

From: F M

Sent: Friday, May 3, 2024 2:09 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Cc: Rightsofway <Rightsofway2@planninginspectorate.gov.uk>; Baylis, Caroline <caroline.baylis@planninginspectorate.gov.uk>; Definitive Map <definitivemap@wiltshire.gov.uk>;

Subject: Wildlife and Countryside Act 1981 - Section 53: The Wiltshire Council Trowbridge Path No. 8 Definitive Map and Statement Modification Order 2021 - PINS Ref: ROW/3295476

Dear Case Officers,

Thank you for your letters of 12 February 2024 and 22 March 2024.

Please accept this e-mail as my duly-made objection to the Inspector's proposed modifications (fifth and sixth bullet points). I disagree with [40] of the Interim Order Decision and the second sentence of [43] of its Conclusions, and I wish to ensure the right to be heard.

I also wish to maintain my objections/representations to the unmodified part of the Order - see my Statement of Case of 9 October 2023 and my Comments of 20 November 2023 (and subsequently) on the documents submitted by the Order Making Authority. In particular, I disagree with [9] to [13] and the first sentence of [41] of the Interim Order Decision on The impact of the Natural Environment and Rural Communities Act 2006.

In support of my case both against the proposed modifications and against the unmodified part of the Order, I wish to submit additional documents relating to planning decisions for development fronting Church Lane.

Please acknowledge receipt.

Yours sincerely,

Francis Morland

3 May 2024

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DPC:76616c646f72



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From: Vigar, David

Sent: Monday, April 15, 2024 11:58 AM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>; Green, Janice <janice.green@wiltshire.gov.uk>

Subject: RE: Planning Inspectorate ROW/3295476: Bridleway from Frome Road at Whiterow Hill, south of St Johns Church, BA14 0EH

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Dear Helen and Janice

Thank you for sending the documents. Having raised the concerns of residents to avoid Church Lane becoming a through road, I was pleased to note that the Inspector added a line to say that "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 I agree with the placing of points X and Y on the modified plan.

I was also pleased to see in the interim decision the paragraph stating: "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."

So I am not writing to object but merely to comment to the effect that I hope that, as I said in my statement of case, the process operates such that if the lane is redesignated, a new barrier is erected immediately after the existing one is taken down and there is no possibility of through traffic at any stage.

The minutes of the Western Planning Committee in 2021 said: "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 am grateful to the officers for these assurances on this matter and on that basis I am content to support the Order.

I recognise that expanding the path to a 7m width and replacing the barrier will require engagement with residents and some engineering works. And I would be very grateful if at the appropriate time a plan of action to implement this decision could be drawn up showing the planned sequence of events and shared with residents. I think residents would be greatly reassured if they know in advance what is likely to happen and when.

Best wishes

David Vigar

From: helen.sparks@planninginspectorate.gov.uk <helen.sparks@planninginspectorate.gov.uk>

Sent: Friday, March 22, 2024 12:43 PM

To: Vigar, David

Subject: Planning Inspectorate ROW/3295476: Bridleway from Frome Road at Whiterow Hill, south of St Johns Church, BA14 0EH

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DPC:76616c646f72



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Wiltshire Council Trowbridge Path No. 8 Definitive Map and Statement Modification Order 2021. Order reference: ROW/3295476

Objection from Councillor David Vigar

I am the Wiltshire Councillor for Trowbridge Grove division which includes Church Lane. I write to object to the confirmation of the order to modify the definitive map and statement as proposed in the interim order decision dated 12 February 2024, reference ROW/3295476.

I also request that this paper is sent to officers of Wiltshire Council's Planning and Highways teams as well as the Definitive Map team as the Inspector may find that the main issues raised here are for the Council to resolve following his decision.

For the last two and a half years, I have been minded to support the modification as I believed that the main concern of residents was to prevent a through road being established by the removal of the barrier at the north-west end of Church Lane.

The concerns of residents on this point were allayed by the commitments made by the council in the Minutes of the meeting of the Western Area Planning Committee of 29 September 2021¹ that: "The current barrier would be removed and replaced with an appropriate barrier at the same time in order to protect non-motorised users."

Residents therefore also welcomed the Inspector's modification to add the words: "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".

However, in the last few weeks it has come to my attention that there is significant concern among several residents about the practical impact of recording the minimum width of the bridleway as 7 metres.

I am therefore lodging this objection with a request to the Inspector to modify the order in such a way that clearly signals to Wiltshire Council as the Local Planning Authority and Highways Authority as well as the Commons Registration

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

Authority (CRA) that residents should not be made to suffer practical adverse impacts which cause personal stress and anxiety as a result of a change in the designation of a carriageway that no resident or member of the public has formally requested through any application to modify the Definitive Map.

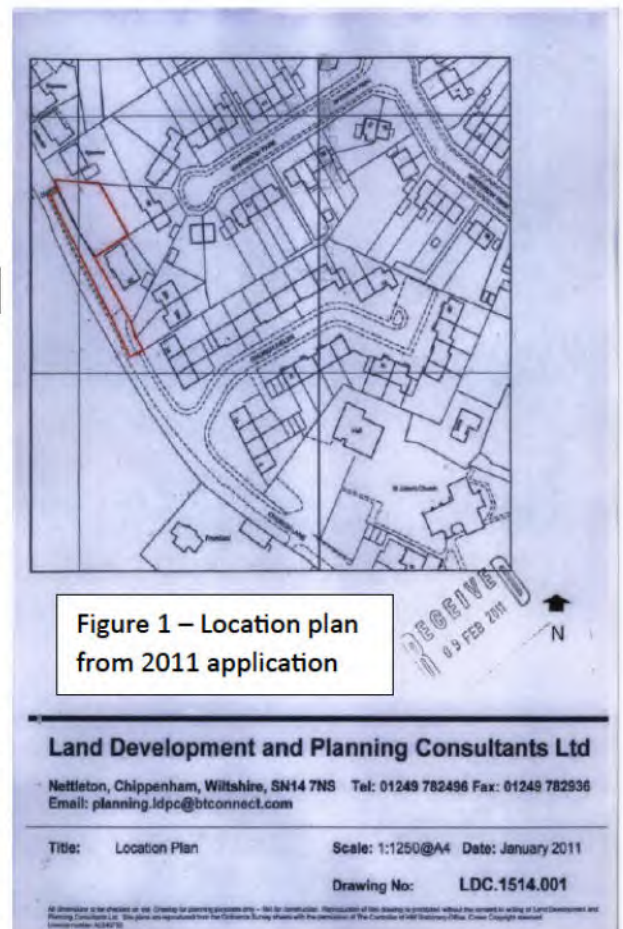
The history of this case is that on 29 August 2018 an application was made by a resident to upgrade a section of Footpath no.8 Trowbridge (Church Lane), to a Byway Open to All Traffic. After conducting research, officers did not approve that application as there was insufficient evidence of use of the path by the public with vehicles in the period of 20 years before the public right to use the path with vehicles was brought into question by the erection of posts across the full width of the way in 1962.

Instead however, and without any further application being made by a member of the public, officers recommended that the footpath, for the whole length of Church Lane between Frome Road and Acorn Meadow, be upgraded to a bridleway, having a width varying between 4 metres and 13 metres.

The Inspector has proposed modifying that minimum width to 7m. This is based on evidence provided of former use of the lane, but in practice it could have serious consequences for some residents.

In particular, the occupants of [redacted] and [redacted] Church Lane have been experiencing a great deal of anxiety about the possibility of Wiltshire Council requiring the removal of the fence between their driveway and the footpath to Acorn Meadow on the grounds that it represents an obstruction to the full width bridleway.

In 2011, when planning permission was granted for the pair of bungalows that constitute [redacted] and [redacted] Church Lane (Application W/11/00419/FUL)², the permission explicitly included access from Church Lane as shown on the location plan at Figure 1 – also attached



² <https://development.wiltshire.gov.uk/pr/s/planning-application/a0i3z000014ecnBAAQ/w1100419ful>

with this objection. The western part of the red section covers a strip of land that is now included in the extent of the footpath proposed to be upgraded to a bridleway.

The 2011 officer's report (also attached) noted that when permission had been previously granted for the bungalows in 2008, a condition stipulated that access was to be from the north west, which means from Acorn Meadow.

However, in March 2011, when a fresh application was made, it revised the plans to create access from Church Lane and this was recommended for approval. One material factor in the change of stance by the Highways Authority noted in the officer's report was the success of an appeal in relation to an application to build another house in Church Lane (07/02273/FUL).

Much of the discussion in the officer's report relates to the proposed agreement for the applicant to install a barrier to prevent a through road being created from Acorn Meadow, which was duly undertaken. The details of what was described as a "continued private drive" were to be provided and agreed as a condition – but the principle of access from Church Lane was recommended and allowed. The driveway as it is now is shown at Figure 2.

The report makes clear that the council considered and accepted the impact on the width of the lane, saying: "The Highways Officer has confirmed that he does not wish to pursue an objection of the lack of footway and width of a section of Church Lane, on the grounds that Church Lane is well used by the wider public and that refusing a 2-house development making further use of the lane, would be difficult to defend on appeal."



Figure 2 - Driveway to 24 and 26 Church Lane

One of the residents has separately submitted an objection saying that the chicane and fence was installed in accordance with Wiltshire Council's agreement and permission in preference to posts or bollards as Council Officials were concerned that installing posts or bollards would not have restricted the

use of motorcycles mopeds etc. A fence was erected from south-east to north-west along the side of the current footpath and no enforcement action has been taken in the last 13 years to challenge it. And the agreed location of the drive was clearly on land that is now being proposed to be part of the bridleway.

The Discharge of Conditions notice of 28 September 2011 indicates that the council as planning authority was content with the chicane arrangement put forward by the applicant's agent. (figure 3).

I have now had an opportunity to discuss your colleagues' requirements with my Client and have enclosed drawing number LDC.1514.01CONDITIONS detailing the following matters as discussed:

- Position of railings on line of existing bollards;
- Create a full chicane to deter pedal and motorcycle use of the footpath;
- Widen surfaced portion of the public right of way to accommodate chicane
- Form drive to same level of surfaced portion of public right of way;
- Form surface of driveway with rolled scalplings or similar to create porous surface.

Figure 3 – Discharge of Conditions Notice, 28 September 2011

The documents relating to the application in 2011 remain available to view online at <https://development.wiltshire.gov.uk/pr/s/planning-application/a0i3z000014ecnBAAQ/w1100419ful>

The Council has presented evidence from witnesses that the full width of the lane was available as a path and for horse-riding prior to the 2011 planning permission.

However, photographs such as that shown in Figure 4 from the CRA's Statement of Case, indicate that in 2009, prior to the planning permission being granted, there was a thick hedge to the north-east of the pathway, restricting the width to less than 7 metres.

Moreover, no resident has come forward with an application to re-register the path as a bridleway.



On the other hand, planning permission was given in 2011 for access from Church Lane on a location including the current driveway. It is true to say that: "There has been no legal order to stop up part of the width of the highway" but it is also the case that there has been a decision to grant planning permission for access and a "continued private drive" as shown in Figure 1. Therefore if the land is recorded as a bridleway, Wiltshire Council will face a situation where an area of land has been both approved for development and recorded as a public bridleway.

██████████ of █████ Church Lane has said that he has experienced instances of antisocial behaviour and cars driving to the end of the lane at night. The fence provides some deterrence to anyone thinking of approaching the bungalows or using the end of the lane as a meeting place, whereas its removal would create an accessible but dark area at the end of a cul-de-sac, close to a large housing estate.

Given that risk, it might even be that were the fence to be removed, the Highways Authority might install another under Section 66 of the Highways Act 1980 whereby: "A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway."

It is also important to note that neither of the current residents of █████ and █████ Church Lane were the applicant in 2011. They bought their homes in good faith believing that the fenced off driveway area was theirs to use.

I therefore see no overwhelming public demand or public interest in removing the fence that would create a public benefit to outweigh the distress that will be caused to the residents of █████ and █████ Church Lane by such an action.

At the other end of the lane, residents have other concerns. They note that at many points the actual surfaced or 'metalled' carriageway is much narrower than 7m and they are concerned about any possibility of it being widened in practice. Figure 5 shows the lane close to 4 Church Lane where I measured the width of the surfaced road at one of the narrowest sections as 3.7m.

One resident has told me: "We were never told that if we agreed for it to become a bridleway the entire length of Church Lane would have to have a minimum width of 7m, and that ancient, protected hedgerow, trees or ditches would have to be removed or repositioned. Had that been proposed we would have objected."



"If Wiltshire Council wishes to persist with its bridleway redesignation, and if this requires widening of the route then I believe the public consultation will need to be done again, this time making the implications clear."

It has been observed that the policy for the adjacent site identified for housing development in the Wiltshire Housing Sites Allocations Plan (H2.4 on page 43)³ emphasises the enhancement of hedgerows in the area, as opposed to stripping them away to widen a bridleway, saying that: "core bat habitat will be protected and enhanced", and providing for: "retention and enhancement of hedgerows and trees as part of wider landscaping and green infrastructure requirements."

Residents also say they believe that removing the ditch to the south could remove an important flood mitigation feature in an area prone to flooding.

I understand that if the order is confirmed, the Council does not intend to remove the trees and hedges which are deemed to form part of the highway and "accepted by the public", to quote one officer. This will be welcomed by residents at the southern end of the lane. However, in relation to the northern end of the lane, as the local councillor, and from reading the reports, I do not see any evidence that the current arrangement is not also now accepted by the

³ https://www.wiltshire.gov.uk/media/4540/Wiltshire-Housing-Site-Allocations-Plan-Adopted-February-2020/pdf/Wiltshire_Housing_Site_Allocations_Plan_Adopted_February_2020.pdf?m=1599145692157

public. Nor do I see any public demand to demolish the fence and open up land for which planning permission has been given as a driveway. As far as I know, there is no application from any member of the public to register the land as a bridleway or at a minimum width of 7m.

My request to the Inspector is that, in light of the practical likelihood that the southern part of the lane will remain as narrow as 3.7m, to consider reinstating the minimum width of 4m as originally proposed by the CRA.

I would also request that the Inspector, having very helpfully added some words relating to the “posts or bollards”, might consider adding some wording to the effect that the Council has it in its power to ensure that the change in registration is sensitively implemented in a way that does not causes more distress than any that it removes.

My request to the Council is to note that the most relevant law here relates to registration. The Wildlife and Countryside Act 1981, Section 53, paragraphs 2 and 3 states that the surveying authority shall modify the definitive map and statement in the event 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.”⁴

That legislation does not require infrastructure on the ground to be modified. It is section 143 of the Highways Act 1980 that gives authorities the power to require the person having control or possession of a structure to remove it. But it does not make such action mandatory. As the Inspector notes, the issue of “whether the definitive map and statement should be modified ... is distinct from the issue of maintenance”.

I suggest that before removal of the fence is considered, the Council, as the Local Planning Authority, should bring forward proof that the erection of the fence was not an acceptable discharge of the condition attached to the 2011 planning application, and if was not, the reasons why no enforcement action has been taken.

I would suggest that in light of the fact that the residents of ■ and ■ Church Lane bought their homes believing the fence was approved, that its removal would cause distress, and that there is no overwhelming demand or need to remove it, that the power not be exercised on this occasion.

⁴ <https://www.legislation.gov.uk/ukpga/1981/69/section/53>

It remains the case that maintaining a barrier between Acorn Meadow and Church Lane is necessary to prevent a through road being created with all of the danger and disturbance that would cause. The existence of a barrier has been supported by successive Councils, during the 2011 application process and by residents now. So if the current barrier were to be removed I hope that the Council as Highways Authority will honour its commitment to replace it.

However if the fence is not in practical and everyday terms obstructing people from accessing locations that they have a particular need or desire to access, then perhaps one option would be to redesignate the lane in the Definitive Map and Statement in line with the research undertaken by the officers, but as mentioned above, to add an informative to the effect that any infrastructure alterations might be deferred pending any public application, request or other evidence of demand to implement them.

David Vigar
3 May 2024



DELEGATED REPORT

Application Number	W/11/00419/FUL		
Site Address	Land Rear Of [REDACTED] Whiterow Park Trowbridge Wiltshire		
Proposal	Construction of a pair of semi-detached dormer bungalows & associated parking areas; revised access		
Date of Inspection / Site notice posted	16.03.2011		
Date of Press Notice		Date of Overall Expiry	08.04.2011

1. Purpose of Report

To consider the above application and to recommend that it be approved subject to conditions.

2. Main Issues

The main issues to consider are:

Planning History
Highway Safety

3. Site Description

The site relates to a parcel of land located between Acorn Meadow and Church Lane within the defined Town Policy limits of Trowbridge. Access to the site is on land which is not owned by the applicant and certificate D of the application form has been duly completed with press advertisement notices duly issued. There is a non vehicular public right of way which runs from Church Lane to Acorn Meadow past the application site.

4. Relevant Planning History

06/01051/OUT - Construction of single storey detached bungalow - Permission 17.05.2006
08/00965/FUL - Construction of a pair of semi detached 3 bedroom dormer bungalows and associated parking area - Permission 13.05.2008

5. Proposal

Under application reference 08/00965/FUL, planning permission was granted for the construction of two 3-bed dormer bungalows subject to eleven planning conditions, one of which (no. 11) stipulated the following:

"That vehicular access shall be gained onto the site only by the access to the north west of the site as identified on approved plan drawing no. 2094 AL 1/03".

The reason presented for this condition was in order "to protect the integrity of the public right of way". Such an access would be shared with [REDACTED] Church Lane, which is also known as [REDACTED]

Under this application, planning permission is sought to allow vehicles to access the site from Church Lane alongside the public right of way. The applicant has stated a willingness to install bollards or

fencing adjacent to the northern boundary of the identified application site. An indicative layout of such a barrier is annotated on plan drawing LDC.1514.002A. If granted, a previously existing paddock access would not be closed up, but instead would serve the southern most property on the site.

The applicant also seeks to reduce the area of land to be excavated and spoil material to be removed from the site and redesign the access point and parking arrangements. The applicant would retain the existing retaining walls to the rear of the site. The rear amenity ground associated to the two new properties would be accessed via three steps.

There is no proposed change made to the number, scale, design or layout of the two semi-detached properties approved under 08/00965/FUL.

6. Planning Policy

Government Guidance

PPS1 - Delivering Sustainable Development
PPS3 - Housing
PPG13 Transport
PPG24 Planning and Noise

West Wiltshire District Plan Policies

H1 - Further Housing Development within Towns
H24 - New Housing Design
C31a - Design
C38 - Nuisance
T12 - Footpaths and Bridleways

Wiltshire and Swindon Structure Plan 2016

DP1 - Priorities for Sustainable Development
DP2 - Infrastructure
T5 - Cycling and Walking

7. Consultations

Town/ Parish Council - Support subject to a condition requiring that the bollards at the end of Church Lane are reinstated and be maintained by the occupiers in order to prevent through traffic and subject to there being no adverse impact on neighbouring amenity.

Highways Authority - Following detailed negotiations and discussions with the Council's PROW officer, no objections are raised subject to the relocation of bollards being conditioned.

Having spoken again to our Rights of Way office. I spoke with [REDACTED] who explained that all the frontagers on the section of the ROW have taken out insurance should an owner emerge to deny them access. He also explained that he would cut back the southern hedge and generally tidy the area, including reinstating the bollards on the western side of his site. These improvements and the creation of a driveway linking to the east, as proposed in the application, would not appear to be unacceptable, subject to any requirements/conditions from my ROW colleagues.

I also take the view that because Church Lane is well used by the wider public associated with church/church hall activities and the occasional election (as also pointed out by [REDACTED]), I do not propose to make an issue over the lack of a footway/width of Church Lane.

The matter of visibility onto Frome Road remains an issue that is sufficiently unsatisfactory for me to maintain a highway objection. Having inspected the hedge on Frome Road, I have noted that the

overgrowth causing the obstruction extends considerably over the highway footway and have asked our Highway Inspector to remedy this by requiring the frontager to cut the hedge back to the line of the footway, significantly improving visibility. This cannot however be carried out until the end of the nesting season (September?). I am minded, given the prospect of a visibility improvement being forthcoming, to recommend a Grampian condition that access to the east to Frome Road should not proceed until a specific visibility splay is achieved at the Frome Road junction.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 8 April 2011

Summary of points raised:

18 letters of objection were received raising the following representations:

08/0965/FUL restricted the means of vehicular access to the site (via Acorn Meadow). The applicant has not provided a justification to change this arrangement.

The existing arrangement of bollards preventing the use of Church Lane as a "rat run" should be retained. Removing the bollards would set a precedent. The bollards have in the past, and recently been removed and the matter was reported to the police.

Locals do not want to see Church Lane being used by more traffic, which in turn would lead to more congestion and potential accidents.

There is no footpath in places along Church Lane. It is too narrow and its junction with Frome Road is restricted in terms of its width and visibility. Accidents have occurred at this junction due to the junctions' poor visibility and restricted width.

The local church services are popular and the lane gets very busy with parked cars on both sides. Increasing even more traffic would add to the noise pollution and congestion. Even when the services are not on, it is not advisable to drive above 20 mph. The lane is well used by walkers and cyclists.

Concerns are raised about surface water drainage, flooding of the lane (which freezes in the winter) and off-site water logging and field flooding.

Vehicles/motorcyclists regularly use Church Lane believing that they can access Acorn Meadow/Studley Green beyond. This results in vehicles having to reverse or use private drives which adds to the vehicle/pedestrian/local conflict/concern.

One letter writer understood that only one bungalow had been approved for the site.

One local asks whether the owner(s) of the lane has been informed.

The proposed parking spaces about the new driveway. There is no allowance for visitor parking or for delivery/waste management vehicles. The access strip shown on the plans are only wide enough for one vehicle, not a delivery vehicle or dustbin lorry - which would need to drive along the footpath.

There is inadequate lighting along the lane.

In the past, bollards have been deliberately moved by people wanting to gain access down the lane. Moving them further down will make it more difficult to see and encourage people to remove them again.

The proposal would detrimentally affect the wildlife interests.

1 letter writers starts off by stating they have no objections to the application, but then proceeds to raise concerns about the lane potentially becoming a "rat run" if no secure barrier is installed. Further concerns are raised about the length of the driveway access and its use as overflow parking, and once cars are parked, others may try to pass along the footpath.

Measures should be taken to make it clear that Church Lane is not a through road.

2 letters of support were received raising the following points:

On sunny days I walk from my home with my daughter down Church Lane into the Southwick Country Park and return home along Frome Road. The other day I noticed the planning sign and read it. As we walked passed the site where the building is taking place I spoke to the developer and asked what he wanted to do as I am concerned about a through road. He informed me he merely wants to access his property through Church Lane he further told me that he wanted to tidy the footpath up and at one time had suggested to Highways that he would re-tarmac it put in cycle barriers and concrete pepper pots at the far end by [REDACTED] to stop any cars from driving through at his expense.

To my astonishment he told me this offer had been refused by Highways. It is quite apparent that Highways do nothing about the state of this path it is over grown and strewn with rubbish and at times could almost be a health hazard. I personally have encountered and had to stand back as cycles pass me on the foot path, speeding in excess of 30 mph as they take advantage of the hill down Church Lane. I support this application and would urge the Council to sort this untidy dangerous mess out at someone else's expense once and for all and except the developers offer. It could be a "Condition of Planning Approval".

The driveway to [REDACTED] is on an incline, and the existing large gate, pillar and fencing (which the owners do not intend changing) restricts visibility of traffic emerging from the site to the south.

One letter writer also advises that the applicant/developer has allegedly obtained permission to cut back the hedgerow which restricts visibility and dig out the ditch along Frome Road.

9. Planning Considerations

9.1 Planning History

Following the Council's decision to grant 08/00965/FUL, the principle of erecting a pair of semi-detached dormer bungalows on the identified site has already been established as being acceptable. There is no policy objection raised to the reduced level of on site excavation. The parking reconfiguration would only be acceptable if the revised means of access off Church Lane can be supported. As noted above, the 08/00965/FUL application was subject to a planning condition which restricted the point of access, and it is acknowledged that this is considered to be the key planning issue, which is covered in more detail below.

9.2 Highway Safety

It is acknowledged that local residents have raised concerns about taking access off Church Lane and increasing the amount of traffic using the junction onto Frome Road, which has limited visibility. Concerns are also raised about Church Lane being used for even more traffic from Acorn Meadow. Whilst these concerns are duly registered, with an appropriate planning condition, bollards could be installed along the north western side of the application site (with the agreement of the Highways Authority) to prevent cars and larger vehicles using Church Lane as a "rat run" linking Acorn Meadow (and streets beyond) with Frome Road.

Towards the end of the planning application process, the applicant's agent submitted details of an appeal in respect to a local site dating back to 2008. The appeal related to land adjacent to [REDACTED] Church Lane and to refused planning application 07/02273/FUL relative to the erection of a 1-bed dwelling house with access taken off Church Lane. The appeal (APP/F3925/A/07/2059805) was allowed on 13 March 2008.

Notwithstanding the fact that each application should be assessed on its own merits, the appeal decision has some material weight. There are some differences between the two sites and the respective proposed development. As far as this application is concerned, the Council's Highways Authority has changed their initial stance (of recommending refusing the application) to an approval subject to conditions to allow the 2 houses to be accessed from Church Lane.

The applicants agent argues that in granting 08/00965/FUL, the Council stipulated by way of Condition 11, that vehicular access to the site had to be from the north west only (i.e. Acorn Meadow), over land which was and remains under unknown ownership. The agent goes to argue that "the opportunity existed for the future owners and occupiers to access and exit the site either from the north west or the south east; had this not been the case, there would have been no need to impose a condition specifying the direction of the vehicular access". In response to the above, it is necessary to note that in approving 08/00965/FUL, no works falling outside the defined red boundary of the site were approved by the Council. In 2008, through the signing of the application form pursuant to application 08/00965/FUL, the applicant declared that all land subject to his application was under his own control and ownership and that he had rights of access both from the north west and south east directions. In line with consistent highway safety advice, condition 11 was attached to the decision to grant permission to prevent vehicular access being taken from the south east and Church Lane/Frome Road direction.

The applicant was advised back in August 2009 by the Council's Highway Authority that the "Highway Authority has a duty to protect the rights which exist over the public footpath [he wished] to take access over (which includes the first part of Church Lane from Frome Road) as well as the part that runs adjacent to the site. In addition, the applicant was advised that "the junction of Church Lane and Frome Road is substandard in terms of visibility and kerb radii. It is difficult to see vehicles approaching the junction from both directions on Frome Road and therefore vehicles have to edge out from Church Lane into the line of on-coming traffic to get a view of Frome Road. The tight kerb radii hinder[s] access and egress of the junction, particularly for traffic making a left turn in or out, pushing them toward/across the centre line of the road into the line of on-coming traffic. Any proposal resulting in an increased use of the access would cause highway safety concerns". It is with regret that application 07/01237/FUL and the subsequent appeal decision did not address the restricted Church Lane/Frome Road junction.

As part of the application proposals, the applicant proposes to remove 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). The applicants agent argues that a "Grampian" type condition could be used in this particular case to secure the relocation of bollards on unknown third party land and other works necessary to avoid the creation of a through road.

Although it would classed as "ultra vires" to require works which a developer/applicant has no power to undertake, or which would require the authorisation of a third party, revisions made to Circular 11/95 in 2002 (following a High Court Case involving Merritt v SSETR and Mendip District Council), it is accepted that in some circumstances (after very careful analysis of the proposals), works which are considered necessary as part of a planning approval could be conditioned providing such a condition is worded in the negative form (such as prohibiting occupation of the dwellings until works are done or agreed between the respective parties).

The above cited High Court Case required a change to be made to paragraph 40 of Circular 11/95 which stated that such a condition should only be imposed "if there is at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission". The Merritt Judgement ruled that only in cases where there are no prospects at all of the action being performed within the requisite time-frame, should such negative condition not be used.

In this particular case, the relocation of bollards on unknown third party land could have fallen foul of this test. After protracted negotiations, it has been agreed that there is sufficient confidence that the works could be undertaken to prevent a rat-run being created. The exact details of the barriers/bollards and their siting need to be covered by way of a separate condition to ensure that the Council /PROW officer is satisfied with the alterations to the ROW.

This application has been delayed due to detailed and complex consultations with the Council's Highways Authority and the PROW officer as well as with the applicant's agent.

The re-location of bollards on "unknown" third party land (the land which is designated PROW) has required careful consideration in terms of assessing the reasonableness of imposing a Grampian style condition. This matter has been discussed at length, and it has been concluded through dialogue with the Council's PROW and Countryside Manager, that in the event the applicant reneges on any condition requirement to reinstall bollards on land not under his own control, the Council has the authority to ensure that such work is completed. Such a planning breach would out of highway safety necessity, be actively pursued and the costs of completing such works falling to the applicant.

It is acknowledged that several, if not all the frontagers on the section of the PROW have taken out insurance should the owner emerge to deny them access. This application has been subject to the proper advertisement procedures in terms of Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, and despite such advertisements in local press, the owner of part of the PROW has not come forward or made representation.

The vast majority of the local objections stem from a concern about the creation of a rat-run or through road from Frome Road to Acorn Meadow/Studley Green. The installation of bollards along the north western edge of the application site (shown on drawing no LDC.1514.002A) would prevent this from happening.

Visibility from Church Lane onto Frome Road is at present restricted, but it has been demonstrated that an existing hedge (again not owned by the applicant) overhangs the public highway and that by cutting it back, improved visibility could be obtained, and that this would alleviate the previously raised highway objection. Such works are again within the power of the Highways Authority to sanction, and an informative rather than a condition is recommended to advise the applicant that it would be in his own best interests to agree with the known third party to cut back the offending hedgerow.

The Highways officer has confirmed that he does not wish to pursue an objection on the lack of footway and width of a section of Church Lane, on the grounds that the Lane is well used by the wider public and that refusing a 2-house development making further use of the lane, would be difficult to defend on appeal.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 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.

- 3 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming how the "continued private drive" (as shown on plan drawing LDC.1514.002A) shall be consolidated. Once the finished material has been agreed in writing, the access drive shall be maintained for the lifetime of the development.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 4 The dwellinghouses hereby approved shall not be occupied until further details of the access gradients have been submitted and approved in writing by the local planning authority.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 5 The parking spaces shown on plan drawing LDC.1514.002A shall not be used other than for the parking of vehicles or for the purpose of taking access to the site.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 6 That the hexagonal windows shown in the gable elevations shall be formed in obscure glazing units for the lifetime of the development.

REASON: To safeguard residential amenity and privacy.

POLICY: West Wiltshire District Plan - 1st Alteration policy C38.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the gable elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38

- 8 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

LOCATION PLAN drawing no.LDC.1514.001 received on 09.02.2011

PROPOSED SITE LAYOUT drawing no. LDC.1514.002A received on 04.03.2011

PROPOSED FLOOR PLANS drawing no. LDC.1514.003 received on 04.03.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.004 received on 04.03.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.005 received on 04.03.2011

REASON: To ensure that the development is carried out in accordance with the approved plans that have been judged to be acceptable by the local planning authority.

Informative(s):

- 1 The applicant/developer is encouraged to make contact with the owners of hedgerows which restrict visibility at the Church Lane and Frome Road junction. Cutting back the hedgerow would improve highway safety for all users of Church Lane and other road users. The applicant is however advised that hedgerow should not be cut back during the bird nesting season.



RECEIVED
09 FEB 2011



Land Development and Planning Consultants Ltd

Nettleton, Chippenham, Wiltshire, SN14 7NS Tel: 01249 782496 Fax: 01249 782936
Email: planning.ldpc@btconnect.com

Title: Location Plan

Scale: 1:1250@A4 Date: January 2011

Drawing No: LDC.1514.001

-----Original Message-----

From: Andrew May

Sent: Friday, March 29, 2024 6:49 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Cc: ben.braine@wiltshire.gov.uk; Roscoe, Vicky <vicky.roscoe@wiltshire.gov.uk>; Michelle Dunne

Subject: Re: Planning Inspectorate ROW/3295476: Bridleway from Frome Road at Whiterow Hill, south of St Johns Church, BA14 0EH

[You don't often get email from. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Helen

Thank you for your previous email. We would like to object to this part:

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.

The reason being that [REDACTED] and [REDACTED] both have a vehicular right of way up Church Lane that has been blocked by the chicane and previously installed posts. I thought that their location was beyond the remit of this DMMO but I am compelled to object as I am currently in discussion with the Wiltshire Council Countryside Access Officers about this issue. My evidence is attached.

Kind regards

Andrew May and Michelle

On Fri, Mar 22, 2024 at 12:31 PM

<helen.sparks@planninginspectorate.gov.uk> wrote:

>

> _____

>

> The Planning Inspectorate (England)

> Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

>

> The Planning Inspectorate (Wales)

> Crown Buildings, Cathays Park, Cardiff, CF10 3NQ

>

>

<https://gbr01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.p%2F&data=05%7C02%7CChelen.sparks%40planninginspectorate.gov.uk%7C7acc9563da5c44e8aa4608dc533124b7%7C5878df986f8848ab9322998ce557088d%7C0%7C0%7C638476718038025858%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=212Kt7MFEW3pWK9VJbUWu2I3eJ3WWe96lbkLJm1f0jk%3D&reserved=0>

> lanningportal.gov.uk%2Fplanninginspectorate&data=05%7C02%7CChelen.spark

> s%40planninginspectorate.gov.uk%7Cddc92c51bd42462ee5f908dc5020fc3d%7C5

> 878df986f8848ab9322998ce557088d%7C0%7C0%7C638473350236235104%7CUnknown

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> XVCI6Mn0%3D%7C0%7C%7C%7C&sdata=IHJJbafRh1yf7dWM9jAp6hliLgCev0jIlf95Lpr

> LgNQ%3D&reserved=0

> Twitter: @PINSgov

>

> This communication does not constitute legal advice.

>

> How we use your information

> The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our privacy notice.

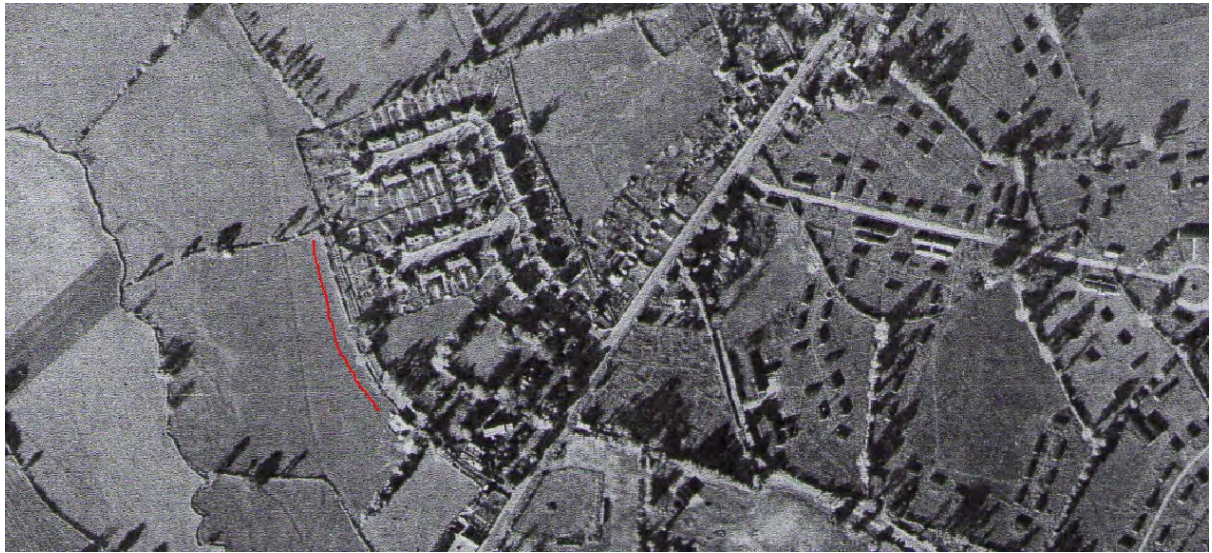
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The statements expressed in this e-mail are personal and do not necessarily reflect the opinions or policies of the Inspectorate.

DPC:76616c646f72

[Environmental advice image with text saying please consider the environment before printing this email]



English Heritage Aerial photo Nov 1946 clearly shows that Church Lane is the only possible access road to the plot. If you zoom in you can clearly see that a track leads all the way to the [REDACTED] plot:





Drawing Number T1A/15b 11th Jan 1954

Showing a clear gap between Lambrok Road and Church Lane. Access to Lambrok Road not possible.
Only possible access is via Church Lane



OS 38/11 1937 edition with revisions circa "1950/55"

██████████ and ██████████ are planned. Acorn Meadow does not exist. There is a clear gap between end of Lambrok Road and end of Church Lane, through which there is a footpath. Therefore vehicular access is only possible via Church Lane and that must have been used as the only possible access route.

2292. Church Lane: Upper Studley.—Upon a report by the Surveyor that land situate on the north side of Church Lane is likely to be developed for residential development it was **RESOLVED** that the Council be recommended:—

- (i) By Order to prescribe the centre line of the New Street and the outer lines defining the minimum width, in accordance with S.159 of the Highways Act, 1959.
- (ii) That the Surveyor prepare a detailed plan in connection therewith.
- (iii) That the Clerk be authorised to serve all necessary notices and to take all necessary action in connection with the proposed order.

2293. Traffic Signs

13th December 1960 – Trowbridge U.D.C. Minutes

Planning to adopt Church Lane

2586. Site for Proposed Dwelling at rear of No. 42a Whiterow Park.—An informal enquiry was received as to whether permission could be obtained for the erection of a dwelling, preferably a semi-bungalow, on this site, being part of the large garden of No. 42A Whiterow Park, with access to Church Lane. It was Agreed to obtain the Area Planning Officer's views on this matter and to inform him that the Committee see no objection in principle to the proposal.

2nd March 1961 – Trowbridge U.D.C. Minutes

No objections in principle to Church Lane access for ██████████ (and therefore also ██████████)

Minutes, Plans Committee, 13th April, 1961.

267

No. 4331 Church Lane (rear No. 68 Whiterow Park): Outline application for erection of semi-bungalow for Mr. S. J. Hillier.
Planning: Permission, subject to the Area Planning Officer's recommendation and to the submission of detailed plans and particulars for the approval of the Council before development is commenced.

13th April 1961 – Trowbridge U.D.C. Minutes

██████████ planning permission

No. 4333 Church Lane (rear No. 42A Whiterow Park): Proposed detached semi-bungalow for Mr. K. J. Hillier.
Byelaws: Surveyor authorised to pass the plan if found to comply with the requirements of the Byelaws: otherwise to reject the plan.
Planning: Permission, subject to the Area Planning Officer's recommendations.
Highways Act, 1959, Sec. 193: Deposit or security in respect of street works in the sum of £162 to be provided.

13th April 1961 – Trowbridge U.D.C. Minutes

██████████ planning permission and condition to deposit street works fee. The intention and only possibility of access for ██████████ (and therefore ██████████) was via Church Lane.

No. 4344 Church Lane (rear No. 42 Whiterow Park): Outline application for erection of house or bungalow for Mr. E. J. Organ.
Planning: Surveyor to discuss with the applicant the dimensions of the site and to report back together with the observations of the Area Planning Officer.

4th May 1961 – Trowbridge U.D.C. Minutes

Planning for land fronting between Church Lane and Lambrok Road. See map OS ST8456

No. 4344 Church Lane (rear No. 42 Whiterow Park): Outline application for erection of bungalow for Mr. E. J. Organ.
Planning: Permission, on an outline application, subject to approval of detailed plans and to satisfactory arrangement of site boundaries.
No. 4356 Church Lane (rear No. 42 Whiterow Park): Proposed detached

18th May 1961 – Trowbridge U.D.C. Minutes

No. 4394 Rear No. 68 Whiterow Park (Church Lane): Detached semi-bungalow and garage for Mr. S. J. Hillier.
Byelaws: Pass.
Planning: Permission.
Highways Act, 1959, Sec. 193: Deposit or security for street works to be provided in the amount of £135.
No. 4395 24 The Croft: Proposed

29th June 1961 – Trowbridge U.D.C. Minutes

██████████ planning permission

HIGHWAYS ACT, 1959. s. 193

Notice by Street Works Authority requiring payment or security in advance of apportionment of Private Street Works Expenses.

To (1) A/N. S. J. HILLIER
[REDACTED] WATERLOW PARK
TROWBRIDGE WILTS.

WHEREAS on the First day of July 1961, the* Trowbridge Urban District Council (hereinafter called "the Council") passed under the building byelaws of the Council plan No. 4391 - [REDACTED] deposited by you for the erection of a building at the rear of [REDACTED] Whitewell Park Trowbridge which building will have a frontage on to the private street known as CHURCH LANE, Upper Simley, within the Council's district

AND WHEREAS section 192 of the Highways Act, 1959, applies in this case

NOW THEREFORE TAKE NOTICE that in the opinion of the Council the sum of £135 (One hundred and thirty-five Pounds) would be recoverable under the appropriate private street works code (namely, the code of [1892] [1875]) in respect of the frontage of the said proposed building on to the said private street if the Council were now to carry out such street works in the street as they would require under that code before declaring the street to be a highway maintainable at the public expense

AND FURTHER the Council, in pursuance of the provisions of the advance payments code contained in Part IX of the Highways Act, 1959, and acting as street works authority under and for the purposes thereof **HEREBY REQUIRE** you or other the owner of the land on which the proposed building is to be erected to pay to the Council, or to secure to their satisfaction the payment of, the said sum of £135 (One hundred and thirty-five Pounds).

DATED this Third day of July, 1961.

[REDACTED]
[REDACTED] Clerk [of the Council].

Notes.

* Insert name of local authority.

† Insert the name and address of the person by whom or on whose behalf the building plans were deposited.

1st July 1961 – Trowbridge U.D.C. Document

Street works paid by [REDACTED] developers. This document proves that [REDACTED] fronts on to Church Lane and it is a private street. Also, if [REDACTED] wasn't using Church Lane for access, why would the owner pay for the private street works to be completed in the future? Church Lane gave vehicular access to the property and should not have been obstructed.

TOWN HALL,
TROWBRIDGE.

to
The Urban District Council of Trowbridge

All Accounts to be paid to the Cashier, Town Hall, Trowbridge and
Cheques made out to "Trowbridge U.D.C." and crossed Account Payee

Date. <i>Slung 1961</i>	<i>Mr. K. J. Hillier Whiterow Park Trowbridge</i>	
	<i>Highways Act 1959</i>	£ s. d.
	<i>Amount recoverable in respect of street works re new house to be erected near Whiterow Park</i>	<i>135-0-0</i>

CHEQUES ACT, 1957.
If payment of this account is made by CHEQUE, please forward THIS SECTION ONLY with the cheque. No receipt will be issued unless specifically requested as the paid cheque is evidence of receipt by the Council of the sum payable by the cheque. If payment is made other than by cheque, please present this account intact.

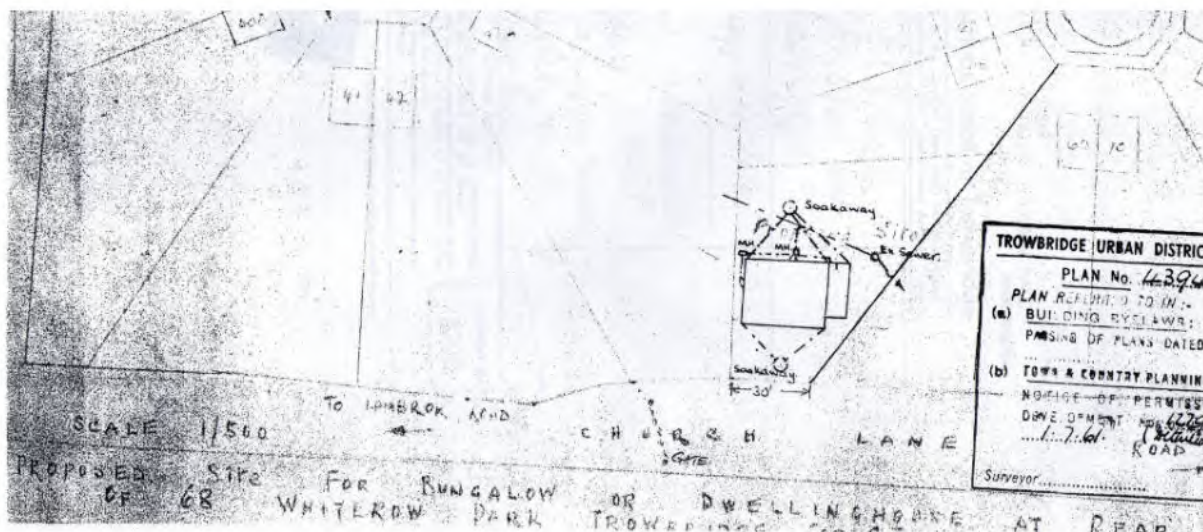
ACCOUNT No. **3722**

Only a Receipt printed by the receipting machine will be recognised.

Received the sum stated here in printed figures.

135. 0. 000

Receipt for streetworks payment 1961



1st July 1961 – [redacted] plans showing Church Lane and Lambrok Road are separated. Also shows a gate that separates the two roads. This gate was previously a cattle gate and marked the end of Church Lane. The position of the gate is now pavement and is adopted by Wiltshire Council. This would be an ideal position for a barrier to prevent Church Lane from becoming a through road, but also for [redacted] and [redacted] to have their right of way up Church Lane to be accessible again.

No. 4425 Rear No. 42A Whiterow Park (Church Lane): Proposed garage for Mr. K. J. Hillier.
Byelaws: Defer consideration pending receipt of further particulars.

No. 4425 Rear No. 42A Whiterow Park (Church Lane): Proposed garage amended for Mr. K. J. Hillier.
Byelaws: Pass.
Planning: Permitted development.

10th August 1961 – Trowbridge U.D.C. Minutes

█ garage amendment given planning permission. Access is currently only from Church Lane, Therefore Trowbridge U.D.C recognise the fact that cars from █ will be using Church Lane as their access (see Drawing Number T1A/15b 11th Jan 1954 and OS 38/11 1937 edition).

3787. Lambrok Road: Church Lane.—The Surveyor submitted an enquiry by the owner of one of the new bungalows fronting on to Church Lane as to whether the Council could put down some hardcore across the verge at the end of Lambrok Road to allow furniture vans, coal lorries, etc., to approach the site. It was RESOLVED that approval be given and that the matter be left for the Surveyor to deal with under S.47 of the Public Health Act, 1961.

9th January 1962 – Trowbridge U.D.C. Minutes

A verge separated end of Lambrok Road and end of Church Lane (as seen in map OS 38/11 1937 edition with revisions circa "1950/55"). Now █ and █ were given permission to access from both directions, if only for heavy loads from the North end. This also turned Church Lane into an unofficial through road.

objecting to the use of the site as a way from the site to The Down, December, 1961, and which had been forwarded to the Council.

4019. Church Lane: Site for Dwelling at rear of No. 42 Whiterow Park (Reference Plan No. 4344).—An inquiry was received from a prospective purchaser of this site as to whether permission would be forthcoming for the erection of a "Woolaway" type bungalow upon it. The observations of the Area Planning Officer had been obtained and were submitted. The Surveyor was instructed to reply to the enquirer to say that the Committee are not prepared to agree to the erection on this site of a bungalow of the type suggested.

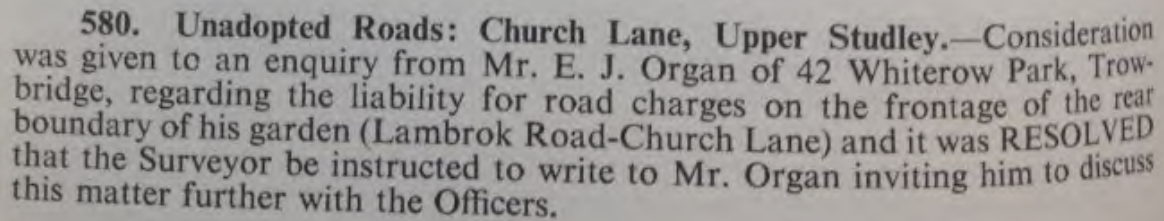
8th March 1962 – Trowbridge U.D.C. Minutes

Rear of █ Whiterow Park is now being referred to as Church Lane when actually it is past the end of Church Lane as shown on all previous maps. This is an argument against a precedent being set for other Church Lane addresses that are now in Acorn Meadow when █ and █ regain Church Lane access (as is the position of the gate shown previously).

4161. Church Lane, Upper Studley.—It was RESOLVED that the Surveyor be authorised to erect posts across the width of this lane near the new bungalows to prevent through vehicular traffic using the lane.

10th April 1962 – Trowbridge U.D.C. Minutes

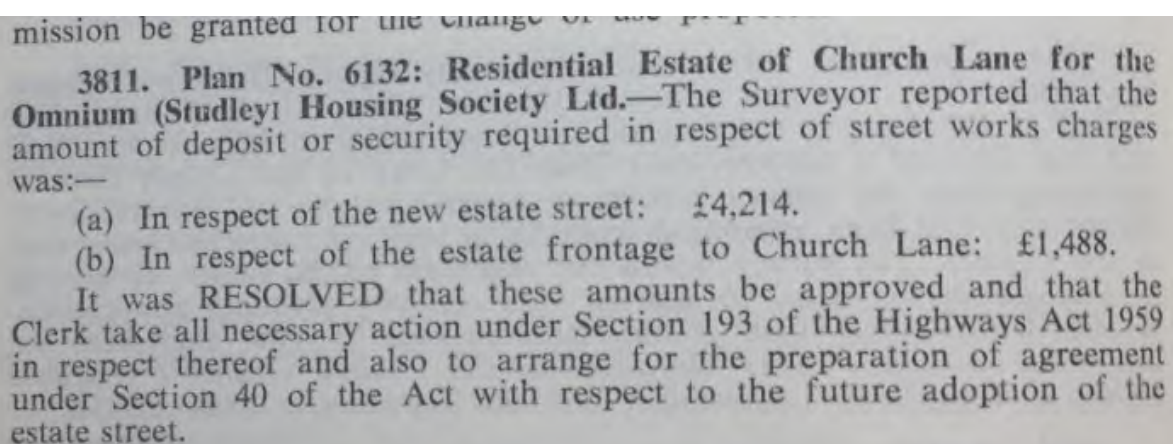
Posts erected on a private street for which there were plans to adopt in the future. Church Lane was however never adopted. The posts were justified by the council to protect the PROW safety from the cars treating the lane as a through road. The posts remained after 1991 when the street works charge was refunded to [REDACTED] owners, even though the [REDACTED] owners requested access in the mid nineties. They were unaware of the historical facts presented in this document, but still used Church Lane to access [REDACTED] as can be seen in documents below.



580. Unadopted Roads: Church Lane, Upper Studley.—Consideration was given to an enquiry from Mr. E. J. Organ of 42 Whiterow Park, Trowbridge, regarding the liability for road charges on the frontage of the rear boundary of his garden (Lambrok Road-Church Lane) and it was RESOLVED that the Surveyor be instructed to write to Mr. Organ inviting him to discuss this matter further with the Officers.

13th October 1964– Trowbridge U.D.C. Minutes

See OS ST8456 below. End of Church Lane is now considered to have moved further North. [REDACTED] is no longer at the end of Church Lane and it now meets Lambrok Road.



mission be granted for the change of the [REDACTED]

3811. Plan No. 6132: Residential Estate of Church Lane for the Omnium (Studley) Housing Society Ltd.—The Surveyor reported that the amount of deposit or security required in respect of street works charges was:—

- (a) In respect of the new estate street: £4,214.
- (b) In respect of the estate frontage to Church Lane: £1,488.

It was RESOLVED that these amounts be approved and that the Clerk take all necessary action under Section 193 of the Highways Act 1959 in respect thereof and also to arrange for the preparation of agreement under Section 40 of the Act with respect to the future adoption of the estate street.

4th April 1967– Trowbridge U.D.C. Minutes

“Future adoption of the estate street” – Not the rest of Church Lane then? [REDACTED] and [REDACTED] (and others?) had also paid street works charges as a condition of planning permission. They were still expecting Church Lane to be adopted and improved as a road, not a track.



CHIEF EXECUTIVE'S DEPARTMENT

I. A. Browning, BA, Chief Executive
N. A. Smith, TD, MA
County Secretary & Solicitor

Wiltshire
COUNTY COUNCIL

County Hall Trowbridge Wiltshire BA14 8JN
Tel: Trowbridge (0225) 753641
Fax: (0225) 777680
Telex: 44340
DX 43102 Trowbridge

Mr. S.J. Hillier,
[REDACTED]
Church Lane,
Upper Studley,
Trowbridge, Wilts.

Please ask for:	Ext:	Our ref:	Your ref:
Miss L.J. Hayward	3081	LJH/NV/NS.3001	

11th January, 1991

Dear Sir,

Deposit of £135 made in respect of [REDACTED] Church Lane, Upper Studley, Trowbridge

Further to my letter dated 30th November, 1990 I now enclose a cheque in your favour to the value of £430.42 in respect of the deposit plus accumulated interest, less tax. I also enclose a certificate of deduction of income tax for your information.

Yours faithfully,

[REDACTED]

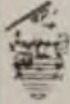
for County Secretary & Solicitor

Encs.

RESEARCH
UK

11th January 1991

Refund of street works charge from 1961. Church Lane to [REDACTED] will no longer be adopted therefore it remains an unadopted private street. Posts remained even though [REDACTED] (heir to [REDACTED]) also requested Church Lane access in the mid nineties. The letter dated 30th November 1990 cannot be located by the archive team at Wiltshire Council, nor by the Wiltshire and Swindon History Centre



CHIEF EXECUTIVE'S DEPARTMENT
 I. A. Browning, BA, Chief Executive
 M. O. Holder, LL.B., County Secretary & Solicitor

Wiltshire
 COUNTY COUNCIL

County Hall, Trowbridge, Wiltshire BA14 8JN
 Tel: Trowbridge (0225) 753641
 Fax: (0225) 777680
 DX 43102 Trowbridge

Messrs. Bishop Longbotham & Bagnall,
 Solicitors,
 DX 43106,
 TROWBRIDGE.

H.567

Please ask for:	Ext:	Our ref:	Your ref:
Mr. A. Harbour	3041	ARH/JW/ENV/TC242	13/F/480

12th April, 1991

Dear Sirs,

Church Lane, Upper Studley, Trowbridge

Thank you for your letters dated 14th March and 9th April, 1991.

I enclose an extract from the highway records for the area and have shown coloured in orange the extent of Church Fields and the part of Church Lane recorded as highway maintainable at the public expense. The adopted part of Church Lane connects with Whiterow Hill and Lambok Road as a public footpath, F.P.B, Trowbridge.

It is assumed that the whole of Church Lane is used by vehicles and it is therefore considered a private street over which the public at large enjoy the above described public footpath; excepting that part of Church Lane shown coloured orange.

The remaining lengths of Church Lane are not included in the County Council's rolling programme of private streets to be considered for making up under the Private Street Works Code. In any case, for several years now the County Council, for economic reasons, have not proceeded further with a private street works programme. Except in one case where the street was made up under the Code, no formal resolutions have been passed. No indication can be given at the present if or when further consideration will be given to private streets being made up under the Code. It has been the County Council's policy to consult frontagers before passing any formal resolution to make up a private street and their views are taken into account before any decision is taken whether or not to proceed.

If, however, in the unlikely event that it is decided at some time in the distant future to make up Church Lane, it may be the case that No. 14 may be liable for private street works charges. This scenario is considered highly unlikely, at the present time.

Any private vehicular rights that do exist over Church Lane would be considered to be of a private nature and, of course, have to be proven to exist if challenged.

Yours faithfully,

for County Secretary & Solicitor

Enc.

Letter to BLB from WCC 12/4/91

The whole of Church Lane is considered a private street and used by vehicles.



TITLE NUMBER
WT183189 "PLAN A"



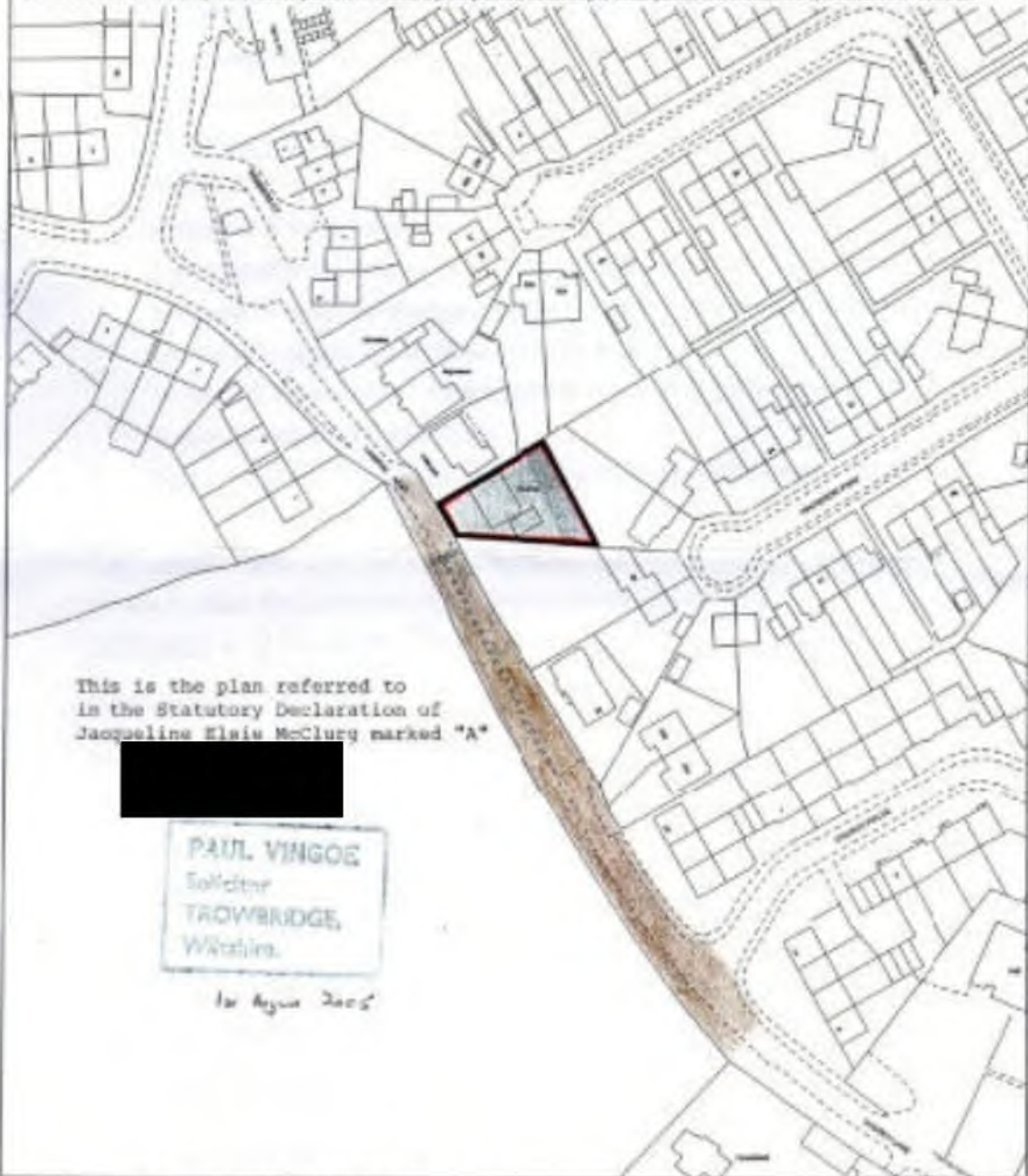
WILTSHIRE : WEST WILTSHIRE

ORDNANCE SURVEY MAP REFERENCE:

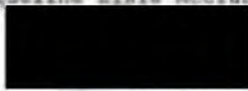
STATION:

SCALE: 1:1250

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This is the plan referred to
 in the Statutory Declaration of
 Jacqueline Elsie McClurg marked "A"



PAUL VINGOE
 Solicitor
 TROWBRIDGE,
 Wiltshire.

1st August 2005

This title plan shows the general position of the boundaries; it does not show the exact line of the boundaries. Measurements stated above this plan may not exactly correspond to those between the same points on the ground. For more information see Land Registry Public Guide 3 - Title Plans.

This official copy shows the state of the title plan on 9 June 2005 at 12:00:46. It may be subject to alterations in scale. Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original, based on 9 June 2005.

This title is dealt with by the Weymouth District Land Registry.



I JACQUELINE ELSIE MCCLURG of [REDACTED] Church Lane Upper Studley Trowbridge
Wiltshire BA14 [REDACTED]

DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am one of the owners of the freehold property [REDACTED] Church Lane Upper Studley
Trowbridge Wiltshire BA14 [REDACTED] ("the Property") which is shown edged red on the
plan marked 'A' attached hereto ("the Plan") and registered at H.M. Land Registry with
Title Absolute under Title Number WT183189
2. The Property is situated on a roadway ("the Roadway") shown coloured brown on the
Plan
3. To the best of my knowledge the Plan is accurate
4. I have occupied the Property since 23 July 1999 and since that date the Roadway has
been used by myself my family and persons visiting or calling at the Property at all times
and for all purposes with or without vehicles as of right without let or hindrance and
without the consent of and without payment of any kind to any person or persons or
body corporate until the present time
5. During my period of ownership I have never paid for any maintenance or upkeep to the
Roadway nor has any demand for payment been made of me

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be
true and by virtue of the provisions of the Statutory Declarations Act 1835

DECLARED at 2 Fort Street Trowbridge

in the County of Wiltshire

this 1st day of August 2005

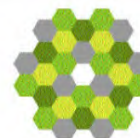
Before me [REDACTED]

A ~~Commissioner for Oaths~~ Solicitor

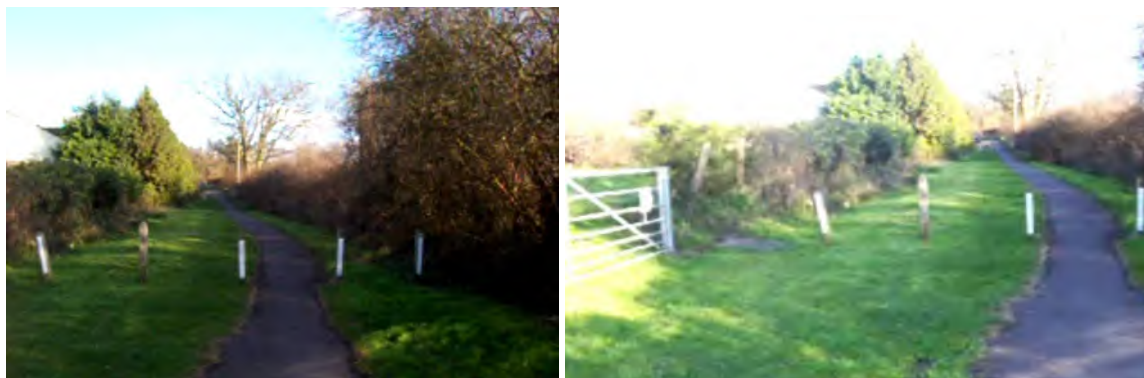
empowered to administer Oaths

PAUL VINGOE
Solicitor
TROWBRIDGE,
Wiltshire.

1st August 2005 – Jackie McClurg, previous owner of [REDACTED], confirms in this legal statutory declaration that her, her family and visitors have used the brown area to access the property since July 1999 and further supports the right of way.



24th March 2006 – We move into [REDACTED].



Church Lane when we moved in. You can clearly see that there is a post that is different to the others. This was a removable post which we used to access Church Lane.



February 2009 – The post is removed on these photos. The gap is clearly wide enough for a car to pass.

In August 2018 [REDACTED], who also lived in [REDACTED] prior to us, stated in his DMMO witness evidence form for Footpath 8 that the post was removable and that he could drive to [REDACTED] via Church Lane.

24/8/18 – [REDACTED] (who lived in [REDACTED]) writes in his DMMO witness evidence form that the previously mentioned farm gate and style existed at the location it is shown on “1st July 1961 – [REDACTED] plans”. He also states that he had been given permission to use the way by the town council in 1961 which confirms the Trowbridge U.D.C minutes above.

In their DMMO witness evidence forms [REDACTED] and [REDACTED] also remember the gate at the end of Church Lane.

Summary

[REDACTED] and [REDACTED] were some of the first developments in Church Lane and only had Church Lane access at first. They had a right of way by necessity back in 1961 which was agreed by Trowbridge U.D.C. [REDACTED] Church Lane right of way was used until the posts were installed to prevent Church Lane from becoming a through road. It is law that a right of way cannot be extinguished, therefore it still exists. All of Church Lane was originally planned to be adopted. When the council gave permission to put down hardcore on the verge between Lambrok Road and Church Lane the area became a through road. Next they installed posts despite the fact that the positioning was on unadopted land, and in the end never would be adopted. [REDACTED] and [REDACTED] were then denied their original Church Lane access. [REDACTED] [REDACTED] ([REDACTED] nephew who lived here) objected to the posts but presumably did not seek legal advice on the matter. The end of both Church Lane and Lambrok Road properly met when Acorn Meadow was created, without apparent thought of the consequences by the council. As a result there were houses with an Acorn Meadow address opposite two semi-detached bungalows with a Church Lane address. These bungalows ([REDACTED] and [REDACTED]) never actually were in Church Lane. They were in between Church Lane and Lambrok Road. Therefore the barrier that prevents [REDACTED] and [REDACTED] from using their right of way up Church Lane should finally be removed and reinstated in a position at the actual end of Church Lane where the aforementioned gate was pre 1960. This is where the council have adopted the pavement end of Acorn Meadow. The barrier needs to be such that it prevents Church Lane being a through road, and also allows Church Lane to be used as a bridleway given that the DMMO is almost certainly going to be approved by the inspector in December 2023. I would also point out that [REDACTED] and [REDACTED] also have a right of way by prescription from Church Lane into Acorn Meadow and beyond. That is because both houses have enjoyed uninterrupted access from that direction since the posts were installed, again unchallenged. The owners of [REDACTED] and [REDACTED] would suggest that a suitable, lockable barrier be installed where only [REDACTED], [REDACTED] and the council have the keys to use.

We have shown that Trowbridge U.D.C gave [REDACTED] owners permission to use Church Lane as an access route before the house was built. [REDACTED] confirms this in his DMMO statement. [REDACTED] confirms that she and her family used the way from 1999, as backed up by [REDACTED] DMMO statement. We also used the way until we were blocked at the time [REDACTED] Church Lane was built at around 2010. Therefore we can use Church Lane to access [REDACTED] by virtue of prescriptive rights.

There is no record of anybody owning Church Lane even though it is a private street. [REDACTED] [REDACTED] (who built number [REDACTED]) advertised in the local paper and searched for an owner when he built it. Nobody came forward. Therefore there is nobody with any legal justification to challenge us in the future.

Will the council be able to justify allowing [REDACTED] Church Lane access to Church Lane but not the older houses [REDACTED] and [REDACTED] who also front on to Church Lane unlike [REDACTED] and [REDACTED]?

For further legal discussions please refer to email correspondence between Terry Bishop of BLB solicitors and Sarah Marshall, chief solicitor for Wiltshire Council in 2017 to 2018.

Mr M. Reed

30th April 2024

Dear Helen and Janice,

Wildlife and Countryside Act 1981 - Section 53 Order Making Authority: Wiltshire Council

ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Oder 2021

I wish to object and make a complaint regarding the proposed changes to Path No.8, as highlighted above. My objections are as follows:

- Upgrading the footpath to a bridleway has been and continues to be a complete waste of time and public money. I have lived in [REDACTED] for 9 years without any complaints or issues regarding access or the width of the current footpath, until 2018, when a single household applied for the footpath to be upgraded to a byway. I remain baffled by this application; surely it is blindingly obvious and clear to all, not only from studying maps and plans of the area, but also from undertaking physical investigations of Church Lane that upgrading to a byway would be an impossibility! Thankfully this application was rejected.
- I feel that after Wiltshire Council rejected the byway application the case should have been closed and Church Lane should have retained footpath status. Wiltshire Council have spent a considerable amount of public money pursuing the bridleway route - investigating historical records and orders; we are living in the 21st century and as such, surely a more commonsensical approach should be applied and more emphasis placed on present day evidence; the majority of residents in church Lane are against this proposal and have provided their own

evidence and yet, we have all had to endure years of uncertainty and living in a 'limbo' state - all because of just 1 application; a complete fiasco and a misuse of public Money!

- I am not alone in my view that the proposed minimum width of 7 metres, along the entire length of Church Lane is unrealistic. How can this be achieved as the available width at some points ranges between 1.5 metres and 4 metres? I feel that increasing the width of the lane will be of little, or any benefit; pedestrians and cyclists are currently using the footpath without any problems. Horse riders are also able to use the footpath but could be hindered by the chicane style railings exiting onto Acorn Meadow.

- Regarding the small wooden fence highlighted in red on the OS map, which borders the footpath and runs along the [REDACTED] and also that of my neighbour, at no. [REDACTED] both properties were sold to us with this fence already in situ and as far as I am aware, it was erected when the houses were built in 2011 - one of the selling points the estate agent highlighted when I purchased my property, was in fact, the size of the drive and how it could accommodate several vehicles. I purchased the property in all good faith and underwent all the relevant searches etc without any problems.

I assume that if Wiltshire Council had any concerns regarding the fence or the driveway that they would have flagged this up at the time the house was built and before signing it off. My neighbour was also granted planning permission to have a garage built on the driveway and again, no problems or issues were flagged up.

I have never been approached by anyone with any issues or problems regarding the fence and feel that it should remain. Apart from the fact that I purchased my property including the fence, without it, and if it were to be removed, I would feel a sense of vulnerability regarding my property and any vehicles parked on my drive.

There is some antisocial behaviour at times and in fact, the most recent was on 28th April 2024 at around 8.00pm when a group riding motorcycles rode at speed along the lane and passed my house.

This is something which has been happening for some time and something other residents have noted. Vehicles also drive down the lane, frequently late at night; when they realise that they are unable to exit they try to turn around in the lane, which is difficult - removing the fence would give them a larger turning circle closer to my house. These are just two examples of how removing the fence would have a negative impact on my property and my wellbeing, both physically and mentally - allowing people to encroach much further onto my property, very

close to my house with the possibility of causing damage and becoming a nuisance.

My complaint is as follows:

- I am extremely unhappy with the way Wiltshire Council are dealing with this matter. The amount of public money this is costing and the fact that it is incomprehensible how the actions of one person (applicant) have been allowed to spiral, when the one thing they were applying for has been rejected. At this point I feel that Wiltshire Council should not have spent any more time and money and left the footpath status in place, particularly taking into account the evidence and opinions of the majority of the residents of Church Lane who are against the proposal.
- Improvements could have been made to Church Lane a long time ago without having to have endured the many years this whole process has already taken - and on it goes!
- Improving the road surface, providing a fit for purpose barrier and improved lighting. Hedge trimming and grass cutting would also help; all common sense and real solutions which should be given the go ahead and priority over centuries old plans and bureaucratic nonsense.
- In all of this the human element seems to have been overlooked completely. The anxiety and stress which I, and I am sure, other residents have felt, having this whole process hanging over you for so many years. For me personally, the unknown of what will happen with my drive and my fence. Rights of way issues. Will my property be open to all and sundry to approach my house as they please, without limits?
It has been extremely difficult to obtain clear answers from the council to any of these questions - how can anyone raise objections if they do not know exactly what they are objecting to?! Totally unacceptable, as is the timescale; if this was a private company it would not have been allowed to rumble on like this and would have been resolved years ago!
- I have been unable to put my house on the market as whilst this process is ongoing it is making the property unsaleable - are Wiltshire Council going to

compensate me for this, along with others in this situation?...I doubt whether this is something the council has even considered!

- And what assurances are the council going to give once the status of the lane is decided? Will records be clear and non ambiguous concerning future legal searches on properties?
- My feeling is that Church Lane should remain as a footpath for all of the reasons stated above. This should be actioned as soon as possible as the time it has already taken to reach this point is totally unreasonable and unacceptable, to say the least.

Yours Sincerely,

Michael Reed

(sent via email - helen.sparks@planninging-inspectorate.gov.uk)

Objection to the inspector's recommendation to assign Bridleway status with an increased width of 7-13m

I live at [REDACTED] and have previously written to support the application to change the footpath status to a bridleway stating that "I believe that this is in keeping with the historical use of the route and its use as a quiet lane, well used by walkers, cyclists, the elderly, Brownies/Guides and children learning to ride their bikes for the first time. "

However, my viewpoint has changed on reading the inspectors report, which recommends that the minimum recorded width of the bridleway be changed from 4m to 7m.

Although I have been re-assured that a barrier will be maintained to the north end of Church Lane, there appears no reason to increase the width of the path from 4m to 7m. No resident has requested this and in the 20 years that we have been using the lane , we cannot recall the path at the north end being any more than a gravel path and a verge.

When number [REDACTED] and [REDACTED] were built, access was provided by the builder at the time of construction in 2011 and planning permission was given for access to these houses using Church Lane.

The Rights of Way Act 1990 states that:

For the purposes of this Schedule the "minimum width" and "maximum width" of a highway shall be determined in accordance with sub-paragraphs (2) and (3) below.

(2) In any case where the width of the highway is proved, that width is both the "minimum width" and the "maximum width".

(3) In any other case—

(a)the "minimum width" is—

(i)as respects a footpath which is not a field-edge path, 1 metre,

(ii)as respects a footpath which is a field-edge path, 1.5 metres,

(iii)as respects a bridleway which is not a field-edge path, 2 metres, or

(iv)as respects any other highway, 3 metres; and

(b)the "maximum width" is—

(i)as respects a footpath, 1.8 metres,

(ii)as respects a bridleway, 3 metres, or

(iii)as respects any other highway, 5 metres.

The current measured width of 4m , clearly falls within these requirements.

I am concerned that increasing the allowable width to 7-13m, would result in considerable stress to the residents at the north end of the road, but could also change the nature of the entire lane which currently maintains its historical and environmental character. I would therefore like to express my objection to the proposed order.

Rachel Hunt

From: Stephen Coleman
Sent: Tuesday, April 30, 2024 11:18 AM
To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>
Subject: ROW/3295476
Importance: High

Dear Helen

I would like to object to the Interim Order Decision based on information derived from planning application documents for Number ■ and ■ Church Lane.

Wiltshire Councils own approved Planning documents for the above properties state that vehicle access could be (and was in fact) granted for them down Church Lane “**alongside the Public Foot Path**”! This would suggest to me, and I would suggest to any reasonable person that the Council did not actually deem the width of the Public Foot Path to be the entire width of Church Lane as suggested in the Interim Order. There are also other documents and correspondence from both Wiltshire Council and The Highways Authority that I believe cast doubt over the suggestion that the Foot Path covers the full width of Church Lane.

If as the Interim Order Decision Suggest that the “Council has previously expressed a view that Footpath No. 8 ran over the whole width of Church Lane” why would they have agreed planning permission for the above mentioned properties with vehicle access over land that they deem to be a Public Foot Path when as I ‘am led to believe it is illegal to drive a motor vehicle over such land by law something I’m sure both Wiltshire Council and The Highways Agency would have been fully aware.

I would also like to understand the reports suggestion that the width of Church Lane should measure between 7m and 13m when there is clearly insufficient distance between the boundary line (fence of the Farmers Field) and the wall of the houses at the top of the lane to accommodate such measurements. This was previously made clear to Wiltshire Council by the residents of the property during the initial review process advising them at that time 4m was unavailable outside their residents. Sadly, it would appear that this advice has either been completely ignored or totally overlooked. I am somewhat intrigued as I am sure the residents of said property would be to understand the Inspectorate decision to suggest a minimum width of 7m for the lane when there is barely a 4m gap available in this location, something that is more than evident to any normal person who had actually walked or driven past the property.

With regards to the chicane barrier referred to in the Interim Order I would point out to the inspectorate that it was installed as a condition set by Wiltshire Council as part of the Planning Permission which required the bollards to be reinstated by the Developer in a location/position agreed in writing by the local planning authority. There was also a requirement set that stated that the bollards should thereafter be retained and maintained by the residents for the lifetime of the development approved.

I would further point out to the inspectorate that this chicane and fence was installed in accordance with Wiltshire Council’s agreement and permission in preference to posts or bollards as Council Officials were concerned that installing posts or bollards would not have restricted the use of

motorcycles mopeds etc, this can clearly be seen in correspondence appertaining to the Planning application.

With the above in mind, I would like to know that should the current chicane and fence be removed and replaced at the Council's expense with whatever they deem to be appropriate and in a location of their choosing, who will be responsible should that replacement require repair or maintenance as surely this could no longer be deemed to be the responsibility of the residents of No ■ and ■ going forward. Should the residents of No ■ and ■ be deemed to be no longer responsible then the condition imposed as a requirement for the planning application acceptance I believe would need to be removed/redacted from the current planning documentation held on file by Wiltshire Council in order that no confusion could arise in the future as to who is responsible for repairs or maintenance.

As a final observation. I would ask of what benefit the proposed changes from a Footpath to a Bridleway would bring to the local residents and wider public?

Kind regards

Mr Steve Coleman

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DPC:76616c646f72



Please consider the environment before printing this email

From: F M

Sent: Wednesday, May 29, 2024 8:31 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Cc: Rightsofway <Rightsofway2@planninginspectorate.gov.uk>

Subject: ROW/3295476 - The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Modification Order 2021 (made on 19/01/2021)

Dear Case Officer,

Please accept the e-mail below (with its attachments and links) in substitution for the one I sent to you earlier today, which contained a typographical error in the second paragraph relating to [30] of the Interim Order Decision.

Yours sincerely,

Francis Morland

From: F M **Sent:** 29 May 2024 14:36

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Cc: rightsofway2@planninginspectorate.gov.uk <rightsofway2@planninginspectorate.gov.uk>

Subject: ROW/3295476 - The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Modification Order 2021 (made on 19/01/2021)

Dear Case Officer,

Thank you for your letter of 08 May 2024 and your e-mail sent Wed 15/05/2024 10:55.

[40] of the Interim Order Decision is in the section headed **Limitations** and the second sentence of [43] is in the section headed **Conclusions**. The relevant period referred to in each appears to be that mentioned in [30], viz. 1991-2011.

What is proposed in the fifth bullet point of the Inspector's proposed modifications (under the heading **Limitations**) is in fact an obstruction of the existing Public Footpath No. 8, and the caselaw, in particular *Herrick v Kidner* [2010] EWHC 269 (Admin) - Cranston J. on 17/02/2010 (see at: <https://www.bailii.org/ew/cases/EWHC/Admin/2010/269.html>), followed by *Kind v Northumberland County Council* [2012] EWHC 603 (Admin) (see at: <https://www.bailii.org/ew/cases/EWHC/Admin/2012/603.html>) and *Derbyshire County Council v High Peak Magistrates Court* [2013] EWHC 1762 (Admin) (see at: <https://www.bailii.org/ew/cases/EWHC/Admin/2013/1762.html>), establish that that is unlawful.

In any event, I agree with [38] of the Interim Order Decision that the meaning of limitations (and the power to record them in the Definitive Map and Statement) is limited, and in respect of public bridleway rights of way, could only apply to features that were already in place restricting/obstructing the route when it was dedicated.

In this case, the OMA's SoC sets out the origins and history of these features in considerable detail, in particular under the heading **Opening up Church Lane at its junction with Acorn Meadow** at [27] to [31] (SoC 12 to 15), and under the heading **Bringing into question** at [10.3] to [10.20] (SoC 44 to 59), and does not assert that they were unlawful obstructions of either the existing Public Footpath No. 8 or the claimed public bridleway rights of way, but rather the lawful exercise by or on behalf of the Highways Authority of its statutory powers under the Highways Acts and/or the Road Traffic Regulation Acts to regulate traffic using Church Lane, particularly at its junction with Frome Road, in the interests of road safety. It is well established that the exercise of these powers does not affect the status of the highway in question (as in another respect, [35] to [37] (under the heading **Width**) of the Interim Order Decision confirms).

In order to give the Inspector a fuller picture of Wiltshire Council's approach to this issue in its development control of planning applications fronting the northern end of Church Lane, I attach:-

- a) Delegated Report on Application W/11/00419/FUL (2 bungalows at rear of ■ Whiterow Park with revised access to Church Lane), permitted 16/05/2011
- b) Discharge of Conditions Application W/11/00419/FUL not agreed 7 July 2011
- c) Further Discharge of Conditions Application W/11/00419/FUL approved 27 September 2011
- d) Delegated Report on Application W/11/02605/S73 (variation of conditions 7 and 8 of W/11/00419/FUL), permitted 30/11/2011
- e) Public Right of Way Consultee Response to Application 19/10546/FUL (detached garage at ■ Church lane) on 03/12/2019
- f) Delegated Report of Case Officer on Application 19/10546/FUL (detached garage at ■ Church Lane), permitted 04/03/2020

I agree with the OMA that the Highways Authority already has adequate opportunities under its separate statutory powers either directly or by a Traffic Regulation Order to regulate the road safety

of traffic using Church Lane without the Limitations clause set out in the fifth bullet point of the Inspector's proposed modifications dated 5 April 2024.

It is not the function of a Definitive Map and Statement Order to do that, either when made or by subsequent modification, and it pre-empts the exercise by the Highways Authority of other more appropriate powers and unlawfully circumvents the relevant advertising and consultation procedures stipulated by them.

In respect of [9] to [13] under the heading **The impact of the 2006 Act**, and in respect of the first sentence of [41] under the heading **Conclusions**, I remain of the opinion that the user evidence, properly understood, demonstrates that Church Lane is "a way whose main lawful use by the public during the period of 5 years ending with commencement (2 May 2006) was use for mechanically propelled vehicles" and therefore that the exemption in Section 67(2)(a) of the Natural Environment and Rural Communities Act 2006 (Ending of certain existing unrecorded public rights of way) is applicable to it.

I rely on my Comments by e-mail sent Mon 20/11/2023 15:45 and in particular on the caselaw, such as Trail Riders Fellowship v SSEFRA [2022] EWHC 1804 (Admin) - Steyn J. on 16/06/2022 (see at: <https://www.bailii.org/ew/cases/EWHC/Admin/2022/1804.html>) to provide the proper interpretation of this exemption

I consider that the exclusion of most users of Church Lane indicated in the Interim Order Decision by the words "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." in [10], and by the words "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." in [11], is factually incorrect, unjustified by the evidence, and erroneous in law, in particular by placing an unwarranted restriction on the meaning of "by the public" in Section 67(2)(a).

I trust that this adequately identifies the issues I wish to pursue at the hearing (or hearings).

Please advise.

Yours sincerely,

Francis Morland

29 May 2024

E&OE: Disclaimer

From: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Sent: 15 May 2024 10:55

To: F M

Subject: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Francis, the Inspector has requested that you expand on your objection submitted on 3 May 2024 as it is presently insufficient. You have stated that you disagree with certain paragraphs without providing further explanation. Please could you explain why you disagree with these sections by **29 May 2024**.

Kind regards

Helen

H Sparks Case Officer

Defra Team (Specialist Casework) The Planning Inspectorate

<https://www.gov.uk/government/organisations/planning-inspectorate>

Email: helen.sparks@planninginspectorate.gov.uk

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

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DPC:76616c646f72



Please consider the environment before printing this email

DELEGATED REPORT

Application Number	W/11/00419/FUL		
Site Address	Land Rear Of [REDACTED] Whiterow Park Trowbridge Wiltshire		
Proposal	Construction of a pair of semi-detached dormer bungalows & associated parking areas; revised access		
Date of Inspection / Site notice posted	16.03.2011		
Date of Press Notice		Date of Overall Expiry	08.04.2011

1. Purpose of Report

To consider the above application and to recommend that it be approved subject to conditions.

2. Main Issues

The main issues to consider are:

Planning History
Highway Safety

3. Site Description

The site relates to a parcel of land located between Acorn Meadow and Church Lane within the defined Town Policy limits of Trowbridge. Access to the site is on land which is not owned by the applicant and certificate D of the application form has been duly completed with press advertisement notices duly issued. There is a non vehicular public right of way which runs from Church Lane to Acorn Meadow past the application site.

4. Relevant Planning History

06/01051/OUT - Construction of single storey detached bungalow - Permission 17.05.2006
08/00965/FUL - Construction of a pair of semi detached 3 bedroom dormer bungalows and associated parking area - Permission 13.05.2008

5. Proposal

Under application reference 08/00965/FUL, planning permission was granted for the construction of two 3-bed dormer bungalows subject to eleven planning conditions, one of which (no. 11) stipulated the following:

"That vehicular access shall be gained onto the site only by the access to the north west of the site as identified on approved plan drawing no. 2094 AL 1/03".

The reason presented for this condition was in order "to protect the integrity of the public right of way". Such an access would be shared with [REDACTED] Church Lane, which is also known as [REDACTED]

Under this application, planning permission is sought to allow vehicles to access the site from Church Lane alongside the public right of way. The applicant has stated a willingness to install bollards or

fencing adjacent to the northern boundary of the identified application site. An indicative layout of such a barrier is annotated on plan drawing LDC.1514.002A. If granted, a previously existing paddock access would not be closed up, but instead would serve the southern most property on the site.

The applicant also seeks to reduce the area of land to be excavated and spoil material to be removed from the site and redesign the access point and parking arrangements. The applicant would retain the existing retaining walls to the rear of the site. The rear amenity ground associated to the two new properties would be accessed via three steps.

There is no proposed change made to the number, scale, design or layout of the two semi-detached properties approved under 08/00965/FUL.

6. Planning Policy

Government Guidance

PPS1 - Delivering Sustainable Development
PPS3 - Housing
PPG13 Transport
PPG24 Planning and Noise

West Wiltshire District Plan Policies

H1 - Further Housing Development within Towns
H24 - New Housing Design
C31a - Design
C38 - Nuisance
T12 - Footpaths and Bridleways

Wiltshire and Swindon Structure Plan 2016

DP1 - Priorities for Sustainable Development
DP2 - Infrastructure
T5 - Cycling and Walking

7. Consultations

Town/ Parish Council - Support subject to a condition requiring that the bollards at the end of Church Lane are reinstated and be maintained by the occupiers in order to prevent through traffic and subject to there being no adverse impact on neighbouring amenity.

Highways Authority - Following detailed negotiations and discussions with the Council's PROW officer, no objections are raised subject to the relocation of bollards being conditioned.

Having spoken again to our Rights of Way office. I spoke with [REDACTED] who explained that all the frontagers on the section of the ROW have taken out insurance should an owner emerge to deny them access. He also explained that he would cut back the southern hedge and generally tidy the area, including reinstating the bollards on the western side of his site. These improvements and the creation of a driveway linking to the east, as proposed in the application, would not appear to be unacceptable, subject to any requirements/conditions from my ROW colleagues.

I also take the view that because Church Lane is well used by the wider public associated with church/church hall activities and the occasional election (as also pointed out by [REDACTED]), I do not propose to make an issue over the lack of a footway/width of Church Lane.

The matter of visibility onto Frome Road remains an issue that is sufficiently unsatisfactory for me to maintain a highway objection. Having inspected the hedge on Frome Road, I have noted that the

overgrowth causing the obstruction extends considerably over the highway footway and have asked our Highway Inspector to remedy this by requiring the frontager to cut the hedge back to the line of the footway, significantly improving visibility. This cannot however be carried out until the end of the nesting season (September?). I am minded, given the prospect of a visibility improvement being forthcoming, to recommend a Grampian condition that access to the east to Frome Road should not proceed until a specific visibility splay is achieved at the Frome Road junction.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 8 April 2011

Summary of points raised:

18 letters of objection were received raising the following representations:

08/0965/FUL restricted the means of vehicular access to the site (via Acorn Meadow). The applicant has not provided a justification to change this arrangement.

The existing arrangement of bollards preventing the use of Church Lane as a "rat run" should be retained. Removing the bollards would set a precedent. The bollards have in the past, and recently been removed and the matter was reported to the police.

Locals do not want to see Church Lane being used by more traffic, which in turn would lead to more congestion and potential accidents.

There is no footpath in places along Church Lane. It is too narrow and its junction with Frome Road is restricted in terms of its width and visibility. Accidents have occurred at this junction due to the junctions' poor visibility and restricted width.

The local church services are popular and the lane gets very busy with parked cars on both sides. Increasing even more traffic would add to the noise pollution and congestion. Even when the services are not on, it is not advisable to drive above 20 mph. The lane is well used by walkers and cyclists.

Concerns are raised about surface water drainage, flooding of the lane (which freezes in the winter) and off-site water logging and field flooding.

Vehicles/motorcyclists regularly use Church Lane believing that they can access Acorn Meadow/Studley Green beyond. This results in vehicles having to reverse or use private drives which adds to the vehicle/pedestrian/local conflict/concern.

One letter writer understood that only one bungalow had been approved for the site.

One local asks whether the owner(s) of the lane has been informed.

The proposed parking spaces about the new driveway. There is no allowance for visitor parking or for delivery/waste management vehicles. The access strip shown on the plans are only wide enough for one vehicle, not a delivery vehicle or dustbin lorry - which would need to drive along the footpath.

There is inadequate lighting along the lane.

In the past, bollards have been deliberately moved by people wanting to gain access down the lane. Moving them further down will make it more difficult to see and encourage people to remove them again.

The proposal would detrimentally affect the wildlife interests.

1 letter writer starts off by stating they have no objections to the application, but then proceeds to raise concerns about the lane potentially becoming a "rat run" if no secure barrier is installed. Further concerns are raised about the length of the driveway access and its use as overflow parking, and once cars are parked, others may try to pass along the footpath.

Measures should be taken to make it clear that Church Lane is not a through road.

2 letters of support were received raising the following points:

On sunny days I walk from my home with my daughter down Church Lane into the Southwick Country Park and return home along Frome Road. The other day I noticed the planning sign and read it. As we walked passed the site where the building is taking place I spoke to the developer and asked what he wanted to do as I am concerned about a through road. He informed me he merely wants to access his property through Church Lane he further told me that he wanted to tidy the footpath up and at one time had suggested to Highways that he would re-tarmac it put in cycle barriers and concrete pepper pots at the far end by [REDACTED] to stop any cars from driving through at his expense.

To my astonishment he told me this offer had been refused by Highways. It is quite apparent that Highways do nothing about the state of this path it is over grown and strewn with rubbish and at times could almost be a health hazard. I personally have encountered and had to stand back as cycles pass me on the foot path, speeding in excess of 30 mph as they take advantage of the hill down Church Lane. I support this application and would urge the Council to sort this untidy dangerous mess out at someone else's expense once and for all and except the developers offer. It could be a "Condition of Planning Approval".

The driveway to [REDACTED] is on an incline, and the existing large gate, pillar and fencing (which the owners do not intend changing) restricts visibility of traffic emerging from the site to the south.

One letter writer also advises that the applicant/developer has allegedly obtained permission to cut back the hedgerow which restricts visibility and dig out the ditch along Frome Road.

9. Planning Considerations

9.1 Planning History

Following the Council's decision to grant 08/00965/FUL, the principle of erecting a pair of semi-detached dormer bungalows on the identified site has already been established as being acceptable. There is no policy objection raised to the reduced level of on site excavation. The parking reconfiguration would only be acceptable if the revised means of access off Church Lane can be supported. As noted above, the 08/00965/FUL application was subject to a planning condition which restricted the point of access, and it is acknowledged that this is considered to be the key planning issue, which is covered in more detail below.

9.2 Highway Safety

It is acknowledged that local residents have raised concerns about taking access off Church Lane and increasing the amount of traffic using the junction onto Frome Road, which has limited visibility. Concerns are also raised about Church Lane being used for even more traffic from Acorn Meadow. Whilst these concerns are duly registered, with an appropriate planning condition, bollards could be installed along the north western side of the application site (with the agreement of the Highways Authority) to prevent cars and larger vehicles using Church Lane as a "rat run" linking Acorn Meadow (and streets beyond) with Frome Road.

Towards the end of the planning application process, the applicant's agent submitted details of an appeal in respect to a local site dating back to 2008. The appeal related to land adjacent to [REDACTED] Church Lane and to refused planning application 07/02273/FUL relative to the erection of a 1-bed dwelling house with access taken off Church Lane. The appeal (APP/F3925/A/07/2059805) was allowed on 13 March 2008.

Notwithstanding the fact that each application should be assessed on its own merits, the appeal decision has some material weight. There are some differences between the two sites and the respective proposed development. As far as this application is concerned, the Council's Highways Authority has changed their initial stance (of recommending refusing the application) to an approval subject to conditions to allow the 2 houses to be accessed from Church Lane.

The applicants agent argues that in granting 08/00965/FUL, the Council stipulated by way of Condition 11, that vehicular access to the site had to be from the north west only (i.e. Acorn Meadow), over land which was and remains under unknown ownership. The agent goes to argue that "the opportunity existed for the future owners and occupiers to access and exit the site either from the north west or the south east; had this not been the case, there would have been no need to impose a condition specifying the direction of the vehicular access". In response to the above, it is necessary to note that in approving 08/00965/FUL, no works falling outside the defined red boundary of the site were approved by the Council. In 2008, through the signing of the application form pursuant to application 08/00965/FUL, the applicant declared that all land subject to his application was under his own control and ownership and that he had rights of access both from the north west and south east directions. In line with consistent highway safety advice, condition 11 was attached to the decision to grant permission to prevent vehicular access being taken from the south east and Church Lane/Frome Road direction.

The applicant was advised back in August 2009 by the Council's Highway Authority that the "Highway Authority has a duty to protect the rights which exist over the public footpath [he wished] to take access over (which includes the first part of Church Lane from Frome Road) as well as the part that runs adjacent to the site. In addition, the applicant was advised that "the junction of Church Lane and Frome Road is substandard in terms of visibility and kerb radii. It is difficult to see vehicles approaching the junction from both directions on Frome Road and therefore vehicles have to edge out from Church Lane into the line of on-coming traffic to get a view of Frome Road. The tight kerb radii hinder[s] access and egress of the junction, particularly for traffic making a left turn in or out, pushing them toward/across the centre line of the road into the line of on-coming traffic. Any proposal resulting in an increased use of the access would cause highway safety concerns". It is with regret that application 07/01237/FUL and the subsequent appeal decision did not address the restricted Church Lane/Frome Road junction.

As part of the application proposals, the applicant proposes to remove 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). The applicants agent argues that a "Grampian" type condition could be used in this particular case to secure the relocation of bollards on unknown third party land and other works necessary to avoid the creation of a through road.

Although it would classed as "ultra vires" to require works which a developer/applicant has no power to undertake, or which would require the authorisation of a third party, revisions made to Circular 11/95 in 2002 (following a High Court Case involving Merritt v SSETR and Mendip District Council), it is accepted that in some circumstances (after very careful analysis of the proposals), works which are considered necessary as part of a planning approval could be conditioned providing such a condition is worded in the negative form (such as prohibiting occupation of the dwellings until works are done or agreed between the respective parties).

The above cited High Court Case required a change to be made to paragraph 40 of Circular 11/95 which stated that such a condition should only be imposed "if there is at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission". The Merritt Judgement ruled that only in cases where there are no prospects at all of the action being performed within the requisite time-frame, should such negative condition not be used.

In this particular case, the relocation of bollards on unknown third party land could have fallen foul of this test. After protracted negotiations, it has been agreed that there is sufficient confidence that the works could be undertaken to prevent a rat-run being created. The exact details of the barriers/bollards and their siting need to be covered by way of a separate condition to ensure that the Council /PROW officer is satisfied with the alterations to the ROW.

This application has been delayed due to detailed and complex consultations with the Council's Highways Authority and the PROW officer as well as with the applicant's agent.

The re-location of bollards on "unknown" third party land (the land which is designated PROW) has required careful consideration in terms of assessing the reasonableness of imposing a Grampian style condition. This matter has been discussed at length, and it has been concluded through dialogue with the Council's PROW and Countryside Manager, that in the event the applicant reneges on any condition requirement to reinstall bollards on land not under his own control, the Council has the authority to ensure that such work is completed. Such a planning breach would out of highway safety necessity, be actively pursued and the costs of completing such works falling to the applicant.

It is acknowledged that several, if not all the frontagers on the section of the PROW have taken out insurance should the owner emerge to deny them access. This application has been subject to the proper advertisement procedures in terms of Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, and despite such advertisements in local press, the owner of part of the PROW has not come forward or made representation.

The vast majority of the local objections stem from a concern about the creation of a rat-run or through road from Frome Road to Acorn Meadow/Studley Green. The installation of bollards along the north western edge of the application site (shown on drawing no LDC.1514.002A) would prevent this from happening.

Visibility from Church Lane onto Frome Road is at present restricted, but it has been demonstrated that an existing hedge (again not owned by the applicant) overhangs the public highway and that by cutting it back, improved visibility could be obtained, and that this would alleviate the previously raised highway objection. Such works are again within the power of the Highways Authority to sanction, and an informative rather than a condition is recommended to advise the applicant that it would be in his own best interests to agree with the known third party to cut back the offending hedgerow.

The Highways officer has confirmed that he does not wish to pursue an objection on the lack of footway and width of a section of Church Lane, on the grounds that the Lane is well used by the wider public and that refusing a 2-house development making further use of the lane, would be difficult to defend on appeal.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 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.

- 3 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming how the "continued private drive" (as shown on plan drawing LDC.1514.002A) shall be consolidated. Once the finished material has been agreed in writing, the access drive shall be maintained for the lifetime of the development.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 4 The dwellinghouses hereby approved shall not be occupied until further details of the access gradients have been submitted and approved in writing by the local planning authority.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 5 The parking spaces shown on plan drawing LDC.1514.002A shall not be used other than for the parking of vehicles or for the purpose of taking access to the site.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 6 That the hexagonal windows shown in the gable elevations shall be formed in obscure glazing units for the lifetime of the development.

REASON: To safeguard residential amenity and privacy.

POLICY: West Wiltshire District Plan - 1st Alteration policy C38.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the gable elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38

- 8 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

LOCATION PLAN drawing no.LDC.1514.001 received on 09.02.2011

PROPOSED SITE LAYOUT drawing no. LDC.1514.002A received on 04.03.2011

PROPOSED FLOOR PLANS drawing no. LDC.1514.003 received on 04.03.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.004 received on 04.03.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.005 received on 04.03.2011

REASON: To ensure that the development is carried out in accordance with the approved plans that have been judged to be acceptable by the local planning authority.

Informative(s):

- 1 The applicant/developer is encouraged to make contact with the owners of hedgerows which restrict visibility at the Church Lane and Frome Road junction. Cutting back the hedgerow would improve highway safety for all users of Church Lane and other road users. The applicant is however advised that hedgerow should not be cut back during the bird nesting season.

North area
 East area
 South area
 West area

Application for approval of details reserved by condition.
 Town and Country Planning Act 1990
 Planning (Listed Buildings and Conservation Areas) Act 1990

Publication of applications on planning authority websites.

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

1. Applicant Name, Address and Contact Details

Title: First name: Surname:

Company name:

Street address:

Town/City:

County:

Country:

Postcode:

Telephone number: Country Code: National Number: Extension Number:

Mobile number:

Fax number:

Email address:

Are you an agent acting on behalf of the applicant? Yes No

2. Agent Name, Address and Contact Details

Title: First Name: Surname:

Company name:

Street address:

Town/City:

County:

Country:

Postcode:

Telephone number: Country Code: National Number: Extension Number:

Mobile number:

Fax number: Country Code: National Number: Extension Number:

Email address:

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 23 JUN 2011

3. Site Address Details

Full postal address of the site (including full postcode where available)

House: Suffix:

House name:

Street address:

Town/City:

County:

Postcode:

Description:

Description of location or a grid reference
(must be completed if postcode is not known):

Easting:

Northing:

4. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

Yes No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title: First name: Surname:

Reference:

Date (DD/MM/YYYY): (Must be pre-application submission)

Details of the pre-application advice received:

5. Description of Proposal

Please provide a description of the approved development as shown on the decision letter:

Application reference number: Date of decision:

Please state the condition number(s) to which this application relates:

Condition number(s):

Has the development already started? Yes No

6. Discharge of Condition(s)

Please provide a full description and/or list of the materials/details that are being submitted for approval:

7. Part Discharge of Condition(s)

Are you seeking to discharge only part of a condition?

Yes No

8. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

Yes No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

The agent The applicant Other person

9. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information.



Date

Green, Kenny

To: Osborn, Jeff
Cc: McMahon, David; Broadhead, Richard; Hawkins, Stephen
Subject: w/11/00419/FUL - Land rear of [REDACTED] Whiterow Park, Trowbridge

Importance: High

Good Morning Cllr Osborn,

Following on from our office meeting on Tuesday morning, please note my further points of clarification which take on board the comments you received direct from [REDACTED] on 27 June.

As I advised yesterday, the applicant, [REDACTED] has now submitted details pursuant to discharging three conditions as attached to the decision notice for w/11/00419/FUL. These details relate to the means by which he proposes to close off the section of Church Lane to prevent a rat run being formed. In addition, the applicant has submitted details showing how he intends to finish the drive in front of the two houses, which are currently being built. Access gradient details have also been submitted. All these details have been sent to my highways colleagues to assess, and in due course, I shall make a decision as to the acceptability of the details. If the details are inappropriate or lacking, the conditions will either be partially discharged or not.

As explained during the course of our meeting, once we know what is acceptable and where and how the lane is bollarded or closed to motorised traffic, we will be in a better position to advise [REDACTED] about their respective enquiry to take access along Church Lane. On this matter, I have delved a bit deeper and can confirm that if the highways authority maintain an "in principle" objection to the occupiers of [REDACTED] taking such access along Church Lane, then they would be required to submit an application of their own, as the planning legislation stipulates that if their proposals involve development (i.e. forming a new access, changing the use of land etc) pursuant to taking access along a private access driveway (i.e. not public highway) is subject to highway objections, then the Council has the authority to require a formal application to be submitted.

There is a separate matter which would also need to be addressed by the occupiers of [REDACTED]. In addition to the requirement of applying for planning permission, they may well need to obtain the permission of those parties who have an interest and/or own the parts of the private access. This aspect falls beyond the scope of the local planning authority and is a civil matter.

As I am sure you will appreciate the formal discharge of conditions application must be duly considered on its own merits. That said, 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 and how they might affect neighbours and their ability to access their own properties, including [REDACTED]

I should point out that the Council has a statutory 2 month period to assess a discharge of condition submission. Once I hear back from my highways colleagues I will let you know.

Turning to the specific points highlighted in [REDACTED] email, I must advise that the approved plans show that the residential property facing [REDACTED] does have two wall openings on the ground floor level, a window and a door. If the developer on site has however formed a second window on the north west gable ground floor, then this would be in breach of condition 7 of the permission, which states that no additional wall openings, including windows shall be formed in the gables (other than those as approved). If the local residents wish to raise a complaint about potential breaches, they should contact Steve Hawkins, the Council's enforcement team leader who covers the Trowbridge area. Steve can be contacted by the following email: steve.hawkins@wiltshire.gov.uk. Steve will need specific details to open up an enforcement case.

The application from states that the roof over the dwellings shall match the adjoining property. Again, if the developer has strayed beyond what he has approval for, such a breach requires to be raised with Steve Hawkins to investigate.

Point 3 of [REDACTED] email 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/Richard Broadhead to see if they wish to provide any comment thereto – both of whom have had significant involvement with this particular case.

I hope the above provides the additional clarification sought. Should you wish to the above, please don't hesitate to contact me again.

Kind Regards,

Kenny Green BA, MA (Hons) MRTPI

Senior Planner

Department of Neighbourhood and Planning (DNP)

Development Management

Wiltshire Council West Hub

Bradley Road

Trowbridge

Tel: 01225 770344 / 0300 456 0100

Ext 15174

Email: kenny.green@wiltshire.gov.uk

Website: <http://www.wiltshire.gov.uk>

Green, Kenny

To: Broadhead, Richard; McMahon, David
Cc: Millard, Paul
Subject: RE: w/11/00419/FUL - discharge of conditions

Good Afternoon All,

Thanks Richard for your comments. The details submitted as part of the discharge of conditions request will need to be refused. It will be over to the applicant to submit further details or seek a collective meeting to outline what is, and what is not acceptable.

Regards,

Kenny Green BA, MA (Hons) MRTPI

Senior Planner
Department of Neighbourhood and Planning (DNP)
Development Management
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Trowbridge
Tel: 01225 770344 / 0300 456 0100
Ext 15174
Email: kenny.green@wiltshire.gov.uk
Website: <http://www.wiltshire.gov.uk>

From: Broadhead, Richard
Sent: 04 July 2011 13:31
To: McMahon, David
Cc: Green, Kenny; Millard, Paul
Subject: RE: w/11/00419/FUL - discharge of conditions

Dear all,

I'm happy with David's suggestions, but we will need to be sure that adequate width through the chicane is provided to allow access for powered wheelchairs. Unfortunately, this means that it will be very difficult to keep motorcycles out, though it will of course slow them down.

A different option would be to install a wheelchair friendly kissing gate which would be more effective against motorcycles. A suitable product is manufactured by Centrewire. Your thoughts on this will be welcome.

Whatever design we agree to, the structure will need to be authorised under Highways Act 1980 Section 66(3) - Footways and guard-rails for publicly-maintainable highways in order to ensure that it is not an illegal obstruction within the highway.

regards,

Richard

Richard Broadhead
Rights of Way and Countryside Manager
Department of Neighbourhood and Planning
Wiltshire Council
Tel: 01225 713875
e:mail: richard.broadhead@wiltshire.gov.uk
Fax: 01225 713400

From: McMahon, David
Sent: 29 June 2011 16:50
To: Green, Kenny; Broadhead, Richard
Subject: RE: w/11/00419/FUL - discharge of conditions

Hi Both,

I've had a look at the drawing LDC.15114.002C and agree the details are unacceptable. I would suggest the following provisions -

- As the parking spaces need a 6m aisle width, and assuming the building position and parking spaces are established, the footway cannot be moved further north and would be best protected by a kerb upstand above the level of the new drive.
- The driveway may be best left in gravel so that it is less formal given the PROW status.
- To provide a safe, convenient pedestrian space, the metalled footpath should be widened by 1m on the south side, allowing prams/wheelchairs etc. to pass in a total width of 2m.
- To effectively prevent use by motor cycles and to slow cyclists, a chicane barrier should be introduced at the position of the existing bollards, and railings provided across the entire width of the PROW at this point. The railings to have a lockable gate for emergency/maintenance access. I consider it important that the barrier, in whatever form, is located in the position of the established bollards as this is the 'historic' position justifying why [redacted] Whiterow has access to the east and [redacted] to the west, does not.

Clearly, these are only my suggestions and Richard will have the final say.

Regards

David

From: Green, Kenny
Sent: 29 June 2011 09:27
To: McMahon, David; Broadhead, Richard
Subject: w/11/00419/FUL - discharge of conditions

Good Morning Gentlemen,

I have given some further thought to the recently submitted discharge of conditions application pursuant to w/11/00419/FUL – land rear of [redacted] whiterow park, and the details to my mind are unacceptable. Firstly, the submitted detailed plan show 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. I would appreciate your respective thoughts when you get the chance to review the details which were sent to you both on the 24th.

Kind Regards,

Kenny Green BA, MA (Hons) MRTPI

Senior Planner
Department of Neighbourhood and Planning (DNP)
Development Management
Wiltshire Council West Hub
Bradley Road
Trowbridge
Tel: 01225 770344 / 0300 456 0100
Ext 15174
Email: kenny.green@wiltshire.gov.uk

7 July 2011

Mr David Pearce
LDPC Ltd
Lavender Cottage
Nettleton
Chippenham SN14 7NS

Your Ref: LDC.1514.gI

Our Ref: W/11/00419/FUL

Dear Mr Pearce,

Town and Country Planning Act 1990

DISCHARGE OF CONDITIONS SUBMISSION - W/11/00419/FUL

I refer to the abovementioned matter and to your discharge of conditions submission dated 22 June 2011.

Having carefully considered the details submitted as part of your discharge of condition submission (plan drawing LDC.1514.002c refers) and having obtained the views of both David McMahon (the Council's consultant highways engineer) and Richard Broadhead (the Council's Rights of Way and Countryside Manager), it is with regret that I must inform you that the Council cannot agree to discharging condition 2 as attached to the decision notice dated 16 May 2011.

The condition expressly states that:-

"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".

Your submission fails to provide such details 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 the 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 and indeed must advise you that David McMahon and Richard Broadhead further advise as follows:

The parking spaces need a 6m aisle width and assuming that the building position and parking spaces are established; the footway cannot be moved north and would be best protected by a kerb up stand above the level of the new drive. The drive itself may be best left as gravel so that it is kept less formal than the PROW. To provide a safe, convenient pedestrian space, the metalled footpath should be widened by 1m on the south side, to allow prams/wheelchairs to pass in a total width of 2 m. To effectively prevent the use of the lane by motor cyclists and to slow peddle cyclists, a chicane type

barrier may be appropriate located at the position of the existing bollards with railings provided across the entire width of the PROW at such a point. The railings should have a lockable gate for emergency/maintenance access. The bollards should clearly be sited so that they do not interfere with the access to the approved site, but equally they should not offer further access onto the lane by neighbouring properties.

It is important you recognise that whatever type of barrier is agreed/installed will need to be authorised under the Highways Act 1980 Section 66(3) – Footways and guard rails for publicly maintainable highways in order to ensure that it is not an illegal obstruction within the said highway.

If your client is still keen to pursue the options indicated within plan drawing LDC.1514.002c, I would suggest that you first discuss the issues directly with my highways colleagues. I must however advise you that I am not supportive of the proposals as indicated and that I would not encourage any formal application in this regard.

Should you wish to discuss the matter further, please don't hesitate to contact me.

Yours Sincerely,



Senior Planner Team North

Telephone: 01225 776655 Ext 15174
Fax Number: 01225 770314
Email: kenny.green@wiltshire.gov.uk

cc. Cllr Jeff Osborn.

LAND DEVELOPMENT & PLANNING CONSULTANTS

Land Development & Planning Consultants Limited
Lavender Cottage, Nettleton, Chippenham, Wiltshire SN14 7NS
Tel: (01249) 782496 Fax: (01249) 782936
e-mail: planning.ldpc@btconnect.com

Our ref: LDC.1514

Your ref: W/11/00419/FUL

23rd August 2011.

Development Services – West
Wiltshire Council,
Shurnhold,
Melksham,
Wiltshire.

For the attention of Mr. K. Green

31 AUG 2011

Dear Mr. Green.

Town and Country Planning Act 1990 – as amended
Discharge of Conditions Submission – W/11/00419/FUL
Development at Church Lane, Trowbridge.

I would refer to the meeting that took place in your office with your colleagues David McMahon and Richard Broadhead on the 10th August and the discussion regarding the best means of achieving the alterations to the public right of way necessary to address the discharge of condition 2 attached to the planning permission issued on the 16th May 2011 under reference W/11/00419/FUL..

I have now had an opportunity to discuss your colleagues' requirements with my Client and have enclosed drawing number LDC.1514.01CONDITIONS detailing the following matters as discussed:

- Position of railings on line of existing bollards;
- Create a full chicane to deter pedal and motorcycle use of the footpath;
- Widen surfaced portion of the public right of way to accommodate chicane
- Form drive to same level of surfaced portion of public right of way;
- Form surface of driveway with rolled scalplings or similar to create porous surface.

I appreciate there are two issues in play here and would confirm that this submission is required to discharge the requirements of the planning permission and specifically condition 2 which only refers to the relocation of the bollards and the timing of that action. It was pointed out at the meeting by Mr. Broadhead that bollards was a generic term relating to installations

for the regulation of use of public rights of way. As such the proposed replacement of the existing bollards by railings would meet the requirements of the planning condition particularly as the object of the condition was to address the representations made during the consideration of the planning application which related to the achievement of a means of deterring the use of the public right of way as a through route to Frome Road by pedal and motor cyclists. As discussed the replacing of the existing bollards with similar obstacles would not achieve this objective.

The second issue relate to the need to secure the implementation of any 'approved' scheme and this will require agreement with Mr. Broadhead in his capacity as the Council's Rights of Way Manager, in order to achieve the time requirements of the condition. While these issues must be addressed independently, I am sure that with the helpful advice given at the meeting, the 'implementation' stage can be dealt with promptly once the discharge of condition has been issued.

Once again thank you for you help in this matter.



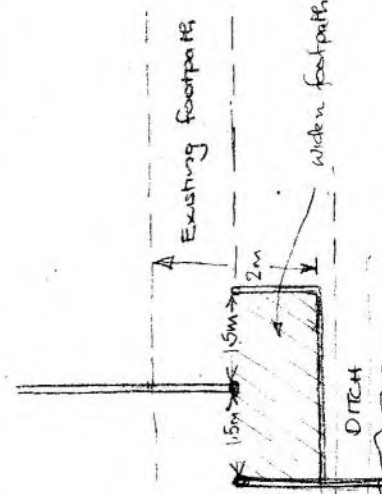
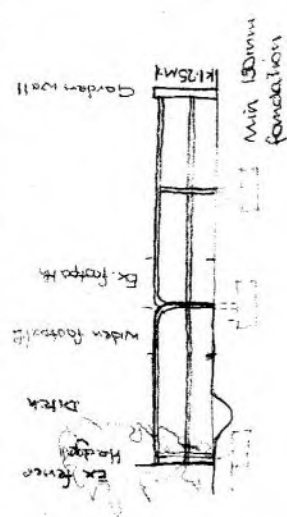
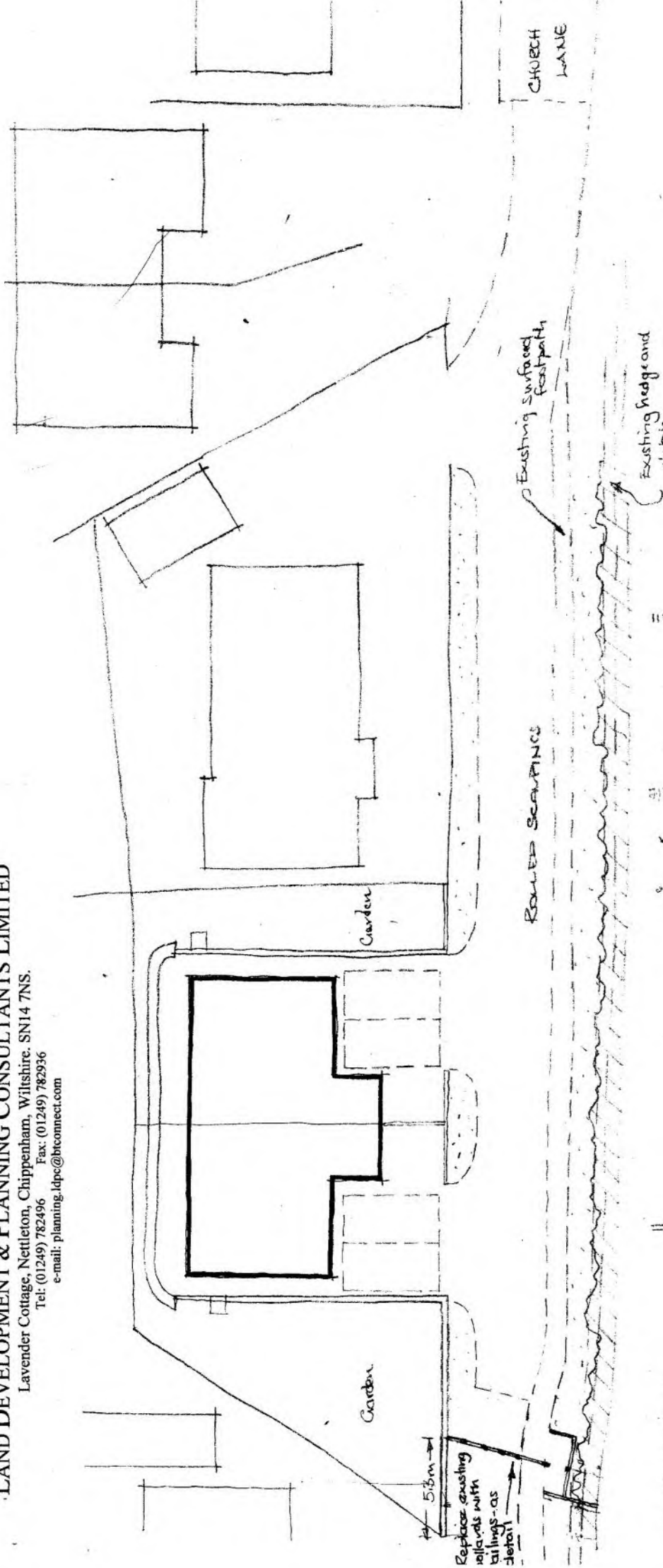
Copy to Client.

LAND DEVELOPMENT & PLANNING CONSULTANTS LIMITED

Lavender Cottage, Nettleton, Chippenham, Wiltshire. SN14 7NS.

Tel: (01249) 782496 Fax: (01249) 782936

e-mail: planning.ldpc@btconnect.com



Detail of railings - N.T.S.

- Barrier to be constructed using Kee-Klamp tubes and fittings or similar approved system with construction and materials as follows:-
- Post and rails to be galvanneal steel tubing 42mm diameter to BS1387 and coated to BS725.
 - Junctions between rails and posts to be a malleable iron casting to BS6881 and capable of achieving a rigid joint by means of a recessed zinc plated set screw at each tube/fitting interface.
- When stated in the contract or when requested by the Engineer, the alternative socketed foundations to be provided, comprising of a cast in ground socket capable of securing the upright posts by a set screw fitting.
- The top rail to be painted using "Morgan's" or similar galvanneal metal primer plus top coat of white "Hammerite" using second coat where required within 3 hours. Paint to be applied in accordance with manufacturers recommendations.

21 AUG 2011

DETAILS OF PROPOSED ALTERATIONS
TO BARRIERS AND ACCESS DRIVE
AT CHURCH LANE, TRIMBRIDGE

SCALE 1:200 DATE AUG 2011

DRAWING NO LDC 1514.01.CONDITIONS

Green, Kenny

From: McMahon, David
Sent: 20 September 2011 12:52
To: Green, Kenny
Cc: Broadhead, Richard
Subject: RE: W/11/00419/FUL - Approval of Details Reserved by Condition

Thanks Kenny,

From what I can see, the proposals are consistent with our requirements at the meeting. I would suggest this is sufficient to discharge the condition, subject to implementation.

Regards

David

-----Original Message-----

From: Green, Kenny
Sent: 19 September 2011 14:41
To: McMahon, David; Broadhead, Richard
Subject: FW: W/11/00419/FUL - Approval of Details Reserved by Condition
Importance: High

Good Afternoon David and Richard,

Please find attached the latest submission from the agent who is endeavouring to get condition 2 of application w/11/00419/FUL discharged. Please let me know your thoughts on the details submitted.

Kind Regards,

Kenny Green BA, MA (Hons) MRTPI
Senior Planner
Department of Neighbourhood and Planning (DNP) Development Management Wiltshire Council
West Hub Bradley Road Trowbridge
Tel: 01225 770344 / 0300 456 0100
Ext 15174
Email: kenny.green@wiltshire.gov.uk
Website: <http://www.wiltshire.gov.uk>

-----Original Message-----

From: Gail Lewis at LDPC [<mailto:gaillewis.ldpc@btconnect.com>]
Sent: 19 September 2011 14:19
To: Green, Kenny
Cc: David R. Pearce
Subject: RE: W/11/00419/FUL - Approval of Details Reserved by Condition

Hello Kenny,

Yes! Please see attached our letter to you dated 23rd August together with plan ref: LDC.1514.01.CONDITIONS.

Please do come back to me if you have any queries regarding the attached.

Kind Regards,

Gail
Assistant Planner
Land Development & Planning Consultants Limited
Tel. 01249 782496
Fax. 01249 782936

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-----Original Message-----

From: Green, Kenny [mailto:Kenny.Gr [REDACTED]]
Sent: 19 September 2011 14:01
To: gailLewis.ld [REDACTED]
Cc: McMahon, David; Broadhead, Richard
Subject: RE: W/11/00419/FUL - Approval of Details Reserved by Condition
Importance: High

Hi Gail,

I have not received any fresh submission for this application following my letter dated 7 July and meeting with David Pearce on 10 August. I understood that there was to be further discussions between David Pearce and David McMahon and Richard Broadhead from the Council, but I have not been advised of any such meeting/discussion. Can you shed any light on this matter?

Kind Regards

Kenny Green BA, MA (Hons) MRTPI
Senior Planner
Department of Neighbourhood and Planning (DNP) Development Management Wiltshire Council
West Hub Bradley Road Trowbridge
Tel: 01225 770344 / 0300 456 0100
Ext 15174
Email: kenny.green@wiltshire.gov.uk
Website: <http://www.wiltshire.gov.uk>

-----Original Message-----

From: Gail Lewis at LDPC [mailto:gaillew [REDACTED]]
Sent: 02 September 2011 14:03
To: Green, Kenny
Subject: W/11/00419/FUL - Approval of Details Reserved by Condition

Dear Kenny,

I wonder if you are now in a position to discharge the conditions in respect of the above approval?

Many Thanks,

Kind Regards,

Gail
Assistant Planner
Land Development & Planning Consultants Limited

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Green, Kenny

From: Broadhead, Richard
Sent: 27 September 2011 09:52
To: Green, Kenny
Cc: McMahon, David
Subject: RE: PROW definition of a bollard

Hi Kenny,

Apologies for the delay on this.

Highways Act 1980 Section 66(3) states,

"A highway authority may provide and maintain in a highway maintainable at public expense by them which consists of or comprises a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway."

I see no difficulty in the previous bollards being replaced by the railings arrangement now proposed by the agent with regard to the discharge of conditions under w/11/00419/ful and am happy with the proposed design.

If you need anything more than this please let me know.

Kind regards,

Richard

Richard Broadhead
Rights of Way and Countryside Manager
Department of Neighbourhood and Planning
Wiltshire Council
Tel: 01225 713875
e.mail: richard.broadhead@wiltshire.gov.uk
Fax: 01225 713400

From: Green, Kenny
Sent: 22 September 2011 10:38
To: Broadhead, Richard
Subject: PROW definition of a bollard
Importance: High

Sorry Richard, but as part of your formal consultation response to the discharge of condition submission for w/11/00419/ful, can you please confirm that the replacement of bollards with an alternative obstacle falls in line with your requirements. I would appreciate having a copy of the legal/technical definition of what constitutes as a bollard (as previously discussed).

Thanks in advance,

Best Regards

Kenny Green BA, MA (Hons) MRTPI

Senior Planner
Department of Neighbourhood and Planning (DNP)
Development Management
Wiltshire Council West Hub
Bradley Road
Trowbridge
Tel: 01225 770344 / 0300 456 0100
Ext 15174

27 September 2011

LD And PC Ltd
FAO Mr David Pearce
Lavender Cottage Nettleton
Chippenham
Wiltshire
SN14 7NS
England

Development Control West
Bradley Road
Trowbridge
Wiltshire
BA14 0RD

Your Ref: LDC.1514
Our Ref: W/11/00419/FUL

Dear Sir

Discharge of Condition(s)

Application No: W/11/00419/FUL

Proposal: Construction of a pair of semi-detached dormer bungalows & associated parking areas; revised access

Location: Land Rear Of [REDACTED] Whiterow Park Trowbridge Wiltshire

I write following receipt of your recent letter, regarding the discharging of condition(s).

I can confirm that the details submitted satisfy the following condition(s) of the above planning application and that these have been found to be acceptable.

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.

You will be aware that this condition also carries an implementation requirement. Whilst the details proposed are considered acceptable and have the support of both my highways colleagues and the Public Rights of Way Manager, you are encouraged to liaise direct with Richard Broadhead in respect to the implementation of the barriers.

3. The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming how the "continued private drive" (as shown on plan drawing LDC.1514.002A) shall be consolidated. Once the finished material has been agreed in writing, the access drive shall be maintained for the lifetime of the development.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

DELEGATED REPORT

Application Number	W/11/02605/S73		
Site Address	Land Rear Of [REDACTED] Whiterow Park Trowbridge Wiltshire		
Proposal	Variation of conditions 7 and 8 relating to planning permission W/11/00419/FUL		
Date of Inspection / Site notice posted	17.10.2011		
Date of Press Notice		Date of Overall Expiry	11.11.2011

POLICIES

Government Guidance

PPS1 - Delivering Sustainable Development
PPS3 - Housing
PPG13 Transport
PPG24 Planning and Noise

West Wiltshire District Plan Policies

H1 - Further Housing Development within Towns
H24 - New Housing Design
C31a - Design
C38 - Nuisance
T12 - Footpaths and Bridleways

Wiltshire and Swindon Structure Plan 2016

DP1 - Priorities for Sustainable Development
DP2 - Infrastructure
T5 - Cycling and Walking

ISSUES

Established Principles
Impact on Street Scene and Neighbours

REPRESENTATIONS

Town Council - Support subject to there being no significant loss of neighbouring amenity.

Highways Authority - No objections raised.

Third Party Representations -

2 letters of representation received raising the following points:-

One letter writer claimed to have no objection to the windows on the original plans because it was not possible to see into the property from any of their windows. The ground floor window facing their house ([REDACTED]) on the original plans was behind their garage. The new window was added with no consultation and has compromised the privacy of both the new house and the

neighbouring dwelling. It is now possible to see straight into their living room, and they can see straight into the neighbouring bedroom.

The original plans indicated that the roof tiles would match those of the adjoining properties all of which are the same type and red colour. The roof tile used is out of keeping with the surrounding estate. The black slate tile roof is not only out of character with all houses in the vicinity but also because the sheer blackness draws the eye to what is simply a dark blot on the street, especially on a sunny day. An eyesore that offends.

1 letter raising no objection was received. However, the letter writer did note the fact that the houses should not be occupied until details of the relocated bollards have been agreed and installed. One of the bungalows is occupied and the bollards had not yet been installed.

ASSESSMENT

Established Principles

Through the Council's approval of planning application reference w/11/00419/FUL, the principle of constructing a pair of semi-detached bungalows with associated parking and revising the access arrangements, was established. Indeed through implementing this permission (with one of the bungalows occupied), the permission is considered extant. This application cannot re-assess the principle of the development (which has already been approved). Only those variations which have been applied for are subject to Council determination.

For the avoidance of any doubt, the material changes requiring regularisation are:

- * The insertion of additional ground floor windows on the gables - restricted by planning condition no. 7;
- * The repositioning of door and window positions on the rear elevation - restricted by planning condition no. 7;
- * The insertion of roof lights and 2 x sun pipes on each of the roof planes - restricted by planning condition no. 7;
- * The use of Marley Eternit cement slate rather than tiles (similar to neighbouring properties, as previously proposed) - a material variation from the approved plans covered by planning condition no. 8; and,
- * The applicant also seeks the Council's approval for the rendering of the exterior of the pair of bungalows deviating from the approved brick finish (approved under w/11/00419/FUL) - which is a material variation to planning condition no. 8

Under Section 73 (a) of the Town and Country Planning Act 1990 (as amended) an applicant can apply for planning permission for development that has already taken place (as in this case - the pair of bungalows have been built with one being occupied) and apply to vary or remove a condition (or conditions) attached to a previous decision notice.

When receiving a Section 73 application, a local planning authority has a duty to only consider the condition(s) in question and must decide whether to grant planning permission to vary or (to remove conditions) as attached to w/11/00419/FUL. In approving such an application, the local planning authority would issue a new decision notice. Such a decision would not however remove the original planning permission and the associated conditions. In approving such an application, the local planning authority could also attach new conditions, which are considered reasonable and necessary (two of the "Tests" to which all planning must comply with reference to Circular 11/95) to bind the development and to ensure consistency.

In accordance with the commentary which accompanies Section 73 (a) published within the encyclopaedia of planning law, it is clear that "the decision maker is required to look at the planning circumstances existing at the time...and should not proceed simply on the basis of whether the condition had been inappropriately imposed in the first place" (p2-3310-/3) (Sevenoaks DC v Sec of State for the Environment (1994) followed by Bannister v Sec of State for the Environment (1994)).

Under this application, the applicant's agent advises that "during the construction of the dwellings authorised by the terms of the planning permission [w/11/00419/FUL] a variation to the position and number of window openings in the gable end of the dwellings took place. Furthermore, amendments took place to the position and size of door and window openings in the rear elevation and in relation to the roof lights approved for installation in the rear facing roof slope. Finally two sun pipes were installed on each of the two main roof slopes and the external facing materials for the walls were altered from brickwork to a render finish".

Condition 7 as attached to planning permission reference w/11/00419/FUL precluded the applicant from forming additional "windows, doors or other forms of openings other than those" approved. Furthermore, the minor material revisions which have been undertaken requires a substitution of the previously approved with the as built plans, and thus vary condition 8 also.

Impact on Street Scene and Neighbours

There is no planning objection raised against the formation of two additional ground floor windows on the south-east and north-west gables. The two additional windows would not demonstrably cause detriment to neighbouring amenity or privacy. During an accompanied site visit, which include being given access to the inside of the finished house, it was confirmed that the upper floor windows (which is subject to a condition) on the gable wall is of obscure glazing and the ground floor windows offer little overlooking and due to the fact that the newly built houses are sited on a lower ground level than the immediate neighbours, there would not be demonstrable detriment caused through any loss of privacy.

The fact that the windows would be at ground floor level means that there would be no significant overlooking or overbearing conflict. In addition, it should be noted that the boundary wall/fencing would preclude any significant loss of residential privacy.

Similarly, there are no planning based objections to raise against the repositioning of the door and window positions on the rear elevation or the installation of different rooflights on the rear roof slope. The formation of sunpipes in the front roof plane also raises no planning objection. These variations would not cause detriment to neighbouring amenity nor would they detract from the character of the area.

As part of the terms of approved planning application w/11/00419/FUL, the pair of bungalows were to have roof tiles and brickwork to match neighbouring properties. The unauthorised cladding of the roofs with a slate material and rendering them acts as a material revision which does break away somewhat from the predominant character of the immediate surroundings, which is formed by different brick clad walls under concrete tiled roofs.

Policies H1 and C31a requires new housing development within the built-up areas of Trowbridge to "respect or enhance" the existing built form and the quality of architecture of surrounding buildings. Whilst it is fully accepted that the majority of the houses in the surrounding area are built with brick under tiled roofs, there are examples of different building materials. The property at No. ■ which is located to the immediate south of the application site is not of brick construction, but rather has a magnolia coloured stone ashlar facade which relates more to the render on the two bungalows than the brick dwellings nearby. In the local area, other more historic buildings like the Church break away from the brick dominance as does the hall building, both of which are located off Church Lane.

The rendered walls and the dark grey slate roof material admittedly breaks away from the predominant red/brown tiled roofs. However, in assessing the merits of the application, it is necessary to consider any harm caused; and, in this particular case, whilst the variations do deviate from the predominant palette of materials, the buildings do not cause significant harm to the street scene and as a consequence, the variations are deemed acceptable.

As mentioned above, should the local planning authority be minded to approve a s.73 application, it is necessary to reimpose all relevant original conditions and to ensure that the development is completed in a consistent manner, as well as imposing any other condition deemed necessary. In this particular case, the Council as planning authority has taken note of some additional works undertaken by the applicant beyond the reaches of the defined red line site boundary, and in

particular on the PROW. At the point of processing this decision, there is an ongoing investigation taking place involving the Council's PROW and Countryside Management Team regarding the construction of a boundary wall which dissects the PROW. Since this has been built on the PROW itself, it is a matter for the PROW team to determine and enforce where applicable.

It is also come to the Council's attention that the applicant has taken occupation of one of the bungalows (and did so before the respective conditions attached to approved application w/11/00419/FUL were discharged). This has been raised as part of one of the representations and it has been the subject of an enforcement investigation. However, it should be noted that on 27 September, the relevant conditions attached to the previous permission were duly discharged. Through taking occupation of one of the bungalows before the conditions were discharged and satisfied, the applicant was technically in breach. However, the breach was not of a sufficient serious nature to require formal enforcement proceedings to commence (since it was accepted that the applicant and his agent were at the time, in discussions with Council planning, highways and PROW officials to regularise the situation).

It is also necessary to record since a new decision notice is being processed under this application, that it is deemed necessary to impose a planning condition to stipulate that the two bungalows should be only accessed via Church Lane. Following the formal discharge of condition 2 (w/11/00419/FUL), it has come to the Council's attention that the applicant has allegedly accessed the property from both Acorn Meadows (by opening up the boundary to the immediate north of the barrier position on the PROW) and Church Lane. For the avoidance of any doubt, the two properties are to be accessed by vehicular traffic only by Church Lane. A separate means of vehicular access via Acorn Meadows would not be supported and should be covered by a planning condition.

Recommendation: Permission

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

- 1 The dwellinghouses hereby approved shall not be occupied unless and until the barrier and 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.

- 2 The two dwellinghouses hereby approved shall benefit from vehicular access via the "continued private drive" formed off Church Lane only (as shown on plan drawing LDC.1514.002A). The drive and the consolidated surface shall be maintained for the lifetime of the development. No other vehicular means of access is hereby granted.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 3 The parking spaces shown on plan drawing LDC.1514.002A shall not be used other than for the parking of vehicles or for the purpose of taking access to the site.

REASON: In the interests of highway safety and in order to protect the integrity and use of the public right of way.

- 4 That the hexagonal windows shown in the gable elevations shall be formed in obscure glazing units for the lifetime of the development.

REASON: To safeguard residential amenity and privacy.

POLICY: West Wiltshire District Plan - 1st Alteration policy C38.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on approved plan drawing no. LDC.1514.005B, shall be inserted in the gable elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38

- 6 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

LOCATION PLAN drawing no.LDC.1514.001 received on 06.10.2011

PROPOSED SITE LAYOUT drawing no. LDC.1514.002A received on 04.03.2011

PROPOSED FLOOR PLANS drawing no. LDC.1514.003A received on 27.09.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.004B received on 27.09.2011

PROPOSED ELEVATIONS drawing no. LDC.1514.005B received on 27.09.2011

REASON: To ensure that the development is carried out in accordance with the approved plans that have been judged to be acceptable by the local planning authority.

From: Rights Of Way Consultations

Sent: 03 December 2019 13:09

To: Developmentmanagement <Developmentmanagement@wiltshire.gov.uk>; Highways Development <HighwaysDevelopment@wiltshire.gov.uk>

Subject: RE (TROW8) RoW Comments. Planning Application for Consultation 19/10546 FUL

The property would be accessed by a public footpath (TROW8). This is not recorded as a public vehicular highway, the only recorded public rights along it are on foot. In order to drive a vehicle along here, the householder would require a demonstrable private right of vehicular access. Without this private right the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the footpath. The applicant is advised to take private legal advice. The Rights of Way Team has received an application to upgrade the footpath to a byway open to all traffic.

The applicant has not provided details of vehicle movements into and out of the garage or of the parking arrangements outside of the garage. Given the constraints of the site it does not appear there would be adequate space to enable vehicles to enter and leave the property in a forward gear. I am unable to ascertain whether there is adequate provision for visibility when exiting the property onto the public footpath. This may have an adverse effect on pedestrians using the public footpath. I would therefore ask that my colleague in Highways Development to check the proposed development meets the "Manual for Streets" visibility standards.

Assuming the applicant has a private vehicular right of access and adequate visibility can be provided I would have no objections subject to the following informatives:

No construction / demolition vehicle access may be taken along TROW8 without prior consultation with the Wiltshire Council Countryside Access Officer. Where appropriate any safety/mitigation/reinstatement measures must be approved by the Wiltshire Council Countryside Access Officer.

Reason: To ensure the public right of way remains available and convenient for public use.

No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken which obstruct or adversely affect the public right of way whilst development takes place.

Reason: To ensure the public right of way remains available and convenient for public use.

Jane Hughes (Mrs)

Definitive Map and Highway Records Technical Officer

Rights of Way and Countryside Team



County Hall, Trowbridge, BA14 8JN.

Tel: 01225 713048

Email: jane.hughes@wiltshire.gov.uk

Website: www.wiltshire.gov.uk

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CASE OFFICER'S REPORT

Application Reference: 19/10546/FUL
Date of Inspection: 04.12.2019
Date site notice posted: 04.12.2019
Date of press notice: N/A

POLICIES

Local Context: The adopted Wiltshire Core Strategy (WCS) 2015, namely Core Policy (CP) 1 - Settlement Strategy, CP 2 – Delivery Strategy, CP 57 - Ensuring High Quality Design and Place Shaping, CP61 – Transport and New Development

Wiltshire Local Transport Plan 2011-2026 Car Parking Strategy

National Context: National Planning Policy Framework (NPPF) 2019, Planning Practice Guidance

ISSUES

The principle issues to be assessed in the determination of this application are:

Impact on the Neighbouring Amenity
Visual Impact
Impact on highways and the public right of way

RELEVANT PLANNING HISTORY

Below is the most recently approved applications on the site that are most relevant.

W/11/00419/FUL Construction of a pair of semi-detached dormer bungalows & associated parking areas; revised access. Approve with Conditions

W/11/02605/S73 Variation of conditions 7 and 8 relating to planning permission
W/11/00419/FUL Approve with Conditions

REPRESENTATIONS

Trowbridge Town Council: No objection subject to no significant adverse impact on neighbour amenity

Wiltshire Council Public Rights of Way Officer: The following comments were received:

The property would be accessed by a public footpath (TROW8). This is not recorded as a public vehicular highway, the only recorded public rights along it are on foot. In order to drive a vehicle along here, the householder would require a demonstrable private right of vehicular access. Without this private right the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the

footpath. The applicant is advised to take private legal advice. The Rights of Way Team has received an application to upgrade the footpath to a byway open to all traffic.

The applicant has not provided details of vehicle movements into and out of the garage or of the parking arrangements outside of the garage. Given the constraints of the site it does not appear there would be adequate space to enable vehicles to enter and leave the property in a forward gear. I am unable to ascertain whether there is adequate provision for visibility when exiting the property onto the public footpath. This may have an adverse effect on pedestrians using the public footpath. I would therefore ask that my colleague in Highways Development to check the proposed development meets the "Manual for Streets" visibility standards.

Assuming the applicant has a private vehicular right of access and adequate visibility can be provided I would have no objections subject to the following informatives:

No construction / demolition vehicle access may be taken along TROW8 without prior consultation with the Wiltshire Council Countryside Access Officer. Where appropriate any safety/mitigation/reinstatement measures must be approved by the Wiltshire Council Countryside Access Officer.

Reason: To ensure the public right of way remains available and convenient for public use.

No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken which obstruct or adversely affect the public right of way whilst development takes place.

Reason: To ensure the public right of way remains available and convenient for public use.

It was also advised that they have 'no objection subject to the informatives in my earlier email. We do not ask for the applicant to prove they have a private vehicular right of way as this is a complex area of law and is a matter for which they need to satisfy for themselves.'

Wiltshire Council Highways Officer: Confirmation of the number of bedrooms that the dwelling was requested as well as 'a plan showing how parking can be accommodated within the site to meet Wiltshire's parking standards of 1 bed - 1 space, 2-3 bed - 2 spaces, 4 plus bed - 3 spaces.' A swept path analysis was also requested 'detailing entry to and egress from the garage' and it was requested that 'the red line be extended to reach the public highway'

Third Party representations: The application was advertised by neighbour notification and by the display of a site notice and no letters of representation were received.

ASSESSMENT:

Proposal: The application relates to ■ Church Lane in Trowbridge which is a semi-detached dwelling set amongst other detached and semi-detached dwellings accessed along Public Right of Way.

This is an application for a detached garage.

Impact on Neighbour Amenity: Core Policy 57 requires that proposals should have regard to the compatibility of adjoining buildings and uses, the impact on amenities of existing occupants, and to ensure that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration and pollution.

The proposed garage would be set in from the boundary with the property [REDACTED], Church Lane. Due to this set back from the boundary and the fact that the garage is proposed to be single storey with a pitched roof and also because the area to the north west of the site is used for car parking would mean that there are no concerns regarding loss of light and overshadowing to this neighbour from the proposed garage. The proposed rear window in the garage would be facing an existing fence and as such there are no concerns regarding overlooking from this window. Furthermore, this window is proposed to serve a garage and not a habitable room.

For the reasons discussed above it is considered that the proposal would comply with Core Policy 57 of the WCS.

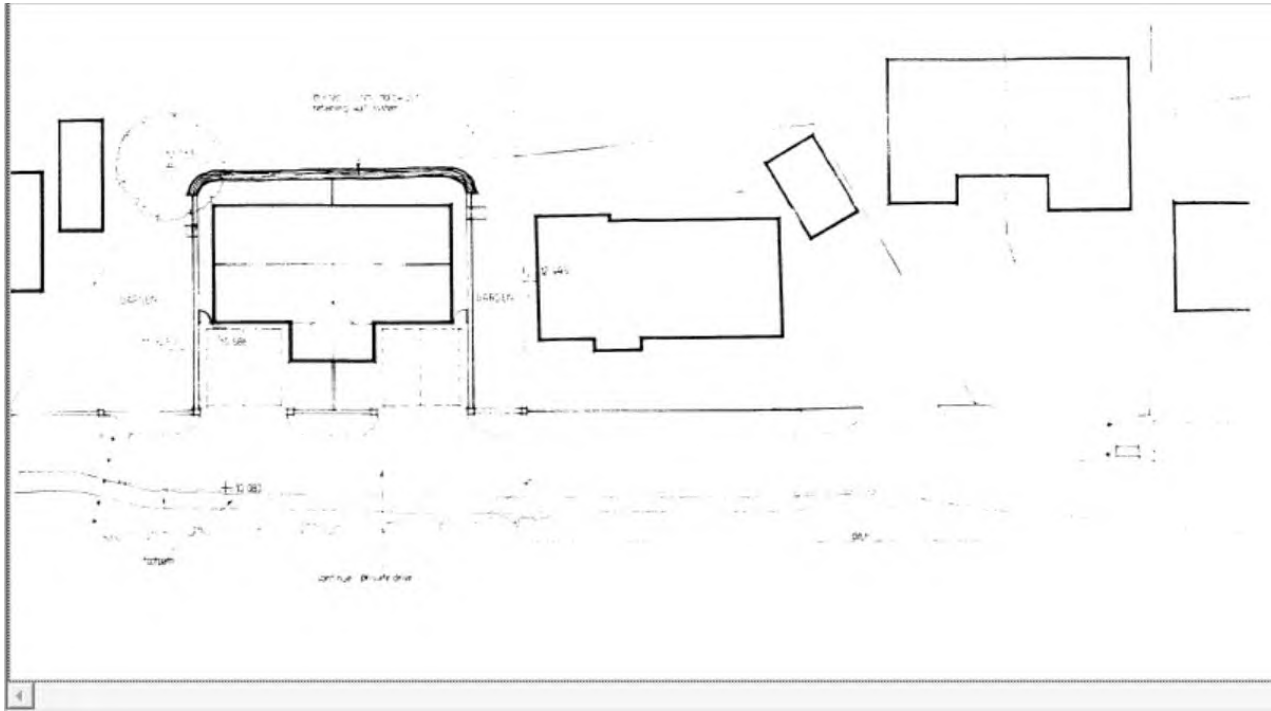
Visual Impact: Core Policy 57 requires a high standard of design in all new developments, including extensions, alterations, and changes of use of existing buildings. The third criteria of the policy is particularly relevant to householder applications and requires development to respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials streetscape and roof lines to effectively integrate the building into its setting.

The proposed garage is not considered to be harmful to the character and appearance of the dwelling because it is designed as a subservient addition to the host dwelling and would not appear visually intrusive. The walls of the garage are proposed to be rendered with red brick quoins to match the house and the roof is proposed to be cement fibre cement to match the existing dwelling, which would mean that the development would harmonise with its setting.

For the reasons discussed above it is considered that the garage would be in keeping with the host property and the character and appearance of the area and as such would comply with core policy 57 of the WCS.

Impact on Highways and the Public Right of Way:

Following comments from highways and the Public Rights of way team the planning history of the site was investigated further. The approved layout for the house includes two parking spaces in the location identified in the reproduced plan below:



This area is secured for parking and access by condition and lies within the redline boundary of this application. 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.

Vehicular access to the proposed garage would only be possible when the existing spaces are not in use but would not significantly alter the existing situation in terms of vehicular movements outside the site boundary.

It is considered that the concerns raised in the Highways comments and the Public Rights of Way comments have been addressed through research of the planning history and confirmation of the approved parking layout on the site.

Therefore it is considered that the proposal will not have an adverse impact on Highway Safety and is in accordance with Core Policy 61.

Other: Even though the Council's Public Rights of Way Officer wrote the informatives as conditions it is considered that they shall be imposed as informatives and not conditions.

Conclusion: In light of the above assessment of the submitted information and from the case officer undertaking a site inspection, it is considered that the proposed garage would not have an adverse impact on neighbour amenity or an adverse visual impact or an adverse impact on highway safety or the Public Right of Way. As such it is considered that the proposals would comply with CP57 and CP61 of the WCS and the requirements of the NPPF

Recommendation: Approve subject to conditions

From: Andrew May

Sent: Wednesday, May 15, 2024 6:55 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: Re: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Helen

My objection is about the "potential for the Council to authorise the erection of bollards" between points x and y which was on the modification. It seems to me that this is misleading because they are surely able to authorise the erection of bollards at any point on Church Lane that they see fit. The actual end of Church Lane would be the right place to reinstall them as this would mean that [REDACTED] and [REDACTED] can use their right of way up Church Lane which is evidenced in my pack that I sent previously and to the rights of way team at Wiltshire Council.

I do not object to anything else. I was led to believe that our rights of way issue was beyond the remit of the inspector, but his statement about points x and y brought it up and therefore I had to object.

I would accept the modification if it said "between points x and the end of Church Lane".

Please do let me know if there is anything else I can do.

Kind regards

Andrew May and Michelle Dunne

On Wed, May 15, 2024 at 11:44 AM Sparks, Helen <helen.sparks@planninginspectorate.gov.uk> wrote:

Dear Sir/Madam,

The advertisement of the proposed modifications provides an opportunity for people to make an objection or representation to the modifications, the unmodified element of the order or both aspects. In this case the only modifications proposed related to the width of the central section where it passes the junction with Church Fields and the potential for the Council to authorise the erection of bollards. The remainder of the route falls within the unmodified element of the order.

In light of the above, clarification is sought regarding whether your objection relates to the modifications, the unmodified element or both aspects. Please bear in mind that issues such as the impact of the order on local residents, or the benefits of the route being recorded as a bridleway, are not relevant considerations.

Please provide your response by **29 May 2024**.

Kind regards

Helen

H Sparks

Case Officer

Defra Team (Specialist Casework)

The Planning Inspectorate

<https://www.gov.uk/government/organisations/planning-inspectorate>

Email: helen.sparks@planninginspectorate.gov.uk

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

Telephone: 0303 444 5646

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DPC:76616c646f72

From: [REDACTED]

Sent: Tuesday, May 28, 2024 5:10 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: Re: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Helen,

Thank you for your email.

I wish to object to the modified element of the proposal, in particular, the proposed minimum width of 7mtrs.

I am unsure as to why and how a minimum width of 7mtrs has been proposed as having looked at the statements and evidence given by the public, it appears that the overall majority state a minimum of 5mtrs.

Kind regards,

Michael Reed.

----- Original Message -----

From: "Sparks, Helen" <helen.sparks@planninginspectorate.gov.uk>

To: "Sparks, Helen" <helen.sparks@planninginspectorate.gov.uk>

Sent: Wednesday, 15 May, 24 At 11:44

Subject: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Sir/Madam,

The advertisement of the proposed modifications provides an opportunity for people to make an objection or representation to the modifications, the unmodified element of the order or both aspects. In this case the only modifications proposed related to the width of the central section where it passes the junction with Church Fields and the potential for the Council to authorise the erection of bollards. The remainder of the route falls within the unmodified element of the order.

In light of the above, clarification is sought regarding whether your objection relates to the modifications, the unmodified element or both aspects. Please bear in mind that issues such as the impact of the order on local residents, or the benefits of the route being recorded as a bridleway, are not relevant considerations.

Please provide your response by **29 May 2024**.

Kind regards

Helen

H Sparks

Case Officer

Defra Team (Specialist Casework)

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DPC:76616c646f72

From: Stephen Coleman

Sent: Thursday, May 16, 2024 9:48 AM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: Re: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Helen

For clarification – My objection I believe relates to both the modifications element of the order and the unmodified elements of the order.

For the modifications. It is the installation of bollards instead of a fence and chicane, as I believe that bollards will not restrict the access of motorcycles and mopeds from using the Lane as a rat run it would only stop the use by motor vehicles. Also, it is the potential change in location of the bollards given the Councils stipulations that are included in the planning permission issued for Nos [REDACTED] & [REDACTED] Church Lane.

As for the unmodified elements. This relates to the minimum width on the order and the suggestion that the foot path No8 covered the full width of the lane outside Nos [REDACTED] and [REDACTED] Church Lane when the Council and Highway Agency at the time of granting vehicle access for the planning permission for the above believed the footpath did not cover the full width of the lane! This can clearly be seen in the planning documentation as can the stipulation for the installation and upkeep of the chicane and fence currently in place.

Kind regards

Steve Coleman

From: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Sent: 15 May 2024 11:44 AM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Sir/Madam,

The advertisement of the proposed modifications provides an opportunity for people to make an objection or representation to the modifications, the unmodified element of the order or both aspects. In this case the only modifications proposed related to the width of the central section where it passes the junction with Church Fields and the potential for the Council to authorise the erection of bollards. The remainder of the route falls within the unmodified element of the order.

In light of the above, clarification is sought regarding whether your objection relates to the modifications, the unmodified element or both aspects. Please bear in mind that issues such as the impact of the order on local residents, or the benefits of the route being recorded as a bridleway, are not relevant considerations.

Please provide your response by **29 May 2024**.

Kind regards

Helen

H Sparks

Case Officer

Defra Team (Specialist Casework)

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DPC:76616c646f72

From: Vigar, David

Sent: Tuesday, May 21, 2024 6:34 PM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: RE: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Helen Sparks

Thank you for the opportunity to clarify my comments.

I am objecting to the setting of the minimum width of the bridleway at 7m at the lanes northern and southern ends.

The unmodified order set it at 4m where it passes the entrance to Church Fields and up to 13m for much of the length. The Inspector decided to modify the order to record the full width for the whole length of the lane – which then leads to the order recording the width as ‘varying between 7m and 13m.

I argue that there is insufficient evidence for 7m to be recorded and that 5m would be more appropriate. I do not see any witness statements saying the lane used to be 7m wide. However, a large number cite 5m. That appears to be the width for which there is user evidence. I note that the Inspector says: “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.”

But I see no evidence that users are making a distinction between 5m and ‘the whole width’. The fact that many witnesses cite 5m and then draw what appears to be a full width on their maps suggests to me that their evidence is that the full width was 5m.

The Inspector adds: “On balance, I consider the width of the right of way should be taken to be the full width of Church Lane.” But he does not state why the minimum extent of that width, according to the historical record and witness evidence, would be 7m. The only mention of 7m in the decision is at the point where the modifications are set out.

My comments also discuss the fact that planning permission has been granted 13 years ago for development on some of the land now being proposed for recording as bridleway. I think that should

be a material consideration. But I recognise that the relevant [guidance](#) states that “In making a decision on a definitive map modification order, an Inspector can only consider whether the disputed rights of way do or do not exist. The Inspector cannot consider the suitability of the way for public use or any other effects of confirming an order.” Personally, I think that guidance should be updated but I recognise it is what the Inspector and your team are following.

Other aspects of my submission do refer to impact on residents and I recognise that the Inspector may disregard them. Those comments are directed to the Council as the action taken following this decision is a matter for the Council as Commons Registration Authority, Planning Authority and Highways Authority.

Best wishes

David

From: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Sent: Wednesday, May 15, 2024 11:45 AM

To: Sparks, Helen <helen.sparks@planninginspectorate.gov.uk>

Subject: ROW/3295476 - Wiltshire Council The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Order 2021

Dear Sir/Madam,

The advertisement of the proposed modifications provides an opportunity for people to make an objection or representation to the modifications, the unmodified element of the order or both aspects. In this case the only modifications proposed related to the width of the central section where it passes the junction with Church Fields and the potential for the Council to authorise the erection of bollards. The remainder of the route falls within the unmodified element of the order.

In light of the above, clarification is sought regarding whether your objection relates to the modifications, the unmodified element or both aspects. Please bear in mind that issues such as the impact of the order on local residents, or the benefits of the route being recorded as a bridleway, are not relevant considerations.

Please provide your response by **29 May 2024**.

Kind regards

Helen

H Sparks

Case Officer

Defra Team (Specialist Casework)

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