



## WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

### DECISION REPORT

#### DURNFORD 4 – WOODROW

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

#### 1.0 APPLICATION

Application number: 2005/39

Date of application: 06 May 2005

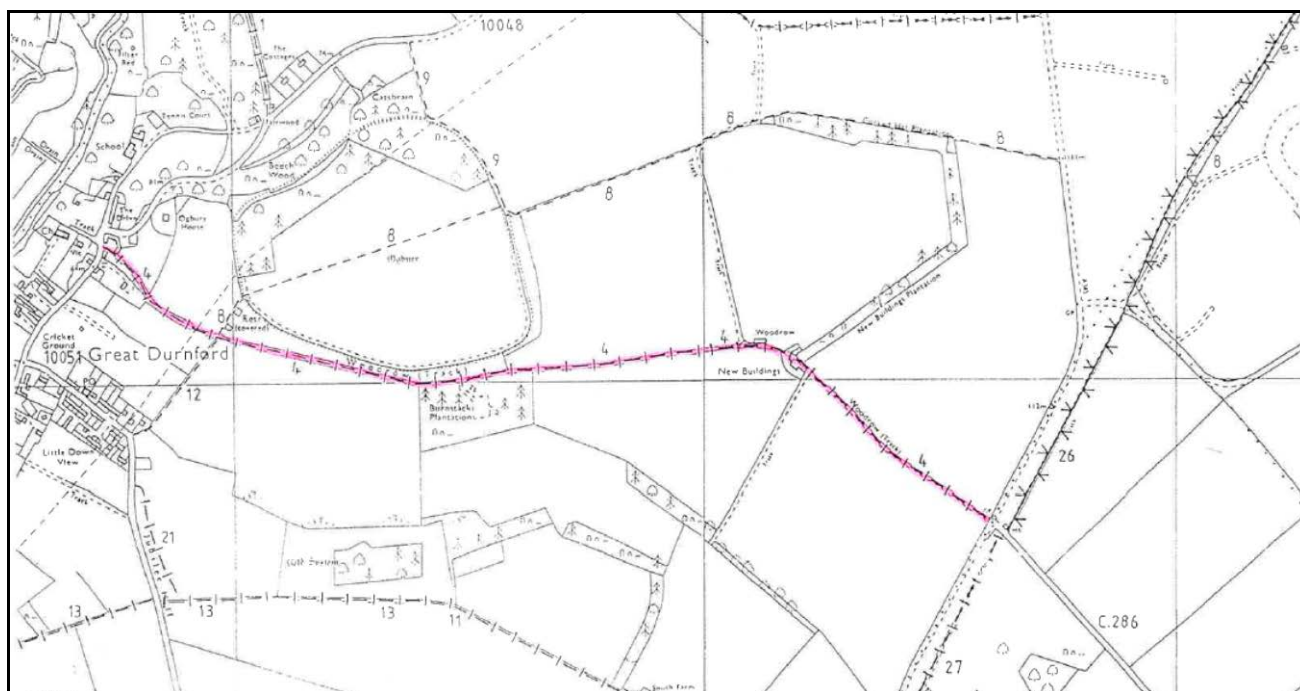
Applicant: Mr Bill Riley  
141 Bath Road  
Bradford on Avon  
BA15 1SS

Application for: An Order modifying the definitive map and statement for the area by upgrading to a byway open to all traffic the bridleway No. 4 in the parish of Durnford: and varying the particulars relating to the byway open to all traffic by recording a width of 30 feet (9.14 metres) where awarded, and not less than 20 feet (6.10 metres) elsewhere; and shown highlighted on the map accompanying this application

Application comprises: Form of Application for Modification Order Schedule 7 Regulation 8(1)  
Form of Certificate of Service of Notice of Application Schedule 9 Regulation 8(4)  
Notice served on:  
Mr M d'Arcy Irvine, Wilsford Manor, Wilsford, SP4 7BL  
Mr G Rasch, Heale Farms, Heale House, Middle Woodford, SP4 6NT  
Mr and Mrs H Hawkings, Woodrow Cottage, Great Durnford, Salisbury, SP4 6AZ  
The Occupier, The Small House, Great Durnford, SP4 6AZ

The Occupier, Dairy House, Great Durnford, SP4 6AZ  
The Occupier, Dairy Cottage, Great Durnford, SP4 6AZ  
The Occupier, Ogbury House, Great Durnford, SP4 6AZ  
Map to the scale 1:10000 showing claimed route highlighted in pink  
Extract from the Salisbury and Winchester Journal 07.08.1858  
Summary of Evidence

## Application map



## 2.0 Enabling Legislation

- 2.1 Wiltshire Council is the surveying authority for the County of Wiltshire, excluding the Borough of Swindon. A surveying authority is the body responsible for the preparation and upkeep of the definitive map of public rights of way.
- 2.2 The Wildlife and Countryside Act 1981 (WCA 1981)(c.69) section 53(2)(b) applies:

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

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

***and statement as appear to them to be requisite in consequence of that event.***

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

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

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

*(iii) that there is no public 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.*

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

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

2.5 Section 53(5) WCA 1981 allows for any person to apply for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

2.6 Schedule 14 to this Act states:

*Form of applications*

1. *An application shall be made in the prescribed form and shall be accompanied by –*

*(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates and*

*(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*

*Notice of applications*

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

*(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*

*(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*

*(4) Every notice or certificate under this paragraph shall be in the prescribed form.*

- 2.7 A surveying authority has discretionary power to waive strict compliance to Schedule 14 when determining an application or may consider the application to be improperly made whereby the surveying authority may use the evidence brought to its attention as a trigger to make its own decision under Section 53(2) of the 1981 Act.
- 2.8 This application is considered to fail the test of strict compliance (no actual copies of evidence were adduced, only a list and extracts were provided) to Schedule 14 but to otherwise be compliant.
- 2.9 Although it is clear that it is possible to proceed with most applications that are not strictly compliant with Schedule 14, legislation enacted in May 2006 (Natural Environment and Rural Communities Act 2006 (NERC Act 2006 see section 17 of this report) means it is necessary for the Council to consider strict compliance where an exemption from the extinguishment of public rights for mechanically propelled vehicles (MPVs) under s.67(3) may apply.
- 2.10 An exemption under s.67(3) may only apply where an application was received before the 20<sup>th</sup> January 2005. In this instance the application was made on the 6<sup>th</sup> May 2005 and therefore s.67(3) can not apply.
- 2.11 The NERC Act 2006 permits further exemptions to the extinguishment of public vehicular rights under s.67(2), however, in all cases it is necessary to establish whether, on the balance of probabilities, the route carried a right for the public to use a mechanically propelled vehicle before the 2nd May 2006. Only then is it appropriate to consider whether any savings apply. As a result NERC Act 2006 will be covered later in this report (see sections 17 and 19 of this report).

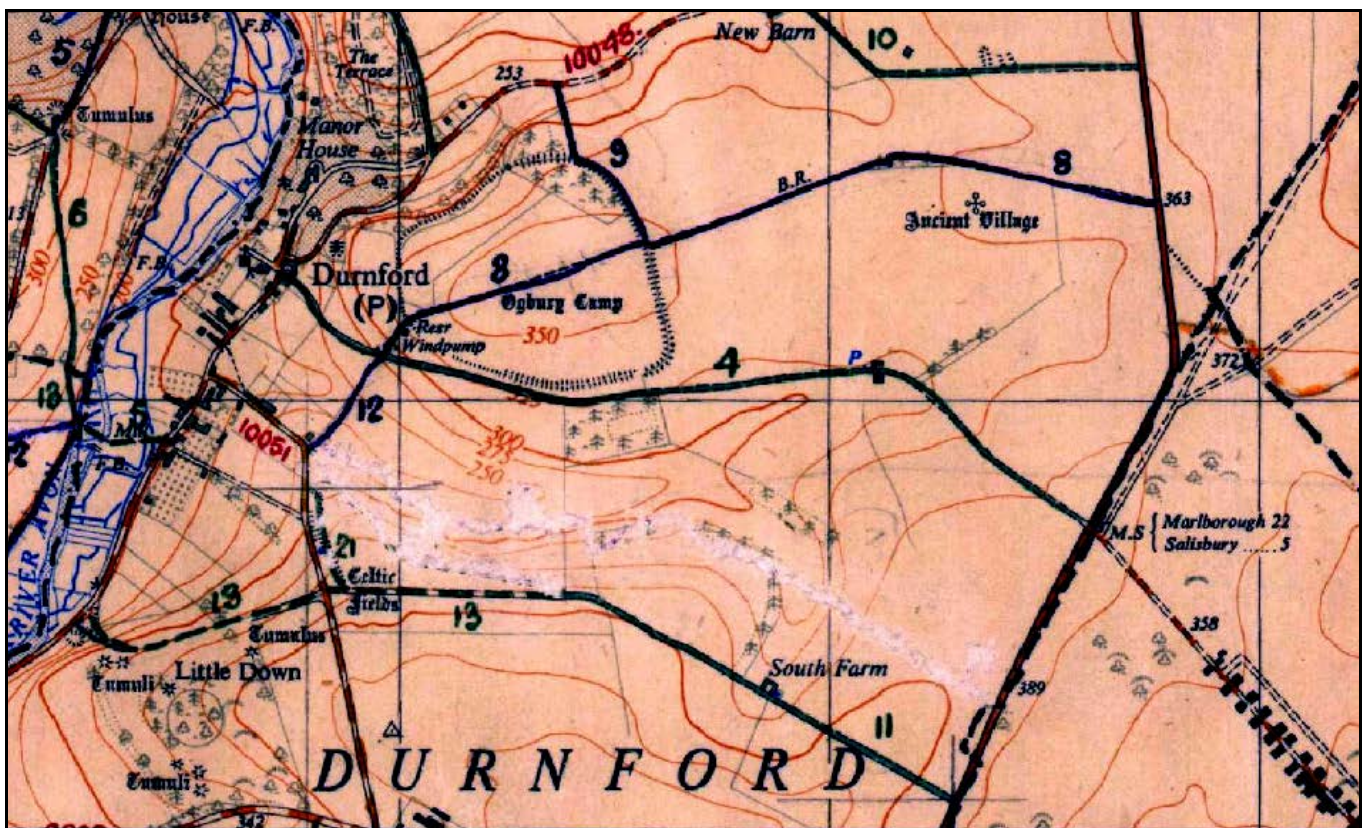
### 3.0 Land Ownership

3.1 The majority of Durnford 4 (Woodrow) is included in Registered Title no WT315372 though a short section through the barns is included in Registered Title no WT195700.

3.2 The ownership is given as the Great Durnford Estate (formerly belonging to Mr M d'Arcy Irvine on whom notice was served in May 2005) and the land is farmed by Great Durnford Farms and Heale Farms.

### 4.0 Current Records

4.1 The claimed route is recorded in the Amesbury Rural District Council Area definitive map and statement dated 1952 as follows:



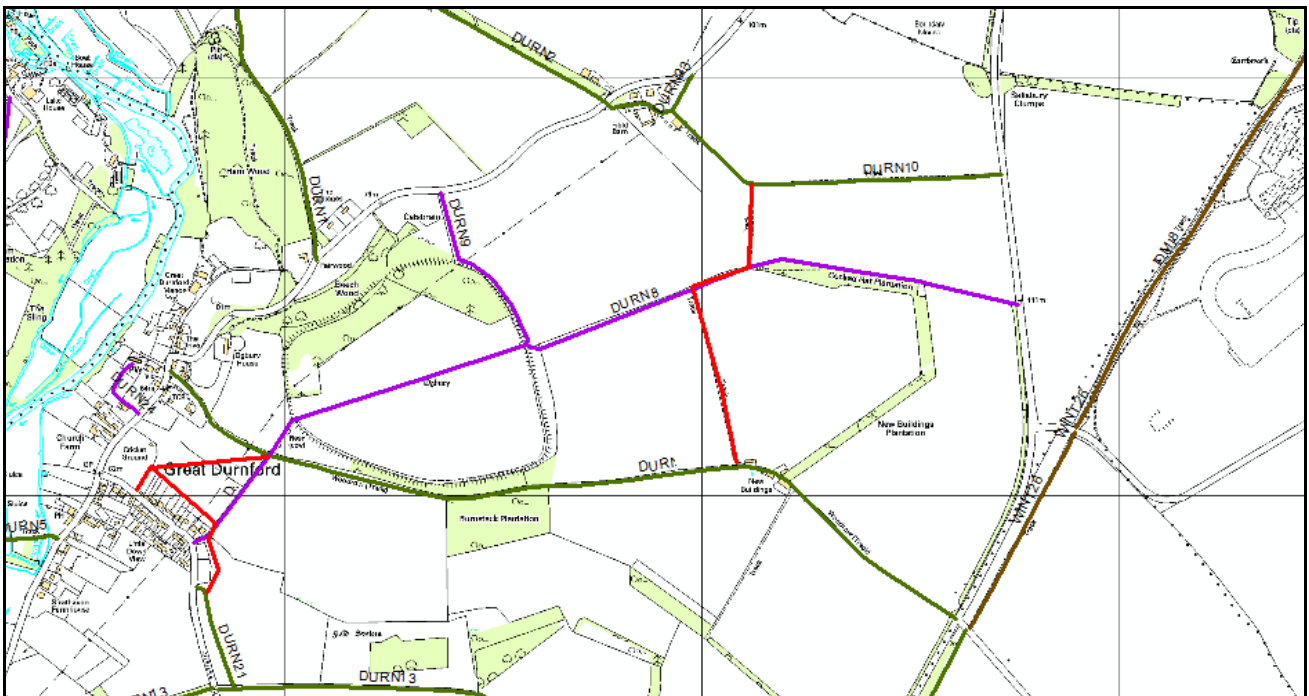
Footpaths = purple  
Bridleways = solid green line  
Roads Used and Public Paths = broken green line

*B.R. From road U/c 10048 at Durnford Church leading south east, east and south-east to the Salisbury – Amesbury road, A.345.*

*Approximate length 2360 yards*

*Width 9 feet*

4.2 The working copy of the definitive map (showing all changes since 1952) shows that the route has remained unchanged in the record since 1952:



Footpaths = purple Bridleways = green Byways open to traffic = brown

Red line show routes subject to DMMO applications based on evidence of use on foot and for the route linking Durnford 4 (Woodrow) with Durnford 10 additional use by cycle and on horseback.

## 5.0 Photographs

### 5.1 Site visit 01 March 2016 From A345 west towards Durnford





Track to field on left Durnford 4 (Woodrow) straight on (white arrows)



Durnford 4 (Woodrow) straight on









Post in middle of Durnford 4 (Woodrow) east of Woodrow Cottage



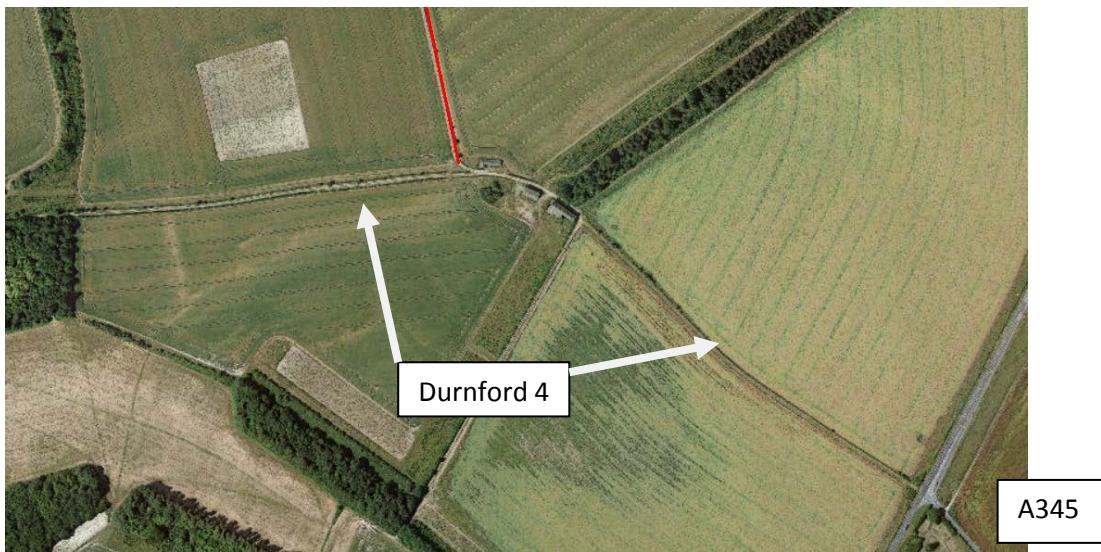
Woodrow Cottage



View of western end of Durnford 4 (Woodrow) past Woodrow Cottage

## 5.2 Aerial photographs

**2014** (red line shows claimed bridleway application no. 2015/07) **Eastern section**



**2001 Eastern section**



**2014 Western section**



## 2001 Western section



## 2006 photograph showing effect of farm vehicle use on Durnford 4



### 6.0 Pre consultation correspondence

6.1 The application, when made in May 2005 triggered some correspondence with the then Wiltshire County Council.

#### 6.2 10.05.05

A telephone call from Mr G Rasch of Heale Farms which resulted in him being sent a summary of the evidence (from the application) and a copy of Natural England's Guidance on Definitive Map processes (NE112).

### 6.3 **18.05.05**

A fax message was received from Ms Heather Sprague of The Small House, Great Durnford.

*"I wish to register with you that I am opposed to the opening of Bridleway no 4 at Great Durnford to all traffic. At present the bridleway is used by walkers and riders and horses and motorised farm vehicles and equipment.*

*The junction of Woodrow bridleway 4 and the road to Amesbury (track) is tight between houses, with a blind corner and the Church Lane (also blind at juncture with Track road and Manor Drive).*

*The Woodrow track (Bridleway 4) is used a good deal by families with small children. They learn a lot about the country, trees and different species of flowers and hedge bushes. It is a good habitat for wild creatures. It is a lovely peaceful place to walk.*

*It would be sad to hand this to noisy 4 x 4 vehicles, heavy duty motor bikes (note: how the old ox droves have been destroyed by this between Wilton and Shaftesbury).*

*The track leads to farm buildings. Once it would have crossed what is the A345 now; this is a section of the A345 which is very dangerous and where there are frequent accidents. The land is all privately cared for.*

*In 1996 I think (the Police would be able to give information) there was, at the time of the Summer Solstice, an invasion of Great Durnford by a Hippy Convoy; the convoy turned up Bridleway 4, apparently with the intention of setting up Camp at Ogbury. Thanks to the Police they did not succeed. It was some hours before the convoy was removed.*

*I watched from my garden and orchard as the lorries and vans with their tree trunks strapped on, churned up the bridleway below me. It was sad and frightening so you may understand why I don't want this bridleway no. 4 opened up to all traffic."*

### 6.4 **07.06.05**

A letter from Durnford Parish Council including reference to Durnford 4:

*"It is understood by the Parish Council that enquiries have been made to use this bridleway which runs from Great Durnford to the A345. The Parish Council are concerned that 4 x 4 cars could be hoping to use this and this is, of course, causing considerable concern to the Council."*

Wiltshire Council responded on 15.06.06 explaining the effects of the NERC Act 2006.

### 6.5 **22.06.06**

A letter from Miles d’Arcy-Irvine, Wilsford & Durnford Estates Ltd:

*“...the bridleway traverses farmland managed on behalf of clients of this Company. I would be grateful, therefore, for confirmation that, in accordance with the contents of Miss Langton’s letter of the 15<sup>th</sup> June 2006 to Mrs Rowntree, I am correct in understanding that Mr Riley’s application, as referred to above, will now be dealt with under the new procedures and that, as a consequence, it is no longer possible for that application to result in bridleway 4 being upgraded to a BOAT, in view of the date of Mr Riley’s application and the fact that the bridleway in question has not been used for motorised vehicle traffic in living memory (if ever).”*

#### 6.6 **12.08.08**

A letter from the applicant:

*“Certain applications of mine for byways open to all traffic might be able to be processed as restricted byway because, post Winchester, I am currently unable to provide evidence that an exemption applies. Records have not been kept as to whether any maps or documents were submitted at the time, so please check that the following 20 applications are indeed non compliant first.”*

A list of DMMO applications follows of which 2005/39 Durnford 4 is one.

#### 6.7 **24/05/11**

One MPV user evidence form/Section 67(2) NERC exemption form was submitted by Mr Keith Dobson of Amesbury declaring use of the route with a motorcycle from 2000 to 2011. Photographs of the motorcycle on the route taken on 01.05.06.

### 7.0 **Initial Consultation**

On the 31 December 2015 Wiltshire Council circulated the following letter:

***“Wildlife and Countryside Act 1981 s.53  
Application to upgrade bridleway Durnford 4 – Woodrow***

*In May 2005 Wiltshire Council received an application for a modification order to record Durnford path no 4 (Woodrow) as a byway open to all traffic (BOAT). The application adduces historical evidence which supports that Woodrow is an ancient road dating back to at least 1675. The majority of the route was awarded to the public as a Public Carriage Road when the North End tithing of Great Durnford was enclosed by Act of Parliament in 1794. The route was recorded by the highway authority as a publicly maintainable road in 1881 and has been represented as a road in a variety of documents from 1675 to 1947.*

*Although the route is currently recorded as a bridleway the applicant considers that on the balance of probabilities higher rights subsist. If they do, the Council has a duty to make an Order to record them. The route affected by the application is shown in pink on the enclosed map.*

*Although the original 2005 application was for a byway open to all traffic the law changed in 2006 and it is considered likely that any right for the public to use a mechanically propelled vehicle (MPV) on the route has been extinguished (although any adjoining property relying on the public right for access to their property would have this saved as a private right). The extinguishment of the public right is dependent of certain exemptions not applying. It is noted that the applicant does not rely on any exemptions that may have preserved the public MPV right.*

*In the event that the public MPV right has been extinguished the route would be recorded as a restricted byway. This is a route over which the public has a right to pass and re-pass on foot, on or leading a horse, on a bicycle and driving a horse and cart but not to drive a mechanical vehicle (for example a car or motorbike).*

*Wiltshire Council is currently investigating 4 applications for Orders to alter the definitive map and statement in Great Durnford and it is considered sensible to determine this application (2005/39) now; primarily to save wear and tear on historical documents relating to Great Durnford but also to address all potential definitive map changes in the parish at the same time.*

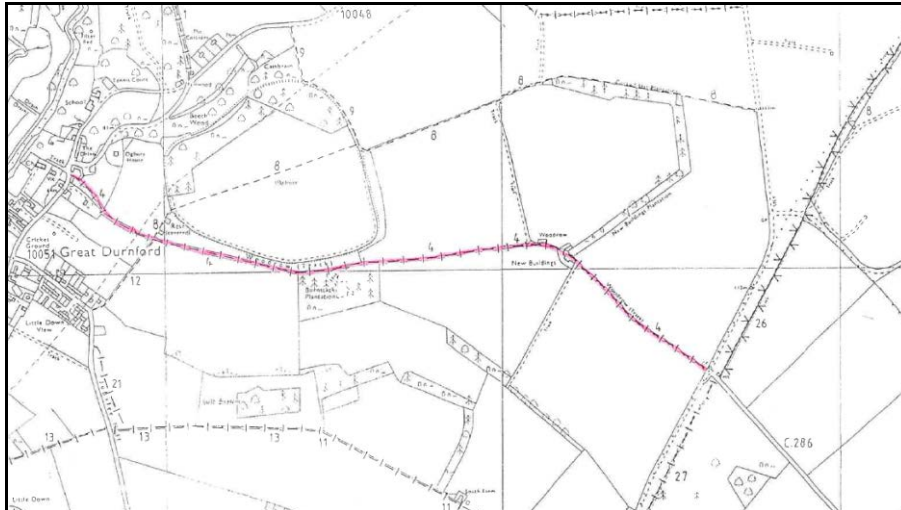
*If you have any comment on the above or evidence relating to Woodrow please ensure it is sent to me by February 29 2016.”*

7.2 The letter was sent to the following:

The Auto Cycle Union	Commons, Open Spaces &Footpaths Society
Wiltshire Bridleways Association	Cycling Touring Club
British Horse Society	Durnford Parish Council
Wiltshire Councillor M Hewitt	British Horse Society (Wiltshire)
Byways and Bridleways Trust	British Driving Society
Wiltshire Council Senior Rights of Way Warden	
The Ramblers (Wiltshire)	The Ramblers (South Wiltshire)
Applicant Mr B Riley	N Gallop, Woodrow Cottage
G Rasch, Heale House	S Langdon, White Cottage
M Gentle, Durnford Estate	Mr J Blackwood, Dairy House
Durnford Properties	Julian Properties
Woodhouse Properties	R Barnett, Countryside Access Consultant
Great Durnford Farms	Owner/occupier, Dairy Cottage
Owner/occupier The Small House	
Owner/occupier Ogbury House	

7.3 The following map was also circulated:





NB This is the application map shown at 1.1.

## 8.0 Consultation responses

### 8.1 Mr B Riley 06.01.16

*“There is one minor piece of additional evidence (can’t remember if I’ve mentioned it before). It’s from the Salisbury Journal and a rather poor photograph from the microfilm reader screen is attached – you can just about read it. If it’s any use, a copy of the original paper should reproduce well.*

*Keith Dobson, who lives in Durnford, is/was a regular MPV user of this lane. He was going to try and contact other users. I have jogged his memory.”*

The Salisbury Journal extract will be considered in the historical records section at 15.23.

### 8.2 Mr A Clarke, Cycling Touring Club 08.01.16

*“We don’t think it is relevant but might be of interest.*

*Our cycling group cycled the "bridleway" Durnford 4 on Christmas day 1983. I have attached a scan of the relevant pages from our newsletter of the time. I remember it well as we didn’t know if anyone would turn out on Christmas morning. To my surprise there were quite a few of us including people who didn’t come out very often.*

*My annotated O/S map shows that this was the first time our cycling group was recorded as using this bridleway.*

*We just thought it might amuse you to know how eccentric Salisbury cyclists are!”*

Scan of newsletter supports that a run was scheduled for the 25<sup>th</sup> December 1983.

### 8.3 **Durnford Estate, 03.03.16**

On the 3<sup>rd</sup> March 2016 the Durnford Estate submitted a response to the four applications to record footpaths and bridleways over its land submitted in 2015. As part of their response, Ms Rhoda Barnett acting for the estate stated:

*“Please note also that I understand that the Landowners do not wish to make any comments on your investigation into the evidence relating to the application to upgrade Bridleway 4 Durnford. They do however reserve the right to make representations to your council should they deem it necessary once a report is presented to the relevant Committee and if a modification order is made.”*

### 8.4 **Wiltshire Trail Riders Fellowship 07.02.16**

A submission of 25 user evidence forms for use of the way with mechanically propelled vehicles were submitted. This makes a total of 26 and these have been considered with other user evidence of the ways as adduced in support of the 2015 applications at Section 19 of this report.

### 8.5 **N Gallop, Woodrow Cottage 26.02.16**

*“You wrote about the application to change the status of the Woodrow. Your letter stated that this kind of use would be preserved, even if the access became more restricted. I’m writing simply to inform you that we use our car on the first 100 yards of the Woodrow on a daily basis to give access to the parking area at the top of our garden, and we have planning permission for a triple garage (barn type garage) in this area of our garden.*

*We have made daily use of this part of the track for 12 years, and so did the previous owners, and I believe the owners before, who laid concrete to provide a parking area.”*

## 9.0 **General Context** *Notes taken from Victoria County History Vol 15 (1993)*

9.1 Durnford is a civil parish in the Woodford Valley bounded by the River Avon in the west and the A345 in the east. Today, Durnford includes the settlements of Great Durnford, Netton, Salterton and Little Durnford. Prior to 1885, Normanton, a settlement on the west bank of the Avon formed a part of Durnford but was transferred to Wilsford in 1885. In 1986 a small part of Durnford was transferred to Woodford and land at Laverstock was added.

9.2 The population of Durnford was 553 in 1861 falling to 380 by 1891. In 2011 the population was 368.

9.3 Great Durnford is the largest of the settlements and Durnford 4 (Woodrow) lies wholly within it, extending from the crossroad with the road to the church and the u/c

10048 leading broadly in an easterly direction to the crossroad at the parish boundary and its junction with the A345 (former Marlborough Road) and the C.286 road to Winterbourne Gunner. Durnford 4 (Woodrow) forms the most direct connection with the village centre and the main road.

- 9.4 The road that is the eastern parish boundary (and at the eastern end of Durnford 4) was the main road from Chipping Campden (Glos) via Marlborough to Salisbury in the 17<sup>th</sup> century and the main road to Amesbury converged on it just north east of the Durnford 4 junction. The main road that is now the A345 was realigned as a straight road and the old Marlborough Road is now recorded as byway open to all traffic Winterbourne 26. The milestone near the junction remains (Marlborough 22 Salisbury 5).
- 9.5 The iron age hill fort known as Ogbury Camp lies to the north of Durnford 4 (Woodrow) and is accessible from it. Woodrow Cottage, a listed building dating back to the late 16<sup>th</sup> century lies beside Durnford 4 and the u/c10048 and appears to have been built with reference to the roads which bound it.
- 9.6 The demesne lands of Great Durnford manor appear to have lain in severalty south and east of Ogbury Camp. There were three open fields (in 1412 there was East (later called Woodrow), Middle and North, all of about 100 acres. Additionally there was a cow down and a sheep down, possibly including Ogbury Camp and Catsbrain Hill.
- 9.7 In 1794 this arable and downland pasture ('Durnford Northend') was enclosed by Act and approximately 50 acres of meadows and home closes allotted in exchange. The act of inclosure of the open fields and downland created a number of roads, one of which was Durnford 4 (Woodway) though its route pre-dated inclosure.
- 9.8 The allotment commuted the tithes and accordingly, in this area of Durnford, there was no need for further commutation of Great Tithes under The Tithe Commutation Act 1836 in Northend tithing. Tithes in Southend tithing were commuted at a later date (1842).

## **10.0 Historical Records**

- 10.1 The route recorded as Durnford 4 can be seen on maps dating from 1675 to the present day. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example although a way may appear on fifty commercial maps it does not necessarily carry as much evidential weight as if the way is shown in perhaps two publicly consulted documents or created, say, as the result of an Act of Parliament.
- 10.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines:

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/guidance> (as revised to date of report) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Abbreviations: Wiltshire and Swindon History Centre, Chippenham (WSHC), The National Archive, Kew (TNA), House of Lords Record Office (HoL)

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public rights	Inclosure Acts, awards and plans  Orders creating, diverting or extinguishing highways  Railway and canal acts and plans  Definitive map and statement
B	Reputation of a way as a highway Physical existence of a way	Documents, maps plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights.  i.e. Tithe Commission, Inland Revenue Finance Act
C	Reputation of a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

## 11.0 Category A Evidence

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

### 11.2 Inclosure

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

11.3 Land at Durnford Northend was enclosed by a private act made in 1793 entitled “An Act for dividing and allotting Certain open and Common Fields, Downs and other Commonable Lands and Grounds in the Parish of Durnford in the County of Wilts”. 33 George III, C.43 (The National Archive HL/PO/PB/1/1793/33G3n139). The award viewed is held by Wiltshire and Swindon History Centre Catalogue reference EA36

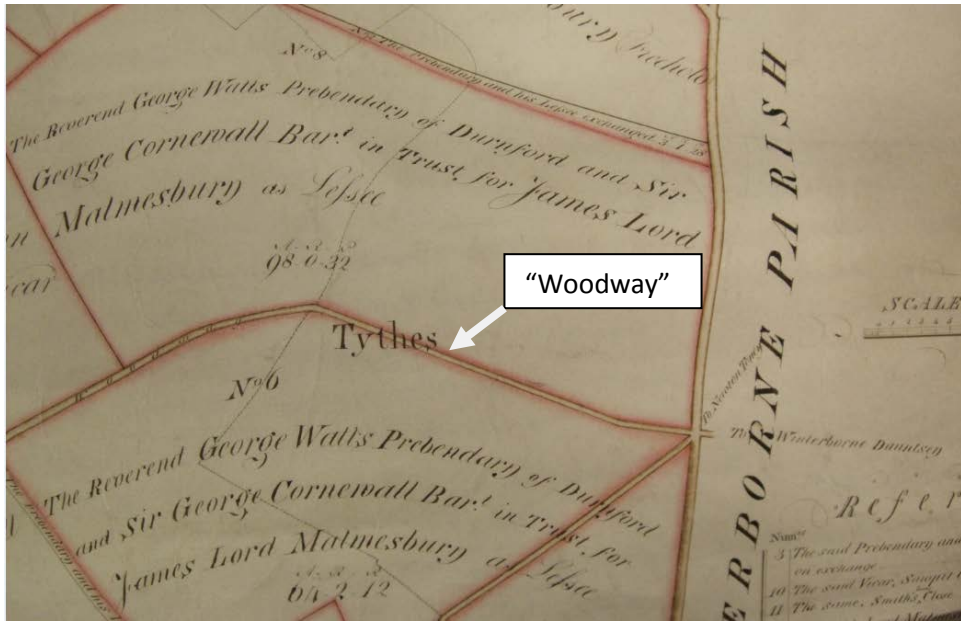
11.4 The award is dated 1794 and has a map dated 1793 attached. The map is entitled “*A Map of the North End Tything and Manor of Hungerford Durnford in the County of Wilts as divided and allotted 1793*”. It is drawn to the scale of 6 chains to one inch.

11.5 The map has a key:

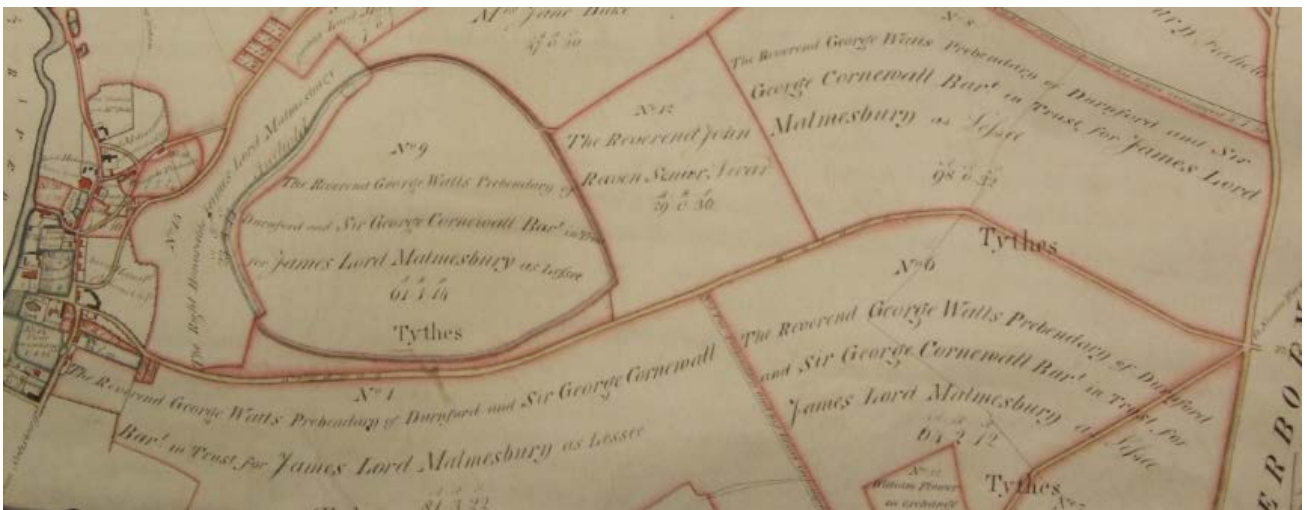
*“The boundaries of the Allotments of the several Proprietors are coloured Red; Those of the Old Inclosures exchanged, Blue; the Roads, Brown; The Houses Deep Red; and the Outbuildings Black: The Numbers in the several Allotments and exchanged Premises, refer to the Numbers in the Margin of the Award.”*

11.6 Durnford 4 is shown as a brown coloured track and labelled “Woodway” in two places. At the eastern end it forms part of a five road cross roads with the continuations into the neighbouring parish marked “*To Newton Toney*” and “*To Winterbourne Dauntsey*”.

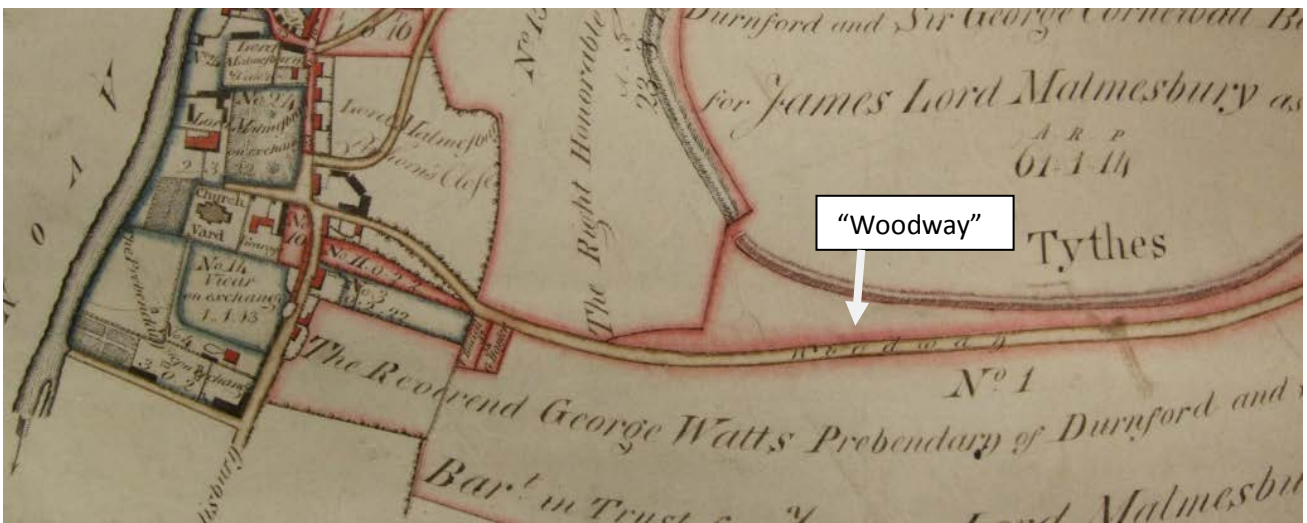
11.7 Eastern end of route



11.8 Entire length



11.9 Western end



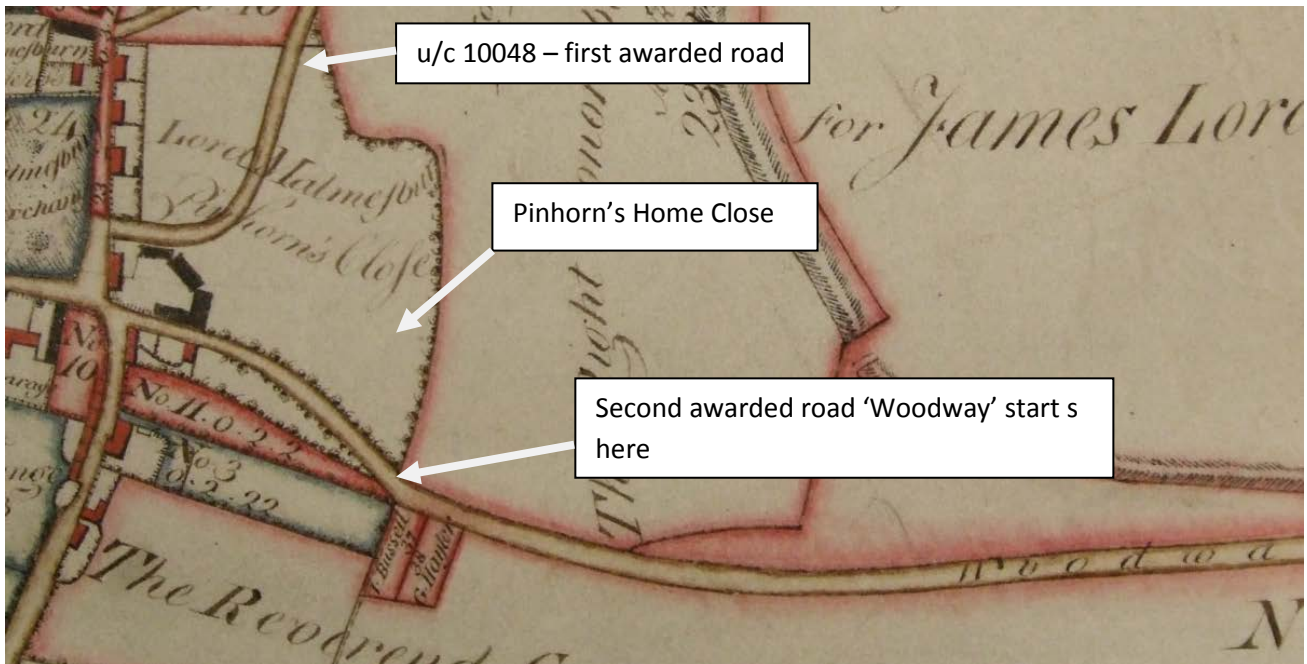
11.10 Five roads were awarded and have been transcribed as follows. Durnford 4 (“Woodway”) is the second awarded and is shown in bold text.

*“One Public Carriage Road and Driftway beginning at the North end of that part of the street in the village of Durnford which is in the South End Tything and extending Northward along the Street of the said Village in its present Course or Direction and of its present Breadth to the Southwest Corner of a Garden called Pinhorn’s now in the occupation of Stephen Smith then turning Eastward and Northward of the breadth of twenty four ffeet through and over an old Inclosure belonging to the Right Honorable James Lord Malmesbury called Pinhorn’s Home Close then continuing Northwards into through and over an old Inclosure allotted to the said James Lord Malmesbury and then continuing Northeastwards of the Breadth of Thirty feet over an allotment hereinafter described and awarded to the said James Lord Malmesbury to the ancient upper road leading from Durnford towards Amesbury at the Distance of twenty perches Eastwards of Water’s Common Close and then continuing Eastward in the usual Course of the said Road to its entrance into the parish of Amesbury the same being part of the Public Road leading from Durnford towards Amesbury aforesaid AND the said Commissioners do hereby award order and direct that the first described part of the last mentioned Road as far as it leads through the said Inclosures and part of the said Allotment to the said James Lord Malmesbury until it joins the said ancient public Road called Amesbury upper Way shall on or before the twenty fourth day of June next be properly formed and made fit for the passage of all persons having occasion to use the same with Carts and Carriages by and at the expense of the said James Lord Malmesbury his heirs and assigns as to the expenses of the first forming and making therof and that the present public Road along the street of the said village shall remain as a public Road until the last described public Road shall be formed and made as aforesaid.”*

This Road is now recorded as the road u/c 10048

***“ONE other public Carriage Road and Driftway of the breadth of Thirty ffeet beginning at the East End of an ancient Lane leading into the ffarm ffield at the South Corner of an old Inclosure called Pinhorn’s Home Close and extending from thence in or near its usual Course or Direction between the ffarm ffield and Woodway ffield and over the ffarm Down to its usual entrance into the Parish of Winterbourne Dauntsey near the five mile stone on the Marlborough Road the same being part of the Public Road leading from Durnford towards Winterbourne Dauntsey and called Woodway.”***

This Road is currently recorded as bridleway Durnford no. 4.



*One other Public Carriage Road and Driftway of the like breadth of thirty feet beginning at the usual entrance into the South Side of the said field called the farm field and extending from thence Northeastward in or near its usual Course over the same field and over the said Down called the farm Down until the same Road meets the said Woodway at its entrance into the said Parish of Winterbourne Dauntsey and the same being part of the Public Road leading from Woodford towards Newton Toney and Winterbourne Dauntsey.”*

This Road is not recorded as a public highway in either the definitive map or the highway record though it is possible that parts of it are incorporated into bridleway Durnford 11.

*“One Public Carriage Road and Driftway of the breadth of forty feet beginning at its usual entrance into the said Down called the farm Down at the distance of forty-five perches from the south-east Corner thereof and extending from thence Northward along the East boundary of the said Down and of the Tenantry Down to the North Corner of the last mentioned Down where the said road enters the parish of Amesbury the same being part of the Public Road leading from Salisbury towards Everly and Marlborough.”*

This Road is now the A345/Byway Open to All Traffic Winterbourne 26 (this section of the A345 was straightened and widened beside the byway leading to the route being recorded in Winterbourne)..

*One other public Carriage Road and Driftway of the like breadth of Forty feet branching out of the last described Road at or near the Southwest Corner of the tything of Gumbleton in the Parish of Idmiston and extending from thence in a Northwards direction in a straight line over the said Down called the Tenantry Down*



*in the Parish of Durnford to the usual entrance of the same Road into the Parish of Amesbury the same being part of the Public Road leading from Salisbury towards Amesbury aforesaid.”*

This Road is now recorded as the A345.

#### 11.11 **Other Category A Evidence**

The route is not affected by any plans for public undertakings (for example railway or canal schemes). In Wiltshire, Quarter Sessions records have been searched and indexed for highway references and no entries relating to the route of Durnford 4 have been found. Additionally no applications or orders for diversions, closures or creations from 1750 – 1971 relating to the route of Durnford 4 have been found. No Orders relating to the route have been found in other public records to date of report. In Wiltshire, Petty and Special Sessions Justices’ minute books have also been indexed for highway references but again, no references relating to Durnford 4 have been found.

#### 12.0 **Category B Evidence**

Category B evidence may be documents or plans drawn up as a result of legislation, and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.

- 12.1 **The Tithe Commutation Act of 1836** A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and generally represented one tenth of production. The system was both unpopular, cumbersome and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued and apportioned rent charges among thousands of separate parcels of the titheable land in different states of cultivation.
- 12.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 12.3 Although a tithe map and apportionment was drawn up for part of Durnford, the tithes in the North End tithing were commuted to rent charges during the process of Inclosure in 1794 and as a result the tithe map does not cover the land affected by

this. Accordingly the area of Durnford 4 is not shown in the tithe survey and the tithe records for Durnford offer no evidence relating to Durnford 4.

#### 12.4 **Inland Revenue Finance Act 1909/1910 Records**

**Plans** WSHC L8/10/60

**Valuation Book** WSHC L8/1/146

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

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

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

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

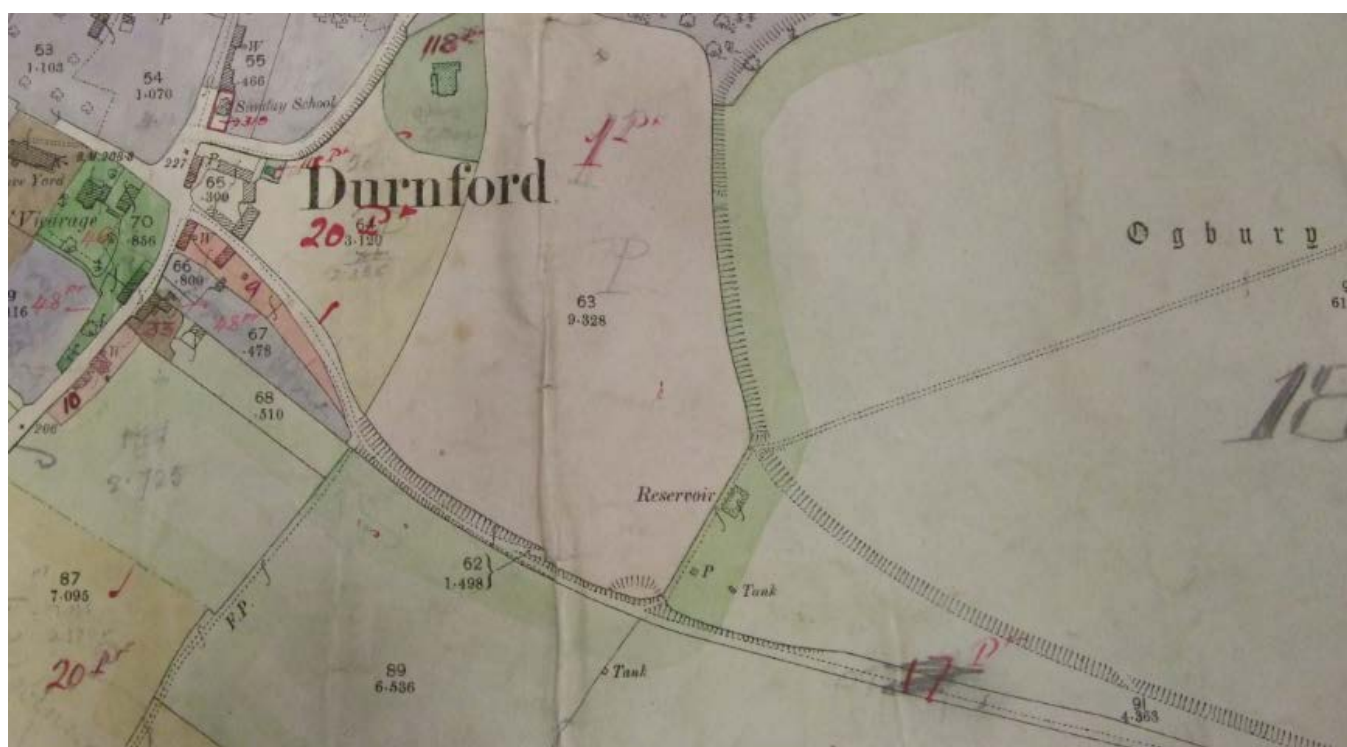
- 12.6 The working copy of the Finance Act plans held at Wiltshire and Swindon History centre (WSHC) have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and provide the most accurate record of the landscape that we have for this area at that time. Sheets 60/7, 8, 11 & 12 (L8/10/60) have been viewed.

- 12.7 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property was diminished, for example if a public right of way, an easement or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol

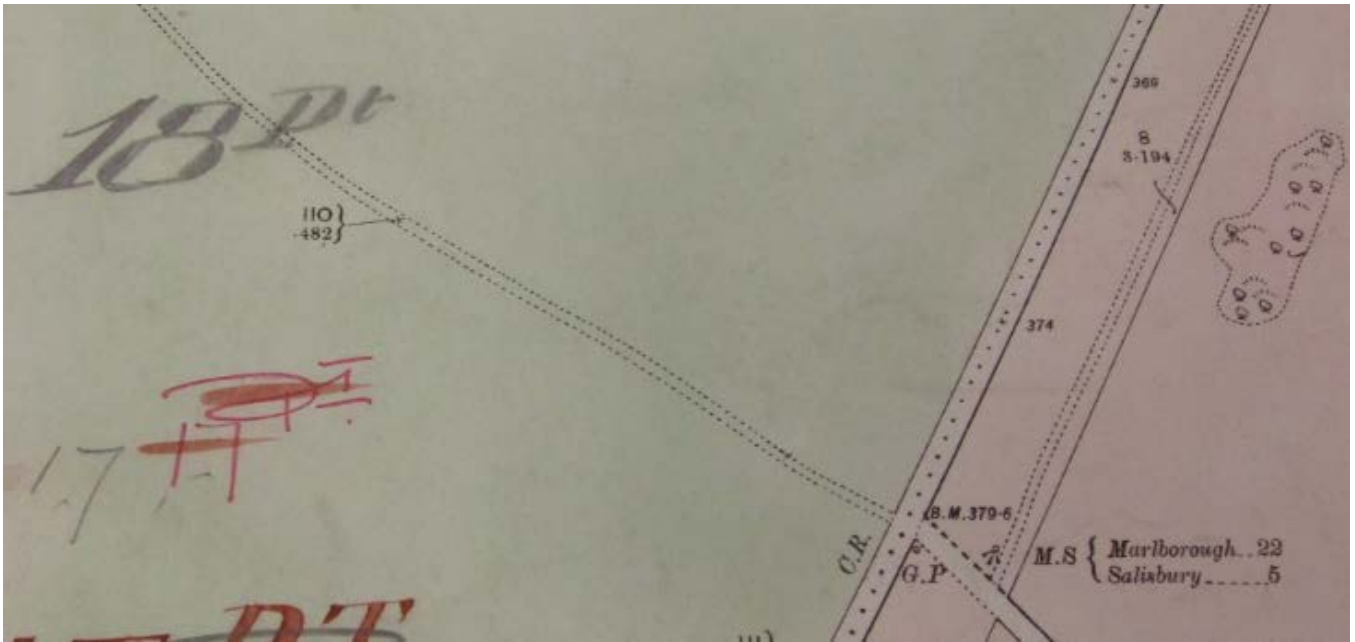
used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.

- 12.8 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that “No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority”.
- 12.9 A length of approximately 265 yards at the western end of Durnford 4 is shown uncoloured and untaxed in the conventional manner for a public road in the control of the highway authority. The surveyor has been deliberate in this depiction by drawing half a red brace against the lane making it clear it is excluded.
- 12.10 Where the lane enters the land coloured green and numbered 18 it becomes coloured green and continues through this hereditament, and coloured green, until its junction with the A345.
- 12.11 Details relating to Hereditament 18 in the Valuation Book lists the owners as the Eccl. Commissioners, the name of the property as being Church Farm, the extent of the property as being 371a. 0p. 37p and a Deduction for Rights of Way or User as being £108.” The valuer was a local man; Richard Pile of Netton.
- 12.12 Although there was no set amount for deductions relating to rights of way or amounts proportional to the status (or at least no records of any instructions survive) it is noted that the sum of £108 is a significant sum and may well include the track that is now Durnford 4.

## Western end



## Eastern end



### 13.0 Category C Evidence

Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. Includes bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

#### 13.1 Amesbury Rural Sanitary Authority Minutes WSHC G1/1/1

Section 24 of the Highways and Locomotives (Amendment) Act 1878 permitted authorities to make application to the Justices to discontinue the repair of certain district roads.

13.2 It is clear from the Minute Books of the Amesbury Rural Sanitary Authority (the highway authority responsible for the upkeep of roads in the area at that time) that in 1880 they were considering making an application to the Justices to do this for certain roads, of which Durnford 4 (Woodrow) was one. The first application to cease repairing roads in Amesbury and Boscombe was refused by the Court and all other proposals abandoned.

#### 13.3 Minutes December 01 1880

*“was decided at the next meeting to report to the Board on the steps necessary to be taken to carry out the wishes of the Board. When they would determine whether*

*applications would be made under the 24<sup>th</sup> section of the Highways and Locomotives amendment Act 1878 for an order of justices declaring the road unnecessary.*

*The Surveyor was directed to report to a subsequent meeting of the Board on the roads which he considered should not be repaired by the Board in the several parishes of Boscombe, Winterbourne Earls, Durnford, Figheldean, Bulford, Milston, Shrewton, Maddington and Winterbourne Stoke.”*

#### **13.4 Minutes December 15 1880**

*“In pursuance of the direction given me at the last meeting of the Board I beg to make the following report as to the roads which appear unnecessary for public use in the following parishes.*

*Durnford – The road commencing at Salterton and crossing the Salisbury main road at Reads Pond and ending afterwards in the parish of Winterbourne Earls. This road is in a very rough state the only repairs that have been done being the packing of the ruts in some places also*

*The road commencing at Mr Powells shop and ending at High Post. This road is in a very bad state and is used almost entirely by the occupiers of the adjoining land Mr Thorne, Mr Smith and Mr Benjapeld.”*

The surveyor listed 8 roads in total but only 2 in Durnford. Woodway was added at a subsequent meeting in May:

#### **13.5 Minutes May 11 1881**

*“The surveyor reported that he had 600 Loads in stock 400 loads of which he had collected during the last month. And that he was the opinion that a road in Great Durnford commencing near the Church through Mr Thorns Farm and ending at the Salisbury and Amesbury main road was unnecessary for public use and should be added to those he had already reported on.”*

#### **13.6 Amesbury Rural District Council Take Over Map 1929**

As a result of the Local Government Act 1929 the maintenance liability for rural roads was taken over by Wiltshire County Council. Surveyors from the Rural District Councils came into the offices of the County Council and roads for which they had the maintenance liability for were shown coloured on 1:10560 Ordnance Survey maps. These maps are known as ‘the Takeover Maps’ in Wiltshire.

13.7 Durnford 4 (Woodrow) has not been coloured on this map but its status is acknowledged by an inscription in red ink beside it - *“Awarded 30 feet”*.

## 14.0 Category D Evidence

Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

### 14.1 Church Farm Sales Particulars 1920 WSHC CC/Bishopric/214a/1)

Sales particulars dating from a sale held on the 13<sup>th</sup> July 1920 have been viewed. The “*Plan of Agricultural Properties at Woodford & Durnford Wilts*” shows Durnford 4 (Woodrow) leading from opposite the church to the main road (now A345) on its usual course. A length of approximately 900 yards of the western end is shown uncoloured and excluded from the sale. The remainder is coloured green with Lot 5 and numbered 109.



14.2 The schedule lists for Lot 5, number on plan, 109 and being “*Description, Road*”; area 18p.

SCHEDULE.			Area.		
No. on Plan.	Description.		A.	R.	P.
93	Arable	...	109	1	39
121	Ditto	...	15	1	13
90	Ditto	...	38	1	21
Pt. 94	Ditto (estimated)	...	125	2	27
91	Pasture	...	4	1	18
89	Ditto	...	6	2	6
Pt. 87	Ditto	...	2	2	29
68	Ditto	...		2	2
75	House, Buildings, Garden, &c.	...	1	2	23
73	Orchard	...	1	0	10
74	Withy Bed	...		1	1
92	Pasture (Ogbury Camp)	...	61	3	6
109	Road	...			18
107	Down	...	3	2	0
			<hr/>		
Ac.			371	1	13

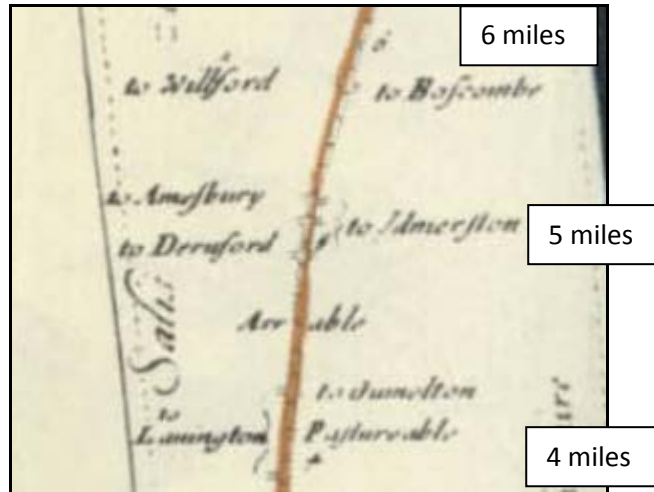
- 14.3 Under the Conditions of Sale, at paragraph 16, it is clear that each Lot is conveyed subject to...all rights of way...affecting such Lot.

16. Each Lot is believed and shall be taken to be correctly described both in Particulars and Plans, as to boundaries, quantities, cultivation, access, dimensions, or fences, but if any error or mistake in the Particulars or Plan be discovered the same shall not annul the Sale, nor shall any allowance or compensation be made in respect thereof. Each Lot is sold subject to the existing tenancy or tenancies and the rights of the present Tenant and the Landlord's obligations in respect thereof, and to any Order which may be made before or after the Contract for Sale by any competent authority relating to the cultivation of any of the Property. Each Lot will be conveyed subject to and henceforth charged with all the tithe rent charges (other than that belonging to the Vendors, which will by the conveyances be conveyed to the Purchasers), outgoings, and payments (if any) and to all rights of road or way, water, light, and other easements (if any) affecting such Lot. All notes, statements, and memoranda contained in the Particulars shall be binding on each Purchaser as if the same were here repeated as Conditions of Sale.

## 15.0 Category E Evidence

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

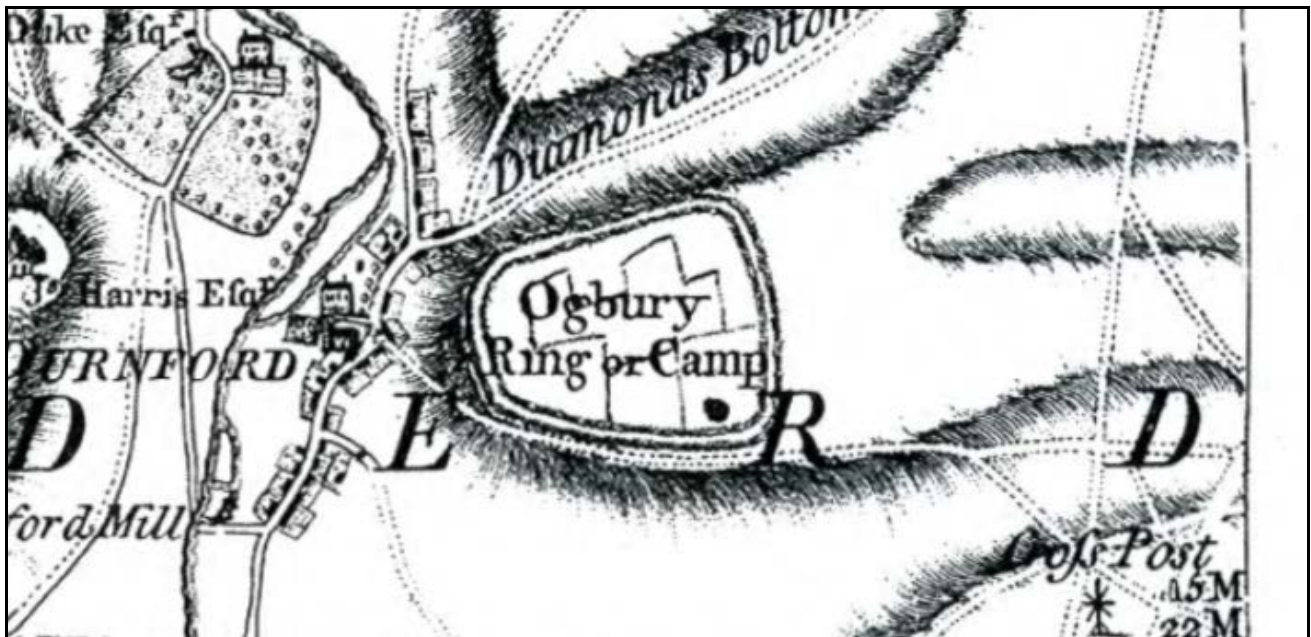
- 15.1 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury, C & I Greenwood and the Ordnance Survey. In this instance the route is also shown in an independent survey map published in 1675 and this is included here also.
- 15.2 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 15.3 **Ogilby's Britannia 1" to one mile Road Map Plate 85 1675**
- John Ogilby is credited with publishing Britain's first Road Atlas. It was produced as a series of linear strip maps, a logical step from the listed itineraries that preceded it. The maps showed the "principle roads" but also showed junctions with cross roads and their destination. Mile markers were also shown on the principal roads.
- 15.4 Five miles north of Salisbury, where the milestone "Marlborough 22 Salisbury 5" now stands on the Old Marlborough Road (byway 26) a "Cross Road" is shown leading westwards "To Dornford" on the line of Durnford 4.



#### 15.4 Andrews and Dury's Map of Wiltshire 1773

The map is drawn at the scale of 2 inches to one mile. It does not have a key but Andrews' and Dury's map of Hertfordshire does and the symbology appears to be the same. Durnford 4 (Woodrow) is shown as a minor road. The 5 mile milestone is a useful reference point.

Sheet 4



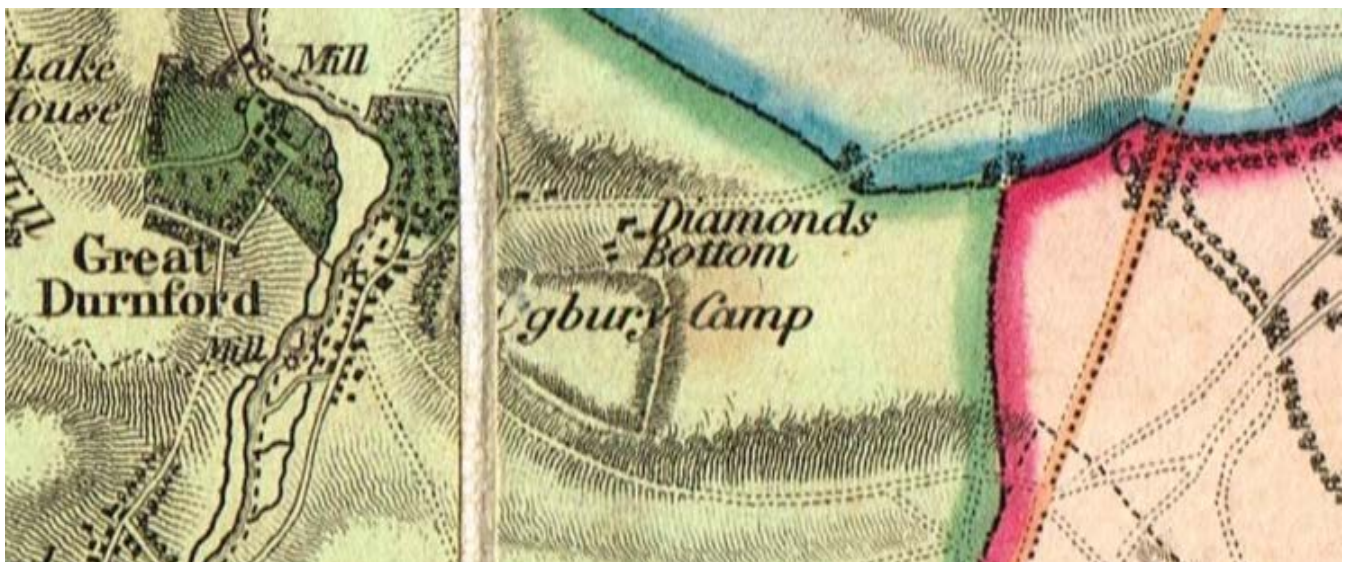
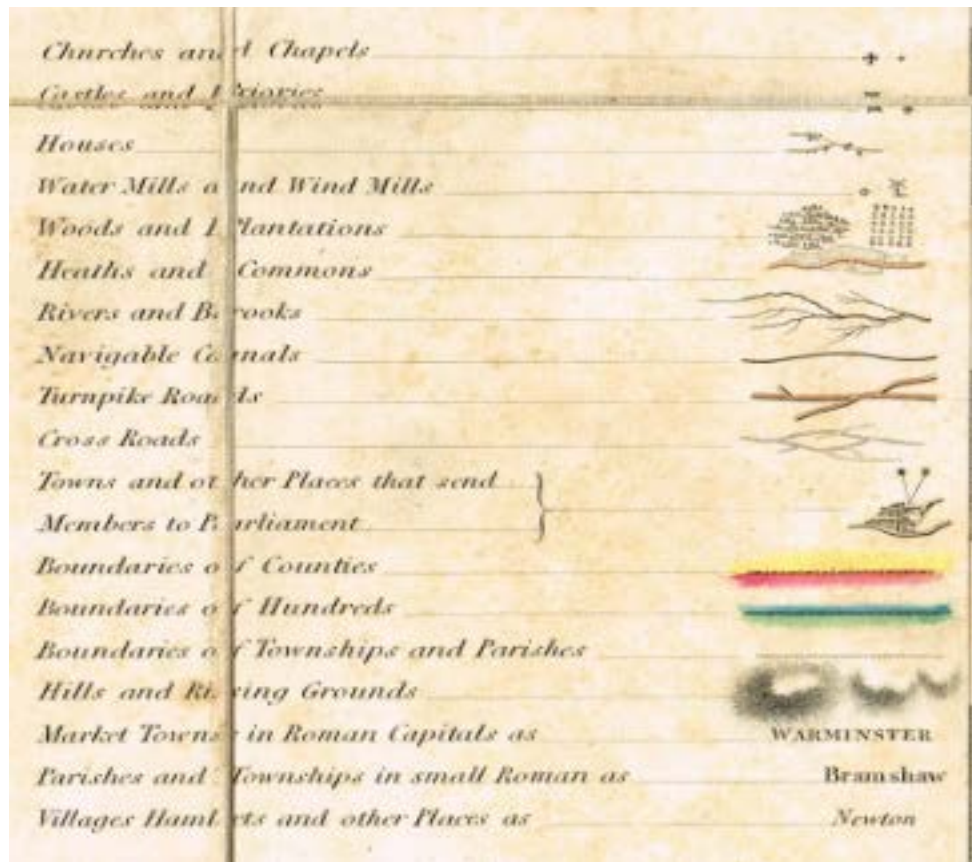
15.5 The Revised and Corrected Edition dated 1810 shows the road on the same route but as a "Cross Road".

#### 15.6 C and I Greenwood's Map of Wiltshire 1820

Greenwood's maps relied on a survey independent of Ogilby, Andrews' and Dury and the Ordnance Survey and can be a useful source of information. The maps



were produced at a scale of 1 inch to the mile, in full colour and have a key. The route of Durnford 4 is shown as a 'Cross Road'.



15.7 The Council is guided by the Planning Inspectorate's Consistency Guidelines (para 2.24 to 2.30) for the definition of a cross road.

*"In modern usage the term cross road/crossroads is generally taken to mean the point where two roads cross. However old maps and documents may attach a*

*different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.”*

- 15.8 Howarth J’s comments in the case of Hollins-v-Oldham 1995 concluded that the category known as ‘cross road’ must mean a public road in respect of which no toll was payable. The judge gave his reason for this view, stating:

*“This latter category, it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use.”*

- 15.9 Greenwood’s Reduced Map of Wiltshire, corrected to 1829 shows the route as an “open Road”.

#### 15.10 Ordnance Surveyor’s 2” Drawings 1807

In preparation for the publication of the OS’s 1” to 1 mile series (now known as ‘the Old Series’) the OS appointed surveyors to survey and draw the country at the scale of 2 inches to one mile. Edmund Crocker is attributed as surveying the area around Salisbury in 1807 and although Ogbury Camp is depicted in great detail, Durnford 4 is not shown. Although later OS maps corrected this error it is interesting to note that although the surveyor has clearly taken great pains to show the archaeology in this rich area, he has not recorded the road that other earlier surveyors had seen.



#### 15.11 Colt Hoare’s Map of the Hundreds of Everley, Ambresbury & Underditch 1826

This map was surveyed by the brother of Edmund Crocker (see 15.10 above), Philip Crocker for Sir Richard Colt Hoare’s History of Modern Wiltshire published in 1826. Durnford 4 (Woodrow) can be clearly seen passing in its usual east/west direction just south of Ogbury Camp.



### 15.12 Ordnance Survey Mapping – The County Series 1:2500 1877 - 1939

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. Sheets 60.7, 60.8, 60.11 & 60.12 cover the applicant route. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact practically all the significant man made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road...., field...., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries..are shown;....hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

15.13 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”

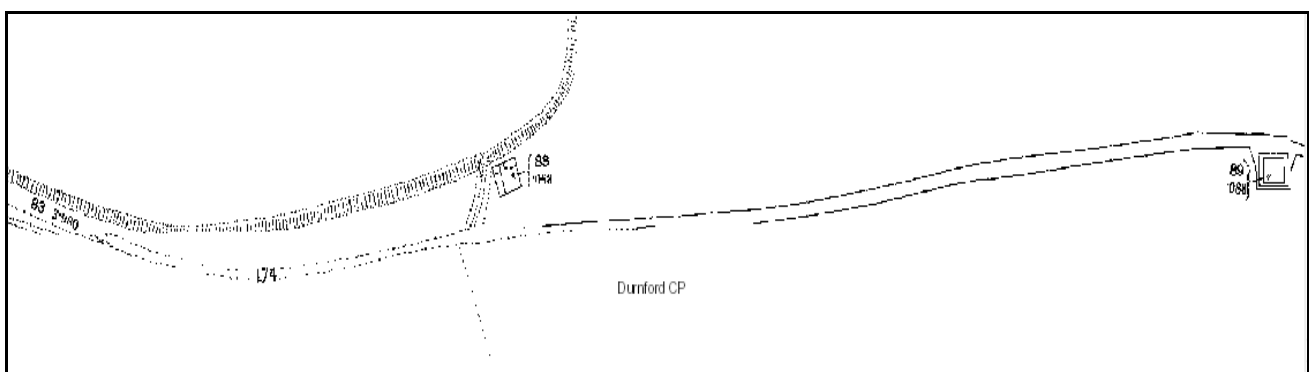
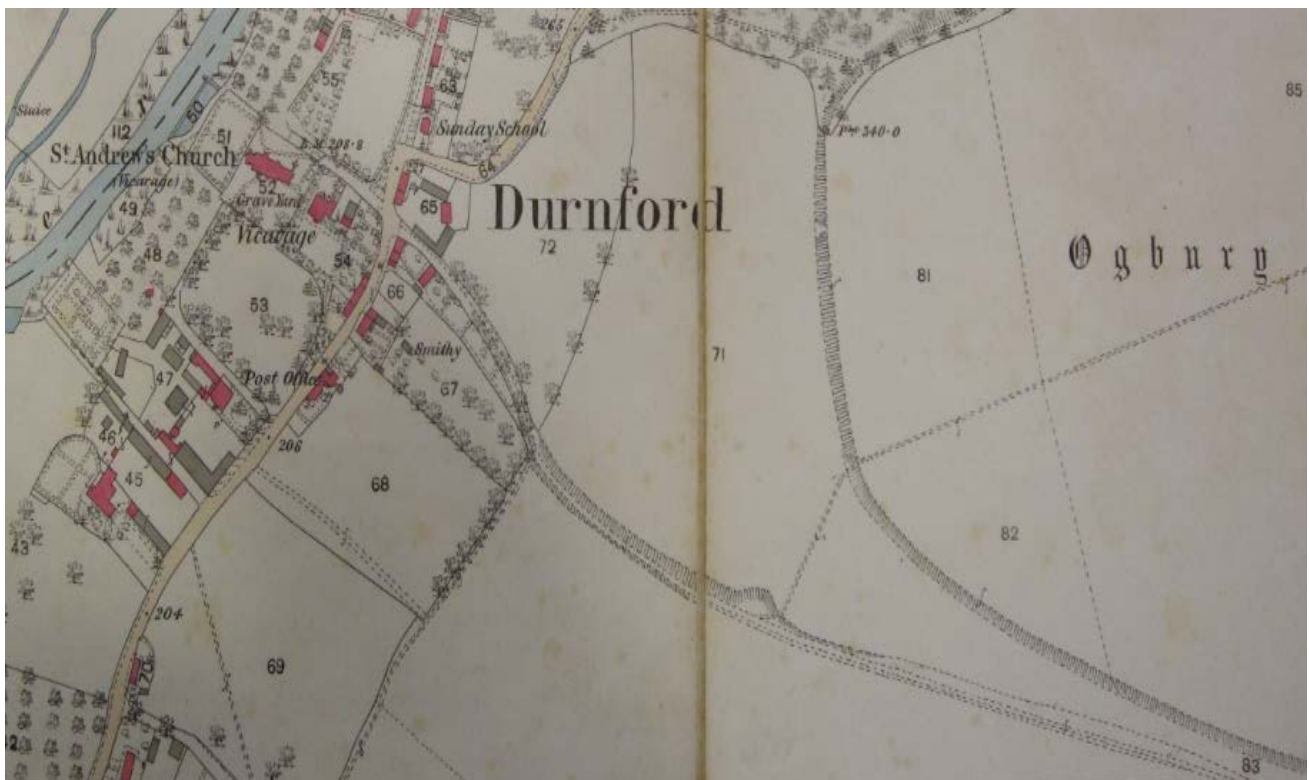
15.14 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.

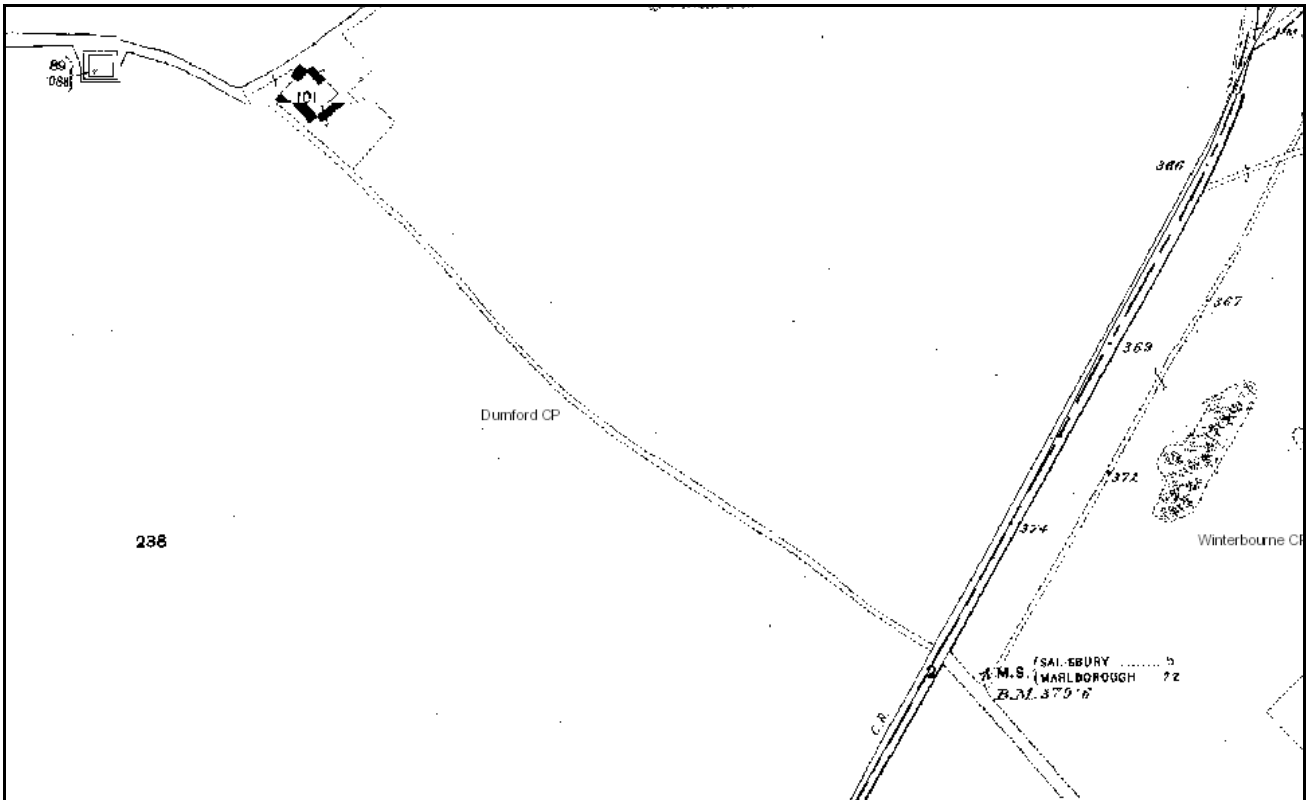
15.15 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public*

roads, whether fenced or unfenced and foreshore and tidal water....” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreage was printed on the sheet. Land use information was dropped. Unfortunately the First Edition maps in this area do not have land use information available for them at the Wiltshire and Swindon History Centre.

### 15.16 First Edition surveyed 1877

The route is shown as a partly fenced road, separately numbered and measured throughout. There are no gates.





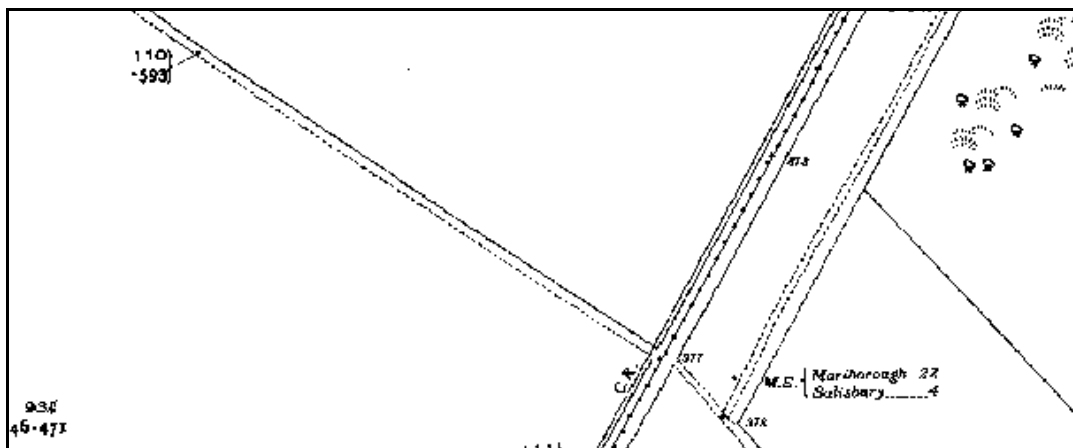
**15.17 Second Edition Revised 1899 Published 1901**

The route is shown as a fenced road from Woodrow Cottage to the barns and then as an unfenced road from the barns to the main road (A345). The route is not shown as a footpath (F.P.) or bridleway (B.R.).

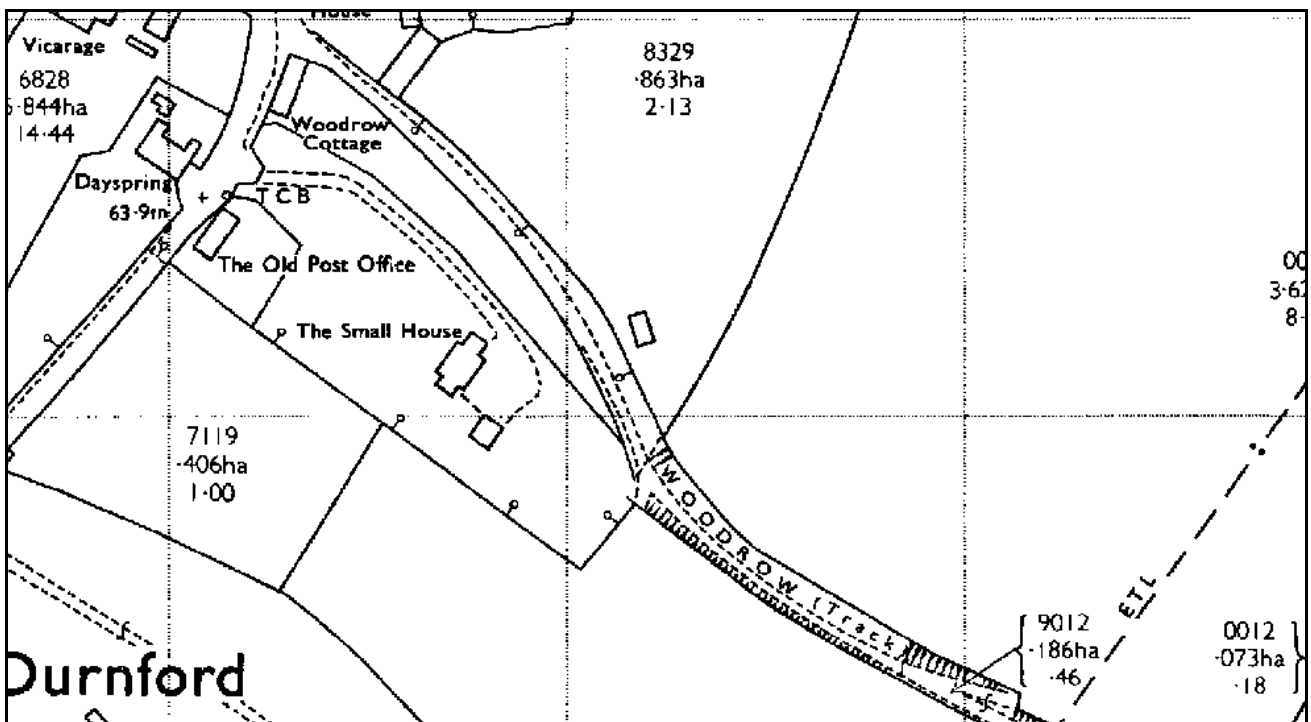
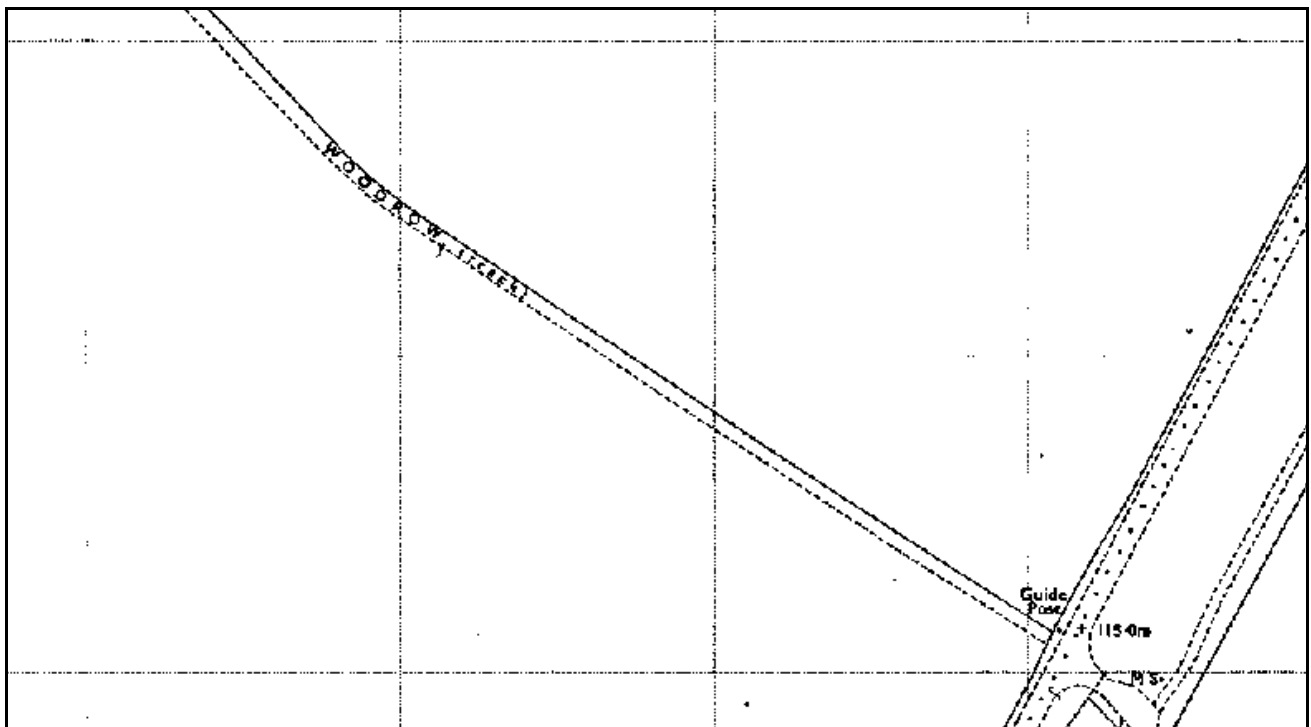
**15.18 3<sup>rd</sup> Edition Revised 1922 Published 1925 also Edition of 1939**

In the 1925 edition the route is shown as a part fenced and part unfenced road in the same manner as the first and second editions of the map.

15.19 By the 1939 Edition the route is shown fenced on the northern boundary from the barns to the A345 (as it is today). It remains numbered as a separate parcel.

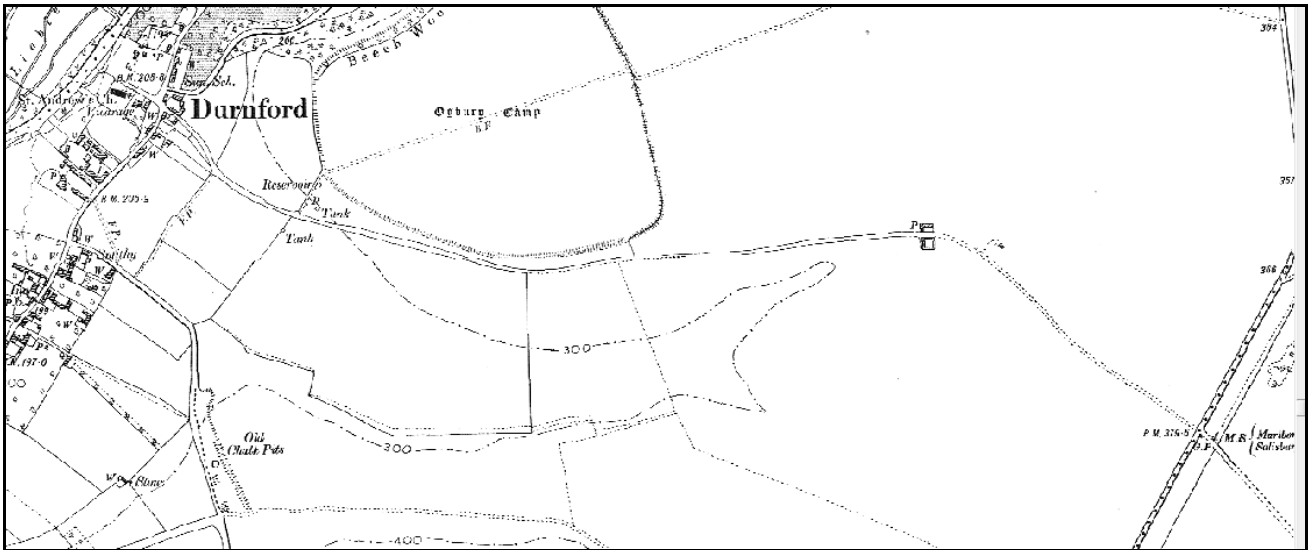


15.20 By the late 1970s the Ordnance Survey recorded the name “Woodrow” at several points along the track.



**15.21 Ordnance Survey 1:10560 maps**

The base survey data for the six inch series is taken from the 25 inch (1:2500) series and it is rare to see any differences in the maps. However, the six inch series does have a key and all editions viewed show the route of Durnford 4 as a “Minor Road”



## 15.22 Other Commercial Maps

The applicant has adduced a number of small scale commercial maps showing Durnford 4 as a road to support the application. These maps have not all been viewed by officers at the date of report.

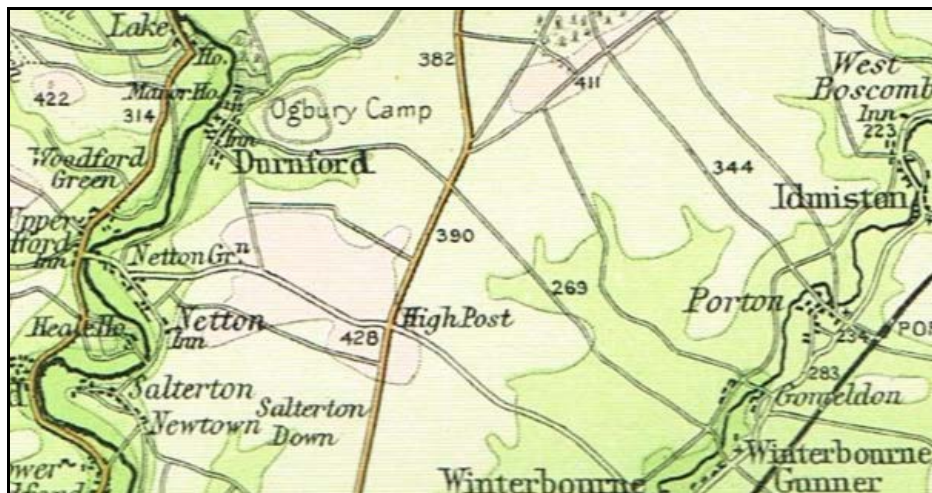
Gall & Inglis Half inch Map for Cyclists Tourists etc 1898 Minor road

Ordnance Survey 1" Map Revised New Series Sheet 298 1898 Three quarters is classified as "*metalled Road, Third Class*" and one quarter is classified as "*Unmetalled Road*"

Murray's Half inch Map of Salisbury & neighbourhood 1899 Minor road

Gall & Inglis 2.5 miles to 1" Map for Cyclists Tourists etc 1902 Minor road

Bartholomew's Half inch Survey Atlas Plate 64 1904 *"Other Driving Road"*  
*A different symbol is used for footpaths & bridleways*



Bartholomew's Half inch Map for Tourists and Cyclists Sheet 33 1904-5 Coloured with red dots and classified "*Indifferent Road (Passable)*".

Ordnance Survey 1" Map 3<sup>rd</sup> Edition Sheet 123, 1908 Three quarters is classified as "*Metalled Road, Third Class*" and one quarter is classified as "*Unmetalled Road*".

Ordnance Survey Half inch maps Sheets 33 1910 and 38 c.1911 "*Other Road*"

The Royal Automobile Half inch Official Touring Map c.1915 "*Other Road*"



Milestone Motor Map c.1916

"Unfenced Road"



**GENERAL REFERENCE**

Main Motoring Roads		County Names	<b>HANTS</b>
Secondary Motoring Roads		County Boundaries	
Other Metalled Roads		Golf Courses	
Unfenced Roads		Race Courses	
Mileage indicated thus		Trigonometrical Points	
Railways & Stations		Altitudes in Feet	746
Canals		Tumuli	
Parks		Adjoining Sections thus	
Woods		Limits of same	

Letters in margin refer to Golf Course Index A E.

Scale - 3 Miles to 1 inch

Walters' Guide to Wiltshire, Map 1, 1920

Minor road



Ordnance Survey Half inch Road Map Sheet 33 1926

*“Other Road”*

Ordnance Survey 1” Map 5<sup>th</sup> Edition Sheet 131

*“Unmetalled Road”*

Ordnance Survey 1” Map New Popular Edition Sheet 167 1940 (Roads revised 1947)

*“Unmetalled Road”*

### 15.23 **Salisbury and Winchester Journal 7<sup>th</sup> August 1858**

A notice posted by the British Archaeological Association in the edition of the Salisbury and Winchester Journal (the local paper) printed on the 7<sup>th</sup> August 1858 has been viewed:

#### ***“Meeting of the British Archaeological Association.***

*(continued from Supplement to this day’s Journal) Wednesday*

*This day was devoted to an examination of the Muniments and the Library of the Cathedral, and to an excursion to Wilton and its neighbourhood. At ten o’clock a numerous party assembled in the Library, when*

*Mr PETTIGREW introduced Mr. Black, the palaeographer of the Society.*

*Durnford*

*The carriages being sent round to Great Durnford by the bridge, the party were ferried over the river to Great Durnford Church. The principal features of this edifice are the arches of the north and south entrances.....The old parish register was examined with much interest. Durnford Church was the last place visited by the bulk of the excursionists, though a few walked to Ogbury Camp, which is an extensive earthen work, on the brow of a hill, a few hundred yards from the village, from which it is approached by what is supposed to have been a covered way, now used as a waggon road.”*

15.24 The westerly part of Durnford 4 has its carriageway approximately 15 or 20 feet below the surrounding land in some places and, it is certainly not an unreasonable suggestion that this could once have been a covered way allowing concealed access to and from the camp. If this is the case; the road has very ancient origins.



A sunken section of the lane today

## 16.0 Category F Evidence

Evidence in this category includes any user or anecdotal evidence.

- 16.1 A total of 26 forms demonstrating use of the route with a mechanically propelled vehicle (MPV) have been received. The use covers the period from the late 1980s to 2016 and has been adduced to demonstrate an exemption from s.67 of the NERC Act 2006.
- 16.2 The application of the NERC Act 2006 will be considered fully in Section 18 below.

## 17.0 Natural Environment and Rural Communities Act 2006

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

- (1) (a) *was not shown in a definitive map and statement, or*  
(b) *was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

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

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

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

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

- (b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(List of highways maintainable at public expense),*
- (c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*
- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) *it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.*

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

- (a) *before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
- (b) *before commencement the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*
- (c) *before commencement a person with an interest in land has made such an application immediately before commencement, use of the way for mechanically propelled vehicles –*
  - (i) *was reasonably necessary to enable that person to obtain access to the land or*
  - (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

(4) *“The relevant date” means –*

- (a) *in relation to England, 20<sup>th</sup> January 2005;*
- (b) *in relation to Wales, 19<sup>th</sup> May 2005.*

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

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

(6) *For the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

- (7) *For the purposes of subsections 3(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact –*
- (a) exercising the existing public right of way, or*
  - (b) able to exercise it.*
- (8) *Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c.69) does not apply.*
- (9) *Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c.37) has effect to this section.*

## **18.0 Interim Decision regarding public rights over Durnford 4 prior to the 2<sup>nd</sup> May 2006.**

In order to determine this application to record Durnford 4 (Woodrow) as a byway open to all traffic Wiltshire Council must first consider whether a public vehicular right subsisted prior to the implementation of the NERC Act 2006 on the 2<sup>nd</sup> May 2006.

- 18.1 Officers have viewed a considerable number of documents relating to the route and it is considered that they provide a consistent and cohesive record of the route as a public road prior to 2006.
- 18.2 Of greatest evidential weight is the Inclosure Award of 1794 considered at Section 11. This awarded a Public Carriage Road and driftway with a width of 30 feet leading out of an ancient lane across the newly enclosed downs to meet the main road between Salisbury and Marlborough.
- 18.3 There is evidence that a road existed linking the village of Great Durnford with the main road in 1675 (further supported by a map of 1773) and that this route was not only retained and formalised at Inclosure in 1793 but that it survived in records as a road and not a footpath or a bridleway.
- 18.4 The records of the highway authority in 1880 support that the route was a publicly maintainable road (presumably as a result of it being a pre- 1835 highway – hence an ‘ancient highway’ according to the Highways Act of that year), even though they considered it unnecessary.
- 18.5 It is not unreasonable to assume that the route was little used by this time (if it had not have been the highway authority would have been unlikely to consider it unnecessary) and that it continued to be so to the extent that in 1950 when the route was surveyed by the Parish Council as a requirement of the National Parks and Access to the Countryside Act 1949 (preparation of the definitive map and statement), the Parish Council regarded it as a bridleway and it has been recorded as such in the definitive map and statement since that time.

18.6 It is therefore considered that, on the balance of probabilities, Durnford 4, Woodrow (or Woodway) was a public vehicular highway prior to the 2<sup>nd</sup> May 2006.

## 19.0 Consideration of the Effect of NERCA 2006

It is appropriate to consider each exemption in turn:

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

19.2 It is upon this exemption that a number of users of the way rely and accordingly 26 user evidence forms have been submitted to demonstrate use of the way with MPVs.

24 of the 26 users have ridden or driven the way for recreational purposes during the period 2001 to 2006 with 7 of them having used the route for all 5 years.

The frequency of use varies between once in the 5 year period to a maximum estimate of 75 times in the 5 years. However, the more usual frequency is around 3 to 4 times per year per person. Users report travelling in group of up to 10 with around 3 or 4 being more usual.

19.3 It is not known if the others in the group also filled out evidence forms, if they did then the use should not be multiplied but if they did not it is reasonable to multiply the usual frequency of say 4 times per annum with the usual group number of say 4. This gives an estimate of 384 (24 users each with 4 others = 96, each using it 4 times = 384) vehicle passes per annum or approximately one per day. This would be a maximum figure based on a number of assumptions.

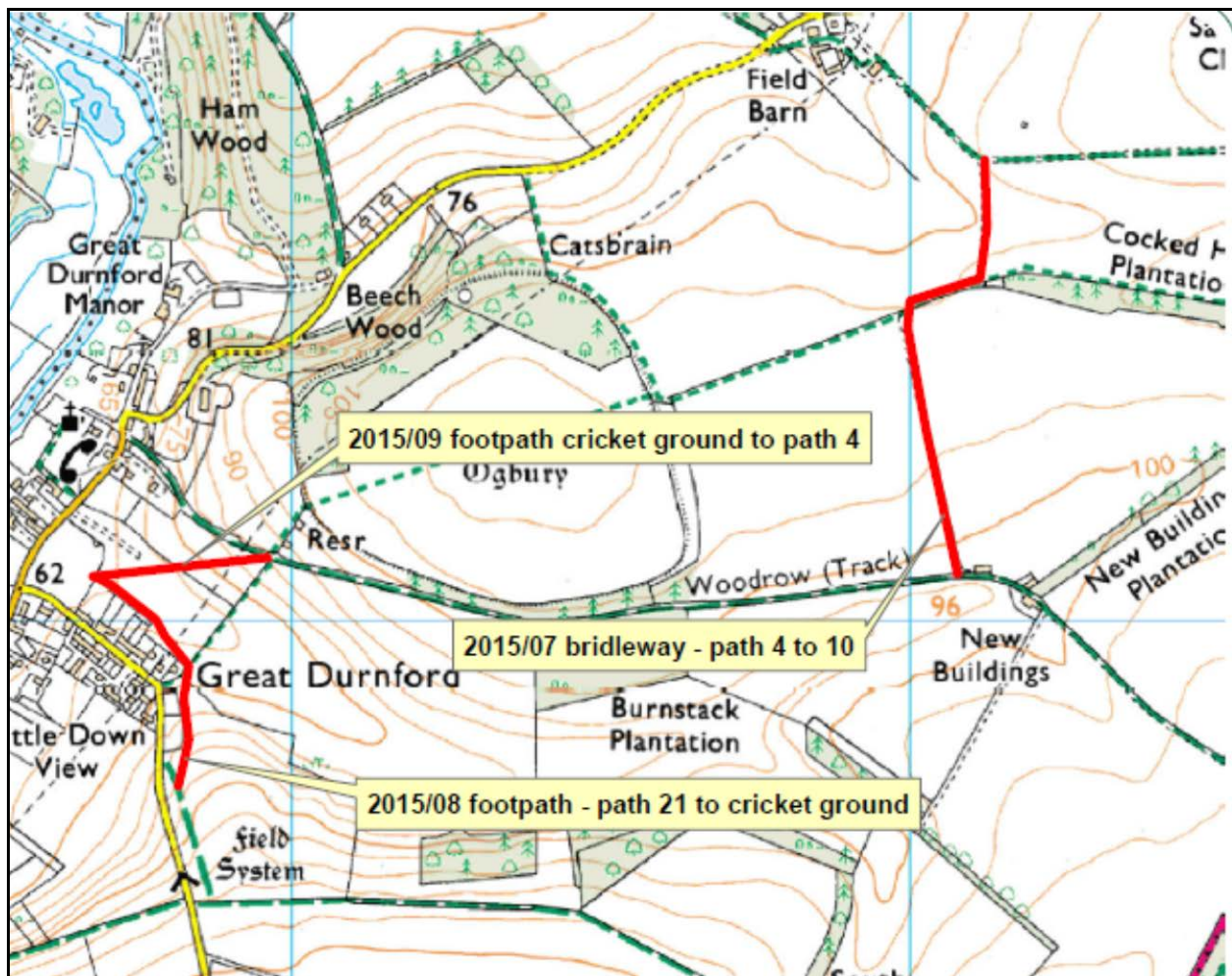
19.3 It is not clear what sort of vehicle people used, and although it is noted that a folding metal bollard is in place in the middle of the track near Woodrow Cottage, it is not known whether it was ever in the upright position or if it was, for how long. Certainly no users have reported it as being an obstruction to their use and indeed it would not have been to a motorcyclist.

19.4 Durnford 4 (Woodrow) is a logical link in any recreational MPV route allowing users to link byway Winterbourne 26 with byway Wilsford cum Lake 2 to Stonehenge and officers consider that the evidence adduced represents a fair reflection of the use it may have had.

19.5 That this use was relatively light is supported by statements submitted at the time of the application in 2005; Mrs Sprague did not “want this bridleway opened to all traffic” and she further states that the way is used by “walkers and riders and horses and motorised farm vehicles and equipment”. She was clearly unaware of the MPV

use from her property The Small House, the garden of which adjoins Durnford 4 (Woodrow).

- 19.6 In 2005 the Parish Council also wrote to Wiltshire Council stating that they were concerned that “4 x 4 cars could be hoping to use this” as a result of the “enquiries to use this bridleway”. Again it appears that they were unaware of existing use.
- 19.7 Even if use by MPVs is relatively light, it is of course still possible for them to be the main user of the route and hence to satisfy sec. 67(2)(a) NERCA 2006.
- 19.8 Coincidental to this application Wiltshire Council also has before it four applications to record footpaths and a bridleway over land at Durnford. These applications are based on user evidence and are recorded as application numbers 2015/06, 07, 08 and 09. Application number 2015/09 adduces evidence of use on foot for a route that would allow users to walk along Durnford 4 in either direction and application number 2015/07 adduces evidence of use on foot, cycle and horse for a route that requires people to use a significant length (or all of) of Durnford 4. The map below shows the claimed routes in red. Durnford 4 (Woodrow) is shown as a bridleway labelled “Woodrow (Track)” and it is clear how it has to be used to access the claimed routes shown in red.



- 19.9 Application no 2015/09 is supported by the evidence of 19 witnesses who have walked the path for variable lengths of time leading back to the 1960s and extending to 2015. 16 of the users had walked the way from 2001 to 2006. The frequency of use was high with some of them walking it daily or at least weekly or monthly.
- 19.10 It is not known which of these included Durnford 4 in their walk but it did form the northern terminus of the claimed route and would have provided a useful and pleasant walk in either direction.
- 19.11 Application no 2015/07 is supported by the evidence of 32 people all of whom would have had to walk, ride or cycle over parts of Durnford 4 to access the route claimed in the application. They could have used Durnford 4 from either direction – the crossing if the A345 clearly not being a deterrent to horse riders as evidenced by hoof prints on the ground today at that end and the ease of access to byway Winterbourne 26 on the other side of the A345.
- 19.12 Of the 32 people 27 had used Durnford 4 (or parts thereof) for all five years between 2001 and 2006. The frequency of use ranged from daily to ‘about 8 times per year’ with most people using it at least once per month. All users reported seeing other users though it is noted that it is not known if these people had also submitted evidence.
- 19.13 Evaluating frequency of user evidence can be difficult but in this instance it is felt that there is clear evidence of use from walkers, cyclists and horse riders that demonstrates how well used Durnford 4 is. Although officers are in no doubt that the way has also been enjoyed by MPV users, it is considered that their use was not more frequent than other types of user in the period 2001 to 2006.
- 19.14 I conclude that the requirements of Section (2)(a) NERCA 2006 are not met and public vehicular rights are not preserved by this section.
- 19.15 **(2)(b)** *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66)(list of highways maintainable at public expense).*

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

I conclude that the requirements of Section (2)(b) NERCA 2006 are not met and public vehicular rights are not preserved by this section.

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

It is known that this road was a carriage road in 1794, a time before mechanically propelled vehicles existed.

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

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

Public MPV rights have not been preserved by this section.

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

Public MPV rights have not been preserved by this section.

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

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

An application was not made before the relevant date (20 January 2005).

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

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

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

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

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

## **20.0 Legal and Financial Considerations**

20.1 The determination of Definitive Map Modification Orders (DMMOs) and the continual review of the definitive map are statutory processes for which financial provision has been made. In determining applications for DMMOs the Council is acting in pursuit of its statutory duty and cannot be challenged in so doing (subject to due process being followed).



- 20.2 If an order is made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order. If the order attracts objections that are not withdrawn it must be forwarded to the Secretary of State for determination. It may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £4000).
- 20.3 If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general public traffic of the area and has a duty to maintain the surface of the highway to that extent. No works to the route are currently identified.

## **21.0 Risk Assessment**

- 21.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety
- 21.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.
- 21.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.
- 21.4 Advice from the Planning Inspectorate is that a byway open to all traffic application should not be refused as the Schedule 14 appeal process is not open in a case where evidence subsists and the Council has a duty to make an Order. The Schedule 14 appeal procedure is only open to applicants where the Council refuses to make any order. The applicant's appeal route is thereby through objection to the Council's order. Officers consider it highly unlikely that the 2005 applicant would object to a restricted byway order as the effect of the NERC Act 2006 is generally well known and understood. Additionally the Council has benefitted from having the additional evidence of use adduced in support of the 2015 applications, especially 2015/07.

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

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

## **23.0 Equality Impact**

- 23.1 The character of the route will not alter with the making of an order to record the way as restricted byway. The legal right to pass and repass over the entire width will be protected which will ensure that obstructions and encroachments may be removed by Order of the Council. This could lead to greater accessibility.
- 23.2 A restricted byway may be used by a horse and cart. Many people who cannot ride a horse for reasons of a disability drive horses and the recording of this long route as a restricted byway will increase the available network for them. This will lead to greater accessibility. This would offer a significant improvement to the network for carriage drivers.
- 23.3 The recording of the full width as a restricted byway is in line with the Council's duty under The Equality Act 2010. Equality is however not a material consideration contained within the Wildlife and Countryside Act 1981.

## **24.0 Safeguarding Considerations**

- 24.0 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to safeguarding.
- 24.1 It is however noted that there are no considerations arising.

## **25.0 Public Health Considerations**

- 25.1 Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to public health.

## **26.0 Relationship to the Council's Business Plan**

- 26.1 Consideration of the Council's Business Plan is not relevant to the application of s.53 of the Wildlife and Countryside Act 1981. However, Wiltshire Council is committed to working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

## **27.0 Options to Consider**

- i) To make an Order to modify the definitive map and statement to show Durnford 4 (Woodrow) as a restricted byway width 30 feet (9.14 metres) and 20 feet (6.10 metres)
- ii) To make an Order to modify the definitive map and statement to show Durnford 4 (Woodrow) as a byway open to all traffic width 30 feet (9.14 metres) and 20 feet (6.10 metres)
- iii) To refuse the application for an Order

## **28.0 Reason for Recommendation**

- 28.1 A substantive body of historical evidence supports that on the balance of probability Durnford 4 (Woodway) should be recorded with a higher status than bridleway and that the width should be recorded.
- 28.2 The route is an ancient one that predated and survived the process of parliamentary inclosure being awarded as a Public Carriage Road and Driftway in 1794.
- 28.3 Public rights were affected by the NERC Act 2006 and Wiltshire Council must consider the effect of the Act on them.
- 28.4 It is clear that s.67(1) of the 2006 Act extinguished the public MPV right and officers have accordingly considered a number of exemptions to this given in s.67(2) and (3) of the same Act.
- 28.5 A number of MPV users have adduced evidence of their use during the period required to satisfy the exemption contained within s.67(2)(a) of the Act.
- 28.6 Although there has been undoubted use by MPVs during this period the Council also has before it evidence of use of Durnford 4 which was adduced as part of independent applications for DMMOs for linking paths. It has therefore been possible to compare the use of several types of user and it is considered that, on the balance of probability, the main user was not by MPV during the period 2001 – 2006.

## **29.0 Recommendation**

**That an Order is made under s.53(3)(c)(ii) and (iii) of the Wildlife and Countryside Act 1981 to record Durnford path no 4 (Woodrow) as a restricted byway with a width of 30 feet (9.14 metres) and 20 feet (6.10 metres) and to confirm the Order if no objections or representations are made to it.**

Sally Madgwick

Rights of Way Officer – Definitive Map

08 March 2016