

WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

5 NOVEMBER 2014

WILDLIFE AND COUNTRYSIDE ACT 1981

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

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

Purpose of Report

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

Relevance to the Council's Business Plan

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

Background

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

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

Main considerations for the Council

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

As regards every map and statement the Surveying Authority shall -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment on the objection

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

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

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

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

Evidence is the key

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

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

Safeguarding Considerations

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

Public Health Implications

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

Environmental Impact of the Recommendation

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

Risk Assessment

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

Financial Implications

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

Legal Implications

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

Options Considered

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

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

Reasons for Recommendation

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

Recommendation

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

Tracy Carter
Associate Director, Waste and Environment

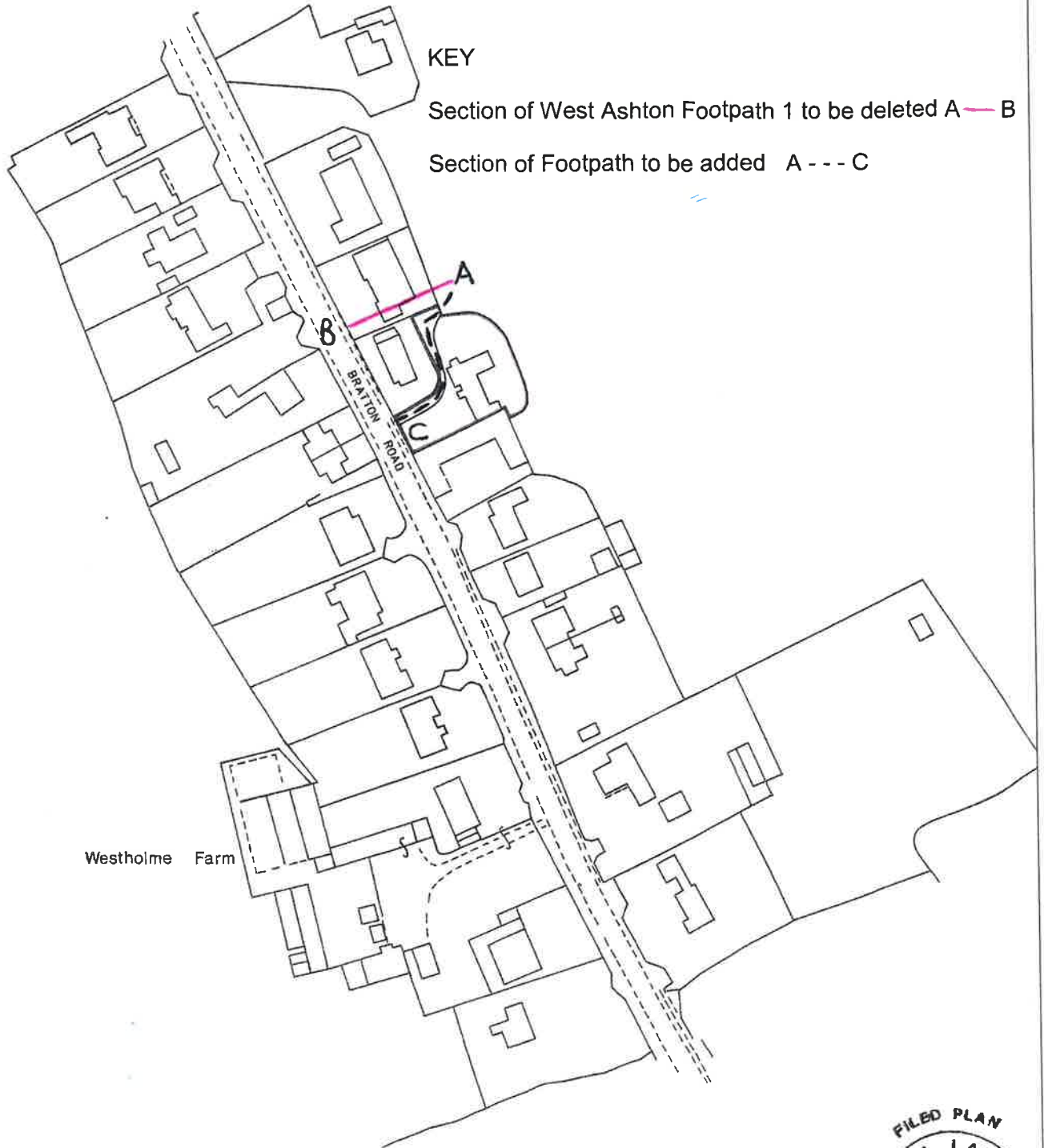
Report Author:
Barbara Burke
Definitive Map and Highway Records Team Leader

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

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

Appendices:

Appendix A - Order Plan
Appendix B - Decision Report



DECISION REPORT

Wildlife and Countryside Act 1981, Section 53

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

Purpose of the report

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

Background

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

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

Legal considerations

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

As regards every map and statement the Surveying Authority shall-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The Council must consider all available relevant evidence.

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

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

Safeguarding Considerations

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

Public Health Implications

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

Environmental Impact of the Recommendation

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

Risk Assessment

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

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

Financial Implications

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

Decision

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

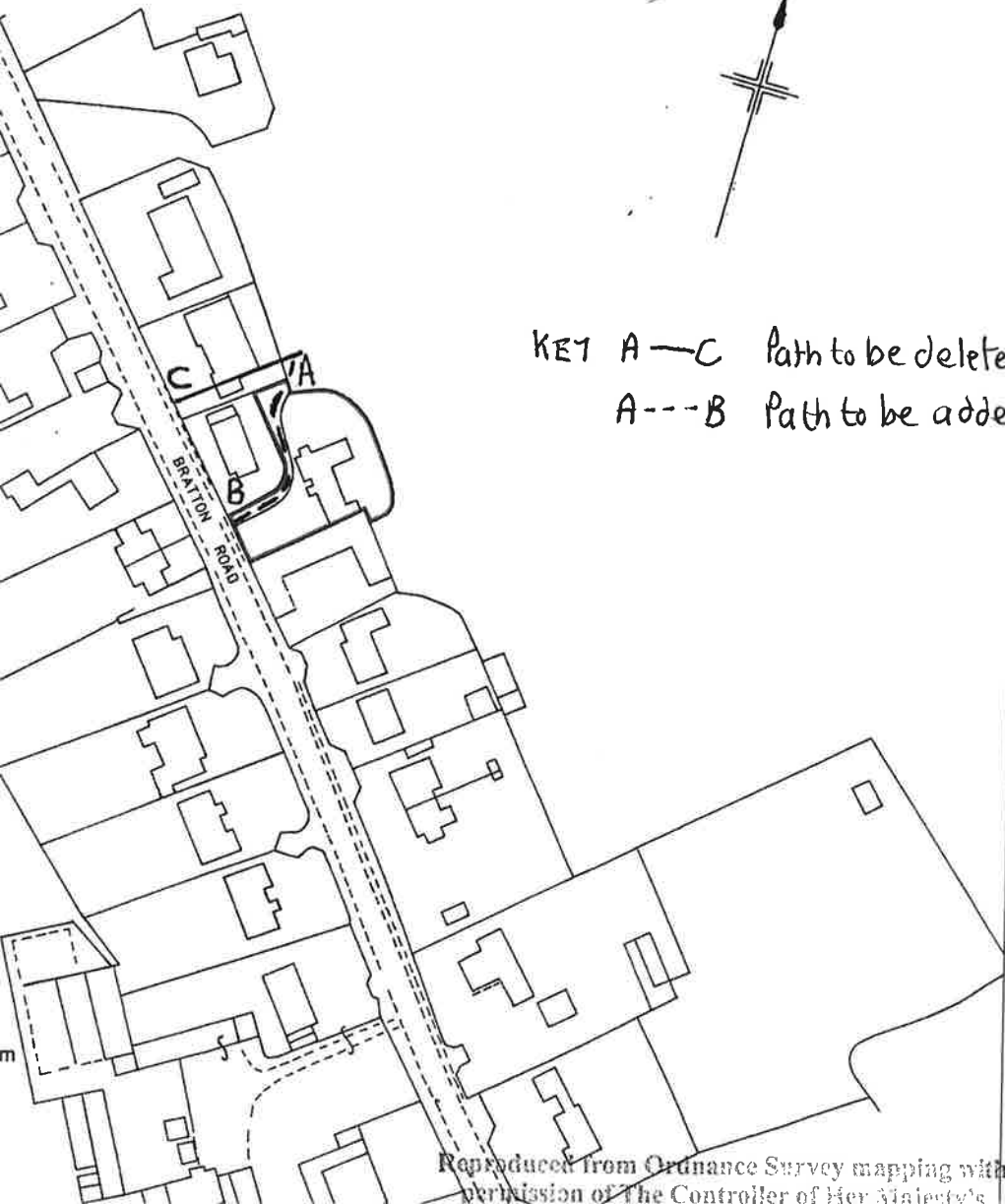
Special review map. This lack of clarity in the council's records is adversely affecting the owner of Manor View and their ability to sell their property.

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

Barbara Burke

Definitive Map and Highway Records Team Leader

T ASHTON FOOTPATH 1



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

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

WITNESS STATEMENT

-of-

KAREN JULIET MORRIS

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

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

The answer to such question was:

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

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

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

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

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

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

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

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

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

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

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

Signed 

Karen Juliet Morris

Dated 4/12/13

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

EXHIBIT “KJM1”

H.M. LAND REGISTRY

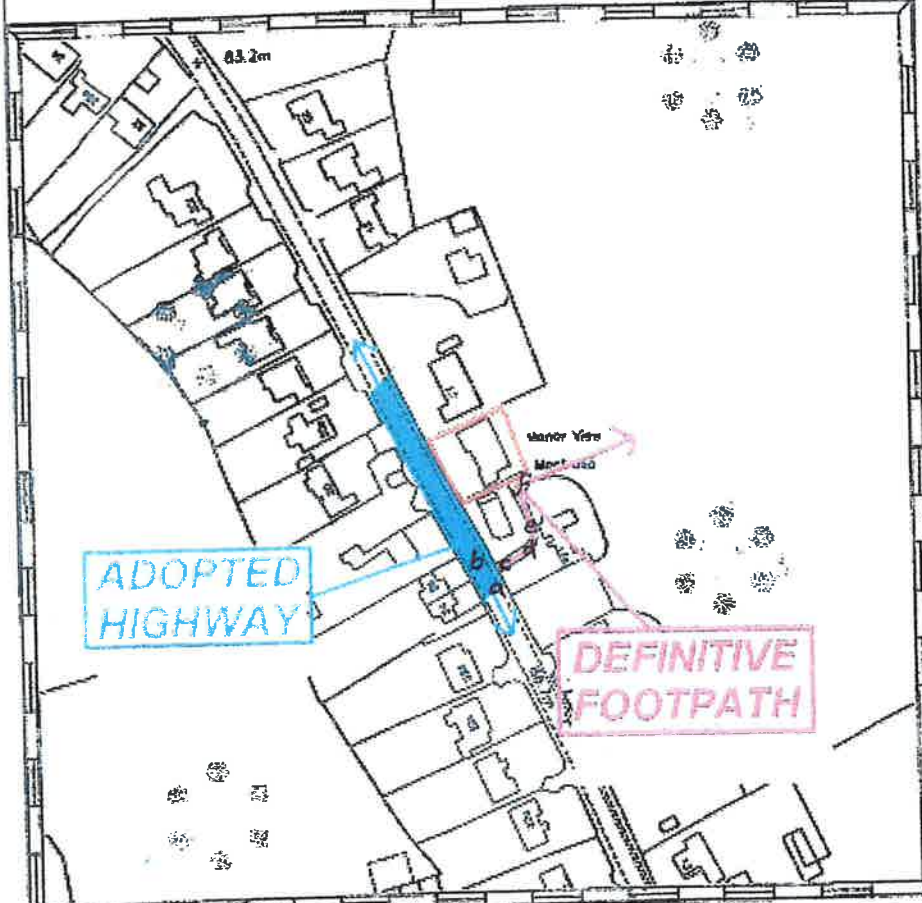
TITLE NUMBER
WT167105



ADMINISTRATIVE AREA
WILTSHIRE/WEST WILTSHIRE

ORDNANCE SURVEY MAP REFERENCE
ST170000E ST0000N ST170000E ST0000N

SCALE
1:1250



ORIGIN COMMENT

This plan is based on the largest scale of the published Ordnance Survey map

This official copy is incomplete without the preceding page page.

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2





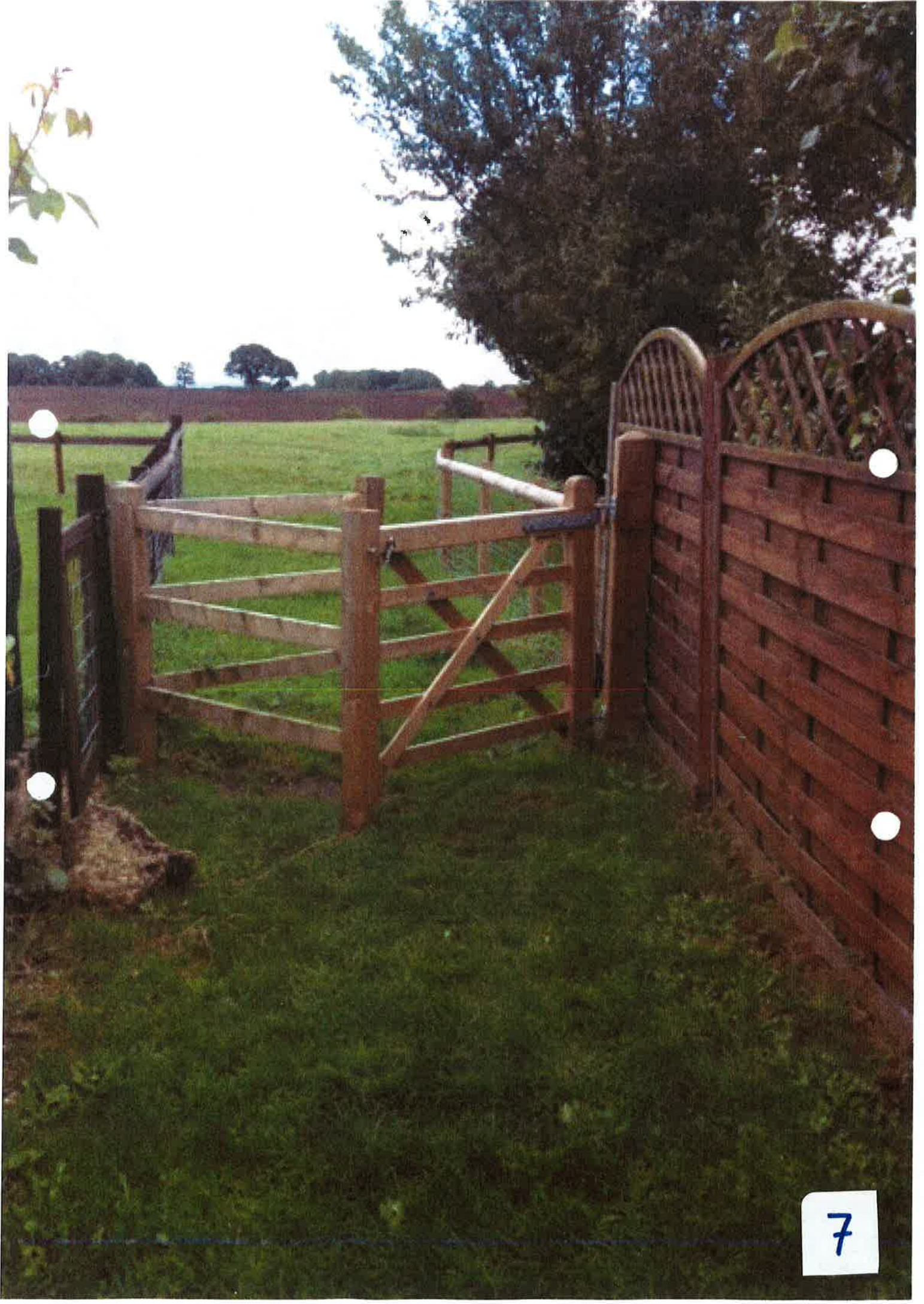
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5



6



7



Official copy
of register of
title

Title number WT149940

Edition date 11.05.2009

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

A: Property Register

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

WILTSHIRE

- 1 (14.02.1996) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Montrose, Bratton Road, West Ashton, Trowbridge, (BA14 6AZ).
- 2 (14.02.1996) The Conveyance dated 19 September 1958 referred to in the Charges Register contains the following provision:-

"PROVIDED that the Purchaser and his successors in title shall not become entitled to any easement or right of light or air or other easement or right which would restrict or interfere with the free use of the said adjoining and neighbouring land or any part thereof by the Vendor or any person deriving title under her for building or any other purposes."

B: Proprietorship Register

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

Title absolute

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

C: Charges Register

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

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

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

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

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

THE FIRST SCHEDULE above referred to

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

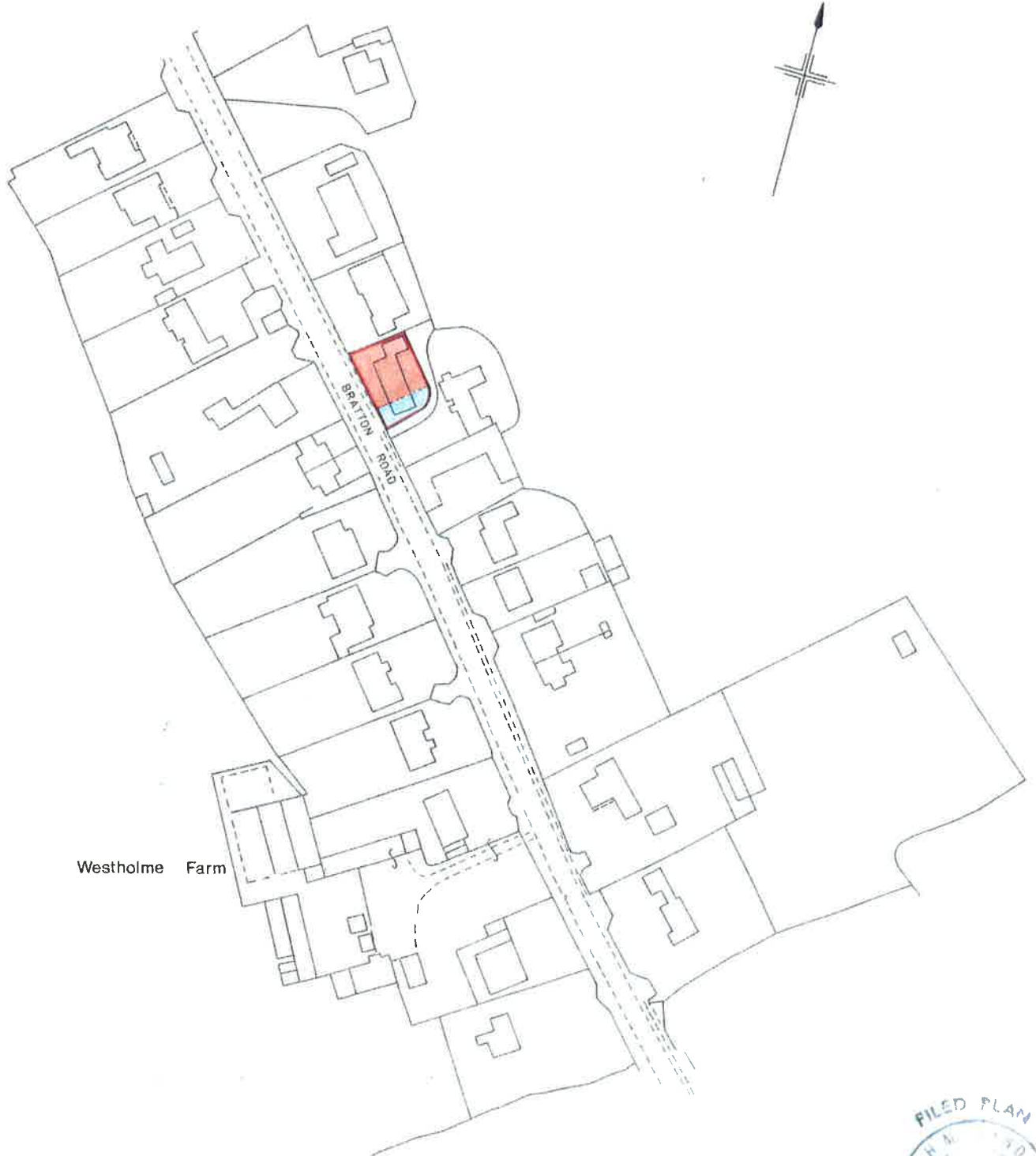
2. No buildings of any kind other than a private dwellinghouse with appropriate offices and outbuildings to be appurtenant thereto and occupied for the purposes thereof shall be erected on the land hereby conveyed and no trade business or manufacture shall be carried on upon the said land or any part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

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

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

End of register

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



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Official copy of register of title

Title number WT147473

Edition date 14.04.2010

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

A: Property Register

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

WILTSHIRE

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

B: Proprietorship Register

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

Title absolute

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

C: Charges Register

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

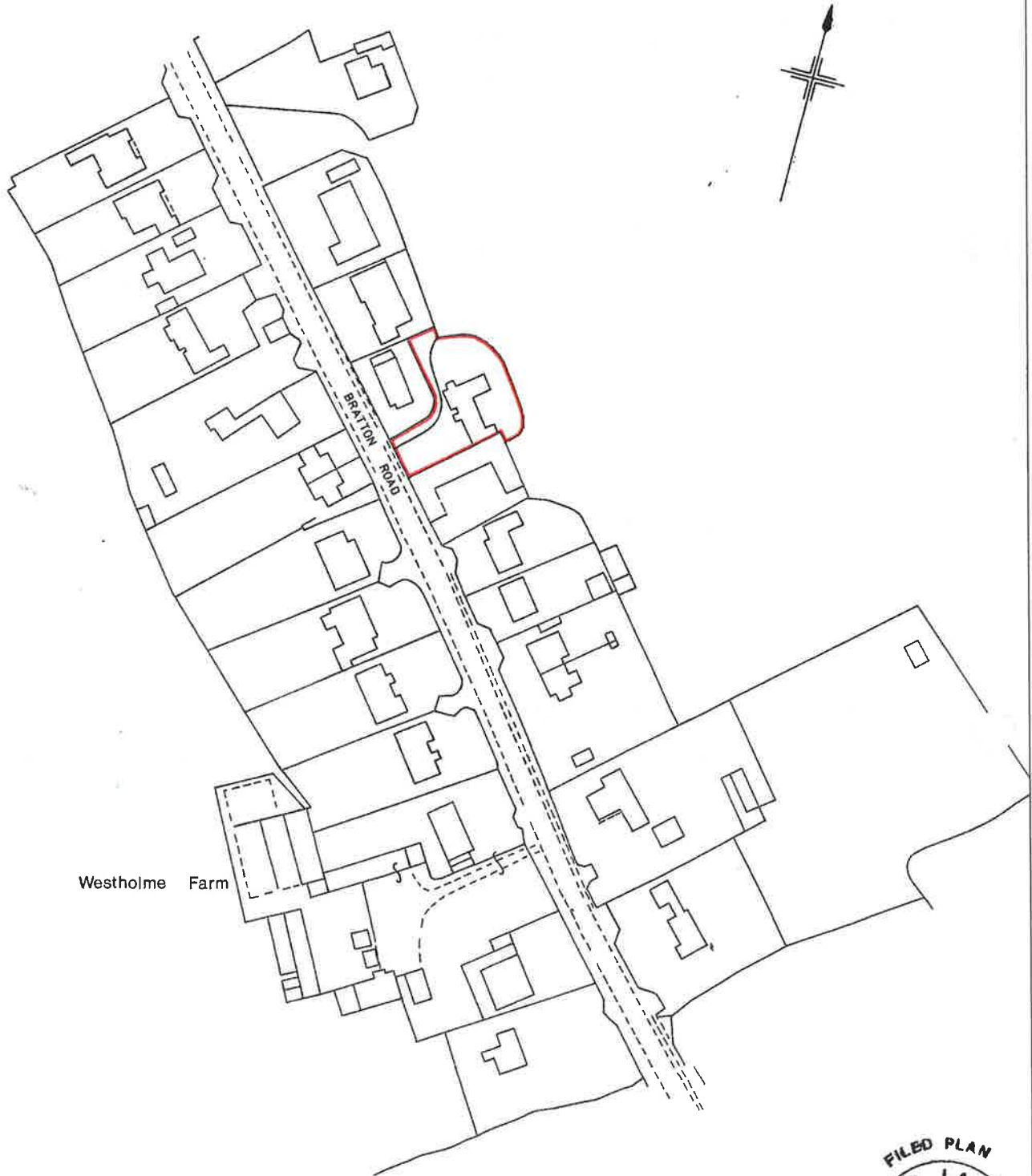
- 1 (14.12.1995) By a Conveyance dated 18 August 1979 made between (1) Lorna Kathleen Rogers and (2) Eric Rogers Brown the land the land in this title was conveyed subject as follows:-

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

End of register

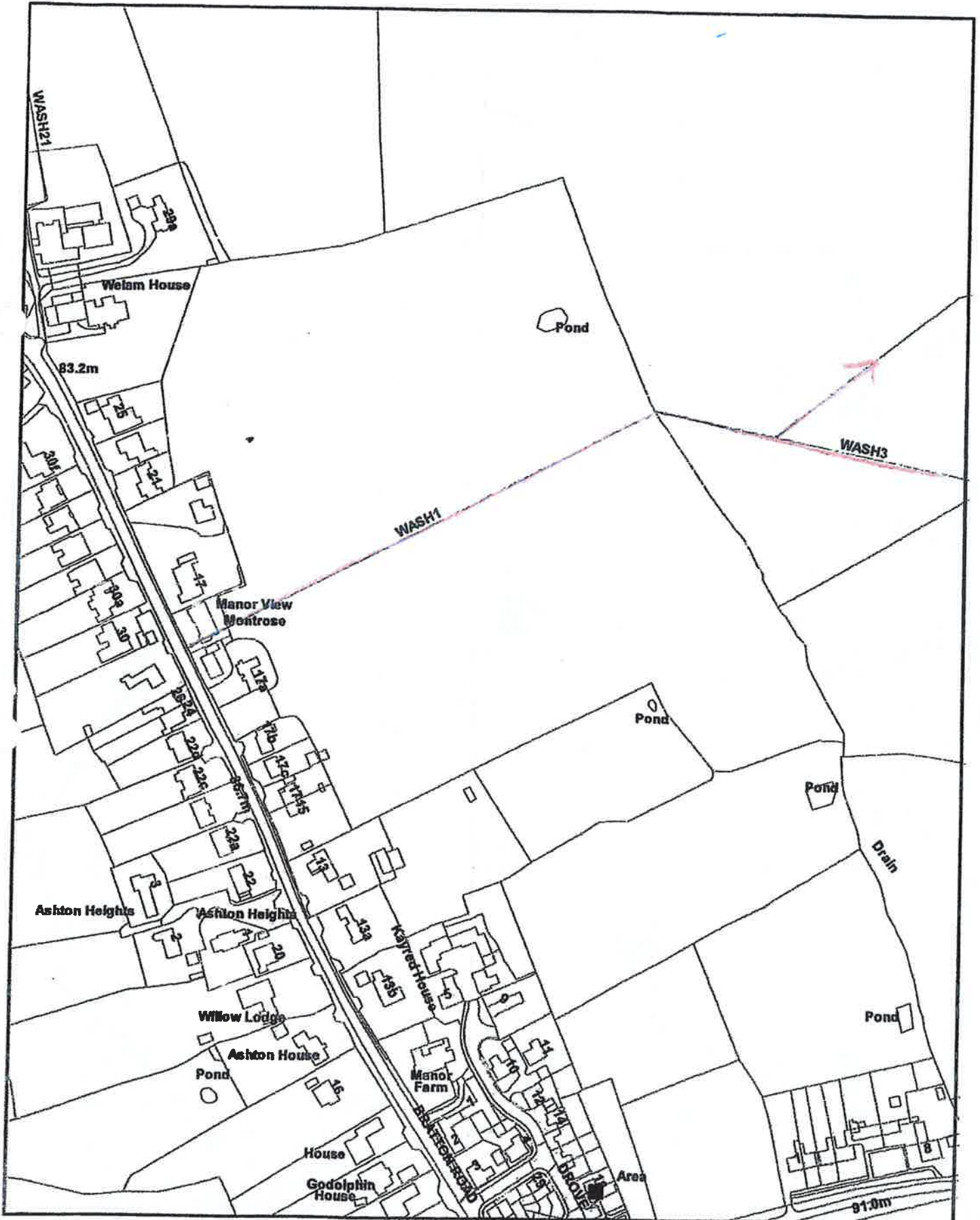


H.M. LAND REGISTRY		TITLE NUMBER	
		WT 147473	
ORDNANCE SURVEY PLAN REFERENCE	ST 8755	SECTION B	Scale 1/1250
COUNTY	WILTSHIRE	DISTRICT	WEST WILTSHIRE ✓
			© Crown Copyright



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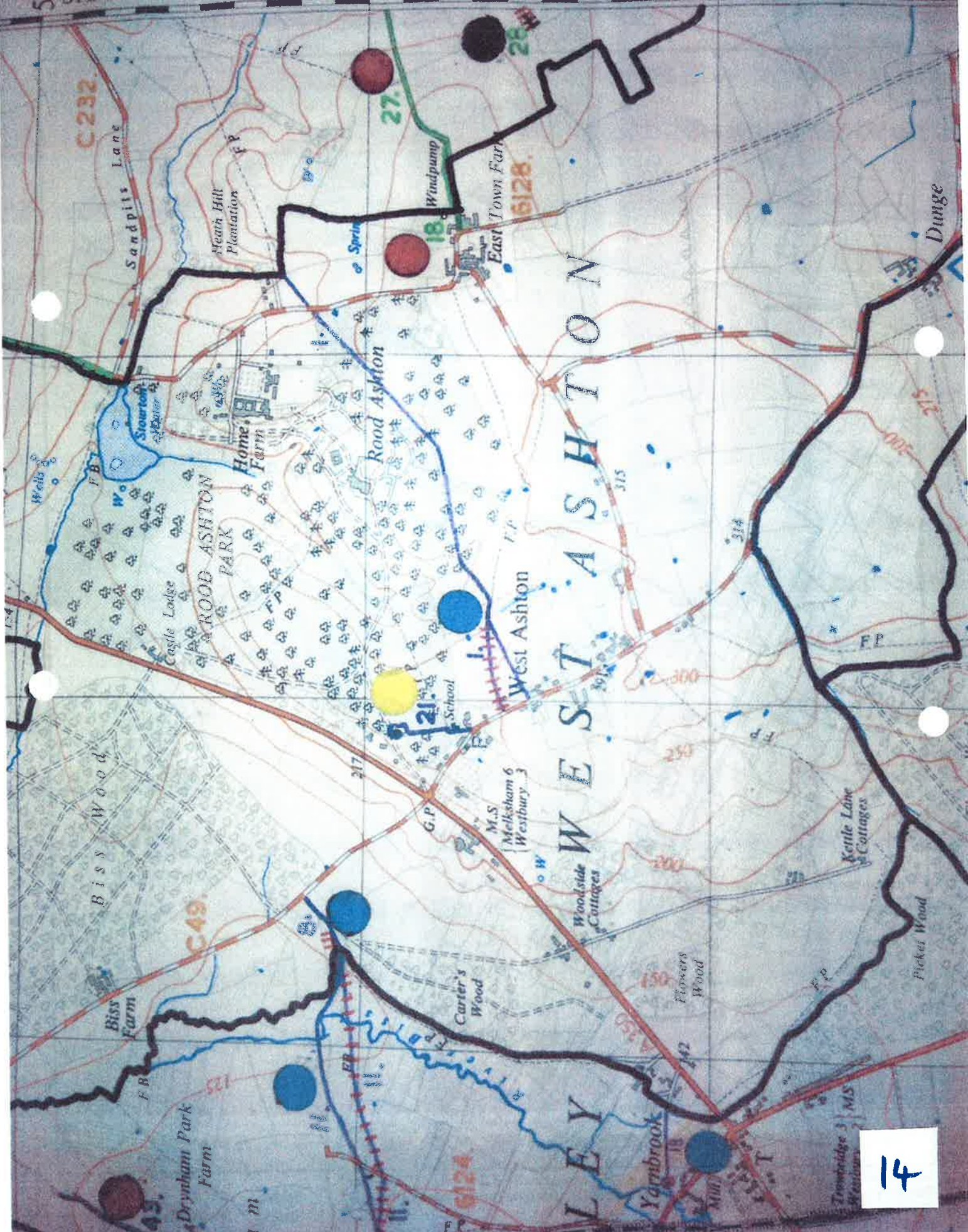
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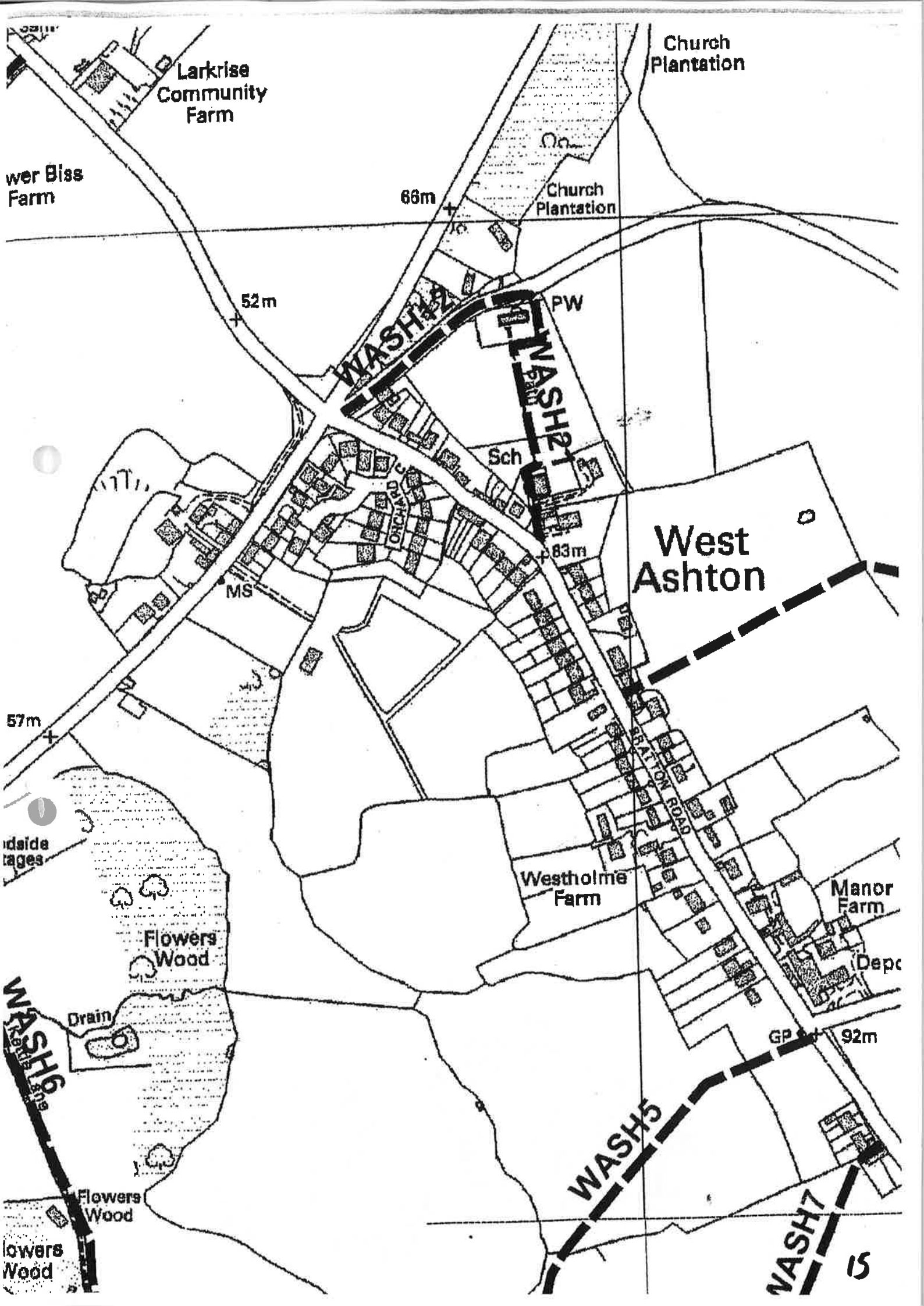
57 STEEPLE ASHTON

56

55



14



Larkrise
Community
Farm

Church
Plantation

wer Biss
Farm

66m

Church
Plantation

52m

WASH1

PW

Sch

83m

West
Ashton

MS

57m

side
tages

Flowers
Wood

Westholme
Farm

Manor
Farm

(Depc

Drain

GP 92m

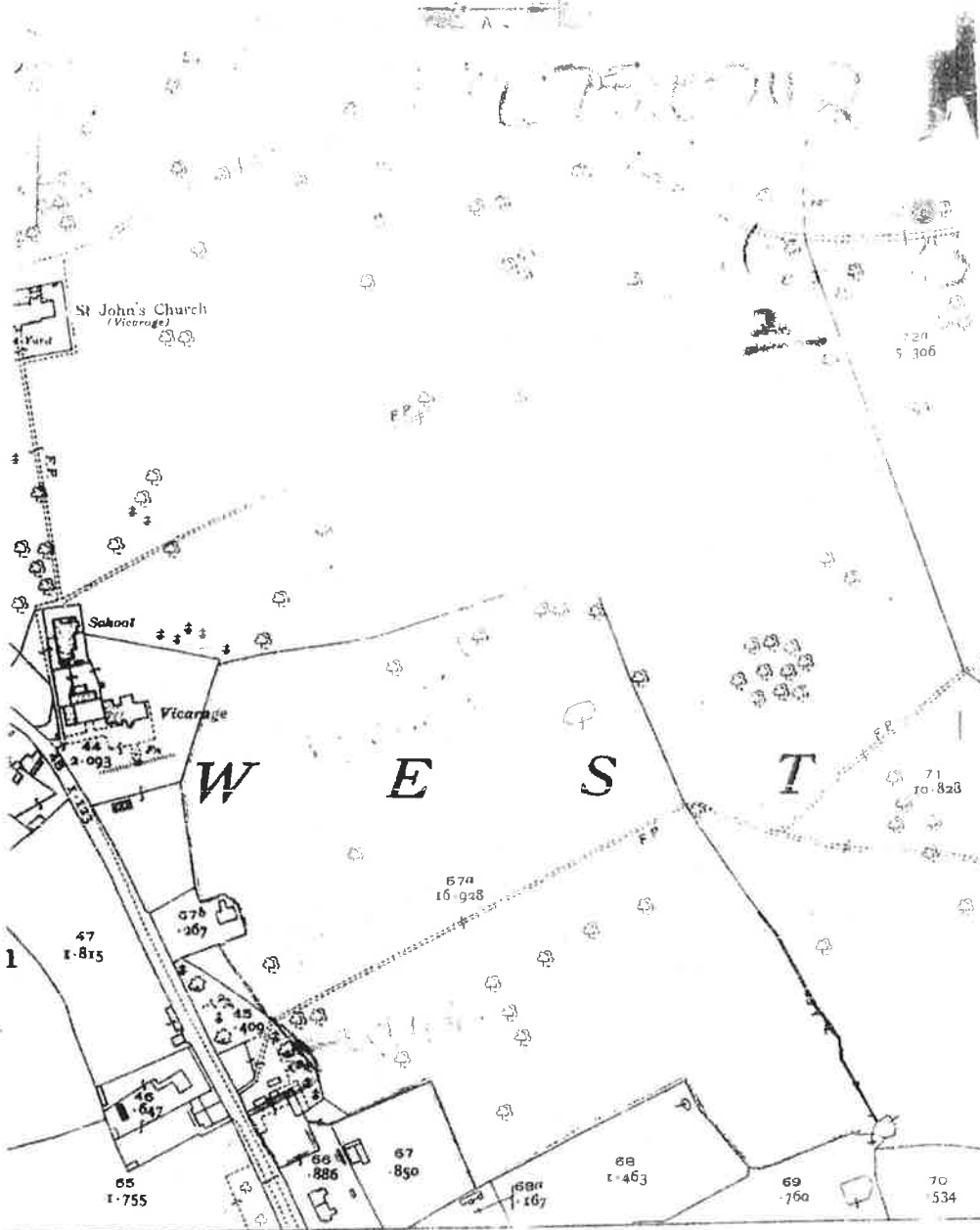
WASH6

Flowers
Wood

WASH5

Flowers
Wood

WASH7
15



WILTS XXXVIII.12.



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

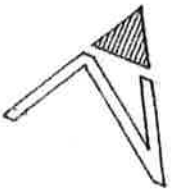
A 5

A 5

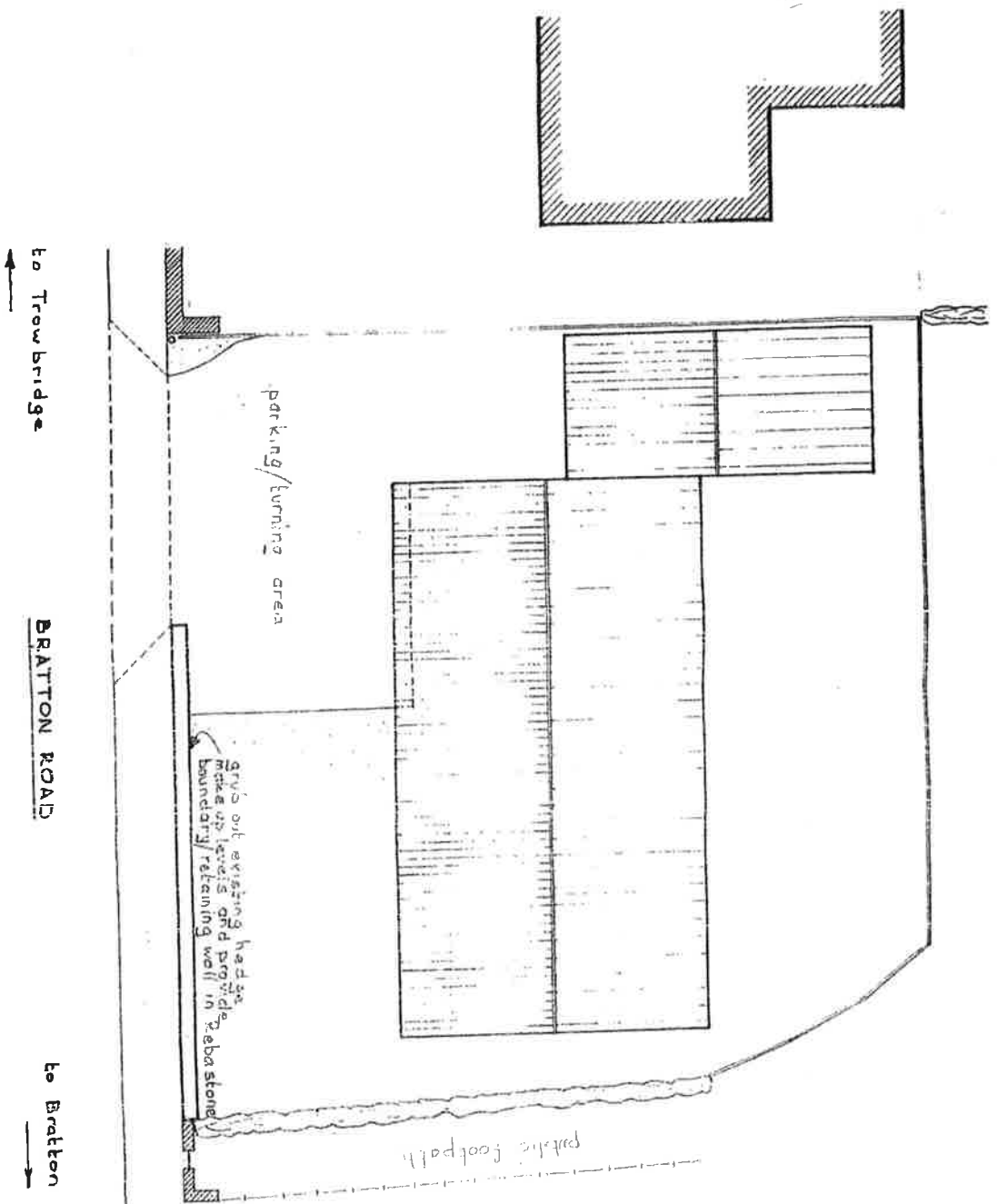
A 4

16

W03/1497



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



ALTERATIONS & EXTENSIONS TO MONTROSE, BRATTON ROAD, WEST ASHTON

Block plan

Scale: 1:100