

WILDLIFE AND COUNTRYSIDE ACT 1981 S.53(2)(b) APPENDIX 2

DECISION REPORT

Application 1987/01 Chute 3, Collingbourne Kingston 33 and 1B (part)

1 The Application

1.1 Details

- Application number:** 1987/01
- Application date:** 01.04.1987
- Applicant:** C J and M Newby Vincent, Highlands Farm, Collingbourne Ducis
(now at: Orchardleigh House, Orchardleigh Park, Frome, BA11 2PH)
- Application to:** Upgrade to a byway open to all traffic the footpath and bridleway from C21 Hungerford Road "A" on plan thro "B" and "C" on plan to the northern end of Chantry Lane "D" on plan.
- Width:** 40 feet C to D and 30 feet A to B to C.
- Basis of Application:** That public rights exist that are higher than shown in the definitive map and statement.
- Application contents:** Wiltshire County Council Appendix C Form of Certificate of Service of Notice of Application for Modification Order. Served on:
G Crook, Aughton Farm
J Crook, Parsonage Farm
N Hosier, Brunton Farm
P T Hosier, Wexcombe Farm
M Sykes, New Zealand Farm
Map based on OS 1:25000 sheet showing claimed route marked by letters A, B, C and D and annotated CKIN 1B, 33 & 3 RUPP
List of Documents
Collingbourne Kingston Inclosure Award & Chute Inclosure Award
Tithe Award Map Chute 1841
All Ordnance Survey Maps
Greenwoods Map 1820 & Andrews' and Dury's Map 1773
Cary's Map 1842
Extracts from Chute and Collingbourne Kingston enclosure awards

Background

2 Enabling Legislation

2.1 Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map of public rights of way.

2.2 The Wildlife and Countryside Act 1981 (WCA 1981)(c.69) section 53(2)(b) applies:

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

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

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

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

2.4 The council must consider all available evidence and this may relate to a dedication at common law or by statute law. Historical evidence may be considered by virtue of Section 32 of The Highways Act 1980 (below):

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

2.5 Section 53(5) WCA 1981 allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be

requisite in consequence of the occurrence of one or more events falling within paragraph (b) or(c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

2.6 Schedule 14 to this Act states:

Form of applications

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

Notice of applications

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*
 - (2) *If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*
 - (3) *When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*
 - (4) *Every notice or certificate under this paragraph shall be in the prescribed form.*

2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.

2.8 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006 see para 12) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.

- 2.9 The application, when received in 1987, in line with Defra advice and practice, appeared compliant with Schedule 14. Subsequent investigations by officers revealed that it is possible that Mr Newby Vincent failed to serve notice on the landowners despite certifying that he had. However, by the end of 2001, notice had definitely been given to landowners (and copies retained by the council) and it is considered that given the timescales involved in this case no disadvantage to landowners has occurred as a result of this apparent failure in 1987.
- 2.10 Subsequent case law (known as the Winchester case and discussed in detail later) changed the way in which officers must look at Schedule 14 compliance where a case turns upon the application of s.67(3) of the Natural Environment and Rural Communities Act 2006 (NERCA 2006). This is regardless of any compliance issues regarding the serving of notice.
- 2.11 Following the Winchester Case' ([2008] EWCA Civ 431) the Lord J Ward, Dyson and Thomas found that **if** the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) then strict compliance with Schedule 14 would be required in respect of the presentation of "copies of any documentary evidence ...which the applicant wishes to adduce in support of the application". This is required in Section 67(6) for Section 67(3) to apply.

However Dyson J, in paragraph 55 of his decision went on to say:

"I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6) it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the "trigger" for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3)"

- 2.12 As a result it is now considered that this application does not satisfy the requirements of Schedule 14 with regard to the evidence adduced. Schedule 14 states that copies of evidence may be adduced by the applicant but in this case Mr Newby Vincent has not included copies of any evidence, just a list of documents and a short transcript. The application is therefore not fully compliant with Schedule 14.
- 2.13 For the NERC Act 2006 to apply it is first necessary to establish whether, on the balance of probabilities, a public vehicular right existed before the 2nd May 2006. If it did then it is necessary to investigate whether or not that right was extinguished by the 2006 Act. As a result NERC Act 2006 consideration will be discussed later in this report.

3.0 Background

- 3.1 The application was made in 1987; applications for definitive map modification orders (DMMOs) are dealt with in chronological order of receipt and it was allocated to a case officer in 1995.
- 3.2 A consultation and a significant amount of research was conducted at this time but owing to staff changes within the rights of way team it was not until 2001 that a third case officer took over the case and conducted an extended initial consultation. This lasted for 3 months.
- 3.3 The consultation attracted an unusually large number of responses and whilst some were in agreement with the historical context of the route the majority expressed objection to recording the way as a byway open to all traffic and making it available for motorised vehicles to use. Respondents pointed out that the route is in an Area of Outstanding Natural Beauty (AONB) and parts of it that have been ploughed do not have the sort of surface that withstands use by MPVs without disturbance, mud and deep ruts in wet conditions.
- 3.4 As a result of these concerns, although the Council recognised that the application must be proceeded with in line with the statutory duty contained within WCA 1981, the application was put on hold while the Council produced its Framework Document for managing the rights of way network.
- 3.5 Although the Framework Document and the subsequent Rights of Way Improvement Plan (ROWIP) recognise that in some cases the application of a traffic regulation order (TRO) can be an effective form of byway management where problems persist, it is possible, if public MPV rights subsisted on this route before 2nd May 2006, that they were extinguished by NERC Act 2006 making the recording of the way as a byway open to all traffic based on the historical evidence an impossibility and any need for management by TRO irrelevant.
- 3.6 In 2012 an application was made to divert part of the route and the question of unresolved higher rights was raised. This had to be addressed at this time (or the diversion could not have proceeded) and as a result of this coupled with the growing isolation of the 1987 application in the Council's register of applications, a new case officer was allocated and a fresh consultation conducted.

4.0 Initial Consultation

4.1 The following letter and plan were circulated on 08 April 2013.

***“Wildlife and Countryside Act 1981
Public rights of way Chute 3 (part) and Collingbourne Kingston 33 and 1B
(part)***

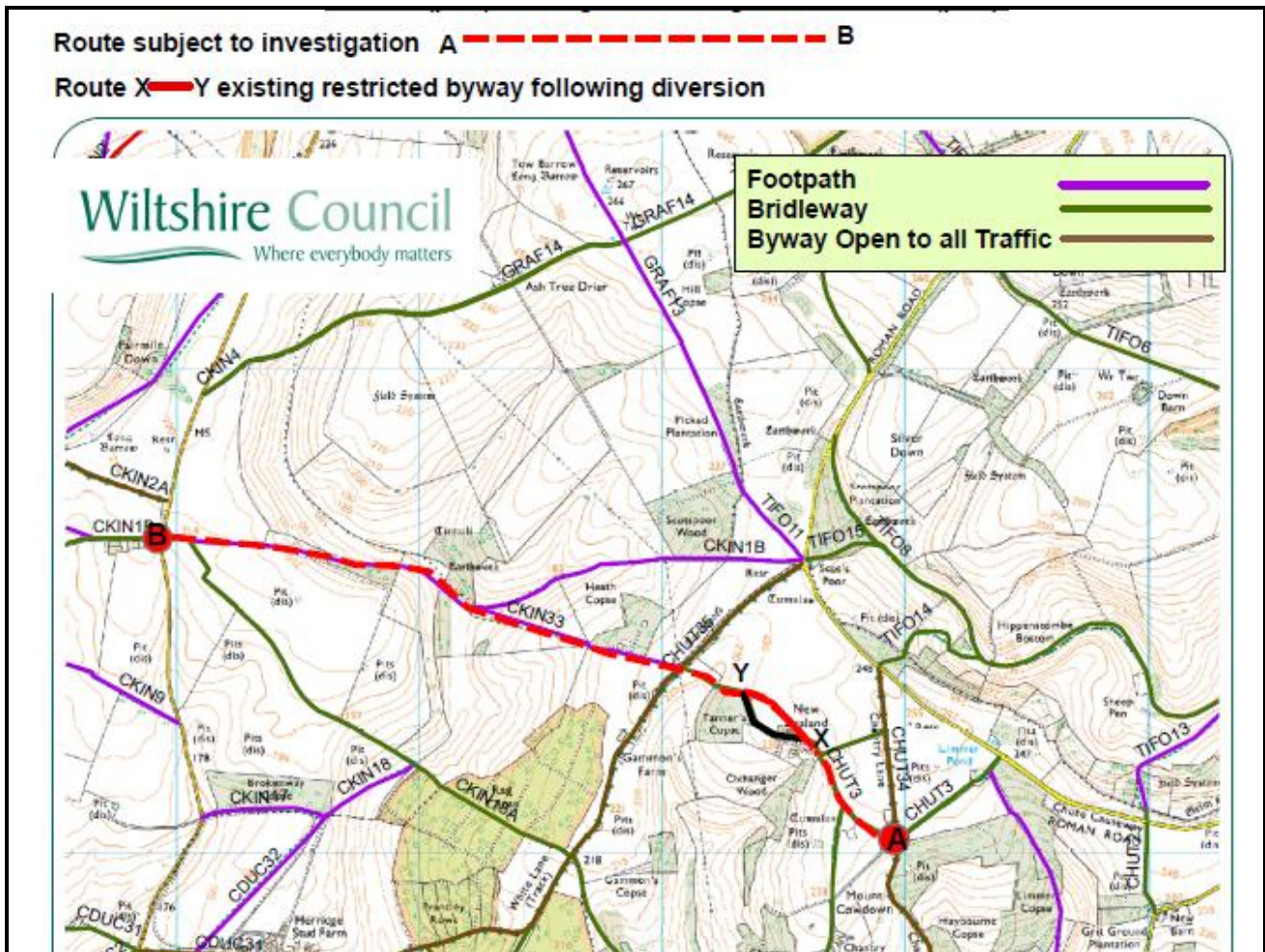
In 1987 Wiltshire County Council received an application for an order to modify the definitive map and statement (DMS) in respect of paths Chute 3 (part – CHUT3) and Collingbourne Kingston 33 (CKIN33) and part of path 1B (CKIN1B). Please see the attached map. The application brought evidence to the Council’s attention that higher rights subsisted over the route and should be recorded in the DMS. The Council has a duty to investigate the evidence and amend the DMS as appropriate.

The evidence is in the form of historical documents which support that the route linking Upper Chute with Collingbourne Kingston forms an old road linking the two places. The strongest evidence is the Inclosure Awards of 1799 and 1820 (as they arose from Acts of Parliament) awarding the route as a public carriage road and this is further supported by the deposited plans of the South Midland Railway, tithe awards, estate plans, vestry minutes and a variety of commercial maps ranging from 1773 to the mid 1940s.

It is believed, that on the balance of probabilities any mechanically propelled vehicular right that existed on this route has been extinguished by s.67(1) of the Natural Environment and Rural Communities Act 2006. Officers have considered this carefully (please see attached report on this) and when part of Chute 3 at New Zealand Farm was diverted in 2012 the new route was created as a restricted byway in recognition of the higher rights but taking into account the extinguishment of the public right for mechanically propelled vehicles.

It is now considered that the highest public right that can subsist over this route is that of a restricted byway, that is a route over which the public may walk, ride or lead or horse, cycle or drive a horse drawn vehicle (i.e. pony and trap). Your comments are invited on this matter and I would be grateful for any specific comments regarding any savings to the extinguishment of public MPV rights that you consider may apply. Any claims for exemption from S.67(1) of the 2006 Act should be accompanied by the evidence relied upon. Please respond by 17 May 2013.”

A consideration of the effect of NERC Act 2006 was attached and is appended here at **APPENDIX A**



4.2 The letter and plan was sent to the following:

- The Auto Cycle Union
- Commons, Open Spaces & Footpaths Society
- Wiltshire Bridleways Association
- Wiltshire Cycling Touring Club
- British Horse Society
- Chute Parish Council
- Collingbourne Kingston Parish Council
- Wiltshire Councillor C Howard; The Collingbournes and Netheravon
- Wiltshire Councillor S Wheeler; Burbage and The Bedwyns
- Wiltshire British Horse Society
- Byways and Bridleways Trust
- Wiltshire Council Senior Rights of Way Warden
- Wiltshire Ramblers Association
- Wiltshire Trail Riders Fellowship
- Green Lane Association

Trail Riders Fellowship
Hosier Brothers Ltd (Waglands Farm)
P T Hosier and Son (Wexcombe)
R Crook and Sons (at Parsonage Farm)
J Sykes (New Zealand Farm)
R Hallam (Gammons Farm)
C Newby Vincent (Applicant)

4.3 Responses

There have been 2 responses to the consultation.

4.4 Mr B Riley (12.04.13) submitted a reference to a historical document that had not been considered by officers during the 2001 investigation. This is held at the Wiltshire and Swindon History Centre, reference number 9/12/96 and is a map of part of Brunton attached to a deed dated 1803. This map has been viewed and is included in the research section of this report.

4.5 Jane Hanney of Magna Law acting for Mr Hallam of Gammons Farm on 13 May 2013.

"I write further to our telephone conversation and email correspondence of today's date.

As indicated, I have been instructed by Mr Robin Hallam of Gammons Farm to advise him in relation to the above matter and in the first instance to respond to your letter of 15 April 2013.

As advised it is not possible to comment on the evidence you have reviewed or carry out any further research for relevant evidence in the timeframe required. In this respect you have indicated that you would be happy to receive any further evidence that my client may have after 17 May.

As my client only moved to the property relatively recently, he is not aware of any evidence relating to the extinguishment of mechanically propelled vehicular rights under s.67(1) of the NERC Act 2006. I can, however, comment on the conclusions in this respect set out in your letter of 15 April. Based on the evidence that you have presented I would agree that, if public vehicular rights are found to exist, the highest public rights that can subsist over this route is that of a restricted byway. However, there may be new evidence which other parties submit following receipt of your letter. I should therefore be grateful if you would forward to me any new evidence you receive regarding vehicular rights."

5.0 Current records

5.1 *Wildlife and Countryside Act 1981 s.56*

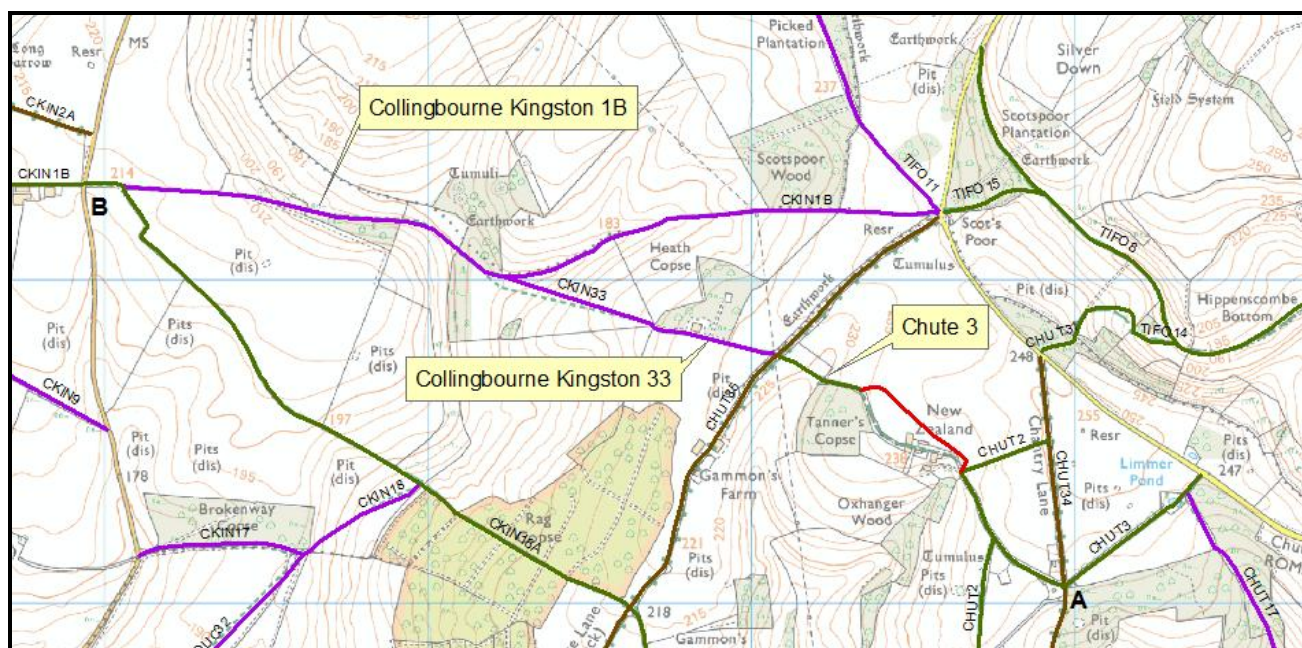
(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely –

(a) where the map shows a footpath, the map shall be conclusive evidence that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right.

(b) where the map shows a bridleway, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights.

5.2 The application route is represented in the definitive map and statement by Chute path no. 3 in the parish of Chute and path 33 and part of path 1B in the parish of Collingbourne Kingston.

The working copy of the definitive map represents these ways as below (purple = footpath, bridleway = green, restricted byway = red and BOAT = brown)



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5.3 The definitive statement:

Chute 3 BRIDLEWAY. From Chute Causeway, C.195, north-east of Limmer Pond, leading south-west to Chantry Lane, path No.34, and then north-west to OS Grid Reference SU 2864-5540, continuing as RESTRICTED BYWAY in a north north easterly direction for approximately 35 metres, then leading north west for approximately 330 metres, before leading generally west for approximately 80 metres to OS Grid Reference SU2833 5566 at Tanners Copse, and then continuing north west as BRIDLEWAY to the Collingbourne Kingston Parish Boundary. Approximate length 1800 m.

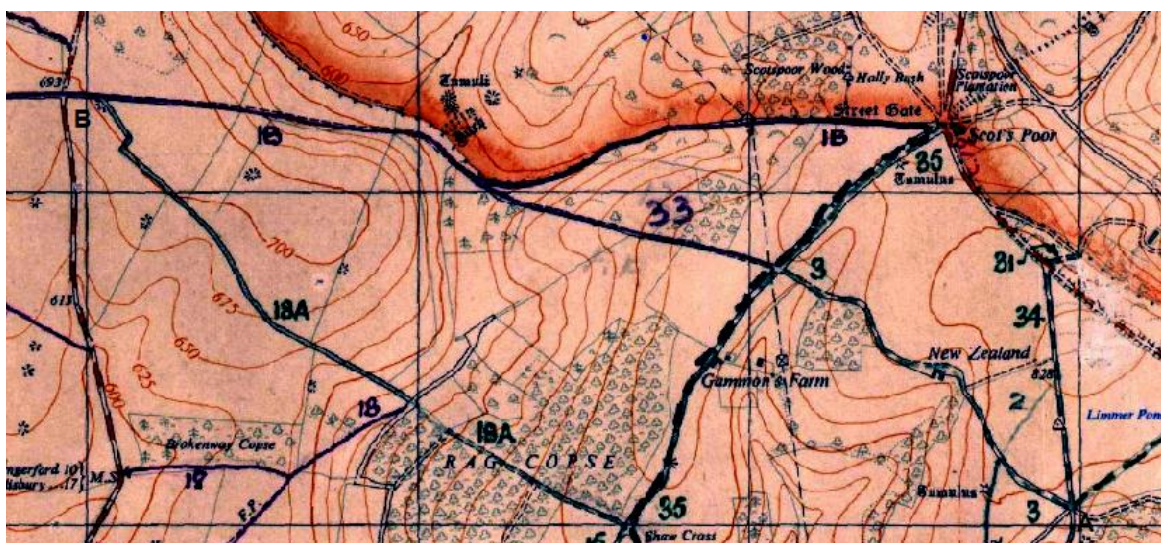
Width 1.8 m metres and 7metres on that section of restricted byway between OS Grid Reference SU2864-5540 and OS Grid Reference SU2833- 5566.

Collingbourne Kingston 1B BRIDLEWAY. From road U/C 8053, about 60 m south-west of path No.1D, leading south-east past Brunton Farm and then north-east and east past Tinkerbarn, across the Wexcombe road, C.21 to its junction with path No.18A.

FOOTPATH. From its junction with path No.18A leading eastwards and along the Grafton Parish boundary to Scots Poor on the Wexcombe road, C.195 at the Tidcombe and Fosbury/Chute Parish boundary. Approximate length 4500 m.

Collingbourne Kingston 33 FOOTPATH. From path No.1B, leading east-south-east along the southern edge of Heath Copse to Chute path No.3 towards New Zealand. Approximate length 960 m.

5.4 The route is shown on the Pewsey Rural District Council Area Definitive Map and Statement dated 1952 as below:



5.5 The routes were shown as follows:

Chute 3 – Road Used as a Public Path
Collingbourne Kingston 1B and 33 – footpath

2 of these were reclassified at Second and Special Review, without objection, as:

Chute 3 – bridleway
Collingbourne Kingston 1B – bridleway and footpath

5.6 A short section of the route of Chute 3 at New Zealand Farm was diverted in 2012 and the new route dedicated as a restricted byway.

6.0 Historic Records

6.1 A route linking Chute with Collingbourne Kingston appears in maps, plans and other records that officers have viewed dating back to 1773. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on fifty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.

6.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines (as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public	Inclosure Acts, awards and plans Orders creating, diverting or extinguishing highways Railway and canal acts and plans Definitive map and statement

	rights	
B	Reputation of a way as a highway Physical existence of a way	Documents, maps plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights. i.e. Tithe Commission, Inland Revenue Finance Act
C	Reputation of a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

6.3 **General Context** From Victoria County History *A History of the County of Wiltshire: Volume 16 pp 108 -120 (Chute) and pp 126 – 139 (Collingbourne Kingston)*

6.4 The parish of Chute lies to the east of the county of Wiltshire and has the county border with Hampshire on its eastern edge. Its most western boundaries are with the parishes of Collingbourne Kingston and Collingbourne Ducis.

6.5 The parish of Chute is a parish of over 1300 hectares that contained villages and hamlets named Chute, Cadley, Lower Chute, Conholt, Shaw and Standen. In the 20th century Chute became Upper Chute and the word Chute was added as a prefix to the names Cadley and Standen.

6.6 The parish of Collingbourne Kingston was a much larger parish of nearly 3000 hectares but this has been reduced to around 2000 hectares as land has been transferred to the neighbouring parish of Collingbourne Ducis. Collingbourne

Kingston contained the villages of Aughton, Brunton, Collingbourne Kingston, Sunton and part of Cadley.

- 6.7 Neither parish has been highly populated and census figures show peaks of population in the middle of the 19th century being approximately halved by 2001 to 331 for Chute and 486 for Collingbourne Kingston.
- 6.8 The parts of both parishes affected by this application are chalk downs with no natural water courses. It is noted that the roads through the parish of Collingbourne Kingston that were turnpiked around the end of the 18th century (The Marlborough to Salisbury Road in 1762, the Hungerford Road in 1772 and the Bourne Valley Road to the west in 1835) remain the major routes now. These routes are all essentially north south routes and it is notable that none of the roads running east west across the parishes have become principal routes today.
- 6.9 The land through which the claimed route leads was historically common or open pasture and down. New Zealand Farm, situated alongside the claimed route was built between 1841 and 1879 and post dates the road by at least 100 years. No other settlement exists along the route though the land over which part of it leads is now part of Gammons Farm, a settlement predating New Zealand Farm by at least 60 years (Gammons Farm had been built by 1773).

7.0 Category A Evidence

- 7.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e. arising from an act of parliament which specifically required the identification and verification of public rights of way).

7.2 Inclosure

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

- 7.3 Relevant to the applicant route land in Collingbourne Valence (a tithing of Collingbourne Kingston) was enclosed by an agreement made in 1798 and land in Chute was enclosed under a local Act of Parliament made in 1808 and the Enclosure Consolidation Act of 1801.
- 7.4 **Articles for Inclosing the Common fields of Collingbourne Valence 29th May 1798, A Plan of the Allotments in the Tithing of Collingbourne Valence in the County of Wilts As Laid Out in the Year 1798 and Described in the Annexed Deed and Collingbourne Valence Inclosure Award 1799.**
All documents Wiltshire and Swindon History Centre (WSHC) ref. 9/12/25 and 26.
- 7.5 The enclosure of lands in the tithing of Collingbourne Valence was carried out under an agreement made on the 29th May 1798. A transcript of this is appended here at **APPENDIX B**. In evaluating evidence relating to enclosure it is necessary to establish what powers the agreement (or act) gave and whether these reflect what occurred in the award.

Key points arising from these Articles:

- Agreement is made between The Right Honourable Thomas Bruce Earl of Ailesbury, Baron Bruce of Tottenham, William Ludlow of Hillworth, near Devizes, Thomas Edwards of Tilshead, Robert Edwards of Tilshead and Dummer Andrews of Swathling, Southampton – all being freeholders or proprietors of the common or open fields, lands and downs within the tithing of Collingbourne Valence and Michael fford of Collingbourne Valence who holds an estate by Copy of Court Roll (under the Earl of Ailesbury) and is also a Rack renter and John Piper, a Rack renter.
- The purpose of the agreement is to divide and enclose and is a great advantage and an improvement to their estates.
- Appoints John Gale of Stert and John Butcher of Wexcomb as Arbitrators or referees for exchanging, dividing and inclosing the common open fields, downs and waste grounds.
- Mssrs Gale and Butcher shall and may cause lands to be surveyed and measured by such person as they shall think fit as soon as conveniently may be done, if the same has not already been done.
- The survey and admeasurement shall be reduced into writing and no. of acres, roods and perches belonging to each shall be set forth, ascertained and described for enabling the Arbitrator to make divisions and allotment.

- If required survey shall be verified on the oath or oaths of the surveyor or surveyors and their assistants.
- John Gale and John Butcher for the more just and regular division and distribution shall qualify value and appraise the same and this shall be verified on the oaths of the said John Gale and John Butcher if required by any of the said parties.
- John Gale and John Butcher are hereby authorised and empowered as soon as convenient after the survey and valuation has been made to set out, ascertain and allot all of the said common or open fields, downs and waste lands within the tithing of Collingbourne Valence unto and amongst the several freeholders and copyholder intituled to or interested in the shares interests and properties having due regard to the situation convenience, quality and quantity of the lands now belonging to each proprietor and of the lands to be allotted in lieu thereof by virtue and in pursuance of the articles. To make proper consideration and allowance for trees, hedges and fences.
- As soon as convenient after Mssrs Gale and Butcher have completed and finalised the partitions and Allotments as aforesaid and before 29th may 1800 they shall form and draw up or cause to be formed and drawn up an Award or Instrument in writing which shall express and allot and a description of the situation, buttals and boundaries of parcels and Allotments and proper orders and directions for mounding, fencing and inclosing the same and at what times and how repaired and at what costs. Also for making and laying out proper Roads, Drovers, Ways and Passages both public and private in over and through such allotments and in what manner and at whose cost the same shall be kept in repair.
- To direct and appoint the course of husbandry that shall be used in and upon the lands so intended to be divided until such time as they have completed their Award and the new allotments are taken possession of.
- Restrictions, orders, direction regarding the depasturing of sheep and lambs in the new inclosures for a limited time are at the discretion of Messrs Gale and Butcher.
- The Award is to be binding and conclusive unto and upon the several parties, their heirs, executors, administrators and assigns.
- It is agreed and declared by all and every of the parties that lands to be divided, set out and allotted shall be in full bar and in exchange, satisfaction and compensation for all rights of common and other rights and properties.

- It is agreed and declared that charges and expenses should be paid by the owners and proprietors and other interested parties.
- If Messrs Gale and Butcher don't divide and allot within 2 years the agreement shall be void.
- Nothing in the Award shall affect manorial rights and interests except for the right to the soil.
- If Messrs Gale and Butcher disagree on any matter it should be referred to the umpire, Benjamin Haynes of Salisbury so that same may be made in writing in 2 and a half years.
- It is lawful for Arbitrators and the umpire with the consent of the parties of this agreement to allot and award any messuages, buildings, lands, tithes, hereditaments, new allotments and old inclosures in the tithing of Collingbourne Valence in exchange for other messuages, buildings, lands, tithes, hereditaments, new allotments and old inclosures in the same tithing and all such exchanges shall be forever good, valid and effectual in the law and shall be confirmed by any Deed or deed of exchanges.
- Hands and seals applied by:

Earl of Ailesbury
 Wm Ludlow
 Thos Edwards
 Robert Edwards
 Dummer Andrews
 Michael fford
 John Sloper

7.6 A Plan of the Allotments in the Tithing of Collingbourne Valence in the County of Wilts As Laid Out in the Year 1798 and Described in the Annexed Deed

7.7 The plan is at a scale of 6 chains to one inch and is a detailed plan showing details of land allotment and the roads that served them.

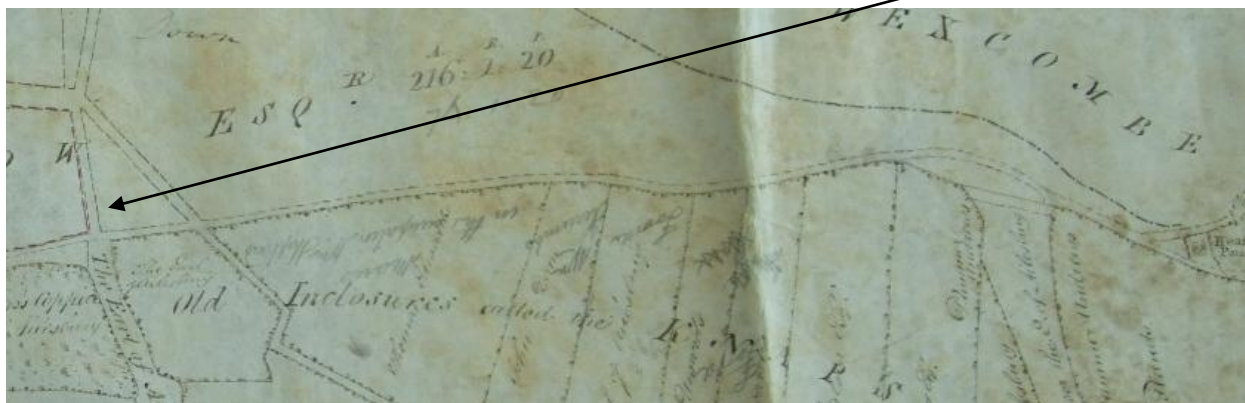
7.8 The whole of the relevant part of Collingbourne Kingston 1B and 7.5 chains of Collingbourne Kingston 33 is shown as a road hedged on the south side and unfenced on the north side. Joining the western end of its continuation there is an inscription "*Road from Collingbourne Kingston*" and at the eastern end the road is inscribed "*To Chute*". The road is of uniform width and there are no gates.

7.9 The map states that "That part of the Allotments lying east of the red dotted line consist of Down land". This includes the land to the north of the applicant route. This land is also inscribed "Down".

Extract showing applicant route at junction of 1B and 33. 33 shown leading past Heath Pond "To Chute".



Extract showing applicant route joining turnpike road from Hungerford (working copy below)



- 7.10 The route is the only continuous route linking Brunton and Collingbourne Kingston with Chute.
- 7.11 The original map is large and covers an area slightly larger than a sheet of A1 paper. As a result it is not possible to append a copy to this report but the original may be viewed at the Wiltshire and Swindon History Centre, Chippenham (Tues – Sat. inc).
- 7.12 **Collingbourne Valence Inclosure Award 1799** The award is dated 1st November 1799 and has been signed and sealed by John Gale and John Butcher in the presence of Robt Noyes and Wm Hemming. The file at WSHC contains the original and a 19th century copy. It is noted that John Gale was an experienced commissioner who dealt with 22 awards in Wiltshire.
- 7.13 The award appears to satisfy the terms of the Articles of Agreement in all ways. It is noted that an agreement does not have the power to extinguish existing highways (though it may create by dedication) and this is reflected in the descriptions of the roads detailed in the award. A transcript of this section of the award is appended at APPENDIX C and a summary table is also appended here.
- 7.14 A total of 14 routes are detailed in the award, 7 of these are public carriage roads (of which 6 are also drift ways). An additional 1 public bridle road and footpath is awarded and one public footpath. All other routes are listed as private routes.
- 7.15 The applicant route (i.e. part of Collingbourne Kingston 1B and 33) is awarded as *“ONE OTHER public Carriage Road of the breadth of twenty ffeet beginning at the place where it joins Stonehill ffield from the Inclosures of the said William Ludlow about three hundred and fifty Yards to the west of Jennings’s Coppice and from thence extending eastward in its usual course and Direction across the Turnpike Road leading from Hungerford to Salisbury and by the Knapp Hedge over an allotment of down Land to the said William Ludlow until it enters the Lands of the said William Ludlow called Heath ffarm near a pond called Heath pond the same being a public Carriage Road leading from Collingbourn towards Chute.”*
- 7.16 This description includes 26 chains of 1B west of the Hungerford to Salisbury road. A route continuing south-west from the turnpike towards Collingbourne Kingston village is set out as a Public Carriage Road in the Collingbourne Kingston Inclosure Award of 1824 (WSHC EA128) and named *“Chute Road”*.
- 7.17 It is notable that the award refers to all public roads as being on their “usual course” and this is consistent with the applicant route being shown on earlier maps (for example on Andrews’ and Dury’s Map of Wiltshire 1773).

7.18 An Act for Inclosing Lands in the Parish of Chute in the County of Wilts 1808 and subsequent Inclosure Award dated 1820

7.19 Land at Chute was enclosed under a local act dated 1808 and entitled “An Act for Inclosing Lands in the Parish of Chute, in the County of Wilts.” This Act supplemented the Inclosure Consolidation Act of 1801 which also applied to this process.

7.20 Prior to the 1801 Act each Parliamentary Inclosure was authorised by its own local Act with varying terms and conditions. The 1801 Act provided a framework for subsequent inclosures and although a local act was still required (which could vary the rules), the 1801 Act generally standardised the process.

7.21 The local act for Chute (“the 1808 Act”) makes no mention of variations to the award of public or private roads and paths and accordingly it is necessary to consider the provisions contained within the 1801 Act. **APPENDIX D** relevant provisions.

7.22 Section VIII states that the Commissioners shall appoint public carriage roads and produce a map showing these. This was to be undertaken before allotments were made. Notice was then to be given and an opportunity granted for objections to be made at a meeting; the matter to be determined by the Commissioner and a Justice of the Division. Extinguishment of any old road could only be done by order of two Justices of the Peace , subject to appeal, at Quarter Sessions.

7.23 WSHC holds copies of the Salisbury and Winchester Journal on micro fiche which have been viewed and two notices appeared in this paper as follows:

<u>Date</u>	<u>Notice</u>
01.05.1809	Chute Inclosure. Eleven Public Carriage Roads and Driftways set out and described.
25.09.1809	Chute Inclosure. One Public Carriage Road and Driftway in lieu of a Public Carriage Road previously set out and now suppressed and an additional Public Carriage Road and Drift Way set out and described. Nine public footpaths and four private roads and driftways set out and described.

7.24 Hence it is clear that by September 1809 twelve public carriage roads and driftways, nine public footpaths and four private roads had been set out. Section IX of the 1801 Act defines the term setting out and requires that Commissioners appoint Surveyors to set out the roads and that they declare their completion at a Special Sessions to

enable them to become highways maintainable at public expense. Failure to do so within a limited time resulted in a fine of £20. No declaration of completion has been found for this route, any other route in Chute and officers can only recall one example of such a declaration (relating to a route in Orcheston parish) for the whole of the County. A presumption of regularity applies and is supported at common law (Planning Inspectorate Consistency Guidelines para.7.25 2nd Revision May 2013).

- 7.25 This certification related wholly to the maintenance liability of the roads and not to any rights of the public to use them (s. ix the 1801 Act). It is noted that the way was, on the balance of probabilities, a pre-existing ancient highway and would by virtue of the 1835 Highways Act become maintainable at public expense at that time anyway.
- 7.26 The setting out of the roads preceded the allotment (s.VIII of the 1801 Act).
- 7.27 Only after the setting out of the roads and the allotment of lands could the Commissioner draw up their award (s.XXXV of the 1801 Act). This section of the Act states that Commissioners, if they thought it necessary, could draw up maps and plans to assist explanation of the allotments and that any such maps or plans should be annexed to the Award and enrolled with it.
- 7.28 It is notable that there is no map held with the Award and it is considered likely that there wasn't one given the provision contained within s.XXXV. The descriptions of roads, pits and allotments in the Award are full and descriptive and the text does not refer to plans or numbering of roads in the same manner that other Awards do.
- 7.29 **Chute Inclosure Award dated 1820 WSHC 304/1 MS**
- 7.30 The 1801 Act required at s.1 that no one may act as a Commissioner until he had taken the prescribed oath. Document ref. 304/1 contains the sworn oaths of the two Commissioners (Rich. Parsons and Benjamin Haynes) and the Umpire (George Barnes).
- 7.31 The Award has been read and contains the following relevant information:
- The term "Chute Act" is used to distinguish it from "The General Act".
 - A meeting was held at The Cross Keys Inn on 22nd August 1808 further to notice being given on the 6th August 1808 to enable the two Commissioners (Rich. Parsons and Benjamin Haynes) and the Umpire (George Barnes) to be sworn into post.
 - A true and exact survey admeasurement and plan has been made and verified on oath before the Commissioners as per the General Act.
 - The Collingbourne Kingston boundary was questioned and resolved by George Barnes at a meeting at The Cross Keys Inn on the 25th May 1809.

- The boundary for Chute Forest was also defined at this meeting.
- Rich. Parsons and Benjamin Haynes “do hereby Award and confirm the several public and private Roads and ways in over upon through and by the said lands and grounds so directed to be inclosed as hereafter describes (that is to say)...” See **APPENDIX E** for transcript of awarded roads and paths.
- The Award grants 12 public carriage roads and driftways , 9 public footpaths, 2 private carriage roads and driftways and 2 private roads and driftways. It also awards 2 gravel pits and 2 ponds and watering places (NB the descriptions for the gravel pits and ponds refer to a plan but none is annexed).
- Gravel pits are for the Surveyor or Surveyor of highways for the purpose of furnishing chalk or gravel or other materials for making and repairing the roads and ways in Chute and for the use of the owners and occupiers of the allotments awarded (NB the power to do this is contained within the 1808 Local Act).
- The fences for inclosing allotments shall be made against the said public roads.
- Allotments of land were made to the Earl of Ailesbury, George Smith Esq., Major Bailey, James Knight, Daniel Wilkins, Thomas Fisher, the representative of the late Ann Cook, John Mills, the representative of the late John Phillmore, the representative of the late William Smart, Ralph Broad, Thomas Mills, Francis Breadmore, John Webb, the representative of Thomas Smart, the representative of the late John Nichols, Philip Evelyn, George Soley Foyle, the representative of the late Joseph Norris, the representative of the late James Butcher, the representative of the late William Smith, Edward Broad, the representative of the land Blandena Bennett, the representative of the lat Mary Arnold and Philip Pulse Esq.
- The Award is signed and sealed by 31 people in total and is signed and sealed by Richard Parsons, Benjamin Haynes, Wm Philip, ? Medows and Henry Bateman “In witness wherof we the said Commissioners parties to these presents have hereunto set our hands and seals this fourth day of November in the year of our lord one thousand eight hundred and twenty and we the said several other parties to these presents as proof of our several consents to these exchanges here in before made and set forth have to this Award also affixed our hands and seals”.
- Also “signed sealed and published” and “signed sealed and delivered” as below.

Signed sealed and published ¹⁷⁸⁸
 by the said Richard Parsons and
 Benjamin Bagges in the presence
 of us
 G. Ryley
 W. Phillips
 Signed sealed and delivered by the said
 Evelyn Philip Meadows William Augustus Spencer
 Boswell and Henry Bateman in the
 presence of John Jones
 Lincoln Jct
 Alexander Moore Clerk to
 Messrs Bateman & Jones Lincoln

Description of Roads

Description of Roads — One Public Carriage Road and drift way of the breadth of Forty feet beginning at
 Scot Pools and extending eastwards in its ancient course and direction along the Causeway into the
 Causeway Lane being the Highway from Marlborough to Andover.
 One other Public Carriage Road and drift way of the breadth of Forty feet beginning
 at Scot Pools and extending in a Southwest direction across Chute Heath to a place
 called Shaw brook the same being the Highway from Scot Pools to Collingbourne
 Kingstone —
 One other Public Carriage Road and drift way of the breadth of Forty feet
 branching out of the last described Road near a place called Gammon Corner and
 from thence extending eastward to the North end of Chantry Lane the same being
 the Highway from Collingbourne Kingstone to Chute —

7.32 The above extract from the Award shows the first three roads to be awarded.

7.33 The first is Chute Causeway, now recorded as a C class road, the C.195.

*“One Public Carriage Road and driftway of the breadth of forty feet beginning at
 Scots Pools and extending eastwards in its ancient course and direction along the
 Causeway into the causeway Lane being the highway from Marlborough to
 Andover.”*

7.34 The second is now recorded as Byway Open To All Traffic Chute 35.

“One other Public Carriage Road and driftway of the breadth of forty feet beginning at Scots Poors and extending in a southwest direction across Chute Heath to a place called Shaw Cross the same being the highway from Collingbourne Ducis.”

7.35 The third is the applicant route now recorded as bridleway Chute 3 (part).

“One other Public Carriage Road and driftway of the breadth of forty feet branching out of the last described road near a place called Gammons Corner and from thence extending eastward to the north end of Chantry Lane the same being the highway from Collingbourne Kingston.”

7.36 The Commissioners at Chute (unlike at Collingbourne Kingston where inclosure happened by agreement) were able to extinguish existing rights of way as part of the allotment process (s. VIII of the 1801 Act). This was subject to the same forms and restrictions as if the matter had been raised by a Justice of the Peace, but nevertheless they had the power to identify routes to be extinguished. No evidence has been found of any proposed extinguishments and no orders of the Quarter Sessions have been found.

7.37 Old map evidence viewed (and later discussed) supports the existence of a route linking Collingbourne Kingston with Chute leading past Heath Pond and joining Chantry Lane. Although maps of this scale and antiquity (i.e. Andrews and Dury 1773, Cary 1801, Greenwood 1820) are unlikely to be of use in determining the precise route of a way, they may be supportive of the existence of public rights in some cases and indicative of a route.

7.38 As the Chute Inclosure Award made no extinguishments it is likely that all awarded public roads were on existing routes, as was the case in Collingbourne Kingston. Since the routes continue across the parish boundary in some instances, this is reasonable.

7.39 **Deposited Plans of the South Midland Railway 1871 (WSHC A1/371/121MS)**

7.40 Individual railway and canal schemes were promoted by Special Acts. The process for Canal Schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover Railway Schemes in 1810. The requirements for railways were expanded in the 1845 Act, which requires public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, these plans provide good evidence in this context as the law required provision to be made for existing routes crossing the line.

7.41 Clause 10 of the 1845 Act requires that True copies of such plans and books of reference ... certified by any such clerk of the peace shall be received by the courts of justice or elsewhere as evidence of the contents thereof. The Act also

includes provisions for the crossing of the line by any highway and specifies (Clauses 46 to 51) the minimum bridge dimensions for public and private roads and the requirements for the gating of crossings on the level.

- 7.42 Railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes was exacting and the Book of Reference and Deposited Plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way.
- 7.43 The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description.
- 7.44 Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain.
- 7.45 Railway plan sections and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges laid down in the 1845 Act is 25 feet (7.62 metres) for public roads and 12 feet (3.66 metres) for private roads. However, caution needs to be exercised regarding the latter as some high status estate roads had wider bridges. There were no specified widths for bridleways or footpaths.
- 7.46 The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated Book of Reference.
- 7.47 The Plans and Book of Reference for the South Midland Railway were deposited with the Clerk of the Peace of the County of Wiltshire at Marlborough on the 30th November 1871 at a quarter to seven pm. The deposit is signed by the Clerk of the Peace.

30th November 1871.

*Deposited at the Office of the Clerk of the Peace
of the County of Wilts at Marlborough by Messrs
Sharp Harrison and Pocock at a Quarter before
Seven o'clock P.M.—*

J. E. Merriam
" Clerk of the Peace of
the County of Wilts.

H-MIDLAND

7.47 The railway was not built but the accepted intention was as follows (extract from the deposited Book of Reference):

9. A Railway (No. 6) commencing in the parish of Hungerford, in the county of Wilts, in a field called the "Nine Acres," part of Hop Grass Farm, and abutting upon the turnpike road from Newbury to Marlborough, belonging to Francis Leybourne Popham, as committee of the estate of Edward William Leybourne Popham, and now in the occupation of John Richens, at a point in that field fifty-five yards or thereabouts south of the centre of the said road leading from Newbury to Marlborough, and ninety-eight yards or thereabouts south-west of the stile at the point where a public footpath intersects the said road, passing thence through or into the several parishes, townships, and extra-parochial places following, or some of them, namely:—Hungerford and Shalbourne, in the county of Berks; Hungerford, Froxfield, Shalbourne, Great Bedwyn, Little Bedwyn, Tidcombe, Collingbourne Kingston, Collingbourne Ducis, Chute, North Tedworth, South Tedworth, Ludgershall, and Fyfield, in the county of Wilts; North Tedworth, South Tedworth, Appleshaw, Fyfield, Kimpton, Thruxton, Moxton, Penton Grafton or Weyhill, Penton Mewsey, Foxcott, Knight's Euham, and Andover, in the county of Southampton, and terminating in the parish of Andover, in the county of Southampton, by a junction with the Andover and Redbridge Railway of the London and South-Western Railway Company, at a point on that Railway sixty-five yards or thereabouts north of the distant auxiliary down train signal-post on that Railway, which signal-

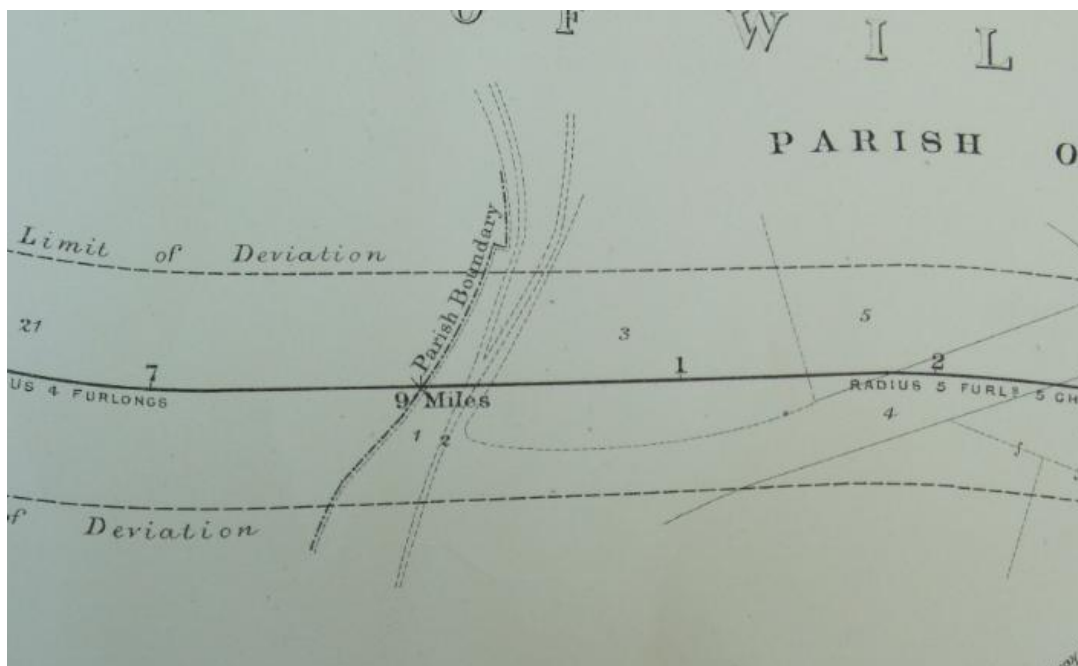
post is situated between the junction of that Railway with the Basingstoke and Salisbury Line of the London and South-Western Railway Company and the level crossing at Andover town station;

7.48 The overview plan deposited is of help in interpreting the detailed plans and sections and shows the railway leading over Collingbourne Kingston 1B close to its junction with Collingbourne Kingston 33 (near Heath Pond):

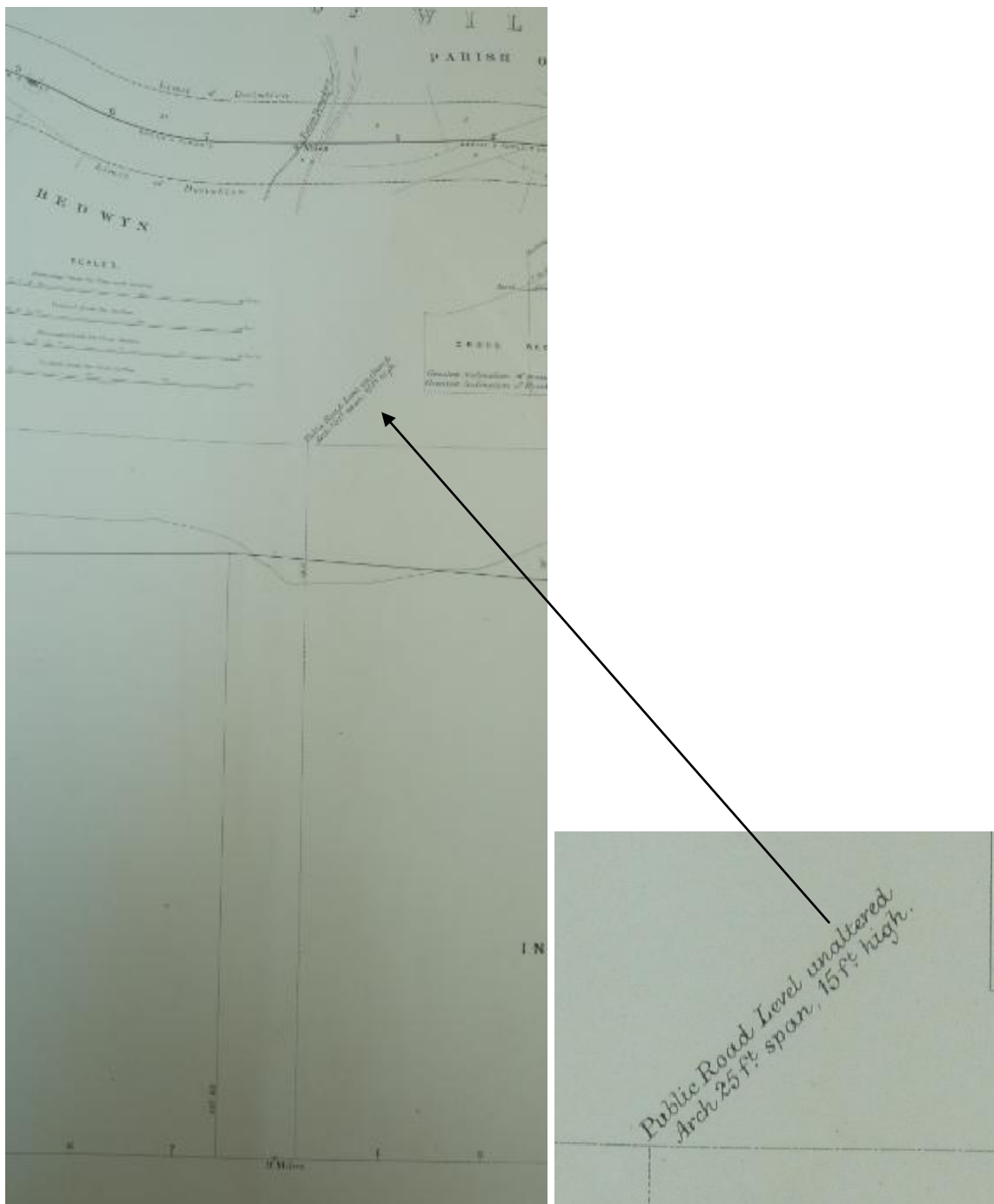


Applicant route

7.49 The detailed plan for Railway Number 6 on Sheet 5 shows the railway crossing the applicant route at 9 miles and 2 chains near the junction of paths 1B and 33. The road is numbered 2 in the Parish of Collingbourne Kingston. NB Railways plans do not follow the 'north is up' convention and in this case the top of the plan is east.



7.50 Immediately below the plan is the cross sectional drawing and this records, at 9 miles and 2 chains "Public Road level unaltered Arch 25 ft. span, 15 ft high".



7.51 The Book of Reference for Railway No. 6 in the Parish of Collingbourne Kingston records as follows:

Numbers referring to the Plan	Description of Property	Names of Owners or Reputed Owners	Names of Lessees or Reputed Lessees	Occupiers Names
2	Public Road	The Everley and Pewsey District Highway Board	blank	blank

Decision Report Chute 3(part), Collingbourne Kingston 1B (part) and 33

7.52 To demonstrate the diversity of routes crossing the railway in the parishes of Collingbourne Ducis and Kingston the below is included:

Collingbourne Kingston			
121/176	2	Public Road	
121/177	7	Public Road	
121/178	9-10	Public Road	
121/179	13	Footpath	
121/180	16	Occupation Road	
121/181	18	Public Road	
Collingbourne Ducis			
121/182	2	Public Road	
121/183	10	Occupation Roadway	not on map
121/184	15	Turnpike Road	
121/185	24-6	Footpath	
121/186	25	Turnpike Road	see 70/7
121/187	27-9-a	Roadway	
121/188	32	Occupation Road	see 69/79
121/189	33	Public Road	see 70/5

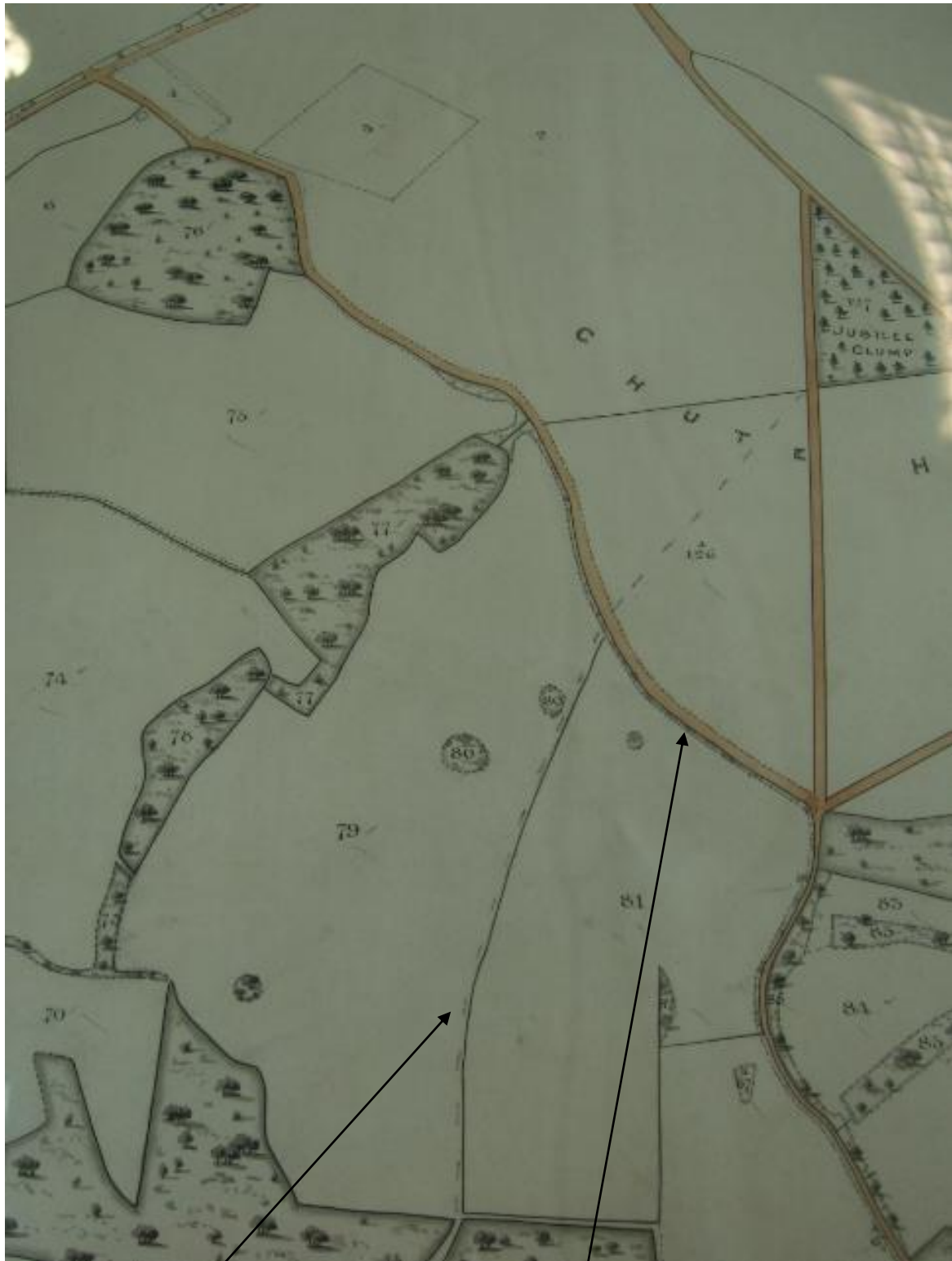
8.0 Category B Evidence

- 8.1 Category B evidence may be documents or plans drawn up as a result of legislation, and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.
- 8.2 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.

- 8.3 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 8.4 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians* by Roger J P Kain and Hugh C. Prince) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 8.5 The applicant route passes through the parishes of Chute and Collingbourne Kingston and as a result two tithe maps have been viewed.
- 8.6 **Chute Tithe Award 1842 and Map dated 1841 T/A Chute WSHC**
- The map is dated 1841 and drawn to the scale of 6 chains to one inch by Phillips and Westbury, Surveyors of Andover. It carries the Tithe Commissioners stamp dated Dec 22 1841 and is signed by Robt Page, Assistant Tithe Commissioner. It is also certified as a copy of the map referred to in the apportionment signed by Wm Blamire and T W Buller .
- 8.7 The map shows foot/bridleways, houses, woods, plantations, parkland, some building names, some road names, cross, windmill (pictorial), parsonage, boundary wells, some hills and downs are named.
- 8.8 Paths or tracks appear as single pecked lines and lanes and roads as double lines (either solid or pecked). Roads are coloured sienna and are un-numbered. These roads are excluded from tithe, not recorded in any ownership and appear in the apportionment under the heading "Roads". The applicant route (Chute 3) is shown as one of these "Roads". Private roads are numbered and listed in the apportionment (for example road to Conholt House is number a407 and described thus); Chute 3 is not one of these.
- 8.9 Some routes have destinations written on them where they leave the parish and some do not. 11 routes are shown leaving the parish, 4 of these do not have a destination written against them. To investigate whether there is any reason for this (as Chute 3 does not have a destination written against it) officers have investigated how these routes are recorded today.
- 8.10 Working round the edge of the parish in an anti clockwise direction starting at the Ludgershall and Chute parish boundary the following have been identified:

Order from BOATs LUDG30 and CHUT32 boundary (south west corner of parish)	Inscription on Tithe Map	Current status recorded	Notes
1	From Appleshaw	C class road c.256	
2	To Andover	C class road C.262	At Lower Chute
3	To Tanglely	U/c road 8063	
4	To Andover	C class road 196	
5	None	C class road C.257	
6	None	U/c road 9055	At junction with u/c 8056
7	None	U/c road 8056	
8	To Hippenscombe	Bridleway Chute 25	Breach Lane (awarded public carriage road and driftway 1820 Inclosure award)
9	To Marlborough	Byway Open to All Traffic Chute 35	Causeway and Scots Poor junction
10	None	Bridleway Chute 3	Applicant route
11	From Collingbourne Ducis	Byway Open to All Traffic Chute 31	

8.11 Additionally it is possible to identify a number of the routes shown with a single pecked marking. Bridleway Chute 2 is one of these and is shown in a manner distinct from the Road network.



Chute 2

Chute 3

8.12 The representation of Chute 3 is consistent with the recording of other roads in the parish and inconsistent with routes of a lower status than road. It is noted that in

1841 no buildings were recorded at New Zealand Farm. Chute 3 varies between 33 and 50 feet wide.

8.13 **Collingbourne Kingston Tithe Award and Map 1843 T/A Collingbourne Kingston**

The map is drawn at the scale of 6 chains to one inch by A M May Surveyor of Marlborough and carries the stamp of the Tithe Commissioners and is signed by Aneurin Owen Assistant Tithe Commissioner and Certified by Wm Blamire and T W Buller.

8.14 The map shows water bodies, woods (coloured), plantations (coloured), a camp, notable pond, windmill, tithing boundaries (coloured), churchyard (coloured), dot dash lines separate lands in the same occupancy, pecked lines separate occupancies. The compass star is ornate and has 'Ich Dien' and Prince of Wales feathers.

8.15 Collingbourne Kingston 1B is shown as a partly fenced road coloured sienna passing along the south side of Apportionment No. 203. Collingbourne Kingston 33 is also shown partly fenced and coloured sienna except for a length of approximately 20 chains. It is partly bounded on the south by Apportionment No 251 and has an approximate width of 25 feet and no gates.



Collingbourne Kingston 33

Chute 3



Collingbourne Kingston 1B

33

8.16 A short section of the route of Collingbourne Kingston 33 is not shown where it passes between plot numbers 250 and 251. It is also only partly fenced where it crosses plot number 203.



8.17 The apportionment records the following:

No. 203 “Down and Roadway” and No. 251 “Between Ways”.

Plot No. 250 is described as “Rendalls Ground – Arable”.

8.18 The manner in which roads were represented in the Collingbourne Kingston and Chute Tithe awards differs considerably and Brunton (a tithing of Collingbourne Kingston) has only 3 roads recorded. These are numbered and described as follows:

100 Village Street and Road Adjoining

204 Turnpike

230 Knapp Drove

8.19 It is noted that in the Inclosure award of 1798 the land through which the applicant route leads here called Rendalls ground plot number 250 was recorded as down land. The tithe map and award shows that ploughing of the down here occurred between 1798 and 1843 (so much earlier here than for part of Chute 3 – see later OS evidence).

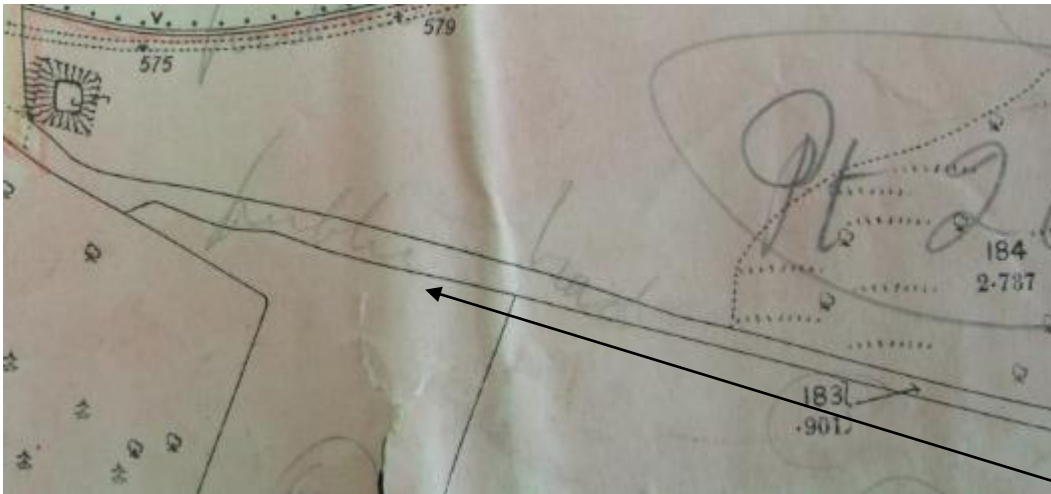
8.20 **Inland Revenue Finance Act 1909/1910** In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were carefully identified and included in the documentation.

8.21 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 “An Edwardian Land Survey: the Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

“The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses”.

“A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament.”

- 8.22 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and undoubtedly provide the most accurate record of the landscape that we have for that time. Sheets 42.12 and 43.13 (L8/10/42 and L8/10/43) have been viewed.
- 8.23 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property were diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 8.24 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that "No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority".
- 8.25 It is possible that the parishes of Chute and Collingbourne Kingston were surveyed by different valuers; certainly the styles of the plans of sheets 42 and 43 are different in their use of colour. However, in both cases the applicant route was coloured in the same manner as surrounding hereditaments and hence in theory included in their valuation.
- 8.26 However, in the case of Chute 3 and Collingbourne Kingston 33 the surveyor has written in pencil on the plans annotations relating to the nature of the route being a 'Public Track' and a 'Public Road'. The valuation book does not record an easement or deduction for public right of user and yet the surveyor has recorded in one place that "track 202 is part of Gammons Farm".
- 8.27 On part of CKIN33 west of Heath Copse:



“public track”

8.28 On part of Chute 3 west of New Zealand Farm:



“Public Rd”

Note Byway Open To all Traffic Chute 35 is shown excluded from hereditaments to its junction with Chute 3 only, south west to Gammons Farm is shown pink as part of Gammons Farm.

8.29 The maps for the Finance Act Records are incomplete at WSHC and the plan showing Chute 3 east to its junction with Chantry Lane is missing.

9.0 Category C Evidence

9.1 Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority.

9.2 These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

9.3 Collingbourne Kingston Vestry Minutes 1839 WSHC 666/15

The vestry formed the fundamental unit of decision making for the parish and had a number of legal obligations and responsibilities it had to meet. One of these was to appoint Surveyors of the Highways and to oversee the repair and maintenance of public highways within the parish.

9.4 The Statute of Winchester in 1285 made manors responsible for maintaining the Kings Highway and the situation continued for nearly 300 years. During the 16th and 17th centuries the power and influence of the manor courts diminished and the Vestry assumed more power. The Highways Act of 1555 transferred the responsibility for maintaining roads from manors to the parish Vestries and required that each able bodied parishioner was required to give 4 days statute labour per annum to work on the roads, though the Highways Act of 1691 authorised the levying of a Highways Rate. The 1555 Act also established the office of Surveyor of the Highways (also called a waywarden) and made the churchwardens, constable and other parishioners responsible for their selection though from 1662 the selection was made by the majority of parishioners.

9.5 The role of the Surveyor of Highways was to organise works to the highways and to see that they were carried out properly. Failure to do so could result in a presentment being made at Quarter Sessions and the Parish being ordered by the court to make repairs or face significant penalties.

9.6 An Act of 1815 (55 Geo III c.47) required that a return was made to Parliament showing “Length of the Public Highways used for Wheeled Carriages” and was followed by returns made by order of the House of Lords in 1827 and by order of the House of Commons in 1833 and 1839.

9.7 Pasted inside the Collingbourne Kingston Vestry Minute Book is a schedule headed "Measurement of the Roads or Ways in the parish of Collingbourn Kingston". One of the roads is Collingbourne Kingston 2A (part), 1B (part), and 33. A note at the bottom of the page states:

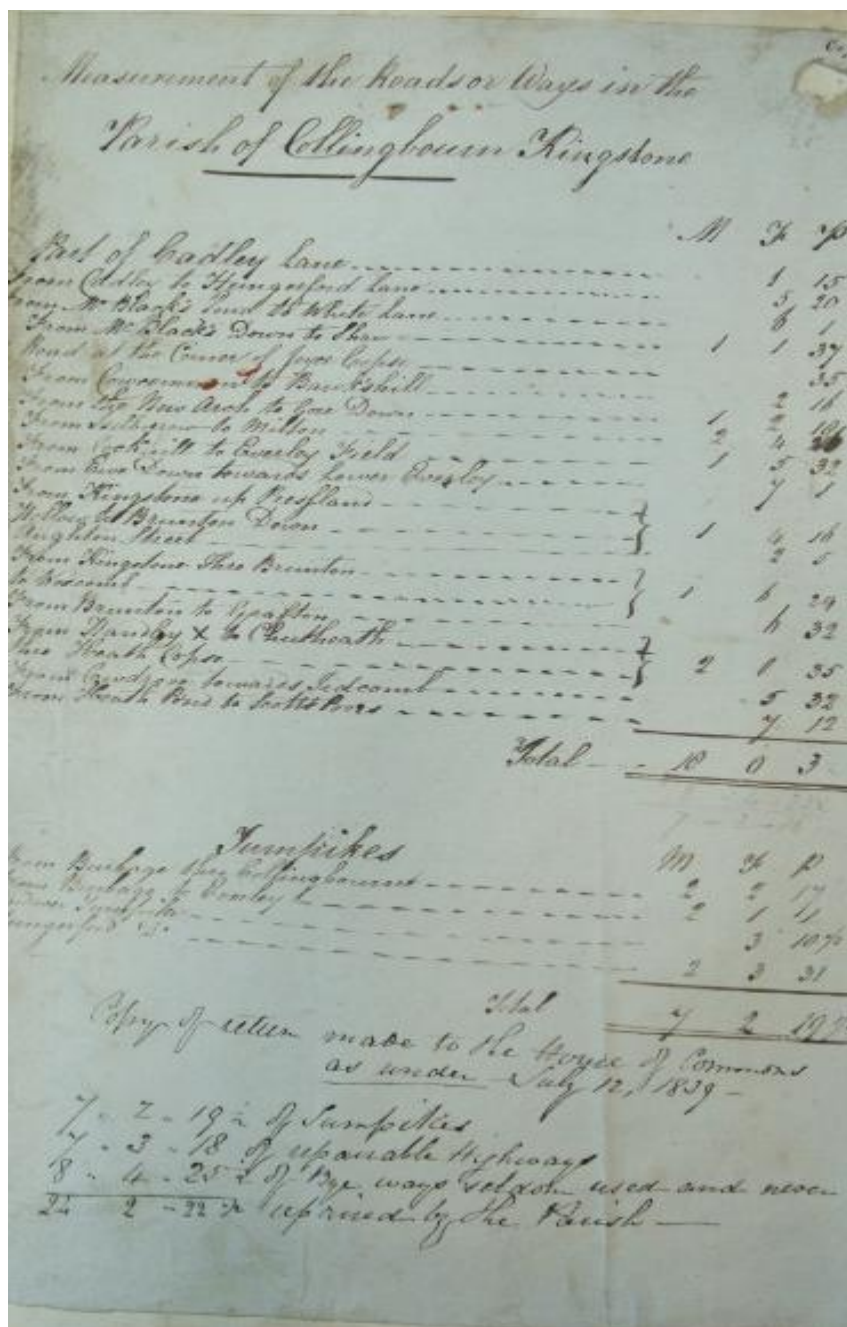
"Copy of return made to the House of Commons as under – July 12, 1839

7 .. 2 .. 19.5 of Turnpikes

7 .. 3 .. 18 of repairable Highways

8 .. 4 .. 25.5 of Bye ways seldom used and never repaired by the Parish

24 .. 3 .. 22.5"



Decision Report Chute 3(part), Collingbourne Kingston 1B (part) and 33

9.8 Routes have been identified as follows:

	M	Y	P
Part of Hadley Lane			
From Caddow to Hungerford Lane		1	15
From Mr Black's Pond to White Lane		5	20
From Mr Black's Down to Shaw		6	1
Road at the Corner of four Copse	1	1	37
From Cowcommon to Hawk's Hill			35½
From the New Arch to Lee Down		2	16
From Sulbarrow to Millers	1	2	18
From Cook's Hill to Beverley Field	1	4	20
From Lee Down towards Lower Beverley		5	32
From Kingstone up Presland		7	1
From Kingstone Down			
Wroughton Street	1	4	16
From Kingstone Thro Brunton		2	5
to Woodcomb			
From Brunton to Grafton	1	6	29
From Handley & to Heath		6	32
Three Heath Copse			
From Grafton towards Woodcomb	2	0	35
From Heath Pond to Scott's Pools		5	32
		7	12
Total	10	0	3

9.9 The Turnpikes may be identified as follows:

	M	Y	P
From Buxton to ...			
From ... to ...	2	5	17
From ... to ...	2	1	11
From ... to ...		3	107
From ... to ...	2	2	31
Total	4	2	197

Copy of return made to the House of Commons
 at order July 12, 1839 -

9.10 More clearly these are: Applicant route in the parish is highlighted in yellow

Order in list	Description of Route	Current recording	Length in M F P
1	Part of Cadley lane	Road C.259	0 1 15
2	From Cadley to Hungerford Lane	CDUC 2	0 5 20
3	From Black's Pond to White Lane	Former RUPP CDUC 24	0 6 1
4	From Black's Down to Shaw	Former RUPP 25 and CDUC 38	1 1 37
5	Road at the Corner of Joyce Copse	CDUC 7 (pt)	0 0 35.5
6	From Cowcommon to Bawk's hill	CDUC 34	0 2 16
7	From the New Arch to Gore Down	Road C.259 (Chick's Lane)	1 2 18
8	From Isleborrow to Milton	CDUC 6A and 1A (pt)	2 4 26
9	From Cockhill to Everley Field	Road u/c 8085 CDUC 12 (pt) & 13	1 5 32
10	From Ewe Down towards Lower Everley	CDUC 30, 14 (pt) & 12 (pt)	0 7 1
11 & 12	From Kingstone up Presland Hollow to Brunton Down	CDUC 9 (pt) unregistered and 1B(pt)	1 4 16
13	Aughton Street	Road u/c 8052	0 2 5
14 & 15	From Kingstone thro Brunton and Wexcomb	Road u/c 8053 (pt) and 2	1 6 29
16	From Brunton to Grafton	Road u/c 8053 (pt) and CDUC 2A (pt)	0 6 32
17 & 18	From Handley Cross Roads to Chute Heath thro Heath Copse	CDUC 2A(pt), 1B (pt) and 33	2 0 35
19	From Cowdrove towards Tidcomb	Unregistered and CDUC 4	0 5 32
20	From Heath Pond to Scotts Poors	CDUC 1B (pt)	0 7 12

Turnpikes

Order in list	Description of Route	Current recording	Length in M F P
1	From Burbage thro Collingbourn	Road A.338 (pt)	2 2 17
2	From Burbage to Everley	CDUC 20 and 1A (pt)	2 1 1
3	Andover Turnpike	Road A.342	0 3 10.5
4	Hungerford Turnpike	Road C.21	2 3 32

9.11 That part of the applicant route that is now Collingbourne Kingston 1B and 33 is clearly identified as part of the route leading from Handley Cross to Chute Heath through Heath Copse. The list details the division of 1B at Heath Pond where it heads north east to Scotts Poor and describes the applicant route as leading “thro Heath Copse”.

9.12 It has not been possible to determine whether this route is included in the total for “repairable highways” or “bye ways seldom used and never repaired by the parish”, however, it is clear that the route was regarded as a public highway used for wheeled carriages in 1839.

9.13 Parish Council Claims – National Parks and Access to the Countryside Act 1949

9.14 The National Parks and Access to the Countryside Act 1949 required Wiltshire County Council to produce a definitive map and statement of public rights of way. As a part of this process Parish Councils had to submit details of all the ways in their parish that they considered to be public rights of way that should be included in the map and statement.

9.15 Although parish councils were directed to guidance on the matter and all parish councils did submit a claim in Wiltshire, there is significant variation in the extent and detail of the submissions between parishes.

9.16 Chute Parish

9.17 The parish claimed a route numbered ‘3’ as shown on the underlying Ordnance Survey Map (1:10560 Edition of 1926) leading from the parish boundary with Collingbourne Kingston east past Tanners Copse and New Zealand Farm, across Chantry Lane extending past Limmer Pond to its junction with Chute Causeway.

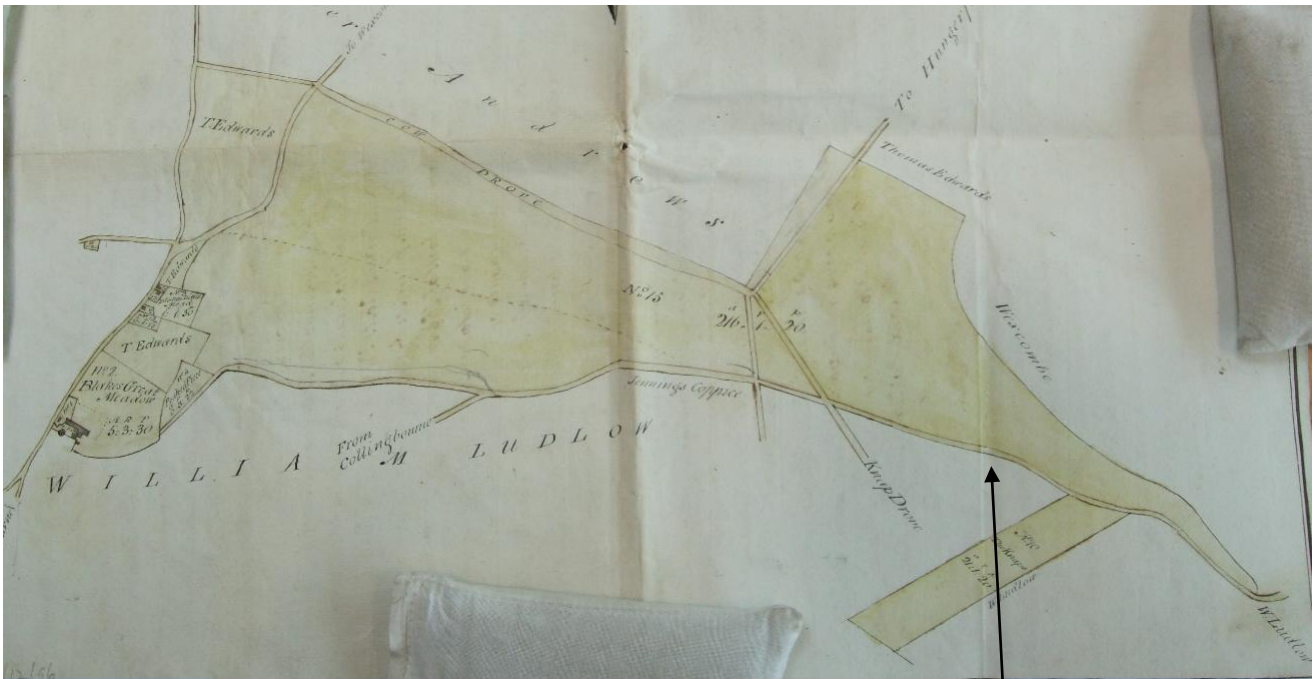
This is the route of Chute path 3 today, other than the section diverted in 2012 at New Zealand Farm.

- 9.18 The Parish Council described the route as leading “from Limmer Pond to Chantry Lane overgrown by scrub etc. Cart Track from Chantry Lane to Tanners Copse. Cart track in bad repair”. The nature of the surface was described as “Grass and overgrown to Limmer Pond otherwise from Chantry Lane to Tanners Copse deeply rutted cart track.” No stiles, gates, footbridges, stepping stones or direction posts were recorded and the way was described as being open and fenced and 6 feet wide.
- 9.19 The route was added to the definitive map as a Road Used as a Public Path and to the statement as a Carriage Road Bridleway.
- 9.20 **Collingbourne Kingston Parish Council**
- 9.21 The parish Council claimed a long route leading from the Easton Boundary to Scots Poor - “Easton Boundary to Inham Down to Cross Roads just S of Aughton crossing railway running due E to Brunton across Road to Rookery to Pt 694 to Hungerford Road to Scots Poor”. Other than the surface being described as “Good” and that the way was “fenced” no other details were given. No status was indicated.
- 9.22 The County Surveyor divided the route into three parts (1A, 1B and 1C) and added it to the record as a Carriage Road Bridleway, Footpath and Bridlepath respectively. The continuation to the Chute Boundary as path 33 was added at the provisional map consultation stage.

10 CATEGORY D EVIDENCE

- 10.1 Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.
- 10.2 **Collingbourne Kingston Lease and Deed 1803 (9/12/96 WSHC) Earl of Cardigan’s Archive.**
- 10.3 This record is a lease and deed for land in Collingbourne Kingston. The bundle contains two large plans drawn to a scale of 7 chains to one inch. The two maps appear to be the same but one has a scale bar. The lease is for one year of lands (coloured yellow on the plan) and is dated 4th January 1803. The other document relates to a release in fee and assignment of the residue for a period of 1000 years and is dated 5th January 1803.

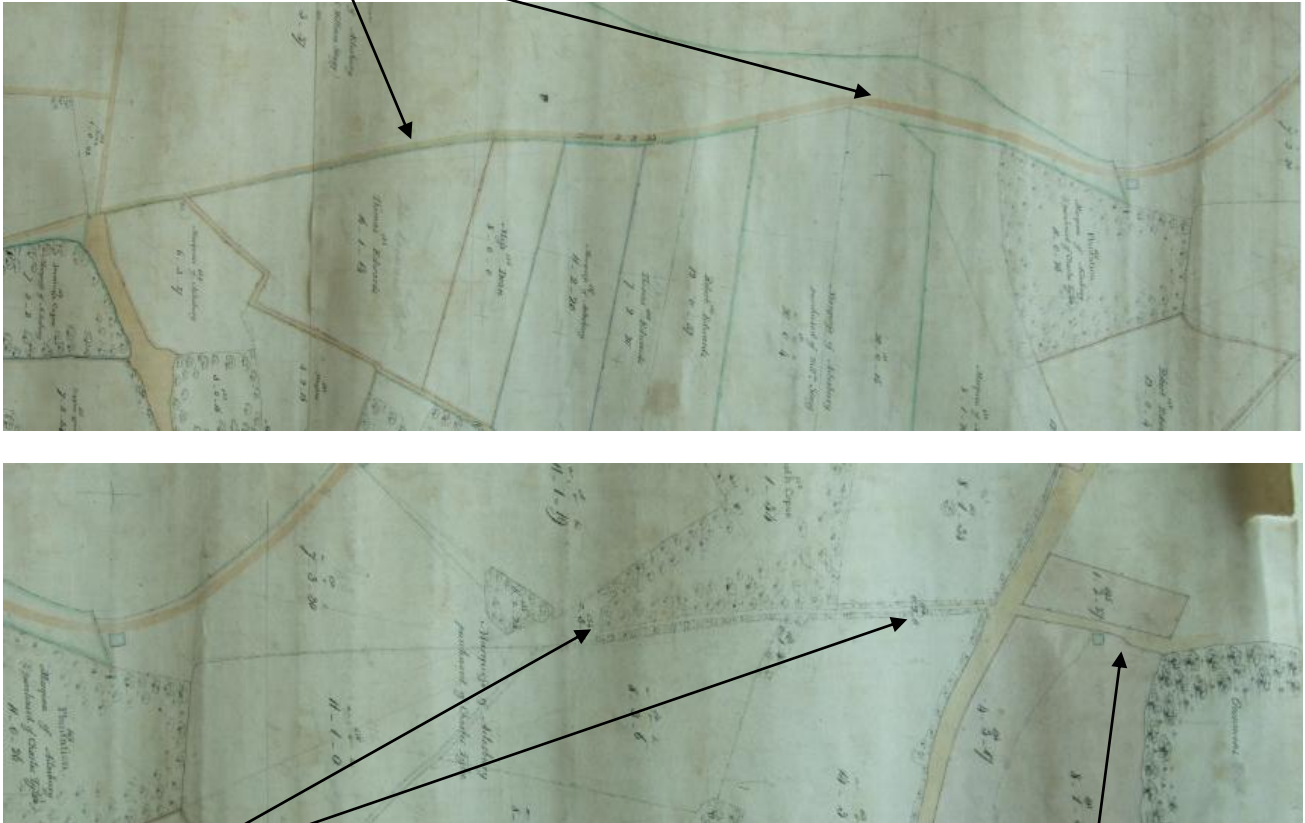
- 10.4 Both documents relate to Mr William Ludlow entering into an arrangement with Mr William Stagg. William Ludlow was allotted a considerable amount of land in the parish under the inclosure agreement of 1799.
- 10.5 The map shows the road “From Collingbourne” leading east across the road “To Hungerford” and eastwards to lands owned by Wm Ludlow not affected by the lease and deed. The map only covers the area affected by the lease and deed but shows a clear east west route on the course of the applicant route.



Applicant route

- 10.6 **Map of Collingbourne Brunton, Gammons Farm and Blagdon 1825 (3354 WSHC) Earl of Cardigan’s Archive**
- 10.7 The map has no scale but appears to be drawn at 6 chains to one inch, there is no indication of the surveyor or the purpose beyond it being a post inclosure map showing parcels of land, their size and their ownership or tenancy details.
- 10.8 Collingbourne Kingston 1B is shown as a road fenced on the south side and coloured sienna. Inscribed “Drove 3-2-23”. The eastern half is shown unfenced through Heath Copse with a short section of the eastern end near the parish boundary coloured sienna. Approximately 250 yards of Chute 3 is shown as a wide mainly fenced road. No gates are shown.

10.9 Application route CKIN1B



CKIN 1B

Chute 3

10.10 Sales Particulars: Plan of Conholt Park Estate 1897 (130/78 1 of 2 WSHC)

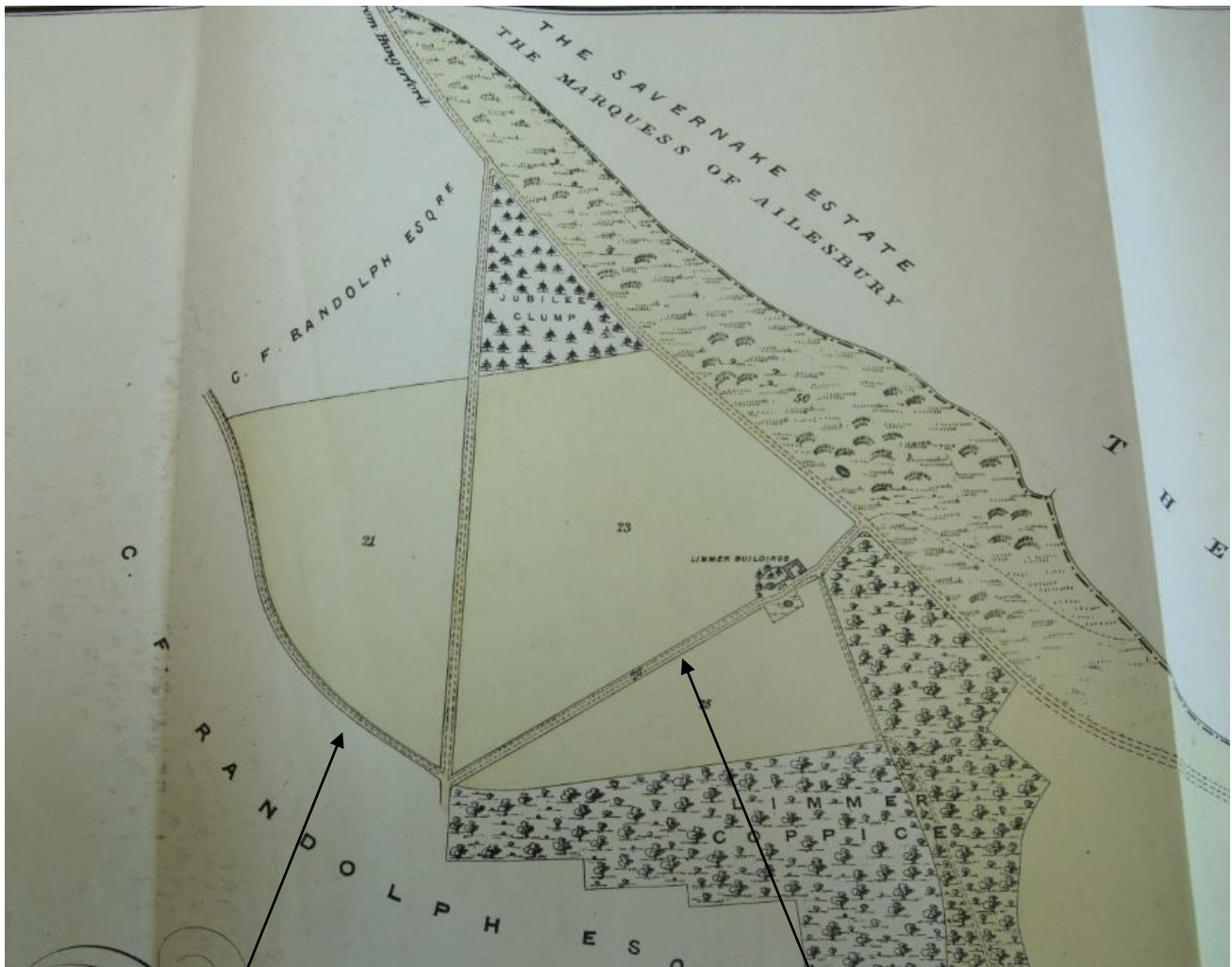
10.11 The Conholt Park Estate situated in Chute, Tanglely and Chute Forest was offered for sale in 1897. The file contains sales particulars and plans. The relevant plan for Chute 3 was drawn by F Ellen and Sons FSI, Land Agents, Surveyors and Auctioneers of Andover. The scale is 6 chains to one inch.

10.12 A length of 27 chains of Chute 3 at its south east end is shown as a fenced road coloured sienna and excluded from the sale. By way of comparison, the north east section of Chute 3 (north of Chantry Lane to Limmer Pond)(an awarded private road) is numbered and included in the sale.

10.13 Chute 3 west of Chantry Lane appears as part of the local road network and is un-numbered. Chute 3 east of Chantry Lane is numbered 24 "Road and Waste".

SCHEDULE OF THE LANDS.									
No. on Plan.	Description.	State.	Area.						
			A.	R.	P.				
21	Chute Heath	Arable	18	1	7				
23	Ditto	Ditto	30	1	10				
23A	Limmer Homestead	—	0	0	22				
24	Road and Waste	—	2	3	24				
25	Eight Acre Piece	Arable	11	3	14				
49	Limmer Coneyburrow Coppice	Wood	15	1	26				
...	Chute Heath	Down	49	0	13				

10.14



Applicant route

Chute 3 'private road' no. 24

11 Category E Evidence

11.1 Evidence in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this

group of documents would have had the largest public circulation outside of the parish.

- 11.2 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury , John Cary , C & I Greenwood and the Ordnance Survey.
- 11.3 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 11.4 **Andrews' and Dury's Map of Wiltshire 1773** The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same. The applicant route is shown as a Minor Road, unfenced for much of its length. The western junction with the Hungerford Road and the eastern junction with Chantry ("Chancery") Lane are clearly shown and the route continues west to Collingbourne Kingston. The 1798 Inclosure Agreement referred to it as being on its "usual course" and this agrees with this representation.



11.5 J Cary's New Map of Wiltshire 1801 (3.2 WSHC).

11.6 The map is entitled "A New Map of Wiltshire Divided into Hundreds Exhibiting its Roads, Rivers, Parks and c by John Cary Engineer 1801". The applicant route is represented as a "Cross Road". Scale of map c.5 inches to one mile.



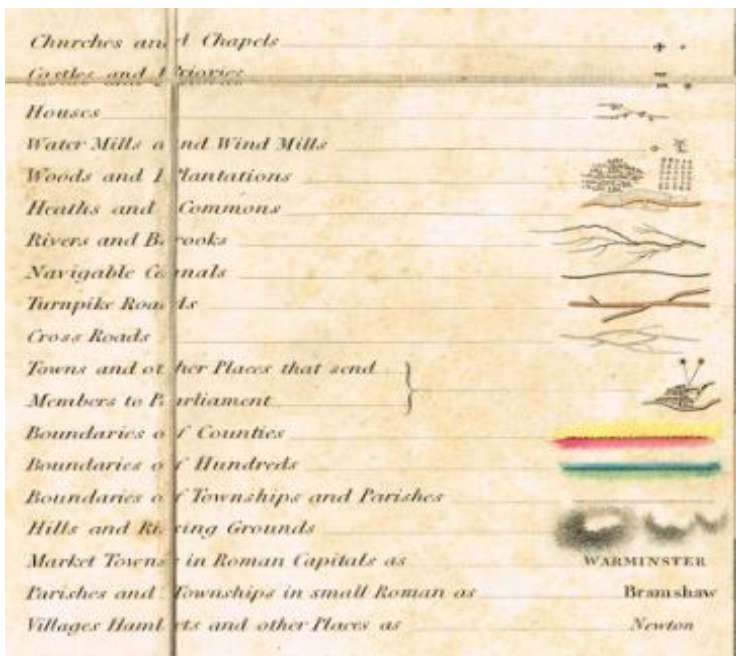
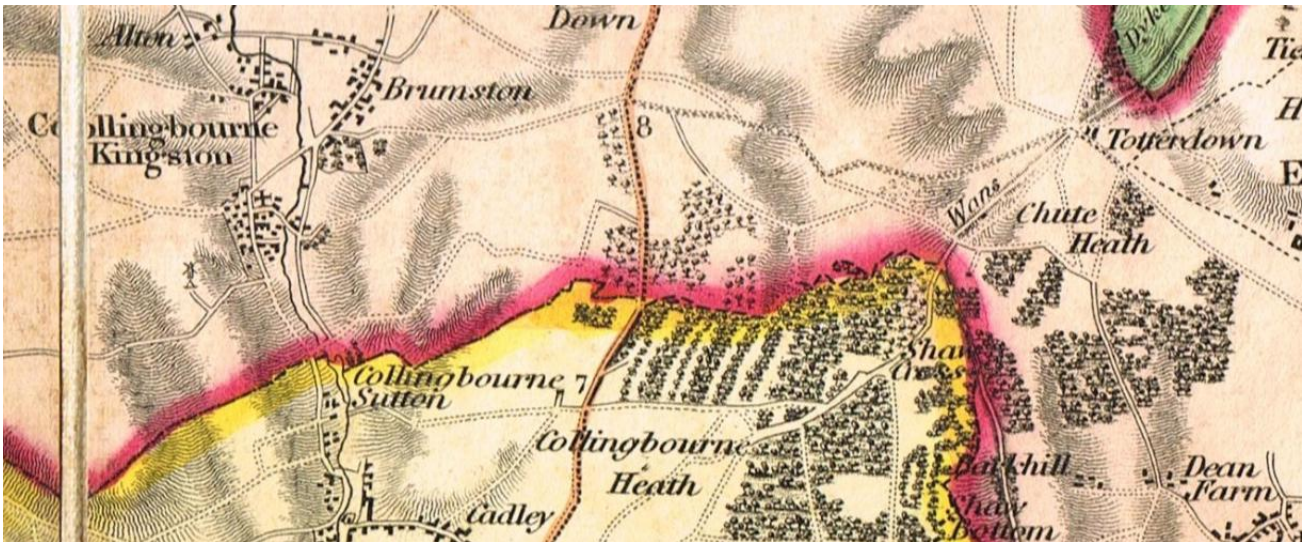
11.7 Ordnance Survey Surveyor's Drawing 1808-9

11.8 In preparation for the production of a map covering the whole of England at the scale of 1 inch to 1 mile the OS surveyed the country at a scale of 2 inches to 1 mile. The surveyors drawing for the applicant route shows it clearly defined as a minor road. The red line has been drawn by case officer to indicate route from Hungerford Road to Chantry Lane.



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- 11.9 **Andrews' and Dury's Map of Wiltshire 1810** This map is revised and corrected and shows the application route as a "Cross Road". Scale 2 inches to one mile.
- 11.10 **Ordnance Survey 1 Inch to 1 mile Map 1817 Sheet 14.** This map is produced from the 2 inch to 1 mile surveyor's drawing of 1808-9 and shows the applicant route as a "Minor Road".
- 11.11 **C and I Greenwoods Map of Wiltshire 1820** This map shows the route as a "Cross Road". Scale 1 inch to 1 mile.



- 11.12 **Greenwood's Reduced Map of Wiltshire Corrected to 1829 (3.3. WSHC)** No changes to the applicant route have been made and it is shown as a "Cross Road". Scale 2.5 inches to 1 mile.

- 11.13 **Murray's Map of Wiltshire 1830 (1.19 WSHC)** The applicant route is shown as "Bye Road". Small scale map.
- 11.14 **Crutchley's Map of Wiltshire 1855 (2.9 WSHC)** The applicant route is shown as a minor road. Small scale map.
- 11.15 **Weller's Map of Wiltshire 1862 (1.29 ESHC)** The applicant route is shown as a "Road". Small scale map.
- 11.16 **Ordnance Survey 1:2500 County Series mapping 1878 to 1923**

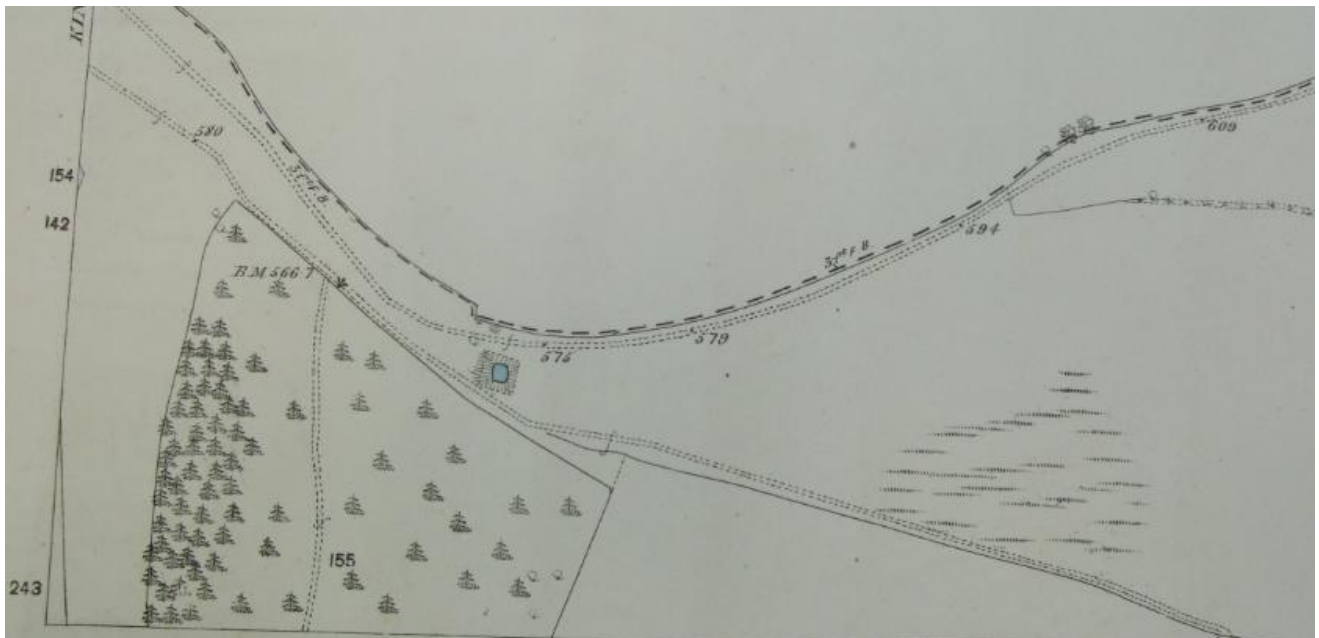
The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 42.12, 43.9 and 43.13 cover the applicant route. J B Harley, historian of the Ordnance Survey, records that "the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority".

- 11.17 Richard Oliver in his book "Ordnance Survey Maps a complete guide for historians" recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction."
- 11.18 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.
- 11.19 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were 'braced' with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features "*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of 'Town area'), all public roads, whether fenced or unfenced and foreshore and tidal water....*" (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS

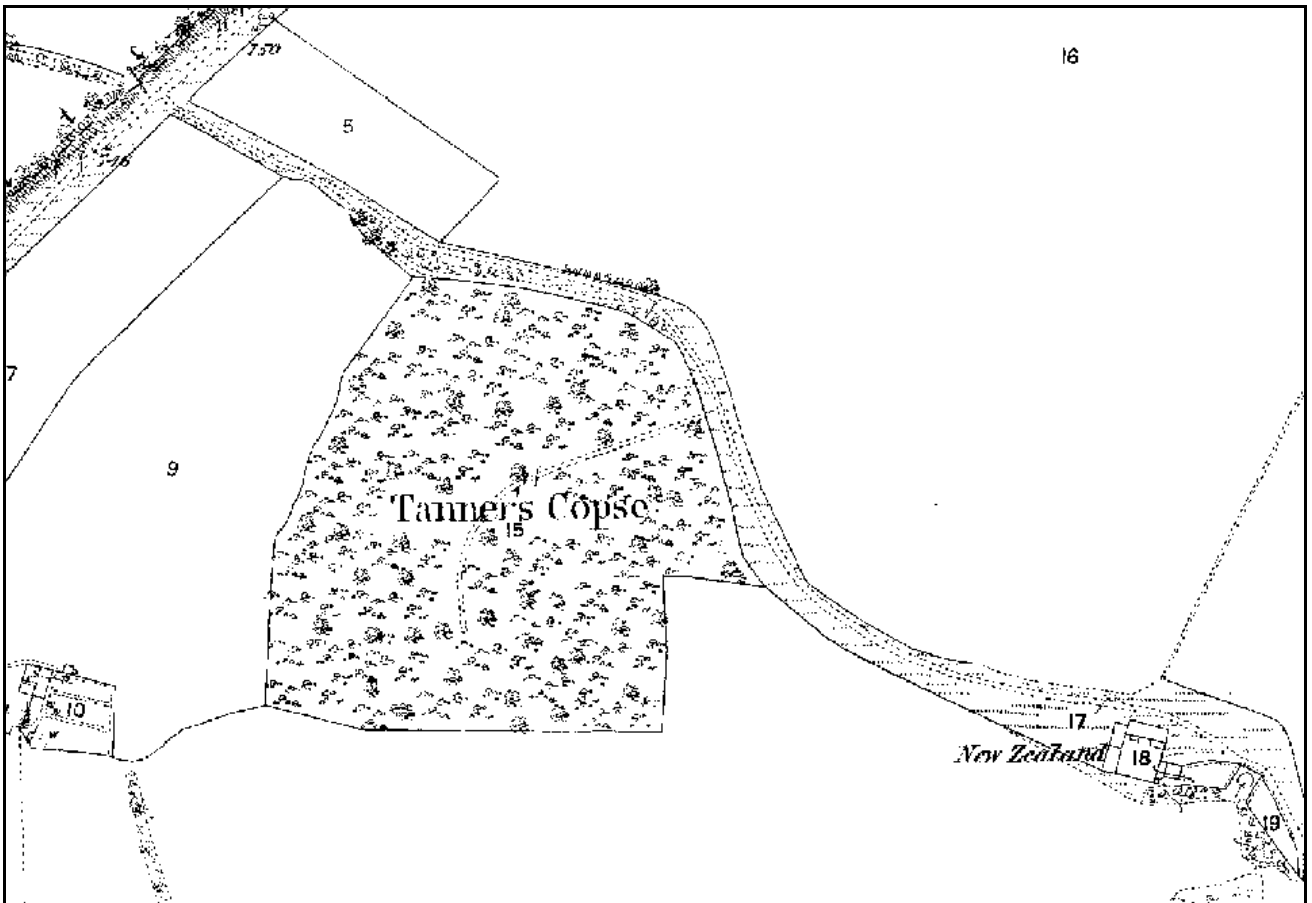
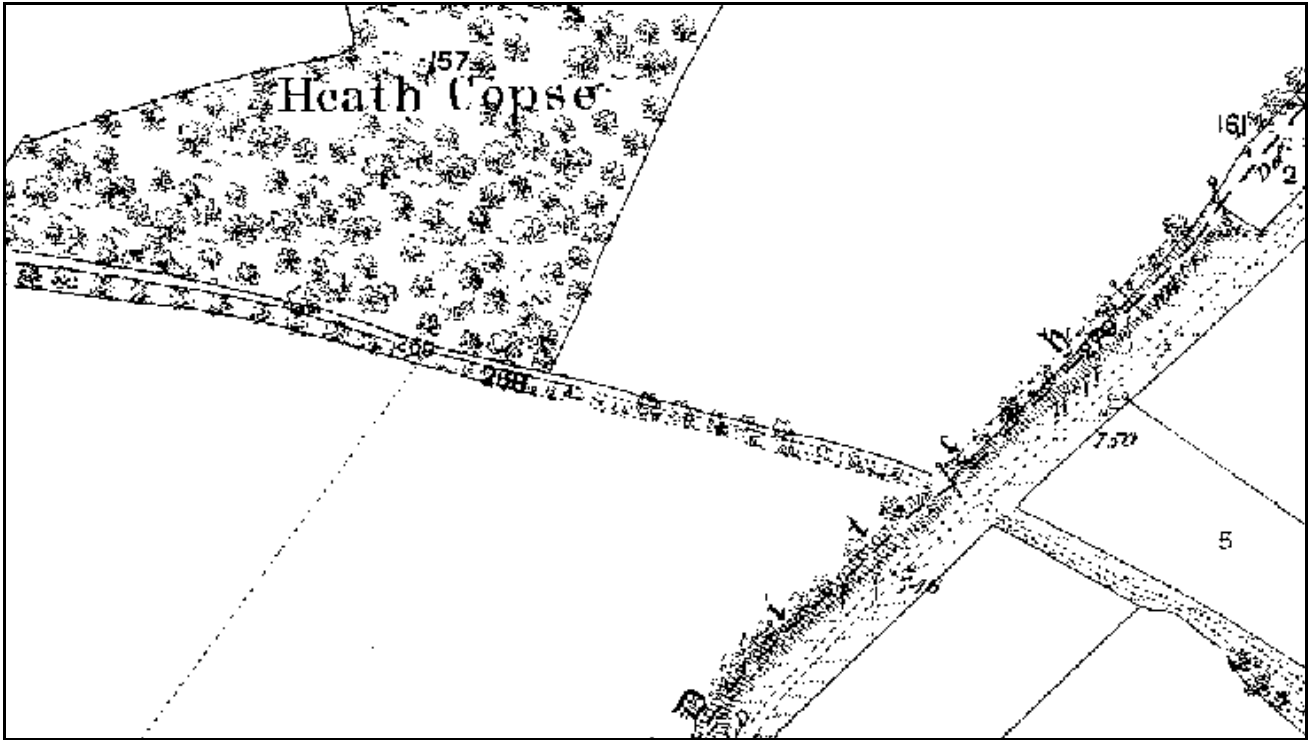
produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information as they were printed relatively late in the series.

11.20 First editions

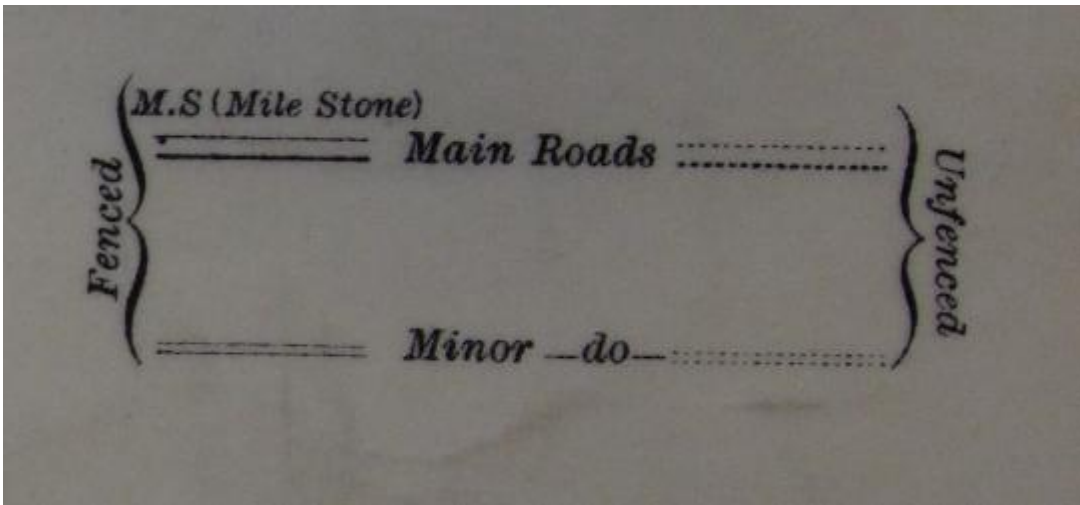
11.21 Only the first edition for sheet 43.9 is available at WSHC. This was printed in 1880 and surveyed in 1878 and 1879. A length of Collingbourne Kingston 1B is shown as a partly fenced road and an unfenced road with a Bench Mark and Spot Height marked. Part of Collingbourne Kingston 33 is shown as a road fenced on the south side. Not marked F.P. or B.R.



11.22 The First Edition sheets supplied by the Ordnance Survey through their historic mapping facility have been viewed for the other sheets. Collingbourne Kingston 33 past Heath Copse is shown as a separately numbered and measured parcel no 269 and the extent of Chute 3 leading from Byway 35 at the parish boundary east past Tanners Copse and New Zealand Farm to Chantry Lane is separately numbered and measured as parcel number 17.

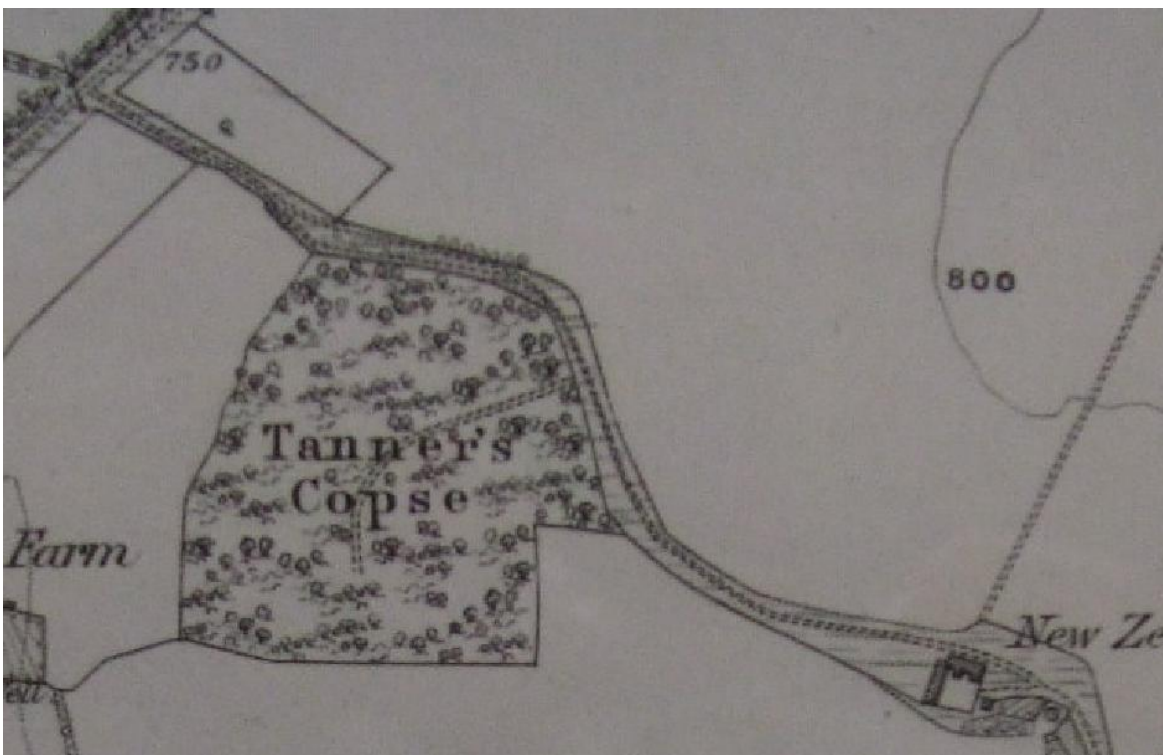


11.23 **Ordnance Survey 1:10560 maps Sheet 42 and Sheet 43** These maps were surveyed in 1879/1886 and 1878/1879 and are derived from the 1:2500 survey. They have a key and the application route is shown as a "Minor Road".



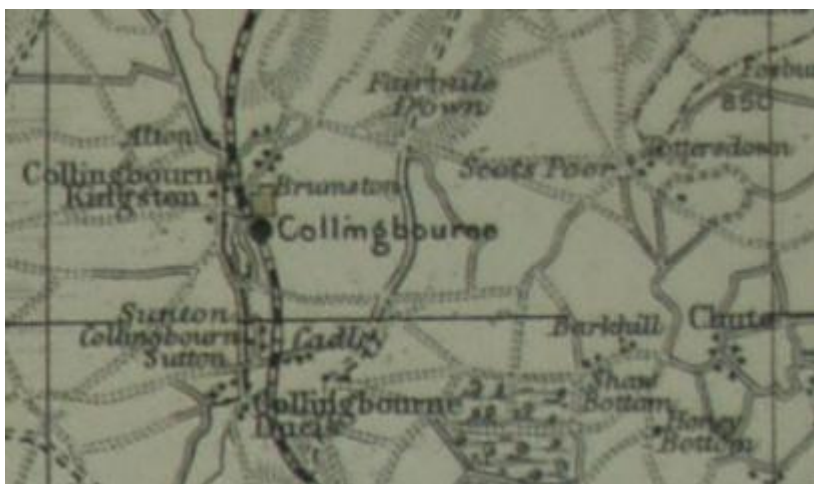


11.24 An extract from Sheet 43 for Chute 3 is shown below confirming that the route was fenced in 1878/1879 (the date of the survey). The map shows an unfenced track leading between fences.



11.25 **Bacon's Map of Wiltshire 1895** This map shows the applicant route as a "Cross Road". The map has a key and is at a scale of c.4 inches to one mile.

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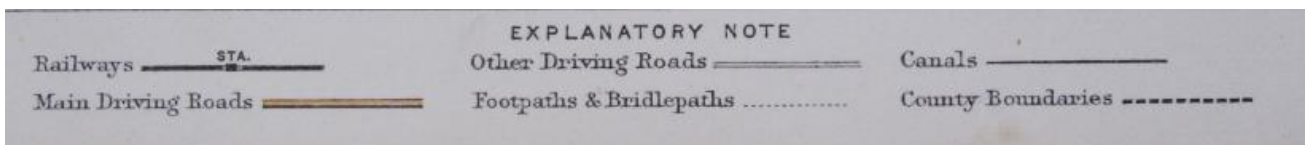


11.26 **Ordnance Survey 1" to 1 mile Map Revised New series Sheet 283 1896 (4.43 WSHC)** This map shows the applicant route as an "Unmetalled Road".

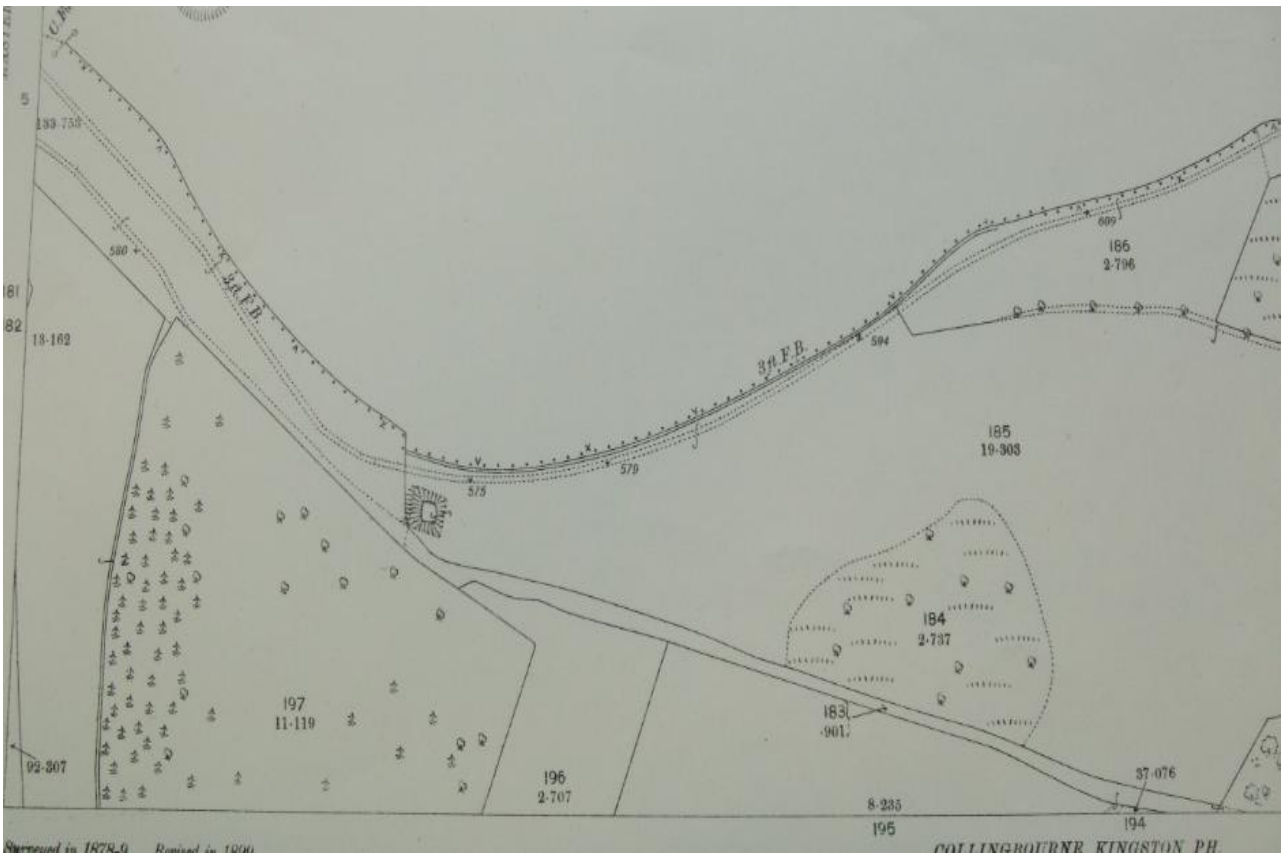
11.27 **Gall and Inglis Half Inch Map (2 miles to 1 inch) Map for cyclists, Tourists etc 1898.** The applicant route is shown in the same manner as other minor local roads.

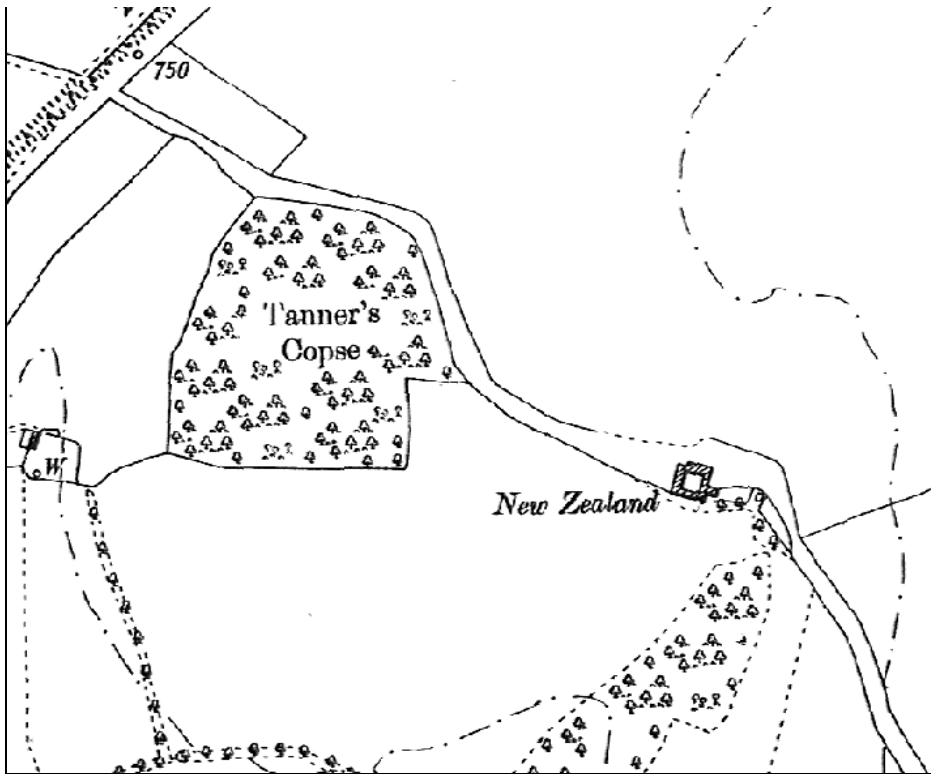


11.28 **Bartholomew's Half Inch (2 miles to 1 inch) Survey Atlas Plate 64 1904** The applicant route is shown as an "Other Driving Road" on a map endorsed by the Cycling Touring Club.



- 11.29 It is noted that a different symbol is used to show footpaths and bridleways on this map.
- 11.30 **Bacon's Half Inc Cycling and Motoring Map c.1906** The applicant route is shown as a minor road.
- 11.31 **Ordnance Survey 1" to 1 mile Map 3rd edition Sheet 113 1908** The applicant route is shown as an "Unmetalled Road".
- 11.32 **Ordnance Survey 1:2500 County Series Maps Second Editions Sheets 42/12, 43.9 and 43.13 all revised 1899** The course of Collingbourne Kingston 1B follows a fence line on one sheet and is shown as a mainly fenced road on the adjoining one. A series of Spot Heights is marked along the road. It is not marked 'F.P' or 'B.R' and no gates are shown across the road. Collingbourne Kingston 33 is shown as a partly fenced road most of which is separately measured and numbered. One gate is shown and it is not marked 'F.P.' or 'B.R'. Chute 3 is shown as a fenced road separately numbered and measured with no gates and not marked 'F.P' or 'B.R'.





11.33 A large number of maps show the route in a number of ways in the period 1902 to 1919.

Bartholomew's Map Sheet 29 Half Inch Map 1902

Bacon's Map of Wiltshire for Cyclists and Tourists Editions of 1910 and 1917 (Minor Roads) Half inch maps

Bartholomew's Quarter Inch Map for Wiltshire 1911 ("Other Road")

Bartholomew's Half Inch Maps for Tourists & Cyclists Sheet 29 Editions 1911 to 1929 (uncoloured roads)

Milestone Motor Map c.1916 (Other Metalled Road)

11.34 In 1919 the Ordnance Survey produced a new type of map – the Popular Series.

11.35 Ordnance Survey Popular Edition 1919 One inch to one mile

The Popular Edition maps represented a departure in purpose by the Ordnance Survey. The 1" Popular series maps were a new series aimed at travellers on the roads and were undoubtedly aimed at motorists. They were the subject of frequent revision and the scheme took evidence from both the Royal Automobile Club and the Road Board. In practice the maps also went before the Rural District Council Surveyor. .

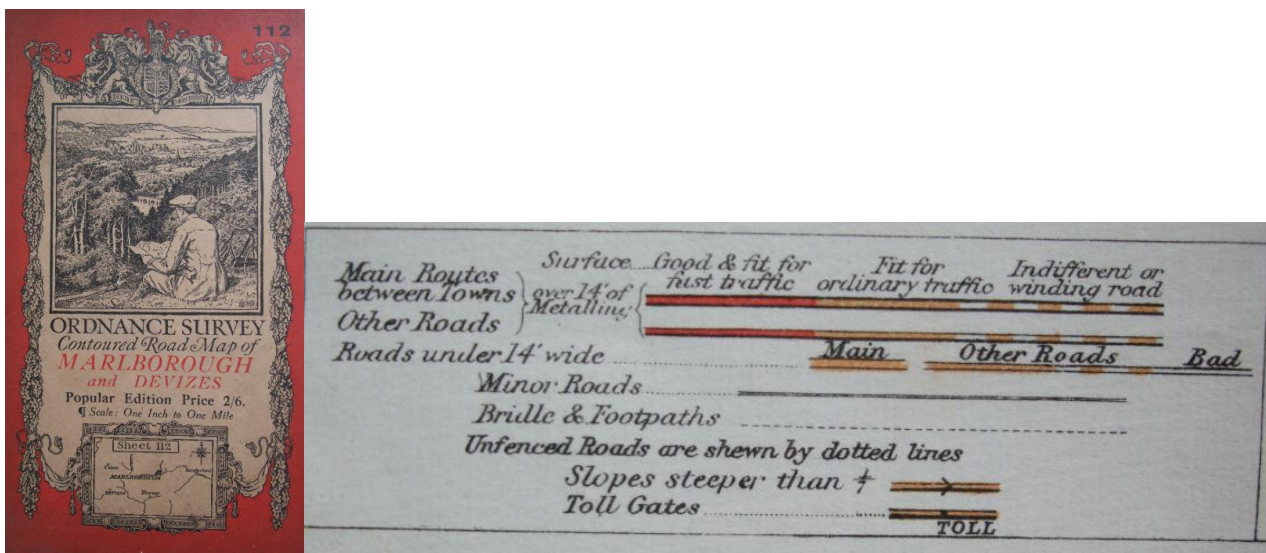
Yolande Hodson, in her book "Popular Maps" (ISBN 1-870598-15-6) states:

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“Large-scale plans were not regarded as road maps; their primary function was to depict physical features and administrative features as accurately as the scale would allow. In contrast, the smaller scale showed a range of road classification, first by line-work, and then by line and colour. These conventions allowed the user to make an intelligent deduction of the suitability of routes for different purposes that would have been impossible at the larger scale. In this respect, the one-inch maps are an invaluable aid to the interpretation of roads on the large scale plans”

“Another demonstration of the map history rule is that the Popular Edition, rather than the 1:2500 plans, was, unquestionably, the largest scale at which road development was most faithfully portrayed, although its road classification system was unnecessarily complex as a result of inheriting principles which had been established in the days of more leisurely traffic; but most sheets had been “road-revised” at least twice at about a seven or eight year period.”

11.36 **Sheet 112 Ordnance Survey Popular Edition 1” to 1 mile 1919** The map shows the applicant route as a “Minor Road”.



The extract is shown overleaf.



11.37 Commercial maps from the period 1919 to 1949 continue to show the applicant route as a through route and as a road.

Bartholomew's Quarter Road Map Sheet 11 1919 ("Other Road")

Walters' Guide to Wiltshire, Map 2 1920 (Minor road)

Ordnance Survey Half Inch Road Map Sheet 33 1926 ("Other Road")

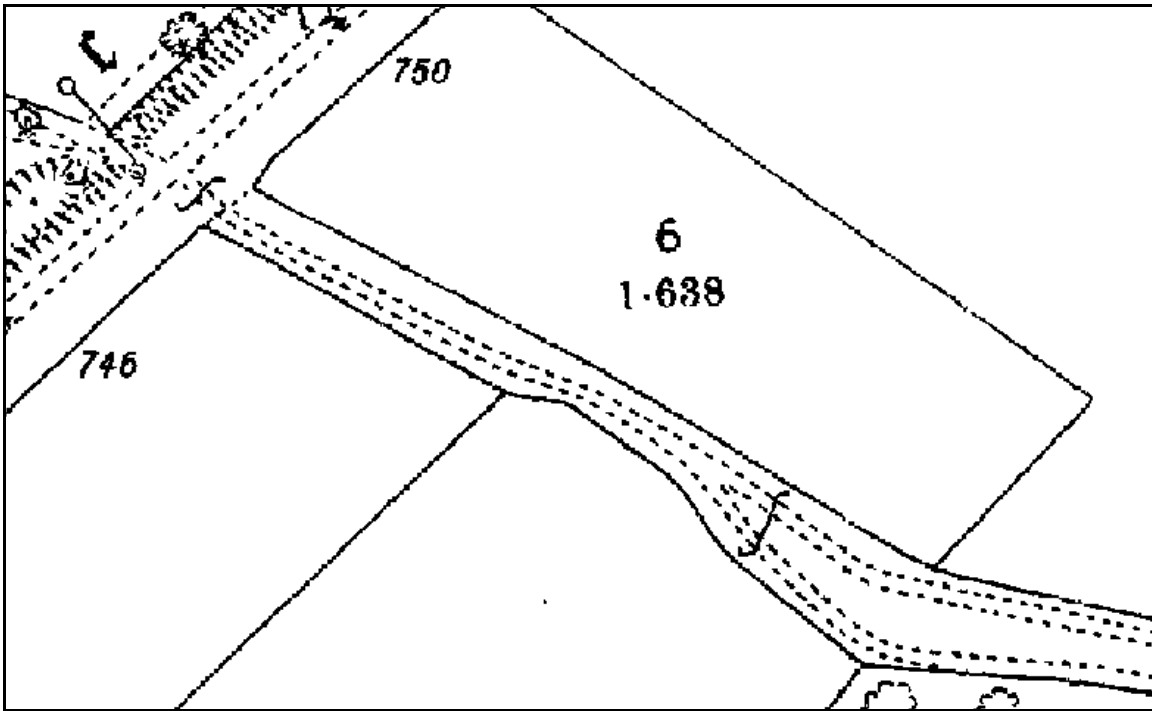
Geographia Half inch Road Map of Wiltshire c.1930 ("Other Road")

Bartholomew's Revised Half inch Map Sheet 8 1940 ("Other Road")

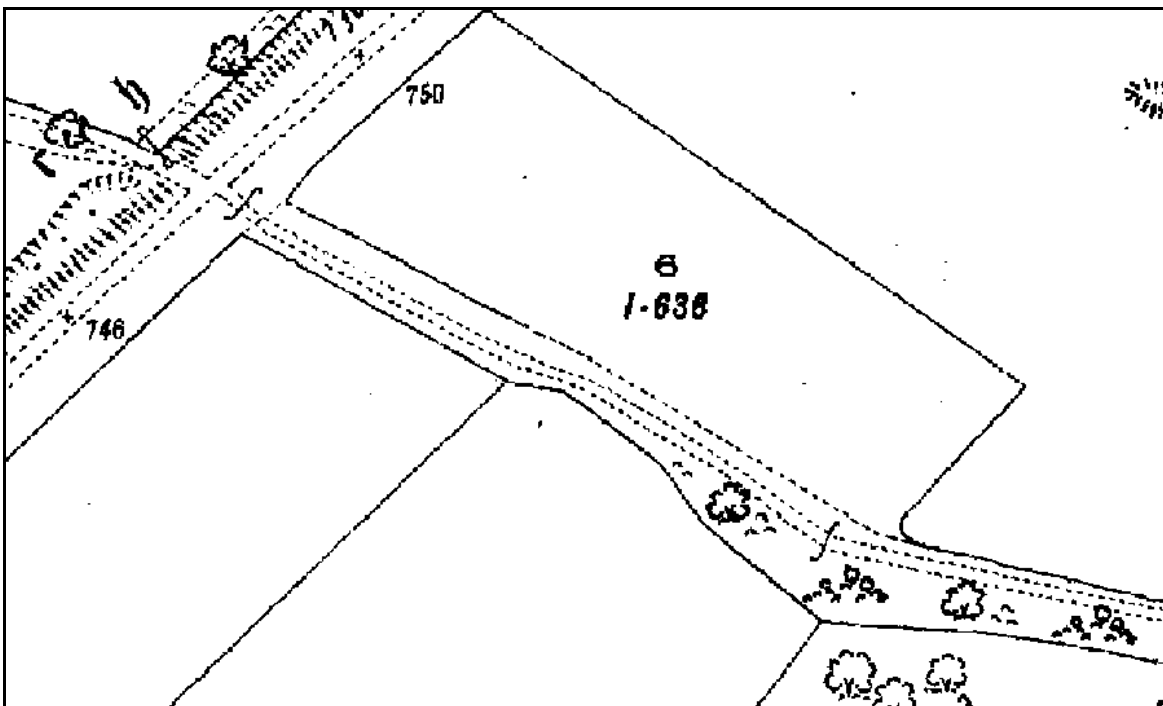
Bartholomew's Revised Half Inch Map Sheet 8 Editions 1942 to 1949 ("Other Road & Track").

11.38 Ordnance Survey 1:2500 County Series Maps 3rd Editions (Revised 1923) Sheets 42.12, 43.9 and 43.13

11.39 The roads are shown substantially the same as on the 2nd Edition sheets though some fencing has been removed on Collingbourne Kingston 1B and 33 and some gates have appeared along the route (2 on path 1B, 1 on path 33 and 1 on Chute path 3). It is notable that inbetween the 1899 revision and the 1923 revision some fencing had been removed on the north side of Chute 3. See comparison that follows:

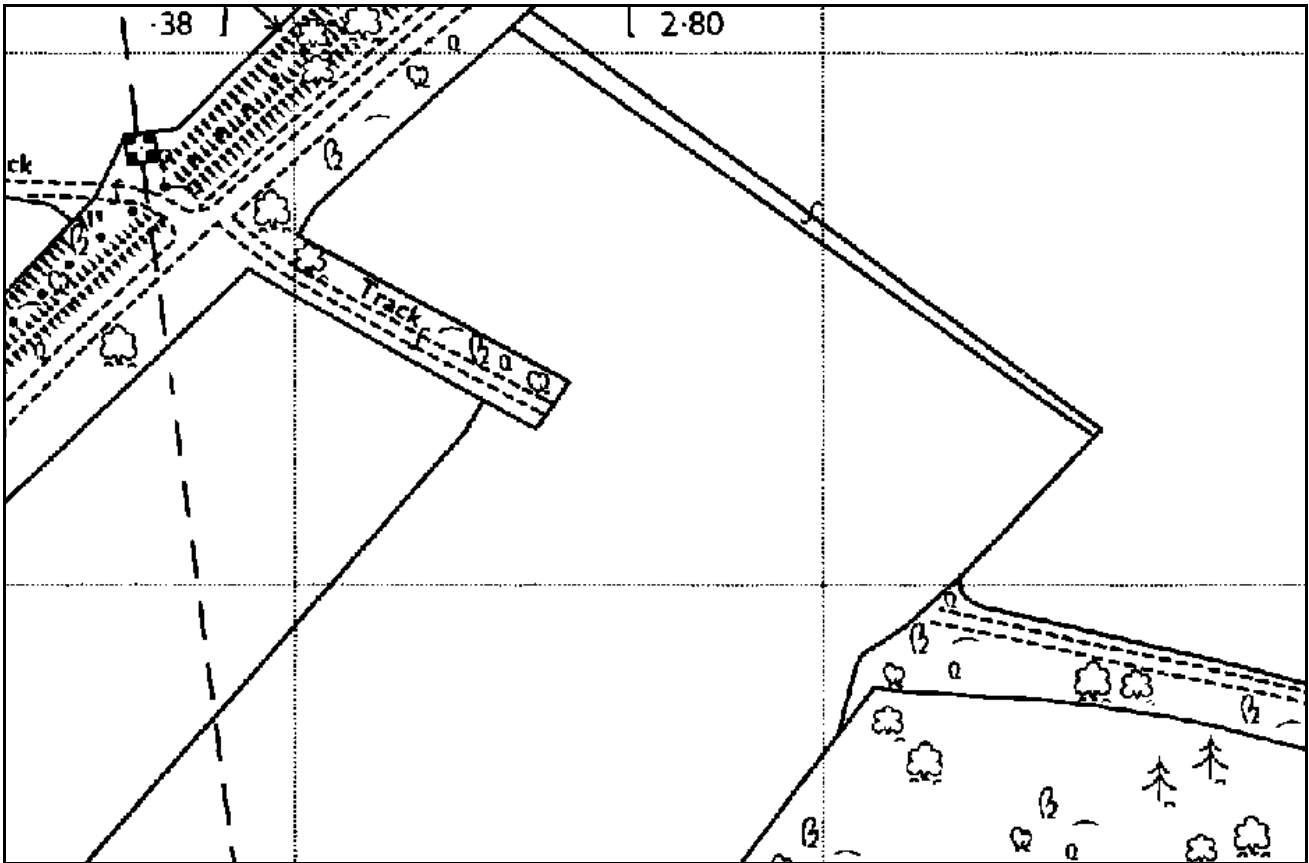


Above: Second Edition (1899 Revision)

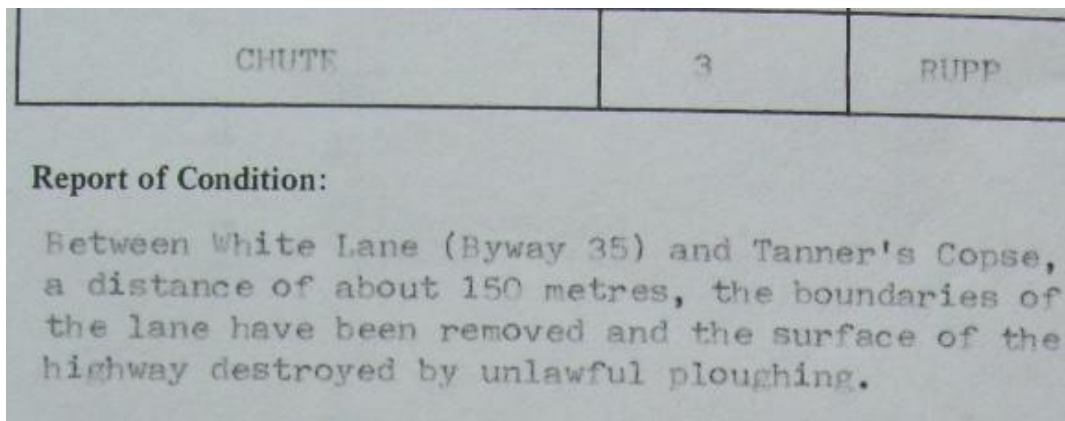


Above: Edition of 1924 (1923 Revision)

11.40 The Ordnance Survey utilised base mapping from 1936 to produce a series of maps using the National Grid. These are known as the National Grid Series maps and an edition printed between the years 1952 and 1992 has been viewed. This shows the removal of fencing on the south side at some time after 1923.



11.45 In October 1985 Wiltshire County Council received a complaint about the removal of the boundaries to the land and the ploughing of the route.



11.46 Aerial photographs dated 2001 support that by this time no boundaries remained on this part of the route.



11.47 It is of passing note that the owner of land at the Chantry from the late 1930s onwards was a prominent agriculturalist noted for his work improving the productivity of land at Chute. Friend Sykes was the author of the book *Humus and the Farmer* and against this background of local land improvement it is not surprising that land use in this area was maximised by changes in fences, field sizes and land use.

12 CATEGORY F EVIDENCE

- 12.1 This evidence category includes local repute or any consultation responses that are not covered elsewhere.
- 12.2 There was a change in the law in 2006 relating to the use of mechanically propelled vehicles (MPVs) on routes that were not already recorded in the definitive map and statement as byways open to all traffic and this will be addressed later in this report as part of the Council's decision but it is noteworthy that no evidence to support the continuation of any public mechanically propelled vehicular rights post 2006 has been adduced by any party (including vehicular user groups).
- 12.3 The Council received one response to its consultation (from the agent acting for one of the affected landowners) and this did not adduce any evidence to support the retention of any public MPV right that may have existed and did not adduce any evidence of a historical nature either.

13.0 Decision

- 13.1 The law requires that any evidence of higher rights or greater width must be shown 'on the balance of probabilities'. This means that it is more likely than not that something is shown.
- 13.2 The earliest document viewed, Andrews and Dury's Map of Wiltshire dated 1773, shows a route linking Collingbourne Kingston with Chute on a line consistent with that of CKIN 1B (pt), 33 and Chute 3(pt). The Collingbourne Kingston Inclosure Award dated 1799 awards a public carriage road 20 feet wide on "its usual course" being a public carriage road leading from Collingbourn towards Chute. The map is consistent. The plans deposited with parliament in 1871 for the South Midland Railway confirm that the CKIN1B was a "Public Road".
- 13.3 Other documentation supports the existence of a through road throughout the 19th and 20th centuries. Land in this area was ploughed at an early date (it was downland in 1798 but by 1844 it was arable) and changes in field boundaries and land use have altered the representation on maps and on the ground. However, the evidence of the enclosure award, railway plan and parliamentary submission by the vestry in 1839 show that the way was a public road and case law supports that unless there is an obvious destination of public resort, a route is likely to be a through route linking public highways regardless of small 'missing' sections in some instances.
- 13.4 Turning to the evidence for Chute 3 continuing east to Chantry Lane, again early maps support the existence of an ancient highway and the Inclosure Award of 1820 makes it clear that a Public Carriage Road 40 feet wide was awarded being the 'Highway from Collingbourne Kingston to Chute'. The description is clear and the tithe map of 1841 supports and is consistent with evidence for a route on this course both before and after inclosure.
- 13.5 Detailed Ordnance Survey mapping of the late 19th century shows that Chute 3 was fenced on both sides but from 1899 onwards a series of changes to fences and land use of the adjoining land has led to the disappearance of the route as a physical feature in some places. However, considerable evidence of this being an ancient highway exists and the fundamental common law ruling of 'once a highway, always a highway' applies.
- 13.6 Given the above, it is considered that on the balance of probabilities the route as a whole (and being part of the highway from Collingbourne Kingston to Chute) carried public vehicular rights prior to the enactment of s.67 NERCA 2006; that is the 2nd May 2006.

13.7 It is therefore appropriate to consider whether the right for the public to drive a mechanically propelled vehicle (MPV) over the route was extinguished by s.67 of the NERCA 2006 or whether it was preserved.

14.0 Natural Environment and Rural Communities Act 2006

14.1 On the 2nd May 2006 **the NERC Act 2006** commenced and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8)

Subsections 2 to 8 are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

(2) Subsection (1) does not apply to an existing public right of way if –

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(List of highways maintainable at public expense),

(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles

(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or

(e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

(3) Subsection (1) does not apply to an existing public right of way if –

(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

(b) before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or

- (c) *before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*
- (i) *was reasonably necessary to enable that person to obtain access to the land or*
- (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*
- (2) *The relevant date in England means January 2005*
- (3) *refers to private rights*
- (4) *For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

14.2 It is appropriate to consider each exemption in turn:

(2)(a) *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles.*

No evidence of use by the public in MPV has been submitted for the period 2001 – 2006.

The claimed route does not meet the requirements of Sec(2)(a) NERC Act 2006 .

(2)(b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(list of highways maintainable at public expense).*

The claimed route is shown in the definitive map and statement and is not shown in a list required to be kept under section 36(6) of the Highways Act 1980 (the Highway Record)

Public vehicular rights are not preserved by this section.

(2)(c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles.*

It is known that this road was a road by 1773, a time before mechanically propelled vehicles existed.

I conclude that the requirements of Section (2)(c) NERC Act 2006 are not met.

(2)(d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

Public MPV rights have not been preserved by this section.

(2)(e) *it was created by virtue of use by such vehicles during a period ending before 1930*

The mechanically propelled vehicle did not exist as a distinct class of highway user before the 2nd May 2006, hence it is very difficult to consider this section. It is likely that as mechanically propelled vehicles became more common (in the mid 1800s) people started using them on roads that would support their use. The claimed route does not appear to have ever been surfaced in a manner that would support MPV use although it is noted that the worn route of parts of CKIN1B are characteristic of use by wheeled vehicles over a considerable length of time. See image below:



Additionally the Parish council reported that in 1950 Chute 3 was a 'deeply rutted cart track' at Tanners Copse.

Since the distinct category didn't exist and since prior to 2006 the right to drive a horse drawn carriage was the same as the right to drive a motorised one it is not considered that the right was created by any actual MPV use, any such use was merely use continuing.

Public MPV rights are not preserved by this section

(3)(a) *(3) Subsection (1) does not apply to an existing public right of way over a way if –*

(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic.

An application was made before the relevant date (20 January 2005). However, the application was not strictly compliant with Schedule 14 to the 1981 Act. The evidence adduced was in the form of a list of documents and short extracts from the inclosure awards and did not include copies of the evidence.

Following recent case law popularly known as ‘The Winchester Case’ ([2008] EWCA Civ 431) the Lord J Ward, Dyson and Thomas found that if the outcome of an application turned on the application of Section 67(3) of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) then strict compliance with Schedule 14 would be required in respect of the presentation of “copies of any documentary evidence ...which the applicant wishes to adduce in support of the application”. This is required in Section 67(6) for Section 67(3) to apply.

However Dyson J, in paragraph 55 of his decision went on to say:

“I wish to emphasise that I am not saying that, in a case which does not turn on the application of section 67(6) it is not open to authorities in any particular case to decide to waive a failure to comply with paragraph 1(b) of Schedule 14 and proceed to make a determination under paragraph 3; or to treat a non-compliant application as the “trigger” for a decision under section 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in subsection (3)”

Advice received from the Department for Environment, Food and Rural Affairs (DEFRA) on 2nd June 2008 confirms that surveying authorities retain the power to waive strict compliance where the case does not turn on the application of Section 67(3)(a) or (b) NERC Act 2006.

- 14.3 It is concluded that the public’s right to drive a motor vehicle over the route was extinguished on the 2nd May 2006. However, as the route was a public vehicular highway prior to this date, section 67(5) of the NERC Act 2006 applies with respect to private access rights to property:

(5) Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –

(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or

(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

This is in addition to any granted easements or consents that the Council is unaware of.

15.0 Environmental Impact of the Recommendation

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

16.0 Equality Impact

16.1 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility.

16.2 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. Parts of the route are currently recorded as a footpath, the recording of the route as a restricted byway will make the route available to horse riders and cyclists also.

16.3 The recording of the full width as a restricted byway is in line with the Council's duty under The Equality Act 2010. This is however not a material consideration contained within the Wildlife and Countryside Act 1981.

17.0 Legal Implications

17.1 The making of a definitive map modification order to correctly record the applicant route is in line with the Council's duty contained within s.53(2) of the 1981 Act to keep the definitive map under continual review. It is not likely that the Council would be challenged if acting in pursuit of this duty. Additionally this application has been unresolved for so long (36 years) that the Council is at greater risk of legal action if it does not resolve the matter than if it does.

17.2 If the Council fails to make an Order it may be subject to judicial review. This could have significant cost implications (c. £50000).

- 17.3 If the Council makes an Order which receives objections it may be liable to pay subsequent costs if it acts in an unreasonable manner at public inquiry. Costs awards of this nature are rare and may be in the region of c.£10,000.
- 17.4 Any final decision made on an order that has been objected to is made by the Secretary of State (SoS) and not Wiltshire Council. Hence any challenge to that decision is against the SoS and not the Council.

18.0 Risk Assessment

- 18.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 18.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 18.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 18.4 The application for an order to record a byway open to all traffic is to be refused as a result of this decision and the applicant will be informed that his application has been refused but that the Council will proceed to make an order to record a restricted byway in line with its duty under s.53(2) of the 1981 Act.
- 18.5 The applicant may appeal this decision with the Secretary of State under sch. 14 to the 1981 Act which could lead to Wiltshire Council being directed to make an order. Officers consider that this is highly unlikely on the grounds that no evidence supporting the retention of public MPV rights has been discovered and that the definitive map and statement is being updated in line with the Council's duty by the making of a modification order to record a restricted byway.

19.0 Financial Implications

- 19.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 19.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000). There is no indication that any objections will be received.
- 19.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. The route has been inspected by the Senior Rights of Way Warden for the area and it is considered that no additional works are currently necessary beyond allowing access at gated points..

20.0 RECOMMENDATION

- 20.1 **That the application for a definitive map modification order to record a byway open to all traffic (as received 1.4.1987) is refused and that under the statutory duty given in s.53(2) of the Wildlife and Countryside Act 1981 an order to record part of Collingbourne Kingston path 1B, 33 and part of Chute 3 as a restricted byway is made and duly advertised.**

Sally Madgwick

Rights of Way Officer

14 June 2013

