

## **WILDLIFE AND COUNTRYSIDE ACT 1981 Section 53**

### **DECISION REPORT**

#### **APPLICATION FOR AN ORDER TO MODIFY THE DEFINITIVE MAP AND STATEMENT BY ADDING FOOTPATHS AT LEAFY LANE, BOX**

**NB** All documents (including 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; please contact Sally Madgwick on 01225 713392.

#### **1.0 Application**

**Application number:** 2015/10

**Application date:** Dated 01 September 2015. Received 18 September 2015

**Applicant:** Springfield & Clift Residents Association  
29 Springfield Close  
Rudloe  
Corsham  
SN13 0JR

**Application to:** Add the footpath from Leafy Lane (3 entrances in Leafy Lane Wood) through Leafy Lane Wood to Boxfields Road.

**Width:** Varying from 3 metres to 1 metre

**Sch. 14 compliance:** Notice of Application for Modification Order (Form 1)  
Certificate of Service of Notice of Application (Form 3) served on Leafy Lane Playing Fields Ltd  
Plan at scale 1:2325 showing claimed routes in red. Further 1:2500 plan submitted showing route ending at Boxfields Road plus additional paths in blue. Plan submitted 03 December 2015  
42 User evidence forms

**Basis of application:** That public rights on foot subsist over the routes and should be added to the definitive map

# 1.1 Application maps:



## **2.0 Legal empowerment**

2.1 The Wildlife and Countryside Act 1981 (c.69) s.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 the events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.*

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

*(3)(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or a restricted byway;*

or

*(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.*

## **3.0 Compliance of the application**

3.1 Section 53 (5) of the Wildlife and Countryside Act 1981 (WCA81) allows:

*(5) 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.*

Schedule 14 to this Act states:

*Form of applications*

*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.*

Schedule 14 (2) requires that notice is served on owners and occupiers of any land to which the application relates.

3.2 This application comprised the below and is considered to be compliant with the legislation.

Notice of Application for Modification Order (Form 1)

Certificate of Service of Notice of Application (Form 3) served on

Leafy Lane Playing Fields Ltd

Plan at scale 1:2325 showing claimed routes in red. Further

1:2500 plan submitted showing route ending at Boxfields Road

plus additional paths in blue. Plan submitted 03 December 2015

42 User evidence forms

#### **4.0 Land ownership details**

4.1 The land over which the claimed route leads is owned by Leafy Lane Playing Fields Ltd (LLPF Ltd). They bought the land in 1998. The woodland area has recently been offered for sale. A purchaser has been found but as at date of report the sale has not been completed.

4.2 Prior to 1998 the land was owned by Mr Graham Padfield though it is not known for how long Mr Padfield had owned it. Mr Padfield did not respond to a letter sent on the 8<sup>th</sup> December 2015 seeking information though did later e.mail the Council confirming 1998 as the date of sale.

4.3 From at least the late 1960s part of the land was leased to the Ministry of Defence for use as sports field including a football pitch and a cricket pitch. It is not known when this lease expired. These occupied about one third of the existing sports area with the rest of the open ground fenced off to enable the grazing of cows. The tenants for this land for unknown periods were Mr and Mrs Maidment (1980s) and Mr Clive Freeman.

4.4 During some of the MOD's occupation of part of the land 2 signs with the following wording were displayed:

*“Ministry of Defence*

*This is a prohibited place within the meaning of the official secrets act – unauthorised persons entering the area may be arrested and prosecuted.”*

*“All dogs must be kept on a lead and only walked around the perimeter of the station sportsfield. Golf practice is prohibited on the station sportsfield.”*

The extent of the MOD lease is not known though on the balance of probabilities it is thought unlikely to have included the woodland and the grazed field. The notice directs the public around the edge of the sportsfield.

4.5 From 1998 to the date of report LLPF Ltd have displayed the following signs at the entrances to the land at Leafy Lane. The signs have been vandalised and are not generally readable, however, the signs are known to show a map showing the woods and a narrow strip along the western edge of the land in green and the remainder of the field in orange. The green land is affected by this application to record footpaths. They state:

### ***“This is Private Land Owned by Leafy Lane Playing Fields Ltd***

*We are pleased to welcome walkers and dogs in the designated areas coloured green on the adjacent plan marked by signs on the site. This area has been developed for the enjoyment of local residents and walkers. Please make sure that dogs do not enter the playing field areas coloured red because it is used by young children, sportsmen and women. This approach follows the firm recommendation of the Playing Fields association who have highlighted potential problems when dogs foul playing areas”*

*“Dog mess is dirty and unpleasant and is of particular concern.*

- In play areas where young children are not always discriminating about what they touch or pick up.*
- On sports pitches where players often young people frequently slide on the surface*
- To ground staff when mowing*

*There is concern about Toxoceriasis, a disease which can be spread through dog faeces even though the risk to health is comparatively small.*

***Please ensure you keep to the designated area in the interest of all users.***

#### 4.6 Image of sign in storage (supplied by LLPF Ltd):



#### 4.7 Leafy Lane Playing Fields Ltd

LLPF Ltd is a private limited company incorporated on the 24<sup>th</sup> October 1996. A copy of its Certificate of Incorporation and Memorandum of Association has been provided by the applicant and is included in his evidence (witness no 34).

#### 4.8 The Company's objects are listed at 3 (a) to (b)(xiv) and were amended on 7<sup>th</sup> April 1997 by Special Resolution as follows:

*“That the objects of the company be amended by specifically including the following additional paragraph: -*

*To provide for the inhabitants of Corsham and surrounding areas in the interests of social welfare facilities for recreation and leisure time occupation with the object of improving their conditions of life.”*

This is addition to 3(a):

*“To advance and improve the education and physical, mental and social well-being of the community by the provision of sporting and recreational amenities, grounds and facilities of all kinds.”*

#### **4.9 Tree Preservation Order**

The whole of the woodland area is included in Leafy Lane Rudloe Tree Preservation Order (No.1) 1995. This matter is irrelevant to the determination of this application to record footpaths in the definitive map and statement.

#### **4.10 Charitable Status**

LLPF Ltd is registered as Registered Charity No. 1062013.

#### **4.11 Asset of Community Value Application**

The woodland area was the subject of an application to be listed as an Asset of Community Value. The application was made on the 15<sup>th</sup> May 2015 and refused by Wiltshire Council on 24<sup>th</sup> July 2015. This matter is irrelevant to the determination of this application to record footpaths in the definitive map and statement.

4.12 The application to list the woodland as an asset of community value appears to have been the result of local residents fearing the sale of the woodland area by LLPF Ltd. A key question being whether the sale was an action that LLPF Ltd, as a registered charity, could take.

4.13 In their response dated 10<sup>th</sup> June 2015 to the Community asset application LLPF Ltd made the following comment:

*“The woodland area on the other hand, which the applicant wishes the council to list as a community asset, marked in red on Appendix 1, does not provide any community asset in regards to fulfilling requirements of a community asset (as listed further) nor does it provide the amenities for the local community towards fulfilling our duty under our charitable status. The decision to release capital by selling the woodland area was taken after much discussion. Leafy Lane Playing Fields Ltd finally decided that as the woodland area was not part of our core aims, nor did it have a need within the community, the selling of the land was only the way forward for the charity to progress.*

*After fulfilling our duties under the Charities Commission, the Woodlands sale...was advertised....although we would be within our legal rights to sell before your decision we have decided to wait...”*

4.14 While matters related to assets of community value are irrelevant to this application the ability to sell part of the land does demonstrate the capacity to dedicate that LLPF Ltd has

and that the woodland area was not considered to be subject to the objectives of the company.

## 5.0 Description of route

5.1 There are three distinct entrances to the woodland area from Leafy Lane and well trodden tracks leading into the woods from them. A number of trodden tracks then lead south west through the wood emerging at the western end into a fenced track between 2 and 3 metres wide. The enclosed area was created in 1999 by Leafy Lane Playing Fields specifically to keep dogs away from the playing fields. Access to the playing fields from this track is prevented by a locked gate. Access to this track from the south is through a 'squeeze' gap and/or over a stile at Boxfields Road (at the site of the former shop).

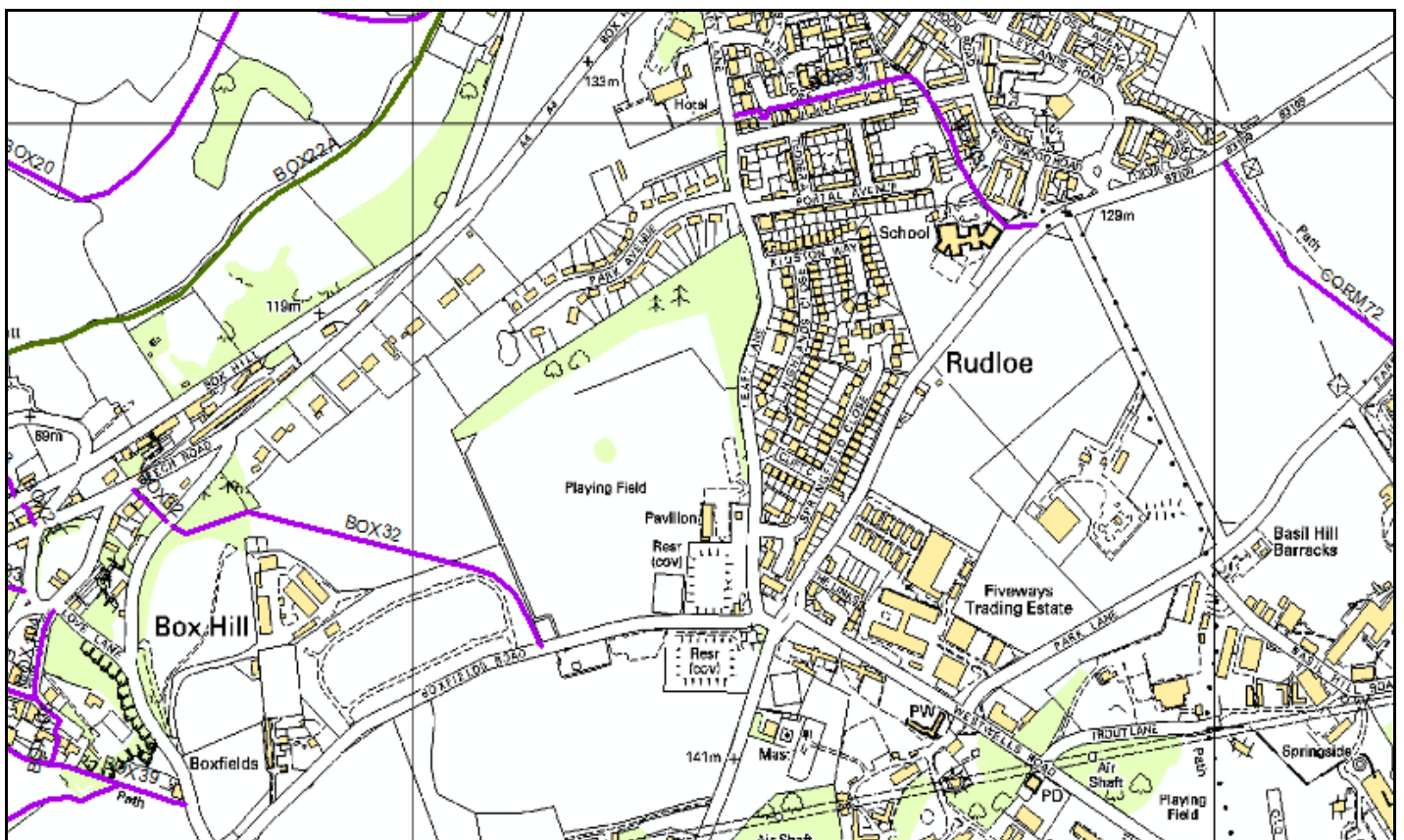
5.2 There is additional access to the claimed route from the MOD housing and play area in the north. This is through a gate which has a sign on it (readable from the woodland into the MOD site) stating:

*"Ministry of Defence. This is a prohibited place within the meaning of the Official Secrets Act. Unauthorised persons entering the site may be arrested and prosecuted."*

The positioning of this sign supports that the MOD had no jurisdiction over the woodland area.

## 6.0 Current Records – Definitive Map and aerial photographs

6.1 There are no recorded rights of way across the site. The closest footpath is Box 32. See extract from the working copy of the definitive map below:



6.2 Aerial photograph 2001



6.3 Aerial photograph 2006





6.4 Aerial photograph 2014



6.5 An aerial photograph from 1950 clearly shows the Boxfields pre-fabricated housing development to the south and west of the LLPF Ltd land (pale blue square).



7.0 Site visit 20 November 2015



Stile and 'squeeze' gap at Boxfields Road



Southerly end of claimed route from Boxfields Road



Westerly edge of site – playing fields on RHS behind hedge



Claimed route leads into woodland area



Well trodden tracks into woodland area



Main east west track south of Park Avenue



Main east west track south of Park Avenue



Main east west track south of Park Avenue towards Leafy Lane Electricity sub station



Leafy Lane junction at sub station opposite former NAAFI



From Leafy Lane sub station junction  
looking east back along track



Second entrance from Leafy Lane  
south of sub station



Third and most southerly entrance  
from Leafy Lane

Tracks are generally well defined and claimed routes can be identified reasonably well:

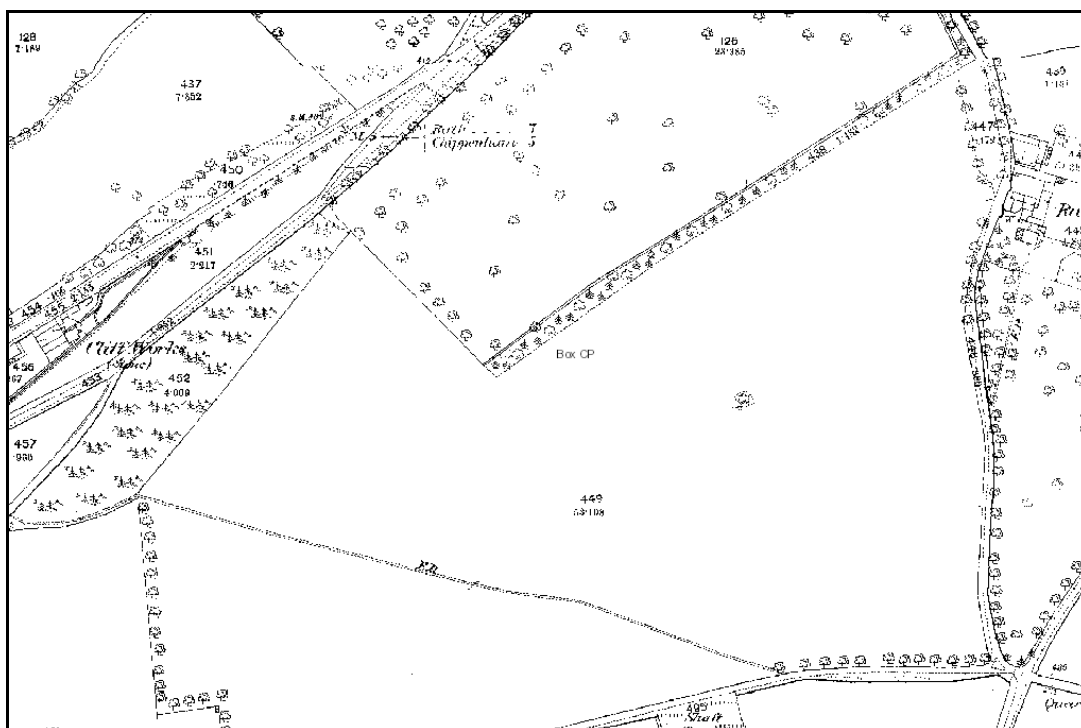


## 8.0 Context of application and historical evidence

- 8.1 Historically the area around Box, and specifically the area of the claimed route, has been extensively mined for stone. Boxfields Road to the south of Leafy Lane Playing fields is a continuation of Quarry Hill Road and the land now used for playing fields formed part of a much larger field under which was Cliff Quarry. In 1884 the Ordnance Survey recorded Cliff Works in the north west and a quarry shaft south of the claimed route on the opposite side of Quarry Hill Road/Boxfields Road.
- 8.2 There is a historic footpath in this area and this links Quarry Hill Road/Boxfields Road with Cliff Works in a straight line. The end of this path was diverted at the Boxfields estate by Order in 1951 (The Stopping up of Highways (Wiltshire) (No. 4) Order 1951) and the route is now recorded in the definitive map and statement as Box path no. 32.
- 8.3 The southerly end of the historic path is where the stone stile into the playing fields is today. This stile does not form part of the claimed route.



- 8.4 Extract from OS 1:2500 County Series Map Sheet XXV.11 1884 survey showing larger field and historic footpath Box 32.:

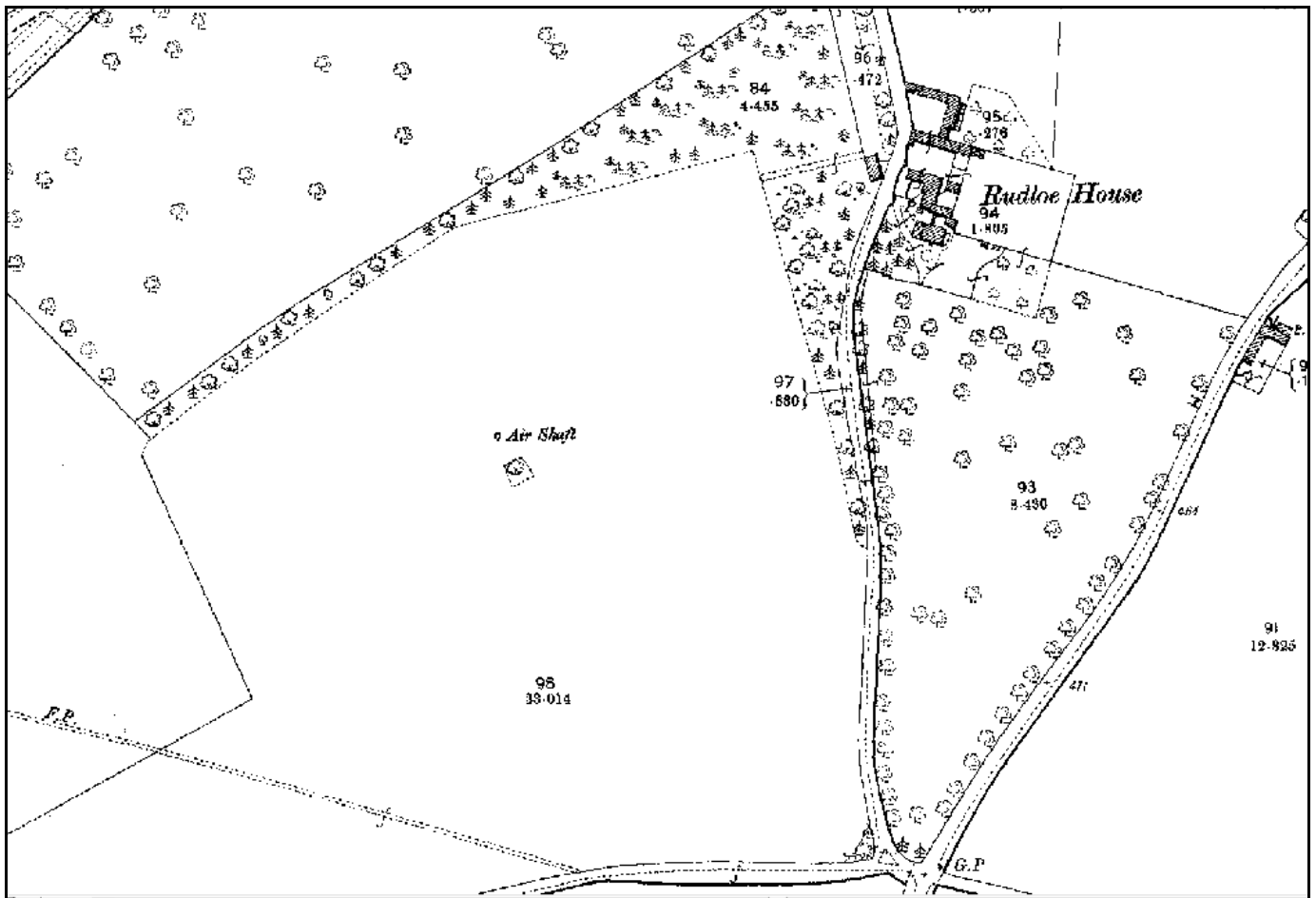




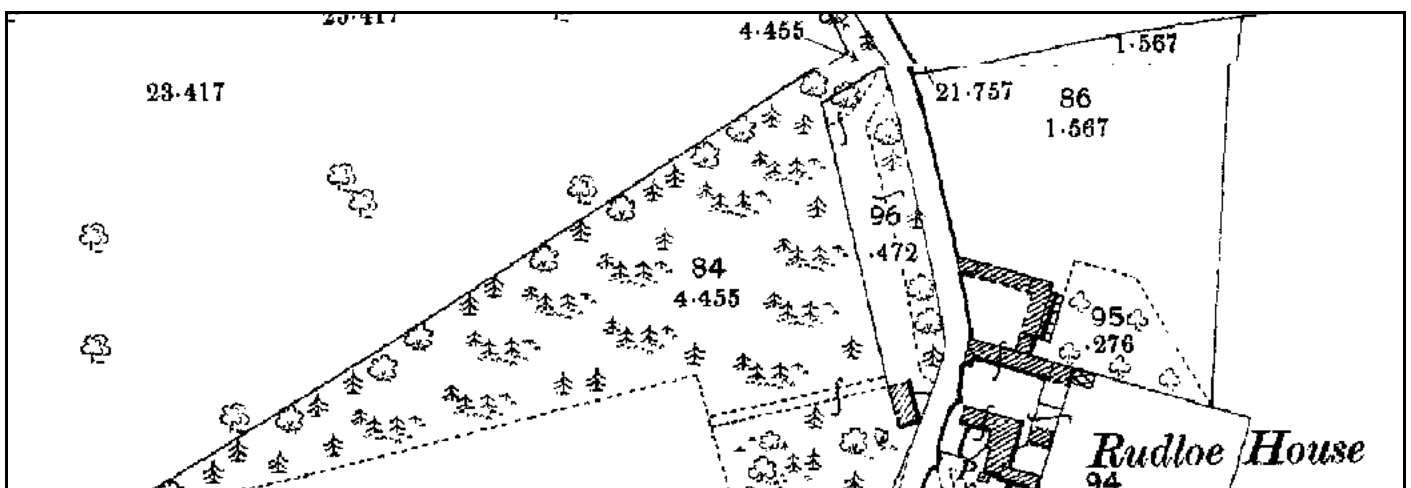
8.5 The description of the end of the footpath that was diverted in 1951 is given in the order as:

*“That length of footpath leading from Quarry Hill Road to the tramway from the Wharf at Box to the Clift Works which extends from a point ...”*

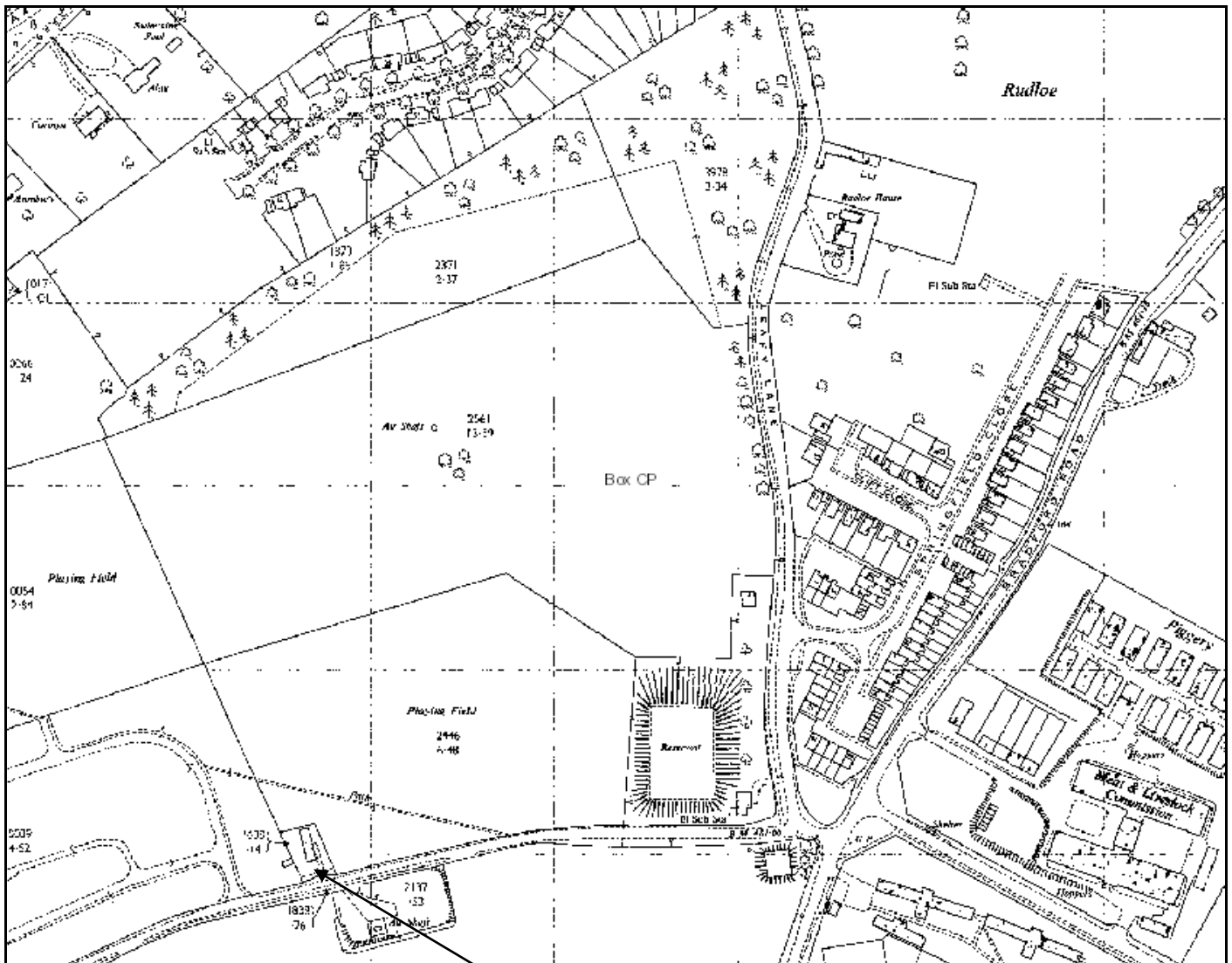
8.6 Ordnance Survey 1:2500 maps (County Series) record an air shaft being in the playing field as below from 1899 onwards:



8.7 No historical maps show any footpaths other than Box 32 within the woods or across the field at any time though a track is shown linking Leafy Lane through the woods to the field at a point approximately where the electricity sub station is today and another opposite Rudloe House:



8.8 The area around Box and Corsham is also used by the Ministry of Defence (MOD), primarily because the underground tunnels from the quarrying industry make a good defence resource. By the 1960s MOD housing had been built to the north of the claimed route and private housing also spread to the land to the east of Leafy Lane from this time onwards.



8.9 The above map, representing the site in around the late 1960s clearly shows the housing to the north of the woods and the layout of the site before LLPF Ltd bought the site in 1998. The map shows that before 1998 the Playing Field (an MOD facility leased to them from Mr Padfield) occupied a smaller area to the south of the site with smaller enclosures to the north. The air shaft is still shown.

8.10 The small enclosure in the bottom left hand corner of the site, beside which the claimed route now leads, was at that time a building which was used as a shop. The area immediately to the west formed part of the Boxfields estate, an area of pre-fabricated housing which was occupied from the 1940s through to the early 1960s when it was demolished. The line of the estate roads can be seen on this map and on aerial photographs today.

8.11 Although Clift Quarry continued in operation until the 1960s the use of the land over which the claimed route leads was likely to have been relatively unaffected by the activities of the quarry and the Finance Act 1909/1910 documents record it as being two separate hereditaments, number 113 and 222. No. 113 was occupied by John Blake and owned by



*Wiltshire Council has received an application from the Springfield and Clift Residents Association for an order adding public footpaths to the definitive map and statement. A number of paths through woodland alongside Leafy Lane are claimed, also a path linking Boxfields Road with the woodland. Please see enclosed copy of the application map. The application is supported by evidence of use from 42 people dating back, in some cases, to the early 1970s.*

*The Council must investigate all relevant evidence made available to it and accordingly invites any further evidence that you may have. I would be especially grateful for any information relating to signage (for example - what did the now yellow signs at Leafy Lane entrances say?) and use prior to 1996 (including perhaps photographs taken on the routes). Comments and evidence from any landowner, tenant or occupier from the period 1970 to 2015 are especially invited.*

*Please could responses be sent to me at the above address by the end of January 2016. If you have any queries please do not hesitate to contact me.*

9.2 A copy of the application map received on the 3<sup>rd</sup> December 2015 and shown at paragraph 1.1 was included.

9.3 The consultation was sent to:

The Auto Cycle Union  
Commons Open Spaces and Footpaths Society  
Wiltshire Bridleways Association  
Wiltshire Cycling Touring Club  
British Horse Society  
British Horse Society Wiltshire  
Wiltshire Councillor Mr D Tonge  
Box Parish Council  
Corsham Town Council  
Byways and Bridleways Trust  
British Driving Society  
Wiltshire Council Rights of Way Warden  
Wiltshire Ramblers  
Wiltshire Rambler Local rep.  
Wiltshire Council County Ecologist  
Open Spaces Society Local rep  
Mr P Neuman Leafy Lane Playing Fields Ltd  
Mr R Mullins Leafy Lane Playing Fields Ltd  
42 people who had submitted user evidence forms  
Mr G Padfield (landowner prior to 1996)

## **10.0 Consultation responses**

10.1 **Dr D Wright** 27.12.15

*“Thank you for the invitation to comment on the disposal of the Woodland described in the Public Notice issued at Ref A” Public notice describing the intent to dispose of woodland belonging to Leafy Lane Playing Fields Trust dated 13 August 2015. “I can confirm that I have lived in my current home at Kidston Way since 1996 and have walked the circular*

*route through Leafy Lane woods to Boxfields and returning to Kidston Way and Leafy Lane daily over the period 1996 – 2015. Noting the invitation posted by the owners of the wood to keep to the prescribed footpaths and avoid dogs fouling the woods.”*

**10.2 Mr and Mrs M Canham 27.12.15**

*“The signs would have advised where they could walk their dogs “NOT ON THE PLAYING FIELDS”. The path linking the woodland and Boxfields road was set up by the sports club at the start of their tenure once again to avoid people walking on the sportsfield with their dogs. The red lines on the map are a fair reflection of where people walk consistently.”*

**10.3 Wiltshire Council County Ecologist 06.01.15**

*“Thank you for consulting me on the above application for additional new footpaths. I have carried out a desk study of the area and find that the area of woodland concerned carries no special designations for nature conservation, is not listed as ancient woodland and has no records of protected species associated with it. My only concern is that this woodland contributes to primary connectivity within the wider landscape area, linking different areas of habitat, providing secluded commuting routes for a range of birds, small mammals and other wildlife species and providing a buffer to the residential development close by. The number of paths proposed through the woodland, although they may already be in use, is likely to be detrimental to the function of the woodland for biodiversity, i.e. human disturbance is likely to reduce the number of wildlife individuals that can forage and move around safely. I fully support the health benefits for people that walking in woodland brings and also that direct routes linking key areas are most useful to the local community. However, I would ask that the applicants reconsider the number of pathways crossing through the woodland and reduce the number to the fewest and most efficient to serve the community.”*

**Officer’s comment:** The Council may only consider the paths used and whether the legal tests relating to that use are met in deciding whether paths may, or may not, be recorded as public footpaths.

**10.4 Mr and Mrs P Turner 06.01.15**

*Happy New Year and thanks for the letters dated 8th December 2015 regarding Springfield and Cliff Residents Association application.*

*Regarding "The Council must investigate all relevant evidence ... and invites any further evidence ...", as you know, I have many photographs (actually thousands!) of this area including Leafy Lane Wood and the subject footpaths. Within this 'collection' I may have a photograph of the signs at the Leafy Lane Wood entrances but, strangely, I doubt that I have as I have always tried to avoid signage in the photographs. I should say that from what I remember, the signage specified pictorially (with text) the area that was granted to walkers (specifically dog walkers) and others for recreation within the woodland area of Leafy Lane Playing Fields. The signs were contemporary with, and public notification of, the substance of the Leafy Lane Playing Fields (LLPF) Project Manager, Mr Graham Cogswell's, letter dated 13th January 1999 which, inter alia, stated "An extended dog walking area is being provided around what is in fact a privately owned site, however, we have always intended that the site be sensibly used by the whole community".*

*As you will know from copies already passed to you, this stated intention confirms one of Leafy Lane Playing Fields Ltd's 'Objects' from its Companies Act Certificate of Incorporation and Memorandum of Association document dated 24th October 1996 that is "To advance and improve the education and physical, mental and social well-being of the community by the provision of sporting and recreation amenities, grounds and facilities of all kinds". This particular 'object' was indeed confirmed by an LLPF Extraordinary General Meeting 'Special Resolution' dated 7th April 1997 which stated "That the objects of the company be amended by specifically including the following additional paragraph:- To provide for the inhabitants of Corsham and surrounding areas in the interests of social welfare facilities for recreation and leisure time occupation with the object of improving their conditions of life". I have attached the documents for the sake of completeness.*

*Apologies that the foregoing has gone over old ground!*

*As I indicate above, I have thousands (this is not an exaggeration, the number is probably close to ten thousand) of photographs of the local area centred on Rudloe and Leafy Lane. This number includes many photographs taken in and around Leafy Lane Wood since we moved to this area in 1975. Many of the photos may be found on the Rudloe website, rudloescene which was founded and is administered by yours truly. The principal pages where photos of the wood may be found are here <http://www.rudloescene.co.uk/localities/rudloe/> and here <http://www.rudloescene.co.uk/localities/rudloe/leafy-lane-flora-fauna/> but photos (and news) may also be found here <http://www.rudloescene.co.uk/news/rudloe/leafy-lane/>.*

*Most pictures will be post-1996 but, given the scale of my 'collection', there are quite a number of pre-1996 photos. However ... as most of the images are of the flora and fauna of the woodland (principally trees), there is no particular point of reference regarding the date - I know the dates involved but it seems that such photos will perhaps be of limited use with regard to our objective of establishing rights of way? Please let me know if any might be of use and/or if you would like me to search for any photos of the 1999 signs.*

*As you know, we have a number of documents relating to pre-1996 ownership from Mr Graham Padfield (the owner). I believe we passed the most relevant to you at our meeting before Christmas. However, there are also a number of documents regarding the woodland under LLPF stewardship which I have just re-discovered. I have included relevant parts from these documents as attachments. These are:*

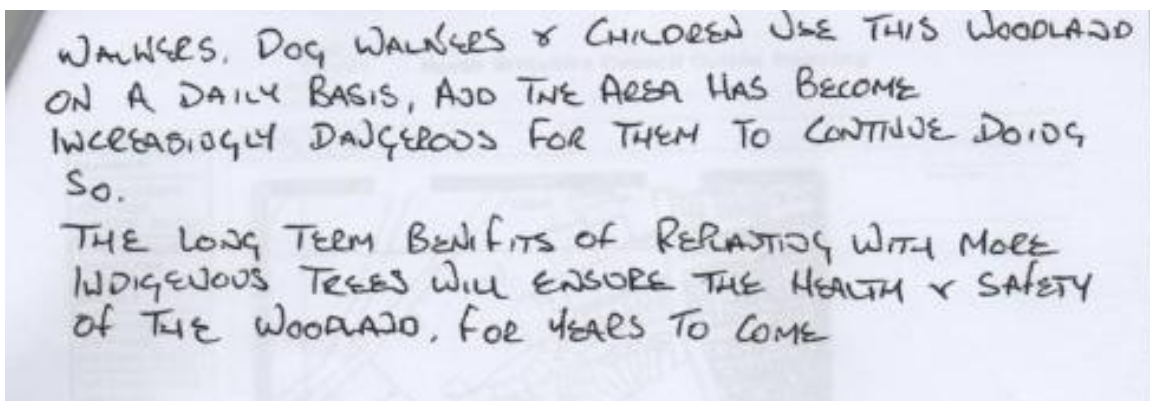
*page 4 of the Messrs Greenman report on Leafy Lane Wood (headed 99.01277.TPO at top right) of 21/4/1998 which includes, under 'Area 3. Dark Red' the text "**From stile at Leafy Lane**"*

- Map from above report (also headed 99.01277.TPO) which shows the 'Dark Red' area at the north-west corner of the wood adjacent to the substation*
- A letter from LLPF (Peter Morgan) dated 2nd May 1998 which includes the text "Leafy Lane Playing Fields have to make sure that the woodland is a safe place for the public to have access"*
- A letter from LLPF (Peter Morgan) dated 10 July 1998 to all Rudloe residents with regard to "formulating ideas and managing (sic) the woodland area" (also includes a request for my thoughts on the history of the Wood)*

- A letter from me to Peter Morgan dated 1st August 1998 responding to his request
- A letter from me to Graham Cogswell, LLPF Project Manager dated 3rd January 1999
- A 2-page letter from me to NWDC and others dated 22nd May 1999 which includes the text "I am pleased that we have the woodland and newly-created\* footpaths to use". \*I believe I have my politically correct hat on here
- A letter from me to Messrs Greenman dated 13 Sept 99 which includes the wording "I noted a small piece in the local paper at the weekend - 'Following complaints about the potential danger of falling branches, clearance of footpaths is to go ahead on Leafy Lane woods'"
- An application from LLPF (Steve Bray) for tree work in Leafy Lane Wood. The first three pages are attached, the third of which states "Walkers, dog walkers and children use this woodland on a daily basis"

*In case of any problems with the attachments, please let me know if you would like this email and attachments also to be sent by post. I have copied this to the chairman and secretary of the Springfield and Clift Residents Association for information."*

**Extract from 2009 application for works to trees made by Leafy Lane Playing Fields Ltd:**



**Extract from 1999 letter from Paul Turner to Mr Cogswell, Leafy Lane Playing Fields Ltd:**

I had not appreciated that the 'strip paddock', which is enclosed by the line of trees to the north of the main playing field area, was going to form part of the playing field. I had assumed that this was an area which could be used by the local residents. Scores of people from the Rudloe estates use the playing fields to exercise their dogs. It is, or was, the only local green space available for this purpose, and so for people who for many reasons cannot venture further afield, it was an integral part of their daily routine. I don't know if you are a dog owner, but having had dogs for many years, I have become aware that for many people it serves a useful social function. For those who would otherwise be isolated inside their homes, especially in winter, it provides the opportunity to take the fresh air, to meet other locals who perhaps they would never normally encounter and to find out what is going on in the neighbourhood (like the putting-up of fences for example). I have also become aware that dog owners

**10.5 Celia Hopkins 13.01.16**

*"Being a regular user of the footpaths in question since 1978, I support the application to add the indicated footpaths through the woodland adjacent to Leafy Lane to the definitive map and to the statement.*

*The main paths and the newly marked paths shown in red and blue respectively on the Revised Application, are all in regular use.*

*The old faded yellow signs at two entrances indicated that paths around the playing field and through the wooded areas (originally marked green, now marked red on the application) afforded access to everyone, including dogs. The signs forbade dogs access to any remaining playing field areas which were identified in red on the sign."*

**10.6 Box Parish Council 13.01.16**

*"Thank you for your letter dated 8<sup>th</sup> December 2015. The Parish Council does not have any evidence in this case other than knowledge that these paths have been used for a considerable number of years and a councillor who has lived in Rudloe for 30 years and knows that these paths have been walked. If I receive any further evidence I will forward it to you."*

**10.7 Robert Davies 07.01.16**

*"Further to the evidence I gave you last year in relation to adding a public footpath to the definitive map at leafy lane I have enclosed a photograph of the remains of a stile put up by the tenant of the land Clive Freeman prior to 1996 when the land was sold. It is located near the electricity sub station and bus shelter at the A4 end of the wood, it was constructed at least 3 years before the land was purchased by Leafy Lane Playing Fields Ltd.*

*In 1994 Graham Padfield the owner at that time walked through the woods with me where I pointed out areas where people walked and although there were no rights of way he indicated he understood why the area was popular with local people and we discussed the possibility of the selling of the land.*

*I have seen letters supplied to you by Paul Turner from representatives of Leafy Lane Ltd making it clear that the woodland was open for walkers.*

*The now faded signs put up in the wood and the entrance to the path at Boxfields Road were coloured red and green indicating that anybody could walk in the green areas this included the path leading to Boxfields Road. The red areas only excluded dogs, pedestrians could still walk in these areas.*

*I gave you details of Clive Freemans address and landline number however if you have difficulty in contacting him please let me know, I spoke to him some time ago about the stile he erected and he agreed he would give evidence of this if required. I have lived in the area since 1974 and have walked on these paths and fields since that time and I was not warned by the owner or his tenant at anytime that I was trespassing."*

**10.8 John Harrill 14.01.16**

*"In reply to your letter of 8<sup>th</sup> December 2015; having lived in Rudloe since 1972 (Pine Close and then Kidston Way). During this time we have always enjoyed walks with our children and now grand children, through the wooded area shown on your map and which the trees/wild life provided endless enjoyment.*

*I notice in your letter the mention of yellow signs – these were put in place by the present owners who purchased the playfield and woodland in 1996; the signs stated that no dogs were allowed on the playing field, but dog walkers could use the path as shown on your map in red. The four signs were located as shown by the black crosses I have drawn on*



*your map. Indeed as a dog walker myself I have used these paths and also the revised paths marked in blue added by Mr Turner; at least twice daily since 1996.*

*Hoping this information will be helpful to your enquiries and sincerely hope that the areas marked will continue to be accessible and enjoyed by the general public.”*

10.9 Mr Harrill subsequently confirmed that he had walked the paths in the period 1972 to 1996 as well as after 1996.

10.10 **Elizabeth Arkell** 15.01.16

*“With regard to the signage at the entrances abutting Leafy lane, there are three. One is sited at the car park entrance, one at each end of the next two entrances. I have marked these with a cross on your copy plan.*

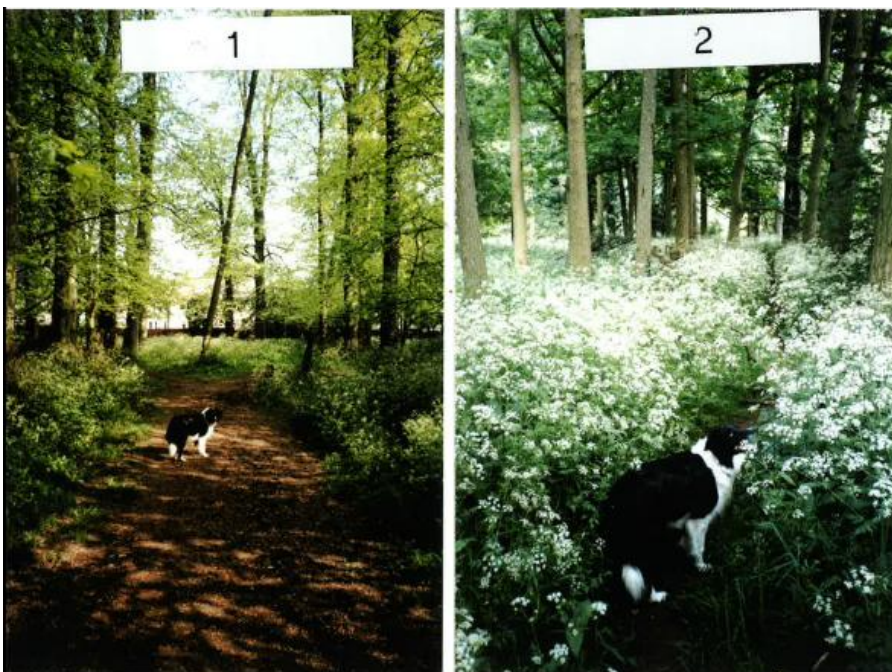
*The sign on the post at the second entrance down from the car park is just legible if the light is in the right place and says:*

*“We are pleased to welcome walkers and dogs in the designated area coloured green on the adjacent plan marked by signs on the site. This area has been developed for the enjoyment of local residents and walkers. Please make sure that dogs do not enter the playing field areas coloured red because it is used by young children, sportsmen and women. This approach follows the firm recommendation of the Playing Fields association who have highlighted potential problems when dogs foul playing areas.”*

*“There were two further paragraphs which are very difficult to transcribe but relate solely to keeping dogs off the playing fields as fouling affects the enjoyment of children and others using the playing fields.”*

10.11 **Kevin Short** 15.01.16

*“Please find enclosed three photographs taken in the early 1990s showing evidence of the well worn tracks in use at that time. I have enjoyed the experience of walking five different border collies through the woodland on an almost daily basis since 1982.”*



*Photograph 1 is on North south route parallel with Leafy Lane. Photograph 2 is on main track south of Park Avenue.*



*Photograph 3 shows use of a route south of the existing treeline but north of a belt of trees that is no longer present. This route is clearly well used but is not claimed by the applicant.*

**10.12 Kathryn Barstow 22.01.16**

*"I understand that my friend and neighbour, Mrs Arkell has already sent you a copy of the writing that is visible in the correct light, of one of the signs. I attach a photo of the map on the sign. I have enhanced the colour by changing the contrast and brightness and it now clearly shows the designated area for local residents and walkers (this area is black on my photo as opposed to the green mentioned on the sign.*

*I would also like to add: Box Highlands School used to be situated off White Ennox Lane before it moved to the Broadlands site. Children living in Rudloe would have walked to school through these woods every day, being the easiest way to get to White Ennox Lane. This suggests that the footpath through the woods goes back to at least the time that Box Highlands School was first set up. (Box People and Places website suggests that this was November 1943)*

*This suggest that, at the very least the main footpath through the woods and along the playing field should qualify, by virtue of long usage, as a definitive footpath."*

**10.13 Officers asked Mrs Barstow whether she had any recollection or evidence of people using the claimed routes at that time to access White Ennox Lane.**

*"Unfortunately I did not live here until 1989 so cannot confirm that exactly. However when I first lived here there was a stile by the main entrance near the bus stop. The gate into the top of the woods that enters the MOD field I do know is part of the escape plan in the event of fire in Park Avenue. My late sister was a Squadron Leader based here and on one occasion one of the trustees saw fit to put a very large padlock on the gate. She phoned him to ask for it to be removed I can only assume that he declined but a few days later my husband and I were walking our dogs and saw him and an MOD police officer walking to remove the padlock.*

*When I first came here there was a path from this gate to a stile in the fence of the field which was then used by the forces. This fence ran the other side of the ash trees on the field some 10 plus yards into the field. People always walked their dogs along the edge of the field, this was why the footpath was hedged off so that the walkway was designated and one therefore did not have to walk across the playing fields.”*

**10.14 John and Susan Griffith 25.01.16**

*“My husband and I have lived on the Rudloe estate since June 2000 and in all the years of living here we have enjoyed the pleasure of being able to walk through the beautiful landscapes in the area including the woodland that you refer to.*

*With reference to your enclosed map, we can confirm that, in our minds, there has never been any doubt as to the intended use of the paths and routes shown; that being for use to the general public as official public footpaths. The main clue to this is the stile at the Boxfields Road end of the indicated right of way coupled with the fact that the path itself is bordered by boundary fences on either side of it which makes it impossible to wander off the line until you meet the woodland. Even then the routes are clearly defined by well trodden paths that have been engraved into the land over time. At the other end of the main path which meets Leafy lane at the bus shelter, there is, and always has been (since our time of living here) open access at this point and there is no evidence of any damaged or broken barrier to assume otherwise.*

*With regard to the sign at the pavilion end of the woodland, we cannot remember precisely what it said but think something along the lines that indicated walkers were welcome into the woodland. We think there was a picture possibly of the woodland and some wording which might have stated that dogs must be kept on a lead; but we cannot be absolutely sure about that. What we can be sure about is that there was never any signage to indicate that the land was private or that walking on it was an act of trespass. (Again this applies since 2000). Also we have never at anytime been approached to say that we were trespassing on private property.*

*We are also aware that a number of trees in the woodland have preservation orders on them and the trees in question are labelled accordingly.*

*In addition to this information please find enclosed two photographs that we have taken over the years that highlight the natural beauty of the woodland.*

*We hope this information helps to reinforce the view that the footpaths shown have, for many years been a public right of way and that the people of Rudloe will be allowed to continue to walk through the woodland and enjoy its natural beauty.”*



Photographs submitted by Mr and Mrs Griffith

10.15 **Stella M Vain** 01.02.16

*“Further to your letter of 08.12.2015 (sorry for the delay) there is little I can add to my original response to Leafy Lane woods paths. Just to reiterate that I have lived opposite the woods since 1968 – nearly 50 years. During that time I have walked the footpaths in and around the woods with my children, family, friends and usually accompanied by dogs. I was also an active member of Box Natural History and Archaeological Society who monthly walked the footpaths in and around Rudloe to ensure that the footpaths weren’t lost to us through neglect, farming and development.*

*I cannot accurately describe the signpost in those days but in my memory they were old fashioned finger posts. The entrance to the footpath from Boxfields road was over a stone stile which is still in place. This footpath was reinstated around the edge of the field when the new football club subsequently obtained the field.*

*I hope this may add to your enquiry. We would hate to lose these ancient footpaths.”*

10.16 **Kevin Short** 25.01.16

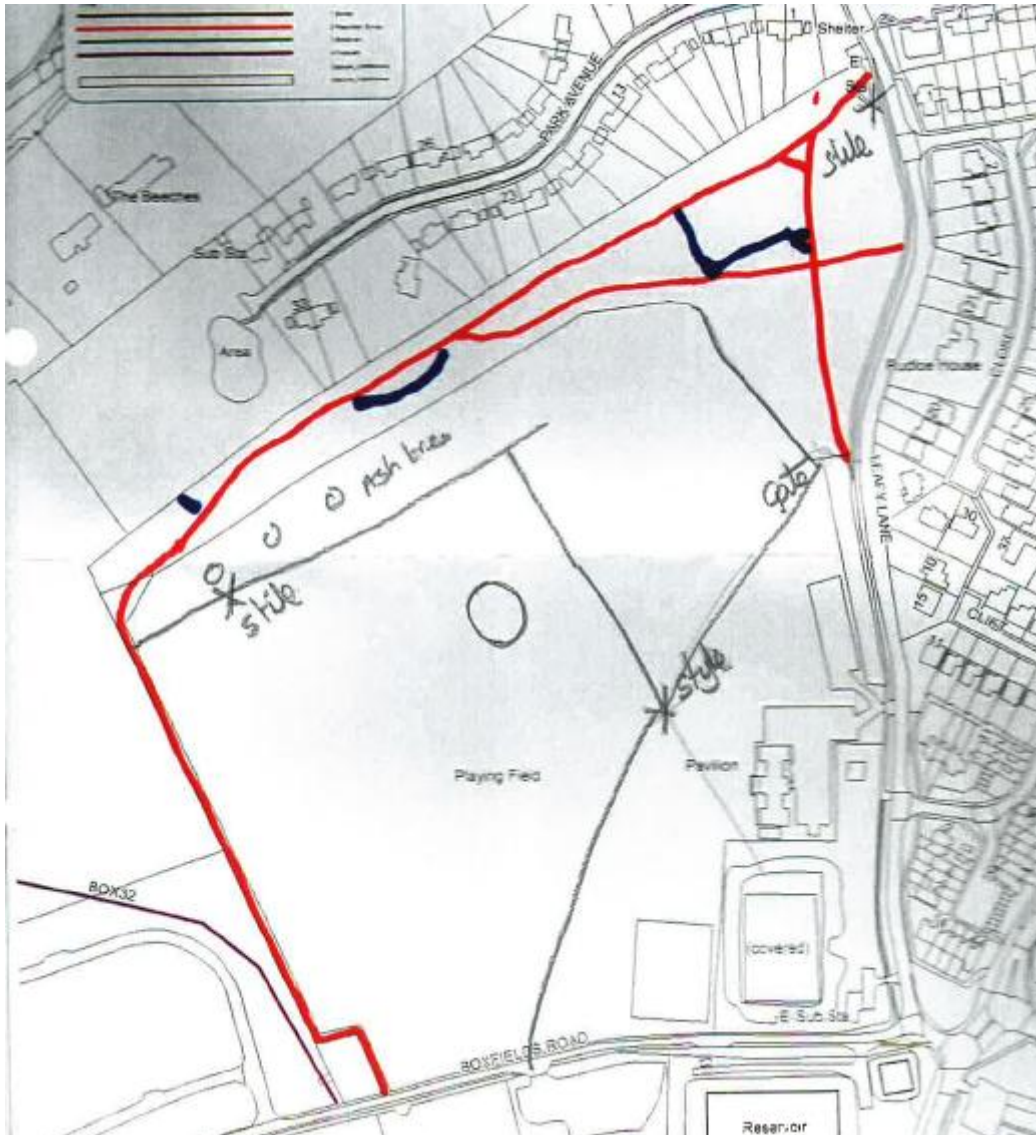
*“Thank you for your very nice letter of 18 January 2016. Just to confirm my photographs were indeed taken before the land was purchased by Leafy Lane Playing Fields. I have (hopefully!) attached some more shots taken on the same day as photograph no 3, showing in the background the beautiful hedgerows and hawthorn trees destroyed by them. The land was also soon sprayed with chemicals and all the wild flowers in evidence killed off! Please note also the rugby posts, in use when the sports fields were owned and used by the Royal Air Force.”*





10.17 **Kathryn Barstow** 29.01.16

*“In addition to my previous note I have attached a map of Leafy Lane Playing fields as I remember then I arrived in 1989. The main playing field was divided into playing field and rough pasture nearest the road with a stile located in the middle. One could go through a gate by the road and diagonally across the field to the stone stile on Boxfields Road.”*



10.18 **Jane McDermott** 02.02.16

*“I understand that you are compiling evidence regarding the footpaths in the Leafy Lane Wood Rudloe, to support an application to add the path to the definitive map. I lived in the RAF housing to the north of Leafy Lane woodland from 1995 – 1997 (Park Lane) and used the path twice a day to walk my dog, connecting to the surrounding footpath network around Box Valley and towards Hazlebury. I was frequently accompanied by my neighbours (fellow dog walkers!) on these walks.”*

10.19 **K J Oatley** 08.02.16

*“I noticed a recent article in rudloescene.co.uk that some issues concerning the sale and use of this land. Clearly a lot of debate and controversy has been generated in the process for the future sale/use of this wooded area of our landscape.*

*As a former professional in the town, it goes without saying, that such woodlands play a very important part to our environment and as such afford the population a benefit which has great value, both in terms of the possible small amount of peace and tranquillity it offers but also in terms of the catchment for our increasing problem of pollution.*

*Very little in the form of additional woodland has been “planned” for the Corsham area and although we do not benefit from a great parkland owned by Corsham Estates nothing has been created for future generations. It is therefore essential that such areas of land which have already been designated a open space should be retained in perpetuity for everyone’s future pleasure and enjoyment.*

*I plead with you to take a very special look at this, consider carefully any decision taken, has to be taken for the future and not just “today.”*

**10.20 Robert Mullins on behalf of LLPF Ltd 26.01.16**

The response from LLPF Ltd is appended to this report at **Appendix A**.

**10.21 Philip Beattie 01.02.16**

In response to a question relating to use of the land by the MOD as a sports field.

*“As far as I can remember RAF Rudloe Manor were still using the playing field up to the time that Leafy lane purchased the land. It was always known to us as the RAF pitch and had been used by them since at least the late 1960s presumably on some sort of lease arrangement from the farmer Padfield. When it was used by them the sports field part of the ground which included a football pitch and a cricket pitch was only about a third of the existing area with the rest of the ground fenced off with barbed wire fencing and this area used by the farmer for grazing his cows.”*

NB Mr Beattie also submitted a full response to Robert Mullins of Leafy Lane Playing Fields Ltd and this forms part of Appendix A (sub appendix 1).

**10.22 Graham Padfield 01.02.16**

In response to a request from Robert Mullins, Treasurer of Leafy Lane Playing Fields Ltd, and further to a telephone conversation they had had, for “ a letter that your family opposed access to the land by locals – if you have any other evidence i.e. old photographs/letters written that would back up the case that would be great.”

*“hello Mike, sorry to have taken so long to get back to you. I can confirm that there were no public rights of way on leafy lane fields that we sold for playing fields in 1998. While in our ownership we kept signs erected to make people aware that it was private land and that there were no rights of way. we have also kept gates padlocked. Many people did get over the railings to walk dogs, but no stiles existed. I cannot find a photo to prove this but one may turn up. I hope this is helpful.”*

**10.23 Officers wrote to Mr Padfield by e.mail on 9<sup>th</sup> February asking for details of what the signs said, where they were placed and the dates of his ownership of the land. Mr Padfield replied on 10<sup>th</sup> February 2016:**

*“The land was sold by myself in 1998. Until that time I kept signs posted wherever people got into the field informing them that the land was private and there was no public right of*

*way. I distinctly remember going up a ladder to fix signs above the height at which they could be easily vandalised. At least one sign was half way up a tree. I may have taken photos of the signs at the time, though I think it is unlikely that I will find them now."*

**10.24 Clive Freeman** telephone conversation 10.02.16

The case officer rang Mr Freeman as he farms the land to the west of the woodland and had grazed cattle at the claimed site at times. He had owned his land from 1970 onwards and although he could not recollect details about stiles at the site he did remember that people "had always" walked through the woods. Problems were caused to him by this use as people tried to walk on west through his land and fences were frequently broken down by them.

**10.25 Paul Turner** 09.02.16

E.mail in response to case officer's request for a pre 1996 photograph showing a stile on the site. This photograph had been viewed by the case officer on 3<sup>rd</sup> December 2015. Mr Turner agreed that he had the photograph and that it showed a stile on the playing field site before Leafy Lane Playing Fields Ltd bought the land.

10.26 Another photograph taken 1987/1988 showing two gateposts in the fenceline opposite Rudloe House. It is not possible whether this was a stile or a gate but it is clearly an entrance/exit point for the woods.



**10.27 Mark and Susan Maidment** 13.02.16

Mr and Mrs Maidment rented the field south of the woodland in the 1980s from Mr Padfield. They can remember a stile by the NAAFI *"and people always walked through the woods regardless of whether there was a right of way!" "I remember the path to be well worn"*.

10.28 The NAAFI was on the site of current community centre and café opposite the entrance to the woodland by the sub station.



## 11.0 Considerations

### 11.1 Statutory Presumed Dedication – Highways Act 1980 Section 31

In full Section 31 of The Highways Act 1980 states:

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

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

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

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

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

*(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected the notice, in the absence of proof of any 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 of 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 have 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 or statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.*

NB The Growth and Infrastructure Act 2013 brought about alterations to s.31(6) extending the length of time that a deposit remains valid for from 10 years to 20 years.

Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

## **11.2 The date when use was brought into question**

11.3 Wiltshire Council has not received a deposit made under s.31(6) of the Highways Act 1980 in respect of this piece of land. Neither has Wiltshire Council received any notice under s.31(5) of the Highways Act 1980.

11.4 The Highways Act 1980 also provides for the landowner or tenant to negative any intention to dedicate the land as a public right of way by the erection of notices (s. 31 (3) & (4)). The notices must be inconsistent with the dedication of the way as a highway and must be maintained. In *Burrows v Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 132 (Admin)* it was held that a notice must have been erected by or on the authority of the landowner to have the effect of rebutting the presumption but that, although the notice did not have to be in place for the whole of the claimed 20 year period, it would

have to be in place for a substantial time so that the intention of the landowner can be brought home to the public.

- 11.5 During the ownership of the land by Leafy LLPF Ltd (1998 to date of report) a number of signs have been in place at entrances to the land. These signs are detailed at 4.5 and 4.6. The text is repeated here:

***“This is Private Land Owned by Leafy Lane Playing Fields Ltd***

*We are pleased to welcome walkers and dogs in the designated areas coloured green on the adjacent plan marked by signs on the site. This area has been developed for the enjoyment of local residents and walkers. Please make sure that dogs do not enter the playing field areas coloured red because it is used by young children, sportsmen and women. This approach follows the firm recommendation of the Playing Fields association who have highlighted potential problems when dogs foul playing areas”*

*“Dog mess is dirty and unpleasant and is of particular concern.*

- In play areas where young children are not always discriminating about what they touch or pick up.*
- On sports pitches where players often young people frequently slide on the surface*
- To ground staff when mowing*

*There is concern about Toxoceriasis, a disease which can be spread through dog faeces even though the risk to health is comparatively small.*

***Please ensure you keep to the designated area in the interest of all users.”***

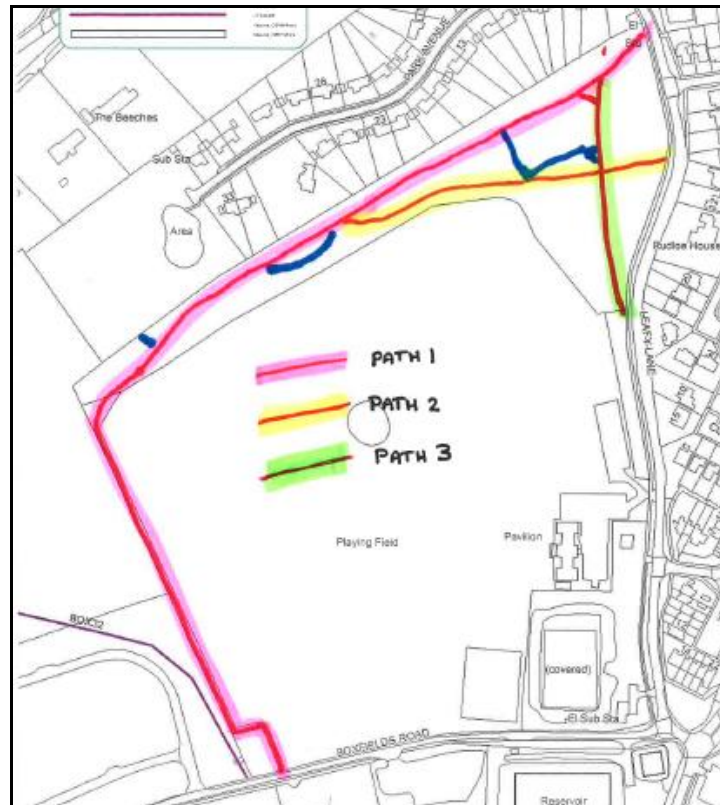
- 11.6 Although some of the signs remain in their original positions, one that was vandalised was not replaced and was put into storage and the other signs have demonstrably not been maintained as readable signs, the writing fading and becoming unreadable with time and vandalism.
- 11.7 Signs that say ‘Private Land’ are not sufficient to demonstrate no intention to dedicate and are hence not compliant with s.31(6) of the Highways Act 1980. It is feature of public rights of way that they almost always lead over private land and hence any sign stating this is merely recording the fact that the land is not owned by a public body.
- 11.8 The signs encourage use of the areas coloured green, which include the woodland area, and are not specific about the use of paths within the woodland. Additionally the purpose of them appears to be more related to the control of dogs and keeping them away from playing fields than it is rights of way – which are not mentioned.
- 11.9 Signs may also negate s.31(1) if they are clear that use of paths is subject to a revocable permission (so ‘by right’ rather than ‘as of right’). These signs do not convey this message to the public.
- 11.10 There is some evidence of the erection of signs in the woodland by Mr Padfield in the period from the early 1970s to 1998. Mr Padfield states at 10.22 and 10.23 that he kept signs erected to make people aware that it was private land and that there were no rights of way. He recalls fixing one sign high in a tree to prevent vandalism.

- 11.11 Although 17 users recall the signs erected by LLPF Ltd (some of which are still in place) only 2 of the 42 recall an older sign in the woods. Witness no 34 (the applicant) possibly recalls one no right of way sign in a tree before 1996 and witness no 35 recalls a sign in the 1970s at Leafy Lane near a gateway.
- 11.12 No-one has been able to say what Mr Padfield's signs said exactly and accordingly whether they would be sufficient to rebut the presumption of dedication. Additionally the Council has no evidence of the position of the signs or for how long they were in place.
- 11.13 It is clear that although there were some signs in the woods at some times prior to 1998, very few people saw them (or could remember them) and no-one can show or state what they said. In any event the signs were clearly not maintained when they were vandalised (Mr Padfield had clearly learned to put them high in trees to avoid this and LLPF Ltd had merely stored a vandalised sign and had not maintained others when they became unreadable). Hence neither s.31(3 or 4) is satisfied by these signs and neither Mr Padfield or LLPF Ltd ever took advantage of the provisions of s.31(5) which would have allowed them to give notice to the Council that signs erected in accordance with s.31(3 or 4) had been vandalised and were impossible to maintain.
- 11.14 Officers therefore consider that the notices erected on this site were insufficient to bring the right of way into question.
- 11.15 Access across the site altered in the period 1998/1999 when LLPF Ltd bought the land and expanded the existing sporting facilities there. Around this time the woodland and small field fencing was altered and the public were encouraged to use the pathway along the western edge of the site. It is noted that three planning applications to develop the site for LLPF Ltd activities were submitted from 1996 to 1998 and accordingly some changes to the playing fields occurred before the 1998 transfer of ownership.
- 11.16 Any use of paths across the site leading from the woodland south towards Boxfields Road were called into question at this time (by the erection of the fence specifically to restrict access to walkers and dogs). The new field perimeter walk becoming the only route available to walkers from that time onwards, a period of 16 years, though it is likely that some walkers used the field edge before that time.
- 11.17 Use of the woodland section was called into question by the making of the application, 2015. This would make the relevant period 1995 – 2015.
- 11.18 If it were judged that within that period the memorandum of association of LLPF Ltd made it impossible for them to dedicate the land (either by statutory means or by express dedication) then the date for calling into question of the woodland area would be 1978 – 1998 as it is necessary to consider whether a public right had already been acquired by the time LLPF Ltd acquired the land. Additionally the Council may need to consider whether a right of way had been dedicated at common law before or during that time. It is certainly possible that the field edge path provided by LLPF Ltd and unprotected by signage or express permission may have given rise to a dedication at common law.

11.19 Officers consider that there are two possible dates for the calling into question of the routes and for the purposes of s.31(1) of the Highways Act 1980 the relevant periods are: 1995 to 2015 or 1978 – 1998 if the later period is not satisfied. If Common Law dedication (which does not require 20 years) is to be considered for the perimeter path then the date would be 1999 onwards.

## 12.0 Whether the public used the routes or paths and is there a route or path?

12.1 The application plan shows three principal paths as shown on the plan below:



12.2 41 of the 42 witnesses have walked the pink route or parts of it— path number 1, 21 have walked the yellow route or parts of it – path number 2 and 29 have walked the green route – path number 3 or parts of it.

12.3 For path number 1, 4 of the 41 witnesses claim to have only walked the woodland part.

12.4 The application brings to the Council's attention a substantive body of evidence supporting the use of the paths for a period dating back to 1968. This is further supported by the awareness that Mr Padfield and LLPF Ltd as owners of the land and Mr Freeman and Mr and Mrs Maidment as tenants had of the use of the land by the public.

12.5 The application shows that on the balance of probability the public used the routes claimed.

## 12.6 Is there a route?

To satisfy section 31 (1) 'a way of such a character' the route must be definable. In *Oxfordshire County Council v Oxford City council* [2004] Ch 253 Lightman J said that the true meaning and effect of the exception of "a way of such character that use of it by the public could not give rise at common law to any presumption of dedication" is that "the user

*must be as a right of passage over a more or less defined route and not a mere or indefinite passing over land”.*

- 12.7 The application map shows a number of paths through the woodland. Witnesses have provided evidence of use for the paths shown in red but not those shown in blue. The blue paths are therefore not considered in this report.
- 12.8 The case officer found, on a site visit on 20 November 2015, that the paths shown in red were easily identifiable as well trodden paths (see photographs at paragraph 7). It is noted that even though the photos were taken in late autumn, the paths were still identifiable despite the fallen leaves.
- 12.9 That part of path no. 1 linking Boxfields Road with the woodland is clearly defined by hedging and has been since 1999. Before that time to walk this route the public would have been walking a field edge beside the MOD playing fields as directed by the MOD sign.
- 12.10 Although it is clear from LLPF Ltd correspondence that there were issues with dogs fouling the playing fields users have submitted evidence that they walked the field edge. It is accepted that a reasonable person would skirt a managed playing field rather than cross it (though their dog may run over it), and certainly at times when it was in use, a reasonable person would defer to that use and go round it. This has been held not to be inconsistent with a public right (R (Lewis v Redcar and Cleveland Borough Council) [2010] UKSC 11.
- 12.11 The field edge route also aligned approximately with the stile in the woodland fenceline as remembered by Kathryn Barstow in her evidence. The presence and position of this access point is also in agreement with the gate linking the MOD recreation area with the MOD sportsfield and Boxfield Road. A clear route existed and early use (pre-1999) could have utilised the stone stile which remains in place in the wall beside Boxfield Road or it could have used the ‘squeeze’ gap between the old wire fenceline and the wall. The stone stile originally served **footpath BOX 32** which was diverted out of the field in 1951. The ‘squeeze’ gap is still in use today and provides the more direct link.



12.12 It is accepted that the claimed routes were used by the public and that they were ways capable of being dedicated as public rights of way.

### **13.0 Whether use was for the full period of 20 years**

- 13.1 There are 27 witnesses who claim to have used all or some of the claimed routes for the full 20 year period between 1995 and 2015 and 12 witnesses who have used all or some of the claimed routes for the full 20 year period 1978 – 1998. Additional witnesses have used the routes for some times within these two periods.
- 13.2 Evidence has been given of use before that time by Mr Beattie and Mr R F Hancock, both of whom have known and lived in the area for a long time (born 1941 and 1953) Mr R F Hancock removed timber from the woods in 1968 and recalls that at that time no one used the wood for recreation and that the fences were in good order. Mr Beattie vaguely recalls going to the woods from Boxfields to play in the 1950s and early 60s and more clearly later in the 60s using the woods for playing in. He recalls that the woods were securely fenced with a metal fence and that you had climb in and that the farmer chased them out a couple of times saying it was 'Private Property'. There were no footpaths at that time.
- 13.2 However, evidence adduced by Mr Bob Hancock who had a lot to do with setting up the LLPF Ltd complex in the 90s, describes the 1998/9 fencing of the woods being taken down within a week of being put up, the public claiming that "they were there before the playing fields".
- 13.3 Taken as a whole, the evidence adduced from all parties suggests that although some access to the woods from Boxfields took place in the late 1950s and early 1960s the level of use that created the well trodden paths we see today didn't start until the late 1960s/early 1970s. This is reflected in the evidence and corresponds with the development of the Springfield/Cliff areas for relatively high density housing.
- 13.4 The erection of the fence and hedge defining the field edge path obstructed all other routes linking the wood with the stone stile and the 'squeeze' gap and the public would have had no choice but to use the newly created route – which they appear to have done. Although this route was only clearly defined 16 or 17 years ago it had always been possible for the public to walk along the field edge and get onto Boxfields Road via the 'squeeze' gap or the stone stile.

13.5 The public could therefore have enjoyed in excess of 20 years usage of the field edge route as well as the woodland routes.

### **14.0 Whether use was interrupted**

- 14.1 There is no evidence for any interruption to use of routes through the woodland (see conclusion at paragraph 11.14 relating to notices).
- 14.2 The claimed route around the perimeter of the field was formalised with fencing/hedging in 1999, accordingly, use of any other routes leading from the woodland to Boxfield Road was interrupted at this time. See paragraph 13.2 above.

- 14.3 Witnesses claim to have only used a perimeter route and no evidence has been adduced showing use of any other routes though Mrs Barstow in a later submission describes a cross field route.
- 14.4 LLPF Ltd claim to have interrupted use of the perimeter route by allowing it to become overgrown and by the actions of programme sellers on match days.
- 14.5 Evidence has been adduced in the form of e-mails from Kathryn Barstow who complained about hedge growth in 2013. She complains that she is “*fed up catching my clothes on brambler/thorn bushes/rose thorns, one of these days it is going to cause damage and I do not suppose that...*” It is clear that although the path was unpleasant to use, it was not obstructed.
- 14.6 It is accepted that LLPF Ltd volunteers may have wished to dissuade anyone viewing the football for free from the path during paying tournaments or matches. However, visibility is not good from the perimeter path (as the hedges are well grown) and anyone selling programmes there would not be in a good position to do so from there. No witnesses report being stopped in this way and any closure of the path for matches has clearly been sufficiently infrequent to represent an effective interruption to use. It is also apparent that the closure of the path would not have been with the intention of bringing to the public’s attention that the use was by a revocable permission; it was more to prevent the public from viewing the sport.

## **15.0 Whether use was as of right – without secrecy, force or permission**

### **15.1 Secrecy**

The public have used the woodland routes and the field openly, during hours of daylight and in sight of any landowners or tenants. LLPF Ltd were clearly aware of the use in 1999 when they sought to rationalise it with signage and fencing and Mr Padfield was aware of the use as he knew that his signs were removed or vandalised. Tenants Crossman and Maidment were also aware of the use.

15.2 Use was without secrecy.
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### **15.2 Force**

Although LLPF Ltd suffered damage to fencing between the woodland and the field (letter of P Beattie Appendix 2 to LLPF Ltd’s representation at Appendix A) and Mr Freeman suffered (and still does) damage to his fencing between the woodland and his field, there is little or no evidence that any force has been used on the claimed routes.

15.3 LLPF Ltd have supplied photographs of damage to fencing at Appendix 10 of their submission. One image does not appear to be on a claimed route. The image showing the metal rail fencing is the entrance to the woods by the sub-station but there is no evidence of repair or maintenance at this site where a stile once stood (supposedly the one allegedly erected by Mr Crossman in the early 1990s and/or the one remembered by the Maidments as being used for access to the NAAFI).

15.4 Although there is evidence of damage to fences and signs, it appears to be only Mr Crossman who has repaired his fencing to keep his stock in and who has suffered repeated damage. This fencing is not part of a claimed route.



15.6 **Permission**

There is no evidence before the Council that Mr Padfield (owner), Mr Crossman, Mr and Mrs Maidment or the MOD (all tenants for parts of the land) gave the public permission to walk anywhere. Indeed the MOD directed walkers around the edge of their leased land.

15.7 LLPF Ltd sought to formalise use of the land when they bought the land in 1998. Signs were erected (but not maintained) at entrances to the land. The signs showed the areas the public were encouraged to use and they detailed how they should behave if with dogs. However the signs did not state use was by permission and nor did they suggest that any use was by a revocable permission (i.e. it could be stopped at any time).

15.8 Likewise LLPF Ltd formalised a field edge path and fenced the woodland from the pitch areas thus forcing the public to use this route only. Witnesses record using this field edge route before it was formalised and there was no signage erected to suggest that use of it was by permission or that permission could be taken away.

15.9 Signage erected by LLPF Ltd seems to have been clear in affirming that the land was privately owned, but this is an irrelevant statement with regard to acquiring a public right over it.

15.10 LLPF Ltd has *inter alia* in its Memorandum of Association the following objects:

*To advance and improve the education and physical, mental and social well being of the community by the provision of sporting and recreation amenities, grounds and facilities of all kinds.*

*To provide for the inhabitants of Corsham and surrounding areas in the interests of social welfare facilities for recreation and leisure time occupation with the object of improving their conditions of life.*

15.11 It may then be argued that the provision of footpaths is an essential tenet of some of the objectives of the owner and that use is by right and not as of right. However, it is clear that LLPF Ltd have not regarded the woodland as a part of the land that satisfies the objectives of the organisation since the land is currently being sold and that the Charity Commissioners are satisfied that this is so.

15.12 It is also clear that the provision of the formalised perimeter path was to prevent the fouling of pitches by dogs rather than to specifically provide for the recreational needs of walkers and as such does not appear to be seen as meeting one of the objectives. Additionally, if this were argued to be so it would be incompatible with the selling off of the woodland as the resultant path would become a cul-de-sac – hardly a provision for recreational needs.

15.13 Given the sale of the woodland and the divorcing of it from the objectives of LLPF Ltd the annexing of the perimeter path from the recreational facility has more the air of a dedication to the public than that of a permissive route. There is certainly no way anyone using the path would have been aware that use was considered to be permissive.

15.14 On balance it is considered that these objectives cannot be taken as implying a revocable permission and in any event it is more likely than not that public use was ongoing on these paths before LLPF Ltd bought the site.

15.15 Use was without permission.

## **16.0 The intention of the landowners**

16.1 It is clear from the responses of both Mr Padfield and LLPF Ltd that notwithstanding the efficacy of any actions they may have taken to prevent public rights being acquired neither of them had any intention of dedicating the routes to the public.

16.2 However, during Mr Padfield's ownership of the land there was a 'squeeze' gap and a stone stile in the wall at Boxfields Road and there was at least one stile and one gate in the fenceline along Leafy Lane. Another witness has stated that there was a stile in the fenceline from the woodland and other evidence suggests that the woodland was not well fenced from the playing field area until LLPF Ltd took over in 1998.

16.3 In *R (Godmanchester Town Council) v Environment Secretary [2007] 3 W.L.R. 85* at para. 6 Lord Hoffman stated:

*"As a matter of experience and common sense, however, dedication is not usually the most likely explanation for long user by the public, any more than a lost modern grant is the most likely explanation for long user of a private right of way. People do dedicate land as public highways, particularly in laying out building schemes. It is however hard to believe that many of the cartways, bridle paths and footpaths in rural areas owe their origin to a conscious act of dedication. Tolerance, good nature, ignorance or inertia on the part of landowners over many years are more likely explanations."*

## **16.4 The Ministry of Defence (MOD) tenancy**

The MOD were a tenant of part of the land for an unknown period. That period ended in 1998. Although the provisions of the Highways Act 1980 may only apply to Crown Land where an agreement is in place for it to do so (s.327 Highways Act 1980), in their position as relatively short term tenants or lease holders it is doubtful whether this exemption could apply. Additionally their tenancy only extended to the land used for their sports facilities (or additional use of the land for Mr Crossman and Mr and Mrs Maidment would not have followed).

16.5 Although they had an interest in the land they did not have the power to dedicate a public right of way as they were not holders of the fee simple. Dedication cannot be implied by a leaseholder unless the acquiescence of the freehold owner in the use by the public can be established.

16.6 The Crown may however dedicate a highway over lands within its ownership and the common law principles of dedication and acceptance apply in the same way as with a private person. However, this is not the case here.

## **17.0 Subjective belief**

It does not matter what is in the mind of the user of the way or whether he believes it to be a public right of way or not; it is the nature of his actual use that is the consideration.

Lord Hoffman in *R v Oxfordshire CC Ex p. Sunningwell Parish Council* [2000] A.C. 335 at 356:

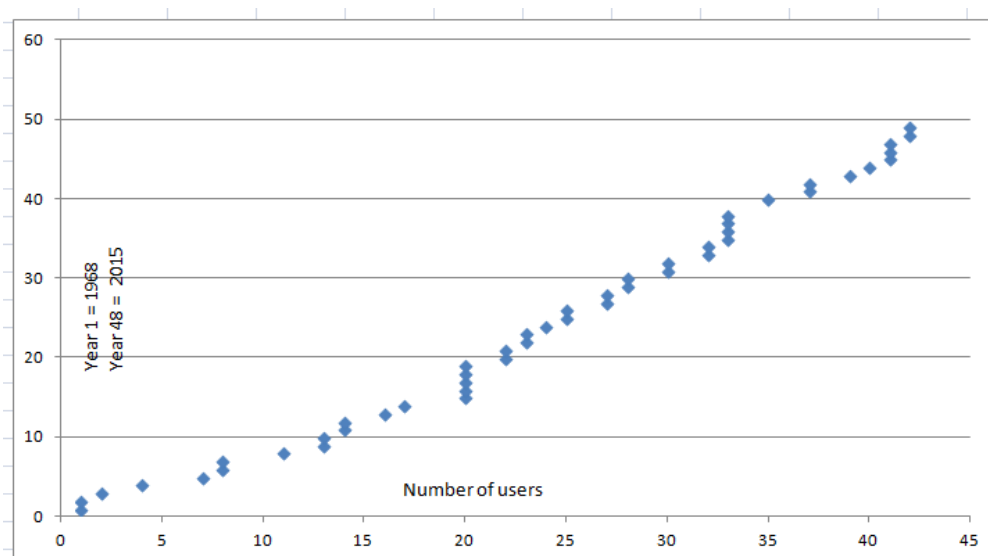
*“In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case,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

## 18.0 The common law test

In the absence of evidence of actual express dedication by a landowner, proof of a past dedication is inevitably achieved by looking at the character and extent of use of the way using the principles of *“nec clam, nec vi and nec precario”* i.e. ‘as of right’ and as discussed at section 15 of this report.

18.1 The common law test does not require a period of time to be satisfied (unlike the 20 years specified in s.31 Highways Act 1980) but use would be expected to be of such frequency so as for the owner of the land to be aware of the use and to demonstrate acceptance by the public..

18.2 Use of the claimed routes has increased with time as the graph below illustrates. In year 1 (1968) only one user has given evidence but by 2015 (year 48) 42 people are using the routes. There is no increase in use in 1999 (year = 31) corresponding with LLPF Ltd purchase, signage and formalisation of field edge path.



**NB** Any assumptions about use increasing with time must be approached with caution and offset by an appreciation of how much more difficult it is to collect evidence from people who would have used the path 50 plus years ago.

- 18.3 There is a high frequency of use with 26 people claiming daily or twice daily use and with all witnesses recording seeing other walkers. There is a clear acceptance by the public.

## **19.0 Conclusions on the statutory test**

- 19.1 Use by the public has been consistent for a period back to at least 1968. The Council has little evidence of use for the land when the Boxfields pre-fabricated housing existed, only the statement of Mr Beattie which states that children would use the woods but that they were chased off by the farmer.
- 19.2 It was probably not until the housing developments to the east of Leafy Lane and the MOD housing to the north were built that use became more frequent. It would appear that by the 1980s use was sufficiently high for the tenants (Mr and Mrs Maidment) to comment that the path was “well worn”. There was no interruption to this use (see chart at 18.2) and if there had been attempts to stop it, it is clear that they were unsuccessful.
- 19.3 Mr Padfield erected some signage but cannot recall what it said. He recalls that it was vandalised and was placed high in a tree to prevent this. However, very few witnesses recall this and it is unlikely to satisfy the requirements of s.31(3) & (4) of the Highways Act 1980 in defeating s.31(1).
- 19.4 Signage erected by LLPF Ltd was not maintained to be readable and besides did not contain appropriate wording to either satisfy s.31(3) or (4) of the Highways Act 1980 or to grant permission or to imply that it was granted.
- 19.5 No deposits were made with Wiltshire Council under s.31 (5) or (6) of the Highways Act 1980.
- 19.6 Officers consider that based on the evidence before it that the requirements of s.31(1) are met for either the period 1995 to 2015 or, if the statutory provision cannot be applied because of the objectives of LLPF Ltd, for the period 1975 – 1995.

## **20.0 Conclusions on the common law test**

Where the requirements of the statutory test are met it is not usual to need to consider the common law tests. However, there have been some clear indications to the public that they may use this site including the erection of at least one stile at Leafy Lane (by the sub station), the retention of the stone stile after the extinguishment of the cross field path in 1951, the obvious ‘squeeze’ gap between the wall and the fence where the shop once stood on Boxfields Road and the gate linking the MOD area with the woodland area (presumably through which they walked to get through the woodland to the NAAFI as remembered by Mr and Mrs Maidment from the 1980s. Additionally one witness recalls and specifies where the stile was linking the woodland with the perimeter of the field. However, other witnesses do not specify that they recall that.

- 20.1 Additionally LLPF Ltd created a clear route for the public to use beside the playing field. It is considered that there is a possibility, that if the creation of this route was as a wholly new route then the use may have been by right (as opposed to ‘as of right’) as a result of the

objectives of LLPF Ltd, however, evidence given by witnesses shows that the field edge path was in use long before LLPF Ltd bought the land and it is also arguable whether the objectives of a limited company are sufficiently and reasonably accessible to the public to make it clear to them what was the intention of the landowner. Certainly there were no outward signs that this may have been the case.

20.2 See also the officer's comments at 15.11 – 15.14 relating to the situation now proposed by LLPF Ltd whereby the path potentially becomes a cul-de-sac with the sale of the woodland.

20.3 Officers do not intend to rely on the common law test in the first instance but it is noted that use of these paths is consistent and considerable and has the appearance of a right being asserted.

## **21.0 Legal and financial considerations and risk assessment**

If Wiltshire Council refuses 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 the order. If the Council is directed to make an Order it must do so.

21.1 Failure to progress this case to determination within a year of application may result in the applicant seeking a direction from the Secretary of State. As Wiltshire Council prioritises user based applications it is likely that the Council would be directed to make a determination.

21.2 If an order, when made and advertised receives objections which are duly made it must be forwarded to the Secretary of State for determination. Through their agent, the Planning Inspectorate (PINS), the order may be determined by way of written representations (no additional cost to the Council), a local hearing (cost £200 to £500) or a public inquiry (cost £3500 - £5000 if Wiltshire Council supports the order; around £300 if it does not). The Council may support the Order, object to it or where directed to make it, may take a neutral stance.

21.3 Statute is clear as to the Council's duty in this matter and financial provision has been made to pursue this duty. It is considered unlikely that judicial review would be sought by any party if the statute is adhered to. Costs arising from judicial review of the Council's processes or decision making can be high (in the region of £20,000 to £50,000).

## **22.0 Equality impact**

22.1 Consideration of the Equality Act 2010 is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. If the path is recorded in the definitive map and statement it must be as used and accepted by the public though any further improvements to access could be pursued by negotiation with the landowner as appropriate.

## **23.0 Relationship to Council's business plan**

23.1 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.

## **24.0 Safeguarding considerations**

24.1 Consideration of Safeguarding matters is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981.

## **25.0 Public Health Implications**

25.1 Consideration of public health implications is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981.

## **26.0 Options to consider**

- 26.1
- i) To make an order under s.53(3)(b) or (c)(i) of the Wildlife and Countryside Act 1981.
  - ii) Not make an order under s.53(3)(b) or (c)(i) of the Wildlife and Countryside Act 1981 and to refuse the application.

## **27.0 Reasons for recommendation**

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.

27.1 In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

27.2 To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA* [2004] EWHC 1450 (*Admin*). Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

27.3 Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence. Incontrovertible evidence is that contained within s.31(3)(4)(5) and (6) of the Highways Act 1980.

27.4 There has been no incontrovertible evidence adduced or discovered in relation to this claim under the requirements of sections 31(3)(4)(5) and (6) of the Highways Act 1980.

27.5 The evidence of the 42 witnesses who have used the path is at least a reasonable allegation that public rights subsist. There is evidence of infrequent use and challenge to use of the routes in the late 1950s through to the late 1960s but it is clear from the profile of use at 18.2 that public use increased from that time. It is likely that although Mr Padfield

had no intention of dedicating rights of way to the public he failed to convey that fact to them and use continued.

27.6 The summary of Wills J in *Eyre v New Forest Highway Board (1892) 56 JP 517* is repeated here to illustrate the long standing nature of the situation that Mr Padfield found himself in:

*“you have a person in ownership for the time being of Tinker’s lane, who did not wish the public to pass, and who would have stopped, and wished to stop, their passage if he could. If so, and if the impression left upon your mind by the bulk of the evidence that you have heard, is that notwithstanding his objection to it, he was not able to stop it, and that the thing went on, surely it is a strong ground for supposing that there really was a right acquired by the public before that time which he could not interfere with.”*

27.7 By the time LLPF Ltd acquired the land in 1998 the public were using the claimed routes freely to the extent that LLPF Ltd sought to formalise the use by containing the walking public to certain areas to prevent dogs fouling the playing areas.

27.8 Users of the way do not appear to have objected to this, do not appear to have questioned the calling into question of any routes that they may have been using at that time (certainly no application to Wiltshire Council was made) and use of the woodland routes and field edge path appears to have continued.

27.9 The law requires that the relevant period for the consideration of this application is, in this case, the date of application, making a 20 year period 1995 to 2015. However, in the event that any actions of LLPF Ltd called the ways into question in 1998 the relevant period would be 1978 to 1998.

27.10 It is considered that there is at least a sufficiency of cohesive evidence to make a reasonable allegation that public rights have been acquired. Test B (paragraph 21.1) therefore applies.

27.11 In considering this application officers have been minded to question whether the routes through the woodland area are defined routes or merely a wandering through woodland.

27.12 Stephen Sauvain Q.C. in *Highway Law (Fourth Edition)* at 1.19 states:

*“It is a primary characteristic of a highway that the public right of passage follows a known, defined line. The common law did not recognise any public right to wander across countryside (jus spatiendi). Thus, where there had been regular use of woodlands through which the public had wandered at will, it was held that this use was not sufficient to infer dedication to the public of the woodland tracks as public paths.”*

Sauvain relies on:

*Chapman v Cripps (1862) 2 F. & F. 864; Schwinge v Dowell (1862) 2 F. & F. 845*

27.13 On an unaccompanied site visit in November the case officer had no difficulty identify the most northern route and the field perimeter path (Route 1). Additionally, when accessing the other two claimed routes (Routes 2 and 3) from Leafy Lane the walked paths were clear on the ground and linked to the other claimed paths as shown in the application plan.

27.14 It is almost certainly the defined entry points from Leafy Lane that give rise to the defined paths and also the use of the paths for specific purposes. For example Route 1 was used for access to the NAAFI from the MOD housing and as part of a longer walk avoiding the road and linking in with the footpath network. Routes 2 and 3 are more likely to allow people to take shorter circular walks.

27.15 Although it is considered there is a sufficiency of evidence given for all of the routes to form a reasonable allegation it is noted that use of Routes 2 & 3 is significantly lower than Route 1 and this may arise from the availability of the more southerly access points (especially the one closest to the car park) in the early years.

## **28.0 Recommendation**

**That Wiltshire Council makes an Order under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record the paths detailed in the application as public footpaths in the definitive map and statement and that if no objections or representations are made that the Order is confirmed.**

Sally Madgwick

Rights of Way Officer – definitive map

16 February 2016

### **Appendices:**

**Appendix A Submission by Leafy lanes Playing Fields Ltd**

**Appendix B Summary of User Evidence**

**Appendix C Draft Order**