
Order Decisions

Inquiry Held on 1 May 2018

Site visit made on 2 May 2018

by **Alan Beckett BA MSc MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 July 2018

Order Ref: FPS/T0355/7/4 (Order A)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 22 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/5 (Order B)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 21 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/6 (Order C)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 20a Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Order Ref: FPS/T0355/7/7 (Order D)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 20 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/ 8 (Order E)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 19a Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/9 (Order F)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 19 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/10 (Order G)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 18a Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7 /11 (Order H)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 18 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/12 (Order I)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 17a Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7 /13 (Order J)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 17 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/14 (Order K)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 16a Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/15 (Order L)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 16 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/16 (Order M)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 15 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/T0355/7/17 (Order N)

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Footpath 14 Wraysbury in the Royal Borough of Windsor and Maidenhead Order 2016.
- The Order is dated 15 July 2016 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Application for costs

1. At the Inquiry an application for costs was made on behalf of the Council of the Royal Borough of Windsor and Maidenhead ('the Council') against Mr Michael Kenneth Busbridge, sole Director of Worby Estate Sales Limited and against Mr Frank McDonagh. This application is the subject of a separate Decision.

Procedural Matters

2. I held a public local inquiry into the Orders at Wraysbury Baptist Church over the course of three days between 1 and 3 May 2018. I made an unaccompanied visit to the site on the evening of Monday 30 April 2018 and conducted a further inspection of the paths at issue in the company of the parties or their representatives on the afternoon of the second day.

Background

3. The footpaths described in the Orders predominantly cross an area of land known as Thamesfield although the footpaths in Orders A and I cross from Thamesfield into the adjacent woodland known as the Kayles. Part of footpath 15 (Order M) also crosses land in unknown ownership between Thamesfield and public footpath Wraysbury 8c.
4. Thamesfield at one point formed part of an agricultural property known as Manor Farm. It is understood that Mr Worby, the owner of Manor Farm, actively farmed the land until around 1975 with subsequent management being undertaken by others until around 2009. The majority of Thamesfield is currently in the registered ownership of Worby Estate Sales Limited ('WESL') of which the principal objector, Mr Busbridge, is the sole Director. WESL was formed as a company to trade in its own real estate and to sell off parcels of land at Thamesfield to interested buyers; WESL remains the principal landowner although a number of plots of land have been sold to third parties.
5. Thamesfield was the subject of an application made on 11 March 2010 to register the land as a town or village green (TVG). The application was determined following a non-statutory local inquiry conducted by the late Vivian Chapman QC. It was contended on behalf of WESL at that inquiry that the *"predominant use of the field by local inhabitants has been confined to discrete paths. Use has been in the nature of the exercise of public rights of way rather than use necessary to support a claim to a village green"*¹. With regard to the evidence of use Mr Chapman concluded *"I am quite satisfied that the use of Thamesfield has not been confined to the type of linear walking along defined routes which might qualify as giving rise to the creation of prescriptive rights of way"*².
6. Despite Mr Chapman being satisfied that the evidence of use of Thamesfield had been of sufficient quality to warrant registration as a TVG, his recommendation to the Council was that Thamesfield should not be registered as the application for registration had been made more than two years after the use had been rendered contentious by the erection in 2007 of prohibitory notices by the then landowner.

¹ Paragraph 25 of WESL's 'summary of lead objector's legal arguments'

² Paragraph 300 of Mr Chapman's report

7. The Kayles was registered as a TVG in 2011 following a non-statutory public inquiry.
8. Five applications to record public rights of way over Thamesfield were made in June 2009. The Council deferred investigation of these applications pending the outcome of the subsequent application to register the land as a TVG. Investigation of the public rights of way applications resumed in June 2014 following the dismissal of an application made to the High Court for the judicial review of the Council's acceptance of Mr Chapman's recommendation.
9. The five public rights of way applications seek the recording of a network of public footpaths through and around Thamesfield. Some of the paths shown on the application maps overlap with each other and include spurs or linking paths from seven entrances to the field. The paths described within the Orders reflect the Council's interpretation of the routes shown on the application maps and which were visible on an aerial photograph of the site taken in 2008 submitted with the application. Although the Orders break the five application routes into 14 separately identifiable paths, I am satisfied that the Order routes reflect the routes indicated on the plans attached to the 2009 application forms.
10. The evidence bundles submitted by the Council, WESL and Mrs Fergusson included copies of the evidence submitted in the TVG case, copies of the Inspector's report and other associated papers. I have taken these documents into account in reaching my decision and I refer to that documentary evidence where appropriate. None of the former owners or occupiers of Thamesfield appeared at the inquiry although they had appeared at the TVG inquiry in person or had made statutory declarations or witness statements to that inquiry. Although this evidence is not first-hand evidence, some of it had been tested at the TVG inquiry and whilst such evidence has to be treated with a degree of caution, unless new evidence has been presented on a particular point already considered by the TVG inquiry, I will have regard to the findings of fact made by Mr Chapman on the evidence presented to him.

The Main Issue

11. The main issue in this case is whether the evidence discovered by the Council is sufficient to demonstrate, on a balance of probabilities that a public right of way on foot subsists over each of the Order routes.
12. With respect to evidence of use (such as is claimed in this case), section 31 of the Highways Act 1980 ('the 1980 Act') states that where a way, which is of a character capable of giving rise to a presumption of dedication at common law, has been enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, either by a notice or otherwise.
13. Section 32 of the 1980 Act requires me to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

14. If the statutory scheme set out under section 31 of the 1980 Act is not satisfied, I am also required to consider whether a dedication of the claimed routes can be inferred at common law. The evidential test to be applied, at common law or under the statutory provisions, is the civil standard of proof; that is, the balance of probabilities.

Reasons

Documentary evidence

Aerial photographs

15. Three aerial photographs were submitted with the applications for the modifications orders, the applicant considering that they provided evidence that the claimed routes through and around Thamesfield had been in use by the public for the required period. The photographs submitted by the applicant had been taken in 1976, 1987 and 2008. As part of WESL's evidence to the TVG inquiry, a comprehensive report on aerial photographs taken between 1981 and 2012 was produced by Air Photo Services and which included a copy of the 2008 photograph relied upon by the applicant. I have taken all the available aerial photographs into consideration.
16. The 1976 photograph is monochrome and it is difficult to discern what might be wear lines around or through Thamesfield. There appears to be a means of access to Thamesfield from Ouseley Road and from Fairfield Approach and there appears to be a faint wear line running from each entrance towards the copse. The copy of the 1981 photograph shows well-defined entrances at Fairfield Approach, at Ouseley Road and at the south-east corner of the Kayles with worn paths linking those entrances. There is a perimeter path in the southern corner of the field. The Air Services report describes these paths as "*obviously well used, possibly on a daily basis, as they are clearly visible*".
17. The 1987 photograph shows a path around the perimeter of Thamesfield with the path being very close to the boundary. Also clearly visible is a north – south path between Ouseley Road and the Kales (on the general alignment of footpaths 16 and 22), an east – west path between Fairfield Approach and the north-south path (part of footpath 14) and a diagonal path along the alignment of the northern part of footpath 15. What appears to be a running track is shown to the extreme west of the site near to Friary Road.
18. The 1989 photograph shows the perimeter path together with the other paths shown on the 1987 photograph. There are a number of well-worn access points visible at Ouseley Road, Fairfield Approach, Fairfield Approach from footpath 8c, Friary Road (at the western end of footpath 15) and into the Kayles on the alignment of footpath 17a. Due to the shadows cast by the trees on the north-western boundary between Thamesfield and the Kales it is not possible to determine whether access into the Kales on an alignment similar to footpath 22 was possible. The photograph also shows evidence of agricultural activity in that fertiliser appears to have been spread over two-thirds of the land.
19. The 1990 photograph shows a worn line between Thamesfield and the Kales on the alignment of footpath 22. Other points of access in use at that date are Ouseley Road, Fairfield Approach (footpaths 14 and 15), the Kales (footpath 17a) Friary Road (footpaths 15 and 18). The perimeter path is also shown but

appears to have moved further into the field than was shown on earlier photographs. Also clearly in regular use is the east-west path between Fairfield Approach and Friary Road, the north-south path between Ouseley Road and the Kayles and the diagonal path on an alignment similar to the northern half of footpath 15. The Air Photo services report states in relation to these paths "*They are likely to be pedestrian footpaths in daily use, as they are very well defined*". These features are also clearly visible in the photographs taken in 1991 and 1992.

20. The quality of the copy of the 1993 photograph is poor; the paths which were clearly visible in the 1990, 1991 and 1992 photographs are less visible but were still present. In the 1994 photograph the northern part of the site had been ploughed and there is no visible evidence of the northern part of footpath 15 shown on earlier photographs. The perimeter path is still visible as are the north-south path between Ouseley Road and the Kayles and the east-west path between Fairfield Road and Friary Road. Access to Thamesfield is via Friary Road (footpaths 15 and 18); Ouseley Road (footpath 16); Fairfield Approach (footpaths 14 and 15) whereas the access points from the Kayles (footpaths 22 and 17a) are less distinct.
21. In the photograph taken in September 1996 the northern part of the field appears to be covered in vegetation once again, but it is not clear whether this is a grass cover or some other crop. The perimeter path, the east-west path between Fairfield Approach and Friary Lane and the north-south path between Ouseley Road and the Kayles are clearly defined. The access points at Fairfield Approach, Ouseley Road, Friary Road and the Kayles are clearly visible. A worn feature which approximates to footpath 21 is also evident. Although a means of access to the field is visible at the extremities of footpath 15, in 1996 there is no visible evidence of a diagonal wear line crossing the field. It is notable that in 1996 the perimeter path was much closer to the boundary than that shown on the Order plans. There is little change in the position of the wear lines in the field between this photograph and ones taken in September 1998 and October 1999.
22. The September 2000 photograph was taken after the lower part of the field had been cut for hay; the northern part was either not cut for hay that year, had not yet been cut or was under some other crop; there is no evidence of a diagonal path from Friary Road across the field on the alignment of footpath 15. The perimeter path, the north-south path, the east-west path and a path on the alignment of footpath 21 are all visible.
23. Two photographs were taken in 2003, one in July and a second in August. Both clearly show a worn line diagonally across the site on the alignment of footpath 15 parallel to the site of the sewer pipe trench; the back-filled pipe trench is clearly shown as recently disturbed ground with the path running to the south-east of the trench. The perimeter path, the north-south path and the two east-west paths remain well-defined on both these photographs. The perimeter path near Ouseley Road has moved further into the field than had been shown earlier.
24. The photographs taken in 2004 (one monochrome, one in colour) are of poor quality although the perimeter path and the north-south and east-west paths

remain visible. The perimeter path at the western end of the site has moved eastward into the field.

25. The aerial photograph taken in October 2008 shows that the hay crop had been harvested from the lower part of the field and that in parts the perimeter path no longer ran on the perimeter but had moved inward into the field; that part of footpath 17 between the Ouseley Road and Fairfield Approach entrances is clearly shown running through the area cut for hay. Access to and from the field at six points is clearly shown as are the east-west paths, the north-south path and the diagonal path between Friary Road and footpath 8c.

Other documentary evidence

26. It is known from the statutory declaration made by Mr Keith Worby to the TVG inquiry that Mr Worby ceased farming Thamesfield in 1975 and that others subsequently managed the field on the Mr Worby's behalf. In his statutory declaration Mr Worby states that action was taken around 1976 to erect prohibitory notices on Thamesfield to advise the public that the land was private there was no public access, but that these notices were repeatedly torn down and Mr Worby gave up trying to replace them. This suggests that as early as 1976, there was a degree of public access to the site which the landowner was aware of and against which some limited action was taken.
27. It is also known from Mr Gunderman's statutory declaration to the TVG inquiry that he managed Thamesfield for a hay crop between 1986 and 2007 and that around 1993 he ploughed the northern part of the field to grow kale as a winter feed crop for animals he kept elsewhere. The site survey undertaken by Thames Water prior to the sewer pipe works notes that the field was part pasture and part arable although the arable section was standing fallow. This is reflected in the aerial photographs which show the northern part of the site ploughed in March 1994 and having a covering of vegetation different from the remainder of the field in 1996 and up to 2000.

Thames Water sewer pipe works 2000-2002

28. In or around 2000, as part of Phase 2 of the Wraysbury West Main Drainage Scheme, Thames Water installed a new sewer pipe diagonally across Thamesfield. The works were undertaken by McNicholas Construction and lasted approximately 18 months. As part of the project, McNicholas entered into a licence agreement with Mr Worby for the occupation of parts of Thamesfield. Access to the land for plant and materials was via the Ouseley Road entrance and McNicholas erected double gates at this entrance and other fencing to create a secure compound for the duration of the works. In addition to the lockable gates to the compound, McNicholas also erected a pedestrian gate at the side of the compound gates which allowed pedestrian access to the field.
29. One clause of the licence is headed '*Special Conditions*' and reads "Access shall be maintained for the occupiers of No 34 Ouseley Road and No 2 Wharf Road at all times. The public footpaths through the field shall be maintained around the edge of the compound." The licence is signed by Mr Worby (as licensor) and dated 30 November 2000. The '*Special Conditions*' of the licence suggest that far from disputing the existence of public rights of way over the land, Mr Worby

acknowledged that public footpaths (in the plural) crossed Thamesfield which the contractors working for Thames Water were required to accommodate and not obstruct during the period of the works.

30. The oral evidence I heard from the supporters of the Orders was that during the construction works, the contractors had made provision for pedestrians to be able to cross from one side of the excavations to the other. Mr Stott and Mrs Hughes recalled a "platform" or "bridge" being provided over the trench and that the works had not impeded access across the field; other witnesses recalled that the paths around the field had remained available during the works and the pedestrian gate erected by McNicholas at the Ouseley Road entrance remained in use by the public until it was obstructed by Mr Butler and Mr Gunderman.
31. I have no difficulty in accepting the evidence of users with regard to the period during which Thames Water were installing the new sewer; given the licence requirement for the contractor to maintain access to the "*public footpaths through the field*", it is unsurprising that members of the public were able to continue to use the paths at issue throughout the duration of the works. It is highly likely that members of the public would have been able to follow footpath 15 on an alignment parallel to it for the duration of the works.

Conclusions on the documentary evidence

32. It is the Council's case that the aerial photographs provided very strong evidence of the existence of a network of paths across and around Thamesfield. In this case, there is a body of photographic evidence which demonstrates the pattern of use of Thamesfield over a period of 27 years and which encompasses the twenty year periods identified in paragraphs 37 – 45 below.
33. The aerial photographs demonstrate that Thamesfield has been generally laid to grass with some improvement to the condition of the ground being made by way of the spreading of fertiliser and the ploughing of the northern section of the field. The aerial photographic evidence suggests that such improvement works were limited and after the ploughing of the field in 1994, no further ploughing appears to have been attempted and that the northern part of the field reverted to grass. The photographs demonstrate the existence of a perimeter path which appears to have been consistently used although its position within the field has varied over time. There also appears to have been regular use of the seven access points around the field and paths across the field between those entrance points.
34. The aerial photographs demonstrate the existence of well-established and enduring paths since at least 1987 and that the position of the perimeter path changed over the same period. The change in the position of the perimeter path is likely to have occurred as a result of both vegetation growth on the boundary of the site and a gradual reduction in the area mown for a hay crop. The installation of the sewer pipe is also likely to have been a factor in the change in the pattern of worn lines visible on the ground.
35. Despite this variation in position, the photographs show that throughout the period 1987 to 2008 there has been a path around the perimeter of Thamesfield, and that paths running north-south and east-west over the site

have also been identifiable features on the ground for some time. Less evident are footpath 15 and the link paths 18a, 19a and 20a which only appear in the aerial photographs from 2003 and are likely to have come into existence as a result of the perimeter path moving inwards following the installation of the sewer pipe and works associated with that project. There is no evidence that Mr Gunderman kept livestock on Thamesfield; it is therefore likely that the worn lines in the ground were created by the pedestrian traffic that Mr Worby attempted to prevent in 1976.

36. Although not conclusive of the existence of public rights of way, I consider that the sequence of aerial photographs provide highly persuasive evidence of widespread pedestrian use of defined routes around and across Thamesfield over a prolonged period. Overall, the aerial photographs support the Council's case regarding use of a number of paths over an extended period of time.

When the right of the public to use the claimed footpath was brought into question

37. In July 2007, the then owner of Thamesfield arranged for notices to be erected at the principal entrance points to the field; on the gates at the Ouseley Road entrance; towards the rear of the Fairfield Approach entrance facing towards Fairfield Approach; at the entrance from public footpath Wraysbury 8c at the north-western corner of the northern part of the field facing the Kayles and on Friary Road at the northern entrance to Thamesfield.
38. The notices read "*Private Property. Access to this land is by permission of the owners*". Mr Chapman concluded from the evidence before him that other than the sign on the gates at Coppice Road the signs had been in place for around one month before being torn down and that anyone entering Thamesfield would have understood that the message being conveyed was that there was no right to be present on the land. The conclusion reached by Mr Chapman as to the effect of the signs was endorsed by Foskett J in respect of the application for judicial review of the Council's rejection of the TVG application³.
39. It was the Council's case that the signs erected in 2007 not only rendered use of Thamesfield contentious for the purposes of the TVG application but also had the same effect with regard to use by the public of linear routes through and around Thamesfield. In the Council's submission, the relevant 20-year period of use for the purposes of section 31 (2) of the 1980 Act was July 1987 to July 2007. No other cogent evidence that prohibitory notices had been erected prior to 2007 was submitted at the inquiry.
40. In his statement to the TVG inquiry, Mr Gunderman claimed that 'Private Property' signs had been present at four locations between the Kayles and Thamesfield when he had commenced farming the land in 1986 and had remained in place for about a year. No further evidence appears to have been given to the TVG inquiry about these signs regarding their locations and from Mr Gunderman's evidence, they do not appear to have been worded in such a way to convey to the public that the owners objected to public access to the field.

³ R(oao) Su Burrows v Royal Borough of Windsor and Maidenhead and others [2014] EWHC 389 (Admin)

41. I place little weight upon the statutory declarations which purport to have been made by Mr & Mrs Butler as both declarations have been annotated in the margins by Mr Busbridge. The exhibits to which each of the statutory declarations refers have also been heavily annotated by Mr Busbridge. Although the Butlers refer to 'keep out' signs having been present in 1986 and 1987 and 1990, the only plan on which the claimed location of these signs is shown is a plan annotated by Mr Busbridge; this plan does not carry the signatures of either Mr or Mrs Butler and is dated two months prior to the statutory declaration being made. In short, I cannot determine from these documents what is Mr & Mrs Butler's evidence and what is Mr Busbridge's interpretation of that evidence; consequently I place little weight upon these statutory declarations.
42. An alternative date on which use was brought into question was suggested by Mr McDonagh. This date was connected with the obstruction of the access into Thamesfield at Ouseley Road by the removal of the pedestrian gate which had been erected by Thames Water in 2000. Mr McDonagh submitted that the date on which use of the footpaths was brought into question should be 2003 as that was the date when Mr Gunderman and Mr Butler had erected an earth bund behind the double gates and boarded up the pedestrian gate.
43. There is some question as to whether the actions of Mr Gunderman and Mr Butler's had any affect at all on public use of footpath 16; the aerial photographs discussed above taken in 2003 and 2004 show the continued existence of a well-worn path from Ouseley Road into Thamesfield which suggests that whatever action had been taken to block access was resisted by those members of the public who considered they had a right of way. Furthermore, the evidence of use I heard was to the effect that access from Ouseley Road continued as there was always a way through the vegetation to the side of the gates. Mr Hughes had last walked the path in 2013 and produced photographs showing Mr McDonagh in the process of laying kerb stones to define the access to a house he proposed to build on the land; these photographs show that the double gates were present and that there was no fencing or other obstruction to prevent access into Thamesfield.
44. Although the obstruction of the pedestrian gate and the creation of an earth bund behind it did not interrupt use of that part of footpath 16, I accept that the actions of Mr Gunderman and Mr Butler were such that use by the public of footpath 16 between Ouseley Road and the junction with footpaths 17 and 18 was brought into question. However, the blocking of the access at Ouseley Road had no impact upon use of the other footpaths at issue.
45. In the absence of any cogent evidence regarding the existence of prohibitory signs prior to 2007 I conclude that with the exception of that part of footpath 16 between Ouseley Road and the junction with footpath 17 and 18, the relevant 20-year period of use to be considered for the paths at issue is 1987 to 2007. For that part of footpath 16 to the south of footpaths 17 and 18, the relevant 20-year period is 1983 to 2003.

Whether the public have used the Order routes as of right and without interruption for a period of not less than 20 years prior to their right to do so being brought into question

The public

46. There is no legal interpretation of the term 'the public'. A dictionary definition is "*the people as a whole, or the community in general*". Coleridge CJ (1887)⁴ commented that use by 'the public' "*must not be taken in its widest sense; it cannot mean that it is a user by all the subjects of the Queen, for it is common knowledge that in many cases it is only the residents in the neighbourhood who ever use a particular road or bridge*".
47. I acknowledge that of those who completed user evidence forms, or who appeared at the inquiry, the overwhelming majority reside within the immediate vicinity of Thamesfield. In her written submissions, Mrs Fergusson questioned whether those who had claimed use could be regarded as 'the public' when the majority of supporters were drawn from a discrete area. For the Council, Mr Ward submitted that as Wraysbury was sandwiched between the Thames to the west and reservoirs and lakes to the east it was essentially a "*water-locked community*"; in such circumstances it was unsurprising that the majority of users of Thamesfield had come from within what was essentially a residential island.
48. I have no difficulty in accepting that the residents of Wraysbury can be regarded as 'the public'; none of the supporters have any connection with the land crossed by the path, either in terms of ownership, tenancy or a business relationship with the owners of the land. Despite the close proximity of the residences of supporters to the claimed path, and the narrow geographic area from which the supporters are drawn, there is no reason, in my view, why those resident in the neighbourhood should be regarded as other than 'the public'.

Use by the public for not less than 20 years prior to the date use was brought into question

49. In total, 72 individuals submitted user evidence forms in support of the five applications made to add public rights of way to the definitive map and statement. Of these 72 individuals, some completed more than one form to indicate their use of several of the routes being claimed. The Council helpfully provided an analysis of these forms in terms of the numbers of users of each of the routes shown in the Orders and the periods of use prior to 2007 for each user.
50. As part of its analysis, the Council had discounted the evidence provided by those three individuals who said on their UEF that they had obtained permission to use the paths and the two users who had only used the paths on Thamesfield after 2007. This analysis showed that footpath 17a had the least number of users (7 in total) whereas footpaths 16 and 17 had the most users (64 in each case). The remaining footpaths had varying numbers of users between these extremes with the number of individuals who had used each path throughout the 20-years prior to 2007 ranging from 3 (footpath 15) to 35

⁴ R. v. Inhabitants of Southampton (1887) 19 QBD 590; RWLR April 1998 S6.3 pp55

(footpaths 19 and 20); of the 7 individuals who claimed to have used footpath 17a, 6 had done so throughout the 20-year period which ended in 2007.

51. With regard to footpath 16, four individuals claimed use of the whole of the footpath throughout the 20-year period, 2 claimed use of the whole of the route for part of that period and 31 individuals claim to have used part of the route between 1983 and 2003.
52. The earliest claimed use was in 1954 with use increasing in intensity from the mid-1970s, a period which coincides with the cessation of Mr Worby's farming activities on the site. On paper at least, the user evidence forms describe continuous and intensive use of a number of routes which are shown in the aerial photographs already considered and which are well-defined on the ground.
53. One criticism of the user evidence forms made by the objectors is that when the routes shown on each of the plans which accompany the user evidence forms are transposed onto a single plan, they show that the land has been subject to general wandering and not that specific routes have been used. To my mind, this is not the approach that should be taken regarding the plans drawn by individual users. What each user is seeking to convey is the route he or she may have taken over a parcel of land; the user is not being asked to show to any specified degree of accuracy the exact position of the route which had been walked. The plans submitted with the user evidence forms show a degree of individuality which in my view adds weight to their credibility as evidence; it is clear that each user has from memory given his or her best effort at describing the route which had been used and has not simply copied from another plan or been provided with a filled up plan to sign and date.
54. WESL also submitted that much of the user evidence should be discounted as many of the individuals who had completed user evidence forms in support of the public rights of way claims had also completed evidence forms in support of the TVG claim. It was WESL's view that once these individuals had been excluded there was little evidence of use which would support a claim for public rights of way.
55. I know of no authority which states that individuals are precluded from giving evidence of use in relation to a public right of way claim if they have also given evidence of use in relation to having indulged in lawful sports and pastimes on the same parcel of land. Mr Busbridge did not refer me to any such authority, nor did the Council know of such authority. Each case should be approached on its merits and although certain individuals may have engaged in activities other than walking for recreational or utilitarian purposes, that would not diminish the value of their evidence in relation to a claim for a public right of way.
56. Even if I were to discount the evidence of those who had also supported the TVG claim, the evidenced of a number of users would still have to be taken into consideration from those who had not had any involvement with the TGV case. The evidence of 24 users in relation to footpath 14 would need to be taken into account; 16 users in relation to footpath 15; 28 in relation to footpath 16; 9 in relation to footpath 16a; 29 on relation to footpath 17; 4 in relation to footpath 17a; 28 in relation to footpath 18; 8 in relation to footpath 18a; 28 in relation to footpath 19; 9 in relation to footpath 19a; 25 in relation to footpath 20; 6 in

relation to footpath 20a; 6 in relation to footpath 21 and 7 in relation to footpath 21.

57. In short, I am not persuaded that the objector's submission on this point has any merit and even if it did and the evidence of certain individuals were to be excluded from consideration, there would remain a body of user evidence in relation to the claimed use of each path. In my view the only user evidence which should be excluded from consideration in relation to these orders is from those who stated they had obtained permission for that use or whose use only commenced after 2007.
58. I heard from 14 individuals at the inquiry in respect of their use of the footpaths at issue. Mrs Ettridge's evidence was limited as she had only begun walking on Thamesfield in 2006; she entered and exited the field at Friary Road near the sub-station and generally walked the perimeter path with her dog; if visiting the shops in Wraysbury, the exit at Fairfield Approach was also used. For a shorter walk or if time was limited, she would walk a loop starting at the southern entrance on Friary Road then east along FP18, north on 16 and west on 19 to exit at the northern Friary Road entrance. Although Mrs Ettridge had used all of the paths at some point, she had not used the Ouseley Road entrance.
59. Mr Woodham had walked in Thamesfield since 1998 mainly entering at the northern entrance on Friary Road to use the perimeter path. Mr Woodham had worked shifts; his use of the paths had been between 06:00 and 07:00 when working nights and between 21:00 and 22:00 when on days. In addition, the shortest route between Friary Road and Fairfield Approach via 19, 21 and 17 had also been used. Mr Woodham had only used footpath 15 to reach footpath 8c after Mr Gunderman had ceased cultivating the northern part of the field. Mr Woodham considered that Mr Gunderman had not engaged in 'serious' farming; the northern corner had been ploughed on occasion and attempts had been made to grow kale but the agricultural use of the field had been minimal. Mr Woodham had little need to use the Ouseley Road entrance and had only done so on two or three occasions.
60. Mrs Driver had walked in and around Thamesfield since 1991. Between 1991 and 1997 she had used the Ouseley Road entrance to walk the perimeter path. From 1997 Mrs Driver has used the Fairfield Approach entrance. Mrs Driver also described her use of combinations of the other routes to vary her walks. In her experience, Mr Gunderman had always waved and smiled when she had seen him in the field; when kale had been grown she would have walked around the crop not through it.
61. Mr Hughes had walked in Thamesfield since 1981 and had walked many of the paths at issue on a daily basis whilst exercising his dogs; the choice of path taken or the combination of paths taken depended upon how long or short a walk was required and who he was walking with. Entrance and exit to the field was primarily from the Kayles or from the northern entrance on Friary Road; some use had been made of the Ouseley Road entrance when travelling to catch a train at Wraysbury and the entrance at the Kayles when walking to Sunnymead station. Mr Hughes had not used the Ouseley Road entrance since around 2013 when Mr McDonagh was in the process of installing kerb stones for the driveway to a house he had intended to build on his land. Mr Hughes

had spoken with Mr Gunderman when on the field; he had always been friendly and amenable. When the field had been treated with slurry it was an inconvenience for two or three days, but didn't affect use of the paths. Mr Hughes submitted a copy of the application Mr McDonagh had made for permission to build a house on the land adjacent to 2 Wharf Road; the plan which accompanied the application had made provision for a footpath to run from Ouseley Road to Thamesfield.

62. Miss Young had walked in Thamesfield since her childhood, and from 1984 had used some of the paths in the field with her parents as part of a journey to school. She had subsequently walked her dogs in the field on a daily basis using the perimeter path and 15, 16 and 14 in combination; entry to the field had primarily been from Friary Road and Fairfield Approach. The Ouseley Road entrance had been used until around 2005. Miss Young's recollection was that slurry had not been spread on the field each year and that when it had been spread, she kept away from the field for a few days. Mr Gunderman's agricultural activities had not affected use of the footpaths.
63. Mrs Hughes had walked many of the footpaths on Thamesfield on a daily basis since moving to the area in 1981. The route taken would vary depending upon how much time was available for a walk with her dogs. Mr Gunderman's agricultural activities had not interfered with or prevented use of the paths other than during the few years that kale had been grown; at such times, the perimeter path had been used. Mrs Hughes had rarely used the Ouseley Road entrance; her principal entry points had been from Friary Road and the Kayles.
64. Mrs Holden had lived at her current address since 1985 and had made use of various paths within Thamesfield since that date to visit friends in other parts of Wraysbury, as part of a trip to the shops and pubs in the village and for walking the family dog. Mrs Holden usually entered the field via the Kayles to walk the perimeter path, and depending on her destination would use the exit points on Friary Road, Fairfield Approach or the exit to footpath 8c at the rear of Fairfield Approach. Mrs Holden had used the Ouseley Road entrance until around 2008; until that time there had always been a means of access around the double gates. Mrs Holden had also used footpath 15 which she said had developed into a well-used footpath since the installation of the sewer pipe; in her experience footpaths 14, 16, 17, 18, 19, 20 and 21 had all been in existence from 1985.
65. Mr Stott had been resident in Wraysbury since 1992 and up to 2003 had walked in Thamesfield around twice a month at weekends using paths 14 to 22 having entered at Ouseley Road, leaving via either of the entrances into the Kayles. In 2004 Mr Stott acquired a dog and has since walked in the field twice per day since that date. The perimeter path would be used the most but the cross field paths (14, 15, 16 and 21) would also be used. When visiting friends on Friary Island, Mr Stott would enter the field via Fairfield Approach and walk over 14 and part of 15 to Friary Road. Mr Stott recalled a sign at Fairfield Approach being erected in 2007 which remained on site for no more than a few days.
66. Mrs Hanson had lived in Wraysbury since 1967 and had walked in Thamesfield with her dogs. Primarily use had been made of the perimeter path entering and leaving at the southern Friary Road entrance although a shorter walk was

sometimes taken using 15, 17 and 18. Mrs Hanson moved house in 1986 and subsequently used the Fairfield Road entrance or footpath 8c and 15 to access the field. Mrs Hanson stated that she had walked all of the paths at issue. Mrs Hanson had used the Ouseley Road entrance between 1987 and 1988 when visiting friends in Coppice Drive, but had not used that entrance since the access at the side of the double gates had been blocked.

67. Mr Wood had been resident in Wraysbury since 1986 and had walked his dogs on Thamesfield since that date; he had no recollection of any prohibitory notices or signs on the land and that it had been evident from the worn lines in the grass that people walked around the field frequently. Although the principle route used had been the perimeter path, variations on that route using other claimed paths could be incorporated to make a longer or shorter walk depending upon the time available.
68. Mrs Jeffries first came to live in Wraysbury in 1962 and recalled her children being able to walk across Thamesfield to visit their friends in other parts of the village. Mrs Jeffries had entered the field from Fairfield Approach and crossed the field using 14, 17, 18 and 15 to Friary Road to visit friends living in Riverside. Mrs Jeffries moved away from the area in 1986 and returned in 1994 and used the paths between Ouseley Road and Fairfield Approach between 1994 and 1998 as part of a short cut on her daily visits to her elderly mother-in-law. In 2000 Mrs Jeffries bought a narrow boat which was moored at Old Ferry Drive Boat Yard and used the paths over Thamesfield between Ouseley Road and the Kayles as a short cut to the boat yard. Mrs Jeffries said she recalled a 'public footpath' sign at the southern Friary Road entrance but did not recall any other signs being present of the land.
69. Mrs Straka had been resident since 2003 and had started using the paths on Thamesfield when walking her son to his primary school; entering at Ouseley Road she would take footpath 16, 17 and 14 to Fairfield Approach. The journey at the end of the school day would be made in reverse or sometimes using footpath 15 from the junction with footpath 8c. At weekends she would walk with her family on any or all of the footpaths visible on the ground using entrances and exits depending on her final destination. Mrs Straka said it had been possible to enter the field at Ouseley Road until 2007 until the entrance was fully blocked off.
70. Mrs Turton has been resident in Wraysbury since 1987 but had first walked the perimeter path in 1986 when house hunting in the area; having viewed what was to become her home, Mrs Turton walked her dog along Fairfield Approach then around the field leaving by way of footpath 15 and 8c. Subsequently, Mrs Turton had walked the perimeter path on a daily basis doing a complete round and then using footpath 16 for a further half circuit. For an evening walk, Mrs Turton would vary her route, using a combination of the paths present on the ground. The primary access point used was the junction of footpath 8c and footpath 15, with some use of Friary Road and Fairfield Approach entrances.
71. Mr Blofeld's evidence was that he had lived in Wraysbury since 1953 and had walked in or around Thamesfield on a daily basis since then. He had mainly entered the field by the northern entrance on Friary Road or from the two paths which ran from footpath 8c between the Kayles and Thamesfield but he had not used the Ouseley Road entrance. Mr Blofeld acknowledged that he had

been challenged by representatives of WESL when walking on the field and had been told to leave as it was private property.

72. Other than Mr Blofeld, who had been challenged by representatives of WESL after 2007 when the company had an interest in the land, none of the witnesses I heard from had been challenged in relation in their use of the paths around and across Thamesfield. None of the witnesses recalled seeing prohibitory notices on the site prior to 2007; this reflects Mr Worby's evidence to the TVG inquiry that after his 1976 notices had been torn down he gave up posting them.
73. A number of witnesses spoke kindly of Mr Gunderman who it was said would chat and wave when he encountered people on site. Although Mr Gunderman wasn't the owner of the land, he was occupying the land for his own agricultural purposes; the evidence I heard suggests that Mr Gunderman was not confrontational about the level of public access occurring as it didn't interfere with his use of the land.
74. In addition to the witnesses I heard from at the inquiry, a further 27 written statements were received from other residents which detailed their use of the footpaths. The earliest claimed use by this group of respondents was 1967 and collectively the respondents describe use primarily of the path on the perimeter of the field but also of 14, 16 and 21 which cross the field. The frequency of use was primarily on a daily basis and involved walking the family dog or crossing the field for the utilitarian purpose of a short cut to school or the shops in the village. Although this evidence remains untested and has to be approached with a degree of caution, it seems to me that it is on all fours with the oral evidence given at the inquiry.
75. The impression I gained from the oral evidence was that the witnesses didn't walk along that part of footpath 15 which crossed the land that Mr Gunderman had ploughed and that if there was a growing crop in the field, local users would not walk through it but would walk around it on the perimeter path.
76. The relatively light and infrequent use of the northern part of footpath 15 is reflected in the evidence found in the aerial photographs considered above. In 1987 there is a clear wear line in the ground on the alignment of the northern part of footpath 15 which remained visible until 1992. However, the southern part of footpath 15 is not evident at all on these early photographs and the northern part of the path disappears after Mr Gunderman had ploughed and cultivated part of the site in 1994. Thereafter path 15 is not shown as a worn line in the ground until 2003 following the installation of Thames Water's new sewer pipe.
77. Although the users claimed to have used all the paths at issue throughout their own individual periods of use, I consider that Mrs Holden's recollection to be the most accurate with regard to footpath 15. On the basis of the evidence before me, I consider that those parts of footpath 15 shown on Order M as between points B and C only came into general use by the public after Thames Water had installed their pipe and after Mr Gunderman had ceased cultivating the land. As there is a period of some 9 years when the photographic evidence shows no use of the footpath, I do not consider that the case for deemed dedication under section 31 can be made out in respect of footpath 15.

78. The claimed use of the perimeter path, of footpath 16 and footpath 14 throughout the 20-year period is supported by the aerial photographic evidence with the perimeter path, footpath 16 and the western end of footpath 14 being clearly shown in the 1987 photograph. As it is human nature to cross land by the shortest route, I consider it highly likely that if use of the continuation of footpath 14 had not occurred prior to 1987, it commenced around that time or very soon after as the continuation west to Friary Road is evident on the 1989 photograph.
79. Footpath 16a is shown as a physical feature on the ground as early as 1996, although it is highly likely that 19a and 20a have developed in recent years as desire line links between the principal paths and which may have arisen as the perimeter path moved inwards into the field as a result of vegetation grown on the field margins became denser due to changing patterns of land use. Although many of the witnesses chose to vary their walk around the field by combining different routes together, I consider that the photographic evidence when taken together with the user evidence suggests that 16a, 19a and 20a have not been in use throughout the relevant 20-year period.
80. In respect of that part of footpath 16 between Ouseley Road and footpath 17, the user evidence is that the path had been in use for at least 20 years prior to 2003. The 1981 photograph shows a path which has been sufficiently worn such that it indicates that a large number of pedestrians had consistently passed and re-passed through that entry over a prolonged period prior to the access being obstructed in 2003.
81. The objectors contended that the position of the perimeter path shown in the Order plans was markedly different from the route shown by the aerial photographs as having been in use in 1987. Measurements taken on the accompanied site visit showed that the currently used line of footpath 17 in the south-east corner of the site was approximately 39 metres away from the boundary fence of 34 Ouseley Road and about 34 metres away from the boundary of the property known as Wendicot. The western end of footpath 18 had also moved inwards by around 25 metres from the boundary. The objectors considered that this movement was excessive and the depiction of the perimeter path on the Orders was incorrect compared with what had been in use in 1987.
82. The Council referred me to the case of *Fernlee Estates Ltd v City & County of Swansea* [2001] EWHC Admin 360 as authority for the proposition that a path need not follow exactly the same alignment throughout the relevant period for it to be recorded as a public right of way. In that case, the court had found that a variation of around 20 metres over time had not prevented the path from being recorded. In the Council's submission, the movement of the perimeter path was likely to have arisen gradually due to the encroachment of vegetation. The perimeter path shown in the Orders was essentially the same as the path shown to have been in use on the 1987 photographs in that it was a path on the perimeter of the field.
83. It is well established that where a path crosses open land the route need not follow a precise path and the exact route followed may vary from time to time. In this case, although the early aerial photographs show a worn line on the extreme edge of the site, subsequent photographs show that gradually the

used line of the perimeter path has crept inwards from the boundary. This suggests that at any given point in time the perimeter path could have been measured as being a number of metres away from the boundary. The current position of the perimeter path is likely to have been affected by the creation of the Thames Water compound, the creation of an earth bund along the length of Friary Road and the general growth of vegetation following the cessation of Mr Gunderman's agricultural activities.

84. The Orders seek to record the public's use of a path around the perimeter of the field, a route which has changed its actual position from year to year but has nonetheless remained on the perimeter of the field. The user evidence demonstrates that use has been made of a perimeter path throughout the 20-year period which ended in 2007. I consider that the Orders reflect that use.
85. With the exception of the southern part of footpath 16 between Ouseley Road and footpaths 17 and 18, I conclude that the evidence of use adduced in this case is sufficient to demonstrate use of the Order routes throughout the relevant 20-year period which ended in 2007. With regard to that part of footpath 16 between Ouseley Road and footpaths 17 and 18, I conclude that the evidence adduced is sufficient to demonstrate use of that path throughout the 20-year period which ended in 2003.
86. With regard to footpaths 15, 16a, 18a, 19a and 20a, the evidence does not demonstrate that these paths have been in use for the whole of the 20-year period under consideration.

Without force

87. The available evidence is that until 2003 there was no barrier to entry to Thamesfield from the Ouseley Road entrance and until 2007 there had never been a fence, barrier or prohibitive notices at any of the other entrances. An earth bund had been created by Thames Water along the length of the Friary Road frontage as part of the sewer pipe works but this and other earth bunds at the Fairfield Approach entrance were largely ineffective at preventing pedestrian access; users simply continued to access the field by walking over the bunds. There is no evidence that the public had to break down a gate or fence in order to access the field or that use of the paths between 1983 and 2007 has been contrary to a prohibitory notice. I conclude that use of the paths across and around Thamesfield has been without force.

Without secrecy

88. It is not disputed that the claimed use took place at all times of the day and in full view of anyone who cared to look. I conclude that the claimed use was not secretive.

Without permission

89. There is no suggestion within the written evidence of use or in the oral testimony of those who appeared at the inquiry of permission to walk along the Order routes having been sought or obtained. I conclude that use of the claimed footpaths by the public during the relevant 20-year periods was without permission.

Without interruption

90. With regard to Section 31 of the 1980 Act an interruption in use must be some physical and actual interruption which prevents enjoyment of the path or way and not merely some action which challenges that use but allows it to continue. For any action taken to qualify as an interruption of use there must be some interference with the right of passage.
91. Whether any action can be regarded as an interruption is also dependent upon the circumstances of that action; temporary obstructions of a minor nature such as the parking of vehicles on a road⁵ or the storage of building materials on a path⁶ have been held not to amount to relevant interruptions.
92. It was submitted by WESL that the works undertaken by Thames Water to install a new sewer in 2000-2002 would have interrupted use of the footpaths. I am not persuaded that the works undertaken by Thames Water had the effect claimed by the objectors. First, the oral evidence I heard was that use of the footpaths continued during the period the works were being undertaken and that Thames Water had taken steps to ensure that use was not interrupted; temporary bridges had been created to allow access over the trench being excavated. Secondly, it was a condition of the contractor's use of part of the site for their compound that the public footpaths on the field were to be maintained during the works. If the sewer pipe works created any disruption to the use of the paths it would have been of a temporary and transient nature which did not amount to an interruption for the purposes of section 31 (1).
93. As part of the sewer works, the Worby's asked the contractors to create an earth bund alongside the Friary Road section of Thamesfield. It was submitted that this bund, along with ones subsequently created at the Ouseley Road and Fairfield approach entrances would have interrupted use of the paths over the field. However, the available evidence is that the bunds had no such effect; people simply walked over them. Those which were visible at the time of my site visit had prominent wear lines over them indicating continuous and continuing pedestrian traffic onto the field. I am not persuaded that the bunds interrupted use of the paths in terms of section 31 of the 1980 Act.
94. In his statutory declaration to the TVG inquiry, Mr Gunderman had stated that he had sprayed slurry on Thamesfield for a number of years as a fertiliser and that it would have taken up to six weeks to wash into the field. WESL submitted that these actions would have interrupted use of the field. However, the evidence I heard was that any effect the slurry may have had was short-lived; people avoided walking on the field immediately after the slurry had been spread, but resumed use within a few days. Any disruption to the pattern of use of the paths at issue would have been of a temporary and transient nature which did not amount to an interruption for the purposes of section 31 (1).
95. I conclude that use of the claimed paths had not been interrupted during the relevant 20-year periods under consideration.

⁵ Lewis v Thomas [1950] 1KB 438

⁶ Fernlee Estates Ltd v City & County of Swansea [2001] EWHC Admin 360

Conclusion on the user evidence

96. I conclude with the exception of footpaths 15, 16a, 18a, 19a and 20a that the evidence of use is of sufficient quality to raise a presumption that the footpaths at issue have been dedicated as public rights of way.

Whether there is sufficient evidence during the relevant 20-year period of a lack of intention to dedicate

97. In order to take advantage of the proviso to section 31 (1) of the 1980 Act, the owner of the land has to provide evidence of overt and contemporaneous action having been taken against those using the claimed paths during the relevant 20-year period which has brought to the attention of users that there was no intention to dedicate a public right of way.
98. In the case of *Godmanchester and Drain v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28, Hoffman LJ held that in terms of the intentions of the landowner, the "*intention*" means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is... objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending to disabuse him of the notion that the way was a public highway". Furthermore the contemporaneous actions taken by the landowner must be "*perceptible by the relevant audience*" and be "*objective acts perceptible outside the landowners' consciousness, rather than simply proof of a state of mind*".
99. During the relevant 20-year periods of use considered above, the land crossed by the majority of the claimed footpaths was in the ownership of the Worby family. Those parts of footpaths 22 and 17a which cross into the Kayles was in the ownership of Mr H J Pelham; the current owners, Mrs Fergusson and Mr Fergusson-Rees acquired the Kayles on 27 October 2010. Mr McDonagh has had an interest in part of the land crossed by that part of footpath 16 between Ouseley Road and footpaths 17 and 18 since 2010.
100. The only evidence before me regarding the approach taken by the Worby family is in the form of a statutory declaration made by Mr Keith Worby for the TVG inquiry. In that declaration Mr Worby notes that prohibitory signs had been erected around 1976: "*at this time we erected notices to show that the land was private and that there was no public access. However, the notices were constantly torn down and after a while we gave up posting signs*". There is no evidence that once the prohibitory signs had been torn down, the Worby family notified the highway authority of such events as provided for under section 31 (5) of the 1980 Act.
101. Although Mr Gunderman's statutory declaration to the TVG inquiry claimed that prohibitory notices were present in 1986 when he commenced using the field for agriculture, no evidence was submitted to corroborate that claim. WESL submitted a letter from a Mrs Harrison in which she noted that her partner had erected signs in 1986 on the Worby's other land at the end of Coppice Drive which read "*Private Keep Out*". The existence of these signs is shown in the contemporaneous photographs appended to Mrs Harrison's letter.

It was WESL's contention that this demonstrated that the Worby's had taken steps to keep the public out of their property; it was argued that if such notices had been erected at Coppice Field, it was likely that similar notices had been erected at Thamesfield, as claimed by Mr Gunderman.

102. Whilst I accept Mrs Harrison's evidence regarding the signs which were erected at Coppice Field, it is clear from the manuscript annotation at the end of Mrs Harrison's letter "*For Coppice Drive field only*" that her evidence only relates to Coppice Field and that it says nothing about whether similar signs had been erected at Thamesfield. If the owners of the land had intended to convey to the public their intentions with regard to public access over Thamesfield, suitably worded notices could have been erected. However, the evidence of the owner at the land at the relevant time was that after the notices erected in 1976 had been torn down they were not replaced. For the reasons given above, I place little weight upon the declarations made by Mr and Mrs Butler in relation to the existence of notices during the 1980s and 1990s. There is therefore little evidence before me from which it could be concluded that the landowners during the relevant 20-year periods had conveyed to the public a lack of intention to dedicate public rights of way such that the presumption raised by the evidence of use would be rebutted.
103. Mrs Fergusson's ownership of the Kayles post-dates the date of bringing into question the use of paths across Thamesfield. The only evidence available from the previous owner dates from October 2009 when Mr Pelham's agent wrote to the Council indicating that there were a number of paths through the Kayles which were available for use on a permissive basis. A plan of these routes was appended to the agent's letter and indicates that footpaths 22 and 17a were considered to be permissive paths. Although this letter demonstrates the landowner's position as of October 2009, evidence of a lack of intention to dedicate has to be communicated to users of the paths during the relevant 20-year period. There is no evidence before me that during the period 1987 to 2007, the then owner of the Kayles gave notice to the public that the paths through the woods were only to be used on a permissive basis. A retrospective assertion of the landowner's view after the expiry of the relevant 20-year period is insufficient to demonstrate that the owner had communicated his intentions to the public during that period.
104. It follows that I conclude that there is insufficient evidence of a lack of intention to dedicate a public rights of way for the current owners of the land to be able to take advantage of the proviso to section 31 (1) of the 1980 Act.

Common law

105. Given that I am not persuaded that the evidence in relation to footpaths 15, 16a, 18a, 19a and 20a satisfies the requirements of section 31 of the 1980 Act, I have given consideration to whether an inference of dedication of these footpaths can be drawn at common law. Three issues need to be addressed at common law; (a) whether, during the relevant period, the owners of the land in question had the capacity to dedicate a public right of way; (b) whether there was express or implied dedication by the owners, and (c) whether there is evidence of acceptance of the claimed right of way by the public.

106. Prior to 2007 and the transfer of the land to WESL, Thamesfield was owned by the Worby family; I received no evidence which demonstrated that the then owners of the field lacked the capacity to dedicate a public right of way if they so wished.
107. Prior to the Thames Water sewer pipe being installed, the contractor undertaking the works entered into a license with the owners of Thamesfield for the temporary possession of some of the land for the purposes of a secure site compound. As noted in paragraph 29 above, included in the license was a clause which required the contractor to ensure that "*The public footpaths through the field shall be maintained around the edge of the compound.*"
108. Whilst this clause may have only referred to the public footpaths in the vicinity of the site compound it provides evidence that the landowners, although absent from the site, acknowledged the existence of public footpaths over the land. There is no evidence to suggest that the landowners took any action to prevent access over Thamesfield on these paths such that an implied intention to dedicate would be justified.
109. The aerial photographs taken in 2003 show that following the installation of the sewer pipe, a distinct worn line parallel to the site of the sewer trench on the alignment of footpath 15 was visible, as were wear lines paths which correspond with footpath 16a and 19a. Five years later in 2008, footpaths 15, 16a, 18a and 19a are visible on the ground as a result of frequent and sustained use by the public.
110. The user evidence I heard at the inquiry, together with the evidence contained in the UEFs is sufficient to demonstrate that with the exception of footpath 20a, use of footpath 15, 16a, 18a and 19a during the Worby's ownership had reached such a level to wear defined lines in the ground such that it can be concluded that the public had accepted the implied dedication by the owners.
111. The only path which is not shown on the aerial photography is footpath 20a; I conclude that this is likely to be a very recent addition to the network of paths running across the site and is likely to have developed after the prohibitory notices were erected in 2007 and as such no inference of dedication at common law can be drawn in relation to this path.

Overall Conclusions

112. Under the statutory tests for presumed dedication set out in Section 31 of the Highways Act 1980, I have concluded that footpaths 14, 16, 17, 17a, 18, 19, 20, 21 and 22 were used by the public as of right and without interruption throughout the twenty years prior to use being brought into question and is sufficient to raise a presumption that the paths have been dedicated as public rights of way. I have also concluded that during these 20-year periods there is insufficient evidence of a lack of intention to dedicate and that the presumption raised by the user evidence has not been rebutted. As a result, I conclude that on a balance of probabilities, public footpaths subsist over these routes.
113. I have given consideration to whether footpaths 15, 16a, 18a, 19a and 20a could have become public rights of way at common law and have concluded that the owners would have had the capacity to dedicate if they so chose; that

the owners acknowledged the existence of public footpaths over the land in their dealings with contractors engaged in installing the sewer pipe in 2000 such that an intention to dedicate could be implied, and that the level of use of the paths (with the exception of footpath 20a) after 2000 was sufficient to demonstrate acceptance of the implied dedication.

114. I have concluded that footpath 20a does not satisfy either the statutory scheme or for an inference of dedication at common law to be drawn.

Conclusions

115. I conclude that the evidence discovered by the Council, when considered with all other relevant evidence available, shows that, on a balance of probabilities, rights of way on foot subsist along the claimed routes described in Orders A – B and D - N.

Formal Decisions

Order A

116. I confirm the Order.

Order B

117. I confirm the Order.

Order C

118. I do not confirm the Order.

Order D

119. I confirm the Order.

Order E

120. I confirm the Order.

Order F

121. I confirm the Order.

Order G

122. I confirm the Order.

Order H

123. I confirm the Order.

Order I

124. I confirm the Order.

Order J

125. I confirm the Order.

Order K

126. I confirm the Order.

Order L

127. I confirm the Order.

Order M

128. I confirm the Order.

Order N

129. I confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For the Council of the Royal Borough of Windsor and Maidenhead

Mr T Ward of Counsel, instructed by Mrs C Woodward, Shared Legal Solutions, Council of the Royal Borough of Windsor and Maidenhead, Shute End, Wokingham, RG40 1BN

who called

Mr A Hirst Parks and Countryside Team Leader, Council of the Royal Borough of Windsor and Maidenhead

Interested parties in support:

Mr T Woodham	Mrs K Driver	Mrs D Hughes
Mrs L Holden	Mr P Hughes	Mrs S Ettridge
Mrs K Straka	Mr D Stott	Mr L Blofeld
Miss Z Young	Mr N Wood	Mrs B Jeffries
Mrs J Hanson	Mrs S Turton	

In objection:

Mr Busbridge Director, Worby Estate Sales Limited

Mr F McDonagh

Inquiry documents

1. Two undated photographs of the gates at the Ouseley Road entrance (submitted by Mr McDonagh).
2. Appendices A – F to file 6 of Mr Busbridge's bundle of documents.
3. Letter from Mrs Fergusson dated 11 April 2018 with five appendices.
4. Two photographs dated 6 December 2012 showing Mr McDonagh installing kerbs on land adjacent to 2 Wharf Road, Wraysbury (submitted by Mr Hughes).
5. Copy of planning application made by Mr McDonagh for the construction of a five bedroom house on land adjacent to 2 Wharf Road, Wraysbury (submitted by Mr Hughes).
6. Signed copy of Mr Gunderman's statutory declaration made to the TVG inquiry (submitted by Mr McDonagh).
7. Closing submissions made on behalf of Council of the Royal Borough of Windsor and Maidenhead.



MAP NOT TO ORIGINAL SCALE

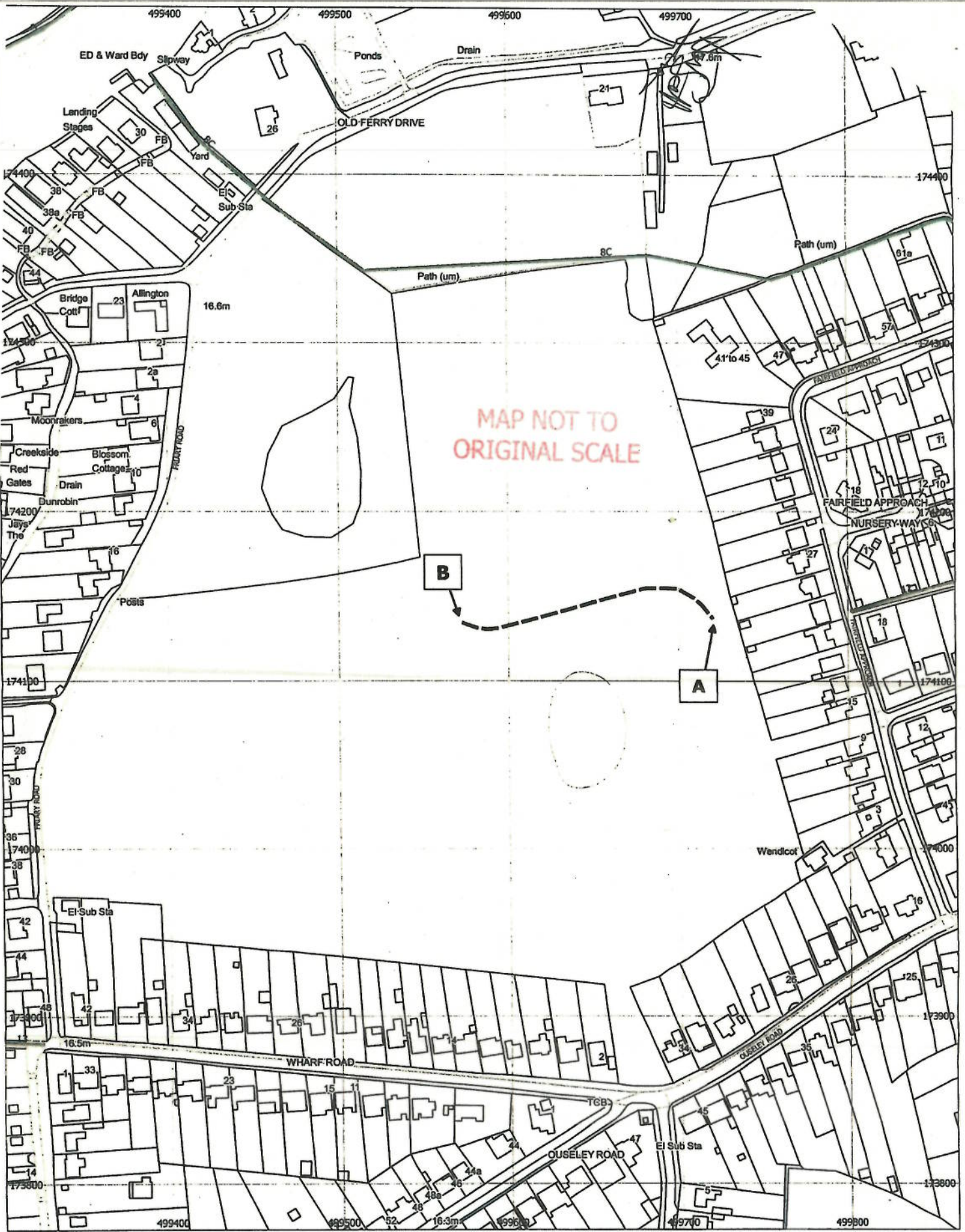
Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM053

Wraysbury Footpath 22

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

B

A

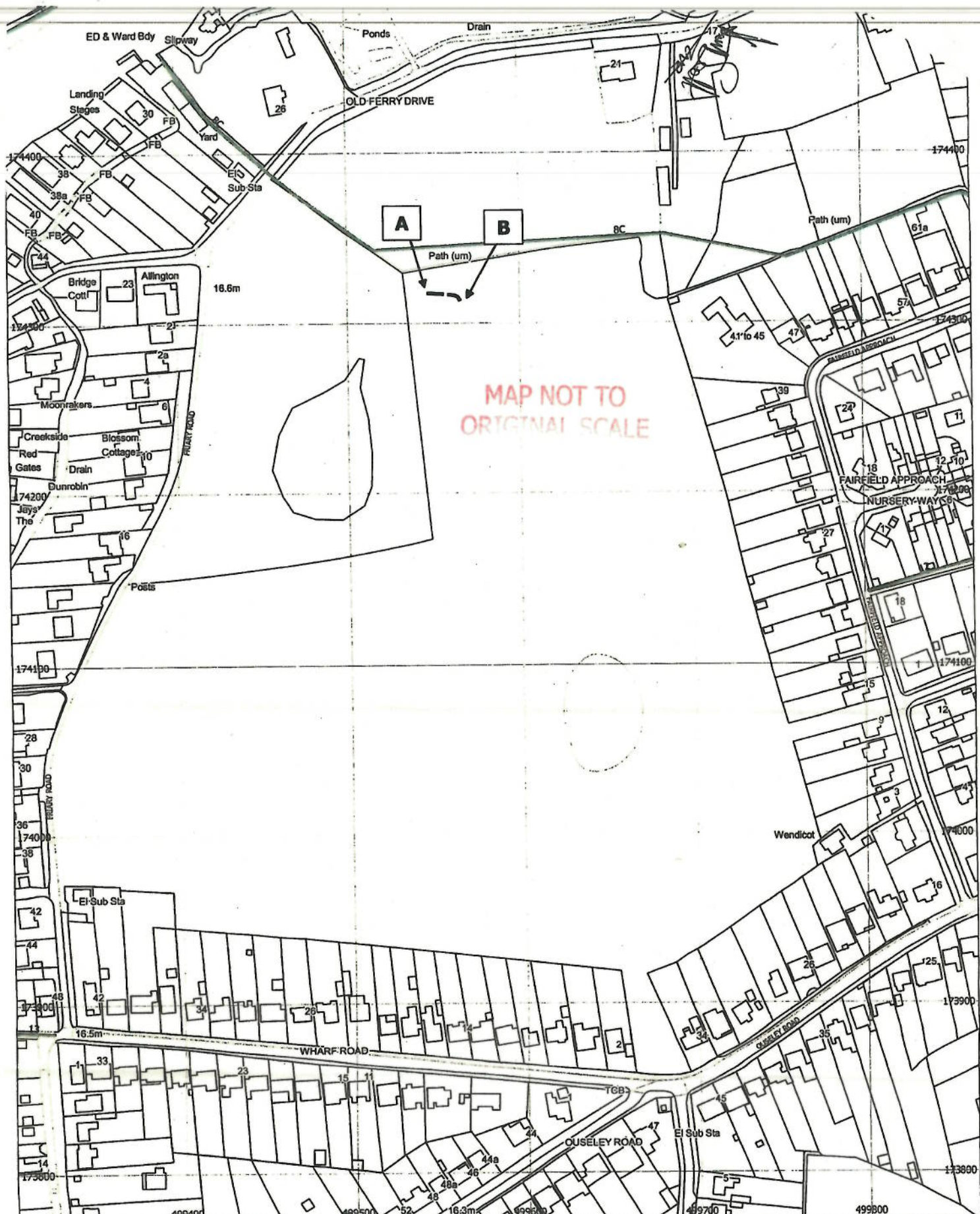
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 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM052

Wraysbury Footpath 21

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM051

Wraysbury Footpath 20a

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM050

Wraysbury Footpath 20

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

A B

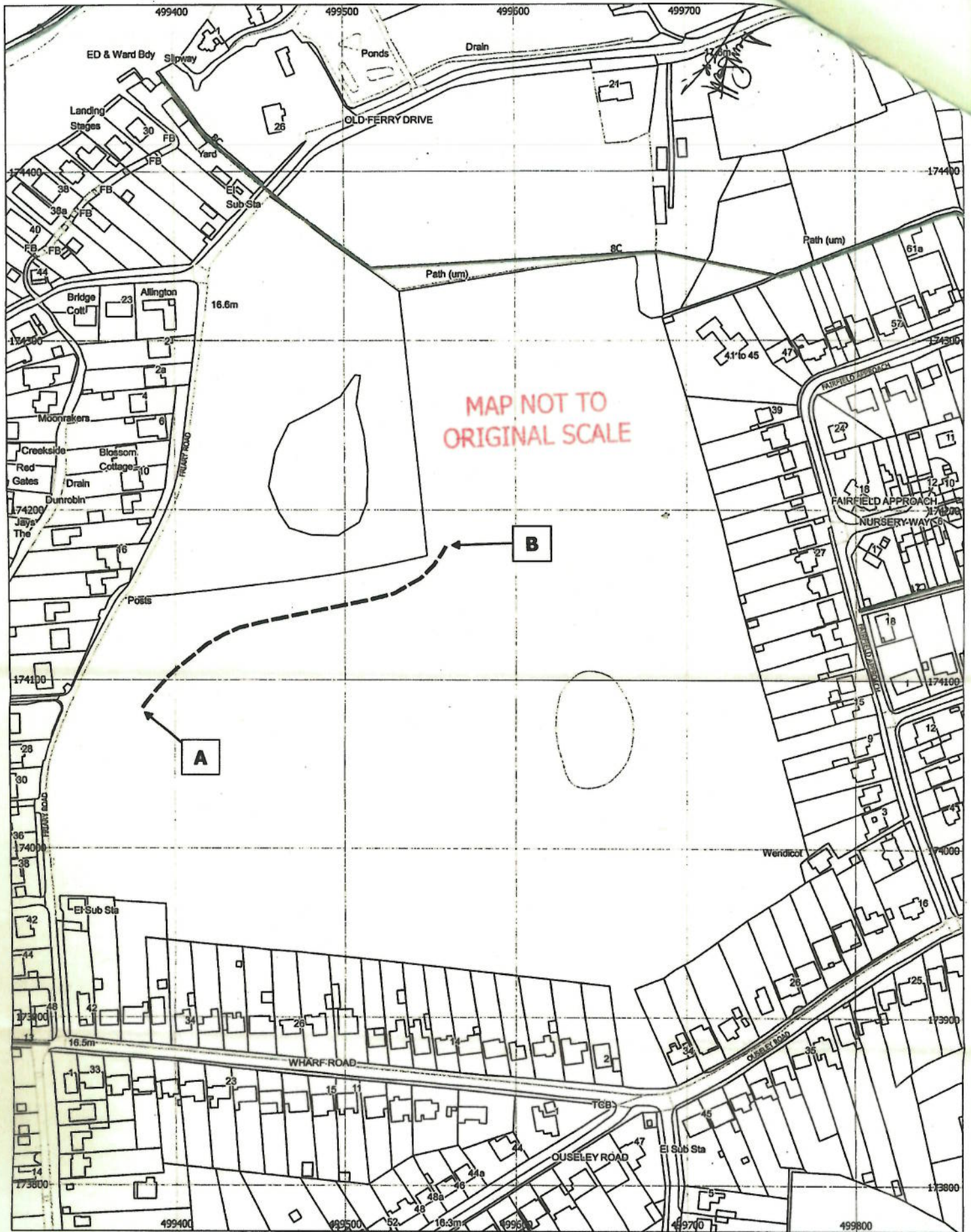
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Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM049

Wraybury Footpath 19a

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

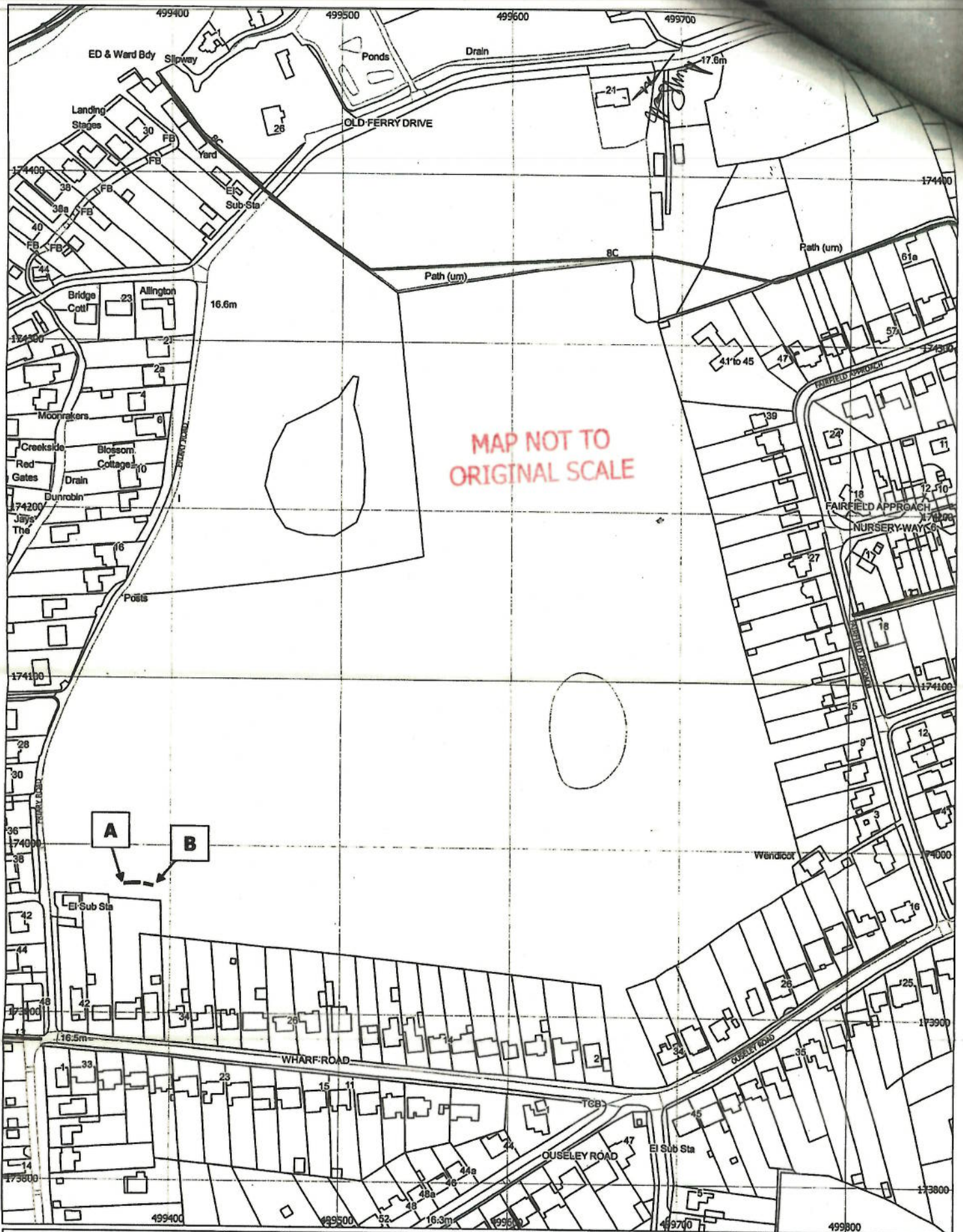
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Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM048

Wraysbury Footpath 19

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

A B

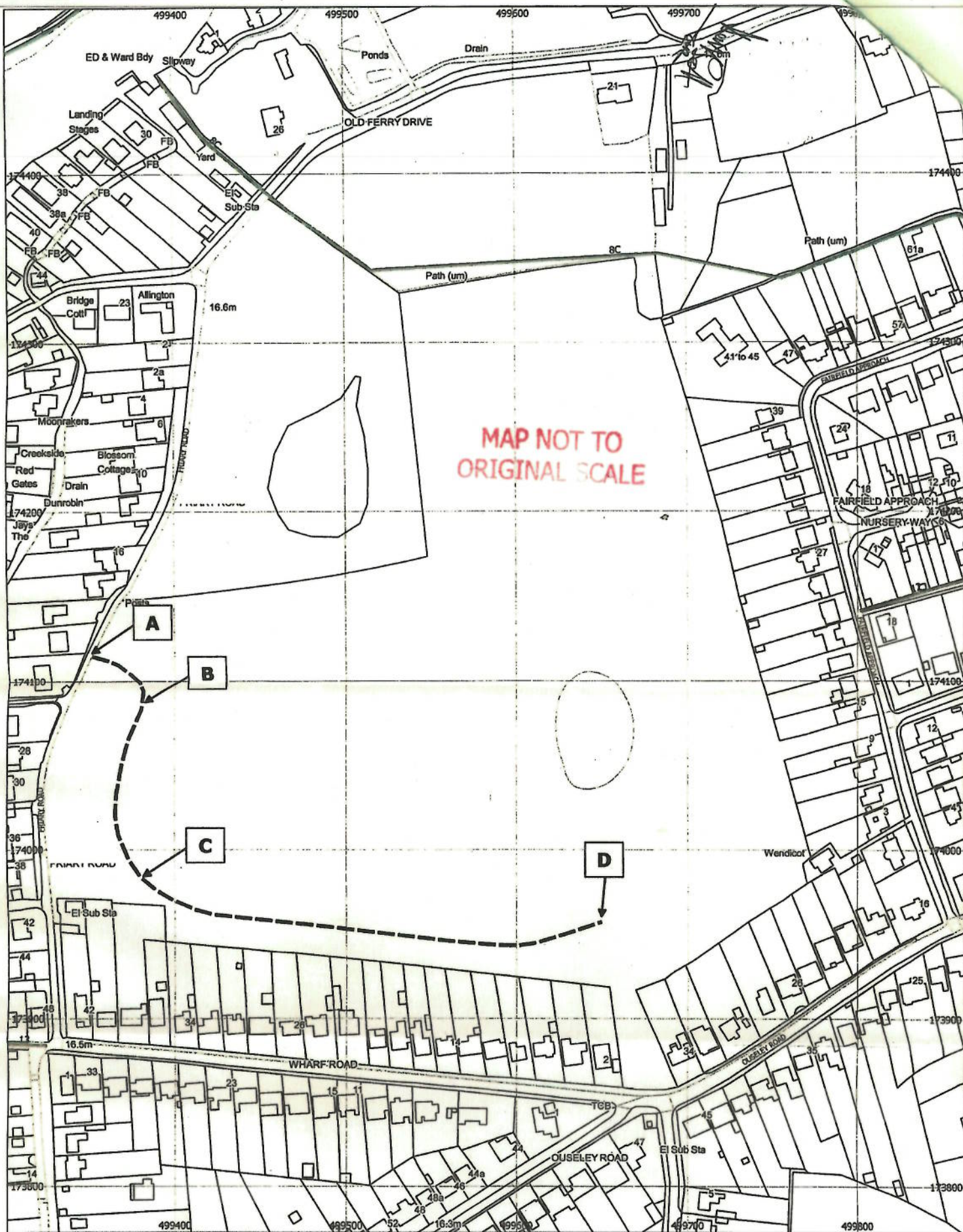
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 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM047

Waysbury Footpath 18a

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM046

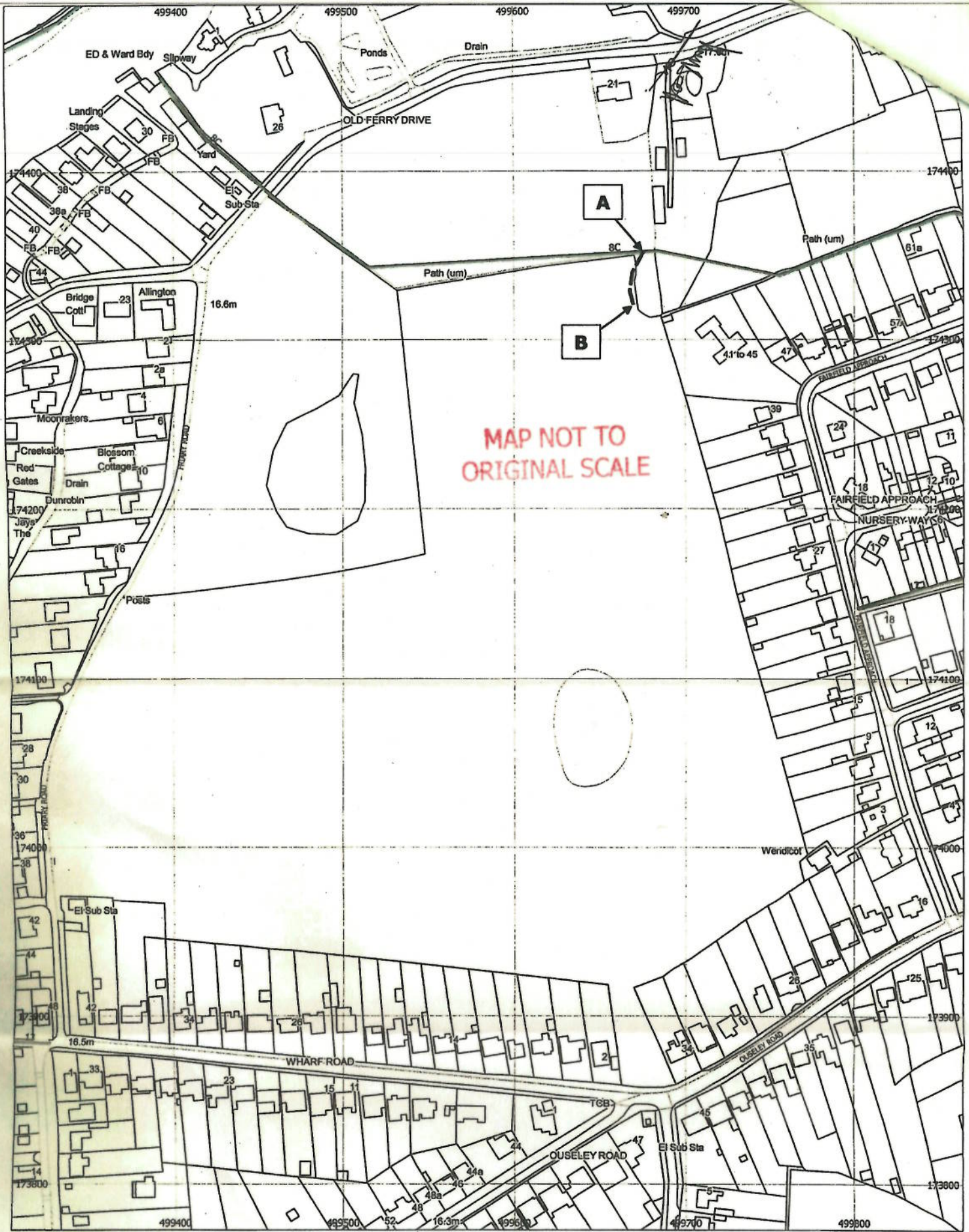
Wraysbury Footpath 18

- Footpath to be added to the definitive map
- Other paths unaffected by the order

The Royal Borough



Windsor & Maidenhead





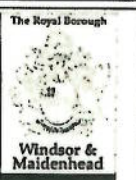
MAP NOT TO ORIGINAL SCALE

Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM045

Wraysbury Footpath 17a

-  Footpath to be added to the definitive map
-  Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

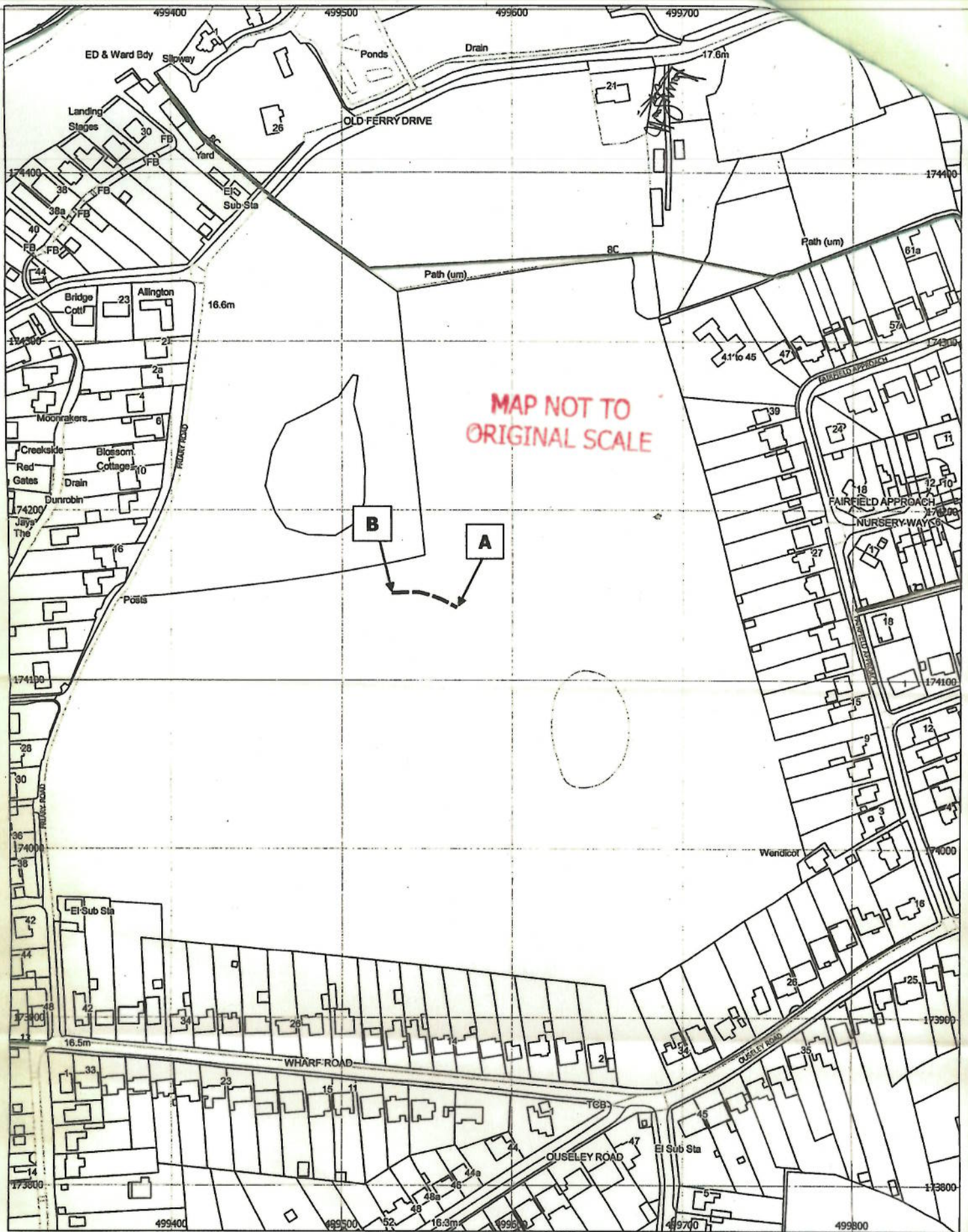
Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM044

Wraysbury Footpath 17

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

B A

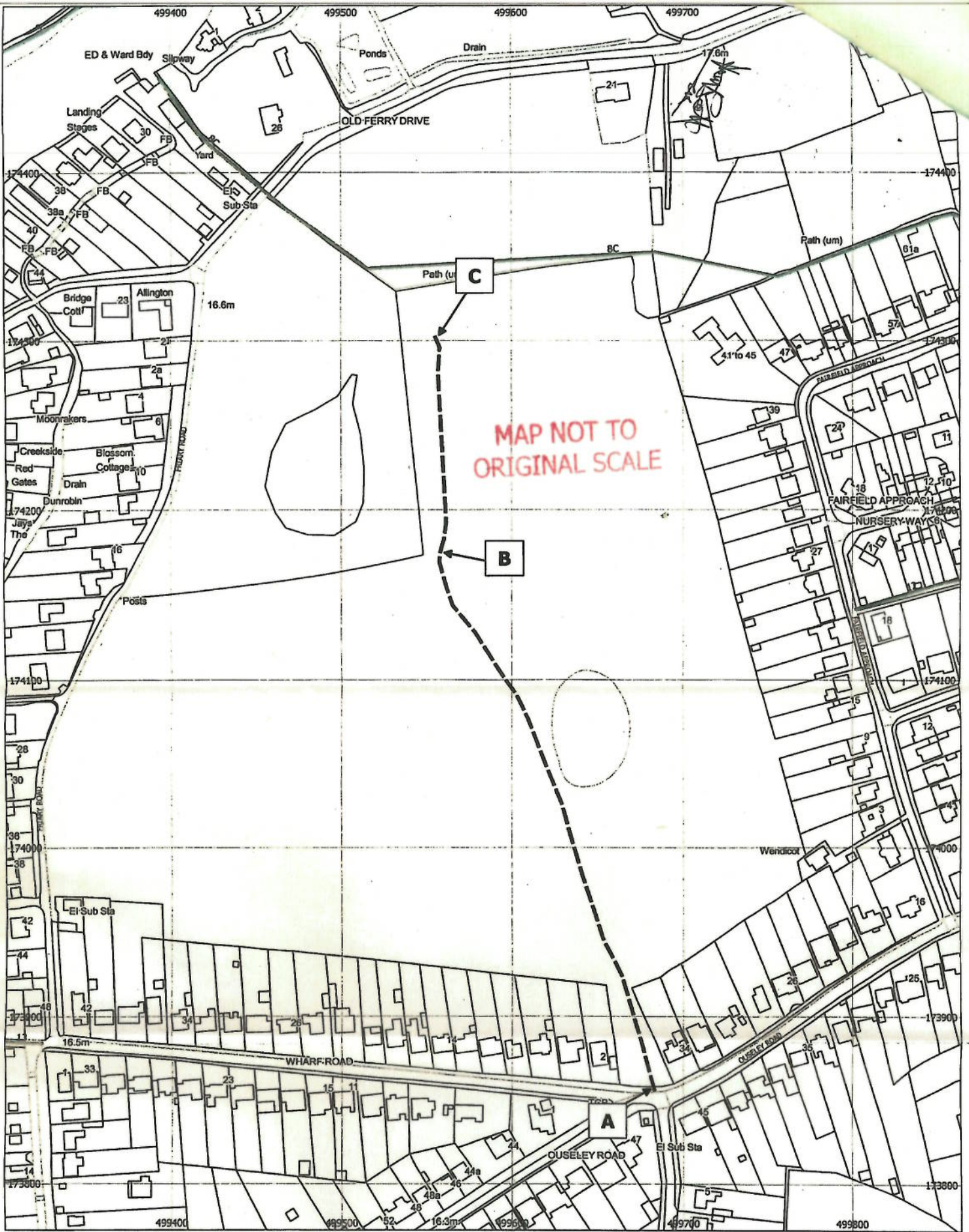
Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM043

Wraysbury Footpath 16a

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

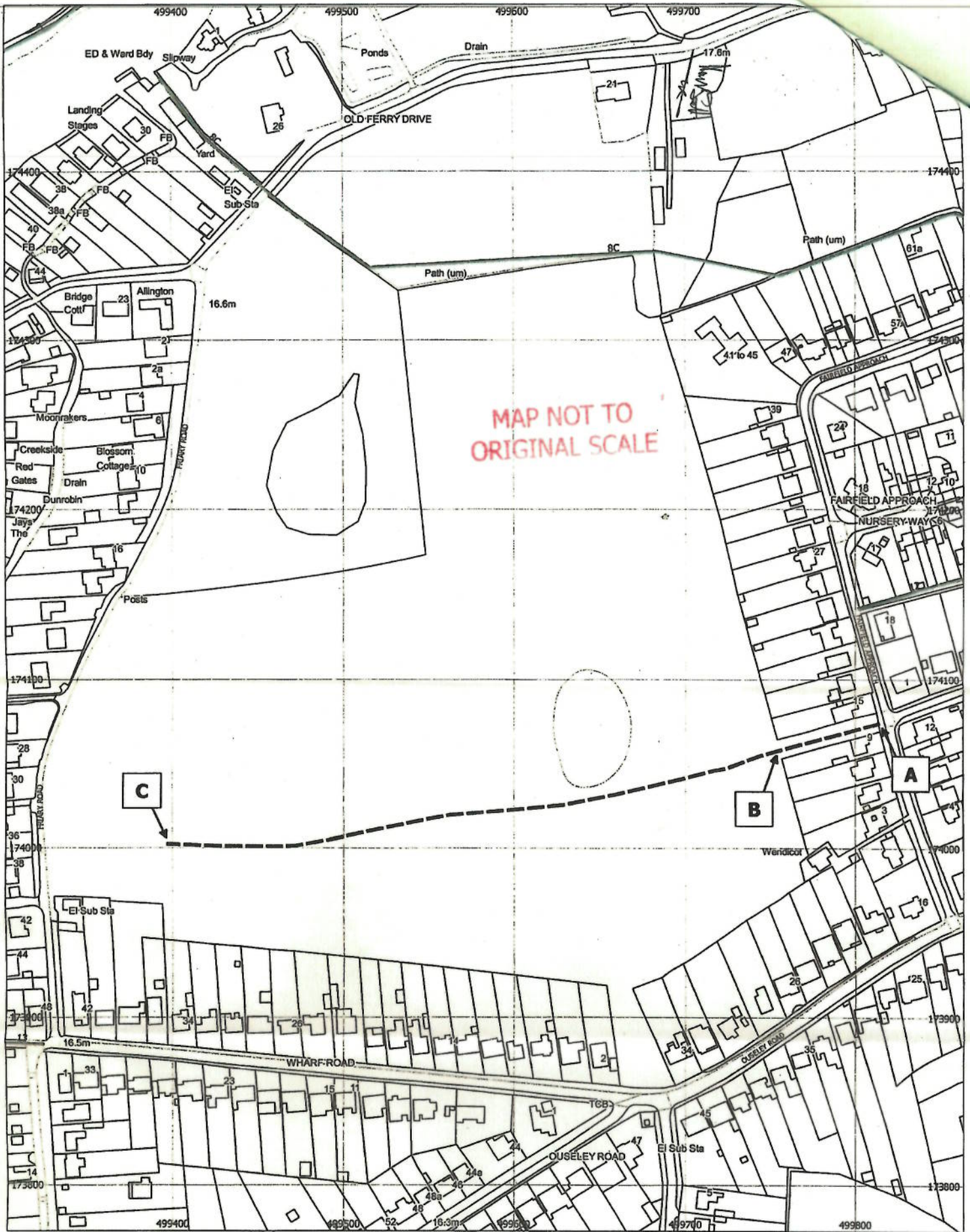
Public Rights of Way
 Drawn by: Andrew Fletcher
 Scale 1:2,000 @A3

Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM042

Wraysbury Footpath 16

- Footpath to be added to the definitive map
- Other paths unaffected by the order





MAP NOT TO ORIGINAL SCALE

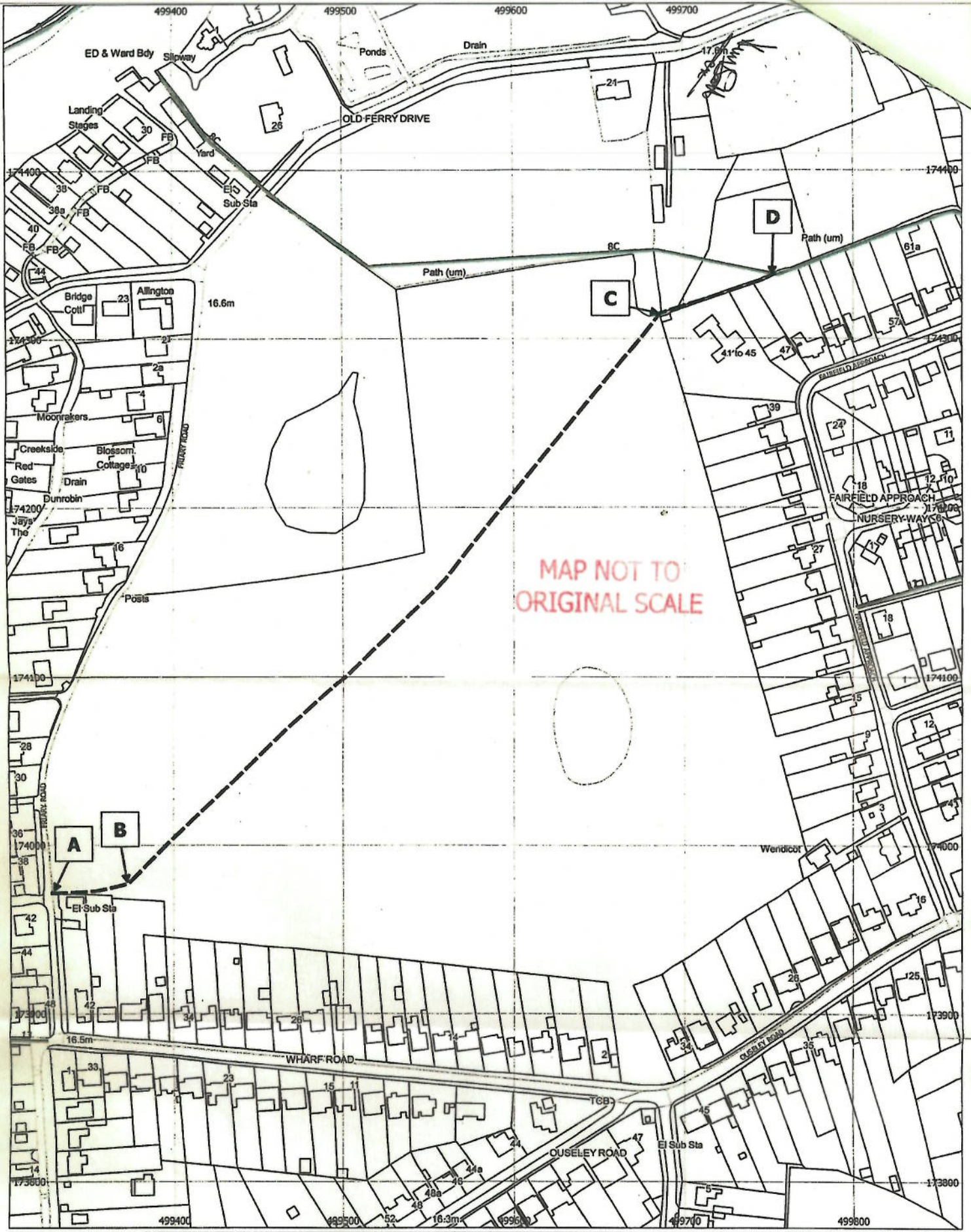
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Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM040

Wraysbury Footpath 14

- Footpath to be added to the definitive map
- Other paths unaffected by the order





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Wildlife and Countryside Act 1981
Definitive Map Modification Order RBWM041

Waysbury Footpath 15

- Footpath to be added to the definitive map
- Other paths unaffected by the order

