

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement**  
**Modification Order 2021**

**Ref: ROW/3295476**

**OMA Written Representations – 17<sup>th</sup> November 2023**

Please find below OMA replies to matters raised in Statements of Case (SoC's) submitted regarding The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.

**David Vigar – Wiltshire Councillor for Trowbridge Grove Ward**

Councillor Vigar is supportive of the Order to upgrade the route of Footpath no.8 Trowbridge (Church Lane), to a Bridleway, on the understanding that the current barrier at the northern end of the path would be replaced with a suitable barrier, if the Order is confirmed and the route successfully upgraded at full width.

In the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981, the OMA and the Inspector appointed on behalf of the Secretary of State, respectively, may consider only the evidence in order to correctly record the full extent of public rights within the definitive map and statement. The Order does not seek to add “new” public rights, rather to record those which already exist, being incorrectly recorded in the definitive map and statement.

The objections to the Order do not challenge the Bridleway status set out within the Order, or present evidence which would lead the OMA to amend its view on the evidence, in fact many residents agreed that the status of Bridleway reflected their own knowledge of use of the way on foot, on horseback and with bicycles, and some residents considered that this use would just continue and that the Order was not necessary. However, there were a number of objections regarding concerns over the “opening up” of Church Lane as a cut through for vehicles between the Studley Green Estate and Frome Road, Trowbridge, if the Order was successful and the current barrier removed to make the full width of the route available, as set out in the Order, i.e. the proposed width varying between 7m and 13m.

The current barrier at the northern end of Path no.8 Trowbridge, was erected under powers available to the Highway Authority at Section 66 of the Highways Act 1980, to provide and maintain in a footpath or bridleway, such barriers; posts; rails or fences as they think necessary for the purposes of safeguarding persons using the highway. In the historical evidence considered by the OMA, the issue of vehicles using Church Lane as a through route between the Studley Green Estate and Frome Road, has long been a concern, with barriers erected accordingly, in summary:

- i) c.1962 - one set of posts erected at the north end of Church Lane, south of the new bungalows Hillbrook and Kynance, “...to prevent through vehicular traffic using the lane.”, see Trowbridge Urban District Council Minutes (Highways Committee) 10<sup>th</sup> April 1962 (p.195 OMA SoC). The location of the posts is recorded on the OS National Grid Series maps 1968 and 1974, drawn at a scale of 1:2,500, ST 8456-8556, (p.179-181 of OMA SoC).
- ii) c.1974 - increased to 2 sets of posts across the lane in relation to the building of 22 Church Lane, see planning permission granted 12<sup>th</sup> May 1975, (para 10.12 at p.50 OMA SoC), which states that “3. *Bollards shall be placed across the extremity of the turning head...3. To prevent traffic going beyond the proper road access provided.*”
- iii) c.2011 - posts replaced by the current barrier in relation to the building of 24 and 26 Church Lane, see planning notice 2011, (para 10.16 at p.53 OMA SoC), “...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.”

Please see discussion of posts, including photographs and 1975 and 2011 planning document extracts, at paras 10.6. to 10.20. of the Decision Report dated 26<sup>th</sup> October 2020, (p.45-58 OMA SoC).

The evidence suggests that since 1962 there has been some form of barrier in place to prevent vehicular use of Church Lane as a through route. However, the historic OS maps examined show no narrowing of the Order route at its northern end, (the location of the current barrier), and therefore Officers consider that it is correct to record a width of the path varying between 7m and 13m within the Order, as per the OS mapping (p.169-181 and p.1286-1296 (TROW 23) of OMA SoC), which consistently records the route at this width.

The Wiltshire Council, Rights of Way Operations Team have confirmed that, if the Order is successful and the route of Path no.8 Trowbridge, Church Lane, is recorded as a Bridleway at full width within the Definitive Map and Statement, as a second stage to the process, they intend to replace the current barrier with an alternative barrier suitable for the full width Bridleway to prevent vehicular access, where the use of Church Lane with vehicles is a long-held concern and the Highway Authority duty to safeguard users will remain. However, the management of rights, is not a matter for consideration in the determination of the Order, but will be a matter for the Highway Authority to address if the Order is successful, at a later date.

### **Mr Francis Morland – Statement of Case 9<sup>th</sup> October 2023:**

Please note that Mr Morland did not make objections during the formal objection period at the making of the Order, he has instead made an application to Wiltshire Council, to add the whole of Church Lane (Path no.8 Trowbridge), from its junction

with Frome Road to Acorn Meadow, to its List of Streets as being a highway maintainable at the public expense (HMPE), (Wiltshire Council Highways Protocol Application).

Section 36(5) of the Highways Act 1980, states:

*“A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either-*

*(a) it was a highway before 31<sup>st</sup> August 1835; or*

*(b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense...”*

Church Lane is not included in the current List of Streets as a vehicular highway, with the exception of the adopted central section, adjacent to the entrance to Church Fields, which is included as non-principal unclassified 7m in length, (Church Fields is also included in this list as non-principal unclassified 134m in length), see current Highway Record at p.26 and p.1239-1243 (TROW 16) of OMA SoC. The Trowbridge Urban District Council (Highways and Planning Committee) minutes dated 10<sup>th</sup> June 1971 (p.210-211 OMA SoC), show that this central section of Church Lane only was adopted in 1971, (following the building of the Church Fields estate). The SoC suggests that the remainder of Church Lane should also be recorded in this manner, where it is considered that both of the conditions set out and Sections 36(5)(a) and (b) of the 1980 Act, are applicable over the Order route.

The application to add the route of Church Lane to the List of Streets is a separate matter for the Highway Authority, the Definitive Map and Statement of Public Rights of Way is not a record of maintenance liability, but a record of the extent of public rights. In the current DMMO process the extent of the public rights which exist over the way are under review and Officers have taken the view, based on the available evidence, that on the balance of probabilities, public rights do not extend beyond Bridleway. The Surveying Authority is entitled to rely upon the List of Streets and the extent of HMPE recorded, in its consideration of the DMMO application.

### **Pre-1835 Highway Evidence**

The SoC contends that the whole route of Church Lane was highway prior to 1835, the main supporting evidence submitted is the Trowbridge Inclosure Award of 1816 (p.136-143 and p.1273-1274 (TROW 19) of OMA SoC). Officers would agree that the route is recorded by double broken lines on the Inclosure Award Map, however, Officers do not agree that the route is identified in the Award as Quar Lane, but that the route of Church Lane forms part of an old inclosure. Quar Lane is an awarded route, adjoining the Order route to the north and shown coloured sienna, numbered 39 and set out as an awarded private carriage road of the width of twenty feet: *“...for the use of the owners and occupiers for the time being of the old Inclosures and*

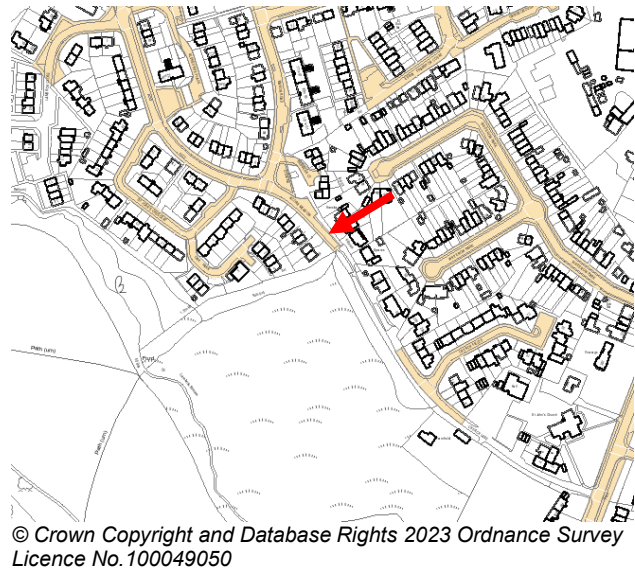
*allotments adjoining the said Road or to which the same leads...". The repair of this road is to be carried out "...by Edward Horlock Mortimer in respect of the allotment No.198..." (not the inhabitants at large).*

Officers consider that the extent of the coloured and awarded Quar Lane shown on the Inclosure Award Map, accords with the current highway record, the extent of which is now Acorn Meadow leading into Lambrok Road, i.e. excluding Church Lane, please see comparison below:

Inclosure Award Map:



Current Highway Record:



Within the Inclosure Award, the allotments numbered 196, 197, 198 and 199 mention Quar Lane in their descriptions, where they adjoin it, however, plot 199 which is also bounded on its south side against the old inclosure, which includes Church Lane, states *"...bounded Eastward by the Road No.39 and on the other parts by old inclosures..."*

Additionally Quar Lane, of which the SoC suggests the Order route forms part, is not awarded as a public carriage road, but as a "private carriage road" repairable by Edward Horlock Mortimer.

The SoC suggests that reference to the Church being present at the time of the Trowbridge Inclosure Award in 1816, (paragraph 9.4. of the OMA decision report, p.37-38 of OMA SoC), is erroneous given that St Johns Church was not built until 1852, and as such Officers are wrong to conclude that the route was not a through route for the public, perhaps being a route to serve land and the Church. However, the Wiltshire Council, Wiltshire Community History pages, state that a chapel is mentioned on this site in the early 12<sup>th</sup> century, the present Church was built in the 15<sup>th</sup> century and much rebuilt in 1862. Officers consider that the Church, (although not labelled as such, being within the old inclosures), is recorded on the 1816 Inclosure Award Map.

Officers would suggest that where the Order route is not part of the awarded lands and grounds, in this case the Inclosure Award, which would normally form important evidence of the status, route and extent of highway, is inconclusive.

The SoC also presents the Andrews and Dury's Maps of Wiltshire dated 1773 and 1810 (p.158-162 and p.1279-1285 (TROW 22) of OMA SoC), and the Old Series 1 inch OS map 1817, (p.1286 (TROW 23) of OMA SoC), in support of the existence of Church Lane as a highway prior to 1835. The maps do appear to show the Order route as part of a longer distance route, which may support the route shown on the Inclosure Award map as part of an historic route with the awarded Quar Lane. Please note that the maps included at p.1286 of the OMA SoC, are incorrectly labelled as published 14<sup>th</sup> August 1817, however, they are a later edition which records the railway, dated to the 1860's. Please find below, earlier versions of OS 1" Old Series Maps, dated to the 1830's, (both editions record the Order route in the same manner):

OS Old Series 1" Mapping:  
Sheet no.14 – 1830's



OS Old Series 1" Mapping:  
Sheet no.19 – 1830's



However, the recording of the route in this manner on the Andrews and Dury's Maps and the 1" OS mapping, is not consistent with other small scale commercial mapping which does not record Church Lane. Additionally, Ordnance Survey mapping is topographical in nature, i.e. showing features observed by the surveyor at the time of survey and public rights cannot be inferred from its recording, particularly when considered alongside the Inclosure Award evidence of Quar Lane as a private carriage road serving the adjoining allotments.

Overall Officers consider that there is insufficient documentary evidence to support the reputation of the route of Church Lane as a public highway, open to all traffic, prior to 31<sup>st</sup> August 1835.

## Post 1835 Highway Evidence

A way may also become highway where it has been subject to maintenance by the inhabitants at large of any area after 31<sup>st</sup> August 1835 and the SoC contends that:

- i) Church Lane has been maintained at the public expense from time to time after that date, including the laying of a bound tarmac surface for most of its length, and
- ii) that the adoption of Church Fields as HMPE could not have been implemented without a lawful vehicular access from another adopted highway, i.e. that part of Church Lane from Frome Road leading to Church Fields, otherwise the adoption would not have been effective and would not be effective even now.

However, the minutes and letters adduced in evidence by the Applicant and considered by the OMA (p.182-222 OMA SoC), are consistent and supportive of the continuous treatment of Church Lane as a "Private Street", i.e. a private or unadopted street which is not maintained at the public expense and over which there is no obligation on the Authority to carry out repairs, even if the public has a right of access.

For most private streets the duty to maintain them falls to the owners of the properties fronting the street. Sections 189-191 of the Highways Act 1959 set out the powers of the Street Works Authority under "The Code of 1875", to require the owners or occupiers of premises fronting a private street, to execute works in respect of the private street where it was not to the satisfaction of the Street Works Authority "...sewered, levelled, paved, metalled, flagged, channelled, made good and lighted...". The Authority had powers to execute such works if they were not undertaken, with costs recoverable from frontagers. Where new buildings were to be erected having a frontage on a private street in which the Street Works Authority had powers to require works to be executed, payments could be made under "The Advance Payments Code", (Sections 192-199 of the 1959 Act). In the Church Lane case, see evidence of charges to frontagers in respect of the new-build property at the rear of 68 Whiterow Park, having "...a frontage on to the private street known as CHURCH LANE...", under the Highways Act 1959, s.193 Notice by Street Works Authority, requiring payment of security in advance of payment of apportionment of Private Street Works Expenses, 1<sup>st</sup> July 1961, with receipt for payment received in that respect to Trowbridge Urban District Council, as the Street Works Authority, (p.187-191 of OMA SoC).

Whilst other routes in Trowbridge were being adopted as HMPE, Church Lane is never added to the List of Streets, with the remainder of the route being treated differently under the Private Street Works Programme. In the same minute which records the adoption of Church Fields as HMPE, (see Trowbridge Urban District Council minute, 10<sup>th</sup> June 1971 (Highways & Planning Committee), p.210-211 OMA SoC), the remainder of Church Lane is treated separately and subject to the Private Street Works Programme:

**“867. PRIVATE STREET WORKS PROGRAMME**

*The Engineer and Surveyor presented a schedule showing a suggested order of priority, the approximate estimated costs and construction periods for the private streets programme 1972/1975.*

*It was RESOLVED that:-*

*(a) The schedule for the period 1972/73 to allow for the making up of Holbrook Lane, Silver Street Lane, Church Lane, and River Way be approved in principle ...”*

Priority appears to have been given to Church Lane where the Church Fields development was completed and the making up of the unadopted section of Church Lane from Church Fields to Frome Road, that we see today, is likely to have been carried out as part of this programme.

The issue of adopting only a short, central section of Church Lane at Church Fields, was raised at the time of its adoption, in correspondence from Mr A Philips, (p.209 OMA SoC), who wrote to Wiltshire County Council to complain that planning permission had been granted by the Urban District Council for houses in Church Fields, without access onto a public highway and onto the unmade track (Church Lane), which was not good planning practice. The County Council agreed that the Urban District Council had granted planning permission onto a “private street” and that the making up of Church Lane was a matter for the Urban District Council as the Street Works Authority.

Wiltshire County Council kept a list of private streets until 1980, i.e. which it considered for making up to adoptable standard, although very few were undertaken due to both the cost of construction and administrative procedures for recovering these costs from frontagers. In the Trowbridge case, this is explained in the letter from Wiltshire County Council to BLB Solicitors, dated 12<sup>th</sup> April 1991, (p.217-219 OMA SoC). Church Lane was never adopted in full and monies secured through the Advance Payments Code, were later refunded (p.216-217 OMA SoC).

Officers consider that the undertaking of works under the Private Street Works Programme, for which contributions were made by frontagers, are not supportive of public maintenance of the route since 1835. Wiltshire County Council or its predecessors may have laid tarmac on that section of the route between Church Fields and Frome Road, however, this is of itself not sufficient evidence to support public vehicular rights over the Order route in the DMMO application test, as set out at Sections 53(c)(ii) and (iii) of the Wildlife and Countryside Act 1953.

**Conclusion:**

Officers consider that there is not sufficient evidence provided in the SoC’s, to lead the OMA to take an alternative view of the evidence to that provided in the OMA SoC, and Officers respectfully invite the Inspector to confirm The Wiltshire Council

Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021, as made.

Janice Green  
Senior Definitive Map Officer  
Wiltshire Council

17<sup>th</sup> November 2023