

Commons Act 2006 – Schedule 2 (paragraph 6)

Application to De-Register Buildings Wrongly Registered as Common Land – The Pound, Whiteparish

APPENDIX 8 – Curtilage Evidence

	Evidence	Comments
1		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking north into Area 4.</p> <p>At May 2021 the wooded/grass area to the north of the application land is fenced out as a separate enclosure, (the evidence supports the fencing of this area by the Applicants c.2019). From aerial photographs, this area appears to have always been a wooded/grass area, not included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building.</p>

2



Photograph - May 2021 (Wiltshire Council)

Looking west into Area 4.

Please see comments above.

3



Photograph - May 2021 (Wiltshire Council)

Looking south-west into Area 3.

At May 2021 Area 3 hardstanding is used for the parking of vehicles associated with the car garage business (the building) and there is evidence that it has previously been used in conjunction with the building, i.e. for the parking of vehicles, since around 2000. This area is not included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building and there is not sufficient evidence to demonstrate that it was, at provisional registration in 1968, so intimately associated with the building as to lead to the conclusion that it formed part of the curtilage of the building.

4



Photograph - May 2021 (Wiltshire Council)

Looking south-west from the highway Common Road into Areas 3 and 4.

Please see comments above regarding Areas 3 and 4.

5		<p>Photograph - May 2021 (Wiltshire Council).</p> <p>Looking south-west into Areas 3 and 2.</p> <p>Please see comments above regarding Area 3 (foreground).</p> <p>Area 2 includes the building and land directly to the east of the building to the edge of Common Road, including the grass area adjacent to the highway.</p> <p>At May 2021 Area 2 is used in association with the car garage business (the building).</p> <p>Area 2 is included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building and includes the provision of access to the building; a turning/parking area and part of the visibility splay, as set out in the planning conditions.</p>
6		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking north into Areas 2, 3 and 4.</p> <p>Please see comments above regarding Areas 2, 3 and 4.</p> <p>The evidence suggests that the building has existed on the site since the close of 1967 and there is no dispute of the fact that part of the application land was covered by the building at the time of provisional registration, (part of register unit CL.7, Whiteparish Common), on 10th April 1968 and at all times since. The evidence suggests that the building has retained its original footprint of approx 122m², comprising approx 5% of the total area of the application land. What is in dispute in this case is the extent of the curtilage of this building which may also be capable of de-registration as common land.</p>

7		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking west towards Area 1.</p> <p>Land to south of the workshop building, Area 1, which does not form part of register unit CL.7, Whiteparish Common and is to be excluded from the application.</p>
8		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south-east in Area 2.</p> <p>Please comments above regarding Area 2.</p> <p>Land to the south-east of the workshop building although not used in conjunction with the current use of the building as a car garage, is included within the 1967 planning application areas for change of use of the land and the erection of the garage/workshop building. The area adjacent to Common road includes provision for part of the visibility splay required in the planning conditions. Although the area is now fenced by the Applicants c.2019, Officers consider that the visibility splay is clearly identified for the purposes of the building, to remain undeveloped for as long as the building exists and for safe use of the building, sufficient to form part of its curtilage.</p>

9



Photograph - May 2021 (Wiltshire Council)

Looking south into Area 1.

Please see comments above regarding Area 1.

The building located at the south-west corner of the site does not form part of the registered common land unit CL.7 and is therefore excluded from the application.


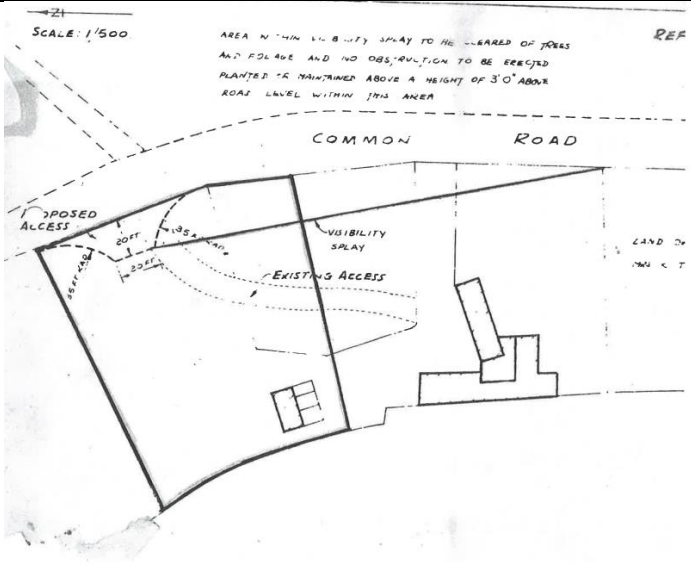
10



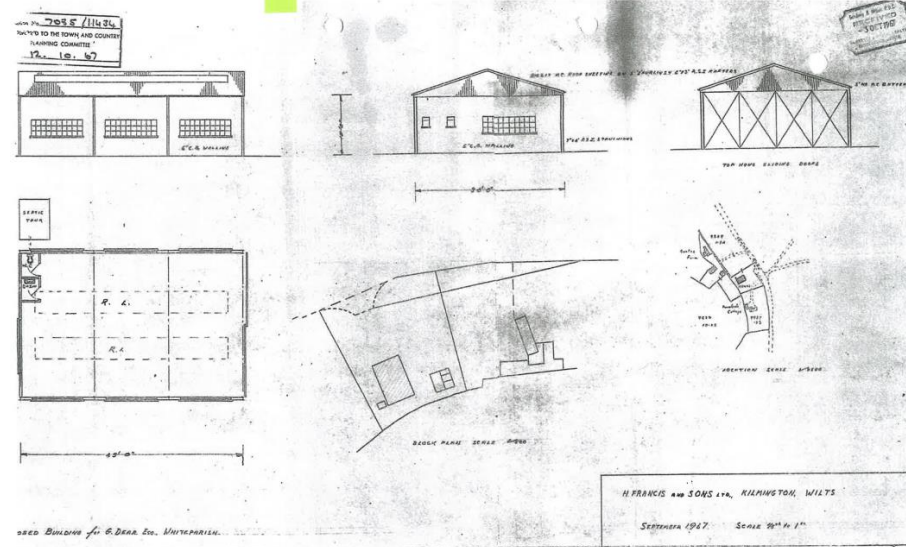
Photograph - May 2021 (Wiltshire Council)

Looking north to the rear of the building, Area 2.

Area to the rear of the building which is included in Area 2, to the western boundary hedge. Please see comments above regarding Area 2.

<p>11</p>		<p>Photograph - May 2021 (Wiltshire Council)</p> <p>Looking south, land adjacent to Common Road.</p> <p>The grass area is not registered as highway maintainable at public expense, but does form part of common land register unit CL.7 and is in the ownership of the Applicants.</p> <p>Only that section of the land falling within Area 2 is capable of de-registration as common land, where it forms part of the 1967 planning site identified in the change of use and erection of the garage/workshop building planning applications. This area provides access to the building and part of the visibility splay, which are required in the planning conditions and necessary for the operation of the building.</p>
<p>12</p>		<p>8th June 1967 – Permission for Development – Change of Use at The Common, Whiteparish – Plan supplied by Applicants with Application 2021/01ACR - 04/01/2021</p> <p>Salisbury & Wilton Rural District Council hereby permit change of use from builders yard to milk and general haulage depot at The Common, Whiteparish.</p> <p>The area to be included in the change of use is very clearly set out and the visibility splay is shown extending into the adjacent plot, to be cleared of trees and foliage, with no obstructions to be erected, planted or maintained above the height of 3' above road level.</p> <p>A new, wider access to the site is to be provided within the identified planning area (Area 2), and the planning conditions include adequate provision for the parking/turning of vehicles to be accommodated within the site, not extending outside the identified area.</p>

13



12th October 1967 – Permission for Development – Erection of garage/maintenance workshop at Common Road, Whiteparish – Plans supplied by Applicants with Application 2021/01ACR - 04/01/2021

Proposed building with access and visibility splay, necessary for the safe operation of the building, to be accommodated within the identified planning area and not extending outside this area. The north section of the application land extending to Barter's Farm track, is not included as part of the planning application site. The Applicants refer to the "brace" symbol on the location plan to suggest that the planning site (Area 2), forms one single unit with Areas 3 and 4, however, Officers consider that the bracing is only a convenient way of joining two parcels of land together for the purposes of measuring area in OS convention.

14



Photographs 20th November 2020 – Supplied by Applicants with Application 2021/01ACR - 04/01/2021

At the time of application, the workshop building is present on site and the remainder of Area 2 is used in conjunction with the workshop, (save for the green area at the south-east of the site, however, this area does form part of the planning site in 1967).

At this time Area 3 is used for the parking of vehicles in conjunction with the car garage business.

15



2003 Aerial Photograph – Supplied by Applicants with Application 2021/01ACR - 04/01/2021

Aerial view of The Pound, showing lorries parked in front of the garage/workshop building in 2003.

16



Circa 2011 Google

Images supplied by Richard Hughes, Economic Development and Planning, Wiltshire Council – 17/05/2021

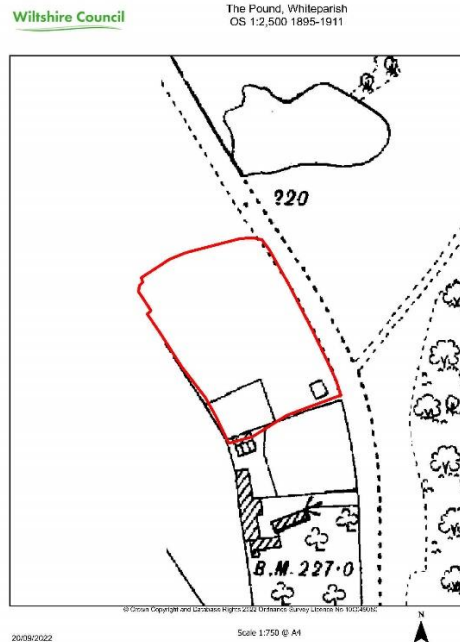
In 2011 the site is not fenced and logs are placed across the hardstanding area, perhaps to prevent vehicular access to the site, although there are vehicles present on the site. In 2011 the site was owned by Mr G Downes who rented out the site for a number of different purposes according to the evidence provided by the Applicants. The workshop building, as erected in 1967 is still in place, although it does appear to be little used at this time. The areas of hardstanding (Areas 2 and 3) are not fenced and Area 4 appears to be a wooded/natural area.



Circa 2020 - Google

Circa 2020 – The workshop building is now used as a car repair garage with associated parking. The green area adjacent to the highway is not recorded as highway maintainable at public expense, but does form part of common land register unit CL.7 and has now been fenced by the Applicants (c.2019). The south-east corner of Area 2 is laid to grass and not used for car parking, however, this area does form part of the planning application site and visibility splay in 1967. Area 3 is used for car parking associated with the current use as a car repair garage. Area 4 remains a wooded, natural area now fenced off from the remainder of the application land.

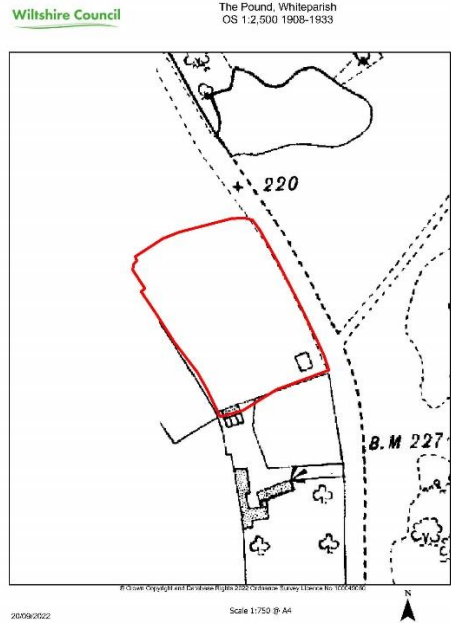
17



OS 1:2,500 (1895 - 1911) – (Wiltshire Council)

The application land is shown as an open area with a small fenced off enclosure to the south-west corner, (Area 1 – excluded from common land register unit CL.7 and therefore excluded from the application). The land appears to be open to the metalled highway of Common Road, as shown by the pecked line at the eastern edge of the application land, (the pecked line records a change in surface/vegetation on OS mapping, the land to the south has solid line against the highway which suggests a solid boundary against the highway such as a fence/hedge/wall). The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.

18

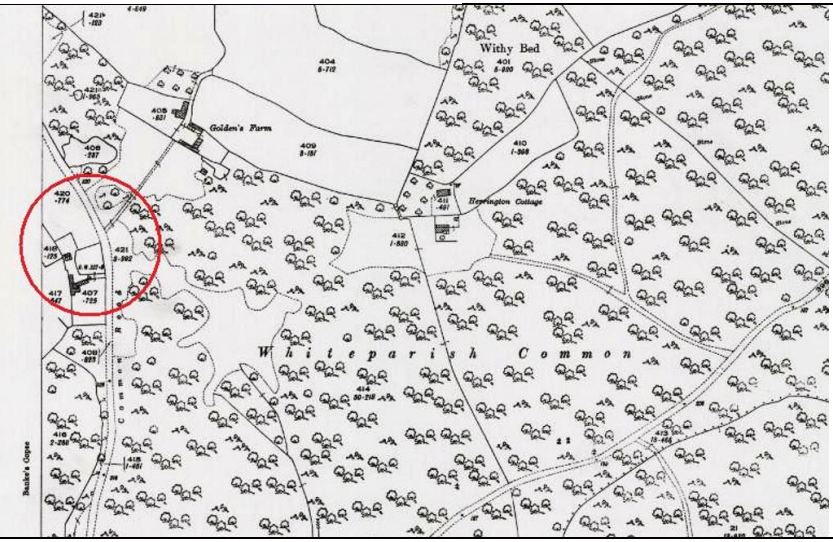


OS 1:2,500 (1908 - 1933) – (Wiltshire Council)

Again there is no fencing of the application land and it is open to the highway Common Road. The fencing in the south-west corner is not recorded.

The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.

19

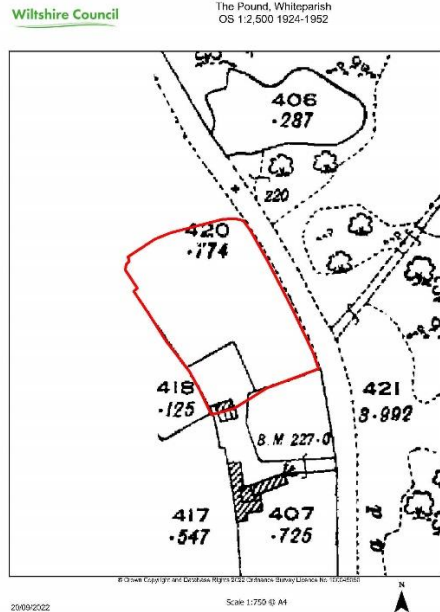


OS 1:2,500 County Series map – Revised 1924, Published 1926 –
Supplied by S Byrne 20/05/2021

The application land is shown as an open area without fences, other than the south-west corner, (Area 1 excluded from common land register entry CL7 and therefore land excluded from the application). The land appears open to Common Road, as shown by a pecked line at the eastern edge of the land against the highway.

The map pre-dates the farm track which now marks the northern boundary of the land subject to this application.

20



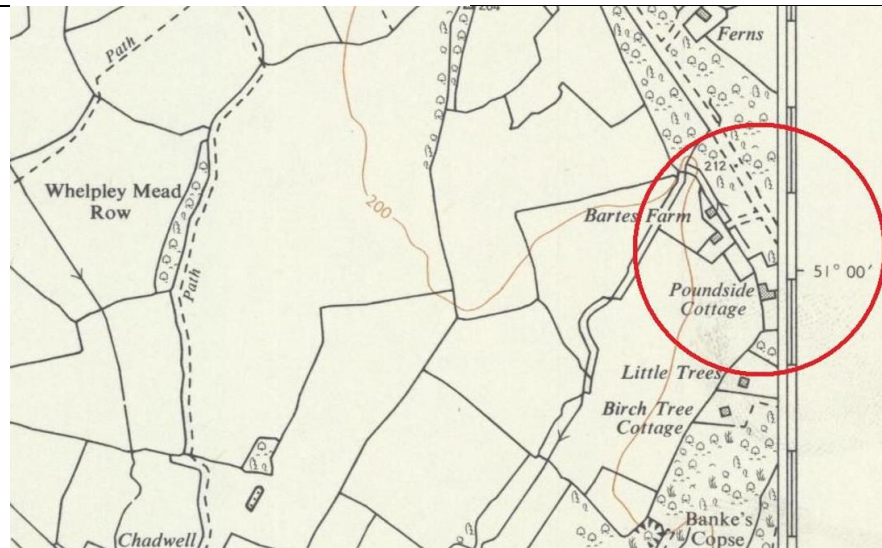
OS 1:2,500 (1924 – 1952) – (Wiltshire Council)

The application land is shown as an open area, without fencing, other than the south-west corner, (Area 1 which is excluded from the common land register until CL7 and therefore excluded from this application).

The land is open to the highway Common Road, as shown by a pecked line at the eastern edge of the land.

The map pre-dates the farm track which now forms the northern boundary of the land subject to this application.

21



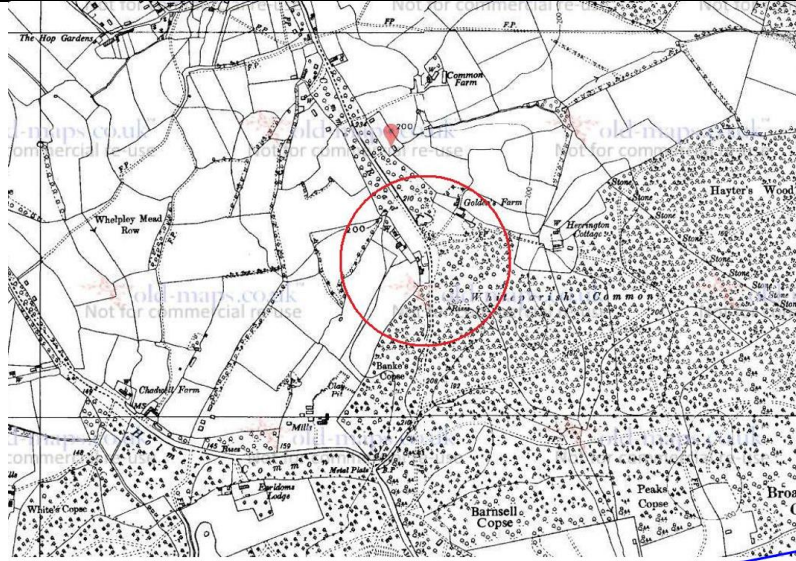
OS 1:10,560 – 1970 – supplied by S Byrne 20/05/2021

The application land is shown open and unfenced, with the exception of the south-west corner Area 1, which is fenced out of the application land and appears as part of Poundside Cottage. This area is excluded from the common land register unit CL7 and is therefore excluded from the application.

The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.

This map appears to be revised prior to 1967 where the building present by the end of 1967 is not shown. Although the building would be expected to be recorded on a map dated 1970, these maps were revised between 1963 and 1970 and it is possible that revision in this area took place prior to 1967 and therefore the building is not recorded.

22



OS 1:10,560 map – 1962 – Supplied by S Byrne 20/05/2021

The application land is shown as an open area without fencing, open to the Common Road highway, as shown by a pecked line at the eastern edge of the land.

The south-west corner which is part of the application land, Area 1, is fenced out of the land and appears to be a separate plot, this area is excluded from the common land register entry CL 7 and is therefore excluded from the application.

The farm track which now forms the northern boundary of the application land is not recorded.

23

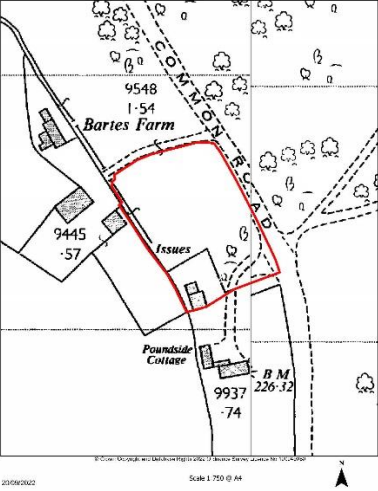


OS 1:2,500 – 1967 – Supplied by S Byrne 20/05/2021

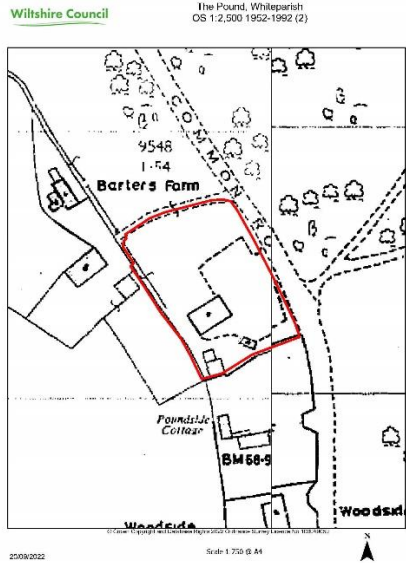
The application land is shown as an open area, without fencing, with the exception of the south-west corner which is fenced out of the application land and appears to be part of the plot to the south, Poundside Cottage. This section of land (Area 1) is excluded from the common land register entry CL 7 and therefore excluded from the application.

The farm track which forms the northern boundary of the application land is recorded and the land is open to both the farm track on the north and the highway Common Road to the east, as shown by pecked lines.

The access drive to Poundside Cottage to the south is recorded by double pecked lines over the application land, (pecked lines indicate a change in surface/vegetation rather than a physical boundary). At

		<p>this time the land at the Pound and Poundside Cottage were both in the ownership of Mr J Chant.</p>
<p>24</p>	<p>Wiltshire Council</p> <p>The Pound, Whitparish OS 1:2,500 1952-1992 (1)</p>  <p>© Crown Copyright and Database Right 2010. Ordnance Survey (UK) 100038888</p> <p>23/06/2022 Scale 1:250 @ A4</p>	<p>OS 1:2,500 (1952 – 1992) (1) – (Wiltshire Council)</p> <p>As above, the application land is shown as an open area, save for south-west corner (Area 1) which is shown fenced out of the application land and appears to be part of Poundside Cottage. Area 1 is excluded from the common land register entry CL.7 and is therefore excluded from the application.</p> <p>The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.</p> <p>The access drive to Poundside Cottage to the south is recorded over the application land, evidence suggests that at that time the land at The Pound and Poundside Cottage were in the same ownership.</p> <p>This map appears to pre-date the 1967 planning permissions where correspondence with the Land Commission in 1967 suggests that the change of use for the land is subject to a new shared access for the builder and the haulier, this map records the pre-existing access to Poundside Cottage.</p>

25



OS 1:2,500 (1952 – 1992) (2) – (Wiltshire Council)

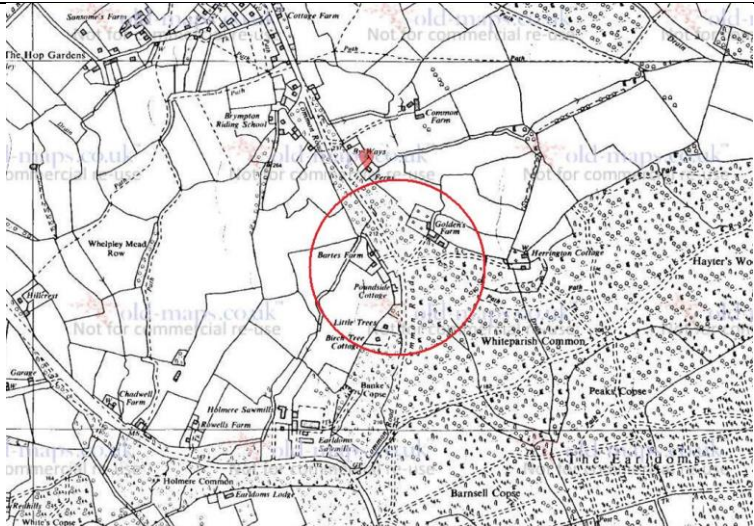
This map appears to post-date 1967 where the building subject to planning permission in October 1967 and built before the close of 1967, is recorded.

The south-west corner of the site (Area 1) is now incorporated, however, it does not form part of the common land register unit CL7 and is excluded from this application.

The site remains open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.

Within the site itself, there is no fencing indicated and it appears to be open for the whole of the application land. The single pecked lines indicate a change in surface of the land and would suggest the areas of hardstanding within the site, which include Area 2 (the identified planning site) and Area 3 (outside the identified planning site). Area 4 is not fenced off from the remainder of the site.

26



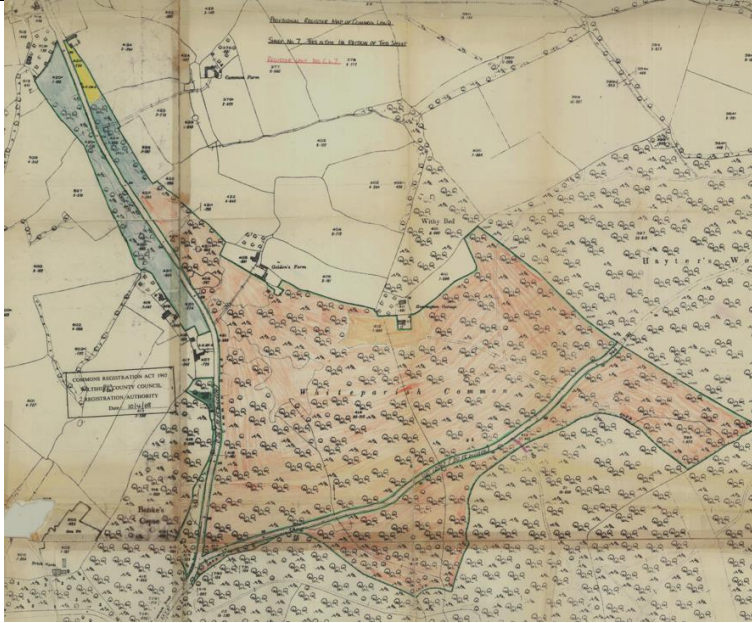
OS 1:10,560 – 1970 – supplied by S Byrne 20/05/2021

The application land is shown open and unfenced, with the exception of the south-west corner Area 1, which is fenced out of the application land and appears as part of Poundside Cottage. This area is excluded from the common land register unit CL7 and is therefore excluded from the application.

The land is open to the farm track to the north and the Common Road highway to the east, as shown by pecked lines.

The suggestion of the access track to Poundside Cottage to the south, appears to be shown, faintly. This map appears to be revised prior to 1967 where the building present by the end of 1967 is not shown and the pre-1967 access track to Poundside Cottage appears to be recorded over the site. Although the building would be expected to be recorded on a map dated 1970, it is possible that revision in this

28



CL 7 Whiteparish Common, Common Land Register Entry Map (Provisional Registration 10th April 1968, Final Registration 1st October 1970) - supplied by S Byrne 02/05/2021

No separate enclosures are shown within the common land de-registration application land and part of the application land (south-west corner), does not form part of the area of registered common land CL 7 Whiteparish Common, (Area 1). Area 1 is therefore excluded from the application.

The building subject to this application is not recorded on The Pound site, which is provisionally registered as common land and being undisputed, the registration becomes final on 1st October 1970.

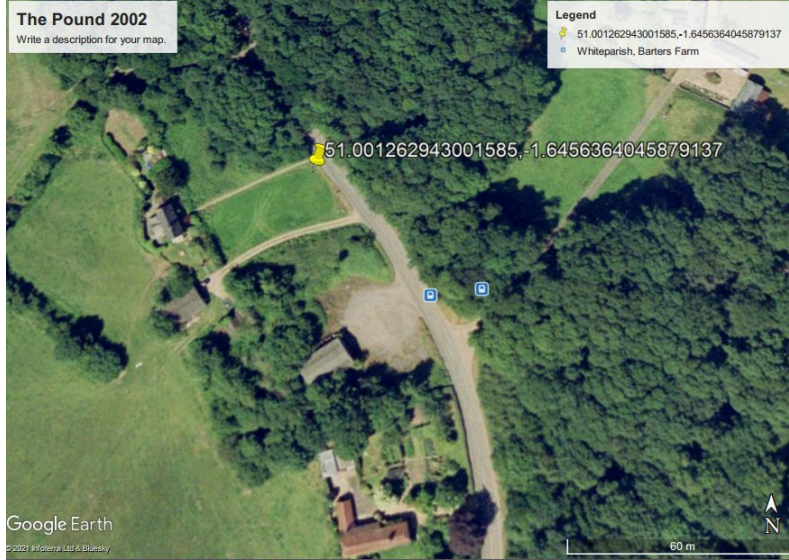
29



Current OS mapping overlaid with 1967 planning area plan to illustrate extent of land which OSS proposes is within the curtilage of the building and therefore capable of commons land de-registration - Supplied by OSS 02/07/2021

The OSS contend that the building and Areas 1 and 2, excluding the visibility splay area, as identified in the planning documents, are the areas capable of de-registration as common land. Officers consider that Area 1 should be excluded from the application where it is not land included within register unit CL 7. Additionally, Officers take an alternative view with regard to the de-registration of the visibility splay area, i.e. it is included within the planning site and is identified for the purposes of the building and its safe use, it was and continues to be necessary for the building, sufficient to form part of its curtilage.

30



2002 Google Earth – Supplied by OSS 02/07/2021

The building and associated hardstanding in Area 2 are recorded. Area 3 is hardstanding and Area 4 appears to be laid to grass and trees. The evidence supports the OS mapping that the site has, until recently, been open and unfenced and accessible from the Common Road highway, please also see Google Streetview photograph 2011 above.

OSS add comments *“We also submit (3) a photograph derived from Google satellite photography dated 2002 which shows no evidence that, even as recently as 2002, the land to the north of the blue dotted line [see plan above] was being used with the buildings – let alone ‘intimately associated’ with them.”*