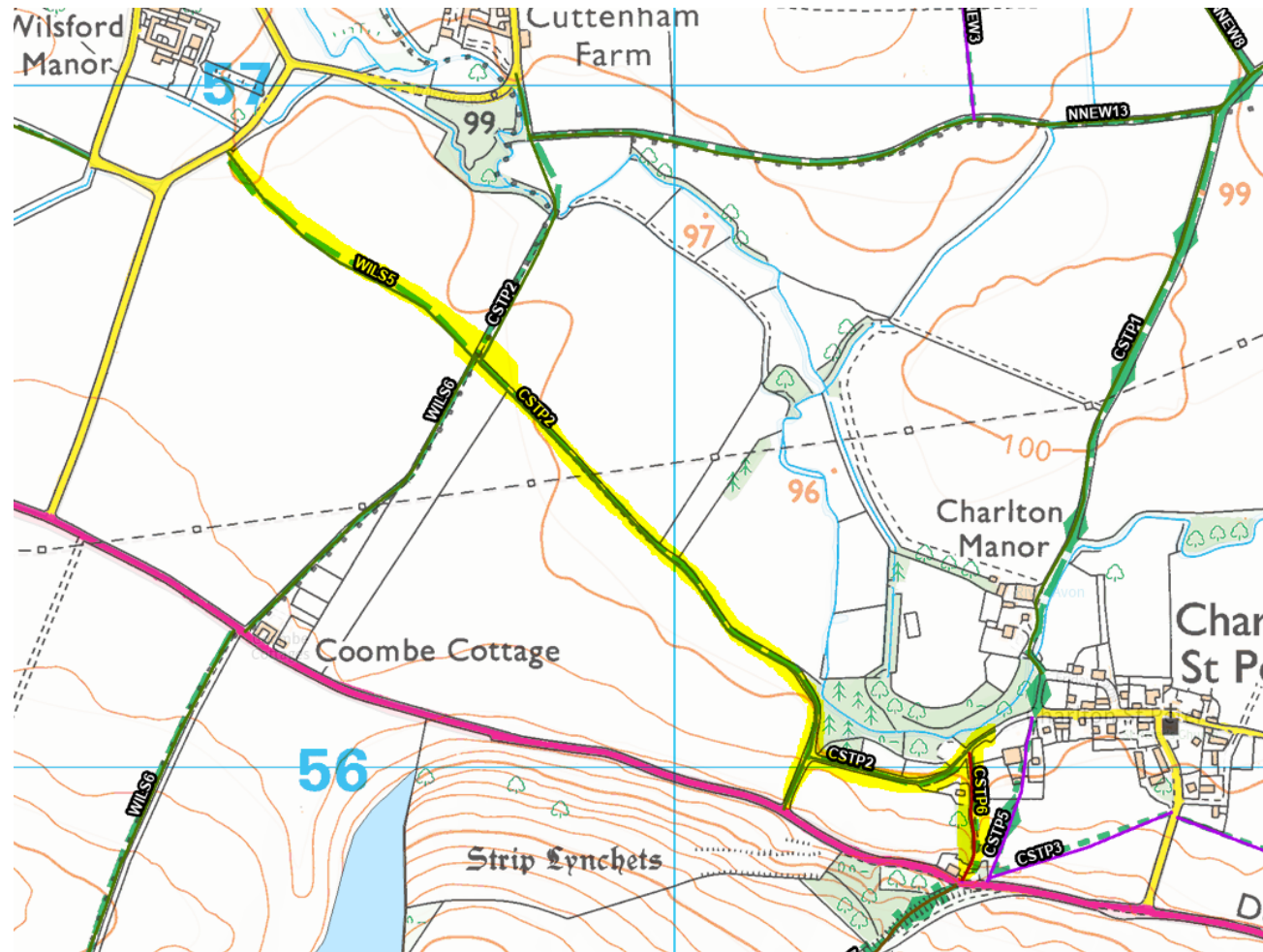


EASTERN AREA PLANNING COMMITTEE
22nd June 2023 15:00

Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Charlton St. Peter 2, 6
and Wilsford 5 Definitive Map and Statement
Modification Order 2023

Application Routes (highlighted yellow)



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.
- 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- The order before the committee today has attracted four objections that have not been withdrawn. The order is therefore before this committee who must consider Wiltshire Council's recommendation to the order, to either support the order, take a neutral stance, amend the order or to not confirm the order when it is sent to the Secretary of State.

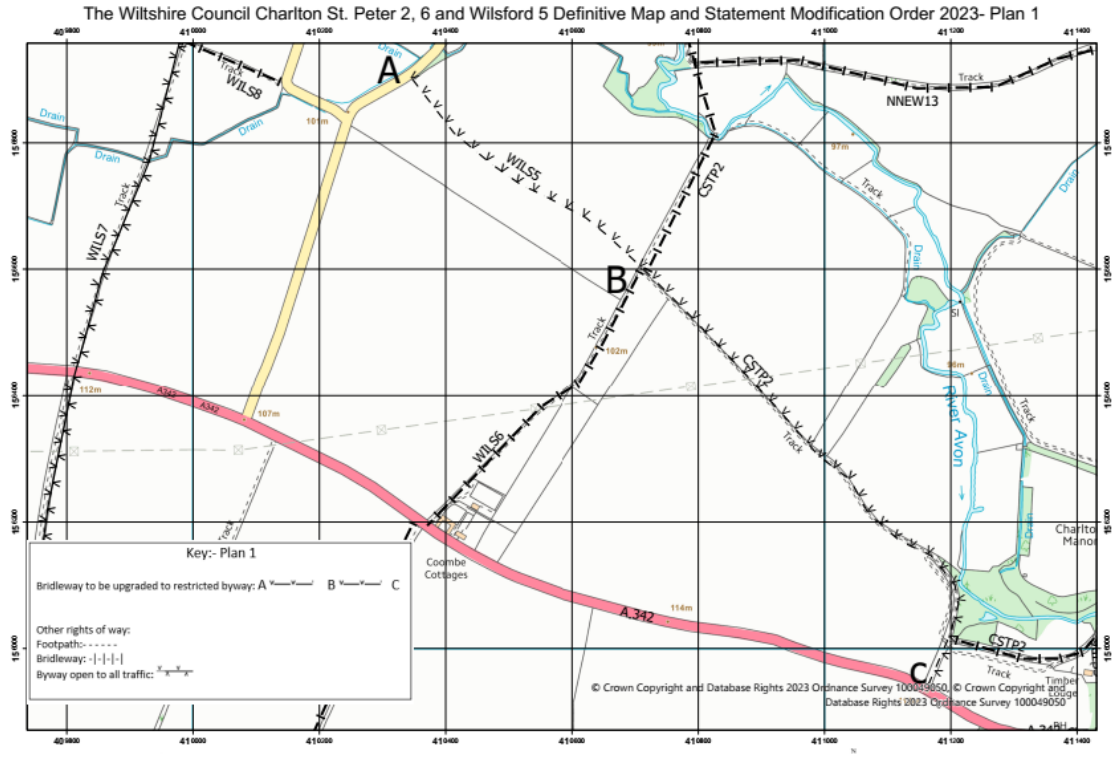
The legal tests

- 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

Order Plans



The evidence for CSTP6

- Quarter session rolls dated 1739 describe the route as being named 'White Lane' a 'common highway for all persons, horses, cattle, carts and carriages'
- Inclosure award dated 1780, route referred to as White Lane, opposite an awarded public road (now byway CSTP7). CSTP6 (White Lane) likely a pre inclosure road.
- Shown in the same manner as local roads in 18th century plans (Andrews and Dury's Map of Wiltshire 1773)
- Detailed Parish Plan of 1804 labels route as White Lane and shown in manner of other roads.
- Tithe map of 1841 shows route in manner of a public road.
- 1866 Railway plans dating from 1866 record the route as a public highway in the control of the Devizes Highway Board and wardens of parish.
- A number of commercial maps from early 19th century shows, including Ordnance Survey records show the route as a minor, cross or parochial road.
- Evidence shows from late 19th century it is likely the central section of the route was accessible only on foot.

The evidence for CSTP2 (part) and WILS5 (A- C on order plan)

- Section of route in Charlton awarded as a public road and named as “Wilsford Road” in the 1780 Charlton St. Peter inclosure award.
- 1804 plan of Charlton shows route in parish in manner of a road and named Wilsford Road.
- 1808 Wilsford Inclosure records route as a private carriage road and drift way and a public footway.
- 1773 and early 1800 OS maps show route in manner of a road.
- 1841 Charlton tithe map and 1844 Wilsford tithe map show route in manner of surrounding roads.
- 1845 Direct Western Railway Plans record section in Wilsford as a public highway , in the manner of other roads.
- 1846 survey of land shows route in Wilsford in manner of other roads.
- 1866 railway plans record section in Charlton as in private ownership.
- Records show from circa 1900 route was likely used and considered as a bridleway.

Other evidence

- The central section of CSTP2 lacks evidence to upgrade it from its current bridleway status.
- The section of CSTP2 linking from the U/C 8044 to CSTP6 is likely part of the historic White Lane and has similar evidence to CSTP6 and should be upgraded as such. Evidence shows this section was likely considered part of the road network until 1930.

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 routes to be upgraded as historic vehicular highways (roads) but that the public right to drive an MPV was extinguished by the 2006 Act.
- Hence the highest status the routes 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 byways should be based on historic evidence.
- Widths are clearly set out in the 1780 (Charlton) and 1808 (Wilsford) inclosure awards.
- The section B – C of the order route is set out as ‘ not less than 40 ft’ and as such is recorded as 40ft (12.2m). The continuation of the route in Wilsford is set out as 20ft (6.1m) and rights have more than likely been acquired over that set out width.
- No documentary written evidence has been found relating to other widths and as such has been taken from Ordnance Survey mapping of the late 19th century. This being the earliest and most accurate mapping available. Where this is not possible a general width for restricted byways of 5 metres is recorded.
- For CSTP6 this results in a width of between 5 and 9 metres taken from late 19th century mapping and a 5m width for the central section.
- For CSTP2 linking to the road this is taken as 7 – 14 metres from 19th century mapping.

Comments on the objections

- No evidence has been adduced by objectors that has challenged the documentary evidence relevant to the making and subsequent confirmation of the order.
- Objectors have concerns relating to safety matters which can be addressed if and when the rights are recorded. They are not matters which are material to this order.
- Concerns have been raised as to the necessity of the widths and change of status and widths. Officers have made a decision on these matters based on the available evidence and the balance of probabilities test.
- Objectors do not dispute these routes were roads.

Proposal

That THE WILTSHIRE COUNCIL CHARLTON ST PETER 2,6 AND WILSFORD 5
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2023 is confirmed as made.