

# AGENDA

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**Meeting:** Western Area Planning Committee  
**Place:** Ridgeway space - County Hall, Trowbridge BA14 8JN  
**Date:** Wednesday 6 November 2013  
**Time:** 6.00 pm

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Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

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## Membership:

Cllr Trevor Carbin	Cllr Christopher Newbury (Chairman)
Cllr Ernie Clark	Cllr Horace Prickett
Cllr Andrew Davis	Cllr Pip Ridout
Cllr Russell Hawker	Cllr Jonathon Seed
Cllr John Knight	Cllr Roy While (Vice Chairman)
Cllr Magnus Macdonald	

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## Substitutes:

Cllr Nick Blakemore	Cllr Gordon King
Cllr Rosemary Brown	Cllr Helen Osborn
Cllr Terry Chivers	Cllr Jeff Osborn
Cllr Dennis Drewett	Cllr Graham Payne
Cllr Keith Humphries	Cllr Fleur de Rhé-Philippe
Cllr David Jenkins	

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# AGENDA

## Part I

### Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 1 - 24*)

To approve the minutes of the last meeting held on 16 October 2013.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person **no later than 5.50pm on the day of the meeting.**

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda **no later than 5pm on Wednesday 30 October 2013.** Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

**6 The Definitive Map and Statement for the Bradford and Melksham Rural District Council Area Dated 1952 as Modified Under the Provisions of the Wildlife and Countryside Act 1981 (Pages 25 - 112)**

**The Wiltshire Council Parish of Holt (Holt Path No. 71) Rights of Way Modification Order 2013**

**The Wiltshire Council Parish of Holt (Holt Path No. 72) Rights of Way Modification Order 2013**

Appendix A - The Wiltshire Council Parish of Holt (Holt Path No. 71) Rights of Way Modification Order 2013 (Pages 35-38)

Appendix B - The Wiltshire Council Parish of Holt (Holt Path No. 72) Rights of Way Modification Order 2013 (Pages 39-42)

Appendix C - Decision Report Application 2012/07 (Holt Path No. 71) (Pages 43-66)

Appendix C(A) - Evidence Summary Application 2012/07 (Pages 67-70)

Appendix D - Decision Report Application 2012/08 (Holt Path No. 72) (Pages 71-96)

Appendix D(A) - Evidence Summary 2012/08 (Pages 97-98)

Appendix E - Objections to the Orders (Pages 99-112)

**7 Planning Applications (Pages 113 - 114)**

To consider and determine the following planning applications:

7a **13/02371/FUL: 57 Damask Way, Warminster, Wiltshire, BA12 9PP**  
(Pages 115 - 122)

7b **13/02945/FUL: Land North West of 69A, Upper South Wraxall, BA15 2SA** (Pages 123 - 130)

7c **13/02904/FUL: 17 Chalford, Westbury, Wiltshire, BA13 3RG** (Pages 131 - 138)

**8 Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

**Part II**

**Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed**

None

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## **WESTERN AREA PLANNING COMMITTEE**

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**DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 16 OCTOBER 2013 IN THE RIDGEWAY SPACE - COUNTY HALL, TROWBRIDGE BA14 8JN.**

**Present:**

Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Russell Hawker, Cllr John Knight, Cllr Magnus Macdonald, Cllr Christopher Newbury (Chairman), Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed and Cllr Roy While (Vice-Chair, in the Chair)

**Also Present:**

Cllr Helen Osborn, Cllr Jeff Osborn and Cllr Ian Thorn

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**80 Apologies for Absence**

An apology for absence was received from Councillor Andrew Davis.

**81 Minutes of the Previous Meeting**

The minutes of the meeting held on **04 September 2013** were presented for consideration. It was,

**Resolved:**

**To approve as a true and correct record and sign the minutes.**

**82 Chairman's Announcements**

The Chairman announced the application 13/01573/FUL: Manor Farm, Upton Lovell, Warminster, was to be moved from 6h to 6b on the agenda.

**83 Declarations of Interest**

Councillor Jonathon Seed declared a non-pecuniary interest in application 13/01573/FUL: Land East of 14 Farleigh Rise, Monkton Farleigh, as he believed he had had correspondence with the applicant, but that would consider the application on its merits and contribute to the debate and vote.

Councillor Magnus Macdonald declared a non-pecuniary interests in applications W/13/12/02346/FUL, W/12/02347/FUL and W/12/02348/LBC: Kingston Mills, Kingston Road, Bradford on Avon, by virtue of being a member of Bradford on Avon Town Council and had met with the applicant. He

confirmed he would consider the applications with an open mind and participate in the debates and votes on the items.

Councillor Horace Prickett declared a non-pecuniary interest in application 13/01891/FUL: Honeywell Farm, Silver Street Lane, Brokerswood, Westbury, by virtue of having met with the developer and agent at the site. He declared he would consider the applications with an open mind on its merits, and would contribute to the debate and vote on the item.

#### 84 **Public Participation and Councillors' Questions**

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

A question from Councillor Ernie Clark was received for the meeting, with an answer included in the agenda pack.

A supplementary to the question was asked as follows:

“Assuming that the 'backstop' date (i.e. 22nd August 2016) will be the completion date for the road, by which date will Wiltshire Council expect work to start? i.e. How long will the council give Persimmon to finish building the road and opening it to the public?”

In response it was stated that although there was no direct measure to compel the developers as to when to begin construction of the road, Persimmons had to have it completed by the backstop date. As such, officers would receive an updated list of house completions in April 2014, at which point they would be in a better position to determine how far off from the target number the development was and start pressing Persimmons as to when they intended to start in order to meet their obligations by the stated date of 22 August 2016.

#### 85 **Planning Applications**

The Committee considered the following applications:

#### 86 **W/12/00697/FUL: Land West Of Codford Station, Station Road, Codford (Upton Lovell Parish)**

##### Public Participation

Mrs Sarah Kennedy spoke in objection to the application.

Mr Graham Lees spoke in support of the application.

Cllr Tom Thornton, Codford Parish Council, spoke in objection to the application.

The Planning Officer introduced a report which recommended that permission be granted. Key issues were stated to include the principle of the development resulting from the change of use within an Area of Outstanding Natural Beauty (AONB), the impact upon the amenity of the area and highways considerations. It was noted that highways officers had raised no objections to the application, which now included a lay-by and additional signage. As requested by the

Committee when considering the application during its meeting of 12 June 2013, a site visit had taken place prior to the commencement of the meeting.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Christopher Newbury, then detailed the local concerns regarding the application.

A debate followed where the impact on the surrounding area was assessed, taking note of the nearby rail line, along with the width and safety of the access road and the mitigating measures that had been proposed. Proposed hours of delivery to and from the site were also discussed.

After debate, it was,

**Resolved:**

**To GRANT planning permission for the following reason:**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.**

**Subject to the following Conditions:**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 101, 102, 103, 105, 106 received on 13th April 2012, drawing number 107A received on 18th September 2013 and drawing number 104B received on 24th September 2013.**

**REASON: For the avoidance of doubt and in the interests of proper planning**

- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Class B1 and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes)**

**(Amendment) (England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).**

**REASON:** The proposed use has been considered to be acceptable but the Local Planning Authority wish to consider any future proposal for a change of use and its impact upon the AONB, the wider landscape and any impact upon the existing road network.

- 4** The delivery and despatch of goods to and from the site shall only take place between the hours of 08:30hrs and 17:30hrs Mondays to Fridays. Deliveries and despatch of goods shall not take place outside of these hours or on bank holidays.

**REASON:** To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area having regard to Saved Policy C38 of the West Wiltshire District Plan 1st Alteration 2004.

- 5** The development hereby approved shall not be first brought into use until the access and parking areas have been implemented in accordance with drawing number 104A received by the Local Planning Authority on 22nd April 2013, drawing number 107A received by the Local Planning Authority on 18th September 2013 only. The areas shall thereafter be maintained for those purposes at all times thereafter.

**REASON:** In the interest of highway safety having regard to advice contained in the NPPF.

- 6** Prior to the communal toilet block being constructed on site, details of the exact location, material and colour of the structure shall be submitted to and approved in writing by the Local Planning Authority. The building shall then be carried out in accordance with the approved details.

**REASON:** To ensure that the modular building does not have an impact upon the AONB and wider landscape having regard to Saved Policies C1, C31a, C32 of the West Wiltshire District Plan 1st Alteration 2004 and advice contained in the NPPF.

- 7** All soft landscaping works shown on drawing number 104A received by the Local Planning Authority on 22nd April 2013 shall be carried out in the first planting and seeding season following the first occupation of the buildings or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species



**REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features within the AONB having regard to Saved Policies C31a and C32 of the West Wiltshire District Plan 1st Alteration 2004 and advice contained in the NPPF**

- 8 Prior to the use hereby permitted being put into the use the buildings annotated as E, F, G and I shown on drawing number 101 received on 13th April 2012 shall be demolished and the material removed from the site.**

**REASON: To protect the landscape quality of the AONB having regard to advice contained in the NPPF.**

NOTE: Councillors requested that the Council's Highways Team be asked to look at the possibility of placing highway signage relating to the bend in the road leading to the site from the A36.

**87 13/02078/FUL: Manor Farm, Upton Lovell, Warminster, BA12 0JN**

Public Participation

Mr Tony Kernon, agent, spoke in support of the application.

The Planning Officer introduced a report which recommended that planning permission be refused. Key issues were stated to include the principle of development of an additional agricultural dwelling, highways considerations and impact upon amenity and the immediate area. It was stated that officers considered that the existing dwellings on the site meant that an additional one was not justified as essential.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought on the relevant local and national policies for the application.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Christopher Newbury, then spoke in support of the application.

A debate followed where the need for an additional dwelling was considered, taking into account the difficulties experienced in retaining a worker without a dwelling on site, as well as the possibility of reorganizing the current dwelling arrangements. The sustainability of the expansion of the business to justify permitting an addition dwelling was raised, along with the modest nature of the proposed design.

After debate, it was,

**Resolved:**

To GRANT planning permission subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**REASON:** To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plan:

113 Drawing 1 received on 1st July 2013.

**REASON:** For the avoidance of doubt and in the interests of proper planning.

- 3) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

**REASON:** The site is in an area where residential development for purposes other than the essential needs of agriculture or forestry is not normally permitted and this permission is only granted on the basis of an essential need for a new dwelling/residential accommodation in this location having been demonstrated.

- 4) No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

**REASON:** In the interests of visual amenity and the character and appearance of the area.

- 5) No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- a) location and current canopy spread of all existing trees and hedgerows on the land;
- b) full details of any to be retained, together with measures for their protection in the course of development;
- c) a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- d) finished levels and contours;
- e) means of enclosure;

- f) car park layouts;
- g) other vehicle and pedestrian access and circulation areas;
- h) all hard and soft surfacing materials;
- i) programme of implementation

**REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.**

*It was requested that it be recorded that the decision to grant planning permission was approved unanimously.*

**88 W/12/02346/FUL: Kingston Mills, Kingston Road, Bradford On Avon**

Public Participation

Mr Jocelyn Feilding, Bradford on Avon Preservation Trust.

Mrs Pam Hyde spoke in objection to the application.

Mr Chris Beaver, agent, spoke in support of the application.

Mr Tim Smale, applicant, spoke in support of the application.

Cllr Gwen Allison, Bradford on Avon Town Council, spoke in objection to the application.

The Planning Officer introduced a report which recommended that the application be delegated for approval subject to the completion of a supplemental planning agreement to ensure the residential properties complied with the original s.106 legal agreement. Key issues were stated to include highways and access considerations, the principle of development arising from the change of use from offices to residential units, and the impact upon the immediate area and listed building.

Members of the Committee then had the opportunity to ask technical questions of the officer, during which it was confirmed the original design of previously granted permissions had been for residential use, but that additional conditions had restricted the use to office use only.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Ian Thorn, then spoke in objection to the application.

A debate followed, where the difficulty parking for the site was noted, and it was also confirmed the walkway running alongside the site would remain for public use in the event of permission. The reduction in retail space for the town was raised, along with it being noted that a neighbourhood plan for the town was not yet complete. The marketing of the site and the consideration of its viability as commercial space was also assessed.

At the conclusion of debate, it was,

**Resolved:**

**That planning permission be GRANTED at a future date subject to the Area Development Manager being satisfied to the completion of a supplemental planning agreement to ensure the residential properties subject of this permission comply with the original Section 106 Legal Agreement attached to 06/02394/FULES**

**For the following reason:**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.**

**Subject to the following conditions:**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 10026(L)361 C, 3114/P/001 N received on 11th January 2013 and drawing number 8008(I)243\_B received on 5th September 2013**

**REASON: For the avoidance of doubt and in the interests of proper planning**

**Informative(s):**

- 1 This permission shall be read in conjunction with a Supplemental Planning Agreement to the original Section 106 Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated \_\_\_\_**

**89 W/12/02347/FUL: Kingston Mills, Kingston Road, Bradford On Avon**

**Public Participation**

Mr Chris Beaver, agent, spoke in support of the application.

Mr Tim Smale, applicant, spoke in support of the application.

Cllr Gwen Allison, Bradford on Avon Town Council, spoke in objection to the application.

The Planning Officer introduced a report which recommended that the application be delegated for approval subject to the completion of a supplemental planning agreement to ensure the residential properties complied

with the original s.106 legal agreement. Key issues were stated to include highways and access considerations, the principle of development arising from the change of use from offices to residential units, design issues and impact upon the immediate area and listed building. It was noted there would be a loss of 209m<sup>2</sup> of commercial space should the application be approved, but that the council's Economy and Regeneration team were in favour of the application as detailed in the report.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought regarding the proposed floor plan of the building.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Ian Thorn, then spoke in objection to the application, but stressed the important of consultation with the town and residents should the Committee approve the application.

A debate followed, where the level of and appropriateness of the marketing for the site for commercial use was assessed, along with consideration of the building's central and more appealing location as compared to the building under application W/12/02346/FUL, as well as the possibility of improving economic conditions impacting the viability of the site.

It was also noted that parts of the building were already occupied by residential use and that restaurant space was not classified under policies as employment space.

At the conclusion of debate, it was,

**Resolved:**

**That planning permission be GRANTED at a future date subject to the Area Development Manager being satisfied to the completion of a supplemental planning agreement to ensure the residential properties subject of this permission comply with the original Section 106 Legal Agreement attached to 06/02394/FULES**

**For the following reasons:**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.**

**Subject to the following conditions:**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 10026(L)411A, 3114(P)001M received on 11th January 2013 and drawing numbers 10026(L)410D, 8008(I)243\_B received on 5th September 2013**

**REASON: For the avoidance of doubt and in the interests of proper planning**

- 3 The development hereby permitted shall be carried out in accordance with the noise acoustic report received by the Local Planning Authority on 2nd May 2013. Once the development has been completed but prior to occupation of the residential units hereby permitted a post noise construction assessment shall be carried out and the results, any required remedial works and a timetable for implementation of any such remedial works shall be submitted to and agreed in writing by the Local Planning Authority. Any necessary works shall be carried out in accordance with the agreed timetable.**

**REASON: To ensure that noise from the existing plant room does not impact upon the amenity of future residents having regard to Saved Policy C38 of the West Wiltshire District Plan 1st Alteration 2004.**

**Informative:**

- 1 This permission shall be read in conjunction with a Supplemental Planning Agreement to the original Section 106 Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated \_\_\_\_**

*Councillors Magnus Macdonald and Ernie Clark requested that their votes in objection to granting permission be recorded.*

**A recess took place between 2015-2020**

Councillor Christopher Newbury then left the meeting, with Councillor Roy While in the Chair for the remainder of the meeting.

**90 W/12/02348/LBC: Kingston Mills, Kingston Road, Bradford On Avon**

The Area Development Manager introduced a report which recommended Listed Building Consent be approved. It was noted the consent related to application W/12/02347/FUL, which had already been granted permission, and that there would be no change to the external appearance of the building.

Members of the Committee then had the opportunity to ask technical questions of the officer.

There were no public speakers.

It was,

**Resolved:**

**To GRANT Listed Building Consent.**

**For the following reasons:**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.**

**Subject to the following conditions:**

- 1 The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.**

**REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2 The works hereby permitted shall be carried out in accordance with drawing numbers 10026(L)410 C, 10026(L)411\_A, 3114(P)001\_M received on 14th January 2013 and drawing number 8008(I)243\_B received on 5th September 2013**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

**91 W/13/01080/FUL: Glove Factory Studios, 1 Brook Lane, Holt, Trowbridge**

**Public Participation**

Mr Chris Beaver, agent, spoke in support of the application.

Mr Nick Kirkham, applicant, spoke in support of the application.

Cllr Stephen Siddall, Holt Parish Council, spoke in support of the application.

The Area Development Manager introduced a report which recommended that permission be granted. Key issues were stated to include the principle of the proposed extension to the workhub and formation of a new ancillary car park, encroachment into the open countryside and impact on the Conservation area.

Members then had the opportunity to ask technical questions of the officer. Details were sought about the attenuation pond proposed as part of the landscaping works.

The Local Member, Councillor Trevor Carbin, then spoke in support of the application.

A debate followed where the lack of car parking for the expanding commercial area of the site was noted, along with the need to consult with the parish council during the development of any management plans affecting the site.

After debate, it was,

**Resolved:**

**To GRANT planning permission for the following reason:**

**In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively with the applicant and to secure an acceptable sustainable future for the site as a whole.**

**Subject to the following conditions:**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:**

**LOCATION PLAN – Drawing 002 received 07.06.2013**  
**EXISTING SITE PLAN – Drawing No 003 received 07.06.2013**  
**EXISTING GROUND FLOOR PLAN – Drawing No – 010 received 07.06.2013**  
**EXISTING FIRST FLOOR PLAN – Drawing No 011 received 07.06.2013**  
**EXISTING SECOND FLOOR PLAN – Drawing No 012 received 07.06.2013**  
**EXISTING ROOF PLAN – Drawing No 013 received 07.06.2013**  
**PROPOSED DEMOLITION PLAN – Drawing No 015 received 07.06.2013**  
**EXISTING ELEVATIONS – Drawing No 020 received 07.06.2013**  
**PROPOSED SITE PLAN – Drawing No 100 received 07.06.2013**  
**PROPOSED GROUND FLOOR PLAN – Drawing No 101 received 07.06.2013**  
**PROPOSED FIRST FLOOR PLAN – Drawing No 102 received 07.06.2013**  
**PROPOSED ROOF PLAN – Drawing No 103 received 07.06.2013**  
**PROPOSED ELEVATIONS – Drawing no 200 received 07.06.2013**  
**PROPOSED ELEVATIONS – Drawing No 201 received 07.06.2013**  
**PROPOSED SECTIONS – Drawing No 300 received 07.06.2013**  
**PROPOSED MASSING DIAGRAM – Drawing No 700 received 07.06.2013**  
**PROPOSED MASSING DIAGRAM – Drawing No 701 received 07.06.2013**



**PROPOSED MATERIALS – Drawing No 800 received 07.06.2013**

**PROPOSED FRONT ELEVATION MONTAGE – Drawing No 801 received 07.06.2013**

**FENCE DETAIL PLAN – Drawing No 1081-401-403 received 07.06.2013**

**LANDSCAPE MASTERPLAN – Drawing No 1081-002 Rev A received 04.09.2013**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

- 3 Notwithstanding the detailed findings of the land contamination site investigation undertaken by CJ Associates (which is included within a report dated May 2013), no occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out within a remediation strategy confirming the effectiveness of any remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.**

**If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until the following steps have been complied with in full in relation to that contamination.**

#### **Reporting of Unexpected Contamination**

**In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.**

#### **Submission of Remediation Scheme**

**If any unacceptable risks are identified on-site, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.**

## **Verification of remedial works**

**Following completion of measures identified in the approved remediation scheme a verification report must be produced. The report should demonstrate the effectiveness of the remedial works. A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out.**

**The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority and the Local Planning Authority must be given at least two weeks written notification of commencement of any remediation scheme works.**

## **Long Term Monitoring and Maintenance**

**If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved.**

**All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.**

**REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.**

## **POLICY- West Wiltshire District Plan - 1st Alteration Policy 37 - Contaminated Land**

- 4 No development shall commence on site until sample materials for the external surfaces to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

**REASON: In the interests of visual amenity and the character and appearance of the area.**

- 5 Notwithstanding the details enshrined within the landscape master plan, no development of the car park shall commence on site until an extended scheme of hard and soft landscaping has been submitted**

to and approved in writing by the Local Planning Authority, the details of which shall include:-

1. increased screen planting along the northern car park boundary (to be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428) with a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
2. full details of all retained trees and hedgerows, together with measures for their protection in the course of development;
3. confirmed surfacing material(s) for the car park and the extended GFS site;
4. any minor artefacts and structures (e.g. external furniture, refuse and other storage units, signs, lighting columns etc);
5. proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);
6. all retained historic landscape features and proposed restoration, where relevant.

**REASON:** To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

**POLICY:** West Wiltshire District Plan 1st Alteration 2004 - **POLICY:** C31a and C32

- 6 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

**REASON:** To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

**West Wiltshire District Plan 1st Alteration 2004 - POLICY:** C31a and C32

- 7 No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or

lopping approval shall be carried out in accordance British Standard 3998: 2010 'Tree Work - Recommendations' or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

[In this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].

**REASON:** To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

- 8 No development shall commence on site until a Construction Environment Management Plan (CEMP) has been submitted to and approved by the local planning authority which shall detail the exact measures that will be undertaken throughout the construction period to:

- a) protect features of ecological interest including Dawes Pond, ditches and hedgerows;
- b) control risks arising from earthmoving activities, demolition, lighting, introducing invasive species, and other construction works;
- c) protecting species which may be affected by the works either directly or indirectly e.g. breeding birds, great crested newts, water voles, otters, bats, reptiles, dormice and badgers.

The approved plan shall thereafter be adhered to throughout the construction period.

**REASON:** In ensure that all ecological and biodiversity interests are fully taken into account and protected during and after the construction stages.

- 9 No development shall commence on site until an Ecological Mitigation and Management Plan has been submitted to the local planning authority for its written approval to cover the following:

- a) a location map illustrating all ecological enhancement works (including habitat creation and sensitive management) in line with the Ecological Appraisal and Protected Species Report (produced by 'Engain' dated June 2013) and including new ponds and ditches, the management of hedges, bird and bat boxes, native tree and hedgerow planting, creation of species rich grassland and marginal wetland planting;
- b) confirmation of when and how the measures will be put in place; and
- c) a 5 year habitat management plan for the site.

The development shall be carried out in accordance with the approved plan and any timetable within it.

**REASON:** In ensure that all ecological and biodiversity interests are fully taken into account and protected during and after the construction stages.

**POLICY:** The National Planning Policy Framework and specifically paragraphs 109, 118 and 125.

- 10** No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication 'Guidance Notes for the Reduction of Obtrusive Light (ILE, 2005)', have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

**REASON:** In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

**West Wiltshire District Plan 1st Alteration 2004 - POLICY: C35 and C38**

- 11** No development shall commence on site (including any works of demolition), until a Construction Method statement, which shall include the following:
- a) The parking of vehicles of site operatives and visitors;
  - b) Loading and unloading of plant materials;
  - c) Storage of plant and materials used in constructing the development;
  - d) The erection and maintenance of security hoarding;
  - e) Wheel washing facilities;
  - f) Measures to control the emission of dust and dirt during construction;

- g) A scheme for recycling / disposing of waste resulting from demolition and construction works;**
- h) Hours of construction, including deliveries.**
- i) Routing of construction traffic.**

**has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.**

**REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detrimental to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.**

- 12 The development hereby approved shall not be brought into use until details of the Car Park Management Plan has been approved in writing by the Local Planning Authority following consultation with the parish council. Such a Plan should detail to operations, user availability, times of use, including any restrictions, lighting and security. The car park shall be managed in accordance with any approved plan at all times thereafter unless agreed in writing by the Local Planning Authority.**

**REASON: In the interests of good planning and to define the use and function of the car park at various times of the week.**

- 13 No development shall commence until full construction details of the proposed kerb line adjustment, footway improvements, and new signage have been submitted to and approved in writing by the Local Planning Authority. The kerb line and footway improvements shall be constructed in accordance with the approved details prior to the first use of the development.**

**REASON: In the interests of highway safety.**

- 14 No part of the development hereby approved shall be first occupied until a Green Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.**

**REASON: In the interests of road safety and reducing vehicular traffic to the development.**

- 15 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Class B1 (with ancillary cafe premises) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment)(England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).**

**REASON:** The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same use class, having regard to the circumstances of the case.

**POLICY:** West Wiltshire District Plan 1st Alteration 2004 - C1, C17, C41a, H17 and the NPPF

- 16 Notwithstanding any permitted development rights, no additional buildings, structures, gates, walls, fences or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans unless otherwise submitted and approved under a separate application.**

**REASON:** To safeguard the character and appearance of the area.

- 17 No development shall commence on site until details showing ventilation and extraction equipment within the site (including details of its position, appearance and details of measures to prevent noise emissions) have been submitted to and approved in writing by the Local Planning Authority. The ventilation/extraction equipment shall be installed prior to the building/extension hereby approved is first occupied and shall thereafter be maintained in accordance with the approved details.**

**REASON:** In the interests of the amenities of the area.

- 18 No development shall commence on site until details of the storage of refuse, including....details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the approved refuse storage has been completed and made available for use in accordance with the approved details and it shall be subsequently maintained in accordance with the approved details thereafter.**

**REASON:** In the interests of public health and safety.

**Informative(s):**

- 1 The applicant/developer is advised to contact Wessex Water to agree connections to their infrastructure prior to any commencement of works on site.**
- 2 Pumps used for pumping out water from excavations should be sited well away from watercourses and surrounded by absorbent material to contain oil spillages and leaks. Discharge of silty or discoloured water from excavations should be irrigated over grassland or passed via a settlement lagoon so that gross solids are removed. The Environment Agency must be advised if a discharge to a watercourse is proposed. Storage of fuels for machines and pumps should be well away from any watercourses. Tanks should be bunded or surrounded by oil absorbent material (regularly replaced when contaminated) to control spillage and leakage.**

92 **13/01891/FUL: Honeywell Farm, Silver Street Lane, Brokerswood, Westbury, BA13 4EY**

Public Participation

Mr Eric Davis, agent, spoke in support of the application.

The Area Development Manager introduced a report which recommended that planning permission be refused. Key issues were stated to include whether the proposals were in accordance with policies on the provision of tourist accommodation outside of town of village policy limits.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Horace Prickett, then spoke in support of the application.

A debate followed, where the impact of the proposed dwellings to replace the existing garage was assessed, along with any precedent from building outside the village policy limits.

After debate, it was,

**Resolved:**

**That planning permission be REFUSED for the following reasons:**

- 1) The proposed creation of a new building for holiday accommodation would result in unwarranted development encroaching into and harmful to the character and appearance of the open countryside. No**



exceptional circumstances have been presented which would outweigh the harm associated with the development. The proposals are therefore contrary to policies C1 and TO3 of the West Wiltshire District Plan 1st Alteration (2004) and the emerging Wiltshire Core Strategy and would set an undesirable precedent for future similar development in the countryside that cumulatively would have a significant adverse impact on the character and appearance of the landscape.

- 2) The proposal, located outside of village policy limits, is contrary to the National Planning Policy Framework (Section 4 paras 29, 30 & 37) and the emerging Core Strategy for Wiltshire (Policy 60), which seek to reduce the need to travel, influence the rate of traffic growth and reduce the environmental impact of traffic overall in support of sustainable development.

93 **13/01573/FUL: Land East of 14 Farleigh Rise, Monkton Farleigh, Bradford on Avon, BA15 2QP**

Public Participation

Mr James Collin spoke in support of the application.

Mrs Margaret Field spoke in support of the application.

Mrs Helen Dewick, applicant spoke in support of the application.

The Area Development Manager presented a report which recommended that planning permission be refused. Key issues were stated to include the principle of development within the Green Belt and Area of Outstanding Natural Beauty (AONB), the impact upon the Highway and design issues.

Members of the Committee then had the opportunity to ask technical questions of the officer, where details were sought on the building materials for the proposed Cattery.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Trevor Carbin, then spoke in support of the application.

A debate followed, where the sustainability of the proposal was raised, along with the impact upon highways and neighbouring area, and the former use of the site for long-term material storage and the impact that had had on the Green Belt was noted.

After debate, it was,

**Resolved:**

**To GRANT planning permission, subject to the following conditions:**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**REASON:**

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) No development shall commence on site until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority. The landscaping shall be carried out in the first planting and seeding season following the bringing into use of the building or the completion of the development, whichever is the sooner within that particular phase; any trees or plants which within a period of five years, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.

**REASON:**

To ensure a satisfactory landscaped setting for the development.

- 3) No development shall commence until details of the proposed means of disposal of the waste arising from the use of the site as a cattery have been submitted to and approved in writing by the local planning authority. The waste shall be disposed of in accordance with the approved details.

**REASON:**

In the interests of amenity

- 4) The building shall be used solely for the purposes of a cattery and for no other purpose without the prior grant of planning permission from the local planning authority. If the building ceases to be used as a cattery, it shall be demolished and the resulting materials removed from the site within six months of its use ceasing.

**REASON:**

The site lies within the Green Belt where new buildings are not normally permitted. However, an exception has been made in this case because of the economic benefits of the new cattery. If this use were to cease, the economic justification would no longer exist and the openness of the green belt should be restored.

- 5) The car parking area and access shall be completed in accordance with the approved plans, including hardsurfacing, before the cattery is first brought into use, and shall thereafter be retained for these purposes.

**REASON:**

To ensure the satisfactory provision of off-street parking and access to serve the proposed site, in the interests of road safety and amenity.

- 6) This permission relates to the submitted plans, including the car parking and access layout; floorplan of proposed cattery; block plan and elevations; and Figure 1 showing the site outlined in red.

**REASON:**

To define the permission in the interests of clarity.

94 **13/01823/FUL: The Lodge, 6 Westwood Road, Trowbridge, BA14 9BR**

Public Participation

Mr Mark Willis, agent, spoke in support of the application.

The Area Development Manager presented a report which recommended the application be refused permission. Key issues were stated to include the impact upon neighbouring amenity and the Green Belt.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The Local Member, Councillor Helen Osborn, then detailed the local issues and how she had called in the application to permit the applicant the chance to speak to the Committee directly.

A debate followed, where the scale of previously granted extensions was raised, along with the impact from additional expansion and its location within the Green Belt.

After discussion, it was,

**Resolved:**

**That planning permission be REFUSED for the following reason:**

**The proposed extensions, particularly those to the first floor, represent a disproportionate addition when compared to the size of the original building. Having regard to Section 9 Paragraphs 87 and 89 of the National Planning Policy Framework the proposal results in inappropriate development within the Green Belt which is by definition harmful and in conflict with national planning policy.**

95 **13/02371/FUL: 57 Damask Way, Warminster, BA12 9PP**

The Area Development Manager introduced a report which recommended permission be granted. Key issues were stated to include the impact on neighbour amenity, design and highways considerations.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Due to a medical emergency among a member of the public in attendance, the meeting was then closed at 2220 prior to determination of the application.

96 **Urgent Items**

(Duration of meeting: 6.00 - 10.20 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

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**WILTSHIRE COUNCIL**

**WESTERN AREA PLANNING COMMITTEE**

**6 NOVEMBER 2013**

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## **WILDLIFE AND COUNTRYSIDE ACT 1981**

### **THE DEFINITIVE MAP AND STATEMENT FOR THE BRADFORD AND MELKSHAM RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**The Wiltshire Council Parish of Holt (Holt Path No. 71) Rights of Way Modification  
Order 2013**

**The Wiltshire Council Parish of Holt (Holt Path No. 72) Rights of Way Modification  
Order 2013**

#### **Purpose of Report**

1. To:
  - (i) Consider the evidence and duly made objections relating to the above Orders adding public footpaths to the Definitive Map and Statement at Holt Manor, Holt.
  - (ii) Recommend that the Orders be submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that they be confirmed.

#### **Description of the Routes**

2. The Orders are attached to this report at **Appendices A and B** and contain maps showing the claimed routes.
3. The routes lead across farm land to the south of Holt Manor and link a minor road with existing recorded public footpaths.

#### **Background**

4. On 1 November 2012 Wiltshire Council received two applications for Orders to modify the Definitive Map and Statement by adding two footpaths over land at Holt Manor. The applications were numbered 2012/07 and 2012/08 with 2012/07 supported by eleven user evidence forms (UEFs) and 2012/08 supported by seven UEFs.
5. The Council has a duty to investigate this evidence and to make an Order if, on the balance of probability, it is either reasonably alleged, or shown, that public

rights subsist over the ways. Pursuant to this duty, consultations and investigations were carried out between 26 March and 3 May 2013. This was extended for a short period at the request of the landowner.

6. Correspondence was received, both in support of, and in objection to, the application.
7. Officers considered all of the evidence available and on 24 June 2013 a decision was made to make Orders. The Decision Reports are appended here at **Appendices C and D**.
8. The Orders were made on the basis that it is reasonably alleged that Section 31 of the Highways Act 1980 applies. Broadly, this gives that where a right of way has been used without interruption by the public 'as of right' for a period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate, then public rights are deemed to have been dedicated. 'As of right' means without force, without permission and without secrecy.
9. In deciding to make the Order the Council was bound by the case of R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P and CR 402 which gives that the Council must apply one of two tests:  

Test A: Does a right of way subsist on the balance of probabilities? This requires that there is clear evidence in favour of public rights and no evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? This requires that the allegation of public rights is reasonable and that there is no incontrovertible evidence to the contrary.
10. Test B is the weaker of the two tests and was applied to make this Order.
11. The Orders have been advertised in accordance with the regulations and objections to them have been received. There are three objections to the Order for Path No. 72 (application number 2012/07) and five objections to the Order for Path No.71 (application number 2012/08).
12. The Orders must now be forwarded to the Secretary of State for determination. The tests for confirmation of the Orders that will be applied by The Secretary of State will be Test A; i.e. that, on the balance of probabilities, a right of way subsists.

### **The Evidence in Support**

13. Eleven UEFs regarding order route 72 and seven UEFs regarding order route 71 have been adduced. A summary of this evidence is appended at **Appendices C(A) and D(A)**.
14. Photographs showing some people using one of the claimed paths were additionally submitted.
15. UEFs were all accompanied by a map showing where the witnesses had walked.

16. Witnesses all claim to have used the routes without challenge until fences were erected in 2011 by the new owner of Holt Manor. This challenge precipitated the application and has been taken as the date that the use was called into question.
17. If 2011 is taken as the date that the public use was called into question then the relevant period for the consideration of 20 years use is between 1991 and 2011. All users have used the routes within this 20 year period, without interruption to use, challenge or permission.
18. Nearly all of the witnesses for both Orders have used the routes for the entire 20 year period.
19. The land has been owned by the Spreckley family, Mr Clarke, Mr Fisher and Mr Harris during this period. No evidence has been received from Mr Spreckley but Mr Clarke has submitted that he was aware that the public used the claimed routes when he owned the land between 1996 and 2002.

### **The Evidence Against the Orders**

20. Prior to making the Orders, evidence was adduced by the current landowner. This can be found at Section 5.1 of the Council's Decision Reports at **Appendices C and D**.
21. Nothing in this evidence was considered incontrovertible (i.e. not able to be denied or disputed) and capable of defeating Test B referred to at paragraph 9 above, hence, the Orders were made.
22. The Orders were advertised from 1 August 2013 to 13 September 2013 and attracted a total of eight duly made objections.
23. The objections are appended in full at **Appendix E**.
24. The basis of the objections is that no-one had seen people using the claimed routes. These included Mr Hillier, who farmed the land for an undisclosed period ("in all the years"), and the estate manager, for the period 2001 to 2011, Mr Holmes. Additionally, three users of the adjacent definitive map routes claim never to have seen anyone on the claimed routes, though one objector (Mrs Oliver) did not start walking in the area until after the fence was erected and use ceased.
25. Mr Fisher (the owner of the land from 2002 to 2011) states that "there were times when we had to reprimand some walkers who were not following the appropriate route".
26. Only some aerial photographs show a trodden route (the 2006 photo shows a line corresponding to the route of Path No. 72 where it cuts across the corner of the field) but other images show either no route or a trodden route in a different place.

## **Main Considerations for the Council**

27. The Council, as the surveying authority for the county of Wiltshire, excluding the Borough of Swindon, has a duty under Section 53 of the Wildlife and Countryside Act 1981 to investigate the applications made by Holt Parish Council. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
28. Section 53(2)(b) states:
- “as regards every definitive map and statement, the surveying authority shall: “as from that date (the commencement date), keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”*
29. The events referred to in Section 53(2)(b) relevant to this case are set out below in Section 53(3)(c)(i):
- “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.”*
30. In considering and determining the application, Wiltshire Council must have regard to ‘*all other relevant evidence available to them*’, as the statute demands.
31. Dedication of a way as highway can be presumed after public use for 20 years provided it satisfies the requirements of Section 31(1) of the Highways Act 1980. The Section states:
- “where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*
32. The Section provides that where a way has been enjoyed by the public as of right, and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway - unless there is sufficient evidence that there was no intention during that period to dedicate the way.
33. The term 'as of right' means without force, secrecy and permission. People using the way must do so openly without damaging the property and not be reliant on being given permission to use the path by the owner of the land over which the path runs.



34. The case of *R. v. Oxford County Council ex parte Sunningwell Parish Council* (1999) considered the issue of public use of a way. Lord Hoffman presiding stated, “...*the actual state of mind of the road user is plainly irrelevant*”, it is immaterial therefore whether the public thought the way was a 'public' path or not.
35. The case concluded that it is no longer necessary to establish whether the users believe they have a legal right to use the land. Instead, it should be shown that their use has been without force, secrecy and permission.
36. The use of the way must be without interruption. Once the 20 year uninterrupted use 'as of right' has been proved, the burden then moves to the landowner to show there was no intention to dedicate, i.e. evidence of any overt acts by the landowner to deter the public from using the way, or conversely to permit the public to do so. Overt acts are covered in Section 31 (3) (4) (5) and (6) below.
37. Section 31 of the Highways Act states as follows:

**“31. Dedication of way as highway presumed after public use of 20 years**

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*

*(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*

*(b) has maintained the notice after 1 January 1934, or any later date on which it was erected.*

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

*(6) An owner of land may at any time deposit with the appropriate council -*

*(a) a map of the land on a scale of not less than 6 inches to 1 mile and*

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

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

*(i) within ten years from the date of deposit*

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

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

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

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

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

*(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over the land as a highway would be incompatible with those purposes."*

38. The Supreme Court (House of Lords) recently considered two cases which hinged on the intention to dedicate and the application of Section 31 of the Highways Act 1980. In the judgement delivered 20 June 2007 [2007] UKHL 28 Lord Hoffman reasoned:

*“It should first be noted that s.31(1) does not require a tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be a difficulty in satisfying such a requirement without any evidence at all. It requires ‘sufficient evidence’ that there was no intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson’s Case [R v S of S for the Environment ex p. Billson [1999] QB374 it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience.”*

### **Safeguarding Considerations**

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

### **Public Health Implications**

40. Considerations relating to any public health implications of the making and confirmation of an Order made under s.53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be confirmed based on the evidence alone.

### **Environmental Impact of the Recommendation**

41. Effects on the environment cannot be taken into consideration for an Order decision.

### **Risk Assessment**

42. Risks or safety cannot be taken into consideration for an Order decision.

### **Financial Implications**

43. It is considered that with this case, and the need to test the evidence of witnesses from both sides, a Public Inquiry is unavoidable. However, the decision whether to determine an Order by Written Representations, a Public Hearing or a Public Inquiry rests with the Secretary of State.
44. The Council has a duty in law to support Orders where it is considered that on the balance of probability public rights subsist as shown in the Orders. Budgetary provision has been made for this duty.
45. It is rare for a Council to object to an Order, though it may do so. An example of this may be when an Order has been made and during the advertisement period evidence against the Order is brought to its attention that is incontrovertible or compelling. This would attract a similar cost to supporting an Order and could be in the region of £3,000 to £10,000.

## **Options Considered**

46. That:
- (i) The confirmation of the Orders is supported as made.
  - (ii) The confirmation of the Orders is supported with modifications.
  - (iii) The confirmation of the Orders is objected to.

## **Reasons for Recommendation**

47. The application adduces evidence that shows that on the balance of probability the routes have been used by the public at large for a period of at least 20 years without interruption in a manner that is 'as of right'.
48. The objectors to the Orders dispute this evidence on a number of grounds.
49. Wiltshire Council is not aware of any incontrovertible evidence to defeat the application of s.31(1) HA80 and has no evidence of any statements or deposits being made in respect of s.31(5) and (6) HA80 or of any signs or notices being placed to satisfy s.31(3) or (4).
50. There is no requirement to demonstrate an intention to dedicate with the application of s.31(1) HA80. It is for the landowner to demonstrate a *lack* of intention to dedicate the way as a public right of way to the relevant audience and Wiltshire Council has no evidence before it that this was done.
51. The case against the Order has been made on the basis that there has been little or no use of the ways. This is based on the evidence given by the tenant farmer (for some of the time), the estate manager (2001 - 2011), the landowner (2002 - 2011), users of adjacent paths and the lack of tracks shown on aerial photographs.
52. This must be weighed against the evidence of use contained within the UEFs and the statement of the landowner (Mr Clarke 1996 – 2002) and the appearance of a track on the 2006 aerial photograph coincident with Path No 72.
53. The appearance or non-appearance of a track on an aerial photograph is not evidence of great weight (as any track may be made by animals or farm workers or conversely the time of year and grazing regime could mean that a track did not show up).
54. However, it is clear that it will be the evidence given by witnesses from both sides that determines this case and without the benefit of cross examination of these witnesses this committee is undoubtedly disadvantaged.
55. The decision must be whether, on the balance of probabilities, s.31(1) is satisfied and officers consider that the UEFs form a small but cogent body of evidence that cannot be ignored.

56. Given that the use was not conducted in secret, light use would be easy to miss. A farmer may only tend his stock at a remote location (the farm house is not here) when they are on the land and even then for a short period of the day. Because of the fall of the land the routes are hidden from neighbouring properties and being relatively short only take a few minutes to traverse. Additional to this there are two existing definitive footpaths crossing the land and it would not be easy for someone to notice whether people were on a definitive line or not. It is suggested that Mr Hillier's building company, who worked at the Manor and did not see anyone using the routes, would fall into this category. They would also have been heavily pre-occupied with what they were doing for the majority of the time they were on site
57. It is accepted that whilst evidence from both sides would benefit from cross examination, it is considered that on the balance of probability s.31(1) of the Highways Act 1980 has been satisfied.

### **Recommendation**

58. That the Wiltshire Council Parish of Holt (Holt Path No. 71) Rights of Way Modification Order 2013 and the Wiltshire Council Parish of Holt (Holt Path No. 72) Modification Order are forwarded to the Secretary of State for Environment, Food and Rural affairs for determination with the recommendation that the Order be confirmed.

### **MARK SMITH**

Service Director - Neighbourhood Services

Report Author

**Sally Madgwick**

Rights of Way Officer

### **Appendices:**

Appendix A - The Wiltshire Council Parish of Holt (Holt Path No. 71) Rights of Way Modification Order 2013 (*Pages 35-38*)

Appendix B - The Wiltshire Council Parish of Holt (Holt Path No. 72) Rights of Way Modification Order 2013 (*Pages 39-42*)

Appendix C - Decision Report Application 2012/07 (Holt Path No. 71) (*Pages 43-66*)

Appendix C(A) - Evidence Summary Application 2012/07 (*Pages 67-70*)

Appendix D - Decision Report Application 2012/08 (Holt Path No. 72) (*Pages 71-96*)

Appendix D(A) - Evidence Summary 2012/08 (*Pages 97-98*)

Appendix E - Objections to the Orders (*Pages 99-112*)

### **The following unpublished documents have been relied on in the preparation of this Report:**

Correspondence with Parish Councils, user groups, other interested bodies and members of the public

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WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE BRADFORD AND MELKSHAM RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL PARISH OF HOLT (HOLT PATH NO. 72) RIGHTS OF WAY MODIFICATION ORDER 2013**

This order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement for the Bradford and Melksham Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: -

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

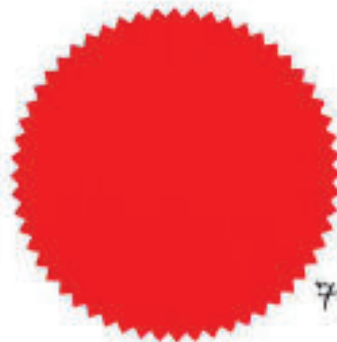
The Authority has consulted with every local authority whose area includes the land to which the order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 22 May 2013
2. The Definitive Map and Statement for the Bradford and Melksham Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Parish of Holt (Holt Path no. 72) Rights of Way Modification Order 2013

THE COMMON SEAL of  
WILTSHIRE COUNCIL was  
hereunto affixed this 19<sup>th</sup> day  
of JULY 2013 in the  
presence of:

}  
}  
}  
}



77849

*[Handwritten Signature]*  
Principal Solicitor  
S. W. SLATER

**SCHEDULE**

**PART I**

**MODIFICATION OF THE DEFINITIVE MAP**

<b>Parish</b>	<b>Path No</b>	<b>Description of footpath to be added</b>	<b>Modified under Section 53(3) as specified</b>
HOLT	72	Length of footpath as shown by a broken black line marked A to B to on the plan annexed hereto.  Width 2 metres  Approximate length 260 metres	53(3)(c)(i)

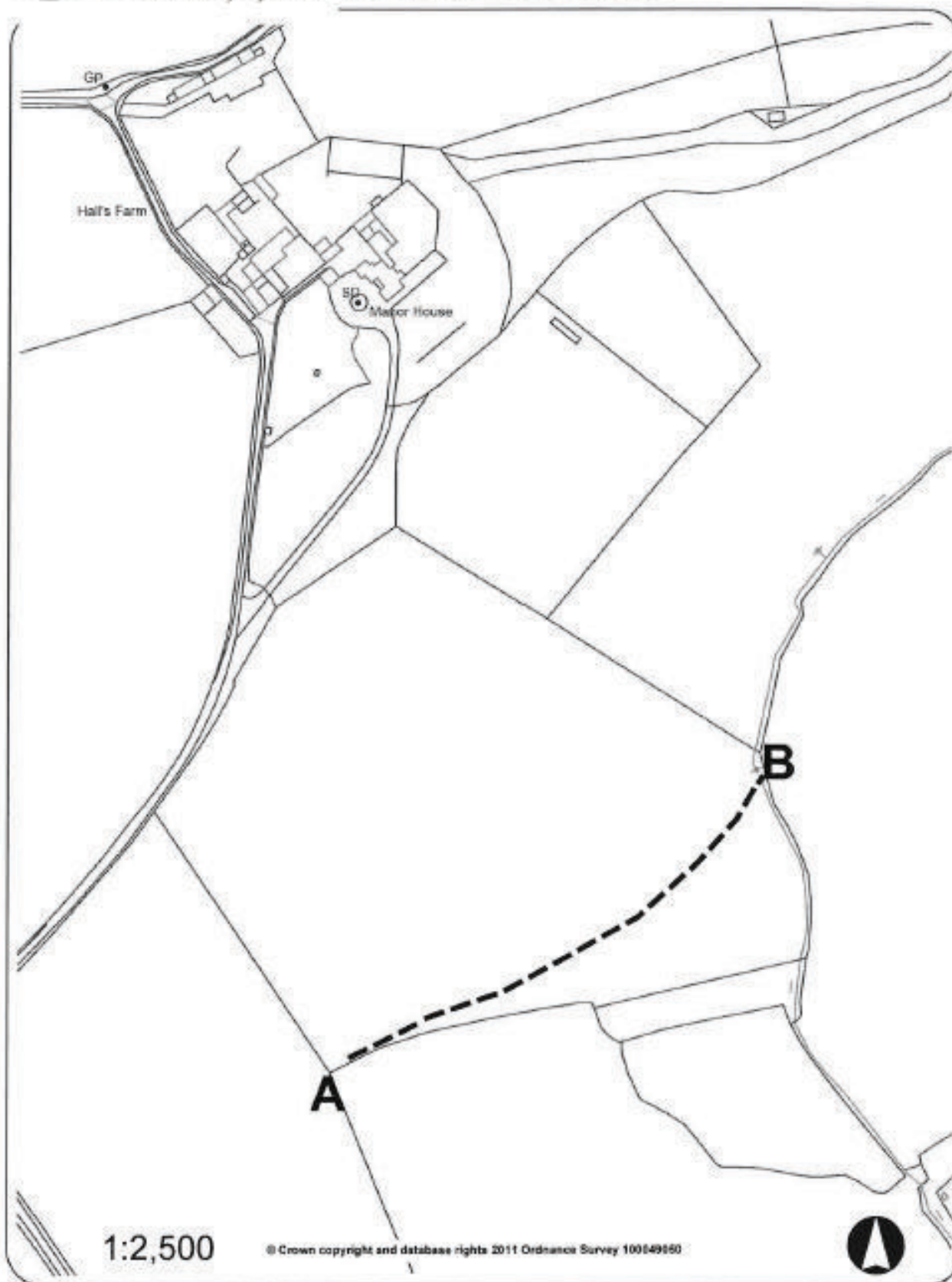
**PART 2**

**MODIFICATION OF THE DEFINITIVE STATEMENT**

<b>Parish</b>	<b>Path No</b>	<b>Description of footpath to be added</b>	<b>Modified under Section 53(3) as specified</b>
HOLT	72	<u>Footpath</u> leading from Holt path no. 16 just north of its junction with Holt path No. 14 in a east north east and north east direction to its junction with Holt path no. 8.  Width 2 metres  Approximate length 260 metres	53(3)(c)(i)



**ORDER PLAN**  
**Footpath to be added A-----B**



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WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE BRADFORD AND MELKSHAM  
RURAL DISTRICT COUNCIL AREA DATED 1952 AS MODIFIED UNDER THE  
PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE WILTSHIRE COUNCIL PARISH OF HOLT (HOLT PATH NO. 71) RIGHTS OF WAY  
MODIFICATION ORDER 2013**

This order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement for the Bradford and Melksham Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: -

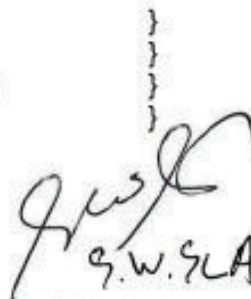
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway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

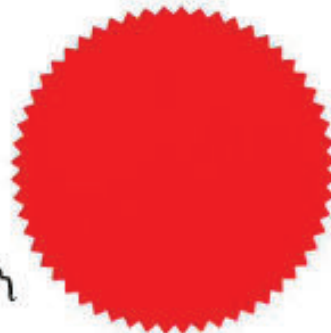
The Authority has consulted with every local authority whose area includes the land to which the order relates.

The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is the 21 May 2013
2. The Definitive Map and Statement for the Bradford and Melksham Rural District Council Area dated 1952 as modified under the provisions of the Wildlife and Countryside Act 1981 shall be modified as described in Parts I and II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Parish of Holt (Holt Path no. 71) Rights of Way Modification Order 2013

THE COMMON SEAL of  
WILTSHIRE COUNCIL was  
hereunto affixed this 19<sup>th</sup> day  
of JULY 2013 in the  
presence of:

  
G.W. SLATER  
Principal Solicitor



77847

## SCHEDULE

### PART I

#### MODIFICATION OF THE DEFINITIVE MAP

<b>Parish</b>	<b>Path No</b>	<b>Description of footpath to be added</b>	<b>Modified under Section 53(3) as specified</b>
HOLT	71	Length of footpath as shown by a broken black line marked A to B to on the plan annexed hereto.  Width 2 metres  Approximate length 300 metres	53(3)(c)(i)

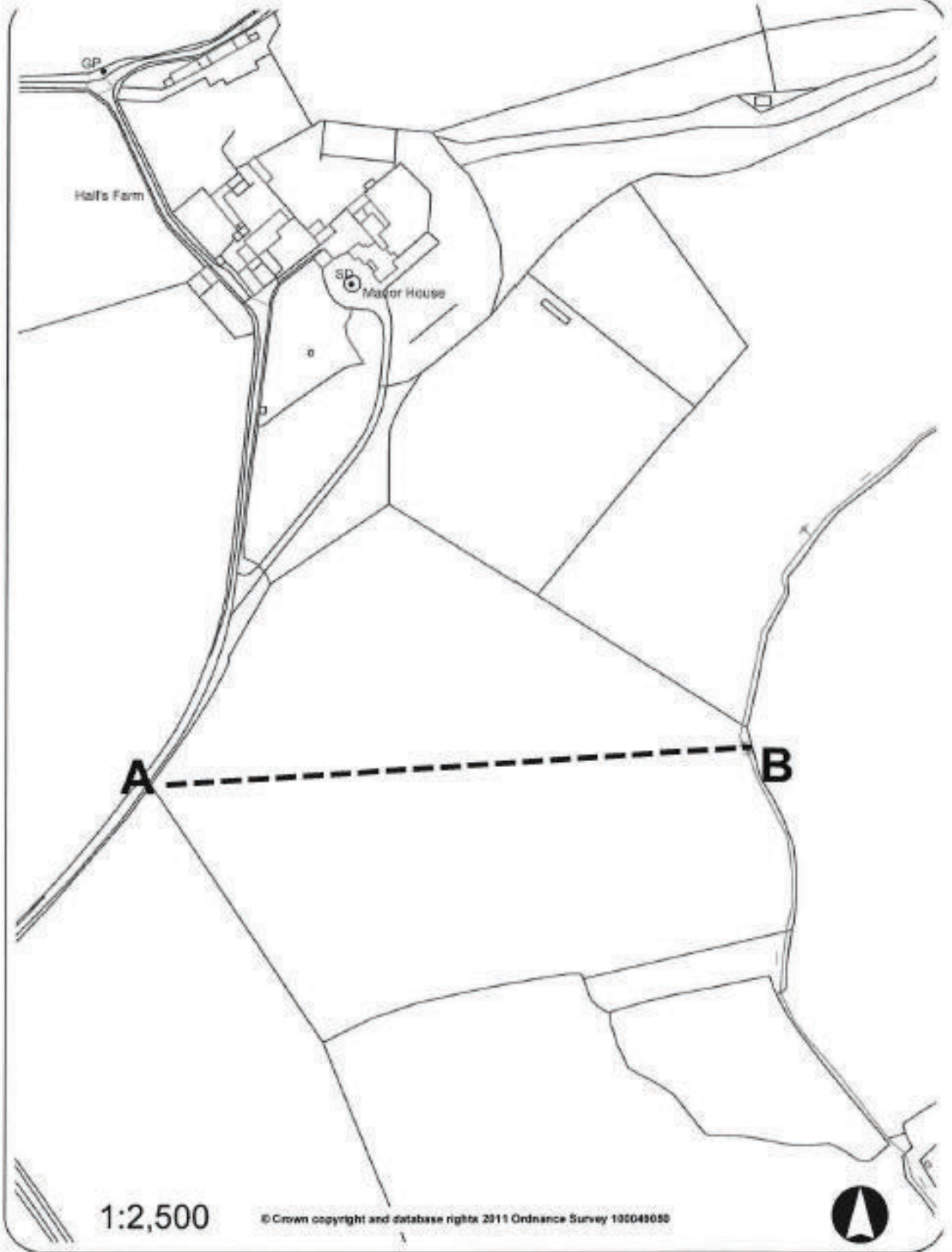
### PART 2

#### MODIFICATION OF THE DEFINITIVE STATEMENT

<b>Parish</b>	<b>Path No</b>	<b>Description of footpath to be added</b>	<b>Modified under Section 53(3) as specified</b>
HOLT	71	<u>Footpath</u> leading from Holt path no. 16 at Jacob's Ladder stile in an easterly direction to its junction with Holt path no. 8.  Width 2 metres  Approximate length 300 metres	53(3)(c)(i)

ORDER PLAN

Footpath to be added A ----- B



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## Application to Add a Public Right of Way to the Definitive Map and Statement

### Route linking Holt Path 16 with Holt Path 8 at Holt Manor (Field Corner Path)

### Decision Report

**NB** All documents (including user evidence forms, responses to consultations and correspondence) are available to be viewed at the Council's offices at Newbury House, Aintree Avenue, White Horse Business Park, Trowbridge, please contact Sally Madgwick on 01225 713392.

#### 1.0 The Application

- Application number:** 2012/07 (NB Holt Parish Council has made an application for another footpath in the same field. This is the subject of a separate investigation and is application no. 2012/08)
- Application date:** 01 November 2012
- Applicant:** Holt Parish Council  
c/o Jennie Beale, Clerk  
50 Leigh Road  
Holt  
BA14 6PW
- Application to:** "A footpath 2 metres wide from the stile where footpath 8 meets Holt brook to the stile half way along footpath 16 the exact route is visible on the Google map attached."
- Width:** 2 metres
- Sch 14 Compliance:** Notice of application for Modification Order (Form 1)  
Certificate of Service of Notice of application to the following owners and occupiers (Form 3):  
Mr P Harris, Holt Manor, Holt, Wiltshire  
Approx. 1:10000 Plan showing claimed route  
Aerial photograph showing claimed route  
11 user evidence forms and maps
- Basis of Application:** That public rights exist and that the route should be recorded in the Definitive Map and Statement.
- Legal Empowerment:** 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 and statement of public rights of way.

The Wildlife and Countryside Act 1981 (c.69) s.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 the events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

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 –

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

Section 53(5) 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.

## 2.0 Compliance of the application

Section 53 (5) of the Wildlife and Countryside Act 1981 (WCA81) allows:

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

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.*

Schedule 14 (2) requires that notice is served on owners and occupiers of any land to which the application relates.

This application comprised the below and is considered to be compliant with the legislation.



Notice of application for Modification Order (Form 1)  
Certificate of Service of Notice of application to the following owners  
and occupiers (Form 3):  
Approximately 1:1000 plan showing claimed route  
Aerial photographs showing claimed route  
11 witness evidence forms and maps

## 2.0 Land Ownership Details

2011 to date	Mr P Harris, Holt Manor
2002 to 2011	Mr Fisher formerly of Holt Manor
1996 to 2002	Mr and Mrs Giles Clarke formerly of Holt Manor
1991 to 1996	Mr Walter Spreckley formerly of Holt Manor

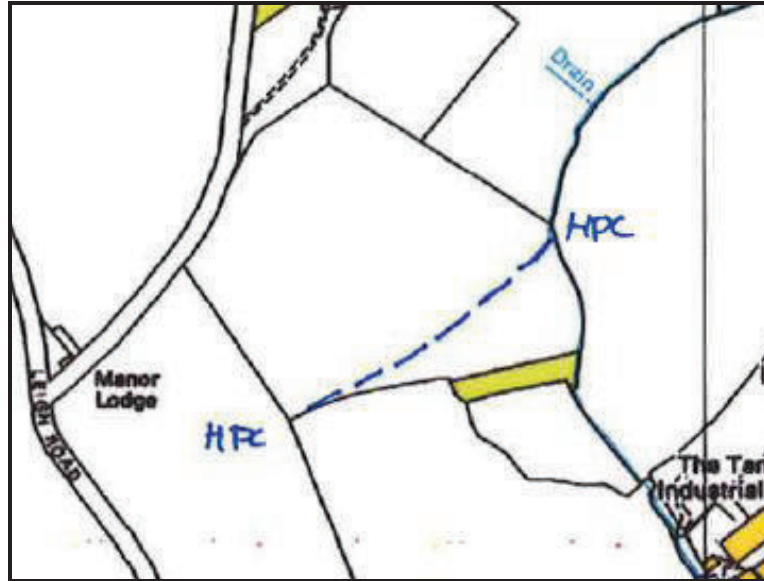
Early ownership of the land was with the Forster and Smith Barry family (c.1900 to 1960s).

## 3.0 Description of route

The route leads from a stile at a field boundary on Holt path no 16 across a field to a stile at the brook on Holt path no. 8. This is shown by the red pecked line on the 2006 aerial photograph below.



### 3.1 Application map

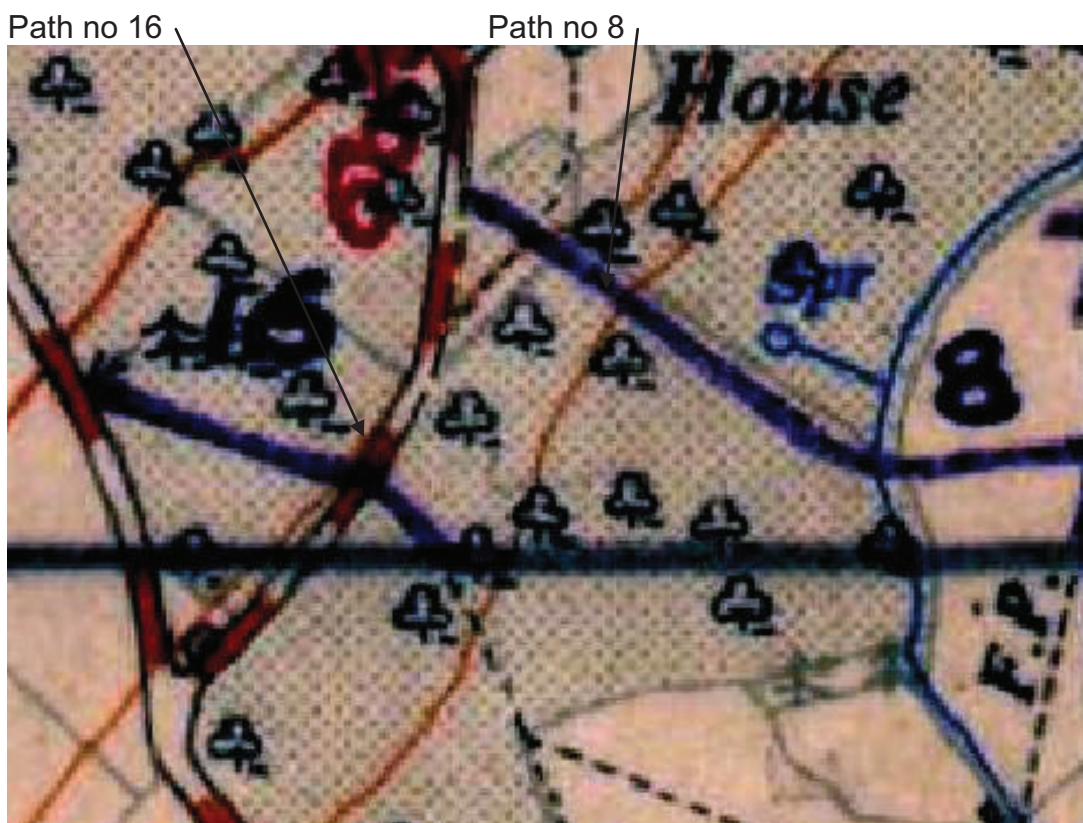


### 3.2 Definitive map and statement

Holt paths 8 and 16 were added to the Bradford and Melksham Rural District Council definitive map and statement dated 1952. Although both of these paths have had sections of them affected by diversion orders since that time it is only path number 8 that has been affected by a diversion order in the area of interest.

The original definitive map is as below (Holt has a 1:25000 map and a 1:10000 'insert' map):

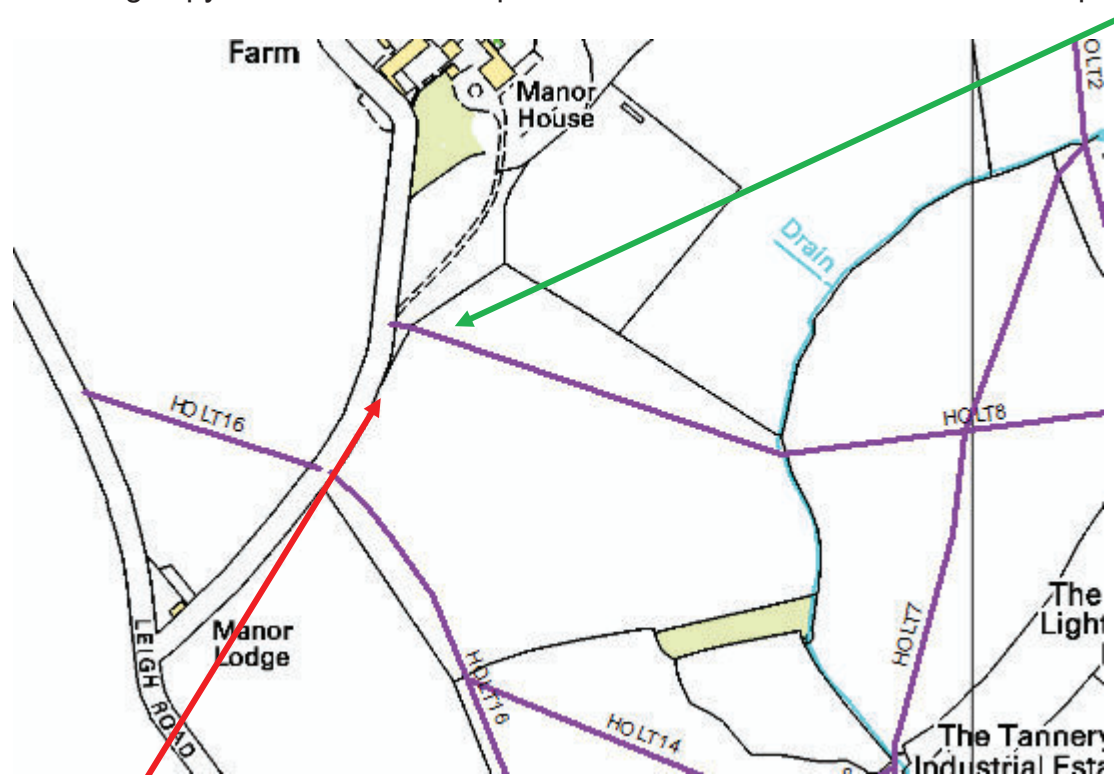
1. 1:25000 base map (expanded)



2. 1:10000 base map (expanded)



The current working copy of the definitive map shows the effect of the diversion of footpath 8:



The diversion order was confirmed in June 2005. As a result of this a new access point was installed at the Manor House end. Unfortunately this was installed in the wrong place (it was installed approximately 50 metres south west along the u/c 6020 (by farm access gate) instead of close to the Manor House gate as shown by the red arrow).

As a result of this there are now three access points to the field: 1) a stile at the end of Holt 8, 2) a kissing gate approximately 50 metres from it and 3) Jacob's Ladder stile and kissing gate on Holt 16 at the junction with the road u/c 6020 .



Manor House end of Holt 8(2007)

Permissive route 50 metres SW of Holt 8 (2011)

**3.3 Aerial Photographs (OS copyright 100049050)**

**2001**





The worn route visible in this image corresponds with the application route.



It is noted that the most worn route shown in the 2006 and 2008 photographs (not visible in the 2001 photograph) corresponds with the route enabled by the kissing gate installed 50 m to the SW of Holt path 8 and as shown in the photograph on page 6 of this report.

#### 4.0 Context of the Application and Historical Evidence

The land over which the claimed route leads lies to the south of Holt Manor and to the north west of the village of Holt. Holt is a largely linear village along the line of the B3107 and lies between the towns of Bradford on Avon and Melksham. The village had seen a steady increase in population numbers as follows:

Year	Population
1831	839
1901	915
1961	1278
1991	1458
2001	1532

The vast majority of the population of Holt lives to the south and south east of the claimed routes.

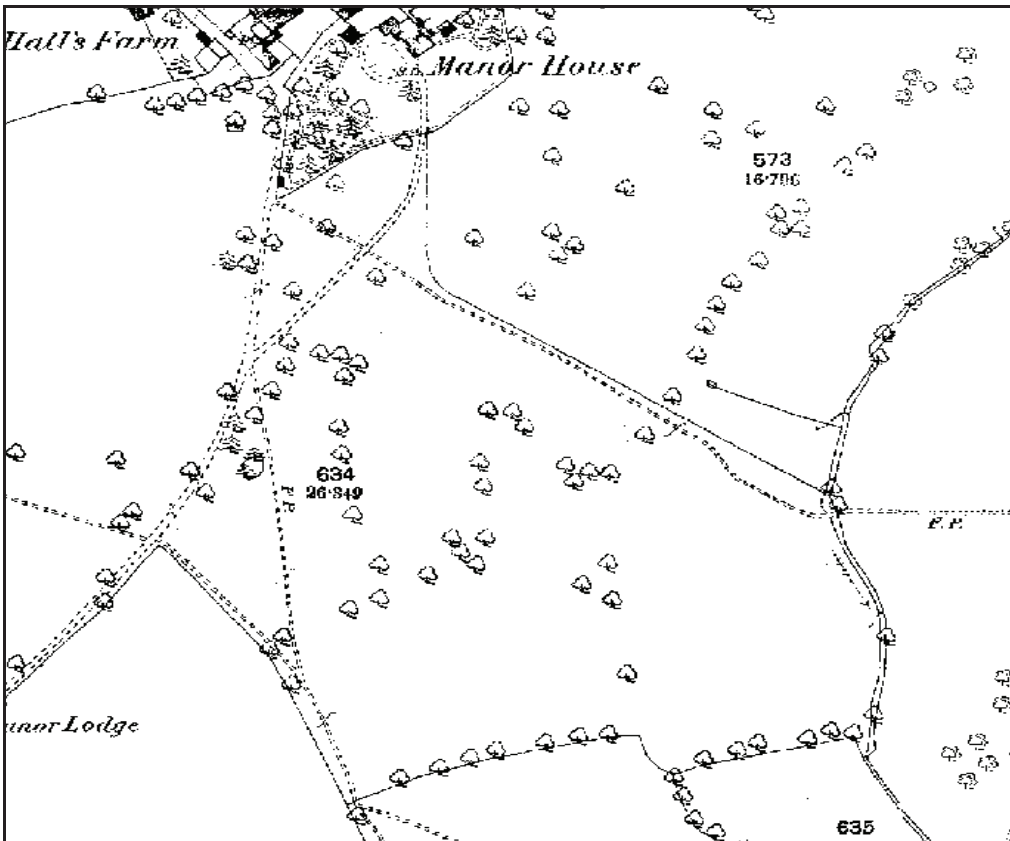
The One Inch to one mile Ordnance Survey map of c.1890 shows the Manor House and represents the area of land over which the claimed paths lead as parkland.



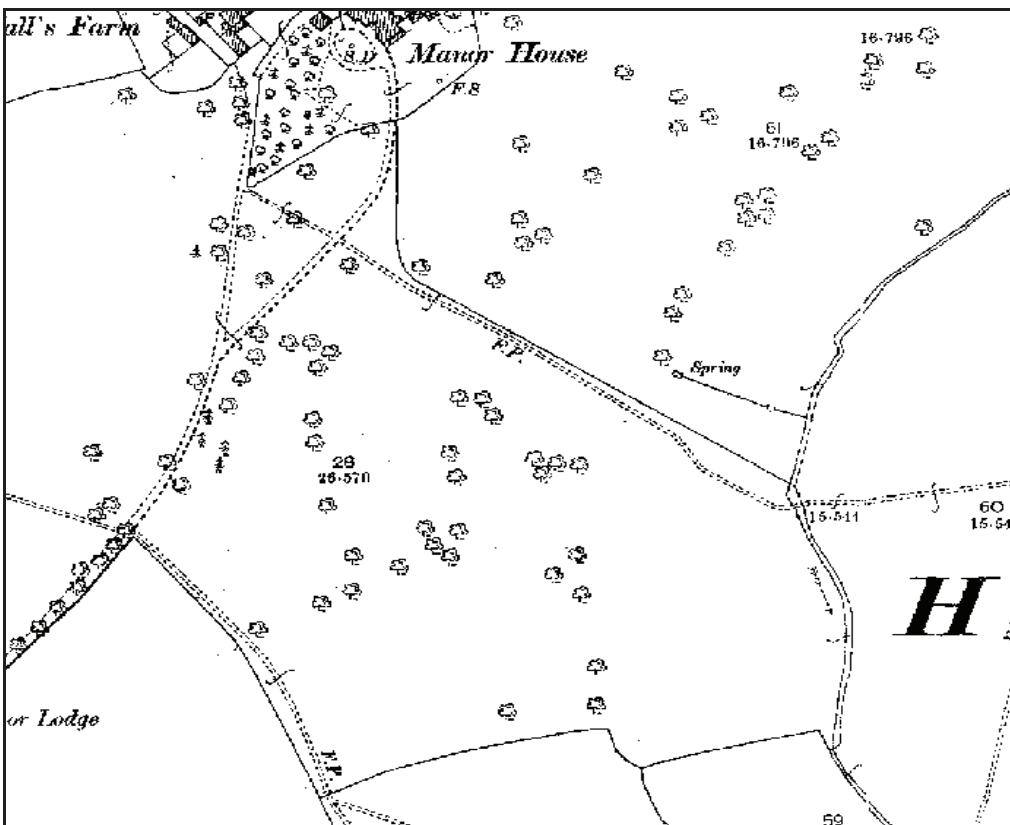
The County Series Ordnance Survey maps printed at a scale of 1:2500 have been viewed as they record the lines of historic paths. A disclaimer applies that the representation of paths is no indication of the existence of public rights, but like aerial photographs, these maps can be useful to gauge whether a visible path was present at the time of the survey.

Maps record a number of paths in this area (many of which are now recorded in the definitive map and statement as public rights of way) but none show paths on the line of the claimed route.

First Edition (c.1870)

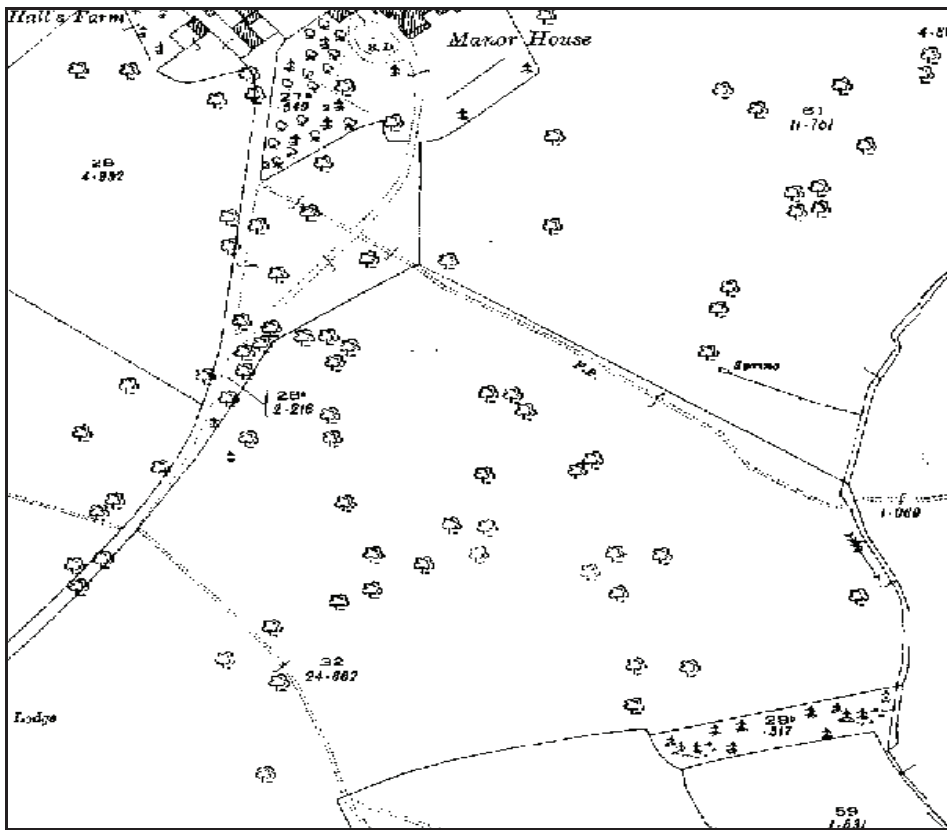


Second Edition 1901

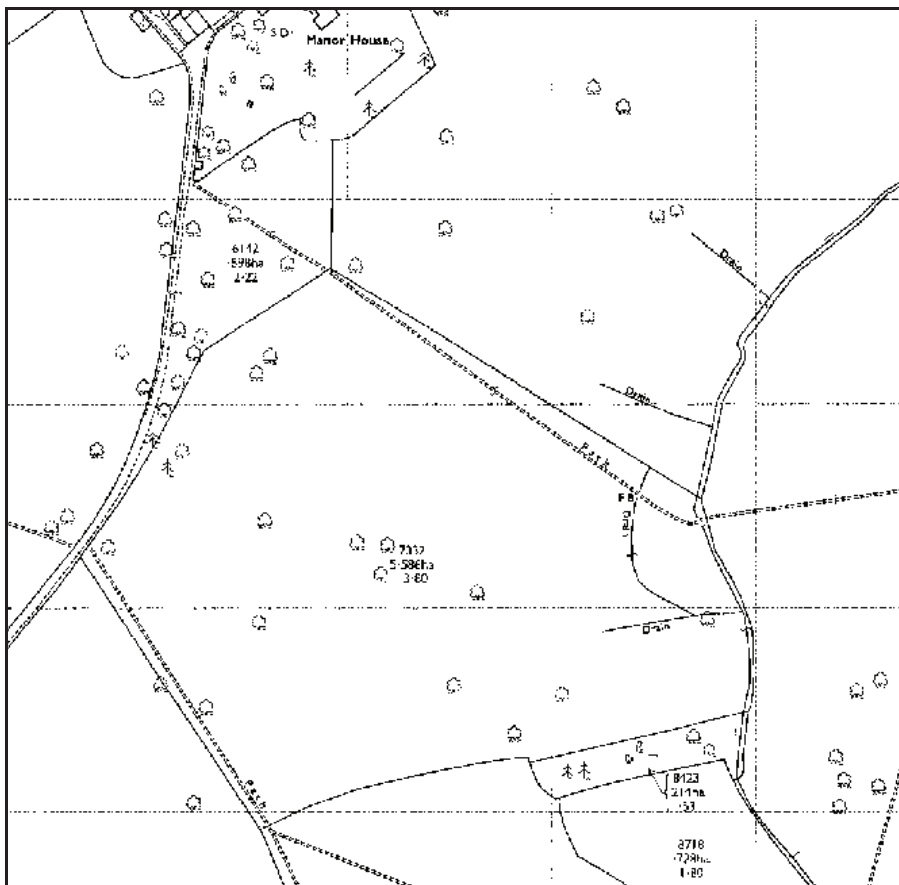




**Edition of c.1924**



**National Grid Series 1:2500 c.1970**





The following were consulted:

Mr P Harris (landowner)  
Auto Cycle Union (statutory consultee)  
Wiltshire Bridleways Association  
Cycling Touring Club (statutory consultee)  
British Horse Society (statutory consultee)  
Holt Parish Council (applicant and statutory consultee)  
Cllr T Carbin (Wiltshire Councillor)  
Wiltshire British Horse Society  
Byways and Bridleways Trust (statutory consultee)  
Wiltshire Council Senior Rights of Way Warden  
Wiltshire Ramblers  
Mr B Riley  
British Driving Society (statutory consultee)  
Mr P Smith (witness)  
Mr R Mizen (witness)  
Mr J Nibbs (witness)  
Mrs A Nibbs (witness)  
Mr R Moody (witness)  
Mr M Moyes (witness)  
Mrs P Earl (witness)  
Miss A Pryke (witness)  
Mr M Smith (witness)  
Mr P Ladd (witness)  
Mrs S Chapan (witness)

## **5.1 Initial Consultation Responses**

### **1. Mr P Harris 02 April 2013 Notes from telephone call**

- i) Mr Harris bought Holt Manor from Mr Fisher about 2 years ago. Mr Fisher had probably owned it for about 12 years and had bought it from Giles Clarke. Prior to this the Manor had belonged to Smith Barry, a son of Colonel Forster. This period was from around 1900 to the 1960s.
- ii) Mr Fisher had employed a full time land agent who lived on the estate and looked after land related business. Mr Harris would be getting a statement from him.
- iii) He had erected a fence across the field in July 2011 by Mr Harris as he had concerns about public safety and cattle attacks on footpaths.
- iv) The ROW warden for the area had put a kissing gate in the wrong place for the 2005 diversion of footpath 8 and had subsequently put a stile in the correct place by the Manor House gate.
- v) He doesn't have any memory of people walking the claimed routes but thinks they may have walked round the edges.

### **2. Mr P J Ladd 12 April 2013**

*"I enclose photographs of my family, together with some visiting American friends enjoying climbing on a large fallen tree.*

*That tree is a few metres from the proposed route of the footpath shown on the map as dotted line A to B.*

*I moved back to Holt 6 years ago. My grandchildren have since that date regularly played in that tree and used the footpath to get there. The photo proves that the footpath was in regular untrammelled use and was taken in 2011."*

The photographs show people in and around a large tree which is along the route near the northern end. They are close up pictures and do not show the path.

### **3. Mr Giles Clarke** 23 April 2013

*"My wife Judy and I owned the freehold of Holt Manor, Holt from 1996 – 2002 and I am the Lord of the Manor still.*

*I have been shown a copy of your letter to Mr Moyes dated 15 March 2013 ref SN/PC123 with public footpath plans attached.*

*I confirm that throughout our ownership the public used these footpaths and we made no objections since these are clearly of immensely long habitual use."*

Officers responded to Mr Clarke and enclosed a copy of the consultation plans for 2012/07 and 2012/08. Mr Clarke responded on 29 April 2013:

*"I confirm that the footpaths marked A to B on each plan are the ones to which I refer."*

### **4. Mr Martin Moyes** 19 April 2013

*"I refer to your letter dated 15 March 2013.*

*I am aware that there are two applications regarding Rights of Way across the one field. I have walked both routes and have similar but not identical comments, so please forgive the repetition.*

*We moved in to Holt in August 1982 and, as country lovers and walkers, explored the footpaths around this community. However it was not until 1983 when we acquired our first pet dog, Bonnie, that we became regular walkers of the local footpaths. For a shorter walk, a favourite route was out of the village on Holt 17 and Holt 8, then along route A to B as per your map and returning via Holt 16.*

*We walked this route regularly until our last pet, Meg, died in 2005 and since then just very occasionally when the fancy took us.*

*Never – a word that I am using carefully and after some thought – did we encounter any obstruction of this route, any sign preventing or limiting its use, nor did we receive any word from the occupiers of Holt Manor suggesting that we restrict our activities in any way.*

*I note that, although the two ends of this route are exactly as per your attached map, the specific route that we took between them did vary a little due to the copse roughly halfway. This lack of an absolutely exact route means that it does not show up well on aerial photographs. I would however be content with whatever route is provided between the two specified ends points as long as it is reasonably direct and does indeed cross the field rather than skirting it . . . I say this because part of the pleasure of walking this route is simply being in that lovely open space and enjoying the views of Holt and beyond – unusual in such a generally flat terrain. Walking the field boundaries is no substitute.*

*The Spreckleys occupied Holt Manor in the early 1990s and in 1993 I directed an outdoor production of Macbeth at Holt Manor – with their kind permission and support. I clearly remember Mr Spreckley encouraging me to walk to Holt Manor across the fields rather than driving.*

*Through Robert Floyd of Great Chalfield, I have been in contact with Giles Clarke – the occupier of Holt manor from the mid-1990s for some 8 or 9 years – and he will be contacting you separately to confirm the freedom he gave to walkers across the field in question.*

*There were times when there was stock in the field and it would have been unwise or wrong to walk there with a dog – but that was always my decision and I do not recollect and sign of obstruction at such times.*

*I hope this is helpful, and please contact me if anything is unclear or if I can help further in any way.”*

An aerial photograph was enclosed showing the route between pecked lines:



## 5. Mr P Harris 14 May 2013

*"With reference to your letter of 26<sup>th</sup> March 2013.*

*(1) We became the owner of the affected land 31<sup>st</sup> May 2011.*

*(2) The fencing was erected July 2011.*

*(3) Mr Giles Clarke till approx 13yrs ago, Mr Anthony Fisher May 31<sup>st</sup> 2011. Mr Hillier of Norbin Farm, Box, Wiltshire*

*Since we have resided at Holt Manor we have never seen people walking the routes suggested, tracks have never been established, refer to statement of Mr Philip Holmes. Prior to erection of fences people were observed going off footpath but never on a set path, when ever able people were spoken to. There is no need for these extra footpaths as access is already catered for. Given the Parish Councils strong views on keeping the landscape clean, and the need if these footpaths are granted to fence them in due to cattle in the fields, the application will seriously affect the views and the farmers use of the fields. This is a vindictive application and must be seen as such. It has taken the Parish Council 15 months to decide the erected fencing has stopped them walking somewhere they should not. It is interesting to note you cannot walk footpath 16 due to it being blocked off by electric fencing yet no one complains."*

Mr Harris also submitted 2 aerial photographs dated 1999 and 2008, an example of a cattle attack on a walker to highlight the danger to the public of using paths with cattle in them and copies of submissions from Mr P Holmes, a former estate manager and Mr Hillier, the agricultural tenant.

## 6. Mr Hillier submitted 14 May 2013 sent to Mr Harris 13 April 2013

*"I understand that there are ongoing discussions with regards to two footpaths below Jacobs Ladder which is situated at Holt Manor Bradford Road Holt.*

*This is farm land that I am a tenant and have used for livestock purposes in past and intend to do so in the future. The two footpaths in question I have never seen being used once in all the years I have farmed the land.*

*Given that this land is agriculture land in a organic conservation at present, if these proposed plans go ahead the land will become unworkable in farm management terms and be detrimental to the environment in terms of not complying to the government standards for organic farmed land.*

*Finally there has never been any visual marks of use to the land in question."*

## 7. Mr Philip Holmes submitted 14 May 2013 dated 06 April 2013

*"To whom it may concern: For approximately 10 years until 31<sup>st</sup> July 2011, I was employed as a full time estate manager by the former owner of Holt Manor. My duties included the maintenance of the property and the grounds. My wife and I lived at the Dower House at Holt Manor. Inspection of the fields and fencing was carried out on a regular basis, also mowing of the verges alongside the road. At no time do I recall any person or persons walking the 2 routes suggested, in fact if I had it was my duty to inform them that they were trespassing and must stick to the official paths. At no time was a trodden path visible during employ. The former owner did have me erect a gate for the farmer to use near to the Manor, which the public did use to create unofficial path which has a notice informing the public of such. At times people would walk away from the official paths, but never on a regular basis."*

## 5.1 Officer's Comments: User Evidence – See Appendix A

The evidence submitted with the application suggests that the route has been used by the public since 1935; the route does not appear to have a historical context and/or evidence of public use in earlier times and I am mindful that either the principles of dedication at common law (the principal of long term use by the public and either acceptance by the landowner by making no objection if such use is considerable or perhaps by an express dedication) or those laid out by statute in s.31 of The Highways Act 1980 need to be found to apply for the application to succeed. Whilst the dedication of this route may have occurred at common law at some time in the past, it is recognised that such a dedication is difficult to determine and hence it is considered appropriate to apply section 31 of The Highways Act 1980.

Section 31 of The Highways Act 1980 states:

### **31. Dedication of way as highway presumed after public use of 20 years**

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*  
*(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*  
*(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected.*

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

*(6) An owner of land may at any time deposit with the appropriate council-*  
*(a) a map of the land on a scale of not less than 6 inches to 1 mile and*  
*(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;*

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

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

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the*

*deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

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

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

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

*(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.*

NB The Growth and Infrastructure Act 2013 brought about alterations to s.31(6). However, this application pre-dates these changes and they have not been incorporated here.

Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

## **6.0 Consideration of all evidence**

### **6.1 Calling into question**

Section 31(2) states that the 20 years of public use is to be calculated retrospectively from the date that the public use was brought into question.

7 User evidence forms with individually annotated maps were provided to support the application. This evidence is summarised at **Appendix A**. No users record anything to challenge their use until a fence was erected across the route in 2011. Hence it is considered that the 20 year relevant period for the application of s.31(1) is from 1991 to 2011.

It is considered that it was only at this time was public use effectively challenged. An action by a landowner may be an effective challenge but case law requires that there is sufficient evidence that there was no intention on the part of the landowner to dedicate the route as a public highway (Godmanchester and Drain House of Lords ([2007] UKHL 28). Lord Hoffman at para. 33 said:

*" It should first be noted that s.31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires 'sufficient evidence' that there was no such intention. In other words, the evidence must be inconsistent with an intention to*



*dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner's consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson's Case [R v S of S for the Environment ex p. Billson [1999] QB374] it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience".*

The evidence provided shows 7 members of the public used the claimed route for various lengths of time and with varying frequency between 1940 and 2011. The evidence gives that all of these used the claimed route for the entire 20 year period before the erection of the fencing (notwithstanding that Mr Moyes thought the fencing was erected in 2010) and that all had seen other people walking along the route.

All witnesses reported that their use had been without permission, secrecy or force. None of them had worked for the landowner.

## **6.2 Without permission**

No witnesses claim to have sought or been given permission. The landowner between the years 1996 and 2002 was aware of the use by the public and made no objection. This tolerance of the use may not be seen as implied permission.

It is also noted that implied permission is not necessarily fatal to a claim based on use by the public that is 'as of right'. In a recent case involving a village green the question of whether implied permission would be fatal to user 'as of right' was considered by the House of Lords in *R(Beresford) v Sunderland City Council [2004] 1 AC 889 (paras 5,6 and 7)* Lord Bingham says:

*"I can see no objection in principle to the implication of a licence where the facts warrant such an implication...a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his own permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use...Authority, however, establishes that a licence to use land cannot be implied from mere inaction of the landowner with knowledge of the use to which his land is being put...In *R v Oxfordshire County Council, Ex p Sunningwell District Council [2001] 1 AC 335* it was held by the House that the landowner's toleration of local inhabitants' user of the land in question was not inconsistent with such user having been as of right, and so did not prevent registration of the land in question as a town or village green."*

Additionally, Lord Walker of Gestrinhorpe, at para 85 says:

*"The fact that the City Council and its predecessors were willing for the land to be used as an area for informal sports and games, and provided some minimal facilities (now decaying) in the form of benches and a single hard cricket pitch, cannot be regarded as overt acts communicating permission to enter. Nor could the regular cutting of the grass, which was a natural action for any responsible landowner. To treat these acts as amounting to an implied licence, permission or consent would involve a fiction...."*

Additionally Mr Moyes recalls being encouraged to walk across the fields to Holt Manor in 1993 by the then owner, Mr Spreckley. There does not appear to be any suggestion of permission but it is not clear what routes Mr Spreckley was encouraging Mr Moyes to use and little weight may be given to this evidence one way or the other.

### 6.3 Without interruption

Section 31(1) of the Highways Act 1980 specifies that the use by the public must be without interruption for the 20 year period and it is noted that the period of use covers the period February 2001 to July 2001, a period when the majority of rights of way were closed to the public during an outbreak of foot and mouth disease. Wiltshire County Council acted at that time under the powers of the Foot and Mouth Disease Order 1983 and the order permitted closure of some land regardless of the presence of rights of way. The Planning Inspectorate has issued a revised Advice Note 15 on this topic (June 2009) which concludes that 'it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1) of The Highways Act 1980.

The submitted evidence, supports that the public have used the claimed route, on foot, for a full period of 20 years as of right and that the requirements of section 31(1) are satisfied subject to there being sufficient evidence that there was no intention during the period to dedicate it. Evidence of non intention to dedicate may be found as follows:

- (3) Where the owner of the land over which any such way as aforesaid passes –*
- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
  - (b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected.*

No evidence of such notices has been discovered.

- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

No evidence of such notices has been discovered.

- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

The Highway Authority (Wiltshire County Council and latterly Wiltshire Council) has not received any such notice and no evidence of such notice being served has been discovered.

- (6) An owner of land may at any time deposit with the appropriate council-*
- (a) a map of the land on a scale of not less than 6 inches to 1 mile and*
  - (b) a statement indicating what ways(if any) over the land he admits to having been dedicated as highways;*
- And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –*
- (iii) within ten years from the date of deposit*
  - (iv) within ten years from the date on which any previous declaration was last lodged under this section,*

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the*

*deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

NB The Growth and Infrastructure Act 2013 amended this section of s.31. However, the alterations post date this application and have not been included here.

Officers have searched archive deposits dating back to 1932 and no deposit, statement or statutory declaration has been made affecting the claimed route for the period 1932 to 2011.

#### **6.4 Without secrecy**

No users claim to have used the path in secret and the evidence of Mr Giles Clarke is clear that he was aware of the use by the public. The routes are not visible from the Manor House but may be seen from the public road just south west of the Manor House gates.

#### **6.5 Without force**

No users claim to have used force to access the claimed routes. None would have been necessary as access was possible at either end from either the stile known as Jacob's Ladder or path number 8.

#### **6.6 The character of the way**

It is a requirement of s.31(1) that the way may be any way "*other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication*". Examples of ways that may not be of such character include ways where public use is specifically prohibited (for example a motorway) or a discontinuous length of highway wholly unconnected with the highway network. There is however no requirement that a way must be of utility value or perhaps provide a shorter or more direct route. A way may be a cul-de-sac and may end at a place of public resort.

Lightman J in *Oxfordshire County Council v Oxford City Council* ([2004] Ch253) said that the true meaning and effect of the exception of "a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication" is that "the user must be as a right of passage over a more or less defined route and not a mere and indefinite passing over land". The exception could also apply to routes that did not connect to highways or lead to a place of popular resort.

#### **6.7 Subjective belief**

It is sometimes suggested that anyone using the land would have known it was private and that they were not using a public right of way and hence their use cannot be considered to have been 'as of right'.

It is a feature of public rights of way in England and Wales that they pass over land that is in private ownership; that is, that the public has a right, in law, to pass and repass over a defined route on land that is privately owned.

Neither is the state of mind of the user a consideration, all that may be considered is whether that use has gone on, without permission, without force and without secrecy. This point was

addressed by Lord Hoffman in the House of Lords in the case of Regina v Oxfordshire County Council and others ex parte Sunningwell Parish Council [2000] 1 AC 335. In his judgement Lord Hoffman dismisses any additional requirement of subjective belief for the satisfaction of 'as of right':

*"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use a footpath will use it in any way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the earlier years will have been without any very confident belief in the legal right. But that does not mean that it must be ignored. Still less can it be ignored in a case like Steed when the users believe in the existence of a right but do not know its precise metes and bounds. In coming to this conclusion, I have been greatly assisted by Mr J G Ridall's article "A False Trail" in [1997] 61 The Conveyancer and Property Lawyer 199."*

## **7.0 Widths, Conditions and Limitations**

The majority of users consider the width of the path to be 2 metres. The limitations are associated with the existing rights of way and not the claimed route and no users record any on the claimed route. There are therefore no conditions or limitations associated with the route claimed.

## **8.0 Decision**

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.

In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

To confirm the Order, the stronger test needs to be applied; that is, essentially that contained within Test A. *Todd and Bradley v SoSEFRA* [2004] EWHC 1450 (Admin). Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

There has been no incontrovertible evidence adduced or discovered in relation to this claim and the evidence of the 11 witnesses is at least a reasonable allegation that public right subsist..

There is however credible evidence that the use by the public has been light (as given by witness forms) though aerial photographs do show a worn path on this route unlike application 2012/08. Additionally the evidence given by Mr Holmes cannot be ignored. Mr Holmes was the full time estate manager from 2001 to 2011 and cannot recall any users on the route. It would be difficult to apply Test A without further testing of the evidence under cross examination.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This may only be defeated by incontrovertible evidence. Incontrovertible evidence is that contained within s.31(3)(4)(5) and (6) of the Highways Act 1980.

The Council is not aware of any incontrovertible evidence and Test B must apply.

## **9.0 Legal Considerations and Risk Assessment**

If Wiltshire Council refuses to make an order the applicant may lodge an appeal with the Secretary of State who will consider the evidence and may direct the Council to make the order. Given recent experiences of officers and the application of Norton and Bagshaw as referred to above it is considered highly likely that Wiltshire Council would be directed to make an order as there is no incontrovertible proof to defeat Test B.

Failure to progress this case to determination within a year of application may result in the applicant seeking a direction from the Secretary of State. As Wiltshire Council prioritises user based applications it is likely that the Council would be directed to make a determination.

If the order, when made and advertised receives objections which are duly made it must be forwarded to the Secretary of State for determination. Through their agent, the Planning Inspectorate (PINS), the order may be determined by way of written representations (no additional cost to the Council), a local hearing (cost £200 to £500) or a public inquiry (cost £5000 to £10000 if Wiltshire Council supports the order; around £300 if it does not).

Statute is clear as to the Council's duty in this matter and it is considered unlikely that judicial review would be sought by any party if the statute is adhered to. Costs arising from judicial review of the Council's processes or decision making can be high (in the region of £20,000 to £50,000).

## **10.0 Equality Impact**

Consideration of the Equality Act 2010 is not relevant to application of s.53 of the Wildlife and Countryside Act 1981. If the path is recorded in the definitive map and statement it must be as used and accepted by the public though any further improvements to access could be pursued by negotiation with the landowner as appropriate.

## **11.0 Other Considerations**

The route claimed by the applicant has not been available to the public since late in 2011. Officers have considered whether it would be appropriate to negotiate access while the application is being considered or the provision of a permissive route. In this case the landowner has provided an alternative route around the field edge, this is signed as a permissive route and appears to be used by the public. The landowner had also made an application for a public path order which would dedicate the new route to the public. However, this proposal produced very strong objection from local people and has now been withdrawn. The permissive route is however currently still available and offers the public a route away from grazing cattle.

It is considered that the best course of action for all parties is to resolve the issue of whether public rights subsist over the claimed route in as efficient and timely manner as possible, as provided by

the statute. Determination of the two applications (2012/07 & 08) at Holt Manor would clarify where public rights subsist and would assist greatly both the public and the landowner

## **12.0 Recommendation**

**It is recommended that an Order should be made under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding the footpath as claimed to the definitive map and statement and that if no duly made objections or representations are received during the statutory period of advertisement that the order is confirmed**

Sally Madgwick  
Rights of Way Officer

21 May 2013

Fencing called use into question. Fencing erected 2011. Relevant period: 1991 - 2011

Witness no	Name	Address	Years of Use	Route used
1	Peter N Smith	71 Ham Green, Holt, Trowbridge, BA14 6PY	1985 – 2011	Application route
2	Martin G Moyes	The Old Manse, The Street, Holt, BA14 6RS	1982 – fencing	Application route
3	Miss A Pryke	49 Leigh Road, Holt, BA14 6PW	1993 – 2011	Application route
4	Robert J Mizen	16 Leigh Road, Holt, Trowbridge	1980 – 2011	Application route
5	Martin Lewis	76 Ground Corner, Holt, Trowbridge	1990 – 2012	Application route
6	Jonathan Nibbs	273 The Gravel, Holt, Trowbridge, BA14 6RA	1955 – fencing	Application route
7	Mrs A Nibbs	273 The Gravel, Holt, Trowbridge, BA14 6RA	1960 – 2010	Application route
8	Rodney Moody	Huckshards, The Gravel, Holt, BA14 6RA	1940 – 2011	Application route
9	Mrs P Earl	Fairlawne, 21A Leigh Road, Holt, Trowbridge	1960 – 2011	Application route
Page 67	Patrick Ladd	76a Ground Corner, Holt, BA14 6RT	1935 – 1940/50 and 2005 - 2011	Application route
	Mrs S Chapman	Brookfield Cottage, 76 Ground Corner, Holt, Trowbridge	1964 – 2012	Application route

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
1	26	20	Yes, walking including exercising dogs	Walking and running	Not before 2011	Not before 2011	No	No	20 times per year	“Not sure, but I would expect the owners before 2011 were, since the field and its public use would be visible, if not from the house, certainly from the grounds of Holt Manor.”
2	28 or 29	19 or 20	Yes – on foot	On foot	No	No	No	No	10 times per year	Yes “must have seen people walking this pathway.”

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
3	18	18	Yes – walking	Walking	No	No	No	No	Daily	“Yes. The route is in sight of the house so I would assume the owners must have been people using it.”
4	31	20	Yes – walking	Walking	Gate and stile at point D and gate and stile at point B never locked	No	No	No	5 – 6 times per year	“Yes. Because of the number of people using same path.”
Page 68	22	20	Other dog walkers and rambler	Walking	Stiles at D and B	No	No	No	Daily	“Yes. When he brought Holt Manor all footpaths and public right of way.”
	56	20	Yes, walking	Walking/running	Stiles at signed ends	No	No	No	Variable over years stated	“Yes. There have been a number of owners during the time I have used the way and over the years, a clear path has been etched in the terrain.”
	7	50	19	Yes, walking	Walking	Stiles at initialled points	No	No	No	Variable
8	71	20	Yes, walking	Walking	Only at boundaries	No	No	No	Many times	“Yes – because of significant numbers using the path.”
9	51	20	Yes – also walking	Walking	No	No	No	No	Variable	“Yes. With position of house and grounds could hardly miss being aware.”



No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
10	Known path for 75 years	6	Dozens. Walking	Walking	Stiles at either end of route	No	No	No	30 times per year	"Yes. The owner was often met during our walks and conversation often took place."
11	48	20	Yes walkers or other dog walkers	Walking	Stile D and B	No	No	No	Daily	"Yes. When he brought Holt Manor with all footpaths."

#### Width of path

Witness no.	Width in metres
1	1.5
2	1.5
3	2
4	2
5	2
6	2.25
7	2
8	2
9	2
10	-
11	-

Mean width = 2 metres

Sally Madgwick 27 March 2013

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## Application to Add a Public Right of Way to the Definitive Map and Statement

### Route linking Holt Path 16 with Holt Path 8 at Holt Manor (Cross Field Path)

### Decision Report

**NB** All documents (including user evidence forms, responses to consultations and correspondence) are available to be viewed at the Council's offices at Newbury House, Aintree Avenue, White Horse Business Park, Trowbridge, please contact Sally Madgwick on 01225 713392.

#### 1.0 The Application

- Application number:** 2012/08 (NB Holt Parish Council has made an application for another footpath in the same field. This is the subject of a separate investigation and is application no. 2012/07).
- Application date:** 01 November 2012
- Applicant:** Holt Parish Council  
c/o Jennie Beale, Clerk  
50 Leigh Road  
Holt  
BA14 6PW
- Application to:** "Add a footpath 2 metres wide from the stile where footpath 12 meets Holt Brook to the stile at the end of footpath 16, commonly known as 'Jacob's Ladder'"
- NB** Although the applicant states footpath 12, the application and evidence maps show it leading to footpath 8.
- Width:** 2 metres
- Sch 14 Compliance:** Notice of application for Modification Order (Form 1)  
Certificate of Service of Notice of application to the following owners and occupiers (Form 3):  
Mr P Harris, Holt Manor, Holt, Wiltshire  
Approx. 1:10000 Plan showing claimed route  
Aerial photograph showing claimed route  
7 user evidence forms and maps
- Basis of Application:** That public rights exist and that the route should be recorded in the Definitive Map and Statement.

**Legal Empowerment:** 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 and statement of public rights of way.

The Wildlife and Countryside Act 1981 (c.69) s.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 the events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

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 –

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

Section 53(5) 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.

## **2.0 Schedule 14 compliance of the application**

Section 53 (5) of the Wildlife and Countryside Act 1981 (WCA81) allows:

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

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.*

Schedule 14 (2) requires that notice is served on owners and occupiers of any land to which the application relates.

This application comprised the below and is considered to be compliant with the legislation.

*Notice of application for Modification Order (Form 1)*  
*Certificate of Service of Notice of application to the following owners and occupiers (Form 3):*  
*Approximately 1:10000 plan showing claimed route*  
*Aerial photographs showing claimed route*  
*7 witness evidence forms and maps*

## 2.0 Land Ownership Details

2011 to date	Mr P Harris, Holt Manor
2002 to 2011	Mr Fisher formerly of Holt Manor
1996 to 2002	Mr and Mrs Giles Clarke formerly of Holt Manor
1991 to 1996	Mr Walter Spreckley formerly of Holt Manor

Early ownership of the land was with the Forster and Smith Barry family (c.1900 to 1960s).

## 3.0 Description of route

The claimed route begins at the junction of the road u/c 6020 with path Holt 16 at a stile referred to by local people as 'Jacob's Ladder' leading approximately eastwards across the field (around trees) to join path Holt 8 at the drainage feature. Approximate length 300 metres.

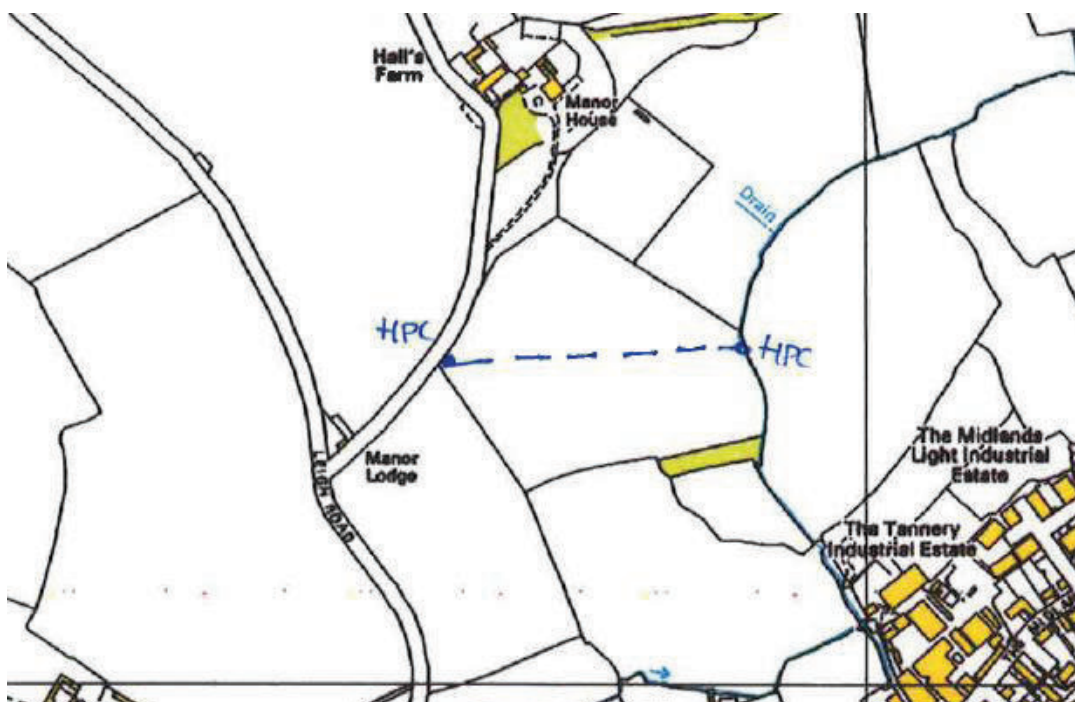


"Jacob's Ladder" at u/c 6020 and Holt 16 junction. Claimed route shown by white arrow leading across the field, definitive line of Holt 16 shown by purple arrow following field boundary.



Claimed route 2012/08 shown by white arrows. Public footpaths Holt paths 8 and 16 shown in purple.

### 3.1 Application map

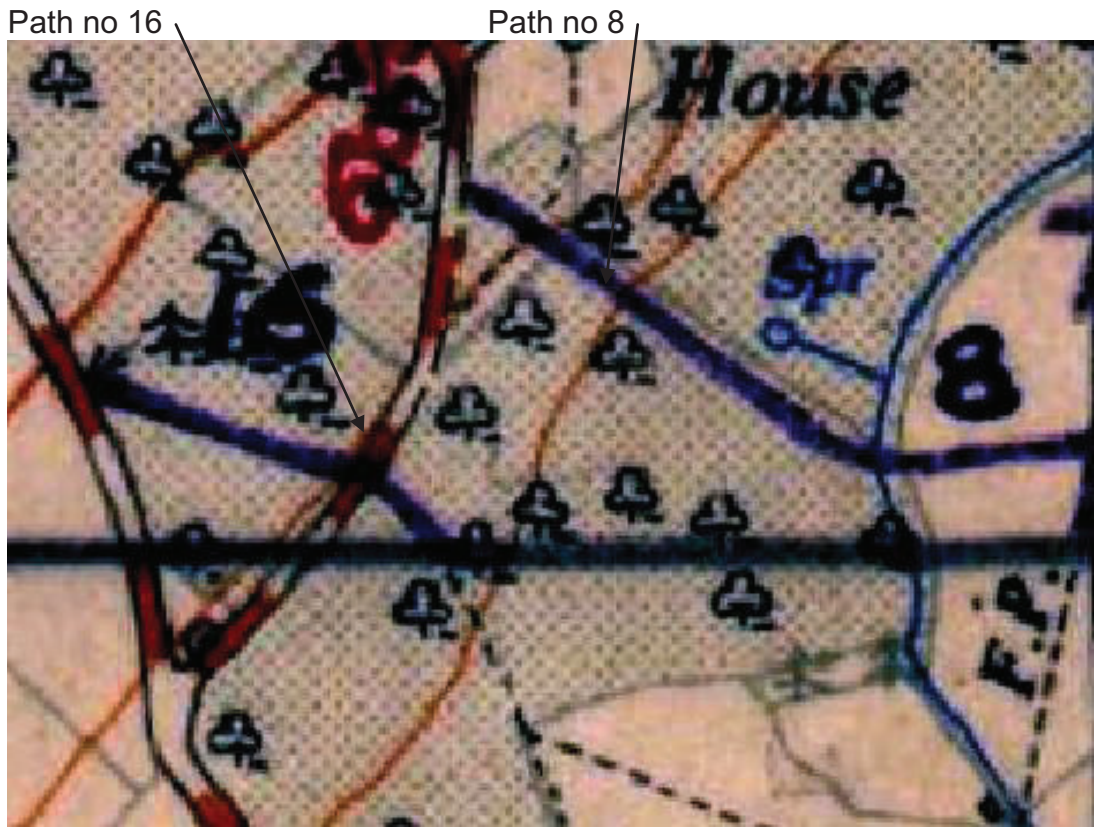


### 3.2 Definitive map and statement

Holt paths 8 and 16 were added to the Bradford and Melksham Rural District Council definitive map and statement dated 1952. Although both paths have had sections of them affected by diversion orders since that time it is only path number 8 that has been affected by a diversion order in the area of interest.

The original definitive map is as below (Holt has a 1:25000 map and a 1:10000 'insert' map):

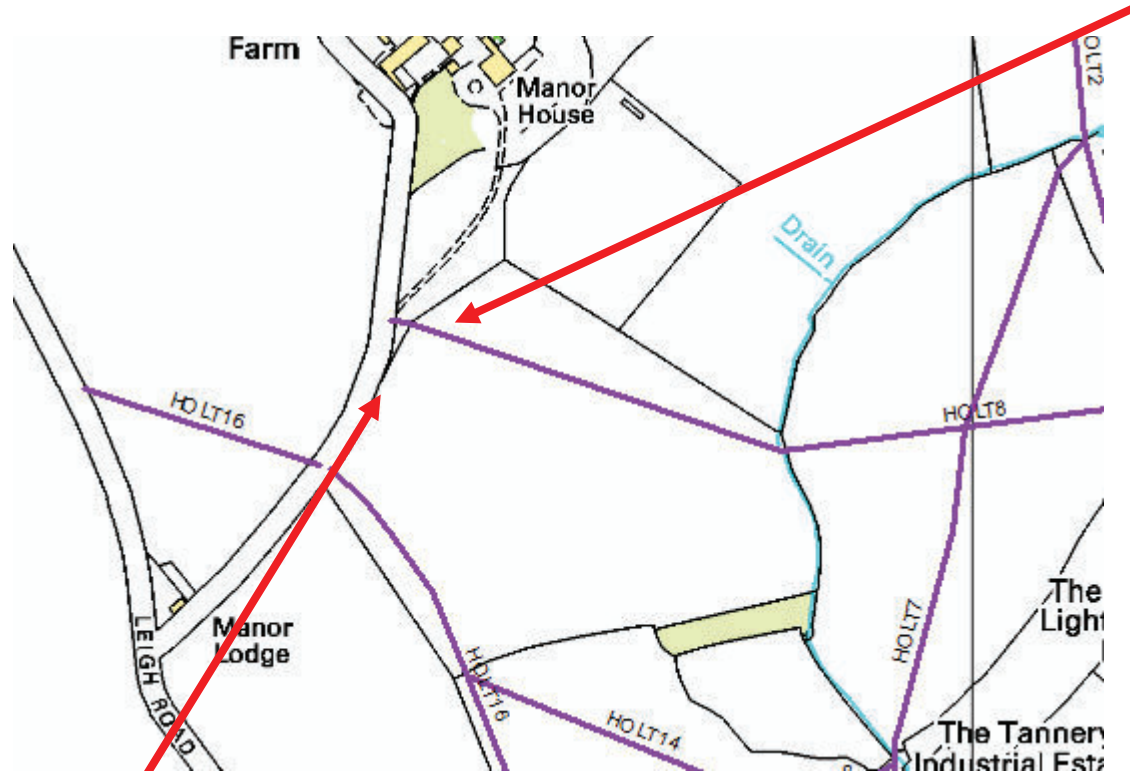
1. 1:25000 base map (expanded)



2. 1:10000 base map (expanded)



The current working copy of the definitive map shows the effect of the diversion of footpath 8:



The diversion order was confirmed in June 2005. As a result of this a new access point was installed at the Manor House end. Unfortunately this was installed in the wrong place (it was installed approximately 50 metres south west along the u/c 6020 instead of close to the Manor House gate). A former landowner, Mr Fisher, also installed a wide gate at this point to facilitate access for the farmer (c.2005).

As a result of this there are now three access points to the field. 1) a stile at the end of Holt 8, 2) a kissing gate approximately 50 metres from it and 3) Jacob's Ladder stile and kissing gate on Holt 16.



1) Manor House end of Holt 8  
Photograph 2007

2) Permissive route 50 metres SW of Holt 8  
Photograph 2011



3.3 Aerial Photographs (OS copyright 100049050)

2001



2006



2008



It is noted that the most trodden route shown in the 2006 and 2008 photographs (not visible in the 2001 photograph) corresponds with the route enabled by the kissing gate installed 50 m to the SW of Holt path 8 and as shown in the photograph on page 6 of this report (south of blue square on aerial photograph above) .

#### 4.0 Context of the Application and Historical Evidence

The land over which the claimed route leads lies to the south of Holt Manor and to the north west of the village of Holt. Holt is a largely linear village along the line of the B3107 and lies between the towns of Bradford on Avon and Melksham. The village had seen a steady increase in population numbers as follows:

Year	Population
1831	839
1901	915
1961	1278
1991	1458
2001	1532

The vast majority of the population of Holt lives to the south and south east of the claimed routes.

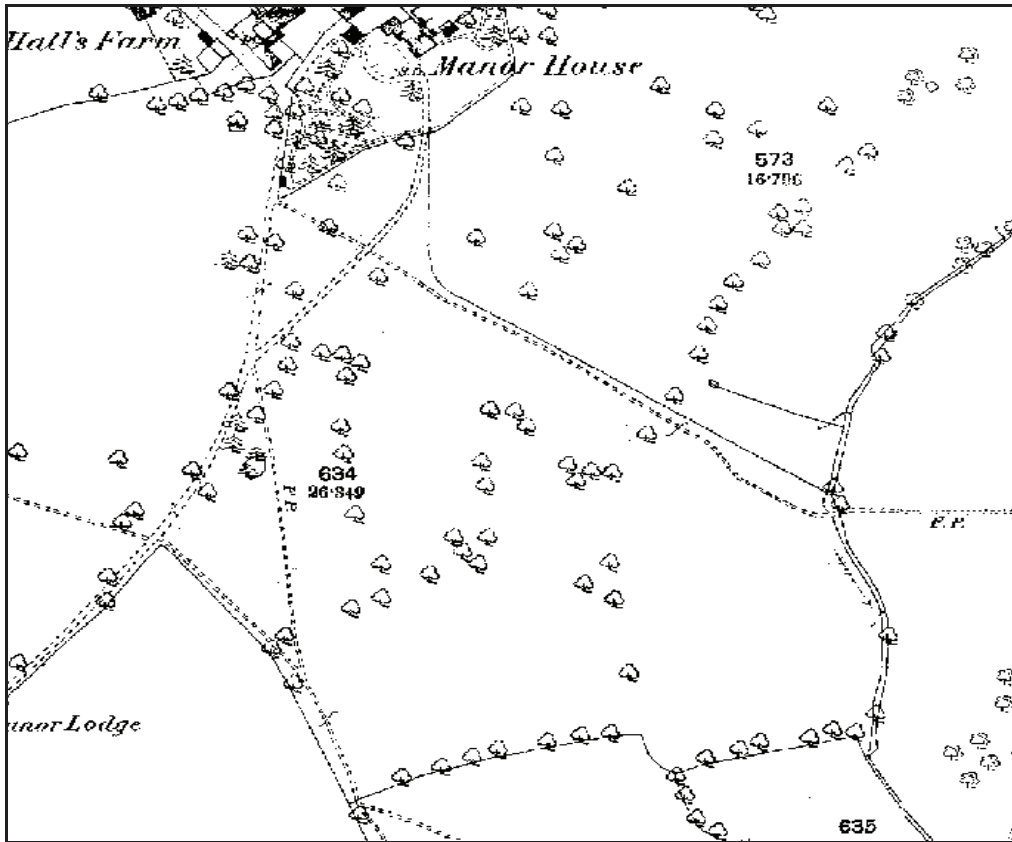
The One Inch to one mile Ordnance Survey map of c.1890 shows the Manor House and represents the area of land over which the claimed paths lead as parkland.



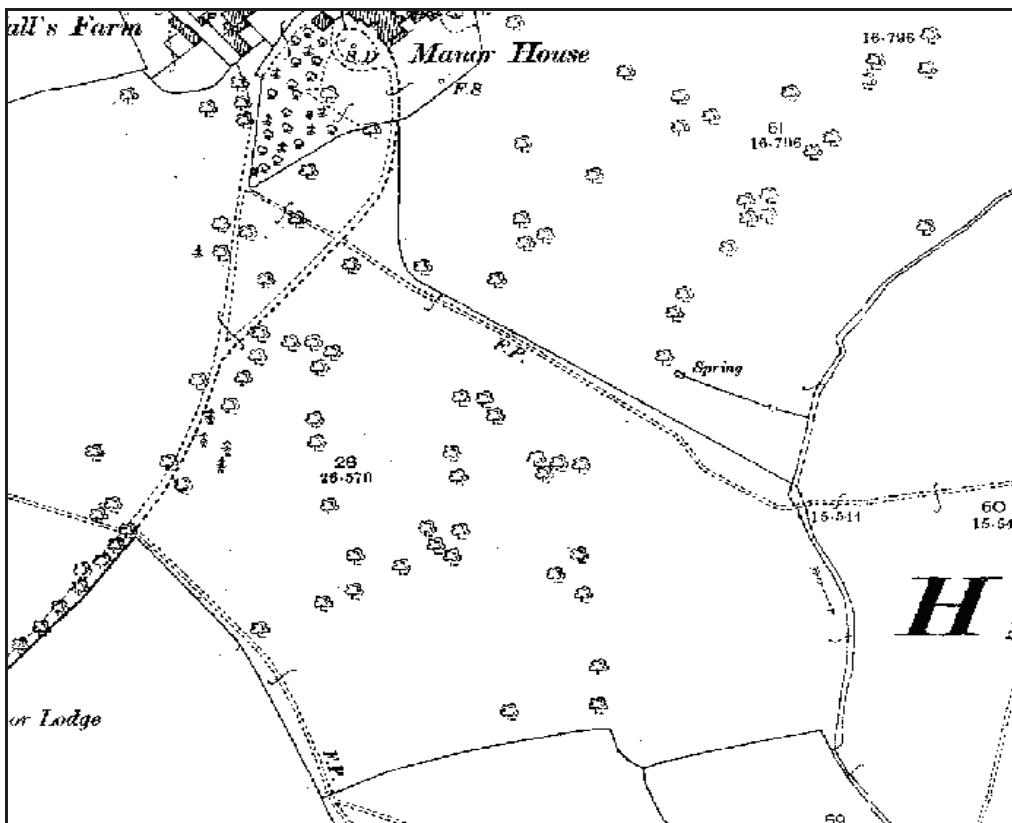
The County Series Ordnance Survey maps printed at a scale of 1:2500 have been viewed as they record the lines of historic paths. A disclaimer applies that the representation of paths is no indication of the existence of public rights, but like aerial photographs, these maps can be useful to gauge whether a visible path was present at the time of the survey.

Maps record a number of paths in this area (many of which are now recorded in the definitive map and statement as public rights of way) but none show paths on the line of the claimed route.

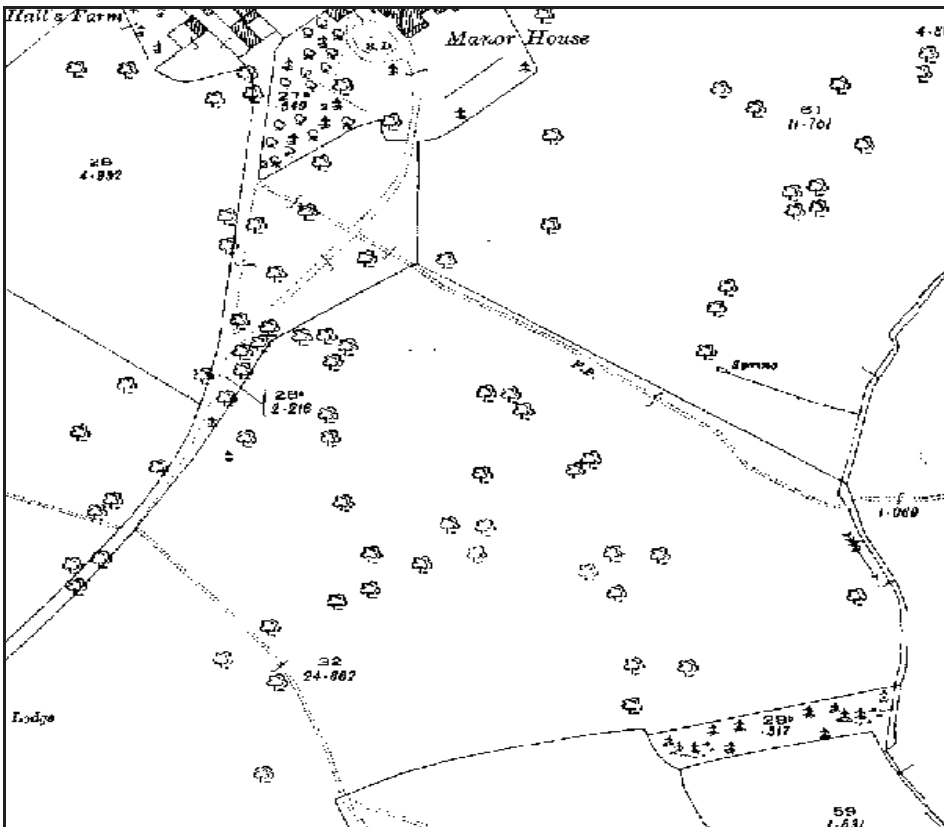
**First Edition (c.1870)**



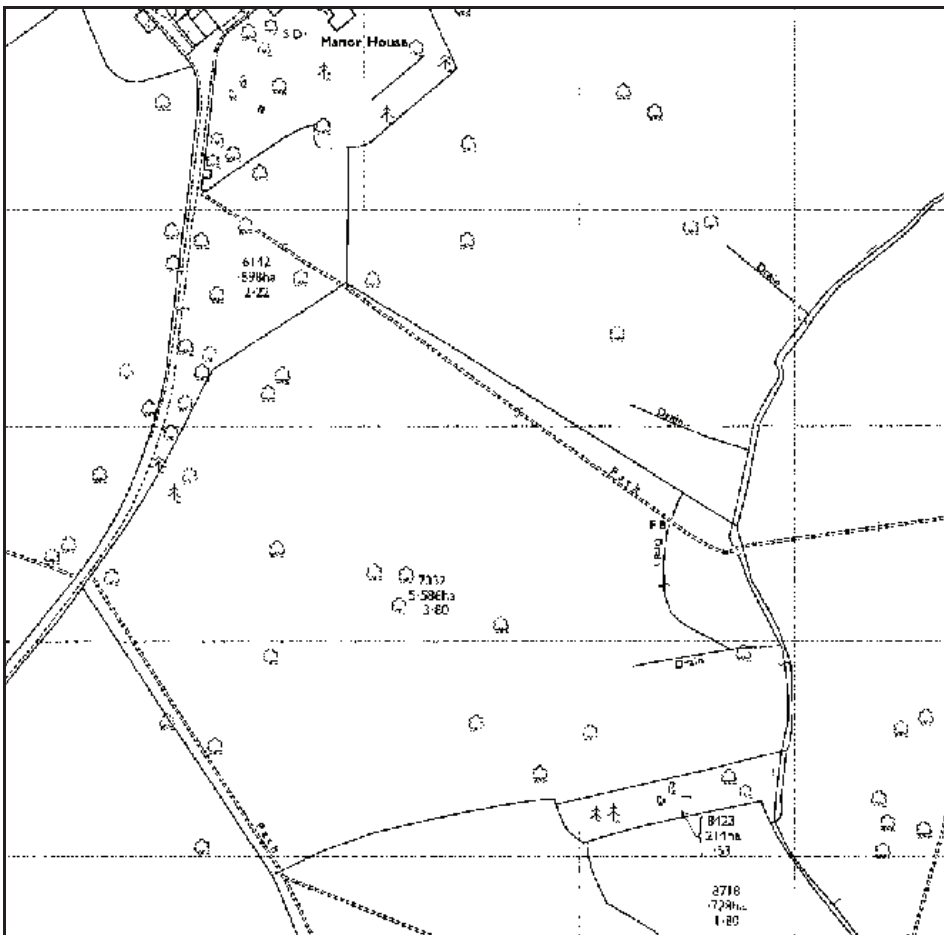
**Second Edition 1901**



**Edition of c.1924**



**National Grid Series 1:2500 c.1970**



## 5.0 Initial Consultation

An initial consultation was conducted between 15 March and 26 April 2013.

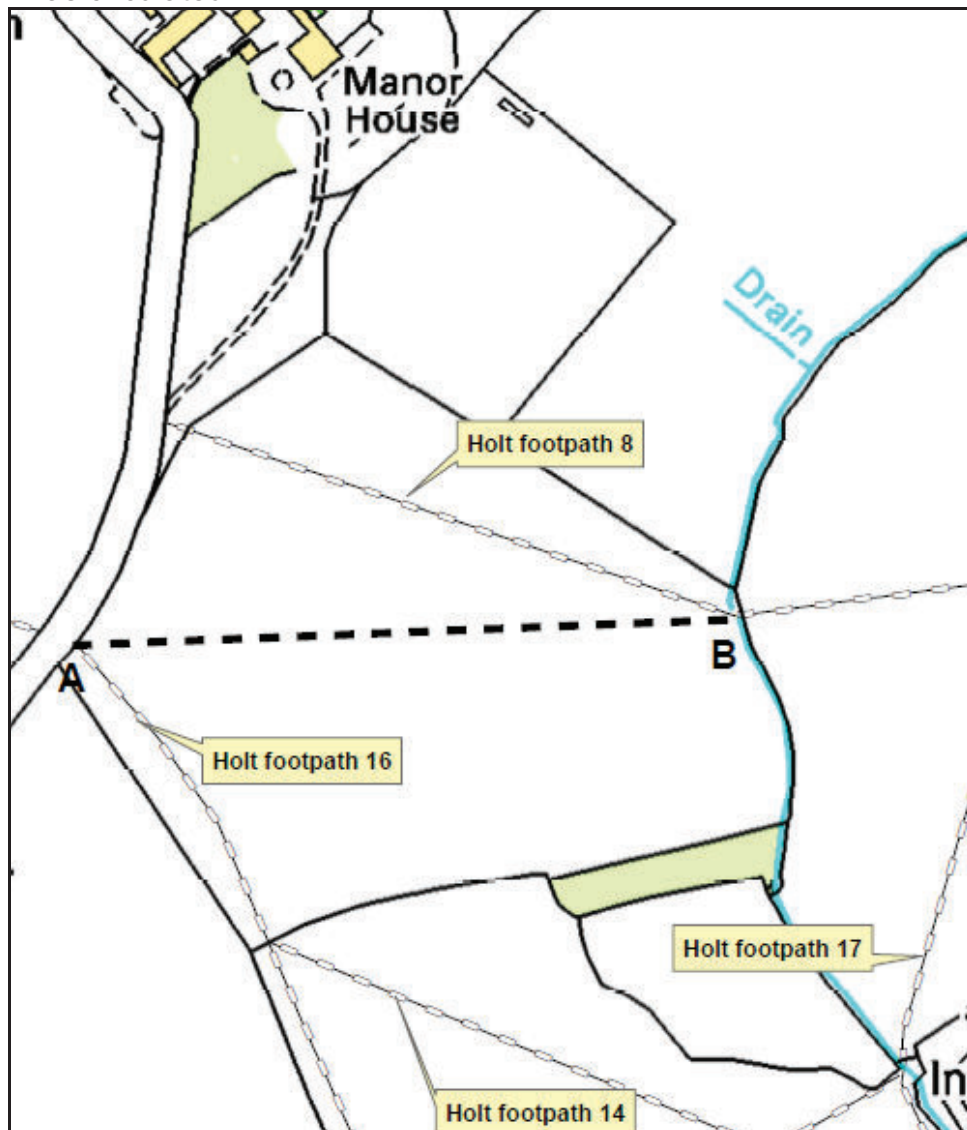
### ***“Wildlife and Countryside Act 1981 s.53***

### ***Application for a definitive map modification order to add a public footpath over land south of Holt Manor***

*On the 1<sup>st</sup> November 2012 Wiltshire Council received an application for an order to add a footpath to the definitive map and statement over land south of Holt Manor. The application is supported by the statements of 7 members of the public who have used the route for varying lengths of time from 1940 to 2011. For the application to succeed it is necessary for that use to have been without interruption and ‘as of right’, that is, without permission, without force and without secrecy.*

*If you have any comment to make regarding this application or perhaps any additional evidence (which may include photographs) I would be pleased to receive it by 26 April 2013. If you have any queries please do not hesitate to contact me.”*

The map below was circulated:



The following were consulted:

Mr P Harris (landowner)  
Auto Cycle Union (statutory consultee)  
Wiltshire Bridleways Association  
Cycling Touring Club (statutory consultee)  
British Horse Society (statutory consultee)  
Holt Parish Council (applicant and statutory consultee)  
Cllr T Carbin (Wiltshire Councillor)  
Wiltshire British Horse Society  
Byways and Bridleways Trust (statutory consultee)  
Wiltshire Council Senior Rights of Way Warden  
Wiltshire Ramblers  
Mr B Riley  
British Driving Society (statutory consultee)  
Mr P Smith (witness)  
Mr R Mizen (witness)  
Mr J Nibbs (witness)  
Mrs A Nibbs (witness)  
Mr R Moody (witness)  
Mr M Moyes (witness)  
Mrs P Earl (witness)

In addition specific questions were asked of some witnesses who had been unclear about the frequency with which they had used the paths (sent to Mr and Mrs Nibbs and Mrs Earl):

***“Wildlife and Countryside Act 1981 s.53***

***Application for a definitive map modification order to add a public footpath over land south of Holt Manor***

*You have completed a user evidence form (UEF) which has been submitted in support of an application to record a footpath over land at Holt Manor. There are two applications and this letter refers to application number 2012/08 as shown on the attached plan.*

*Question number 5 (f) on the UEF asks how frequently have you used the path? You have replied that it is “utterly variable during the stated period”. To enable the Council to better evaluate your evidence I would be grateful if you could answer the following questions:*

*1) Have you used the path without interruption during the period 1955 to 2011 or have there perhaps been times when you did not (perhaps you lived elsewhere for a while?).*

*2) I appreciate it may be difficult to state how often you used a path but it would be helpful to know whether you were say a daily dog walker, a Sunday afternoon walker or perhaps someone who only got out and walked a few times a year.”*

## **5.1 Initial Consultation Responses**

### **1. Mr Rodney Moody 22 March 2013**

*“Thank you for your letter of the 15<sup>th</sup> March refSM/PC123.  
I have used the footpath in question for over 70 years having been born in the Parish. In that time the owners have been Smith Barry, William Spreckley, Giles Clark and Tony Fisher prior to the present owner. Never once was I apprehended for walking the route in*



*question and it was a great attraction to me and others who used it because of the unusual stile at the east end known all my life as Jacob's Ladder. I have never heard of anyone else rebuked for using the path."*

## **2. Mr P Harris** 02 April 2013 Notes from telephone call

- i) Mr Harris bought Holt Manor from Mr Fisher about 2 years ago. Mr Fisher had probably owned it for about 12 years and had bought it from Giles Clarke. Prior to this the Manor had belonged to Smith Barry, a son of Colonel Forster. This period was from around 1900 to the 1960s.
- ii) Mr Fisher had employed a full time land agent who lived on the estate and looked after land related business. Mr Harris would be getting a statement from him.
- iii) A fence was erected across the field in July 2011 by Mr Harris as he had concerns about public safety and cattle attacks on footpaths.
- iv) The ROW warden for the area had put a kissing gate in the wrong place for the 2005 diversion of footpath 8 and had subsequently put a stile in the correct place by the Manor House gate.
- v) He doesn't have any memory of people walking the claimed routes but thinks they may have walked round the edges.

## **3. Mr Jonathan Nibbs** 06 April 2013

*"During the period 1955-2011, I replied to question number 5(f) on the UEF that usage was utterly variable, for the following reasons:-*

*1. Between 1955 and approx 1960, I regularly walked these routes, especially during Summer months with both my parents and my brother. At that time the lower reaches of the paths were often extremely wet, necessitating wellington boots as the land was far less well drained than it is now. I was 5 - approx 10 yrs. old*

*2. Between approx 1960 and 1969, my usage was different. During roughly that period, I and my friends "played" almost every day, "across the fields" in different ways, using all manner of different routes between recognised stiles and gates in the Holt environ, totally without let or hindrance.*

*3. Between 1969 and 1973. I was studying away from Holt, but was still using the fields sporadically during holiday times, often with my future wife, for relaxing walks to and from The Chalfields, both Little and Great, up to Black-acre and The Wraxalls both Lower and South, again exercising choice of route between access points on a whim.*

*4. Between 1973 and 1984 I lived, with my wife, away from Holt, but my parents still lived here in the village and we returned, often on a monthly basis to visit them and take pleasure in walks in similar manner as I iterate in 3. above.*

*5. In 1984 We returned to Holt to live, and have done so ever since, bringing up our two children here, walking with them and their Grandparents "across the fields" along all the footpaths available in all sorts of combinations of generational mix for all sorts of pleasure purposes.*

*6. In about 2000, we joined the informal Holt Walkers group, as keen cross-country walkers, and over the last few years it has been established that, as the longest established "local," I lead the final walk of the Summer season in and around Holt, and again, making it up as I go along, I have lead the group along the paths in Question.*

*I hope this is of assistance to you."*

## **4. Mrs Angela Nibbs** 08 April 2013

*"You requested amplification to my reply of 'variable' to question 5f on the UEF. I hope the following is useful.*

*From 1960-1965 I and a group of friends spent a lot of our free time and certainly most days of school holidays, playing in the fields of this area and using the recognised routes. 1965-69 Moved away from Holt. No use of footpaths. 1969-73 Still living away, but would return with my future husband during holidays and would use the paths for the occasional walk for pleasure. 1973-84 Still living away, but would return monthly approx to visit parents and use the paths as above. 1984- Returned to Holt to live. When our children were young used the paths frequently, often with grandparents. 2000 approx. Joined Holt Walkers. Paths in question certainly used a few times during the summer season."*

**5. Mrs Peggy Earl** c.10 April 2013

*"My family and I have walked this route regularly since 1962 – we have always kept dogs – we used this pathway on a weekly basis and even now I still walk this route as an individual and whenever I am caring for my son's dog.*

*Even though I am now a widow I still enjoy this pathway from "Jacob's Ladder" to the crossing the stream point."*

**6. Mr P J Ladd** 12 April 2013

*"I walked the fields around Holt in the 15 or so years prior to the 1950s.*

*I returned to live in Holt about 7 years ago and used the footpaths until about 2/3 years ago when problems with my back put an end to much walking. Visiting friends and grandchildren have continued to walk the fields, particularly the track to the old tree which is under discussion. Photographs of this tree were included in my last letter to you.*

*Incidentally a neighbour who walks the fields regularly told me yesterday that the old tree is being cut up as we speak."*

NB The photographs show the tree between the claimed routes 2012/07 and 2012/08.

**7. Mr Giles Clarke** 23 April 2013

*"My wife Judy and I owned the freehold of Holt Manor, Holt from 1996 – 2002 and I am the Lord of the Manor still.*

*I have been shown a copy of your letter to Mr Moyes dated 15 March 2013 ref SN/PC123 with public footpath plans attached.*

*I confirm that throughout our ownership the public used these footpaths and we made no objections since these are clearly of immensely long habitual use."*

Officers responded to Mr Clarke and enclosed a copy of the consultation plans for 2012/07 and 2012/08. Mr Clarke responded on 29 April 2013:

*"I confirm that the footpaths marked A to B on each plan are the ones to which I refer."*

**8. Mr Martin Moyes** 19 April 2013

*"I refer to your letter dated 15 March 2013.*

*I am aware that there are two applications regarding Rights of Way across the one field. I have walked both routes and have similar but not identical comments, so please forgive the repetition.*

*We moved in to Holt in August 1982 and, as country lovers and walkers, explored the footpaths around this community. However it was not until 1983 when we acquired our first pet dog, Bonnie, that we became regular walkers of the local footpaths. For a shorter walk, a favourite route was out of the village on Holt 17 and Holt 8, then along route A to B as per your map and returning via Holt 16.*

*We walked this route regularly until our last pet, Meg, died in 2005 and since then just very occasionally when the fancy took us.*

*Never – a word that I am using carefully and after some thought – did we encounter any obstruction of this route, any sign preventing or limiting its use, nor did we receive any word from the occupiers of Holt Manor suggesting that we restrict our activities in any way.*

*I note that, although the two ends of this route are exactly as per your attached map, the specific route that we took between them did vary a little to the copse roughly halfway. This lack of an absolutely exact route means that it does not show up well on aerial photographs. I would however be content with whatever route is provided between the two specified ends points as long as it is reasonably direct and does indeed cross the field rather than skirting it . . . I say this because part of the pleasure of walking this route is simply being in that lovely open space and enjoying the views of Holt and beyond – unusual in such a generally flat terrain. Walking the field boundaries is no substitute.*

*The Spreckleys occupied Holt Manor in the early 1990s and in 1993 I directed an outdoor production of Macbeth at Holt Manor – with their kind permission and support. I clearly remember Mr Spreckley encouraging me to walk to Holt Manor across the fields rather than driving.*

*Through Robert Floyd of Great Chalfield, I have been in contact with Giles Clarke – the occupier of Holt manor from the mid-1990s for some 8 or 9 years – and he will be contacting you separately to confirm the freedom he gave to walkers across the field in question.*

*There were times when there was stock in the field and it would have been unwise or wrong to walk there with a dog – but that was always my decision and I do not recollect and sign of obstruction at such times.*

*I hope this is helpful, and please contact me if anything is unclear or if I can help further in any way.”*

#### **9. Mr P Harris 14 May 2013**

*“With reference to your letter of 26<sup>th</sup> March 2013.*

*(1) We became the owner of the affected land 31<sup>st</sup> May 2011.*

*(2) The fencing was erected July 2011.*

*(3) Mr Giles Clarke till approx 13yrs ago, Mr Anthony Fisher May 31<sup>st</sup> 2011. Mr Hillier of Norbin Farm, Box, Wiltshire*

*Since we have resided at Holt Manor we have never seen people walking the routes suggested, tracks have never been established, refer to statement of Mr Philip Holmes. Prior to erection of fences people were observed going off footpath but never on a set path, when ever able people were spoken to. There is no need for these extra footpaths as*

*access is already catered for. Given the Parish Councils strong views on keeping the landscape clean, and the need if these footpaths are granted to fence them in due to cattle in the fields, the application will seriously affect the views and the farmers use of the fields. This is a vindictive application and must be seen as such. It has taken the Parish Council 15 months to decide the erected fencing has stopped them walking somewhere they should not. It is interesting to note you cannot walk footpath 16 due to it being blocked off by electric fencing yet no one complains.”*

Mr Harris also submitted 2 aerial photographs dated 1999 and 2008, an example of a cattle attack on a walker to highlight the danger to the public of using paths with cattle in them and copies of submissions from Mr P Holmes, a former estate manager and Mr Hillier, the agricultural tenant.

**10. Mr Hillier** submitted 14 May 2013 sent to Mr Harris 13 April 2013

*“I understand that there are ongoing discussions with regards to two footpaths below Jacobs Ladder which is situated at Holt Manor Bradford Road Holt.*

*This is farm land that I am a tenant and have used for livestock purposes in past and intend to do so in the future. The two footpaths in question I have never seen being used once in all the years I have farmed the land.*

*Given that this land is agriculture land in a organic conservation at present, if these proposed plans go ahead the land will become un workable in farm management terms and be detrimental to the environment in terms of not complying to the government standards for organic farmed land.*

*Finally there has never been any visual marks of use to the land in question.”*

**11. Mr Philip Holmes** submitted 14 May 2013 dated 06 April 2013

*“To whom it may concern: For approximately 10 years until 31<sup>st</sup> July 2011, I was employed as a full time estate manager by the former owner of Holt Manor. My duties included the maintenance of the property and the grounds. My wife and I lived at the Dower House at Holt Manor. Inspection of the fields and fencing was carried out on a regular basis, also mowing of the verges alongside the road. At no time do I recall any person or persons walking the 2 routes suggested, in fact if I had it was my duty to inform them that they were trespassing and must stick to the official paths. At no time was a trodden path visible during employ. The former owner did have me erect a gate for the farmer to use near to the Manor, which the public did use to create unofficial path which has a notice informing the public of such. At times people would walk away from the official paths, but never on a regular basis.”*

**5.1 Officer’s Comments: User Evidence – See Appendix A**

The evidence submitted with the application suggests that the route has been used by the public since 1940; the route does not appear to have a historical context and/or evidence of public use in earlier times and I am mindful that either the principles of dedication at common law (the principal of long term use by the public and either acceptance by the landowner by making no objection if such use is considerable or perhaps by an express dedication) or those laid out by statute in s.31 of The Highways Act 1980 need to be found to apply for the application to succeed. Whilst the

dedication of this route may have occurred at common law at some time in the past, it is recognised that such a dedication is difficult to determine and hence it is considered appropriate to apply section 31 of The Highways Act 1980.

Section 31 of The Highways Act 1980 states:

### **31. Dedication of way as highway presumed after public use of 20 years**

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –  
(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and  
(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected.*

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

*(6) An owner of land may at any time deposit with the appropriate council-  
(a) a map of the land on a scale of not less than 6 inches to 1 mile and  
(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;*

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

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

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

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

*the land (in the case of subsection (6)) is situated or, where the land is situated in the City, the Common Council.*

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

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

*(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over the land as a highway if the existence of a highway would be incompatible with those purposes.*

Section 31(1) requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

## **6.0 Consideration of all evidence**

### **6.1 Calling into question**

Section 31(2) states that the 20 years of public use is to be calculated retrospectively from the date that the public use was brought into question.

7 User evidence forms with individually annotated maps were provided to support the application. This evidence is summarised at **Appendix A**. No users record anything to challenge their use until a fence was erected across the route in 2011. Hence it is considered that the 20 year relevant period for the application of s.31(1) is from 1991 to 2011.

It is considered that it was only at this time was public use effectively challenged. An action by the landowner may be an effective challenge but case law requires that there is sufficient evidence that there was no intention on the part of the landowner to dedicate the route as a public highway (Godmanchester and Drain House of Lords ([2007] UKHL 28). Lord Hoffman at para. 33 said:

*“ It should first be noted that s.31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires ‘sufficient evidence’ that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J, in Billson’s Case [R v S of S for the Environment ex p. Billson [1999] QB374] it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience”.*

The evidence provided shows 7 members of the public used the claimed route for various lengths of time and with varying frequency between 1940 and 2011. The evidence gives that all of these used the claimed route for the entire 20 year period before the erection of the fencing (notwithstanding that Mr Moyes thought the fencing was erected in 2010) and that all had seen other people walking along the route.

All witnesses reported that their use had been without permission, secrecy or force. None of them had worked for the landowner.

## 6.2 Without permission

No witnesses claim to have sought or been given permission. The landowner between the years 1996 and 2002 was aware of the use by the public and made no objection. This tolerance of the use may not be seen as implied permission.

It is also noted that implied permission is not necessarily fatal to a claim based on use by the public that is 'as of right'. In a recent case involving a village green the question of whether implied permission would be fatal to user 'as of right' was considered by the House of Lords in *R(Beresford) v Sunderland City Council* [2004] 1 AC 889 (paras 5,6 and 7) Lord Bingham says:

*"I can see no objection in principle to the implication of a licence where the facts warrant such an implication...a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his own permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use...Authority, however, establishes that a licence to use land cannot be implied from mere inaction of the landowner with knowledge of the use to which his land is being put...In *R v Oxfordshire County Council, Ex p Sunningwell District Council* [2001] 1 AC 335 it was held by the House that the landowner's toleration of local inhabitants' user of the land in question was not inconsistent with such user having been as of right, and so did not prevent registration of the land in question as a town or village green."*

Additionally, Lord Walker of Gestinhorpe, at para 85 says:

*"The fact that the City Council and its predecessors were willing for the land to be used as an area for informal sports and games, and provided some minimal facilities (now decaying) in the form of benches and a single hard cricket pitch, cannot be regarded as overt acts communicating permission to enter. Nor could the regular cutting of the grass, which was a natural action for any responsible landowner. To treat these acts as amounting to an implied licence, permission or consent would involve a fiction...."*

Additionally Mr Moyes recalls being encouraged to walk across the fields to Holt Manor in 1993 by the then owner, Mr Spreckley. There does not appear to be any suggestion of permission but it is not clear what routes Mr Spreckley was encouraging Mr Moyes to use and little weight may be given to this evidence one way or the other.

## 6.3 Without interruption

Section 31(1) of the Highways Act 1980 specifies that the use by the public must be without interruption for the 20 year period and it is noted that the period of use covers the period February 2001 to July 2001, a period when the majority of rights of way were closed to the public during an outbreak of foot and mouth disease. Wiltshire County Council acted at that time under the powers of the Foot and Mouth Disease Order 1983 and the order permitted closure of some land regardless of the presence of rights of way. The Planning Inspectorate has issued a revised Advice Note 15 on this topic (June 2009) which concludes that 'it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the

Foot and Mouth Disease Order 1983 could be classified as an “interruption” under section 31(1) of The Highways Act 1980.

The submitted evidence, supports that the public have used the claimed route, on foot, for a full period of 20 years as of right and that the requirements of section 31(1) are satisfied subject to there being sufficient evidence that there was no intention during the period to dedicate it. Evidence of non intention to dedicate may be found as follows:

*(3) Where the owner of the land over which any such way as aforesaid passes –  
(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and  
(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected.*

No evidence of such notices has been discovered.

*(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

No evidence of such notices has been discovered.

*(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

The Highway Authority (Wiltshire County Council and latterly Wiltshire Council) has not received any such notice and no evidence of such notice being served has been adduced.

*(6) An owner of land may at any time deposit with the appropriate council-  
(a) a map of the land on a scale of not less than 6 inches to 1 mile and  
(b) a statement indicating what ways(if any) over the land he admits to having been dedicated as highways;  
And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –  
(iii) within ten years from the date of deposit  
(iv) within ten years from the date on which any previous declaration was last lodged under this section,*

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

NB The Growth and Infrastructure Act 2013 amended this section of s.31. However, the alterations post date this application and have not been included here.

Officers have searched archive deposits dating back to 1932 and no deposit, statement or statutory declaration has been made affecting the claimed route during the period 1991 to 2011.



## 6.4 Without secrecy

No users claim to have used the path in secret and the evidence of Mr Giles Clarke is clear that he was aware of the use by the public. The routes are not visible from the Manor House but may be seen from the public road just south west of the Manor House gates.

## 6.5 Without force

No users claim to have used force to access the claimed routes. None would have been necessary as access was possible at either end from either the stile known as Jacob's Ladder or path number 8.

## 6.6 The character of the way

It is a requirement of s.31(1) that the way may be any way "other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication". Examples of ways that may not be of such character include ways where public use is specifically prohibited (for example a motorway) or a discontinuous length of highway wholly unconnected with the highway network. There is however no requirement that a way must be of utility value or perhaps provide a shorter or more direct route

Lightman J in *Oxfordshire County Council v Oxford City Council* ([2004] Ch253) said that the true meaning and effect of the exception of "a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication" is that "the user must be as a right of passage over a more or less defined route and not a mere and indefinite passing over land". The exception could also apply to routes that did not connect to highways or lead to a place of popular resort.

Although users claim to have followed the same route it is also admitted that there were trees which had to be gone round, causing some variation in the route. However, the claimed route does appear to be a direct route linking path 16 with path 8.

## 6.7 Subjective belief

It is sometimes suggested that anyone using the land would have known it was private and that they were not using a public right of way and hence their use cannot be considered to have been 'as of right'.

It is a feature of public rights of way in England and Wales that they pass over land that is in private ownership; that is, that the public has a right, in law, to pass and repass over a defined route on land that is privately owned.

Neither is the state of mind of the user a consideration, all that may be considered is whether that use has gone on, without permission, without force and without secrecy. This point was addressed by Lord Hoffman in the House of Lords in the case of *Regina v Oxfordshire County Council and others ex parte Sunningwell Parish Council* [2000] 1 AC 335. In his judgement Lord Hoffman dismisses any additional requirement of subjective belief for the satisfaction of 'as of right':

*"In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all*

*the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use a footpath will use it in any way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the earlier years will have been without any very confident belief in the legal right. But that does not mean that it must be ignored. Still less can it be ignored in a case like Steed when the users believe in the existence of a right but do not know its precise metes and bounds. In coming to this conclusion, I have been greatly assisted by Mr J G Ridall's article "A False Trail" in [1997] 61 The Conveyancer and Property lawyer 199."*

## **7.0 Widths, Conditions and Limitations**

The majority of users consider the width of the path to be 2 metres. The limitations are associated with the existing rights of way and not the claimed route and no users record any on the claimed route. There are therefore no conditions or limitations associated with the route claimed.

## **8.0 Decision**

Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates.

In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

To confirm the Order, the stronger test needs to be applied; that is, essentially that contained within Test A. *Todd and Bradley v SoSEFRA* [2004] EWHC 1450 (Admin). Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

There has been no incontrovertible evidence adduced or discovered in relation to this claim and the evidence of the 7 witnesses is at least a reasonable allegation that public right subsist..

There is however credible evidence that the use by the public has been light; as an indication of this it is notable that aerial photographs do not show a worn path on this route although worn paths can be seen on other routes. Additionally the evidence given by Mr Holmes cannot be ignored. Mr Holmes was the full time estate manager from 2001 to 2011 and cannot recall any users on the route. It would be difficult to apply Test A without further testing of the evidence under cross examination.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This may only be defeated by incontrovertible evidence. Incontrovertible evidence is that contained within s.31(3)(4)(5) and (6) of the Highways Act 1980.

The Council is not aware of any incontrovertible evidence and Test B must apply.

## **9.0 Legal Considerations and Risk Assessment**

If Wiltshire Council refuses to make an order the applicant may lodge an appeal with the Secretary of State who will consider the evidence and may direct the Council to make the order. Given recent experiences of officers and the application of Norton and Bagshaw as referred to above it is considered highly likely that Wiltshire Council would be directed to make an order as there is no incontrovertible proof to defeat Test B.

Failure to progress this case to determination within a year of application may result in the applicant seeking a direction from the Secretary of State. As Wiltshire Council prioritises user based applications it is likely that the Council would be directed to make a determination.

If the order, when made and advertised receives objections which are duly made it must be forwarded to the Secretary of State for determination. Through their agent, the Planning Inspectorate (PINS), the order may be determined by way of written representations (no additional cost to the Council), a local hearing (cost £200 to £500) or a public inquiry (cost £5000 to £10000 if Wiltshire Council supports the order; around £300 if it does not).

Statute is clear as to the Council's duty in this matter and it is considered unlikely that judicial review would be sought by any party if the statute is adhered to. Costs arising from judicial review of the Council's processes or decision making can be high (in the region of £20,000 to £50,000).

## **10.0 Equality Impact**

Consideration of the Equality Act 2010 is not relevant to application of s.53 of the Wildlife and Countryside Act 1981. If the path is recorded in the definitive map and statement it must be as used and accepted by the public though any further improvements to access could be pursued by negotiation with the landowner as appropriate.

## **11.0 Other Considerations**

The route claimed by the applicant has not been available to the public since late in 2011. Officers have considered whether it would be appropriate to negotiate access while the application is being considered or the provision of a permissive route. In this case the landowner has provided an alternative route around the field edge, this is signed as a permissive route and appears to be used by the public. The landowner had also made an application for a public path order which would dedicate the new route to the public. However, this proposal produced very strong objection from local people and has now been withdrawn. The permissive route is however currently still available and offers the public a route away from grazing cattle.

It is considered that the best course of action for all parties is to resolve the issue of whether public rights subsist over the claimed route in as efficient and timely manner as possible, as provided by the statute. Determination of the two applications (2012/07 & 08) at Holt Manor would clarify where public rights subsist and would assist greatly both the public and the landowner.

**It is recommended that an Order should be made under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding the footpath as claimed to the definitive map and statement and that if no duly made objections or representations are received during the statutory period of advertisement that the order is confirmed.**

Sally Madgwick  
Rights of Way Officer

21 May 2013

Fencing called use into question. Fencing erected 2011. Relevant period: 1991 - 2011

Witness no	Name	Address	Years of Use	Route used
1	Peter N Smith	71 Ham Green, Holt, Trowbridge, BA14 6PY	1985 – 2011	Application route
2	Robert J Mizen	16 Leigh Road, Holt, Trowbridge	1980 – 2011	Application route
3	Jonathan H Nibbs	273 The Gravel, Holt, Trowbridge, BA14 6RA	1955 - fencing	Application route but occasionally differs between trees
4	Angela J Nibbs	273 The Gravel, Holt, Trowbridge, BA14 6RA	1960 – fencing	Application route
5	Rodney Moody	Huckshards, The Gravel, Holt, BA14 6RA	1940 – 2011	Application route
6	Martin G Moyes	The Old Manse, The Street, Holt, BA14 6RS	1982 – fencing – thinks 2010	Application route
7	Mrs P R Earl	Fairlane, 21A Leigh Road, Holt, Trowbridge	1960 – 2011	Application route

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	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
1	26	20	Yes, walking and exercising dogs	Walking or running	Not before 2011	Not before 2011	No	No	12 times per year	“not sure, but I would expect the owners before 2011 were aware, since the field and its public use would be visible, if not from the house, certainly from the grounds of Holt Manor.
2	31	20	Yes, walking	Walking	Stile and gate and stile at each end	No	No	No	5 or 6 times per year	“yes, because of the number of people using it”.
3	56	20	Yes, walking	Walking and running	Stile at east end, unique ladder stile at west end	No	No	No	“utterly variable”	“yes, throughout different ownerships during the last 50 years or so people have always walked this route and it is visible from parts of the manor garden.”

No	Total years	Yrs in rel. period	Other users?	Nature of own use	Gates or Stiles	Signs?	Permission ?	Challenge?	Frequency of use	Landowner aware?
4	51	20	Yes, walking	Walking	Stile at east end and ladder stile at west end	No	No	No	"variable"	"yes, it has been a well used path during the time I have walked it (50 plus years)"
5	71	20	Yes, walking	Walking	Only at field boundary	No	No	No	3 or 4 times per year	"yes, obviously by number of people that I personally knew who used the path"
6	28	19	Yes – on foot	Walking	No	No	No	No	About 10 times per year	"yes, Mr Spreckley – a previous owner – let me put on a play at Holt Manor. I remember talking with him about walking, by various routes, to rehearsals"
7	51	20	Yes – also walking	Walking	No	No	No	No	"variable"	"yes, with position of house and grounds could hardly miss being aware."

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Width of path – mean width = 2 metres

Witness no.	Width in metres
1	2
2	2
3	2 to 2.5
4	2
5	2
6	1.5
7	2

Ms Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire BA14 8JN

Our ref: CP011/0629/1450/404605.00001  
Your ref: SM/2012/07/Holt72 and 08/Holt71

04 September 2013

Dear Ms Madgwick

**Wildlife and Countryside Act 1981, Section 53**

**The Wiltshire Council Parish of Holt (Holt Path Number 71) Rights of Way Modification Order 2013/The Wiltshire Council Parish of Holt (Holt Path Number 72) Rights of Way Modification Order 2013**

I refer to your letters of 23 July 2013 to Mr Harris enclosing copies of the above Modification Orders which would have the effect of adding two new footpaths across his land at Holt Manor.

As you are aware, I have been instructed by Mr Harris and I thank you for the additional information that you have sent me subsequently.

On behalf of Mr Harris, I am writing to object formally to the two Modification Orders on the ground that, contrary to what has been asserted by the applicants, there is insufficient evidence to establish the use of the two routes by members of the public for in excess of 20 years as required by Section 31 of the Highways Act 1980.

In support of that contention, I would make the following observations:

- 1 Although the application was made in November 2012, it is clear that the relevant 20-year period runs between July 1991 and July 2011, when my client erected fences to enclose the route of the existing and permitted footpaths to ensure the safety of the general public when cattle were in the field.
- 2 During the relevant period, the land was owned until 1996 by the Spreckleys, between 1996 and 2002 by Giles Clarke, from 2002 until 2011 by Mr and Mrs Fisher and since mid 2011 by my client.
- 3 There would appear to be no evidence available from the Spreckleys, but a letter has been received from Giles Clarke, confirming that both routes were used by the general public whilst he was the owner of Holt Manor. However, his tenure only covered six years of the 20-year period.

10848990-1

Clarke Willmott LLP 1 Georges Square Bath Street Bristol BS1 6BA UK

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- 4 I attach to this letter a copy of an email which has been received from Mr Fisher confirming that, during his period of occupation, which covered nine years of the 20-year period, he was unaware of any use of the two routes by the general public. His letter further confirms that had he seen or been aware of any members of the public using either route, then they would have been asked to use the public footpaths only.
- 5 Mr Fisher's account is confirmed by Phillip Holmes, who was the Estate Manager during the time that Mr and Mrs Fisher owned Holt Manor. As he points out in his representations, which are attached as Appendix 2 to this letter, part of his job was to check the land regularly, including all fences and stiles. Had either or both of these routes been in use, as alleged by the applicants, then it would have been clear to Mr Holmes as there would have been well worn paths. Mr Holmes is quite clear that at no point did he ever see anyone walking the paths.
- 6 Mr Hillier of Norbin Farm Ltd has farmed land in this area for many years. He has had cattle in the field through which the claimed footpaths pass and therefore would have been all too well aware if there were routes across the fields which were being used regularly by members of the general public. He was also engaged by the Fishers for a number of months in the mid 2000s to construct the new walls and gate pillars on the entrance drive. This work would have given him a very good view of anyone using the claimed routes as the relevant field is very close by. Again, Mr Hillier has confirmed that he never saw anyone using the paths and never saw any sign of worn tracks which would have indicated that the claimed routes were being used frequently by members of the public.
- 7 Mr Phil Harris, the current owner of Holt Manor, has also confirmed that he has never seen people walking on either of the claimed routes. This again corroborates the information given by Mr Fisher, Mr Hillier and Mr Holmes.
- 8 A number of the applicants refer in their evidence to a Google aerial photograph of the site dated 2006 which they claim shows the route of proposed Footpath Holt 71. However, this is only a snapshot of one moment in time and it is noteworthy that this route is not clearly shown either on the 2001 or the 2008 aerial photographs appended to the officer's Decision Report dated 21 May 2013. Furthermore, none of the aerial photographs which have been submitted in support of the application or referred to in the officer's report show any route which corresponds to the claimed route of proposed Footpath Holt 72. The only route which can be clearly seen on the 2006 and 2008 photographs is a line which follows the permissive route which was provided following the diversion of footpath 8 by Mr Fisher and the installation of the gate at this point for the farmer in about 2005. This would explain why there is no sign of this route on the 2001 aerial photograph appended to the officer's report. This route has now been removed as a direct consequence of these two applications.
- 9 The only aerial photographs that have been examined at this stage all date from 2001 onwards, which covers the last 10 years of the period for which the public must claim that they have used the way as of right. To date, no examination has been undertaken of any aerial photographs for the preceding 10 years, although a 1999 aerial photograph appended to my client's initial response before the Orders were made, would suggest that neither path was in existence at that date.



- 10 As the officer's report records, neither of the claimed paths is shown on any Ordnance Survey map. Given that some of the user evidence asserts use going back to the 1940s and 1950s and that Mr Giles Clarke in his letter refers to the paths being of "immensely long habitual use" this is again surprising as, following one of its periodic resurveys of the area, Ordnance Survey would have marked any clearly well-used path.
- 11 The Wiltshire Ramblers do not appear to have responded to the consultation before the Order was made. One would have expected that, were these claimed routes regularly used by the general public as part of the network of footpaths in the area, then the Ramblers would have submitted a response in support of the application as they would have been aware of both of these routes if they existed, as claimed.
- 12 Mr Martin Moyes, in his user evidence form, refers to Mr Spreckley, who owned the land until 1996 (five years of the relevant period), encouraging him to walk to Holt Manor across the fields. However, this would have been a personal invitation and therefore would not be sufficient to establish a right for the purposes of Section 31 of the Highways Act 1980. Moreover, looking at the footpath network and the line of the claimed routes, it is clear that the obvious routes for Mr Moyes to have walked from Holt would have been along Footpaths 14 and 16 or Footpaths 17 and 18, since both these routes would have given far more direct access to Holt Manor than either of the claimed routes.

## Conclusions


Given the longstanding, frequent and heavy usage of these paths asserted by each of the user evidence forms submitted by the applicants, it is extremely surprising that those who would have been in the vicinity of the claimed routes on a frequent, if not daily, basis and who would all have been very aware of activity on the land, either because they owned the land (Mr Fisher and Mr Harris who together cover nine years of the relevant period) or because it was part of their job to be aware of what was going on (Mr Holmes, who also covers nine years of the relevant period and Mr Hillier, who has farmed in the area for many years).

Had the usage of the claimed routes been as longstanding and frequent as the user evidence forms suggest, then both routes would have been clearly identifiable on all the aerial photographs particularly given the 2m width for each claimed by the applicants. This is not the case. The absence of clearly worn tracks instead corroborates the assertions made by the landowners and those working on and in the vicinity of the field through which the claimed routes pass, that these were not routes actually enjoyed by the public as of right and without interruption for a full period of 20 years or at all.

Accordingly my client objects to the confirmation of these Orders on the basis that the tests required by Section 31 of the Highways Act 1980 have not been satisfied and requests that the two Orders

now be referred to the Secretary of State so that the evidence submitted by the applicants may be tested before an Inspector at an inquiry.

Yours sincerely



**Karen Howe**  
**Senior Associate**  
**Clarke Willmott LLP**

t: 0845 209 1260 m 07786 321 730  
f: 0845 209 2514  
e: Karen.Howe@clarkewillmott.com

**Karen Howe**

---

**From:** Phil Harris [redacted]  
**Sent:** 31 August 2013 17:14  
**To:** Karen Howe  
**Subject:** FW: Holt Manor and land

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Herewith !!

---

**From:** ANTHONY FISHER [redacted]  
**Sent:** 31 August 2013 12:50  
**To:** Phil Harris  
**Subject:** Fwd: Holt Manor and land

Sent from my iPhone

Begin forwarded message:

**From:** ANTHONY FISHER [redacted]  
**Date:** 31 August 2013 12p  
**Subject:** Holt Manor and land

To whom it may concern

We owned Holt Manor from 2002 until 2012 and we can confirm that we did not allow unknown walkers on our land unless they were following the allowed rights of way. There were times when we had to reprimand some walkers who were not following the appropriate route. Any deviation from this policy could have violated our privacy  
Anthony Fisher FCMA

Sent from my iPhone

Click [here](#) to report this email as spam.

Philip Holmes  
36 Marsden Road  
Kingsway  
Bath  
BA2 2LW

06<sup>th</sup> April 2013

**REFERENCE APPLICATION TO REGISTER 2 FOOTPATHS**

To Whom It May Concern: For approximately 10 years until 31<sup>st</sup> July 2011, I was employed as a full time estate manager by the former owner of Holt Manor. My duties included the maintenance of the property and the grounds. My Wife and I lived at the Dower House at Holt Manor. Inspection of the fields and fencing was carried out on a regular basis, also mowing of the verges alongside the road. At no time do I recall any person or persons walking the 2 routes suggested, in fact if I had it was my duty to inform them that they were trespassing and must stick to the official paths. At no time was a trodden path visible during employ. The former owner did have me erect a gate for the farmer to use near to the Manor, which the public did use to create unofficial path which has a notice informing the public of such. At times people would walk away from the official paths, but never on a regular basis.

Yours sincerely

A large, dark, irregular redacted area covering the signature of Philip Holmes.

Philip Holmes

**Phil Harris**

**From:** gill hillier-  
**Sent:** 13 April 2013 20:05  
**To:** Phil Harris  
**Subject:** Norbin farm re Holt manor

Dear Sir / Madam

I understand there are ongoing discussions with regards to two footpaths below Jacobs ladder which is situated at Holt manor Bradford Road Holt,  
This is farm land that i am a tenant and have used for livestock purposes in past and intend to do so in the future ,  
The two footpaths in question i have never seen being used once in all the years that i have farmed the land,  
Given that this land is agriculture land in a organic conversion at present ; if these proposed plans go ahead the land will become un workable in farm management terms and be detrimental to the environment in terms of not complying to the government standards for organic farmed land ,  
Finally there has never been any visual marks of use to the land in question,

Mr Hillier  
Norbin Farm ltd  
Box Wiltshire  
SN13 8JJ

Tenant of Holt Manor agriculture land.

*Norbin Farm  
Box  
Corsham  
Wiltshire  
SN13 8JJ*

*01225 866907*

13/04/2013

HOLT MANOR  
LEIGH ROAD  
HOLT  
BA14 6PR.

WILTSHIRE COUNCIL  
RIGHTS OF WAY  
COUNTY HALL  
TROWBRIDGE  
WILTSHIRE BA 14 8JN

Dear Sally Madgwick.

With reference to your letter of 26<sup>th</sup> March 2013. ( 1 ) We became the owner of the affected land 31<sup>st</sup> May 2011 . ( 2 ) The fencing was erected July 2011 . ( 3 ) Mr Giles Clarke till approx 13yrs ago , Mr Anthony Fisher May 31<sup>st</sup> 2011 . ( Mr Hillier of Norbin Farm, Box , Wiltshire . Since we have resided at Holt Manor we have never seen people walking the routes suggested , tracks have never been established , refer to statement of Mr Philip Holmes . Prior to erection of fences people were observed going of footpath but never on a set path , when ever able these people were spoken to . There is no need for these extra footpaths as access is already catered for . Given the Parish Councils strong views on keeping the landscape clean , and the need if these footpaths are granted to fence them in due to cattle in the fields , the application will seriously affect the views, ,and the farmers use of the fields . This is a vindictive application and must be seen as such. It has taken the Parish Council 15mths to decide the erected fencing has stopped them walking some where they should not . It is interesting to note you cannot walk foot path 16 due to it being blocked of by electric fencing yet no one complains .

Yours sincerely, Mr Philip Harris

[Your Name]

# NORBIN FARM LTD

Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/07/Holt72), we object for the reasons given.

Having been a local farmer for many years, my family having lived locally and farming under a contract, this and other surrounding land. People walking the suggested route has never been witnessed neither tracks observed other than cattle tracks.

Furthermore, adding to this route would, given the need for fencing in, severely compromise my ability to maximise the use of the land. The landowner has provided safe and secure routes for walkers, one following the line of the application; therefore there is no need for this or other footpaths, as access is already adequate.

In addition, my building company worked for many months on building walls and pillars on the estate approximately nine years ago and walkers were never seen using the route suggested.

Andy Hillier



Box, Corsham, Wiltshire. SN13 8JJ  
T: 01225 866907 M: 07970810516  
VAT No. 639 0468 94 Company No. 06621293  
Director: Andy Hillier Secretary: Gill Hillier

Michelle Harris-Manley  
The Dower House  
Leigh Road  
Holt  
BA14 6PR

Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/07/Holt72), we object for the reasons given.

I have lived in The Dower House for quite some time now and occasionally go for walks in and around the fields and land surrounding the suggested footpaths. I myself have never witnessed any person using said footpaths nor stumbled upon any human tracks.

Furthermore, adding to this route would, given the need for fencing in, compromise the natural beauty of the landscape which I feel is wrong. The current landowner has provided routes for walkers which are safe and secure, one of which follows the line of the application; therefore I personally see no need for any additional footpaths, as access is already beyond adequate.

Michelle Harris-Manley





# NORBIN FARM LTD

Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/08/Holt71), we object for the reasons given.

Having been a local farmer for many years, my family having lived locally and farming under a contract, this and other surrounding land. People walking the suggested route has never been witnessed neither tracks observed other than cattle tracks.

Furthermore, adding to this route would, given the need for fencing in, severely compromise my ability to maximise the use of the land. The landowner has provided safe and secure routes for walkers, one following the line of the application; therefore there is no need for this or other footpaths, as access is already adequate.

In addition, my building company worked for many months on building walls and pillars on the estate approximately nine years ago and walkers were never seen using the route suggested.

Andy Hillier



2.

Box, Corsham, Wiltshire. SN13 8JJ  
T: 01225 866907 M: 07970810516  
VAT No. 639 0468 94 Company No. 06621293  
Director: Andy Hillier Secretary: Gill Hillier

05.09.13

Dear Sally Madgwick,

Footpath order SM / 2012 / 08 / HOLT71 . Please record my objection to this order .  
Having walked this land on the official paths for ~~some~~<sup>many</sup> years with my dog , I have never  
witnessed anyone walking the route suggested . The landowner has supplied 2 secure  
routes for single people to walk , one now closed and sadly missed .

Yours sincerely,



[Your Name]

MRS. SUSAN OLIVER .

1, SPENCERS ORCHARD  
BRANFORD ON AVON

SM/2012/07/HOLT72

Simon Mount  
Holt Manor Lodge  
Leigh Road  
Holt  
BA14 6PR

Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/08/Holt71), we object for the reasons given.

Having lived at Holt Manor Lodge for some time now, and regularly walking the fields along the dedicated footpaths, I have never witnessed any person using the suggested route.

Furthermore, adding to this route would, given the need for fencing in, severely alter the natural landscape. The landowner has already provided safe and secure routes for walkers; therefore I see no need for any further footpaths to be instated.



05/09/13

Simon Mount

Michelle Harris-Manley  
The Dower House  
Leigh Road  
Holt  
BA14 6PR

Sally Madgwick  
Rights of Way Officer  
Wiltshire Council  
Bythesea Road  
Trowbridge  
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/08/Holt71), we object for the reasons given.

I have lived in The Dower House for quite some time now and occasionally go for walks in and around the fields and land surrounding the suggested footpaths. I myself have never witnessed any person using said footpaths nor stumbled upon any human tracks.

Furthermore, adding to this route would, given the need for fencing in, compromise the natural beauty of the landscape which I feel is wrong. The current landowner has provided routes for walkers which are safe and secure, one of which follows the line of the application; therefore I personally see no need for any additional footpaths, as access is already beyond adequate.

Michelle Harris-Manley



Wiltshire Council

Western Area Planning Committee

06 November 2013

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6a	13/02371/FUL	57 Damask Way, Warminster, Wiltshire, BA12 9PP	Two storey side extension, conversion of garage to domestic room	APPROVAL
6b	13/02945/FUL	Land North West of 69A, Upper South Wraxall, BA15 2SA	Change of use from agricultural to equestrian, erection of a 6 stable barn, menage and access route.	APPROVAL
6c	13/02904/FUL	17 Chalford, Westbury, Wiltshire, BA13 3RG	Alterations to existing garages to form studio workshop including dormer windows.	APPROVAL

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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	06 November 2013		
Application Number	13/02371/FUL		
Site Address	57 Damask Way, Warminster, Wiltshire, BA12 9PP		
Proposal	Two storey side extension, conversion of garage to domestic room		
Applicant	Mr and Mrs L Fullaway		
Town/Parish Council	WARMINSTER		
Electoral Division	Warminster Broadway	Unitary Member	Cllr Keith Humphries
Grid Ref	387540 144292		
Type of application	Full Planning		
Case Officer	Carla Rose		

### Reason for the application being considered by Committee

Councillor Keith Humphries has requested that the application be called to the Planning Committee for the following reasons:

- Scale of the development
- Relationship to adjoining properties
- Design
- Siting of the drains
- Dominance of the building
- Loss of light

### 1. Purpose of Report

To consider the above application and to recommend that planning permission be granted.

### 2. Report Summary

The main issues to consider are:

- design issues and impact upon the immediate area
- impact on amenity
- highway and access considerations

### 3. Site Description

57 Damask Way is detached house on an estate development and sits amongst other detached dwellings. The site is located at the end of a cul de sac and is set back from the street frontage. The site has an existing vehicular access.

### 4. Planning History

W/13/00404/FUL - Two storey side extension, conversion of garage to domestic room –  
Withdrawn 03.05.2013

## 5. The Proposal

The proposal is for the erection of a two storey side extension and the conversion of a garage to a domestic room. The extension is 4 metres in width and 5.185 metres in depth, with a ridge height 300mm below the existing ridge line. It is set back 2 metres from the front wall of the dwelling.

## 6. Planning Policy

West Wiltshire District Plan 1st Alteration 2004 – policies C31a Design; C38 Nuisance

## 7. Consultations

Wiltshire Council Highways – no objections

Warminster Town Council – object because of the siting of the drains, dominance, loss of light to neighbouring property and the accuracy of the plans

Wessex Water – No objection received. Advice on sewers provided

## 8. Publicity

The application was advertised by site notice/neighbour notification. Expiry date: 26th August 2013.

Neighbourhood Responses – 2 letters of objection have been received with the following comments from the same neighbour (summarised):

- Extension would be imposing due to location, angle, height of land and levels. It was advised that number 57 Damask Way is at a higher height than number 59 Damask Way.
- Visual balance of property interrupted
- Front elevation does not accurately show the appearance of the dwelling. It does not show the angle. Small wall to the front of the property is not shown accurately. The neighbour advised that they have not been notified about what would happen to this wall.
- Front elevation would be ugly and appear unbalanced
- First floor window is larger than ground floor window
- Extension would be the same size as a one bedroom terraced house
- Windows around corner of dwelling do not resemble existing design
- The cul de sac is a focal point
- Opaque glazing would be harmful to the design of the estate
- Overlooking of garden and conservatory from ground and first floor window as the extension would be higher than the neighbours
- Overlooking from ground floor windows
- Opaque glazing will still give a feeling of overlooking and could be changed to clear glazing at a later time
- Downstairs window will overlook garden and conservatory because the extension will be at a higher height
- A 2m high fence would need to be constructed to avoid overlooking which would be expensive.
- Loss of light to garden and conservatory in the evening and late afternoon from Spring to Autumn. Seating area would be in the shade
- Supplementary Planning Guidance states that 10m should be between extensions and gardens, but plans show 5.5m
- Loss of privacy
- Concerns regarding car parking because a three bedroom house is proposed to be changed to a five bed room house. No extra parking is proposed and there is no off street parking
- There is already congestion and this would be exacerbated.



- 2m high wall between properties does not exist.
- Small wall to front of property is not as high or wide as indicated on drawing and is owned by number 57 Damask Way and 59 Damask Way.
- Chimney not shown on all drawings.
- Nuisance from the smoke of the chimney.
- Drain problems in area
- No objections were raised regarding the garage conversion

## **9. Planning Considerations**

### **9.1 Design issues and impact upon the immediate area**

It is considered that the proposed extension would not have an adverse impact upon the character of the existing dwelling and the street scene because the proposed extension is set back from the front elevation of the dwelling with a ridge line lower than the existing. Revised plans show that the extension is no longer proposed to be at an angle, which would mean that the extension would be more in keeping with the host dwelling. Furthermore, matching materials are proposed to be used which would mean that the proposed extension would harmonise with the existing dwelling and its surroundings.

A neighbour raised concerns that the use of opaque glazing would be harmful to the design of the estate and that the first floor window would be larger than the ground floor window. It is not considered that opaque glazing would be harmful to the design of the estate because an opaque glazed window could be inserted at a later stage without the need for planning permission. The plans show the ground and first floor windows being the same size. Concerns were also raised that the visual balance of the property would be interrupted. For the reasons already discussed this is not considered to be a concern.

For the reasons discussed above it is considered that the proposal complies with policy C31a

### **9.2 impact on amenity**

Due to the orientation and location of the proposed extension it is not considered that loss of light and overshadowing should warrant a reason for refusal as it would not be any worse than the loss of light and overshadowing caused by the existing dwelling.

It is not considered that the proposed extension would be overbearing because the extension is set in approximately 1m to the neighbouring boundary and approximately 8.1m to the neighbouring dwelling and because a pitched roof is proposed.

A first floor window is proposed in the side elevation of the dwelling serving a bedroom. The plans have been annotated to say that it will be a non-openable and obscure glazed which is considered to be acceptable to ensure it does not overlook the garden of 59 Damask Way.

A first floor window is proposed in the front elevation serving a bathroom. The plans have been annotated to show that this is proposed to be obscure glazed, which would prevent overlooking of the neighbours property.

For the reasons discussed above it is considered that the proposal complies with policy C38

### **9.3 Highway and access considerations**

It is recognised that the number of bedrooms is proposed to increase and that a garage is

proposed to be converted. However, the plans show that there is space for three cars to the front of the property and therefore the Councils Highways Officer has recommended no objections. Furthermore, the garage could be converted under permitted development rights.

#### **9.4 Other**

The location of the drains was raised as a concern. If the extension is proposed to be built over any public drain it would be the applicant's responsibility to contact Wessex Water and relocate them.

A neighbour mentioned that a 2m wall does not exist between the properties and that the chimney is not shown on all plans. The plans indicate that there is a wall to the front of the property that was seen on site. No other boundary treatments are shown on the plans. Revised plans show the position of the chimney.

A neighbour advised that the small wall to front of property is not as high or wide as indicated on drawing and is owned by number 57 Damask Way and 59 Damask Way. The elevational drawings show that this wall is proposed to be set further back by approximately 0.4m. It is not reasonable to request further clarification on this because the applicant has signed certificate A to say that they own the land and because the wall is shown on the drawings.

#### **10. Conclusion**

In conclusion it is considered that there would be no harm to the character and appearance of the dwelling or the street scene and that there would be no harm to neighbour amenity. Approval is therefore recommended.

#### **RECOMMENDATION: Grant permission subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.

REASON: In the interests of visual amenity and the character and appearance of the area.

3. The first floor window in the southern elevation serving a bathroom shall be obscured glazed prior to the first occupation of the extension hereby permitted and shall be so maintained in perpetuity.

REASON: In the interests of residential amenity and privacy.

4. The development hereby permitted shall be carried out in accordance with the following approved plans: PL01 E, PL02 E, PL03 E, PL04 E, PL05 E received on 27.08.2013

REASON: For the avoidance of doubt and in the interests of proper planning.

INFORMATIVE:

The applicant is advised of the following information from Wessex Water:

Separate systems of drainage will be required to serve the proposed development. No surface water connections will be permitted to the foul sewer system. Sewers can be located within property boundaries at the rear or side of any premises in addition to the existing public sewers shown on our record plans. They will commonly be affected by development proposals and applicants should survey and plot these sewers on plans submitted for Planning or Building Regulations purposes. It will be important to undertake a full survey of the site and surrounding land to determine the local drainage arrangements and to contact our sewer protection team on 01225 526333 at an early stage if you suspect that a section 105a sewer may be affected.

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13/02371/FUL – 57 Damask Way Warminster  
Two storey side extension, conversion of garage to domestic room



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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>6 November 2013</b>		
<b>Application Number</b>	<b>13/02945/FUL</b>		
<b>Site Address</b>	<b>Land North West of 69A, Upper South Wraxall, BA15 2SA</b>		
<b>Proposal</b>	<b>Change of use from agricultural to equestrian, erection of a 6 stable barn, menage and access route.</b>		
<b>Applicant</b>	<b>Mr Martin Dennafor</b>		
<b>Town/Parish Council</b>	<b>SOUTH WRAXALL</b>		
<b>Electoral Division</b>	<b>Holt and Staverton</b>	<b>Unitary Member</b>	<b>Cllr Trevor Carbin</b>
<b>Grid Ref</b>	<b>383042 164668</b>		
<b>Type of application</b>	<b>Full Planning</b>		
<b>Case Officer</b>	<b>Jemma Boustead</b>		

### **Reason for the application being considered by Committee**

Councillor Trevor Carbin has requested to call this application in if recommended for Approval for the following reason:

- Visual impact upon the surrounding area
- Environmental or highway impact

### **1. Purpose of Report**

To consider the above application and to recommend that planning permission be granted

### **2. Report Summary**

The main issues to consider are:

- Principle
- Design issues and impact upon the immediate area – particularly the Green Belt
- Impact on amenity
- Highways and access considerations

### **3. Site Description**

The site is located outside the village policy limit of South Wraxhall and as such is located within the open countryside. The proposal also lies within the Green Belt.

### **4. Planning History**

No relevant planning history

### **5. The Proposal**

The proposal is for the change of use of land to equestrian, barn (6 stables, 2 storage rooms for tack feed and hay), ménage and access. The proposal is for a private equestrian use.

## 6. Planning Policy

West Wiltshire District Plan 1st Alteration 2004

C1 Countryside Protection

GB1 Green Belt

C31a Design

C32 Landscaping

C38 Nuisance

E10 Equestrian Uses

Wiltshire Local Transport Plan 2011-2026: Car Parking Strategy

National Planning Policy Framework (NPPF)

## 7. Consultations

South Wraxhall Parish Council – Object There is no justification for a new building in the Green Belt. There would be an increase in traffic on an unsuitable track and is liable to flood.

Highways – No objections to amended plans

Environmental Health – No adverse comments to make on the application

Wiltshire Fire & Rescue – Request £74.64 for fire services

## 8. Publicity

A site notice was erected at the site which expired on 10<sup>th</sup> October 2013.

## 9. Planning Considerations

### PRINCIPLE OF DEVELOPMENT

The site is located in the open countryside where development is strictly controlled under Policy C1 of the West Wiltshire Local Plan which states: *In order to maintain the quality and variety of the countryside, the water environment, the rural landscape and wildlife, will be protected, conserved and enhanced through the control of development and positive planning measures. Development proposals in the open countryside will not be permitted, other than those which encourage diversification of the rural economy and rural recreation, unless there is an agricultural, forestry or other overriding justification such as essential transport improvements, schemes of national importance or overriding benefit to the local economy. Acceptable mitigation measures will be implemented where appropriate.*

The site is located within the Green Belt. Part 9 of the National Planning Policy Guidance Note seeks to protect the Green Belt from unacceptable development. Paragraph 89 states that *new buildings will be unacceptable unless it is for outdoor sport, outdoor recreational facilities as long it protects the openness of the Green Belt.*

The proposed equestrian use would be considered as rural recreation under the above Policy requirements and therefore in principle is considered to be acceptable. Policy E10 of the Local Plan also supports equestrian uses and states: *Proposals for equestrian facilities and changes of use will be required to have regard to minimising their effects on the appearance of the countryside and to highway implications. All such building proposals should have special regard to siting, design materials and construction to ensure they blend in with their surroundings and do not have an adverse impact on the countryside and the natural environment including the water environment.*



The issues highlighted under Policy E10 will be looked at below.

#### DESIGN ISSUES & IMPACT UPON THE WIDER AREA

The site is located approximately 275 metres west of the village of South Wraxhall and is currently pasture land. There are mature hedgerows and trees on the existing boundary.

The proposal sees a barn which is to be built with shiplap cladding stained in light oak under a grey shingle roof. The boundary will see post and rail fence and the proposed hard standing sees impacted gravel on existing access track, however the first 5 metres will be surfaced with tarmac for highway safety reasons. No external lighting is proposed and additional landscaping is proposed to the south west of the proposed ménage and stables.

The proposed design of the stables by reason of its size and materials is considered to be appropriate to its rural setting.

It is considered that the proposed change of use, the proposed stable and ménage would have minimal impact upon the countryside which would be further reduced through the additional landscaping. The site is also located away from any other buildings and main roads and therefore only glimpses of the proposed development would be visible. This in turn would ensure that the openness of the Green Belt is maintained.

The proposed barn is located near an existing oak tree and as such an arboricultural report has been submitted as part of the application which states that tree protection fencing shall be erected before any works commence on site and is only to be removed once all works on site relating to the construction of the proposal have been removed. This is considered to be acceptable and can be conditioned as such.

The proposal is considered to comply with Policy C31a and C32 of the Local Plan and guidance contained within the NPPF.

#### IMPACT UPON AMENITY

C38 which relates to nuisance and states:

*Proposals will not be permitted which would detract from the amenities enjoyed by, or cause nuisance to neighbouring properties and uses. Consideration will be given to such issues as any loss of privacy or overshadowing, levels or types of traffic generation, the storage of hazardous materials, the generation of unpleasant emissions such as odour, fumes, smoke, soot, ash, dust or grit, the extension of existing unneighbourly uses and the creation of an untidy site. Development will not be permitted if the amenities of its occupiers would be affected adversely by the operation of existing or proposed neighbouring uses.*

Storage of materials will be within the barn and muck will be collected and stored within a muck trailer which will be collected for off-site disposal. This has been considered to be acceptable.

The site is located away from residential properties and therefore it is considered that there would be no impact upon residential amenity in terms of overshadowing, overlooking, noise or smell. No external lighting is proposed as part of the application and any future lighting would require planning permission.

The proposal is therefore considered to comply with Policy C38.

#### ACCESS AND HIGHWAYS

As the proposal is for a private equestrian use it is anticipated that the associated traffic movements will be low. The proposal will utilise an existing small track but improvements will be made as noted previously. The highways officer has made no objections to the proposed scheme.

#### OTHER

The Parish Council has made reference to the site flooding. The site is not located within a flood zone as identified by the Environment Agency.

The Fire and Rescue Service have requested a sum of money however there is not a policy within the local plan to request such monies and therefore it would be inappropriate of the Local Planning Authority to do so.

#### 10. Conclusion

The proposal is considered to comply with the relevant policies of the development plan and guidance located within the NPPF.

#### RECOMMENDATION

The proposal is recommended for Approval subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall only be used for the private stabling of horses and the storage of associated equipment and feed and shall at no time be used for any commercial purpose whatsoever, including for livery, or in connection with equestrian tuition or leisure rides.

REASON: In the interests of highway safety and to protect the openness of the Green Belt

- 3 The development hereby approved shall be carried out in accordance with the materials stated in the application form received by the Local Planning Authority on 12th August 2013.

REASON: To ensure the proposal is appropriate and to reduce its impact upon the Green Belt

- 4 The development hereby approved shall be carried out in accordance with the arboricultural method statement received by the Local Planning Authority on 12th August 2013.

REASON: To ensure the mature trees located within the Green Belt are not harmed during construction of the development

- 5 The development hereby approved shall be carried out in accordance with the Planning Statement received on 11th October 2013 by the Local Planning Authority and no horse manure or any other materials shall be burnt on site.

REASON: To ensure manure and waste from the site is stored and disposed of appropriately

- 6 The landscaping shown on the approved details of landscaping shall be carried out in the first planting and seeding season following the first use of the building or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 7 No part of the development hereby permitted shall be first brought into use until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 8 The development hereby permitted shall be carried out in accordance with the following approved plans annotated as:

Site Plan, Landscaping Plan, Proposed Access Track and Hardstanding, Stable Elevation and Floor Plans, Cross Section through Menage received on 11th October 2013.

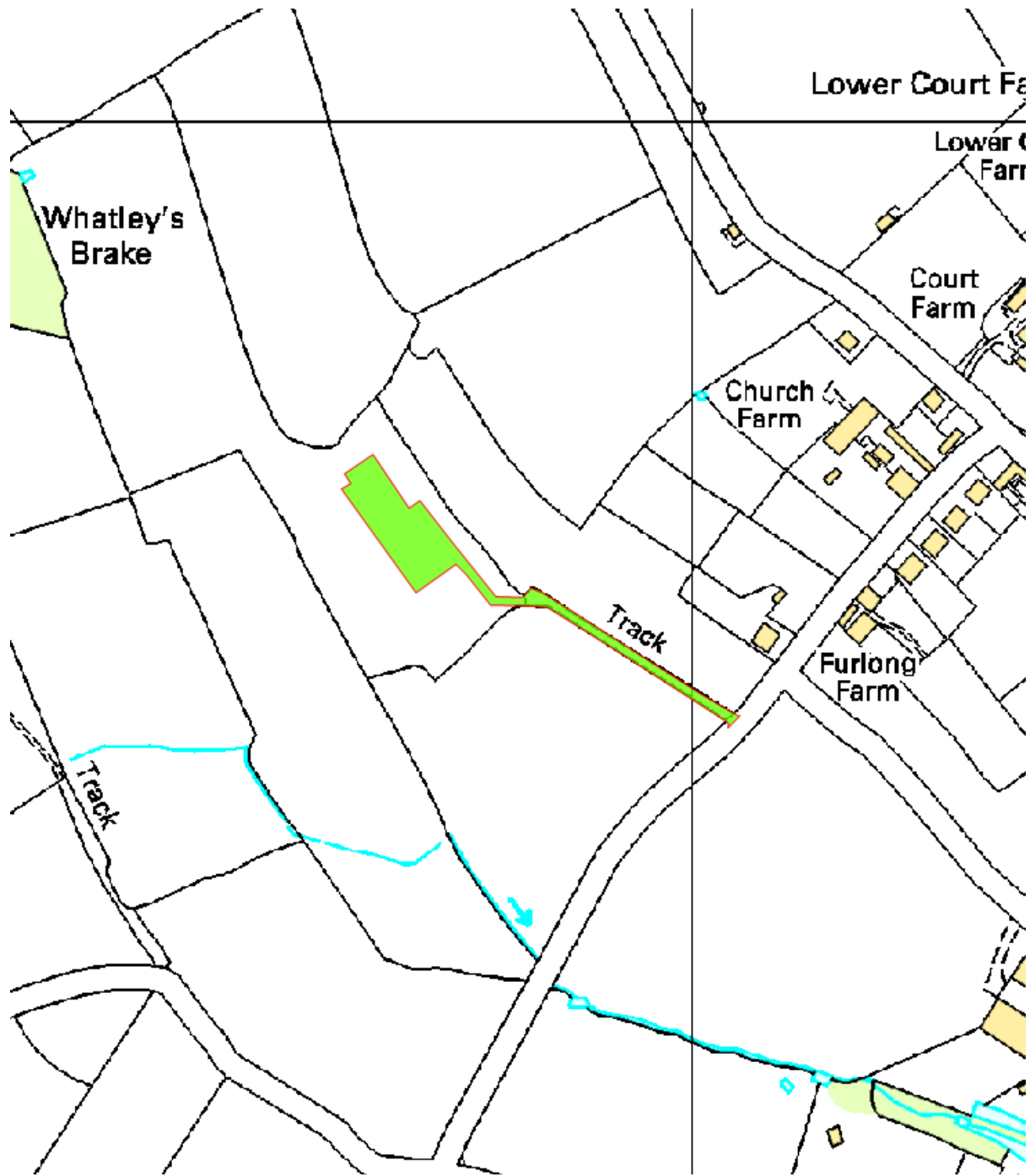
REASON: For the avoidance of doubt and in the interests of proper planning.

## **Appendices:**

### **Background Documents Used in the Preparation of this Report:**

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13/02945/FUL – Land North West of 69A Upper South Wraxall  
Change of use from agricultural to equestrian, erection of a 6 stable barn, manege and access route



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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>6 November 2013</b>		
<b>Application Number</b>	<b>13/02904/FUL</b>		
<b>Site Address</b>	<b>17 Chalford, Westbury, Wiltshire, BA13 3RG</b>		
<b>Proposal</b>	<b>Alterations to existing garages to form studio workshop including dormer windows.</b>		
<b>Applicant</b>	<b>Mr Graham Dobson</b>		
<b>Town/Parish Council</b>	<b>WESTBURY</b>		
<b>Electoral Division</b>	<b>Westbury East</b>	<b>Unitary Member</b>	<b>Cllr Gordon King</b>
<b>Grid Ref</b>	<b>386943 150232</b>		
<b>Type of application</b>	<b>Full Planning</b>		
<b>Case Officer</b>	<b>Matthew Perks</b>		

### **Reason for the application being considered by Committee :**

Cllr Gordon King has requested that this application be submitted to Committee for consideration of the scale of the development, the relationship to neighbouring properties, and where there is an inadequate description of works, no design or access statement has been provided and it is likely that development will lead to increase of traffic and residential use of building contrary to Inspectors advice.

### **1. Purpose of Report**

To consider the above application and to recommend that planning permission be granted

### **2. Report Summary**

The main issues to consider are:

- principle of development; and
- design issues and impact upon the neighbouring amenity.

### **3. Site Description**

The application site is part of the established residential curtilage of 17 Chalford, Westbury. This is a fairly substantial dwelling with an extensive rear garden.

The garage building it is proposed to convert has been built but not fully in accordance with the approved plans (W/10/00340/FUL) in that additional openings have been provided and drainage systems appear to be in place. At the time of the site visit the roof tiling had not been completed, leaving openings in positions where dormers are proposed on the plans now submitted. The footprint to the building is 13 m by 7 m. The height to eaves of is 2.5m, with a height to the ridge of 5.6 m.

To the south of the garages is the garden of the host dwelling; to the east is the extended curtilage of that property. To the west of the garage site is the only neighbour in close proximity, No. 18 Chalford. To the north there is higher land, understood to be MOD property.

Access to the site is from the A350 on an existing access drive which has a steep gradient up to the application site.

#### **4. Planning History**

04/01425/OUT - Detached dwelling house : Refusal : 17.09.2004

W/10/00340/FUL - Proposed domestic garage building : Permission : 30.04.2010

W/11/02939/FUL : Change of use from garages to dwelling : Refused : 21.12.2011

W/12/00726/FUL : Change of use from garages to dwelling : Refused : 25.06.2012 and appeal dismissed on 27.06.2013

#### **5. The Proposal**

The proposal is for alterations to the existing garage building to form a studio at ground floor level, with a store, wc and workshop to the roofspace, including dormer windows. Half of the ground floor area would be retained as a garage.

Following Town Council, neighbour and highway comments, the applicant was requested to provide additional information on the use of the spaces in the building. He advised that the ground floor is to provide garaging space for classic cars and motorbikes with room for a small maintenance area, and an open area for gym equipment and a hobby area. The glazed doors are to provide light and to open out on to the garden. The upper floor would provide an area to store a music collection and auto memorabilia, with room for seating. It would also house a hobby area for painting. The proposed dormer windows in the south elevation are proposed to provide natural light and fresh air into the two areas upstairs.

The applicant advises that the garage is for his sole use and at no time will it be used for residential accommodation nor industrial or employment use. "Nor will it be rented out. There will also be no increased vehicle use of the drive by myself or third parties." The objections received do not reflect the actual intentions. The applicant advises that conditions ensuring the use as above are wholly acceptable.

#### **6. Planning Policy**

West Wiltshire District Plan 1st Alteration (2004)

C31a Design

C38 Nuisance

National Planning Policy Framework (NPPF)

#### **7. Consultations**

WESTBURY TOWN COUNCIL

Objects to the proposal on grounds that:-



- The “Highway objection which led to a previous appeal being dismissed relates equally to this proposal and warrants the same decision as nothing has changed”;
- Traffic generation whether the building is for business or residential use; and
- Overlooking of neighbours property, affecting amenity.

#### WILTSHIRE COUNCIL HIGHWAY OFFICER

Notes the history of the site including the dismissed appeal. The Highways Officer observes that it is not clear from the application form as to whether the proposed studio will be for the private use of 17 Chalford or rented as a business premise. “If the use is as a business premise I would object on highway safety grounds due to the increase use of the sub-standard access.” However, if the studio is for sole use of 17 Chalford, it would be difficult to substantiate a refusal reason and there would be no highway objection subject to a condition preventing the conversion of the studio to habitable accommodation and to restricting the use to the applicant only.

### **8. Publicity**

The application was advertised by way of site notice and letters to neighbours.

Two letters of objection were received. The neighbour at No. 18 highlights WWDP policy on nuisance to neighbours and design (Policies C38 and C31a respectively). The neighbour is of the view that the dormers would result in an overbearing effect and unacceptable overshadowing on No. 18. And that the addition to the existing building would significantly reduce light to the living room. “Negotiations with the neighbour to fit roof lights instead of dormers have failed, presumably because the developer wants more floor space to the roof rooms.” The visual impact of the dormers would also be unacceptable. The design is not in keeping with the area, and the rendered finish would not accord with development in the surrounding area. There is also an objection insofar as potential industry that may be carried out in the garage/workshop/studio or if it is separately rented out with resultant increase in visits to the site. The increased usage of the existing sub-standard access to the A350 would be prejudicial to road safety. Finally there are questions on the precise nature of the use, what is to be stored and potential noise.

A second objector notes the history including the appeal. No Design & Access Statement has been submitted and it is not clear what precisely is proposed. The description of the current application "Alterations to existing garages to form studio workshop including dormer windows" is vague, and no or other commentary has been submitted with it to elucidate further what is proposed. “There is no indication that what is proposed is in any way to be ancillary to the existing dwelling, and from its position (at a distance from the existing dwelling) and its extended planning history, it appears that the proposal is intended to be free-standing and functionally separate (either at once or at some stage).” Whatever is proposed there is the potential for traffic generation, whether from residential or employment use. The proposal should be refused on the same grounds as the appeal dismissed on 27 June 2013.

### **9. Planning Considerations**

The NPPF requires development that is sustainable and in accordance with the policies of the development plan to be approved, unless material considerations indicate otherwise.

Whilst noting the Westbury Town Council and neighbour objections on the use of the building, the application has been submitted and a fee paid for a “Householder” planning application, by definition for works in association with a dwelling/residential use. No application is being made for a change of use class or development of a new planning unit. The proposed use to the rooms within the building would, again by definition in terms of the nature of the application, be ancillary to the residential use on the site. Design and Access statements are not required in respect of householder applications.

In this instance the proposals relate to changes to the internal spaces to the garage to provide for the studio, store, wc and workshop whilst retaining a portion of floor space for garaging.

These changes, ancillary to the residential use on the property, could take place in the absence of planning permission, under permitted development rights and also where no prohibitive condition is in place under Permission reference W/10/00340/FUL preventing such change.

The principle of the change of function of the internal space is therefore accepted.

The only element of the proposals that requires planning permission is the installation of the dormers to the roof. A key consideration therefore is whether or not the addition of the dormers to the roof would give rise to unacceptable harm to the appearance of the building and/or to neighbouring amenity.

The building already approved on site is a garage of standard materials which is set in the context of modern residential development in the immediate surrounds. In the proximity including along Warminster Road, older development of varying forms and finishes exists. There is a building with rendered finish immediately to the west of No. 18 Chalford, as well as other examples on Warminster Road.

The proposed dormer ridges are set below the ridge line to the building and are of relatively small size seen in the context of the overall width of the roof. The dormers would not face onto any street frontage and are not prominent to view in the wider public realm. No habitable rooms are proposed and the windows would be orientated to face over the private garden space belonging to the host dwelling. It is therefore considered that the dormers would be acceptable elements as additions to this building in terms of its existing setting and design, and as part of an ancillary outbuilding.

With regard to neighbouring amenity, the property to the west at No 18 Chalford is nearest neighbour to the garage building. Initial site plans were inaccurate and revisions showing the true as-built location were requested and provided. The garage sits at a slight angle relative to the boundary line. The corrected plan shows that the separation distance between the nearest rear-facing openings to the neighbouring dwelling and the garage building is at least 22m, with open garden space of approximately 14m in depth to the rear of No 18. The garage is situated a minimum of 6m beyond the rear boundary.

In noting the neighbour comments in relation to impacts on No 18, the issues of dominance and loss of light can be assessed by way of the rule of thumb guide of the 25° angle above horizontal, measured from the middle of potentially affected windows, as the maximum which can be accepted (this is not a Policy criterion, but a generally accepted approach in assessing acceptable open sky visibility). The garage is set on lower ground

than the dwelling. From the windows to the rear extremity of No 18 the angle from ground floor facing windows to the ridge of the new dormers would be less than 8 °, at a distance of a minimum of 25m. The approved ridge line to the garage as it exists is slightly higher, but still below 10° above the horizontal. The garage is located to the east of No. 18 thus not impacting in terms of affecting light from the southerly aspect either. There is a backdrop of large trees to the MOD property behind and to the north of the line of sight to the garage which have a greater overall impact in terms of open sky than the building itself.

In further considering neighbouring impact, it must be noted that there was no reason for refusal relating to amenity in the refused application W/12/00726/FUL for the conversion to a dwelling of the garage (including dormers). The reason for refusal related solely to highways, and the Inspector, in his decision dismissing the appeal, did not raise this as an issue either. It is therefore considered that the limited additional impact of the dormers does not make it reasonable to introduce new amenity issues at this point.

## **10. Conclusion**

Provided that appropriate conditions are put in place to ensure that the use of the building remains ancillary to the residential dwelling on site and also does not become a self-contained “annex”, permission is recommended.

## **RECOMMENDATION**

Permission, subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage, studio, store and workshop hereby permitted shall not be converted to habitable accommodation.

REASON: To safeguard the amenities and character of the area and in the interest of highway safety.

3. The building hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 17 Chalford, Westbury and shall not be separately let or sold.

REASON: The building is sited in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a non-residential use, in particular in relation to traffic generation at the access point onto Warminster Road.

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

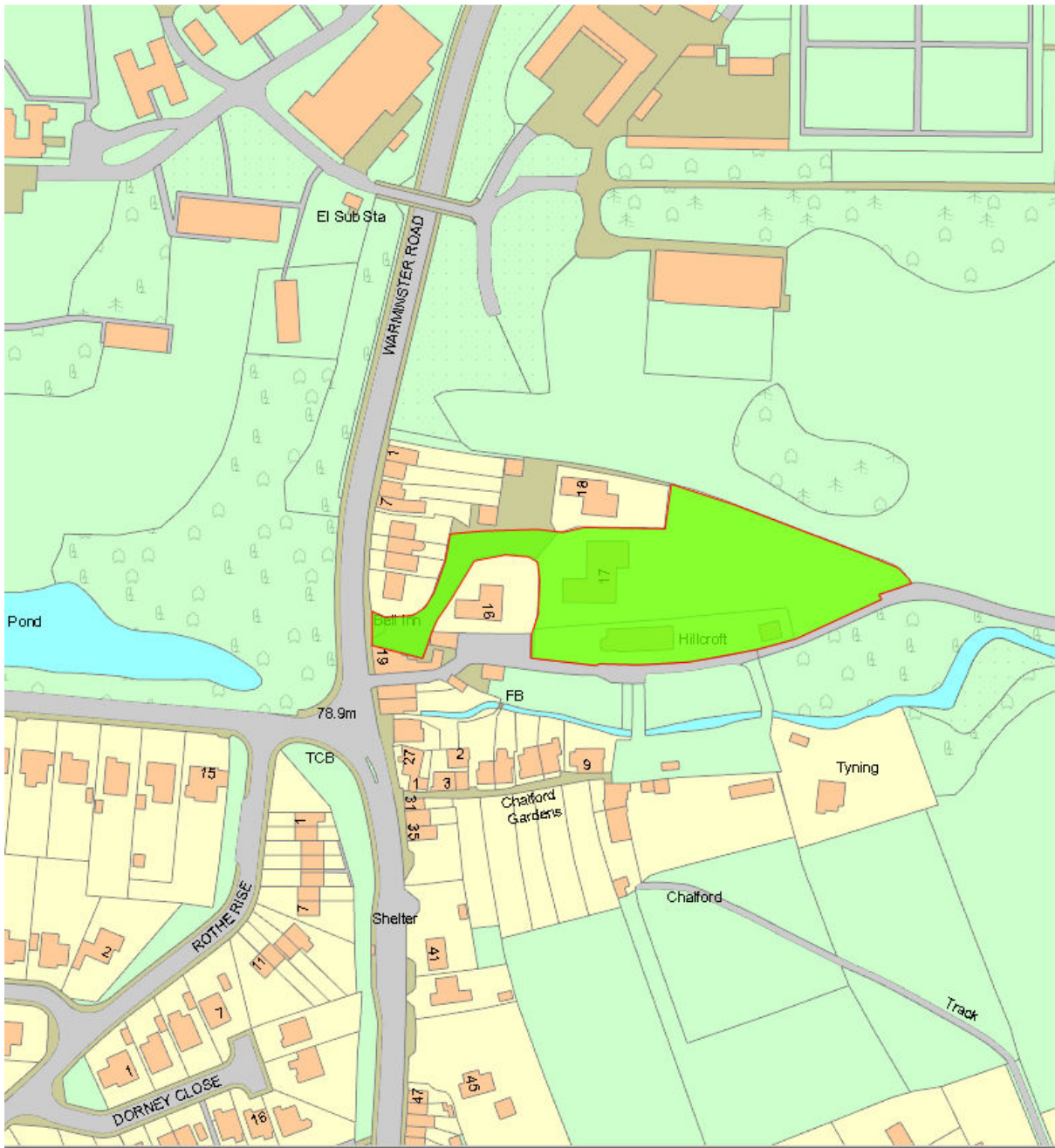
Drawing number 13712 - 1 received on the 17 October 2013;  
Drawing number 13712 - 2 received on the 9 August 2013; and  
Drawing number 13712 - 3 received on the 9 August 2013.

REASON: For the avoidance of doubt and in the interests of proper planning.

**Appendices:**

**Background Documents Used in the  
Preparation of this Report:**

13/02904/FUL – 17 Chalford, Westbury  
Alterations to existing garages to form studio workshop including dormer windows



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