

STATEMENT OF CASE
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

THE WILTSHIRE COUNCIL TROWBRIDGE PATH NO.8 DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021

STATEMENT OF CASE AND LIST OF DOCUMENTS RELIED UPON

Wiltshire Council as the Order Making Authority (OMA) intends to rely upon the Western Area Planning Committee Report with Appendices A-F dated 29th September 2021 and Appendices TROW 1 – TROW 24 attached here, including the OMA comments on the objections at TROW 11, as its Statement of Case and does not at this time intend to submit a further statement of case. Should additional evidence come to the Council’s attention that may be relied upon, this will be presented as a supplementary Statement of Case within the appropriate time frame, however, it is considered unlikely that this will be necessary. The Western Area Planning Committee Report dated 29th September 2021 with Appendices A-F, contains a full investigation and comment upon the application and opposing evidence available to the Council in making the Order and TROW 11 sets out the OMA comments on the objections in detail.

The OMA contends that, based on the evidence contained within this Statement of Case, on the balance of probabilities, there is sufficient evidence that Path no.8 Trowbridge, which is presently recorded within the definitive map and statement of public rights of way as a footpath, ought to be there shown as a bridleway and recommends that the Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021, be confirmed without modification.

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WESTERN AREA PLANNING COMMITTEE

29 SEPTEMBER 2021

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

THE WILTSHIRE COUNCIL TROWBRIDGE PATH NO.8 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2021

Purpose of Report

1. To:
 - (i) Consider objections and representations received following the making and advertisement of “The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021”.
 - (ii) Recommend that “The Wiltshire Council Trowbridge Path no.8.Definitive Map and Statement Modification Order 2021” be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council’s Business Plan

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received an application dated 29 August 2018, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade a section of Footpath no.8 Trowbridge (Church Lane), to a byway open to all traffic, as shown on the application plan at **Appendix A**. The application was made by a resident on the grounds 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, i.e. that Footpath no.8 Trowbridge (part) should be recorded as a byway open to all traffic and that other particulars contained in the map and statement required modification, i.e. the recorded width of the path. The application was supported by 62 completed user evidence forms and documentary evidence.

4. Church Lane is located on the south-western side of Trowbridge and leads between Frome Road and Acorn Meadow, Upper Studley, (please see location plan at **Appendix B**). At present the route is recorded as Footpath no.8 Trowbridge, having a recorded right for the public on foot only, save for a central section of Church Lane at Church Fields, which is recorded as publicly adopted highway and over which the public have a right with vehicles, (please see adopted highway plan at **Appendix C**). The adopted highway does not extend to Frome Road and Church Lane is presently used with vehicles to access properties, St Johns Church and the Church Hall.
5. Before determining the application Wiltshire Council undertook an initial consultation regarding the proposals to upgrade part of the footpath to a byway open to all traffic. The representations, objections and additional evidence received are included at Appendix 5 of the Decision Report attached at **Appendix D**). However, it should be noted any public vehicular use would be impacted by Natural Environment and Rural Communities Act 2006 (NERCA) Section 67(2). The two exemptions which may apply require evidence of public vehicular use during the five-year period before the commencement of NERCA (2 May 2006) and for the period prior to December 1930 when it became unlawful to drive on a footpath. However, no direct evidence of vehicular use during either of these periods was provided to officers during the initial consultation. Please also see paragraphs 10.53 to 10.63 of the decision report at **Appendix D**.
6. Following an investigation of the available evidence, including 62 completed witness evidence forms and documentary evidence submitted by the applicant, Officers of Wiltshire Council produced a decision report in which a recommendation was made to Senior Officers 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, please see decision report at **Appendix D**. Senior Officers approved the recommendation on 26 November 2021.
7. Wiltshire Council subsequently made a definitive map modification order to upgrade Footpath no.8 (Church Lane), to a Bridleway and amend the statement to record a width varying between 4 metres and 13 metres, please see definitive map modification order at **Appendix E**. Notice of the making of the order was duly advertised, served on interested parties, (including neighbouring landowners where Church Lane itself is unregistered) and posted on site.
8. Following the making of the Order, the following representations and objections were received:
 - 1) Anna Evans-Wylie – Correspondence dated 24 January 2021; 8 March 2021; 16 April 2021; 17 April 2021.

- 2) Rachel Hunt – Correspondence dated 13 February 2021; 12 April 2021; 22 April 2021 (with residents of Church Lane).
 - 3) Mr M Reed – Correspondence dated 9 February 2021.
 - 4) Roy Pegrum – Correspondence dated 17 April 2021.
 - 5) Shelley Mcgrath – Correspondence dated 25 March 2021.
 - 6) Trevor Mcgrath – Correspondence dated 26 March 2021.
 - 7) Shane Wheeler – Correspondence dated 25 February 2021.
 - 8) Steve Wylie – Correspondence dated 5 March 2021; 19 April 2021.
9. The representations and objections are included in full at **Appendix F** and the officer’s comments on the objections are set out at paragraphs 16 - 40 of this report.
10. Due to the unresolved objections, the Order must now be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are requested to consider the objections and representations received against:
- (i) the evidence already before the Council in this case and
 - (ii) the legal tests for making a definitive map modification order under Section 53 of the Wildlife and Countryside Act 1981,

in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for decision.

Main Considerations for the Council

11. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review.
12. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:
- “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (ii) 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...*
 - (iii) ...any other particulars contained in the map and statement require modification.”*
13. Where witness evidence regarding the use of path no.8 Trowbridge, Church Lane, is submitted, Section 31(1) of the Highways Act 1980 states:

“Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

14. In this case where the application was made to upgrade only a short section of Footpath no.8 Trowbridge to a byway open to all traffic, upon examination of the available evidence, there was found to be insufficient evidence of public vehicular rights over the footpath; however, there was sufficient evidence to show, on the balance of probabilities, public bridleway rights over the footpath for the whole length of Church Lane, having a width varying between 4 metres and 13 metres (excluding the central section of adopted highway, please see adopted highway plan **Appendix C**). Therefore, the made Order to upgrade the whole of the footpath to a bridleway, was very different to the original application to upgrade only a short section of the path to a byway open to all traffic.
15. Evidence is key and therefore valid objections to the making of the Order must challenge the evidence available to the Surveying Authority. The Authority is not able to take into account other considerations, such as the suitability of the way for use by the public; environmental impacts of the proposal; the availability of suitable alternative paths; the “need” for the claimed route or private rights.

Comments on the Objections

16. A number of those making objections and representations do not object to the proposed status of bridleway over Church Lane and agree that this coincides with the historical use of the path on bicycles and some use on horseback, which they have observed / have knowledge of, as local residents, although some residents saw little point in upgrading the route where this use was already established.
17. Ms Rachel Hunt and Mr Shane Wheeler, writing separately, confirmed support for the Order to upgrade Path no.8 from public footpath to bridleway, allowing access to pedestrians, bicycles and single horses, but not to motorised vehicles, 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, children learning to ride their bikes for the first time and visitors to St Johns Church. Mr R Pegrum also confirmed that he had no objections to the reassignment of Church Lane from footpath to bridleway, for historic reasons and also bearing in mind its current usage.

18. Ms Evans-Wylie and Mr S Wylie, writing separately, commented that the difference between the footpath and bridleway lay solely in bridleways allowing for travel on horseback (in addition to foot traffic). Since horseback traffic was of only historical interest and currently there was no horseback traffic at all, (the only horse owners who leased the paddocks by Church Lane left a couple of years ago – although this could change if the paddock is used again by horse owners in future), with a distinct lack of horses on Church Lane and the Lambrok Estate with a need to ride along Church Lane to access the busy A361 road, there was little point in redefining the usage and upgrading the footpath to a bridleway. Mr Wylie confirmed that currently the footpath running from Frome Road A361 to Acorn Meadow, allowed passage for pedestrians and cyclists and that Church Lane had for a long time been a quiet lane well used by walkers, cyclists, the elderly, people with disabilities, people on mobility scooters, Brownies/Guides, children learning to ride their bikes and lots of dogs, as a safe recreational lane, not suitable for more motor vehicles. They confirmed their position as having no objections to bicycles or any other non-motorised road users travelling through Church Lane in addition to its residents, the churchgoers and the visitors to Church Hall and that cyclists were always welcome in Church Lane. Ms Evans-Wylie understood the objective of upgrading the footpath (pedestrian traffic) to a bridleway (pedestrian, bicycles and horseback), as that would reflect the current and historic usage of Church Lane and Mr Wylie clarified that he had no objection to Church Lane being classified as either a footpath or a bridleway, giving exclusive access to all forms of pedestrian traffic and cyclists; however, as Mrs Wylie confirmed, this usage was already in place and well established in Church Lane without the need of adapting or upgrading the path.
19. Mr Wylie and Ms Evans-Wylie accept public use of Church Lane with bicycles and have no objections to this use, their comments regarding use of the lane by walkers and cyclists supports the findings of the Surveying Authority in upgrading the path to bridleway. Where the route is currently recorded only as a footpath, cyclists are not formally able to use the route and are therefore committing a trespass. It is true, therefore, that all use begins with a period of trespass, but where there is now evidence of use of the path by the public with bicycles for a period of 20 years or more, it is more likely than not that a right for the public with bicycles has been acquired and Wiltshire Council, as the Surveying Authority, has a duty to correctly record that right. Upgrading the route to a bridleway records a legal right for cyclists to use Path no.8.

Change in status to bridleway

20. Mr M Reed objects to the bridleway status and questions “...*the advantage of a bridleway which does not allow motorised vehicles to use it. This seems a nonsense given the fact that most people in the area have cars which require parking space.*”
21. The Surveying Authority has carried out a detailed investigation of the historical and witness evidence in this case and considers there to be insufficient evidence of public vehicular rights over the way, but sufficient

evidence of public bridleway rights, (through use of the route by the public on horseback and with bicycles). In such a case, evidence is key and Mr Reed provides no evidence that the route of Church Lane has been used by the public at large with vehicles, (in addition to private vehicular use to access property), which would lead the Council to take a different view on the evidence already before it.

Recorded Width

22. Objectors dispute the width recorded in the Order, varying between 4 metres and 13 metres. Ms Evans-Wylie considers that nowhere does the lane seem to have 13 metres in width and their measurements show the width to be slightly under 4 metres in front of their driveway. This does not allow for two vehicles passing, or even one vehicle to safely go past a group of pedestrians. The soft verge of the lane dropping into a ditch on the other side does not provide any room for laybys or pavements. Ms Evans-Wylie, Mr Wylie and Mr Pegrum consider 4 metres excessive for bridleway traffic. Mr Pegrum considers that 2 horses do not need even 4 metres to pass each other. There is concern that opening the path at the width set out in the Order would be an invitation to motor vehicles to use Church Lane as a through route between Frome Road and Acorn Meadows, creating danger and hazards for the intended users of the bridleway, i.e. pedestrians and cyclists.
23. Mr Wylie confirms that he cannot support the Order if it does not physically prevent motor vehicles passing between Church Lane and Acorn Meadow and Ms Evans Wylie and Mr Pegrum confirm their formal objection on the specific issue of widening Church Lane at its junction with Acorn Meadow. These parties, and additionally Ms R Hunt, confirm that the width should be limited at the junction of Church Lane and Acorn Meadow to prevent vehicular use, Mr Wylie and Ms Evans-Wylie suggest that the Order is amended to record a maximum width of 1.5 metres (5 feet) at the junction of Church Lane with Acorn Meadow.
24. The width recorded in the definitive map modification order is measured from Ordnance Survey 25" County Series and later National Grid series mapping, which consistently records the width of Church Lane varying between 7 metres and 13 metres. The measurement includes not only the metalled carriageway, but also the verge area, as the full width of the path which would have been available to path users. The users in their evidence support the full width of the path being open and available before the width was reduced at the Acorn Meadow end, many witnesses refer to the path being "full width", "hedge to hedge" or "whole width". Additionally, in 1970 the County Secretary and Solicitors Office confirm: *"It will be observed that Church Lane, from its junction with White Row Hill (Frome Road) to its junction with Lambrok Road is shown by purple hatching which indicates that there is a public right of way on foot along the whole width of Church Lane..."* and Mr S Wheeler confirms

in representations regarding the Order: *“When we first moved to this lane there were concrete bollards and a wider pathway”*.

25. The path width measured from the OS mapping varies from 7-13 metres for the length of the path; however, when the central area of adopted highway at Church Fields, (which cannot be recorded as bridleway where it is already highway), is excluded from the width of the path, the minimum width is reduced to 4 metres, so a width of varying between 4 and 13 metres is recorded within the Order. When measured on the ground, a maximum width of approximately 13 metres can be measured opposite the Church Hall between boundaries. There is no evidence of a legal event formally stopping up part of the width of the highway, (please see Width section, paragraphs 10.64 – 10.70 of Decision Report at **Appendix D**).
26. Where the determination of such Orders is based upon evidence alone and in the absence of any evidence to the contrary, it is not possible to record an alternative width within the Order. Any modification to the Order, e.g. to record a reduced width of 1.5 metres at the junction of Church Lane with Acorn Meadow, whilst it may be desirable, must be based on evidence of a reduced highway width at this point, which has not been submitted in this case.

Opening up Church Lane at its junction with Acorn Meadow

27. Presently the staggered barrier at the northern end of Church Lane reduces the width of the path to approx. 1.2 metres usable width, (4.5 metres approximately including verge); however, if the actual width of the highway is greater, which the investigations of the Surveying Authority suggest is more likely than not, based on the available evidence, this barrier may in effect be an obstruction of the full width of the highway and should be removed. There is understandable concern that if the junction of Church Lane is opened up to full width it will invite vehicular traffic from the Lambrok Estate to use Church Lane as a through route between the Estate and the Frome Road (A361), with the following consequences according to the objections and representations:
 - The legal description of the road as “bridleway” and the associated restrictions of user on foot, horseback and with bicycles only, would be disregarded by many users.
 - Church Lane will be used as a “rat run” and the resultant misuse of Church Lane by vehicular traffic (cars, vans, motorcycles etc) would foreseeably generate significant dangers and hazards for the existing users of Church Lane, such as pedestrians, churchgoers, dog walkers, and the residents of Church Lane and neighbouring areas who commonly use this lane for recreational purposes.

- Speeding cars and especially motorbikes would be dangerous due to poor visibility on this narrow and hedged lane.
- Particular concern is that motorbikes, which use a circular route along the lower half of Frome Road and Bradley Road for night time races would use Church Lane as a cut through to Studley Green. Should motorbikes start using this route it would become extremely dangerous for cyclists and pedestrians. A detailed plan of action to ensure that Church Lane does not become a “rat run” for motorcycles/scooters is required and any alteration to the fixed barrier at the junction of Church Lane and Acorn Meadows should be viewed with extreme caution. Use of Church Lane by motorcycles has been a problem in the past; when the pathway was narrowed and a staggered gate installed, this greatly reduced issues and made the lane a much safer place.
- Congestion could be anticipated if traffic started pouring in from the large Lambrok Estate, (some 2,000 households), to access the A361. Difficulties are already noted on Sundays and religious holidays where the traffic to and from the church car park intensifies and leaves cars stuck in queues.
- Risks at narrow entrance into Church Lane from Frome Road (A361), obscured by hedges with inadequate vision for safe usage. If the volume of traffic increased at this junction, collisions and potentially deaths could occur.
- Church Lane is not fit to accommodate any traffic in addition to the residents it already serves. Road margins are kerbless and drainage, road markings and signage are non-existent. At its narrowest point (barely 4 metres) two vehicles are unable to pass and the lane is not wide enough for a pavement to protect pedestrians.
- Wiltshire Council in its deliberations of the potential housing site H2.4 alongside Church Lane, (Wiltshire Housing Sites Allocation Plan), has ruled that Church Lane would be unsuitable as an entrance to the development for up to 40 new houses, due to the dangerous and blind junction with Frome Road. It follows that Church Lane would be even more unsuitable for a flow of cars from the hundreds of dwellings on the Lambrok Estate.
- The residents of Acorn Meadow are not disadvantaged in any way as they enjoy access from Lambrok Road and there is already a network of wide, well-designed, well-lit and fit for purpose roads linking Lambrok Estate to the rest of Trowbridge and beyond.

- Request that all necessary steps are taken by the Local Authority to mitigate the foreseeable hazards that would be risked should the full width of Church Lane and Acorn Meadow be opened and the current barrier removed, i.e. replacement barriers, bollards, gateway, hump, road signs to prevent/prohibit the entry of motorbikes and cars into Church Lane from Acorn Meadow or an entrance only wide enough for a single horse or bike. If the route does become a bridleway it is imperative that physical measures are taken at the same time as the decision to ensure the route from Acorn Meadow remains inaccessible to motorised vehicles.
 - Adding street lamps and vehicle headlights would have an adverse effect upon the protected Bechstein bat population in the roadside hedgerows.
28. In the determination of definitive map modification order applications made under Section 53 of the Wildlife and Countryside Act 1981, the Council may only take into account the evidence, to correctly record public rights. Where there is historic and user evidence that the path should have a recorded width, wider than the present width available at the junction of Church Lane and Acorn Meadow, the “once a highway, always a highway” presumption remains if there has been no legal event to extinguish/stop up part of that width, the present barrier may be an obstruction of the highway.
29. In the first instance and in the determination of this application, it is the duty of Wiltshire Council, as the Surveying Authority, to investigate the available evidence to determine what public rights exist over path no.8 Trowbridge (Church Lane) and accurately record those rights and any width, based on the evidence.
30. As a second stage to this Order, if public bridleway rights are found to exist over the full width of the path and the Order confirmed, it will be necessary to make the full width available. However, there is evidence that use of Church Lane as a through route with vehicles has long been a concern, as can be viewed in the Trowbridge Urban District Council minutes dated 10 April 1962, which resolved that the Surveyor be authorised to erect posts across the width of the lane near the new bungalows (Kynance and Hillbrook, built 1961), to prevent through vehicular traffic; planning permission dated 12 May 1975 for detached bungalow on land to the rear of 20 Whiterow Park (22 Church Lane), which required a second set of bollards across the extremity of the turning head to *“prevent traffic going beyond the proper road access provided”* and more recently the planning granted for the two new bungalows 24 and 26 Church Lane in 2011, which required the relocation of the bollards on unknown third party land (Church Lane) and resulted in the current barrier: *“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 the bollards along the north-western edge of the application site...would prevent this from happening...”,

With condition 2:

“2 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming the exact type and siting of the relocated bollards on the public right of way. The dwellinghouses shall only be occupied after the relocated bollards have been installed in a position agreed in writing by the local planning authority. The bollards shall thereafter be retained and maintained for the lifetime of the development hereby approved. REASON: In order to prevent the formation of an unauthorised through-road from Frome Road/Church Lane to Acorn Meadow and to limit the amount of traffic generated along Church Lane.”

31. Please note that planning does not supersede highway law and the current barrier may still be an obstruction of the highway. There are, however, powers available to Wiltshire Council as the Highway Authority under section 66(3) of the Highways Act 1980, to introduce a barrier where there are public safety concerns:

“(3) 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.”

The nature and location of such a barrier is not a matter for this Order, but can be fully investigated following the determination of this Order.

Improvements for disabled users/pushchairs is all that is required

32. Ms Evans-Wylie considers that *“There is of course nothing within the current footpath usage to prevent the Council from making adjustments for disabled access”* and Mrs S McGrath agrees that the definitive map modification order is not necessary where all that is required are alterations to Footpath no.8 to make it easier for disabled users and pushchairs, which would be a cheaper and far less disruptive course of action. Mr T McGrath comments that during the past seven years, as a resident of Church Lane, he has never heard a single person, resident or passer-by, suggest anything like the present bridleway proposal. What is frequently voiced is simply the removal of overgrowth from the obscured footpath with tarmac repairs where the path is eroded. It is they who use the pathway and will have to live with any detrimental outcome long after the Council has forgotten that Path no.8 exists and he suggests that the Council stops wasting money and concentrates on proper maintenance of that part of the path that has been neglected in the past.

33. Once Wiltshire Council, as the Surveying Authority, has received an application to amend the definitive map and statement of public rights of way, it has a duty to determine the application, and it cannot simply not deal with the application in favour of improvements/maintenance. Of course, Wiltshire Council, as the Highway Authority, has a duty of maintenance; however, we also have a duty to determine applications and correctly record public rights in full, based on the evidence and on the balance of probabilities. To simply not deal with the application is a risk to the Council, which could lead the applicant to appeal to the Secretary of State who may compel the Authority to determine the application within a set time limit. If the Authority then fails in its duty to determine the application it could lead to costly legal challenge for the Authority. In making a definitive map modification order, the Authority is not adding new rights, but recording only those public rights which have already been shown to exist, in this case through a user period of 20 years on horseback and with bicycles. There is evidence of use of the lane on bicycles and Officers have observed this use when visiting the site, at present cyclists have no recorded right over Footpath no.8 Trowbridge, the upgrading of the route to a bridleway formally records the rights of cyclists and horse riders, which on the balance of probabilities, already exist over Path no.8.

Private rights

34. There is concern that the upgrading of the footpath to a bridleway will affect the rights of property owners to access their properties with vehicles. Some residents are aware of their private rights to access their properties, as Mrs Evans-Wylie writes *“As residents of Church Lane we enjoy “the benefit of a right of way over the roadway known as Church Lane leading into Frome Road” (quote from our property Title Deed)”* and Rachel Hunt submits the following petition signed by 25 residents:

“As residents of Church Lane we wish to document the following information as part of the consultation process in the Application to upgrade Footpath Number 8 to a Bridleway.

Statement of Confirmation of Access to our Properties on Church Lane, whether it remains a Footpath or is designated a Bridleway.

All of the undersigned residents of Church Lane and Church Fields, and other interested parties (such as the users of St John’s Church and Hall carpark) can show if so required in terms of sec.34(1) of the Road Traffic Act 1988 that they have the private right in place to use Church Lane as an accessway by either having acquired the prescriptive right of way (see evidence below), or by virtue of having the right of way of necessity on the basis of there not being any alternative ways of accessing their properties, or because they have the private right of way created by Deed.

Evidence of Prescriptive Right of Way:

St John’s Church was built in 1852 and was accompanied by a rectory (built 1859) and School houses built 1856/1857 (converted into houses Number 2-8

Church Lane in the 1980's). Access to all of these has been established over 150+ years. In addition, Church Cottage (344 Frome Road) has had access for a similar amount of time and has used Church Lane to access its driveway by motor vehicle for at least 50 years. 'Framfield' in Church Lane was constructed in 1950's originally as a farm dwelling, later used by a practicing veterinary and is now a private dwelling. This property has had essential vehicle access for over seventy years. Church Fields and the remaining houses on the land also use Church Lane to access their properties. The majority of these houses were built in the 1970's and they have all enjoyed vehicular access since then without complaint.

Evidence of Right of Way by Necessity

All properties on Church Lane, Church Fields and users of the Church Hall can only access their property by using Church Lane.

These rights will continue if Footpath No.8 is upgraded to a bridleway and consequently there is no need to consider upgrading Church Lane to a byway."

35. There is understandably, however, some concern amongst residents regarding the impact of the proposed change in status upon their private rights to access properties. Mr S Wylie agrees that *"A volume of misinformation and anxiety has circulated in the neighbourhood about the modification order, in particular the rights of property owners and churchgoers to access properties here. This may have influenced the way some people have responded to the consultation."*
36. Mrs S McGrath is concerned that residents of Church Lane would still have complete freedom of vehicular access to their properties without restriction. Signage stating e.g. "Resident's Access Only" could be erected and Mr T McGrath is concerned that residents of Church Lane are not given specific guarantees that access to their properties will be unrestricted or that visitors and delivery vehicles will not suffer any hindrance or restrictions: *"We understand that we have legal rights to access our properties under common law but we need this to be clearly and unambiguously stated by the Council to avoid expense and uncertainty when selling our properties in the future."*
37. Wiltshire Council, as the Highway Authority, does not record private rights and cannot give advice or comment on private rights. Church Lane is an interesting case, as can be seen from the Urban District Council minutes 1960-1972 and other correspondence, it is clear that Trowbridge Urban District Council, as the then highway authority and later Wiltshire County Council, consistently refer to Church Lane as a "Private Street", i.e. a as prospective maintainable highways over which the Highway Authority could secure sums from frontagers in respect of street works. The Urban District Council had a private street works programme and budget and it is likely that the making up of the unadopted section of Church Lane was carried out under that programme when Church Fields estate was adopted, as shown in the minutes

dated 10 June 1971, (Highways and Planning Committee), when it was resolved that the Private Street Works Programme for the period 1972/73, allowing for the making up of Church Lane (amongst others), be approved in principle. It is interesting that Church Lane was never adopted as publicly maintainable highway in full, even though there are within the minutes, numerous instances of roads in Trowbridge being adopted and even following the Churchfields development when the central section of Church Lane was adopted along with Churchfields itself. The County Council writes in 1991 that it was, for economic reasons, eventually unable to proceed further with the private street works programme and on 12 April 1991 Wiltshire Council writes to confirm that: *"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 the part of Church Lane shown coloured orange...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."*, (please see Appendix 8 of Decision Report at **Appendix D**).

38. Property owners must satisfy themselves that they have a vehicular right of access to their properties and this is not a matter which is relevant to this Order. The Surveying Authority has a duty to correctly record public rights only. Previously to this Order, the full length of Church Lane was recorded as a Footpath and there is no material difference in the definitive map modification order upgrading the route to a bridleway. If, however, property owners are relying upon a public vehicular right of way to access property, they have not submitted additional evidence which would support public vehicular rights over Church Lane and lead the Council to take an alternative view of the evidence already before it.

Effect on property

39. A property owner directly affected by any increased width in the path at the northern end and who presently parks on what may in fact be part of the full width of the highway, is understandably very concerned regarding the effect on his property: *"When I purchased property it was on the understanding that everything was in order, now I am told of plans to modify the area to create a bridleway, this will have repercussions which make me think the house was mis-sold... Which part of the frontage of my property needs taking up for the bridleway and what are your legal rights to do so. This is dangerous and will reduce privacy. Another major area of concern is how far the house will be devalued if this proposal goes through. Many people are already very stressed at the prospect."*

40. Title documents show that there is no registered owner of the full length of Church Lane and over the full width proposed within the Order. Again, Wiltshire Council is concerned only to correctly record public rights and may only take into account the available evidence. The correspondent provides no additional evidence which would lead Officers to reach a different conclusion on the evidence before it.

Overview and Scrutiny Engagement

41. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

Safeguarding Considerations

42. Considerations relating to safeguarding anyone affected by the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Public Health Implications

43. Considerations relating to the public health implications and the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Corporate Procurement Implications

44. Where an Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to Order and these are considered at paragraphs 48 – 51 of this report.

Environmental and Climate Change Impact of the Proposal

45. Considerations relating to the environmental or climate change impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

46. Considerations relating to the equalities impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside

Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Risk Assessment

47. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error in the definitive map and statement of public rights of way which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. If the Council fails to fulfil this duty, it is liable to complaints to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

Financial Implications

48. The determination of definitive map modification order applications and the modification of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore, the costs of processing such Orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
49. Where objections are received to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
50. Where the case is determined by written representations, the cost to the Council is negligible. However, where a local hearing is held, the costs to the Council are estimated at £300 - £500. A public inquiry could cost between £1,500 and £3,000, if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 - £500 where the Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
51. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

52. Where the Council no longer supports the making of the Order, clear evidential reasons for this must be given, as the applicant may seek judicial review of the Council if this decision is seen by them to be incorrect or unjust.
53. The determination of an Order which has received objections is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State, (although the Council as Highway Authority would be considered by the Court to be an “interested party” and named as such in any such proceedings). Any legal challenge would be heard in the High Court and would need to show that the Inspector (appointed by the Secretary of State to preside over the inquiry and take the decision) had misinterpreted the law or erred in the making of the decision. If the challenge is successful, the Court could quash the decision and in cases where an error has been found, return the case to the Secretary of State for re-determination. The losing party would be responsible for the costs of the successful party.

Options Considered

54. Members of the Committee should now consider the objections and representations received and the evidence as a whole, in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for decision and Members of the Committee are required to determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members, having considered the available evidence and the objections and representations, are as follows:
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;
 - (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
 - (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear evidential reasons given for this resolution;

- (iv) Members may resolve to take a neutral stance, if the Committee considers on consideration of the available evidence that a Wiltshire Council recommendation cannot be attached to the Order when it is forwarded to the Secretary of State for determination.

55. Please note that all references to the available evidence above, now include the submissions made at the formal objection period, (please see correspondence at **Appendix F**), as well as the evidence considered within the decision report dated 26 October 2020, (included at **Appendix D**). Members should note that the evidence in full is available to be viewed at Wiltshire Council's Offices, County Hall, Trowbridge.

Reason for Proposal

56. Where the Surveying Authority may take into account only the evidence regarding public rights and the width of the way, no additional evidence regarding the status and width of the path has been submitted during the formal consultation stage, which would lead Officers to amend the Order. The matter of the barrier and private rights are not a matter for this Order which is limited only to the correct recording of public rights based upon the available evidence.

Proposal

57. That "The Wiltshire Council Trowbridge Path no.8.Definitive Map and Statement Modification Order 2021" be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Jessica Gibbons

Director Communities and Neighbourhoods Services

Report Author:

Janice Green

Senior Definitive Map Officer

The following unpublished documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix A – Application Plan

CM10039/F

17

Appendix B – Location Plan

Appendix C – Adopted Highway Plan

Appendix D – Decision Report

Appendix E – “The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021”

Appendix F – Objections and Representations

Completed witness evidence forms x 62 are available to be viewed at the Offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge


Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to All Traffic

384100

384200

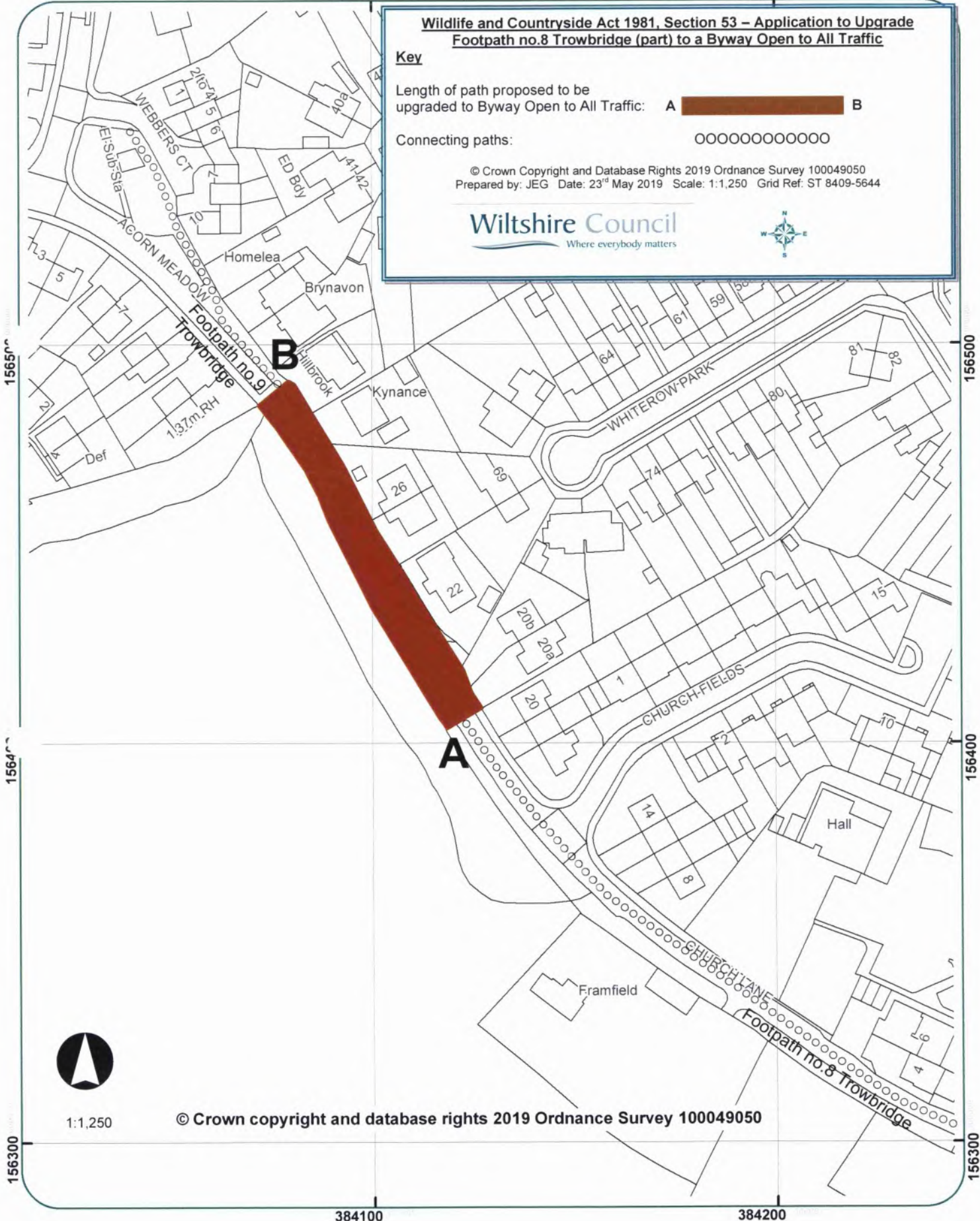
**Wildlife and Countryside Act 1981, Section 53 – Application to Upgrade
Footpath no.8 Trowbridge (part) to a Byway Open to All Traffic**

Key

Length of path proposed to be upgraded to Byway Open to All Traffic: A  B

Connecting paths: 

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Prepared by: JEG Date: 23rd May 2019 Scale: 1:1,250 Grid Ref: ST 8409-5644

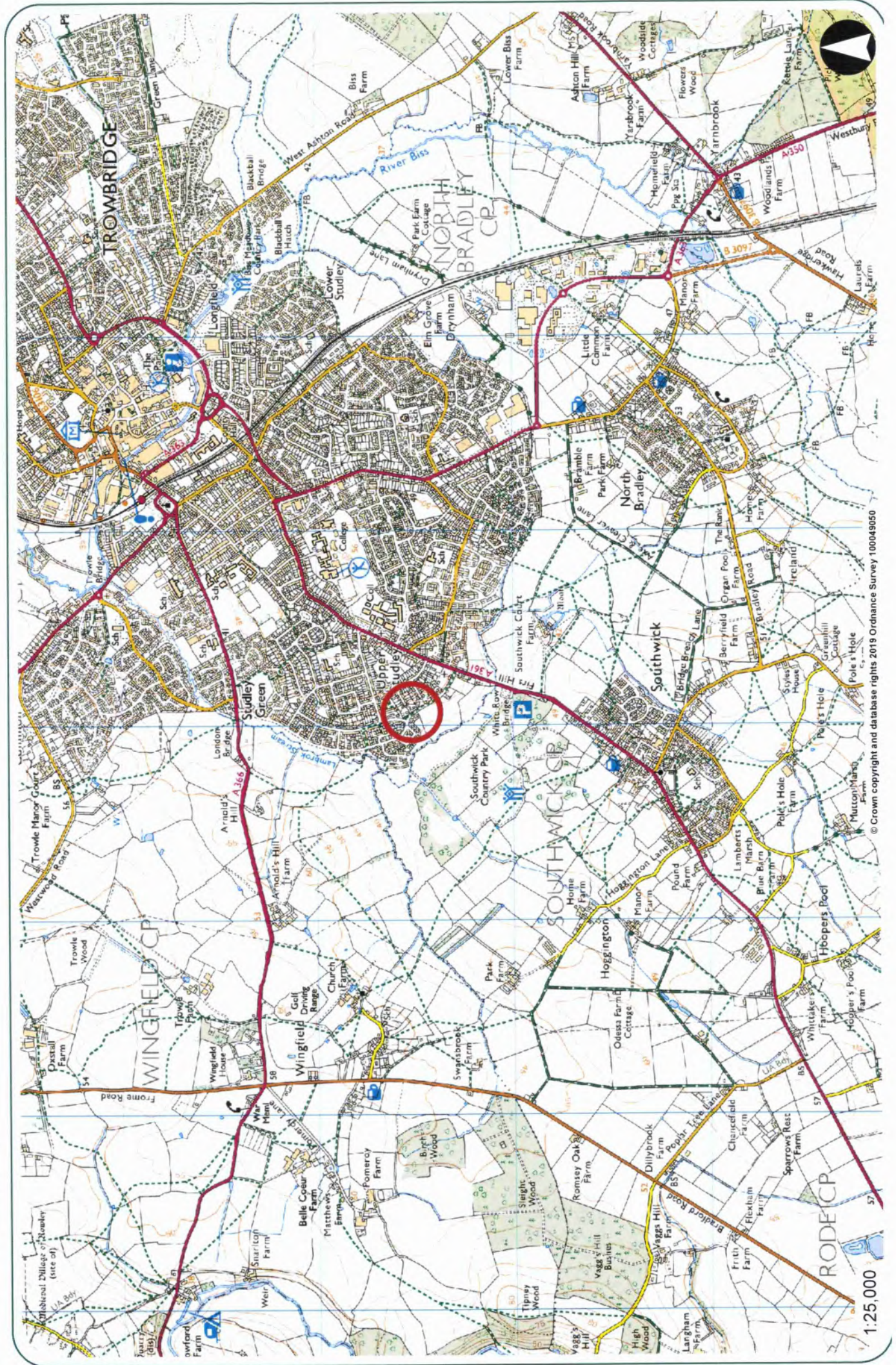


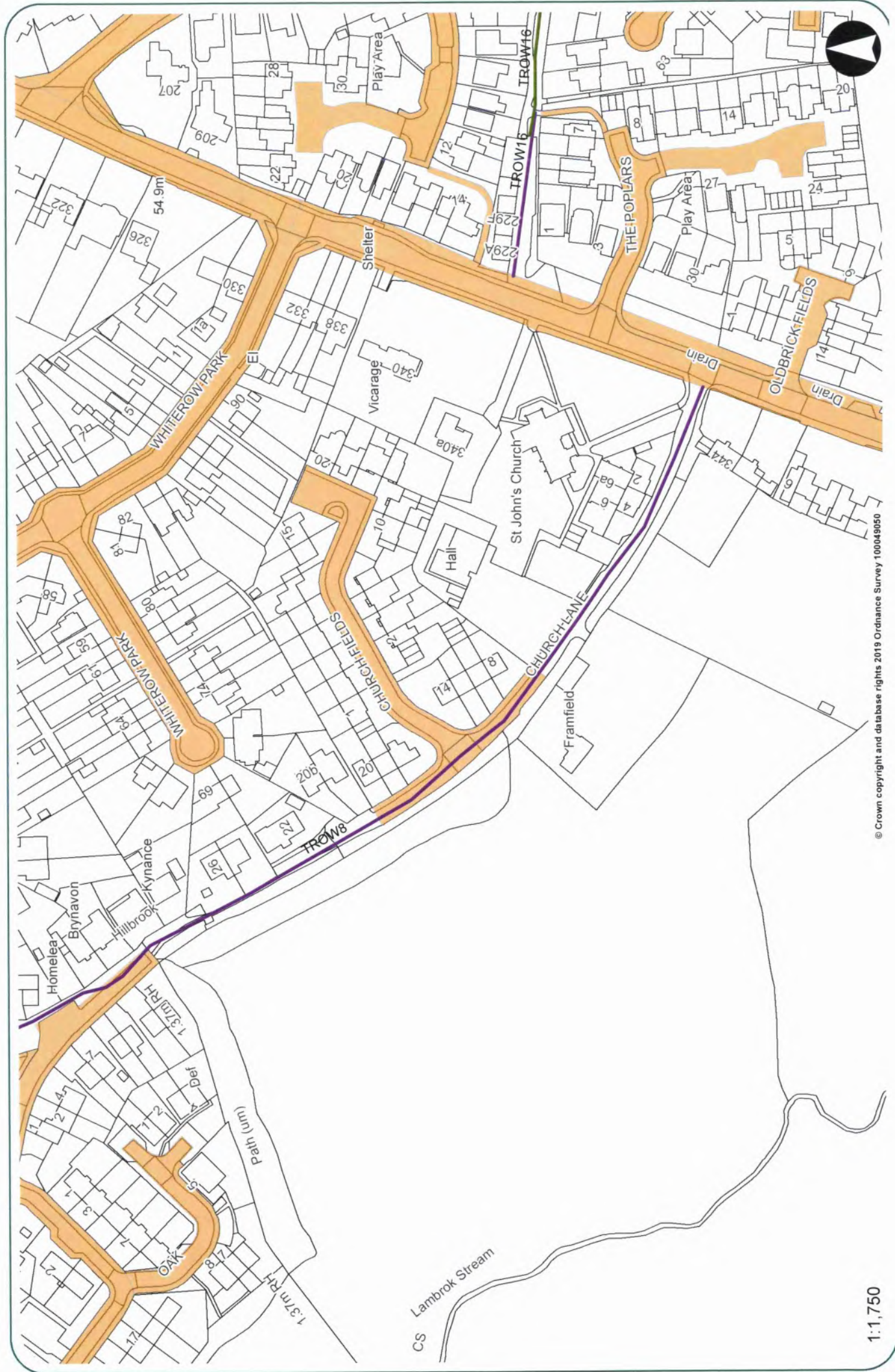
1:1,250

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EXECUTIVE SUMMARY OF DECISION REPORT

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

**APPLICATION TO UPGRADE FOOTPATH NO.8 TROWBRIDGE (PART), CHURCH LANE, TO
A BYWAY OPEN TO ALL TRAFFIC**

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sally Madgwick (Definitive Map and Highway Records Manager)		18 Nov 2020
	Richard Broadhead (Head of Service, Rights of Way and Countryside)		26 November 2020
	Jessica Gibbons (Director Communities & Neighbourhood Services)	n/a – copy of for information only	
From:	Janice Green (Senior Definitive Map Officer)		
Date of report:	26 th October 2020		
Return to:	Janice Green (Ext. 13345)		

Nature of Report:

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers), regarding an application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic. The application is extensive, involving both historical and user evidence and the main report contains a full and detailed consideration of the evidence. However, the main facts of the case are contained in the following executive summary.

Executive Summary:

Wiltshire Council are in receipt of an application dated 29th August 2018, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8 Trowbridge (part), Church

Lane to a byway open to all traffic, based on evidence that the Trowbridge Urban District definitive map and statement dated 1953 incorrectly records the claimed route as a footpath. The application was accompanied by 62 completed user evidence forms and documentary evidence.

Section 53(2)(b) of the Wildlife and Countryside Act places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review. Section 53(3)(c)(ii) applies, i.e. *“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them shows-*

(ii) 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...”

Section 31 (as amended) of the Highways Act 1980, deals with the dedication of way as a highway, presumed after public use for 20 years, as of right and without interruption. The relevant legal test to be applied is the “balance of probabilities”. (See Legislation in full at **Appendix 6**).

Upon examining the evidence received with the application; at the initial consultation regarding the application and from the Officer’s research, the following conclusions are made, (please see parts 9 and 10 of the main report for full consideration of the available evidence):

- There is 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. Vehicular use after that date was found to be in connection with access to property and not use with vehicles by the public at large, perhaps utilising a removable post. In addition, the Natural Environment and Rural Communities Act 2006 extinguished unrecorded public vehicular rights, save for certain exemptions, one of those exemptions being that the main use of the way in the 5 years prior to commencement of the Act, was by the public with vehicles. There is insufficient evidence that the main public user in the years 2001-2006 was by the public, with vehicles, the user evidence suggests that the main public use during this period was on foot, on bicycle and some use on horseback. Additionally, the documentary evidence does not support a public vehicular route. Church Lane appears to have started life as an accommodation route to access land / property. The Highway Authority have consistently treated Church Lane as a “private street” with development consistent with that of a private street. It is noted that Church Lane was never adopted as a highway maintainable at the public expense in full, even when the Church Fields development off Church Lane was completed.

- There is sufficient evidence of public use of the route on bicycle and on horseback during the user periods 1991-2011, (in 2011 part of the width of the way was obstructed by the fence erected during the building of the properties 24 and 26 Church Lane) and 1998-2018, (the remainder of the width). Caselaw suggests that where there is evidence of use by the public with bicycles, whilst this could be evidence of the route as a restricted byway, the least burdensome classification for the landowner, i.e. as a bridleway, should be inferred.
- On the balance of probabilities and based on the evidence, it is proposed to record Church Lane in full as a bridleway, where users on bicycle and on horseback have used, and cyclists continue to use, Church Lane as a through route to Frome Road, excluding from the order that central section of the adopted highway (Church Fields development).
- The evidence supports, on the balance of probabilities, that before the obstruction of the width in 2011, the full width of Church Lane was available to walkers, horse riders and cyclists. There has been no legal order to stop up part of the width of the highway and therefore the width should be recorded as per the Ordnance Survey mapping (1890-1974), which consistently records the full width of the way varying between 7m and 13 m for the full length of Church Lane, excluding from the order that central section of adopted highway (Church Fields development).

Officer's Recommendation:

That further to the application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic, a definitive map modification order be made to upgrade Footpath no.8 Trowbridge to a bridleway over its full length (Church Lane), having a recorded width between 7m and 13m, as per the Ordnance Survey mapping, excluding from the order that central section of adopted highway (Church Fields development), where there is insufficient evidence, both documentary and user, to support public vehicular rights over the path, but sufficient evidence of public rights on horseback and with bicycles, on the balance of probabilities.

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO UPGRADE FOOTPATH NO.8 TROWBRIDGE (PART),
CHURCH LANE, TO A BYWAY OPEN TO ALL TRAFFIC

1. Purpose of Report

- 1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8 Trowbridge (part), Church Lane, to a byway open to all traffic, having a recorded width of 5 metres.

2. Relevance to the Council's Business Plan

- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

3. Location Plan

- 3.1. Please see location plan at **Appendix 1**. Church Lane is located on the south-western side of Trowbridge and leads between Frome Road and Acorn Meadow, which then links into Lambrok Road and the Upper Studley / Studley Green housing estate.

4. Application Plan

- 4.1. Church Lane is presently recorded as Public Footpath no.8 Trowbridge within the definitive map and statement of public rights of way, having a central section of adopted highway for the Church Fields development which lies off Church Lane to the east.
- 4.2. Please see application plan at **Appendix 2**. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8

Trowbridge (part), Church Lane, to a byway open to all traffic, having a recorded width of 5m, (as shown coloured green on the application plan), between a point just north of Church Fields, adjacent to the property 20A Church Lane, leading north-west to its junction with Acorn Meadow, linking the two adopted highways.

- 4.3. Please also see extract from the working copy of the definitive map of public rights of way at **Appendix 2**. The map also shows the central section of Church Lane which is recorded as highway maintainable at the public expense, (coloured orange), having a right for the public with vehicles. That section of Path no.8 which is subject to the definitive map modification order (DMMO) application, does not currently have any recorded public vehicular rights. Note, there is also a section of Church Lane at its southern end (its junction with Frome Road), which does not have recorded public vehicular rights, but which does not form part of the DMMO application. As a result, unusually, the development Church Fields has no recorded public vehicular access to / from Frome Road.
- 4.4. The applicant seeks to record a public vehicular right over the application route to secure access to the property [REDACTED], (which is located alongside Church Lane on its eastern side at its northern end), from Church Lane, by upgrading that section of the footpath to a byway open to all traffic (BOAT). If this part of the route is successfully upgraded to BOAT, as per the application, there would remain a gap between the presently adopted highway (Church Fields) and Frome road, which has no recorded public vehicular rights.
- 4.5. However, Wiltshire Council has a duty to accurately record the public rights which exist over so much of the route for which there is evidence of such rights, therefore if public vehicular rights are found to exist over the whole of Church Lane, they will be recorded as such, even though the application is confined to only a short section of Church Lane.

5. Photographs

- 5.1. Please see aerial photographs at **Appendix 3** and photographs of the route attached at **Appendix 4**.

6. Registered Landowners

- 6.1. The land over which the claimed route passes and indeed the whole of Church Lane, Trowbridge, has no registered title. As part of the application process the applicant has posted notice of the application on the land addressed to all owners and occupiers and served notice on all adjoining property owners where the common law presumption of ownership to the centre of the highway by adjoining landowners may apply. If an order is made, it will be necessary to seek dispensation from the Secretary of State, under Section 3(4) of Schedule 15 to the Wildlife and Countryside Act 1981, who may direct that it shall not be necessary for notice of the making of the order to be served on every owner or occupier of the land, as described in Section 3(2)(b)(i) of Schedule 15 and the Order Making Authority may affix notices addressed to the 'Owners and Occupiers' to some conspicuous object on the land.

- 6.2. The application is made by:

Mr Andrew May and Miss Michelle Dunne

██████████

Church Lane

Trowbridge

Wiltshire, BA14 0██████████

7. Background

- 7.1. The urban district of Trowbridge is the administrative centre of Wiltshire and lies in the west of the County between Warminster to the south and Chippenham to the north. Frome Road, Trowbridge forms part of the A361 leading between Devizes and Frome. The Victoria County History – “A History of the County of Wiltshire” Volume 7 (1953), states that the westward flow of traffic through Trowbridge, has changed its course: *“In 1675 the only important thoroughfare was the road from Devizes to Wells. When, however, the north-east limb of this road came to be repaired and turnpiked in 1752, it was extended in a south-westerly direction over White Row Bridge at Beckington (Som.) and not westward towards Wells.”* The claimed route forms part of Church Lane which leads from the above-mentioned A361, Frome Road, in a north-westerly direction to its junction with Acorn Meadow, part of the Studley Green Estate. St Johns Church is located at the south end of Church Lane. According to Wiltshire Council – Wiltshire Community History, a chapel is mentioned on this site in the early 12th century, the present church was built in the 15th century and much re-built in 1862.
- 7.2. The length of Church Lane is recorded as Footpath no.8 Trowbridge, (at the junction of Church Lane with Acorn Meadow the footpath continues north-westwards as Footpath no.9 Trowbridge), as recorded in the Trowbridge Urban District Council Definitive Map dated 1953. A central section of the lane is recorded as adopted public highway, i.e. the development Churchfields to the east of the lane. (Please see extracts from working copy of definitive map and Trowbridge Urban District Council Definitive Map at **Appendix 2**).
- 7.3. The lane has a bound tarmac surface for most of its length (leading from Frome Road), with a verge to the western side. The adopted highway area at Church Fields has a surfaced footway on the eastern side of the lane. Leading north past the adopted highway, the surface changes to a looser stone surface and appears less well maintained. Leading further north the surface

changes again to a more gravel surface with a narrow hard surfaced footpath area on the western side. At the very northern section the width is greatly reduced by a wooden fence erected when the houses 24 and 26 Church Lane were erected in 2011, the surfaced footpath area here measures 1m approx in width, (2.3m approx including the verge which is very overgrown and clearly not used by the public). Two staggered metal cycle barriers were also erected at this location at that time, the widest point of the footpath here being 3.2m approx. (Please see photographs at **Appendix 4**, in sequence leading from Frome Road to Acorn Meadow).

- 7.4. The application is dated 29th August 2018 and is made by two residents of Church Lane, on the grounds that a highway shown in the map and statement as a highway of a particular description, (i.e. a footpath), ought to be there shown as a highway of a different description, i.e. a BOAT, based on user and documentary evidence and should be recorded within the definitive map and statement of public rights of way, as such. The application form, (which consists of Forms 1 and 3), is accompanied by a plan drawn at a scale of 1:1250, highlighting the claimed route; 59 completed witness evidence statements (3 additional witness evidence forms received at a later date) and documentary evidence.
- 7.5. Wiltshire Council undertook an initial consultation regarding the proposals on 23rd May 2019. Consultees included user groups, neighbouring properties and other interested parties such as the Town Council and the Wiltshire Council Member for Trowbridge, Grove. The representations received are attached at **Appendix 5**. Due to the implications of Section 67(1) of the Natural Environment and Rural Communities Act 2006 (NERCA), which had the effect of extinguishing all unrecorded public vehicular rights, save for certain exemptions, the Surveying Authority requested further information regarding any use of Church Lane with vehicles prior to 1930 and during the 5 years prior to the commencement of Section 67(1) of NERCA, i.e. 2001-2006, (the

implications of NERCA are fully considered at paragraphs 10.53. – 10.63. of this report).

8. Main Considerations for the Council

- 8.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, (excluding the borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.
- 8.2. Section 53(2)(b) of the Wildlife and Countryside Act places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review. Section 53(3)(c)(ii) applies in this case: *“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them shows- (ii) 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...”*
- 8.3. Section 53(5) of the Act allows any person to apply for a definitive map modification order (DMMO) under subsection 2, based on evidence that the definitive map and statement is incorrect, in this case in its omission of public vehicular rights over path no.8 Trowbridge (part), (please see relevant legislation at **Appendix 6**). The application to upgrade Footpath no.8 Trowbridge (part) to a BOAT, has been correctly made in the prescribed form, as per Schedule 14 of the 1981 Act. The relevant legal test in this instance is the “balance of probabilities”, i.e. is it more likely than not that public vehicular rights exist over Footpath no.8 Trowbridge (part)?

8.4. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years, as of right and without interruption, (as set out at **Appendix 6**).

9. Documentary Evidence

9.1. Section 32 of the Highways Act 1980, states that the Authority should consider a range of historical documents and their provenance in relation to the claim:

*“32. Evidence of dedication of a way as highway
A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”*

9.2. In evaluating historical evidence, it is necessary to recognise that differing weight must be given to different historical documents. The following categorisation has been used, (Category A documents carry the highest evidential weight and Category F documents the lowest):

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of way as a highway Physical existence of highway Conclusive evidence of public rights	Inclosure Acts, Awards, Plans Orders creating, diverting or extinguishing highways – i.e. Railway and Canal Acts, Plans Definitive Map and Statement
B	Reputation of way as a highway Physical existence of a way	Documents, Maps, Plans drawn up as a result of legislation, consulted upon,

		but whose primary purpose was not to record public rights – i.e. Tithe Commission, Inland Revenue Finance Act
C	Reputation of way as a highway Physical existence of a way	Includes Local Government records - i.e. Highway Board, County Council, Parish Council
D	Reputation of way as a highway Physical existence of a way	Other maps and documents showing highways additional to or as part of their purpose - i.e. Parish Maps, Estate Plans, Conveyances
E	Reputation of way as a highway Physical existence of a way	Commercial Maps, some Ordnance Survey Records
F	Reputation of way as a highway Physical existence of a way	Local repute, consultation responses

This system of categorisation has been devised by Officers with regard to the Planning Inspectorate Consistency Guidelines and “Rights of Way A Guide to Law and Practice” – Fourth Edition by John Riddall and John Trevelyan (Chapter 6).

- 9.3. As part of Wiltshire Council’s investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at **Appendix 7** to this report. Additional documentary evidence adduced by the Applicant is considered at **Appendix 8**.
- 9.4. The Inclosure Award for Trowbridge would normally provide category A evidence where the award itself arises from Acts of Parliament, i.e. the local act dated 1815: *“An Act for Inclosing Lands in the Parishes of Hilperton and Trowbridge, in the County of Wilts”* and the 1801 Inclosure Consolidation Act: *“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”*. Commissioners had powers to stop up

and amend existing roads and set out and appoint new roads within the parishes. The route of Church Lane can be seen on the map included with the Trowbridge Inclosure Award dated 1816, recorded by double broken lines (suggesting a route open to the surrounding land). However, this route was not awarded and appears to be part of an old inclosure and a pre-existing way, the description of awarded plot no.197 refers to being bounded to the south by “*other Roads as have been herebefore used and existed through and over the same*”, perhaps a reference to Church Lane. The connecting route leading north of Church Lane is awarded as a “*Private Carriage Road*”, for the use of the owners and occupiers of the inclosures and allotments adjoining that road. The implication of this being that Church Lane itself was not a through route for the travelling public, perhaps also being a route to serve land and the church, which we know to be present on the site at that time. However, where the claimed route is not awarded, no additional conclusions regarding the status of the route may be drawn from the inclosure award.

- 9.5. The production of the definitive map and statement of public rights of way arises from the National Parks and Access to the Countryside Act 1949, (category A evidence). This was a public process with draft and provisional definitive maps being published with opportunity for objection by any persons to the inclusion / non-inclusion of a path; its provisionally recorded status and route. The claim form for path no.8 Trowbridge provides evidence, within the observations section, that the way was a hard cinder cart road 10ft wide for 150 yards from its junction with Frome Road, perhaps for a sufficient length to access the church, which then became a “*deeply rutted cart track in bad condition*” for the remainder of its length and ending at a “*dilapidated field gate*”, this section beyond the church perhaps receiving less use. Despite this observation of the way as a “cart road / track”, this does not necessarily refer to public vehicular rights over the way, it may be a reference to its character and appearance as such, which would also accord with use only as a private access road serving property / land as per its continuation northwards within

the inclosure award. It is noted that path no.8 Trowbridge was recorded within the definitive map and statement as a Footpath and there is no evidence of any objection to the recording of the route at that status. The condition of the surface of the way is comparable today, with that part of the route to Church Fields being well maintained with a bound tarmac surface, beyond the adopted highway leading north, the surface becomes looser and less well maintained, reflecting less use of that part of the way.

- 9.6. The Trowbridge Tithe Award map 1838 (Category B evidence), which arises from an Act of Parliament, the Tithe Commutation Act 1836, records the route of Church Lane uncoloured without a plot number, excluded from the adjacent plots in the same manner as the parish road network. However, its continuation northwards, i.e. the awarded private carriage road within the inclosure award, is not recorded and Church Lane does not appear as a through route, which is further supportive of the route as a private access to land / property. The key appears to show the route as a “*cross roads*” or byway. It was not the main purpose of this document to record highways, however, the recording of highways was useful in the provision of plot boundary and map orientation information. Additionally, the existence of a highway could affect the productivity of the land and the Tithe Commissioners therefore had some interest in recording them. Perhaps Church Lane was recorded where it affected the productivity of the land, even as a private route and it cannot be concluded from this document that public vehicular rights existed over Church Lane. For this reason, the Tithe Award documents should be considered alongside other evidence.
- 9.7. Also Category B evidence arising from an Act of Parliament, the Finance Act 1910 plan records the route as uncoloured and excluded from the adjacent hereditaments, which may be indicative of the route being regarded as a public vehicular highway, where footpaths and bridleways were usually included within the hereditament and dealt with as a deduction for rights of way within the valuation book. It was not the main purpose of these

documents to record highways and there are known cases of private roads set out at Inclosure, being excluded from the hereditaments, where the instructions to the field valuers dealt with the exclusion of “roadways”, but did not expressly set out all the circumstances in which such exclusion would apply. Again, these documents should be considered alongside other evidence.

- 9.8. The highway takeover map c.1974 (Category B evidence), arises from the Local Government Act 1972, which reformed local government on 1st April 1974. Wiltshire County Council took responsibility for roads in urban districts, (other than main roads for which responsibility already lay with the County Council). The maps consistently record the route of Church Lane as a footpath, with a central section of adopted highway maintainable at the public expense, being the development Church Fields, (Acorn Meadow to the north of Church Lane is also recorded as adopted highway). This central section of adopted highway is unusual and the Church Fields development has no connection to another public vehicular highway, i.e. Frome Road. The evidence suggests that Church Lane had no record of public maintenance, (other than the central adopted section).
- 9.9. This lack of public maintenance of Church Lane is supported by the documents adduced by the Applicant, including Trowbridge Urban District Council minutes (1960 – 1972) and other correspondence, as well as a Private Street Works Notice for Church Lane, Trowbridge, dated 1st July 1961 under Section 193 of the Highways Act 1959, (please see **Appendix 8**). Trowbridge Urban District Council as the then highway authority and later Wiltshire County Council, consistently refer to Church Lane as a “Private Street” and the development permitted alongside Church Lane outlined in the minutes is consistent with a private street. It is interesting that Church Lane was never adopted as publicly maintainable highway in full, even though there are many instances in the minutes of roads in Trowbridge being adopted and even following the Churchfields development when the central section of

Church Lane was adopted. The treatment of Church Lane as a private street, does not, in the opinion of Officers, support public vehicular rights over the way.

- 9.10. Ordnance Survey (OS) maps, (category D evidence), (maps examined 1890 - 1974), record Church Lane being a consistent width of 13m - 7m, narrowing towards its junction with Acorn Meadow. They record that the route stops at a solid field boundary at its northern end, (the definitive map parish claim form description suggests a field gate at this end), with footpaths continuing north-westwards and north-eastwards beyond this point, until the 25" County Series map dated 1950 and 1955 Wiltshire County Council revision, which shows no solid boundary at this end, but a narrower footpath continuation north-westwards, (now Acorn Meadow). By the time of the later National Grid Series maps this gap is enclosed with what appears to be a central metalled area. The links leading from the north end of Church Lane north-eastwards towards Manor Road and north-westwards towards Wingfield, as shown on the OS one inch Old Series map 1805-1869, are shown on the 25 inch maps as lesser routes, marked "FP" (Footpath), open to the fields and braced with the surrounding land. The path leading north-eastwards is for the majority of its route disappeared by the 1950 and 1955 Wiltshire County Council revision. This suggests that if vehicular rights were applicable over Church Lane, these rights did not continue north-west towards Wingfield and north-east towards Manor Road, as a through route for vehicles. Perhaps further evidence of the route as an accommodation route.
- 9.11. The National Grid series maps are interesting where, from the 1968 plan onwards, they record "Posts" across the full width of the lane, just south of the property Kynance, but provide no additional evidence regarding the nature of these posts. We see from the Trowbridge Urban District Council minutes dated 10th April 1962, that these posts were erected consistent with the building of the properties Kynance and Hillbrook, to prevent use of Church

Lane as a through route to vehicles, (please see **Appendix 8**). Photographs of the posts are included at paragraphs 10.6. and 10.10. of the report.

- 9.12. Although the route is shown on the maps, OS plans are topographical in nature, i.e. they accurately record what was visible to the surveyor at the time of survey / revision, so they can be extremely helpful in providing evidence of the width of a way, but cannot alone provide conclusive evidence of the status of a highway and the existence of public / private rights. They should therefore be considered alongside other evidence.
- 9.13. The majority of small scale commercial maps, (Category E evidence), do not record Church Lane, perhaps due to the constraints of scale or perhaps as additional evidence that the way did not carry public vehicular rights or as a through route for the public, where its inclusion could cause difficulties for both for the travelling public who purchased the maps and trespass against the landowners, from whom many of the mapmakers sought subscriptions. Andrews' and Dury's maps of Wiltshire dated 1773 and 1810 appear to show a route, (opposite Silver Street Lane, which given the constraints of scale would accord with Church Lane), by double solid lines as part of a longer route towards Trowle, but which does not connect with another highway, stopping as a cul-de-sac route before it reaches Little Trowle. This supports other evidence of Church Lane not being a through route for the public with vehicles.
- 9.14. The recording of the route in this manner is supported by the Ordnance Survey one inch Old Series map of England and Wales 1805-1869, which records the route of Church Lane by double solid lines, opposite Silver Street Lane leading to what appears to be a larger enclosed area, however, on this map the enclosed area then has a connection to Upper Studley and Frome Road, perhaps via what is now Manor Road, (there is no continuation of the route in a north-westerly direction). This route is shown on the larger scale and more detailed 25 inch County Series OS maps dated 1887 – 1938, by

double broken lines, braced within the surrounding land and marked “FP”, which is suggestive of a footpath at a different status to Church Lane itself.

Documentary Evidence

There is no category A evidence to support public vehicular rights over Path no.8 Trowbridge, Church Lane. Although the definitive map claim form for path no.8 describes the character of the route as a “cart road / track”, this is not necessarily indicative of the public rights claimed and subsequently recorded in the definitive map of public rights of way, i.e. as a footpath. There is no evidence that there was objection to the recording of the route at this status. Additionally, there is only limited evidence of Church Lane as a through route, i.e. the OS one inch Old Series mapping dated 1805 – 1986 and this continuation of Church Lane in a north-easterly direction towards Manor Road is shown as a footpath on the later OS 25 inch mapping.

Officers must therefore conclude that there is insufficient historical evidence of public vehicular rights over Church Lane, it is more likely that the route carried private vehicular rights for access by owners and occupiers of the land and property adjoining Church Lane, as per the awarded private carriage road continuing northwards. Although some documents may be supportive of public vehicular rights, there is no category A evidence and the remaining documents alone are insufficient to satisfy the evidential test “on the balance of probabilities”, i.e. it cannot be shown that it is more likely than not that vehicular rights exist over path no.8 Trowbridge.

However, this does not mean that additional public rights over Footpath no.8 Trowbridge (part) do not exist and the available user evidence in this case should now be considered. In the case of *Whitworth & Ors and Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 1468, Lord Carnwath quotes the Inspector, Mr Alan Beckett, who states: *“In my view, where both documentary and user evidence are presented, the requirements of Section 31 of the 1980 Act are such that user evidence is to be considered separately and independently from any historic evidence adduced in relation to the same route. Whilst as [sic] of the documentary and user evidence are linked by Section 53 of*

the 1981 Act, the assessments of the documentary and the user evidence are separate and discrete matters and the conclusions reached upon the documentary evidence are not relevant to any subsequent consideration of the user evidence.”

10. User Evidence

- 10.1. The application is accompanied by 62 completed user evidence forms, 7 of these forms are completed jointly by two persons. A summary of the user evidence is included at **Appendix 9** (user evidence summary) and **Appendix 10** (user evidence chart).
- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a highway where a way over land has been actually enjoyed by the public as of right and without interruption for a period of 20 years, (see legislation at **Appendix 6**). The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Bringing into question

- 10.3. In order to establish a 20 year public user period with vehicles, there must be a date upon which use of the path by the public was brought into question. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in Fairey v Southampton County Council [1956] and quotes him as follows:

“I think that in order for the right of the public to have been “brought into question”, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up

a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way."

10.4. In Godmanchester, Lord Hoffman says of Denning L J's interpretation:

"As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases."

10.5. Path no.8 Trowbridge is already recorded as a public footpath, the definitive map being conclusive evidence of the rights shown and any action to wilfully obstruct the free passage along a highway is an offence under Section 137 of the Highways Act 1980. The user evidence and representations in objection to the application to add vehicular rights, suggest that there has also been use of the lane by the public with bicycles and limited use on horseback and with vehicles.

10.6. Witnesses have provided evidence regarding obstructions / signage on the route which may have brought their use into question, (please see **Appendix 11**). 27 of the users observed posts (bollards in one case), erected on the way. Mr Hillier believes that these posts were erected by the Council and provides a photograph from the early 1990's in which the posts are clearly visible.



10.7. These posts do not appear to have obstructed pedestrian use of the way as stated by witnesses 20, 44 and 46, but do appear to have obstructed use of the way with vehicles as suggested by witnesses 28 and 48. The path users give little evidence about when these were erected, but witness 38 states that they were present until the house was built at point A (application plan at **Appendix 2**), after which the fence was erected. Witness 43 states that they appeared in around 2003, Witness 55 states that the posts were not present during their childhood and Witness no.52 states that there were no posts in the late 1960's and early 1970's.

10.8. However, the origin and purpose of the posts is set out in the minutes of Trowbridge Urban District Council meeting dated 10th April 1962, min no.4161 Church Lane, Upper Studley (**Appendix 8**), which resolved that the Surveyor be authorised to erect posts across the width of the lane near the new bungalows, (Kynance and Hillbrook built c.1961), to prevent through vehicular traffic. The continued existence of posts historically on the way, is supported by the OS National Grid Series maps dated 1968 and 1974, which show "Posts" across the width of the path located just to the south of the property Kynance.

- 10.9. Although these documents do not give any detail of the nature of the posts, e.g. height and dimensions, their position suggests that they would obstruct the width of the path to the public with vehicles. The 1990's photograph above suggests that use on foot, with bicycles and on horseback would still be possible between the posts. It seems logical that the posts were intended to prevent vehicular use only and that a gate or more substantial structure / barrier would have been placed across the lane if it was intended to obstruct all public use.
- 10.10. The applicant provides photographs of posts on site (below), taken in 2006 when they moved into their property, (the 'For Sale' sign is clearly visible in the first photograph as an indication of date). The applicant claims that there was a post of a different nature, (visible in two of the photographs), which was removable and allowed vehicular access to their property through the gap, over the grass. Mr and Mrs McGrath comment that *"The photo submitted by the applicant (referred to now as A) purports to show a bollard which could be removed to allow vehicular access to Church Lane. This appears to be a unique memory. If this was the case, A would presumably have had permission from local authority to vary the use of the bollards as a barrier against vehicles and been granted exceptional leave to do so. Where is the documentation giving A or anyone else permission to remove a barrier specifically placed to prevent vehicles using the Lane, then using it for that purpose, when was the permission sought, who gave consent and on what grounds of exceptionality."* F Gilmour however, does refer to the lockable post in evidence: *"Up until that time [2011], there were posts in place just beyond the entrance to no.22 which as far as I can remember were lockable and only removed to allow the council to cut the hedge / verge back to maintain the footpath."* Mrs C May who is related to the current resident of [REDACTED] and visited the property, also refers: *"Occasionally there were wooden stakes across the path, but these were removable and often not there."* Mr McClurg whose father previously lived at the same property also refers to the *"removable post"*.



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Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic



10.11. Officers agree that two of the photographs do record a post of a different nature, however, this may support a private right of access with vehicles for the residents of the property [REDACTED], given their knowledge of the removable post and therefore cannot be applicable to a public right of way with vehicles. It is not clear how the “removable” post would have been communicated to members of the public wishing to use the way, Mr and Mrs McGrath appear not to have been aware of the removable posts even though they lived close by and would have observed use of the way. The photographs provided in evidence appear to show little evidence of vehicles having been driven on the lane / verge at this point, certainly not on a daily basis. Of the 5 witnesses who claim to have used the way with vehicles, Mrs C May and Mr L McClurg were aware of removable “wooden stakes”; Miss M Dunne appears to have been aware of the removable post by reason of her joint application to upgrade the path to a BOAT, which contains reference to the removable post and as a resident of the property [REDACTED] and Mr T Bishop may have been aware of the removable post due to his connections with the property [REDACTED] as legal advisor to the residents. Mrs J McClurg as a former owner of [REDACTED] does not mention the removable post in her declaration at **Appendix 8** and states that she, her family, visitors and those calling at the property at all times and for all purposes, with or without vehicles, did so without let or hindrance. All had links to the property [REDACTED].

10.12. The photographs do appear to show a second set of bollards present further south on the path. There is no comment regarding a removable post on the second set of bollards. It seems that these posts were also erected to prevent use of Church Lane as a through route by the public with vehicles, as supported in the West Wiltshire District Planning Permission granted 12th May 1975 for the erection of a detached bungalow on land at the rear of rear of 70 Whiterow Park, (22 Church Lane), as submitted by the residents of this property:

"...further approval of the local planning authority shall be obtained with respect to the undermentioned matters hereby reserved before any development is commenced..."

2. The extension to Church Lane together with the turning head shown cross hatched on the plan deposited with the West Wiltshire District Council on 15th April, 1975 shall be constructed to the same standard as Church Lane to the satisfaction of the local planning authority before the dwelling is occupied.

3. Bollards shall be placed across the extremity of the turning head.

Reasons:...

2. To ensure a proper road access is constructed to the site.

3. To prevent traffic going beyond the proper road access provided."

10.13. It is a reasonable assumption that members of the public encountering one or two sets of posts, would assume that public use of the route with vehicles was prohibited.

10.14. Mr and Mrs McGrath, in evidence, have included photographs of the same location dated 10th September 2009, which show the posts still in place. The part which was claimed previously to be accessible with vehicles, having the removable post, i.e. the grass area to the east of the lane, is overgrown and appears to not have been used by vehicles for some time. A second set of bollards further south on the route are clearly visible:





10.15. Mr Pegrum makes reference to 2 sets of timber bollards: “...placed south of ‘Kynance’ and another set north of 22 Church Lane. These allowed the passage of pedestrian’s, cyclists and horse riders but were too narrow for any four wheeled vehicles.” Mr C Knight reports that: “There were always white posts installed Acorn Meadows end and by No.22 Church Lane across the land from the footpath, as developments occurred the white posts at the Acorn Meadow end were pushed further up the lane but remained to stop any vehicles using the land.”

10.16. The posts appear to have been present on site from at least 1962 until planning permission for the properties 24 and 26 Church Lane was granted in 2011. 5 users refer to metal barriers erected, Witness no.29 states that these were erected to force cyclists off the route and horses could no longer get through. Witness no.19 suggests that metal gates were erected when the houses were built. This is believed to be reference the metal chicane style barriers presently on site and which appear to have been installed as a result of the planning permission and the building of the properties 24 and 26 Church Lane. Mr Pegrum confirms that *“More recently; since the construction of 24/26 Church Lane; a staggered (chicane) barrier was erected north of 26 Church Lane, this has permitted vehicular access northward up Church Lane as far as no 26.”* The relocation of the posts previously present on the path, i.e. the white posts present between at least 1962 and 2011 was a requirement of the planning permission, as the planning notice states:

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

The relocation of the 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 of 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...

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.

Recommendation: Permission

For the following reasons(s):

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

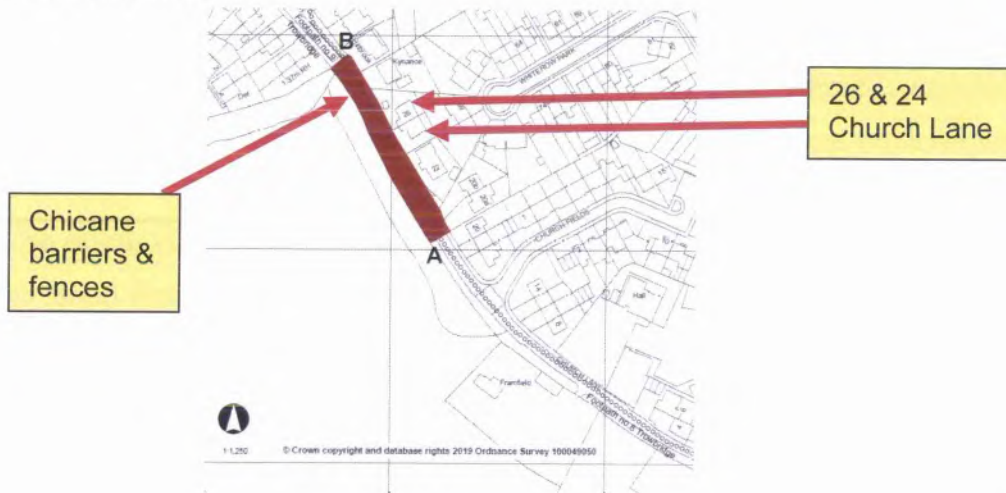
Subject to the following condition(s):...

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.”



The present metal bollards, which serve to prevent public vehicular access, have been in place since the houses 24/26 Church Lane were built in 2011 as per the planning conditions within the permission granted. (Photographs show barriers viewed from the north and the south respectively).



10.17. 6 users make reference to a fence on the route, which is believed to be a reference to the present fence, as seen above. Witness 42 suggests that the builder, (24 Church Lane), encroached further and further with a metal fence which then became a proper fence and witness 38 concurs with this, i.e. the fence was erected after the house was built, just leaving the footpath open. This fence does not form part of the planning permission, but is believed to be contemporary with the building of the properties and its installation narrows the available path width from the full width of Church Lane available for the remainder of Path no.8. The action of erecting these barriers clearly had the effect of preventing use of the route on horseback, as suggested by Witness no.3 who used the route on horseback and comments *“Now I cannot ride my horse there due to the chicane.”* Witness no.5 who also used the route on horseback concurs: *“Can’t ride horse due to barriers!!...Had to stop riding horse and child in wheelchair have to go all around the long way.”*

10.18. With regard to the use of bicycles and vehicles on the route, Witness no.8 makes reference to a “No Cycling” signpost which was present during their years of use 1983-1988 approximately, which then disappeared and Witness no.57 makes reference to a “No Through Road” sign on Frome Road. Mr and Mrs McGrath in evidence include a photograph of *“...the sign at the entrance to Church Fields, directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road, off Acorn Meadow, one of which is*

Kynance.” The signage presently erected on Church Lane, below, is not consistent with a through route for the public with vehicles:

Photograph supplied by Mr and Mrs McGrath. Sign at Church Fields indicating no access to properties via Church Lane. This sign was found lying on the ground on a site visit October 2020.



Sign from Frome Road, opposite Church Lane indicating access to St Johns Church Hall.



No through road sign at junction of Church Lane with Frome Road.



Sign at junction of Church Lane with Frome Road – “Church Lane leading to Church Fields” only.



10.19. The cycle barriers erected in 2011, do not prevent the public from using the footpath with bicycles, although the planning permission requires the barriers to prevent vehicular access, they can also be erected on a right of way as a health and safety measure intended to slow down cyclists before junctioning

with a vehicular highway. The Highway Authority may erect such barriers on a highway in the interests of health and safety, under Section 66 of the Highways Act 1980. Officers consider that their presence is an acceptance by the owner, or in this case where there is no registered landowner, the Highway Authority, that cyclists were using the footpath and that their safety needed to be taken into account at the junction of Footpath no.8, with the vehicular highway Acorn Meadow, as well as to prevent public use of Church Lane as a through route with vehicles. These efforts to prevent vehicular use of Church Lane as a public through route with vehicles are continuous, (since barriers were erected in 1962) and consistent with a way having no reputation as a public vehicular route and as a “private street”.

- 10.20. Sub-section 31(7A) of the Highways Act 1980 applies subsection 31(7B) where there is no such matter bringing the right of the public to use the way into question and the DMMO application made under section 53(5) of the Wildlife and Countryside Act 1981, forms the date of bringing into question, the relevant 20 year user period is calculated retrospectively from that date, (see legislation set out in full at **Appendix 5**). This would apply in this case to use of the path by the public with bicycles over the reduced width of the path still available to cyclists following the erection of fencing when the houses 24 and 26 Church Lane were built in 2011.

Bringing into question

The evidence suggests that:

- 1) Use of Church Lane by the public with **vehicles** is brought into question in **1962** by posts erected over the full width of the way. Clearly an action to prevent public vehicular use of the way as a through route. A second set of posts being erected for the same reason in 1975, both sets of posts co-existed until 2011, then being replaced by the present barriers and fencing.
- 2) Use by the public on **horseback** is brought into question by the erection of the fence and cycle barriers contemporary with the building of the houses 24 and

26 Church Lane in **2011**, following which horse riders were unable to continue using the way.

- 3) Use by the public with **bicycles** is, on part of the route, brought into question by the erection of the fence contemporary with the building of the properties 24 and 26 Church Lane in **2011**, i.e. that part of the width of the lane which has been fenced off and incorporated within the driveway of the adjoining property.
- 4) On the remaining section of the route, use by the public with **bicycles** is brought into question by the application to upgrade Footpath no.8 Trowbridge to a BOAT, dated 29th August **2018**, where there is no other act bringing use with bicycles over that part of the route into question, as per subsections 31(7A) and (7B) of the Highways Act 1980. The erection of the cycle barriers on this part of the width of the lane, does not bring this use into question.
- 5) Use of the path **on foot is not brought into question** where Path no.8 is recorded as a public footpath within the definitive map and statement of public rights of way, however, the erection of the fence contemporary with the building of 24 and 26 Church Lane in 2011, may be an obstruction of the historic width of the footpath.

20 Years Public User

10.21. Given the above evidence regarding the erection of posts on the full width of the way, in order for a claim to add public vehicular rights over the way to be successful, it would be necessary to demonstrate a user period by the public with vehicles between 1942 and 1962.

10.22. In this case only four of the 62 witnesses claim to have used the way with vehicles, Miss M Dunne thought to have used vehicles between 2006 and the change of layout of the lane (2011); Mrs C May between 2006 and 2010, Mr T Bishop between 1970 and 2018 and Mr L McClurg between 1995 and 2005. Mrs J McClurg also signs a declaration, (see **Appendix 8**), attesting to her use of the way with vehicles between July 1999 and August 2005. Miss

Dunne is owner and resident of the property [REDACTED], although she does not give dates of her use with vehicles it is understood that this property was purchased by the present owners in 2006. Miss Dunne: *“Drove to property unless wet and muddy. Since lane had been changed [2011] unable to access my property have to take a long route to work...”*. Mrs C May lives in Melksham and claims to have used the way with vehicles for the purpose of: *“Driving off Frome road, down Church Lane to visit.”*, *“2-3 x per year with car until 2010. 20 x per year – walking.”* *“With car occasionally. Walking with children & dog & bikes.”* Mrs May, whose main use of the way was on foot, is related to the applicant Mr A May who resides at the property [REDACTED] adjacent to the way subject to the application. Mr T Bishop is a Solicitor and does not give a residential address in his evidence form, he used Church Lane with a vehicle for the purpose of *“Visiting clients”* about once a year, he does not appear to have walked the route but saw others using the route, *“driving and walking”*. Mr L McClurg’s father previously lived at the property [REDACTED] and his use of the path spans from 1995 – 2005, walking, cycling and driving. He used the route as an access to his home, *“Driving to and from home”*, he only saw others walking and cycling. Mrs J McClurg claims to have used Church Lane with and without vehicles from 1999 – 2005 in her declaration at **Appendix 8**.

10.23. These five users have not used the route with vehicles during the relevant user period 1942 – 1962. Mr Bishop claims to have used the route with vehicles until 2018, which was not possible after 2011 when the present metal barriers and fence were erected, (i.e. at the building of the properties 24 and 26 Church Lane). Additionally, during their own relevant user period, they are very likely to have been aware of the arrangement for the property [REDACTED] where the removable post was in place allowing vehicular access, this appears to relate to a private right with vehicles for the property. Certainly Mrs C May claims to have been aware of *“removable”* wooden stakes, Mr L McClurg refers to the removable post and Miss M Dunne as resident of [REDACTED], by reason of her application to upgrade Footpath no.8 Trowbridge

(part) to a BOAT, which contains information regarding the removable post. Mrs McClurg in her declaration does not mention the posts / removable post and claims that she and her family and all visitors to the property have used the way with and without vehicles “without let or hindrance”.

10.24. S Wylie, in evidence, considers that the track came into being for visitors on foot and with carts to access St John’s Church, which was built (1854) for the workers (labourers) in the brick fields, starting as a modest track south of the church which was never meant to be a public highway. Certainly the OS maps examined show the presence of a brickworks east of Church Lane and the St John’s Church, on the other side of Frome Road, (there is now a new small estate at this location called “Oldbrick Fields”), until the 1950 and 1955 planning revision OS sheet. In evidence Mr R Hillier also supports the use of the lane with vehicles for access “...*Before the estate was built the lane was used by the farm to access the fields which are now Lambrok Road.*” The evidence of these witnesses supports the documentary evidence that Church Lane was not a through route for the public with vehicles, but its purpose was to access property and land, which cannot lead to qualifying user by the public at large.

10.25. Mr D Murrell states in evidence that he has seen the route used by motorcycles and tractors, as well as walkers and cyclists. He has used the route since 1996, his own use of the way being limited to walking and cycling. Certainly, the use of tractors on the lane would be consistent with landowners / farmers using the route to access land, but no further details are given by Mr Murrell. Use of the way with motorcycles has also been observed by Mr R Westwood, although no further details are given, his own use being confined to walking from 2000 onwards. Mr T Bishop has also seen others driving the route and he considers the lane to be a “Private Street” as per the Private Street Works Notice from Trowbridge Urban District Council, dated 3rd July 1961, (please see **Appendix 8**). His own use was about once per year, so the occasions on which he saw others driving would have been infrequent. It is

noted that Mr McClurg saw others only walking and cycling, Ms Dunne saw only families, children, bikes and walkers and Mrs May saw only walkers and cyclists, perhaps a further indication that use with vehicles was confined to only those parties, as residents or with links to the property [REDACTED], particularly Mr McClurg and Ms Dunne who live / lived at the property and would have observed the everyday use of the lane by the public. Mrs J McClurg in her declaration states that all persons visiting or calling at the property at all times and for all purposes did so with and without vehicles, but there is no other indication of the frequency of use with vehicles, (see **Appendix 8**).

10.26. Therefore, public use of the route with vehicles during the relevant user period 1942-1962 has not been sufficiently demonstrated on the balance of probabilities. Officers have continued to consider the witness evidence in relation to any additional public rights which may exist over Path no.8 Trowbridge. There is no requirement to investigate the route as a footpath, i.e. where the path is presently recorded as Footpath no.8 Trowbridge, the definitive map is conclusive evidence that, at the relevant date, there was a right of way on foot, but this is without prejudice to the existence of other rights. It is possible to consider higher rights, i.e. as a bridleway or restricted byway, where there is insufficient evidence of public vehicular rights. 2 witnesses consider the true status of the path to be footpath, 5 consider the true status to be Bridleway, 32 consider that the route should be recorded as a Restricted Byway and 10 as a Byway Open to All Traffic, however, actual use of the path should now be considered.

10.27. 41 users have used the route on foot only, (including 2 wheelchair users); 14 users have also used the way with bicycles and 2 users on horseback, (users on bicycle and on horseback are also very likely to have used to route on foot in addition). 4 users claim to have used the route with vehicles, (3 of these users have also used the route on foot and with bicycles). One user who claims to have used the route since the 1940's, R Hillier, does not specify how

the route was used and simply states “*Several means*”. Mrs J McClurg has not completed a user evidence form, but submitted a declaration of her use with and without vehicles on the sale of the property [REDACTED] in 2005, (see **Appendix 8**).

10.28. As well as their own use of the path, all but one of the witnesses who completed a user evidence form, has seen others using the way, as follows:

Use	No. of witnesses who observed others using the way in this manner	[REDACTED]	Frequency others seen (where specified)
Walking	45	[REDACTED]	Occasionally All the time Lots 2 Everyday A lot Loads - 2
Cycling	28	[REDACTED]	All the time Everyday A lot Loads
Horse riding	8	[REDACTED]	Previously seen horse riders - 3
Motorbike	2	[REDACTED]	In the past
Tractor	1	[REDACTED]	
Driving	1	[REDACTED]	
Pushchairs	1	[REDACTED]	
Wheelchairs	1	[REDACTED]	
Running	1	[REDACTED]	
Access	1	[REDACTED]	
Unspecified use	13	[REDACTED]	Sometimes Lots of people Loads - 4 Several people Always Not now mainly late evening – used to see loads.

		It's a busy path
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10.29. This pattern of use is supported by those who have made representations against the application, many of whom live alongside or in the vicinity of the path and will have observed the use on a daily basis as that by walkers, cyclists and horse riders, without vehicular use:

R Pegrum	<p>Since 1994 no vehicular traffic.</p> <p>2 sets of timber bollards prevented vehicular use but allowed the passage of pedestrians, cyclists and horse riders.</p> <p>No through access to motor vehicles.</p> <p>Part access for vehicular traffic for newly constructed 24 and 26 Church Lane, no through access.</p>
Trowbridge Town Council	Not aware of any evidence of vehicular traffic except access to properties.
C Knight	<p>Grew up on Studley Green estate – in 59 years never saw area used as byway for vehicles, it has always been footpath access only.</p> <p>The land only became open to traffic when a developer built no.24 and 26 Church Lane, initially planning permission granted access form Studley Green estate only. This was overturned and open to all traffic never existed until the Council gave permission for this access.</p> <p>Brother who has known the area for over 60 years agreed with this recollection.</p>
F Gilmour	Since February 1988 never vehicular access beyond the entrance to drive of 22 Church Lane, until construction of 24 and 26 Church Lane 2011.
T & S McGrath	<p>Path used daily by children and adults going to and from school or work and weekend walkers.</p> <p>Bollards unambiguously prevented the lane being used by vehicular traffic other than pedestrians or horses.</p> <p>Overgrown for a long period in the 1980's – difficult to get anything down it.</p> <p>Peaceful, safe environment now enjoyed by residents of Church Lane, pedestrians, cyclists, school children and runners.</p>
N Cathrew	<p>Since 1965 never any vehicle access through Church Lane to Lambrok Road.</p> <p>Access only ever used by pedestrians and cyclists.</p>
S J Wylie	Purpose of lane was to serve the church and was never intended to be a public highway.

	<p>Used mostly by pedestrians, runners, dog walkers, child and adult cyclists, parents with prams and pushchairs as well as a significant number of wheelchair users as there are nearby homes for people with disabilities.</p> <p>In last 3 years horses from paddocks on Church Lane ridden along the lane as a quiet route that links to nearby areas of countryside.</p> <p>Use by visitors to St Johns Church and hall – little clusters of motorised vehicle use at times of events interspersed with long periods of quiet when lane inhabited by pedestrians and local wildlife.</p> <p>Churchfields 1980 – increased volume of motor vehicles into Church Lane.</p>
S A Coleman	<p>Absence of vehicular rights existing during the 5 years beginning with the enactment of NERCA.</p> <p>Only ever been a footpath used by pedestrians, cyclists and horse riders.</p> <p>Enclosed signed letters from residents of Church Lane and Churchfields who all confirm that the byway has only been used by pedestrians, cyclists and horse riders and that the byway has never been used by vehicles.</p>

10.30. Use of the route by the public with bicycles is likely to have been brought into question over part of the width historically used by the erection of the present metal barriers and fence in 2011. Where the route is recorded as a footpath, use on foot of the available part of the way is not in dispute. However, for additional rights on bicycle (part width) and horseback, the relevant period is 1991-2011 and on bicycle (part width) 1998 – 2018, (see witness evidence summary at **Appendix 9** and witness evidence chart at **Appendix 10**):

Type of use	Relevant user period	No. of users	Users of full relevant period
Horse riding	1991 - 2011	2	0
Cycling (part width)	1991 - 2011	17	7
Cycling (part width)	1998 - 2018	18	11

10.31. The Court of Appeal case between Whitworth & Ors and the Secretary of State for Environment, Food & Rural Affairs, [2010] EWCA Civ 1468, considers the question of use with bicycles following the making of a definitive map modification order by Cumbria County Council, to add a restricted byway through the appellants farm yard and close to the house. The 2005 order

included proposals to add a new section of byway open to all traffic (BOAT) (B-C) and upgrade part of the footpath to a BOAT (C-D), which, after public inquiries in 2007 and 2008 was confirmed with modification to record the route ABCD as a restricted byway. This decision was appealed and the appeal case considers the use of bicycles during the relevant user period and the effect on the recording the path as a restricted byway or bridleway, grounds (i) and (ii) of the appeal being:

- “i) The Inspector erred in law in finding that use of a bicycle would be consistent with a finding that the route BCD was anything more than a bridleway, since members of the public have had a right to use bridleways for cycling since the coming into force of section 30(1) of the 1968 Act*.*

- ii) In any event, the evidence of use of route BCD found by the Inspector over the period 1973 – 1993, by one man with a pony-trap, and two cyclists, was insufficient to justify a finding of rights to vehicular use.”*

*Section 30 of the Countryside Act 1968 which gave cyclists the right to use a bridleway, giving way to users on foot and on horseback.

10.32. Lord Justice Carnwath, giving leading judgment concluded:

“41. In the present case, the Inspector had found that by 1968, and before the relevant 20-year period the way had the status of a bridleway. After that time, use of the bridleway by cyclists would have been permitted by the 1968 Act. The owner would have had no power to stop it. There would be no justification therefore for inferring acquiescence by him in anything other than bridleway use. It matters not whether the cyclists were aware of the legal position. What matters is the effect of the use as seen by the landowner. It follows that in considering the extent of the deemed dedication, the use by cyclists should be disregarded. Since the only other evidence of use by vehicles is that of Mr

Clegg's pony-trap, which admittedly did not extend for the full 20 years, there is no basis for the order to confer anything more than bridleway rights.

42. In my view, the same conclusion would follow even if there had been no finding of pre-existing bridleway rights, so that the claim had rested solely on use after 1973. One would then be considering the inference to be drawn from the actual use between 1973 and 1993. It is true that regular use by both horse-riders and cyclists over that period would be consistent with an assumed dedication as a restricted byway at the beginning of the period (had that concept then existed). But it is no less consistent with an assumed dedication as a bridleway, of which cyclists have been able to take advantage under the 1968 Act. Since Section 30 involves a statutory inference with private property rights, it is appropriate in my view, other things being equal, to infer the form of dedication by the owner which is least burdensome to him.”

“45. The conclusion on ground (i) makes it unnecessary to consider in any detail ground (ii)...

47. In any event, on the basis of ground (i), I would allow the appeal. It follows that the 2005 order designating this route as a restricted byway cannot stand...

53. For these reasons, I feel constrained simply to allow the appeal on ground (i), and quash the order so far as affects route BCD.”

10.33. In applying this caselaw to the Trowbridge case, it is not necessary to demonstrate that the way was a bridleway before commencement of Section 30 of the Countryside Act 1968 which allowed cyclists to use bridleways, where there is little evidence available to suggest that the way was a bridleway before that date, other than its width and character. It is possible to consider the use by cyclists during the relevant user period only, in this case 1991-2011 (part width) and 1998-2018 (part width) and how this may have

appeared to the relevant landowner, to provide them with opportunity to challenge such user. However, in this case there is no identified landowner of Church Lane, but it would appear that, to the relevant highway authority, the use by cyclists was sufficient for them to install cycles barriers in 2011 between the public vehicular highway Acorn Meadow and Church Lane, under Section 66 of the Highways Act 1980. Even where the majority of witnesses consider that the path should be correctly recorded as a restricted byway, the Whitworth case concludes that use by cyclists may support the status of bridleway which is the least burdensome form of dedication for the landowner and Officers suggest that this would follow in the Trowbridge case.

10.34. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and consistency is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Cleveland Borough Council* UKSC 11 (03 March 2010), a Town/Village Green case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

Lord Walker goes on the quote Lindley L J in the case of Hollins v Verney [1884] giving the judgment of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance to it is intended.”

10.35. The frequency of user is also an important factor. Frequency varies from daily / twice daily to once per year and would certainly be sufficient to come to the

attention of any landowners. The greatest concentration of user is twice daily, daily and weekly by walkers and cyclists:

Use	Frequency	No. of users
Walking / running	Twice daily	3 1
Cycling	Daily	22 6 1 1 1
Horse riding	Weekly	8 2 2
	5 times a week	1 1
Car / driving	3-4 times a week	3
Wheelchair	2-3 times per week	1 1
Unspecified	A few times per week	1 2
	Twice a week	5
	Once a week	1
	Once per fortnight	1
	Every few weeks	1
	30 times per yr	1 1
	2-3 times per month	1 1
	20 times per yr	2 1
	Once a month/monthly	3 1
	10 times per yr	1 1
	6 times per yr	1
	Twice per yr	1
	5 times per yr	1
	2-3 times per yr	1
	Once per yr	1 1
	5-10?	1

20 years user

Vehicular - 20 years use of the way with vehicles during the relevant user period of 1942-1962 has not been demonstrated in this case. The five vehicular users appear to be exercising a private right to access property in Church Lane, after 1962 when it is known that the posts were in place on the full width of the lane.

Cycling and horse riding - There is sufficient evidence of use by the public with bicycles and on horseback to support public bridleway rights over the full width of the Church Lane between 1991 and 2011 when the present barriers were erected

and sufficient evidence of use by cyclists on the remaining section of the lane between 1998 and 2018 to support bridleway rights, (caselaw supports that bridleway rights can be inferred from public use with bicycles).
The route of Footpath no.8 Trowbridge (Church Lane) should be upgraded to the status of bridleway.

As of Right

10.36. In order to establish a public right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission.

Without force

10.37. Use by force could include the breaking of locks, cutting of wire or passing over, through and around an intentional blockage such as a fence / locked gate. In the Trowbridge case there is no evidence before the Surveying Authority to suggest that public use of the claimed route was by force. Although posts were erected on the path between 1962 and 2011, they do not appear to have prevented public use on foot, horseback or with bicycles sufficiently to cause use by force. The barrier and fence erected in 2011, whilst reducing the width and preventing use on horseback, have not led to use by force, (use on horseback appears to have ceased following this action and walkers and cyclists have adapted their use to the available width and conditions). In any case 2011 marks the close of the relevant period for use on horseback and of the full width of the path by all users.

10.38. Use by force does not include only physical force, but may also apply where use is deemed contentious, for example by the erection of prohibitory signs or notices in relation to the use in question. In the Supreme Court Judgement *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another (Respondents)* (2010), Lord Rodger commented that:

“The opposite of “peaceable” user is user which is, to use the Latin expression, vi.

But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”

10.39. In the Trowbridge case, Mr and Mrs McGrath produce evidence of a road sign at the entrance to Church Fields “...directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road off Acorn Meadow.” Additionally witness no.57 makes reference to a “No Through Road” sign located on the lane at the Frome Road end. This would suggest that the Highway Authority erecting these notices, did not consider Church Lane to be a through road for the public or suitable for such use, however, there is no additional evidence regarding how long these signs have been in place.

10.40. Additionally, in evidence witness no.8 makes reference to a “No Cycling” signpost which was present during their years of use between 1983-1988, after which the sign disappeared. The evidence of this sign is prior to the user period in question for use by the public with bicycles, which begins in 1991 / 1998 and there are no additional references to this sign in the evidence adduced by others.

Without Secrecy

10.41. Although the landowner in this case is unknown, it would appear that witnesses used the route in an open manner, without secrecy and in a manner in which a person rightfully entitled to do so would. On site visits Officer’s of the Council have observed use of the path both on foot and with

bicycles continuing, in an open manner. 50 witnesses consider that a landowner would be aware of the use of the lane by the public, 5 of those mention that a landowner would have been aware of the use of the way on horseback or with bicycles, (i.e. as a bridleway).

10.42. Whilst Witness no.8 states that: *“No I have never been stopped or turned back and I do not know of anyone else to whom this has happened to”* and Witness no 34 states: *“I have never been stopped all people I have talked to have never been stopped.”*, 5 other witnesses do make reports of challenge, i.e. Witness no.18: *“Whilst houses were being built we were asked not to use the walkway – (my only way to school). And to not park near the walkway...In 2016 I was asked by the house owner not to keep using the path as it was disrupting them with all the public walking past their house.”*; Witness no.19: *“The road was blocked when houses were being built. I could not access the road for a few weeks...when riding through with a bike with my 3 children I was told it shouldn’t be “used for riding I shouldn’t be using this path”. 2015”*; Witness no.29: *“Vaguely recall someone commenting I shouldn’t be there. All they got were a few choice words.”*, this witness also comments that they were told by the owner or tenant of the land that the way was not public in the last 8-12 months; Witness no.42: *“Once a grumpy old man came out and said “this is private property”, I ignored him and carried on walking with my child...2011/12”* and witness no.43: *“An angry man yelled at me twice as I walked/cycled on the road/wasteland on about 2003/4. Say this is my land. This was outside Kynance, he did not own it.”* Out of 62 completed witness evidence forms, only 5 witnesses report any challenge to their use of the way when cycling or walking the route and this is more recent in date, i.e. 2016; 2015; last 8-12 months; 2011/12 and 2003/04, which is likely to relate to the building of the new properties alongside Church Lane, (with the exception of the 2003/04 incident). Land registry title documents record the full width and length of Church Lane being unregistered, i.e. it is not in the ownership of the properties adjoining Church Lane and therefore any challenge to public use is not made by the landowners or tenants to demonstrate their non-intention to

dedicate additional rights over the footpath. Additionally, legitimate use of the recorded public footpath should not be challenged.

Without Permission

10.43. Use “as of right” was discussed in the Town / Village Green Registration case of R (on the application of Barkas) v North Yorkshire County Council and Another, Supreme Court, 21st May 2014. The leading judgement was given by Lord Neuberger, who sets out the legal meaning of the expression “as of right”:

“...the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”.”

10.44. Therefore, where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner. As Lord Neuberger states in the Barkas case, the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land covenants, suffering), does not stop it being trespass. This point was well made by Dillon LJ in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be

acquired if the user...has been tolerated without objection by the servient owner” as it would be “fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p 281, “mere acquiescence in or tolerance of the user...cannot prevent the user being user as of right for the purposes of prescription.”

10.45. Only one witness, Mr R Hillier, claims to have requested permission to use the way from the Town Council in 1961, no further details of the nature of this permission are provided, i.e. for how long and for what activities, as at that time the path was already recorded as a footpath and Mr Hillier states that he used the way by “several means”. None of the witnesses claim to be employees or tenants of the landowner. There is no additional evidence that users of the route on horseback or with bicycles did so with permission.

10.46. The historical documents examined appear to support the way as a private road to access property and this is supported by the five individuals who claim to have used the way with vehicles to access / visit private property. The applicants, (also the property owners), refer to a removable post to allow vehicular access which appears to be related to a private use (Miss M Dunne) and of the additional four vehicular users, Mrs C May and Mr L McClurg appear to also have been aware of removable wooden stakes. Mr T Bishop is also likely to have been aware of this arrangement. Mrs J McClurg does not mention the removable post in her declaration, but states that she, her family and visitors to the property [REDACTED], did so with and without vehicles, without let or hindrance and without the consent of and without payment to any person, persons or corporate body. The dedication of a way as a public highway can be inferred from use by the public and there will be no presumption of dedication, (in this case as a byway open to all traffic), unless the way has been “*actually enjoyed by the public as of right*”, (Section 31(1) Highways Act 1980), however, “The Public” is not defined in the legislation. In *R v City of Sunderland ex parte Beresford* [2003] UKHL 60, [2004] 1 AC 889, Lord Scott states, “*There are important differences between private*

easements over land and public rights over land...” and Alex Lewis writing for the Rights of Way Law Review – “Section 6: Creation of Highways” – “ ‘Public’ and ‘Private’ use of a way (p.13-19), states that use should be disregarded for the purposes of Section 31 of the Highways Act 1980, if it is the exercise of a private right of passage. It is not relevant whether this is because it is not use “as of right” for the purposes of Section 31(1) or because it is not used “by the public”, or both of these grounds.

10.47. Alex Lewis quotes the definition of “The Public” from Lord Justice-General Clyde in *Harrison v Hill* 1932 JC 13, 16 *“I think that, when the statute speaks of ‘the public’ in this connection, what is meant is the public generally, and not the special class of members of the public who have occasion for business or social purposes to go to the farmhouse or to any part of the farm itself; were it otherwise, the definition might just as well have included all private roads as well as public highway”.*

10.48. Officers accept that there is some evidence that the claimed route has been used with vehicles, most likely to access land / property, as Mr Hillier refers: *“Before the estate was built the lane was used by the farm to access the fields which are now Lambrok Road”*, until the closure of the path to vehicles in 1962. After that date there is evidence that Miss M Dunne, Mrs C May, Mr L McClurg, Mr T Bishop and Mrs J McClurg used the route with vehicles, however, this is only 4 witnesses out of 62 completed evidence forms, plus the declaration of Mrs J McClurg and their use with vehicles relates to private use of the route for the specific purpose of accessing / visiting property. This does not relate to use by the public sufficient to represent the people as a whole, or the community in general. There is not sufficient evidence with the application that the wider public used the route with vehicles. As stated in *Halsbury’s Laws of England: Highways, Streets and Bridges, Volume 55, 2012, paragraph 1*, in considering the definition of highway *“...it need not be a way for vehicles, as, if they are open to the public generally, footpaths, bridleways and driftways are highways. It is, however, an essential*

characteristic of a highway that every member of the public should have a right to use it for the appropriate class of traffic; there can be no dedication to a limited section of the public, such as the inhabitants of a parish.”

10.49. Alex Lewis continues to explain that where a property owner has no right whatsoever to use a path, *“If the alleged public highway was in use as access to a property before the earliest incident of truly “public” user, it may be that the property will have acquired an earlier, private right of way along it and that such a right will extend to all visitors to a property, and it should be disregarded [in evidence under statute – Section 31(1) of the Highways Act 1980]. Different inferences might, however, be drawn if there is early evidence of public use of the way which was subsequently used to access private property”*. In the Trowbridge case there is no early evidence of public use of the way with vehicles other than for a specific purpose, i.e. to access property and land, which is not qualifying “public” user and therefore must be disregarded for the purposes of Section 31(1) of the Highways Act 1980.

10.50. This matter was also considered very recently by an Inspector appointed on behalf of the Secretary of State in the Appeal Decision (FPS/Y3940/14A/14) regarding Wiltshire Council’s refusal of an application to upgrade Bridleway no.7 Chippenham (part) to a BOAT, based on evidence of use with vehicles to access property and a commercial business. The appeal was refused:

“17. Although it would appear that significant use of the appeal route by vehicular traffic has taken place, the evidence suggests that this use cannot be regarded as use by the public in general but only by specific categories of users, namely residents of a few properties on Rowden Hill and their visitors and customers and employees of the builders’ merchant.

18. Also, it is arguable that such use took place not ‘as of right’ as required under the 1980 Act but in the exercise of private rights to access property.

20. Although the appeal route has been used by vehicular traffic over a lengthy period, this use was not, in my view, use by the public as of right as required under the provisions of the 1980 Act and accordingly does not raise the presumption that the route has been dedicated as a public vehicular route.”

10.51. Following the implementation of Section 67 of the Natural Environment and Rural Communities Act 2006 (NERCA), which had the effect of extinguishing unrecorded public vehicular rights, subject to exclusions, (the effect of this legislation in the Trowbridge case is considered in full in paragraphs 10.53. – 10.63. of the report), there are perhaps two views on this matter, i) that frontagers are entitled to access properties from the adjoining highway and that use by the frontagers is not as “the public” where Section 67 of NERCA 2006, provides separately for private use, or ii) when the route becomes public this entitlement ceases to be relevant and frontagers use the route as if they were the public. In the Trowbridge case there is no evidence that Church Lane is an old **public** vehicular highway and we refer back to the point made by Alex Lewis that user by those accessing property should be disregarded if the access to property was in use “*before the earliest incident of truly “public” user*”.

10.52. In a joint legal opinion produced for the Green Lanes Protection Group, “In the Matter of Section 67 of the Natural Environment and Rural Communities Act 2006”, dated 26th January 2007, George Laurence and Ros Crail address the question of “Is use for access regarded as use by the public?”

36. We think the phrase “main lawful use by the public” [as contained in the exemption at section 67(2)(a) of NERCA 2006] was intended to exclude use by those who used the way for access. This would therefore include frontagers and those who, but for the public right of way, would have had a right to use the way in any event by virtue (i) of their ownership; or (ii) of having been granted an easement or licence; or (iii) of being invitees

(express or implied) of such owners or grantees of an easement or licence, (so the postman, fire service and milkman would be amongst those excluded.) The idea underlying the section, in our view, was to save from extinguishment those ways (vehicular use of which (other than for access) outweighed use on foot or horseback (other than for access). Those who used ways for access without having an independent right to do so were separately protected by sub-section 67(3)(c) and (5), so they would not be prejudiced by not being counted among “the public” for the purposes of section 67(2)(a).”

As of Right

There is no evidence that the public used Footpath no.8 Trowbridge on horseback and with bicycles by force and they did so in a manner in which a person rightfully entitled to do so would do and without permission during the relevant user periods 1991-2011 and 1998-2018. This user is therefore qualifying user “as of right”.

However, the evidence suggests that any vehicular use of the claimed route, limited to only five users as it was, was not use by the general public, but use by a limited group of individuals to access property, which is not qualifying use with vehicles by “The Public” under Section 31(1) of the Highways Act 1980. This is not qualifying user “as of right”.

Natural Environment and Rural Communities Act 2006

10.53. Overall, Officers consider that there is insufficient evidence of public vehicular use of the way / historical evidence, to upgrade that part of Footpath no.8 subject to the application, to a byway open to all traffic, on the balance of probabilities.

10.54. In any case, public vehicular user element would be impacted by Section 67(1) of NERCA 2006, which had the effect of ending certain existing unrecorded public vehicular rights of way, as follows:

“(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-
(a) was not shown in a definitive map and statement, or
(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway...”

10.55. There are however certain exemptions to this. Those which may have applied in relation to the Trowbridge case are those based on public use of the path with vehicles prior to the commencement of NERCA 2006, (2nd May 2006) and prior to December 1930, when it became illegal to drive a vehicle on a footpath. At Section 67(2), it is stated that:

“Subsection (1) does not apply to an existing public right of way if-
(a) it is over a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles...
(e) it was created by virtue of use by such vehicles during a period ending before December 1930.”

10.56. At (e) above, it is now difficult to demonstrate evidence of actual use of a path by the public with vehicles prior to December 1930. At the initial consultation on the application, Officers requested further evidence regarding public use with vehicles before 1930, only anecdotal evidence of use of the way with vehicles to access property / land was submitted, which cannot give rise to a public right.

10.57. Additionally, exemption (a) leads to further questions regarding the quality of the evidence of public use with vehicles in the 5 years 2001-2006 (commencement of NERCA). No additional direct evidence of public vehicular use during this period was forthcoming at the initial consultation and the way is known to have been closed to the public with vehicles from 1962 – present day, firstly by the timber posts and then from 2011 onwards by the present

cycle barrier and fence arrangement. Of the evidence submitted with the application, only 4 of the 62 completed witness evidence forms refer to use with vehicles, plus the declaration of Mrs J McClurg, (see **Appendix 8**). From this it cannot be argued that the main public use of the way by the public between 2001 and 2006 was vehicular.

10.58. Miss M Dunne is believed to have used the route with vehicles between 2006 and 2011, use just outside the relevant exemption period and for the purposes of accessing private property. Mrs C May used the route only between 2006-2010 with vehicles, i.e. outside the exemption period and additionally, use with vehicles was not her main use of the way, she gives evidence that she used the route with vehicles 2-3 times per year and walking 20 times per year, her main use of the route was on foot. Mr T Bishop claims to have used the route with vehicles from 1970–2018, within the relevant 5 year period, he appears only to have used it with vehicles, but his frequency of user is only once per year, it cannot be argued from this that the main public use was vehicular where the other evidence shows that the main use of the route was on foot and with bicycles, most frequent use twice daily, daily and weekly. He does claim to have seen others driving the route, but given his own frequency of use once a year, his limited opportunity to view others doing so does not support vehicular use being the main use of the way. Mr L McClurg does also use the way with vehicles in the relevant period, his use spans 1995 – 2005, daily for accessing his home, but this is again only one vehicular user and he does not claim to have seen any other members of the public driving the route, he saw them walking and cycling. Mrs J McClurg used the route between 1999 and 2005, during the relevant exemption period and claims that her family and visitors to the property used the route with and without vehicles, however, no further details of the frequency of vehicular use are provided to argue that the main use of the way was with vehicles in the light of the other witness evidence.

10.59. Of the vehicular users Miss M Dunne was aware of the removable posts by reason of her joint application to upgrade the path to a BOAT; Mr L McClurg and Mrs C May were also aware of the removable wooden stakes / posts and Mr T Bishop, having links to the occupiers of the property [REDACTED] as legal advisor, is likely to have been aware of the “removable” post, which appears to be a private arrangement, use thereby confined to a small cross-section of individuals to access property and land, not representing the public at large. As seen at paragraphs 10.46. – 10.52. of the report, use to access property cannot support the main use the path by **the public** with vehicles prior to the commencement of NERCA.

10.60. Section 67(3) of NERCA includes an exemption to the extinguishment of public vehicular rights under Sub-section 67(1) of the Act, as follows:

“Subsection 1 does not apply to an existing public right of way if-

- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
- (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*
- (c) before commencement, a person with an interest in land has made such an application and immediately before commencement, use of the way for mechanically propelled vehicles-*
 - (i) was reasonably necessary to enable that person to obtain access to land, or*
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of the land if he had had an interest in that part only.”*

(The relevant date in this section being 20th January 2005 and commencement being 2nd May 2006).

10.61. In order for the exemption (c) above to be relevant, it is necessary for a person with an interest in the land to have made an application to add vehicular rights to the definitive map and statement of public rights of way, prior to commencement. In this particular case the application is dated 29th August 2018 and does not meet this requirement, therefore public vehicular rights, (if they exist), are not saved under this exemption.

10.62. Section 67(5) of NERCA states that:

“Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies-

(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or

(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.”

10.63. Any owner of property accessed by the way, would need to seek independent legal advice regarding whether or not the way reverts to a private right of way for mechanically propelled vehicles for the benefit of the person with an interest in the land, or part of the land, however, in order to comply with the requirements of Section 67(5), those wishing to access property would need to demonstrate that prior to the commencement of NERCA, (2nd May 2006), they were relying upon a public vehicular right to access the land, which has now been extinguished by Section 67(1) of NERCA. In this particular case, in its investigations, Wiltshire Council have discovered insufficient evidence to show that “public” vehicular rights subsist over path no.8 Trowbridge (part) on the balance of probabilities.

Width

10.64. There is presently no width recorded within the definitive statement over Footpath no.8 Trowbridge and the application includes a proposed width of 5m. The witnesses refer to a reduction in the width of the path contemporary with the building of the properties 24 and 26 Church Lane in around 2011, therefore it is possible that there is a greater, historic width of the path. Evidence of this width can be taken from the OS 25 inch County Series and National Grid Reference maps, which consistently record the width of the path varying between 13m and 7m between Frome Road and Acorn Meadow, narrowing to 7m over the section subject to this application. It is likely that the whole of this width would have been available to path users. In the absence of any evidence to the contrary it is proposed make a definitive map modification order to record a width of the path at varying between 13m and 7m as per the OS mapping, excluding that section of adopted highway at Churchfields, as recorded within the highway records, please see proposed order plan at **Appendix 12.**

10.65. The full width of the path being available as a footpath is supported by a letter from the County Secretary and Solicitors Office dated 1970, (**Appendix 8**) which states:

“3. It will be observed that Church Lane, from its junction with White Row Hill (Frome Road) to its junction with Lambrok Road is shown by purple hatching which indicates that there is a public right of way on foot along the whole width of Church Lane. Church Lane is however a private street (except, of course, for the half width which has been adopted).”

10.66. The user evidence refers to the reduction of the width of the path. Users report the former width of the path to be 5m (mean of responses given), as O Smart suggests 5m from the 1950's, and the present width of the path to be narrowed to 1m (mean), Officers believe at the time the houses 24 and 26 Church Lane were built in 2011. This does not quite accord with the OS

mapping at a width between 7m and 13m, however, M Dunne refers to fruit hedges on either side of the lane, which may have grown into the lane and given the impression of a narrower width, particularly at the northern section subject to the application which has a historic width of 7m. This overgrowth is supported by other path users, including Witness no.9 who describes the grass area on the former route as *“overgrown to brambles until the new house was built...”* and Witness no.48 who confirms *“...the grass was usually short but overgrown with brambles later, for about 1 to 2 years.”* The photographs of the route at **Appendix 4**, reveal mature trees and an old fence line and ditch along the western edge of the route which accords with the trees at this boundary of the route shown on the 1887 County Series OS mapping and is likely to indicate the original western extent of Church Lane, (trees formerly present on the eastern boundary of the route, now developed).

10.67. Additionally, M Dunne’s observations regarding fruit hedges on either side of the lane, suggest that the whole of the lane was available to walkers. R Hillier supports this with reference to the “full width” being available and many of the witnesses refer to the path being “hedge to hedge” or “whole width”. Witness no.46 includes a width of 5m in evidence, but in the description the route provides further information: *“1m wide tarmac footpath, 4m of grass that was mown to the left up to a hedge, 1m of grass to the right up to a ditch and hedge to a field.”* which equates to 6m and certainly reflects the photographic evidence of the route between the 1990’s and 2011 and the OS mapping evidence. A number of witnesses support this width being available, i.e. a tarmac strip of around 1m – 1.5m and a strip of mown grass of about 4m-5m alongside the tarmac path and some witnesses recalling an additional 1m grassed area to the other side of the tarmac path between a hedge on one side and a hedge/hedge and ditch on the other. The consensus is that all of this area, including the grassed areas were available to both walkers and horse riders, with room for walkers and horses to pass each other, as Witness no.3 states: *“I used to be able to ride my horse across the whole width from hedge to hedge. There was 1 metre width of a tarmac strip footpath but also 4*

metres of grass to a hedge. There was plenty of room for me to pass pedestrians walking on the path. Now I cannot ride my horse there due to chicane.” Witness no 9 states: *“Used to be 1m tarmac strip with about 1m of grass to the right then a ditch then a hedge. There was 4m of grass to the left of the tarmac strip to another hedge. You could walk anywhere across this whole width from hedge to hedge, plenty of room for groups of people and dog walkers to pass each other from opposite directions. The grass was usually short, but overgrown to brambles until the new house was built...”* Witness no.58 states: *“5m wide grassy area that groups of people could walk on from hedge to hedge with plenty of room to pass, even with a horse or two. 1 – 1½ m of tarmac strip too.”* and witness 59 states: *“5 metre wide footpath with 1m tarmac strip that groups of people and horses could pass easily on. Hedges lined either side and ditch too.”* Witness 21 mentions the posts as an obstruction: *“A tidy tarmac path about 1 meter wide, grassy for 1 meter to the right and 4-5 metres on the left. You could walk across the whole width without obstruction, except the posts.”*

10.68. Where the evidence suggests that historically the full width of the lane was available to path users and there is no evidence of a legal event formally extinguishing part of the width of the way for public use, part of the highway appears to have been incorporated into the driveway for the property 26 Church Lane and narrowed by the present fencing and barrier arrangement which forms an obstruction of the historic width of the highway. Although the planning for these properties required the bollards to be moved and retained on Church Lane to prevent it becoming a through route for traffic, there was no requirement within the planning permission for fencing on the highway. Planning law does not override highway law and any barriers placed on the highway for health and safety reasons are required to be authorised.

10.69. Officers consider that a width, as per the OS mapping should be applied to the whole of Church Lane for its full length between Frome Road and Acorn Meadow, not just confined to the claimed section of the way, where the OS

mapping provides consistent width evidence for the full length of Church Lane, Footpath no.8 Trowbridge. This is supported by the user evidence, witnesses used the full length of Path no.8 as a link between the Studley Green Estate and Frome Road to access the church, shops, post office, garden centre, bus stops, pub, school, college, Southwick Country Park and Hope Nature Centre, doctors surgery/clinic etc, (mainly located off Frome Road), the majority of users being residents of Studley Green and Church Lane itself. Witness no.2 considers that the path includes the length of Church Lane from an oak tree just below Framfield (located on Church Lane just south of Churchfields), to Manor Road estate just outside Hillbrook, whilst Witnesses 11 and 23 consider that the path includes the full length of Church Lane between Acorn Meadows to Churchfields and out onto Frome Road. Witnesses 14 and 31 consider the route to give access from Frome Road to Lambrok Road.

10.70. Mr Murrell gives a detailed description of the path in evidence: *“Starts outside Hillbrook at end of tarmac ‘Acorn Meadow’ & runs up towards ‘Frome Road’, gravel up to posts marked on map, originally from posts to end of tarmaced ‘Church Lane’ was an earth/grass track until taken over when houses at @ built, just leaving footpath which is tarmaced...”* This description of the original track accords with the evidence in the urban district council claim observations regarding the condition of the track in 1953 when it was claimed and added to the definitive map of public rights of way as a footpath, as a *“deeply rutted cart track in bad condition”*.

Width

Church Lane has an historic width, presently unrecorded within the definitive statement for Footpath no.8 Trowbridge, varying between 13m and 7m for its full length between Frome Road and Acorn Meadow, (as per OS 25” mapping). There is no evidence that part of the width of this highway has been legally stopped up and it is proposed to record this varying width in a definitive map modification order by reference to the order plan.

Landowners Intention

10.71. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public user of a route for a period of 20 years or more “as of right”, unless during that period there was in fact no intention on the part of the landowner to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburn’s words, take steps to disabuse these persons of any belief that there was a public right...”

10.72. In the same case, Lord Neuberger of Abbotsbury went further on this point:

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1 (1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

10.73. Lord Hoffman went on to say:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

10.74. As stated by Lord Justice Carnwath in the Whitworth case, *“By section 31(1A)(b) use by non-mechanically propelled vehicles is to be taken into account, but that says nothing about the characterisation of the resulting right of way. For that purpose, it is necessary to consider what is implied by the owner’s acquiescence.”*

10.75. There is no registered landowner/s of Church Lane and no evidence of any actions by the landowner/s to negate their intention to dedication the lane as a bridleway. There is no deposit with Wiltshire Council under Section 31(6) of the Highways Act 1980 and no evidence of prohibitory signs in the relevant user period, (one witness refers to a “No Cycling” sign between 1983 and 1988, however, there is no photographic evidence of this sign, only one witness refers to it and it is outside the relevant user period for cyclists of 1991-2011 and 1998-2018).

10.76. Out of 62 completed witness evidence forms, only 5 witnesses refer to challenge of their use of the way when both walking and cycling. There is no reason to challenge the public who were legitimately using the recorded Footpath no.8 Trowbridge and any challenge to the minority of users is recent in date, perhaps corresponding with the new build properties 24 and 26 Church Lane, however, the lane is not in the ownership of these properties and any challenge is not made by the landowners to suggest non-intention to dedicate additional rights over the footpath.

Common Law dedication

- 10.77. Section 5 of the Planning Inspectorate Definitive Map Orders: Consistency Guidelines suggests that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.
- 10.78. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends upon the inference that the way was in fact dedicated at some point in the past.
- 10.79. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to public use of the way. It also relies upon the public showing their acceptance of the route by using the way.
- 10.80. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.
- 10.81. Relatively few highways can be shown to have been expressly dedicated and in the Trowbridge case, there is no evidence before the Surveying Authority that the landowners have carried out any express act of dedication over the claimed route. However, there is evidence that the landowners have acquiesced in the use of the footpath on horseback and with bicycles and evidence of public acceptance of this route through user evidence. If the claim

at statute were to fail, it is possible to apply the principles of common law dedication in this case.

Conclusion

10.82. Officer's have considered the evidence submitted both supporting and opposing the application and concluded that there is sufficient evidence that a right of way for the public on horseback/bicycle exists over Footpath no.8 Trowbridge and therefore the only option available to Wiltshire Council, as the Surveying Authority, is to make a DMMO to amend the definitive map and statement of public rights of way accordingly, upgrading Footpath no.8 Trowbridge to a bridleway for the full length of Church Lane and adding a width varying between 7 and 13m, to be shown in the order plan.

10.83. There is insufficient evidence of public vehicular rights over Path no.8 Trowbridge, on the balance of probabilities.

11. Overview and Scrutiny Engagement

11.1. Overview and Scrutiny engagement is not required where the procedures to be followed regarding orders made under Section 53 of the Wildlife and Countryside Act 1981 are set out at Schedules 14 and 15 of the 1981 Act and within "The Wildlife and Countryside (Definitive Maps and Statement Regulations) 1993 – Statutory Instruments 1993 No.12".

12. Safeguarding Considerations

12.1. Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the available evidence alone.

13. Public Health Implications

- 13.1. Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the available evidence alone.

14. Procurement Implications

- 14.1. The determination of a definitive map and statement modification order application and modifying the definitive map and statement of public rights of way accordingly are statutory duties for the Council. The financial implications are discussed at 18.

15. Environmental Impact of the Proposal

- 15.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the available evidence alone.

16. Equalities Impact of the Proposal

- 16.1. Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the available evidence alone.

17. Risk Assessment

- 17.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside

Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

- 17.2. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error within the definitive map and statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. Where the Council fails to pursue its duty to determine the application, (within 12 months of the date of application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

18. Financial Implications

- 18.1. The determination of DMMO applications and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
- 18.2. Where no DMMO is made, the costs to the Council in processing the DMMO application are minimal.
- 18.3. Where a DMMO is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however, where a local hearing is held the additional costs to the Council are estimated at £200-£500, (i.e. room hire where legal representation is not

required). If a local public inquiry is held, costs are estimated at £1,500 - £3,000 for a 1-2 day inquiry, rising to an estimated £4,500 for a 3 day inquiry, if Wiltshire Council continues to support the order, (i.e. where legal representation is required by the Council), and £200 - £600 where the Council no longer supports the making of the order, (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

19. Legal Considerations

- 19.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

20. Options Considered

20.1. To:

- (i) Refuse to make a DMMO under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that, on the balance of probabilities, 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, or
- (ii) Where there is sufficient evidence that, on the balance of probabilities, a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description, the only option available to the authority is to make a DMMO to upgrade that part Footpath no.8 Trowbridge subject to the application,

or the whole of Footpath no.8 (Church Lane), (depending upon the evidence), to a bridleway, restricted byway, or a byway open to all traffic, (if public vehicular rights are not extinguished under Section 67(1) of NERCA), amending the definitive map and statement of public rights of way accordingly, under Section 53 of the Wildlife and Countryside Act 1981.

21. Reasons for Proposal

21.1. It is proposed to make an order upgrading Footpath no.8 Trowbridge (Church Lane), to a bridleway for its full length between Frome Road and Acorn Meadow, having a recorded width varying between 7m and 13m, but not to upgrade the footpath to a BOAT as claimed, for the following reasons:

- (i) There is insufficient documentary evidence of a public right of way with vehicles over Path no.8 Trowbridge. The available evidence suggests a private route for accessing property with vehicles, which does not give rise to a public right.
- (ii) There is insufficient evidence that the way has been used as of right for a period of 20 years or more, without interruption, by “The Public” with vehicles.
- (iii) A number of witnesses have used the route with bicycles and on horseback, which during the relevant user periods 1991-2011 and 1998-2018, is sufficient to show on the balance of probabilities that a path no.8 Trowbridge ought to be shown as a bridleway.
- (iv) The Ordnance Survey mapping provides an accurate and consistent record of the width of Path no.8 Trowbridge (Church Lane), varying between 7m and 13m, for its full length between Frome Road and Acorn

Meadow, which is likely to have been used by the public and supported by witness evidence, in the absence of any evidence to the contrary.

22. Proposal

23. That further to the application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic, a definitive map modification order be made to upgrade Footpath no.8 Trowbridge to a bridleway over its full length (Church Lane), having a recorded width between 7m and 13m, as per the Ordnance Survey mapping, excluding from the order that central section of adopted highway (Church Fields development), where there is insufficient evidence, both documentary and user, to support public vehicular rights over the path, but sufficient evidence of public rights on horseback and with bicycles, on the balance of probabilities.

Janice Green, Senior Definitive Map Officer, Wiltshire Council

Date of Report: 26th October 2020

Appendices:

Appendix 1 – Location Plan

Appendix 2 – Application Plan; Working copy of definitive map and extract from Trowbridge Urban District Definitive Map 1953

Appendix 3 – Aerial photographs

Appendix 4 – Photographs

Appendix 5 – Representations and objections

Appendix 6 – Legislation

Appendix 7 – Documentary Evidence

Appendix 8 – Documentary Evidence Adduced by Applicant

Appendix 9 – User Evidence Summary

Appendix 10 – User Evidence Chart

Appendix 11 – Bringing into Question

Appendix 12 – Proposed Order Map

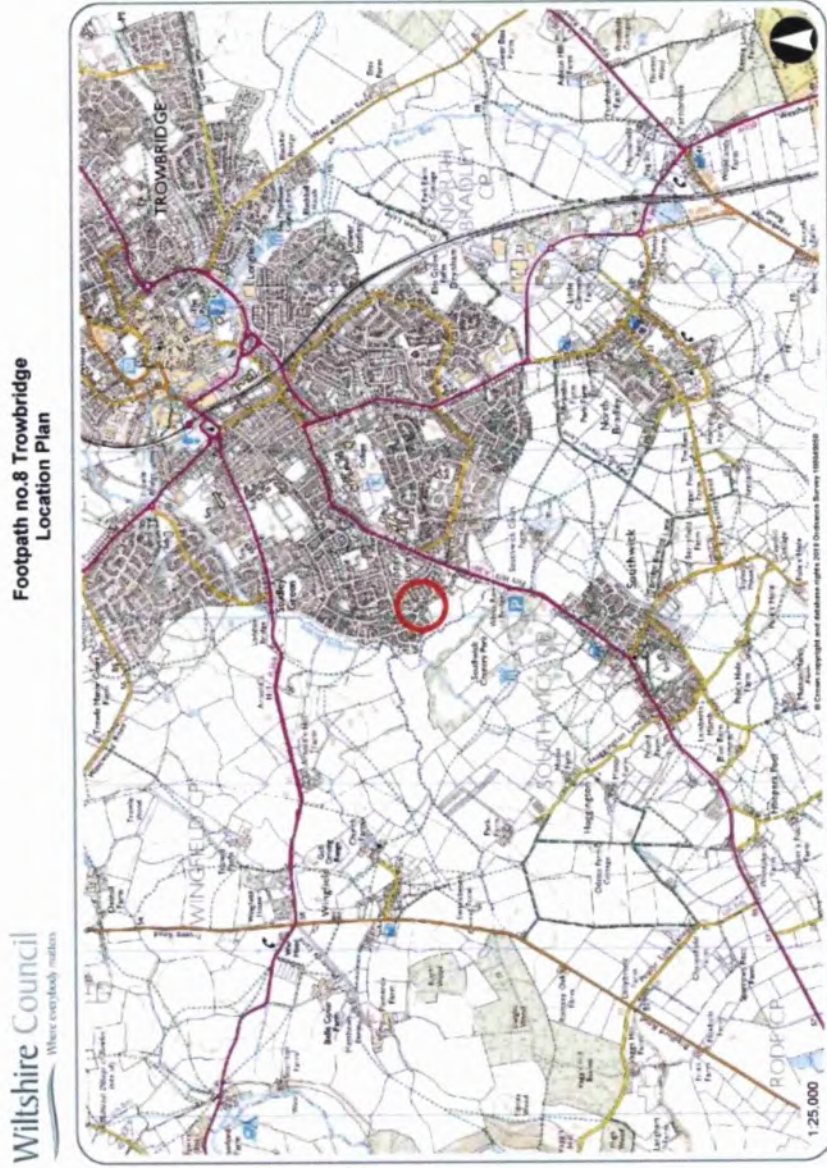
Decision Report – Wildlife and Countryside Act 1981, Section 53

Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic

Decision Report Wildlife and Countryside Act 1981 – Section 53
Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic

Appendix 1 – Location Plan

Plan not to scale



Decision Report Wildlife and Countryside Act 1981 – Section 53

Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic

Appendix 2 – Application Plan

Plan not to scale



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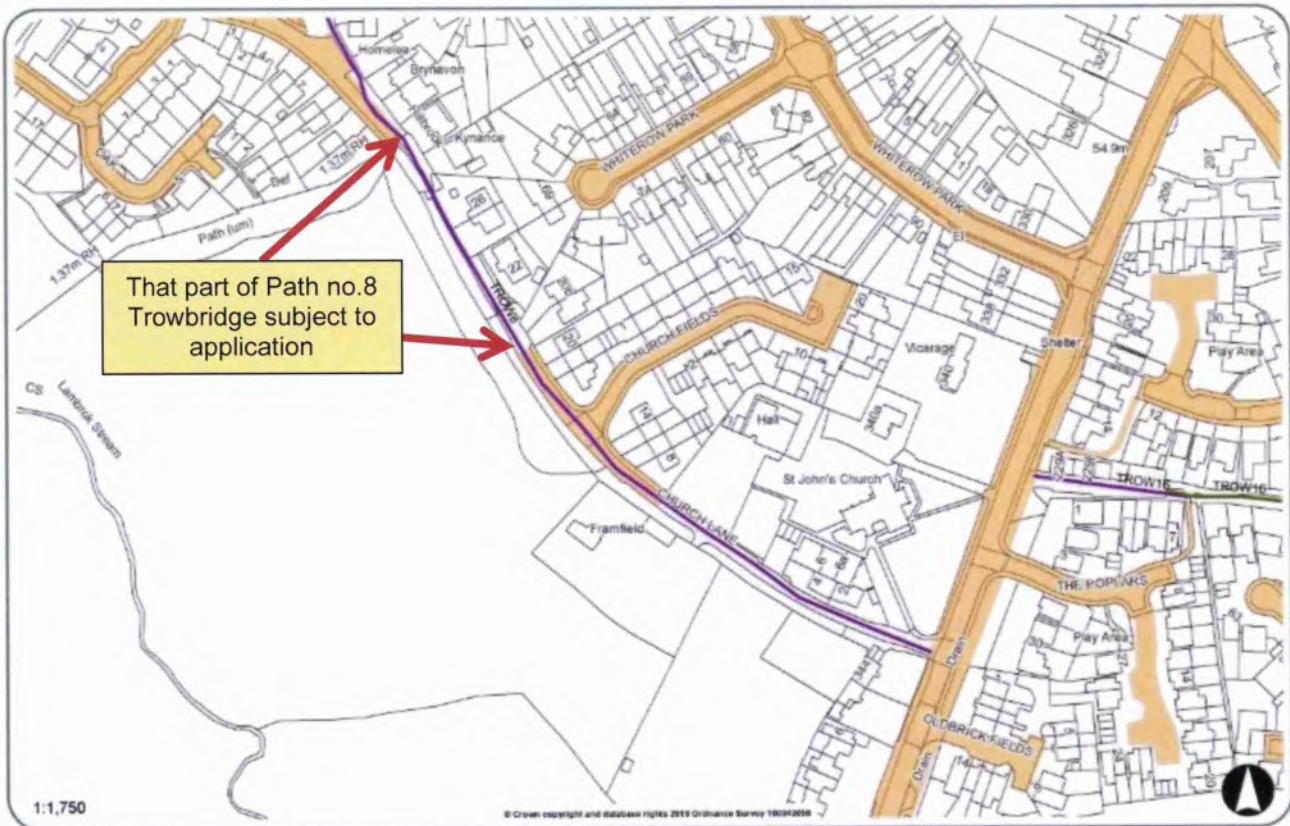
This title is dealt with by HM Land Registry, Weymouth Office.

Extract from working copy of definitive map and statement of public rights of way including highway maintainable at the public expense (coloured orange)

Plan not to scale



Footpath no.8 Trowbridge - Working Copy of Definitive Map of Public Rights of Way and Highway Records



Please note – The roads, footways and verges, shown coloured orange are recorded as highways maintainable at the public expense. The extent of publicly maintainable highway shown on the plan is intended to be indicative only. If a road, footpath or footway is not highway, there may be no right to use it.

Trowbridge	8	FOOTPATH. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west across a length of Church Lane to its junction with path No.9. Approximate length 218 m.	relevant date 23rd December 1991
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Trowbridge 8 Definitive Statement – note that there is no recorded width for Footpath no.8 (Church Lane)

Extract from Trowbridge Urban District Council Definitive Map 1953

Plan not to scale



Trowbridge Urban District Definitive Map 1953

Decision Report Wildlife and Countryside Act 1981 – Section 53
Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a
Byway Open to all Traffic

Appendix 3 – Aerial Photographs

Not to scale



2001 aerial photograph (properties at Acorn Meadow appear to be under construction)



2005/06 aerial photograph (note the driveway of the property Kynance which is orientated north-westwards towards Acorn Meadow, not southward on Church Lane towards Frome Road)



2014 aerial photograph (note the properties 24 and 26 Church Lane, built in 2011)

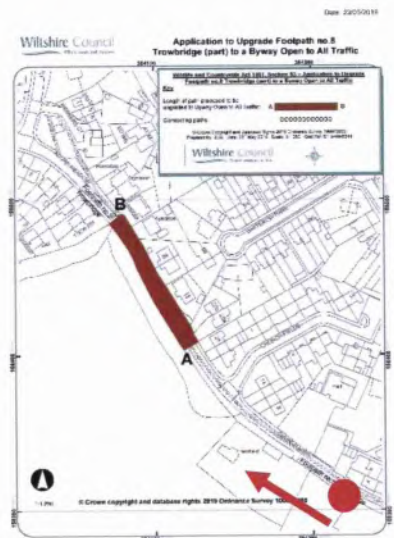
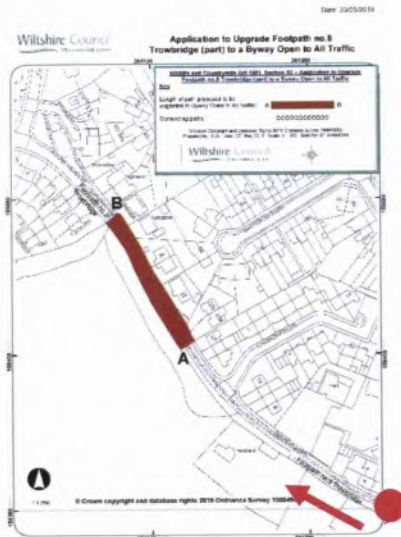
Decision Report Wildlife and Countryside Act 1981 – Section 53

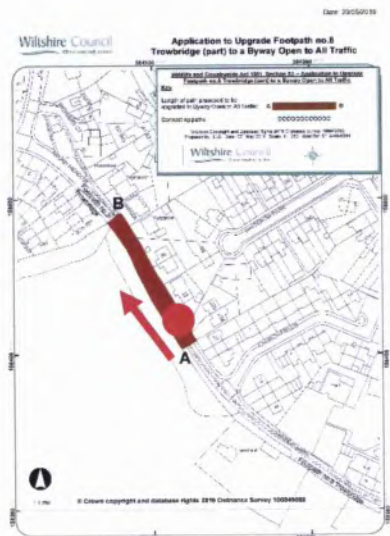
Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic

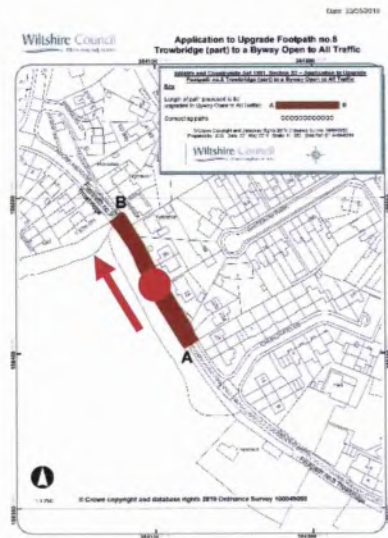
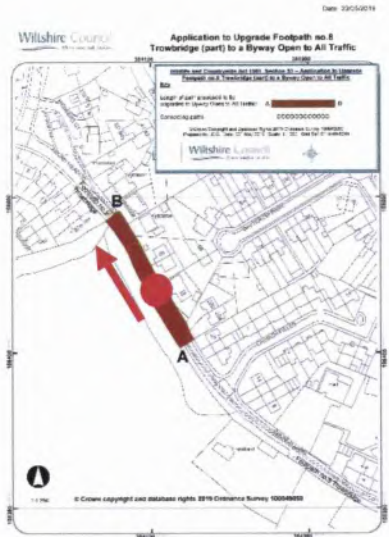
Appendix 4 - Photographs

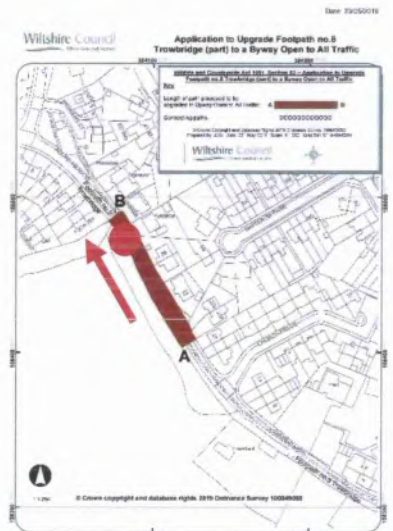


Junction of Church Lane with Frome Road. Note the sign "Church Lane leading to Church Fields", there is no mention of Church Lane as a through route to Acorn Meadow and Studley Green. There is also a "No Through Road" traffic sign located at this junction. Opposite Church Lane on Frome Road there is a road sign pointing to "St Johns Church Hall". The treatment of Church Lane as a no through road for the public, access only to the Church Hall and Church Fields, not including [REDACTED], consistent with the Highway Authority's consideration of Church Lane as a "Private Street". This section of Church Lane is unadopted.



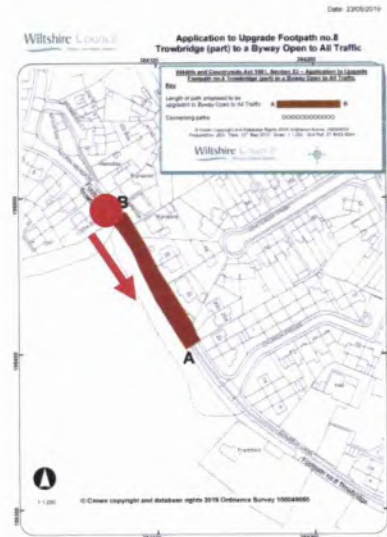








2013



Note from the photographs:

- Mature trees in the western boundary of Church Lane suggesting that this is the original boundary of the lane, as per OS mapping.
- A change in surface of the lane where the adopted section ends.
- Another change in surface of the lane at 22 and 24 Church Lane.
- Services provided in the highway, i.e. water/sewer; telegraph poles; lighting (adopted section).
- Footway provided on eastern side of Church Lane on adopted section only.
- Sign located opposite Church Fields entrance advising vehicular users that access to properties at the north end of Church Lane is via Lambrok Road and Acorn Meadow (not via Church Lane), has been pushed over and is lying in the verge (October 2020).

Decision Report

Wildlife and Countryside Act 1981 – Section 53

Application to Upgrade Footpath no.8 Trowbridge, Church Lane, to a Byway Open to All Traffic (Part)

Appendix 5 – Objections and Representations at Initial Consultation

1) Mr Roy Pegrum – correspondence dated 5th September 2018 (pre-initial consultation):

“I wish to comment on the application made by the residents of Kynance to modify the access from Church Lane to Acorn Meadow.

- If a 5m wide extension of the BOAT of Church Lane were granted with associated constriction moved from their current position northwest towards the end of Acorn Meadows this would increase traffic in Church Lane by adding the residents and associated deliveries of two additional dwellings to the existing exit on to the Frome road with its restricted sight lines.*
- With the best will in the world the likely hood of coordinating the remove of the existing arrangement with the erection of any new bollards etc. required by a ‘restricted byway’ (or extended BOAT) is low. This could leave Church Lane open to use as temporary through road until any new measures are installed.*
- I have resided in Church Lane for 24 years and the measures installed to prevent through traffic have always been exactly where they currently exist and not at the end of Acorn Meadows. As far as I am aware Kynance and the adjacent residence to the northwest have never had vehicle access to Church Lane in that time and I see no reason; historically or otherwise; for this to chance.*

I would be grateful if you would keep me informed regarding how this Application for Modification progresses.”

2) Rachel Hunt – correspondence dated 27th September 2018 (pre-initial consultation):

“Objection to an application by Andrew May and Michelle Dunnes of Kynance, dated 30th August in respect of the proposed modification of Church Lane by way of adding byway open to all traffic leading from Church Lane to Acorn Meadow outside the driveway of 20a Church Lane, grid reference ST 8411556422.”

I object to the proposed opening of Church Lane to vehicular and other traffic on the following grounds:

1. Contradiction to Wiltshire Council’s existing strategy regarding Church Lane in the SHLAA

In Wiltshire Councils’ Housing Strategy it clearly stated that access for any new housing on the fields behind Church Lane would not be granted through Church Lane as it would causes [sic] excessive traffic on what is effectively a one way lane. If this is the councils strategy for a potential 45 new houses, then it must also be the strategy for the whole of Studley Green (hundreds of houses).

2. Congestion

If the application was allowed, this would open up a rat run between Broadmead (and therefore Bradford on Avon) and the A361. Church Lane is a very narrow unadopted road which at best allows for single lane traffic. It could never be suitable for large volumes of traffic.

3. The Environment

Church Lane and the adjacent fields has been recognised as being a corridor for the European protected species of Bechstein Bats. The lane offer [sic] only minimal lighting and noise pollution which allows safe passage for these creatures. Opening up the lane to Studley Green would cause irrevocable damage to the environment.

4. Safety

As mentioned above the land is a single track, unmaintained leading to a small gate which is solely used by local residents and access to the church car park. The sides of the road are soft and bordered by a ditch and residential walls. It is also used by dog walkers and pedestrians wishing to access the A361 from Studley Green. Increased traffic would inevitably lead to accidents involving both pedestrians and vehicles. Church Lane is under no circumstances suitable to take any additional volume of traffic from the large housing estates on the other side of Acorn Meadow.

I would be most grateful if you could take these objections into account when making any decisions. Please do keep me informed of any further information relating to this application.”

3) Anna Evans-Wylie – correspondence dated 21st September 2018 (pre initial-consultation):

“Objection to an application by Andrew May and Michelle Dunne of Kynance, dated 30th August 2018 in respect of the proposed modification of Church Lane by way of adding byway open to all traffic leading from Church Lane to Acorn Meadow outside the driveway of 20a Church Lane, grid reference: ST8411556422

I object to the proposed opening of Church to vehicular and other traffic on the following grounds:

1. Congestion

Church Lane is a very narrow unadopted road which at best allows for single-line traffic. It is not well maintained and poorly lit. Even the current level of traffic is problematic when for example there is a church service at St John’s and cars have to queue up in order to pass one way or the other. I can’t possibly imagine what the congestion would be like if vehicles were able to travel between the very large estate on the side of Acorn Meadow and

beyond, and Frome Road. The volume of traffic would be well beyond the capacity of a little country lane that Church Lane is.

2. Safety

I've mentioned the narrowness and lack of adequate lighting along Church Lane. The sides of the road are soft and unenforced on the one side and on the other side there are residential walls and the border of the cemetery, with absolutely no room for widening of the road. In peak hour traffic early in the morning or in the evening, especially in winter, the accidents would be numerous. There is also the question of poor visibility on the junction between Church Lane and Frome Road. This was the reason why even the developers proposing housing development on the south side of Church Lane decided against using Church Lane as an access road and elected to build another road for the new estate further down Frome Road. Without some serious widening and upgrading of Church Lane which would involve adopting the road by the Council and investing in adjacent land, Church Lane is under no circumstances suitable to take on any additional volume of traffic from the large housing estates around Acorn Meadow.

3. Protected Wildlife

I have already pointed out that Church Lane is poorly lit. This is conducive to a large population of Bechstein's Bats who are proven to forage in the fields adjacent to the road. Bringing traffic lights and street lamps to the road would put the future of these protected animals in jeopardy.

I look forward to hearing from you regarding your decision on the outcome of the application my objection related to."

4) Steve Wylie – Correspondence dated 23rd September 2018 (pre-initial consultation):

"Objection to Application dated 30th August 2018 by Andrew May and Michelle Dunne of [REDACTED] Church Lane, Trowbridge BA140 [REDACTED] to alter

the right of way on Church Lane between Grid references ST 84084 56477 to ST 84115 56422 to that of a byway open to all traffic BOAT

I wish to object to this proposal in the strongest terms for a number of reasons:

- 1) **Church Lane is unsuitable to be opened up to additional motorised traffic.** Church Lane is a narrow country lane established in the middle of the nineteenth century to serve St Johns Church. The main motorised traffic on Church Lane is church users and residents of Church Fields – the small dead-end close just past the church housing just 20 dwellings. Church Lane is an unadopted land, quite rural in nature and overlooking Southwick Country Park. Being unadopted the highway is not maintained, has cracks and potholes, has a considerable camber in places, there are pipes and drains near the surface of the highway, and there is minimal street lighting. Given the era when the lane was constructed (before motor vehicles) the lane is narrow, only single lane width, and owing to the presence of a number of Listed Buildings on both sides of the lane it is not possible to widen the road to the width necessary to meet modern day planning standards for access roads.

If the application was approved Church Lane would become a access route for the hundreds of dwellings in the Lambrok Road to Westfield Road area, particularly for anyone wanting to join Frome Road A361 to head south. As well as all the residential traffic the road would be available to all the business traffic serving those addresses including home deliveries like supermarket vans, construction/DIY chain lorries, refuse vehicles, home removal lorries, plumbers, electricians, builders vehicles, Post Office vans and emergency vehicles. Church Lane could not cope with such large/heavy vehicles not the additional volumes of motorised traffic.

- 2) **The junction of Church Lane into Frome Road A361 is unsuitable for more traffic.** Church lane joins the A361 Frome Road at the top of the notorious Firs Hill. The junction is narrow and as stated above the width here is restricted by Listed Properties on either side of the junction so there is no scope for widening the junction. Visibility is poor and it is difficult to drive out of

Church Lane onto Frome Road which is not helped by the volume and speed of traffic travelling on the A361, and is further complicated by traffic entering and leaving the two opposite junctions of The Poplars and Oldbrick Fields.

There have been a number of road accidents on Firs Hill in the past including the fatal accident on 18th January 2015. Bringing more traffic to this junction is only likely to lead to more accidents and casualties.

The Wiltshire Housing Site Allocation Plan WHSAP includes a proposal to develop a site immediately south of Church lane – site number 1021. The site proposals are restricted to a maximum of 45 homes due to a variety of factors, one of them being motorised traffic. Wiltshire Council have deemed Church Lane to be too narrow and the exit onto the A361 as too dangerous. Given the narrow width and poor visibility Church Lane will not be considered as an access route for potentially 45 houses and a new site entrance will be considered further down the A361 if the development is to proceed. Having made the decision under the WHSAP that Church Lane is unsuitable as a route for up to 45 houses it would be contradictory and highly irregular for Wiltshire Council to now decide to open up Church Lane for potentially hundreds of existing local residential and business vehicles.

- 3) **Opening Church Lane as a BOAT would put at risk the safety of the many pedestrians and cyclists who currently use the lane.** *Given Church lane is currently a quiet and safe land many people walk and cycle along it, to and from the church and also just because it is a pleasant and quiet lane. The many pedestrians as well as the cyclists include elderly people enjoying the view to Southwick Country Park, families with pushchairs, wheelchair users, Guides and Brownies, dog walkers, the occasional horse and rides from the adjacent paddocks and others. These people are able to use the land in relative safety despite the lane being narrow, having no pavement, and with limited street lighting because there is a limited volume of mainly light residential traffic and because Church lane is a no-through road. This means that traffic speeds are kept low and local drivers know to watch out for pedestrians on the road. If Church Lane was opened up to all and sundry*

unfamiliar drivers and inevitably higher traffic speeds would mean the risk of accidents and injuries to pedestrians and cyclists would increase, and/or pedestrians and cyclists would simply no longer be able to enjoy this route – as people have done before them for generations.”

5) Mr Roy Pegrum – correspondence dated 6th June 2019:

“I have resided at the above address [Church Lane] since August 1994 at no time since then have four wheeled vehicles been able to pass between Acorn Meadows to the north and Church Lane to the south. This was prevented initially by timber bollards placed south of ‘Kynance’ and another set north of 22 Church Lane. These allowed the passage of pedestrian’s, cyclists and horse riders but were too narrow for any four wheeled vehicles. More recently; since the construction of the 24/26 Church Lane; a staggered (chicane) barrier was erected north of 26 Church Lane this has prevented vehicular access between Acorn Meadows and Church Lane but has permitted vehicular access northward up Church Lane as far as no 26.

I therefore comment as follows on the Exceptions to subsection 67(2) for the last 25 years.

- a) Through access has been by walkers cyclists and horse-riders only, no motor vehicles at all.*
- b) No maintenance has ever been carried out at public expense to keep any access free.*
- c) Part access was created to permit vehicular access to the newly constructed 24 and 26 Church Lane by no through access.*
- d) No road construction has ever taken place.*

Regrettably I have no documentation of photographs to support any of the aforementioned but I trust that the information provided is useful.”

6) Trowbridge Town Council – E-mail correspondence dated 14th June 2019:

“The town council considered this application at a meeting of the Town Development committee and resolved to object to the proposal. None of the councillors is aware of any evidence of vehicular traffic using the entirety of this section of footpath nor of public vehicles having access along parts of the footpath, except those in recent years who have gained access from one end to properties situated alongside the footpath.”

7) M T Reed – Correspondence dated 9th May 2019:

“I am about to go away for the next week and this reply is very much my initial thoughts and findings. On my return I will provide you with a more detailed and considered response. With this in mind a more precise description of the byway’s location would be helpful.

At the time of purchasing the property it was not made apparent by either the owner/estate agent or Solicitor that the upgrading of the footpath would become an issue in the future. If it had been I would not have gone ahead with the house purchase.

The pros and cons of the application that immediately come to mind are:-

a) Pros – nil

b) Cons –

(1) detrimental impact on the selling prices of houses in Church Lane, and in particular Nos. 24 & 26.

(2) passing of traffic that did not exist before

(3) traffic noise

(4) loss of privacy

(5) increase in traffic queuing on the Frome Rd caused by volume of cars/lorries slowing down to enter Church Lane.

(6) parking, turning and delivery problems caused by reduced driveway at Nos.24 & 26.

(7) safety issues

(8) drainage problems

(9) costs involved to satisfy the selfish requirements of one household.

Nobody in Church Lane supports the application because of the many downsides listed above. Apparently its original aim was to enable the proposer's wife to reach their property without having to drive through the council estate, an experience she found unbecoming, despite a driving time from Frome Rd of only 5 minutes.

Given this overwhelming rejection the proposer is now attempting to gain the backing of Council tenants by advocating for Church Lane to become accessible to all of them. To this end he has been putting posters on fences and gates etc, an action that is surely illegal given some of the literature is of Council business. It is important that nobody is fooled into thinking this action is altruistically motivated. On the contrary, it is solely for selfish reasons, and if implemented will significantly downgrade the quality of life currently experience by Church Lane residents.

The recovery of expenses incurred by some fighting the application has yet to be considered. As has the involvement by the local MP and press, in the event of an unfavourable outcome."

8) Mr C Knight – correspondence dated 14th June 2019:

"I was brought up on Studley Green Estate in 1953 my earliest recollections would be from around seven years of age so from 1960 on, I have lived in Trowbridge all my life moving to Church Lane around 1979.

During these times to present day stretching approx. 59 years I have never seen the area in question used as a byway for vehicles it has always been footpath access only.

There were always white posts installed Acorn Meadows end and by No 22 Church Lane across the land from the footpath, as developments occurred the white posts at the Acorn Meadow end were pushed further up the lane but remained to stop any vehicles using the land.

The land in question remained heavily overgrown for many of these years.

The land only became open to traffic when a developer built nos 24 + 26 at the bottom Acorn Meadows end, initially planning permission gave access from Studley Green estate only.

The developer managed to have this overturned and access was via Church Lane.

This open to all traffic never existed until the Council gave this permission for access.

I have spoken to my brother Vaughan Knight who like me has lived on Studley Green estate for most of his life he lives at ■ Lambrock Road and he agrees with my recollections that this has never been open to traffic as he is some nine years older this extends to over 60 years our memories of Church Lane.”

9) Felicity Gilmour – Correspondence dated 8th July 2019:

“I am writing to express concern at the above application to upgrade Path no.8 (part) to a BOAT.

I have lived at the above address [Church Lane] for over 31 years (since February 1988) and there was never any vehicular access beyond the entrance to the drive of no.22 until the construction of numbers 24 and 26 Church Lane in 2011.

Up until that time, there were posts in place just beyond the entrance to no.22 which as far as I can remember were lockable and only removed to allow the council to cut the hedge/verge back to maintain the footpath. These posts can clearly be seen if you do a search on Google Street View for Church Lane. The image is dated May 2009. This was the state of the footpath up until 2011, therefore covering your key dates of 2000 – 2006.”

10) Trevor and Shelley McGrath – correspondence dated 11th July 2019:

“We would like to object in the strongest terms to the application to change Path No.8 at Church Lane, Trowbridge into an Open Byway for all traffic. Clearly such a move will have a detrimental impact on everyone living in

Church Lane, become a real and present danger to all who walk or cycle this quite, safe lane. The path is used daily by children and adults going to and from school or work and weekend walkers particularly enjoy this route. Enclosed with this letter are some photographs of this lane and an aerial photo taken before the development of the housing estate at Studley Green. The former show the bollards that unambiguously prevented the lane for being used by any traffic other than pedestrians or horses. These same bollards, we believe, are marked on OS maps. The photos show no sign of any wheeled vehicle having disturbed the grass verge or the snowfall. The aerial photo indicates that the lane simply connected to another footpath that presumably led to Frome Road.

For your information we enclose an email sent by a lifetime resident of this area who used the land more or less his whole life and confirms that is [it] has never been open to traffic of any kind. This is repeated by any number of local people who emphatically state the lane passed where the bollards were fixed was never open to either carts or cars. For a long period in the 1980s it was so overgrown that it would have been difficult to get anything down it. This situation would never have been allowed to arise if it was an open byway for traffic. The remnants of dozens of trees can still be found in the front garden of No22 indicating that the lane was only ever a footpath. Many others no doubt will reinforce these facts in other submissions.

The negative social consequences of opening Church Lane as a new byway cannot be overstated. Traffic movement after 5pm is virtually non-existent and the lane is little used during the day by other than local residents and that is minimal. The peaceful, and above all safe, environment now enjoyed by residents of Church Lane and the pedestrians, cyclists, school children and runners is under threat for reason that most will consider to be blatant self-interest. This is just the first move in the eventual aim of opening Church Lane to through traffic from the adjacent estate, creating a "rat-run" for the convenience of car drivers who want a faster route to Frome Road."

- 11) **E-mail referred to above, enclosed with correspondence from Mr and Mrs McGrath, e-mail correspondence dated 28th June 2019 from Mr Nigel Cathrew:**

“To whom it may concern,

I have until recently lived in St Johns Crescent all my life (from 1965) during this period of time there has never been any vehicle access through Church Lane to Lambrok road. The access has only ever been for pedestrians and bicycles. There has always been posts or barrier of some description in place to prevent any other vehicle access.

I think it is obvious to see that if this was opened to have vehicle right of way, the route would immediately become a “Rat Run” from Frome Road along Lambrok Road and on to Wingfield Road (and vice versa). This would have a serious detrimental impact on the safety of residents in this area. The entrance to and from Church Lane on to Frome Road is only suitable for light residential traffic.”

- 12) **S J Wylie – Correspondence dated 8th July 2019:**

“Further evidence regarding public use of the route in question.

St John’s Church was dedicated in 1854. It was built for the workers (labourers) in the brick fields. A narrow track was provided to the south of the church providing access to visitors on foot or cart to the grounds and graveyards surrounding the church. This modest access-way in time became known as Church Lane, as its purpose was evidently to serve the church.

Church Lane was never intended to be a public highway. This rural lane overlooking Southwick Country Park remains to this day an unadopted route, its upkeep remaining the responsibility of St John’s Church.

In my time here, Church Lane (footpath No 8) has been used mostly by pedestrians, runners, dog walkers, child and adult cyclists, parents with prams and pushchairs, as well as a significant number of wheelchair users as there are nearby homes for people with disabilities. Disabled groups also regularly

use the church hall on Church Lane. During the last 3 years horses from the paddocks on Church Lane have also been ridden along the lane as it is a quiet route that links to other nearby areas of countryside.

The other main users of Church Lane are visitors to St John's Church for the Sunday services, weddings and funerals as well as groups using the church hall during weekdays and evenings. Individuals and groups of children such as The Brownies, and those with disabilities and their helpers frequently walk from the church hall along the quiet lane and into the countryside or elsewhere on various activities. There are little clusters of motorised vehicle use on Church Lane at the times of events interspersed by long periods of quiet when the lane is inhabited by pedestrians and the local wildlife.

Churchfields was built around 1980 – a close of some 20 dwellings off Church Lane just west of St John's Church. This brought an increased volume of motor vehicles into Church Lane, and with the subsequent incidence of one or two-car families becoming the norm the level of conflict between vehicles and pedestrians has increased.

I strongly object to Church Lane being opened up to Acorn Meadow as a through road as this would seriously increase the danger to all existing users of the lane. The accident risk as the hazardous blind junction of Church Lane with the A361 Frome Road would also sky-rocket if Church Lane became a through road."

13) Wiltshire Bridleways Association – Correspondence dated 10th July 2019:

"Thank you for allowing Wiltshire Bridleways Association to have sight of this application for consideration.

The committee of Wiltshire Bridleways Association have no objection to raise in respect of this application."

14) Trevor and Shelley McGrath – Correspondence dated 31st July 2019:

“Enclosed are two documents (marked A&B) from our deeds to [REDACTED] Church Lane that we believe will be useful.

The photo is of a sign at the entrance to Church Fields directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road, off Acorn Meadow, one of which is [REDACTED].

We would appreciate your consideration of the following questions:

- (1) The photo submitted by the applicant (referred to now as A) purports to show a bollard which could be removed to allow vehicular access to Church Lane. This appears to be a unique memory. If this was the case, A would presumably have had permission from local authority to vary the use of the bollards as a barrier against vehicles and been granted exceptional leave to do so. Where is the documentation giving A or anyone else permission to remove a barrier specifically placed to prevent vehicles using the Lane, then using it for that purpose, when was the permission sought, who gave consent and on what grounds of exceptionality.*
- (2) There are comments on the survey forms concerning the dilapidated state of footpath 8, etc. While a matter of concern what relevance are they to the issue of vehicular access?*
- (3) It appears that out of 59 pieces if [sic] “evidence” submitted only 4 support the claim that Church Lane was ever open to vehicles. These are A, A’s live-in partner, mother and solicitor. What purpose do the other submissions serve other than to disprove the assertion that Church Lane was open to vehicles?”*

15) Goughs Solicitors – Correspondence dated 31st July 2019:

“Thank you for providing the bundle of evidence submitted by Mr May and Miss Dunne in their application to upgrade path no.8 Trowbridge to a Byway Open to All Traffic, and for allowing an extension to the consultation period.

I have considered that evidence and now enclose the following documents in support of my client, Stephen Coleman’s, objection to the above application:

1. *Witness Statement of Stephen Coleman dated 30th July 2019.*
2. *Photographs referred to in the above statement.*
3. *Statements from the following residents:*
 - 1) *S.Eddleston of [REDACTED] Church Lane.*
 - 2) *S.J.Wylie of [REDACTED] Church Lane.*
 - 3) *Anna Evans-Wylie of [REDACTED] Church Lane.*
 - 4) *Ingrid Figueirado of [REDACTED] Church Lane.*
 - 5) *Edward Figueirado of [REDACTED] Church Lane.*
 - 6) *S.Brewer of [REDACTED] Church Lane.*
 - 7) *Clive Knight of [REDACTED] Church Lane.*
 - 8) *Felicity Gilmour of [REDACTED] Church Lane.*
 - 9) *P.Marchant of [REDACTED] Church Lane.*
 - 10) *C Harrington of [REDACTED] Church Lane.*
 - 11) *Steven Tripp of [REDACTED] Church Lane.*
 - 12) *Susan Tripp of [REDACTED] Church Lane.*
 - 13) *T. and S. McGrath of [REDACTED] Church Lane.*
 - 14) *Michael Thomas Reed of [REDACTED] Church Lane.*
 - 15) *Roy Pegrum of [REDACTED] Church Lane.*
 - 16) *RM Hunt of [REDACTED] Frome Road.*
 - 17) *Daniel Brown of [REDACTED] Churchfields.*
 - 18) *J.J. Brown of [REDACTED] Churchfields.*
 - 19) *S.Foley of [REDACTED] Churchfields.*
 - 20) *M. Hillier of [REDACTED] Churchfields.*
 - 21) *Steven Ball of [REDACTED] Churchfields.*
 - 22) *Derek Major of [REDACTED] Churchfields.*

23)G Robinson of ■ Churchfields.

24)D.M. Perkins of ■ Churchfields.

I should be grateful if you would let me know when an investigating officer is appointed, when a decision is made and the reasoning for that decision.”

*“Witness Statement of Stephen Alfred Coleman – ■ Church Lane,
Trowbridge*

1. *My name is Stephen Alfred Coleman and I live at ■ Church Lane, Trowbridge, Wiltshire, BA14 0■. I purchased the above property with my late wife in February 2013 not long after it was constructed.*

2. *Andrew May and Michelle Dunne, the legal proprietors of ■, Church Lane, Trowbridge, BA14 0■, have made an application to modify footpath no.8 Trowbridge (“the Byway”) to a Byway Open to All Traffic. I object to that modification of the Byway because (a); the practical problems it would cause to me and to other residents of Church Lane, and (b) the absence of vehicular rights existing during the five years prior to the enactment of the Natural Environment and Rural Communities Act 2006.*

Statutory Declaration of Jacqueline McClurg

3. *In the evidence enclosed in his witness statement, Mr May refers to Jaqueline McClurg’s Statutory Declaration dated 1st August 2005 which states that*
“the [Byway] has been used by myself my family and persons visiting or calling at the Property at all times for all purposes with or without vehicles as of right without let or hindrance” since 23rd July 1999.

Mrs McClurg’s alleged use of the Byway only dates back six years and Mr May has not produced any other evidence that the Byway was used by vehicles between 1985 and 2005. Therefore the requirement for acquiring a right of way by prescription through uninterrupted and continuous use for 20 years has not been fulfilled and such vehicular access during the period of five years prior to May 2006 would have been unlawful.

4. *If the public ever had vehicular access rights over the Byway before May 2006, these were unrecorded and so the enactment of the Natural Environment and Rural Communities Act 2006 has extinguished those rights.*
5. *The Council cannot create vehicular rights which have not existed so it follows that it has no authority to upgrade path no.8 Trowbridge (part) the Byway to a Byway Open to All Traffic.*

Documentary/Historical Evidence

6. *The additional documentary evidence submitted by Mr May only relate to the situation after 1930 and before 2006. The evidence does not add any weight to Mr May's application to upgrade the classification of the Byway because unrecorded public vehicular rights between these two dates have now been extinguished.*
7. *It is irrelevant that the Byway was once, many years ago, the only way the access Mr May's property. For the avoidance of any doubt, these documents do not provide proof that the Byway was ever used by vehicular traffic.*
8. *Mr May has also produced an undated letter written by the County Secretary & Solicitor's Officer in Trowbridge. Mr May highlighted an extract in the document which says:
"It will be observed that Church Lane, from its junction with Whiterow Hill (Frome Road) to its junction with Lambrok Road is shown by purple hatching which indicated that there is a public right of way on foot along the whole width of Church Lane."
There is no mention of vehicular access in this letter so it has no relevance to the modification of the Byway being considered.*
9. *Furthermore, the developer naturally sought planning permission from Wiltshire Council prior to the erection of 26 Church Lane, copies of which*

Mr May has provided in his evidence at item 9. The permission provides that it is a condition of the development that “bollards are retained and maintained for the lifetime of the development [...] 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.”

If the planning officer at Wiltshire Council believed the footpath was being used by vehicles then they would not have imposed that condition.

10. *Mr May also adduced documents to try to assert that the Byway is a private street by producing a vague Private Street Works notice and a few extracts from Trowbridge Urban District Council meeting minutes. These documents are not accompanied by any plans so it is impossible to determine which section of Church Lane these relate to. In any event, the owner of the Byway is still unknown and it is now considered to be a public road over which the public has a right of way on foot.*

Photographic evidence

11. *The photographs that were provided by Mr May support the position that the Byway has not been used by vehicles. Two of these photographs show the bollards that were previously positioned to prevent vehicular traffic up the narrow footpath; it is evident that vehicular access was not permitted, or in fact possible, before or during the development of ■ and ■ Church Lane.*

12. *I enclose a photograph confirming that one of these bollards is still in place and another illustrating that the path itself has not been altered. The only significant difference is that the grass was removed and was replaced with what is now my driveway.*

Witness Statements

13. *Only four out of the 59 statements, submitted in support of the application to upgrade application to upgrade [sic] the status of the Byway to a Byway Open to All Traffic, refer to vehicular use: Andrew May, Michelle Dunne,*

Carol May and Terence Bishop, all of whom are related parties to this application. Mr May and Miss Dunne made the application, Carol May is Mr May's mother and Mr Bishop is a solicitor who is or has been instructed by Mr May and Miss Dunne in this matter.

14. *All four witness statements lack credibility because they are understandably partial, and in the case of Mr Bishop it is not clear how he comes to his stated knowledge as he only uses it once a year. I trust that these statements would not heavily influence the Council's decision; the rest and majority of the statements confirm, among other things, that the Byway has only ever been a footpath used by pedestrians, cyclists and horse riders.*
15. *As an example of what has been said in the witness statements:*
- (a) Robert Brice says that the Byway has been an established footpath for at least 50 years.*
 - (b) Mrs A Whelan, who has been using the Byway for at least 15 years, believes that there used to be a footpath sign at the entrance to the footpath.*
 - (c) Ella Whelan confirms that there used to be a footpath sign in this area.*
 - (d) Christopher Howell, also a resident on the estate since 1978, maintains that to his knowledge the Byway has always been a footpath.*
16. *I have also enclosed signed letters from the residents of Church Lane, and Churchfields, who all confirm that the Byway has only been used by pedestrians, cyclists and horse-riders. The residents also maintain that the Byway has never been used by vehicles.*
17. *The primary concern of the other witnesses relates to the condition of the Byway, namely the overgrowth of the foliage and the lack of lighting in the area, not to its current status. They should not be considered by the Council when considering this application.*

18. One of the main features that attracted my wife and I to ■ Church Lane was the large driveway. At present, the driveway is separated from the frequently used footpath by a 1 metre fence which has, on a number of occasions, been damaged by pedestrians using the path.

19. I enclose photographs showing the different colour panelling on the fence caused as a result of intermitted essential repairs. If the fence was removed, my driveway would be extinguished and there would be an increased risk to the security of my property and the vehicles on it.”

Statements of Residents:

“To Wiltshire Council (Rights of Way & Countryside Team)

Re: Application to upgrade path no.8 Trowbridge (part) to a Byway Open to All Traffic

I have been living in my property below sinceand, to the best of my knowledge, the footpath shown on the attached plan, between points A and B, has only ever been used by pedestrians, cyclists and horse-riders. The footpath has never been used by motor vehicles and I would not wish it to be.

Signed

Dated.....

Print name

Address”

Completed and signed by 24 local residents.

Decision Report Wildlife and Countryside Act 1981 – Section 53
Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a
Byway Open to all Traffic

Appendix 6 - Legislation

- 1.1. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies in the determination of this application:

“As regards every definitive map and statement the Surveying Authority shall-

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”

- 1.2. The event referred to in subsection 2, (as above), relevant to this case, is:

“(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

...(ii) 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...”

- 1.3. Section 53(5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”

1.4. Schedule 14 of the Wildlife and Countryside Act 1981, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*
 - (a) *a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*
 - (b) *copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”*

The prescribed scale is included within “The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12, which state that “A definitive map shall be on a scale of not less than 1/25,000.”

1.5. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

“(1) Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(1A) Subsection (1) –

- (a) *Is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but*
- (b) *Applies in relation to the dedication of a restricted byway by virtue of use for mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.*

- (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) *Where the owner of the land over which any way as aforesaid passes-*
(a) *has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
(b) *has maintained the notice after the 1st January 1934, or any later date on which it was erected,*
the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*
(a) *a map of the land and*
(b) *a statement indicating what ways (if any) over the land he admits to having been dedicated as highways:*

and, in any case in which such deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –

- (i) within the relevant number of years from the date of the deposit, or*
- (ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section,*

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(6A) Where the land is in England-

- (a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,*
- (b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and*
- (c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years...*

(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).

(7) For the purpose of the foregoing provisions of this section, 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5), (6), (6C) and (13) above 'the appropriate council' means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsections (6),

(6C) and (13)) is situated or, where the land is situated in the City, the Common Council.

(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act..."

Decision Report
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Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway
Open to All Traffic

Appendix 7 – Historical Evidence Summary

Each document is listed according to the evidential weighting awarded to that document (please see paragraph 9.2 of main report):

Document	Trowbridge Inclosure Award (E/A 101)
Date	1816
Relevant Documents	Inclosure Award Inclosure Award Map – <i>“Hilperton and Trowbridge Inclosure. The Map or Plan referred to by my Award. Y Sturge”</i>
Size / Scale	Map: Scale of Chains 22 Yards each = 4 Chains to 1 Inch
Evidential weighting	A
Significance	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the Manor, were redistributed amongst people having rights of common. By the 18th Century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties. Therefore, the larger landowners who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence where they arise from Acts of Parliament. Prior to 1801 Inclosure was dealt with by local acts for specific areas, each with its own terms and conditions. After 1801 the Inclosure Consolidation Act, <i>“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”</i> provided standard conditions for the Inclosure process, although each inclosure still required a local authorising Act alongside it which could vary the rules. The Acts gave the Inclosure Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private, within the parish.</p> <p>Weight can be given to routes included within Inclosure Awards as landowners had a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure</p>

	<p>process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>One of the main purposes of the Inclosure Award was to record highways.</p>
<p>Conclusion</p>	<p>That part of Path no.8 Trowbridge (Church Lane), subject to the application, is recorded on the Award Map by double broken lines, however, it is not awarded and appears to be part of an old inclosure. It is therefore not possible to determine the status of this route where it is not awarded. The adjoining route which commences at what is now the junction with Acorn Meadow, (at the northern end of that section of Path no.8 subject to the application), leading north-west, is awarded as "Private Carriage Road" No.39. The description of this way within the award is as follows:</p> <p>No.39 <i>"One other private Carriage Road twenty feet wide Numbered 39 on the said Map leading along Quar Lane to a Gate at the Northward end thereof for the use of the owners and occupiers for the time being of the old Inclosures and allotments adjoining the said Road or to which the same leads."</i></p> <p>The adjoining route leading north-east from no.39 is numbered 36 and is described as:</p> <p>No.36 <i>"One other private Carriage Road twenty feet wide numbered 36 on the said Map leading from the said Trowbridge and Frome Turnpike Road through Studley Green and the allotment No.197 to Quar Lane For the use of the owners and occupiers for the time being of the homesteads old inclosures and allotments adjoining the said Road or to which the same leads."</i></p> <p>The map shows that 36 leads through allotment 197, with the inscription "197" over the top of the lane, i.e. as part of that land.</p> <p>With regard to the maintenance of route 39 adjoining Church Lane, the Award sets out the following:</p> <p><i>"And the said Commissioners taking into consideration the charges and Expenses which may be incurred by the necessary repairs of the several private Carriage Roads, footways and Bridleways hereinbefore set out and appointed Doth hereby order and direct that ... The Road No.39 by Edward Horlock Mortimer in respect of the allotment No.198..."</i></p> <p>Allotments 196 and 198 to Edward Horlock and 197 and 199 to Elizabeth Mortimer, which adjoin route no's 36 and 39, refer to the road in the description of the allotments:</p>

“Unto Edward Horlock Mortimer of Trowbridge aforesaid Esquire the Six Several pieces of Land next hereinafter mentioned all situate within the Tything of Studley (that is to say)... One other piece of Land situate near Studley Green Containing thirty three perches Numbered 196 on the said Map bounded southward by the Road no.36 and on other parts by Old Inclosures of the said Edward Horlock Mortimer.”

“No.198 All the herbage arising and growing and the sole right of Stopping and feeding in Quar Lane containing one acre one Rood and 34 Perches Numbered 198 on the said Map Subject to the Road No.39 and to such other Roads as have been heretofore used or exercised through and over the Land.”

“Unto Elizabeth Mortimer of Trowbridge aforesaid widow the three several pieces of Land next hereinafter mentioned all situate within the said Tything of Studley (that is to say)...”

“And all the herbage arising and growing and the sole right of Stopping and feeding in the Lane leading from Studley Green to Quar Lane containing three Roods and eleven perches Numbered 197 of the said Map subject to the Road no.36 and to the south other Roads as have been herebefore used and existed through and over the same.”

“No.199 One other Piece of Land situate in Quar Lane containing One Rood and three perches Numbered 199 on the said Map bounded Eastward by the Road No.39 and on the other parts by Old Inclosures.”

This Inclosure Award dated 1816, stems from a local Act of Parliament: *“An Act for inclosing Lands in the Parishes of Hilperton and Trowbridge, in the County of Wilts”* 12th May 1815 (local act) and the 1801 Inclosure Consolidation Act *“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”*.

The local Act contains the following instructions to the Commissioners regarding the stopping up and alterations of roads:

“XIII. And be it further enacted, That it shall be lawful for the said Commissioner, with the Concurrence and Order of Two Justices of the Peace for the County of Wilts, (in Manner, and subject to Appeal, as in the said recited Act is mentioned), such Justices being respectively uninterested in the said Open Common, and Parcels and Strips of Commonable and Waste Lands, to stop up and discontinue any of the Public Roads, Ways or Footpaths,

within the said Parishes, or either of them, which shall be deemed unnecessary, except Turnpike Roads, and to widen, turn, or alter any of such Roads, Ways or Footpaths, as shall be deemed proper to be widened, turned or altered; and all such Public Roads as shall be stopped up or discontinued shall be deemed Part of the Lands hereby intended to be divided, allotted and inclosed, and shall be allotted to such of the Proprietors of the adjoining Lands as the said Commissioner shall think fit; and that no Person shall after the Execution of the Award turn or put, or caused to be turned or put, any Horses, Sheep, Swine, Lambs, or any other Cattle whatsoever, into any of the Roads or Ways within the said Parishes of Hilperton and Trowbridge, or either of them.”

The Consolidation Act of 1801 contains powers for the Commissioners to set out and appoint public highways:

“Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the inspection of all Persons concerned; as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any person who may be injured or aggrieved by the setting out of such roads to attend; and if any

such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgment upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the Case may require: Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice aforesaid.

And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road...and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Parts of the same as shall be been previously made...”

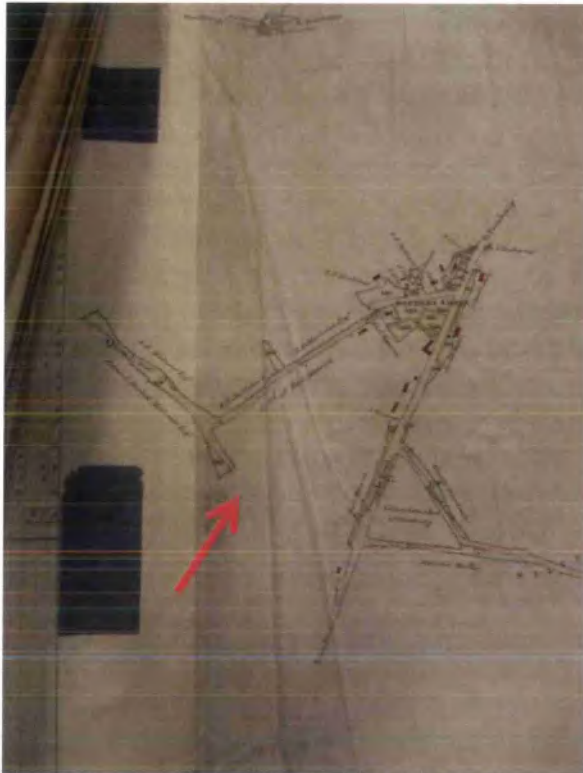
“And be it further enacted, That after such publick and private Roads and Ways have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which not be set out as aforesaid, shall for ever be stopped up and extinguished, and shall be deemed as taken as Part of the Lands and Grounds to be

divided, allotted and inclosed, and shall be divided, allotted an enclosed accordingly; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that purpose on ten Day Notice, be first has and obtained...

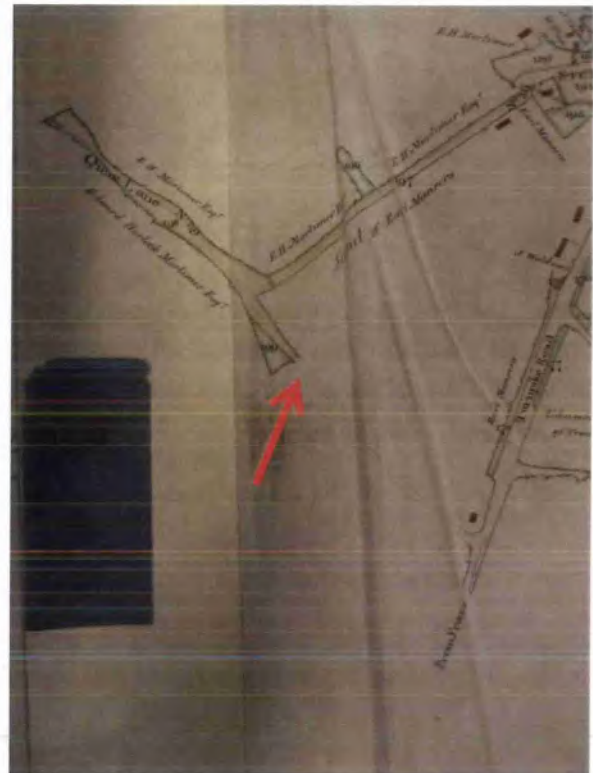
And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of Roads, Ways and Footpaths...set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions and Determinations, as the said Commissioners shall think necessary, proper, or beneficial to the Parties; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End of that Recourse may be has thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid; and a Copy of the said Award, or any part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be

paid than Two-pence for every Sheet of seventy-two Words; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods and Perches, together with the names of the respective Proprietors at the Time of such Division and Allotments; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.”

In conclusion, although the Inclosure Award does not provide direct evidence of the status of the route, the adjoining route leading north-westwards is a private carriage road, for use of the owners and occupiers of the land, which does not support “public” vehicular rights over that section of the route. If the application route does carry public vehicular rights, the Inclosure Award suggests that that right would cease at what is now the junction with Acorn Meadows and become a private vehicular right. It is more likely that Church Lane does not carry public vehicular rights, where users would need to return along the same route which they had used where they could not continue north along the private carriage road. This also supports the user evidence of vehicular use of Church Lane being for access to property only, which does not qualify as “public” vehicular use.



Trowbridge Inclosure Award (1816)



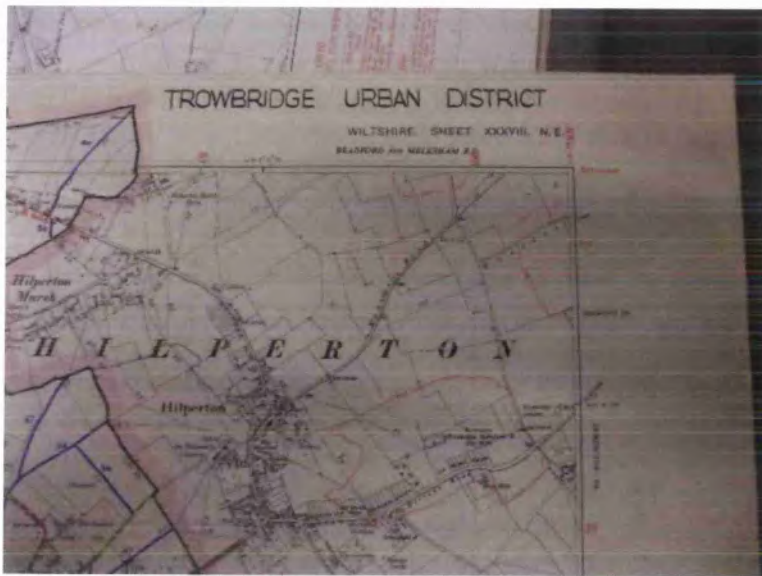
Trowbridge Inclosure Award (1816)

Document	Definitive Map
Date	1949
Relevant Documents	Claim map Claim record card Provisional Map Definitive Map
Size / Scale	6 inches to 1 mile
Evidential weighting	A
Significance	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map.</p> <p>Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey Maps to all Parish, Borough, Town and City Councils, who surveyed and recorded what they considered to be public rights of way within their areas, with an accompanying description of each path.</p> <p>The local Councils were required to convene a meeting at which the public rights of way information to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and</p>

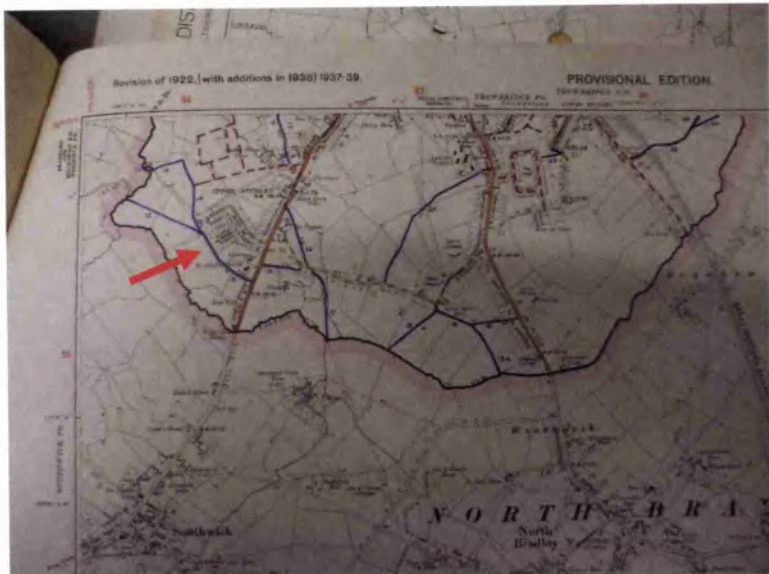
	<p>statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the local Council's input into the definitive map process was issued with Circular no.81/1950 from the Ministry of Town and Country Planning – <i>“Surveys and Maps of Public Rights of Way for the purposes of PART IV of the National Parks and Access to the Countryside Act, 1949 Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Council Association and approved by the MINISTRY OF TOWN AND COUNTRY PLANNING”</i>. The Planning Inspectorates “Definitive Map Orders: Consistency Guidelines” state that the legal “presumption of regularity” applies, i.e. unless otherwise demonstrated, it should be assumed that local Council's received this guidance and complied with it in undertaking their survey and claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
<p>Conclusion</p>	<p>Church Lane is claimed as a footpath leading <i>“From Whiterow Hill, Frome Road, north-westerly”</i>. In the definitive statement this is changed to <i>“F.P. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west to the junction of paths Nos. 9 and 12.”</i> Approximate Length <i>“330 yards”</i>. The observations on the claim record card include <i>“Lane from Frome Road just beyond Church & School – running north-westerly – hard cinder cart road 10ft. + wide for 150 yards then deteriorated into rough deeply rutted cart track in bad condition – ends (320 yards approx..) in dilapidated field gate.”</i> It is also worth considering the comments for Footpath no's 9 and 12 which junction with Path no.8. Footpath no.9 is described as <i>“Continuation of No.8 from junction of No.8 & No,12”</i>, Observations: <i>“Continuing No.8 along edge of field – ground so badly cut up by cattle and farm vehicles that footpath indistinguishable – ends in dilapidated field gate at junction with No.10”</i>. Footpath no.12 is described as <i>“Branch at junction of No.8 and No.9 north westerly into Warminster and Westbury Rural District.”</i> Observations: <i>“Footpath only slightly discernible from junction of No.8 & No.9 – westerly to stream forming Urban District Boundary – across two fields through gap in dividing hedge – no means of crossing stream.”</i></p> <p>Note that use of Path no.9 by <i>“cattle and farm vehicles”</i>, has badly damaged the surface of the route and this identified</p>

use is consistent with the continuation of Church Lane as a private carriage road as set out in the Inclosure Award, for the purposes of access only to land and property, rather than use by the public with vehicles as a through route.

The provisional definitive map records the route as a Footpath, there are no objections to this and the definitive map subsequently records the route as a Footpath, (please note that the routes of paths 9, 10 and 11 are amended on the definitive map to take into account an order made by the Minister of Housing and Local Government under Section 3 of the Acquisition of Land Act 1946, dated 27th July 1953, making provision for the extinguishment of paths at Studley Green Housing Estate, Trowbridge and making provision for alternative routes).



Trowbridge Urban District Definitive Map (Claim)



Trowbridge Urban District Definitive Map (Claim)

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949		PATH No. 8	
PUBLIC RIGHT OF WAY.		TROWBRIDGE URBAN DISTRICT COUNCIL	
NAME OR SITUATION AND DESCRIPTION <small>(FOOTPATH, BRIDGEWAY, ETC.)</small> FROM WILKINSON HILL, WINDY BANK, NORTH-SOUTHGATE.	LENGTH 110 yds	WIDTH	
	WHETHER FENCED OR OPEN		
	APPROXIMATE PERIOD OF UNINTERRUPTED USE —		
	YEARS FROM		
	WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL —		
NATURE OF SURFACE	DATE OF REPAIR		
STILES GATES FOOTBRIDGES STEPPING STONES	WHETHER SUBJECT TO PLOUGHING		
WHETHER DIRECTION POSTS ON WAY <small>(GIVE PARTICULARS)</small>	DATE OF SURVEY		
	WHETHER SHOWN ON UNDERMENTIONED MAPS —		
	ORDNANCE 6" SHEET, REF.		
	INCLOSURE AWARD		
OBSERVATIONS Lane from Stone Road just beyond Church & school - running north-south - best stiles over road 10ft. wide for 100 yards then disappears into rough deeply rutted wet track in bad condition - stile (1740, 1741, 1742) is dilapidated field gate.	LANDOWNER'S MAP (DEPOSITED UNDER SECTION 116 OF THE RIGHTS OF WAY ACT, 1931)		
	OTHER MAPS —		

Trowbridge Urban District claim record card – Footpath no.8

Decision Report – Wildlife and Countryside Act 1981 Section 53
Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1948
PUBLIC RIGHT OF WAY. SECTION OF *WILTSHIRE COUNTY DISTRICT* PART IV.

NAME OR LOCATION AND DESCRIPTION <i>Continuation of No. 8 from District of No. 8 & No. 12.</i>	LENGTH <i>2.00 by 2.00</i> WIDTH
NATURE OF SURFACE	WHETHER FENCED OR OPEN
STILES, GATES, FOOTBRIDGES, STEPPING STONES	APPROXIMATE PERIOD OF UNINTERRUPTED USE — YEARS FROM
WHETHER DIRECTION POSTS ON WAY (AND EXPLANATION)	WHETHER SURVEYED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL
OBSERVATIONS	DATE OF SURVEY
	WHETHER SUBJECT TO ALLOCATION
	DATE OF SURVEY
	WHETHER SHOWN ON DISCREETIONAL MAPS — DISTRICT'S SHEET, 191
	ENCLOSURE AWARDED
	LANDOWNER'S MAP COMPILED UNDER SECTION 105 OF THE ACT OF 1948
	OTHER MAPS —

Trowbridge Urban District claim record card – Footpath no.9

WILTSHIRE COUNTY DISTRICT
TROWBRIDGE URBAN DISTRICT
 NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1948. PART IV.
 SURVEY OF RIGHTS OF WAY
 STATEMENT REQUIRED BY SECTION 10 TO BE ANNEXED TO A DEFINITIVE MAP

The Wiltshire County Council as Surveying Authority have carried out a survey of land in their area in respect of the above mentioned District ~~areas~~ to ascertain what public rights of way have been alleged to exist, and after complying with the procedure laid down in sections 27, 28 and 29 of the Act relating to the preparation and deposit of Draft and Provisional Maps and the dealing with representations, objections, appeals and disputes, have prepared a Definitive Map and statement for the above mentioned district ~~areas~~ in their area.

The relevant date for the purposes of sections 27(4) and 29(2) is the 1st day of May, 1953, and in the opinion of the Surveying Authority there subsisted on such date the public rights of way described below which are shown in the following manner on the Definitive Rights of Way Map annexed hereto:-

Footpaths	by a purple line
bridle roads	by a green line
roads used as public paths	by a broken green line

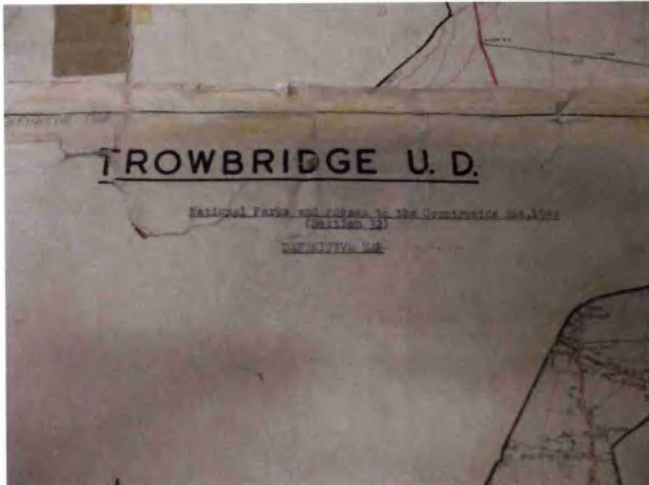
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Definitive Statement Trowbridge Urban District 1953

Path No.	Description of Path	Approximate Length	Width	Limitation on Public Rights
7.	F.P. From the junction of paths Nos. 5 and 6 leading north-east to the path between the Council House and house to Pitman Avenue.	230 yards		
8.	F.P. From Frone Road at Whitrow Hill, south of the Church and School, leading north-west to the junction of paths Nos. 9 and 12.	330 yards		
9.	F.P. From the junction of paths Nos. 8 and 12 leading north-east to its junction with path No. 10.	70 yards		
10.	F.P. From its junction with path No. 9 leading north for 205 yards then west for 180 yards to the Stretfield Parish boundary.	485 yards		
12.	F.P. From the junction of paths Nos. 8 and 9 leading north-west to the Southwick Parish boundary.	400 yards		
13.	F.P. From Pitman Avenue leading north-east past the School to Gloucester Road.	150 yards		
14.	F.P. From Frone Road, south of the Black Horse Public House, Upper Stodley, leading south-east to Silver Street Lane, path No. 15.	300 yards		

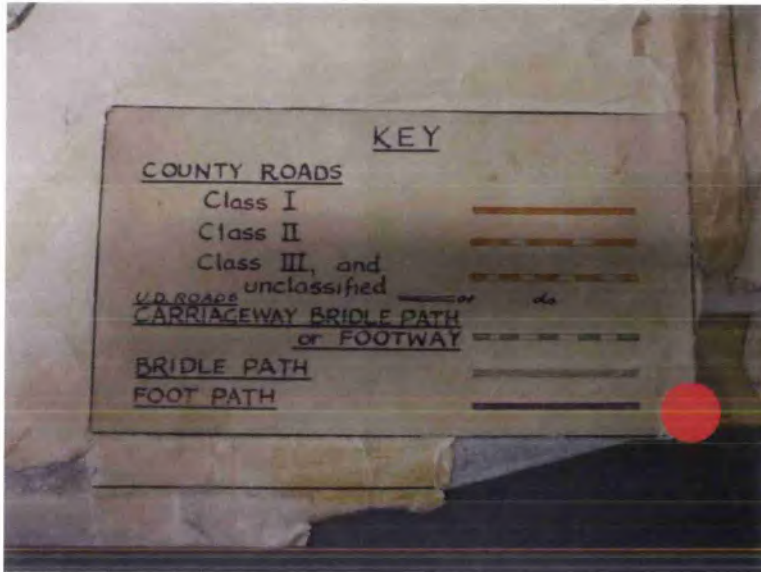
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Definitive Statement Trowbridge Urban District 1953



Trowbridge Urban District Definitive Map 1953

Decision Report – Wildlife and Countryside Act 1981 Section 53
 Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic



Trowbridge Urban District Definitive Map 1953



Trowbridge Urban District Definitive Map 1953

Document	Trowbridge Highways Takeover Map
Date	c.1974
Relevant Documents	Takeover Map New Map (on which changes have been recorded)
Size / Scale	Takeover Map - OS National Grid Series map extract drawn at 1:2,500 on which highway information is recorded.
Evidential weighting	B
Significance	Following the Local Government Act 1972, reforming local government in England and Wales on 1 st April 1974, Wiltshire County Council took on responsibility for roads

	<p>(other than main roads), in urban districts, including Trowbridge Borough as part of the reorganisation, (responsibility for main roads already lay with the County Council and responsibility for rural roads was transferred from the Rural District Councils to the County Council under Section 29 of the Local Government Act 1929). There was no legal requirement for authorities to produce a takeover map, however, takeover maps were produced in Wiltshire and comprised of routes for which the urban district Surveyors had either a record or memory of public maintenance.</p>
<p>Conclusion</p>	<p>The route of Church Lane is consistently shown on these plans (3 versions) as a footpath, with sections of adopted highway at the central section for the development of Churchfields and at its northern end, Acorn Meadows. Church Lane in full has never become adopted highway and this suggests that there was no record of public maintenance of Church Lane as a public vehicular highway for the County Council to take on responsibility, for most of the route, as anything other than a footpath.</p>



Highways Takeover Map c.1974