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WILTSHIRE COUNTY COUNCIL

AGENDA ITEM NO. 7

RIGHTS OF WAY AND COMMONS SUB-COMMITTEE  
22 November 1995

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**FOVANT AND SUTTON MANDEVILLE :**  
**APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER**  
**AFFECTING FOOTPATH 15 AND FOOTPATH 4 (HOLE LANE)**

**Purpose of this Report**

1. To consider an application made by Mrs. J.M. Weatherill, Chairman of Wiltshire Bridleways Association, on the 11th January 1995, under Section 53(2)(b) of the Wildlife and Countryside Act 1981, seeking the upgrading of Footpath 15, Fovant and Footpath 4, Sutton Mandeville (Hole Lane) to byways open to all traffic, with a width of 4.75 to 14 metres in Sutton Mandeville and 4.5 to 7.25 metres in Fovant. These widths are scaled from the 25 inch Ordnance Survey Map of 1939.

**Background**

2. A copy of the evidence submitted by Mrs. Weatherill, and of the route of Hole Lane is attached as Appendix A. Members will be conversant with the documents referred to by Mrs. Weatherill from other applications. I would draw your attention particularly to the Enclosure Award of 1792 (although the road is outside the area enclosed), the Tithe Maps for both Sutton Mandeville and Fovant, and the Finance Act map of 1910. These three maps are backed by statute, and due weight should therefore be given to the details they show.  
A recent public inquiry into the correct status of Right of Way 4, Newton Tony, confirmed that status as a 'byway open to all traffic', based, in main, on the evidence of the Tithe Award map, and the Finance Act Map. This present application provides more evidence than was available in Newton Tony.

**Consultations with Interested Parties**

3. A very detailed letter of objection, dated 3rd June 1995, has been submitted by Fovant and Sutton Mandeville Parish Councils, and a copy is attached to this report as Appendix B. Credit is due to the Parish Councils for understanding that the debate over this application must deal with the evidence. A detailed response to the points made by the Parish Council is also given in Appendix B.
4. Salisbury District Council, in a letter dated the 15th March, 1995, states that it has no evidence on the files it holds relating to the footpaths, and therefore has no useful comments to make.

5. The Ramblers' Association, South Wiltshire group, in a letter dated the 17th March 1995, request that, if Sutton Mandeville 4 and Fovant 15 become byways, a Traffic Regulation Order should be made.
6. Mr. R.D. Wright, of Larkham's Farm, wrote on the 10th April 1995 to say that he objected to the upgrading of Hole Lane on the grounds that this would be environmentally harmful and unfriendly. In addition the footpath is far too narrow between hedges to accommodate wheeled vehicles safely.
7. Mr. Turner of Glebe Cottage, Sutton Mandeville, whose house is directly alongside Hole Lane just to the west of the parish boundary between Fovant and Sutton Mandeville, wrote in on the 7th June 1995, giving his reasons for opposing the upgrading of Hole Lane from a footpath to a byway. His family have owned Glebe Cottage since 1958, and his father tarmac'd a section of Hole Lane as an entrance to the Cottage. He is very concerned about the impact of the proposed byway on the value of his property, and also its impact on the natural environment, especially within an area of outstanding natural beauty.

A copy of Mr. Turner's letter will be available for inspection in the members' room.

8. Dr. Michael Darby, County Recorder for Coleoptera, (broadly defined as beetles) wrote to the County Council on the 12th June 1995. He states that two nationally rare species of beetle are to be found in Hole Lane, both of whom are likely to be eliminated by any major change to the habitat.
9. Hole Lane was inspected on the 16th June 1995 by two officers from my department, accompanied by Mr. Turner and Mrs. Longden, two of the landowners who live alongside the Lane. Leading west from Fovant towards Sutton Mandeville, the Lane has a gravelled surface at first, and is used for private vehicular access to the cottages at this end. The central section is generally between double hedges, until the parish boundary which is marked by a stone. Railings have also been erected at one point across this length so that access is restricted to walkers. Within Sutton Mandeville parish, the Lane becomes more wooded, and passes close beside Glebe Cottage and its outbuildings. The Lane is tarmac'd at its western end from Glebe Cottage to the Council maintained road.

Photographs of the Lane will be circulated at the meeting.

### Legal Points to Consider

10. Section 53(2)(b) of the Wildlife and Countryside Act 1981 places a duty on the County Council to keep the Definitive Map and Statement under continuous review.
11. Section 53 (5) permits any one to apply to the County Council for a modification order.
12. Section 53 (3) (c) (ii) defines one of the events which will cause the surveying authority to make a modification order as  
'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.'

### Protection of Byways

13. Current policy, approved by this Sub-Committee on the 12th July 1995, is to use a mixture of surface strengthening, voluntary restraint notices and Temporary Road Closure notices to prevent misuse of byways during wet autumn/winter months. Only if the above measures are ineffective, will permanent Road Closure Orders be used. The Parish Councils mention in their letter (Appendix B) the existence of a spring crossing the lane at one point, and are concerned that the lane would be unusable in wet weather by walkers, if its use is shared with vehicles.

### Countryside Access Strategy

14. The Countryside Commission identifies the Rights of Way Network as the most important mechanism for enabling people to enjoy the wider countryside. An important part of the County Council's contribution to public enjoyment is the maintenance of an up to date and accurate definitive map and statement, so that people have the confidence to venture into the countryside.

### Conclusions

15. The documentary evidence suggests, on the balance of probabilities, that Hole Lane is an old road available in the past for use by all manner of public traffic. Account can be taken of the adjoining landowners' concerns in the subsequent management of the way, but, in the production of an accurate record of public rights of way, only evidence of what rights exist can be considered.

### Recommendation

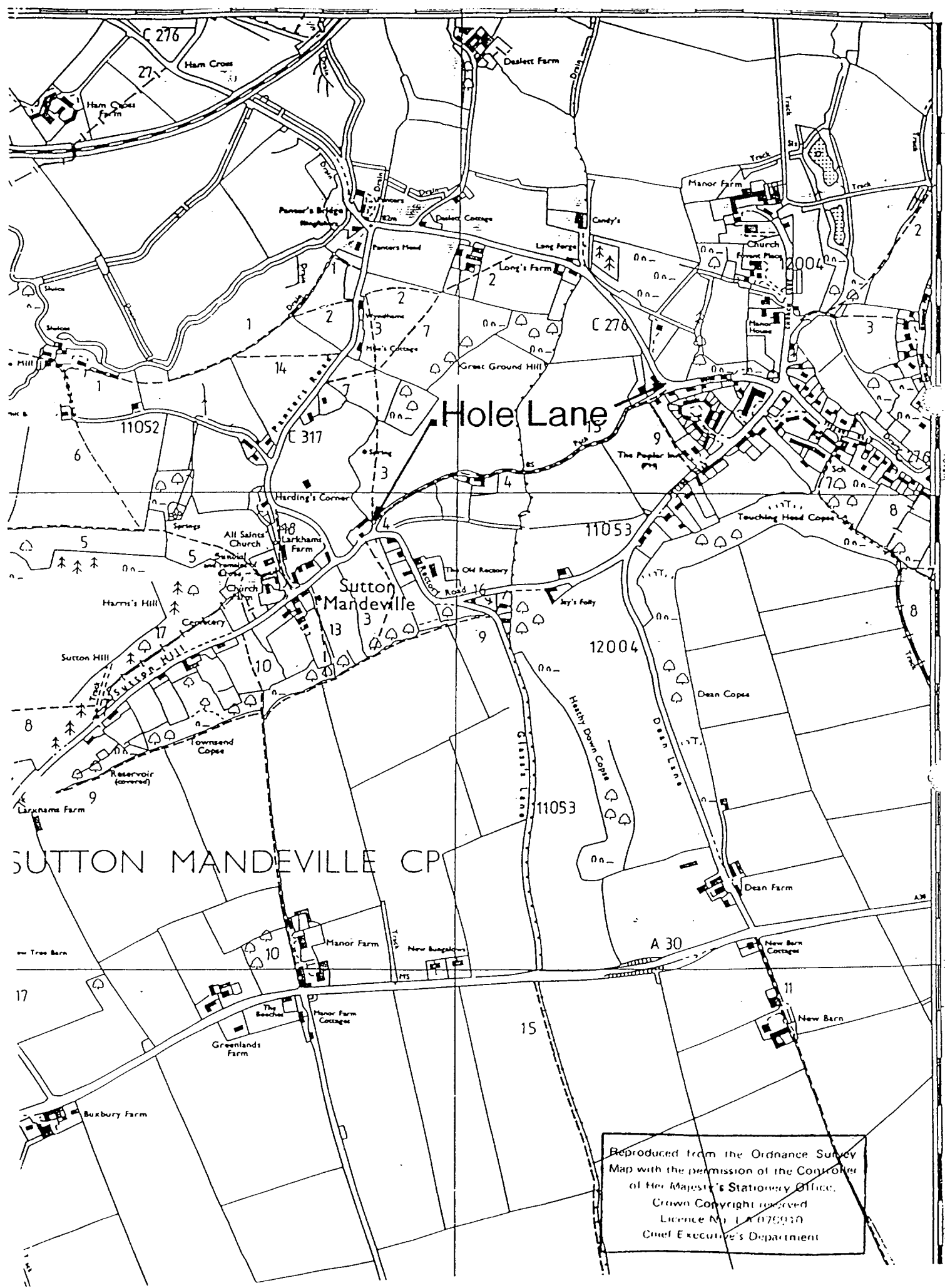
16. That an Order be made under Section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981, upgrading Footpath 15, Fovant and Footpath 4, Sutton Mandeville to a byway open to all traffic, with the width-range of 4.75 to 14 metres in Sutton Mandeville and 4.5 to 7.25 metres in Fovant.

M. O. HOLDER  
County Secretary & Solicitor

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Unpublished documents relied upon in the production of this report: Correspondence with users groups and landowners.

Environmental impact of the recommendations contained in this report: Enhancement of the rights of way network.



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HOLE LANE, SUMMARY of EVIDENCEFovant FP 15 & Sutton Mandeville FP 4

- ANDREWS AND DRURY, MAP OF WILTSHIRE, 1773: shown as road
- CARY, SMALL SCALE MAP OF WILTSHIRE, 1787: shown as only road between villages
- FOVANT ENCLOSURE AWARD, 1792: shown coloured as are other roads outside the area of the award; only road shown between the two villages
- CARY, MAP OF WILTSHIRE, 1801: shown as road
- ORDNANCE SURVEY 2 INCH SCALE DRAWING, SHEET 64, SURVEYED 1807-8: shown as road
- ORDNANCE SURVEY 1 INCH SCALE, 1811: shown as road
- ESTATE MAP OF FOVANT, 1820, WRO/135/36: shown coloured, as are other roads
- GREENWOOD, MAP OF WILTSHIRE, 1820: shown as road
- SIR R. COLT HOARE, MODERN WILTSHIRE, MAP OF DUNWORTH HUNDRED, 1829: shown as road
- T.L. MURRAY, MAP OF WILTSHIRE, 1830: shown as only road between the two villages
- CARY, ½ INCH SCALE MAP, 1832: shown as road
- SUTTON MANDEVILLE TITHE MAP, 1839: shown as part of the parish road network, fenced off and free of tithes
- FOVANT TITHE MAP, 1840: shown as part of the parish road network, coloured, and free of tithes
- CRUTCHLEY, ½ INCH SCALE MAP, 1860: shown as road
- ORDNANCE SURVEY 6 INCH SCALE, 1890: shown as road
- ORDNANCE SURVEY 1/4 INCH SCALE, 1899: shown as third class road
- ORDNANCE SURVEY 25 INCH SCALE, 1901: shown as road
- BARTHOLOMEW'S SURVEY ATLAS OF ENGLAND AND WALES, ½ INCH SCALE MAP, 1903: shown as 'other driving roads'
- INLAND REVENUE FINANCE ACT, 1910 VALUATION MAP: public road, free of tax
- BACON'S COUNTY GUIDE TO WILTSHIRE, 1910: shown as road
- SALE PARTICULARS: THE FOVANT ESTATE, 1917, WRO/2132/87: Hole Lane is uncoloured and excluded from the sale parcels
- SALE PARTICULARS: SUTTON MANDEVILLE AND CHICKSGROVE, 1917, WRO/475/38: only one sale parcel adjoins Hole Lane, but lane uncoloured, no part is included in that parcel, and it is shown as a road through the rest of the parish
- ORDNANCE SURVEY 25 INCH SCALE, 1925: shown as road

BARTHOLOMEW'S MAP OF THE NEW FOREST,  $\frac{1}{2}$  INCH SCALE, 1927 EDITION: hatched as 'secondary motoring road'; only road of this status between the villages (U/C 11053 is uncoloured west of U/C 12009); 1932 EDITION is similar

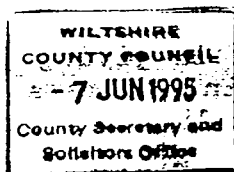
SHELL GUIDE TO WILTSHIRE, 1935: shown coloured green as 'serviceable roads'

ORDNANCE SURVEY, 1:2500 SCALE, 1939 EDITION: shown in same way as other roads

Bartholomew's Map of Salisbury, Winchester and Reading, 1931 edition: the corner used to show the key to this map for the Heddington 1/Calne Without 38 inquiry includes Hole Lane. It appears to be shown as a single line, implying that it had been questioned, and then put back for the other maps, but the copy is not all that clear.

Bridge Cottage  
Tisbury Road  
Fovant  
Salisbury SP3 5JU

3 June 1995



Dear Ms McCraill

Application for Definitive map Modification Order  
Fovant FP 15 and Sutton Mandeville FP 4 - Hole lane)

I apologise for the delay in replying to Miss Kyte's letter EK/TIR/ENV/R106, R106A and R232 of 22 February 1995. This letter only concerns Fovant FP 15 which becomes FP4, as it continues into Sutton Mandeville Parish. I shall be writing later with our comments on the application to upgrade Fovant Footpaths 13 and 14.

Fovant and Sutton Mandeville Parish Councils have now looked at the evidence which you submitted and at other evidence available to us. Both Councils consider that there is no case for upgrading this footpath to a byway open to all traffic and most strongly object to any such proposal. The evidence in the list which accompanied your letter was wholly documentary in nature but the Parish Councils consider it is important to consider also the physical 'on-the-ground' and environmental evidence against the proposal. Under these headings we make the following points in support of our objections:-

1. We accept that 'once a highway always a highway', and that evidence exists that, at least from 1773 when Andrews and Drury's map was published, Hole lane has been shown on maps as a double hedged track. BUT we have found no evidence that it was ever a 'highway over which the public have right of way for vehicular and all other kinds of traffic'. We therefore consider that no Order should be made unless and until positive evidence of such public vehicular rights can be provided by the applicant or the County Council. We have not in fact even found evidence that Hole lane carried the right of vehicular use of any kind, private or public and as we understand it, it is public vehicular use which must be proved if an order is to be made.

Documentary evidence

2.1 Much of the evidence listed in the summary attached to your letter is of a very negative nature, being based on old maps which are inaccurate in many details of relative positioning of roads and villages and were not based on accurate surveys. We therefore question the weight which can be attached to them as evidence for reclassification.

2.2 I am sure you will be aware that under a 1936 High Court ruling (Merstham Manor Ltd v Coulsdon and Purley), physical and tithe maps of an area cannot conclusively show the distinction between public and private rights. The value of old maps generally as evidence of



status was held in question and in giving judgement it was stated of old maps there is nothing in the maps to show whether or not the topographer-author was intending to represent the roads on his map as public highways'. The DOE circular on 'Documentary Evidence' (for reclassification purposes) itself states that 'The only map which provides conclusive evidence of a public right of way is the Definitive map. Other maps will as a rule only show the existence of a route at the time of survey, but not necessarily the status....most early editions (of OS maps) carry a disclaimer to the effect that tracks etc represented thereon are only topographical features and not evidence of public rights of way.....it is reasonable to assume in view of the OS's history that, unless there is evidence to the contrary, it still applies.'

2.3 The early maps produced by the Ordinance Survey certainly provide acceptably accurate evidence of the existence of Hole Lane on its present alignment but they still omitted until the early twentieth century to include any keys relating to the status or width of the 'roads'. The first OS map which we have found to include a classification key was published in 1919. The 1 inch map of this date shows Hole Lane partially as a 'minor road' and partially as a footpath. Even where it is shown as a 'road' it is still in a category below the next which is 'roads under 14 ft wide'. Of the maps listed by you, even the OS 25 inch map as late as 1925 includes the disclaimer 'the representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way'.

2.4 We accept that, although it is shown on the accompanying maps, there is no specific reference to the track known as Hole Lane in either the Fovant Enclosure and Tithe awards nor in the Sutton Mandeville Enclosure and Tithe awards. It is, however, our understanding that none of these awards provide positive evidence for the status of a road shown on the maps, particularly where all surrounding land forms part of an estate and the rents due in lieu of tithes were payable to that landowner.

2.5 You will also be aware that a number of recent reclassification cases/inquiries have highlighted the number of roads which exist but which do not carry public vehicular rights. (Such 'roads' can be access roads, accommodation roads, private including estate roads, commoners roads and driftways or drove roads.) In Cumbria it was held by the Secretary of state that the term county unclassified road was an administrative term only and no presumption was to be made regarding public vehicular rights.

2.6 Before considering the evidence cited, we suggest that it is important to appreciate that, whilst Fovant may be described as a village within a parish, Sutton Mandeville is a parish without a village. It consists of a number of separate small groups of houses (a fact substantiated by the new Salisbury District Local Plan which has determined that there is no concentration of houses/centre to the parish which would justify identification of a Housing Policy boundary). Not only therefore can one not refer to

roads 'between the two villages' but there has never been a reason for general traffic between the two parishes. Fovant and Sutton Mandeville have separate churches and rectories, public houses and, until recently, each had its own village school. The lands and hence the tenanted farms in the two parishes largely belonged to two different large estates - namely those of the Pembroke and Wyndham families (until these were sold off in 1917/1919).

2.7 Notwithstanding the absence of any real need for communication there are a number of routes between different parts of the two parishes. From the end of Fovant village High Street near the present A30 the route to houses near Sutton church is now and would have been since the mid 18th century by the Turnpike road (ie A30). From Fovant church and the west end of the village the route is along the present Sutton road and past Jays Folly and the old Sutton Rectory. A third alternative carriageway is to the Nadder by Panter's Bridge and then by Panter's Lane.

2.8 Each of these routes is shown on all the maps we have looked at included on the list of evidence which you enclosed, as is also Hole Lane. We therefore can neither accept nor understand the statements that Hole Lane is 'shown as the only road between the two villages'. Indeed on the map of the 1792 Fovant Enclosure Award consulted in the County Record Office both of the roads to Sutton via Panters and from the Turnpike (A30) via Glasses lane are clearly marked 'To Sutton Mandeville'/'road from Sutton Mandeville' whilst no such delineation is attached to Hole lane. Similarly on the Fovant Tithe map of 1840 Sutton road in Fovant is marked 'from Sutton and the road to Panters bridge at the parish boundary beyond the start of Hole Lane is marked from Chilmark' - again Hole Lane itself has no such delineation. More recently on the map included with the 1917 sale particulars of the Wyndham Estate, it is the Sutton Road at the parish boundary near Jay's Folly and the Tisbury/Panters road at the boundary near Long's farm which are marked 'to Fovant'; again Hole Lane has no such marking.

2.9 We further suggest that the compiler of your list has misread the small scale 1/4 inch map included in the 1935 'Shell guide to Wiltshire' as the green 'serviceable road' appears to be the Sutton road leading from the church crossroads in Fovant (as we would expect) and not Hole Lane which begins considerably further up the hill. We also query the compiler's statement that Bartholomew's 1903 1/2 inch Survey Atlas shows Hole Lane among 'other driving roads'. We noted that Driving and Cycling routes are shown coloured whereas other 'roads' are uncoloured; Hole Lane is uncoloured ie not a road suitable for driving.

### Physical evidence on the ground

3.1 With the exception of Hole Lane these routes between the two parishes are all the width of a cart with places where two could pass, and have also clearly been so used for some centuries since they contain stretches of an appropriate width which are considerably sunken between old banks/hedges. In support of our

contention that Hole lane was never used by vehicular traffic throughout its length we put forward as evidence its width and cross-section at various points.

3.2 At the Fovant end it is difficult to determine the original width for the first short stretch past the present-day houses. None of these existed at the time of the Enclosure Award and some sections of the hedges may be of more recent date as are some access openings. Both the Enclosure and Tithe Award maps indicate a short branch into the southern field just after these houses. Although this is no longer extant we know from older residents that the lane was of a width to take a cart up to this point in order to gain entry to the field (in which Manor Farmhouse now stands).

3.3 At the Sutton end we accept that, since the cottage now known as Glebe cottage existed, the lane has probably always been used by carts/other vehicles up to that point or the orchard just beyond. This stretch is a slightly sunken lane of sufficient width for a cart (but it was not metalled until 1958/59 - see para. 3.2 below).

3.4 Between these two end stretches there is no reason to suggest that the hedges are in anything other than their original positions. We have no evidence that the lane has ever been maintained by the local authority and the assumption must be that the hedges were regularly cut and laid by the owners/tenants of the fields on either side so long as this was the normal practice. Once this type of maintenance ceased with modern farming methods, the lane on the Fovant side of the parish boundary stone gradually became virtually totally overgrown. On the Wilton rural district take-over map of c.1929 it has actually been deleted. Certainly by 1985 it was no longer possible even to walk along it. Clearance back to the original old hedges was then undertaken by residents of one of the houses. The line of these hedges is perfectly clear even though over twenty years of neglect had led to parts of the old laid hedges being so rotted away that they are not as thick as they would have been at a time when they were regularly properly laid and maintained in order to keep cattle in, the fields on both sides being pastures. With the partial destruction of the hedges the lane appears in some parts wider than it would have been. Nonetheless it is still in some stretches less than 6 feet wide i.e. not only considerably narrower than the actual width of most carts but we note that under the 1835 Highway Act the required width of a public cartway was 20 feet.

3.5 Further evidence that the lane has never been a public highway for vehicular use is provided by the cross-section which in many parts is virtually V shaped with the sunken part only of footpath width. Other than at the two ends there is certainly absolutely no evidence of double ruts.

3.6 Finally in some sections of the narrow stretch referred to in paras. 3.4 and 3.5 above, it can be seen that the lane had a cobbled surface only 2-3 feet wide - i.e. of footpath width only and

unsuitable for any horse-drawn vehicle. One older resident recalls a time when this cobbled surface and its width was apparent over more of the length.

3.7 We have signed statements from several residents in the parish whose memories of the lane date back over 90 years and who have stated that during this time, which includes the first half of the century when the lane was being kept reasonably clear, it was never used for wheeled vehicles along its length. Indeed one old person recalls carrying loads of hay on their backs from the Fovant end to cows kept in sheds at Hole Cottage (now Glebe cottage).

3.8 Previous denial by the Highways authority of responsibility for sections of the lane also lead us to believe that it was never a public highway carrying public vehicular rights. At the Fovant end, in the course of searches made when these houses have changed hands in recent years, the County Council has denied all ownership of the lane, thus supporting evidence that there is no existing public right of usage by vehicles. (The residents of these properties have right of usage/access for vehicles to the houses only by declarations of continuing use). Again at the start of the Sutton end, it is understood that the County Council denied responsibility for its upkeep in 1958/59 when the present owner's father purchased the cottage and proposed a tarred surface. It is therefore deemed a private road since it is maintained by the owners of the cottage and public vehicles such as rubbish lorries do not go down it - the residents have to take their rubbish to the road junction.

3.9 If positive evidence does indeed exist that Hole Lane was ever a public highway with public vehicular rights then we would assume that there would be some documentary evidence that, since at least the Highway Act of 1835, the local highway authority accepted responsibility for its maintenance at their expense, as a publicly maintained highway. We would also query why, if the authority had accepted such responsibility, the lane was not previously designated as a RUPP under the 1949 NPCA Act, particularly as you have cited in evidence of its status comparatively modern maps. We note that DOE Circular 1/83 requires that byways open to all traffic that derive from the reclassification of RUPPs are maintainable at public expense, irrespective of whether they were similarly maintainable prior to reclassification. We assume such a responsibility also applies to new byways which were not previously RUPPs and that the County Council would have to accept responsibility for ensuring it is altered to the width of a vehicle and for so maintaining should an Order for reclassification be approved. It is, however, our interpretation of S.39 of the highways Act 1959 that, before approving creation of a vehicular highway that has existed in principle for over 130 years, councillors are required to decide whether a path's utility to the community justifies its maintenance at public expense. We do not consider that in the case of Hole Lane such expense could be justified. (See also para. 4.2 below).

### Suitability and environmental considerations

4.1 The above evidence leads us to the conclusion that there is no positive evidence that Hole Lane was ever a public highway for vehicular use, and that there are therefore no grounds on which to justify making an order to reclassify it as a byway. We have not therefore referred earlier in this letter to its unsuitability for such use nowadays, particularly bearing in mind that the County Council has previously suggested that 'any objection relating to the suitability of a path, or the effect on the area in which it is situated cannot be considered'. We are, however, aware that the question of the viability of arguments relating to suitability is now being questioned with several local authorities. It certainly appears to us impossible to ignore questions of 'suitability' of a highway for designation as a byway if you are still to meet the requirements of a byway being 'used by the public mainly for the purpose for which footpaths and bridleways are so used'

4.2 The unsuitability of Hole lane for vehicular traffic and the damage to the environment are the very grounds on which a large number of residents in the parishes (not only those with properties bordering the lane) are strongly objecting to the County Council's proposal for redesignation as a byway. They are the people who are making great use of the lane as walkers and with dogs and we find it hard to see how a lane which has always been so narrow in stretches could be mainly used as a footpath and yet also be used by vehicular traffic. Unless Hole lane is made considerably wider than it has been from historical times, there is no room for vehicles and walkers together. We also recognise that redesignation would not carry with it an obligation to provide a surface suitable for the passage of vehicles. Yet without some form of hard surface being provided by the highway Authority, particularly where a spring crosses the lane on one bend, the lane would cease to be usable as a footpath in wet weather should it 's use be shared with vehicles (ie the definition of a byway would not be met).

To summarise therefore, Fovant and Sutton Mandeville Parish Councils object in the strongest possible terms to the suggested redesignation as a byway of Fovant footpath 15 /Sutton Mandeville 4 on the following grounds:-

- (a) Most importantly, positive documentary and physical evidence of any public vehicular rights or usage is lacking, but also
- (b) Many local residents fear they would be deprived of a popular walk, due to vehicular damage to the surface of the lane and to its narrowness in parts
- (c) Any such upgrading would be to the detriment of the natural beauty and amenity of the countryside, particularly as two large oak trees at the narrowest spot would require felling
- (d) It's utility to the local community as a byway would be virtually nil and would not justify the cost of felling and clearing several large trees, laying some hard core and annual

maintenance at public expense.

Yours sincerely

*J. R. Coombes*

Mrs J. Coombes

Clerk to the Fovant and Sutton Mandeville Parish Councils

cc Bobby Baddeley

County Councillor for Tisbury District

FOVANT 15 AND SUTTON MANDEVILLE 4 : HOLE LANE  
OBJECTION MADE BY FOVANT AND  
SUTTON MANDEVILLE PARISH COUNCILS

1. Positive Evidence of Public Vehicular Rights Needed Before an Order made

The level of proof required is that of civil law, on the balance of probabilities. If the Sub-Committee is satisfied that, on the balance of probabilities, Hole Lane was historically a public way for all types of traffic, then a Modification Order should be made.

2.1 Old Maps Quoted Not Based on Actual Survey and Inaccurate in Relative Positioning of Roads and Villages

The evidence quoted includes the Fovant Inclosure Award of 1792, the Tithe Awards for the 2 parishes, the Finance Act map of 1910, as well as several small scale maps.

2.2 The 1936 High Court Case (Merstham Manor Ltd Couldon and Purley) Stated that physical and Tithe Maps of an Area Cannot Conclusively show the Distinction Between Public and Private Rights

Judge Hilbery, speaking in this case, said 'The tithe maps make no distinction between a public and a private road' referring to the tithe maps in that individual case. Were Hole Lane to be shown solely on the Tithe Award maps, and on no other record, then this argument might have more force. Hole Lane is declared to be public on other documents which are backed by Act of Parliament (for example the Finance Act map of 1910). The Tithe Maps show Hole Lane in a manner similar to other present day roads.

2.3. The Ordnance Survey Maps Quoted do not give Evidence of the Status of the Roads Shown

The Ordnance Survey maps give evidence of the dates when the Lane existed, on the ground. Some inferences about its status can be drawn from the way it was recorded.

2.4 Although Hole Lane is shown on the Accompanying Maps, it is not Referred to in Either the Fovant Inclosure and Tithe Awards, or the Sutton Mandeville Inclosure and Tithe Awards

Hole Lane does not cross the land enclosed in 1792, and therefore was not awarded by the Inclosure Commissioners. However, it is shown as part of the parish Road network, on a document subjected to public scrutiny, and this agrees with other evidence of its status.

- 2.5. **A Number of Roads Exist which do not Carry Public Vehicular Rights (Such as Access Roads, Private Roads and so on). The Term County Unclassified Road Carries no Presumption Regarding Public Vehicular Rights.**

The evidence that Hole Lane has existed for over 200 years, since the Andrews and Dury Map of 1773, is amplified by evidence of its public status from for example the Enclosure Award and the Finance Act maps.

- 2.6. **Sutton Mandeville is a Parish Without a Village Being a Collection of Small Groups of Houses. There was Never a Reason for General Traffic Between the two Parishes of Fovant and Sutton Mandeville, each Having its own Facilities and Largely Belonging to Different Landowners.**

The need for several public routes between villages for different times of year and weather conditions would have been more important in the past. A 'small' saving in distance would also have been more significant.

- 2.7. **There are a Number of Other Routes Between Different Parts of the Same Parish.**

See 2.6 above.

- 2.8. **Other Routes are also shown on the Evidence Listed by the Applicant, Therefore the Statement 'Shown as the Only Road Between Two Villages' is Inaccurate.**

According to the applicant, the phrase is used to distinguish maps which show Hole Lane, but not the U/C 11053 road, (the road to the south of Hole Lane) from those which show both.

- 2.9. **Shell Guide to Wiltshire (1935) and Bartholomew's 1903 ½ inch Survey Atlas have been Misread by the Applicant.**

The applicant supports her interpretation of the Shell Guide to Wiltshire, and of the Bartholomew's map.

Colour photocopies of these maps will be available for inspection.

Although both maps can supply useful supporting evidence, neither has the weight of, for example, the Tithe Award Maps.

- 3.1 **Width and Cross-Section of Hole Lane Militate Against it Serving as a Way for all Traffic (in Some sections Less than 6 Feet Wide)**

Fovant 15 has a recorded width of 8 feet, and Sutton Mandeville a recorded width of 1 to 6 feet. Measurements on site give a boundary to boundary width (as opposed to a useable width) at the narrowest point of 3.3 metres (just under 11 feet). Other measurements on site agree generally with widths scaled from the 25 inch O.S. maps of 1901 and 1925.



According to the applicant, the standard wheelbase of carriages and carts is 4.5 feet.

3.6 **Cobbled Width of Only Some 2-3 Feet Wide Apparent in Places**

Maintained or repaired width is not automatically the same as the useable width.

See 3.1 above.

3.7 **Signed Statements Available from Residents Dating Back over 90 years that the Lane Was Never Used for Wheeled Vehicles over its Full Length.**

This would seem to accord with the documentary evidence that use of the Lane has declined since the start of the century when it was excluded from the tax raised by the Finance (1909-10) Act 1910.

3.8 **Highways Authority has Previously Denied Responsibility for the Lane's Maintenance**

Public maintenance responsibility does not automatically accompany a public right of way. In this case, there was some ambiguity in the late 1920's when the Rural Districts transferred their highway functions to the County Council. Tisbury Rural District (covering Sutton Mandeville parish) marked Hole Lane as repairable within the adjoining Wilton Rural District (covering Fovant parish). Wilton Rural District, on the other hand, scratched out Hole Lane within Fovant, and marked the Lane as 'not repairable?' within the area of Tisbury Rural District.

3.9 **The Lane was not Designated as a R.U.P.P. Under the 1949 Act. If Hole Lane was ever a Public Highway with Public Vehicular Rights then there would be some Documentary Evidence to Show it has been Publicly Maintained.**

Under Section 47 of the National Parks and Access to the Countryside Act 1949 (the '1949 Act') all footpaths and bridleway in existence at that time became publicly maintainable. (This section was repeated by the Highways Act 1959). Hole Lane was added to the definitive map in 1952/53, and therefore is already a publicly maintained public highway.

**Section 39 of the Highways Act 1959 Requires that Councillors Consider Whether Path's Utility to the Community Justifies its Maintenance at Public Expense.**

Maintenance at public expense does not automatically accompany the existence of a public right of way.

4.1 **Suitability Should be Taken into Account if the Legal Definition of Byway as 'Used by the Public Mainly for the Purposes for which Footpaths and Bridleway are so used' is to be followed.**

This has a bearing on the County Council's subsequent maintenance of the Lane, should it be recorded as a byway open to all traffic.

If the submitted evidence is ultimately held to support byway status for Hole Lane, then it will continue to be publicly maintainable by virtue of Section 23 of the Highways Act 1835, (since it came into existence before the 31st August 1835).