

## AGENDA

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**Meeting:** Western Area Planning Committee  
**Place:** Council Chamber - County Hall, Trowbridge BA14 8JN  
**Date:** Wednesday 4 February 2015  
**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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

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### Membership:

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

### Substitutes:

Cllr Nick Blakemore	Cllr Gordon King
Cllr Rosemary Brown	Cllr Stephen Oldrieve
Cllr Terry Chivers	Cllr Jeff Osborn
Cllr Fleur de Rhé-Philippe	Cllr Graham Payne
Cllr Russell Hawker	Cllr Jerry Wickham
Cllr Keith Humphries	

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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 - 4*)

To approve and sign as a correct record the minutes of the meeting held on 14 January 2015.

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 2.50pm 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 (acting on behalf of the Corporate

Director) no later than 5pm on Wednesday 28 January 2015. 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 **Right of Way Applications**

6a **Proposed Extinguishment of a Section of West Ashton Footpath 1 (Part) and Creation of Footpath in Substitution** (*Pages 5 - 52*)

## 7 **Planning Applications**

To consider and determine the following planning applications:

7a **14/05980/FUL - Fairview House, Gypsy Lane, Warminster** (*Pages 53 - 66*)

7b **14/02929/FUL - Ravenscroft Nursing Home, 44 Hilperton Road, Trowbridge** (*Pages 67 - 82*)

7c **14/06682/FUL - 64 Wingfield Road, Trowbridge** (*Pages 83 - 98*)

7d **14/10385/VAR - Land South West of 429 Redstocks, Melksham** (*Pages 99 - 110*)

7e **14/09952/FUL - 221 Melksham Road, Holt** (*Pages 111 - 118*)

## 8 **Urgent Items**

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

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## **WESTERN AREA PLANNING COMMITTEE**

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### **DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 14 JANUARY 2015 IN THE COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.**

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr John Knight (Vice-Chair),  
Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Dennis Drewett,  
Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Roy While and  
Cllr Gordon King (Substitute)

#### **Also Present:**

Cllr Stephen Oldrieve

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#### **1 Apologies for Absence**

Apologies for absence were received from Councillor Magnus MacDonald, who was replaced, for this meeting only, by Councillor Gordon King.

#### **2 Minutes of the Previous Meeting**

The minutes of the meeting held on 17 December 2014 were presented. It was noted that the questions, including the supplement, were included in the minutes.

#### **Resolved:**

**To approve as a correct record and sign the minutes of the meeting held on 17 December 2014.**

#### **3 Chairman's Announcements**

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

#### **4 Declarations of Interest**

Cllr Andrew Davis stated that although he had considered application 6 a) as a member of the Planning Committee of Warminster Town Council, he would be considering the application with an open mind.

Cllr John Knight stated that although he had considered application 6 b) as a member of the Planning Committee of Trowbridge Town Council, he would be considering the application with an open mind.

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

No questions had been received from councillors or members of the public. It was noted that the officer's response to the supplementary questions asked by Councillor Ernie Clark had been circulated, as a supplement, appended to the minutes of the meeting held on the 17 December 2014.

Cllr Clark expressed his dissatisfaction with the response and the with time it had taken for it to be given.

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

## **6 Planning Applications**

The Committee considered the following applications:

### **7 14/05980/FUL - Fairview House, Gipsy Lane, Warminster, BA12 9LR**

The meeting's attention was drawn to the additional information, including the amendment to the proposed condition 14, circulated on the 14 January 2015.

Public participation:

Martin Somervell MBE, Andy Jelly and Rev Denis Brett spoke in objection to the application.

Mr Paul Walsh spoke in support of the application.

Cllr Sue Fraser spoke on behalf of Warminster Town Council

The Senior Planning Officer outlined the report which recommended the application for approval subject to conditions.

Members of the public were invited to speak on the application as listed above.

Issues discussed in the course of the debate included: impact on ecology and amenity, the location of the site, the access to the proposed development, the proximity of neighbouring buildings, the heights of the proposed buildings, the impact of local plan policies including those for social housing, the density of the development, the amendments made to the plans, the scale of development, and the visual impact.

At the end of the debate the meeting;

**Resolved**

**To defer consideration of the application to enable further information to be presented to the Committee, and to enable a site visit to take place.**

**8 14/02929/FUL - Ravenscroft Nursing Home, 44 Hilperton Road, Trowbridge BA14 7JQ**

Public participation:

Angela Clements and Roland Smithies spoke in objection to the application. Councillor Roger Andrews spoke on behalf of Trowbridge Town Council

The Senior Planning Officer outlined the report which recommended the application for approval subject to conditions.

Councillor Steve Oldrieve, as the local member, spoke in relation to the application.

Members of the public were invited to speak on the application as listed above.

Issues discussed in the course of the debate included: the site location, the relationship to existing neighbouring buildings, the revisions made to the original scheme, the height and density of the proposals, the impact of the proposals on privacy and sunlight, vehicular access to the site, the number of parking spaces provided, the impact on the vegetation on the site and the relevant tree preservation orders, the impact on the conservation area and that Trowbridge Town Council had confirmed that they objected to the revised plans.

At the end of the debate the meeting;

**Resolved**

**To defer consideration of the application to enable a site visit to take place.**

**9 Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.40 pm)

The Officer who has produced these minutes is Will Oulton, of Democratic Services, direct line 01225 713935, e-mail [william.oultton@wiltshire.gov.uk](mailto:william.oultton@wiltshire.gov.uk)  
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## WILTSHIRE COUNCIL

### WESTERN AREA PLANNING COMMITTEE

4 FEBRUARY 2015

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#### HIGHWAYS ACT 1981 PROPOSED EXTINGUISHMENT OF A SECTION OF WEST ASHTON FOOTPATH 1 (PART) AND CREATION OF FOOTPATH IN SUBSTITUTION

#### Purpose of Report

1. To:
  - (i) Consider and comment on the duly made objection relating to the above proposal.
  - (ii) Recommend that the Wiltshire Council West Ashton 1 (part) Extinguishment Order 2014 and the Wiltshire Council West Ashton 1 (part) Creation Order 2014 be submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that the Orders be confirmed and the objection is dealt with under the written representation scheme.

The effect of the Orders is shown on the plan attached at **Appendix A**.

#### Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network fit for purpose.

#### Background

3. On 29 July 2014 an Order was made under Section 53 of the Wildlife and Countryside Act 1981 seeking to modify the route of part of West Ashton Footpath 1. An objection by Mr Francis Morland was received to the making of the Order. The Order and the objection made to it was the subject of a report to the Western Area Planning Committee on 5 November 2014, attached at **Appendix B**. Under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under the section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the Definitive Map. This burden of proof has not been satisfied and the Committee resolved that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order is not confirmed.

4. The line of West Ashton Footpath 1 through the grounds of Manor View has been unavailable for public use for a number of years and it would appear the public have been using a route which has been provided between the properties known as Montrose and 17A Bratton Road. The owner of Manor View is trying to sell her property and the location of the footpath through the building and grounds of the property is hampering the sale. In order to regularise the situation it is now proposed to extinguish the section of Footpath 1 through Manor View and to create a path to follow the route currently available on the ground. The changes will be sought through the provisions of the Highways Act 1980 but if successful will have the same effect of moving the footpath as the Order made under the Wildlife and Countryside Act 1981 sought to do.

### **Main considerations for the Council**

5. When considering whether to confirm a Creation or Extinguishment Order, the Secretary of State or the Council must give consideration to any material provision within a rights of way improvement plan for the relevant area.
6. An initial consultation with the usual consultees was carried out on the proposal to amend the Definitive Map and Statement to change the position of the footpath from its current position on the Definitive Map to reflect the route currently used by the public and no objections or representations were made. The Parish Council supports the proposal.
7. Officers are not aware of any complaints from members of the public concerning the unavailable route of Footpath 1 through the grounds of Manor View. The existence of a clearly defined route, which has been signed as a public footpath by the Council, which provides an adequate substitute for the route through Manor View, is probably the reason why no complaints have been received.
8. On 8 December Mr Morland e-mailed the Council to state:

*"I am uncertain that it is lawful for Wiltshire Council to exercise its order-making powers to create further proposals which are clearly inconsistent with The Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014 made on 29 July 2014, which it resolved on Wednesday 5 November 2014 should be submitted to The Secretary of State for the Environment, Food and Rural Affairs for determination, and which remains extant and capable of confirmation. In any event, I consider that this 'multiple choice' approach to exercising order-making powers is highly confusing and uncertain as to the outcome (so that it is impossible for objectors adequately to assess the overall effect of what is proposed), and therefore fundamentally unsatisfactory and unacceptable.*

*The width of the 56 metres of footpath to be stopped-up by the Extinguishment Order (as not needed for public use) is undefined on the Definitive Map and Statement in 1972, was intended to be of full width (viz. Not less than 2 metres). Accordingly, its stopping-up should not take place unless/until an alternative route of the same or greater width throughout is available.*

*The Creation Order defines approximately 40 metres of the public footpath described in it as having a width of 2 metres, but the first 33 metres of its length from Bratton Road as having a width varying between 1.3 and 1.6 metres only. There is no adequate reason for restricting the width of the public footpath to be created less than 2 metres throughout.*

*I reserve the right to amend or add to these particulars of my objection to either or both of the orders in due course.”*

9. As explained in paragraph 3 above, the Western Area Planning Committee on 5 November noted there was insufficient evidence available to the Council for it to recommend in the light of Mr Morland’s objection that the Definitive Map Modification Order be confirmed by the Secretary of State. If the Order was capable of being confirmed then the Council would have supported it. The effect of the Definitive Map Modification Order on the ground is to change the Definitive Map and Statement to reflect the location of the used footpath that exists. The effect of the Extinguishment and Creation Orders, if confirmed, would result in recording the footpath which exists on the ground as a public right of way, i.e. the same aim as the Definitive Map Modification Order. All three Orders seek to achieve the same solution and the plans attached to the Orders show the same proposal so clearly which makes it difficult to understand why Mr Morland believes it is ‘impossible for objectors adequately to assess the overall effect of what is proposed’.
10. Mr Morland states that the width of the footpath is undefined on the Definitive Map and Statement but in 1972 the new route created at the second and Special Review was intended to be the full width viz not less than 2 metres. Officers have seen no evidence to substantiate this statement; there is no minimum width for a footpath and in 1972 the unit of measurement in the definitive statements was imperial, not metric. Officers are not aware of any law or council policy at that time that required the width to be not less than 2 metres. Officers have, however, found useful practical guidance on making pedestrian access user friendly in the Department of Transport’s Guide to best practice on access to pedestrian and transport infrastructure first published in December 2005. The guide draws together a range of advice, guidance and codes of practice drawn up by highway engineers and others in local authorities and the transport industries on the best ways to meet the needs of disabled people. In providing for the needs of disabled people the designs and advice often meet the needs of many other people, i.e. people travelling with young children or luggage. The guide identifies a walker needs a width of 700mm, a person using a stick 750mm, someone accompanied with a dog 1100mm and a visually impaired person being guided by another person a width of 1200mm. The width of the path which exists on the ground, which is the subject of the Creation Order, has a width of 2 metres for 40 metres of its length continuing with a width varying from 1300mm to 1600mm. Officers believe the width of the path on the ground is an adequate width for the normal footfall the paths receives and is in line with government advice.

## **Safeguarding Considerations**

11. Safeguarding considerations are not considerations that can be taken into account when the Council is considering Orders under Sections 26 and 118 of the Highways Act 1980; however, it is not considered the report's recommendation will have any detrimental effects on safeguarding.

## **Public Health Implications**

12. The implications of the recommendation on public health are not considerations that can be taken into account under Sections 26 and 118 of the Highways Act 1980; however, it is not considered the report's recommendation will have any adverse implications on public health.

## **Environmental and Climate Change Considerations**

13. It is not considered the report's proposal will have any environmental impacts.

## **Risk Assessment**

14. The recommendation of the report is to forward the Orders to the Planning Inspectorate for determination by the Secretary of State with the recommendation the Orders be confirmed. To abandon the Orders and leave the existing anomaly on the Definitive Map and Statement could be detrimental to the Council's reputation and would not be in the public interest.

## **Financial Implications**

15. If the Orders are submitted to the Secretary of State for determination the costs accrued would fall to Wiltshire Council. If the Orders were to be determined by written representations there would be little additional costs to the Council but the cost of a Hearing could be in the region of £300 and a Public Inquiry £3000-£5000.

## **Legal Implications**

16. Section 26 of the Highways Act 1980 allows the Council to make an Order to create a footpath where it appears to the authority that there is a need. Before making an Order, an authority must be satisfied that it is expedient that a way should be created, having regard to the extent to which it would add to the convenience of persons resident in the area, and the effect that the creation would have on the rights of persons interested in the land, account being taken of the Act's provision as to compensation. In making an Order under Section 26 of the Highways Act 1980 the authority should give consideration to any work that will be required to bring the way in to a condition fit for public use.
17. Section 118 of the Highways Act 1980 enables the Council to make an Order to extinguish a footpath if the Council considers it is expedient that the way should be stopped up because it is not needed for public use. Authorities must disregard any temporary circumstances, including any buildings or other structures preventing or diminishing the use of the way. Neither the Secretary of State nor a council shall confirm an Extinguishment Order as an unopposed

Order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent if any, to which it appears the path would apart from the Order be likely to be used by the public and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path. Account has to be taken of the provisions within the Act as to compensation.

### **Options Considered**

18. To:
- (i) Submit the Orders to the Secretary of State for determination with the recommendation the Orders be confirmed.
  - (ii) Abandon the Orders

### **Reason for Proposal**

19. Officers believe it is expedient to extinguish the path through Manor View and its garden as in the light of a satisfactory alternative there is no need for the public to use this route. It is necessary to confirm the concurrent Creation Order providing for a footpath in substitution for the section of footpath to be extinguished to ensure public access along West Ashton Footpath 1 is maintained.

### **Proposal**

20. That the Orders made under Sections 26 and 118 of the Highways Act 1980 be forwarded to the Secretary of State for determination, with the recommendation the objection is dealt with by written representations and the Orders are confirmed.

### **Tracy Carter**

Associate Director – Waste and Environment

Report Author:

**Barbara Burke**

Definitive Map and Highway Records Team Leader

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

None

### **Appendices:**

Appendix A – Plan of proposed footpath change

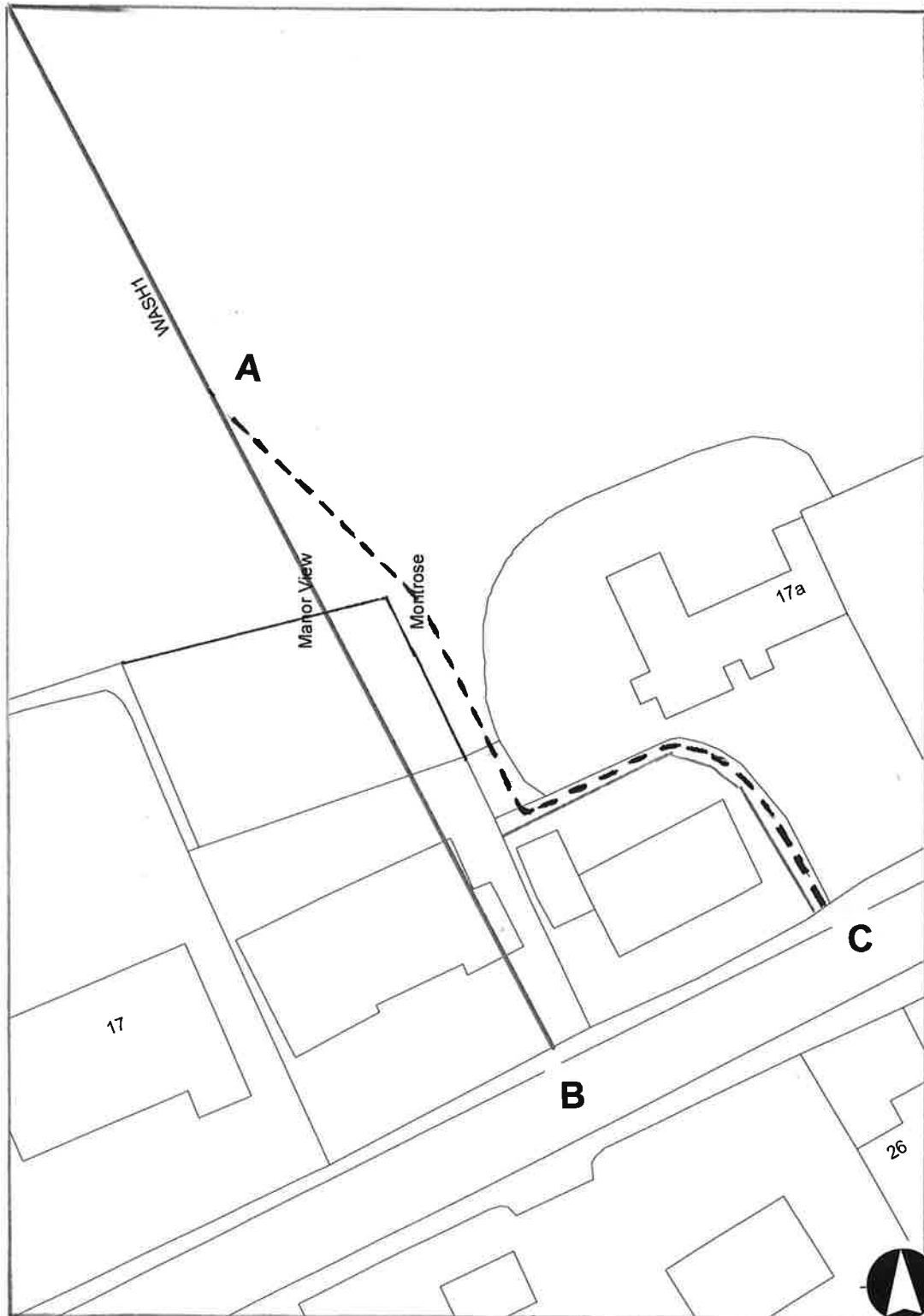
Appendix B – Report to Western Area Planning Committee 5 November 2014

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**KEY:**

**A — B Footpath to be deleted**

**A - - - C Footpath to be created**



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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

5 NOVEMBER 2014

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**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE WARMINSTER AND WESTBURY RURAL DISTRICT COUNCIL AREA DATED 1953 AS MODIFIED UNDER THE PROVISIONS OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

**The Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014**

**Purpose of Report**

1. To:
  - (i) Consider the evidence and duly made objection relating to the above Order.
  - (ii) Recommend that the Order be submitted to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it is not confirmed.

**Relevance to the Council's Business Plan**

2. Working with the local community to provide a rights of way network fit for purpose.

**Background**

3. In January 2013 the Council received an enquiry regarding the route of Footpath 1 West Ashton in association with the exchange of contracts for the sale of Manor View, Bratton Road, West Ashton. Footpath 1 was revealed as passing through Manor View and its garden. The solicitors acting for the owners of Manor View applied to the Council for an Order under Section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement. The application seeks to delete that section of Footpath 1 which runs through the property and add the route currently available for the public to use and signed by the Council as a public footpath. The alternative route runs along the south eastern and north eastern boundaries of Montrose and 17a Bratton Road, as shown on the plan attached at **Appendix A**.
4. The Council has a duty to investigate applications of this nature and to make an Order if, on the balance of probability, it is reasonably alleged that public rights exist over the claimed route and to delete a way if evidence comes to light that there is no public right of way of any description on the Definitive Map.

5. Officers considered all the evidence available to them and concluded in a Decision Report attached at **Appendix B** that the Definitive Map ought to be modified to reflect the change as shown on the plan attached at **Appendix A**.
6. On 29 July 2014 a Definitive Map Modification Order was made under Section 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 seeking to bring the changes referred to in paragraph 3 above into effect. The Order was duly advertised and an objection was received to the making of the Order from Mr Francis Morland.

### **Main considerations for the Council**

7. Wiltshire Council is the Surveying Authority for the county of Wiltshire excluding the Borough of Swindon. Surveying Authorities are responsible for the preparation and constant review of definitive maps and statements of public rights of way. Section 53(2)(b) of the Wildlife and Countryside Act 1981 states:

As regards every map and statement the Surveying Authority shall -

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

8. The events referred to in subsection 2 of the 1981 Act which are relevant to this application are:

53(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic;
- (ii) that there is no right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

9. The Definitive Map Orders: Consistency Guidelines produced by The Planning Inspectorate make the circumstances of when an error in the Definitive Map can be corrected:

*"The Definitive Map and Statement are conclusive as to the status of highways described, generally without prejudice to the possible existence of higher rights (DEFRA circular 1/09). This conclusively is not, however, a*

permanent feature: as Lord Diplock put it in *Suffolk CC v Mason* (1979) The entry on the definitive map does not necessarily remain conclusive evidence forever. It had been held, in the case of *Rubinstein v Secretary of State for the Environment* (1989), that once a right of way was shown on a definitive map, it could not be deleted, but the judgments in *Simms & Burrows* 1981 made it clear that Section 53 of the *Wildlife and Countryside Act 1981* allowed both for the addition or upgrading of rights of way on the discovery of new evidence, and for their downgrading or deletion. In his judgment Purchas LJ stated that he could see no provision in the 1981 Act specifically empowering the local authority to create a right of way by continuing to show it on the map, after proof had become available that it had never existed. Parliament's purpose, expressed in the *Wildlife and Countryside Act 1981*, he said, included the duty to produce the most reliable map and statement that could be achieved, by taking account of changes in the original status of highways or even their existence resulting from recent research or discovery of evidence. Parish/community councils usually provided the information regarding the routes to be added to the *Definitive Map and Statement* and the status of those routes. It is not uncommon for witnesses (e.g. local inhabitants, parish/community councils or user organisations) to assert that the parish/community council's imputes to the definitive map process are not reliable. It is variously argued that they did not have the proper guidance, to that they misinterpreted it, and these assertions then form the basis of the case for the modification. The Memorandum attached to Circular No 81 was distributed down to parish council/parish meeting level and the legal presumption of regularity applies. Unless claimants can demonstrate otherwise, it should be assumed that a parish/community council received this detailed guidance and complied with it. The diligence with which a parish/community council met the remit is a different question. The Council minutes can be a useful source of information on this procedure, and other local highway issues which have arisen since the relevant date. As the minutes are a public record of the perception of the parish/community council at that time, and therefore probably also represent the perception of parishioners, they may carry significant evidential weight. Other procedural guidance was issued to surveying authorities in Circulars 91/1950, 53/1952 and 58/1953.

In *Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] the judge commented that modification of the definitive map requires the discovery of evidence. An inquiry cannot simply re-examine evidence considered when the definitive map and statement was first drawn up; there must be some new evidence, which, when considered together with all other evidence available, justifies the modification.

When considering whether a right of way already shown on a definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all. See section 4 of Circular 1/09.

*Trevelyan confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of Trevelyan that; 'Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that it is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.'*

10. The Council must consider all available relevant evidence.
11. West Ashton Parish Council claimed Footpath 1 at the preparation stage of the Definitive Map and Statement. On a form dated 20 May 1952 the path was described as derelict and was drawn imprecisely by the parish council on the maps provided by Wiltshire County Council to the parish council for the survey. The parish council subsequently asked Wiltshire County Council to amend what it said was a drawing error on the Definitive Map for West Ashton Footpath 1 where it junctions with Bratton Road. An amendment was made but at the 1:25000 scale of the map used to portray the alteration it is difficult to interpret the change.
12. The current parish council supports the change to the route of the footpath as shown at **Appendix A**.
13. The photographs submitted with the application show the alternative route proposed as a well established and defined route which appears to have existed for many years. The route is signed and maintained by Wiltshire Council. There is no evidence of a path through the curtilage of Manor View.
14. A consultation on the change proposed on the Plan at **Appendix A** was undertaken with the usual statutory and non statutory consultees and no objections were raised.
15. When Mr Morland wrote to the Council on 14 August to object to the Order he did not state the grounds on which he objected to it. Officers asked Mr Morland to give the reasons for his objection, which he did on 15 September. Mr Morland believes the Order contains a significant number of errors and other shortcomings which he believes render it unfit for purpose but he has also brought to officers' attention mapping evidence which is directly relevant to the issues for the Council to consider. Mr Morland states:

'To date I have only been able to access an incomplete set of historical Ordnance Survey maps available at Trowbridge Library, which include only two at a scale of 1:2500 (Wiltshire Sheet 38.12 Second Edition dated 1901

and Ordnance Survey Sheets ST8755 and ST8855 dated 1970) and others at smaller scales dated 1890, 1949, 1960, 1975 and 1988.

The provisional conclusions I draw from these and my site visits are as follows:

A footpath running eastwards from Bratton Road at Grid Reference ST 87966 55591 in Plot 67 was shown on the 1890 and 1901 maps and on the Definitive Map of 1953.

Subsequently, its route was blocked/obstructed/encroached upon by the construction of a building in Plot 67, at or close to the present site of the large house at 19 Bratton Road known as Homefield, and a different route to Bratton Road was brought into use, which terminated at point B and which was added to the Definitive Map at its first modification in about 1968 in circumstances I am not familiar with.

Subsequently, a house known as Montrose was built a little to the south-east of that route, not shown on the 1960 map but marked on the 1970 map.

Subsequently, that house was demolished and the bungalows now known as Manor View and Montrose, were constructed in its grounds (not shown on the 1975 map but marked on the 1988 map). It does not appear that the line of the footpath was blocked/obstructed/encroached upon either of these bungalows when first constructed; but at some later date (not recently) a garage extension was added on the south-east side of Montrose across the line of the footpath, which did sever it.

Meanwhile, an alternative route through the grounds of the house known as Montrose, first shown on the 1949 map, came into use and came to be believed by some to be the recorded right of way. That followed a more easterly route than the footpath to be added A – C, but the large modern house numbered 17A and known as Springfields (built since the 1988 map) now sits over and across that route. I have seen no evidence that that route was anywhere less than two metres in width.

Until the construction of Springfields, I have seen no evidence that most of the route A – C is of any significant age or any sufficient status to justify the Modification Order that has been made. The pieces of land in question appear to be in more than one ownership at present but may have all been in a single title at an earlier date and the title deeds dividing up that title may indicate more clearly how the present situation arose.'

### **Comment on the objection**

16. Officers agree the 1953 Definitive Map showed Footpath West Ashton 1 on the route mapped by the Ordnance Survey on the County Series maps up to and including the 1926 edition. An alternative route was mapped by the Ordnance Survey, as shown on the 1949 map Mr Morland has referred to, but officers do not have any information as to when this route came into existence and who used the path. No evidence about public use has been submitted to the Council regarding this route. The Council only has the map produced at the Second and Special Review of the Definitive Map in 1972 resulting from

the 1968 parish council request to amend the route which it can rely upon. As Mr Morland points out, the route shown on the Second and Special Review map could have been available for public use until the line of the path was obstructed by the construction of the garage at Manor View which occurred after 1972. Looking at the Consistency Guidelines produced by the Planning Inspectorate outlined in paragraph 9 above which need to be applied in considering deleting a right of way from the Definitive Map, there is not sufficient evidence to prove that on a balance of probabilities the section of Footpath West Ashton 1 at Manor View ought to be deleted.

17. Mr Morland points out that he has not seen any evidence of use as a public footpath of the route, shown A – C on the plan at **Appendix A**, until the construction of Springfields 17A Bratton Road and this property has been built since 1988. Officers have no evidence of use of this route before Springfields was built, and no evidence was provided with the application, therefore it is not possible for the Council to conclude public rights exist over the claimed route.
18. In 'A Guide to definitive maps and changes to public rights of way' produced by Natural England the legal considerations to be taken into account in matters relating to definitive map modification orders are made clear. The guide, which is targeted at members of the public, states:

*"Definitive map modification orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. So also is the need for public access, locally, if the order alleges that public rights do not exist.*

**Evidence is the key**

*The definitive map is a legal recognition of existing public rights to walk, ride and use vehicles. As such, any proposal to modify it by means of a definitive map modification order to add a right of way has to be judged by the legal test: 'Do the rights set out in the order already exist?.' If they do, then the map must be modified, regardless of any effect on anyone's property interests, or whether or not the routes physically exist at the present time on the ground. Similarly, if the evidence in support of the order proves to be sufficient, and the test is not satisfied, then the map remains as it is, however desirable it may seem for the public to have those additional rights.*

*Evidence is also the key where the proposal is to remove some or all of the rights recorded on a way already shown on the map. In this case it must demonstrate clearly that a right of way, of that status, did not exist when it was first shown on the definitive map, and that an error was made."*

**Safeguarding Considerations**

19. Safeguarding considerations are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981. However, it is not considered a refusal to make the Order applied for will result in any detrimental effects upon safeguarding.

### **Public Health Implications**

20. The implications of the proposal on public health are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981; however, it is not considered the proposed change will have any adverse implications on public health.

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

21. The Environmental impact of the recommendation is not a consideration that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981; however, it is not considered the proposed change will have any environmental impacts.

### **Risk Assessment**

22. Issues relating to health and safety are not considerations that can be taken into account when the Council is carrying out its statutory duty to keep the definitive map and statement under continuous review under Section 53 of the Wildlife and Countryside Act 1981. It is not considered there is a reputational risk to the Council carrying out this statutory duty correctly.

### **Financial Implications**

23. The continual review of the definitive map and statement are statutory processes for which financial provision has been made.
24. When an Order is made and advertised and no objections are forthcoming, the Council will not incur any further costs beyond advertising the confirmation of the Order. If the Order attracts objections or representations that are not withdrawn, it must be forwarded to the Secretary of State for determination. It may be determined by written representations which would be no significant additional cost to the Council, a local Hearing with additional costs to the Council in the region of £300, or a Public Inquiry, with additional costs in the region of £5,000. The financial provision referred to in paragraph 23 above would cover these costs.

### **Legal Implications**

25. Wiltshire Council has a legal duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly.

### **Options Considered**

26. That:
- (i) The confirmation of the Order is supported as made.
  - (ii) The confirmation of the Order is supported with modifications.

- (iii) The confirmation of the Order is objected to.

### **Reasons for Recommendation**

27. Under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map. This burden of proof has not been satisfied.

### **Recommendation**

28. That the Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014 is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order is not confirmed.

**Tracy Carter**  
**Associate Director, Waste and Environment**

Report Author:  
**Barbara Burke**  
Definitive Map and Highway Records Team Leader

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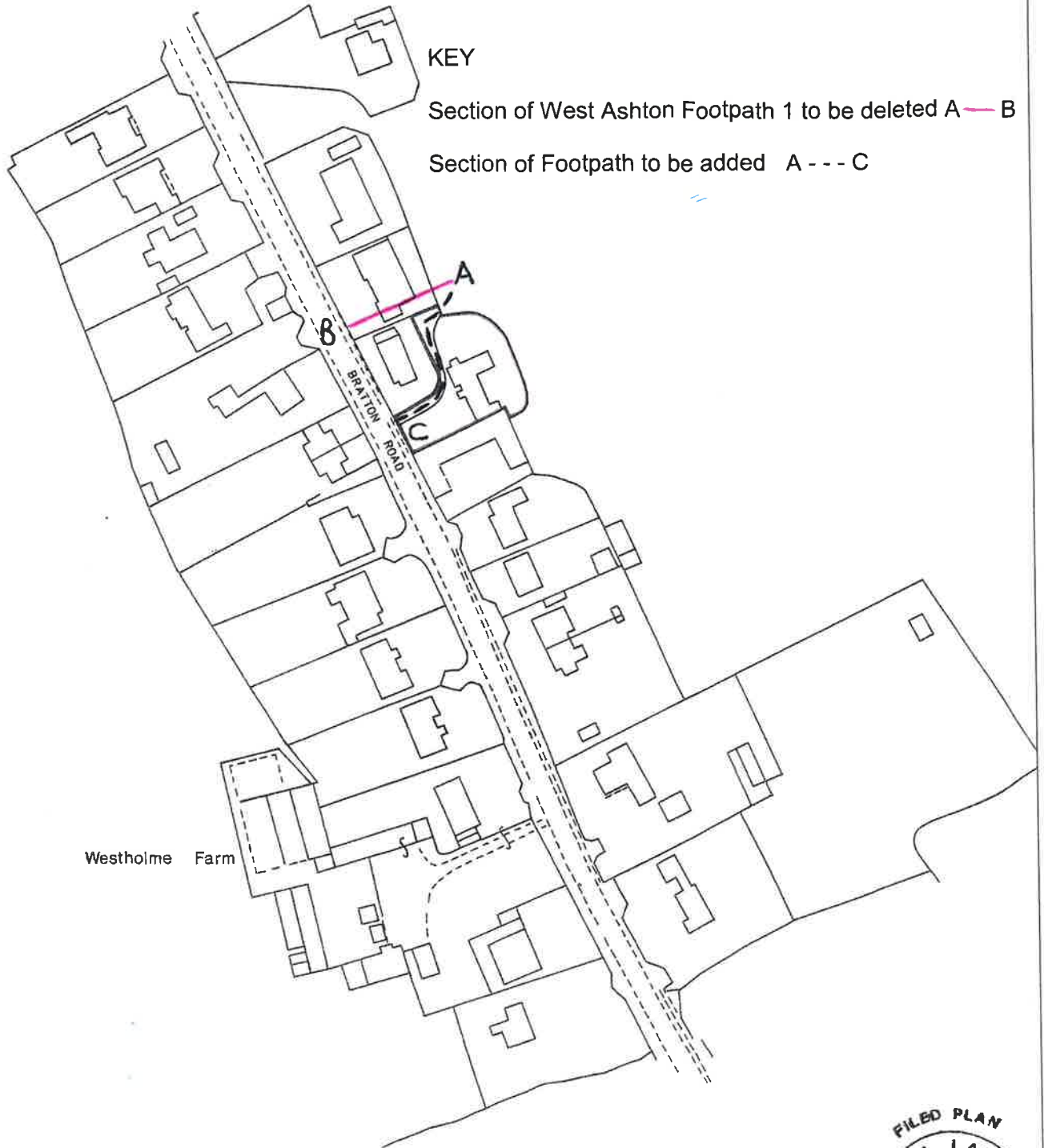
### **The following unpublished documents have been relied on in the preparation of this Report:**

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

### **Appendices:**

Appendix A - Order Plan  
Appendix B - Decision Report





**DECISION REPORT**

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

**Report seeking approval to correct a drawing mistake on the Definitive Map relating to a short section of footpath 1 West Ashton**

**Purpose of the report**

1. To seek approval for the making of an order under section 53 of the Wildlife and Countryside Act 1981 to correct a drawing error on the definitive map regarding the position of a short section of footpath 1 West Ashton as shown on the plan attached at Appendix 1 to this report.

**Background**

2. In January 2013 the council received an enquiry regarding the route of footpath 1 West Ashton in association with the exchange of Contracts for the sale of Manor View, Bratton Road, West Ashton. Footpath 1 was revealed as passing through Manor View and its garden.
3. Solicitors on behalf of the owners of Manor View applied to the council for an order under section 53 of the Wildlife and Countryside Act 1981 to delete that section of footpath 1 which runs through the property and add the route currently available for the public to use and signed by the council as a public footpath. The alternative route runs along the south eastern and north eastern boundaries of Montrose and 17a Bratton Road as shown on Appendix 1 to this report.
4. A statement from Mrs Morris, the owner of Manor View was submitted in support of the application, attached at Appendix 2 to this report. In her statement Mrs Morris explained a footpath currently exists on the ground between the properties Montrose and 17a Bratton Road. The path is signed and maintained by Wiltshire Council and this has been the case in her experience since 2006. Photographs of the alternative path are attached to the statement. Also attached to the statement are the title documents and plans for the property Montrose and 17a Bratton Road lodged with the Land Registry. These documents clearly show the strip of land from Bratton road to the field at the rear over which the footpath runs. The title documentation makes clear reference to the fact that 17a Bratton Road is 'subject to....any private or public rights of way affecting the said property'. The reference stems back to 1979 and therefore one can be certain that the footpath was in its present position between Montrose and 17a Bratton Road at that time.

5. The Warminster and Westbury Rural District Council area definitive map showed footpath 1 leaving the West Ashton to Bratton Road approximately 100 metres south of the vicarage. At the Second and Special review of the definitive map in 1972 on the application of the parish council the route of footpath 1 was amended to exist from the West Ashton to Bratton Road in the vicinity of Manor View, 17a Bratton Road and Montrose. Due to the small scale of the Second and Special Review map at two and a half inches to the mile it is not possible to see in detail the change at this location. A property in the plot containing 17A Bratton Road appears to have been built by the late 1940s or 50s and the plot within which Montrose has been constructed was a separate enclosure at that time with no footpath shown by the Ordnance Survey as passing through it. No footpath has ever been shown on an Ordnance Survey map passing through the plot Manor View is built upon. It would seem on the lack of evidence to the contrary that the change proposed at the Second and Special review in 1972 sought to reflect the line existing on the ground between Montrose and 17A Bratton Road and recorded by the Land Registry.

### **Legal considerations**

6. Wiltshire Council is now the Surveying Authority for the county of Wiltshire excluding the Borough of Swindon. Surveying Authorities are responsible for the preparation and constant review of definitive maps and statements of public rights of way. Section 53(2)(b) of the Wildlife and Countryside Act 1981 states-

As regards every map and statement the Surveying Authority shall-

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

7. The events referred to in subsection 2 above which are relevant to this case are:

53(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over

which the right subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic;

- (ii) that there is no right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

8. The Definitive Map Orders: Consistency Guidelines produced by The Planning Inspectorate make the circumstances of when an error in the definitive map can be corrected:

‘The Definitive Map and Statement are conclusive as to the status of highways described, generally without prejudice to the possible existence of higher rights (DEFRA circular 1/09). This conclusively is not, however, a permanent feature: as Lord Diplock put it in *Suffolk CC v Mason* (1979) The entry on the definitive map does not necessarily remain conclusive evidence forever. It had been held, in the case of *Rubinstein v Secretary of State for the Environment* (1989), that once a right of way was shown on a definitive map, it could not be deleted, but the judgments in *Simms & Burrows* 1981 made it clear that section 53 of the Wildlife and Countryside Act 1981 allowed both for the addition or upgrading of rights of way on the discovery of new evidence, and for their downgrading or deletion. In his judgment Purchas LJ stated that he could see no provision in the 1981 Act specifically empowering the local authority to create a right of way by continuing to show it on the map, after proof had become available that it had never existed. Parliament’s purpose, expressed in the Wildlife and Countryside Act 1981, he said, included the duty to produce the most reliable map and statement that could be achieved, by taking account of changes in the original status of highways or even their existence resulting from recent research or discovery of evidence.

Parish/community councils usually provided the information regarding the routes to be added to the Definitive Map and Statement and the status of those routes. It is not uncommon for witnesses (e.g. local inhabitants, parish/community councils or user organisations) to assert that the parish/community council’s imputes to the definitive map process are not reliable. It is variously argued that they did not have the proper guidance, to that they misinterpreted it, and these assertions then form the basis of the case for the modification. The Memorandum attached to Circular No 81 was distributed down to parish council/parish meeting level and the legal presumption of regularity applies. Unless claimants can demonstrate otherwise, it should be assumed that a parish/community council received this detailed guidance and complied with it. The diligence with which a parish/community council met the remit is a different question. The Council minutes can be a useful source of information on this procedure, and other local highway issues which have arisen since the relevant date. As the minutes are a public record of the perception of the parish/community council at that time, and therefore probably also represent the perception of

parishioners, they may carry significant evidential weight. Other procedural guidance was issued to surveying authorities in Circulars 91/1950,53/1952 and 58/1953.

In *Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] the judge commented that modification of the definitive map requires the discovery of evidence. An inquiry cannot simply re-examine evidence considered when the definitive map and statement was first drawn up; there must be some new evidence, which, when considered together with all other evidence available, justifies the modification.

When considering whether a right of way already shown on a definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all. See section 4 of Circular 1/09.

Trevelyan confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of *Trevelyan* that;

‘Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that it is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.’

9. The Council must consider all available relevant evidence.

### **Evidence considered by the council in support of modifying the definitive map**

10. West Ashton Parish Council claimed footpath 1 at the preparation stage of the definitive map and statement. On a form dated 20<sup>th</sup> May 1952 the path was described as derelict and was drawn imprecisely by the parish council on the maps provided to the parish council for the survey. The parish council subsequently asked Wiltshire County Council which was the surveying authority in 1972 to amend what it said was a drawing error on the definitive map for West Ashton footpath 1 at the location which is the subject of this report. The parish council support the change to the route of the footpath as shown at Appendix 1 to this report.
11. The photographs submitted with the application show the alternative route proposed as a well established defined route of some antiquity obviously signed and maintained by Wiltshire Council. There is no evidence of a path through the curtilage of Manor View.
12. A consultation on the change proposed on the Plan at Appendix 1 was undertaken with the usual statutory and non statutory consultees and no objections were raised.

### **Safeguarding Considerations**

13. Safeguarding considerations are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981.

### **Public Health Implications**

14. The implications of the proposal on public health are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981, however it is not considered the proposed change will have any adverse implications on public health.

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

15. The Environmental impact of the recommendation is not a consideration that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981, however it is not considered the proposed change will have any environmental impacts.

### **Risk Assessment**

16. Issues relating to health and safety are not considerations that can be taken into account when the council is carrying out its statutory duty to keep the definitive map and statement under continuous review under section 53 of the Wildlife and Countryside Act 1981.

17. Wiltshire Council has a duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly. Now evidence has been brought to the council's attention that there is an error in the definitive map which ought to be investigated it would be unreasonable for the council not to seek to address this fact. If the council fails to pursue this duty in this case it is liable to complaints being submitted through the council's complaints procedure potentially leading to a complaint to the Ombudsman. Ultimately a request for judicial review could be made.

### **Financial Implications**

18. The continual review of the definitive map and statement are statutory processes for which financial provision has been made.
19. If an order is made and advertised and no objections are forthcoming, the council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections or representations that are not withdrawn, it must be forwarded to the Secretary of State for determination. It may be determined by written representations which would be no significant additional cost to the council, a local Hearing with additional costs to the council in the region of £300, or a Public Inquiry, with additional costs in the region of £5000. The financial provision referred to in paragraph 18 above would cover these costs. There are no indications that any objections or representations will be received.

### **Decision**

20. The judgement given by the Court of Appeal in R v Secretary of State for the Environment ex parte Burrows and Simms (1991) 2 QB 354 held, in effect that if evidence comes to light to show that a mistake had been made in drawing up the definitive map, such a mistake can be corrected in either of the three ways envisaged in Section 53(3)(c) of the Wildlife and Countryside Act 1981.
21. Under Section 53(3)(c)(i) the Surveying Authority is not required to prove 'beyond all reasonable doubt' that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not, that the rights exist. An Order may be made under this section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the definitive map.
22. From the records the council holds it would appear an error was made at the preparation stage of the definitive map in 1953. An attempt was made to correct the error in 1972 however to provide clarity of the revised route required a plan to a larger scale than that used for the purpose at Second and

Special review map. This lack of clarity in the council's records is adversely affecting the owner of Manor View and their ability to sell their property.

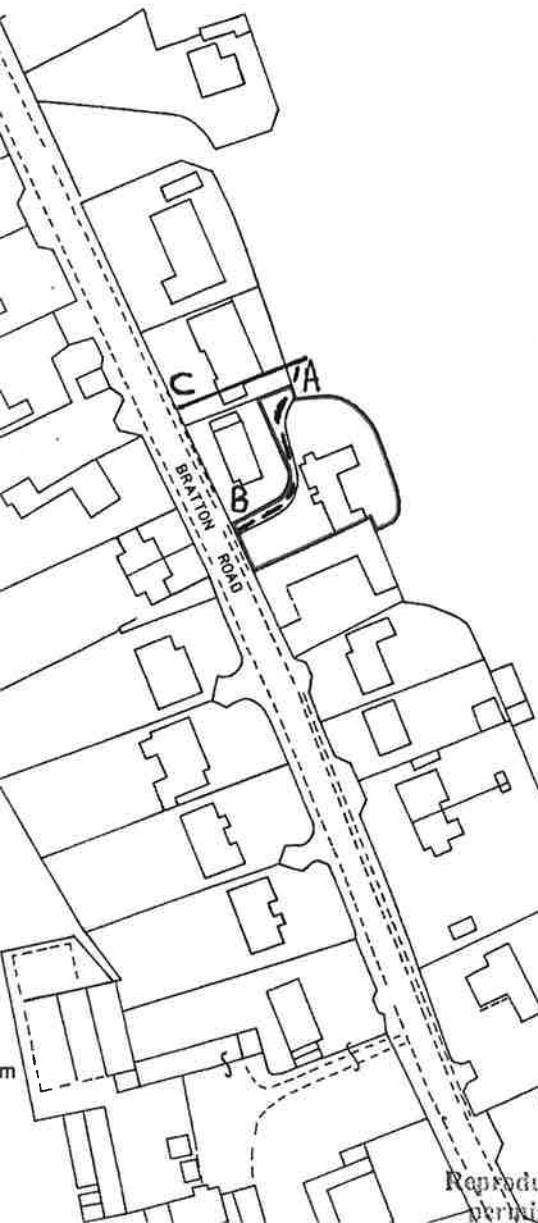
23. No evidence has been discovered by council officers to confirm that West Ashton footpath 1 as currently shown on the definitive map through the grounds of Manor View is correct. Taking all the evidence before the council into consideration relating to West Ashton footpath 1, officers believe that an order ought to be made under section 53 of the Wildlife and Countryside Act 1981 to amend the definitive map and statement as shown on the plan at Appendix 1 to this report.

Barbara Burke

Definitive Map and Highway Records Team Leader



T ASHTON FOOTPATH 1



KEY A—C Path to be deleted  
A---B Path to be added

**Application for Modification Order of Definitive Map for Wiltshire  
(Wildlife and Countryside Act 1981)**

**WITNESS STATEMENT**

-of-

**KAREN JULIET MORRIS**

1. I, Karen Juliet Morris of Manor View, Bratton Road, West Ashton, Trowbridge, Wiltshire, BA14 6AZ make this statement in support of the application I bring for a Definitive Map Modification Order in respect of the footpath known as "West Ashton 1" (or "WASH1").
2. I purchased my home, Manor View, aforesaid with my then husband, Richard Hall in April 2006. I was not familiar with the property until we viewed it in the run up to buying the property.
3. At the time of our purchase we instructed solicitors to act for us in respect of the transaction. Our solicitor, Richard Coates of Forrester & Forrester, now Forrester Sylvester Mackett, instructed a search agent to undertake a local search against the property. One of the questions in the local search was:

"Is any public path, bridleway or road used as a public path or byway which abuts on, or crosses the property shown in a Definitive Map or revised Definitive Map prepared under Part IV of the National Parks and Access to the Countryside Act 1949 or Part III of the Wildlife and Countryside Act 1981? If so, please mark its appropriate route on the attached plan."

The answer to such question was:

"Yes – Definitive Footpath No 1 shown coloured pink on the attached plan."

At page 1 of the Exhibit "KJM1" hereto is a copy of such plan. (Please note that the handwritten letters superimposed thereon relate to paragraph 4 below). This accorded with my actual knowledge of the footpath.

4. At pages 2 to 7 of the Exhibit "KJM1", are a series of photographs taken by my solicitor in September 2013. The approximate position from where each photograph was taken is marked on the plan at page 1 of "KJM1", as follows:

- a page 2
- b page 3
- c page 4
- d page 5
- e page 6
- f page 7

Such footpath has not changed to any material extent since 2006 when I first became acquainted with it.

5. The entrance to the footpath shown in photographs appearing on pages 2 and 3 appears to be quite old. It has been constructed in quite a formal way, although I do not know who was responsible for its construction. The finger post at the start of the footpath is an official one, I suspect having been erected at some point in the past (the long ago past by the look of it) by the local authority. It is certainly the case that over the years I have been aware of Council workers inspecting and maintaining the footpath.

6. At pages 8 to 12 of "KJM1" are title documents and plans obtained from the Land Registry in respect of the properties neighbouring mine. Firstly, Montrose owned by Mr and Mrs Bradley and secondly, 17a Bratton Road, owned by Mr and Mrs Metcalfe. I supply these documents as they clearly show the strip of land from Bratton Road to the field at the rear, over which runs the footpath. This "footpath land" is in fact owned by Mr and Mrs Metcalfe and their title documentation makes clear reference to the fact that their property is, "subject to .... any private or public rights of way affecting the said property". That reference stems back to 1979 and therefore one can be certain that the footpath was like it is now at that time. As will be seen from the photographs at pages 4 to 7 of "KJM1", the footpath is enclosed on both sides. Although Mr and Mrs Metcalfe own the footpath land, it is separated from their garden, no doubt to give them the privacy they would naturally want and expect.

7. I understand that the provenance of the Land Registry plans is from the Ordnance Survey. I do not have the survey dates of the plans, but from the notation thereon, the Ordnance Survey plans were prepared before 1995.

8. In late 2012/early 2013, I tried to sell my home. The solicitors acting for the prospective purchaser obtained a local search in respect of my property and discovered that the Definitive Map shows the line of the footpath not to be where it actually is, but in fact running through my property and indeed right through my garage. At page 13 of "KJM1" is a copy of the plan being the search result. This caused my prospective purchasers to withdraw and subsequently I have instructed my solicitors to ascertain the correct position and establish liability, for it has been discovered that the local search obtained when I bought my home was prepared negligently. The search agency did not inspect the Definitive Map, something they should have done.
9. The footpath WASH1, as depicted on page 13 of "KJM1" is shown on the Definitive Map as running through my property. My solicitor has now made a personal inspection of the Definitive Map and a photograph of the relevant part of the Definitive Map is at page 14 of "KJM1". The footpath is shown as being straight, not doglegged as it actually is. It is possibly the case that my home, Manor View, Montrose and 17a Bratton Road were not built at the time the plan was originally drawn. I do not know, but I guess that Manor View, Montrose and 17a Bratton Road were all built after the Second World War.
10. A working copy of the Definitive Map (upon which one cannot rely but which shows modern landscape) and which is at page 15 of "KJM1", shows the footpath cutting through my property and not taking the dogleg course between Montrose and 17a Bratton Road. To be absolutely clear, no footpath has ever actually run through my home.
11. I ask for the Definitive Map to be adjusted to reflect the current and longstanding course of the footpath WASH1. At present, the line of the footpath is a serious blight on my home.
12. Whether the footpath WASH1 was every straight, as shown in the Definitive Map, or was always doglegged, is probably unascertainable. I understand that the Definitive Map was originally drawn incorrectly in 1952 as the start of the footpath from Bratton Road was changed when there was a revision to the Definitive Map in 1972. I suggest that this "correction" was itself wrong.
13. During the course of investigations, my solicitor has obtained plans from the files relating to planning applications which have been submitted over the years in respect of my neighbouring properties. At page 16 of "KJM1" is an Ordnance Survey plan, apparently

from 1947. It clearly shows the footpath in question taking a line around the back of Montrose in a very similar fashion to the current route. At page 17 of "KJM1" is an architect's plan for Montrose dating from 1996. Again, this shows the start of the footpath at Bratton Road, on the other side of Montrose.

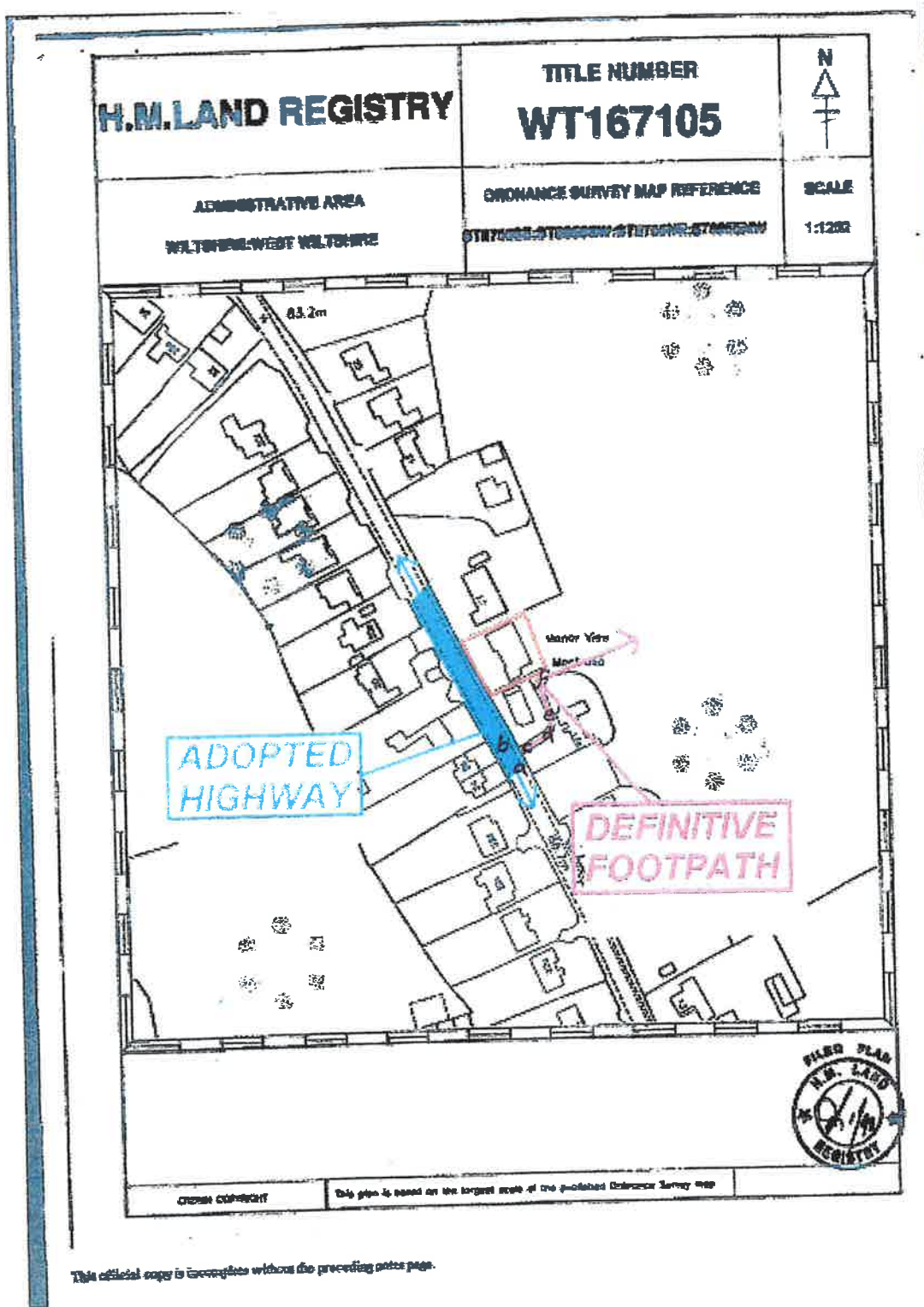
I believe that the facts stated in this witness statement are true.

Signed ..... *KJ Morris* .....  
**Karen Juliet Morris**

Dated ..... *4/12/13* .....

**Application for Modification Order of Definitive Map for Wiltshire  
(Wildlife and Countryside Act 1981)**

# **EXHIBIT “KJM1”**



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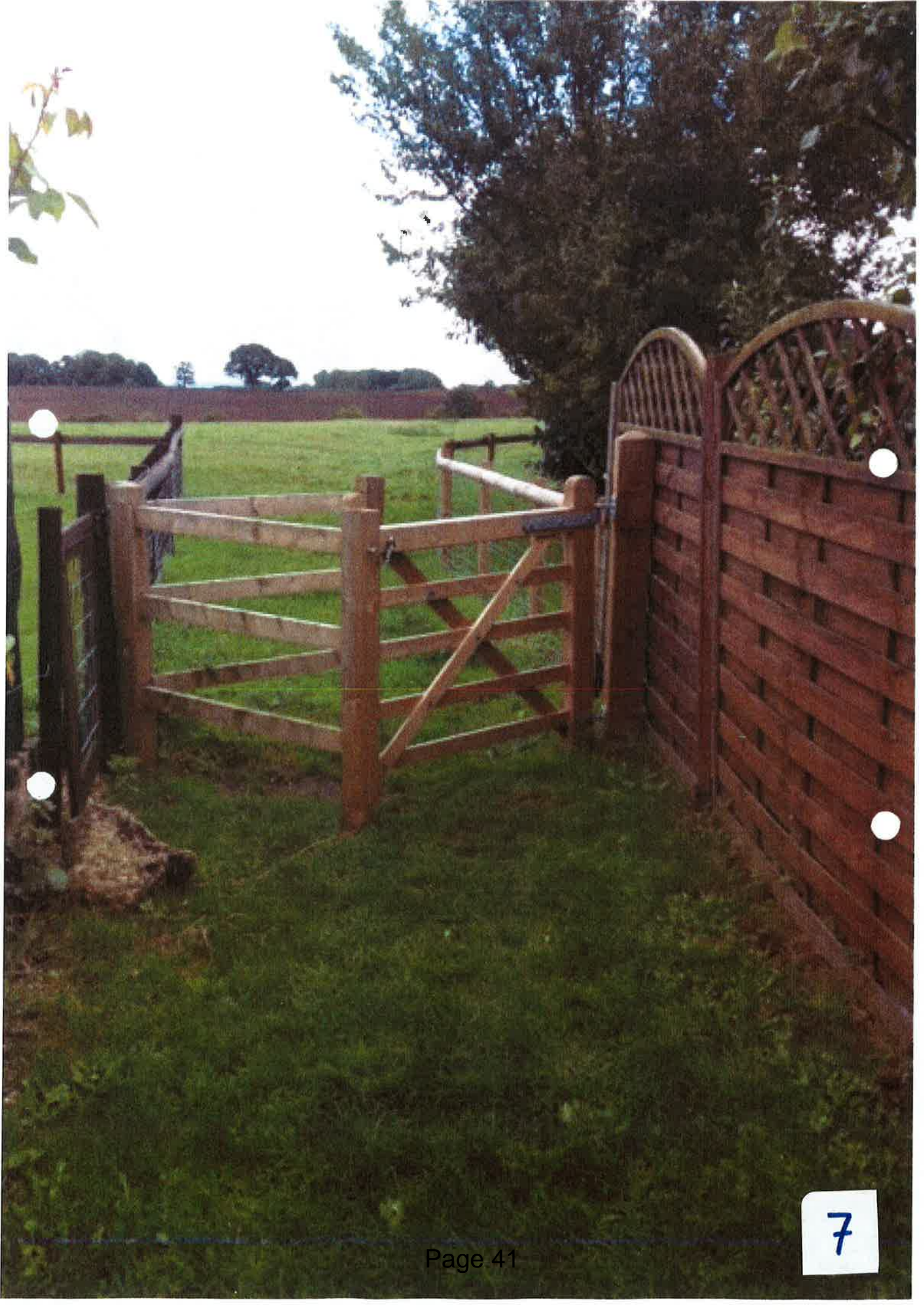






5







Official copy  
of register of  
title

Title number WT149940

Edition date 11.05.2009

- This official copy shows the entries on the register of title on 08 MAY 2013 at 14:51:07.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 May 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A guide to the information we keep and how you can obtain it.
- This title is dealt with by Land Registry, Weymouth Office.

## A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (14.02.1996) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Montrose, Bratton Road, West Ashton, Trowbridge, (BA14 6AZ).
- 2 (14.02.1996) The Conveyance dated 19 September 1958 referred to in the Charges Register contains the following provision:-  
  
"PROVIDED that the Purchaser and his successors in title shall not become entitled to any easement or right of light or air or other easement or right which would restrict or interfere with the free use of the said adjoining and neighbouring land or any part thereof by the Vendor or any person deriving title under her for building or any other purposes."

## B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (18.09.2003) PROPRIETOR: JACQUELINE MARY BRADLEY and DAVID IAN BRADLEY of 24 Bratton Road, West Ashton, Trowbridge, Wiltshire BA14 6AZ.
- 2 (18.09.2003) RESTRICTION: No disposition by a sole proprietor of the land (not being a trust corporation) under which capital money arises is to be registered except under an order of the registrar or of the Court.

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (14.02.1996) The land is subject to the following rights reserved by a Conveyance of the land in this title and other land dated 7 January 1931 made between (1) Arthur Harper Bond (Vendor) (2) Percy Somers Joce and (3) Frederick William Rogers (Purchaser):-

There were reserved in fee simple to the Vendor and his assigns the owner or owners from time to time of all such hereditaments respectively as were conveyed to the Vendor by the deed first mentioned in the Sixth Schedule to the abstracted deed and were not conveyed by abstracted deed all such quasi-easements or rights of way water drainage or watercourse and other rights in the nature of easements or profits a prendre as were then or usually enjoyed by or in respect of such hereditaments respectively over through or from all or any of the hereditaments conveyed by the abstracted deed respectively.

- 2 (14.02.1996) A Conveyance of the land tinted pink on the filed plan dated 19 September 1958 made between (1) Lorna Kathleen Rogers (Vendor) and (2) Gilbert George Derrick (Purchaser) contains the following covenants:-

"The Purchaser hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will henceforth at all times hereafter observe and perform all and singular the restrictions and stipulations contained in the First Schedule hereto

THE FIRST SCHEDULE above referred to

1. The Purchaser will within three months from the date hereof erect and for ever thereafter maintain on the north and east and south sides of the property hereby conveyed as indicated by the letters A-B B-C and C-D on the said plan a stockproof fence consisting of oak wooden posts with at least two strands of plain or barbed wire and chain-link fencing at least four feet in height above the surface of the land

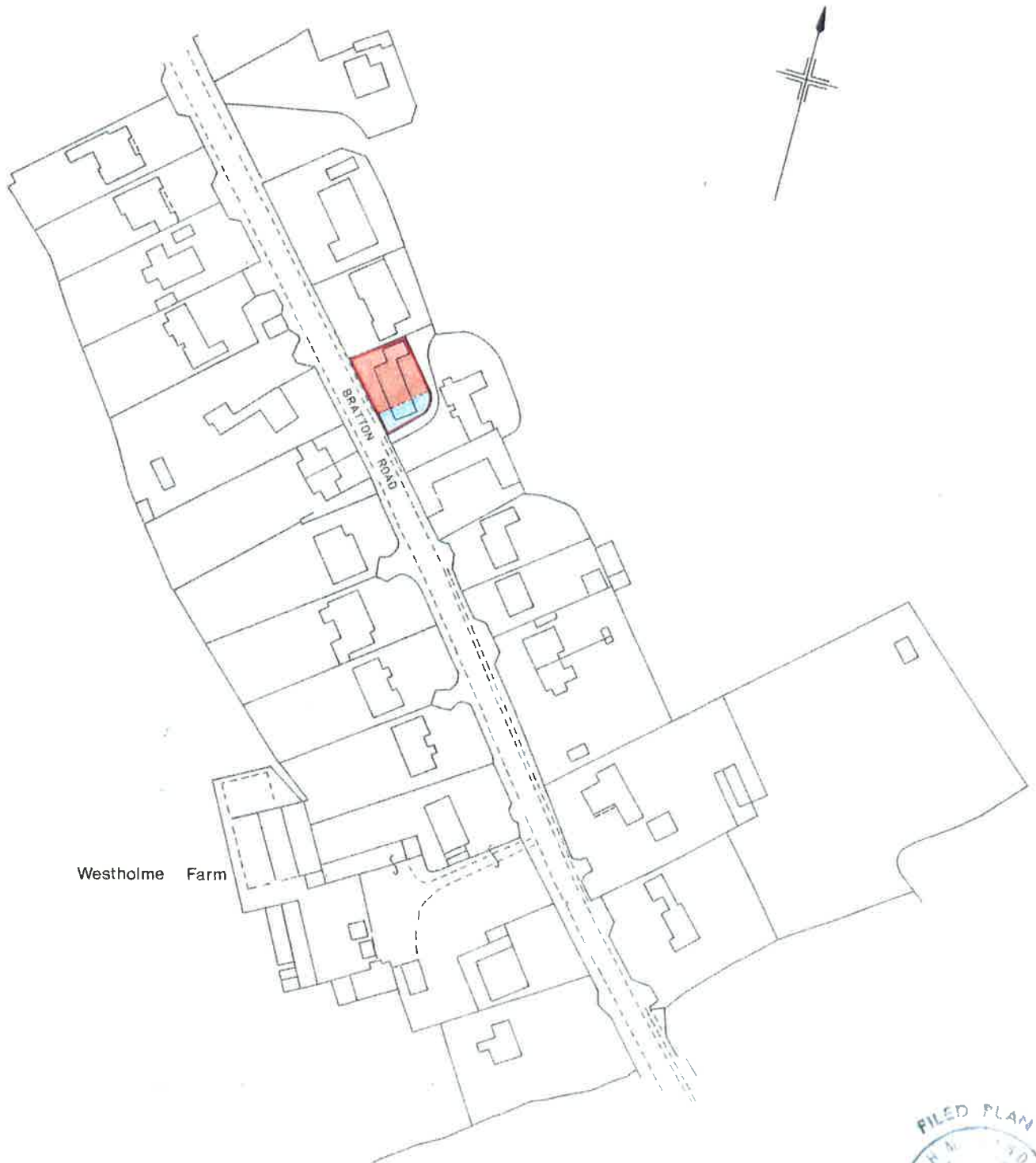
2. No buildings of any kind other than a private dwellinghouse with appropriate offices and outbuildings to be appurtenant thereto and occupied for the purposes thereof shall be erected on the land hereby conveyed and no trade business or manufacture shall be carried on upon the said land or any part thereof."

NOTE: The boundaries A-B, B-C and C-D referred to are the north western, north eastern and south western boundaries of the land tinted pink on the filed plan respectively.

- 3 (01.03.1996) The land tinted blue on the filed plan is subject to such restrictive covenants as may have been imposed thereon before 14 February 1996 and are still subsisting and capable of being enforced.

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		WT 149940	
ORDNANCE SURVEY PLAN REFERENCE	ST 8755	SECTION B	Scale 1/1250
COUNTY	WILTSHIRE	DISTRICT	WEST WILTSHIRE
			© Crown Copyright







## Official copy of register of title

Title number WT147473

Edition date 14.04.2010

- This official copy shows the entries on the register of title on 08 MAY 2013 at 14:49:32.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 May 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Weymouth Office.

### A: Property Register

This register describes the land and estate comprised in the title.

WILTSHIRE

- 1 (14.12.1995) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 17a Bratton Road, West Ashton, Trowbridge (BA14 6AZ).

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (14.04.2010) PROPRIETOR: RICHARD JOHN METCALFE and CHRISTINE ANN METCALFE of Springfields, 17a Bratton Road, West Ashton, Trowbridge, Wiltshire BA14 6AZ.
- 2 (14.04.2010) The price stated to have been paid on 9 April 2010 was £307,500.

### C: Charges Register

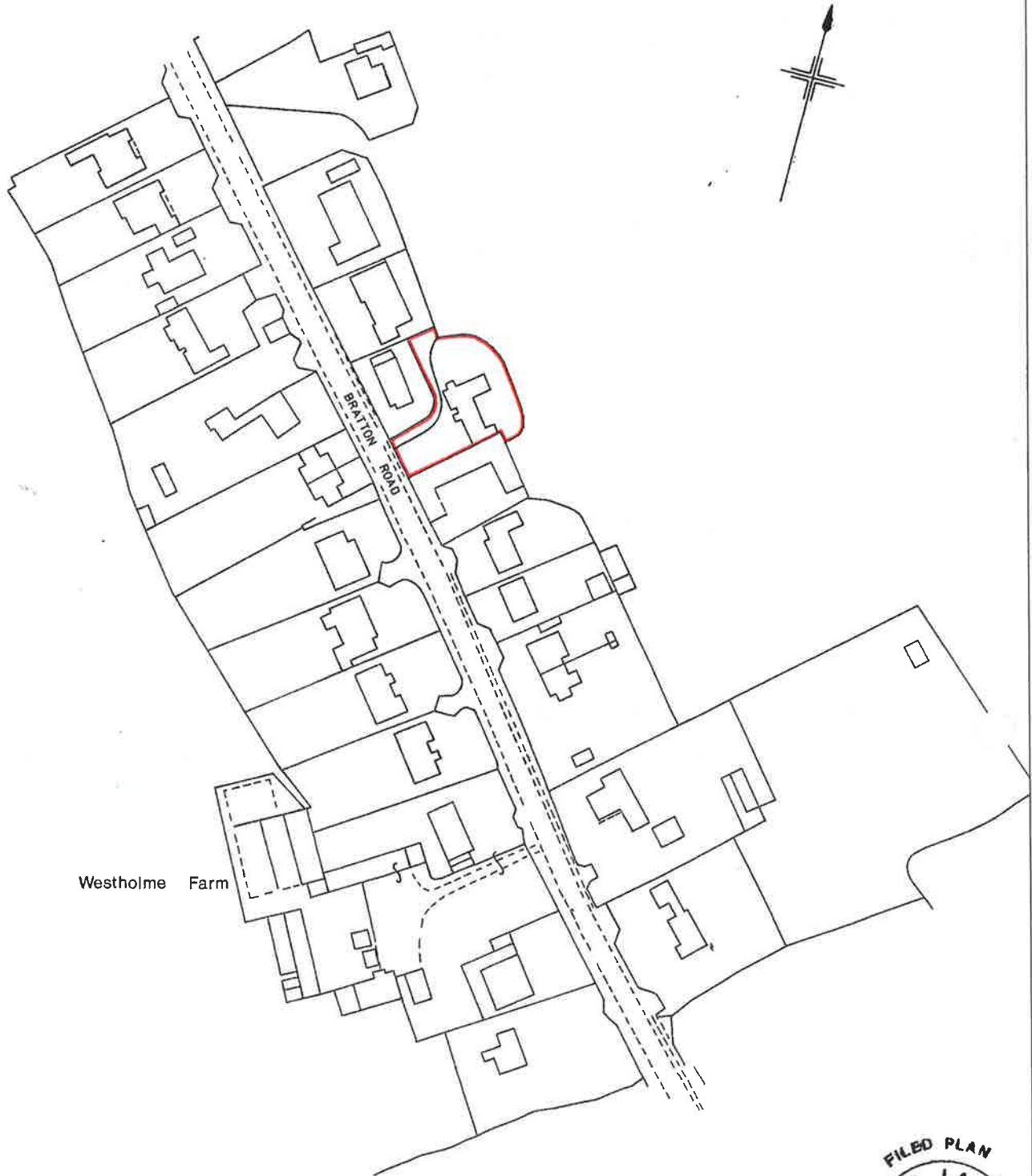
This register contains any charges and other matters that affect the land.

- 1 (14.12.1995) By a Conveyance dated 18 August 1979 made between (1) Lorna Kathleen Rogers and (2) Eric Rogers Brown the land the land in this title was conveyed subject as follows:-

"SUBJECT TO ..... any private or public rights of way affecting the said property."

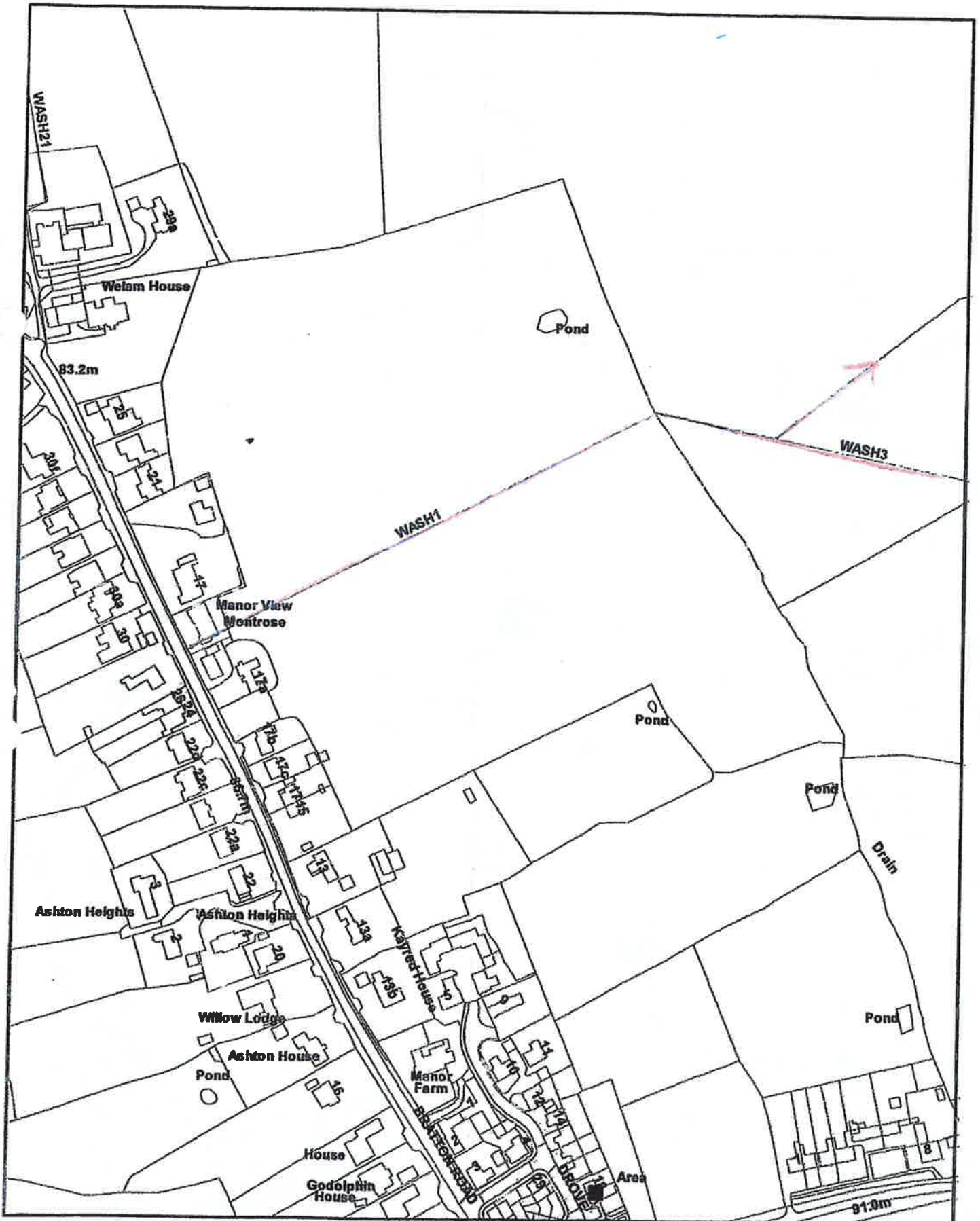


<b>H.M. LAND REGISTRY</b>		<b>TITLE NUMBER</b>	
		<b>WT 147473</b>	
<b>ORDNANCE SURVEY PLAN REFERENCE</b>	ST 8755	<b>SECTION B</b>	<b>Scale</b> 1/1250
<b>COUNTY</b>	<b>WILTSHIRE</b>	<b>DISTRICT</b>	<b>WEST WILTSHIRE</b> ✓
			© Crown Copyright



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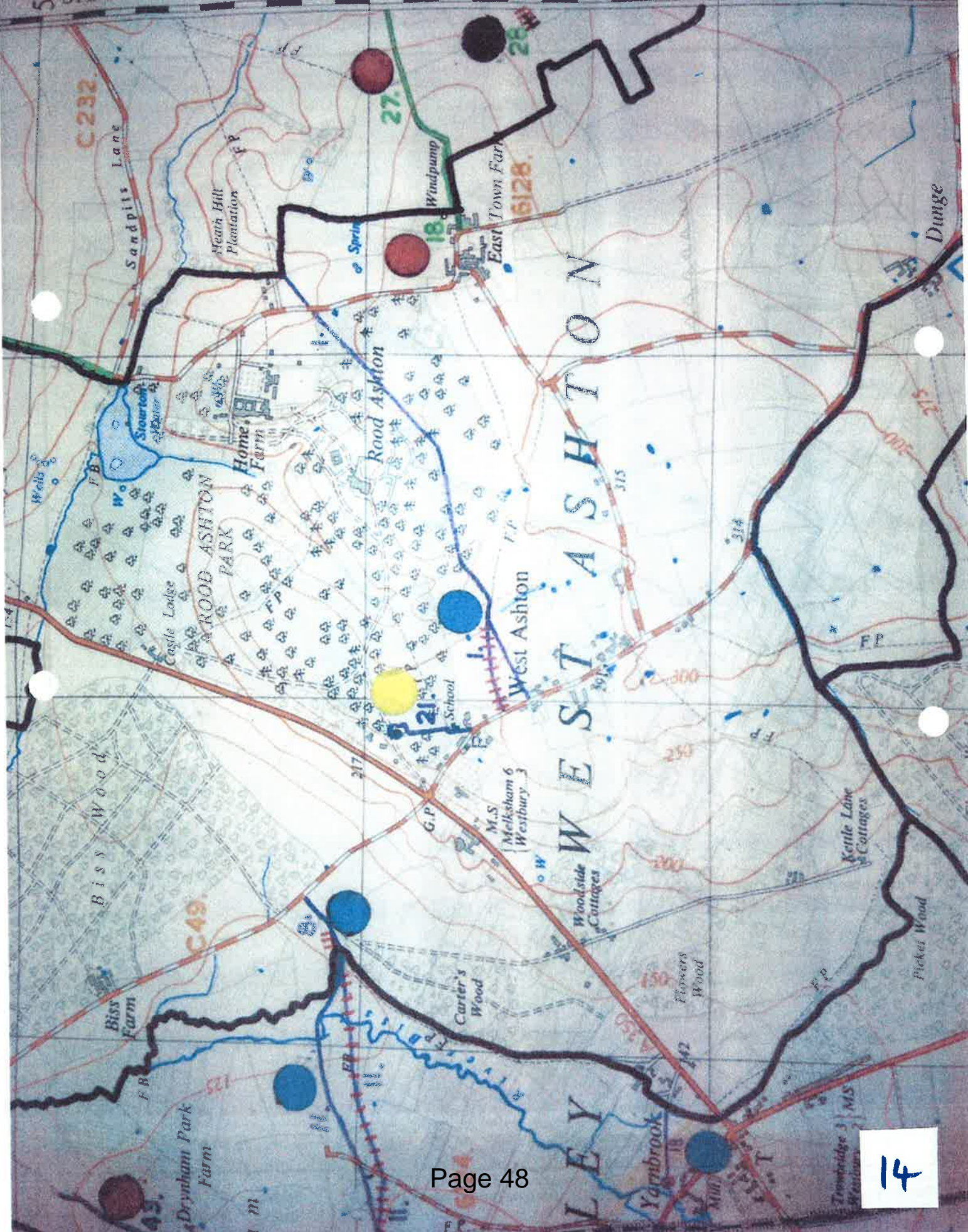
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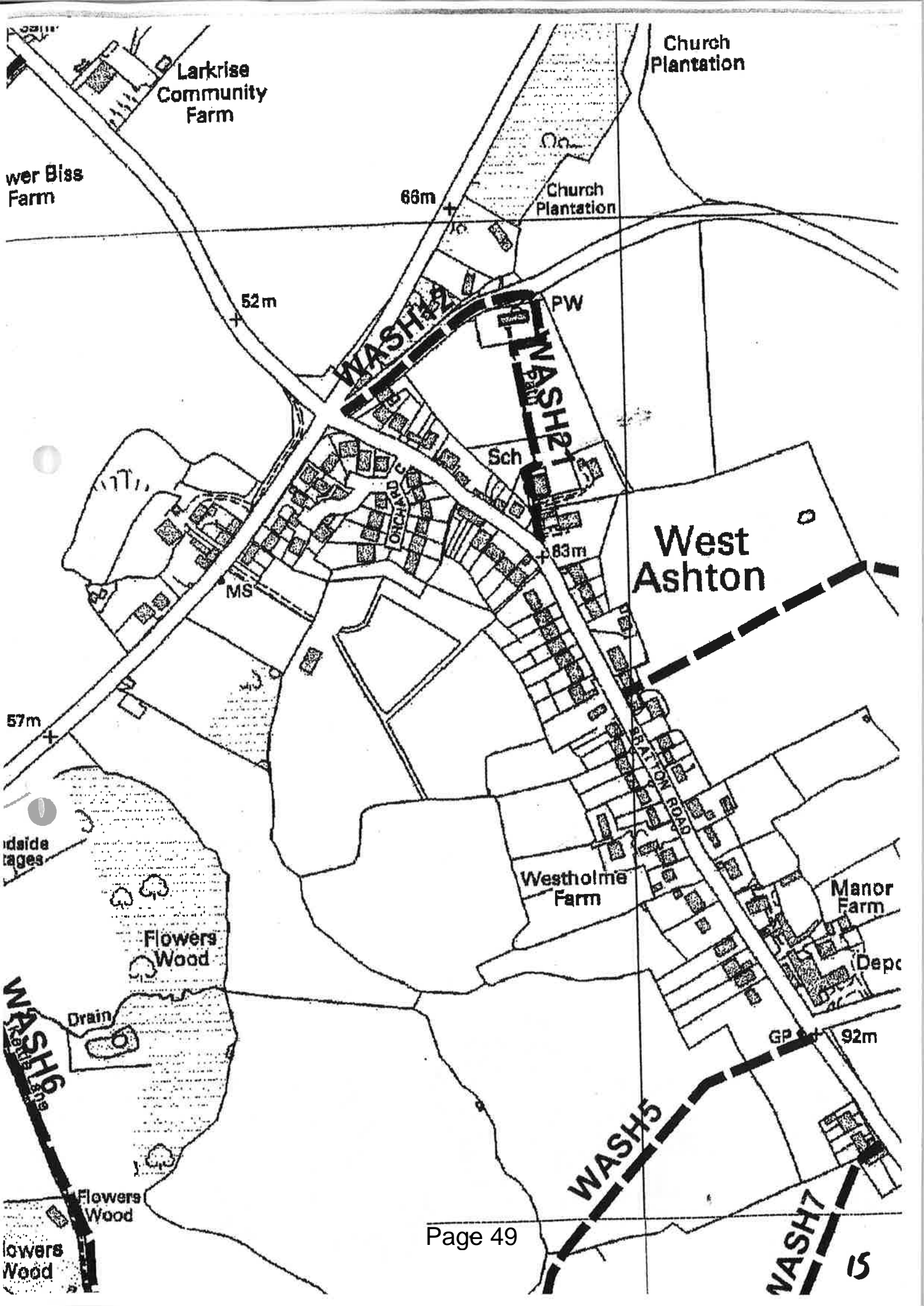
57 STEEPLE ASHTON

56

55



14



Larkrise  
Community  
Farm

Church  
Plantation

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Church  
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WASH 1

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Flowers  
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Westholme  
Farm

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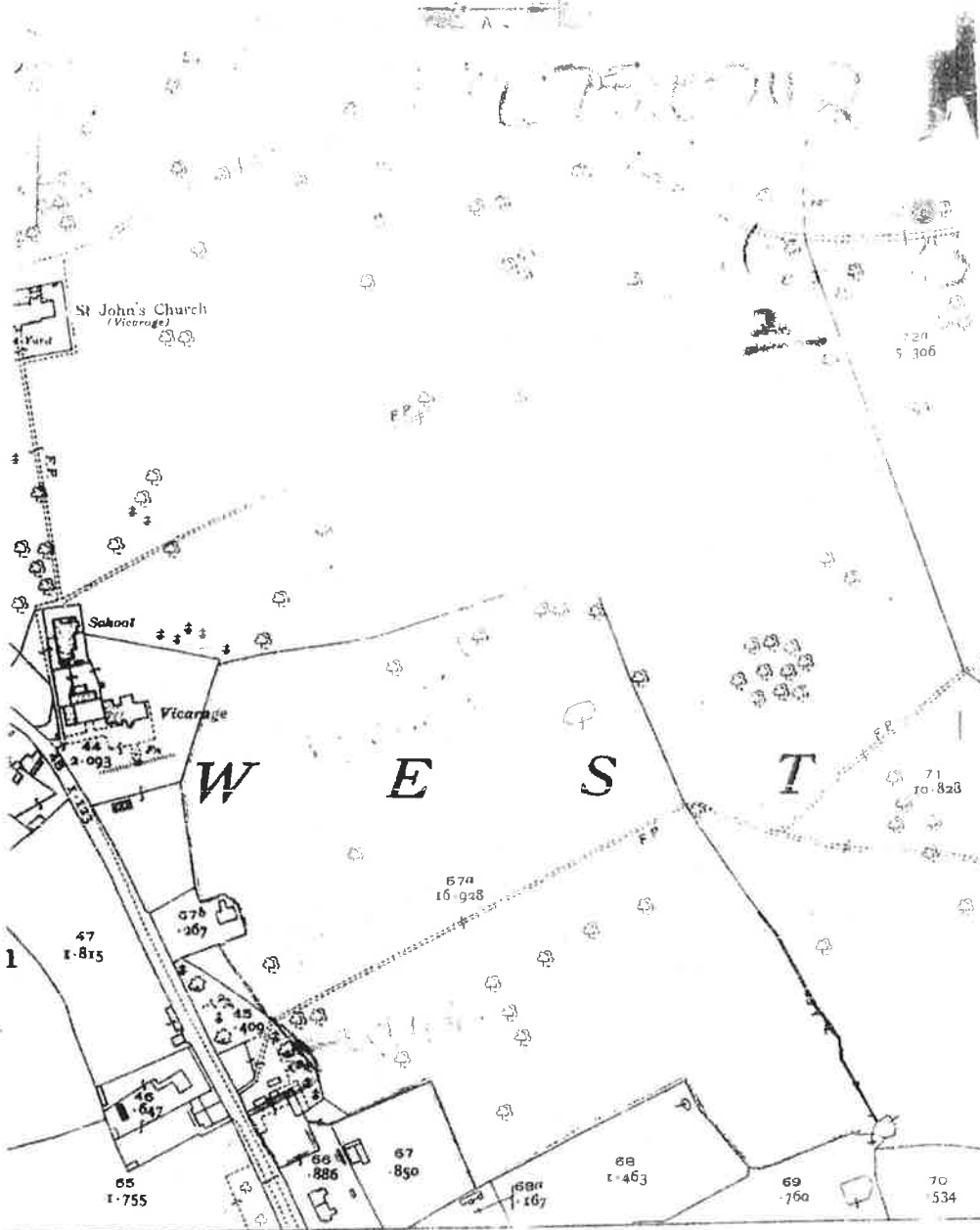
WASH 6

Flowers  
Wood

WASH 5

WASH 7

Flowers  
Wood



WILTS XXXVIII.12. PRICE 10/- NET

44 Inches to a Statute Mile or 208 3/4 Feet to One Inch

1500 2000 2500 2600 Feet

Printed and Published by the Director General at the Ordnance Survey Office 1947.

A 5

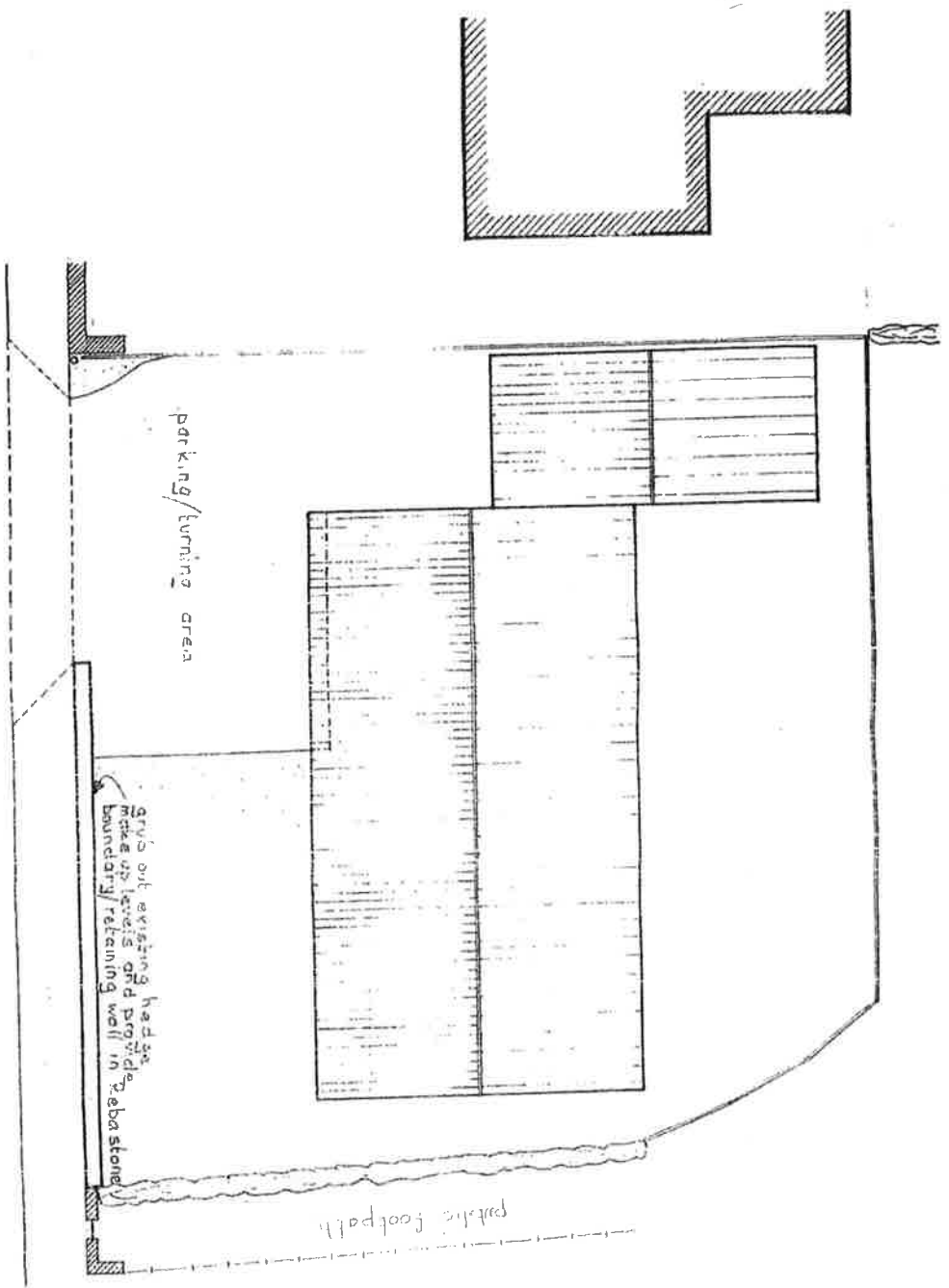
A 5

A 4

WILTSHIRE XXXVIII.12

16

W03/1497



WEST WILTSHIRE DISTRICT C.  
 AMENDED PLAN  
 ON REF. No. W03/1497  
 HAS BEEN APPROVED FOR  
 PURPOSES AS A MINOR  
 8.5.96  
 CR/S  
 BMS

ALTERATIONS & EXTENSIONS TO MONTROSE, BRATTON ROAD, WEST ASHTON

Block plan

Scale: 1:100

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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	04 February 2015
<b>Application Number</b>	14/05980/FUL
<b>Site Address</b>	Fairview House Gipsy Lane, Warminster BA12 9LR
<b>Proposal</b>	Demolition of Fairview House and construction of 6 new houses and 6 new flats with associated infrastructure, gardens, external store & sheds
<b>Applicant</b>	Selwood Housing
<b>Town/Parish Council</b>	WARMINSTER
<b>Ward</b>	WARMINSTER EAST
<b>Grid Ref</b>	387851 144489
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Eileen Medlin

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

This application is brought back to Committee for further discussion in the light of the resolution made on 14<sup>th</sup> January to allow members to visit the site and for officers to provide more clarity on the affordable housing provision, to update the policy position following the formal adoption of the Core Strategy on 20 January (and of particular relevance is the change to the threshold at which affordable housing is now required), incorporate the changes previously presented within a late list circular, and to make further corrections where applicable, including some commentary on the proposed demolition element of the submission.

The application was originally brought to committee at the request of Councillor Andrew Davies to consider the following issues:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design - bulk, height, general appearance
- Environmental or highway impact
- Car parking
- Local public concerns

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

To consider the above application and to recommend that planning permission is granted subject to conditions.

### **2. Report Summary**

The main issues considered in this report are as follows:

- Principle of the development
- Impact on housing need
- Impact on the character and appearance of the area
- Impact on the amenities of adjoining occupiers
- Impact on highway safety and parking

### **3. Site Description**

Fairview House is a purpose built care/nursing home (which is currently vacant) located in a plot measuring 0.28 hectares within the Town Policy Limits of Warminster. The premises are located immediately to the south of the Ashwood Care Centre, an 82 bed care home (previously the Beckford Centre) which has recently been constructed. To the east of the site is Gipsy Lane which serves several residential properties as well as providing the means of access to the site. Small Brook Meadows recreational land is located to the south and to the west of the site is Plants Green.

### **4. Planning History**

There is no relevant planning history.

### **5. The Proposal**

This application seeks permission to demolish 'Fairview House' and erect 12 dwellings with associated parking. Plots 1 and 2 are planned as a pair of 3-bed semi detached houses located in the south east corner of the site. Plots 3 to 8 would comprise 4 x 2-bed flats and 2 x 1-bed flats contained within a three storey block at the centre of the site. Plots 9 to 12 would consist of 4 x 2-bed semi detached two storey houses located to the west of the site. The application has been subject to extensive negotiations which have led to a number of revisions reducing the number of residential units from 14 to 12. The revisions have consequently reduced the parking provision and some of the proposed houses have been moved further away from the eastern and western boundaries (which adjoin neighbouring residential properties).

### **6. Planning Policy**

#### **Development Plan context**

The Wiltshire Core Strategy (WCS) was adopted at a special council meeting on January 20<sup>th</sup> 2015 and as such, it can be afforded 'Full Weight' in planning terms although it is still subject to a 6-week potential challenge. The following WCS policies have full weight: Core Policy 1 – Settlement Strategy; Core Policy 2 – Delivery Strategy; Core Policy 3 – Infrastructure; Core Policy 31 – Spatial Strategy: Warminster Community Area; Core Policy 41- Sustainable construction and low carbon energy; Core Policy 43 - Providing affordable homes; Core Policy 45 - Meeting Wiltshire's housing needs; Core Policy 50 - Biodiversity and Geodiversity; Core Policy 51 – Landscape; Core Policy 52 - Green infrastructure; Core Policy 57 - Ensuring high quality design and place shaping; Core Policy 60 - Sustainable transport; Core Policy 61 - Transport and development; Core Policy 62 - Development impacts on the transport network; Core Policy 63 - Transport strategies; Core Policy 64 - Demand management; Core Policy 65 - Movement of goods; Core Policy 66 - Strategic transport network; Core Policy 67 - Flood risk; Core Policy 68 - Water Resources.

The Development Plan also includes a number of policies carried over from the West Wiltshire District Plan 1<sup>st</sup> Alteration 2004, the West Wiltshire Leisure and Recreation DPD and the Swindon and Wiltshire Waste and Minerals Core Strategies and their subservient DPDs. For the avoidance of any doubt, the still saved policies of the West Wiltshire District Plan and the Leisure and Recreation DPD are listed in Appendix D of the Core Strategy.

**Neighbourhood Planning** – There is a Warminster Town neighbourhood plan area. The neighbourhood area has been officially designated and has an established steering group, but it is at a very early stage of preparation. There is no draft plan at this stage and therefore little weight can be afforded to the emerging neighbourhood plan.

#### **National Planning Policy context**

The **National Planning Policy Framework (NPPF)** was introduced as a principal material consideration in the determination of planning applications in March 2012. It introduces the

presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking.

The NPPF is clear in stating that '*planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise*'. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Paragraph 17 of the NPPF sets out the core planning principles and paragraphs 18-219 constitute what sustainable development means in practice. Paragraph 32 is also critical in terms of asserting that local planning authorities should only refuse applications on transport/highway safety grounds where "*the residual cumulative impacts of development are severe*".

**National Planning Practice Guidance (PPG)** provides guidance on the interpretation of the NPPF. Recent changes to the guidance asserts that affordable housing and tariff style planning contributions should not be sought on schemes of 10 units or less.

## **7. Consultations**

**Warminster Town Council** – Objects to the proposed development advising that whilst they are not opposed to development of this site per se, they consider that the density of the proposal would not be in keeping with the neighbourhood and is also an overdevelopment of the site with no safe provision for children's play. The Town Council also raised concerns about highway dangers, the additional 20 parking spaces and the parking layout which may cause danger from reversing, and potential overlooking. The Council sought more information from the developers in relation to the existing building. After reviewing the revisions, the Town Council reached the same view but cited additional highway concerns to include lack of pavement onto Gypsy Lane, dangers within the development and approaching the development from neighbouring lanes and roads. This view was reiterated following consultation on a second set of revisions.

**Wiltshire Council Highways Officer** – Initially reported having no 'in principle' objection to the scheme, but advised that the parking arrangements did not meet the adopted standards. The applicants addressed these concerns through the submission of revised plans and provided sufficient parking spaces to meet the Council's required standards. The highways officer also confirmed that there was no objection to the number of units being accessed from a shared surface.

**Wiltshire Council Tree Officer** – No objection.

**Wiltshire Council School Places Team** – No objection and no contributions are required in this particular case.

**Wiltshire Council Environmental Services Team** – Financial contributions of £9659 are sought for indoor recreation facilities. It is proposed that the contribution is used to upgrade the sports hall and upgrade pool spectator seating or use the contribution to upgrade the existing Boat House at Warminster Park to use as Tennis and Ball Court changing accommodation. Financial contributions of £16,700 are also sought for offsite open space and play provision at Warminster Park.

**Wiltshire Council New Housing Team** – Supportive of this application and provided further comments following the committee meeting on 14 January to appreciate the consequences of having an adopted Core Strategy.

**Wessex Water** – No objection. The consultation response provided advice relating to new water and waste water connections and requirements for sewers which can be covered by an informative.

**Wiltshire Fire and Rescue Service** – No objection. The consultation response refers to requirements under building regulations and makes recommendations to improve fire safety in domestic properties which can be covered by an informative.

**Wiltshire Council Ecology Officer** – No objection, subject to ecological enhancement to the scheme through the provision of bat bricks in the southern elevations of Plots 1 to 9 and planting of replacement trees. Satisfied with the findings of the additional ecological report prepared following the identification of ponds not addressed in the originally submitted survey.

**Wiltshire and Swindon Biological Records Centre** – Advised that there are records of water voles and otters at Smallbrook Meadows.

## **8. Publicity**

Letters sent to neighbouring occupiers and site notices were erected at the entrance to site, along Gypsy Lane and along Plants Green. Neighbours and contributors were re-consulted on two sets of revised plans. In total, 31 letters of objection were received relating to the original submitted plans on the following summarised grounds:

Fairview House was not placed on the open market for sale

Loss of trees and hedgerow

Traffic congestion

Cramped form of development

Design and density not in keeping with the character of the area

No consideration given to the re use of the existing building

Effect on the Beckford Centre residents who are likely to be elderly and infirm

No children's' play area and Quality of life for future occupants

Disruption during the course of construction

Ensure that committee members voting on the application do not have a conflict of interest

Impact on the value of neighbouring properties

Accept principle of the development

Three storey flats not in keeping with the area

Effect on access road

Loss of privacy

Pedestrian Safety

On street parking pressures

Only half the site is previously developed land, the rest is green field

Site should be combined with Beckford Centre to provide amenity space for residents and additional parking

Access restrictions at the end of gypsy lane should be removed to lessen impact of development

Signage at junctions of Smallbrook Road and Gypsy Lane should be improved

Layout is dominated by parking

Is change if use from healthcare to residential acceptable?

A smaller number of units would be acceptable

Loss of Daylight

Waste Water infrastructure able to cope with increased demand

Risk of flooding

Recognised need for more affordable housing

New footprint of Beckford Centre not shown on the submitted plans

Housing scheme for older people would fit better in the locality than family housing

Development is premature as the impacts of the neighbouring development cannot be fully measured

Great crested Newt Survey flawed

Site is a toad migration route

Poor design in orientating 4 houses so that their rear elevation bears the brunt of the prevailing weather.

Ground levels on site are higher than those on Plants Green

### **Comments received on revised plans which reduced number of dwellings to 13:**

15 of the previous contributors wrote in again to comment on the revised plans with the majority stating that their previous comments still stood. Additional issues raised include;

Planning permission was refused for an increase in the height to a Bungalow in Plants Green Improved situation for neighbouring occupier at No 22 Gipsy Lane, but there is no improvement for the neighbouring occupier(s) in Plants Green.

**Comments on revised plans which reduced the number of dwellings to 12:**

23 of the previous contributors wrote in again to reiterate their objections and cited the following:

Alternative layouts are proposed, but there is some dismay among some local residents that the revised plans have not taken account of principle objections. Some representors however welcome the revisions.

## **9. Planning Considerations**

### **9.1 Principle of the development**

Fairview House is currently vacant and was previously in use as a nursing home/residential care home. There is no specific policy protection for his type of C2 residential accommodation enshrined within the adopted Wiltshire Core Strategy or the NPPF; and as such, its loss is acceptable in principle. The applicants have provided a letter from the Avon and Wiltshire Mental Health NHS Trust advising that the facility was closed as the clients were relocated to be supported within 'community based' services in non health settings, i.e. supported housing. The letter further advises that the building cannot be re-commissioned as accommodation for 'in-patient' services as it is not capable of economic conversion. Whilst there is a sustainability argument for the reuse of an existing building, officers are mindful that without any policy backing, members are advised that this application should not be refused on the grounds that demolition is proposed. As there are no substantive planning reason to insist that the existing building is retained, officers advise that it would be unreasonable to require the applicant to demonstrate financial viability or insist upon retaining the building for conversion purposes.

The application site is located with the Town Policy Limits of Warminster as identified within the former West Wiltshire District Plan and as carried forward into the Core Strategy. It is a previously developed site and not designated for any other use. As such, the principle of residential development is in accordance with the settlement and delivery strategies set out in Core Policies 1 and 2 of the adopted Wiltshire Core Strategy.

### **9.2 Impact on housing need**

Core Strategy Policy 43 currently requires affordable housing on sites of 5 or more. However, recent changes made to national planning policy guidance advising that affordable housing should not be sought on schemes of 10 houses or less. As the proposal is for 12 units which exceeds both the threshold set by the Wiltshire Core Strategy and the PPG, 30% of the proposed development equates to 4 units which should be secured as affordable housing via a s106, one of which should be for shared ownership and the rest for affordable rent, as agreed by the Council's New Housing Team.

Notwithstanding the above, it is duly appreciated that the application has been submitted by Selwood Housing (a Local Register Provider of Affordable Housing); and it is noted that it is the applicant's intention for all the remaining housing to be affordable rental units. As reported above, housing colleagues have responded in support of the application as it is made by a Registered Provider and would likely benefit affordable housing provision for the area. The Council should only secure the number of units required by planning policy as affordable in order to satisfy obligation tests; and, whilst it may be the applicant's intention to develop all of the units as affordable, all 12 units cannot be secured in the absence of any policy basis.

### **9.3 Impact on the character and appearance of the area**

The site is located in a residential area with a mix of property styles and types. Plants Green which is located to the west of the site is predominately detached bungalows finished in a variety of materials. The part of Gipsy Lane immediately to the east of the site is a Cul de Sac of two storey red brick detached houses. To the north of the site is the Ashwood Care Centre, which has recently opened and is taller in height. The site is accessed via the Gipsy Lane cul-de-sac and is largely screened from view by the existing built development in the area and the treed southern boundary of the site.

Plots 1 to 8 would broadly occupy the footprint of the existing building whereas 9 to 12 would occupy the former garden area to the west. The buildings proposed are of mixed height with two storey houses located at the entrance (east) of the site and the rear (west). A three storey block of flats is proposed in the centre of the site, with the top floor level accommodation partly within the roof space (which reduces its overall height).

The development site is not a through-route but at the end of a cul-de-sac and the development would not be viewed in the context of the surrounding street scene. It is considered that the buildings sit comfortably within the site and would not appear cramped. Each house would have its own rear garden and the block of flats would have a communal garden. Parking for the units would be dispersed around the site.

The surrounding development is predominantly single or two storeys with the exception of the Ashwood Care Centre. Officers submit that the three storey block of flats would not appear incongruous in this location due to its position within the site, having a relatively low ridge height and recognising the self contained nature of the site. The two storey semi detached houses located either side are also considered appropriate forms of development. The proposed houses on plots 1 to 8 would be the same distance from the rear boundary as the existing building. Whilst the block of flats would be taller than the existing building it is considered that the development would not appear overly dominant when viewed from the neighbouring public open space.

The design and materials to be used would be in keeping with the character of the area with height, roof form, materials being reflective of the surrounding development. As such, it is considered that the siting, scale, design and layout of the site would not appear incongruous in the area. It is considered that the proposed development sits comfortably within the overall site and would not have an adverse impact on the character and appearance of the area. The proposal is considered to be in accordance with Policy 57 of the Wiltshire Core Strategy.

### **9.4 Landscape**

The application is supported by an Arboricultural Assessment. The assessment sets out those trees to be removed, pruned and the method of protection during construction. Officers are satisfied that the development has taken account of the trees on site and that the proposed conditions would ensure that suitable protections are in place for the trees to be retained on site. Therefore the proposed development is considered to be in accordance with Policies 51 and 57 of the Wiltshire Core Strategy.

### **9.5 Impact on the amenities of adjoining occupiers**

The application site is bounded to the west by No. 29 Plants Green, to the east by No.22 Gipsy Lane, to the north by the Ashwood Care Centre and to the south by open space. It is considered that the proposed development would not have an adverse impact on the amenities of the residents of the Ashwood Care Centre as the proposed buildings are over 20m from the rear elevation of the Ashwood Care Centre. This distance is considered to be sufficient to prevent unacceptable levels of overlooking and privacy.

Plot 1 shares its side boundary with No 22 Gipsy Lane. The side elevation of Plot 1 is over 19m from the rear elevation of No 22 Gipsy Lane. There are no windows on the elevation facing No 22 Gipsy Lane and it is duly considered that the proposed development would not have an adverse impact on the occupiers of No. 22 Gipsy Lane. By virtue of the separation distance between buildings it is considered that the proposals would not result in an unacceptable loss of outlook or sense of enclosure for the occupiers of No 22 Gipsy Lane. It should be noted that No 22 Gipsy Lane is the closest residential neighbour to this side of the development and it is considered that the development would have less of an impact on other properties on Gipsy Lane.

Plots 9 to 12 are at right angles to the rear garden of No 29 Plants Green and all share their rear boundaries with the side boundary of No 29. The rear garden of Plot 12 is approximately 10m in length with the rear garden of Plot 9 increasing to 12m in length. Plots 9 to 12 are two bedroom properties and the first floor layout places a second bedroom and a bathroom at the rear of the property at first floor level. Therefore each of the properties would have a single bedroom window and a bathroom window facing towards the rear garden of No. 29 Plants Green.

It is accepted that the introduction of 4 houses with rear gardens backing onto the side boundary of No 29 Plants Green would result in the garden being overlooked in a way that it is not currently. However, it is necessary to assess whether the level of overlooking would have an unacceptable adverse impact on residential amenity. The proposed houses are at right angles to the existing house at Plants Green and as such it is considered that there would not be an unacceptable loss of privacy within the home. The four habitable room window orientated towards the rear garden of No 29 Plants Green would serve bedrooms. These windows are between 10 and 12 metres from the shared boundary. The northernmost of these windows would look onto the side elevation of No 29 Plants Green and have an oblique view of the garden. It is considered that the distances proposed would not be unusual in an urban environment and that the level of overlooking would not have an unacceptable adverse impact on residential amenity to justify a refusal.

It is furthermore appreciated that the rear garden of No 29 Plants Green slopes downwards from north to south and would be at a lower level than the rear gardens of the proposed properties. Therefore the proposed 2.1m high boundary treatment would appear higher from the rear garden of No 29 Plants Green as would the proposed houses. A 1.5m high fence currently separates the properties. It is considered that a 2.1m high fence would not appear overly dominant when viewed from the garden and house of No 29 Plants Green due to the width of the garden and distance from the house to the proposed fence. The proposed houses would be set back at least 10m from this boundary fence and it is considered that they would not appear overly dominant when viewed from the house or rear garden of No 29 Plants Green.

Overall it is considered that the proposed development would not have an unacceptable adverse impact on the amenities of neighbouring residential occupiers in accordance with Policy 57 of the Wiltshire Core Strategy.

#### **9.6 Impact on highway safety and parking**

The application meets the Council's parking standards and officers consider that the development would not have an adverse impact on highway safety. The site is located within the Town Policy Limits of Warminster and as such, is a sustainable location which could be accessed using sustainable means of transport. A number of concerns have been raised by residents relating to the impact of the development on transport safety and congestion as a result of the proposed development and the neighbouring Care Centre which recently opened. However, officers are satisfied that the development would not have an unacceptable transport impact and that the number of dwellings proposed is suitable for access to be

provided from a shared surface. Furthermore, officers are mindful that the NPPF advises that “development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”. In this particular case and in recognition that there is no such severe impact, the application satisfies highway policy interests both at the local and national level and is considered to be in accordance with policies 60 and 64 of the Wiltshire Core Strategy and the NPPF.

### **9.7 Ecology**

The application was supported by a Preliminary Ecological Assessment, a Great Crested Newt Survey and a Bat Survey. Officers are satisfied that the proposals would not have an unacceptable impact on ecology. Enhancements are proposed as part of the development such as bat bricks in the southern elevations of Plots 1 to 8 and 12. Replacement trees to the southern boundary are also required by condition. Therefore the proposed development is considered to be in accordance with Policy 50 of the Wiltshire Core Strategy.

### **9.8 Sustainability**

The proposed houses are designed to meet the standards set out by the Homes and Community Agency and as such meet Level 4 of the Code for Sustainable Homes which officers fully support. This is also consistent with the requirements of Policy 41 of the Wiltshire Core Strategy.

### **9.9 Financial Contributions**

Core Policy 3 of the Wiltshire Core Strategy refers to infrastructure delivery and the impact of new developments on existing infrastructure. Core Policy 50 refers to The Stone Curlew Management Strategy which is applicable to residential development within distances up to 15km of Salisbury Plain and requires financial contributions to mitigate the impacts of development. This is also referenced in Core Policy 31 – Warminster Community Area. Saved policies in the West Wiltshire Leisure and Recreation DPD refer to financial contributions for Public Open Space and Indoor Recreation Facilities. The scale of the development triggers financial contributions for Public Open Space, Indoor Recreation Facilities and the Wessex Stone Curlew Project. The contributions requested are set out in the table below;

<b>Contribution</b>	<b>Amount</b>
Public Open Space	£16,700
Pools and/or upgrade boathouse at Warminster Park	£4501
Sports Halls	£5158
Wessex Stone Curlew Project	£1320
<b>Total</b>	<b>£27679</b>

### **RECOMMENDATION:**

**To delegate authority to the Area Development Manager to grant planning permission subject to a legal agreement to secure the following:**

- **4 units of affordable housing, 3 of which should be affordable rent and one should be for shared ownership;**
  - **A financial contribution of £16,700 towards public open space;**
  - **A financial contribution of £4,501 towards swimming pools and/or upgrades to boathouse in Warminster Park;**
  - **A financial contribution of £5,158 towards sports halls; and**
  - **A financial contribution of £1,320 towards the Wessex Stone Curlew Project;**
- and, that permission be 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 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.
- 3** 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; full details of any to be retained, together with measures for their protection in the course of development;
  - b) a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
  - c) the finished levels and contours;
  - d) the means of enclosure;
  - e) car park layouts;
  - f) other vehicle and pedestrian access and circulation areas;
  - g) all hard and soft surfacing materials;
  - h) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc); and,
  - i) all proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.
- 4** 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.
- 5** No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until a Tree Protection Plan showing the exact position of each tree/s and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and; The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such

fencing shall not be removed or breached during construction operations

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 and ecology.

- 6** No development shall commence on site until details of the screen fences to be located on the western boundary of the site have been submitted to and approved in writing by the Local Planning Authority. The screen fences shall be erected in accordance with the approved details prior to the occupation of the dwellings hereby permitted and shall be retained and maintained as such at all times thereafter.

REASON: To prevent unacceptable overlooking & loss of privacy to neighbouring property.

- 7** The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- 8** No part of the development hereby permitted shall be first occupied 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.

- 9** 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), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

- 10** The development hereby approved shall not be first occupied until the refuse and recycling facilities shown on the approved plans have been provided and made available for use. These facilities shall be maintained in accordance with the approved details thereafter.

REASON: To ensure the provision of satisfactory facilities for the storage of refuse and

recycling.

- 11** No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.  
REASON: To ensure that the development can be adequately drained.
- 12** The development hereby approved shall be carried out in accordance with the recommendations made in Section 6 of the Nocturnal Emergence and Dawn Re-Entry Bat Surveys report (no. RT-MME-117290-01) dated August 2014 and Sections 6.2 and 6.3 of the Preliminary Ecological Appraisal report (no. RT-MME-116887-01) dated June 2014 both prepared by Middlemarch Environmental, unless otherwise agreed in writing with the local planning authority.  
REASON: to ensure adequate protection and mitigation for protected species / priority species / priority habitats.
- 13** Bat boxes erected in suitable trees shall be at a minimum height of 4 metres from the ground.  
REASON: to ensure adequate installation of bat boxes, as an enhancement for biodiversity
- 14** Prior to the commencement of any works associated with the development hereby approved, an Amphibian and Reptile Method Statement for site clearance and a Reptile and Amphibian Mitigation Strategy shall be submitted to the local planning authority for approval by the Council Ecologist. The approved method statement and mitigation strategy shall be implemented in full.  
REASON: To ensure protection of priority and protected species.
- 15** Prior to the commencement of works associated with the development hereby approved, details of the replacement trees (10 trees) on the southern boundary, including species and container sizes, shall be submitted to the local planning authority for approval. Trees shall be of British origin and local provenance. The tree replacement planting shall be carried out in accordance with the approved details within 12 months of the completion of the development.  
REASON: to ensure mitigation for loss of trees along the southern boundary, which is used by foraging/commuting bats.
- 16** Prior to the commencement of any works associated with the development hereby approved, details of the mitigation for house sparrows shall be submitted to the local planning authority for approval by the Council Ecologist. The approved details shall be implemented in full before the dwellings hereby approved are occupied.  
REASON: to provide mitigation for the loss of nesting sites of a priority species, the House sparrow.
- 17** No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.  
REASON: In the interests of visual amenity.
- 18** The development hereby permitted shall be carried out in accordance with the following approved plans:  
3732/001 Rev H Site Plan and Location Plan, received 21 October 2014  
3732/002 Rev B Plots 1 and 2 Plans and Elevations, received 21 October 2014

3732/003 Rev C Plots 1 and 2 Plans and Elevations, received 21 October 2014  
3732/004 Rev C Plots 3 to 8 Plans and Elevations received 21 October 2014  
3732/005 Rev B Plots 9 to 12 Plans and Elevations, received 21 October 2014  
516/7343/1 Topographical Survey, received 18 June 2014  
REASON: For the avoidance of doubt and in the interests of proper planning.

INFORMATIVE: Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Bats are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended). Please be advised that, if bats are discovered, all works should stop immediately and Natural England should be contacted for advice on any special precautions before continuing (including the need for a derogation licence).

INFORMATIVE: New water supply and waste water connections will be required from Wessex Water to serve this proposed development. Application forms and guidance information is available from the Developer Services web-pages of their website [www.wessexwater.co.uk](http://www.wessexwater.co.uk). Please note that DEFRA intend to implement new regulations that will require the adoption of all new private sewers. All connections subject to these new regulations will require a signed adoption agreement with Wessex Water before any drainage works commence. Further information can be obtained from the Wessex Water New Connections Team by telephoning 01225 526222 for Water Supply and 01225 526333 for Waste Water.

INFORMATIVE: Separate systems of drainage will be required to serve the proposed development. No surface water connections will be permitted to the foul sewer system. If any further information is required please contact Wessex Water.

INFORMATIVE: The attention of the applicant is drawn to the contents of the attached letter from Wiltshire Fire and Rescue Service.

INFORMATIVE: This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [insert date of future s106 agreement].



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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	4 February 2015
<b>Application Number</b>	14/02929/FUL
<b>Site Address</b>	Ravenscroft Nursing Home, 44 Hilperton Road, Trowbridge BA14 7JQ
<b>Proposal</b>	Proposed extension and demolition of the existing bungalow within the curtilage
<b>Applicant</b>	Larch Nursing Home Ltd
<b>Town/Parish Council</b>	TROWBRIDGE
<b>Ward</b>	TROWBRIDGE PAXCROFT
<b>Grid Ref</b>	386564 158379
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Matthew Perks

### Reason for the application being considered by Committee

#### 1. Purpose of Report

This application is brought back to Committee for further discussion in the light of the resolution of the meeting of the 14th January 2015 to hold a site visit.

The application was initially brought to Committee at the request of Councillor Oldrieve, in the event that permission is recommended, for consideration of the scale of development, the visual impact upon the surrounding area, relationship to adjoining properties, and environmental/highway impact.

The report is also updated in anticipation (at the time of writing) of the adoption of the Wiltshire Core Strategy in replacement of the West Wiltshire District Plan, 1<sup>st</sup> Alteration 2004. Both documents were referenced in the previous report.

#### 1. Purpose of Report

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

#### 2. Report Summary

This is an application for demolition of the existing bungalow within the curtilage of Ravenscroft Nursing Home and the extension of the main building to provide for a total of 60-bedrooms with communal and ancillary spaces. This would be an increase of 19 bedrooms from the existing 41.

The application was initially for a total of 73 bedrooms but this was reduced following Consultee and neighbour responses, and negotiation. There were re-consultations on the revised plans.

**Trowbridge Town Council** Comment on initial plans: Objection, for the reasons cited in section 7 below. No Council comment was received on the revised plans at the time of writing the report. Any comments received will be reported at the meeting.

### **Neighbourhood Responses:**

Initial plans: Ten neighbours responded, all objecting. Revised plans: Ten objections were received to the revised proposals.

### **3. Site Description**

The application site is the Ravenscroft Nursing Home and grounds located to the south of Hilperton Road in Trowbridge. The existing building is an unlisted Victorian-era villa which has been converted and extended to provide additional rooms and ancillary space. The use as a care home is long-established with planning records showing applications related to it extending back to the 1980's.

The building occupies a footprint of just over 600m<sup>2</sup> with a primary frontage facing on to Hilperton Road, and a parking area between the building and the road boundary. There are extensive grounds to the rear, which are partially occupied by the bungalow that would be demolished and the existing modern 3.5 storey extension to the main building. The site area is approximately 3000m<sup>2</sup> and land elevations drop from the northwest to southeast by approximately 2m. The land on which the extension would be located is not prominently visible from Hilperton Road, due to a combination of the lower land levels and the presence of the existing building across the majority of the Hilperton Road frontage at a distance of approximately 25 from the boundary (with the car parking area occupying the area in the intervening space) and hedge and tree screening to the boundaries.

The building houses bedrooms for 41 residents over 4 levels. The existing bungalow provides staff accommodation and sits adjacent to the eastern boundary of the site. There is also a modern three-and-a-half storey extension to the east side of the original building.

The site lies within the Trowbridge Hilperton Road Conservation Area with the south-eastern boundary of the site coinciding with that of the CA in this vicinity. To the west beyond the road into Ravenscroft Gardens there is the Grade II Listed Terrace known as 41 – 43 Hilperton Road. The "H3" 15 dwelling urban brownfield allocation for development (West Wiltshire District Plan, 2004) abuts the east of the site. This allocation is however not "saved" to the Core Strategy and will fall within Trowbridge Settlement limits (CP1 and CP2 of the Core Strategy) going forward for the purposes of any new application.

### **4. Planning History**

84/00818/FUL – Additional staff accommodation. Permission: July 1984;

86/01637/FUL – Extension. Permission: January 1987;

89/02044/FUL – Conversion of roof space to residents' accommodation. Permission: February 1990;

90/01229/FUL – Development of 3.5 storey new side wing. Permission: October 1990

94/00314/FUL – Extension and conversion of existing bungalow to nursing accommodation. Permission: August 1994

### **5. The Proposal**

The proposal is for an extension to the rear of the existing 41 bedroom nursing home to provide for an additional 19 bedrooms and enhanced day-spaces on each floor. The existing



accommodation is currently provided over four levels (including 3 basement rooms). Also proposed is the provision of 23 parking spaces (including 2 disabled bays) for care home staff and visitors.

The proposal incorporates design elements of the host building, including fenestration details such as the arched windows, stone lintels & cills and the quoins characteristic of the original building. A glazed stairwell is proposed to the southwest elevation to connect the existing and proposed buildings.

## 6. Planning Policy

The site lies within Trowbridge Settlement Limits. Core Policies 1 and 2 in the Wiltshire Core Strategy are aimed at the sustainable provision and retention of services and facilities within such limits. Trowbridge is a "Principle Settlement" within the settlement hierarchy. Core Policy 1 states that: *"Wiltshire's Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure meeting their economic potential in the most sustainable way to support better self containment."*

Strategic objective 4 of the Core Strategy is aimed at helping to build resilient communities and includes, as a desired outcome, the provision of new community facilities including those serving healthcare and education.

CS Core Policy 58 in turn deals with the historic environment and its protection: *"Designated heritage assets and their settings will be conserved, and where appropriate enhanced."* Core Policy 50: (Biodiversity and Geodiversity) is also relevant where certain ecological issues were identified during the processing of the application.

In addition, the National Planning Policy Framework applies with particular reference to sustainable development, the delivery of a wide choice of accommodation, the historical environment and nature conservation.

## 7. Consultations

**Trowbridge Town Council** - objected to the initial plans for reasons of overdevelopment in a conservation area that would have significant adverse impact on neighbour amenity. Additional parking was also not provided.

**Wiltshire Council Highways** - There was a parking shortfall on the original plans and the applicant was invited to submit revisions. The Officer advised that the initial plans needed to be supported by additional parking in terms of the Wiltshire Car Parking Strategy. Parking standards for Nursing Homes were calculated and the officer advised that the *maximum increase* in parking provision should be 10 spaces, but she concluded that site has an accessibility rating of "moderate" in terms of the Strategy and, therefore, the additional number of parking spaces required to support the extension could be discounted. The revised plans for 60 bedrooms were submitted together with amendments to the parking layout. Looking at the provision required for the overall site the Officer advised that the maximum provision of 26 (16+10) could acceptably be reduced by the "accessibility discount" to 23 spaces. The officer is therefore satisfied with the final proposals.

**Wiltshire Council Ecologist** - The Ecologist initially identified additional requirements that would be needed in respect of bats and potential Great Crested Newt presence. This was followed by extensive discussion between the ecologist and the applicant, finally leading to revised plans to provide for mitigation measures in respect of bats which were confirmed to

be resident. No Great Crested Newt traces were found. The Council's Ecologist is now satisfied with the proposals subject to a condition in relation to the protection/mitigation measures for bats.

**Wiltshire Council Tree Officer** - The Officer noted the tree survey and protection plans submitted with the application as well as the presence of the two trees subject to Preservation Orders close to the south eastern boundary of the site. Whilst noting the tree protection plan information the officer recommended that a condition requiring an Arboricultural Method Statement to be submitted to detail tree protection prior to site clearance/commencement of development, be imposed.

**Wiltshire Council Conservation Officer** - The Conservation Officer raised concerns with the initial proposals insofar as the size and scale of the extension was concerned, given that it would be viewable from within the Conservation Area from Ravenscroft Gardens. The applicant was approached with a view to amending the proposals. Revised proposals to reduce the footprint and provide for the "stepping down" of the rooflines were submitted. The Conservation Officer has confirmed that the revisions address his concerns.

**Wiltshire Council Environmental Health** - No objections. Condition recommended in relation to noise limits and an informative suggested on working hours.

**Wiltshire Council Drainage Officer** – No objections. Condition recommended in relation to drainage of site.

## 8. Publicity

Objections and concerns raised in responses to advertising included:

- Issue of damage to the garden wall and access road, as well as obstruction of access to Hilperton road during construction;
- Unacceptable impact on parking and traffic in the cul-de-sac and hazards to pedestrians;
- Proposed extension is too large, too high, and too close to the long established private houses in Ravenscroft Gardens;
- Loss of privacy in Ravenscroft Gardens;
- Loss of trees and recreation land;
- Contrary to WWDP Policies C17, C19 & C22 in relation to harm to the Conservation Area and existing building;
- Loss of important trees and impact on trees of new building;
- Preservation of open land and countryside no longer seems to be being upheld given recent planning history in the area;
- There are better options of brownfield sites in Trowbridge where a purpose-built building could be constructed;
- This is a business within a residential area - increase in size will be detrimental to the local residents in terms of noise, increased numbers or size of vehicles;
- Would set a precedent for other properties in the area to ask for large extensions to turn into flats;
- Dimensions of parking spaces not indicated, larger cars these days may mean they are not adequate;
- Widening of entrance will require permission of owners of land on either side, or have developers will have to have ownership;
- There is an issue with surface drainage in Ravenscroft Gardens which will be exacerbated by increase in Nursing Home capacity;
- Large visually dominating extension even in revised plans, overdevelopment of site;

- If a vehicle or vehicles were to park adjacent to the home entrance, delivery vehicles would have great difficulty in manoeuvring – potential harm to the grass that the residents in Ravenscroft Gardens maintain;
- Increased parking on verges;
- Remaining integrity of host building will be destroyed, pity it is not listed;
- Harm to amenity at No's. 1 & 2 Ravenscroft Gardens, loss of privacy;
- Increased hazard at access onto busy Hilperton Road;
- Inadequate manoeuvring space for refuse vehicles onto site;
- Lack of provision for emergency vehicles – fire hazard;
- Ravenscroft Gardens was restricted to 9 dwellings when development was applied for, due to access issues;
- Paxcroft Mead/East of Trowbridge development has lead to a massive increase in traffic on A361. Increased size of building will increase traffic and hazards;
- Dispute validity of measurements on loss of light/privacy in analysis for revised plans;
- If permission is granted conditions should be imposed requiring the corridor windows on all levels of the three storey south facing elevation to be obscure glazed; the partial evergreen screen be increased along the entire boundary with planting; the laundry and any plant rooms or noise generating apparatus be positioned at the furthest point possible from our property; that construction staff, materials and associated equipment are only accessed through the side entrance of Ravenscroft Nursing Home and not over the side wall and lawned areas; no widening of the entrance drive without proper investigation into ownership;
- Example photograph submitted of negative effect of large delivery vehicles parking in Ravenscroft when delivering – situation would worsen;
- Although “stepping down” of building in revised plans is an improvement, the footprint remains the same and building with consequent loss of trees.

## **9. Planning Considerations**

Following the consultation and advertising process on the initial plans for the 73 Bedroom (in total) development, the applicants submitted a full set of revised proposals for 60 bedrooms, aimed at addressing issues of concern that were identified in the first round of consultation and advertising. In summary these were:

- potential harm to neighbouring amenity arising from overlooking and overbearing in relation to the neighbouring property to the south No. 1 Ravenscroft Gardens;
- the massing of the new development in relation to the host building as well as the Conservation Area;
- ecology, in particular in relation to bats which were believed to be present in the host building; and
- the traffic impact of the proposed development.

The application drawings are supported by a Design and Access Statement; a Heritage Statement, a transport statement, an arboricultural report, (including a tree survey plan and a plan for tree protection during development) and an ecological survey.

### **9.1 Impact on neighbouring amenity and the surroundings including the Conservation Area**

The number of bedrooms has now reduced to 60 and this has enabled a redesign that has reduced the massing and height of the southern half of the proposed extensions. The revised proposals, on the advice of the Conservation Officer, provide for reducing the ridge line by stepping down from the north to southern end of the building, following the changing site levels. (The site levels vary with the existing main building sitting in an elevated position

above ground levels which reduce towards the southern end of the site). The proposed extension would be at a lower level on the site, with ground floor level approximately 2m below that of the main building.

In addition, given neighbour observations regarding the potential for an overbearing presence and overshadowing on the property to the south of the site (No. 1 Ravenscroft Gardens), the proposed building height reduces, in three elements, from triple to conventional double storey height. The end elevation to the double storey element would be some 14m from the nearest point on the north facing elevation to the neighbouring dwelling. Notwithstanding the land level differentials, the proposed ridge would be below the 25 deg "rule of thumb" vertical elevation from the mid-point of the neighbouring north-facing windows. Further, given the orientations relative to due north of the site and the neighbouring property, there would be no overshadowing restricting direct sunlight. Sun path analyses for mid-summer and mid-winter have been submitted with the revised proposals, and demonstrate this conclusively.

With regard to loss of privacy, the revised plans have been adapted to remove originally-proposed south facing openings to the southern extremity of the building, replacing these with blind openings designed to accord with the style of fenestration of the rest of the buildings. Only two obscure-glazed windows serving en-suite bathrooms are proposed to this section of the building at a distance of some 7.5m from the boundary, which is also characterised by extensive screening by trees and a hedge. The south facing triple storey element would be set back some 17m from the neighbouring boundary, again with substantial vegetation in the intervening space. There would be windows to this elevation with visibility towards the neighbouring dwelling at distances varying between over 29m, and 33m from the house itself. These windows would serve a corridor and not the habitable room spaces and are orientated towards the rear garden of No.1, and at the proposed separation distance with the trees to the boundary it is not considered reasonable to impose a condition in relation to obscure glazing to the corridor windows.

Given the separation distances outlined above, together with the relative orientations of the properties, it is considered that there are no issues of either loss of privacy or overshadowing that would militate against approval.

With regard to Conservation Area considerations the extension would be constructed to the rear of the original building, which itself has an extension. The Hilpert Road facing elevations to the host remain largely unaffected by the proposal. The design and layout of the extension is specific to the needs to provide care home facilities, including the enclosed courtyard area. Externally, matching materials are proposed and design elements such as the arched windows, stone lintels/cills, stone quoins, and a mixture of roof profiles (mansard and hipped roofs) are carried through. The proposals furthermore include the retention of the majority of the trees and other boundary vegetation that provided screening to the boundaries. The Conservation Officer is satisfied that the revised design satisfactorily addresses initial concerns in relation to the size and massing of the extension. Albeit therefore that the building would occupy the private garden space to the rear of the Care Home, visually to external views from the north, south and west there would be substantial softening by the boundary vegetation.

## **9.2 Ecology**

As noted above, Council's Ecologist confirms that the revised scheme "*... avoids causing impacts to bat roosts in the loft of the existing building (possibly lesser horseshoe and brown long-eared bats) and only roosts of crevice dwelling species located under tiles and behind fascias may be affected. It is likely that the latter can be mitigated through provision of new roosting features such as bat tubes which have been indicated in suitable places on the*

*revised proposed elevation drawings...I consider that an application for a European Protected Species Licence would now be able to meet the tests required by the Habitats Regulations.”* It is considered that, in the light of the detailed investigation that has been carried out and the revised detail that has been provided, the ecological issues identified have been wholly addressed.

### **9.3 Highways**

Neighbour comments in particular have raised concern with parking and access. Issues raised include inadequate on-site parking, hazards with access onto Hilperton Road and large delivery vehicles. In considering the revised plans the Highway Officer provided a detailed assessment of the proposals in accordance with the Wiltshire Parking Strategy, which led to revisions to the plans to provide additional parking to meet standards (See “Consultations” section above). The Highway Officer is satisfied with the proposals on that basis. Ravenscroft Gardens is an adopted but unclassified road. The existing car park is currently not formalised in terms of a marked layout. The proposed parking to provide for the revised total of 60 bedrooms is for a reconfiguration and re-surfacing of a shared parking area (staff and visitors) to provide 23 spaces (21 standards and 2 disabled spaces). A turning facility is also proposed to enable vehicles to enter and leave the site in a forward gear. In addition 6 cycle stands are proposed. The condition recommended by the highway officer regarding the physical provision of the parking area should be imposed in the event that permission is granted.

A neighbour comment relating to the widening of the access over the land adjacent to the site is that the area concerned is not under the ownership of the applicants. Research into the original permission W83/00428/FUL) shows that there was a Section 58 agreement entered into in terms of which the highway authority was enabled to issue instructions for the construction of the means of access over the Ravenscroft Garden land. However it does appear that the remaining land would have remained in the ownership of the developers and their successors in Title. It is understood that this land is currently maintained by the local residents. The small width of land required for the widening is not within the application red-line area and the application form is therefore correctly completed in terms of ownership. Ownership is not a planning consideration, and the formation of an access off of a highway that is not classified does not require planning permission under the General Permitted Development Order. It is considered that the scheme could still be reasonably implemented and the parking provided if it is established that the land is not all highway land (the widening was not a requirement of the highway officer in her comments) and the consent of the owner is required to make use of a narrow strip of what would then be amenity land immediately adjacent to the well-established access.

### **9.4 Other matters including conditions**

Paragraph 206 of the National Planning Policy Framework states that Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and
- to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Neighbour concerns were raised with regard to the potential for construction works to create disturbance and the request, in the event that permission is granted, is that a condition

imposing working hours is imposed. Environmental Health officers have suggested only an informative in this regard.

In planning terms, due to the existence of other legislation and procedures to control nuisance, including noise arising from construction activity, the use of planning conditions to control the construction process cannot always be justified. A consideration is also weighing the restriction of working hours against extending the construction process over a longer period. Prior to imposing such conditions, each case needs to be assessed to determine whether this would be appropriate based on the type and scale of development and the nature and sensitivity of the locality.

In this instance, whilst the nature if the development is C2 residential care which is appropriate in the context of surrounding C3 residential use, access off of the relatively busy Hilperton Road for construction traffic would be into the cul-de-sac with the potential for nuisance outside of normal working hours (albeit temporarily during the construction phase) arising from the movement/operation of equipment and delivery of materials. It is considered reasonable therefore to impose a condition restricting working hours. An additional condition requiring a Construction Method Statement addressing matters such as storage of materials, parking for construction vehicles and temporary hoardings is also considered reasonable in this setting. Use rights should also be restricted to Care Home facilities given that alternative C2 Uses (e.g. a college or a training centre) might bring additional planning considerations into play.

A surface drainage condition would also be appropriate in the light of the comments of the Drainage and to ensure that adequate drainage is provided. Foul water drainage would be a building regulations matter and the developer would need to satisfy Wessex Water with regard to foul drainage connections.

## **10. Conclusion**

The proposal would provide a care home that would add to the mix of community facilities serving the Trowbridge Community Area. A scheme has been negotiated to the satisfaction of consultees in relation to the Conservation Area, Highways, Tree preservation and Ecology implications. Permission is recommended 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 details and samples of the materials to be used 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.

- 3 No development shall commence on site until details of all windows (including head, cill and window reveal details) 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, the character of the host building and the character and appearance of the area.

- 4 No part of the development hereby permitted shall be occupied until the parking spaces have been constructed and marked out in accordance with the details shown on the approved plans, and the cycle racks provided. The parking and turning areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety and amenity.

- 5 Before works commence, a report shall be submitted to and approved in writing by the local planning authority approval detailing the results of sufficient bat surveys to confirm the location, status, species and access points of all bat roosts in buildings affected by the development hereby approved. The report shall illustrate the locations of roosts and access points on the approved architect drawings and assess the impacts of the proposed scheme on each roost and access point. The report shall provide recommendations for mitigation of any loss of ecological function of roosts or access points and any other safeguards that need to be put in place such as methods of working and revised survey and will recommend whether or not a European Protected Species licence will be required for works to proceed. The works shall be undertaken in accordance with the recommendations of the approved report.

REASON: In order to ensure the protection of Bat Species.

- 6 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) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
- j) proposed and existing functional services above and below ground (e.g. drainage,

power, communications, cables, pipelines etc indicating lines, manholes, supports etc);

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

- 7 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 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.

- 8 No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to the trees to be retained in accordance with the approved plans has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement shall provide the following:

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2005 and a plan indicating the alignment of the protective fencing;
- A specification for scaffolding and ground protection within tree protection zones in accordance with BS5837:2005
- A schedule of tree works conforming to BS3998.
- Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- Plans and particulars showing the siting of the service and piping infrastructure;
- A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
- Details of the works requiring arboricultural supervision to be carried out by the



developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and

- Details of all other activities, which have implications for trees on or adjacent to the site.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

- 9 The development shall be carried out as specified in the approved Arboricultural Method Statement (AMS), and shall be supervised by an arboricultural consultant.

REASON: To prevent trees on site from being damaged during construction works.

- 10 All building services plant shall be so sited and designed in order to achieve a Rating level of -5dB below the lowest measured background noise level, determined at the nearest noise sensitive receptor. Measurements and assessment shall be carried out in accordance with BS4142:1997.

REASON: In the interests of amenity of the surrounding area.

- 11 No development shall take place, including any works of demolition, until a Construction Method Statement 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 Statement shall provide for:

- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development
- the erection and maintenance of any security hoarding;
- measures to control the emission of dust and dirt during construction; and
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

REASON: In order to avoid harm to surrounding amenity in terms of noise, storage areas and restricted access arising during the development.

- 12 Hours of work for all demolition, site clearance and construction shall be within the following times:

Monday to Friday 0730 to 1800; Saturday 0800 to 1300 and at no time on Sundays or Bank Holidays.

REASON: In the interests of those residents in the cul-de-sac area and nearby the site

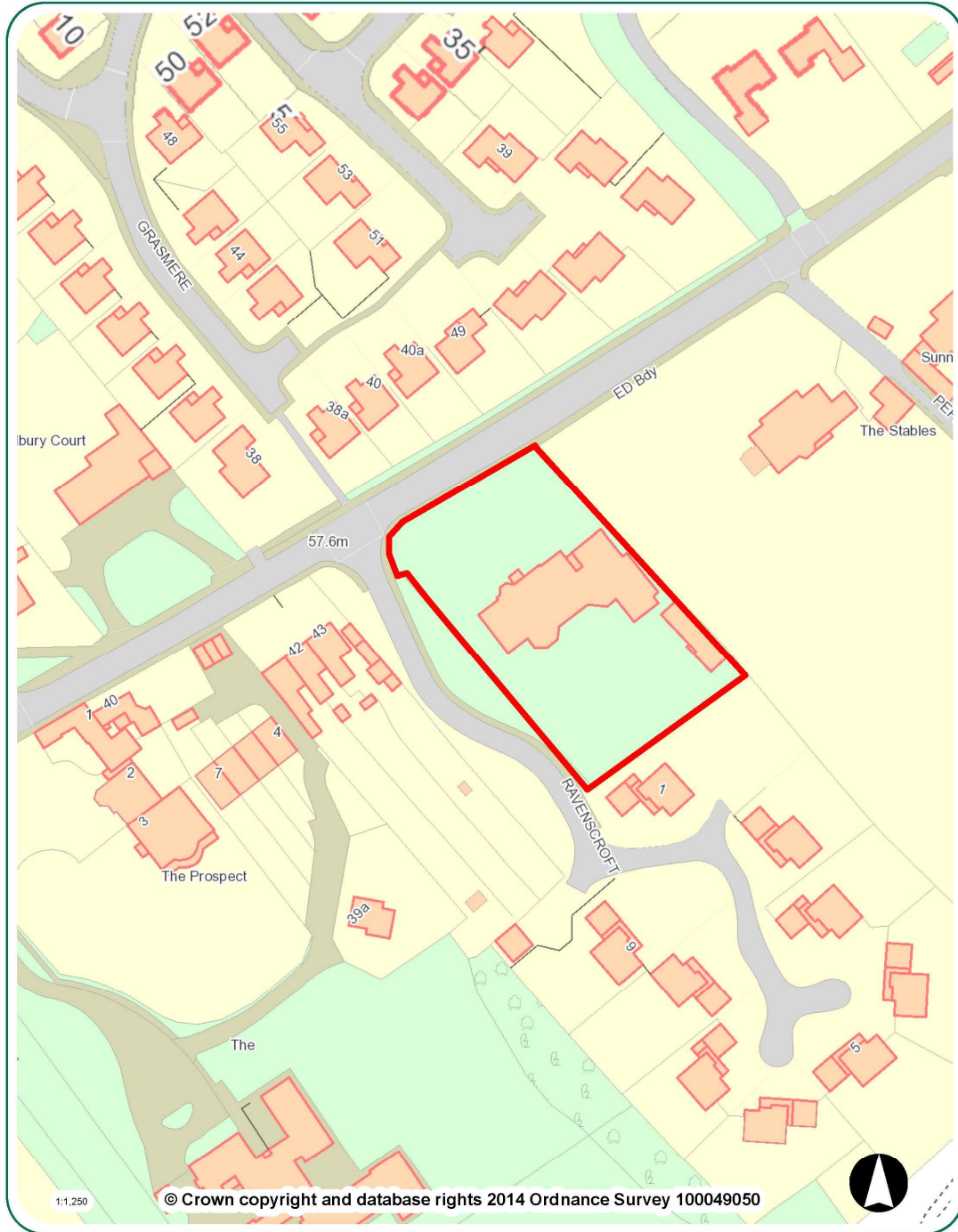
- the hours of working should be controlled.
- 13 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.
- REASON: To ensure that the development can be adequately drained.
- 14 The development and accommodation hereby permitted shall be used for residential care and ancillary facilities within the definition of Class C2, Residential Institutions, and for no other purpose (including any other purpose in Class C2); 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: In order to define the terms of this permission and because other C2 uses may not be appropriate in this context.
- 15 The development hereby permitted shall be carried out in accordance with the following approved plans:
- L5800 (05) 70 Existing Site Plan with Topo survey received on 18.09.2014
  - L5800 (05) 74A Proposed Lower Ground Floor Plan received on 18.09.2014
  - L5800 (05) 75A Proposed Ground Floor Plan received on 18.09.2014
  - L5800 (05) 76A Proposed First Floor Plan received on 18.09.2014
  - L5800 (05) 77A Proposed Roof Plan received on 18.12.2014
  - L5800 (05) 78C Proposed Elevations 1 received on 18.12.2014
  - L5800 (05) 79C Proposed Elevations 2 received on 18.12.2014
  - L5800 (05) 80 Proposed Courtyard Elevations received on 18.09.2014
  - L5800 (05) 83B Proposed Site Layout Plan with 25/45 degree analysis received on 18.09.2014
  - L5800 05 3D 001-004, Sun Path Analysis received on 18.09.2014
  - L5800 (05) 95 South West Progressive Elevations received on 18.09.2014
  - L5800 (05) 96 South East Progressive Elevations received on 18.09.2014
  - L5800 (05) 97 North East Progressive Elevations received on 18.09.2014
- REASON: For the avoidance of doubt and in the interests of proper planning.

16 Informatives:

The details provided in the submitted Arboricultural Report and Tree Protection and Tree Survey plans are accepted as base information for incorporation into the plans/reports to be provided in respect of the landscaping and arboricultural method statement conditions.

The applicant is advised that this permission relates to development within the red-line application site area. There is a question of land ownership over the narrow strip of land adjacent to the access which it is proposed to utilise for access widening.

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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	4 February 2015
<b>Application Number</b>	14/06682/FUL
<b>Site Address</b>	64 Wingfield Road Trowbridge Wiltshire BA14 9EN
<b>Proposal</b>	Erection of 8 dwellings and associated works
<b>Applicant</b>	Shepperton Homes
<b>Town/Parish Council</b>	TROWBRIDGE
<b>Ward</b>	TROWBRIDGE CENTRAL
<b>Grid Ref</b>	384674 157595
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Matthew Perks

### Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor John Knight for consideration of the scale of development, visual impact upon the surrounding area, the relationship to adjoining properties, the design of the development, highway impact and parking.

#### 1. Purpose of Report

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

#### 2. Report Summary

The plans under consideration are revision to those initially submitted, following negotiation. The number of units on site has been reduced from 9 to 8.

The key issues to consider are:

- The principle of development in this locality;
- Neighbouring amenity and Landscaping/Design.
- Access and parking; and
- Ecological considerations

Neighbourhood Responses:

Initial Plans: 7 responses were received,  
Revised Plans : 4 responses received, all objections.

Trowbridge Town Council

Initial Plans: No Objection on first response but subsequently resolved to object for reasons outlined in “Summary of Consultation Responses” below.

Revised Plans : No comments received.

### **3. Site Description**

The application site of some 3100m<sup>2</sup> in extent lies to the north of Wingfield Road, Trowbridge, approximately 800m west of the town centre. The Trowbridge (Newtown) Conservation area abuts the site to the east and is characterised in this vicinity by Victorian dwellings on properties of fairly generous proportions, albeit with permission having been granted to the rear in one instance for a smaller subdivision. To the west and north there are relatively modern residential developments on more modest plots. The plans indicate that access would be centrally located on the Wingfield Road frontage.

The site is currently occupied by a bungalow-style dwelling with rooms to the roofspace served by dormers, and outbuildings. The garden is of a generous size and is largely laid to lawn and planting beds, with a disused tennis court on the western half of the site.

Permission was granted under application reference 00/01910/OUT for Residential development of half (approximately) of the site on 15 June 2001. This permission has lapsed.

### **4. Planning History**

W/00/01910/OUT	Residential development (outline – 2 x 3-Storey dwellings) : Permission : 15 June, 2001
W/89/01148/FUL	Erection of single garage : Permission : 08 August 1989

### **5. The Proposal**

The application is for the construction of four x 4 bed houses and four x 3 bed houses, all two storey in height, and with associated access and parking following the demolition of the existing dwelling. An existing access on to Wingfield road from the eastern side of the site would be stopped up, to be replaced by a centrally located entry point onto a cul-de-sac that would provide for 13 parking spaces, 7 detached garages and 2 further garages attached to proposed dwellings.

### **6. Local Planning Policy**

The Wiltshire Core Strategy (WCS) was adopted at a special council meeting on January 20<sup>th</sup> 2015; and as such, it can be afforded ‘Full Weight’ in planning terms although it is still subject to a 6-week potential challenge.

The site lies within Trowbridge Settlement Limits. Core Policies 1 and 2 in the Wiltshire Core Strategy are aimed at the sustainable provision and retention of services and facilities within such limits. Trowbridge is a “Principle Settlement” within the settlement hierarchy. Core Policy 1 states that: “Wiltshire’s Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as



employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure meeting their economic potential in the most sustainable way to support better self containment.”

Core Policies 60 to 62 relate to sustainable transport and impacts arising from new development on the transport network including highways. Core Policy 50: (Biodiversity and Geodiversity) is also relevant where the ecologist identified ecological considerations on site.

Design and Place Making are the subject of Core Policy 57 (Ensuring High Quality Design and Place Shaping) and Landscaping is addressed in Core Policy 51.

In addition, the National Planning Policy Framework applies with particular reference to sustainable development, the delivery of a wide choice of accommodation, transport infrastructure, the historical environment and nature conservation.

## **7. Summary of consultation responses**

### **Trowbridge Town Council**

Raised no objection in an initial response. This was subsequently revised to an objection in relation to the high density of properties on the development and height of new dwellings that would overshadow existing properties. The impact on neighbouring properties was potentially harmful and materials did not match the surrounds. In addition to this inadequate arrangements were proposed for parking space and drainage was potentially inadequate and could therefore cause flooding. Traffic congestion will be worsened and could potentially lead to severe accidents.

The Town Council did not comment on the revised plans.

### **Highway Officer**

The revised plans were prepared and submitted with consideration for issues initially raised by the highway officer who is now satisfied with parking, manoeuvring and access arrangements. Regarding the site frontage, the officer is of a view that a 3m footway should be required due to the increase of the vehicle movements at the proposed junction to provide adequate space to minimise the risk of pedestrians stepping into the carriageway. (Discussed further below).

### **Urban Design Officer**

Initial Plans: The Officer noted that the area to the east is characterised by large houses set back from Wingfield Road in generous plots. The layout had been altered following pre-application discussions which included the Officer. The density of development is not particularly high and the positioning of the buildings along the front of the site has been well conceived in order to follow the building line of the adjacent property. However, the officer recommended that the layout around the cul-de-sac should be altered. No written comment was received on the revised plans but the officer expressed satisfaction with the revisions in discussions.

### **Archaeologist**

No heritage assets (archaeology) lie within or close to the proposed development site. There is little indication that any heritage assets with archaeological interest would be impacted and therefore no recommendations in relation to this application.

#### **Housing Officer**

Initial and revised plans : The officer noted that the proposed site lies within Trowbridge and that the applicant is proposing a scheme of 9 (then 8) dwellings. There would be no requirement for an affordable housing contribution to be made.

#### **Education Officer**

Initial and revised plans: The development has been reviewed in terms of current assessment methodology, and whether or not exceptional demand for places here should trigger contributions from sites with units under 10 units number. It is confirmed that in this case, no S106 contribution would be required for education.

#### **Environment Services Officer (Public Open Space)**

In noting the demolition of the existing dwelling, and the consequent net additional 7 units the officer advised that a Public Open Space contribution would be required. Following discussions and negotiation with the agent, the amount agreed was £3,296.

#### **Ecologist**

The officer noted that the submitted bat survey confirmed the presence of a single Lesser Horseshoe bat and its usage of the existing garage building as a resting place (roost), but there is no evidence of roosting bats using the existing bungalow. It would therefore be necessary for the developer to apply for derogation (a development licence) from Natural England to allow the proposed demolition of the existing garage and the re-development of the site to proceed. Mitigation for the loss of the Lesser Horseshoe bat roost will also be required as part of the proposed development, the officer recommended design changes and that full mitigation details should be submitted. With regard to vegetation the importance of an existing hedge was noted and it was recommended that a planting/landscaping scheme was submitted. Lighting details are also important given the presence of the bat species. Site clearance should also be undertaken with due consideration for the potential presence of reptile species.

#### **Wessex Water**

No objection, noting only that new water supply and waste water connections will be required from Wessex water to serve the development. The response was confirmed for the revised plans.

### **8. Publicity**

- Three schools in close proximity to each other on busy Wingfield road. Parking and traffic hazard would be increased. Further disruption to surrounding properties;
- 9 Units on this land would be overdevelopment;
- Trees and hedges should remain in situ;
- Application for 9 dwellings is “the result of people taking advantage of the housing situation that exists at the present time and are looking, purely for monetary gain irrespective of any inconvenience and discomfort to the surrounding community.”

- Drainage and sewage disposal at maximum efficiency and greater use would cause problems;
- Previous application for two bungalows on site rejected; Loss of privacy through overlooking of gardens and property;
- Houses in Wren Court are on lower ground than the development site meaning the new houses, particularly plots 5 & 6 look directly down and into the gardens, behind them;
- Should development be granted either the current 2.5m hedging should be kept or be replaced by fencing and planting to at least that height;
- 10m separation distance to boundaries should be required;
- Idea of extending existing yellow lines doesn't deal adequately with number of cars during school start and finish times;
- While noting that proposed build style of houses and the frontage of the site has been developed to bridge the difference between the conservation area and newer housing stock, the use of white render is out of keeping with the area;
- In principle in support for redevelopment of 64 Wingfield Road but there are issues with the proposal to extend the double yellow lines to cover the full extent of since this creates hazards with drivers simply ignoring them; bottlenecks during busy school times; overspill parking in surrounding area; lack of visitor parking for existing residents; street scene not appropriate, where development should blend with the surrounds and dismiss the idea that an Arts and Crafts Movement style is appropriate; Consideration should be given to remove the existing trees between plot 1 and the boundary to 66/68 Wingfield Road in favour of erecting fencing and to provide a mix of fencing and shrubbery to improve privacy;
- No. 66 Wingfield Road not consulted (Officer note: Advertising records indicate that neighbour correspondence was indeed sent to that address)
- Stone facades should be required (rather than brick and render) to match houses on the north side of Wingfield Rd and removal of flat roof dormer windows.
- Density should be reduced;
- Increase in parking spaces from 2 to 22 (expected increase of 1100% in vehicle numbers within the proposed development site) implies a huge increase in the number of exits and entrances from and to the property, associated increase in traffic hazards;
- Much greater distance of the 2-storey dwellings from site boundary, to reduce overshadowing and loss of privacy to neighbours.
- Safe play area with facilities for toddlers, within development should be provided;
- Visitor parking should be provided within the development.

## **9. Planning Considerations**

### 9.1 Principle of Development

The NPPF states that “planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise’ and that ‘in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development’.

The site lies within Trowbridge Settlement Limits as defined within the Wiltshire Core Strategy. Core Policies 1 and 2 in the WCS are aimed at the sustainable provision and retention of services and facilities within such limits. Trowbridge is a “Principle Settlement” within the settlement hierarchy. The site is therefore by definition in a sustainable location and the principle of further residential development is therefore accepted.

## 9.2 Landscaping, design and potential loss of neighbouring amenity

The site is currently occupied by one existing dwelling and the tennis court. This would be replaced by a development of 8 dwellings. The initial proposal was for 9 dwellings but this was reduced following on-site discussion and input from the Urban Design Officer. In the light of neighbour, highway and Town Council comments, a re-layout was submitted aimed at addressing key issues including the relationship to the neighbouring dwellings, and highway concerns (discussed further below).

Key changes from the initial scheme include the re-siting of the dwelling proposed to plot 4, which had the potential for overshadowing and loss of light to the rear of the dwelling to the north at No. 10 Wren Court. Concerns were that the relative location of this property to the north of the site meant that the 25 deg “rule of thumb” vertical viewing angle from rear facing windows of the existing dwelling to the ridge of the proposed unit, indicating potential harm, was exceeded.

The agent revised the plans, relocating the unit towards the south, handed the proposed dwelling so that the massing was reduced, and submitted a “Daylight and Sunlight Analysis” in terms of the guidance set out in the Building Research Establishment (BRE) Report of 2009: “Site Layout Planning for Daylight and Sunlight”. The BRE report advises that: *“If, for any part of the new development, the angle from the centre of the lowest affected window to the head of the new development is more than 25 deg, then a more detailed check is needed to find the loss of skylight to the existing buildings.”* The submitted analysis included a diagrammatic presentation which demonstrated that only a small part of the apex of the ridge of Plot 4 is above the 25 degree viewing plane. The remaining 180 deg horizontal field of view from the rear of the dwelling would remain unobstructed above the vertical viewing plane by any development. The very limited encroachment of a part of the apex of the gable end is concluded by the analysis to be *de minimis* in terms of loss of daylight which would be more than offset by the remaining field of view, and also the application of a light coloured render to the gable. The materials indicated in the drawings are for an off-white render.

The units to Plots 5 and 6 were also re-orientated. In the original plans windows facing north would have been directly inter-visible with upper-level windows to habitable rooms in dwellings to the north at a distance of approximately 17m – well below the normally accepted guideline of 21m (although this is not adhered to in all cases in modern estate development, it does represent an established guideline in terms of achieving privacy). Upper level windows would furthermore have been within 5.5m of the boundaries of the neighbours to the north. The dwellings to Plots 5 and 6 are now proposed to be orientated with primary and rear elevations facing west and east respectively. The issue of loss of privacy has been raised. However, the main section of the rear elevations to the new units would be some 9m from the boundary (two smaller bedroom windows would be at a minimum of 7m). Any overlooking would be restricted to the rear half of the elongated rear garden to the east, with the existing dwelling itself being some 20m from the nearest new upper-level window and at

an obtuse viewing angle. Furthermore, with the retention of the substantial hedge for ecological purposes (see below) it is considered that an unacceptable loss of privacy would not arise. Unacceptable overshadowing would not arise given the distances from the boundary and the presence of the hedge.

The units on Plots 3 and 4 would have west-facing rear windows at between 9m and 12m from the western boundary which is satisfactory. No's 6 and 7 Swallow Drive lie beyond the land to the rear of 66 Wingfield Drive at a minimum distance of 19 m from the rear of the two new dwellings.

Plots 1 & 2, and 7 & 8 would accommodate semi-detached pairs which would form feature buildings onto the Wingfield Road frontage, mirroring each other on either side of the access. The Design and Access Statement notes that the units "...closest to the access road step forward to form a gable with a projecting bay window, and allows the roof to continue down and over the garage. Together with its adjoining unit, this then gives the impression of a large, single dwelling providing a similar massing to its existing neighbours." The urban design officer supports the siting (the remainder of the plots were adjusted around the cul-de-sac following initial comments from the officer). Landscaping to the frontage would include new trees to either side of the access.

The existing dwelling is of no particular architectural merit and given the application site situation in a location that effectively forms a transition between the historic area of Wingfield Road to the east and the modern suburban development to the west, the overall design is aimed at responding to the transition with the more formal frontage buildings. The street elevation has been composed with attention to building detailing and boundary treatments to address the neighbouring Conservation Area frontage.

Density/level of development on site has been raised as an objection. The site is located in a context of varying surrounding densities and would itself have a density of 38 units/ha which the Urban design officer confirms is "not particularly high". In considering this aspect it is accepted that the conservation area to the east is characterised by properties with generous grounds resulting in low densities, but to the west and north of the site the more modern developments in Nightingale Road, Wren Court and Warbler Close have highly variable densities including relatively tight-knit terraced development on small properties. Whilst it is acknowledged that part of the adjacent context includes the larger, fairly generous plots the east, the proposal would form its own cluster of dwellings of a relatively uniform design theme and identity set around the new parking/access cul-de-sac. This is considered to be wholly acceptable.

Building materials have been raised in objector comments, with the view being expressed that matching materials to the surrounds should be used. In evaluating this it is noted that a mix of materials exists in the area. The traditional buildings within the conservation area are a mix of stone with red brick present in some side elevations. In the modern estates in the vicinity use has been made of reconstructed stone under grey roof tiles. The existing dwelling on site (to be demolished) is a mixture of white render under plain red tiles. An established uniform "character" in terms of materials is therefore not in place, and (again) the proposed development would in any event form its own cluster of buildings with a separate identity. The feature units to the road frontage would have a mixture of red brick/reconstituted stone at ground floor level with off-white render above, under plain tiles with black rainwater goods. Fenestration frames and doors would be of timber. The remaining units would all have off-white render under tiles with the same treatment to rainwater goods, fenestration and doors. Seen in this context the proposed materials are considered wholly acceptable.

With regard to landscaping, the site currently has a number of trees and large shrubs which would be unavoidably lost. The proposal includes the replacement of the hedge to the northern boundary because of its intrusion into the site. However (also discussed below under ecological matters) a landscaping scheme that provides for the retention of a key beech hedge to the eastern boundary, as well as feature trees softening the layout has been submitted and is considered acceptable. The beech hedge would form a robust vegetated boundary between the site and the conservation area to the east, whilst also performing a screening function. A specific condition requiring its protection is recommended.

### 9.3 Access and Parking

The application was accompanied by a "Transport Statement" and the Highway Officer, having received additional information and layout details beyond that, is satisfied with parking, access and manoeuvring, including for refuse disposal vehicle access. The parking area would be set back behind the units facing the street frontage and be accessed from the south directly off of Wingfield Road. 13 open and 9 garage parking spaces and would be arranged around a turning head that would accommodate manoeuvring for a refuse vehicle.

The highway officer has no objections in relation to additional traffic or parking issues that are raised by the Town Council and objectors, but did recommend a 3m wide pedestrian walkway to the site frontage given the increased use of the relocated access and the proximity of the nearby schools. However the agent has submitted additional supporting documentation which raises a number of considerations. The required visibility splays of 204m by 43m splays will be provided in both directions through very minor adjustments to the wall in the immediate vicinity of the access only. There are refuges crossing of Wingfield Road approximately 30m to the west of the site and a Pelican crossing approximately 75m to the east, limiting school related pedestrian movements across the site frontage itself. The development is restricted to 7 net additional residential units and the number of pedestrian and cycle movements likely to be generated would not in, in isolation, justify widening of the existing footway. Removal of the on-street parking across the site frontage would increase the perceived width and ease of use of the existing footway, in conjunction with the removal of the close boarded fencing which tops the existing wall and its replacement with open railings at a lower level. The Introduction of a short length of cycleway across the site frontage (50m) is not considered practical as to the east of the site the existing footway reduces to a 1.4m width.

The site was re-visited in the light of these comments and, apart from the argument presented by the consultant, it is evident that the existing narrow pavement width to the east in itself would create a potential hazard where cyclists/pedestrian footway users would be forced to either continue along the narrow footway or move on to the carriageway in any event. Apart from these highway considerations the attractive stone wall that would be slightly re-aligned at the access to achieve visibility, but retained towards either side of the site, presents a continuation of the appearance of the immediate road frontage within the conservation area to the east, creating a degree of transition in the street boundary treatments.

Particular concerns were raised by objectors with regard to parking issues. Wholly adequate on-site parking would be provided and the highway officer has confirmed that no parking would be permitted on the Wingfield Road frontage to the site.

It is considered that, subject to relevant conditions, the application can be supported from the highway perspective.

### 9.4 Ecology

The application was accompanied by an “Ecological Assessment and Bat Survey” and a subsequent “Bat Survey Report” following the comments of the Ecologist. Further, in the light of those comments, revisions were made to the garage details and to the landscaping proposals. The Ecologist has confirmed that the proposals are now acceptable, and has recommended conditions. Mitigating measures include the provision of bat boxes and the retention of the beech hedge to the eastern boundary of the site as a natural habitat enhancement. It is considered therefore that ecological issues have been properly addressed.

#### 9.5 Other matters

No on site open space play areas are included in the proposal and the Open Space Officer has agreed that a contribution of £3,296 would be accepted. This can be achieved by way of a S106 Agreement. This would address satisfactorily, although not entirely, the neighbour observation that a play area should be provided.

In respect of sewerage capacity (a matter raised by objectors) the developer would need to satisfy Wessex Water with regard to foul drainage connections, and that Authority has raised no objections. Details of sewerage would be a building regulations matter. Flooding is raised in comments as a potential issue. The site has no designation in terms of Environment Agency criteria as being subject to flooding hazard. It is considered that a surface drainage condition would satisfactorily address this issue.

No on-site play area has been proposed (a matter raised by some objectors) but the Open Space officer has agreed that a sum for off-site provision is acceptable. In addition there is a mix of various formal (e.g. school playfields) and informal open space in the vicinity, with access to the open countryside over footpaths under half a mile to the west.

### **10. Conclusion**

In view of the above evaluation of the proposal, it is considered that the development should be granted approval, subject to the completion of a S106 agreement and conditions.

### **RECOMMENDATION**

Planning Permission be granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion a legal Agreement to secure an index-linked financial contribution of £3,296 towards the provision of open space facilities, and 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 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.

- 3 Subject to the further requirements of Condition 4, all soft landscaping comprised in the approved details of landscaping on Plan 3631/01 Rev H 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.

- 4 The hedgerow along the north-eastern boundary of the development hereby approved and as shown on Plan 3631/01 Rev H shall not be removed without the prior written approval of the Local Planning Authority. If, contrary to this condition, the hedge or part of the hedge is removed or destroyed, details of new hedging shall be submitted to the local planning authority and the approved details shall be implemented during the first available planting season after the date of approval.

REASON:

To protect a flight line for Lesser Horseshoe bats.

- 5 Notwithstanding any other approved plan and prior to the commencement of development a plan shall be submitted showing existing and proposed finished land levels and finished floor and ridge levels to all new buildings for written approval by the Local Planning Authority. There shall be no raising of existing ground levels on the site by importation of materials . The development shall be implemented in accordance



with the approved levels.

REASON:

In the interests of visual amenity.

- 6 No part of the development hereby permitted shall be first occupied 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.

- 7 The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel) and visibility splays have been provided in accordance with the details shown on drawing GAO1 REV A as contained within the "Transport Statement" dated July 2014. The access shall be maintained as such thereafter.

REASON:

In the interests of highway safety.

- 8 No development shall commence on site until details of all boundary treatments, which shall include the retention of the stone materials to the Wingfield Road frontage to include the reconstruction of the wall to be re-aligned under Condition 6, 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.

- 9 The development hereby approved shall be carried out in accordance with the 'Discussion and Conclusions' section on pages 11 - 12 of the Bat Survey report by Stark Ecology dated August 2014 and drawing 3631/04 REV B received on 22

December 2014, as modified by any relevant Natural England bat licence for the development, or unless otherwise agreed in writing with the local planning authority.

REASON:

To ensure adequate mitigation for a European protected species - Lesser horseshoe bat.

- 10 Only passive infrared sensor lights shall be used on the exterior eastern elevation of Plot 6 and no external lighting shall be installed to the rear of the garages containing the Lesser Horseshoe bat roost (Plots 6 and 7), as modified by any relevant Natural England bat licence for the development. No other external lighting shall be installed without the prior approval of the Council's Ecologist.

REASON:

To maintain the eastern boundary as a dark corridor for bats.

- 11 The development hereby approved shall be carried out in accordance with the 'Discussions and Conclusions' section on pages 14 - 15 of the Ecological Appraisal and Initial Bat Survey report by Stark Ecology dated July 2014 in relation to reptiles, badgers and nesting birds, unless otherwise agreed in writing with the Council's Ecologist.

REASON:

To ensure adequate mitigation for UK protected species

- 12 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON:

To ensure that the development can be adequately drained.

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

3631-001 REV H Received on 22 December 2014;

3631-011 REV A Received on 26 November 2014;

3631-013 REV B Received on 22 December 2014;

3631-018 REV B Received on 26 November 2014;

3631-019 REV A Received on 26 November 2014;

3631-020 REV B Received on 26 November 2014; and

3631-040 REV B Received on 3 January 2015.

REASON:

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

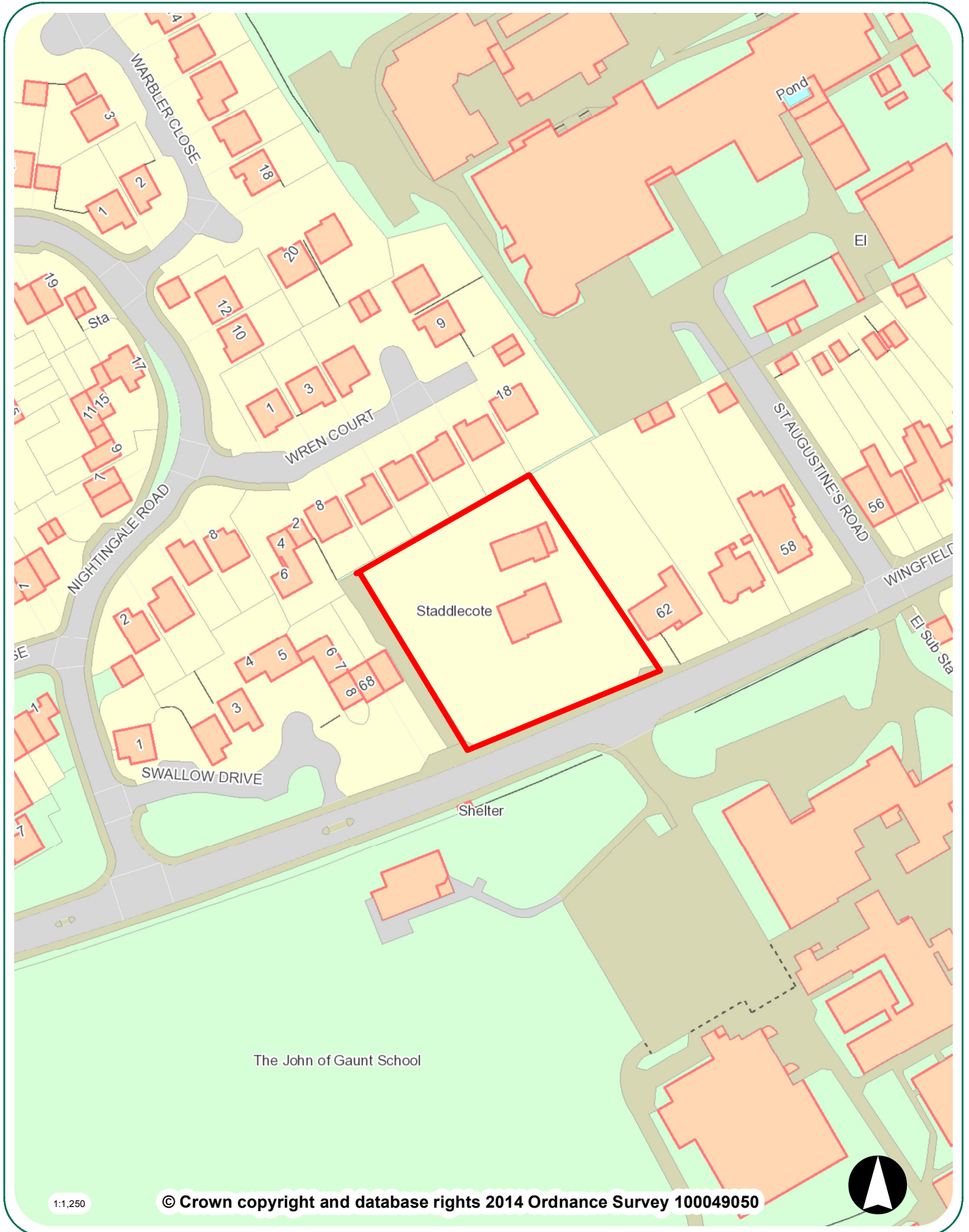
14 INFORMATIVES:

a) There is a low risk that great crested newts could occur in suitable terrestrial habitats on the application site. Great crested newts are legally protected by The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended). Please be advised that, if great crested newts are discovered, all works should stop immediately and Natural England should be contacted for advice on any special precautions before continuing, as a derogation licence may be required.

b) Any noise during the construction phase should be limited to 0730-1800hrs Monday to Friday and 0800-1300 on Saturdays and not at all on Sundays and Public Holidays.

c) The entire site frontage will be subject to parking restrictions by a Traffic Regulation Order (TRO) (parking restrictions currently existing either side of the site), this will ensure that the maximum visibility is achieved at all times.

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## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	4 February 2015
<b>Application Number</b>	14/10385/VAR
<b>Site Address</b>	Land South West of 429 Redstocks, Melksham, SN12 6RF
<b>Proposal</b>	Variation of conditions of W/12/01907/FUL to allow changes to storage of fencing materials and ancillary landscaping materials
<b>Applicant</b>	Mr A Turner
<b>Town/Parish Council</b>	MELKSHAM WITHOUT
<b>Ward</b>	MELKSHAM WITHOUT SOUTH
<b>Grid Ref</b>	393203 162772
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	James Taylor

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

This application has been called to committee by Councillor Roy While on the grounds that it is *“inappropriate development given the poor condition/narrowness of the access road and the additional large vehicles using the road.”*

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

The purpose of the report is to set out the proposals, the relevant material planning considerations, explore and assess the merits of the case and make a recommendation to members of the planning committee.

### **2. Report Summary**

This report recommends that planning permission be granted. This is an application to vary the planning conditions imposed on the planning permission ref: W/12/01907/FUL granted in February 2013 so as to allow further areas of storage for fencing materials and ancillary landscaping materials. A key issue in this matter is highway safety. Highway officers initially raised objection to the proposals, although they acknowledged that defending a refusal on highway grounds would be “difficult” and latterly removed their objection after reflecting upon the planning history of the site. Whilst highway officers do not object their concern is duly acknowledged. Your planning officers have taken a balanced view in light of all material planning considerations including the economic dimensions of sustainable development, the highway officer comments and the highway tests as set out at paragraph 32 of the National Planning Policy Framework; and recommend that the application should be approved subject to revised conditions.

### **3. Site Description**

This is a retrospective application concerning a site that has been visited on several occasions by Council officials (most recently on 17 November 2014). The use of the site and on-site storage arrangements were duly noted with the submitted plans found to be an accurate reflection of the current use.

The site is located in open countryside which is not subject to any specific planning designations. It is accessed via a 'dead-end', rural, single width road (Redstocks) which has informal passing places along its length. This joins the wider road network at a junction with the A365 Bath Road further to the south.

Adjacent to the west is an agricultural yard beyond a drainage ditch that denotes a boundary of the site. Mature hedges exist to the northern and eastern boundary. There are residential properties in the vicinity and these include dwellings beyond the boundary hedge on the opposite side of Redstocks to the east of the application site.

#### **4. Planning History**

W/12/01907/FUL - Change of use from agriculture to a mixed use for agriculture and for the storage of fencing materials required for use in association with landscaping business – Permission granted 28.02.2013.

#### **5. The Proposal**

This is a retrospective proposal for the variation of planning conditions to the original permission (W/12/01907/FUL) and the developer has stated that the development has been taking place since 1 March 2013 – a few days after the original permission (which was also retrospective) was approved.

The application seeks “variation of conditions of W/12/01907/FUL to allow changes to storage of fencing materials and ancillary landscaping materials”.

The original permission imposed conditions limiting storage to fencing materials and the storage to a specific part of the site through acknowledging that there were localised highway issues; but at the same time, being fully aware that there was a lawful turf cutting operation adjacent to the site, and that the storage of fencing materials was associated with that lawful activity, and that the lawful use of the site was as a agricultural yard (and would have been /could be a traffic generator in its own right).

With the principle use of the site established, this application seeks to vary the conditions to allow a greater area of the site to be used for storing ancillary landscaping materials whilst retaining sufficient space for parking and turning associated vehicles. This is a retrospective proposal and the situation has been in existence since March 2013.

Condition 2 imposed on w/12/01907/FUL read:

*“The development shall be completed in accordance with the hereby approved plans: Site location plan; and Drawing: LDC.1672.001.*

*REASON: In order to define the terms of this permission”.*

It is proposed to vary this condition to replace drawing LDC.1672.001 with LDC.1672\_DOC\_01 which shows additional areas for the storage of fencing and other materials ancillary to the lawful use of the site by a landscaping business.

Condition 3 imposed on w/12/01907/FUL read:

*“Fencing materials may only be stored in the area annotated for “fencing materials store” on drawing LDC.1672.001.*

*REASON: In order to define the terms of this permission and allow the Council reasonable opportunity to consider any intensification of this activity.*

*POLICY: West Wiltshire District Plan 1st Alteration (2004) E6”.*

It is proposed to vary this condition to allow for the storage of other materials ancillary to the landscaping business other than fencing materials such as plants and landscaping materials as per



the revised plan. The varied condition would be for the same reason as the original condition but also to respect the interests of highway and landscape amenity.

Condition 4 imposed on w/12/01907/FUL read:

*"The site shall be used for the mixed use of agriculture and storage of fencing materials only and for no other purpose.*

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

*POLICY: West Wiltshire District Plan 1st Alteration (2004) E6".*

It is proposed to vary this condition to allow for the storage of other materials ancillary to the landscaping business than fencing materials such as plants and landscaping materials as per the revised plan.

## **6. Planning Policy**

The Wiltshire Core Strategy (WCS) was adopted at a special council meeting on January 20<sup>th</sup> 2015 and as such, it can be afforded 'Full Weight' in planning terms although it is still subject to a 6-week potential challenge. The following WCS policies have full weight: CP2 (Delivery Strategy); CP34 (additional employment land); CP48 (Supporting rural life); CP50 (biodiversity and geodiversity); CP51 (landscape); CP52 (green infrastructure); CP57 (Ensuring high quality design and place shaping); and CP67 (Flood risk).

The National Planning Policy Framework (NPPF) acts as a principal material consideration in the determination of planning applications. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking. The NPPF is clear in stating that *'planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'*. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Paragraph 17 of the NPPF sets out the core planning principles and paragraphs 18-219 constitute what sustainable development means in practice. Paragraph 32 is also critical in terms of asserting that local planning authorities should only refuse applications on transport/highway safety grounds where *"the residual cumulative impacts of development are severe"*.

Planning Practice Guidance (PPG) is also of material consideration.

## **7. Consultations**

Melksham Without Parish Council: Objects *"...as it considers that since the original application (W/12/01907/FUL) was made, activity on this site has dramatically increased and therefore this business has outgrown its site, in particular the volume, size and frequency of vehicles using the single track road. Additionally residents report that previous conditions imposed by Wiltshire Council, namely restrictions on operating hours and the size of fencing materials storage area, have not been adhered to."*

Environmental Health Officer: No objection.

Highways Officer: No objection. Final comments received on 12 January 2015 which read:

*"I have consistently objected to the commercial activity at this site. The size and frequency of vehicles associated with the site travelling along the Redstocks Road and through the junction with the A365 raises highway safety concerns. However, planning permission was granted for the use of the site against the recommendation of the Highway Authority. I acknowledge that this*

*application is for a variation of conditions and that the turf and fencing business is already approved and established. On reflection, and given that my previous highway concerns were overlooked, I am prepared to withdraw my recommendation for refusal in this instance. I therefore wish to raise no objection."*

Members are advised that the highway officers initial observations dated 16 December 2014 read:  
*"The previous planning application (W/12/01907) attracted an adverse highway recommendation due to the unsuitable nature of the access road and the impact that the commercial vehicles were having on this road. It was accepted that the growing, cutting and lifting of turf is an agricultural activity most likely to be located in a rural location, and that this activity was relatively low key. Of particular concern however were the commercial vehicles and HGVs accessing the site in relation to the fencing business. It was considered that the fencing business could be run from other more suitable premises served by roads which can readily accommodate the associated delivery vehicles. I have considered this latest submission and I have no reason to change my general view from that formed in 2013."*

*The proposal is to vary conditions 2,3 and 4 of the Decision Notice dated 28 February 2013 and I shall address each condition in turn, below:-*

*Condition 2 - Whilst I am not in support of the HGVs accessing the site, I acknowledge that previous permission has been granted. The improved circulatory scheme to allow vehicles to move around the site and exit / enter the highway in a forward gear is accepted in the interests of highway safety. The surfacing and drainage works and defined parking spaces are also welcomed. I regret however that I would not wish to support the proposal for additional areas for storage of fencing and other materials as this represents an intensification in use of the site, over and above that for which permission has been granted.*

*Condition 3 - The success of TW Landscapes has resulted in the need for an increased amount of materials to be stored at the site. The additional materials entering and leaving the site can only result in an increase in vehicle activity and/or larger vehicles accessing the site, both of which raises highway safety concerns. The large articulated lorries are taking over the whole width of the road, and are over-running the adjacent verges leaving them in a poor condition. This is impacting on local residents who wish to walk or drive along the access road without having to negotiate around HGVs on a regular basis.*

*Condition 4 - As above, the proposed additional use of the site will lead to an increase in vehicle movements and / or size of delivery vehicles in connection with materials both arriving and leaving the site.*

*To summarise, there are elements within the variation of conditions application which are considered acceptable bearing in mind the previous consent. It is evident that the main changes are to allow additional areas for storage as a result of the continuing success of the business. As a consequence the vehicle activity is likely to increase, as are the size of vehicles. Having regard to my previous recommendation, I have no option but to adhere to my previous highway recommendation for refusal."*

Rights of Way Officer: No objection.

## **8. Publicity**

This application was advertised by way of a site notice and individual neighbour notification letters. Following the public notification, 4 letters of objection were received which may be summarised as follows:

- Since their last application there has been a vast increase in their traffic, speed of their vehicles, mud on the single track road in the winter and dust in the summer, constant noise of bleeping machinery, rattling trailers and the Company operating outside of their time constraints (includes weekends, early mornings and evenings);
- Highway officers have previously raised objection to use of the site by the business given the suitability of the road and the planning officer found it to be a finely balanced case and felt conditions could control the situation – this has not worked;
- Congestion on the lane in the mornings with their delivery lorries and transit & trailers;
- The increase in traffic is already creating a severe and significant road safety issue;
- Creates a disincentive for walking, cycling and bus use;
- Business could be located anywhere – does not need to be next to the turf operations or in this residential area;
- Loss of amenity from noise and traffic;
- Operating hours not being complied with;
- Restrictions on storage not being complied with; and
- Selling turf to the public and other landscapers from their yard directly.

## **9. Planning Considerations**

### 9.1 Principle of development.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications to be made in accordance with the Development Plan, unless material considerations indicate otherwise. The current situation regarding the Development Plan is set out in section 6 above. The Wiltshire Core Strategy is now the adopted development plan and can be afforded full weight and should be the starting point for determining applications.

Core Policy 34 of the emerging Wiltshire Core Strategy replaced Policy E6 of the former West Wiltshire District Plan 1<sup>st</sup> Alteration (2004). This is a policy relating to additional employment land proposals and as this is an application for an intensification rather than new employment land then the policy is not directly applicable. WCS CP35 deals with existing employment land, but focuses on the protection of employment sites and B-class activities from other development; rather than intensification in the use.

A further material consideration is the NPPF which whilst it must be read in its entirety has a pro-growth agenda and sets out a presumption in favour of sustainable development. It sets out that sustainable development is a multi-faceted concept with interrelated themes of economic, social and environmental.

The expansion of an existing business in a rural area is considered to be acceptable in principle with due weight being attached to the economic benefits of such proposals. Consideration should be given to social and environmental impacts, but given the planning site history, officers assert that demonstrable harm would need to be identified which would also need to outweigh the economic positive attributes, to justify any refusal.

### 9.2 Highway Safety.

Previously highway safety has proven to be the most contentious issue with this development site and it has been acknowledged that Redstocks Road is narrow, has limited passing places and that these places are quite informal and poor. The NPPF sets out at paragraph 32 the relevant test to be applied when considering highway safety:

*“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”*

Whilst the highway officer did raise objection to the original application and initially raised an objection to this application they subsequently removed the objection in light and recognition of the planning history and permission in place. They have also acknowledged that defending an appeal citing transport grounds would be “difficult”. Officers would highlight since the publication of the NPPF in 2012, there have been numerous examples of planning applications being refused in full or in part for highway safety reasons and, it has to be said that the percentage of those successfully defended is low. The NPPF sets a very high bar by which to assess whether planning permission may be withheld on the basis of highway considerations. Planning Inspector decisions where the issue of highway safety is raised, are consistently driving home the message that any impacts must be “severe” to justify refusing any application.

The applicant claims that generally only 2 HGV movements per month can be expected at the site in light of the existing storage and site activity. This has been the case since March 2013 whilst they have been in breach of the conditions. They claim that the aggregation of storage and increased storage will actually reduce vehicle movements in total. On a scheme of this scale it would not be reasonable to require a transport survey and it is considered that a subjective assessment has to be made. In doing so, it is necessary to be mindful of the anecdotal reports received from 4 parties that have written to object whom state that the applicant has wilfully under represented the traffic movements including HGV movements.

The applicant has stated that in the last 3 months of 2014, the site received 15 deliveries; 12 of those in rigid 7.5 tonne vehicles and the other 3 in articulated HGV's. They do acknowledge that deliveries have been higher in the past as they were not receiving deliveries in bulk and they were growing turf over 15 acres only. They now receive deliveries in bulk and turf growing is across 40 acres of land since approximately April 2014. This, they state, reduces the need for deliveries to the site. As such, the deliveries in the last quarter of 2014 may be representative of future movements.

The activity is retrospective and has been occurring since March 2013; which whilst regrettable has inadvertently provided a ‘test period’. Based on the increase in turf growing land and use of bulk deliveries much of the ‘test period’ would have been when deliveries were higher than they now are. Highway officers were asked to check records for any reported highway incidents between the site and the junction with the A365 during this period; and they confirmed that whilst there have been no accidents on Redstocks Road in the past 3 years, but there have been 2 accidents on the junction of Redstocks Road and the A365.

The first record dates from 21 July 2012 and the second from 23 January 2014 – with one recorded accident since the current unlawful activity has been taking place. The accident data reveals that a westward travelling car on the A365 entered the right turn lane intended for cars travelling the opposite way on the A365. The right turn lane already had stationary vehicles in it. The car then turned right and collided with an eastward travelling vehicle going straight ahead of the A365. It is considered that this accident account was due to driver error rather than an evident fault with the highway. It does not indicate that the highway arrangements are dangerous or that any intensification in its use would result in a “severe” impact. Furthermore it is noted that both incidents recorded “cars” being involved only and there is no evidence to suggest that the commercial operation of the application site was implicated. Your officers conclude that the ‘test period’ indicates that no ‘severe’ highway impact has occurred.

It is not considered that the changes to the storage on the site have had a severe impact in terms of highway matters. The original planning approval required improvements to site drainage and access surfacing – which have been complied with and these have helped mitigate the original highway officer's concerns. There are no further reasonable highway improvements available.

Whilst the width of Redstocks road is not ideal, and there may well be some pedestrian / traffic frustrations and inconvenience, but there is no evidence of severe harm.

### 9.3 Impact on the character and appearance of the countryside.

The proposed variations to the existing permission would not have any harmful impact on the character and appearance of the countryside over and above the lawful situation. The site has been visited and this is a retrospective application. It has therefore been possible to see the visual impact first hand, and it is assessed to cause no harm to the rural scene and countryside. The yard condition has improved with hard standing evident at the entrance apron which has resulted in the road having much reduced levels of mud on it. Over and above a concentrated farming activity that could occur at this point, the visual impact is considered to be negligible.

Officers have considered the merits and necessity about placing a restriction on the height of storage at this site. However after careful consideration, officers submit that it would not be necessary through appreciating the existing landscaping and the type of storage uses taking place. To stack any fencing materials securely would likely require some form of operational development, which would fall within the Council's reasonable control should an application be submitted for it in the future. Conditioning such controls at this stage would therefore be unnecessary.

### 9.4 Neighbouring Amenity.

The changes proposed in terms of storage of materials ancillary to the lawful landscaping business use of the site would not cause any substantive harm to residential amenity over and above the lawful situation. It is noted that environmental health officers have raised no objection stating that they have "*no adverse comment*" regarding the proposals. Whilst the neighbour objections in regards to the operating hours, vehicular movements and machinery noises – including the health and safety bleeping noise of fork-lift trucks is duly noted; it is not considered that the additional storage development sought under this application, would cause harm. It is also important to record that the applicant does not propose to vary the operating hours and it is beyond the reasonable scope of this application to consider such matters.

### 9.5 Rights of Way.

Public footpath (MELW23) runs through the site from the access to the west where there is a crossing point over the boundary drainage ditch. The path should be accessible and safe for the public to use and should not be obstructed. It is duly recorded that the rights of way officer raises no objection; and your planning officers find no reason to disagree.

### 9.6 Drainage.

Previous conditions regarding surface water drainage and hard standing at the access have helped to address and limit the amount of mud being brought onto the public highway and it has achieved its intention. Conditions within the site remain quite poor but ultimately, this is considered to be a site operation / maintenance issue beyond the control of planning.

### 9.7 Other material considerations.

If members are minded to approve this application it is necessary to consider the other conditions (beyond 2, 3, and 4) imposed on the original application; and whether they need to be re-applied at all, and if so whether they need to be varied.

Condition 1 – This required development to be carried out within 3 years and is no longer required as the development is entirely retrospective. The condition can be deleted.

Condition 5 – This stated that *“in the event that the turf cutting operations cease, then the storage of fencing materials at the site shall also cease.”* For the avoidance of doubt it would be necessary to vary this condition to encompass the ancillary landscape storage as well.

Condition 6 – This sought access improvements which have been carried out. Therefore, the condition can be deleted.

Condition 7 – This sought drainage works which have been carried out and, this condition can also be deleted.

Condition 8 – This imposed commercial hours of use – this is instructive and no variation is sought. It should be re-imposed.

Members are further advised that the applicant’s agent has agreed to the above approaches.

### 9.8 Sustainable Development

**Economic Impacts**– The proposal if approved, would help ensure that a successful and expanding local business continues to operate and provide employment in a rural area. This is considered to have significant weight in favour of the proposals. However there will be a tipping point potentially when such drivers do not outweigh other themes and material considerations.

**Social Impacts** – The activity on the site provides rural employment; however it is evident that it is having negative social implications for some local residents as a result of noise and vehicular movements. Whilst it has been raised as a concern, it is important to be clear that this application does not seek to amend the operating hour restrictions as previously imposed. Officers fully recognise and have duly considered that highway safety does have a social dimension as a severe highway safety risk may pose a risk to well being.

**Environmental Impacts** – The proposed variation application would have a negligible environmental impact having little or no impact on ecological issues. No landscaping been removed from the site as a consequence of the development. Anecdotally it has been suggested that verges have been damaged along Redstocks Road which could be classed as a negative impact and it is appreciated that local residents may well be disinclined to walk or cycle along a road that has increased traffic movements. However, due regard must be given to the rural context of the site and its surroundings and a degree of realism applied to how often people will use sustainable travel modes. In the absence of empirical evidence to record otherwise, officers would assume most traffic movements made by local residents along Redstocks Road would be by private car.

Taking all three dimensions of sustainability into account, it is assessed that on balance, the economic dimensions outweigh any negatives and that this variation proposal may be assessed to be a relatively sustainable development within the NPPF’s meaning.

## **10. Conclusion (The Planning Balance)**

The proposed revisions to the conditions would regulate the existing operations and development at the site without significant demonstrable harm to any planning interests. The proposal is minor in scale and it is for the intensified use of a site approved for restricted storage. There are economic benefits to take into account in terms of supporting an existing and successful business and this contributes to the sustainability of the scheme. The detailed areas of concern focus on highway and amenity considerations. With regards to amenity, no environmental health based objection was received; and, the application does not seek to vary the limitations on hours of operation. With regard to transport matters, whilst highway officers did raise an initial objection, this was later redacted in recognition of the extant lawful use for the site; and accepting that the implications from this development do not amount to a *severe* impact. Refusing the application would require

demonstrable severe harm to be identified. Failure to do so, if the application is appealed, may place the Council at risk of costs being awarded against it for unreasonable behaviour (which would very likely include the recovery of the costs incurred by an appellant commissioning a traffic impact assessment). Any relatively minor residual concern over and above the lawful position is outweighed by the economic benefits of supporting a business which remains a key priority. The application is therefore recommended for approved.

### **RECOMMENDATION**

That planning permission be granted subject to the following conditions:

1. The development shall be completed in accordance with the hereby approved plans:

Drawing: Site Location Plan; and Drawing: LDC.1672\_DOC\_01

REASON: In order to define the terms of this permission.

2. Fencing materials and other materials ancillary to the landscaping business may only be stored in the areas identified for such use on drawing LDC.1672\_DOC\_01.

REASON: In order to define the terms of this permission; to allow the Council reasonable opportunity to consider any intensification of these activities and in the interest of highway and landscape amenity.

3. The site shall be used for the mixed use of agriculture, and the storage of fencing and other materials ancillary to landscaping only and for no other purpose.

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

4. In the event that the turf cutting operations cease, then the storage of fencing materials and other materials ancillary to landscaping at the site shall also cease.

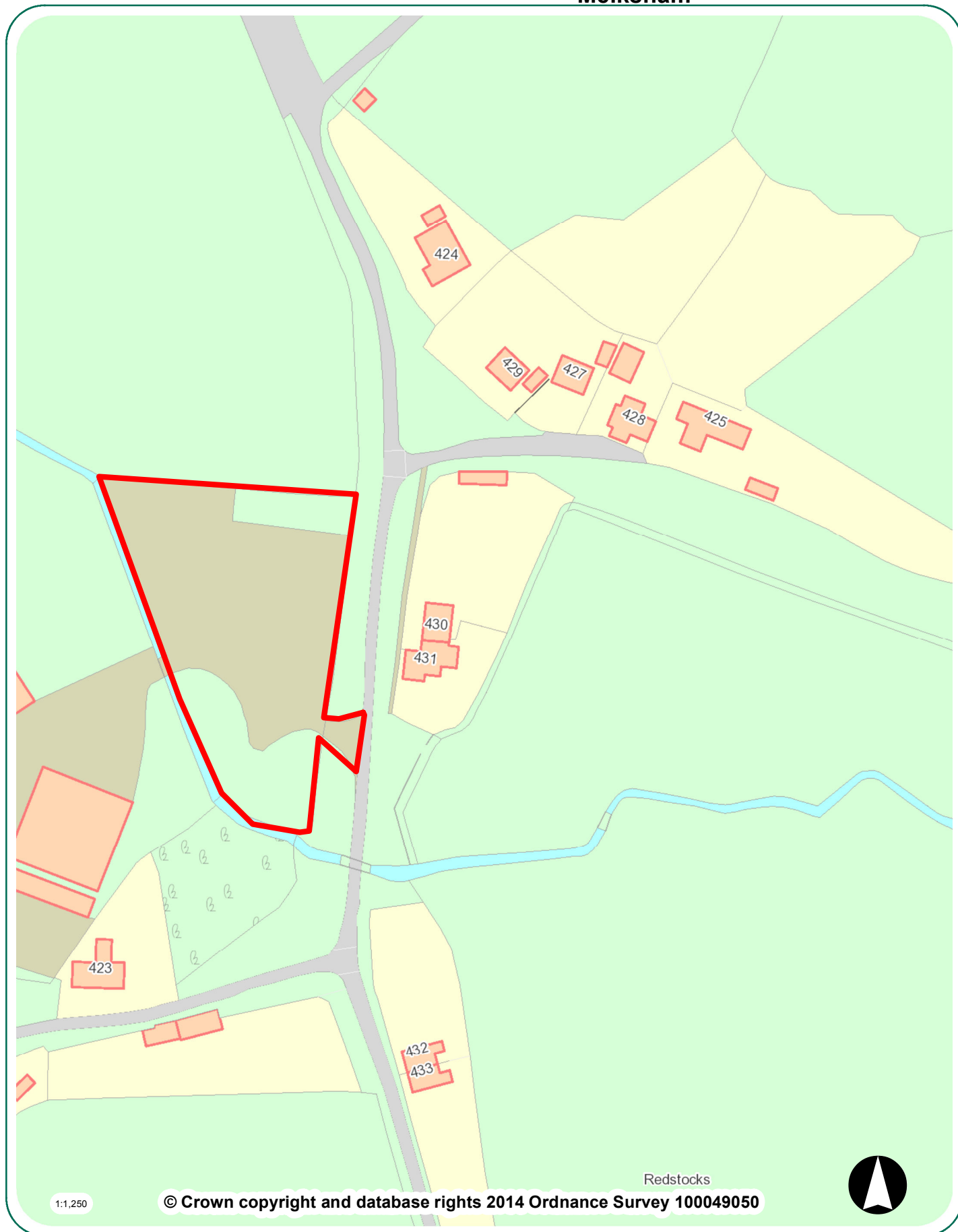
REASON: The storage of fencing materials and other materials ancillary to landscaping on the site has been accepted on the particular justification presented by the applicant which, from a business perspective, is intrinsically linked to the lawful turf cutting operation.

5. The use hereby permitted shall only take place between the hours of 07:30 and 18:00 from Mondays to Fridays and between 08:00 and 13:00 on Saturdays. The use shall not take place at any time on Sundays and Bank or Public Holidays. No delivery loading or unloading shall take place outside these hours of operation.

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.

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## REPORT FOR WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	04 February 2015
<b>Application Number</b>	14/09952/FUL
<b>Site Address</b>	221 Melksham Road, Holt, Trowbridge, Wiltshire, BA14 6QW
<b>Proposal</b>	Proposed two storey rear extension to provide elderly persons accommodation (amendment to 14/04460/FUL).
<b>Applicant</b>	Ms Karen Morten
<b>Town/Parish Council</b>	HOLT
<b>Ward</b>	HOLT AND STAVERTON
<b>Grid Ref</b>	386756 162392
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	David Cox

### Reason for the application being considered by Committee

Councillor Trevor Carbin has requested that this application be determined by Members should officers be supportive of it and to allow Members to consider the following key issues:

- The design and scale of the proposal and the visual impact of the development on the surrounding area; and,
- The impact on neighbouring amenity.

### 1. Purpose of Report

To consider the above application and to recommend approval subject to conditions.

### 2. Report Summary

The main planning issues to consider are:

The Principle of Development.

The Design, Scale and Visual Impact of the proposal.

Impact on Neighbouring Amenity.

Impact on Trees.

### 3. Site Description

No 221 is a detached 4 bedroom dwellinghouse located on Melksham Road in Holt. The dwelling sits within a rather long but narrow plot and has its gable fronting onto the street. There are residential properties either side of the application site.

### 4. Planning History

Application 14/04460/FUL was withdrawn by the applicant following officer advice due to concerns about the proposal and lack of information regarding surrounding trees.

### 5. The Proposal

This proposal is for a subservient two-storey rear extension to provide 2 additional bedrooms for the dwelling (thus creating 6-bed property). During the course of the application revised

plans were received to address issues over potential overlooking of neighbours. The revised extension measures approximately 6.1 metres deep x 5.9 metres to the ridge sloping to 3.5 metres at eaves height.

## **6. Local Planning Policy**

The Wiltshire Core Strategy (WCS) was adopted at a special council meeting on January 20<sup>th</sup> 2015; and as such, it can be afforded 'Full Weight' in planning terms although it is still subject to a 6-week potential challenge. The following WCS policies have full weight:

CP57 – Ensuring High Quality Design and Place Shaping

The adopted WCS also includes a number of policies carried over from the West Wiltshire District Plan 1<sup>st</sup> Alteration 2004, however none of those are relevant to this application.

The National Planning Policy Framework (NPPF) acts as a principal material consideration in the determination of planning applications. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking.

## **7. Consultations**

Holt Parish Council – Advised officers on 2 December 2014 that the Parish Council did have any comments to make.

Tree and Landscape Officer – No objection.

## **8. Publicity**

One site notice was erected on a telegraph pole near the site/subject property. Both neighbouring properties and No 216A Gipsy Lane also received individual notification letters.

Following public notification, 4 letters of objection were received (two from each immediate neighbouring property) raising the following concerns:

- The extension amounts to over-development of the site and would be out of keeping with the area.
- The extension would have an overbearing and unacceptable impact on neighbouring amenity.
- No 220 would be overlooked by a total of 12 windows causing an unacceptable loss of privacy.
- The development would cause an unacceptable enclosure on No 220 causing a loss of light into garden and patio.
- There would be an unacceptable loss of afternoon daylight on No 222's patio and kitchen window.
- The rear windows would overlook No 222's rear garden.
- The proposal is contrary to Local Plan policy including the Holt Neighbourhood Plan which discourages in-filling.
- The revisions to the withdrawn 14/04460/FUL are superficial and do not overcome the harm.
- The proposal represents a massive 23 metre long building which would extend past neighbours properties.
- The dwelling was originally a 2 bedroom bungalow and has been increased in size. This would make it a 6 bedroom dwelling.

- Planning law limits the amount of curtilage that can be built on (50%). This would exceed it.
- Increase in cars and noise.
- The extension would not be suitable for elderly persons accommodation.
- The arboricultural impact assessment is incomplete and misleading.

## 9. Planning Considerations

### The Principle of Development:

The submitted application has been described as being for 'elderly accommodation' i.e. an extension to provide additional bedrooms for family members. In policy terms, there is no 'in principle' objection provided it does not cause harm to the street scene or neighbouring amenity. For the avoidance of any doubt, there are no policies within the recently adopted Wiltshire Core Strategy that prescriptively restricts the amount a dwelling may be extended by. The 50% threshold referenced by a concerned local resident relates to permitted development right allowances, not planning policy. Under Part One, Class A of the General Permitted Development Order, if the total ground area covered by any extension/buildings within the curtilage of the dwelling house exceeds 50% of the total area of its curtilage, planning permission is required. The provisions of the aforementioned Order do not set the criteria that planning applications have to adhere to. Planning policy, professional judgement and assessment of all material considerations applied instead.

The key determining issue for this application is whether the proposed extension would cause demonstrable harm to the visual amenity of the area or substantively harm neighbouring amenity.

### The Design, Scale and Visual Impact of the Proposal:

Officers appreciate the concerns raised about increasing the size of the property set within a relatively narrow plot, sited close to both neighbouring boundaries. Officers are also fully aware that the existing dwelling extends beyond the rear walls of both neighbouring dwellings at No. 220 and 222. In response to concerns raised under the previous scheme and following negotiations, the applicant reduced the height and size of the extension and to increase the separation distance to the neighbouring property at No 222.

As the proposed elevation plans demonstrate, the extension would be significantly subservient to the host building. The detailing and use of materials are acceptable; and officers submit that the proposed extension would not harm the host building or be out of keeping with the local area. Officers furthermore submit that there does not appear to be anything directly relevant within the emerging Holt neighbourhood plan that specifically seeks to restrict domestic extensions or their design. This planning proposal is not 'infilling', as infilling refers to the construction of entirely new standalone residential units with their own cartilage, located between existing buildings and does not relate to extensions.

### Impact on Neighbouring Amenity:

**Responding to the overbearing and un-neighbourly impact concerns:** Due to the layout of the residential plots and orientation of the dwellings found along this stretch of Melksham Road in Holt, the majority of the side elevation of No 221 (approximately 15m of its length) can be seen from No 220's rear garden. Adding the proposed extension would increase this to approximately 21m. However, it is not considered that this would cause sufficient overbearing harm or have an un-neighbourly impact in which to warrant the refusal of the application. Officers consider that due weight should be given to the revised subservient design of the extension which would be more akin to a large single storey extension with the ridge and the eaves set significantly lower than the main part of the subject property. This would reduce the

impact of its 6 metre depth to an acceptable degree. There are also other mitigating factors as the extension would be approximately 2 metres from No 220's boundary, which also has three outbuildings which are located adjacent to the boundary. It is acknowledged that there would be some overbearing impact, but it would not be substantial.

The impact on No 222 would also be mitigated by the subservient design and that the side wall would be set in from the main side wall by approximately 1 metre. The impact on No 222 would be similar to that on No 220; a limited overbearing impact would accrue, but not significant enough to warrant the refusal of the application.

**Responding to overshadowing and loss of daylight concerns:** The proposed extension would not cause any adverse harm on No 220 (to the west). During winter months, the sun rises over No 221 and then moves south past No 220, eventually setting in the west. Therefore no overshadowing would occur and No 220 would still receive all of its direct sunlight. In summer months, the sun would rise behind the extension but would rise higher in the sky and would be above the main ridge of No 221 by mid morning. As the extension would be subservient to the host building, it would only cause very limited amounts of overshadowing, which would only overshadow the shed outbuildings of No 220.

There would be more of an impact on No 222 (to the east). During the winter, the low sun would set relatively in line with the extension which would cause some overshadowing. However during the summer, the sun would be much higher and should be well above the ridge of the extension, which would limit the level of overshadowing. Therefore on balance, whilst some overshadowing would occur, it would not be at a level in which to warrant the refusal of the application.

The impact on the level of natural daylight to No 222 is difficult to quantify, however, consideration must be given to the existing level of vegetation and hedgerow planting along the existing boundary. It is considered that the extension would not cause a significant loss of daylight, more than the vegetation screening.

**Responding to overlooking and loss of privacy concerns:** It is firstly important to duly acknowledge that the existing dwelling has upper floor windows in the rear (north-west) garden facing elevation. In order to accommodate the extension proposal, the existing windows in the rear elevation would go. Existing bedrooms would receive natural daylight via new velux windows inserted into the roof slopes. As the cross section plan demonstrates the cill heights for both velux would be at least 1.8 metres above the floor level of the room; and thus reduce the potential for anybody to look out and down into either neighbouring garden.

Whilst building control regulations are normally a non-planning matter, they can cause planning issues, as it is a requirement for bedrooms to have an emergency window exit in the event of a fire. In order to meet the regulations, as the velux windows would be positioned too high above the floor level of the room to function as a recognised means of escape, the case officer liaised directly with the applicant's agent and a building control officer within the Council to negotiate the provision of a series of internal fire proof doors to avoid the need to lower the cill height of the velux windows. If members are minded to support the recommendation, a condition removing permitted development rights for any additional windows/veluxes would be reasonable to ensure the Council has future control over any additional wall opening proposals.

The proposed extension seeks to provide a bathroom dormer window on the side elevation facing No 220. However, bathroom windows are considered to be non-habitable rooms from which overlooking would not occur in the same way as a habitable room (e.g. a bedroom or living room). To further protect residential amenity and privacy, officers suggest that it would be appropriate to condition any permission requiring the use of obscure glazing.

No windows are proposed on the north-east side elevation facing No 222 and therefore no adverse overlooking would occur. The occupiers of No 222 have however objected in part on the grounds that the new bedroom windows formed in the north-west facing gable would overlook their rear garden and cause loss of privacy. Whilst there might be some potential for overlooking neighbouring garden ground from the upper floor bedrooms, officers advise that the level of overlooking would not be any greater than what already may exist. Indeed it would be more likely to be reduced given that the proposed windows are illustrated lower than the existing windows.

Impact on Trees:

The applicants have submitted an arboricultural impact assessment to which the Council's Tree Officer has agreed its content and conclusions. The assessment concludes that no trees are required to be felled and other trees would only need to be cut back and protected during construction works. The occupiers of No 222 reference an apple tree that would be affected but is not shown on the plans. The assessment was carried out in accordance with the relevant British Standard and members are asked to be aware of the approximate 3 metre tall Holly Tree (identified as T1 on the plans). This Holly is located on the boundary and would only require some pruning as would the conifers.

**10. Conclusion**

The proposed development is considered to be acceptable in principle and would not have an unacceptable impact on residential amenity; and is hereby recommended for approval subject to conditions

**RECOMMENDATION – To approve 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 – Received 24 October 2014

Block Plan – Received 21 October 2014

Existing Elevations – Received 21 October 2014

Existing Floor Plans – Received 21 October 2014

Section B-B – Received 21 October 2014

Arboricultural Impact Assessment – Received 21 October 2014.

Revised Elevation Plan – Received 16 December 2014

Revised Section plan – Received 16 December 2014

Revised Proposed Floor plans - Received 16 December 2014

REASON: To define the terms of this permission in the interests of good planning practice.

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

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

4. Before the development hereby permitted is first occupied, the bathroom window in the south western elevation shall be glazed with obscure glass [to an obscurity level of no less than level 4] and the windows shall be maintained or replaced with similar obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

5. 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), no additional wall or roof openings, other than those shown on the approved plans, shall be formed within the development hereby permitted or on the host building unless approved by the planning authority under a separate application.

REASON: In the interests of residential amenity and privacy.

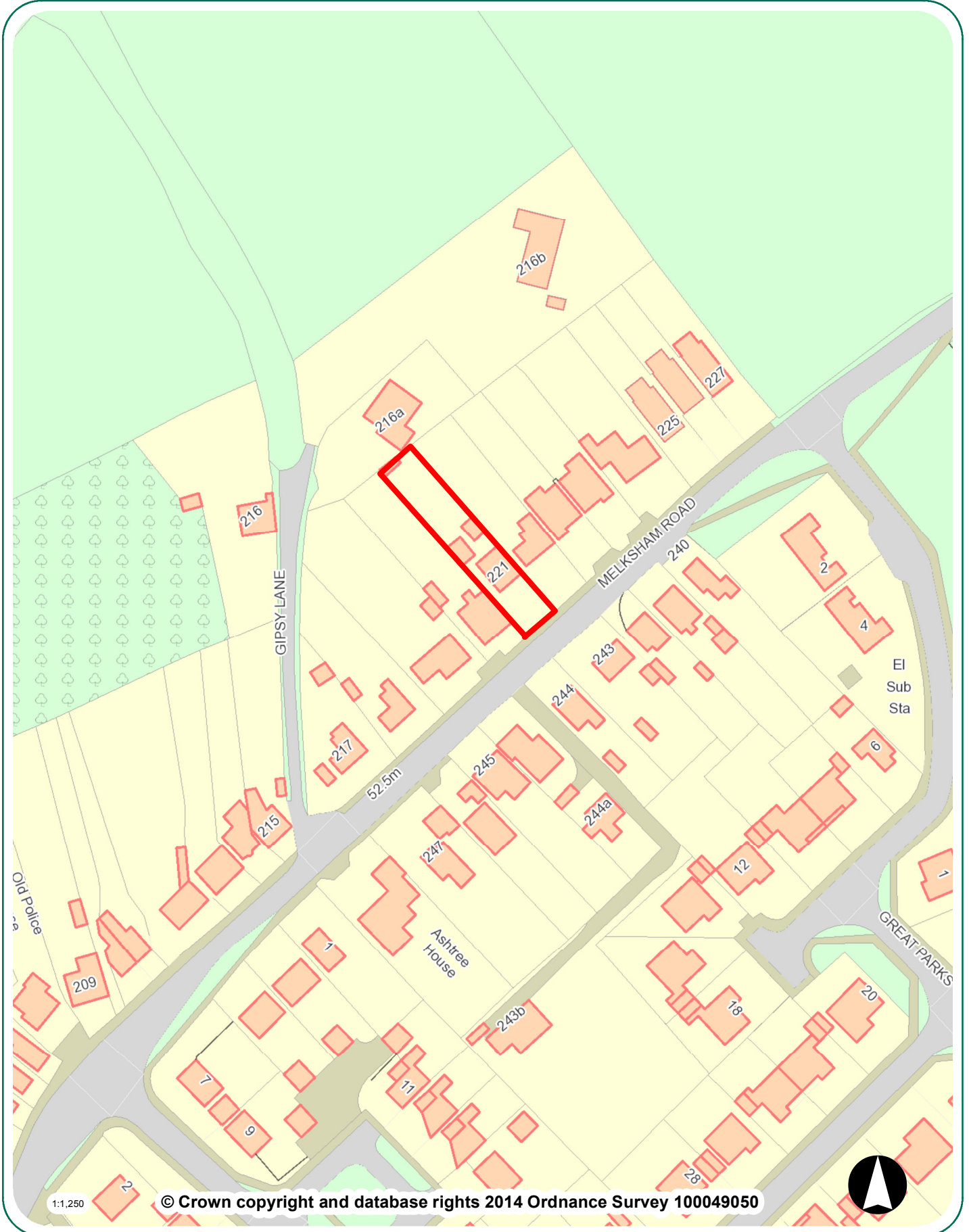
6. No development shall commence on site until details of all earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall specify whether the excavated materials are to be taken off site or are to be used on site. If the latter applies, the applicant shall be required to submit details and extent of any re-grading works, showing the relationship with existing vegetation, boundaries and levels. The development shall not be occupied until such time as the earthworks have been carried out in accordance with the details approved under this condition.

REASON: To ensure a satisfactory landscaped setting for the development.

7. The development hereby permitted shall be carried out in full accordance with the recommendations contained within the submitted Arboricultural Impact Assessment & Tree Protection Plan.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.





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