

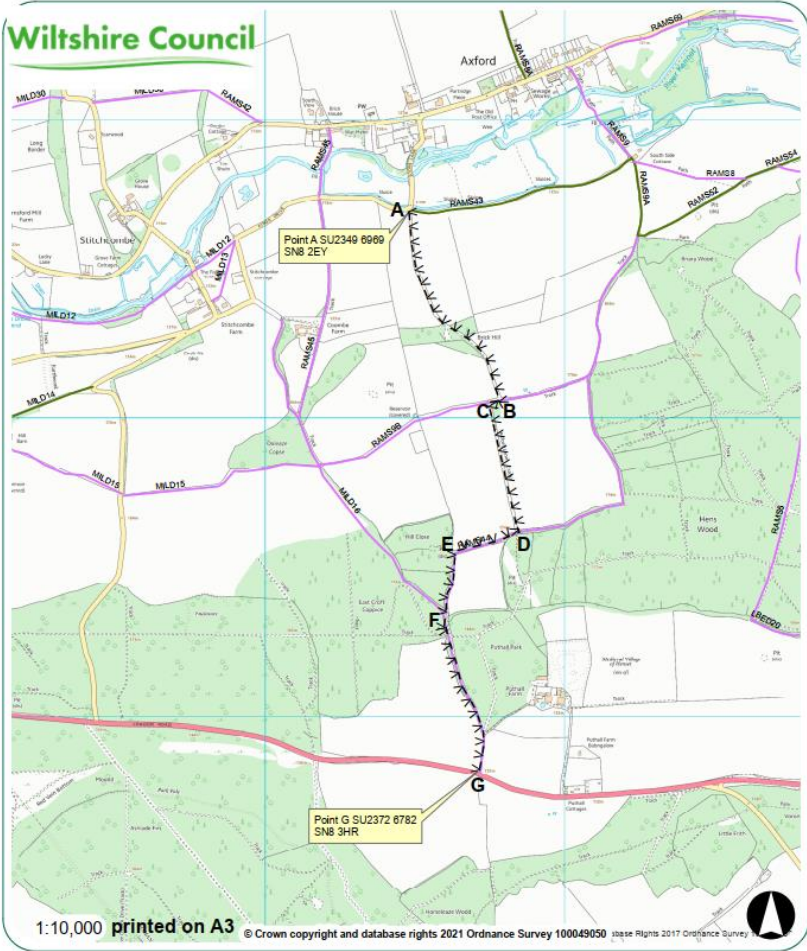
Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Ramsbury 9B, 44, 71 &
72 and Mildenhall 16 Definitive Map and
Statement Modification Order 2022

Wiltshire Council's Duty

- It is the council's duty under s.53 of the 1981 Act to keep the definitive map and statement under continual review and to change it by legal order where evidence shows it is in error.
- The legal test to confirm the order is that it is shown on the balance of probability – that is, that something is more likely than not.
- Routes being added to the definitive map for the first time have a lower legal test (that a reasonable allegation is made) to make the order but still have to meet the balance of probability test to confirm it.
- Any order so made must be duly advertised and if objections are made, or, if the order requires modification, Wiltshire Council must forward the order to the Secretary of State for Environment, Food and Rural Affairs for determination.
- The order before the committee today has attracted two objections that have not been withdrawn and also, owing to an error, the order requires modification. The order is therefore before this committee who must consider whether to support the order or object to the order when it is sent to the Secretary of State.

Order Plan – adds a restricted byway from Axford, Ramsbury south to the A4.



The legal tests

- Does the evidence show that the way is a public highway?
- Is there any evidence that the public highway has been stopped up?
- What is the extent (width) of the public highway right?
- What is the status of the public highway? Is it a footpath, bridleway, restricted byway or byway open to all traffic?
- Does the legal maxim 'once a highway, always a highway' apply?

What can't be taken into consideration for making an order

- The environment or agriculture or forestry
- Desirability or need, criminal acts
- Duplication or cost
- Risk, public safety, the applicant

The evidence

- Inclosure agreement dated 1727 recorded a through route that was likely to have been pre-existing
- Detailed estate plan of 1717 recorded the southern end as “Axford Lane”
- Shown in the same manner as local roads in 18th century plans (Kennet and Avon Canal 1793 and Andrews and Dury’s Map of Wiltshire 1773)
- Inland Revenue’s survey for the commutation of tithes in 1842 records the route as a whole with the southern ends annotated with destinations (“To Bedwyn” “From Bedwyn”)
- Highway Board records from 1865 and subsequent highway authority records from 1905, 1906 and 1929 record the route a highway maintainable by the public at large
- Railway plans deposited with the Clerk of the Peace and Parliament dating from 1844 and 1845 record the route as a public road in the control of the Surveyor of Highways
- A large number of commercial maps from 1773 onwards record the route as ‘cross road’, a ‘parochial road’ etc
- Ordnance Survey records show the preservation of a wide route represented in the manner of other highways

The effect of the Natural Environment and Rural Communities Act 2006 (NERCA 2006)

- Amongst other things, this Act had the effect of extinguishing public rights for mechanically propelled vehicles over highways that were not recorded in the definitive map as byways open to all traffic (BOATS), subject to some exceptions.
- The Act came into force on 2nd May 2006 and this is an important date.
- In considering evidence for historic highways the Council must first consider whether the route was a vehicular highway (i.e. a road) before 2nd May 2006, and then, if it was, consider whether any of the exceptions to extinguishment of the mechanically propelled vehicular (MPV) right were extinguished.
- In this case officers consider the route A to G is a historic vehicular highway (a road) but that the public right to drive an MPV was extinguished by the 2006 Act.
- Hence the highest status the route can have is that of a **restricted byway**, that is a right for the public to pass and re-pass on foot, on a bicycle, on or leading a horse or driving a horse drawn vehicle.

Widths

- The width of the restricted byway should be based on historic evidence.
- In this case the majority of the route was formerly laid out by agreement in 1727 and from A to F these widths have been retained. They are largely apparent on the ground today as adjacent land boundaries have been maintained thus protecting the highway width.
- The section F to G, in the parish of Mildenhall, was not laid out by the 1727 agreement and follows its ancient (1717) course.
- A width for this section, which has the character of a sunken lane, eroded from the surrounding land, has been taken from Ordnance Survey mapping of the late 19th century. This being the earliest and most accurate mapping available.
- An error has been made in the order which requires this width (F to G) to be altered from the width stated in the statement to the one in the Committee Report.

Comments on the objections

- No evidence has been adduced by objectors that is relevant to the making of the order.
- Objectors have concerns relating to the recorded width and how the council may maintain that width.
- These concerns are understood as the margins of these highways are likely to be biodiverse and provide good habitat for a number of species, however, they are not matters that can be taken into account when recording the public right.
- The management of the route itself is another matter and concerns relating to habitat, fauna and flora are best raised once the highway is recorded in the definitive map and statement.
- Concerns have also been raised about unlawful use by MPVs. In the event this occurs the Council may act to prevent such use using powers it has under the Highways Act 1980

Proposal

That THE WILTSHIRE COUNCIL RAMSBURY 9B, 44, 71 & 72 AND MILDENHALL 16 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2023 is confirmed with the Order modified as follows with regards to widths:

Part 1 of Schedule:

Mildenhall 16 (part) “Width from F to G where bounded by two solid lines and ranging from 4.7 metres to 6.0 metres on the Ordnance Survey County Series 1:2500 map Sheet 29.15 printed in 1886 additionally where not bounded by solid lines on both sides width to be defined by the brown track colouring in Wiltshire Council’s highway record.

Part 2 of Schedule:

Mildenhall 16 Width modified to “Width 0.3 to 2.4 metres except for Restricted Byway Section where ranging from 4.7 metres to 6.0 metres as delineated by two solid lines on the Ordnance Survey County Series 1:2500 map Sheet 29.15 printed in 1886 and where not bounded by two solid lines as defined by the brown track colouring in Wiltshire Council’s highway record”.