Planning Inspectorate

Order Decision

Accompanied site visit undertaken on 5 February 2025

by Mark Yates BA(Hons) MIPROW

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

Decision date: 13 March 2025

Order Ref: ROW/3325712

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Wiltshire Council Charlton St Peter 2, 6 and Wilsford 5 Definitive Map Modification Order 2023.
- The Order was made by the Wiltshire Council ('the Council') on 22 February 2023 and proposes to upgrade existing public rights of way in the parishes of Charlton St Peter and Wilsford to restricted byway status ('the Order routes').
- There were four objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. All of the points referred to below correspond to those delineated on the Order Maps. The Order proposes to make the following modifications to the definitive map and statement:

    - Firstly, upgrade sections of Charlton St Peter Bridleway 2 ('CSP2') and Wilsford Bridleway 5 ('W5') to restricted byway status. This route is represented between points A-B-C on Order Map 1 and is referred to below as the 'western route'.

    - Secondly, upgrade sections of CSP2 and Charlton St Peter Footpath 6 ('CSP6') to restricted byway status. This is represented between points D-E-F on Order Map 2 and is referred to below as the 'eastern route'.

2. I note the resolution of the Council's Eastern Area Planning Committee that the Order should be confirmed with modifications. The recommended modifications related to the removal of the proposed change in status for CSP6 on safety grounds as it meets the A342 Road at point F. Safety was a key concern raised in the objections to the Order.

3. Whilst the safety concerns are understandable given the nature of the A342 Road, I need to consider what rights exist over the Order routes in light of the main issues set out below. Safety and other factors in relation to the potential impact of a route having a particular status are not matters that I can have regard to when reaching my decision. Therefore, there is no need for me to consider these issues further. In terms of the widths specified in the Order, this would need to be primarily determined from the evidence of the historical width for the routes in the event that higher public rights are found to exist.

4. One of the two applicants for the Order (the British Horse Society) has submitted a statement of case in which it is requested that the Order is modified to upgrade another section of CSP2 to restricted byway status on the basis of the historical evidence. I shall consider the evidence in relation to this route which in essence serves as a link between the two Order routes and I will refer to it as the 'central route'.

Main Issues

5. The Order relies on the occurrence of an event specified in Section 53(3)(c)(ii) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. The additional modifications proposed in the Order under Section 53(3)(c)(iii) of the Act would arise as a consequence of the upgrading of the rights of way.

6. The case in support relies on documentary evidence in relation to the dedication of higher public rights at some unknown date in the past. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

7. None of the exemptions in Section 67(2) or (3) of the Natural Environment and Rural Communities Act 2006 are stated to be applicable and therefore any public right of way for mechanically propelled vehicles is extinguished. This means that if historical public vehicular rights are shown to exist, the appropriate status would be a restricted byway.

Reasons

Inclosure evidence

8. There is no plan with the Carlton St Peter Inclosure Award (1780). However, the Council draws attention to a reference in the award to what is believed to be the eastern route. One of the awarded public roads (likely to be the present Byway 7) is described commencing at the turnpike road (the present A342 Road) opposite to *'a lane in the village of Carlton called White Lane'.* There is other evidence considered below which indicates that White Lane was the name of the eastern route. White Lane was not included in the award which could suggest it was an ancient highway. Nonetheless, it clearly served as a direct continuation of a public road on the opposite side of the turnpike road and is described leading into the village of Carlton at the time. The weight to be attached to the award in respect of the eastern route will be limited to some extent given that the award did not directly address the status of this route. However, I consider that it carries a fairly significant amount of weight in support of the eastern route being a historical public road.

9. The award also set out a road called Wilsford Road which is described as *"One other public road of its present breadth being more than the breadth of forty feet branching out (document damaged) turnpike road at the south east of a furlong called townsend furlong and extending from hence northward in its ancient course or direction to the west end of the west lane in the village of Charlton from hence of the breadth of forty feet in its ancient course or direction westward to its usual*

entrance into the parish of Wilsford the same being part of the road leading from the village of Charlton to Wilsford".

10. The Council believes the above description corresponds to CSP2 (points B-C) by reference to other maps addressed below. No other route appears to match the description within the award and there are other references to this route as the Wilsford Road. There is the potential for the reference to the west lane to correspond with the central route, but this would need to be supported by other evidence. No provision was made in the award for the central route.

11. The 1808 Wilsford Inclosure Award does contain a map showing the location of various provisions included in the award. The map shows the remainder of the western route (W5) continuing from the parish boundary and this is coloured brown and numbered 15. Road No. 15 is described in the award as a '*private carriage road and drift way of the breadth of twenty feet'*. The description goes on to state that this road included a public foot way, and that the private road shall remain for the use of the owners and occupiers of land served by the road.

12. The description in the Carlton St Peter award is supportive of the B-C section of the western route being an awarded public road. However, the absence of a plan will have a little impact on the weight to be attached to this document. In terms of the A-B section this was clearly set out in the later Wilsford award as a private road.

Quarter Sessions records

13. A transcript referring to White Lane recorded that in 1739 the highway had been obstructed. The highway is described as being for the benefit of '*all persons their horses' cattle carts and carriages*'. I attach significant weight to this document in support of White Lane being a vehicular highway. It is wholly consistent with the lane referred to in the Carlton St Peter Inclosure award being a pre-existing highway.

1804 plan of the parish of Charlton

14. This detailed plan is stated to relate to tithes and is accompanied by a reference book which records various details regarding the parcels of land. The eastern route is coloured yellow and is separate from the adjoining parcels in the same manner as the present connecting public roads. This route is annotated as '*White Lane'* which is consistent with the name given to the route in other documents.

15. The part of the western road in the parish of Carlton St Peter is shown on this map. However, it is notable that the section between point B and the watercourse is shown yellow. In contrast, the continuation of this route to point C is uncoloured and is depicted much wider. The annotation '*V70*' appears in a parcel south of the section of the route and this is described in the book of reference as '*North of Wilsford Road*'.

16. This map provides a little support for the sections of the Order routes in Carlton St Peter being highways and possibly vehicular in nature. It provides no support for public rights in relation to the central route. Clearly, this map is dated after the Carlton St Peter inclosure award but before the Wilsford award.

Commercial maps

17. The Andrews and Dury map (1773) appears to show the Order routes but not necessarily on their correct alignments. The eastern route is shown between solid

lines which, in the absence of the provision of a key, I take to indicate the presence of boundaries on each side. The western route appears to be represented as an unenclosed road. There is also a wide enclosed area that could accommodate the central route, but no route is actually shown within it.

18. Cary's map (1823) broadly shows the eastern route by means of solid lines. Most of the western route appears to be shown by means of double dashed lines but it is not shown continuing southwards to meet the original turnpike road. The central route is not shown. In contrast, the Greenwood map (1820) only appears to show the eastern route as a cross road.

19. The commercial maps provided vary in their quality and I place greater reliance on the other contemporary maps provided in terms of the physical existence of the routes. Where a route is shown linking with known public roads, this provides some support for the route being part of the local highway network and potentially vehicular in nature. Nonetheless, the purpose of these maps was to show the physical features which existed when the land was surveyed, including all roads. This will invariably lessen the weight that can be attached to them.

Ordnance Survey ('OS') maps

20. The 1808 and 1817 OS drawings show the Order routes by a mixture of solid and dashed lines to indicate the presence or absence of boundaries. They are shown linking with other known public roads. The central route is clearly not shown with the only feature between the two Order routes being the watercourse.

21. The 1886 1:2500 scale OS map (surveyed 1885) shows the northern and southern parts of the eastern route in the manner of a road with the middle section represented by dashed lines and annotated '*FP*' to indicate that this section had the appearance of a footpath. The northern part shown is coloured yellow which may indicate some form of metalled surface. There is a wide area of land running to the north of point C with dashed lines represented within its boundaries. A similar feature is shown in respect of the central route. The remainder of the western route is shown as a track or roadway. OS maps of the same scale published in 1900, 1922 and 1942 show the routes in a similar manner albeit these maps have no colouring marked on them.

22. The evidential value of OS maps is that they generally provide a reliable indication of the presence of particular physical features on the date of the survey. However, they do not provide clarification regarding the status of the paths and roads shown. It is evident that the early OS maps show the Order routes as roads. The later maps indicate that a proportion of the eastern route had ceased to have the appearance of a road and is marked as a footpath. In contrast, the western route continued to be shown as a track or road. The later maps also show a track which corresponds to the central route.

Railway documents

23. A deposited plan for the proposed Direct Western Railway of 1845 shows W5 numbered 11. This plot is described in the book of reference as a '*public highway*' in the ownership and occupation of '*William Pearce Hayward and Harry Hayward Surveyors of the Highways of the Parish'.* This is supportive of the section of the western route in Wilsford being considered a highway and more likely a public road. This is in direct contrast to the setting out of this section as a private road in the Wilsford inclosure award.

24. An overview plan for the proposed Andover, Radstock and Bristol Railway of 1866 shows the line would have crossed CSP2 and CSP6 to the north of the A342 Road. A detailed deposited plan shows CSP2 numbered 33 and CSP6 numbered 21. The accompanying book of reference states in respect of plot 21 that this was considered to be a public highway in the ownership of '*The Devizes Highway District Board, The Waywardens of the parish*'. This is wholly supportive of the eastern route being a highway and more likely vehicular in nature.

25. In contrast, plot 33 is recorded in the book of reference as an occupation road in the ownership and occupation of private individuals. This is supportive of a proportion of the western route being viewed as a private road and contrasts with the setting out of a public road in the earlier inclosure award. It also appears to be the case that no higher public rights were acknowledged in relation to the central route which was stated to include a footpath and occupation road. The latter is a term associated with a private rather than public road.

26. It is apparent that the railways were not built which will impact on the weight to be attached to the documents produced for each scheme. However, I consider that a fair amount of weight should be given to these documents given the level of scrutiny involved in the process prior to seeking Parliamentary approval.

Tithe documents

27. The 1841 Carlton St Peter tithe map shows CSP2 and CSP6 excluded from the tithed parcels of land in the same manner as other present public roads. There is no apparent route shown continuing over the central route. Two parcels adjoining CSP6 refer to it as White Lane.

28. The Wilsford tithe map of 1844 shows W5 coloured sienna and excluded from the tithed parcels of land. It is annotated at its eastern end '*To Carlton'.* Reference is made by the Council to routes coloured sienna on this map encompassing public roads, public rights of way and unrecorded routes. Therefore, the colouring used in respect of W5 cannot necessarily be viewed as an indication of status.

29. The tithe maps could provide some support for the Order routes being part of the local highway network. However, the exclusion of a route from the surrounding tithed parcels could be indicative of a public or private road as both would have impacted on the productivity of the land being assessed. This will generally lessen the weight that can be attached to the tithe maps. The annotation at the eastern end of W5 is supportive of it being a through route leading to Carton St Peter and this provides some support for highway status, but not necessarily vehicular.

Estate map

30. A map of land belonging to Francis Dougdale Astley (1846) shows W5 as a coloured route in the same way as the connecting road at point A. At point B, the route is annotated '*To Charlton'*. I note that the turnpike road is shown in the same way and annotated leading to a particular destination. Estate maps were not drawn up for the purpose of representing highways and their evidential value will usually be limited. However, a little weight should be given to the representation of W5 as a route leading to Charlton even if it is not necessarily indicative of a vehicular highway.

1910 Finance Act map

31. Only the northern part of the eastern route is shown excluded on the working map produced in relation to the Finance Act. The representation of a route in this manner can provide good evidence of highway status and is more likely to be indicative of a vehicular highway. However, it is evident that the remaining sections are not excluded in the same way and no evidence has been provided in relation to the Finance Act to support the existence of higher public rights over the majority of the Order routes.

32. Given the potential for there to be other reasons for the exclusion of a route from the surrounding hereditaments and only a proportion of the eastern route being shown excluded, I consider that very little weight should be placed on this document in support of the existence of higher public rights over the route. It is also evident that the Finance Act map provides no support for higher public rights over the central route.

Sales plan

33. The map with the sale of the Rushall Estate (1917) shows some sections of the Order routes in the same manner as the connecting public roads. Other sections cross land to be sold. It is apparent that no mention is made of any higher public rights in the schedule for the plots for sale. There is a specific reference to the central route within lot 74 where it is described as a '*bridle path'*. Additionally, a section of CSP2 crosses lot 67A to point B and this is described as a '*bridle road'.*

34. Given the purpose of this plan and the information shown on it, I consider that it is of limited value. It also contains a disclaimer which states '*This plan is published for convenience only although believed to be correct its accuracy is not guaranteed.* The map provides no meaningful support for the existence of public vehicular rights over the Order routes.

Bartholomew's maps

35. Copies have been provided of a series of maps produced by Bartholomew between 1902 and 1942. These were not based on an original survey but were produced for sale to cyclists and tourists. The central and western routes are shown on the maps provided under different categories of road. In some instances parts are shown as an uncoloured road which is described on the map key as being inferior and not to be recommended to cyclists. Further, there is a disclaimer on the map key stating that '*The representation of a road or footpath is no evidence of the existence of a right of way'*. This disclaimer will limit the weight that can be attached to this map.

Local authority records

36. The handover or takeover maps of 1930 were produced in relation to the transfer of maintenance responsibility from the rural district councils to the former Wiltshire County Council under the Local Government Act 1929. None of the Order routes are shown on this map. Nor are any of the routes shown on a subsequent highways map produced by the county council. This only really demonstrates that the routes were not publicly maintained at that time. It does not necessarily show that the routes did not have public status.

37. The recording of the Order routes on the definitive map with a mixture of footpath and bridleway status does not preclude unrecorded higher public rights from now being found to exist. In terms of the original depiction of CSP2 as a road used as a public path (referred to by the parish council as a 'Carriage Road Bridleway'), this designation did not necessarily mean that public vehicular rights existed over the route. In this case the route has been reclassified as a bridleway.

Conclusions

38. The eastern route is shown on maps both before and after the inclosure award of 1780 and it is referred to as White Lane. Significant weight should be attached to the Quarter Sessions document of 1739 and the Inclosure Award. The route is also referred to as a highway in the railway documents. There are other pieces of evidence which are consistent with the route being a vehicular highway.

39. It seems from the later documents that the route had fallen out of favour by the end of the nineteenth century in terms of use by vehicular traffic. However, this would not serve to extinguish public vehicular rights over the route. I find that the evidence in relation to the eastern route is on the whole supportive of this route being an ancient public road. Further, I accept on balance that the widths included in the Order for this route, which partly reflect the widths for the sections shown on the large scale 1900 OS map and partly what the Council considers to be an appropriate width for the remainder of the restricted byway, are reasonable.

40. I do not find there to be much support for the historical existence of the central route. The maps that do show the route carry limited evidential weight and are not necessarily indicative of the existence of a vehicular highway. Overall, the evidence falls well short of showing that this route should now be recorded as a restricted byway.

41. I have noted the conflict between the Carlton St Peter and Wilsford inclosure awards in terms of setting out part of the route as a public road and the other part as a private road. There is also a conflict in the status specified for the different sections in the later railway documents. However, it is noteworthy that this route appeared to exist as a through route prior to the Carlton St Peter Inclosure award. The 1804 map for this parish indicates that the route continued onwards to Wilsford and other map evidence is supportive of the existence of a through route.

42. The evidence is more evenly balanced for the western route. However, having regard to the evidence as a whole, I consider that it points more to this route being an ancient public road which again later generally fell of favour in relation to use by vehicular traffic. The widths specified in the Order could now be viewed as excessive for a restricted byway, but these correspond with the widths included in the inclosure awards. Although the A-B section was awarded as a private road, the award specified that it would be set out with a width of 20 feet (6.1 metres) and this width should have been available for people to use.

Overall Conclusion

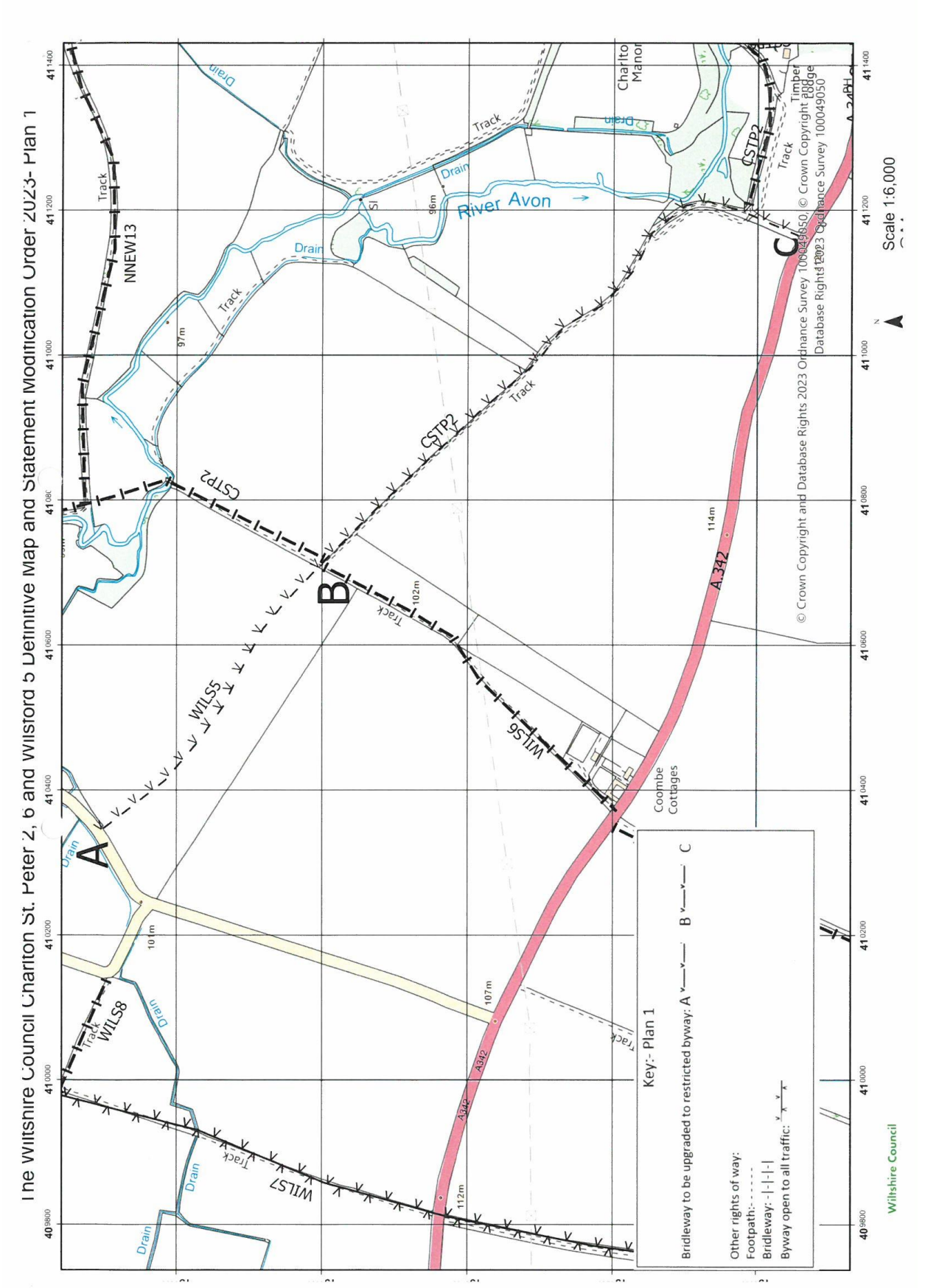
43. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

44. I confirm the Order.

Mark Yates

Inspector


The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023- Plan 1
A
B
C
NNEW13
WILS8
WILS7
WILS5
WILS6
CSTP2
River Avon
Track
Drain
A342
Coombe Cottages
Charlton Manor
Timper Bridge
Key:- Plan 1
Bridleway to be upgraded to restricted byway: A B C
Other rights of way:
Footpath:- - - - -
Bridleway: -|-|-|-|
Byway open to all traffic:
Scale 1:6,000
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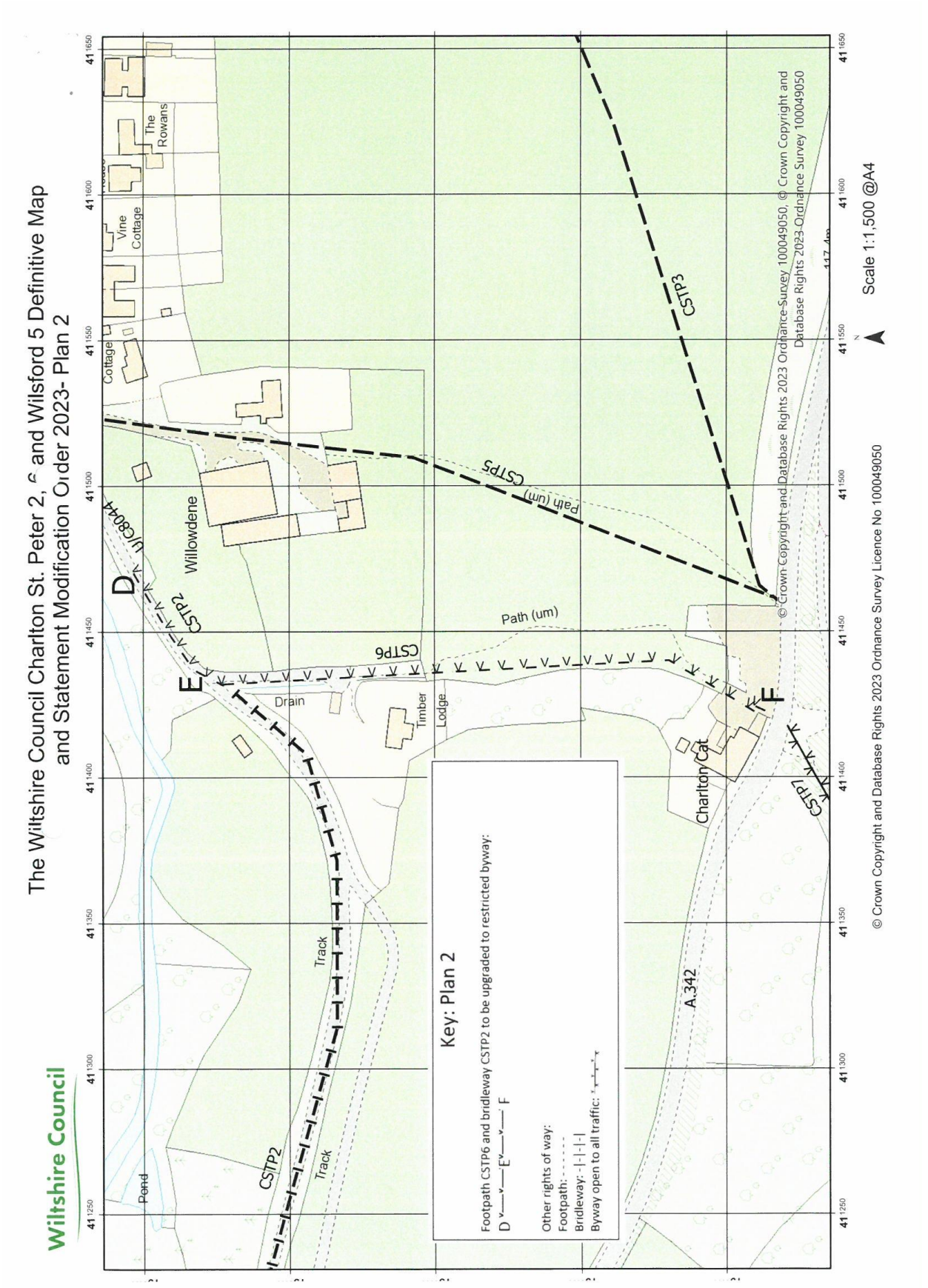
The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023- Plan 2
Wiltshire Council
Scale 1:1,500 @A4
Key: Plan 2
Footpath CSTP6 and bridleway CSTP2 to be upgraded to restricted byway:
D — E — F
Other rights of way:
Footpath: - - - - -
Bridleway: -|-|-|-
Byway open to all traffic: -.-.-
Willowdene
The Rowans
Vine Cottage
Cottage
Timber Lodge
Drain
Track
Track
Pond
Charlton Cat
A.342
Path (um)
Path (um)
CSTP2
CSTP3
CSTP5
CSTP6
CSTP7
D
E
F
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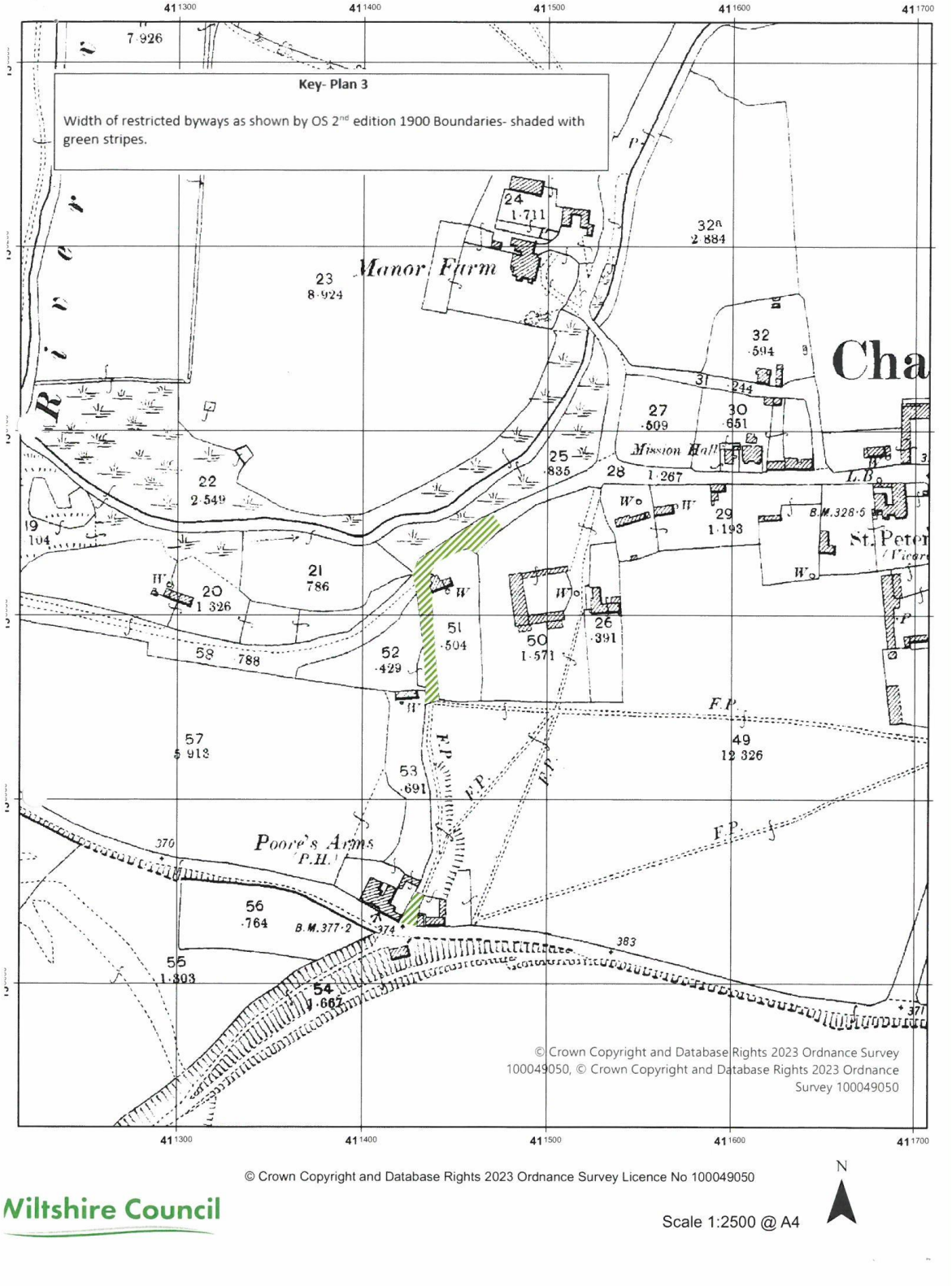

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