

Heddington path 5 (part) at C.247 (between The Coach House land and Gainsborough House)

APPENDIX 2.B

Further Investigation subsequent to Preliminary Report dated 10.08.11

Background

Heddington path 5 is recorded as a public footpath in the definitive map and statement and for a short length near its junction with the C.247 road leads between fenced boundaries. There is no width recorded for this path in the definitive statement.

In the preliminary report it was observed that this fenced section was clearly shown on the Heddington Tithe Map dated 1841 and with reference to later Ordnance Survey mapping pre-dated existing buildings adjacent to the highway. Given the historic nature of this path, where it leads between these boundaries it is considered that the width of the highway extends between these boundaries.

The report also observed that although the eastern boundary ('Gainsborough House') appeared well defined by well established trees suggestive of an ancient hedgeline, the western boundary ('Depot belonging to the Coach House') was less well defined exhibiting only the suggestion of a well established hedgeline at the northern end before leading past a large workshop building and a metal container type building at its junction with the C.247.

The owner of the adjacent land to the west, Mr Fenwick of The Coach House, has observed that a new fence has been erected along this boundary and considers it has been erected on the highway.

Wiltshire Council has the power to remove structures from highways and may require the person who has control of the structure to remove it. This is contained within s.143 of the Highways Act 1980 and relates to the Council's duty under s.130(1) of the Highways Act 1980 to "*assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it*".

It is noted that s.143 may not apply where a structure is authorised by a provision of the 1980 act. For example s.66 (3) permits a highway authority to provide and maintain such barriers, posts, rails, walls or fences as they think necessary for the purposes of safeguarding persons using the highway. Such structures must not interfere with any private rights of access.

Recent case law *Herrick v Kidnor and Somerset CC* [2010] EWHC 269 (admin) has confirmed that the public is entitled to the use and enjoyment of the whole width of a highway (para 53 'Thus in my judgment the public is entitled to use and to enjoy everything which is in law part of a footpath' Cranston J).

It is therefore necessary for officers to consider the width of the highway and to ascertain whether, on the balance of probabilities the fence is erected on it, or not.

Land Ownership - Current

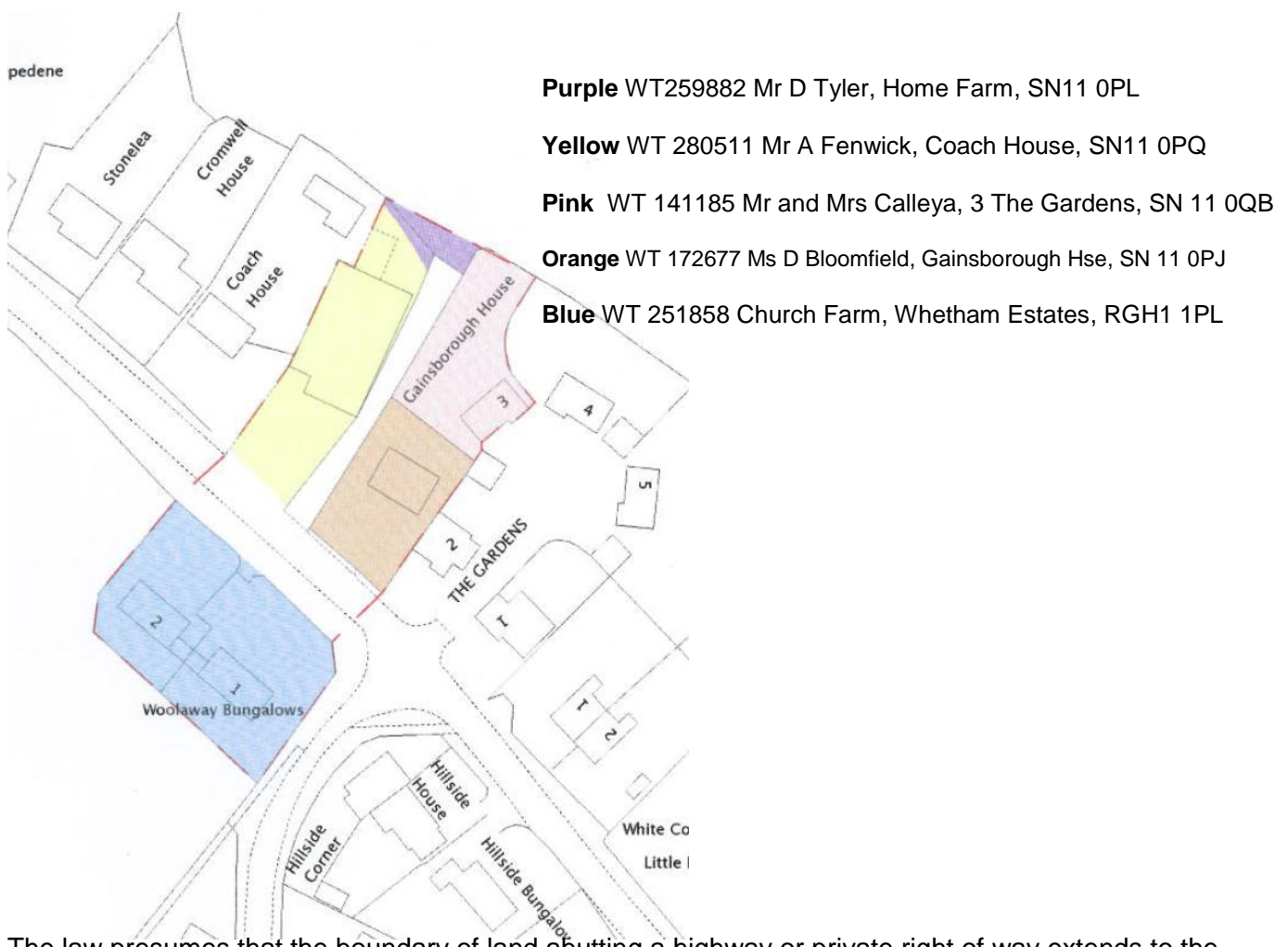
Copies of Register of Title and Title plans were requested from Land Registry for the enclosed section of Heddington path 5, part of the C.247 and adjacent properties;

There is no registered owner for the enclosed section of Heddington path 5 or the C.247. The surrounding land is owned as detailed below. No details of easements or access arrangements over Heddington path 5 were noted for any of the titles.

None of the titles exhibit a determined boundary and plans only show 'general boundaries'. A determined boundary is one that has been determined specifically pursuant to s.60 of the Land Registration Act 2002. General boundaries shown by Land Registry will not show if, for example, the boundary:

- Leads somewhere within a feature of the title plan
- Runs along one particular side of a feature
- Includes all or any part of a road or stream alongside a feature

Ref: *Land Registry Practice Guide 40 Oct 2005 and Land Registry Public Guide 19 – Title plans and boundaries*



The law presumes that the boundary of land abutting a highway or private right of way extends to the middle of the way (ad medium filium viae) subject to the rights of the highway authority. This presumption can be readily rebutted by conveyancing showing contrary ownership. In the case of Heddington 5, officers have not seen any conveyance rebutting this presumption for the enclosed section being considered. A conveyance or transfer abutting a roadway is presumed to include the roadway as medium filium viae, though it describes the land as bounded by the roadway or the plan excludes the roadway.

Land Ownership – Historic

The current representation of the land over which Heddington path 5 and the C.247 leads as not being owned by anyone identified is consistent with the 1909/1910 Inland Revenue Finance Act records.

This act required that all land was surveyed and assessed for taxation purposes. Although the Act was repealed approximately ten years later the Finance Act records provide a good source of data on land ownership and in some cases use, at this time. The process required land owners to fill out a form (Form 4) giving details of the property that they owned. A valuer appointed by the Inland Revenue would then visit individual properties, assess the land, record the buildings thereon and make note of any deduction to the value of the property – these may have included easements, public rights of way or rights of common. This information, recorded in a field note book was represented on a map that was hand coloured to show individual holdings (hereditaments) which were detailed in a valuation book.

The Finance Act map (working copy) and Valuation book for part of Heddington have been viewed.

Map (1900 Second Edition 1:2500 Ordnance Survey base map) WSHC L8/10/32



Valuation Book L8/1/42

Hereditament 21 Occupied by Geo. Duck and owned by F W Hubard

Hereditament 69 Occupied and owned by Louisa Hunt, cottage and Garden

Neither hereditament has any deductions charged against it.

Heddington path 5 is uncoloured and excluded from any hereditament in the same way that the C.247 is. The Finance Act 1909/1910 is not specific about the exclusion of public roads but it does allow for land that carries public rights to be allowed a deduction under section 35(1). This 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”.

It is possible that the enclosed section of Heddington path 5 was excluded from the valuation for this reason though other reasons for exclusion are possible. One such possibility is where a route serves several allotments made at enclosure and whereby exclusion in this way provided an alternative way of allowing a deduction based on this.

Whatever the reason, it is clear that in 1910 the enclosed section of Heddington path 5 was not considered to belong to any of the adjacent landowners further suggesting that boundaries were laid out with respect to it.

Ordnance Survey Large Scale Mapping 1:2500 (25.344 inches to one mile)

Quoting from Ordnance Survey Maps a concise guide for historians by Richard Oliver:

The 1:2500 first edition has been aptly summarised thus by J B Harley “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 a map for the first time. Where appropriate, all topographical features are shown to scale...the...series is thus a standard of topographical authority.”

Three editions of Sheet 34.1 have been viewed.

First Edition 1885 Survey 1886 print

The enclosed section of Heddington 5 is shown as fenced on both sides, open at the road end. It is separately numbered and measured as parcel no 173 with an acreage of 0.065. The field beyond through which the path leads is parcel number 104 with an acreage of 12.255.

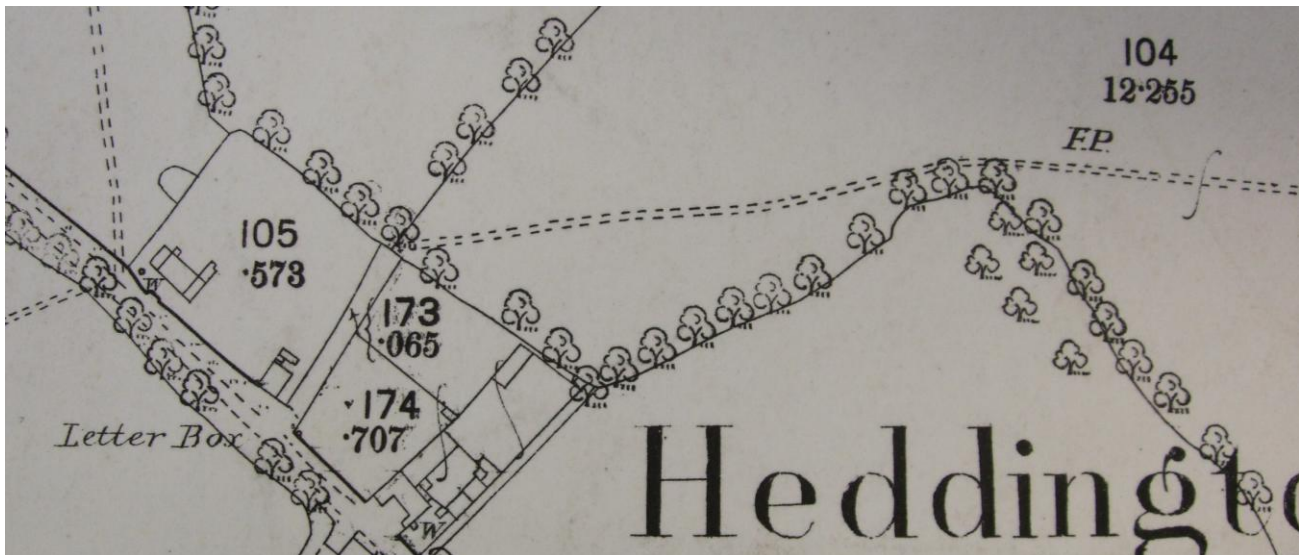
Second Edition 1900 print (1884 survey 1899 revision)

The enclosed section of Heddington 5 is now braced with the field beyond as parcel no 150 with an acreage of 12.320.

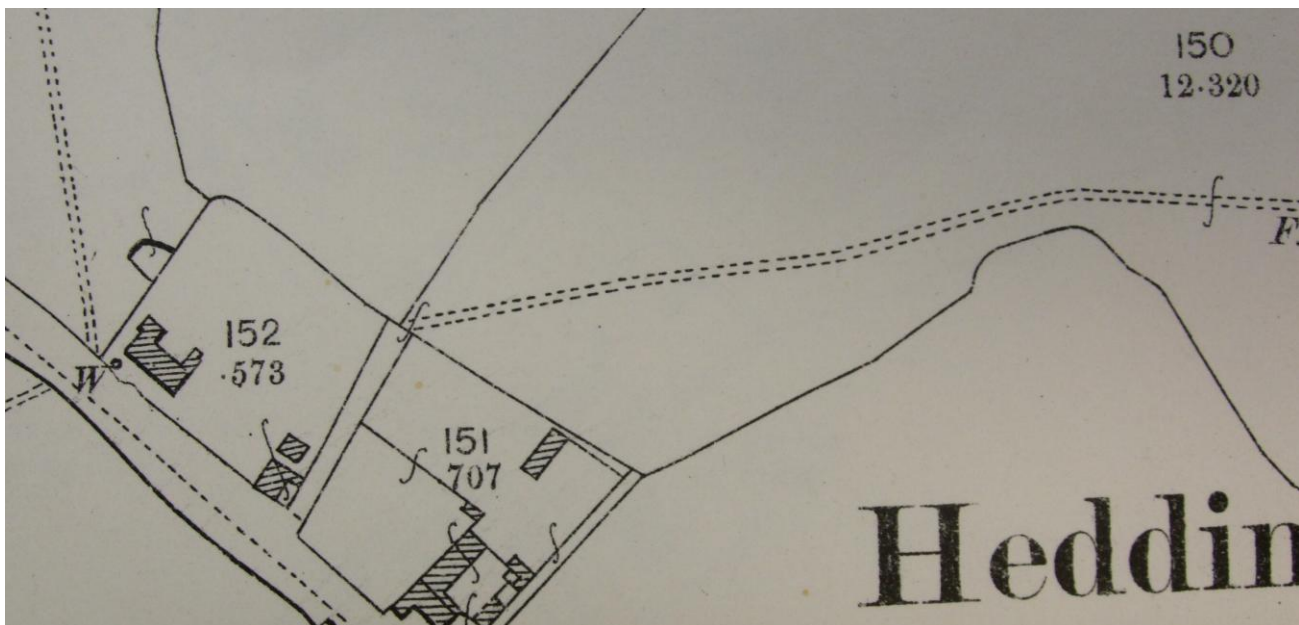
Edition of 1924 print (1884 survey 1922 revision)

The enclosed section of Heddington 5 is now braced with a smaller field parcel number 150a with an acreage of 1.213

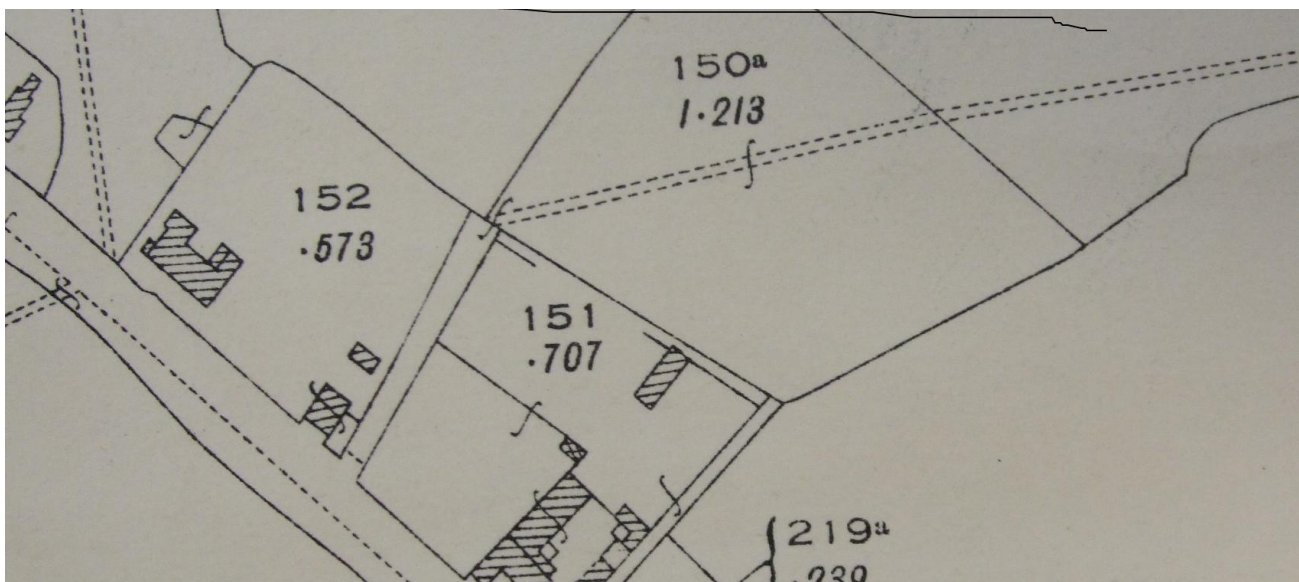
First Edition (not to scale)



Second Edition (not to scale)



Edition of 1924 (not to scale)



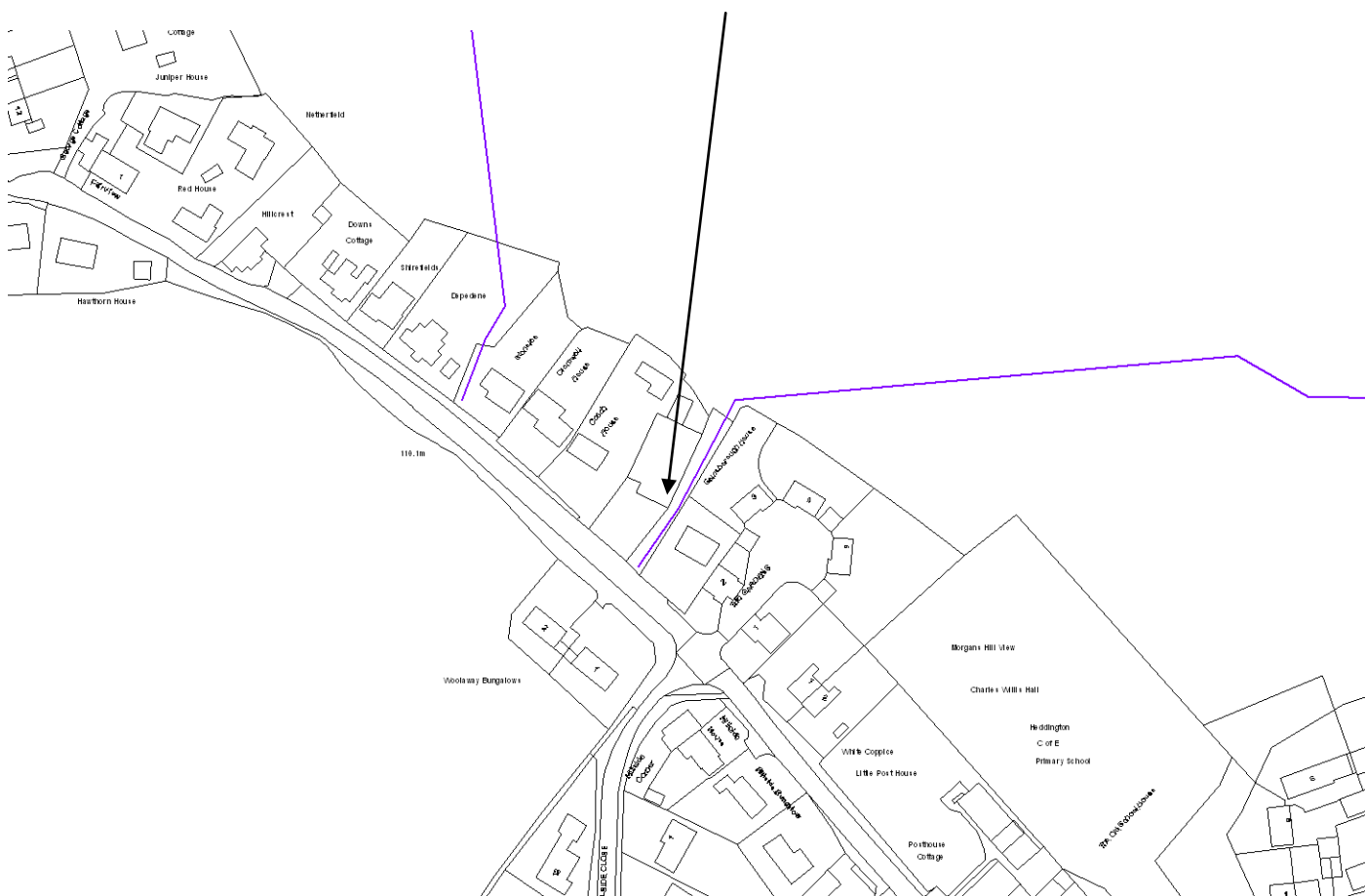
The Ordnance Survey do not recommend taking measurements from these maps as although the base surveying was subject to a maximum permissible error of 1 in 500, the Ordnance Survey have conducted no Field Accuracy Tests for this series and have no accuracy statements for distances as small as would be measured here.

1 in 500 gives an error of +/- 0.02% though it is noted that when the old County Series maps were overhauled to produce the Overhaul National Grid Series maps a relative error (the distance between two measured points) was given as 0.95%.

Additional problems arise when measuring from printed maps as there are distortions to the paper caused by the printing process itself. Additional errors may also arise from the measuring tools used.

It is additionally noted that the workshop building that currently exists to the west of Heddington 5 is not depicted on these earlier maps. It is clearly a later development and some question must be raised as to its position relative to the historic fenced section.

For example the earlier maps (before the workshop) do not show an inflection at this point whereas the modern maps showing the workshop do.



A ground measurement at the point of inflection gives a measurement of 3.4 metres which is in agreement with the modern map above (when printed and measured at 1:500). However, a guideline measurement of the historic fenced section before the workshop was built gives a guide measurement in excess of this (4.8 m), suggesting the possibility of some encroachment, perhaps by a metre or so.

Conclusion

It is considered that the width of public highway extends between the historic boundaries as represented on maps dated 1841, 1885, 1900 and 1924.

Neither adjoining property has a legally defined boundary (as determined specifically pursuant to s.60 of the Land Registration Act 2002) and hence it is not possible to determine the boundaries of these properties beyond them being a 'general boundary'.

It is a general presumption that any highway boundary hedge or tree line is planted on an adjoining property, hence it would be appropriate to consider the width of Heddington 5 at this point as leading between the hedge lines. Although this is reasonably clear to the east it is not so to the west.

Officers have considered the inadvisability of measuring accurately from OS maps, the absence of legally defined boundaries and the absence of any clear developmental plans for the workshop building and consider that the erection of the fence represents a clear delineation of the highway that does not affect the use and enjoyment of the path for the public. It is suggested that any encroachment by the fence could be considered *de minimis*.

Sally Madgwick

Rights of Way Officer

06.09.11