the highway 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. Decisions must be evidence based.

23.0 Safeguarding Considerations

- 23.0 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to safeguarding.
- 23.1 It is however noted that there are no considerations arising.

24.0 Public Health Considerations

- 24.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to public health.

25.0 Relationship to the Council's Business Plan

25.1 Consideration of the Council's Business Plan is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. However, Wiltshire Council is committed to 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.

26.0 Options to Consider

- i) To make an Order to record the width of bridleway Great Hinton 34.
- ii) To refuse the application to record the width of bridleway Great Hinton 34.

27.0 Reason for Recommendation

It is useful to show a timeline for the lane based on the above evidence:

- 1760** No route shown
- 1773** No route shown
- 1807** No route shown
- 1818** Inclosure of the Common. Route awarded as private carriage road and driftway
- 1842** Unnumbered sienna coloured road Tithe Survey (First Class Map)
- 1885 – 1922** Road shown separately numbered and measured by OS
- 1910** Road shown uncoloured and braced apart from surrounding hereditaments in The Finance Act 1909/1910 survey and valuation
- 1917** Lane not included in sale of two adjoining fields
- 1924** Issue of brook clearance at Bleet raised with Parish Council
- 1934** Parish Council declare Bleet Lane to be a non-publicly maintainable lane in the Rights of Way Act 1932 survey.
- 1952** Parish Council claim route as Carriage or Bridleway 'partly unmade and part roughly metalled'
- 1953** Route added to definitive map and statement as Road Used as a Public Path and Carriage Road Bridleway Great Hinton 34
- 1972** Reclassified as a bridleway at Second and Special Review with no objections
- 1985** Route inspected by County Surveyor who found 'some works' at the northern end but an available width of 4.75 metres remained which he deemed 'sufficient for highway needs'.
- 1986** Road planings laid and levelled on route
- 1990** Surface of bridleway raised by adjacent landowner
- 1998** Obstructions reported to Wiltshire County Council
- 2004** Application for a DMMO to record the width received
- 2004** Wiltshire Council declare to Planning Authority that "Bridleway 34 is as described on the Ordnance Survey County Series".
- c.2013** Wiltshire Council maintained with planings and some trimming back of branches. Planings placed on central track only.

- 27.1 The Council must now consider, the physical extent of the public rights across the lane. It does not have to prove the extent of the rights but it must show that on the balance of probabilities it is so. That is, whether it is more likely or not that the public rights extend to the decided width.
- 27.2 It is considered that the public right may extend as follows:
- 1) Across the whole physical width of the lane between hedges and fences based on how it has been represented historically. The applicant relied upon the 1922 Ordnance Survey 1:2500 map for this and this width includes all ditches and drainage features.
 - 2) Across 20 feet of the route as awarded as a private carriage road and driftway in 1818
 - 3) A lesser width
- 27.3 While it is accepted that before the Common was inclosed local people may well have passed over the edge of the Common in front of the cottages, there is no evidence to suggest that a road or track formed, certainly none appeared on any maps viewed and when the land was inclosed in 1818 no public rights were recorded, suggesting that there were none to be preserved. Accordingly it seems a reasonable starting point to say that Bleet Lane, Great Hinton 34 was laid out and created as a private carriage road and driftway in 1818 for the benefit of the adjoining landowners and that public rights were acquired at a later date.
- 27.4 It is clear that the land on the north and west sides were inclosed to create the lane as the inclosures on the south and east sides already existed by 1818. It is therefore not an unreasonable step to say that the land that formed the lane at the points where it is wider than the awarded 20 feet may have been intended to form part of the highway, albeit at that time a private one.
- 27.5 Taking the OS 1:2500 survey maps (1885 – 1922) as a reasonable representation of the lane the awarded width of 20 feet (6.1 metres) is exceeded at every point along the lane with measurements varying between 7 metres to 12.4 metres wide. In general terms the length from Hag Hill to the cottages is 8 metres wide, from the cottages to Treetops is 7 metres wide and the remainder to Cold Harbour is 12 metres wide. All measurements have been taken from the OS map.
- 27.6 It is possible that extra width was allowed to aid use of the way as a driftway though it is more likely that the extra width was merely a result of making straight boundaries to new inclosures on one side of the road and having old inclosures on the other side.
- 27.7 Another possibility is that drainage of the area was poor and that ditches needed to be dug at the sides of highway leaving the awarded width of 20 feet (6.1 metres) intact for actual use. Roadside ditches were a characteristic of this lane and

although significant lengths of them have now been piped and lie under hedges and fences the image supplied by Mr Noad dating from the early 1960s supports that the full width of the lane was not available owing to the presence of the ditches. It is likely that ditches would have been needed to direct water in the same way as they are today. Some of this is in part owing to the impervious surface that the lane now has but even as far back as 1953 it was deemed necessary to have some rough metalling along the lane (see Parish Claim) and in 1924 the Parish Council were tasked with clearing the brook, suggesting that there may have been flooding concerns then. Correspondence also reveals that in 1990 there were drainage issues with water running down the land and flooding land owned by Mr Field at 5 Bleet. At a site meeting held on the 22nd July 2016 Richard Newman of Close Farm confirmed that before the lane was surfaced (perhaps in the 1980s) its condition was poor, being wet and muddy and largely impassable. This is further supportive of the need to drain this route.

27.8 Case law dating back to 1862 supports the public having a right to use the width of a highway between hedges or fences. Although this is readily rebuttable by either title or the purpose for which the fence or hedge was erected, the law is clear on the “hedge to hedge presumption”. In the 1862 case *R V United Kingdom Electric Telegraph Company* the Court of Queen’s bench agreed that a proposition formulated by Martin B (the B standing for a Baron, a member of a class of judges abolished in 1881) was a proper direction to be used as to the extent of the highway between two fences. The direction was that *“in the case of an ordinary highway, although it may be of a varying and unequal width running between fences, one on each side, the right of passage or way, prima facie, and unless there be evidence to the contrary, extends to the whole space between the fences and the public are entitled to the use of the entire (width) of it as a highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers.”*

27.9 In a Rights of Way Law Review article (1994 s.2.2 5 – 13) Michael Orlick, Solicitor discusses highway boundaries and identifies a case where the width of an awarded private road that had subsequently become a public road was queried.

“At the Lancaster Summer Assizes in 1831, Robert Wright was indicted for nuisance by encroaching on a public highway. The case concerned a road set out by Inclosure Commissioners in 1771 as a private road of a width of 24 feet. In fact, a space of sixty feet had been left between the adjoining fences until the time of the alleged encroachments by the defendant. The centre of this space had been commonly used by the public as a carriage road and had been repaired by the township for 18 years before the encroachment. The jury found that the road had been dedicated to the public since the Inclosure Award and convicted the defendant. On appeal, Lord Tenterden, the Chief Justice, said: “I think the case was for the jury and that they found a right verdict. I am strongly of the opinion when I see a space of fifty or sixty feet, through which a road passes, between inclosures set out under

an Act of Parliament, that, unless the contrary be shown, the public are entitled to the whole of that space, although perhaps on economy the whole may not have been kept in repair. If it is once held that only the middle part, which carriages ordinarily run upon, was the road, you might by degrees enclose up to it, so that there would not be room left for two carriages to pass. Space at the sides is also necessary to afford the benefit of air and sun. If trees and hedges might be brought close up to the part actually used as the road, it could not be kept sound.”

- 27.10 Conversely where the extent of public rights is to be determined on routes over open ground with no hedges or fences the case of *Easton v Richmond Highway Board* found on appeal that a public highway could be enclosed to leave just the carriageway and that the extent of public rights would need to be shown by public user of the adjoining land. It is in effect the reverse situation for a case where a route is fenced in that the burden of proof lies with public to show the extent (width) of their use for unenclosed routes but the landowner has to show that his fences do not mark the highway boundary for enclosed routes.
- 27.11 In the case of *Hale v Norfolk County Council* [2001] Ch. 717 the Court of Appeal considered a case relating to the width of a highway and the reliance that parties may put on the ‘hedge to hedge’ presumption. Hale LJ, at paragraph 43 stated:
- “Third, the presumption of dedication of all the land running between hedges or fences can only arise if there is reason to suppose that the hedge or fence was erected by reference to the highway: that is, to separate the land over which there was to be no public right of way from the land over which there was to be such a right. Where matters are lost in the mists of time, it must often be possible to draw such an inference from the layout on the ground. In a conventional road running between hedges or fences, even if the verges are of varying widths and shapes, this may well be the obvious conclusion. It is not surprising, therefore, that the cases regarded this as the prima facie position. But that is not the same as elevating this preliminary question into a presumption of law.”*
- 27.12 It is therefore of fundamental importance to determining the width of a public highway to establish whether the fences or hedges were erected by reference to the highway.
- 27.13 In the case of *Great Hinton 34* the fences and hedges on the eastern side pre-date the year 1760 and, according to contemporary map evidence pre-date the existence of any highway. Their purpose was to separate the enclosures from the common.
- 27.14 The fences and hedges on the western side were only created in 1818 as a result of the enclosure of the common. The inclosure award created a 20 foot wide private access road along the route of *Great Hinton 34* and it is clear that landowners who were granted enclosures at that time gave up substantially more of their land when creating the highway from the enclosure of their land than was required.

- 27.15 The reason for this is unrecorded but it is clear from the ground today that the wide lane was characterised by ditches on either side and although in places the ditches have been piped and the land taken back into adjoining enclosures, and in places hedges have overgrown by as much as 2 metres to conceal the ditch, it is considered more likely than not that drainage ditches were provided for the route from the time of its creation.
- 27.16 The ditches would have had the function of draining the highway as well as the land towards the stream or river running south of the western extent of the lane.
- 27.17 This being the case it can be said that the eastern fenceline was not erected to define the highway and the western fenceline was not erected to define the highway, it was erected to separate the land from the ditches which ran beside the highway.
- 27.18 Measurements on the ground support that this a reasonable assumption and an available width of the awarded 20 feet would have been possible between the ditches.
- 27.19 The public right over this was acquired at some time after 1818 and it is a matter for the Council to consider whether the public acquired a right over the entire available width (it being physically impossible to acquire a right over the ditches) or a lesser width.
- 27.20 The matter must be considered 'on the balance of probabilities' i.e. what is more likely to have happened and in this respect it is considered likely that the full 20 feet was available for the private users of the way and accordingly the same width was available for the public to use. There is evidence that it was considered a public road in and around the 1930s and 1950s and accordingly the way must have been wide enough to support a public use beyond just people following a narrow track.
- 27.21 Quite reasonably a greater width would have been needed for traffic to pass and given the ground conditions in the area (as evidenced by the need for good drainage) it is considered likely that the public would have not only exercised a right to deviate around and give way to other users they would also, in all probability, sought to use the wider width to avoid ruts and ruinous ground.
- 27.22 Officers therefore consider that the public had access to a track that was 20 feet wide and that they considered it to be sufficiently wide and available to them to declare that the way was a lane in 1932 and a carriage road bridleway in 1950. The standard of proof needed to retain any vehicular right may not have been satisfied at the Second and Special review when the way was reclassified as a bridleway but the route was, since 1818, a wide track that was available for use and was, in all probability, used throughout its awarded width by the public. This is likely to have been an extent including a central track and some verges though unlikely to have been right up to the boundaries and certainly not including any ditches.

- 27.23 It has been noted that although the route of Great Hinton 34 remains substantially unchanged there have been alterations to the boundaries of the enclosed land since 1818. In most cases the awarded width remains but for the length between Close Farm and 5 Bleet the width in places is narrower than 20 feet. This appears to be partially due to the wide hedge to the east of the lane which has substantially grown over the ditch (as witnessed by the Wessex Water access point which is now in the hedge whereas it would have originally been placed in the verge beside the track). Likewise the electricity pole and the buildings appear further from the track as a result of the hedge being wide. To the west of the track the ditch has been fenced and taken into the curtilage of the enclosure which is Treetops giving the lane an irregular appearance. It is not possible to say exactly where encroachments have occurred and may in any event, and especially in view of the existing access along this stretch being good, be considered *de minimis*. Determining this is not the purpose of this investigation.
- 27.24 It is noted that temporary circumstances such as these mentioned above are irrelevant to this report and given the ample available width for free passage at this location are unlikely to be investigated further at this time.

28.0 Recommendation

That Wiltshire Council makes an Order under s.53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to record the width of bridleway Great Hinton 32 as 20 feet (6.1 metres)

Sally Madgwick

Rights of Way Officer – Definitive Map 6th August 2016