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Janice Green
Wiltshire Council
Rights of Way & Countryside Team, Waste &
Environment
County Hall, Bythesea Road
TROWBRIDGE
BA14 8JN

Your Ref: JG/Dist.10 2018/05
Our Ref: ROW/3295476

10 October 2023

Dear Madam,

Wildlife and Countryside Act 1981 - Section 53

Order Making Authority: Wiltshire Council

Title of Order: The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Further to my previous letter, please find enclosed copies of all the statements of case that have been received.

If you have any comments on the points raised, you should submit your final comments by 20 November 2023. You should comment solely on the representations enclosed with this letter. You cannot introduce new material or put forward arguments that should have been included in your earlier statement. If you do, your comments will not be accepted and will be returned to you.

Yours sincerely,

Helen Sparks

Helen Sparks

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>

Wildlife and Countryside Act 1981 - Section 53

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Statement of case from Councillor David Vigar

I make this statement of case as the Wiltshire Councillor for the Trowbridge Grove division which includes Church Lane.

I wish to make it clear that the over-riding issue in this case for me and for many of the residents of Church Lane and Church Fields is not whether Church Lane is designated as a footway or bridleway but the risk of it becoming a through road rather than a cul-de-sac. This is apparent from the report presented to councillors at the Western Planning Committee in 2021 – see summary of representations on pages 23-26.¹

I appreciate that this is not a matter for the Inspector whose focus is to determine whether Church Lane is recorded as bridleway. However I think it is very important context for that consideration.

I appreciate the background to the determination of this order is one of an application to upgrade a section of Footpath no.8 Trowbridge (Church Lane), to a byway open to all traffic which was not granted and the subsequent recommendation of the Wiltshire Council Definitive Map team that Church Lane should be upgraded to a bridleway.

While there have been some objections to the new designation, representations made show that the question of whether Church Lane is defined as a footpath or bridleway is only of relevance to many residents should it create the possibility of the existing barrier at the north-west end of the lane being removed on the ground that the full width of the lane should be available.

As representations show, this was a major concern for many residents following the initial consultation. I was asked by residents to investigate and after discussions with several officers I was assured that should the existing barrier be removed, plans were in place for a new one to be erected by Wiltshire Highways Authority Operations Team who may erect such barriers on a highway in the interests of safety under Section 66 of the Highways Act 1980.

Once this became known, the fears of many residents on this issue were allayed.

¹ <https://cms.wiltshire.gov.uk/documents/g13706/Public%20reports%20pack%20Wednesday%2029-Sep-2021%2015.00%20Western%20Area%20Planning%20Committee.pdf?T=10>

However I remain concerned to ensure that the process operates such that if the lane is redesignated, a new barrier is erected immediately after the existing one is taken down.

The report to councillors at the Western Planning Committee in 2021 said: "...this barrier may in effect be an obstruction of the full width of the highway and should be removed." It added: "There are, however, powers available to Wiltshire Council as the Highway Authority under section 66(3) of the Highways Act 1980, to introduce a barrier where there are public safety concerns..."

The minutes of the same meeting² record: "The Highway Authority's duty to safeguard users of the path continues if the path is upgraded to a bridleway, but of course any barrier would need to be appropriate for a bridleway at the full width. The current barrier would be removed and replaced with an appropriate barrier at the same time in order to protect non-motorised users. As this would be an operational decision, it would be made by the Head of Service for Highways or the Rights of Way team."

Later the minutes add: "If the route is confirmed to be bridleway by the Secretary of State any replacement barrier would need to be of a particular design to suit equestrian and cyclist use whilst not allowing motorists through. Regarding the removal of the fence that narrows the width of the piece of land, it was clarified that if installed, the bridle gate would be required cover the full width of the bridleway to prevent vehicles from attempting to drive around the barrier."

I have also received an assurance from the officer team that if the Order is successful and Church Lane is upgraded to a bridleway at full width, it is the intention to replace the current barrier with a new barrier suitable for a bridleway, to prevent vehicular access. I am told that the old barrier will not be removed until details of the new one are agreed.

I am grateful to the officers for their assurance on this matter and subject to that understanding I am content to support the Order. Nonetheless I wished to make this statement to underline the concerns that have been felt.

if the recommendation is approved, and if it is possible, I believe that residents would appreciate a condition being attached to fully guarantee that Church Lane does not become a through road. If this is not possible, any form of support for the continued barrier would be welcome.

Thank you for your attention to this statement.

² <https://cms.wiltshire.gov.uk/documents/g13706/Printed%20minutes%20Wednesday%2029-Sep-2021%2015.00%20Western%20Area%20Planning%20Committee.pdf?T=1>

From: [Rightsofway](#)
To: [Edwards, Michael](#)
Subject: FW: ROW/3295476 - Church Lane, Upper Studley, Trowbridge BA14 0EH
Date: 09 October 2023 12:36:49
Attachments: [IMG_20231006_0001.pdf](#)
[IMG_20231006_0005.pdf](#)

From: F M [REDACTED]
Sent: 09 October 2023 12:15
To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>; [Rightsofway](#) <Rightsofway2@planninginspectorate.gov.uk>
Cc: [REDACTED]
Subject: ROW/3295476 - Church Lane, Upper Studley, Trowbridge BA14 0EH

STATEMENT OF CASE

My name is Francis Morland and I live at [REDACTED]

For the reasons set out in my e-mail to the OMA below (sent Sat 09/10/2021 14:46), I consider that the whole of Church Lane Upper Studley Trowbridge BA14 0EH (from its junction with the A361 Frome Road at Whiterow Hill to its junction with Acorn Meadow BA14 9JA) is a highway maintainable at the public expense.

The passage quoted from [38] of the Agenda Report 29 Sep 2021 is at 18 of the OMA's SoC.

The relevant legislation is Section 36 of the Highways Act 1980 (see at: <https://www.legislation.gov.uk/ukpga/1980/66/section/36>).

The only reference to this legislation in the OMA's SoC is at 189-191 (App 8 of the Decision Report 26 Oct 2020).

The Trowbridge Inclosure Award Map 1816 is at TROW 19 (1273 & 1274) of the OMA's SoC. Other information is at [9.4] of the Decision Report 26 Oct 2020 (37-38) and in App 7 (136-143). However, the reference in [9.4] to the church being present on the site at that time (1816) is clearly erroneous. St. John's Church was not built until 1852 (see [34] of Agenda Report 29 Sep 2021 - OMA's SoC 16; App F to Agenda Report 29 Sep 2021 - OMA's SoC 265; and [20] of TROW 11 - OMA's SoC 575) or 1854 (see [10.24] of the Decision Report 26 Oct 2020 - OMA's SoC 61; and App 5 - OMA's SoC 122). Quar Lane is mentioned twice on 137 and three times on 138.

It should be noted that the extent of the Trowbridge Inclosure Award is limited to the areas in Trowbridge and Hilperton specified in the Private Act of Parliament which authorised it (55 Geo III c.28). These are summarised in Abstracts of Wiltshire Inclosure Awards and Agreements ed. R.E. Sandell, Wiltshire Record Society Volume XXV (1971) at p. 128-129 (see at: https://www.wiltshirerecordsociety.org.uk/s/wrs_v25.pdf).

The evidence for Church Lane being a highway called Quar Lane before 31 Aug 1835 in the

Trowbridge Inclosure Award of 1816 is supported by:-

- The Andrews' and Dury's Maps of Wiltshire 1773 and 1810, at TROW 22 of the OMA's SoC (1279-1285), and at [9.13] of the Decision Report 26 Oct 2020 (42) and in App 7 (158-162). These show that the lane ran from high ground west of the stream (outside Trowbridge, presumably the site of the stone-quarry-referred to in its name) to Frome Road at Whiterow Hill, a distance of just over a kilometre.
- The Old Series Ordnance Survey Map (Sheet 14) published in 1817, at TROW 23 of the OMA's SoC (1286), and at [9.10] and [9.14] of the Decision Report 26 Oct 2020 (41-42). This shows the lane starting at or near the stream crossing, and with a length of about 650 metres. It should be noted that because of the Napoleonic Wars the publication of this map was delayed for a number of years, but the survey work for it took place in the period 1808-11 (the date of the Ordnance Surveyors' Drawing No. 61 - see The Old Series Ordnance Survey by Harley and O'Donoghue Volume III South-central England (1981), page xv, Figure 5 (attached)).

The judgments in the Fortune v Wiltshire Council cases are at

<https://www.bailii.org/ew/cases/EWHC/Ch/2010/B33.html> (High Court), and
<https://www.bailii.org/ew/cases/EWCA/Civ/2012/334.html> (Court of Appeal).

The passage quoted from [7.3] of the Decision Report 26 Oct 2020 is at 33 of the OMA's SoC.

The OMA's comments on Minute 866 of Trowbridge UDC's Highways & Planning Committee 10 Jun 1971 are at 210 of its SoC.

As I said in my e-mail to Helen Sparks (sent Mon 25/09/2023 15:00):-

"It is unfortunate that Wiltshire Council did not address my request (to add the whole of Church Lane to its List of Streets) before submitting the Order to you for confirmation, as they clearly impact on each other but, as case law such as Trail Riders Fellowship v Secretary of State for Environment, Food and Rural Affairs [2023] EWHC 900 (Admin) (20/04/2023) demonstrates, not in an entirely predictable manner."

However, following the example of Rowden Lane, Chippenham, I consider that the Applicants were correct to apply for Trowbridge No. 8 to be upgraded to a BOAT, but I do not think there is any justification for restricting that status to the portion of it shown on their Application Plan (see App A of the Agenda Report 29 Sep 2021 - OMA's SoC 24 and App 2 of the Decision Report 26 Oct 2020 - OMA's SoC 97).

I confirm that the contents of this Statement of Case are true to the best of my knowledge and belief.

I wish to attend the Inspector's Site Visit.

Francis Morland

9 October 2023

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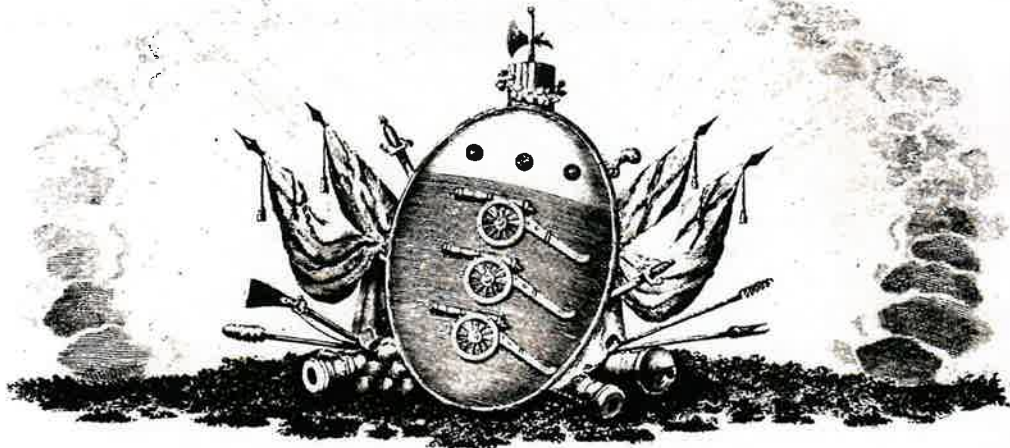


THE OLD SERIES ORDNANCE SURVEY MAPS OF ENGLAND AND WALES

Scale: 1 inch to 1 mile

A REPRODUCTION OF THE 110 SHEETS OF THE SURVEY
IN EARLY STATE IN 10 VOLUMES

Introduction by
J. B. HARLEY AND YOLANDE O'DONOGHUE



VOLUME III
South-central England

(Hampshire and the Isle of Wight and parts of Berkshire, Dorset,
Somerset, Surrey, Sussex and Wiltshire)

HARRY MARCARY LYMPNE CASTLE KENT

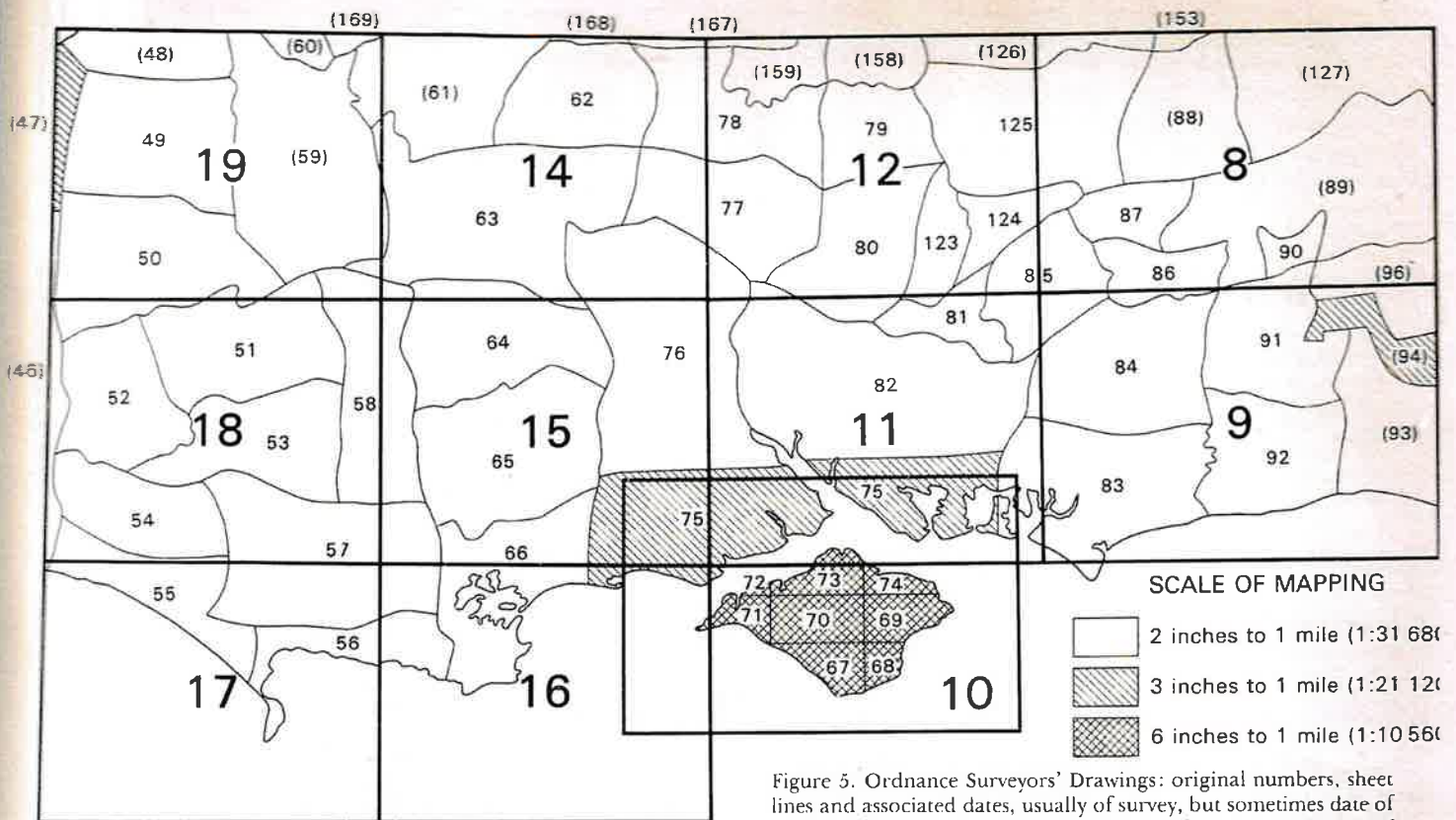


Figure 5. Ordnance Surveyors' Drawings: original numbers, sheet lines and associated dates, usually of survey, but sometimes date of receipt of surveyor's bill in the Tower of London, or date of publication. The originals are in the British Library, Map Library.

Dates associated with the Ordnance Surveyors' Drawings

Sheet No.	Date	Sheet No.	Date
46	1806-7	77	1808
47	1809-17	78	1808-9
48	1810	79	1817
49	1811	80	1808
50	1811	81	1808
51	1808-10	82	1806-10
52	1807-8	83	1805-6
53	1808-9	84	1808-13
54	1806-7	85	1808-9
55	1806-7	86	1810
56	1805-6	87	1809
57	1805-6	88	1806-7
58	1808-9	89	1806-10
59	1808-10	90	1810
60	1815	91	1806-7
61	1808-11	92	1806-7
62	1808-11	93	1789-1806
63	1808-10	94	1797-1810
64	1807-8	96	1808
65	1807-8	123	1808-10
66	1805-7	124	1808-10
67	1810	125	1792-1817
68	1793-4	126	1809-10
69	1793-4	127	1804-6
70	1810	153	1811-22
71	1793-4	158	1808-17
72	1810	159	1812-13
73	1810	167	1816
74	1810	168	1815
75	1797-1810	169	1813-15
76	1807-8		

for developing the practice of military surveying. A recent study of *Maps of Portsmouth before 1801* reveals a coastal zone with a remarkably full cartographic record from the mid-sixteenth century onwards.⁷³ In the majority of cases these were maps and plans drawn by military surveyors and draughtsmen on the payroll of the Board of Ordnance.⁷⁴ The whole area, containing as it did the main base for the Royal Navy, was regarded as a target for invasion. As a result, permanent and field fortifications had been constructed to guard entrances of Portsmouth Harbour, to Portsea

with its dockyard, to the Needles passages, to Southampton Water, and to other likely places where an enemy might land. It was in connection with such works that large-scale military plans were prepared from the 1780s onwards.

Ordnance Surveyors' Drawings relating to the Isle of Wight afford the most elaborate example in the region of this type of military cartography. They were executed to a scale of six-inches to one mile. After 1779 it was generally feared that the French would seize the island as an advanced base for a full invasion of the mainland⁷⁵ but it was not until 1791, after similar surveys had been ordered around Plymouth, and in Jersey, Guernsey and Kent, that surveys were put in hand in the Isle of Wight. At that date the Master General had instructed that 'Mr William Gardner the Chief Surveying Draftsman' was

'to proceed with the survey of the Isle of Wight, and had approved of his taking with him as many assistants as he might want, exclusive of Messrs Yeakell and McLauchan, from the Drawing Room at the Tower.'⁷⁶

There is also a later reference to Gardner having accompanied the trigonometrical party in 1793 and 1794. Mudge and Dalby noted

'Mr. Gardner, and the gentlemen of his department, accompanied us in the Survey of the coast of Hampshire and the Isle of Wight, and have since finished a military description of both, drawn on a scale of three inches to a mile.'⁷⁷

These plans were 'for the use of Government, and not submitted, from obvious motives of policy, to public inspection',⁷⁸ but it seems as if several versions were in official circulation. As well as the three-inch plans referred to by Mudge there is an earlier rough manuscript survey, relating to only part of the island, at two-inches to one mile, one section of which has been signed Frederick George Mulcaster and is endorsed

From: F M [REDACTED]

Sent: 09 October 2021 15:47

To: Fox, Sam <sam.fox@wiltshire.gov.uk>; Khansari, Parvis <Parvis.Khansari@wiltshire.gov.uk>

Cc: McClelland, Mark <Mark.McClelland@wiltshire.gov.uk>; Vigar, David <David.Vigar@wiltshire.gov.uk>

Subject: Church Lane, Upper Studley, Trowbridge BA14 0EH

Dear Sirs,

I refer to comments in a recent Agenda Report (see at [38] of Agenda Item 7a, Western Area Planning Committee, Wednesday 29 September 2021):-

"If, however, property owners are relying upon a public vehicular right of way to access property, they have not submitted additional evidence which would support public vehicular rights over Church Lane and lead the Council to take an alternative view of the evidence already before it."

Pursuant to Section 36 of the Highways Act 1980, I wish to apply to Wiltshire Council, as the current Local Highway Authority, to add the whole of Church Lane, Upper Studley Trowbridge BA14 0EH (from its junction with the A361 Frome Road at Whiterow Hill to its junction with Acorn Meadow BA14 9JA) to its List of Streets, as being a highway maintainable at the public expense. At present, only a length of about 75 metres of Church Lane adjacent to its junction with Church Fields, Upper Studley BA14 0EJ is so recorded.

The grounds of my application are:-

Firstly, it was a highway before 31st August 1835. The evidence for this is in the Trowbridge Inclosure Award of 1816. It is marked on the Award Map by double broken lines, and it is identified in the Award itself by the name of Quar Lane (see, for example, in the description of allotment No. 199 to Elizabeth Mortimer). This marking and its name are compelling evidence that it was not just a footpath at that time, but an ancient (i.e. pre-Inclosure) highway, presumably leading to a stone quarry some distance away, and that it carried vehicular traffic.

The case law on this subject is set out in *Fortune v Wiltshire Council* [2010] EWHC B33 (Ch) and [2012] EWCA Civ 334 relating to a similar highway at Rowden Lane, Chippenham.

Secondly, it is clear that Church Lane has been maintained at the public expense from time to time since 31st August 1835. A recent Report (see at [7.3] of a Decision Report dated 26 October 2020) said:-

"The lane has a bound tarmac surface for most of its length (leading from Frome Road), with a verge to the western side."

In its comments on Minute 866 of Trowbridge U.D.C.'s Highways & Planning Committee of 10th June 1971, the Report added:-

"866 refers to the formal adoption of Church Fields as a highway maintainable at the public expense. The remainder of Church Lane, however, is treated differently under the private street works programme. Church Lane being a priority for 1972/73 phase of the 1972-1975 programme, where the Church Fields development is completed. The making up of the unadopted section of Church Lane from Church Fields to Frome Road, that we see today is likely to have been carried out as part of this programme. That section north of the adopted section has not been made up to the same standard where there is less use with vehicles to access residential properties."

It is established, therefore, that Trowbridge U.D.C., then the Local Highway Authority, did indeed maintain Church Lane at the public expense, including laying the bound tarmac surface described in [7.3].

Thirdly, the adoption of Church Fields as a highway maintainable at the public expense by that Minute could not have been implemented without a lawful vehicular access from another adopted highway. At the date in question, that would have been along Church Lane, Upper Studley from the A361 Frome Road at Whiterow Hill. Otherwise, the adoption of Church Fields would not have been effective (and would not be effective even now).

Yours faithfully,

Francis Morland



