

**COPY OF LANDOWNER'S LETTER CIRCULATED TO JULY
REGULATORY COMMITTEE**

*Riverside Cottage
Wylve
Wiltshire
BA12 0QU*

Mr Roger Bishton
Senior Democratic Services Officer
Democratic Members Services Unit
Resources Department
Wiltshire County Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JD

Saturday 26th July 2008

Committee meeting Questions and Statement in objection to proposed Wylve footpath 11

Dear Mr R Bishton

We understand from a letter received this morning, that if we wish to ask questions or read a statement to the committee dealing with the proposed Wylve footpath 11 that we need to put these questions or statements in writing to you, received by you no later than noon on Monday 28th July 2008. We do wish to and below are the details.

1/ (Point 31) The two gates sit in a gap that is 36 feet wide. This gap needed to be wide enough for a combine harvester to access this field. It is not visible because it was not there at the time of the photo 1987/8 (Documents support the time of this photo showing no 36 foot wide gap in the hedge).

2/ (Point 41) a) Permissions were given to some residents
b) Notices were in place for part of the claimed period of 20 years.
{Photo's, Testimony and existing old third notice support this}

3/ (Point 44) This has not been proved.

4/ (Point 45) Both notices and permissive access brought this to attention.

5/ (Point 46) Some or many of these people would have been unaware that this track was private due to the notices having been removed by persons unknown. A continuous 20 year period is required and only **some** of these 21 claim this.

6/ (Point 47) We have **never** claimed that signs were in place throughout the relevant period, they were only in place for part of the period.

7/ (Point 48) There was a secret meeting in the village held with out our knowledge and for the express purpose of getting signatures stating usage. The attendees were not given the full facts (According to Tim Chinnick) who attended.

8/ (Point 50) Wrong. Not 9 over 20 years but we think just 6 (one is a duplicate) (one is not in the period or unlikely to be) (one has written to us and contradicted his statement) Tim is aware of this and has a copy of the letter from Brian Buchard all prior to 30 July 2008. Why are your council records not updated with this information? Also Are they sure? 26, 28 and 32 years ago? (That's 1975) I think there were cattle in this field then, with a bull at times? Also was this field open to the A303 then?

9/ (Point 52) Photos of signs are **key!** These should be scrutinized by the committee.

- a) One of these shows a sign in place during the claimed period. (Plus letters)
- b) The other two show that signs did and do exist.
- c) The reinstated and subsequent removal of a sign, support this (See photo and letter.)

10/ (Point 57) Please Note: If we loose against the correct legal position then the existing gates will need to be removed allowing 5m wide access. There is no room for an additional footpath gate to either side of the gate by the barn, so motorbikes and 4WD's will use this track. That is why the gates are there, to stop them doing this and so spoiling the Green Lane bridleway.

Statement

This whole process seems politically driven. Any legal proof we have provided has been dismissed. From the outset permissive access for walkers has been granted and this remains today. If it is held that any legal rights of access exists, then this will be against, what should by law be, the correct legal position.

Six people only, just three from Wylve claim to have used this track for over twenty years and with out permission or notices. Twelve people have written letters in objection including those who should know the truth. These including, the farm manager, tenant farmer, landowner plus family, and a number of long standing local Wylve residents. These people should not be dismissed out of hand. All their objections are on file in writing with WCC.

I believe that many people locally have been misled as to the correct legal and actual position, but have been asked to support a new local footpath. The 6 who are claiming this right have something to gain; the twelve who have objected do not. Only the farmer and landowner and wildlife have something to loose.

Please also be aware that the land owner has another field locally (3 miles away) in Teffont where fences and gates were erected the year previous to this dispute. They acted in good faith and when they realized that they had a footpath across that field, they contacted the council and fully complied with the spirit of the law and put in a disabled access foot path gate at their own expense and beyond what was required. (WCC Salisbury asked for a style only, we thought this wrong and paid for a 4 foot wide disabled access gate with a special easy to use latch)

We are not lying! Notices were in place to prevent any rights of access from being established. We feel we have been deliberately misrepresented by Wylve Parish Council officials. We are facing determined local activists who do not care for the correct legal position, but feel that they want a foot path and so they will have one even if that is against the correct legal position. We also feel that this whole process is politically driven and that the system is against us, forcing us to prove the correct legal position. All the local people, who know us in the village, will know that we are telling the truth in this matter, even some of those claiming the right of access know it.

Yours sincerely

John, Anne and Philip Lush
Tel 01985 248227

**COPY OF LANDOWNER'S STATEMENT READ OUT TO JULY
REGULATORY COMMITTEE**

I want villagers to know the truth, the full truth.

I want villagers to know that we have and still do offer permissive access on this track. Indeed we have asked that locals be told this from the outset.

I want villagers to know that we have **not** claimed that notices were in place for the whole 20 year period, just the first part of this time.

I want locals to know **why** we have chosen to gate this field. All the reasons....

I want locals to know about the environmental work we have done and what future works we are planning to do.

I want everyone to know that **all** the above was fully explained to the Ivan. As the then chairman of the Wylfe parish council **before** the gates were erected.

(I want villagers to know that they were misled.....or rather not fully informed on this matter at the secret local meeting held to get support for a BOAT and that the WPC minutes don't show a vote on this matter.)

I want locals to see and judge for themselves the photos of notices that were in place and all the letters that support these photos.

I want locals to know that we offered a key to the Fisherton horse-riding family, (Ivan's friends) even though they were a little aggressive and that they said they had only used the track once the previous winter and that they **didn't** want a key.

I want locals to know that Ivan pointed to my mother at a parish meeting and said to her. "You are not liked in this village!"

I want everyone to understand the correct legal position and to know the full truth.

I want all the facts out in the open, no more half truths, no more forgotten or wrong information misleading people.

Please: Let the full truth be heard at a public enquiry.

LIST OF EVIDENCE SUBMITTED IN LANDOWNER'S SUPPORT

**(THIS DOCUMENT ACCOMPANIED THE LANDOWNER'S LETTER AND
STATEMENT TO JULY REGULATORY COMMITTEE)**

List of evidence submitted in our support

Photo of barn showing white "No Right of Way" notice. (Original and only old photo with WCC. This photo is **key**)
Letter from Tom re: original notice found in hedge by the old A303.
Photo of old A303 gate with "No Right of Way" notice reinstated by Tom.
Photo of old A303 gate with "No Right of Way" notice removed again.
Photo of the third "No Right of Way" notice at far end of field.
Letter from Mr Lyall Farmer.
Letter from Mr Woolley Land Agents.
Valid objection letter from J & A Lush (Wylie Resident)
Copy of Woolley and Wallis letter. (Mr Lyall tenancy starting 1st Feb 1987)
Valid objection letter from P Lush (Wylie Resident)
Objection letter from P & B Annetts (Wylie Resident)
Objection letter from H & R Jeffrey (Wylie Resident 60 years)
Valid objection letter from Mr Lyall
Personal letter from J Atterton (Wylie Resident)
Further additional evidence letter J & A Lush
Photograph 1988 provided by Air Commodore M and J Williams
Valid objection Letter from PKC Palmer (Wylie Resident 40 years)
Copy of objection letter from Commander Ron Copp (Wylie Resident)
Copy of personal letter from Brain Allen (Wylie Resident)
Copy of personal letter from Captain Bryan Butchard (Wylie Resident)
2nd copy aerial photo Air Commodore M & J Williams (Wylie Residents)
Dating of aerial photo, see copy documents A-B-C.
 A-Conveyance of land 18 Sep 1987.
 B-Grant of planning permission 23-Sep 1987. Approved 16 Dec 1987
 C-Building regulations approved 25th Feb 1988

OFFICER'S COMMENTS ON LANDOWNER'S LETTER

The aerial photograph attached to this document, submitted by Councillor Deane was already on file. This aerial photograph was submitted to this council by the landowner on the 27th May 2008. Officers believe the photograph is inconclusive as to whether or not there is a gap at point B on the order map as that point is totally obscured due to the scale and angle of the photograph. The case officer has examined the original photograph and whilst it is far clearer than the photocopy it was still impossible to interpret the area at point B. Conversely, the aerial photograph dated 1981 from the County History Centre attached to this document clearly shows a gap at point B. The landowner now acknowledges that there was a gap at point B but that it was strung with barbed wire.

22 witnesses originally supplied signed statements, 21 stating they had not been given permission to use the claimed route. One of the witnesses had worked for Mr. Lyle and that witness was discounted from the use 'as of right' for the purposes of the order decision. There are now 30 witnesses who state they have used the route, 28 of those have indicated use 'as of right'.

Photographs of the claimed signs at each end of the Order route were either outside the relevant 20 year period, undated or indecipherable.

Some objectors state that notices were in place during the relevant 20 year period but this is robustly denied by the users of the path. These conflicting testimonies between objectors and witnesses can only properly be tested under cross examination at a public inquiry. Once evidence of 20 year uninterrupted use 'as of right' has been submitted the burden then moves to the landowner to rebut the evidence and show there was no intention to dedicate.

The House of Lords has ruled that the term 'as of right' does not necessitate that users should have held the belief that they had a right to walk the route.

The council does not have any records of permissive path agreements in this area.

The July Committee report paragraph 47 should have read 'for part of the relevant period' and not 'throughout the relevant period'.

Officers have not held any secret meetings with witnesses. It is normal practice when investigating an application to meet and speak to all relevant sides as necessary.

It is not unusual for fresh evidence to be discovered in the course of investigating an application.

A continual twenty years of use by any individual user is not necessarily required as long as an adequate twenty years continual usage is covered by the body of witnesses taken as a whole. In this case the minimum user coverage during the relevant period was in 1987 when there were 13 users, 10 of which were using it as a footpath. This is sufficient use to support the Order as made.

The duty to keep the definitive map and statement under continuous review is a statutory requirement.

The legal processes behind reviewing the definitive map have been explained in writing to all parties.

WYLYE PHOTOGRAPH SUPPLIED BY OBJECTORS TO THE ORDER.

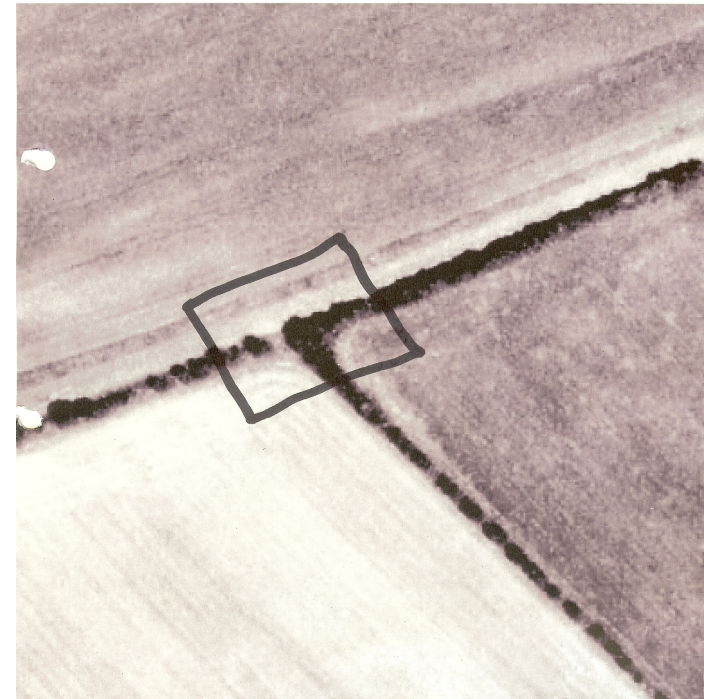
TAKEN CIRCA 1987/88

It was stated by the objectors that this photograph proves there was no gap in the vegetation at the junction but from this angle in the officer's opinion, because of the angle of the photograph it does not seem possible to tell if there is or is not a gap at this point.



1981 WYLYE AERIAL PHOTOGRAPH FROM COUNTY ARCHIVES

In contrast to the photographs submitted by the objectors this photograph clearly shows a gap in the vegetation at the junction of the claimed path with the 'old A303'.



Attached original taken at 12:10pm on 2/8/1981
 From Aerial photograph run of Wiltshire
 from W.C.C. Archives, County Hall,
 Trowbridge

LANDOWNER'S PHOTOGRAPHS OF NOTICES

PHOTOGRAPH AT POINT A

The distance is too great for any notice to be discernable

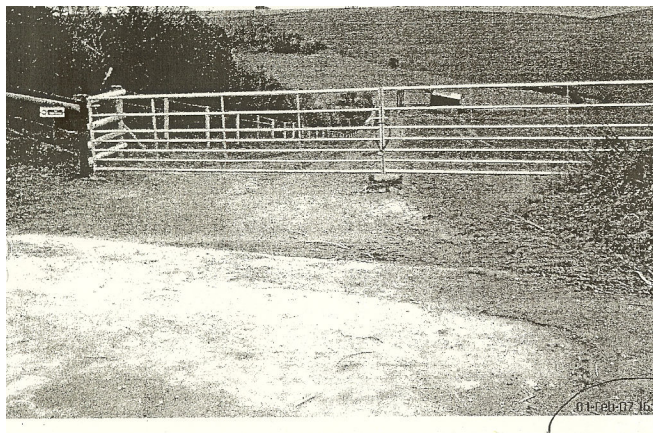


Enlargement of same photograph
There is still no discernable notice evident

LANDOWNER'S PHOTOGRAPHS OF NOTICES

PHOTOGRAPHS AT POINT B

The first two photographs show a notice stating 'No Right of Way'. However, the date shown in the bottom right corner of the pictures is 1st February 2007. This postdates the relevant 20yr period and so is not sufficient proof to rebut the intention to dedicate during the relevant twenty year period.



The photograph on the right was taken on a later unknown date and so also postdates the relevant twenty year period. It shows that the notice has been removed by person or persons unknown.

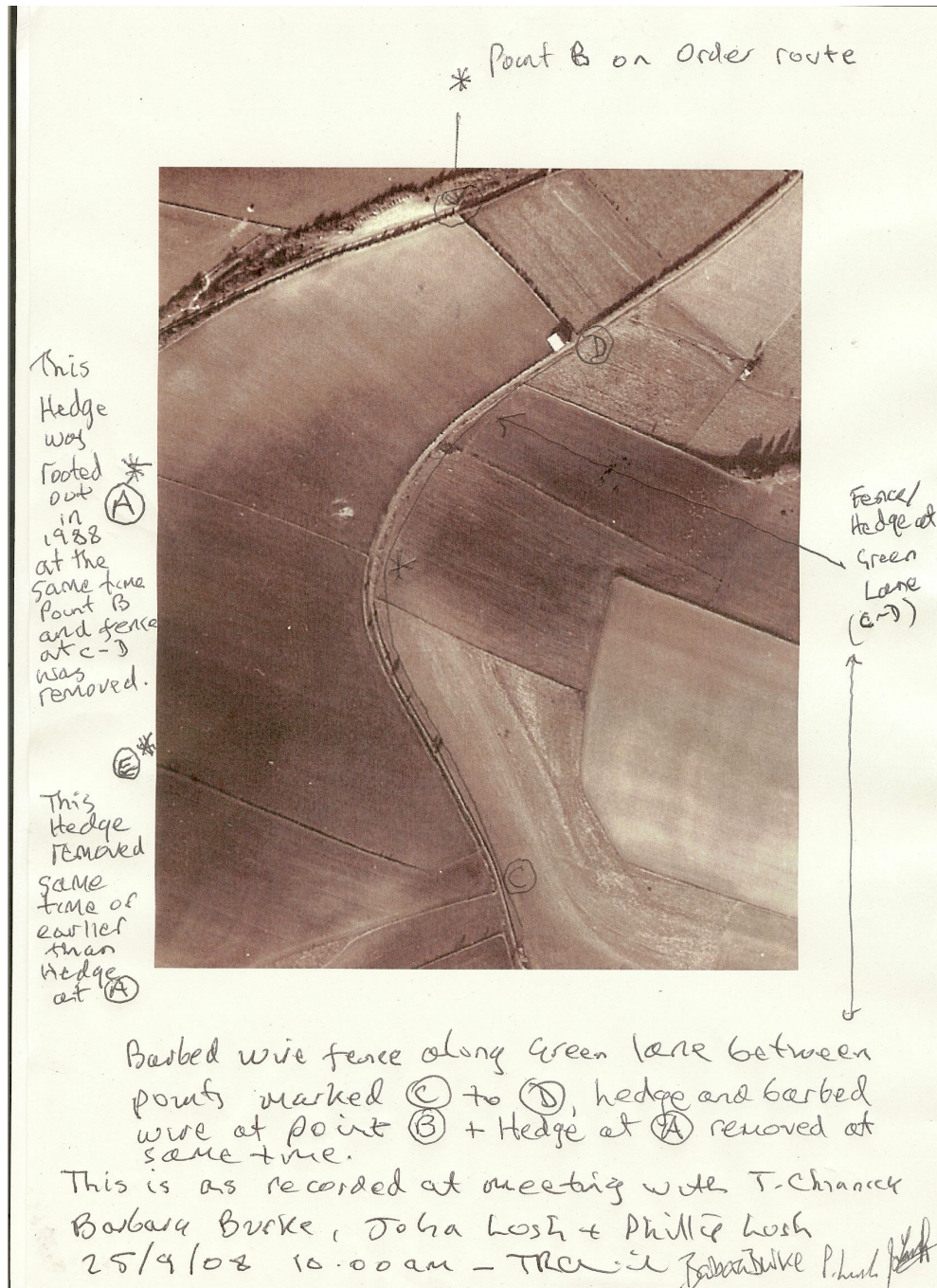
SITE MEETING AT RIVER COTTAGE ON 25TH SEPTEMBER 2008

IN ATTENDANCE:

BARBARA BURKE: SENIOR RIGHTS OF WAY OFFICER W.C.C.

TIM CHINNICK: RIGHTS OF WAY OFFICER W.C.C.

JOHN & PHILIP LUSH: (LANDOWNERS & PRINCIPLE OBJECTORS TO THE ORDER)



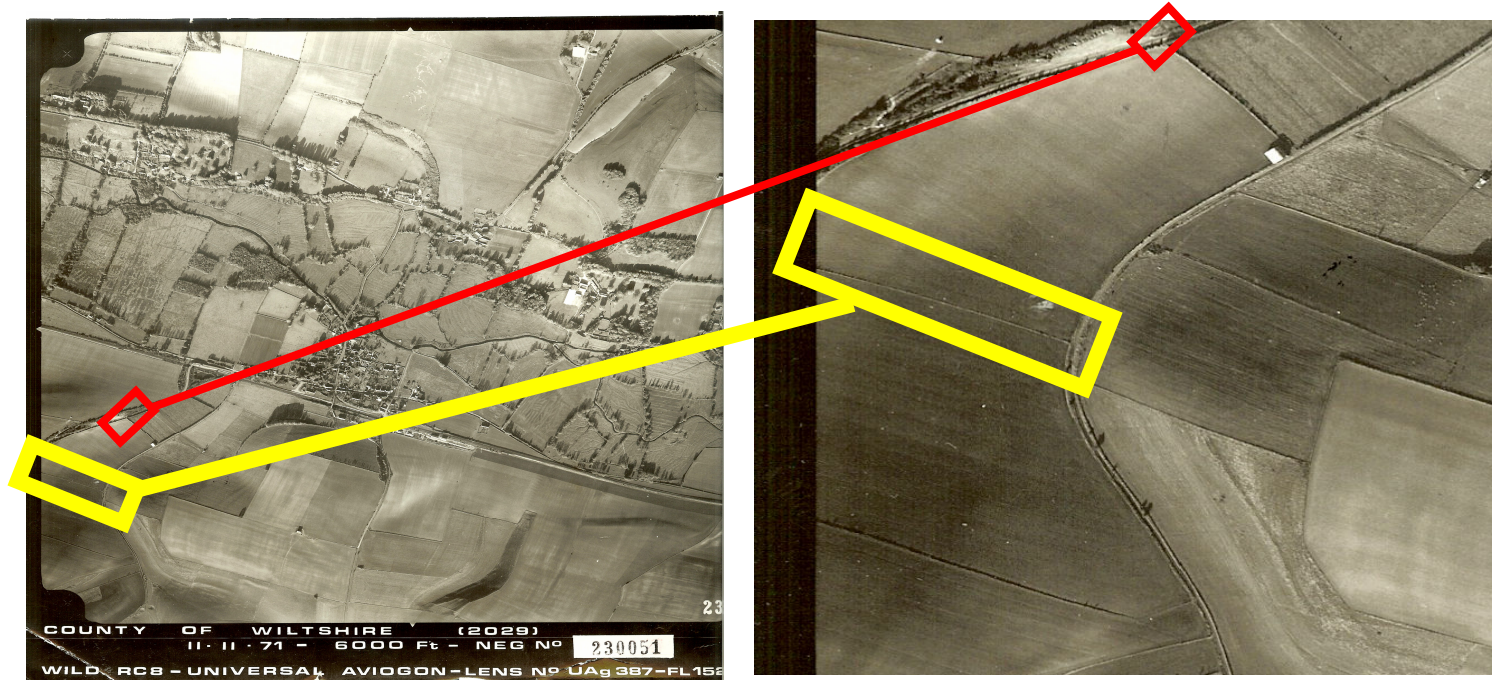
At this meeting Mr Lush and Philip pointed out that the hedge marked 'A' from Green Lane toward the 'Old A303' was grubbed out and removed at the same time as the access to the 'Old A303' from the Order route was created at point 'B'. Although Mr Lush maintains this was in the summer of 1988 the following two County Archive photographs show it would have been between 1971 and 1981, which supports the 14 witness evidence statements that say there was no obstruction in 1987 and 1988.

1971 WYLYE AERIAL PHOTOGRAPH FROM COUNTY ARCHIVES

RUN 14 NEGATIVE 230051 11/11/1971

POINT B OF THE ORDER ROUTE IS SHOWN INSIDE THE RED/DARK GREY BOXES

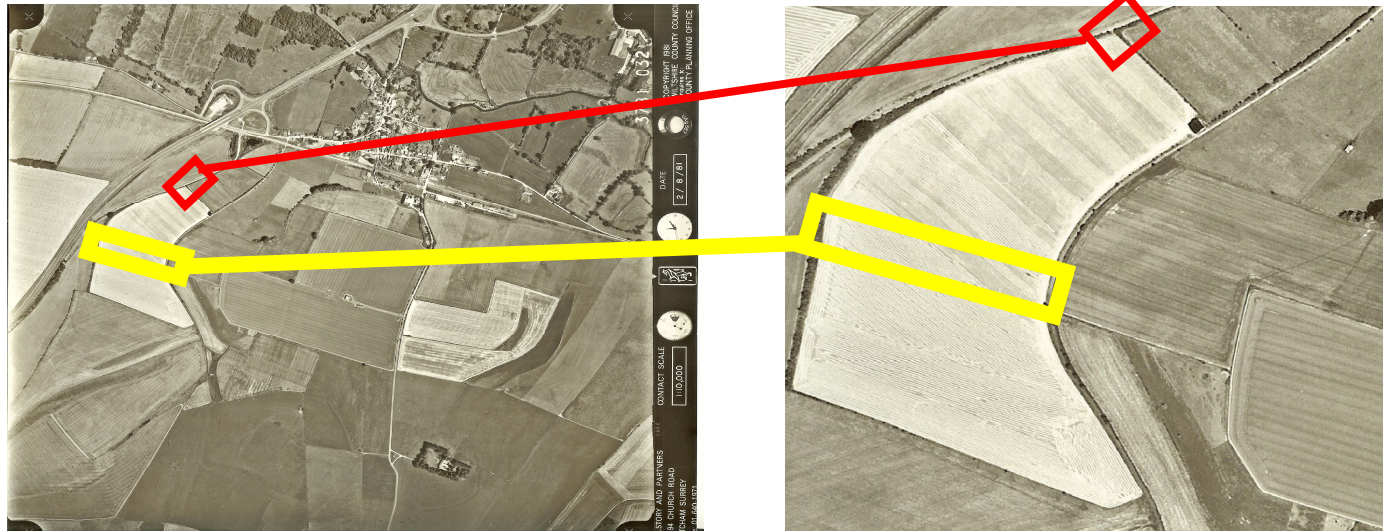
THIS PHOTOGRAPH AND ENLARGEMENT CLEARLY DEMONSTRATES THE EXISTENCE IN 1971 OF A HEDGE (IN THE YELLOW/LIGHT GREY BOX) ACROSS WHAT IS NOW A SINGLE LARGER FIELD



1981 WYLYE AERIAL PHOTOGRAPH FROM COUNTY ARCHIVES

RUN 16 NEGATIVE 3781 032 02/08/1981 12:10 p.m.

THIS PHOTOGRAPH AND ENLARGEMENT CLEARLY DEMONSTRATES THAT THE HEDGE IN THE YELLOW/LIGHT GREY BOX HAS NOW BEEN REMOVED



WHEN COMPARED WITH THE 1971 WYLYE AERIAL PHOTOGRAPH FROM THE COUNTY ARCHIVES IT CAN BE SEEN THAT THE HEDGE IN THE YELLOW/LIGHT GREY BOX WAS REMOVED AT SOME TIME BETWEEN 1971 AND 1981.

There follows an extract from Mr. Lush's letter of clarification dated 15th September 2008... "When Mr. Lyall took over tenancy of this field in February 1987 (see documents from Woolley and Wallis) Mr. Atterton was his Farm Manager. A meeting was requested by Mr. Atterton, my father now deceased, myself and my son Philip attended. At this meeting Mr. Atterton requested that he be allowed to remove a hedge that ran between the two fields that Mr. Lyall was renting and to be allowed to clear old barbed wire and gates from along the edge of Green Lane and in addition, to open up access onto the old A303 wide enough to allow a combine to enter the field at this point." (*Point B on the Order route- TC*) At a site visit attended by John & Phillip Lush, Myself and the County Ecology Officer on Sept 18th 2008. John Lush confirmed the position of the above mentioned hedge and this corresponds to the position of the yellow rectangles in both the 1971 and 1981 County Archive aerial photographs. This confirmed that the date of removal of the hedge in the yellow rectangles and therefore also the date of the clearance at point B of the Order route at it's junction with 'The Old A303' occurred between the dates of 1971 and 1981. This concurs with the fourteen witness statements that state there was no continual hedge or barbed wire across the Order route in the late 1980's.