

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND
STATEMENT OF PUBLIC RIGHTS OF WAY – LEIGH ROAD, HOLT

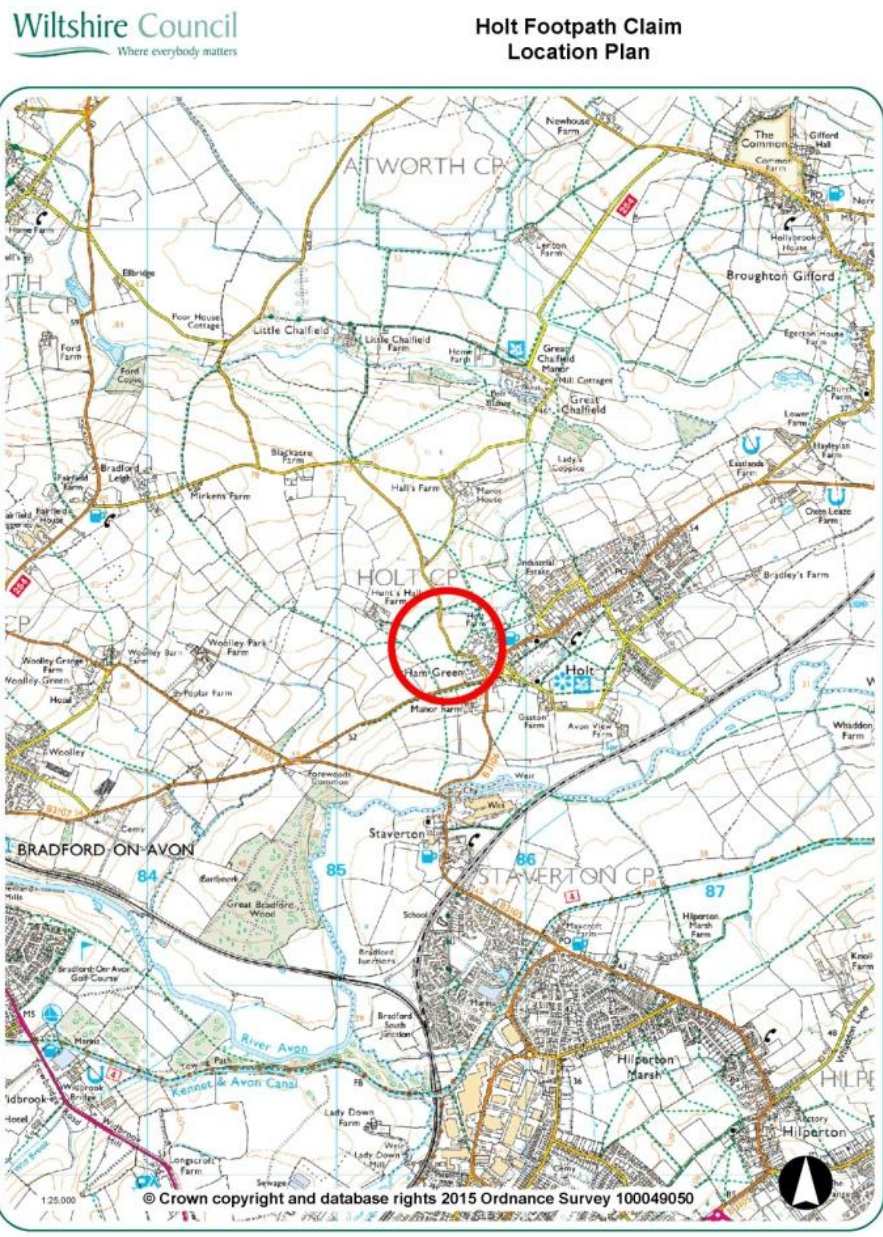
1. Purpose of Report

- 1.1. To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the Parish of Holt, leading from Leigh Road (adjacent to the property 22a Leigh Road), in a generally south-south-west and north-westerly direction to its junction with Footpath no.31 Holt.

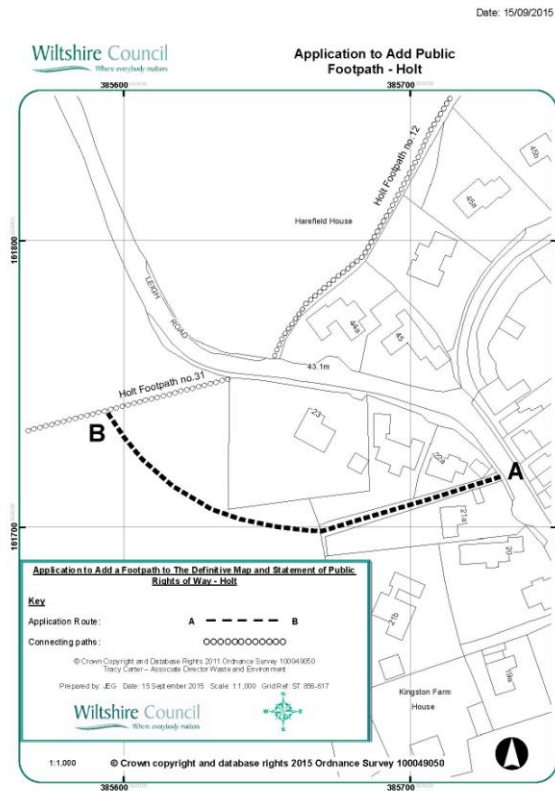
2. Relevance to Council's Business Plan

- 2.1. 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.

3. Location Plan

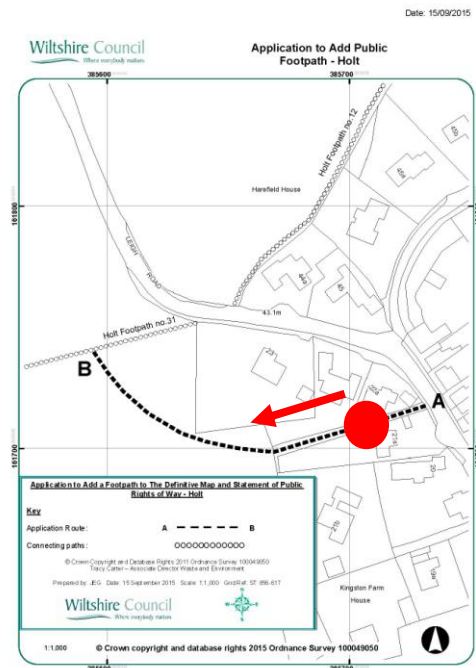
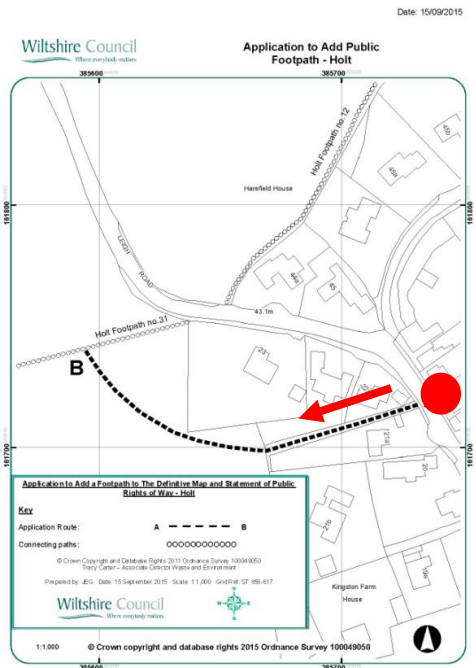


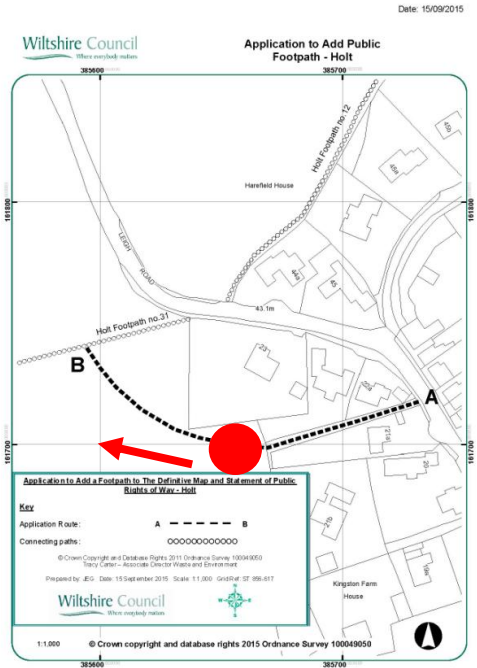
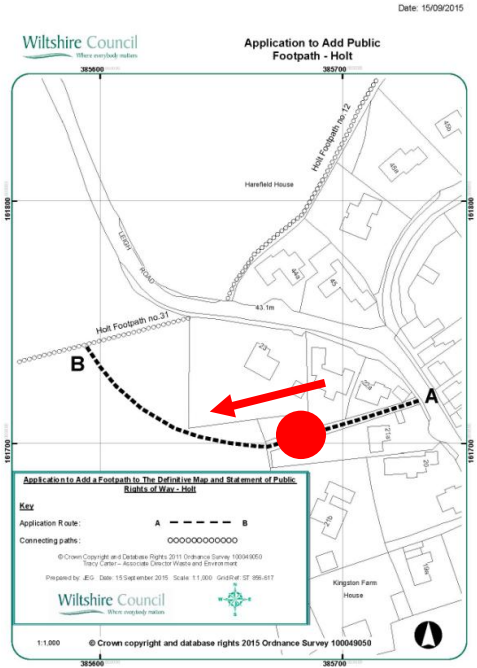
4. Claimed Footpath Route

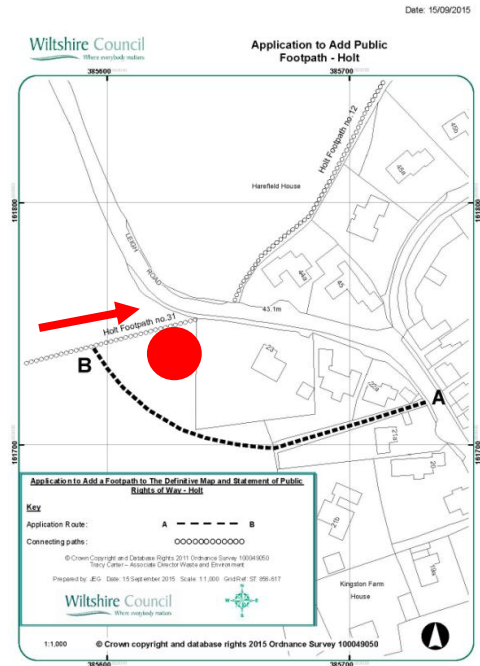


4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Holt, leading from point A, at its junction with Leigh Road, in a generally south-south-west and north-westerly direction to its junction with Footpath no.31 Holt, at point B.

5. Photographs







6. Registered Landowners

6.1. Mr and Mrs Oakley
 22A Leigh Road
 Holt
 Trowbridge
 Wiltshire
 BA14 6PW

Mr and Mrs Arkell
 22 Leigh Road
 Holt
 Trowbridge
 Wiltshire
 BA14 6PW

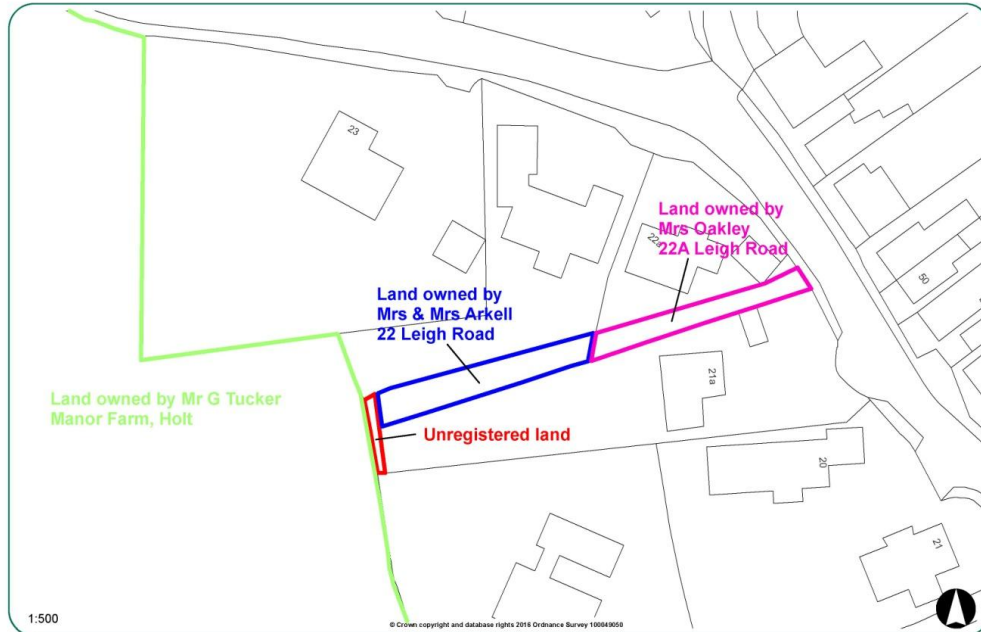
Mr G Tucker
 Manor Farm
 Holt
 Trowbridge
 Wiltshire
 BA14 6PL

6.2. Neighbouring property owners who have been included within the consultations are:

- | | |
|------------------------|--------------------|
| i) Mr and Mrs O'Connor | ii) Mrs Peggy Earl |
| Homefield | 21A Leigh Road |
| 23 Leigh Road | Holt |
| Holt | Trowbridge |
| Trowbridge | Wiltshire |
| Wiltshire | BA14 6PW |
| BA14 6PW | |

6.3. The Parish Council, in its application also identified Mr Mike Singer as a potential landowner, however from the Council's investigations, it is not clear which part of the land Mr Singer owns. Mr Singer has been included in all consultations:

Mr Mike Singer
Kingston Farm House
Holt
Trowbridge
Wiltshire
BA14 6PN



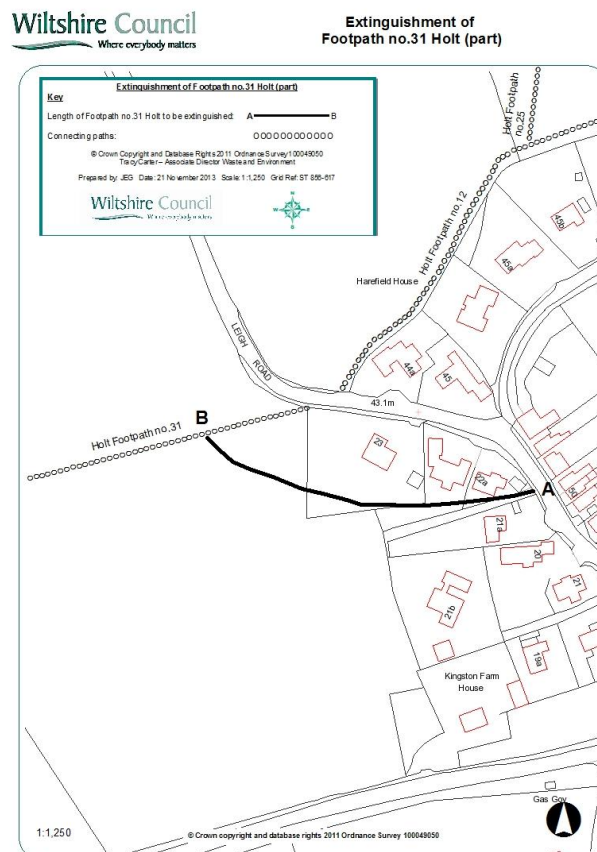
6.4. All of the landowners have received formal notice of the application in the form of “Form 2”, served upon them by the applicant. A small section of the land over which the claimed route passes is unregistered, as shown outlined in red on the plan above. Wiltshire Council are satisfied that the applicants have made all possible efforts to try to establish the identity of this landowner and have required them to post notice of the application upon the section of land in question, addressed to “*Whom it May Concern: Unregistered Land re. Parcel of Land Outlined in Red on Appendix A*”.

7. **Background**

7.1 In 2014 it was brought to the attention of Wiltshire Council that the route of Footpath no.31 Holt, as recorded within the definitive map and statement of public rights of way, did not accord with the route of the path on the ground. The used route led to the rear of properties 22, 22A and 23 Leigh Road, on a narrow track, enclosed between garden fences on the northern side and a post and wire fence with a drainage ditch to the southern side, and then

entering the field to join the remainder of Footpath no.31 Holt, which then joins Leigh Road to the west of property no.23 Leigh Road. The definitive map recorded a route through the gardens of the properties.

- 7.2. When this anomaly came to the attention of Wiltshire Council, it was not possible to divert the definitive line to the used route or extinguish the definitive line and create the used route, as the owner of the field through which the used route passed was unwilling to agree to a diversion/creation on his land. Therefore an extinguishment order was made to stop up the definitive map line through the gardens, on the grounds that the route was not needed for public use, i.e. it was not used and was unlikely to be used by members of public, as shown on the plan below.



- 7.3. Following the extinguishment, Wiltshire Council are now in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Holt, between Leigh Road and Footpath no.31 Holt (i.e. the used route). The application is dated 23rd April 2015 and is made by Holt Parish Council on the grounds that public footpath rights can be reasonably alleged to subsist or subsist over the land, on the balance of probabilities, based on user evidence and should be recorded within the definitive map and statement of public rights of way, as such.
- 7.4. The application form (which consists of forms 1 and 3) is accompanied by a plan drawn at a scale of 1:1,250, highlighting the claimed route, 8 completed witness evidence forms and a statement of supporting documentation.
- 7.5. The claimed route is located in the parish of Holt, which lies to the north of Trowbridge, between Bradford-on-Avon to the west and Melksham to the east. The claimed route forms a link between Leigh Road and Footpath no.31 Holt, leading south-south-west along a track to the rear of the properties 22 and 22A Leigh Road for approximately 65 metres, before entering the adjoining field and then leading generally north-west for approximately 90 metres to its junction with footpath no.31 Holt.
- 7.6. Wiltshire Council undertook an initial consultation regarding the proposals on 15th September 2015. Landowner evidence forms were completed by:

Mr and Mrs Arkell, 22 Leigh Road

Peggy Earl, 21A Leigh Road

Mrs Barbara Oakley, 22A Leigh Road

Mr Dominic O'Connor, 23 Leigh Road

Mr Gordon Tucker, Manor Farm

Mr and Mrs Arkell wrote on 22nd September 2015, enclosing their landowner evidence form:

“I enclose a completed Landowner Evidence Form, as invited. As you will see, we have no objection to our section of the land marked on your map continuing to be used as a footpath and wrote some months ago to Holt Parish Council to that effect. This [is] strictly on condition that access at either end to the section owned by us will follow the marked line and no other.”

Mr Robert Mizen wrote in support of the application, letter dated 25th October 2015:

“As a member of Holt Parish Council, for over thirty five years, I can confirm that the route A to B shown on your plan has been walked annually as part of our Council footpath survey for each of those years.

Each year Holt Councillors are given a number of paths to walk and in this way all of our Parish paths are checked.

As part of that survey, I personally have “drawn” this path on several occasions, the last time being two years ago.

I can confirm that I have walked this path on many occasions for recreational purposes.”

8. Main Considerations for the Council

- 8.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

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

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

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

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

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

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

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

effect as to the making and determination of applications under this subsection.”

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

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:
 - (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”*

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

8.5. The application to add a right of way to the definitive map of public rights of way in the parish of Holt, has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:1,250 and 8 witness evidence forms and supporting documentation.

8.6. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be

deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) Where the owner of the land over which any such way as aforesaid passes –
 - (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
 - (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.**
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to*

negative the intention of the owner of the land to dedicate the way as highway.

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

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

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

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

(i) within ten years from the date of deposit

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

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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

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

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

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

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

“Evidence of dedication of a way as highway

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

9. Documentary Evidence

- 9.1. As part of Wiltshire Council's investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at Appendix 1 to this report.
- 9.2. Some of the Ordnance Survey (OS) maps (i.e. the 1901 and 1924 edition maps drawn at a scale of 1;2,500; the 1926 edition 6" map onto which the Holt Parish Pathways information is drawn c.1933 and the 1938 edition 6" map onto which the parish claim information is drawn), record the former definitive line, now extinguished, but none of the historic documents and maps record the route as claimed.
- 9.3. The parish claim documents, following the parish survey dated December 1950, are interesting. When looking at the route claimed by the parish on the map, alongside the description on the record card, there are some discrepancies and Officers consider that the original description (which is later deleted), may refer to the claimed route, where the route recorded on the claimed map highlights the route shown on the OS base map, i.e. the definitive line of Footpath no.31 Holt, as extinguished in 2014.
- 9.4. The original description reads: *"31. F.P. to BRADFORDLEIGH. Starts in Leigh Rd from Iron Stile next to two Cottages and Gardens, for 50 yards between this garden and bungalow garden; then wooden stile, 50 yards in open field where it meets path 32."* (path 32 is amended to be part of Footpath no.31 on the claim map). This description is crossed through and a new, less detailed description added: *"F.P. from road C224 north west of Holt House leading west to path no.34."*

- 9.5. The record card also specifies that the route is “*open after the first 50 yards which is between hedge and wire fence.*” and “*Stiles in good condition*”, this information is not deleted. The deleted path description and the references to the stiles and the first 50 yards of the route being enclosed between the gardens, being fenced on one side and having a hedge on the other, seems to accord with the claimed route. On the claim map only the boundary of the property to the south (which Officers believe to be the garden of the two cottages referred to in the description, which still exist to this day), is shown, so Officers consider that the enclosed part of the route described must run alongside this boundary as the claimed route does, (the bungalow referred to in the description is not recorded on the base map). The base map is an OS map drawn at a scale of 6” to 1 mile, Provisional Edition, first surveyed in 1884, Revision of 1922 with additions of 1938, whilst the parish survey is 1950. It would appear that the parish at the time of its survey marked on the map the route shown on the base map, which appears to be open in its entirety as the route is shown by double broken lines, (Officers would expect an enclosed route to be shown on OS mapping by double solid lines), whilst the original accompanying description records a route which is enclosed for the first 50 yards between gardens and having stiles, I would not expect stiles to be required on an open route.
- 9.6. The description given as part of the parish claim in 1950, may support the existence of the claimed route, however there are no other documents which support this and this evidence alone is insufficient to support the existence of public rights, on the balance of probabilities. However, this does not mean that public rights over the claimed route do not exist and alongside the original parish claim path description, we must now consider the available user evidence in this case.

10. User Evidence

- 10.1. The application was accompanied by 8 witness evidence forms with maps attached. 3 landowner evidence forms were submitted following the initial consultation, plus landowner evidence forms from adjoining landowners Mr D O'Connor and Mrs P Earl.
- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over the land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Bringing into question

- 10.3. In order to demonstrate a 20 year user period, there must be a date upon which the use of the path by the public was brought into question.
- 10.4. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in the case of Fairey v Southampton County Council [1956], and quotes him as follows:

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of

the Attorney-General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way."

10.5. In *Godmanchester*, Lord Hoffman says of Denning L J's interpretation:

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

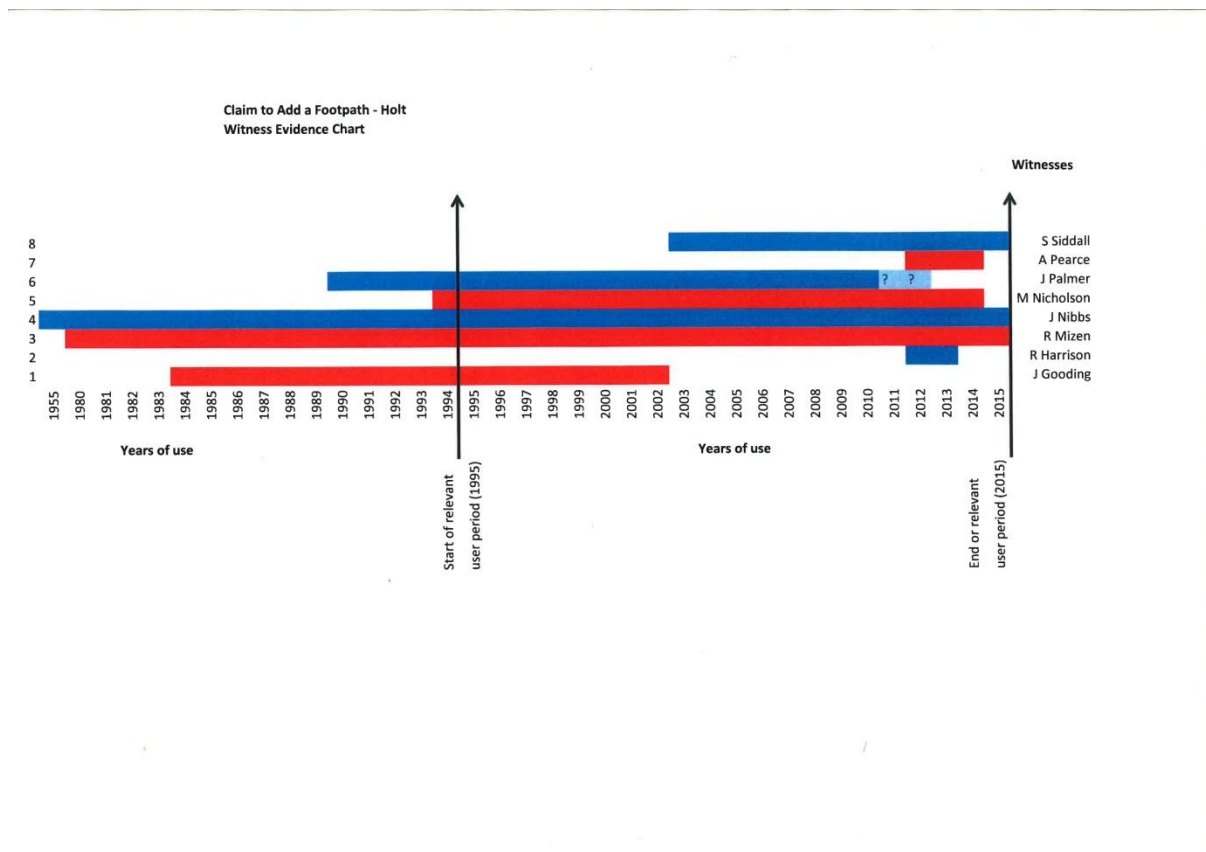
10.6. In the Holt case, Officers have found no evidence that the landowners have taken any action on the claimed route, sufficient to bring home to the public that their right to use the way is being challenged. However, in 2014 Wiltshire Council made an order under Section 118 of the Highways Act 1980 to extinguish the route of Footpath no.31 Holt, as recorded on the definitive map. This order was advertised and notice placed on site. It is noted that 2 of the users ended their use in 2014, including Mrs Nicholson who clarifies that her use continued until its closure in 2014. 3 of the 8 users were still using the route between 2014 and 2015 at the time of application and the used route on the ground was still available after the extinguishment of the definitive route, with stiles remaining in place. It is therefore considered that the making of the extinguishment order on a different route to the used route (the route now being claimed), was not sufficient to bring home to the public at large that their right to use the claimed route was being challenged.

10.7. Where there is no such defining event, under Section 31(7) (a) of the Highways Act 1980, it is possible that the definitive map modification order

application may serve as a trigger to bring the use of the route into question and it is considered that this would be applicable in this case. For this reason the 20 year public user period should be calculated retrospectively from the application date of 23rd April 2015, i.e. the public user period in question is 1995 – 2015.

Twenty Year User

10.8. Please see chart below which shows the dates and level of user as outlined within the 8 witness evidence forms received:



10.9. For the period of user in question, i.e. 1995 – 2015, all witnesses have used the route during this time and 2 witnesses have used the route for the full period of 20 years. The earliest use dates back to 1955 and would support the 1950 parish survey description which suggests that the public used an

enclosed route between the buildings at that time and not the route through the gardens as recorded on the definitive map.

10.10. In addition to their own use, witnesses refer to use of the route with others and seeing others using the route:

User	Used with others	Others seen
1	Group recreational route.	Yes, walking.
2	No information provided.	Yes, walking.
3	No information provided.	When doing Parish Council survey always accompanied by second Councillor.
4	As a child with my parents. We lived at 49 Leigh Road.	Walking.
5	No information provided.	Sometimes – walking.
6	No information provided.	No.
7	No information provided.	No.
8	No information provided.	No.

10.11. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence i.e. its honesty, accuracy, credibility and consistency, is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Cleveland Borough Council* UKSK 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

Lord Walker goes on to quote Lindley L J in the case of *Hollins v Verney* [1884] giving the judgement of the Court of Appeal:

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

10.12. The frequency of use should also be considered. The users have used the route as follows: about 5 times per year; once; twice a year; sporadically; approx 8 – 10 times per year; once a year; very seldom and once or twice a year.

10.13. 5 of the witnesses refer to part or all of their use of the route being as part of the annual footpath survey carried out by the Parish Council, whereby all footpaths in the village were walked by Parish Councillors. In his additional supporting evidence Mr Robert Mizen confirms that in the annual parish survey, over the last 35 years, he has been requested to inspect this particular path, the last time being two years ago. He also confirms that he has used the path on many occasions for recreational purposes and his witness evidence form confirms that his use is twice a year.

10.14. Landowners and adjoining landowners who have completed landowner evidence forms, make the following comments:

Mr and Mrs Arkell of 22 Leigh Road have owned the land for 8 years. They believe this land to be a public footpath as a result of the solicitors search on their property. Between June 2007 and September 2015 they have noted that the claimed route is used infrequently and in small numbers, which supports the completed user evidence forms.

Mrs Barbara Oakley of 22A Leigh Road has owned the land for 8 years, she does not believe the way to be public. Originally they thought this was the public right of way until Wiltshire Council informed them that the legal path went under their garage and across their garden (now extinguished). She has never seen anyone walk through.

Mr Dominic O'Connor of 23 Leigh Road has owned the land (adjoining the proposed right of way) since 2009 and he does believe the way to be public given the frequent and regular use. He has seen people using the route every month throughout the year, more in summer.

Mrs Peggy Early has lived at 21A Leigh Road for 55 years (Officers believe this to be a bungalow built within the garden of the two cottages referred to in the 1950 parish survey, path description). Although she does not own any part of the claimed right of way, she does live directly alongside the claimed route, to the south. She believes the route to be a public footpath and has observed that the route is regularly used.

Mr Gordon Tucker, owner of the field, has confirmed that the field has been in his family for 90 years, he does not believe this to be a public right of way and has held this view since approximately 1995 when the plot of land was sold (Officers believe this refers to the land upon which the properties 22 and 22A Leigh Road, were built). Mr Tucker has not seen or been aware of members of the public using this land which accords with the witness evidence that the path was used infrequently.

10.15. Is this level of user, i.e. 8 witnesses whose maximum use is 8-10 times per year (by Mrs Nicholson who has used the claimed route from 1994 – 2014), sufficient to make the landowners aware that a public right was being asserted against them? The majority of landowners appear to be aware of use, but their recollections differ in level of user, perhaps due to their views of

people using the route and the amount of time spent at their property. Mr Tucker claims not to be aware of public use, however Mrs Nicholson recalls that at the time the extinguishment of the footpath was requested, the wife of the owner of the field, Mrs Barbara Tucker, was on the Parish Council and was aware that these paths were being walked on an annual basis.

10.16. The Parish Council claim that the route was walked by them (on the claimed route and not the former definitive line, now extinguished), as part of the annual survey of all paths in the parish. Wiltshire Council has supporting documentary evidence of this path having been surveyed by the Parish Council in 2003, 2004, 2005 and 2007. A list of observations made by the Parish Council was submitted to Wiltshire County Council, at which times the following issues with the path were identified by the Parish Council:

2001 – *“Footpath 31 – This path goes west to Footpath 34, not east as described. Access is possible but overgrown. At the entrance to the field, the path becomes impassable, due to the planting of corn-on-the-cob, as is the spur. At the end of the spur, the gate is damaged, the sign obscured and needs repainting, and the egress very awkward.”*

2003 – *“Footpath 31 – Obstructed by Maize crop and tall weeds.”*

2004 – *“**Footpath 31** Impassable because of brambles at start of footpath. No signage to show where FP31 meets FP 34.”*

2005 – *“**Footpath 31**: From Leigh west to footpath 34 access blocked by nettles.”*

2007 – *“**Footpath 31**: Obstructed by maize crop (September 2006).”*

The Parish Steward Work Detail Sheet for Holt, dated 28/06/07 details Priority

Programme no.3, from J Gooding as *“Opposite 49 Leigh Road – Footpath 31”* to *“Clear overgrowth around metal stile and strim path on other side as much as possible”*.

10.17. Wiltshire Council also have a note from the local Ramblers Secretary Dr Malcolm Walsh, dated 15th October 2005, who inspected the path having received a complaint from Judy Nickless (who has not submitted a user evidence form) about the state of Footpaths 31 and 34 Holt, (path no.34 adjoins the existing part of Footpath no.31 Holt at its western end and leads north-south). He states:

“Holt 31

Starting on the C224 the stile is clear and signposted, but after a few yards as the path passes between the buildings it is badly overgrown by vegetation until it reaches the field. Considering the NE spur, starting at the same road, the kissing gate (Fig 1) is completely overgrown. From the point where the two branches join, the route to FP 34 is completely overgrown by 8-9ft high maize. Obviously no attempt has been made to clear FP 31 through this crop.”

10.18. The above reference to the route passing *“between the buildings”* suggests that in 2005, during the relevant user period, the public were using the route as claimed and not the definitive line through the gardens.

10.19. Wiltshire Council are in receipt of an extract from *“Walking in West Wiltshire (Book 3)”* (unfortunately Officers have been unable to locate a full copy of this publication and a full reference for the extract). This outlines walk 9: Holt, which includes Footpath no.31, as follows and suggests a route between the houses:

“There is a group of farm buildings – Hunt’s Hall Farm – across the field to your left. Head straight on to reach a stile in the hedgerow about twenty yards or so to the left of this field’s right hand corner.

Now head diagonally across the next field, towards Holt, through a broken hedgerow, to the field’s left corner. Turn sharp left here and cross the stile immediately to hand in the corner. Now follow the beaten path towards the buildings of Holt Village. There are two exits; the one leftward is by a kissing gate which drops you onto a lane at the very edge of the village. The one rightwards leads you between houses to reach the lane. In both cases you turn right to return to Ham Green.”

10.20. Additionally, the route was signed by Wiltshire County Council as a public footpath and there was a stile present at the junction with Leigh Road, (between the properties 22a and 21a Leigh Road) and at the entrance to the field. Officers have spoken to Mr James Gooding (29th April 2016), who was formerly the Wiltshire County Council Rights of Way Warden for this particular area (Mr Gooding has also completed a witness evidence form outlining his use of the path, as both part of his maintenance work and for recreational purposes).

10.21. Mr Gooding confirmed that he first joined Wiltshire County Council as Rights of Way Warden in around 1990, and the stile and waymark post off Leigh Road, were already present at this time in the form of a steel tube with fixed welded arm attached and a stile formed of timber posts with tubular metal rails. Mr Gooding erected a step on the stile when he took up post. Previous to Mr Gooding taking up this post with Wiltshire County Council, his first introduction to rights of way work was leading a group of long term unemployed people called “Manpower Services” and he was involved with sign writing all posts with welded fingers on metal posts, from a template. He recalls spraying this particular finger post. The stile into the field was also present at the time Mr Gooding took up post in 1990 and he recalled that the

landowner Mr Tucker never objected to the rights of way furniture and was aware of the footpath over his land, it has always been used on the line claimed. The presence of the stile at this position in 1990 supports that the public were using the route as claimed, and not the definitive route through the gardens (now extinguished).

10.22. Mr Gooding recalled that the owner of the bungalow "Fairlawn" 21A Leigh Road, to the south of the claimed route, maintained the ditch alongside the claimed route. Mr Tucker had originally owned the claimed path and the land to the north of that, on which there was a property which the Dairyman lived in, (Officers believe this to be the bungalow which is referred to in the original parish claim description following the parish survey in 1950), which was demolished and two new properties, 22A and 22 Leigh Road, built. The houses were built after 1990 as Mr Gooding was in post, the building probably took place about 15 to 20 years ago, (this coincides with Mr Tuckers recollection that the land was sold in 1995).

10.23. Mr Gooding recalled that he had always followed a route, as shown on the OS County Series mapping and as the Rights of Way Warden for the area, if he had found the route to be obstructed by crops, he would always reinstate the County Series map line in the field. On the map included with his witness evidence form Mr Gooding records the route which he has used, leading along the track to the rear of the houses and entering the field, but then leading further west to junction with Footpath no.34 Holt at the western edge of the field. However, Officers have found that the County Series OS maps record a route through the gardens, as per the original definitive line now extinguished, junctioning with the remaining section of Footpath no.31 Holt within the field, closer to Leigh Road (please see **Appendix 1**). From Mr Gooding's further evidence it seems that the definitive line had always been thought to lead along the track to the rear of the houses, i.e. on the claimed route, by all parties, and to enter the field via the existing stile. This was the

signed route and that used by the public and to which the landowners made no objections. There is however some variation in the route taken within the field, which will be explored further at paragraphs 10.42 – 10.47.

10.24. Officers consider that if the landowners and the then Rights of Way Warden Mr Gooding, had considered the definitive line to be different at the time the new houses were built (i.e. not on the claimed route), this would have been an issue and the recorded definitive line (now extinguished) would not have been obstructed by the gardens of these properties. Additionally, the public could not physically follow the definitive route through the gardens, but were led to follow the track and then to enter the field, the claimed route was the only route available for the public to use. The signing of the route as a footpath leads Officers to contend that the owners would have been aware of public use, or it is likely that they would have contested the signing of the used route to the rear of the properties and through the field which encouraged public use of the unrecorded right of way.

10.25. All of the witnesses are residents of Holt, however use wholly or largely by local people may be sufficient to show use by the public. The Planning Inspectorate Consistency Guidelines make reference to R v Southampton (Inhabitants) 1887, in which Coleridge L J stated that:

“user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only the local residents ever use a particular road or bridge.”

10.26. Given the above, Officers are satisfied that the evidence provided is sufficient, on the balance of probabilities, to support public use of the claimed route, over the relevant user period of 1995-2015.

As of right

10.27. In order to establish a right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission.

Without force

10.28. Use by force could include the breaking of locks, cutting of wire or passing over, through and around an intentional blockage, such as a gate.

10.29. From the evidence given, it would appear that users did not use force to enter the land over which the claimed route passes. It is the opinion of Officers that users would not have been required to use force to enter the land as there is a stile at the Leigh Road junction and another stile into the field at the end of the enclosed track. There are 6 references to the stile at Leigh Road and 4 references to the stile at the field entrance, within the 8 user evidence forms and from the evidence given by Mr Gooding, as the former Wiltshire County Council Rights of Way Warden, it would appear that these stiles were present before and during the relevant user period of 1995-2015.

10.30. Use by force, does not include only physical force but may also apply 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.”

10.31. In the Holt case Officers are not aware that the public have been advised by the landowners that they cannot use the route, i.e. there is no evidence of prohibitory notices on the claimed route and therefore use is not deemed contentious.

Without secrecy

10.32. It would appear that witnesses used the route in an open manner, in a way in which a person rightfully entitled to do so would do, without secrecy and they believed that the landowner was aware of use.

User	Do you believe the owner or occupier was aware of the public using the way
1	Yes, because I have been in consultation with all his footpaths (former Wiltshire Council Rights of Way Warden).
2	Yes, because the right of way is marked on maps and they have acknowledged it in a Parish Council meeting.
3	Yes, farmer and neighbouring householders would have seen walkers using the 'defacto' path.
4	Yes, because of the fingerposts indicating the paths existence.
5	The wife of the landowner at Manor Farm (at the time of the request for closure), Mrs Barbara Tucker was on the Parish Council and was aware that these paths were being walked on an annual basis. The line of the path across the field is clearly trodden and visible.
6	Don't know.
7	Yes, can be seen from the houses.
8	Yes, because it was a signed footpath.

10.33. 7 of the 8 witnesses believe that the landowners were aware of public use of the way due to the public being seen using the way; the footpath being waymarked; the route being acknowledged by the Parish Council (the landowners wife, Mrs Tucker, was a Parish Council member) and a clearly trodden path across the field. Mr Gooding, in further evidence, claims that Mr Tucker the owner of the field, never objected to the rights of way signage and stiles and was aware of public use. Users claim that they were not challenged whilst using the way by the landowners or any other party.

10.34. 2 of the landowners, Mr Tucker and Mrs Oakley claim that they had never seen anyone using the path, which ties in with the witness evidence that the path was used infrequently, it could be expected that Mr Tucker and Mrs Oakley had not witnessed the use of the path and therefore had no opportunity to challenge that use should they have wished to do so. Mr and Mrs Arkell confirm that use was infrequent and in small numbers, but they never challenged people using the route. Mr O'Connor claims that the path received frequent and regular use and he has advised those using the route that the way is not public, since he was informed that the path actually went through his garden (now extinguished). The recollections from the landowners are conflicting.

10.35. In the Sunningwell case, Lord Hoffman states that the use must have been open and in a manner that a person rightfully entitled would have used it, that is not with secrecy. He observes that Lord Blackburn, in discussing the dedication of a highway in *Mann v Brodie* [1885]:

"...is concerning himself, as the English theory required with how the matter would have appeared to the owner of the land. The user by the public must have been, as Parke B said in relation to private rights of way in Bright v Walker 1 CM and R211, 219, 'openly and in a manner that a person rightfully entitled would have used it.' The presumption arises, as Fry J said of

prescription generally in Dalton v Angus and Co App Cass 770, 773, from acquiescence.”

10.36. Such use would allow the landowner the opportunity to challenge the use, should they wish to do so. In the Holt case the route was also signed as a public footpath and stiles provided. Although the point of signage at Leigh Road, (point A on the plan at 4) coincides with the starting point of the definitive route now extinguished, the public have not been physically able to use the definitive line of the path which has been obstructed by the gardens of the properties built in approximately 1995 (please see evidence from Mr Tucker). Therefore the signing of a public footpath at this point would have led users along the narrow track and into the field and it is considered that the landowners would have been aware of this, yet have not challenged the longstanding signage or the provision of stiles, as evidenced by Mr Gooding, former Wiltshire County Council Rights of Way Warden. It would appear that even before the houses were built, the public followed an enclosed track between the bungalow to the north and the garden of the two cottages to the south (this is now the boundary of the later bungalow 21A Leigh Road), as evidenced in the Parish Survey path description (1950).

Without permission

10.37. Use “as of right” was discussed in the Town/Village Green registration case of R (on the application of Barkas) v North Yorkshire County Council and another, Supreme Court, 21st May 2014. The leading judgement was given by Lord Neuberger, who sets out the legal meaning of the expression “as of right”:

“...the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have

been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”.”

10.38. None of the users were employees or tenants of the landowner at the time of their use, nor were they related to the owners or occupiers of the land, so their use is not by implied permission. None of the users claim to have requested permission from the landowner to use the route, or been granted permission and none of the landowners claim to have required people to ask permission before using the way.

User	Have you ever worked for or been tenant of any owner/occupier of land crossed by the way at the time you were using it	Are you related to any past or present owner or occupier of land crossed by the claimed way	Have you ever been given permission to use the way, if so by whom and when
1	No	No	No
2	No	No	No
3	No	No	No
4	No	No	No
5	No	No	
6	No	No	No
7	No	No	No
8	No	No	No

10.39. Where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner.

10.40. In the Barkas case, Lord Neuberger states that the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land covenants, suffering), does not stop it being trespass. The point was well made by Dillon LJ in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be acquired if the user...has been tolerated without objection by the servient owner” as it would be fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p.281, “mere acquiescence in or tolerance of the user...cannot prevent the user being as of right for the purposes of prescription.”

10.41. In conclusion, Officers are satisfied that on the available evidence, use of the claimed route has been “as of right”.

The Claimed Route

10.42. The claimed route forms a link between Leigh Road and Footpath no.31 Holt, leading south-south-west along a track to the rear of the properties 22 and 22A Leigh Road for approximately 65 metres, before entering the adjoining field and then leading generally north-west for approximately 90 metres to its junction with footpath no.31 Holt. At its eastern end, the first 65 metres of the path are enclosed between the garden fences of the properties to its northern side and a post and wire fence and drainage ditch to its southern side. The path then enters the field via a stile and is open to the field.

- 10.43. From the witness evidence forms provided, all but two of the eight witnesses claim to have used the enclosed track to the rear of the properties, before entering the field.
- 10.44. Mr Robert Mizen records on the map a route extending east from the original definitive line and north of the track which would place it within the gardens of the properties 22 and 22a Leigh Road. It has been physically impossible to use this route for a number of years, due to obstruction by gardens and fencing and even the parish claim details suggest an enclosed route at this point as early as 1950, (i.e. the route leading between the gardens of the two cottages and the former bungalow on the site of 22 and 22A Leigh Road, which were built c.1995, please see **Appendix 1**). In his written description of the path, Mr Mizen states that he has used a route *“From stile at Leigh Rd, alongside gardens of no.22A over second stile and into field.”* From this description and the position of the second stile into the field, Officers would suggest that Mr Mizen was using the enclosed track.
- 10.45. Mr Andrew Pearce, records a route on the map from the stile at Leigh Road, following the track behind the property 22a Leigh Road and then leading into the garden of no.23 Leigh Road before entering the field. In his written description of the path Mr Pearce states that he has used a route *“Along the fence behind no’s 22, 22a and 23. Then bear right to meet FP no.31.”* From this description and the obstruction of the route shown on the map, by fencing, Officers would suggest that Mr Pearce was using the enclosed track.
- 10.46. Once entering the field, 7 of the witnesses claim to have used the same route which bears north-west from the track, skirting around the south-west corner of the boundary of the property 23 Leigh Road to meet with the existing part of Footpath no.31 Holt, as per the claim map. In addition to his use of this route, Mr Jonathan Nibbs has also used a spur, leading from the claimed route at the south-west corner of the property 23 Leigh Road and then almost directly

alongside the western boundary of 23 Leigh Road, to join the existing kissing gate at the junction of Footpath no.31 Holt and Leigh Road (alongside 23 Leigh Road). Additionally, Mr James Gooding records on the map a route from the enclosed track, leading further west in the field to its junction with the existing Footpath no.34 Holt, at the field boundary, which he describes “as shown on the County Series Plan”. In discussion with Mr Gooding, as the former Rights of Way Warden for Wiltshire County Council, Mr Gooding also makes reference to reinstating the County Series map line, however looking at the witness evidence overall, this is not the route which the public have used and Officers have not located OS maps which record a route leading further west to junction with Footpath no.34 Holt at the field edge, the historic OS mapping shows a route junctioning with the remaining section of Footpath no.31 Holt within the field, closer to Leigh Road, i.e. the former definitive line, now extinguished, (please see **Appendix 1**).

10.47. Officers are satisfied that, on the balance of probabilities, the witness evidence as a whole, supports public user of the route as claimed.

Width

10.48. In making an order to add a new footpath to the definitive map and statement of public rights of way, a width must be recorded within the definitive statement, based on evidence. There is no width recorded in historical evidence as the claimed route is not recorded in documents examined by Wiltshire Council (please see **Appendix 1**). The eastern part of the route which follows the track to the rear of the properties 22 and 22A Leigh Road, is enclosed between garden fences to the north and a post and wire fence and drainage ditch to the south. It is therefore possible to take a measurement of the width available to be used, which varies from between 0.85m at its narrowest point, to 2m. To include a varying width within a definitive map modification order it would be necessary to include a plan highlighting the

extent of the path to be added to the definitive map, between OS Grid Reference ST 8573-6171 and OS Grid Reference ST 8566-6169.

10.49. There is no such enclosure of that part of the route which leads through the field, therefore the recorded width on this part of the route must be based upon user evidence of the actual used width of the path. Witnesses have recorded the following path widths:

Witness	Width	Witness	Width
1	1m until the erection of house no.22A when the width was increased to 1.5m by fencing	5	0.5 - 0.75m
2	> 1m	6	
3	1.5m	7	1.5 m
4	1 – 3m	8	About 2m

10.50. The witnesses have given varying path widths. Officers have therefore used an average width from those users who provided width figures (based on the maximum extent given) which gives an average width of 1.6m to be recorded as the definitive width of the footpath within the field (i.e. between OS Grid Reference ST 8566-6169 and OS Grid Reference ST 8559-6174), if a definitive map modification order is made.

Landowner's intention

10.51. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public use of a route for a period of 20 years or more "as of right", unless during that period, there was in fact no intention on the landowners part to dedicate the land as a highway during that period.

Intention to dedicate was discussed in the Godmanchester case, which is considered the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

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

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

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1(1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

10.53. Lord Hoffman went on to say:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood

that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

10.54. In the Holt case, none of the landowners claim to have carried out any overt acts to bring home to the public that their right to use the path was being challenged. Mr O’Connor states in his landowner evidence form, that once he was advised that the definitive line of the path went through his garden, (now extinguished), he advised path users that the claimed route was not public, however, he has never turned back, or prevented anyone from using the path. Although Mr O’Connor was an affected landowner at time the definitive route was extinguished through the garden of his property, 23 Leigh Road, he is not an owner of the land over which the claimed route passes.

10.55. The witnesses and the landowners do not refer to notices being erected advising the public that the route is not public and the landowners have not completed and lodged with Wiltshire Council a statement / declaration with plan, under Section 31(6) of the Highways Act 1980 to demonstrate the landowners non-intention to dedicate a public right of way. Therefore a non-intention to dedicate the land as a highway, has not been demonstrated.

Common Law Dedication

10.56. Section 5 of the Planning Inspectorates Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 3 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.

10.57. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some point in the past.

10.58. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly, or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to public use of the way. It also relies upon the public showing their acceptance of the route by using the way. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that in practice evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.

10.59. Relatively few highways can be shown to have been expressly dedicated and in the Holt case, there is no evidence before the Surveying Authority that the landowners have carried out any express act of dedication over the claimed route. However, there is evidence that the landowners have acquiesced in the use of the claimed route by the public and evidence of public acceptance of this route through user evidence. If the claim under statute were to fail, it is possible to apply the principles of common law dedication in this case.

Conclusion

10.60. Having considered the evidence submitted in support of the claim and that submitted by the landowners, Officers have concluded that there is sufficient evidence for it to be reasonably alleged that a right for the public on foot subsists over the land in question, on the balance of probabilities and insufficient evidence of the landowners' non-intention to dedicate a public right of way, therefore the only option open to Wiltshire Council, as the Surveying

Authority, is to make a definitive map modification order to amend the definitive map and statement of public rights of way accordingly.

11. Overview and Scrutiny Engagement

11.1. Not required.

12. Safeguarding Considerations

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

13. Public Health Implications

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

14. Environmental Impact of the Proposal

14.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside

Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

15. Equalities Impact of the Proposal

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

16. Risk Assessment

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

17. Financial Implications

17.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, is a statutory duty for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

17.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application, are minimal.

17.3. Where a definitive map modification order is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

18. Legal Considerations

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

18.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

19. Options Considered

19.1. To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot

subsists or is reasonably alleged to subsist, on the balance of probabilities, or

- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, the only option available to the authority is to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

20. Reasons for Proposal

- 20.1. It is considered that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot, subsists, on the balance of probabilities, over land in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), to its junction with Footpath no.31 Holt.
- 20.2. Additionally there is insufficient evidence of the landowner's non-intention to dedicate the way during the relevant user period of 1995 – 2015. Mr O'Connor states in his landowner evidence form, that once he was advised that the definitive line of the path went through his garden, (now extinguished), he advised path users that the claimed route was not public, however, he has never turned back, or prevented anyone from using the path. Although Mr O'Connor was an affected landowner at time the definitive route was extinguished through the garden of his property, 23 Leigh Road, he is not an owner of the land over which the claimed route passes.

21. **Proposal**

21.1. That a definitive map modification order be made to add a right of way for the public on foot to the definitive map and statement of public rights of way in the parish of Holt, leading from Leigh Road, (adjacent to the property 22A Leigh Road), in a generally south-south-west and north-westerly direction, to its junction with Footpath no.31 Holt and if no objections are received, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 19th May 2016