

## APPENDIX E – Comments on the Objections

Objector	Objections	Officers comments
<b>1.</b>	<b>Stile at point B</b>	
Mr and Mrs Shepherd	<p>Some points made in the decision report do not accurately reflect our position or our intentions: The circumstances for the installation of the stile were as follows: The stile was erected in response to pressure from the villagers. We were required by the former owner of the field, Margaret Pitman, to erect a fence between our field and the Shaw’s land. Whilst the fence was being erected a contingent of villagers gathered and demanded a stile or threatened to cut a hole in the fence.</p> <p>With regard to paragraph 10.78 <i>“Mr and Mrs Shepherd who own the land over which the southern section of the route passes, appear to have taken no action to communicate to the public that it was not their intention to dedicate the land as a public highway and in fact included a stile with dog latch in the boundary fence erected in 2012, against the advice of the previous landowner”</i> – we stock the field with sheep and need it to be stock proof so concluded our only course of action was to erect a stile.</p>	<p>Where there is not a recorded public right of way, there is no onus upon the landowner to install a stile or any other means of access and it is interesting to note that in this case the landowners also installed a dog latch with the stile. Where a stile is installed, there are two options available to the landowner, to prevent the dedication of public rights of way:</p> <p>1) Placing on deposit with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980, negating the landowners intention to dedicate the land as a public right of way;</p> <p>2) Placing permissive path signs on the stile/claimed route, to show that use of the path and stile was entirely at the discretion of the landowner. Where such “permissive” notices are in place, public user during that period cannot qualify as user “as of right”. Mr and Mrs Shepherd did not carry out either of these actions (despite Mr Pitman’s view that villagers were not entitled to demand a stile, as there was no public right of way). Either of these actions would have allowed the landowners to erect the fence and stile as they wished, whilst also preventing public rights of way being acquired over the land, as from that date.</p>
David Pitman	<p>I confirm that I was employed to work by Garrett &amp; Fletcher, on the installation of a fence for Mr Shepherd as the new boundary fence to his property in March 2012. As a former part owner (in Pitman and Sons with my brother Gerald) my interest in the land had been transferred to Margaret Pitman and she sold a portion to the Shepherds. Members of the village objected so aggressively to the installation of the new fence, that Mr Shepherd had no option but to install a stile with dog latch. I did not regard that villagers were</p>	<p>It is noted that when the stile was being installed villagers gathered to demand a stile, which suggests that they considered this to be a public right of way, which was being brought into question by the erection of the fence. 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 contained in the case of <i>Fairey v Southampton County Council</i> [1956], in which it is stated “...<i>the acquiescence of the public tends to show that they</i></p>

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	entitled to demand the installation of the stile as there was no footpath. So far as I am aware Mr Shepherd agreed to the inclusion of the stile on the basis that the path is a permissive path.	<i>have no right of way...</i> When the fence was being erected, the public did not acquiesce and a stile with dog latch was installed.
<b>2. Permissive path notices</b>		
Mr and Mrs Shepherd	Para 10.10 (which refers to the erection of permissive footpath only signs) – we met with Kevin Prince, the Shaws’ land agent and agreed that a stile should be erected and that a notice was displayed stating that the footpath was a permissive one. Our permission was given for “the map attached to the notices” to display the whole route of the permissive path.	No written evidence that Mr and Mrs Shepherd agreed to the permissive path signs over the route on their land, has been submitted to the Council; however, Officers have concluded at 10.10 of the decision report ( <b>Appendix B</b> ) that the permissive path notices erected only upon the land owned by Wardour Ltd in autumn 2012, cannot give rise to user “as of right” over the whole of the claimed route, after that date. In any case this is pre-dated by the submission of a statement and plan under Section 31(6) of the Highways Act 1980 by Mrs Shaw, on 8 August 2012, followed by a statutory declaration on 14 August 2012, which negatives Mrs Shaw’s intention to dedicate public rights of way over the land and brings into question public user of the claimed route in full.
<b>3. Common law dedication</b>		
Mr and Mrs Shepherd	Para 10.68, 10.70 and 21.4 (regarding dedication at common law) – we were happy for the villagers to have a permissive footpath over our land. It was not our intention to designate this path as a public footpath.	The evidence suggests that when the stile was erected, no permissive signs were erected on the stile or on the path over Mr and Mrs Shepherds land and that permissive path signs were first erected by Mrs Shaw on land in the ownership of Wardour Ltd in the autumn of 2012. Mr and Mrs Shepherd have presented no evidence to suggest how their permission was communicated to members of the public using the path, if it was intended to be permissive only. Witnesses do not refer to instances of permission being granted by Mr and Mrs Shepherd. Additionally, Mr and Mrs Shepherd have not lodged with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate further public rights over land in their

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		ownership.
<b>4. Statutory Declarations</b>		
Claire Macdonald	<p>I made a statutory declaration about this footpath, it appears that Wiltshire Council is giving equal weight to vague anecdotal statements as they are giving to Statutory Declarations, which are much more reliable evidentially. I was sufficiently certain of my recollection of the village in which I lived for almost 25 years to make a Statutory Declaration about this matter. I think its undemocratic to give equal regard to statements that are given the lesser regard to the requirement to be accurate and truthful.</p>	<p>The Planning Inspectorate “Definitive map orders: consistency guidelines” considers user evidence at Section 5 and states (page 5):  <i>“Claims for dedication having occurred under S.31 HA80 will usually be supported by user evidence forms (“UEF’s”). Analysis of UEFs will identify omissions, lack of clarity, inconsistencies and possible collusion, although the completion of common parts of the form by someone organising the collection of the evidence is not necessarily indicative of collusion. Analysis allows the rejection of invalid UEFs (e.g.no signature, no clear description of the way or of how it was being used) and to note the questions to raise at inquiry. A similar analysis should be made of other types of user evidence, such as sworn statements, letters and the landowner’s evidence. UEF’s are not standardised, and pose differing questions of varying pertinence and precision.”</i> These guidelines suggest that statutory declarations may be subject to the same analysis as the UEF’s.</p>
John Graham	<p>I feel that preference has been accorded to witness statements over declarations made under oath.</p>	
H R Graham	<p>Wiltshire Council has not given regard to the statutory declarations including the statutory declaration made by me on 15<sup>th</sup> January 2016 which confirmed that there was no evidence of a footpath on the alleged route prior to 2003.</p>	
Mr and Mrs Shaw	<p>Reliability of witness statements – WC appears to have given more weight to the user evidence forms (UEF’s) submitted by villagers, many of which were clearly hastily completed and signed, than to the detailed Landowner’s Evidence Form with Note dated 24<sup>th</sup> March 2016 attached (the contents of which are incorporated herein by express reference) and the 10 Statutory Declarations submitted, made under oath, objecting to the villagers’ claim. Great trouble was taken to ensure the accuracy of all statements made in the Landowner’s Evidence Form and Statutory Declarations; the same cannot be said of all the UEF’s, the majority of which do not appear to have been completed with due care and attention, as indicated by the simple</p>	
		<p>Officers consider that both the UEF’s and the landowner evidence have been subject to the same analysis and the issues raised from all of the evidence have been fully examined, for example the landowner evidence identified that Footpath No.4 had been diverted in 1996/1997, which then led Officers to seek further information from those who had completed UEF’s, regarding their use of the claimed route prior to 1996/1997. This further investigation led Officers to conclude that user over the southern section of the route, could not meet the legal test of public user for a qualifying period of 20 years.</p> <p>In this case there are clearly some conflicting points within the evidence and a public inquiry is helpful in testing the evidence. In</p>

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Margaret Pitman	<p>“Yes” or “No” replies without reference to the critical time line. Nor do most of the UEF’s indicate a detailed knowledge of the land. It has been suggested to me by other villagers that there are in fact a very small number of “real” claimants, who have coerced others into filling in UEF’s in order to make it appear as if the claim has widespread support.</p> <p>It is inappropriate and unjust that a permanent right over another’s land should be considered on the basis of such flimsy and unreliable evidence.</p> <p>The Council does not appear to have taken into consideration and given due weight to the Statutory Declaration made by me and David Pitman as previous landowners and by others with a detailed knowledge of the land and/or relevant events. These declarations were made under oath unlike the User Evidence Forms submitted to the Council by the claimants.</p>	<p>R v Secretary of State for the Environment ex parte Bagshaw and Norton [1994], Owen J held that <i>“In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”</i></p> <p>In the same case it was also stated that <i>“if, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, on order would seem likely to be appropriate.”</i></p> <p>It is correct for the authority to make a definitive map modification order on a reasonable allegation that public rights subsist.</p>
<p><b>5. No evidence of path when Footpath no.4 diverted</b></p>		
<p>Claire Macdonald</p> <p>John Graham</p>	<p>When the footpath at Kelloways Mill was diverted there were plenty of local announcements, local residents and the Parish Council were part of the process, but the footpath that is claimed to have existed then did not appear on any plans. If the footpath were established then, why didn’t it appear on the plan. It wasn’t mentioned then or at any time as an informal route that was commonly accepted or as a path people considered as a footpath then.</p> <p>The distance between the old route of FP 4 and the south-eastern exit of the new route of FP 4 is at least 100-120m. This is a considerable distance and the fact that this was not raised when the route of FP 4 was altered shows that the</p>	<p>The claimed footpath was unrecorded in 1996/97 when the recorded footpath No.4 Donhead St Andrew was diverted south of its definitive line. Officers would therefore not expect it to appear on plans at that time.</p> <p>Perhaps it was not raised at that time as users considered that the diversion did not affect their use of the claimed route. Officers understand that at that time The Mansfield was an open field with no fences or barriers and the only effect which the diversion would have had upon the unrecorded route was that users would have been required to continue further south in the field, to meet the new junction with Footpath No.4. Where the diversion of Footpath No.4 did not bring their use into question it</p>

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David Pitman	<p>claimed route was not walked and was not accepted as a right of way.</p> <p>There was no mention of the path when the footpath was closed in the vicinity of Kelloways Mill in 1994/6 due to a weak bridge or when the path was diverted in 1996/7, which suggests that the path was not being walked at that time and that users did not regard that they used the path as of right.</p>	<p>would not have been necessary to make a claim at that time. It is noted that an application to add the footpath under Section 53 of the Wildlife and Countryside Act 1981, was made only after the path was temporarily closed to the public in late 2014 / early 2015.</p>
H R Graham	<p>As far as I was aware there was no sign of a footpath when footpath 4 was diverted around 1996-97, nor anyone walking the new route to the south, nor for many years after the diversion.</p>	
Mr & Mrs Shaw	<p>The fact that the Parish Council did not claim a public right of way, or even mention the possibility of a claim, when the diversion took place in 1997, clearly indicates that either the route wasn't used, or that the Parish Council didn't consider it was used as of right. Lord Denning MR commented that when use of the path is brought into question:  <i>"the local council may bring an action...against the landowner...claiming there is 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."</i>  The same principle applies to the other occasions when it would have been claimed but wasn't, such as when Wardour's permissive path signs were erected; and also when the new fence was installed. Whilst some of the requests for permission to walk the route may have been outside the relevant period, they clearly indicate that people who requested permission did not believe they walked as of right. This failure (to assert a public right of way when an</p>	

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	<p>opportunity arose to do so) should not be attributed to any element of reticence of timidity on the part of the villagers. Jonathan Cheal, who is recognised as one of the South West's leading experts on rights of way, attended a parish council meeting on Wardour's behalf in January 2015 to discuss the matter. He reported back to Wardour that some of the villagers were rude and aggressive; a few he described as "toxic". Putting aside the lack of courtesy shown to Mr Cheal, it is abundantly clear that there were a number of people who, if they genuinely believed there to be a public right of way, could and should have claimed such a right many years ago.</p> <p>My conclusion is that it is most unlikely that one of the "toxic" villagers (to borrow Mr Cheal's expression) would not have attempted to claim the alleged route in 1996/97, <b><u>if it had existed then and they were using it.</u></b></p>	
<b>6.</b>	<b>No evidence of a path</b>	
<p>Claire Macdonald</p> <p>John Graham</p>	<p>I lived in Donhead St Andrew from 1990 – 2014 and regularly walked my dogs along the footpaths in the village, but the route across the field near Donhead Mill was never one I used or noticed others using because it wasn't an established route.</p> <p>I used to frequent only well used footpaths. Some were overgrown and virtually impassable. I assume this is because not many people used them at all.</p> <p>No path was visible on the claimed route between 1993 (when my sister and brother-in-law purchased Beauchamp House) and 2002/3. If such a path had existed from 1996, when I acquired my dog, I would have used it for walking him.</p>	<p>In the witness evidence forms, the witnesses are asked if the landowner was aware of use. 32 of the 33 witnesses in this case consider that, yes, the landowners were aware of use. However, only 5 witnesses refer to a well worn path. 11 witnesses refer to the owners being aware due to being seen by the landowners or the route being visible from the property Beauchamp House.</p> <p>Whilst evidence of use on the ground, i.e. a visible walked track, is useful supporting evidence of a public right of way, it is subject to a number of factors, including frequency of use; ground conditions and time of year etc. and therefore cannot be relied upon to discount the existence of public rights of way.</p>

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<p>David Pitman</p> <p>H R Graham</p> <p>Margaret Pitman</p>	<p>As set out in my statutory declaration (30<sup>th</sup> July 2015), there was no evidence of a footpath on the eastern side of the field when my family partnership purchased the land known as Mansfield in 1982/4.</p> <p>If the path existed along the eastern boundary then I would have walked it.</p> <p>I confirm that I was born and lived my whole life in Donhead St Andrew – 71 years – and when growing up I was never aware of the existence of the alleged path. As children growing up in those times we liked to explore the countryside – and I still do. It is unlikely that a path existed because until improvements were carried out by my late husband and his family the land was divided into several smaller fields and was badly drained.</p> <p>I was unaware of any evidence of a path on the claimed route when my husband’s family bought the land in 1982-84 and there were no stiles. It was quite unusual to see anyone walking the public footpaths at that time. Use of the paths increased in around 2003-2005 but prior to that I rarely saw anyone walking the land and particularly not on the claimed route.</p>	
<p><b>7. No evidence of path to the north even after stile erected</b></p>		
<p>Claire Macdonald</p>	<p>When the stile appeared it looked like the start of a footpath but the path north of the stile wasn’t clear and as I respect my neighbours’ right to enjoy their land without trespassers I avoided crossing the field for this reason. If there had been a worn down route that showed that many locals had started to establish a path I probably would have assumed it was a new right of way and used it, but there was no evidence of</p>	<p>It is difficult to accept that Mr and Mrs Shepherd, when they erected a fence, would have included a stile in the fence line (with dog latch), giving walkers access to the route to the north and the south, where they considered that there was no public access and the previous landowner (Mr David Pitman) had advised them that there was no public right of way. It has been suggested that members of the public applied pressure to add a</p>

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<p>Paul Farrant</p> <p>Mr and Mrs Shaw</p>	<p>this whatsoever.</p> <p>Even after the installation of the stile in March 2012 there was no clear path to the North of the stile. Walkers wandered generally along the Eastern part of the field.</p> <p>No clear route has ever been evident on the ground on the land north of the fence line. There is no general right to wander on another persons land. In the light of this, the claim for a public footpath must at best be highly dubious.</p>	<p>stile (where perhaps they considered that they had acquired a public right of way); however, there was still no onus upon the landowners to install the stile. Additionally, if they had felt pressure to install a stile, with threats of the fence being cut where they kept stock in the field, they could have installed the stile and then taken appropriate action to prevent (as from that date) further public rights being acquired over their land and negating their intention to dedicate public rights of way. However, there is no evidence before the Council that Mr and Mrs Shepherd erected “permissive” path notices immediately upon installing the stile in March 2012 and they did not lodge with Wiltshire Council a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980.</p> <p>In his statutory declaration Mr John Graham confirms that after the installation of the stile, <i>“Subsequently the number of people walking the eastern boundary increased.”</i> and in their evidence Mr and Mrs Collyer confirm that <i>“...when Mansfield was divided and a fence erected a stile was incorporated into this fence allowing us to continue to use the path between DSTA4 and DSTA5.”</i> In his formal objection to the making of the order Mr Graham does qualify this comment <i>“...I am attributed to confirming ‘that after the stile was erected the number of users increased’ although I don’t dispute this comment, I am sure that the numbers increase due to Mr &amp; Mrs Lee’s request to Mrs Shaw for permission to walk the route on behalf of the village.”</i>, however, there is evidence that the fence was erected in March 2012 and evidence that the Lee’s did not approach Mrs Shaw to request permission until 17 July 2012, a period of 4 months between these events. In addition, no written evidence of the permission granted to Mr and Mrs Lee on behalf of the village, has been presented to Wiltshire Council.</p>
8.	People wander all across the field	



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<p>Claire Macdonald</p> <p>Paul Farrant</p> <p>Mr and Mrs Shaw</p>	<p>I did observe that in the last 10 years or so more people were noticeable walking randomly on fields, such as the one in front of my house, and not keeping to the footpaths but rather using other peoples land to exercise their dogs. They showed little regard for the correct right of way or for stock in the field. On many occasions people would walk along my fence line, which isn't anywhere near the footpath from Donhead St Andrew church to Donhead St Mary church, with out of control dogs that entered my garden from the field.</p> <p>The countryside is a working environment and I believe that increasing numbers of people have scant understanding or respect for the land and act as if they are allowed to walk with dogs with impunity, fouling the land and scaring cattle. I'm all for footpaths but I believe there is growing disregard for established rights of way and some people, who wouldn't want dogs rampaging in their own gardens, nevertheless feel entitled to claim the right to others' property, often citing previous years of use which simply didn't take place.</p> <p>After the stile was erected in March 2012, walkers wandered generally along the Eastern part of the field, often with their dogs running free chasing deer across the field. They had no regard for the rules of the countryside.</p> <p>One of the reasons why the Parish Council indicated that it was not in favour of confirming the permissive path was that it was unlikely that walkers could be persuaded to stick to a single path. When the possibility of fencing in the path was mentioned, one PC member said she wouldn't want to be confined to one path, she liked to wander (on another persons property)!</p>	<p>Para 5.11, Section 5 page 5 of the Consistency Guidelines states:  <i>"Wandering at will (roaming) over an area, including the foreshore (Dyfed CC v SSW 1989), cannot establish a public right (Halsbury's Laws of England, Vol.21, paras 2 and 4 refer). Use of an area for recreational activities cannot give rise in itself to a presumption of dedication of a public right over a specific route. Attention should be paid to the maps attached to the UEF's, and any description of the used route to ensure that the Order route is under discussion."</i></p> <p>Officers agree that "wandering" all over the land with no consistent route, does not support the public acquiring a public right of way. However, Officers have examined the routes claimed by users in their evidence forms, and all witnesses have used the route through the field more or less on the same route, although there are some variations, i.e. some being closer to the field boundary and some being more central within the field, allowing for the inevitable inconsistencies in the drawing of the route by different individuals (the claimed route is investigated at pages 40-50 of the decision report attached at <b>Appendix B</b>).</p> <p>The "Right to Roam" is entirely separate legislation where areas of mountain, moor, heath, down and common land, were mapped by Natural England following the Countryside and Rights of Way Act 2000, giving the public free access to walk on these pockets of land, known as "Access Land". The land over which the claimed route passes is not designated as Access Land and as a result there is no right for the public to roam at will over the land.</p>

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	<p>At best this attitude appears to evidence a lack of understanding on the part of the claimants of the (much publicised) right to roam. At worst it indicates a total lack of respect for another's property and rights.</p>	
<p><b>9. The claimed route has not been walked for the 20 year qualifying period</b></p>		
<p>John Graham</p> <p>David Pitman</p> <p>Mr and Mrs Shaw</p>	<p>The claimed route could not have been walked for the 20 year qualifying period.</p> <p>Due to the diversion of footpath 4 the alleged path has not been walked for the statutory period of 20 years and there is no evidence of the path being dedicated by implication.</p> <p>The claimed route has not been walked for the full statutory period of 20 years due to the diversion of old FP4 and there is no evidence of implied dedication in respect of the route south of D on the plan attached hereto (<i>the Plan</i>) or on any other part of the claimed route. It is acknowledged by Wiltshire Council (<i>WC</i>) that the claimed route has not been walked for the full statutory period of 20 years dating back from 8<sup>th</sup> August 2012 (Paragraph 10.54 of <i>WC's</i> decision report dated 18<sup>th</sup> July 2016 (<i>the Decision Report</i>)). Based upon a review of the routes claimed to have been walked prior to 1996/7 as set out in the User Forms submitted, Para 10.57 of the Decision Report confirms that 20 years' public use of the southern section of the route (i.e. south of old FP4) cannot be shown for the required user period. This is further confirmed in Para 10.63 of the Decision Report. Thus <i>WC</i> must rely on the implied dedication of a public footpath by the Shepherds on their land in order to show a public footpath. However <i>WC</i> erroneously assumes that by putting a stile in their new fence, the Shepherds impliedly</p>	<p>Whilst Officers agree that there is a large amount of evidence and agreement within the statutory declarations submitted by objectors in this case, that the route was not used for the full user period in question of 1992-2012 and that public use of the claimed route began between 2002 and 2005, there is also conflicting evidence from witnesses, who claim to have used the route. 19 of the 33 witnesses claim to have used the route for the full 20 year user period, i.e. 1992-2012, the earliest user dating back to 1970. Where there is this level of conflict within the evidence, we return to the advice given in the Norton and Bagshaw case. It is appropriate to make an order and the witness evidence may be tested at the public inquiry.</p> <p>Additionally, where there is consensus amongst the objectors regarding the date at which the public first began using the claimed route, i.e. between 2002 and 2005, there is no explanation provided to Wiltshire Council as to a significant event which would lead public user to begin at this time, particularly where there is user evidence provided from the 1970's.</p> <p>The further investigations carried by Officers regarding the southern section of the route (south of the fence installed by Mrs and Mrs Shepherd), indicates that this part of the route has not been used for the full 20 year user period and on this section Officers rely upon dedication at common law. Mrs and Mrs Shepherd installed the stile in the fence, where there was no</p>

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	<p>dedicated a public footpath on their land.</p> <p>When villagers pressed Marcus Shepherd to install the stile in March 2012, Mr Shepherd spoke to Kevin Prince of Carter Jonas, who advised Wardour Ltd (Wardour) on the purchase of its land. Mr Shepherd agreed that Carter Jonas should prepare a "Permissive Path" sign which would include the route of the path on the Shepherds' land. Accordingly Mr Shepherd installed his stile on the understanding that it was only a <u>permissive</u> path. Sometime after the "<i>Permissive Path</i>" signs had been erected, Mr Shepherd commented to me that he was glad that they had been put up. The "Permissive Path" signs, prepared with the Shepherds express consent and agreement, were prepared by Carter Jonas and differ from the plan attached to the Statutory Declaration I made on behalf of Wardour in August 2012, which showed only the permissive path on Wardour's land and not on the Shepherds land. Paragraph 10.10 of WC's Decision Report is therefore wrong in suggesting that Wardour attempted to grant a permissive path over the Shepherds land; the Shepherds had expressly agreed to this.</p> <p>Mr Shepherd has confirmed that, due to a problem with his office's email server at the time, he never received my e-mail dated 15<sup>th</sup> October 2014 referred to in Question 10 of the Landowner Evidence Form dated 10<sup>th</sup> October 2015 (<i>the LEF</i>) and bullet point 2 on page 6 of Appendix 1 Representations and Objections Received at Initial Consultation of the Decision Report. In my e-mail of 15<sup>th</sup> October 2014 I requested Mr Shepherd to remove the stile from the fence. The fact that he did not receive my e-mail explains why I never received a reply from him; accordingly</p>	<p>requirement for them to do so and although they may have considered the installation of "permissive path" notices, there is no evidence before the Council that they erected such notices immediately upon the erection of the fence in March 2012. The evidence suggests that no such notices were erected until autumn 2012, when Wardour Ltd erected "permissive path" notices, giving a user period of 5-6 months following the installation of the stile and dog latch (Mr John Graham confirms in his statutory declaration that public user increased after the installation of the stile).</p> <p>The failure of the Parish Council or indeed any other member of the public to claim the route on occasions when they might be expected to do so, for example upon the formal diversion of Footpath No.4 on 1996/97, is not contrary to the public acquiring rights. It is possible that on these occasions public use of the unrecorded route, was not affected / prevented by these events and it was not necessary to make a claim at these times. It is noted that no claim was made when the permissive path notices were erected in Autumn 2012, early 2013, but the claim was made following the temporary closure of the footpath when the sink hole appeared on the land in late 2014 / early 2015 and the public were prevented from using the claimed route altogether (the application being dated 15 May 2015).</p> <p>Mr Barton suggests a lack of use of the recorded Footpaths Nos. 3 and 4 Donhead St Andrew, from 1986 onwards, until Footpath No.3 was closed in 1994 and the diversion of Footpath No.4 in 1997, due to being overgrown, out of repair and being in such close proximity to Kelloways Mill. He is owner and resident at Kelloways Mill and has knowledge of these paths; however, where the recorded footpaths were out of repair, it is possible that the public sought alternative routes within the vicinity,</p>

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	<p>no inference may be drawn that he intended to dedicate a public footpath.</p> <p>Of the 25 UEF's which refer to use prior to 1997, only 3 mention the diversion of FP4 in 1997; the rest claim to have walked the same route for the whole of their period of use. Only 2 of the UEF's show the fence line in its correct position and only 4 have the correct position of FP5 shown. This demonstrates a lack of care and attention to detail; a lack of knowledge of the land and tends to indicate that few of the claimants can actually have used to claimed route in the period prior to 1997.</p> <p>It has been agreed by WC that the documentary evidence as a whole <b>does not</b> support the existence of public footpath rights over the claimed route (Section 9 Documentary Evidence Decision Report Para 9.5).</p> <p>The claimed route cannot have been walked for the statutory period of 20 years, as explained above. There is insufficient user evidence as set out above.</p> <p>Although there is mention by Roy Powell of use of the claimed route dating back to the 1950's and to the path being an important link between Pigtrough Lane/Donhead Mill and the church, school and village amenities, this is not borne out by evidence.</p> <p>The track shown on the 1901 OS map between Ricketts (Donhead) Mill and Kelloways Mill (which the map confirms was not a right of way) has not been shown on an OS maps since 1901. On the 1925 OS map, Kelloways Mill is shown as disused and there is no longer a track shown between</p>	<p>perhaps over the claimed route.</p>

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John Barton	<p>the Mills. This indicates that since the closure of Kelloways Mill prior to 1925, there has not been any sign on the ground of a path at this location.</p> <p>A public footpath could have been, but was not, claimed on the following prior occasions:</p> <ul style="list-style-type: none"> <li>(i) under the NPACA of 1949 when the Parish Survey was done, nor in any subsequent review;</li> <li>(ii) in 1994 when the old Footpath 3 was closed;</li> <li>(iii) in 1996-7 when Public Footpath 4 was diverted;</li> <li>(iv) when the new fence was erected by Marcus Shepherd in March 2012; and</li> <li>(v) when Wardour put up the Permissive Path notice in 2012/13.</li> </ul> <p>It is submitted that the evidence indicates that the path was not used enough to be evident from the ground or to come to the attention of the Parish Council; or alternatively that the villagers knew that they had needed express consent to walk the path.</p> <p>You are not correct in claiming 20 years unbroken use of fps 4 and 3 prior to 8<sup>th</sup> August 2012. I have owned and lived in Kelloways Mill since 1986. Not long after arriving here I realised that fp4 was never used and fp3 hardly ever. I found that the stile into and out of my property on fp4 was, and obviously had, been broken for some time. It was also covered in brambles. There was never any complaint from the Council or the public and it was never repaired.</p> <p>The main reason that neither was used, I think secondary to one unusable stile, was because fp4 passed through my</p>	

Objector	Objections	Officers comments
	<p>front garden, directly by the front windows and door; fp3 also passed within easy eye line and contact of windows. In short both paths were embarrassing for villagers and also a threat to security, implied to any user. I started to try to persuade the Council to move the FPs so that they could be enjoyed by villagers. This was hard work and unsuccessful until 1994 when fp3 was closed because it had been deemed unsafe due to the treads of both bridges becoming loose.</p> <p>The WCC eventually realised that rather than replace 2 bridges with new build, if the new fp route could be adopted, costs would be more than halved because only 1 bridge would be necessary and I contributed to the cost of that. In November 1996 the new order was passed and footpaths diverted, a new bridge built in its present position. I add that at no time during this 10 year period did anyone query inability to use fp4 through my garden, or the presence of any path joining 4 to 5.</p> <p>In addition I find some witness statements to be patently untrue. I would be happy to challenge in court if necessary.</p> <p>It is also untrue that the majority of the village wants this new path; it is true that a vocal majority want it, there is a large number of residents who want nothing to do with the idea, consider it to be unnecessary and who are unhappy with the bad taste which has been gathered.</p>	
<b>10.</b>	<b>The plan accompanying the order is erroneous</b>	
John Graham	The plan accompanying the order is erroneous – the fence between the land owned by the Shepherds and Wardour Ltd is not so close to the old route of Footpath 4, it is 20m to the south.	Officers agree that the fence line recorded on the order map, does not accurately reflect the position of the fence on the ground and this line should be located further south. At the time of preparation of the map this fence line was not recorded on the

Objector	Objections	Officers comments
<p data-bbox="188 300 367 325">David Pitman</p> <p data-bbox="188 504 340 561">Mr and Mrs Shaw</p>	<p data-bbox="394 300 1178 464">I note that the map attached to the Definitive Map Modification Order mistakenly shows the new fence line as being roughly in the same position as Footpath 4 before it was diverted. This is not the case, the boundary with the Shepherds land is further south.</p> <p data-bbox="394 504 1178 1342">Throughout this application and on the plan attached to the Order itself, the position of the new fence line is incorrectly shown. WC has assumed that that the northern boundary of the land purchased by the Shepherds is approximately the same position as Footpath 4 prior to its diversion in 1997 (<i>old FP4</i>). This is incorrect. The boundary is further south as shown by the blue line on the Plan. This location of the fence has always been shown on all plans produced by Wardour. Accordingly there is a significant part of the claimed route on Wardour's land which has not been walked for the statutory period of 20 years. To illustrate this point, the approximate position of old FP4 is shown by the red line on the Plan and the claimed route walked prior to 1997 (as shown on the map provided by the Parish Council on 10<sup>th</sup> May 2016, <i>the Parish Council's pre-1997 Map</i>) is shown marked S2, the stile on the old footpath is marked S1 and the closest point between the new stile and old FP4 is marked D. The distance between S1 and S2 is approximately 40m and the distance between S2 and D is at least 20m. The claimed route between S2 and D and any points between S1 and S2 (since many variations of the route were walked) together with the claimed route on the Shepherds' land, totals some 120 metres or more, which cannot have been walked for the full statutory period of 20 years.</p>	<p data-bbox="1205 268 2047 871">Ordnance Survey (OS) base map available and was inserted incorrectly by Officers. This line does now appear on the OS base map and Officers would concur with objectors on this point. However, it is not considered that this inaccuracy materially affects the evidence or the Wiltshire Council decision on the application. When witnesses were completing the evidence forms, no fence line was shown on the map provided to witnesses and many of the witnesses have annotated the map to include the fence where they believe it to be located. It is also noted that the map provided to witnesses who used the route prior to the diversion of Footpath No.4 Donhead St Andrew in 1996/97, did not include the fence line and this map was not annotated in any way by Officers, allowing witnesses to record the route/s they had used. Officers also consider it likely that when witnesses have made later references to the location of the fence, they would have taken reference from the fence in its true location on the ground. It is in fact only the order map which records the fence line incorrectly.</p> <p data-bbox="1205 911 2018 1278">Whilst researching the claim, Officers undertook a consultation amongst users who had used the route prior to 1996/1997, i.e. prior to the diversion of Footpath No.4 Donhead St Andrew (please see paragraphs 10.53 – 10.57 of the decision report). Witnesses were able to mark on a map the route/s they had used prior to this date and from this evidence Officers have concluded that whilst some users did use a route turning north immediately upon entering the Mansfield at Kelloways Mill (via the former route of Footpath No.4), more users appear to have continued westwards before turning north, as per the claimed route.</p> <p data-bbox="1205 1318 2018 1378">By overlaying the diversion order plan (diverting Footpath No.4 Donhead St Andrew 1997) over an OS base map at the same</p>

Objector	Objections	Officers comments
	<p>Christopher Kilner in his letters of 30<sup>th</sup> April 2016 and 7<sup>th</sup> May 2016, with attached maps, suggests that the new stile is sited almost exactly on the historic mapped route of old FP 4. The Plan (which is an extract from a much more recent map than the copy of the 1901 OS Map Mr Kilner relies on) confirms that this is plainly not the case. Moreover, Mr Kilner's maps do not show the new fence in its correct position and do not accord with the map prepared by the 1996/7 members of the Parish Council dated 10<sup>th</sup> May 2016.</p>	<p>scale, with the fence recorded in its correct position, we see that there is a gap of approximately 15m between the former route of Footpath No. 4 and the fence line erected in 2012. Officers agree that the route over Mr and Mrs Shepherds land cannot show 20 years public use as of right; however, there is a gap of approximately 15m between the Shepherds land and the former route of Footpath No.4 which is not accounted for. When asked to describe the route which they had used prior to 1997, (at that time the Mansfield was a single open field), the majority of users used a route leading east-west over the Mansfield in the approximate location of Footpath No.4; however, there are differing reports of the actual used line of this path.</p> <p>The 1901 Ordnance Survey Map is referred to by Mr and Mrs Kilner, which when considered with the OS map of 1925, appears to show the route of Footpath No.4, south of its former line, to the north of a former fence line which existed in 1901, giving less distance between Footpath No.4 and the 2012 fence and stile. Mr and Mrs Kilner state that before the diversion of Footpath No.4, they followed a very similar route to the 1901 OS map and they claim that reference to this historic map shows that the stile is sited almost exactly on the historic mapped route of Footpath No.4, although on the plan their used route intersects the 2012 fence line more central to the field.</p> <p>Mr and Mrs York also appear to record on their map (of use prior to 1997) the route of Footpath No.4 further south in the field. They describe their pre-1997 route entering the Mansfield <i>"...near where the present stile is for the new fence..."</i> and <i>"We think the old footpath 4 roughly followed the line of the new fence. Again we think to its southern side."</i> However, on the plan their route is shown to intersect the 2012 fence line more central to the field.</p>



Objector	Objections	Officers comments
		<p>Miss Whymark also shows a used route for Footpath No.4 (pre-1997) further south in the field and which would have intersected the new fence line at approximately the point where the new stile is located at the eastern side of the field.</p> <p>Mrs Munro used a route which crossed the 2012 fence at about the point of the new stile, using a route past Kelloways Mill and then entering the Mansfield and continuing south to the present route of Footpath No.4, (prior to 1997).</p> <p>Mr B Sullivan shows the claimed route in full, it does intersect the new fence line, but this intersection is slightly further west of the present stile.</p> <p>Mr T Kilner; Mrs Brown and Mr and Mrs Collyer, all claim to have used the claimed route in full prior to 1997 and have therefore intersected the new fence at its eastern end (Mr and Mrs Collyer's intersection, slightly further west).</p> <p>In conclusion, there is some user evidence to suggest that the public had used the 15m gap between the present fence and stile. i.e. some witnesses using a route of Footpath No.4 further south in the field and some using the claimed route in full, prior to 1997 and within the early part of the relevant user period, i.e. between 1992 and 1997.</p>
<b>11.</b>	<b>Requests for permission</b>	
John Graham	Repeated requests from people and bodies such as the Ramblers Association for consent to use the path also confirm that the path was not walked as of right. This was also shown by Mrs Barkham when she thanked Mrs Shaw for being allowed to walk the path.	In order to establish a right of way, public use must be "as of right", i.e. without force, without secrecy and without permission. The meaning of "as of right" was explored in the case of R v Oxfordshire CC ex parte Sunningwell Parish Council [1999] (town and village green registration). It had been considered in the case of Hue v Whiteley 1929, that the state of mind of users

Objector	Objections	Officers comments
Paul Farrant	<p>I do not consider that the Council has given proper consideration to the many requests for consent to walk along the Eastern boundary of the field, including those from John Barton and Mr and Mrs Richard Lee made on 17<sup>th</sup> July 2012 referred to in my statutory declaration sworn on 5<sup>th</sup> February 2016 or to my conversation with Michael Cullimore on 14<sup>th</sup> October 2014 also mentioned in my statutory declaration.</p> <p>Furthermore on 26<sup>th</sup> July 2016 I received an e-mail from Andrews Stevens of Donhead Ramblers (see attached) requesting permission to walk along the permissive path between Ricketts Mill and Kelloways Mill with the Ramblers on 3<sup>rd</sup> September 2016. He had been advised to contact me by Richard Lee. Although outside the relevant period, as I understand it, this does not suggest that the route had been walked "as of right".</p>	<p>should be considered within the "as of right" test; however, in Sunningwell Lord Hoffman doubted what Mr Justice Tomlin had meant by this and stated:</p> <p><i>"My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. In Hue v. Whiteley [1929] 1 ch.440 has led the courts into imposing upon the time-honoured expression "as of right" a new and additional requirement of subjective belief for which there was no previous authority and which I consider to be contrary to the principles of English prescription. There is in my view an unbroken line of descent from the common law concept of nec vi, nec clam, nec precario to the term "as of right" in the Acts of 1832, 1932, and 1965."</i></p> <p><i>"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But this is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use the footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the early years will have been without any very confident belief in the existence of a legal right, but that does not mean that it must be ignored."</i></p>
David Pitman	<p>My brother Gerald Pitman and I gave permission to various village residents such as Belinda Blanshard and later John Barton to walk parts of the field other than the public footpaths. It was not possible to prevent entry to the field because of the existence of 2 public footpaths but we regarded that anyone walking did so on the basis that it was a path used with our discretion.</p>	<p>It was held that use "as of right" does not require the public to believe they are using the way as of right and therefore the Council is not able to consider whether or not the users</p>
H R Graham	<p>The Council has not given sufficient weight to the various requests for consent which indicate that the walkers did not walk as of right.</p>	
Mr and Mrs Shaw	<p>During its period of ownership, Wardour has not acted in any manner which would suggest an express or implied dedication of a public footpath on any part of the claimed</p>	

Objector	Objections	Officers comments
	<p>route on its land; indeed all of its actions clearly indicate the exact opposite.</p> <p>At least 5 of the UEF's (John Barton, Belinda Blanshard, Mr and Mrs Lee (permission given orally on 17<sup>th</sup> July 2012 to the village) and Jane Hopkins (who referred to this permission on the following day, 18<sup>th</sup> July 2012) should be discounted as these claimants walked with consent, clearly knowing that they were not walking as of right during the whole period of use. This knowledge would also extend to all who knew of the Lees request. Of all these people, only John Barton confirmed that he has consent to walk in his UEF.</p> <p>Mrs Barkham also thanked me for allowing her and her husband to walk the permissive path on 21<sup>st</sup> June 2014. This is after the qualifying period, but clearly indicates that she and her husband did not regard themselves as walking as of right, as confirmed by Michael Cullimore's conversation with Paul Farrant on 14<sup>th</sup> October 2014 when, as Chair of the Parish Council, he confirmed that several members of the village would be willing to sign a release from liability if the permissive path was re-opened. At Richard Lee's suggestion, the Donhead Ramblers Association also made a request dated 26<sup>th</sup> July 2016 for permission to walk the route.</p> <p>Both David Pitman and his late brother Gerald, who owned and farmed the land before Wardour acquired it, gave express permission to individuals to walk along the eastern edge of the field. There is absolutely no evidence to suggest that they allowed people to walk the route other than on the basis that it was a permissive path.</p>	<p>themselves considered their use of the way to be "as of right".</p> <p>After Mrs Shaw deposited with Wiltshire Council a statement, plan and statutory declaration in August 2012, followed by the erection of permissive path signs in autumn 2012 and early 2013, the right of the public to use the way was already brought into question and the requests for permission after August 2012 are not relevant to the Council's consideration of the evidence. Where the right of the public to use the route was already brought into question and this was made clear to them, i.e. by the erection of "permissive path" signs, the public may have considered it necessary to seek permission, after that date, demonstrating that the public did view the path differently after the permissive signs were erected. It does not preclude a period of public user of 20 years before August 2012 and there is little evidence before the Council that the public sought permission before 2012 (Officers have already correctly discounted the evidence of witnesses who refer to permission prior to 2012, i.e. Mrs Belinda Blanshard and Mr John Barton, as being user "as of right").</p> <p>The decision report (attached at <b>Appendix B</b>) considers "permission" at paragraphs 10.41-10:50 and it is agreed that the user evidence of Mr John Barton and Mrs Belinda Blanshard cannot be considered as qualifying user "as of right" where these two individuals sought and were granted permission within the relevant user period in question of 1992-2012; however, even where this evidence is removed, there is still a substantial body of evidence of user "as of right".</p> <p>Officers do not agree that the evidence of Mr and Mrs Lee and Mrs Hopkins should be discounted as user "as of right". It is claimed that Mr and Mrs Lee sought permission from the</p>

Objector	Objections	Officers comments
	<p>There are already 2 confirmed public footpaths on the relevant land. Thus people had easy access to the field and it would be impossible to prevent anyone from walking other than on the public footpaths, without taking up permanent position in the field.</p>	<p>landowners Wardour Ltd, on behalf of the village, which evidence suggests they requested at the same time as Mr Barton, on 17 July 2012 (there is agreement amongst objectors that Mr and Mrs Lee made this request, at this time). Mr Barton received a letter of permission from Mrs Shaw dated 17 July 2012; however, the date of the granting of permission to Mr and Mrs Lee and the village is not known as no letter to this effect from Mrs Shaw and Wardour Ltd has been viewed by Officers of Wiltshire Council. Where the date of granting of this permission is not known, the user evidence of Mr and Mrs Lee cannot be discounted as user "as of right".</p> <p>Surely it would have been considered more important to the landowner to confirm in writing permission given to the whole of the village, than simply writing a letter to give permission to certain individuals, i.e. Mr Barton, particularly where it was not the landowner's intention to dedicate public rights of way over the land. Additionally, if Mr and Mrs Lee were seeking permission for the whole of the village to use the route, would it not have been more appropriate to write to the Parish Council. No evidence of permission being granted through the Parish Council in July 2012 has been presented to the Council.</p> <p>In any case, if permission was granted to Mr and Mrs Lee on 17 July 2012, there is sufficient evidence of public user "as of right" from 17 July 1992; therefore, it would simply serve to push back the relevant user period by less than one month.</p> <p>Wiltshire Council has not seen further evidence that Mrs Jane Hopkins referred to this permission the next day, i.e. on 18 July 2012, other than within the statutory declarations and Mrs Hopkins makes no reference to this within her evidence statement. Again there is a conflict of evidence which may be</p>

Objector	Objections	Officers comments
		<p>tested at a public inquiry.</p> <p>Requests for permission and comments made outside the relevant user period of 1992 - 2012, e.g. where Mrs Shaw recalls that Mrs Barkham thanked her whilst attending a garden opening on 21 June 2014, for allowing herself and her husband to walk the path and requesting permission for her husband to inspect the newly formed sink hole, the path was already signed as a "permissive path" at that time and public user had already been brought into question. Additionally, when the local Donhead Ramblers Association made their request to Mr Paul Farrant for permission to use the route on 26 July 2016, the path was already closed temporarily and the application to add a public footpath made.</p>
<b>12.</b>	<b>Increased use of the path after the stile is a result of Mr and Mrs Lee's request to Mr and Mrs Shaw for permission to walk the route on behalf of the village</b>	
John Graham	<p>In para 10.8 of the report I am attributed to confirming "<i>that after the stile was erected the number of users increased</i>" although I don't dispute this comment, I am sure the number of walkers increase due to Mr and Mrs Lee's request to Mrs Shaw for permission to walk the route on behalf of the village.</p>	<p>The stile was erected in March 2012 and it is claimed that Mr and Mrs Lee requested permission to use the claimed route on behalf of the village on 17 July 2012. There is a period of four months where the stile is installed, before the request for permission from Mr and Mrs Lee is made. Officers have not been presented with evidence in writing of any permission granted to Mr and Mrs Lee and the residents of the village. Mr Barton who requested permission at the same time as Mr and Mrs Lee, received a letter confirming the permission; however, it would appear that permission was not granted in writing to the whole of the village, which is perhaps more important where it is not the landowners intention to dedicate public rights of way.</p>
<b>13.</b>	<b>Common Law Dedication</b>	
Mr and Mrs Shaw	<p>WC comments in paragraph 10.67 of the Decision Report that there may be implied dedication under the Common Law by the Pitman family in respect of the section of the</p>	<p>There is little evidence before the Council that the Pitman family carried any acts to negate their intention to dedicate the land as a public right of way. In his statutory declaration Mr David Pitman</p>

Objector	Objections	Officers comments
	<p>claimed route north of FP4, but it is accepted in law that the burden of proving this is on the claimants as Scott L J stated in Jones v Bates <i>“this is a very heavy burden and even quite a formidable body of evidence may not suffice...”</i> The various grants of (or references to) permission to walk the claimed route referred to below also run counter to a suggestion of an implied dedication. It is submitted that the burden of proof required for an implied permission has clearly not been discharged in this case.</p>	<p>confirms that <i>“When we purchased the Land one or two people asked us for permission to walk other than on the public footpaths (Mrs Belinda Blanshard was one such person) and we grated that permission,”</i> This statement is supported by Mrs Shaw, but is not referred to in Mrs Blanshards evidence form. Mrs Blanshards evidence has been discounted as user <i>“as of right”</i>, based on the comments made by Mr David Pitman and Mrs Shaw.</p> <p>Mr Pitman also states <i>“I know my brother, Gerald Pitman who died in 2009, also gave permission to some villagers to walk other than on the public footpaths”</i>, which is supported by Mrs Margaret Pitman in her statutory declaration, in which she states <i>“I understand that from time to time Gerald gave some villagers permission to walk on the land other than on the public footpaths.”</i> However, no further details of these instances are given, e.g. did this permission refer to the claimed route or just the land in general; to whom was this permission given and when. Mr David Pitman also states that <i>“...we always led everybody to believe that it was at our discretion if they walked anywhere else on the field other than the footpaths”</i>, but there is no further evidence given of how this permission was conveyed to members of the public at large.</p> <p>All but one of the 33 witnesses consider the landowners to be aware of public user, for a number of reasons and Mrs Hazel Hinchley, in her witness evidence form, confirms that <i>“on several occasions I stood in my paddock with Mr G Pitman watching people using the path”</i>. None of the witnesses refer to being challenged by the landowners during the Pitmans period of ownership (some of the witnesses refer to instances of challenge after Wardour Ltd took ownership of the land and to the permissive path notices / closure notices erected by Mrs Shaw,</p>

Objector	Objections	Officers comments
		<p>as a challenge to their user).</p> <p>There is no evidence submitted that the Pitman family erected “permissive path” notices on the claimed route, or submitted a statement, plan and statutory declaration under Section 31(6) of the Highways Act 1980 to negate their intention to dedicate further public rights of way over the land.</p>
<p><b>14. Insufficient user evidence</b></p>		
<p>Mr and Mrs Shaw</p>	<p>The user evidence in respect of the qualifying 20 year period from 8<sup>th</sup> August 1992 to 8<sup>th</sup> August 2012 is insufficient to justify inclusion of the claimed route on the definitive map.</p> <p>Many different versions of the claimed route were walked. The second set of maps which claimants were asked to produce by WC showing the route they walked prior to 1997 (the pre-1997 Maps) confirm this. Even the Parish Council’s pre-1997 map shows a different route from the claimed route.</p> <p>It is inconsistent with the assertion made by some claimants that they used the route to walk to the village church and that prior to 1997 some claim to have walked 2 parts of a triangle rather than a direct route. Some of the pre-1997 maps produced by villagers showed the alleged footpath forked close to the stile near Kelloways Mill, with one route going to the mill and the other turning west towards Beauchamp House, which is more likely.</p> <p>A number suggest that they walked the route to access Mill Lane and the school and church. However, FP 3 was closed near Kelloways Mill between 1994 and 1996 due to bridges being dangerously weak and unsafe, so villagers cannot</p>	<p>A definitive map modification order has been made in this case where 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.</p> <p>Officers agree that following their investigations of the route used by the public prior to 1996/97 (the diversion of Footpath No.4 Donhead St Andrew), it is likely that the public have not used the southern section of the claimed route for a period of 20 years of more and therefore this part of the route cannot be claimed under statute.</p> <p>However, turning to the northern part of the route, it would appear that this part of the route has been used for the full period in question, i.e. from 1992-2012. Comments on the claimed route are set out at paragraphs 10.51 - 10.63 of the decision report attached at <b>Appendix B</b>. It is considered that prior to 1996/97 the route linked Footpath No.5 to the former route of Footpath No.4 and there is some evidence that the public walked to the approximate location of the new stile in the fence erected in 2012, or used a route of Footpath No.4 further south in the field, thereby leaving no gap between the former route of Footpath No.4 and the existing fence line, whilst some witnesses used the claimed route in full prior to 1996/97</p>

Objector	Objections	Officers comments
	<p>have walked to the church/village hall during that period of up to 2 years. This was not mentioned by any of the claimants but the condition of the bridges is referred to in the Parish Council's minutes; WC's files from the time of the path diversion should also confirm this. At that time Mr John Barton pointed out that the old FP4 and old FP3 were rarely used because they ran so close to his house. This all clearly indicates a lack of use of the claimed path and old FP3 and 4 to access Mill Lane, the church and school in the early and mid 1990's.</p> <p>The charts in paras. 10.17, 10.24 and 10.33 of the decision report are misleading and unreliable. No safe conclusions can be drawn from them because they do not relate to a particular period of use, eg:</p> <p>Para 10.17: witnesses refer to seeing others walking the alleged path, without providing details or dates. The assertion is in any event irrelevant as we accept that people walked – with permission – after 2003/5.</p> <p>Para 10.24 frequency of user: only 3 claimants differentiate between use in different periods of time. Presumably the rest of the UEF's refer to use prior to the closure of the footpath in 2014.</p> <p>Para 10.33: it is suggested that the owner knew people were walking and did not stop them. The explanation for this was that a few months after Wardour purchased the land, as a gesture of neighbourliness I gave consent to the Lees and others to use the path on the basis that it was a permissive path, not a public right of way. At the same time we put up Permissive Path signs. Had I suspected that the response of so many to my gesture would be to make a far-fetched claim for a public right of way, I would have stopped them using the path immediately.</p>	<p>Mr Barton suggests a lack of use of the recorded Footpaths Nos. 3 and 4 Donhead St Andrew, from 1986 onwards, until Footpath No.3 was closed in 1994 and the diversion of Footpath No.4 in 1997, due to being overgrown, out of repair and being in such close proximity to Kelloways Mill. However, where the recorded footpaths were out of repair, it is possible that the public sought alternative routes within the vicinity, perhaps over the claimed route.</p> <p>The charts within the report at <b>Appendix B</b>, refer to the questions set out within the user evidence forms, and whilst they do not include dates, seeing others walking the route for example, is useful supporting evidence only, it is the witnesses own recollection of their own use of the route which is important. Frequency of user – this is taken to refer to the witnesses full user period, unless further details of specific dates are given, for instance dog walking is a regular activity to be undertaken at least once or twice a day, not necessarily on the same path, (only 5 of the users claim to have used this particular path on a daily basis).</p> <p>Some of the witnesses do suggest that the landowners would have been aware of public user of the route where they gave permission to use the path in 2012. Mr and Mrs Shaw have already confirmed that they were aware of public user of the land after 2003/5 and there is evidence to suggest that the Pitman family as the previous landowners were aware of public use prior to Mr and Mrs Shaw's ownership of the land in 2012. All but one of the witnesses believes the landowners to be aware of use. Where the evidence on this point is conflicting, it may be tested at a public inquiry.</p>



Objector	Objections	Officers comments
	<p>It is settled law that there must be sufficient evidence of use to bring it to the landowner's attention. As Lindley LJ stated in <i>Hollins v Verney</i> "no actual user is 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."</p> <p>Walker LJ said in "R (Lewis) v Redcar and Clevedon Borough Council" "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..."</p> <p>As is clear from the statutory declarations of Hugh Graham, John Graham, Christopher Long, Janet Long, Claire Macdonald, Margaret Pitman and David Pitman, neither of these tests was satisfied in respect of the period prior to 2003-5. WC comments that the aerial photos do not appear to record a well worn path on the eastern edge of the Mansfield even in 2005/6 and that this is inconclusive. But it is submitted that the aerial photographs <u>are</u> conclusive – in showing that there was no well-worn path at that time. The aerial photographs also show clearly that land south of the route of the old Fp4 was in pristine condition, with no sign of a path for many years after diversion of old FP4.</p> <p>It is also settled in law that there must be a "sufficient" number of people who have used the same path and this <i>sufficiency</i> test will not be satisfied by one family and their friends using the route. Analysis of the UEFs indicates that 2 or 3 families may have used the same path before 1996. It is submitted that this does not satisfy the <i>sufficiency</i> test,</p>	<p>Aerial photographs cannot be relied upon as conclusive evidence of public rights, where there are varying factors such, as land use, ground conditions, time of day and time of year of the survey. Whilst they may be useful supporting evidence where they do show a visible path, Officers would not recommend reliance upon them to discount public rights being acquired.</p> <p>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. Mrs Shaw is correct to quote the case law in the Redcar case, that user must be sufficient to bring home to the landowner that a right is being asserted against them. Mrs and Mrs Shaw have owned Beauchamp House, adjacent to the Mansfield since 1993. On purchasing the Mansfield in 2012, Mrs Shaw states that she consulted aerial photographs, to satisfy herself that there was no public right of way at this location (she agrees that she had been aware of public user of the claimed route since 2003/5) and there appears to be consensus amongst the objectors that use of the claimed route commenced in 2002/5; however, there is no explanation presented to Wiltshire Council as to why public user started at this time, for there to be such agreement on this date. On the other hand there is user evidence dating back to 1970. Witnesses confirm that the field could be viewed from Beauchamp House and that landowners were aware of use.</p> <p>Officers do not agree that the evidence of use prior to 1996 is confined to 2-3 families alone. 19 witnesses, who had completed witness evidence forms and Mr Roy Powell, have submitted evidence of user prior to 1996.</p>

Objector	Objections	Officers comments
	<p>given that “<i>general wandering</i>” around the field on different routes cannot establish a public right of way.</p> <p>Without secrecy – it is submitted that the chart included at para 10:33 of the decision report is irrelevant as it is not clear from it what time/s within the period of user these replies relate to.</p>	
<p><b>15. Other objections and discrepancies</b></p>		
Mr and Mrs Shaw	There are numerous further points and discrepancies which could be raised, but which I have omitted at this stage in order to make this letter more manageable.	Where the order is forwarded to the Secretary of State for determination, all objectors and supporters of the order will have opportunity to submit their evidence in full and will be invited to submit a statement of case to the Inspector.