

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND
STATEMENT OF PUBLIC RIGHTS OF WAY – ASHTON KEYNES

1. Purpose of Report

- 1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Ashton Keynes, at Rixon Gate.

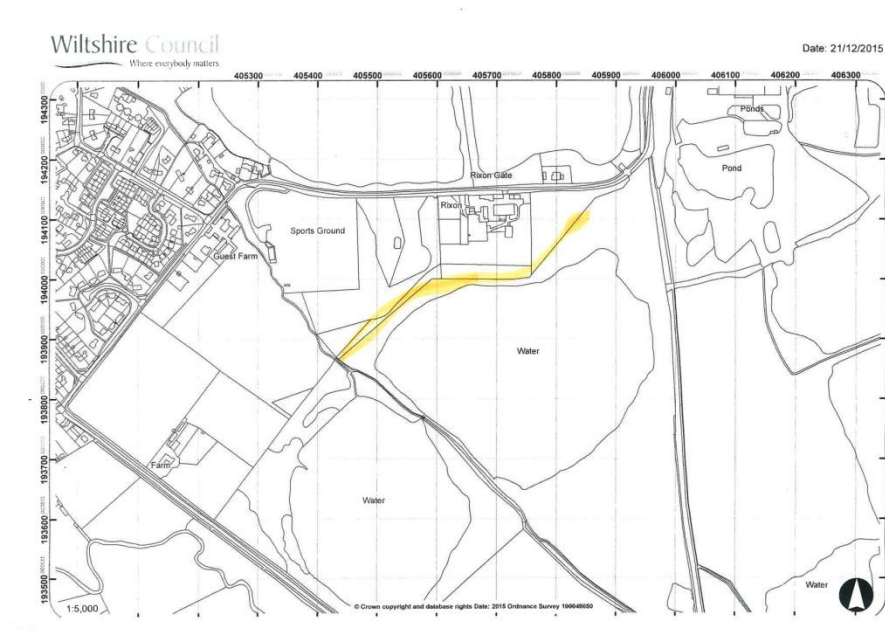
2. Relevance to Council's Business Plan

- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

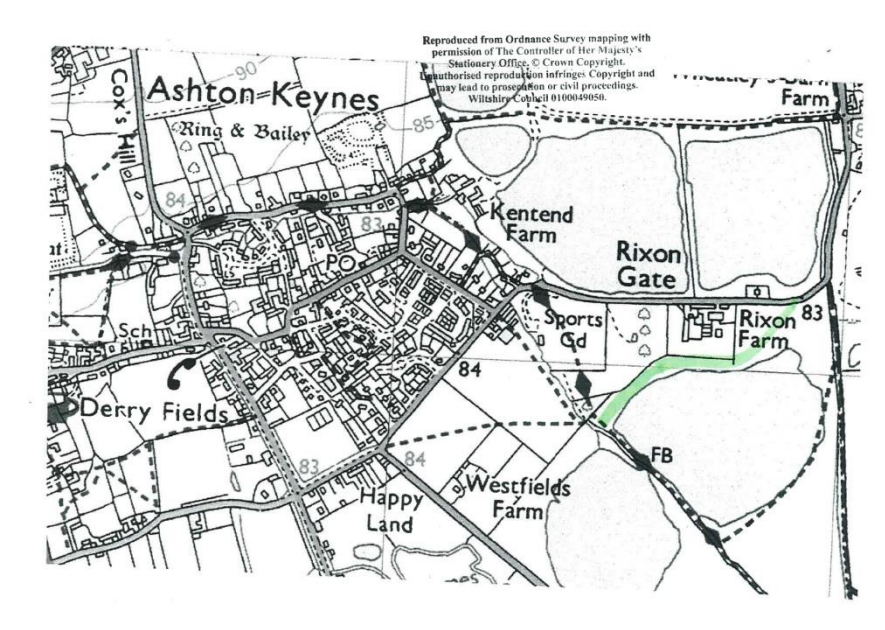
3. Location Plan



4. Application Plans



Plan attached to application form

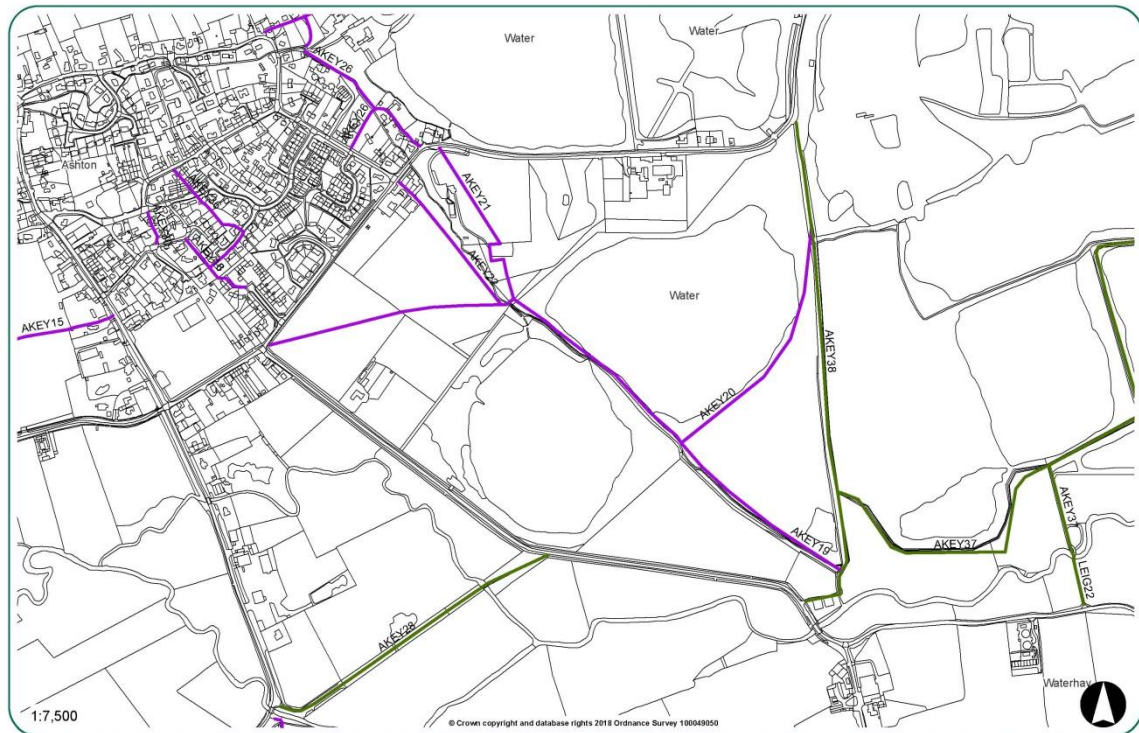


Plan submitted following the application upon request for a clearer map of the claimed route

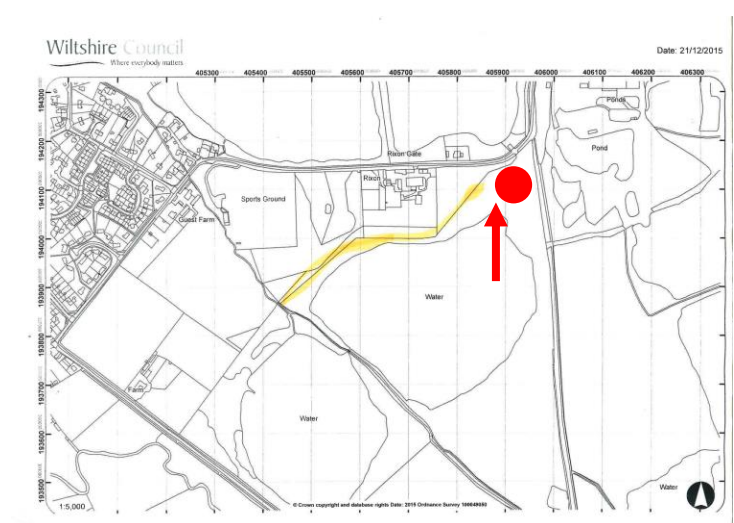
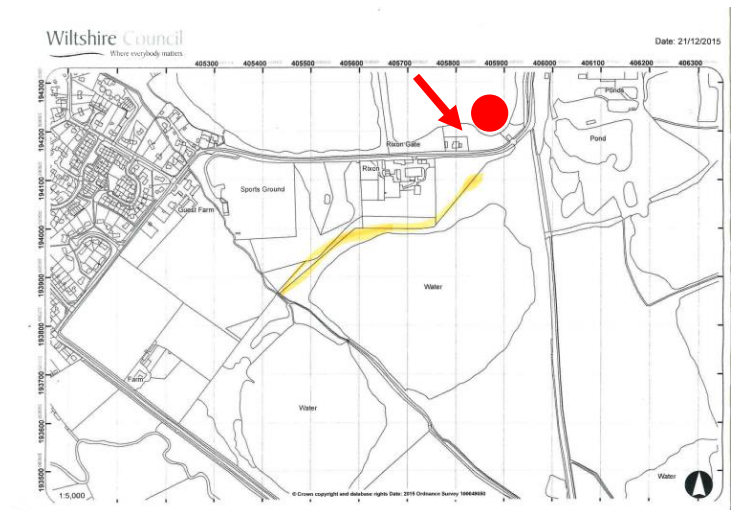
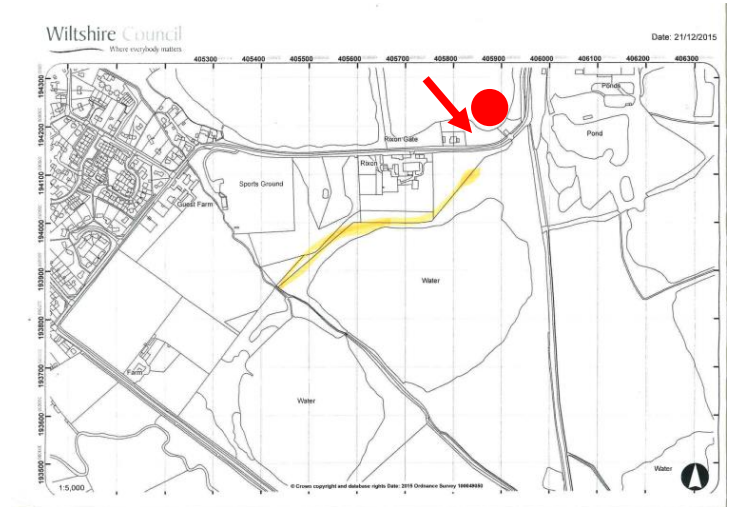
- 4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952, leading from its junction with the existing Footpath no.19 Ashton Keynes (Thames Path), in a

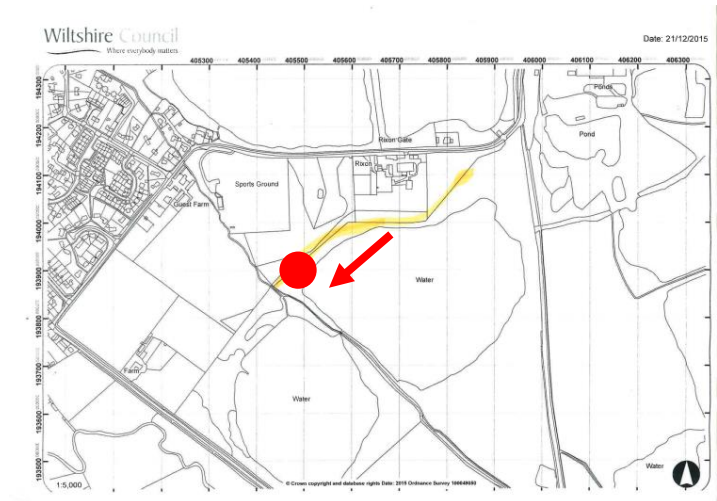
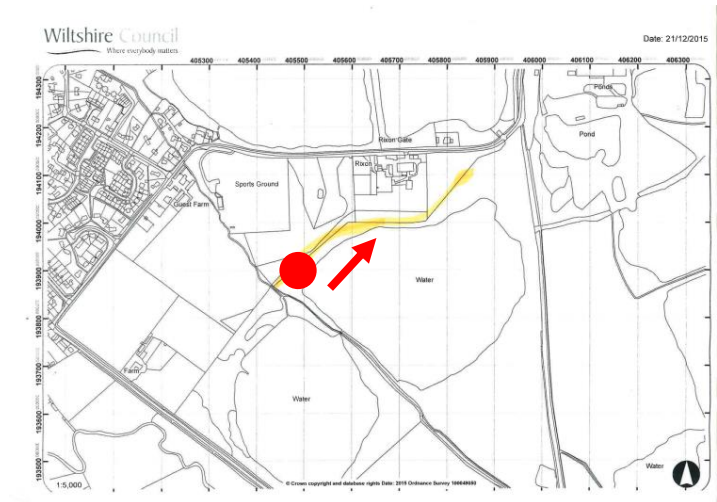
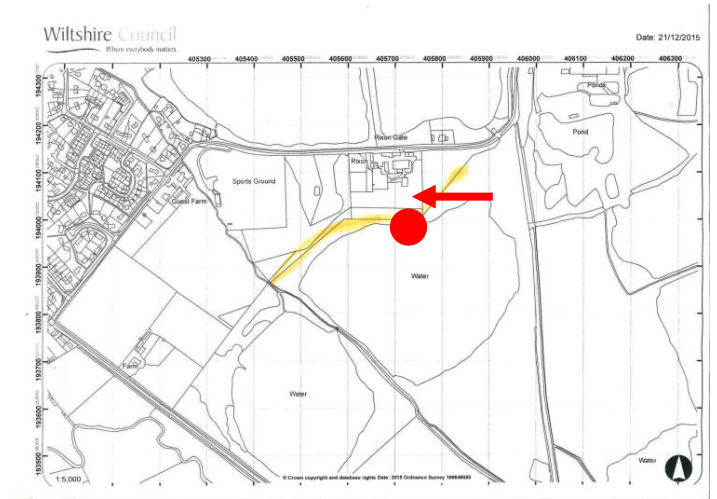
generally north-easterly, easterly and north-easterly direction to its junction with Fridays Ham Lane, at Rixon Gate, as shown highlighted in orange and green respectively, on the above plans. It is helpful also to consider the existing rights of way network at Rixon Gate, Ashton Keynes:

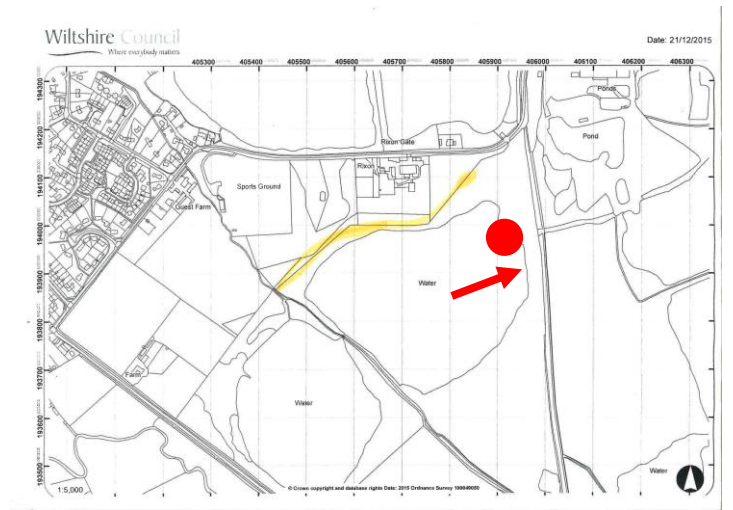
**Rights of Way Network
Rixon Gate, Ashton Keynes**



5. Photographs







Although not part of the application route, some witnesses claim to use a spur of the application route, leading along the northern edge of Lake 82 to junction with Fridays Ham Lane at the location shown above.



Although not part of the application route, witnesses refer to the recorded route of Footpath no.20 leading south of Lake 82, which the landowner has now fenced in.

6. Registered Landowner

- 6.1. Mr Alvin Mark Lindley
C/O Clearwater Plc
First Floor Offices
Wimberley Park
Knapp Lane
Brimscombe
Stroud
Gloucestershire, GL5 2TH

7. Background

- 7.1. Wiltshire Council are in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Ashton Keynes, leading generally north-east, east and north-east from its junction with Footpath no.19 Ashton Keynes, (the Thames Path), to Rixon Gate and its junction with Fridays Ham Lane. The application is dated 30th September 2016 and is made by Ashton Keynes Parish Council on the grounds that a right of way for the public on foot can be reasonably alleged to subsist or subsist, based on user evidence and should be recorded as such within the definitive map and statement of public rights of way. The application form, (which consists of Forms 1 and 3), is accompanied by a plan drawn at a scale of 1:5,000 highlighting the claimed route and 34 completed witness evidence forms.
- 7.2. The claimed route is located in the parish of Ashton Keynes, which lies to the north-west of Swindon and the south-east of Cirencester, forming a link between Footpath no.19 Ashton Keynes, (the Thames Path) and Rixon Gate, at Fridays Ham Lane. From the Thames Path there is a kissing gate structure which is now obstructed by wire and a large ditch dug parallel to the Thames Path. The claimed path leads generally north-east, east and north east, on a

line to the north of what is now known as Lake 82, to its junction with Fridays Ham Lane, where there is a kissing gate, wired shut alongside a padlocked 5 bar gate. It is understood that there was formerly a fenced path along this route and the landowner confirms that the access points on this path have been physically closed and wired up and the fencing removed.

7.3. The land over which the claimed route passes is in the private ownership of Mr Alvin Mark Lindley, who has owned this land since purchasing at auction on 12th March 2015. The land was previously owned by Aggregate Industries UK Ltd. The area of land was referred to as “Lake 82” in the sale particulars dated March 2015.

7.4. Wiltshire Council undertook an initial consultation regarding the proposals on 17th May 2017. The objections and representations received are included below:

- Alvin Lindley – Statement dated 11th August 2017:

“I, ALVIN MARK LINDLEY, OF FIRST FLOOR OFFICES, WIMBERLEY PARK, KNAPP LANE, BRIMSCOMBE, STROUD, GLOUCESTERSHIRE GL5 2TH DO SOLEMNLY AND SINCERELY DECLARE THAT:

1. I acquired the land to the south of Rixon Farm, Ashton Keynes, Wiltshire as more particularly described in the title plan WT265791 and referred to in AS LAKE 82 from Aggregate Industries UK Ltd at Public Auction on the 12th March 2015. The property was widely advertised and I understand many people from the local area requested particulars. I enclose a plan (Exhibit AL1) which was attached to the sale particulars which depicts the Public footpaths recorded on the Definitive Map and Statement at that time. I do not believe that there were any objections and or representations made to the either Aggregate Industries or the Agents Knight Frank either prior to the Auction or at the time of the Auction that

there were any concerns and or objections to the locations of PROW. In response to Standard Enquiries of a Local Authority a response dated 16th February 2015 was received from Wiltshire Council under reference N14/02788 and Highways reference N/06713 Public Rights of Way were described within answer 5.1 (Exhibit AL2) that is, Public Footpaths 19, 20 and 21 and Bridleway 38 (although I believe to be a mistype and should read 37) as further illustrated in the plan supplied (Exhibit AL3). There is no indication that there was any other recorded PROW's crossing the application site, despite the assertions of a number of the supporting statements accompanying the application.

Planning permission for the extraction of sand and gravel from the Land at Cleaveland Farm (incorporating the Rixon Land) and surrounding area was granted by Wiltshire County Council dated 26th March 1992 under reference N/89/2844 This permission also permitted the importation of limited inert infill (construction and demolition waste) to form new landscaped lake margins. Restoration was completed in 2004, with official confirmation of such detailed under a letter from the LPA dated 04/01/05. The planning permission has now therefore been fully complied with. Footpath 20 crossed the land as depicted on the attached plan (Exhibit AL4) and was formally stopped up on 20th November 1996 despite being shown as 25 October 1995. This was replaced with a new Footpath 20 to the south, although this was closed to the public during excavation and reinstatement; In detail, I understand that the original footpath no.20 Ashton Keynes was by a public path order (PPO) stopped up on 20th November 1996 and confirmed on 8th January 1997. The Definitive Map Modification Order (DMMO) followed on from the PPO, being made on 13th August 1997 amending the definitive map and statement of public rights of way to record the legal event changes as set out in the earlier PPO. Although in documentation to and from Aggregate Industries Wiltshire County Council Alan Harbour of 2nd March 2004 there is provided a plan which has reference to Footpath 21 and Footpath 20 both

being stopped up on 25th October 1995. It is important to mention this to bring clarity to the sworn declarations of Robert Westall, Aggregate Industries.

2. A statement in support of the proposed route has been submitted by a Michael Seymour (Exhibit AL5), stating among other matters that his family had owned the land in the past. I refer to (Exhibit AL6), being an extract of the sale conveyance dated 30th September 1974 upon which the original FP 20 is depicted upon the plans. This is to the south of the application site and was formally stopped up by application on 20th November 1996. A meeting was held on the 6th August 2014 between Tony Hudson, Estates Manager Aggregates Industries and Michael Seymour in his capacity as representative of Ashton Keynes Parish Council. An email (Exhibit AL7) was sent on the same day timed at 3.02 confirming the basis of the discussion and making it absolutely clear that the footpath now referred to in the Parish Council's application on the northern side of the lake was a permissive right of way. The Parish Council acknowledged that the footpath now subject to the current application was a permissive right of way and put forward their desire that the existing Footpath 20 being stopped up and the permissive footpath adopted as a public right of way. I am concerned that in the light of this knowledge; the Parish Council were aware that the footpath was permissive created in 2004, the Parish Council wished to have existing FP20 stopped up and for permissive right to be formally dedicated as a Public Right of Way, Michael Seymour was party to all information, that the Parish Council has made the application and encouraged others to put in user evidence forms which I comment on later in this statement. I consider it important that you are aware of these facts before making a decision.

3. There are several claims that the permissive right of way has been used for a period far in excess of when the fencing was erected in 2004. I

believe that their memory is confused with the original Footpath 20 stopped up in 1996. The footpath, as did the permissive footpath, crosses the land in a similar zig zag way meeting Rixon Gate in a similar position.

Further the attached photograph (Exhibit AL8) depicts the water filled quarry in June 1999. It is clear that during excavation and subsequent infill that the application footpath was not in existence, public access was not permitted due to the land being used as a quarry, nor as a consequence of the excavations and works to which not one of the statements refers would enable such access.

4. I have analysed the statements supplied by Rights of Way Wiltshire Council of those users supporting the application (Exhibit AL9).

Whilst I understand that the relevant period of use is an uninterrupted period of 20 years, out of the 35 representations there are four representations claiming over 15 years uninterrupted use. These are ref 3,6,33 and 34 of these ref 3 and 34 follow alternative routes to the application route and in any event all the statements include periods when the extraction and restoration was being undertaken, access was not physically possible. Further the fenced permissive route was not established until earliest 2004. It can only be concluded that these statements, either do not support the route as applied for, are inaccurate to the dates of use and should therefore be disregarded. There were ten statements supporting a use in excess of 20 years ref 8,12,14,17,21,22,26,27,31 and 32. One ref 14 does not show a route and should be disregarded for this reason alone. Statement ref 8,12,17 and 31 all refer to the route being moved north, the original footpath was south of the application site and once permanently closed in 1196 [1996] was moved further South. The users could not have utilised the footpaths during excavation and reinstatement and could only have walked the northern permissive right from 2004. All these statements should be

disregarded as clearly, they accept they have not walked the application during the period they state, either as it was in a different location, that is the original FP20 and or it was not possible until 2004. Statements ref 21 and 22 require the date of commencement confirming, however they do not support the application route neither do users 26 and 32. In any event the routes suggested again were not available until 2004. For these reasons, these statements should also be disregarded.

All supporting statements are inaccurate as to precise facts, in that they fail to acknowledge that the whole area was inaccessible due to excavation works and restoration works during the period 1997 to 2004, there is confusion as to the route each one walked, despite the permissive right being fenced. In addition, the fenced application route was neither in the year prior to or during my ownership from the 12th March 2015 to the 13th May 2015 maintained when signs were taken down by Stephen Leonard Public Rights of Way Officer for Wiltshire Council while attending the land to determine the location of FP20 which was then subsequently fenced in accordance with his requirements. The access points to the permissive right of way were physically closed and wired up by the end of May 2015. Again, the majority of supporting statements that support the application route state that the individuals walked the route into and including 2016, which was not physically possible.

5. The applicant was requested by Wiltshire Council to provide a more clear and detailed map as substitute for the application map (Exhibit AL10) to accompany and provide clarification to the application, despite several requests they have failed to do so. As the application lacks detail, it should be disregarded. The fenced route is shown on (Exhibit AL11) as can be seen from the aerial plan from 2006, although reference for FP 19, clearly shows the walked route which differs substantially from the application plan and majority of supporting statement plans.

6. A plan showing the extent of the Property edged in red is annexed to this declaration and marked (Exhibit AL12).

In essence I do not consider that users have made out a prima facie case for the following reasons:-

1. *It was physically impossible for the route to have been used when excavation and re-instatement was being undertaken*

2. *The user evidence is not reliable for the reasons set out above. I would respectfully suggest that the Council should not proceed to make a modification order and I make this statement believing the same to be true.”*

- Peter Gallagher, Footpaths and Walking Environment Officer Ramblers Swindon and North East Wiltshire Group – Correspondence dated 14th June 2017:

“I understand that some Ramblers members have used this footpath and I have asked them to contact you direct with any evidence of use which they may have.

I would draw to your attention that the leisure map published by the Cotswold Water Park Trust has shown this footpath as a public right of way since 2010 and continues to do so in the 2017 edition. A copy of the 2014 edition is enclosed. Note that permissive paths are shown in a different colour.

In addition, in recent years an official Wiltshire Council “public footpath” waymark was sited at the junction of the footpath with the Thames Path, pointing along the footpath in an easterly direction. It is therefore likely that the path will have been well used.”

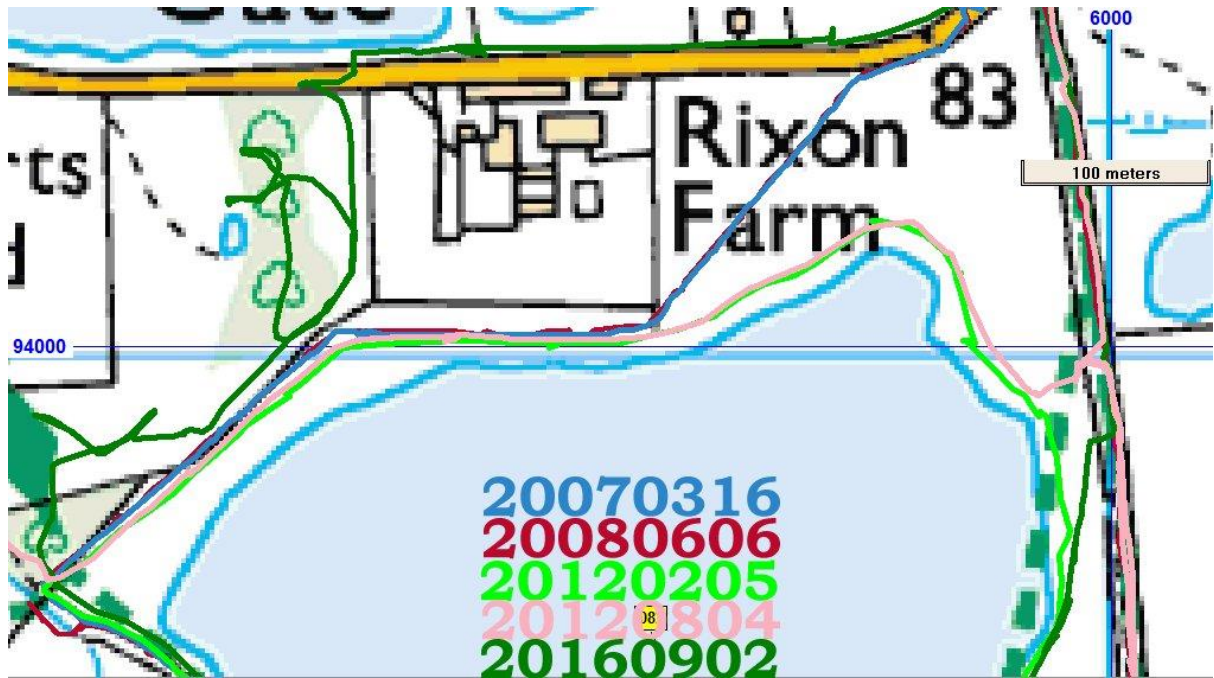


Cotswold Water Park Leisure Map

- Mr Richard Gosnell – E-mail correspondence dated 4th June 2017:

“Referring to the Ashton Keynes footpath by lake 82, email from Peter Gallagher, I attach a map showing coloured lines representing GPS tracks of walks we have done on the tow paths discussed. It shows we walked the path beside Rixon Gate farm twice (brown and blue tracks) and walked along the lake edge (light green and pink). The 2007 and 2008 walks were probably within the twin fence line. We walked the Rixon Gate route on some unrecorded journeys.

The GPS data is also available as “tracklogs” or GPX files if required.”



7.5. Where the claimed route links with Footpath no.19 Ashton Keynes, which forms part of the Thames Path, Natural England were consulted regarding the proposals as required by *The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12)*, but no representations were made by them.

8. Main Considerations for the Council

8.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, (excluding the borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.

8.2. The Wildlife and Countryside Act 1981 section 53(2)(b) applies:

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

(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 those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”

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

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

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

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

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

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

“Form of applications

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

The prescribed scale is included within the 1993 Regulations, which state that “A definitive map shall be on a scale of not less than 1/25,000.”

- 8.6. The application to add a right of way to the definitive map and statement of public rights of way in the Parish of Ashton Keynes, has been correctly made in the prescribed form, being accompanied by a map drawn at a scale of 1:1,500 and 34 completed witness evidence forms.
- 8.7. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:
 - “(1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it...*
 - (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

- (3) *Where the owner of the land over which any such way as aforesaid passes –*
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*
- the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*
- (a) a map of the land on a scale of not less than 6 inches to 1 mile and*

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

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

(i) within ten years from the date of deposit

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

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

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

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

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

- 8.8. Section 32 of the Highways Act 1980, states that the authority should consider a range of historical documents and their provenance in relation to the claim:

“Evidence of dedication of a way as highway

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

9. Documentary Evidence

- 9.1. As part of Wiltshire Council’s investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents, to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at **Appendix 1** to this report.
- 9.2. The route as claimed is not recorded on historical documents examined. The Leigh Inclosure Award dated 1767, and the Ashton Keynes Inclosure Award dated 1778, would normally be significant evidence where these documents arise from Acts of Parliament which gave the Inclosure Commissioners powers to set out highways both public and private, within the parish, including public footways. However, there are no maps included with these

awards and it is not possible to determine whether or not the claimed route was set out as a public footway. The Victoria County History suggests that the area in question may not even form part of these inclosure awards, where some of Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixonn at the east of the parish. Neither is the claimed route recorded on mapping post-inclosure. The parish claim map which arises from the National Parks and Access to the Countryside Act 1949 includes the former route of Footpath no.20 Ashton Keynes, (formally stopped up by order in 1996), rather than the application route.

- 9.3. Ordnance Survey (OS) maps, do not record the application route. OS maps prior to 1900, i.e. the 1885 6" map and the 1886 25" map, record a route further east of the application route, which does not accord with the former route of Footpath no.20 and after 1900, the 25" OS maps record the route of the former Footpath no.20, prior to its stopping up in 1996. On these two maps it can be seen that the claimed route and the former route of Footpath no.20 share a northern entry point onto Fridays Ham Lane at Rixon Gate, but they do not follow the same alignment, Footpath no.20 leading south to the Thames Path (path no.19 Ashton Keyes), over land which is now submerged as part of Lake 82.
- 9.4. There is not sufficient documentary evidence to support the existence of public rights over the claimed route at Rixon Gate, Ashton Keynes. However, this does not mean that public rights over the application route do not exist and we must now consider the available user evidence in this case.

10. User Evidence

- 10.1. The application is accompanied by 34 witness evidence forms with maps attached. A landowner evidence form has been submitted by the landowner Mr Alvin Lindley, with Exhibits attached. Mr Robert Westell, Senior Estates

Manager, Aggregate Industries UK Ltd, has also submitted a Statutory Declaration.

- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a way as a highway, presumed where a way over land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years. The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Bringing into question

- 10.3. In order to demonstrate a 20 year public user period, there must be a date upon which the use of the path by the public was brought into question.

- 10.4. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in Fairey v Southampton County Council [1956] and quotes him as follows:

"I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not,

their right is “brought into question” as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way.”

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

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

10.6. In the Ashton Keynes case witnesses claim to have ceased their user, as follows:

Date of cessation of user	Number of users
Present day	6
2016	21
2016 when it was closed off	1
Present 2016 until closure	1
Early 2016	1
Feb 2016	1
2015	2
2014	1
2012	1

10.7. 17 witnesses refer to the closure of the route when it was fenced off and no longer possible for users to walk the claimed route:

Witness	Date form completed	Comments regarding cessation of use
1	16/07/16	<i>“The new landowner has recently blocked off all access to the northern side of the lake (including the fenced in route detailed above)...”</i>
2	19/07/16	<i>“Last few weeks new owner has blocked path at both ends.”</i>

4	03/08/13	<i>"Footpath now closed up with dyke and barbed wire fence."</i> (Officers consider date of completion of the form is given as 2013 in error and it should read 2016, where the witness claims use of the path ending in 2016).
5	03/08/16	<i>"Footpath has been closed with fencing and barbed wire – Dyke has also been dug."</i>
9	13/08/16	<i>"Summer 2016 – access at Rixon Gate blocked with barbed wire."</i>
10	16/08/16	<i>"Fencing has been erected to prevent entry to the previous route."</i>
11	11/07/16	<i>"Swing gate Friday Ham Lane end now wired up. Barbed wire."</i>
16	18/07/16	<i>"Barbed wire and earth bank...Within the last 3 months...Gate, locked and barbed wired."</i>
20	07/07/16	<i>"Earlier this year the gate at the end was padlocked and barbed wire fencing put across. The west end gate is still there but a fence with 3 rows of barbed wire has been erected (see map) and a ditch dug preventing access."</i> Photographs provided of the <i>"Deep ditch and barbed wire fence preventing access to path"</i> and <i>"Gate at east end of path clearly blocked by barbed wire which is directly next to a public road."</i>
21	06/07/16	Confirms that use ended in May 2016, when the path was blocked – <i>"Path now blocked by a barbed wire fence and 5ft deep trench...the landowner has now dug a 5ft deep moat/trench and blocked the path with a dangerous triple strand barbed wire fence."</i>
23		Confirms that the path is now <i>"totally blocked by fence."</i>
24	23/07/16	<i>"Barriers have been erected ahead of new building work; including barring gate to main footpath to Rixon Gate...Now no longer possible to walk circuit of lake or join the main footpath to Rixon Gate."</i>
25	30/07/16	<i>"ditch and fence installed".</i>
30	08/08/16	<i>"Footpath now locked up with dyke and barbed wire fence."</i>
32	06/08/16	<i>"New owners have put barriers in place/ditch this year 2016 preventing use of previously established and well used footpath circling the lake on the northern side...Now manmade ditch and barbed wire fencing preventing access north side of lake...New owners of Rixon Farm have made access impossible to north side"</i>

		<i>of lake...Ditch/barriers just appeared! Preventing usage...Ditch/barriers clearly prevent access now."</i>
33	03/08/16	Confirms use from 2014 until <i>"Present 2016 until closure."</i>
34	04/08/16	Confirms use of the path from November 2014 until <i>"2016 when it was closed off...Access to the path around the lake have been fenced off with barbed wire."</i>

10.8. There is clear witness evidence of the closure of the claimed route in 2016, with fencing, barbed wire and a ditch, bringing the public right to use the way into question. The evidence of witnesses accords with that of the landowner Mr A Lindley who claims that when the location of Footpath no.20 was determined and fenced, the access points onto the claimed path *"...were physically closed and wired up..."* However, whilst the witnesses claim that the path was closed to the public around early summer 2016, Mr Lindley claims that action to close the path was taken by the end of May 2015 and that *"all supporting statements are inaccurate as to precise facts..."* and *"...statements that support the application route state that the individuals walked the route into and including 2016, which was not physically possible."* Mr Lindley claims that the path was closed when the route of Footpath no.20 was fenced and the Wiltshire Council Rights of Way Warden for the area was consulted and attended the site at this time, removing way markers from the claimed path at the same time.

10.9. The Rights of Way Warden for the area, Mr Stephen Leonard states: *"...my first meeting was on 13th May 2015 and I think that I removed the sign post on the claimed route then as well as some waymarkers. My next meeting was on the 26th November 2015 and I cannot recall what was discussed at the meeting but it could [to] [have been] about providing the definitive line of the ground."*

10.10. Whilst this supports the landowners recollection, the date of May 2015 is not supported by witnesses. In an e-mail to Wiltshire Council Customer Services at 09:12 on 30th April 2016, Mr R Nesbit writes:

“This is a follow up message following two phone calls from myself yesterday to Wiltshire Council.

It relates to the closure of a public footpath between the Thames footpath and Rixon Gate just south of Ashton Keynes. It lies between lake 83 in the Clevedon lakes and the sports grounds at Ashton Keynes. [Officers consider this to be a reference to Lake 82 rather than Lake 83].

Most of the posts and all of the wire marking the footpath have been taken down and the access gate at the Rixon gate end has been barbed wired up. The barbed wire was put up yesterday afternoon (Friday 29 April). I had used the path in the morning but it was closed when I returned at about 3:30pm. I did actually cut myself on the wire but that can wait to a later time. No notice was placed to advise of closure and I understand this is quite illegal though that might be subject to further action at a later date.

I rang the Council at about 9am to advise of the path being removed and again at about 3:30pm when I noticed the barbed wire. I was put through to the department following my morning call but I only got the answerphone. I left a message (and phone number) for someone to call back but no-one did.

In the afternoon I spoke to Matthew who advised he would get someone to look into it.

I have also been in contact with the Ramblers Society who are appointing a representative for the case.

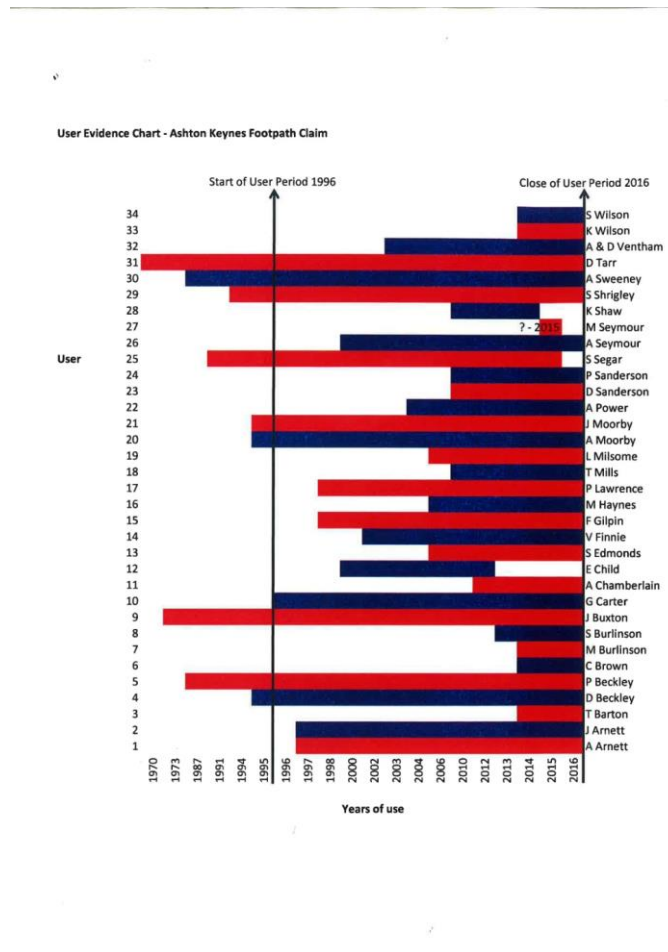
I understand that the owner of the land through which this path lies has applied for planning permission to build. I do however believe that the owner has no rights to arbitrarily close a public footpath and don't want to believe that Wiltshire Council would provide the authority for the owner to do so. I draw your attention to the Highways Legislation regarding Public Footpaths. To avoid confusion the path allows walkers to walk between the Thames Path (running between lakes 82 and 83) to Rixon Gate. To do so now I would have to use a public highway with no footpath."

10.11. Rights of Way Officers, Definitive Mapping Team, were consulted by the landowner Mr Lindley regarding the location of Footpath no.19 and Bridleway no.38 Ashton Keynes on 18th April 2016, for the purposes of fencing these routes. Definitive Map Officers, provided a response regarding the location of the paths to the Rights of Way Warden for the area on 22nd April 2016, following which it is understood that the Rights of Way Warden visited the site to advise on fencing the definitive lines. If the landowner is correct that access to the claimed route was fenced off at the same time the routes of the definitive Footpath 19 and Bridleway 38 were fenced, it would be possible to walk the claimed route until 30th April 2016, as evidence by Mr Nesbit above, who walked the footpath on the day it was closed and complained to the Council about the closure at this time. If the landowner did take action to close the path by the close of May 2015, it does not appear to have been sufficient to prevent use by the public or bring home to users that their right to use the path was being challenged. The user evidence does not support the closure of the path in 2015 and the public continued to use the route until April 2016. If the path had been closed in 2015, Officers would expect the definitive map modification order application to be received sooner, given the local interest in the path. As Mr J Arnett states in his evidence form: *"Path has been in use by villagers for over 20 years. It is signed as Wilts County Footpath, so everyone assumed it was a protected right of way, or would have applied earlier."*

10.12. Additionally, at around the same time the claimed footpath was closed to the public, the new landowner Mr Alvin Lindley, completed a “Form CA16” which is an “Application Form for deposits under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006”, on 28th April 2016. The deposition of this form with Wiltshire Council, with a map of all the public rights of way which the landowner acknowledges to exist over the land in their ownership, serves to negate the landowner’s intention to dedicate further public rights of way over the land, thereby bringing public use of the way into question. Therefore, additional public rights of way cannot be based on 20 years public user after that date, nor does it prevent a claim based on 20 years user prior to that date. In order to be effective, the landowner should submit a statutory declaration at the same time as the initial form CA16, and then at 20 year intervals after that, to continue the effect of the non-intention to dedicate. In this case the landowner has not submitted a statutory declaration with the map and statement, which cannot be relied upon alone to negate the landowners intention. However, in this case, the CA16 form is submitted on 28th April, just before the closure of the public on 30th April 2016, (as evidenced by Mr R Nesbit), and where these dates coincide, the user period in question can therefore be calculated retrospectively from April 1996 – April 2016.

Twenty Year User

10.13. Please see chart below which shows the dates and level of user outlined within the 34 witness evidence forms:



10.14. For the user period in question, i.e. 1996 – 2016, of the 34 user evidence forms submitted, (Mr and Mrs Ventham have completed a witness evidence form jointly and are counted as one), all witnesses claim to have used a route around Lake 82, Ashton Keynes during this time period, although 3 of these witnesses have not used any part of the claimed route, or not recorded a route in their witness evidence map. 9 of these witnesses claim to have used the route for the full period of 20 years 1996 – 2016, although one of these witnesses has not indicated the route which they have used in their witness evidence form. The routes which witnesses have used in the vicinity of Lake 82, vary and are examined in more detail at paragraphs 10.48–10.58).

10.15. In addition to their own use, 33 witnesses refer to seeing others using a route around Lake 82 during their period of user, and comment as follows:

User	Others path users seen	Comments
1	Yes	Have regularly seen at least one other person using the route and many times have seen several others.
2	Yes	Regularly meet people.
3	No	
4	Yes	Walkers (usually with dogs).
5	Yes	Regular route for dog walkers and general public – Very well used!!
6	Yes	Several people every walk.
7	Yes	Walking.
8	Yes	Occasional dog walkers.
9	Yes	Lots of village people and visitors use this path. It is a safe route for families with children, especially the section following the route (roughly parallel with Rixon Gate). This latter point has been a crucial safety issue for me walking this path as a child and now with my child. We also use this route for watching wildlife. Earlier this year a rare bird (Great Northern Diver) was resident on the lake (2016). Many wildlife enthusiasts and visitors came to see this. Over the years there have been similar events. In the past 1990's – 2002 rare Plovers bred here. Wildlife enthusiasts could observe safely from this path.
10	Yes	Local dog walkers.
11	Yes	Walking.
12	Yes	Walkers.
13	Yes	Lots of people walk their dogs around it.
14	Yes	A community of regular walkers mostly from local area, but some from other areas arrive by car (either parking in Waterhay, Fridays Ham Lane or in Ashton).
15	Yes	Used extensively by the likes of Ramblers and walkers, but most use by people of local towns, villages, i.e. Ashton Keynes and from Cricklade via Waterhay Car Park.
16	Yes	
17	Yes	Other walkers.
18	Yes	People regularly walking their dogs or running.
19	Yes	On most occasions when I used this route.
20	Yes	Frequently.
21	Yes	Other people walking dogs, trekking etc. from Waterhay car park and the village of Ashton Keynes.
22	Yes	
23	Yes	Every time I have walked this path I have always met other walkers/dog walkers. Also often used by Thames Path walkers.

24	Yes	The route is used regularly by walkers (usually with dogs), birdwatchers.
25	Yes	Historically used by dog walkers and local residents of the village.
26	Yes	All the time for walking.
27	Yes	Many times – walking.
28	Yes	Walking and walking their dog.
29	Yes	Many walkers with and without dogs over this period.
30	Yes	Village walkers.
31	Yes	Many people use the path as it's a good point to watch the lake wild fowl and birds in trees.
32	Yes	Always, Ramblers, people walking their dogs, people watching birds, the odd fisherman too.
33	Yes	The route is (was) used regularly for personal exercise and residents walking their dogs and by visitors to the area.
34	Yes	Many villagers use the route around the lake regularly.

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

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

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

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

10.17. The majority of witnesses are resident of Ashton Keynes, (one user, Mr C Brown, lives in Cricklade and 2 user evidence forms have address information removed), however use wholly or largely by local people may be sufficient to show use by the public. The Planning Inspectorate's Definitive Map Orders: Consistency Guidelines, make reference to R v Southampton (Inhabitants) 1887, in which Coleridge L J stated that:

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

10.18. Officers conclude that on the face of it there is sufficient evidence to support, on the balance of probabilities, public user for a period of 20 years or more without interruption and that this level of user during the relevant 20 year period of 1996 – 2016, was sufficient to bring home to the landowners that a right for the public was being asserted against them. The routes which the public have used are considered later in this report.

As of Right

10.19. In order to establish a right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission. In conclusion, Officers are satisfied that public use of the claimed route has been “as of right”, as follows:

Without Force

10.20. In the Planning Inspectorate publication “Definitive Map Orders: Consistency Guidelines”, it states that *“Force would include the breaking of locks, cutting or wire or passing over, through or around an intentional blockage such as a locked gate.”*

10.21. From the evidence provided in the Ashton Keynes case, it would appear that users did not use force to enter the land over which the claimed route passes, where a fenced route with gates, was provided. 11 witnesses confirm that there were two gates in place, one at each end of the claimed route. Mr J Arnett and Mr J Moorby confirm that these were kissing gates whilst other users simply refer to these as “gates”. Mr D Buckley refers to a kissing gate at the northern end and Mr A Chamberlain refers to a swing gate at the Fridays Ham Lane end. Mr P Beckley, Mr S Segar, Mrs A Sweeney and Mr and Mrs Ventham refer to a kissing gate or lytch/swing gate at the western end. Mr C Brown, Mr F Gilpin, Mrs D Sanderson and Mr P Sanderson refer to a gate at the western end. 2 witnesses refer simply to a gate, but give no indication of the location of this gate. Mrs J Buxton and Mr D Tarr confirm that there were stiles at each end of the path.

10.22. The witness evidence suggests that these gates were not locked and these features were added approximately 20/30 years ago when the path was moved. The existence of the southern gate is supported by the Cotswold Water Park Leisure Map, which records the claimed route, (2014, 2016 and undated c.2017 (Cotswold Water Park Walking and Cycling Map) editions), as a footpath with one stile/kissing gate/bridge/steps at the southern end of the claimed route, at its junction with Footpath no.19 Ashton Keynes, (Thames Path). Additionally, kissing gates remain in place at either end the path, (i.e. at the junction with the Thames Path and at Rixon Gate), although they have been wired shut, and the remnants of the fencing may be seen at each end. This supports the evidence given by 11 witnesses who refer to two gates.

10.23. There is no evidence that the route was blocked until 2016, as Mr and Mrs Ventham advise: *“New owners have put barriers in place/ditch this year 2016 preventing use of previously established and well used footpath circling the lake on the northern side.”* Mrs Moorby states: *“Earlier this year [user evidence form completed 7th July 2016] the Gate at the East end was padlocked and barbed wire put across. The West end Gate is still there bit a*

fence with 3 rows of barbed wire has been erected...and a ditch dug preventing access.” Therefore there was no requirement for users to enter the route by force, prior to 2016.

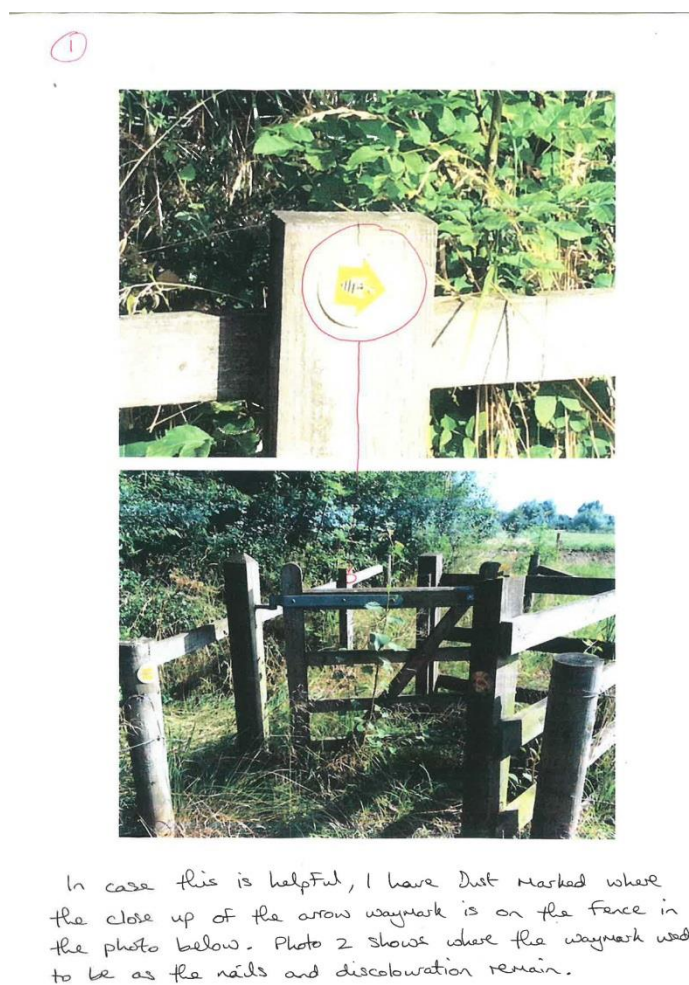
10.24. Use by force, does not include only physical force but may also apply where use is deemed contentious, for example by erecting prohibitory signs or notices in relation to the user in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman Law, where the expression originated, in the relevant contexts vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.25. In the Ashton Keynes case there is no evidence before the Council that prohibitory notices have ever been erected on the claimed route and the public have not been prevented from using the way, or otherwise challenged whilst using the way, prior to the obstruction of the route by fencing and a ditch in 2016 and therefore use is not deemed contentious. In his letter dated 14th June 2017, the local Ramblers representative states *“...in recent years an official Wiltshire Council “public footpath” waymark was sited at the junction of this footpath with the Thames Path, pointing along the footpath in an easterly direction. It is therefore likely that the path will have been well used.”* 13 witnesses refer to Wiltshire County Council waymarking discs present on the entrances to the claimed route. There is photographic evidence of these waymarkers provided by Mr J Arnett, P Lawrence and Mrs A Moorby. The photographs provided by P Lawrence clearly show a waymarking disc with a yellow arrow, which states:

**“WILTSHIRE COUNTY COUNCIL
PUBLIC FOOTPATH”**

10.26. Ms Lawrence has also provided photographs of these waymarking discs in-situ on the claimed route, i.e. on the kissing gate and fence at the junction of the claimed route with the Thames Path, (please see photographs below).



10.27. The locations for these photographs can be identified and referenced to the kissing gate and fencing which remains on site at the southern end of the claimed route, (please see photographs at 5 taken by Officers on a site visit in January 2018). The photographic evidence provided by Ms Lawrence is supported by the photographic evidence provided by Mr Arnett and Mrs

Moorby, (different photographs taken at the same locations), showing the waymarks in-situ. In a previous e-mail dated 25th November 2015, to Mr Seymour of Ashton Keynes Parish Council, Mrs Veronica Hourihane submits similar photographs of the route, with waymarks in-situ at the southern end. She states *“Please find attached the pictures I took this morning which show that the footpath in question had been identified by Wiltshire Council as a public footpath.”* The landowner states that the footpath was closed by the end of May 2015, however the photographs show that it was still signed as a footpath and the gate at the southern end was still available in November 2015.

10.28. Ms Lawrence has also provided a photograph at the same location after the waymarks have been removed, showing the circular outline of the disc. These photographs are referred to as being taken *“recently”*, in a letter from Ms Lawrence dated 19th February 2018, (please see below):



10.29. Additionally, Mrs Moorby and Mrs Hourihane have provided photographs of a waymarking disc now removed or detached, at the northern end of the path. This can be dated from Mrs Hourihane's photograph with her e-mail to Mr Mike Seymour dated 25th November 2015, in which she states, *“Please find*

attached the pictures which I took this morning...The sign at the Rixon Gate “entrance” has been badly damaged, but there is evidence that a similar signage to that from the Thames Path had been placed there at some point.”

The waymarking sign at the northern end was removed before November 2015, which accords with the Rights of Way Warden’s recollection that he had a first meeting on site with the landowner Mr A Lindley on 13th May 2015 and believes that he removed the signpost from the claimed route, as well as some way markers, at this time. The photograph shows that this end of the path is somewhat overgrown by November 2015, but the gate is not wired shut and closed to the public at this time.



Photograph taken by Mrs V Hourihane, dated 25th November 2015, showing damaged sign at Rixon Gate end. The gate is overgrown, but is not wired shut at this time.

10.30. Mrs Moorby photographed the same area in July 2016, (please see photograph attached below). The gate is now wired shut and the remnants of the waymarking disc are still visible. On a site visit in January 2018, Officers also photographed the same, (see photograph attached below). Although there are no photographs provided in evidence of a waymarking disc in-situ at this location, the photographs suggest a circular sign which gives an indication that there was a waymarking disc present at this end of the path, which supports the witness evidence.



Gate at East End of path clearly blocked by barbed wire which is directly next to a public road.

Photograph and comments from Mrs A Moorby – the kissing gate at the eastern end of the path, now wired shut (photographs provided with witness evidence form dated 7th July 2016), and waymarker disc “now removed or fallen off”.



The Rixon Gate end of the claimed route, former kissing gate access, now wired shut, with remnants of waymarking disc. Photograph taken by Janice Green, Rights of Way Officer, January 2018.

10.31. Mrs A Arnett refers to a redundant warning sign relating to gravel extraction work by the gate at the end of the route, (still present), however, no further evidence of the wording of these signs is provided and they are not referred to by other witnesses, therefore user of the claimed route is not considered to be user by force in this regard.

Without Secrecy

10.32. It would appear that witnesses used the route in an open manner:

Witness	Has anyone ever told you the application route was not public (including by an owner, tenant of the land or by anyone in their employment)	Have you ever been stopped or turned back when using the application route	Has anyone else ever told you that they were prevented from using the application route
1	No	No	No
2	Yes – Last few weeks, new owner	Yes – Last few weeks, new owner	Yes – only last few weeks by new landowner
3	No	No	Yes – A friend was told off

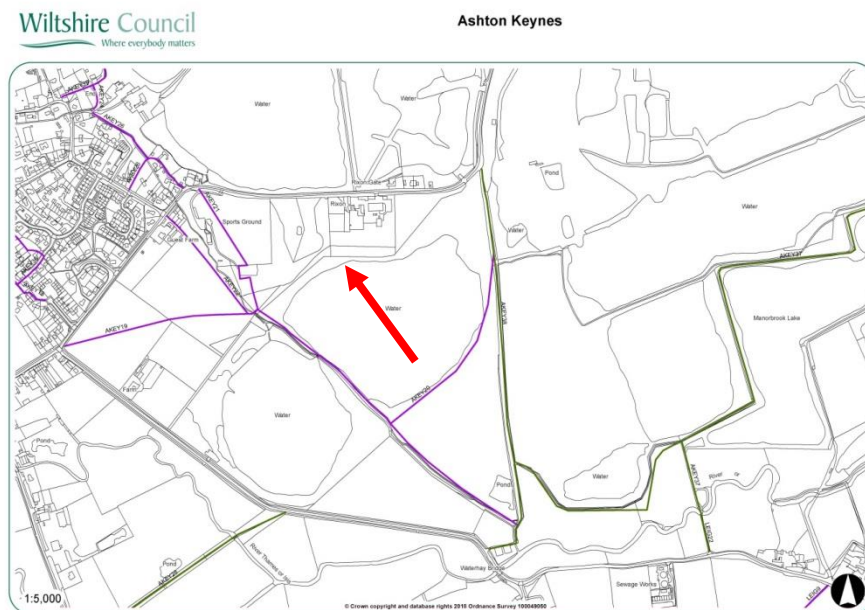
			by the present owner
4	No	No	No
5	No	No	No
6	No	No	No
7	No	No	No
8	No	No	No
9	No	Yes – Summer 2016 – Access at Rixon Gate blocked with barbed wire	Yes – Other walkers – Summer 2016
10	No		Yes – Fellow local dog walkers
11 (Old style witness evidence form)	Do you believe the owner or occupier was aware of the public using the way? You would assume so but have never spoke to anyone so I don't know		
12 (Old style witness evidence form)	Do you believe the owner or occupier was aware of the public using the way? Yes		
13	No	No	No
14	No	No	No
15	No	No	No
16	No	No	Yes – A fellow dog walker – not previously stopped
17	No	No	No
18	No	No	No
19	No	No	No
20 (Old style witness evidence form)	I talked to a man who said he was from the Council who said this path was only 'permissive'. I do not believe this is the case. The Cotswold Leisure map marks this path and labels it as 'footpath' see enclosed, as do Wilts CC discs. Do you believe the		

	<p>owner/occupier was aware of the public using the way?</p> <p>Yes – I believe the gentleman with the man from the Council mentioned above was the owner and so privy to this conversation. He was also present at a public meeting about the proposed development of this land and so assume he is aware. Also enclosure of an old path at the south side of lake 82 by an aggressive fence with 3 rows of barbed wire, implies that the owner has locked in paths across his land.</p>		
21 (Old style witness evidence form)	<p>Do you believe the owner or occupier was aware of the public using the way?</p> <p>Yes – His actions since the purchase of the land, the route marked on the Cotswold Water Park Leisure Map. The reinstatement of the old path (now through a bog) on reclaimed land the southern route is dangerous, was not used due to ground condition and rerouted in the 1990's as the land cleared, dug up and used for gravel extraction for a number of years. The restored land is now waterlogged for most of the year and unsuitable for walking without waders.</p>		
22	No	No	No
23	No	No	Yes – this has only happened in last 6 months. Dog walkers using the path

			told by landlord or representative
24	No	No	Yes – During the last month I have been told that walkers have been told they could no longer use the route
25	No	No	No
26 (Old style witness evidence form)	Do you believe the owner or occupier was aware of the public using the way? There has never been any notice put up saying it is not a footpath. It is a footpath used well.		
27 (Old style witness evidence form)	Do you believe the owner or occupier was aware of the public using the way? Yes – Because it was a F/P and no notices have ever been put up to say anything different		
28 (Old style witness evidence form)	Do you believe the owner or occupier was aware of the public using the way? The fence was pushed down then moved aside plus the footpath was well defined it had been well used and trodden down		
29	No	No	No
30	No	No	No
31	No	No	No – Only very recently when action was taken to close the path
32	No – Ditch/Barriers just appeared! Preventing usage	No – Not by a person but Ditch/Barriers clearly prevented access now	Yes – Common knowledge in the village that has been recently changed to prevent use of public footpath since new owners of Rixon Farm 2016 have taken ownership

33	No reply		
34	No reply		

10.33. Ms J Buxton states that this path is on the “Definition Map” for this area and Mr D Tarr confirms that the path is marked on the Definitive map for the area (Wiltshire Council website). The claimed route is not recorded on the definitive map and statement as a public right of way, which would make landowners aware of the existence of a public right of way and the need to make the path open and available for public use, please see extract below (working copy):



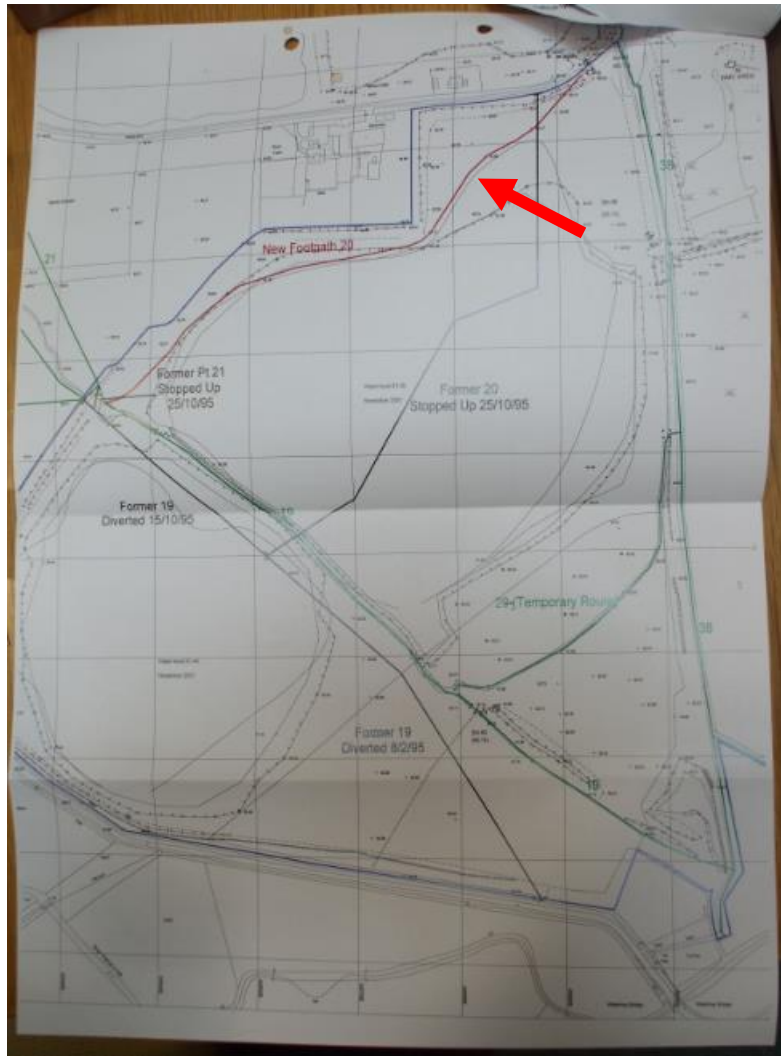
10.34. However, the route is recorded within the Cotswold Water Park Leisure Map, see 2014 edition at 7.4., which may have brought the path to the attention of the landowners, (the path is also included in the 2016 edition of this map). Mr Peter Gallagher on behalf of the Ramblers, states that this path has appeared as a public right of way in this document since 2010 and continues to be shown in the 2017 edition. “Permissive Paths”, which are open to the public only at the discretion of the landowners, are shown in yellow on these maps where “Footpaths” are shown in red, as the application route is. Although the objector contends that the path is “permissive”, this document does not support this view and additionally, there is evidence that the application route was provided as a fenced route which was waymarked as a public right of

way. It would appear that the present landowner was aware of use of the path by the public, in order to allow him to challenge that user, as evidenced by witnesses and take action to close the path, although his period of ownership commences in 2015 only.

10.35. The witnesses do not mention whether or not the previous landowners Aggregate Industries UK Ltd were aware of public use of the path, however Officers believe that the fenced path with kissing gates and Wiltshire County Council waymarkers, was installed during their period of ownership and they would have been aware of public use of the path. In correspondence to Mr A Harbour, Rights of Way Officer at Wiltshire Council, dated 18th February 2004, Mr R N Westall, Estates Surveyor for Aggregate Industries UK Ltd, states:

*“FOOTPATH No.20, RIXON LAKES, ASHTON KEYNES, WILTSHIRE
In 1995, this Company diverted the original footpath 20 to an alternative route (dark green on the attached plan), while sand and gravel extraction was being carried out. The diversion route was a temporary measure until a new path could be created around the northern and western margins of the newly created lake. I write to inform you that the new footpath 20 (red in the attached plan) has now been installed and is connected to Fridays Ham Lane and the Thames Path (footpath 19).*

I understand from historical correspondence held on our files that we now need to formally dedicate the new route, replacing the temporary diversion route. Could you please advise how this may be dealt with and furnish me with any forms, which need to be completed.”



The plan included with the letter from Aggregate Industries, shows the fenced and gated path provided by Aggregate Industries, in red, as referred to in the letter, (the claimed route), intended to be an alternative route for Footpath no.20.

10.36. The letter suggests that Aggregate Industries UK Ltd, as the previous landowners, installed the path and were aware of public user. If the previous landowner had wished to challenge public user, it was not required to make the claimed route available. The action of installing the fenced, waymarked route with kissing gate access, is against a non-intention to dedicate public rights over their land and appears to dedicate the route. There is no evidence that the previous landowners took any action to challenge this user.

10.37. In evidence “*Statutory Declaration of Robert Nigel Westell Relating to Land to the South of Rixon Farm, Ashton Keynes, Wiltshire as More Particularly Described in Title Plan WT265791*”, Mr Westell confirms that he has been employed by Aggregate Industries UK since June 1999, as Estates Surveyor and from the commencement of his employment to November 2008, he was involved with and latterly managed the landholding at Cleveland Farm Quarry, Ashton Keynes, (the claimed route being installed in 2004). He visited the site on average twice a month for various purposes including site meetings with internal and external stakeholders, site inspections and other community relations tasks. His knowledge of the site during that time was quite extensive. Since 2008, being promoted to Estates Manager for the South East of England, he ceased visiting the site regularly, but still periodically visits what remains of the company’s landholdings at Cleveland Farm.

10.38. The frequency of user was such that it should have been clear to the former landowners, Aggregate Industries UK Ltd, particularly where Mr Westell was visiting the site at least twice a month between 1999 and 2008, that the public were using the path and where Aggregate Industries installed a fenced path, with kissing gates and footpath waymarkers in 2004, given that many witnesses used the path daily or weekly:

	Daily	Weekly	Monthly	Every few months	Once a Year	Other
On foot	14	13	4	2	0	Most days 5 times per week Sometimes twice daily 3-4 times per week 3 times a week Twice a week Possibly 12 or more times per year About 4-5 time a year
On horseback	0	0	0	0	0	N/A
By pedal cycle	0	0	0	0	0	N/A

By car	0	0	0	0	0	N/A
--------	---	---	---	---	---	-----

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

“...is concerning himself, as the English theory required with how the matter would have appeared to the owner of the land. The user by the public must have been, as Parke B said in relation to private rights of way in Bright v Walker 1 CM and R211, 219, ‘openly and in a manner that a person rightfully entitled would have used it.’ The presumption arises, as Fry J said of prescription generally in Dalton v Angus and Co App Cass 770, 773, from acquiescence.”

10.40. Overall, Officers consider on the balance of probabilities that if members of the public had used the claimed route, at the levels and frequency suggested by the evidence, it is likely that the landowners would have been aware of use and had opportunity to challenge this use, had they wished to do so. The new landowner, Mr Alvin Lindley, challenged the public use upon taking ownership of the land, by removing and closing access to the gated and fenced route in 2016.

Without Permission

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

“...the legal meaning of the expression “as of right” is somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried out as if it were by right – hence “as of right.”

10.42. Therefore, where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner. As Lord Neuberger states in the Barkas case, the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

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

10.43. The landowner in evidence considers that the claimed route is a permissive path which was created in 2004 and submits evidence in support of this claim, in an e-mail from Tony Hudson, Estates Manager, Aggregate Industries (the landowners at that time), to Mr Michael Seymour of Ashton Keynes Parish Council, dated 6th August 2014, entitled “Rixon Lakes – Public Right of Way

and Permissive Footpath". The e-mail follows up a meeting between Mr Hudson and Mr Seymour earlier that day and the Ashton Keynes Parish Council request to have the fenced route formerly recorded as a public right of way as a new Footpath 20, with the stopping up of the former route of Footpath no.20 south of Lake 82. The claimed route is consistently referred to within this e-mail as the "*Permissive Path*". Mr Hudson states:

"The original Footpath 20 was stopped up in 25/10/95 and diverted to the south of the main lake. In 2004 AI [Aggregate Industries] wrote to Wiltshire Council to seek clarification on the process for dedicating the New Footpath 20 (i.e. the current fenced permissive path) as the formal permanent footpath. WC responded in March 2004 and provided a plan illustrating the routes that they suggested needed to be stopped up in order for the New Footpath 20 to be adopted as the PROW. As I understand it, no such application forms were ever submitted. The fenced pathway is therefore classed as a permissive pathway only. I have checked this with both WC's online PROW mapping service and through liaison with Barbara Burke at WC. It is clear on the definitive maps that the Thames Path and Footpath 20 (to the south of the Lake) are the only two adopted RoW at the property.

You stated that the Parish Council would wish to see the fenced permissive pathway adopted as Footpath 20, with the current Footpath 20 bordering the southern margins of the lake stopped up altogether. If the property wasn't being marketed and AI had time to make such an application (and be sure of a successful outcome in time for any sale completion) then the company would be happy in principle to submit such an application. Unfortunately, time is not on our side and as such I cannot provide complete comfort to you as to a future purchaser's requirements or preference over a right of way."

10.44. Although the claimed route, the fenced and waymarked path, is referred to within this e-mail as a "*permissive path*", the treatment of the footpath on the ground is not consistent with a "*permissive*" path, i.e. the inclusion of Wiltshire

County Council “*Public Footpath*” waymarking discs. If it was not the landowners intention to dedicate this route as a public right of way, there is no evidence that they erected permissive path notices on the path, or closed the path at any time, to bring to the attention of the public using the way, that their right to use the way was with the permission of the landowners which could be revoked at any time. Nor did Aggregate Industries at that time deposit with Wiltshire Council a statement and plan, with subsequent statutory declarations under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate public rights over the claimed path. As Mrs A Moorby states in evidence, “*permission is implied by the discs and local maps.*” Many of the witnesses consider that they did not need permission to use the path, where it was a public footpath and waymarked as such.

10.45. The witnesses provide the following evidence regarding permission:

Witness	Have you ever had a private right to use the application route	Were you working for the owner or occupier of the land crossed by the application route at the time when you used it, or were you a tenant / licensee of any such owner?	Did the owner or occupier ever give you permission (or did you seek permission) to use the application route?
1	No	No	No
2	No	No	No
3	No	No	No
4	No	No	No
5	No	No	No
6	No	No	No
7	No	No	No
8	No	No	No
9	No	No	No
10	No	No	No
11		No	No – Public Footpath
12		No	No
13	No	No	No
14	No	No	No

f15	No	No	No – No need as signs showed way to go as they do on footpaths. Little acorn type signs pointing the way.
16	No – Not needed – public right of way	No	No – Not needed
17	No	No	N/A
18	No	N/A	No
19	No	No	No
20		No	Not specifically, permission is implied by the discs and local maps
21		No	N/A
22	No	No	No
23	No	No	No
24	No	No	No
25	No	No	No
26		No	It is a footpath, a right of public way known and recorded as Footpath 20
27		Yes – My Grandfather owned the land. I lived with him and worked the land 1959-1963. I also worked for Aggregate Industries 1963 until retirement. No instructions given from them as to the use of the way by the public. Before Aggregate Industries owned the land it belonged to my Grandfather. When he died it was left to my uncle who sold it to Aggregate Industries.	The way is F/P 20. You have every right to walk it
28		No	No
29	No	No	No
30	No	No	No
31	No	No	No
32	No – was always simply a	N/A	No – no need when clearly

	public footpath as indicated by markers on wooden kissing gate		marked as a public footpath
33	No	No	
34		No	

10.46. Mr M Seymour (user 27) states that the land was previously owned by his grandfather and he himself worked the land between 1959 and 1963. Mr Seymour then worked for Aggregate Industries, the subsequent landowner from 1963 until his retirement. Although Mr Seymour gives no dates for the sale of the land or his retirement, the Victoria County History, (2011), (please see details at Appendix 1, Historical Evidence Summary), states that between 1920 and 1924 Rixon Farm was passed to Aubrey Seymour, who was succeeded by his son Arthur in 1967, who sold most of the farm to E H Bradley & Sons Ltd, (a Swindon based gravel working company), and 18 acres to Moreton C. Cullimore Gravels Ltd. in around 1970. Mr Seymour states only that he last used the route in December 2015 and does not give dates of when his user began. It is possible that for part of his user period, he was either working the land in the ownership of his grandfather or working for Aggregate Industries, which may be implied permission to use the way. Even if Mr Seymour's evidence is removed where it is possibly by implied permission, all other users, (other than two users who do not reply to this question), claim to have used the path without permission. Mr Seymour does reveal that when he worked for Aggregate Industries, no instructions were given by them regarding use of the way by the public.

10.47. The evidence supports public use of the claimed route without permission.

The Claimed Route

10.48. It is not clear from the application map whether or not the fenced route is the claimed route, or an alternative route between the edge of Lake 82 and the field boundary parallel to this route, (please see application plan at 4 (first

plan), showing the claimed route in orange) and Officer's now consider the routes which witnesses claim to have used. Additionally the application plan does not show the path having a connection with Fridays Ham Lane, at Rixon Gate, at its northern end, however witnesses do make reference to the path between the Thames Path, (at its southern end), and Rixon Gate and Officer's are satisfied that on the balance of probabilities the used path connected with Friday's Ham Lane at its northern end. The witness evidence maps showing the route linking with public highways, is supported by the presence of kissing gates at both ends and aerial photography showing the fenced route in 2005/06, at 10.56, linking with Fridays Ham Lane.

10.49. A number of the witnesses refer to this path as Footpath 20 and refer to it being moved to the north side of Lake 82 some 20 – 30 years ago. Where the landowner supports that the claimed route is a permissive route created and fenced in 2004, there are several claims that the path was walked far in excess of the path being created and fenced in 2004, for which he considers *"...that their memory is confused with the original Footpath 20 stopped up in 1996. This footpath, as did the permissive footpath, crosses the land in a similar zig-zag way meeting Rixon Gate in a similar position."*

10.50. The history of the site is as follows:

- 1) 1992 – Planning permission granted for mineral extraction at the site, Cleveland Farm, Ashton Keynes, (Planning Application no. N/89/02844/FUL), including the extraction of 4,190,000 tonnes of sand and gravel, the progressive reinstatement of the site to land and lakes suitable for active and passive recreation and nature conservation, inert fill and materials imported to create the final landform. Extraction planned for 8-10 years with extraction scheduled to start in 1991 and restoration completed by 2005. Topsoil bunds to be constructed as an initial operation and in any phase which abuts onto a public route or

adjoins private properties. Such bunds to be 3m high, with an outer slope of 1 in 2 and an inner slope of 1 in 1.5.

The design statement considers four public footpaths over the site which would require diversion if planning permission is granted. *“Rixon Farm. The east-west path (F.P.19) would require a temporary diversion and would be reinstated between two lakes. The north-south path (F.P.20) from Rixon Gate would need to be diverted and a permanent one routing alongside the recently formed bridleway is suggested.”*

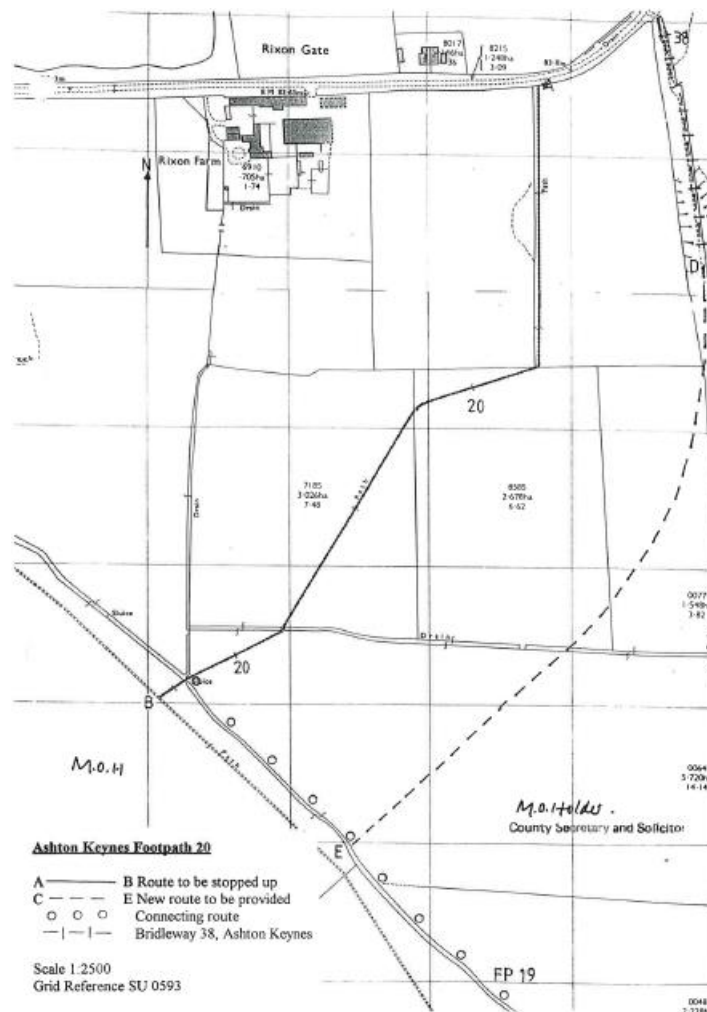
The following restoration is indicated: *“Rixon Gate. This would be restored as a lake area, with water based recreation as the possible after-use. Lake margins would typically be as shown on Fig.3 Section C. [It has not been possible to locate this drawing].*

Rixon Farm. This area would be restored as two lakes, Rixon ‘A’ for club fishing, and Rixon ‘B’ as a waterfowl and nature reserve. The lakes would allow Footpath no.19 to be re-established close to its original route. Part of the land to the south would be returned to agriculture. The levels are shown on the Restoration Plan (Drawing no/291/13) and would be similar to the pre-existing levels at the boundary, with a slight dome to the centre to assist drainage.”

There is no reference within the planning application or the permission to the provision of a footpath to the north of the lake, once the restoration works take place.

- 2) 1996 - Footpath no.20 Ashton Keynes, from its junction with the Thames Path, leading in a generally north-east and then northerly direction over the land now known as Lake 82, (following the restoration of the extraction site), to Rixon Gate, stopped under Section 257 of the Town and Country Planning Act 1990, to allow extraction of sand and gravel, for which planning permission is granted, to be

carried out. The order includes provision for an alternative route of Footpath no.20, south of what is now known as Lake 82, between the Thames Path (Footpath 19) and Fridays Ham Lane (Bridleway no.38), as shown on the order plan below. A definitive map modification order is subsequently made in 1997 to amend the definitive map and statement of public rights of way accordingly, following the confirmation of the stopping up order.



1996 – Stopping up order plan, diverting Footpath no.20 on its line A – B, and the provision of an alternative route D – E, south of the extraction works.

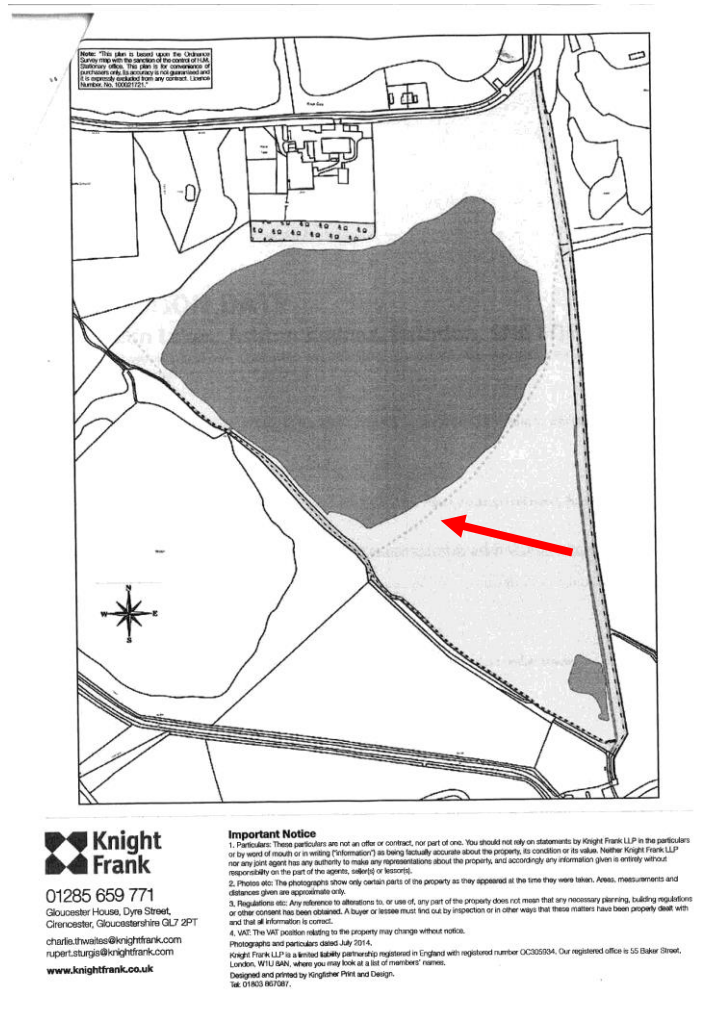
- 3) The new route of Footpath no.20, as created by order in 1996, is temporarily diverted, whilst the extraction works take place, to a new

route between the Thames Path and Fridays Ham Lane further south, however, Officers have been unable to locate details of a temporary diversion order.

- 4) 2004 – The gravel and sand extraction works completed and the site restored with the inclusion of Lake 82. The claimed route is installed as a fenced path, north of Lake 82. Mr R N Westall writes to Wiltshire Council, on behalf of Aggregate Industries, on 18th February 2004, (please see paragraph 10.35), to confirm that the path has been installed and it is their intention to formally dedicate the new route, (however this never occurred and the claimed route was never added to the definitive map and statement of public rights of way and the former route (south of the lake), which now forms the definitive line, was not extinguished). The claimed route is fenced at a width of 1.4 metres, (the width of the remaining fencing at the northern end of the path, has been measured at 1.4 metres and the landowner has confirmed that the route was fenced at a consistent width throughout its length), with kissing gates at both ends, i.e. at its junction with Rixon Gate and the Thames Path junction, and footpath waymarker discs at each end. The present landowner agrees that there was a fenced footpath physically available on the ground. Although witnesses consider the application route to be an alternative route for Footpath no.20, it has never been formally recognised by legal order to record it as such within the definitive map and statement of public rights of way.

- 5) 2015 – The present landowner Mr Alvin Lindley purchases the property on 12th March 2015. The sale particulars correctly record the position of Footpath no.20 Ashton Keynes, as the route created by order in 1996, (please see plan included with sale particulars below), but does not include the line of the fenced route, (the application route), where this path is not a definitive footpath recorded on the definitive map. Mr Lindley, during his period of ownership, removes the fencing for the

majority of the route, wires shut the kissing gates at each end of the path, removes the Wiltshire County Council waymarking discs and installs a ditch at the south-western boundary of the site, to prevent public access.



Map included with 2015 sales particulars

10.51. When considering a route which the public have used, there are a number of variations within the witness evidence statements. 18 witnesses have used the claimed route in full; 8 witnesses have used part of the claimed route, but left the claimed route at the south-east corner of the property Rixon Farm and continued in a generally easterly direction to meet with Fridays Ham Lane where there is a gated entrance onto Fridays Ham Lane, (being public

bridleway no.38). There are some variations on this route, i.e. P Sanderson, F Gilpin and G Carter junction with Fridays Ham Lane, but also connect with the definitive line of Footpath no.20 Ashton Keynes, south of Lake 82, which links to the Thames Path, to complete a circuit of the lake. D Sanderson follows a similar route, but travels on Fridays Ham Lane before picking up Footpath no.20 further south. C Brown junctions with Fridays Ham Lane at the gated entrance, but also uses a spur of that route to junction with Fridays Ham Lane further north. 3 further witnesses use a route on part of the claimed route and then leave the claimed route at the south-east corner of Rixon Farm and then continue east around the lake, to pick up the recorded right of way Footpath 20, without junctioning with Fridays Ham Lane, (Bridleway no.38).

10.52. One witness refers only to the existing right of way, Footpath no.20 south of the Lake; one witness uses a route from the Thames Path which circles Lake 83 to the south of the Thames Path (not the area in question); 2 witnesses do not include a used route on the plan submitted.

10.53. There appears to be sufficient evidence to support public user of the claimed route. In a letter dated 14th June 2017, the local Ramblers representative states that *“I understand that some Ramblers members have used this path...”* and where the path was waymarked from the Thames Path *“It is therefore likely that the path will have been well used.”*

10.54. There is also evidence from 8 witnesses that the public have walked a spur of this route leading east from the corner of Rixon Farm, to Fridays Ham Lane at the gated entrance. However, where the claimed route was fenced out of the site for the period 2004 to 2016, it would not have been possible for the public to access the spur leading east from the claimed route and this could be a recent development, occurring when the new landowner removed the fencing in 2016; or prior to the fencing in 2004; or that witnesses used a route alongside the fenced in route and in addition to the fenced route, after 2004, between the edge of the lake and the fenced route.

10.55. At the initial consultation Mr R Gosnell wrote to Wiltshire Council on 4th June 2017, providing evidence of the routes which he had used to the north of Lake 82, (please see plan at 7.4.). Mr Gosnell states that the routes in 2007 and 2008 were probably within the twin fence line, between Rixon Gate and the Thames Path, which supports other user evidence of the claimed route. However, Mr Gosnell also provides GPS evidence that he used a spur of the route in 2012 to Friday's Ham Lane at the gated entrance and also in 2012 a route leading from the claimed path alongside the lake and then junctioning with the recorded route of Footpath no.20. Officers conclude from this that Mr Gosnell was not using the fenced route which was available at this time, but a route alongside the fenced route at the edge of the lake, where it would not have been possible to access the spur routes from the fenced route. The GPS data provided by Mr Gosnell is evidence of 4 walks in the vicinity between 2007 and 2012, but Mr Gosnell clarifies that *"We walked the Rixon Gate route on some unrecorded journeys."*

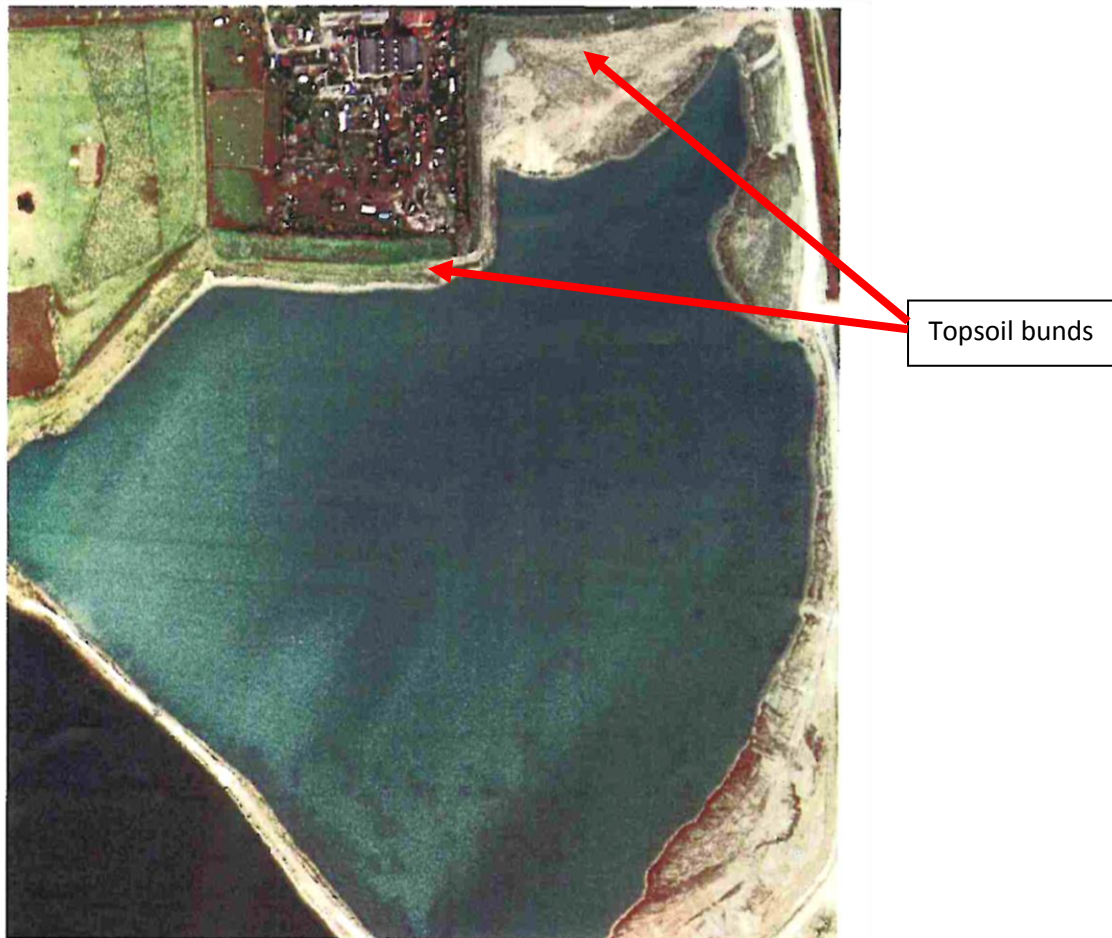
10.56. Mr G Carter states in evidence that: *"As the footpath has been overgrown for many years, the route between the path and the lake has been used (10 metres)."* V Finnie states: *"designated path – v. overgrown – about 1.5 metres, chosen route round lake – 2 people walking side by side."* Mrs A Arnett states that: *"There was a fenced in, signed Wiltshire County Council Public Footpath (fencing recently removed) to the North which ended at the road, but for many years walkers have used a route parallel to this exiting at the large gate rather than the road."* Mr M Seymour states: *"Changed route 1 time when gate by road C.69 was slightly overgrown with blackberry bush. This was later cut out by the owners Aggregate Ind."* Mrs L Milsome states: *"Quite often was overgrown, however still use direction of path but walked on land adjacent to pathway."* Mrs A Moorby states: *"Have walked parallel to this path in the adjoining field because the path has not been maintained and become impassable."* Mrs D Sanderson states: *"...and there was also a fenced path which was badly overgrown."* This evidence would suggest that where the fenced route became overgrown, a route between the fenced route and the

edge of the lake was used in preference, which would perhaps explain why Mr Gosnell was using a route outside the fenced route between 2007 and 2012, only after the installation of the fenced route and the restoration of the site following the mineral extraction works.

10.57. Where the fenced route has existed only since 2004, 20 years use of this route cannot be shown under statute law. However, there is evidence that the public used a very similar route, further south of the fenced route and witnesses refer to the route they were using being moved further north prior to the installation of the fenced path in 2004. However, 20 years user over the southern route cannot be shown where this route was interrupted by the sand and gravel extraction works for which planning permission was granted in 1992 with completion in 2004. There is some evidence that there were warning notices over the land at this time, where Mrs A Arnett refers to a *“Redundant warning sign relating to gravel extraction work by the gate at the end of the route, (still present)”*, although the wording of these notices is not clear and it is not known if these were prohibitory notices, preventing public access.

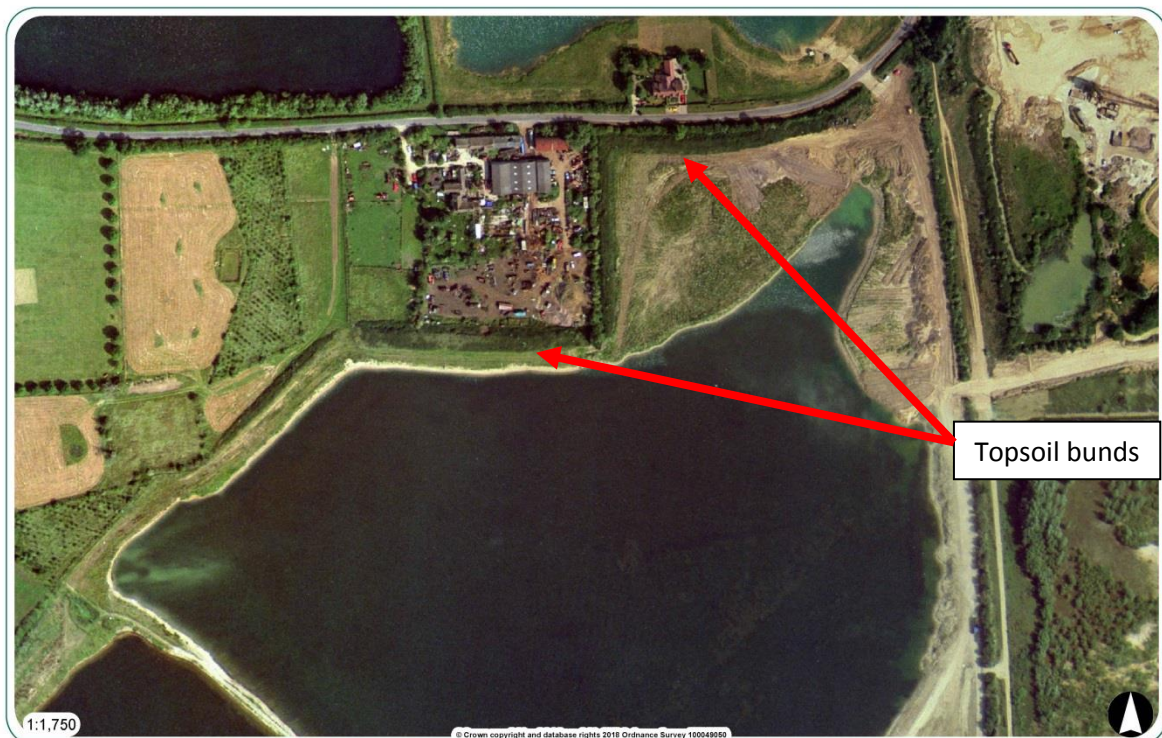
Witness	Comments ref southern route
1	There was a fenced in, signed Wiltshire County Council Public Footpath (fencing recently removed) to the North which ended at the road, but for many years walkers have used a route parallel to this exiting at the large gate rather than the road (user period 1997 – 2016).
4	Shifted a bit north and then fenced in on both sides. Kissing gate installed only when footpath moved north (user period 1995 – 2016).
5	Moved to north – fenced path (user period 1987 – 2016).
9	In general the route has been like this some formal fencing/posts were added in part (user period 1973 – 2016).
25	Moved from an irregular path to one fenced in on both sides a number of years ago. In the early years it was a footpath around the northern edge of Lake 82 in later years the previous landowner fenced in a path on both sides somewhat north (user period 1991 – 2015). Letter from Mr S Segar dated 19 th May 2018 <i>“...initially the footpath skirted the northern</i>

	<i>boundary of the lake, at a later stage it was moved to the northern boundary of the area and fenced in to form a narrow corridor, similar to the relatively recent footpath established to the southern boundary.”</i>
30	Moved slightly north and fenced in on both sides (user period 1987 – 2016). Lych (kissing) gate at western end only installed when footpath moved north.
31	In general followed the same route (user period 1970 – 2016).



Aerial Photograph 1999 – (Photograph provided by Mr R N Westell and dated by him as June 1999, showing the water-filled quarry. Mr Lindley also provides a copy of this photograph in his evidence for which he provides proof of dating from Getmapping, as 25th June 1999). Parts of the claimed route are shown submerged with a very narrow corridor between the edge of the extraction area and the site boundary. Extraction began in 1992 and

continued until 2004, which would have been a significant interruption to public use of a path to the north of the extraction area, throughout that period. The planning permission also refers to topsoil bunds being erected between the edge of the extraction area and public routes, such as Fridays Ham Lane, and private property, such as Rixon Farm. These bunds appear to be visible in this photograph with no gap in the bund to allow access onto Fridays Ham Lane.



In 2001 there is a narrow corridor between the edge of the extraction area and the site boundary to the north, particularly to the south of Rixon Farm. The topsoil bunds appear to be present between the extraction area and Fridays Ham Lane and Rixon Farm.



The fenced route is clearly installed and visible in 2005/06. A route south of this line is likely to have been interrupted by the extraction works prior to 2004, as can be seen from aerial photographs dated 1999 and 2001. The bunds appear to have been removed following the restoration of the site and the newly created fenced footpath leads through the former bund area, which would previously been an obstruction to this route.

10.58. Overall, Officers consider that 20 years user of the fenced claimed route cannot be shown where the fenced route has only existed since 2004. Additionally, it is considered that 20 years user of a route just south of the fenced route and any spurs linking to Fridays Ham Lane, cannot be shown, where they were interrupted by the sand and gravel extraction works between 1992 and 2004, as can be seen from the aerial photographs taken in 1999 and 2001. It might be possible to establish an alternative 20 year user period prior to the interruption in 1992, i.e. from 1972-1992, however, only one witness has used the route north of the lake for the full period of 1972 – 1992

and only 4 other witnesses used a route north of the lake, for part of that period. Officers consider that during that period, the path users are more likely to have been utilising the definitive line of path no.20 Ashton Keynes, prior to its stopping up in 1996, which followed a very similar line to the claimed route, (please see diversion order plan at 10.50). Therefore the routes cannot be claimed under statute.

Width

10.59. There is evidence that the claimed route was fenced out of the field for the entirety of its route. Where short sections of the fencing remain, the width of the path has been measured at 1.4 metres. The present landowner agrees that it was fenced at the same width for the full length of the path, therefore if an order is made to add the claimed footpath, a width of 1.4 metres should be recorded within the order.

Witness	Width		Witness	Width
1	Approx 2 people wide along the majority of the route, but much wider near to the gate		18	Approx 6'
2	Approx 2 people wide		19	Approx 1-2m
3			20	1.5m approx
4	Normal footpath		21	Approx 1.2m due to the ground conditions and the amount of mud present
5	Normal footpath width		22	Approx 5 feet
6	1-2m		23	Up to 40 feet – varied in width
7	1m		24	4ft
8	Approx 1m		25	Narrow irregular footpath
9	Wide enough for people to walk side by side. Wider in more open parts		26	About 1.75m with fences
10	As the footpath has been overgrown for many years, the route between the path		27	App.1.5m – 2m fenced both sides

	and the lake has been used (10 metres)		
11	1.5 to 2 metres approx	28	0.5 -1.5m varying
12	1-2m	29	3m
13		30	Normal footpath
14	Designated path - v. overgrown – about 1.5m. Chosen route around lake – 2 people walking side by side.	31	When fenced 1.5 to 2 yards
15	Width varies depending on where one is on the route. Overall width between 1m to 1.5m.	32	Kissing gate then wide swathe of grass previously accessible – well trodden path relatively narrow but no fencing to dictate specific need to keep to that
16	3m	33	1m
17	1¼m	34	1m

10.60. The widths recorded by witnesses over the fenced route, generally accord with the 1.4 metres available on the ground between the fences, 1.5m being the mean width measurement stated by witnesses.

Landowners Intention

10.61. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public user of a route for a period of 20 years or more “*as of right*”, unless during that period there was in fact no intention on the landowners part to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the

path...that he had no intention to dedicate. He must in Lord Blackburn's words, take steps to disabuse these persons of any belief that there was a public right...

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

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

10.63. Lord Hoffman went on to say:

*"I think that upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way would reasonably have understood the owner's intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* (1885), to "disabuse" [him] of the notion that the way was a public highway."*

10.64. Upon purchasing the land in 2015, the new landowner, Mr Alvin Lindley took steps to remove the fenced footpath, which came to the attention of footpath users in 2016 when the fencing was removed and the gates wired shut. He also completed a "Form CA16", "Application Form for deposits under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006" on 28th April 2016, to negative his intention to dedicate further public

rights over the land. However, there is no evidence that previous landowners, Aggregate Industries UK Ltd, have carried out any acts to bring home to the public that their right to use the path was being challenged. In fact the evidence shows the provision of a fenced route with kissing gates and public footpath waymarkers, suggested to path users that the way was already a public footpath. Mr R Westall in his letter dated 18th February 2004, confirms that the fenced route has been provided by Aggregate Industries UK Ltd. There is no evidence that the previous landowners took steps to close the footpath for short periods of time; or erected permissive footpath notices, which would convey to the public that their right to use the way was at the discretion of the landowners, as Mr and Mrs Ventham state, the claimed path was: “...*always previously open and accessible during previous owners of Rixon Farm time.*” Mr Seymour confirms that Aggregate Industries UK Ltd as the landowners, issued no instructions regarding use of the way by the public, (working for Aggregate Industries from 1963 until retirement).

10.65. Neither did Aggregate Industries UK Ltd, as the previous landowners, submit a statement with map and subsequent statutory declarations under Section 31(6) of the Highways Act 1980, to negative their intention to dedicate additional public rights of way over their land.

Common Law Dedication

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

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

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

10.69. Relatively few highways can be shown to have been expressly dedicated, however, in the Ashton Keynes case, there is evidence before the Surveying Authority that the landowners provided a fenced route, with kissing gates, waymarked as a "Public Footpath", an express act of dedication over the claimed route. In order for common law dedication to apply, there also needs to be acceptance by the public and this can be seen in the user evidence forms which refer to the fenced route, with gates provided and waymarked. In the letter from Mr R N Westell, Estates Surveyor, Aggregate Industries UK Ltd to Wiltshire Council, dated 18th February 2004, Mr Westell confirms that the new footpath 20, (the claimed route), has now been installed and it is now their intention to formally dedicate the route, however this formal dedication to add the path to the definitive map and statement of public rights of way, did not take place and the path has never been formally added. The planning permission, (N/89/02844/FUL), for sand and gravel extraction at Cleveland Farm, Ashton Keynes, does not include any reference to the provision of a footpath to the north of the lake as a substitute for Footpath no.20 and it is not a condition of the planning permission, therefore there was no onus upon the landowners to provide it. It was clearly the intention of Aggregate Industries to dedicate this route as a public right of way and the action of the landowners

providing the fenced route, with kissing gates and public footpath waymarkers is a sufficient act by the landowner to dedicate the path. If it was not the intention of the landowners to dedicate this path, there is no evidence before the Council that they took any steps to make clear to the public that it was not their intention to dedicate the path in 2004 or after that date. If the claim under statute fails, it is possible to apply the principles of common law dedication in this case.

11. Overview and Scrutiny Engagement

- 11.1. Not required where the procedures to be followed regarding orders made under Section 53 of the Wildlife and Countryside Act 1981 are included at Schedules 14 and 15 of the 1981 Act and The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993 – Statutory Instruments 1993 No.12.

12. Safeguarding Considerations

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

13. Public Health Implications

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

14. Procurement Implications

- 14.1. The determination of a definitive map modification order application and modifying the definitive map and statement of public rights of way accordingly are statutory duties for the Council. The financial implications are discussed at 18.

15. Environmental Impact of the Proposal

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

16. Equalities Impact of the Proposal

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

17. Risk Assessment

- 17.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.
- 17.2. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error within the definitive

map and statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. Where the Council fails to pursue its duty to determine the application (within 12 months of the application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

18. Financial Implications

- 18.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
- 18.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are minimal.
- 18.3. Where a definitive map modification order is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500. If a local public inquiry is held, the costs are estimated at £1,500 - £3,000, if Wiltshire Council continues to support the order (i.e. where legal representation is required by the Council) and £200 - £500 where the Council no longer supports the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

19. Legal Considerations

- 19.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

20. Options Considered

20.1. To:

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

21. Reasons for Proposal

- 21.1. There is not sufficient user evidence to satisfy 20 years public user of the claimed route under statute, where the fenced route (as claimed), has only been in existence since 2004.

- 21.2. There is evidence that the public were using a route slightly further south of the fenced route, prior to 2004, however this would have been interrupted by the mineral extraction works on site between 1992 (planning permission granted) and 2004 (restoration of the site). The works on site would also have prevented access to the spur routes identified by some of the witnesses, during the same time period. Prior to 1992, only 5 witnesses used the path between 1972 and 1992 as a potential qualifying 20 year user period, however Officers consider it likely that in the years prior to the formal diversion of footpath no.20 in 1996, users would in fact have used the former legal line of Footpath no.20 between the Thames Path and Rixon Gate, which followed a very similar line to the claimed route, but use of the legally recorded line before 1996, does not constitute qualifying user.
- 21.3 Where witnesses used a path just south of the fenced route after 2004, when the fenced route became overgrown on occasion, 20 years of this route cannot be shown under statute.
- 21.4. However, common law dedication can be applied to the claimed route, where the landowners have created a fenced route, with kissing gates and “Public Footpath” waymarkers, which does not require a 20 year user period and can apply to a much shorter period of public user. There is evidence of public acceptance of the claimed (fenced) route, since 2004, through witness evidence. The applicants in this case have successfully demonstrated that the landowner Aggregate Industries UK Ltd, has dedicated the footpath for public use and that the public have accepted this route.

22. Proposal

- 22.1. That a definitive map modification order be made to add the footpath as claimed to the Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952, under Section 53 of the Wildlife and Countryside Act 1981, where there is sufficient evidence that the claimed

footpath, (the fenced route), has been dedicated by the landowner at common law and where there are no objections, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 15th June 2018

Appendix 1 – Historical Evidence Summary

Document	Leigh Inclosure Award (359/21)
Date	1767
Significance	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the Manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties. Therefore the larger landowners, who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence as they arise from Acts of Parliament. Prior to 1801 inclosure was dealt with by local acts for specific areas which usually gave the Inclosure Commissioners powers to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private. After 1801 the process was set out within the Consolidation Act, which consolidated the main features of the local acts and worked alongside the local act.</p> <p>Weight can be given to the routes included within Inclosure Awards as landowners has a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure process was clearly set out within the Act, e.g. notice of the public and private roads to the set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>One of the main purposes of the Inclosure Award was to record highways.</p>
Relevant documents	<p>Inclosure Award Apportionment Document</p> <p>No Inclosure Award Map has been located</p>
Conclusions	<p>Where there is no map of the lands to be inclosed available, it is not possible to ascertain whether or not the land has been enclosed and whether or not the claimed route is set out as a public footway. The Victoria County History of Ashton Keynes (published 2011), suggests that some of the Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixon at the east of village, prior to this inclosure award. This document is inconclusive.</p>

Document	Ashton Keynes Inclosure Award (374/5)
Date	1778
Significance	As above
Relevant documents	Inclosure Award Apportionment Document No Inclosure Award Map has been located
Conclusions	Where there is no map of the lands to be inclosed available, it is not possible to ascertain whether or not the land has been enclosed and whether or not the claimed route is set out as a public footway. The Victoria County History of Ashton Keynes (published 2011), suggests that some of the Ashton Keynes commonable land was inclosed around the 1590's, including pasture called Rixon at the east of village, prior to this inclosure award. This document is inconclusive.

Document	Ashton Keynes Parish Claim
Date	1951
Significance	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map. Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey maps to all Parish Councils, who surveyed and recorded on this map what they considered to be public rights of way within their parish, with an accompanying description for each path. Parish Council's were required to convene a meeting at which public rights of way information, to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District Council or Urban District area.</p> <p>Detailed guidance regarding the Parish Councils' input into the definitive map process was issued and the Planning Inspectorate "<i>Definitive Map Orders: Consistency Guidelines</i>" state that the legal "<i>presumption of regularity</i>" applies, i.e. unless otherwise demonstrated, it should be assumed that parish councils' received this guidance and complied with it in producing the parish claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map, was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
Relevant documents	Parish Claim Map Ashton Keynes path no.20 survey card
Scale / size	Map: 6 inches to 1 mile
Conclusions	Within the Ashton Keynes Parish Claim, path no 20. Is recorded as a footpath, but this is not on the line of the

application route, it is the original line of Footpath no.20 Ashton Keynes, before its stopping up to allow development to continue, (i.e. sand and gravel extraction), in 1996. This reflects the recording of this path within the definitive map and statement and there do not appear to have been any objections to the route of this path.

The claimed route is not recorded on the OS base map, (drawn at a scale of 6" to 1 mile), and is not claimed by the parish for inclusion within the definitive map and statement. Whilst the definitive map and statement of public rights of way is conclusive evidence of the rights recorded, it is without prejudice to the possible existence of other rights.

The parish claim survey card for this path shows that there was originally a "Gate at Rixon End..." The former path was "Open", (without fencing), and was used by the public for "Many years" from date "Unknown", until being stopped up in 1996.



Ashton Keynes Parish Claim Map - 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PATH No. 20
(to correspond with No. on map)

PUBLIC RIGHT OF WAY. PARISH OF Ashton Keynes

<p>NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)</p> <p><i>No. 19 from farm to No. 19</i></p> <p><i>from 069 about 200 yds E of River farm leading S.W. to path No. 19.</i></p>	<p>LENGTH <i>650 yds</i> WIDTH <i>2 ft</i></p> <p>WHETHER FENCED OR OPEN <i>Open</i></p> <p>APPROXIMATE PERIOD OF UNINTERRUPTED USER — <i>Many</i> YEARS FROM <i>Unknown</i></p> <p>WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL —</p> <p>DATE OF REPAIR</p> <p>WHETHER SUBJECT TO PLOUGHING <i>No</i></p> <p>DATE OF SURVEY <i>from July Aug 57</i></p> <p>WHETHER SHOWN ON UNDERMENTIONED MAPS —</p> <p>ORDNANCE 6" SHEET. REF. <i>40 44 56</i> <i>41 45 10 12</i></p> <p>INCLOSURE AWARD</p> <p>LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932).</p> <p>OTHER MAPS —</p>
<p>NATURE OF SURFACE <i>earth</i></p>	
<p>STILES, GATES, FOOTBRIDGES, STEPPING STONES</p> <p><i>Gate at River End to stile then gate No. 1 in to gate No. 2 then stile where going to 19</i></p>	
<p>WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)</p> <p><i>No</i></p>	
<p>OBSERVATIONS:</p>	

Ashton Keynes Parish Claim, Footpath no.20 - 1951

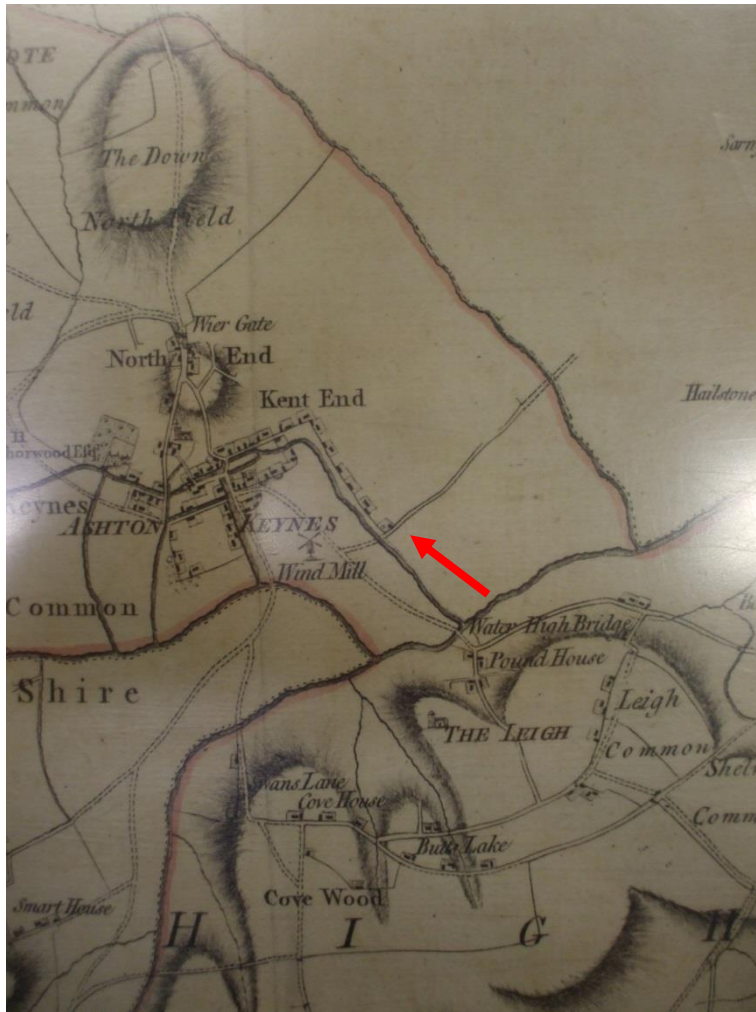
Document	Ashton Keynes Tithe Award (Tithe Award: Ashton Keynes: Leigh)
Date	1839
Significance	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain, comprising an agreed proportion of the annual profits of cultivation and farming. Payment in kind gradually began to be replaced by monetary payment and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system. Tithe Awards are not primary sources of evidence as the apportionments and plans were produced as an official record of all titheable areas, it was not their main purpose to record highways.</p> <p>However, they can provide useful supporting evidence as the existence of a highway could affect the productivity of the land and also give important map orientation and plot boundary information, therefore the Commissioners had some interest in recording them. Additionally the public provenance of the documents adds weight to the information recorded within them.</p> <p>Although there is no key to the map, the British Parliamentary Paper XLI 405, 1837, gives guidance on how landscape features were to be indicated on Tithe maps produced under the Commutation of Tithes Act 1836, however there was no</p>

	statutory requirement to follow these instructions.
Relevant documents	Tithe Apportionment Tithe Award Map
Scale / size	Map: 2.5cm = 4 Chains (approx.)
Conclusions	The map is entitled " <i>Map of the Parish of Leigh in the Parish of Ashton Keynes in the County of Wilts.</i> " S Trinder Surveyor and Co, the map is signed by William Blamire, T H Buller and inscribed " <i>We the undersigned Tithe Commissioners for England and Wales Do hereby Certify this to be a Copy of the Map or Plan referred to in the Apportionment of the Rent Charge in Lieu of Tithes in the Hamlet of Leigh in the Parish of Ashton Keynes in the County of Wilts.</i> " March 24 th 1841. The area in question lies just outside the area included within the parish of Leigh, adjacent to plots in the ownership of the " <i>Late R Nicholas</i> ", on the road " <i>From Ashton Keynes to Buttsham Corner 1935 Yards</i> ". There is no footpath shown leading south or south-east from this road to junction with the Thames Path and the Thames Path is not recorded on this map. This document is inconclusive.

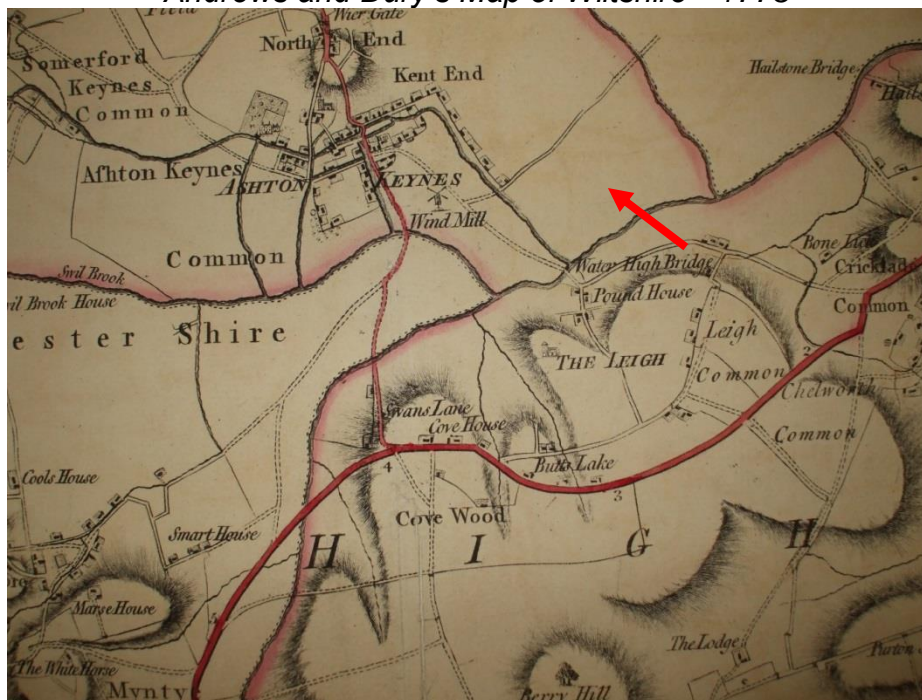


Ashton Keynes (Leigh) Tithe Award - 1839

Document	Andrews' and Dury's Map of Wiltshire
Date	1773 1810
Significance	<p>Commercial maps were produced for profit and intended for sale to the whole of the traveling public. Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the county based on original survey. The map is dedicated "<i>To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is Inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY</i>".</p> <p>The 1810 second edition map is a corrected and updated edition of the 1773 map, entitled, "<i>A Topographical Map of the County of Wilts Describing the Seats of the Nobility and Gentry Turnpike & Cross Roads, Canals & c. Surveyed originally in 1773 by John Andrews & Andrew Dury Drawn from a Scale of two inches to one Statute Mile. Second Edition, Revised and corrected from the extensive information liberally communicated by The Right Honourable The Earl of Radnor and Sir Richard Hoare Bart To Whom This Improved Edition is most respectfully inscribed By William Eaden Charing Cross Jan.y 1st 1810</i>".</p> <p>The map has no key, but the Hertfordshire map does and there is no reason to consider that the Surveyor would have employed different mapping conventions for this particular map. The Wiltshire Archaeological and Natural History Society have produced a reduced facsimile of Andrews' and Dury's Map of Wiltshire 1773, (dated 1952), with an introduction by Elizabeth Crittall, who states: "<i>The map has no key, but it appears that, as is the case of Andrew's and Dury's map of Hertfordshire for which there is a key, a broken line indicates an unhedged roadside.</i>"</p>
Relevant documents	1773 Index Map 1773 Map Plate no.17 of 18 plates 1810 Index Map 1810 Map Plate no.2 of 18 plates
Scale / size	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
Conclusions	<p>The recording of routes on these maps is significant as they were produced for the travelling public of the day and therefore it is unlikely that private routes, footpaths and bridleways would be recorded, as the depiction of routes not open to all traffic would cause difficulty for map users and also encourage trespass against the landowners from whom the map makers sought subscriptions. Also the constraints of a small scale make it unlikely that footpaths and bridleways would be shown.</p> <p>The claimed footpath route is not recorded on these maps.</p>



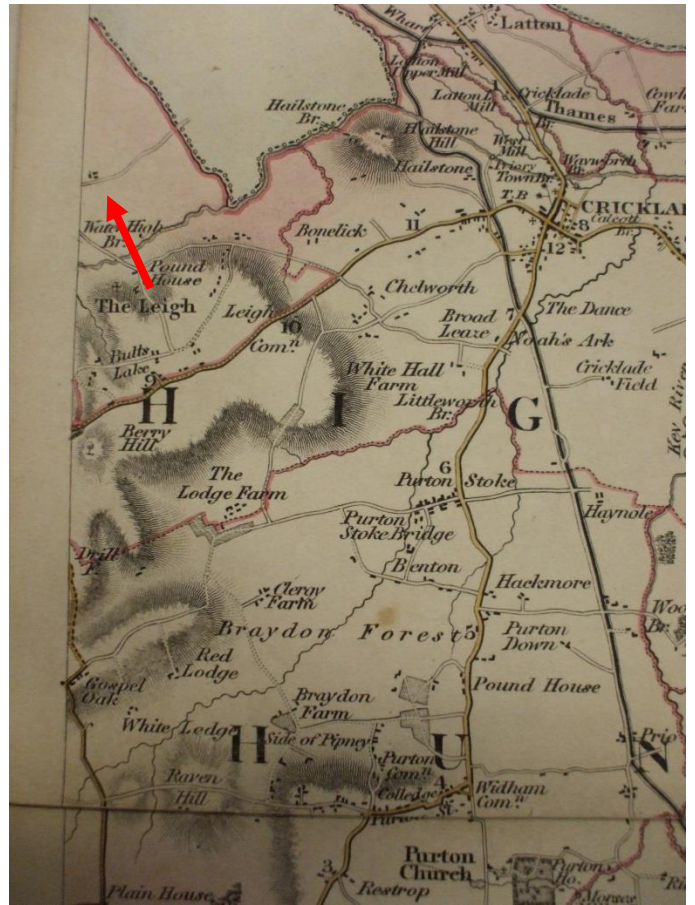
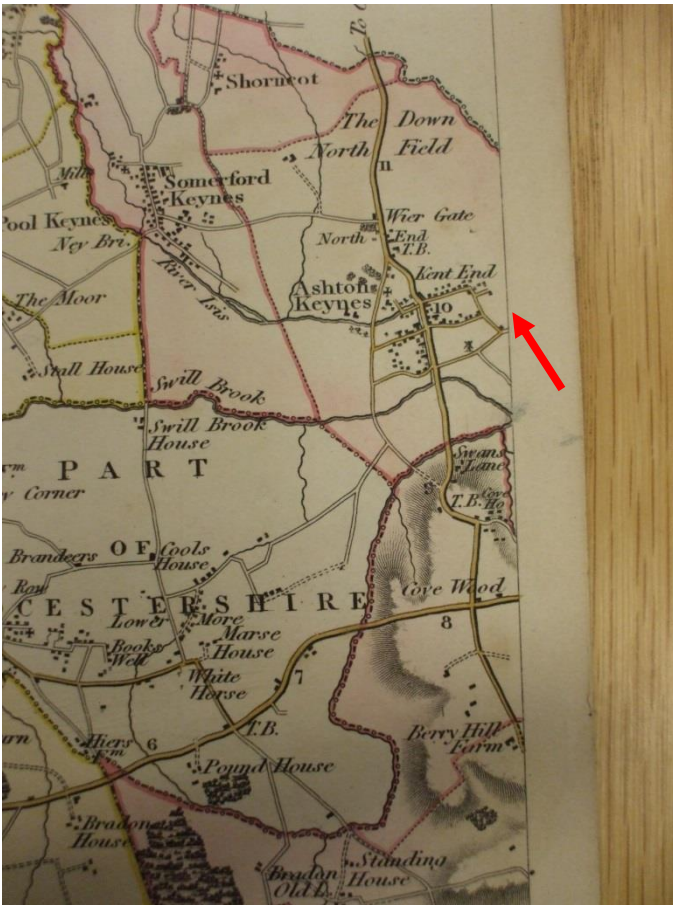
Andrews and Dury's Map of Wiltshire - 1773



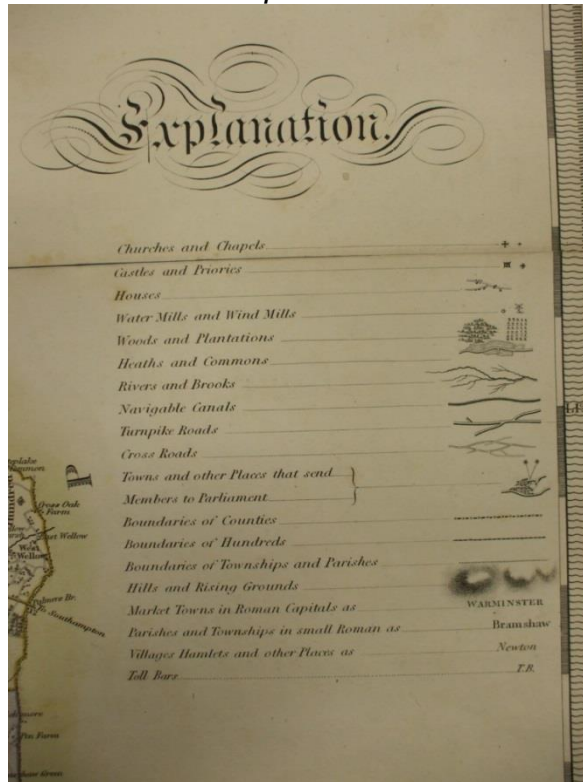
Andrews and Dury's Map of Wiltshire - 1810

Decision Report Wildlife and Countryside Act 1981 - Section 53
 Application to Add a Footpath - Ashton Keynes

Document	Greenwoods Map of Wiltshire
Date	1820 1829
Significance	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey supported by existing secondary sources such as inclosure and estate maps; printed guide books; official sources and local knowledge collected by Surveyors. Greenwoods first edition " <i>Map of the County of Wilts from Actual Survey</i> ", dated 1820 is a commercial map, produced for the travelling nobility who contributed to its production. The inscription reads " <i>To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors</i> ". Greenwood produced a revised and corrected map of Wiltshire in 1829.
Relevant documents	1820 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood 1829 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood Corrected to the present period and Published 4 July 1829
Scale	1820 – 1 inch to 1 mile 1829 – 1 inch to 3 miles
Conclusions	The claimed route is not recorded on these maps. Footpaths and bridleways are unlikely to be shown given the constraints of small scale mapping and the purpose of the map as a commercial map for sale to the general public.



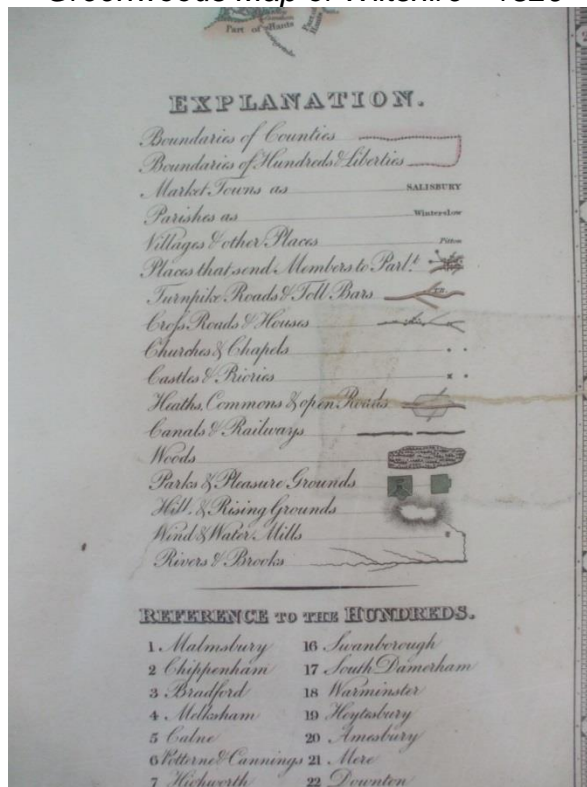
Greenwood Map of Wiltshire - 1820



Greenwoods Map of Wiltshire - 1820



Greenwoods Map of Wiltshire - 1829



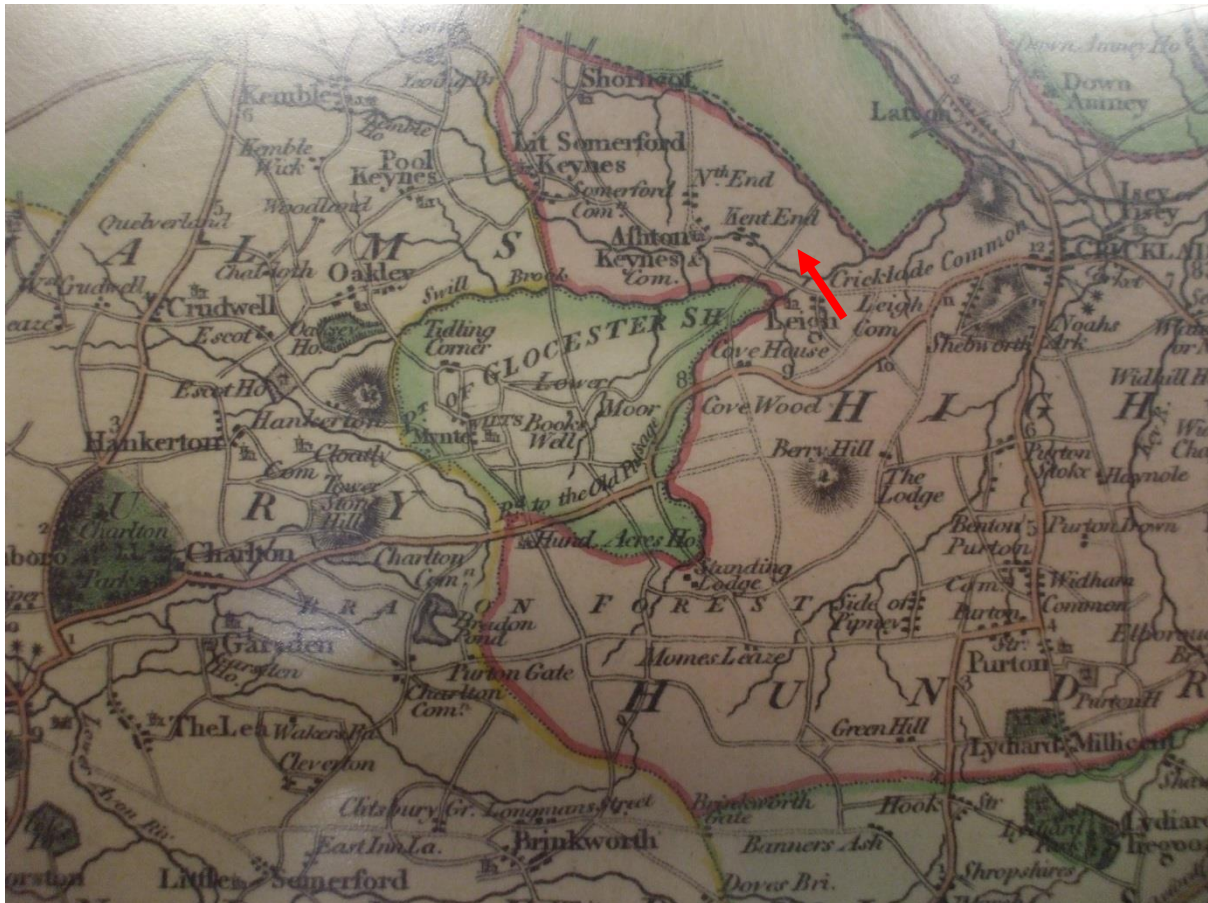
Greenwoods Map of Wiltshire - 1829

Decision Report Wildlife and Countryside Act 1981 - Section 53
 Application to Add a Footpath - Ashton Keynes

Document	Cary's Map of Wiltshire 1787 (Map Folder 1:12) Cary's Map of Wiltshire 1801 (Map Folder 3.2)
Date	1787 1801
Significance	John Cary was a cartographer, born in Warminster, Wiltshire in 1755, well known for his series of county maps. In 1794 he became Surveyor of Roads for the Postmaster General, charged with undertaking a survey of all main roads in England. Cary appears to have used actual survey, as well as the work of others, e.g. the Ordnance Survey in the production of his maps.
Relevant documents	1787 – Wiltshire by John Cary Engraver 1801 – A New Map of Wiltshire Divided into Hundreds Exhibiting its Roads, Rivers, Parks & c.
Scale / size	1787 – 10 miles = 1 ¾ inches 1801 – 8 miles = 2 7/8 inches
Conclusions	The claimed footpath is not recorded on these maps due to the constraints of small scale and where the maps are produced for sale to the travelling public.



Cary's Map of Wiltshire - 1787



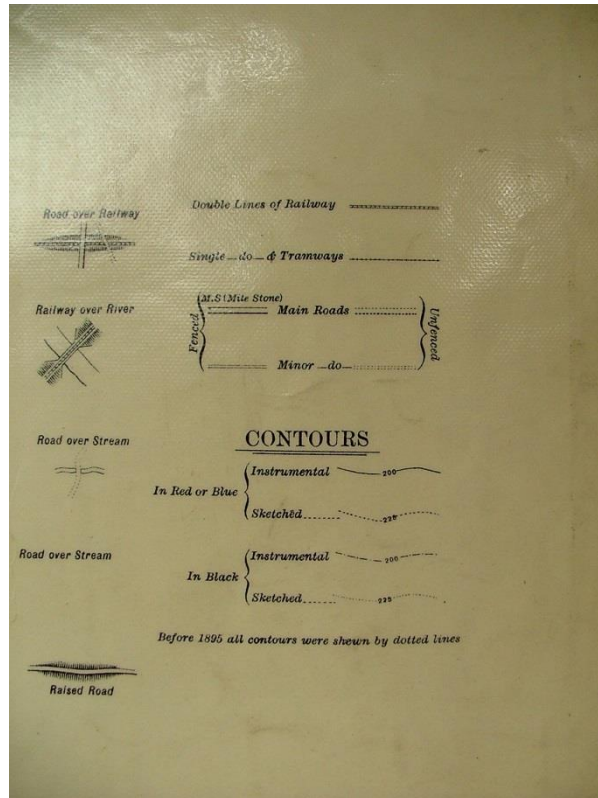
Cary's Map of Wiltshire - 1801

Document	Ordnance Survey First Edition Map
Date	Surveyed 1875 and Printed from a transfer to zinc in 1886 Engraved and published 1885
Significance	The Ordnance Survey was founded in 1791, due to demand from the military for accurate maps of Southern England, in preparation for the Napoleonic War. In time the Ordnance Survey developed a range of maps, varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country. The maps are based on original survey, with revisions, and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.
Relevant documents	Gloucestershire Map Sheet 59 and Wiltshire Sheet 4
Scale / size	6 inches to 1 mile
Conclusions	The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, however this is not on the line of the claimed route and the northern section does not accord with the line of Footpath

no.20 prior to its stopping up in 1996.
The key to the map refers only to “Main Roads” and “Minor Roads”, fenced and unfenced.
On the 6” map, paths and tracks are shown by a single or double pecked lines, or double solid lines where the route is fenced. Double lines are drawn to scale, subject to the minimum clearance between parallel lines. The map records this route by double broken lines, which would suggest an unfenced path or track, but the map is not supportive of a path or track on the claimed route.



Ordnance Survey 6” to 1 Mile – 1885



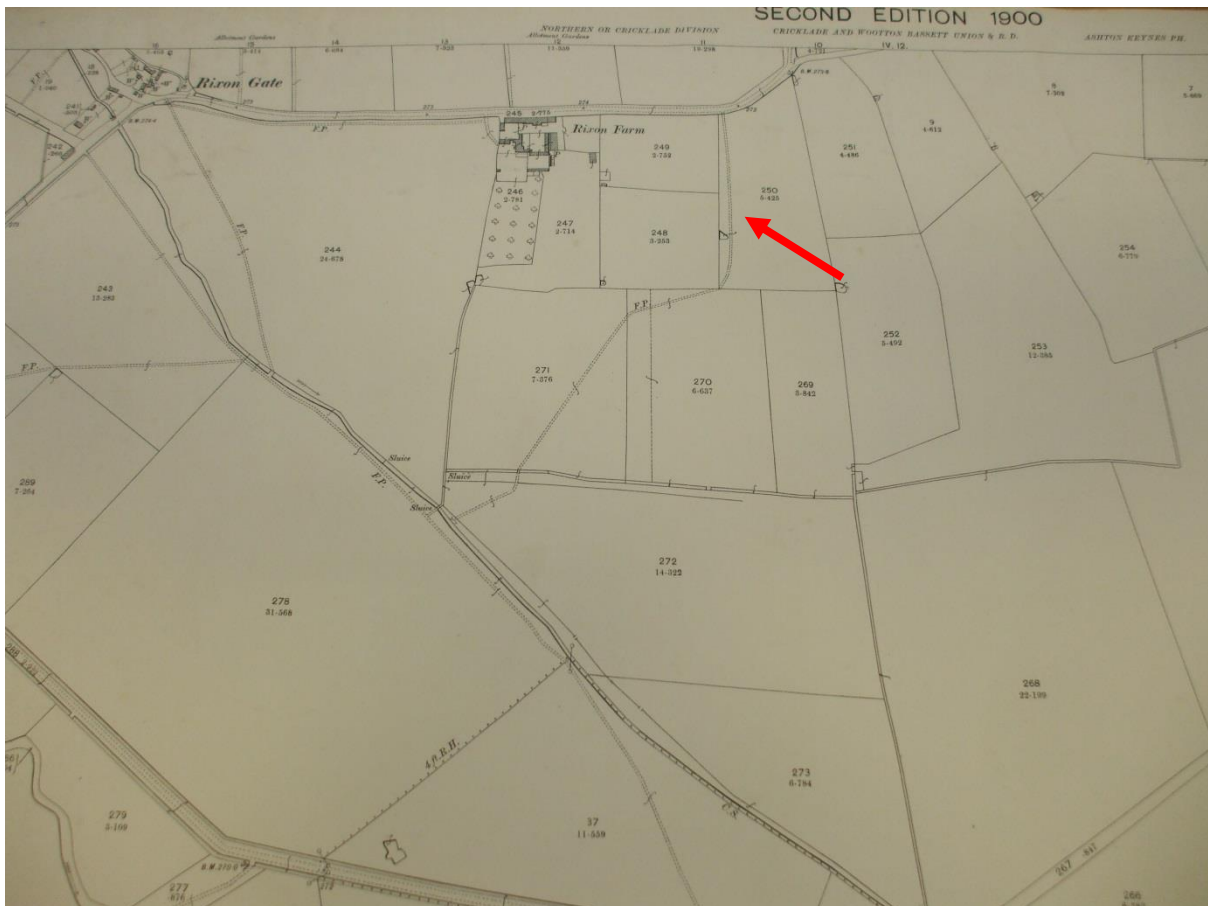
Ordnance Survey 6" to 1 Mile - 1885 (Conventional Signs)

Document	Ordnance Survey Map
Date	Surveyed 1875, LGB Orders-Corrections 1886
Significance	As above
Relevant documents	Map Sheet 4/16
Scale / size	25 inches to 1 mile
Conclusions	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, however this is not on the line of the claimed route and the northern section does not accord with the line of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines which suggests an unfenced path or track. It is not individually measured and numbered as a public road.</p> <p>The map is not supportive of a path or track on the claimed route.</p>



Ordnance Survey 25" to 1 Mile - 1886

Document	Ordnance Survey Map
Date	Surveyed 1873, Revised 1898-99, Zincographed and Published 1900
Significance	As above
Relevant documents	Map Sheet 4/16
Scale / size	25 inches to 1 mile
Conclusions	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, now on a line which accords with the route of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines to suggest an unfenced path or track. It is not separately numbered and measured as a public road would be and the letters "F.P" appears alongside the path, but this gives no indication of the public status of the path. The map contains the disclaimer: "N.B. - The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way."</p> <p>The map is not supportive of a path or track on the claimed route.</p>



Ordnance Survey 25" to 1 Mile - 1900

Document	Ordnance Survey Map
Date	Surveyed 1873, Revised 1920, Levelling Revised 1900, Printed and Published 1921
Significance	As above
Relevant documents	Map Sheet 4/16
Scale / size	25 inches to 1 mile
Conclusions	<p>The claimed route is not shown. A route is shown to the east of Rixon Farm, leading south from the road to the Thames Path, now on a line which accords with the route of Footpath no.20 prior to its stopping up in 1996.</p> <p>The route is shown by double broken lines to suggest an unfenced path or track. It is not separately numbered and measured as a public road would be and the letters "F.P" appear alongside the path, but this gives no indication of the public status of the path. The map contains the disclaimer: <i>"N.B.-The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way."</i></p> <p>The map is not supportive of a path or track on the claimed route.</p>



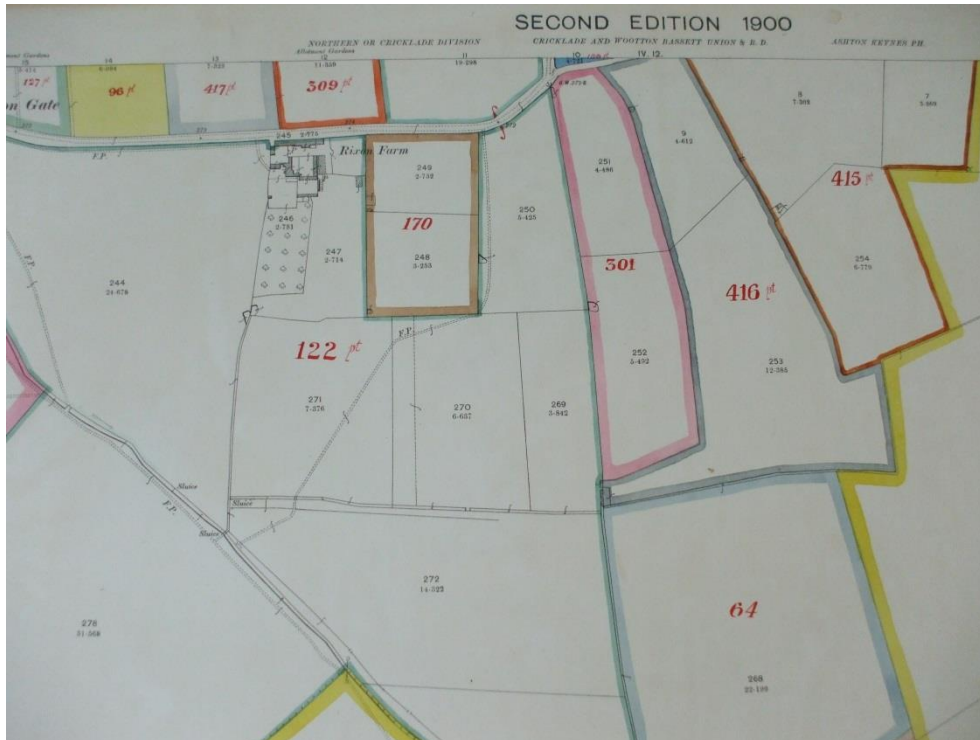
Ordnance Survey 25" to 1 Mile - 1921

Document	Finance Act
Date	1910
Significance	<p>In the early 20th Century, the ownership of the majority of the land in Britain by a privileged few, was seen as a major cause of social injustice and poverty. By the Finance Act of 1910, the government's main concern was that private landowners should pay part of the increase in land values which was attributable, not to their own efforts to improve the land, but to expenditure by the state, e.g. in the provision of improved roads, drainage and other public services.</p> <p>The 1910 Finance Act required the Valuation department of the Inland Revenue to carry out a survey of all hereditaments for the purposes of levying a tax upon the incremental value of a site. This included all property and land in the United Kingdom (whether or not it was considered to be exempt). It has been referred to as the "Second Domesday" as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence.</p> <p>Public rights of way across land could be excluded from the land as a tax benefit. Land holdings (hereditaments) are illustrated on OS base maps, coloured and numbered, being</p>

	referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditament, in the case of public roads, or as a deduction made for rights of way within the book of reference, in the case of a public footpath. The hereditament information is recorded on the Ordnance Survey 2 nd edition 25" map, dated 1901 and drawn at 25 inches to 1 mile.
Relevant documents	Valuation Book Finance Act Map
Scale / size	Map: 25 inches to 1 mile
Conclusions	The route of the definitive line of Footpath no.20, prior to its stopping up in 1996, is recorded on the OS base map, coloured with plot no.122, which records no deductions for rights of way within the valuation book. The Finance Act map is inconclusive.



Finance Act Map - 1910



Finance Act Map - 1910

Document	“The Victoria History of the Counties of England”
Date	Published 2011
Significance	A History of the County of Wiltshire Council Edited by Virginia Bainbridge Volume XVIII Published for the Institute of Historical Research by Boydell and Brewer 2011
Relevant documents	Cricklade and Environs Ashton Keynes – D A Crowley and Carrie Smith
Conclusions	The parish is flat land drained by the upper Thames and is notable for the gravel extraction which has taken place there since the second world war. In 2010 more than half the parish consisted of water-filled pits, now part of the Cotswold Water Park, a tourist attraction. In the middle ages both the parish and the manor of Ashton Keynes included the land of Leigh, which became a separate civil parish in 1884. To serve gravel pits and a factory in the east corner of Ashton Keynes, a new north-south road, given the name Fridays Ham Lane, was built along the course of an old lane between Spine Road East and Cerney Wick Road (1971). By the nineteenth century 7 pockets of settlement had grown up on the edges of Ashton Keynes village, including Rixon Gate, the area south-east of Kent End, it grew up in the nineteenth century. In 1899 a dozen or so small houses / cottages stood near the entrance to the common pasture

	<p>called Rixon.</p> <p>East of the village Rixon Farm was built in the 17th or 18th Century's on land probably inclosed in the 1590's. It includes a range of buildings of the 17th or 18th century and a farmhouse of the land 18th century. A pair of cottages was built nearby in 1904. Between 1920 and 1924 Rixon farm passed to Aubrey Seymour who owned it as a 237 acre farm in 1929. Seymour was succeeded by his son Arthur in 1967, who sold most of the farm to EH Bradley & Sons Ltd, (a gravel working company, operating in Swindon since around 1900), and 18 acres to Moreton C. Cullimore (Gravels) Ltd, Haulage Company, in around 1970. Cullimore's still owned this property in around 2005.</p> <p>Some of Ashton Keynes commonable land was inclosed around the 1590's including pasture called Rixon at the east of the village.</p> <p>Most of the parish lies on gravel and sharp sand deposited by the Thames and its tributaries. Large scale mechanised gravel extraction from farmland began in around 1944 continuing until 2005 and the exhausted pits filled with water which by 2005 covered much of the parish. Pits south of Rixon Farm being worked in 1994 had been largely exhausted by 2001. In 2005 gravel was being extracted from land either side of Fridays Ham Lane, south-east of the village near Waterhay Bridge, south-west of the village and north of Ashton Field Farm.</p> <p>Because the water table is high and clay underlies the gravel deposits in the upper Thames valley, the pits from which gravel was removed have filled with water and by the 1960's water-filled pits were a prominent feature of the landscape. Gravel extraction catalysed a change from agricultural to recreational use and many lakes were used by clubs for water sports or fishing. In 1967 Gloucestershire and Wiltshire County Councils designated the land from which gravel had been removed, or was expected to be extracted, as the Cotswold Water Park and set up a committee to promote the use of the park for sport, by naturalists and as a general public amenity, nature conservation was a later increasing concern.</p>
--	--