



Interim Order Decision

Accompanied site visit undertaken on 19 December 2023

by Mark Yates BA(Hons) MIPROW

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

Decision date: 12 February 2024

Order Ref: ROW/3295476

- 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 Trowbridge Path No. 8 Definitive Map and Statement Modification Order 2021.
- The Order was made by The Wiltshire Council ('the Council') on 19 January 2021 and proposes to upgrade a public footpath to bridleway status.
- There were six objections and two representations 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 proposed for confirmation subject to the modifications set out below in the Formal Decision.

Preliminary Matters

1. All of the points referred to below correspond to those delineated on the Order Map. The Order route is known as Church Lane and it commences from the junction with Frome Road (point A) and continues past St John's Church, the church hall car park, and adjacent properties though to the junction with Footpath No. 9 (point B). Mid-way along Church Lane is the entrance to the cul de sac known as Church Fields. Fanning out from the junction with Church Fields, a proportion of Church Lane is maintained at public expense and excluded from the Order. A public footpath is presently recorded running along Church Lane.

Main Issues

2. The Order relies on the occurrence of an event specified in Section 53(3)(c)(ii) and (iii) of the 1981 Act. It therefore needs to be determined whether there has been the discovery of evidence which shows,
 - a) that a highway shown in the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description, and
 - b) any other particulars contained in the map and statement require modification.
 3. In respect of subsection (ii), consideration needs to be given to whether the evidence is supportive on the balance of probabilities of the dedication of 'higher' public rights under common law or statute. Subsection (iii) relates to consequential amendments in the event that it is concluded that the existing footpath should be upgraded.
 4. The dedication of a highway at common law can be inferred from documentary evidence or more recent evidence of use. It requires consideration of three main issues: whether the owner of the land in question had the capacity to dedicate a highway, whether the evidence is supportive of an inference of the dedication of a
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- highway by the landowner and whether there was an acceptance of the dedication by the public.
5. Section 32 of the Highways Act 1980 ('the 1980 Act') 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.
 6. The relevant statutory provision for the dedication of a public right of way is found in Section 31 of the 1980 Act. This requires consideration of whether there has been use of a way by the public, as of right (without force, secrecy and permission) and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
 7. In respect of the application to record a proportion of Church Lane as a byway open to all traffic, I need to have regard to the Natural Environment and Rural Communities Act 2006 ('the 2006 Act'). Subject to certain exemptions found in Section 67 (2) and (3) of this Act, any unrecorded public rights for mechanically propelled vehicles over a way, which immediately prior to the commencement date (2 May 2006) was shown in a definitive map and statement as a footpath, bridleway or restricted byway, are extinguished.
 8. My decision is concerned with determining whether the definitive map and statement should be modified rather than the extent to which Church Lane is publicly maintained.

Reasons

The impact of the 2006 Act

9. Before addressing the documentary and user evidence, I shall consider the impact of the 2006 Act. The Council does not believe that any of the exemptions in Section 67 (2) and (3) of the Act are applicable. However, I address below the two exemptions that relate to modern use and the recording of a way in the list of streets.
10. In terms of more recent use of Church Lane, the exemption in 67(2)(a) is applicable to ways where the main lawful use by the public in the 5-year period prior to 2 May 2006 was by mechanically propelled vehicles. Mechanically propelled vehicles would not encompass a pedal cycle. Nor do I consider that it would apply to wheelchair users. The main lawful use should have been by the public and would not apply to those who have some form of licence or easement to access properties or land served by Church Lane. In essence, this exemption is aimed at protecting ways that are part of the ordinary road network.
11. No evidence has been provided to show that the main lawful use of Church Lane between 2001 and 2006 was by mechanically propelled vehicles. It is also apparent that some people who live on Church Lane believe that they have a private right of access to their properties. I note the response by a Council Officer outlined in a 2011 report into an application for planning permission that "*Church Lane is well used by the wider public*". However, I also note that earlier in the report reference is made to this comment in the context of access to the church and church hall activities. The church and church hall are located towards the southern end of Church Lane and vehicular use to them could potentially have been as part

of a permitted right of access. No distinction is made in these responses to the extent of the use by mechanically propelled vehicles. The comments in the report do not demonstrate that the main public use of Church Lane between 2001 and 2006 was by mechanically propelled vehicles. Overall, the evidence is not supportive of this exemption being applicable.

12. As outlined in paragraph 1 above, a section of Church Lane is maintained at public expense. This section is recorded in the Council's list of streets. If vehicular rights can be shown to exist and this section was not recorded as a public right of way on the date of the commencement of the 2006 Act, then the exemption in 67(2)(b) would be applicable for the part of the route recorded in the list of streets. Given that a public footpath is recorded along Church Lane and the extent of this footpath (addressed later in this Decision), this exemption is not applicable.
13. In light of the above, for the purpose of the definitive map and statement, any unrecorded public rights for mechanically propelled vehicles are extinguished in relation to Church Lane. Should the evidence be supportive of the existence of a historical vehicular highway, the appropriate status for the route would be a restricted byway.

The documentary evidence

Inclosure award

14. A map produced in relation to the 1816 Hilperton and Trowbridge Inclosure Award shows Church Lane by means of double broken lines. It was not included in the award itself. However, the connecting route to the north was awarded as a private carriage road (numbered 39) for the benefit of the owners and occupiers of the adjacent parcels of land. It is also evident that the road numbered 36, which continued north-east of road 39, was awarded as a private carriage road.
15. The inclosure documents are not supportive of Church Lane having public status and the inference to be drawn is that it was an extension of the awarded private road.

Tithe map

16. Church Lane is shown uncoloured and without a plot number on the 1838 Trowbridge tithe map. It is excluded in the same way as other roads in the locality. However, the exclusion of a route from the tithed parcels of land could be indicative of a public or private road as both would have impacted upon the productivity of the land being assessed. In this case, Church Lane is shown as a cul de sac at point B with no apparent route shown continuing northwards from this point, which would not be indicative of public status.

Commercial maps

17. Reference has been made to the inclusion of Church Lane on the Dury and Andrews maps of 1773 and 1810 and a route continuing onwards towards a former stone quarry. It appears that the route terminated at a point near Trowle Common, which was some distance away from Church Lane itself. Other commercial maps do not show a route on the same alignment. Whilst the later inclosure and tithe maps do show Church Lane, the continuation of the route northwards was only awarded as a private road. Overall, little reliance can be placed on the Dury and Andrews maps in relation to the status of Church Lane.

Ordnance Survey ("OS") maps

18. A number of OS maps from the nineteenth and twentieth centuries show the existence of Church Lane as a physical feature. An OS map believed to originate from the 1830s shows the lane and the awarded private road running northwards from point B. However, no continuation northwards in line with the route depicted on the Dury and Andrews maps appears to be shown.
19. The OS maps from the latter part of the nineteenth century show Church Lane as an enclosed route which meets a solid boundary at point B. A route is shown continuing from point B by means of a dashed line and one limb is annotated 'FP'. At that point in time only the church, school and vicarage were shown bordering the lane towards its southern end. Church Lane continues to be shown during the twentieth century along with the gradual development of land adjacent to the lane. It is apparent that from the 1960s posts are shown near to the property known as Kynance.
20. The evidential value of OS maps is that they provide a reliable indication of the presence of particular physical features on the date of the survey. They do not provide clarification regarding the status of the paths and roads shown. However, they indicate that there was a solid boundary at point B. It is likely that prior to the gap that later appeared at this point, there would have been some means of access given that a path is shown continuing on the other side of the boundary. The later maps are supportive of the existence of posts a little to the south of this point.

1910 Finance Act map

21. Church Lane is shown excluded from the surrounding hereditaments on the working map produced in relation to the Finance Act. The exclusion of a route in this way can provide a good indication of highway status, more likely vehicular in nature. However, this map has to be considered in conjunction with the other pieces of documentary evidence, most notably the inclosure award and definitive map records. The Council also draws attention to the exclusion of some private roads on the Finance Act maps.

The compilation of the definitive map

22. A public footpath was claimed to exist over Church Lane as part of the process undertaken in the 1950s to compile the original definitive map. The claimed path was described running along a cart road/track as far as a dilapidated field gate. There was no objection to the route being recorded as a footpath and it was subsequently added to the definitive map as Footpath No. 8. There is nothing from these records which points to any belief that higher public rights existed over the route.

Local authority minutes

23. A number of minutes have been provided involving Trowbridge Urban District Council. These relate to proposed developments in the area and proposals for Church Lane to be adopted. However, it is apparent that, aside from the section at the junction with Church Fields, the adoption proposals never materialised. The minutes provided are supportive of the route being a private street.

24. A minute dated 10 April 1962 records that the surveyor had been authorised to erect posts across the width of Church Lane near the new bungalows to prevent through vehicular traffic using the lane. The OS maps and other evidence show that these posts were erected.

Highway records

25. It is apparent that the Council have previously expressed the view that Footpath No. 8 ran over the whole width of Church Lane.
26. A highways takeover map of circa 1974 was produced in relation to the Local Government Act 1972 when the Council took over responsibility for those roads previously maintained by the urban district councils. All versions of this map record Church Lane as a footpath with a section shown as highway maintainable at public expense.
27. The highway records are conclusive evidence of the highway authority's acceptance of its maintenance responsibility for a section of Church Lane, but they are not a definitive record of the highway rights in connection with the ways shown.

Conclusion from the above evidence

28. The Finance Act map could provide support for Church Lane being a vehicular highway. However, this map needs to be considered in conjunction with the other documents that point to the route being a private road and a public footpath. I consider that the evidence points more to the route being a historical private road over which a footpath was dedicated prior to the compilation of the definitive map.

Consideration of the user evidence (Section 31 of the 1980 Act)

When the status of Church Lane was brought into question

29. In terms of bridleway use, the Council points to the erection of a chicane barrier in 2011 as serving to prevent use by horse riders. It also appears to be the case that around this time there was a reduction in the available width of a proportion of the route following the construction of Nos 24 and 26 Church Lane. Whilst these measures may not have prevented use by cyclists, they would have hindered use to some extent.
30. On balance, I concur with the Council that use of Church Lane by bridleway traffic (not pedestrian users) was brought into question in 2011. This means that the relevant period for the purpose of Section 31 of the 1980 Act should be taken to be 1991-2011 ('the relevant period').

Evidence of use

31. Sixty-two evidence forms have been submitted in support of use of Church Lane. Twenty-four statements have also been forwarded from people acknowledging that the route has been used by pedestrians, cyclists, and horse riders. Given that Church Lane is a public footpath, the evidence of use by pedestrians should be discounted. I have additionally erred on the side of caution and discounted the evidence of use from those who live in properties served by Church Lane as there is clearly the potential for these people to have been exercising a private right of access.

32. Whilst there is much greater evidence of use from cyclists than horse riders, there is some evidence of equestrian use during the relevant period. Both cycling and equestrian use are acknowledged to have occurred. Overall, I find the evidence of use during the relevant period to be sufficient to raise a presumption of the dedication of a public bridleway.

Whether any action was taken to demonstrate a lack of intention to dedicate a bridleway

33. There is no known owner of Church Lane, and any challenges are likely to have been made by owners of properties adjoining the route. There are some references to challenges being made. However, the limited details provided suggest that they were made in more recent years after the end of the relevant period. In some cases, they appear to have been directed at walkers who are entitled to walk along Church Lane.
34. The information provided is not supportive of action being taken during the relevant period which was sufficient to demonstrate that there was a lack of intention to dedicate a bridleway.

Width

35. The varying width specified in the Order reflects the width available between the historical boundaries of Church Lane on the large-scale OS mapping. It does not include the strip maintained at public expense. In light of my conclusions regarding the historical evidence, it is likely that the boundaries of the lane were initially set out by reference to a private road. Therefore, in this case, regard should be given to the extent of the lane used by the public.
36. A proportion of the users refer to the width of the route being 5 metres which appears to generally correspond to the surfaced part of Church Lane. Other evidence points to the whole width of Church Lane being available and used by the public. It is also apparent that the Council has previously considered the public footpath to run along the entire width of Church Lane.
37. On balance, I consider the width of the right of way should be taken to be the full width of Church Lane. In terms of the section excluded from the Order, I need to determine whether the definitive map and statement should be modified which is distinct from the issue of maintenance. There is evidence of use over the whole width of Church Lane and no distinction is made in relation to the width of the route where it passes the entrance to Church Fields. Therefore, if confirmed, it would be appropriate to modify the Order to record the whole width of Church Lane for its entire length.

Limitations

38. The objectors have expressed concerns that Church Lane will become a through route for vehicular traffic if the chicane barrier is removed to accommodate bridleway users. In terms of my decision, I can only have regard to any limitations that were in place when a right of way was dedicated. The Council will need to determine whether any other structures can lawfully be erected on the route.
39. There is clear evidence of posts being in place prior to the erection of the present barrier in 2011. The posts were originally erected in the early 1960s and their purpose was to prevent motor vehicles continuing along the lane. An additional set

of posts were erected near to No. 22 Church Lane in 1975, again with the purpose of stopping motor vehicles passing this point.

40. I take the view that, in the event the Order is confirmed, it should be modified to record a limitation permitting the erection of posts or bollards to coincide with the structures in place during the relevant period. In the absence of a known landowner, it would be reasonable for the responsibility for the erection of any such structures to rest with the Council.

Conclusions

41. I have concluded that none of the exemptions found in Section 67 of the 2006 Act are applicable to Church Lane and any public rights for mechanically propelled vehicles have been extinguished. Further, the documentary evidence is not supportive of Church Lane being a historical vehicular highway which should now be recorded as a restricted byway.
42. The evidence in support of use by cyclists and horse riders is not contested and it is sufficient to raise a presumption of the dedication of a bridleway in accordance with Section 31 of the 1980 Act. There is also no evidence of action being taken during the relevant period which was sufficient to demonstrate a lack of intention to dedicate a bridleway over Church Lane. Therefore, I conclude on balance that a public bridleway subsists. In these circumstances, there is no need for me to consider the user evidence in the context of common law dedication.
43. However, I consider the Order should be modified to include the section of Church Lane maintained at public expense which was omitted from the Order. Additionally, the Council should be permitted to erect posts or bollards in line with those that were in place during the relevant period towards the northern end of Church Lane.
44. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

45. I propose to confirm the Order subject to the following modifications:
- Delete '*in green*' from the first line of the description in Part I of the Order Schedule.
 - Delete '*in green*' from the fifth line of the description in Part I of the Order Schedule.
 - Delete the sixth and seventh lines from the description in Part I of the Order Schedule.
 - Replace '*4m*' in the seventh line of the description in Part II of the Order Schedule with '*7m*'.
 - Add at the end of the description in Part II of the Order Schedule:

'Limitations

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'.

- Include the remainder of Church Lane within the Order Map and add points X and Y at the appropriate points.

- Modify the key to the Order Map to reflect the extent of the route.
46. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications.

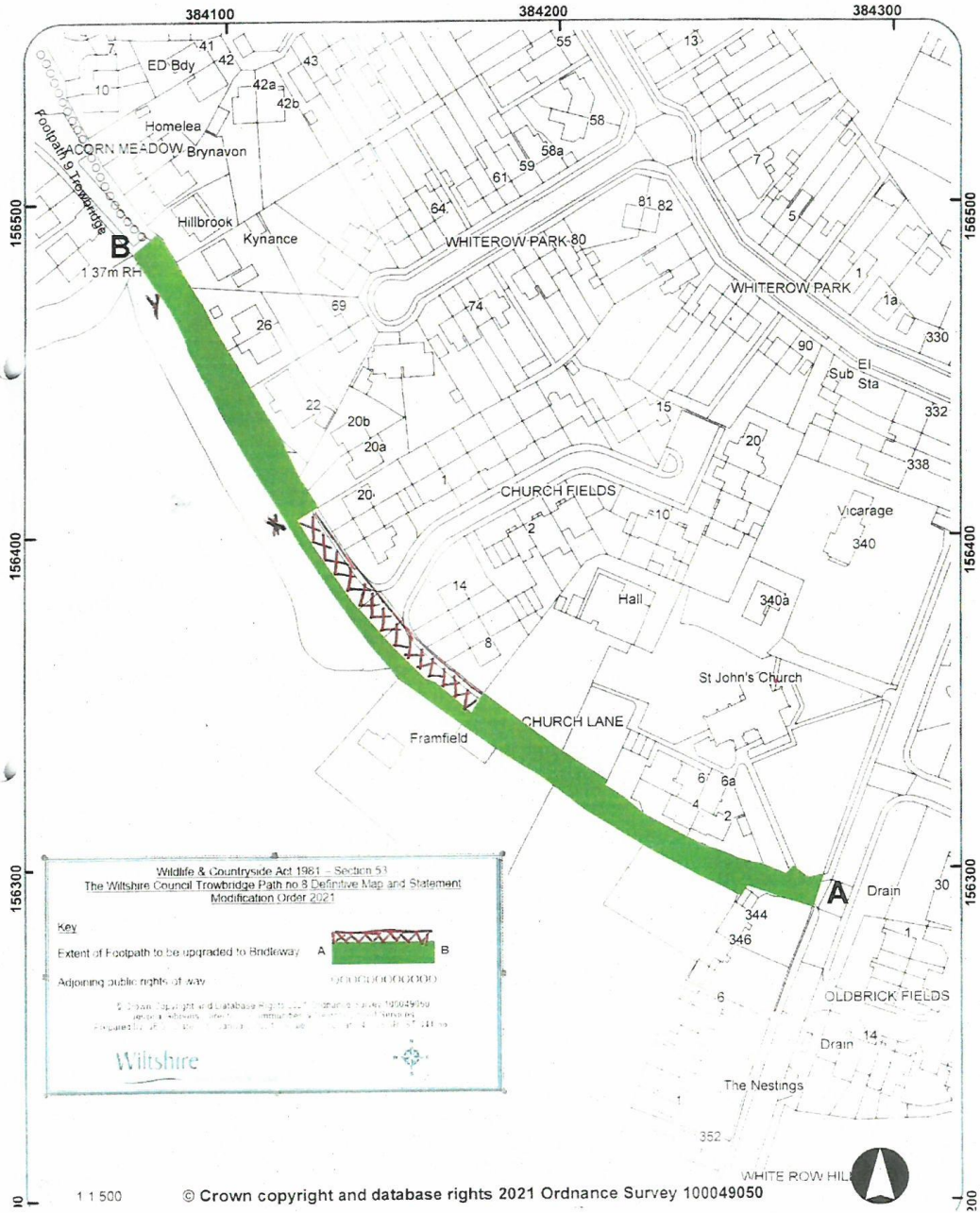
Mark Yates

Inspector

Date: 18/01/2021

Wiltshire Council

**The Wiltshire Council Trowbridge Path no.8
Definitive Map and Statement Modification Order 2021**



Modifications

1. The Secretary of State or Inspector may decide that an order should be confirmed with modifications. The modifications may be quite small, like correcting a spelling error or adding a grid reference or they may be major. The Inspector will explain the exact modifications in the order decision.
2. Some modifications must be advertised so that people are given the opportunity to object or submit representation to them. The following types of modification need to be advertised:
 - moving the line of a path;
 - increasing the width of a path;
 - adding a width to a path (definitive map modification orders and some public path orders);
 - showing a new path on the order;
 - deleting all or part of a path shown in the order (definitive map modification orders only); or
 - changing the type of path shown in the order (definitive map modification orders only).

Decisions, which propose modifications needing advertisement, are known as 'interim' or 'proposed' decisions.

3. Where a modification needs to be advertised, we will arrange for a notice to be published in a newspaper circulating in the local area, outlining how and when objections or representations can be made. A copy of the notice will be copied to the authority, the objectors (including anyone who has made a statutory representation), the applicant and any other people who have asked for a copy of the decision.
4. For your objection/representation to be 'duly made' it has to be made within the time and manner specified in the notice and be with respect to the proposal. Your objection/representation would not be 'duly made' if made before or after the notice period and you would not have the right to be heard.

No objections/representations to proposed modifications

5. If no objections/representations are received to the proposed modifications, the Secretary of State or Inspector will make a final decision, in which he or she will confirm the order with the modifications they previously proposed. The final order decision will be sent to all the people who received a copy of the interim decision.

Objections/Representations to proposed modifications

6. Objections/representations to the modifications will be considered by the Secretary of State or an Inspector (usually the same Inspector who

proposed them). Dependant on the number and content of objections/representations received, there may need to be an inquiry to consider the evidence they contain.

7. If there are only a few objections/representations and/or the issues they raise could be dealt with by written representations, we will write to the authority and relevant parties to ask if they would be happy for a final decision to be made on this basis instead of an inquiry. We will hold an inquiry if anyone asks to be heard by an Inspector.
8. If an inquiry is held into the proposed modifications, the Inspector will not be able to consider any representations into the unmodified part of the order. If anybody asks to give evidence relating to the unmodified part, the Inspector will ask them to submit it in writing to the Planning Inspectorate (within a specified period) and continue to hear the evidence relevant to the modifications. If the submitted representation raises questions likely to effect the Secretary of State or Inspector's decision, it may be necessary to re-open the original inquiry (if one was held). However, if all the parties agree, the new evidence could be dealt with on the basis of written representations (this is the most likely action if the interim decision was made following an exchange of written representations).
9. Having considered the objections/representations, the Secretary of State or Inspector may decide that they do not raise any questions likely to affect their decision. If this is the case no further action on the objections/representations will be taken and the Secretary of State or Inspector will proceed to write a final decision.

What happens if objections/representations are received to the unmodified part of the order?

10. If the only objections/representations received within the objection/representation period relate to those parts of the order the Secretary of State or Inspector does not propose to modify, it may be necessary to re-open the original inquiry or offer the written representations procedure if more appropriate.
11. If the original inquiry is re-opened, the Inspector would not be able to hear evidence relating to his or her proposed modification(s). If anybody asks to give evidence on the modified part, they will be asked to submit it in writing to the Planning Inspectorate within a given period. Again, if the submitted representation raises questions likely to effect the Secretary of State or Inspector's decision, it may be necessary to hold an inquiry so that it can be discussed. However, if all the parties agree, the evidence could be dealt with on the basis of written representations.

Objections/Representations received to the proposed modifications and the unmodified part of the order

12. Where both types of objection/representation are received within the objection/representation period, it may be necessary to hold a 'joint' inquiry. A joint inquiry effectively re-opens the original inquiry whilst allowing the Inspector to hear evidence against the proposed modification(s).

Hearings

13. A hearing may be held instead of an inquiry with the agreement of the authority and the relevant parties.