

## Full Council

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| <b>Title:</b>           | <b>Windmill Road – Stones Close Allotment Site</b>            |
| <b>Date:</b>            | <b>2 August 2022</b>  |
| <b>Contact Officer:</b> | <b>Graeme Markland, Neighbourhood Plan Continuity Officer</b> |

### Background

- 1) Windmill Road is a highway that has been in public use for at least two hundred years. Reliable mapping shows that both the windmill and Windmill Road were established prior to 1793-94 (see Fig.1, below).
- 2) Enclosure maps from 1826 (Fig.2) show that Thomas Stone owned or leased most of the field to the east of the Road up to what is now the Phoenix Trail. Both he and his neighbour would have accessed their land from Windmill Road. Land to the west of the road was in single ownership at that time, with access possible from both Windmill Road and what was then referred to as Bates Leys Road, now Moreton Lane.
- 3) Between 1862 and 1864 the Wycombe Railway Company first opened a service to Thame, and then onwards to Oxford. Around this time the land to the west of Windmill Road became sub-divided, primarily for orchard use as demonstrated by the 1919 Ordnance Survey map (Fig.3).
- 4) Ordnance Survey (OS) mapping demonstrates that the road served public allotments in Thame at least as early as the 1870s. These were accessed from the far south end of the road, immediately in front of the Windmill and what is now Meadowbrook House. By 1937, the old allotments were closed (the site became industrial land, now known as Thame 40) and the current, Stones Close Allotment site opened for public use. Stone's Close allotments are Statutory, having their retention ensured through the 1925 Allotments Act. At that time access was gained to the allotments from the site south of the current Allotment barn, as can be seen from aerial imagery taken in 1946 (Fig.4). This arrangement is still shown on current OS 1:25k mapping.
- 5) What is now Meadowbrook House presumably served as the domestic quarters of the windmill operators and later, farm buildings. An exception can be seen on OS mapping revised in 1919, which shows it to be an Isolation Hospital for Spanish Flu / Tuberculosis patients in the ownership of Thame Urban and District Council.

### Windmill Road ownership dispute

- 6) The current owner of Meadowbrook House has previously successfully registered ownership of a stretch of Windmill Road from the northern boundary of their house, in August 2020. The Town Council has no record of having been invited to comment on this application.
- 7) Thame Town Council received notification from the Land Registry on 1 May 2022 of the intent of Meadowbrook House to register ownership of the section of Windmill Road from their newly extended property line to the southern-most gateway of the existing entrance to the paddock accessed from the road's western edge. The owner made it clear to the Thame Community Land Trust (TCLT) that they were attempting to frustrate their development of 31 affordable homes.
- 8) The Town Council has been led to believe that at some cost, TCLT amended their application to move the site's entrance to the north to ensure access could still be gained. This required the

removal of a separate pedestrian access and footpath from the scheme that had been designed to draw Phoenix Trail users into the open spaces and small play area proposed as part of the scheme.

- 9) On 18 July 2022, Meadowbrook House's occupant informed TCLT of a second application they had made to register ownership of the remainder of the trackway, from their current gateway to the southern edge of the Phoenix Trail, National Cycle Route 57. Their intent to deny access to the TCLT was repeated. Recognising that other land interests could be affected, the TCLT notified the Town Council of this new application.
- 10) Due to Land Registry's workload neither application has yet been assessed. The Town Council believes it will be some weeks before the Land Registry will inform it of the second application.
- 11) Notwithstanding the TCLT's interest, four landowners would be adversely affected by this action. The party with arguably the greatest interest is Thame Town Council, who provide 165 plots for the use of at least 165 tenants (some plots are shared between individuals and households). Two landowners share the paddock land equally, Parties "A" and "B". A third party, "C", owns land south and west of the Phoenix Trail, and the part of Windmill Road the Phoenix Trail crosses over.
- 12) There are several possibilities as to why ownership has not previously been questioned:
  - 1) County Council mapping data indicates they maintain the road from the northern junction of Windmill Road and Elms Road to the point at which it joins the Phoenix Trail. However, the supporting information that accompanies the County's dataset claims that the extent of their control may not be guaranteed by any graphic representation. It is possible that the whole length of the road was adopted following a particular Act of Parliament but that the extent of the County's ownership has become lost over time (a public highway does not have to have a metalled surface).
  - 2) The issue has never arisen, as wider land ownerships have not changed for many decades.
  - 3) The Road may have been "orphaned" as a recognised, adopted highway following the construction of the railway.
  - 4) It may have been assumed that (as is commonly the case) the landowners on either side of Windmill Road own equal parts of the highway, up to the centre.

## **Main issues**

- 13) Any future assurance of rights of access for one or more of the affected parties could not be given regard. Were the application to succeed, the current or future owner of the trackway could act to restrict access in part or full for one or more of the interested parties at any point in the near or distant future. Furthermore, they could attempt to create a ransom strip for any or all of the parties, including the Town Council and its many allotment tenants. Even if swiftly resolved, the loss of part or all of a growing season would cause significant harm to the allotment holders, while the loss of use of their land for any period would similarly harm the owners of the paddock and potentially any stock kept there.
- 14) Stone's Close allotments are operated and run by the Stone's Close Allotment Society. The Council own the site and provides support for major items of expenditure or heavy work, such as new fencing and the relatively recent expansion of the eastern boundary of the site. The private ownership of Windmill Road could harm expansion or improvements of the allotment site, especially should the entry and egress arrangements have to be changed.
- 15) TCLT have acquired from SODC a resolution to grant permission for their scheme of 31 homes on the site and are awaiting the signing-off of their agreed legal planning obligations. While other access arrangements or legal channels would likely be pursued, the project could be further delayed by even the threat of this action. This would be regrettable, given the support the Trust has received to date from the Town, District and County Councils and the enabling funding the Trust has secured

from Government. It would hamper the provision of affordable homes for working families who have a strong local connection to Thame and whose needs are known of, now. A significant delay could require the expense of commissioning a repeat of the Town Council's local affordable housing needs assessment.

- 16) Should the current owner of Meadowbrook House be successful in their bid the Town Council is not without options. The 1908 Small Holdings and Allotments Act, for example, specifically permits the acquisition of land (through compulsory hire or purchase if necessary) including for land for approaches and roads "...and otherwise, as they think fit". Should this occur, it would be necessary to move to secure the Road to ensure the future of the allotments.

## Options

- 17) There are three courses of action available to the Town Council:
- 1) Do nothing.
  - 2) Work with other affected parties to object to the claims.
  - 3) Work with affected parties to both object to both claims and register ownership of Windmill Road.
- 18) Regarding Option 1), it is not guaranteed that the Land Registry would permit either of the initial or extended claims of registration. The objection of other landowners may be sufficient to counter the claim, as could the historic use the Road has seen. This option would have no immediate resource implication for the Town Council, but we would risk failing to best serve the interests of both the allotment and its current and future tenants if we do not act. Later compulsory purchase / hire arrangements could be deemed necessary but could be costly.
- 19) Option 2) would initially require minimal resource. It would be advantageous to pool knowledge and resources with other interested parties. This would, however, leave the matter of ownership of Windmill Road open to being raised again in the future and risk control of access to the allotments moving solely to another party. It is possible that a legal opinion would need to be sought to help counter the claim. While the fee for such a service is currently unknown, it is possible that the Town Council would be able to work through its insurer for either the advice or cost.
- 20) Option 3) would require 2) above and need an application to be made at Land Registry for an adverse possession claim. The sum involved for the latter is modest. Preparing an objection could require the Town Council to require legal counsel which may be attainable through our insurer's services. It would be sensible to work with the other landowning parties (A, B and C) to reflect their ownerships, too and thus provide assured access for all parties, including the current and future occupants of Meadowbrook House. Should ownership be granted to the Town Council, it should be assumed that the Town Council would become liable for a proportion of the ongoing maintenance costs for some or all of Windmill Road. If TCLT builds their scheme the approach to the Phoenix Trail from the north, the Phoenix Trail itself and the road leading to the site's entrance would all be brought to modern highway standards at the project's expense. Ongoing costs should remain light. Traffic south of the current allotment entrance serves only one domestic property, Meadowbrook House, meaning maintenance requirements would remain limited.
- 21) The NPCO has contacted parties A, B and C and they have expressed a willingness to meet with officers of the Town Council to discuss this issue within the very near future.

## Recommendation

- 22) To provide responsible, disinterested ownership of Windmill Road and to protect the current and future occupants of all land and property served by it, Councillors are recommended to choose Option 3).

Figure 1



Windmill Road and Windmill, 1793-94

From: Map of Oxfordshire, Cartographer Richard Davis

Source and Copyright Oxfordshire History Centre

Figure 2



Windmill Road and Windmill, 1826

From: Thame Enclosure Map Plan 3, South of Thame and the Towersey Public Road. Cartographer Richard Raine

Source and Copyright Oxfordshire History Centre

Figure 3



Windmill Road, 1919

From: Ordnance Survey Six-inch published 1922

Source: National Library of Scotland

Figure 4



Stone's Close  
Allotment Entrance  
1946

From: RAF Aerial  
Imagery

Source: Historic  
England