

WILTSHIRE COUNCIL STATEMENT OF CASE
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL TROWBRIDGE PATH NO.8 DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021 – D/2018/006
PINS Ref: ROW/3295476

1. Please also see:
 - Wiltshire Council Statement of Case (OMA SoC);
 - Wiltshire Council Written Representations - 17 November 2023.
2. The Inspector has confirmed that he will be considering:
 - i) Evidence regarding the modified parts of the Order;
 - ii) New evidence in respect of the unmodified part of the Order.
3. Following objections and representations to the advertised Order modifications, as set out in the Inspector’s Interim decision dated 12 February 2024, Officers of Wiltshire Council, as the Order Making Authority (OMA), submit the following Statement of Case:

Evidence Regarding the Proposed Modifications

Proposed modification to add limitation: *“The Wiltshire Council may permit posts or bollards to be erected between points X and Y on the Order Map to prevent use by mechanically propelled vehicles”*, and to add points X and Y at the appropriate points within the Order Map.

4. A limitation included in the definitive statement is intended to be a permanent feature of the path and any later modifications require a Definitive Map Modification Order (DMMO), to amend the particulars. DEFRA Rights of Way Circular (1/09) Guidance for Local Authorities states:

“4.16 ...Authorities should also record limitations and conditions, for example: gates and stiles along the way, and any other specification information which is appropriate. This provision is only applicable where the dedication of the route was subject to such limitations. For example it would be inappropriate to include a gate as a limitation where the gate was installed after a period of use giving rise to a statutory dedication. Under this circumstance the gate, or any other structure, would be regarded as an obstruction unless its installation fulfilled certain conditions and was formally authorised by the highway authority...

6.7 Stiles, gates and other structures on a public right of way are unlawful obstructions on a public right of way unless they are recorded on the definitive statement as a

limitation or it can be shown that the way was dedicated with such a structure despite not being recorded on the definitive statement (i.e. the statement requires updating) or have been authorised by the highway authority...”

5. The OMA considers that during the user period in question 1991-2011, two sets of posts have been in position at points X and Y on the Order Map, across the full width of the way and for the full period, therefore dedication of the route was subject to such limitation, and it can be added to the statement accordingly, as set out in the DEFRA guidance above. As such, the proposed limitation is not an obstruction.
6. The OMA agrees that there are alternative powers available to the Highway Authority to regulate traffic using Church Lane, e.g. Traffic Regulation Orders, or s.66 Highways Act 1980, without the inclusion of a limitation in the DMMO, however, Officers do not agree that the advertised modification of the Order to include the limitation, “...pre-empts the HA exercise of more appropriate powers and unlawfully circumvents the relevant advertising / consultation procedures stipulated by them”, for the following reasons:
 - DEFRA guidance sets out that the inclusion of limitations in Orders is acceptable and in this case the posts/barriers present throughout the relevant user period are a valid “limitation”;
 - The proposed modification has been advertised and consulted upon;
 - A limitation within the definitive statement would lead to the same outcome as the use of alternative powers;
 - A limitation may even give greater certainty to path users and residents where its inclusion is intended to be permanent, (e.g. s.66 of the Highways Act 1980 includes powers to remove/alter any works provided).
 - If posts/bollards are not recorded as a limitation with a specific location, under s.66 of the Highways Act 1980 the Highway Authority has powers to erect barriers etc, at any point on the highway which it considers necessary to safeguard users.
 - The use of a limitation does not preclude use of separate powers available to the Highway Authority to regulate traffic, if this becomes necessary.
7. Regarding the location of the proposed posts/bollards, the Surveying Authority has no new evidence regarding their location, in addition to the chronology of posts/bollards on site, as set out in the OMA SoC (paras 10.6. – 10.20. p.45-59). There is a long history of posts across the width of the way to prevent vehicular traffic from 1962-present, however, there is also evidence of a field gate at the northern end of Path no.8 at the junction between Acorn Meadows and Church Lane, as can be seen in the Trowbridge Urban District Claim survey card for Footpath 8, which sets out: “...ends...in dilapidated field gate.” (see para 9.5. p.38-39 and p.1266 OMA SoC), and OS mapping before 1950 records a solid line at the northern end of Church Lane, (see

para 9.10. p.41 and p.1286-1296 OMA SoC), however, the gate/solid line does not appear to continue in the relevant user period 1991-2011.

8. With regard to the properties [REDACTED] and [REDACTED] and access to those properties from Church Lane and/or Acorn Meadow, Wiltshire Council cannot comment on private rights, the Order seeks only to correctly record public rights of way. It is noted that there have been 2 sets of posts at the northern end of Church Lane since 1975 and whilst there is reference to a removable post for access to property in the first set of posts erected south of [REDACTED] in 1962, there is no reference to a removable post in the second set of posts erected in 1975, which suggests that there has been no vehicular access possible, since that date, (see chronology of posts/bollards at OMA SoC paras 10.6. – 10.20. p.45-59).
9. At the making of the Order, a number of objections were received regarding the “opening up” of Church Lane as a potential through route to vehicles. The proposed limitation allows Wiltshire Council as the Highway Authority to erect posts or bollards to prevent vehicular traffic, which addresses those concerns. However, one resident refers to motorcyclists riding through despite the current chicane barrier; two representations refer to the current chicane and fence installed in 2011 in preference to posts/bollards which would not have restricted such use; and one resident does not believe that the posts/bollards proposed will restrict motorcycles and mopeds. The inclusion of a limitation does not include consideration of anti-social behaviour or the security of property, but reflects features present on the path at the time of dedication, and in the use of s.66 of the Highways Act 1980 the only consideration for the provision of barriers, posts, rails or fences in the highway, is for the purpose of safeguarding persons using the highway. However, the type of barrier will need to be carefully considered to allow bridleway traffic, but be effective in preventing use by motor vehicles, to prevent use of Church Lane as a through route, as was the purpose of these posts historically and the current limitation proposed. The wording of the proposed limitation “posts or bollards” reflects the nature of the original posts/bollards present throughout the user period 1991-2011, but may be too restrictive to allow the Highway Authority to install the most appropriate barrier. Officers suggest alternative wording for the proposed limitation as “barrier” to prevent use by mechanically propelled vehicles.

Proposed Modification to Add a Minimum Width of 7m:

10. The modification proposed to add a minimum width to the Order of 7m, refers only to a section of the Order route at Church Fields, where the area of highway maintainable at the public expense (HMPE) was excluded from the Order Map showing the extent of the footpath proposed to be upgraded. OS mapping records the route of Church Lane between boundaries consistently, varying between 7m – 13m, the 4m minimum

width set out in the Order being the extent of bridleway, excluding the extent of HMPE. Where the extent of HMPE already carries public rights, users of the bridleway would observe no difference on the ground, the full width of Church Lane being available for use on foot; on horseback and with bicycles.

11. There are no representations/objections specific to the extent of the bridleway incorporating the section of HMPE at Church Fields. Therefore, objections to the minimum width of 7m on other parts of the path, or the full length of the path, are objections to the unmodified part of the Order and are not considered under the heading of evidence in respect of the proposed modification.

New Evidence in respect of the unmodified part of the Order

12. There are a number of objections to the proposed modification to increase the minimum width of the Order route to 7m. The Order width varying between 7m (4m if HMPE is excluded) – 13m, is taken from OS mapping which consistently records the width of Church Lane, between solid boundaries, (see OS mapping p.1286 – 1296 OMA SoC and consideration of the width evidence set out at paras 10.64. – 10.70. p.83 - 86 OMA SoC).

13. The alternative widths suggested include:

- Between 1.5m – 4m;
- Witness evidence – 5m;
- In last 20 years cannot recall the lane at the north end being any more than a gravel path and verge.

The Inspector has been presented with the witness/documentary evidence regarding width and has already considered this in his interim decision, see paras 10.64. – 10.70. p.83 - 86 OMA SoC.

14. Cllr Vigar in correspondence dated 3 May 2024, submits a new photograph and measurement at Fig.5: “...close to ■ Church Lane...I measured the width of the surfaced road at one of the narrowest sections as 3.7m.”, (the path adjacent to ■ Church Lane is not within the extent of the proposed modification and this evidence relates to the unmodified part of the Order). However, this measurement takes into account only the metalled area. During the accompanied site visit on 19 December 2023, measurements of Church Lane were taken between boundaries to the centre of hedge. The Planning Inspectorate Rights of Way Advice Note 16, now Annex L of Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders html – Widths on Orders (updated 20 November 2024), considers the inclusion of a width in a DMMO:

“24.4.2. ...Determination of the width will, if not defined by any inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or where there is no such clear evidence the type of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features, may dictate what may be considered reasonable...This width may well be greater than the width of the “trodden path”...

24.4.4. In some cases, the width of the way to be recorded may vary frequently along its length making a simple written description difficult. In such cases a suitable form of wording might say ‘varying between X metres and Y metres as shown on the order plan’...Alternatively, reference may be made to other reliable sources of mapping that may be available, for instance the Ordnance Survey 25” County Series maps. Although it may not be possible to scale off precise measurements from such maps, they may indicate where significant variations of width occur between the minimum and maximum figures.”

15. In order to record the width of 7m, the Highway Authority will not be required to undertake works to remove trees/hedges etc, as the guidance above sets out, the OS 25” mapping can provide evidence of the width and the width may be greater than the “trodden path”.
16. One Objector refers to the Rights of Way Act 1990, which at s.1 amends part 9 of the Highways Act 1980, in particular the minimum and maximum widths set out in Schedule 12A of the Highways Act 1980 – Further Powers of Highway Authorities and Councils in Relation to Interference with Highways:
 - Minimum width - para 1(3)(a)(iii) *“as respects a bridleway which is not a field-edge path, 2 metres...”*;
 - Maximum width - para 1(3)(b)(ii) *“as respects a bridleway, 3 metres...”*;
 - Para 1(2) - *“In any case where the width of the highway is proved, that width is both the “minimum width” and the “maximum width”.*

In the Church Lane case the OS mapping provides evidence of a width for the path, (on the balance of probabilities), which supports user evidence of the width available during the relevant user period 1991-2011, therefore, there is no requirement to revert to the minimum/maximum widths set out in this legislation.

17. Two Objectors include as new evidence the 2011 planning application and permission granted for the building of the bungalows ■■■ and ■■■ Church Lane (W/11/00419/FUL). Objectors claim that the planning documents show that Wiltshire Council did not consider the full width of Church Lane to be a public footpath. A background to the application is as follows:

- i) 13/05/2008 - 08/00965/FUL planning permission granted for two bungalows with access from north-west (Acorn Meadows).
- ii) 04/02/2011 - Application W/11/00419/FUL, construction of pair of semi-detached dormer bungalows and associated parking areas; with revised vehicular access from south-east (Church Lane), *“alongside the public right of way.”*

In the Delegated Report dated 16/05/2011, the Planning Officer acknowledges that the principle for erecting a pair of semi-detached dormer bungalows is already established by the granting of planning application no.08/00965/FUL.

The report confirms that the ownership of Church Lane is unknown:

- 3 *“Access to the site is on land which is not owned by the applicant...There is a non vehicular public right of way which runs from Church Lane to Acorn Meadow past the application site.”*
- 9.2 *“As part of the application proposals, the applicant proposes to remove the existing bollards on Church Lane to allow access to his site and relocate them towards the end of Church Lane (close to the north west corner of the site, but outside his ownership and outside the defined red line boundary of the application site).”*

There are no objections maintained, subject to the relocation of the bollards being conditioned.

- iii) 16/05/2011 - Planning permission is granted with a series of conditions *“In the interests of highway safety and in order to protect the integrity and use of the public rights of way.”*, and condition 2:
*“2 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming the exact type and siting of the relocated bollards on the public right of way. The dwellinghouses shall only be occupied after the relocated bollards have been installed in a position agreed in writing by the local planning authority. The bollards shall thereafter be retained and maintained for the lifetime of the development hereby approved.
REASON: In order to prevent the formation of an unauthorised through-road from Frome Road/Church Lane to Acorn Meadow and to limit the amount of traffic generated along Church Lane.”*
- iv) 20/06/2011 - The Applicant submits plans for approval of details reserved by condition (discharge of condition 2), including drawing no.LDC.1514.002C, which proposes a chicane barrier at either end of the site on the right of way; a 3' high post and wire fence against the east edge of the surfaced extent of the

right of way; gated entrance and a wall extending southwards, (onto part of the extent of the bridleway now proposed).

In e-mail correspondence with Cllr J Osborn (undated), the Planning Officer confirms: *"...I have instructed my highways colleagues to assess the impact of the proposals (the construction of the wall, the gated entrance and the post and wire fencing) on the PROW, the openness of the Lane...*

Point 3...raises concerns about the adjoining hedgerow and the width of the existing footpath to accommodate two prams, these do not raise planning concerns, however you may wish to raise this with David McMahon [Highways] / Richard Broadhead [Rights of way and Countryside Manager] to see if they wish to provide any comment thereto..."

In an e-mail dated 29/06/2011 the Planning Officer confirms that the details are unacceptable: *"Firstly, the submitted detailed plan show[s] a wall being built across the land, when condition 2 of the decision notice clearly states that bollards are sought. A 3ft high post and wire fence is proposed to separate the drive from the PROW – this isn't something that has been discussed previously, and I do have concerns about the site being closed off in the manner shown. Lastly, the applicant proposes to form gates – which again is something that was never considered at the application stage..."*

- v) 07/07/2011 – The Council confirms that it cannot agree to discharging condition 2: *"Your submission fails to provide such details [as required at Condition 2] and instead proposes the erection of a block faced wall and chicane, install gates and a fence alongside the PROW, all of which were not part of the application and nor do they form part of any associated planning condition. The proposed enclosures (the wall, the fence and gate) would effectively close off the frontage of the dwellinghouses and extend the perceived and functional domestic curtilage by stealth. I cannot agree to such proposals..."*

- vi) 23/08/2011 - The Applicant submits drawing no.LDC.1514.01Conditions detailing: Position of railings on line of existing bollards; Create full chicane to deter pedal and motorcycle use of the footpath; Widen surfaced portion of public right of way to accommodate chicane; Form drive at same level of surfaced portion of public right of way. The plan shows a chicane barrier at the north-edge of the site and no fence against the east edge of the surfaced section of the footpath, (shown by a broken line). It is also noted that the chicane barrier and railings span the whole width of the area between the fence/hedge on the west side of Church Lane, and the garden wall of the property on the east side.

- vii) 27/09/2011 – Development Control confirms that the revised proposals in the discharge of condition 2 are acceptable.
- viii) 30/11/2011 – Delegated Report – Variation of conditions 7 and 8 relating to planning permission W/11/00419/FUL, including the following condition:
“1 The dwellinghouses hereby approved shall not be occupied unless and until the barrier chicane as shown on drawing no. LDC1514.01Conditions has been installed in a position agreed in writing by the local planning authority. The barrier shall thereafter be retained and maintained for the lifetime of the development hereby approved.
REASON: In order to prevent the formation of an unauthorised through-road from Frome Road/Church Lane to Acorn Meadow and to limit the amount of traffic generated along Church Lane.”
18. The current chicane barrier was installed as a condition of the planning permission granted, at a location agreed and to be retained and maintained for the lifetime of the development approved. However, Officers comment that the DMMO is made based on the 20-year user evidence period 1991-2011. The planning permission granted and the erection of the barrier in 2011, brings public use of the route into question, whereby users could no longer use the route/full width, due to the barrier erected. In other words, users had acquired public bridleway rights over the whole width of Church Lane over a 20-year period prior to the planning permission and erection of the current barrier in 2011, therefore, the details of the planning permission are not relevant to the user period in question. It is considered that prior to 2011 the public would have had use of the full width lane, as seen in the user evidence regarding width of the path already considered by the Inspector, (see paras 10.64. – 10.70. p.83 - 86 OMA SoC).
19. Although it is acknowledged that the red-line planning area for application W/11/00419/FUL, (as included at Fig.1 of Cllr Vigar’s correspondence dated 3 May 2024), includes part of the width of Church Lane proposed to be upgraded to bridleway, the OS mapping boundaries for Church Lane accord with the Land Registry plan and extent of land ownership, i.e. there is no registered owner of Church Lane. The granting of planning permission does not override highway rights and does not legally stop up the width of the highway or any public rights acquired, (on the balance of probabilities), during the 20-year period prior to the building of the bungalows. The planning permission does not stop up that part of the highway now taken within the drive, irrespective of the planning conditions.
20. There is concern amongst residents regarding the removal of the fence running within the path at the northern end, (the north-south fence, as shown in red on the plan

included at para 21). There is no new evidence submitted to suggest that this fence was present during the user period in question of 1991-2011, and is only erected following the planning permission granted in 2011, which brings public use of the route into question. There is no evidence in the 2011 planning documents that this fence was erected as part of the planning conditions, it first appears as a “3’ high post and wire fence” against the east edge of the surfaced section of the footpath in the first discharge of condition 2 proposals submitted by the Applicant (20/06/2011). The Planning Officer comments in e-mail correspondence dated 29/06/2011 that: “A 3ft high post and wire fence is proposed to separate the drive from the PROW – this isn’t something that has been discussed previously, and I do have concerns about the site being closed off in the manner shown.” This proposal was rejected and the Applicant submitted a revised plan LDC.1514.01CONDITIONS, which does not include the fence, (the eastern edge of the surfaced footpath is shown as a broken line), and the driveway is to be constructed at the same level as the footpath: “Form drive to same level of surfaced portion of public right of way”. The revised submission was accepted in the discharge of condition 2, therefore, Officers do not consider that the north-south fence is constructed as part of the planning application/conditions. The Planning Officer states the preference for the “openness” of the site without enclosure, (see photographs c.2011 and current, included at para 21, for comparison).

21. The following photographs document the changes to the barriers/fencing at the north end of Church Lane c.2006; c.2011 and current. Also attached is a plan showing the north-south fence as a red line and the extent of proposed bridleway at the north end:

c.2006 – posts south of [REDACTED]:



c.2011 – the chicane barrier without the east-west fence, (the north-south fence is present):



Current barrier arrangement with east-west and north-south fences present:





Plan showing the extent of proposed bridleway (shaded green) at the north end of Church Lane (at the properties ■ and ■ Church Lane). The existing north-south fence is shown by a red line.

Please also note the garage building ■ Church Lane), which is not located on the proposed extent of bridleway.

22. The user period in question is 1991 – 2011, the posts and bollards present since 1962/1975 are features of the lane accepted by the public during that period of user. The north-south fence is installed in 2011, outside the relevant user period, therefore, it cannot be said that highway rights have been acquired through a long user period subject to the north-south fence. It is likely that this fence forms an obstruction of the existing right of way.
23. One Objector also includes Rights of Way Officer comments in respect of Planning Application no.19/10546/FUL, erection of detached garage at ■ Church Lane. Whilst the garage is not located on the area of land proposed to be upgraded to bridleway, (as seen on the plan above), the Definitive Map and Highway Records Technical Officer noted in formal representations dated 03/12/2019, that the property is accessed by Footpath TROW 8, with no public vehicular right recorded. In order to drive a vehicle along the footpath, the Householder would require a demonstrable private right of vehicular access and without this the Householder would be committing an offence under s.34 of the Road Traffic Act 1988, (the granting of planning permission did not give the Applicant or Householder a vehicular right of access over the footpath). The Officer outlined the constraints of the site providing inadequate space to enable vehicles to enter and leave the site in forward gear and provision for visibility when exiting the property onto the public footpath which may have an adverse effect on pedestrians. However, assuming that the Applicant had a private vehicular right of

access and adequate visibility could be provided, Rights of Way did not object subject to two informatives to *“ensure the public right of way remains available and convenient for public use.”*

Planning was approved subject to conditions, the Planning Officer in their report (04/12/2019) confirmed: *“There is an area of land in unknown ownership between the site and the PROW and this is the area used for manoeuvring in and out of the existing spaces. The PROW is separated from this area by a low fence...
...the concerns raised in the Highways comments and the PROW comments have been addressed through research of the planning history and confirmation of the approved parking layout on the site...”*

24. Again, the planning application and permission granted in 2019, are outside the relevant user period of 1991-2011, being considered in this case.
25. One of the Objectors sets out that the user evidence demonstrates Church Lane as a way whose main lawful use by the public during the period of 5 years ending with commencement of the Natural Environment and Rural Communities Act 2006 (NERCA), on 2 May 2006, was use for mechanically propelled vehicles and that the interim decision is factually incorrect and places unwarranted restriction on the meaning of the public in s.67(2)(a) NERCA. No new evidence on this point is submitted with the representation, the Inspector has already considered the available user and documentary evidence in the interim decision and concludes bridleway status, on the balance of probabilities.

Conclusions

26. Officers consider that posts have been present on the northern section of the path and across the full width of the way, at point X (since 1975) and at point Y (since 1962), historically to prevent vehicular access and use of Church Lane as a through route. Given the relevant user period of 1991-2011, dedication of the route as a bridleway has taken place subject to these posts and they are a valid limitation at this location. Officers would add only that the nature of the new barrier will need to be carefully considered as it will need to address the full width of the bridleway and prevent vehicular use of Church Lane, yet allow access on foot, with bicycles and on horseback, therefore the wording “posts or bollards” may be too restrictive to enable the Highway Authority to erect the most appropriate barrier. Officers suggest alternative wording for the limitation as “barrier” to prevent use by mechanically propelled vehicles.
27. With regards to the location of the barrier, Officers note the longstanding presence of posts/bollards at points X and Y, however, there is also evidence of a field gate at

point B on the Order plan at the junction of Church Lane and Acorn Meadows, but this does not appear to be present during the relevant user period 1991-2011.

28. There is insufficient evidence submitted in relation to the unmodified part of the Order to lead the OMA to recommend further modification. The planning documents submitted are outside the user period in question, however, they do highlight that whilst the current chicane barrier was installed to replace the existing posts to prevent vehicular use of Church Lane as a through route which has been a concern historically, the current north-south fence is not erected as part of the planning application or conditions. This fence is likely to form an obstruction on the existing public right of way.
29. For the reasons set out above, the OMA respectfully requests that the Order, as modified in the interim decision dated 12 February 2024, be confirmed, with amendment of the proposed limitation of “posts or bollards”, to “barrier” to prevent use by mechanically propelled vehicles.

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11 December 2024