

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE WILTSHIRE COUNCIL CHARLTON ST. PETER 2, 6 AND WILSFORD 5
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2023**

Purpose of Report

1. To:
 - (i) Consider four objections to The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023 made under Section 53 of the Wildlife and Countryside Act 1981 (See **Appendix 1** for a copy of the Order).
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order is confirmed as made.

Relevance to the Council's Business Plan

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

Background

3. Wiltshire Council has statutory duties to maintain the record of public rights of way in Wiltshire (excluding the Borough of Swindon), to maintain the rights of way shown therein, and to assert and protect them for the use and enjoyment of the public. These duties are not discretionary.
4. The definitive map and statement is the legal record of public rights and is conclusive in law as to what it shows but this is without prejudice to the existence of a more extensive public right (s.56 of the 1981 Act). The Council has a duty to keep it under continual review and make orders to modify it when evidence shows it is in error.
5. Members of the public may apply to the Council to modify the definitive map and statement and they do so under the provisions of Schedule 14 to the 1981 Act and the Council must determine these applications by investigating all available relevant evidence and by making a modification order where it is considered it is shown on the balance of probability (i.e., it is more likely than not) that a change in the map and statement is required.

6. Wiltshire Council received an application dated 22 January 2011 (ref: 2011/03) for an Order to upgrade footpath Charlton St. Peter 6 (CSTP6) to a restricted byway with a recorded width of between 5 and 9 metres. Wiltshire Council also received an application dated 29 November 2021 (ref: D/2021/105) to upgrade bridleways Wilsford 5 (WILS5) and Charlton St. Peter 2 (CSTP2) to restricted byways with an approximate width of 6 metres. As the routes physically link to each other and several of the documents to be researched apply to both applications, Wiltshire Council determined the applications concurrently. See full application routes at page 2 and 3 of Decision Report at **Appendix 2**.
7. In 2006 an Act of Parliament extinguished any public mechanically propelled vehicular (MPV) right that existed over the routes (s.67 Natural Environment and Rural Communities Act 2006) and that the highest public right that could exist is that of a restricted byway. A restricted byway is a route over which the public may pass and re-pass on foot, on or leading a horse, on a cycle or with a horse drawn cart or carriage. It is an offence prosecutable by the police for the public to use an MPV over one.
8. A significant amount of evidence was submitted by both applicants and officers have conducted their own research, all of which has been investigated, the report attached at **Appendix 2** explores the evidence in detail. In considering historic public rights it is essential that the common law principal of 'once a highway, always a highway' is applied. In short, if a public right of way can be shown, on the balance of probability, to have existed in the past, no amount of disuse or neglect will extinguish that right. Only a defined legal event can stop up that right.
9. When considering historic documentary evidence officers categorise evidence based on its evidential weight and have drawn up a categorisation system. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines (last revised April 2016) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan. Evidence is graded A through F, with documents in category A holding the most weight down through F. Examples of category A evidence are Inclosure Acts and awards, Acts for railways, waterways or roads and orders creating, extinguishing, or diverting highways as these documents document a legal creation, extinguishment, or diversion of a public highway. Other documents may demonstrate the reputation of a way or the physical existence of a way, but the purpose of that document may not have been to show the legal status of a highway or have any powers to do so. For example, although a way may appear on many commercial maps it does not necessarily carry as much evidential weight as if the way is shown in two publicly consulted documents or created, say, as the result of an Act of Parliament (see section 9 of **Appendix 2**, from page 35).

10. Application 2011/03 adduced documents to demonstrate the route of footpath CSTP2 should be upgraded to a restricted byway. The evidence shows the route was a public carriage road known as White Lane. The submitted evidence dates back to 1739 in the quarter session rolls referring to the route as White Lane and described as a *common highway for all persons, horses, cattle, carts, and carriages*. The route is consistently shown in the manner of a road throughout documents in the 19th century, including the tithe map of 1841 and the railway plans of 1866. A full chronological summary of documents relating to this route can be seen at 16.24 from page 106 of **appendix 2**. It is likely the route became, in part, only accessible by the public on foot in the late 19th century and this is documented by maps from that time. The evidence of historic public carriage rights on the route (now restricted byway rights) has been demonstrated by the evidence on the balance of probabilities. The route has likely not been used, in full, in such a manner for many years, however unless an act of law has extinguished those rights they still exist, no such act of extinguishment has been discovered.
11. Application D/2021/105 produced evidence and officers discovered further evidence of restricted byway rights over some but not the whole of the application route. Section 16 of **Appendix 2** explores the evidence in detail. The evidence shows sections of the application route are subject to different evidence where the route passes across a parish boundary and other sections were used in a different manner. Due to the route crossing a parish boundary it has been subject to separate inclosure awards, tithe maps and is also subject to two separate 19th century railway schemes, all of which are considered grade A or B evidence.
12. The section of the route in the parish of Wilsford (WILS5) is awarded in 1808 as a private carriage road and drift way and a public footway. The same route is shown in the manner of a public road in 19th century documents including the tithe map of 1844, the Direct Western Railway Plans of 1845 and the survey of land owned by Sir Francis Dugdale Astley in 1846. Other early maps from the late 1700s and early 1800s show the route in the manner of a road linking through to the parish of Charlton St. Peter. The continuation of that route in the parish of Charlton St. Peter, (CSTP2) linking to the A.342 (not including the link to the village) is awarded as a public road named Wilsford Road in 1780 by the Charlton St. Peter inclosure award. It is also shown in the manner of road in the detailed plan of the parish of 1804 (referenced as Wilsford Road) and shown in the manner of a road in the tithe map of 1841. It is then partially shown as an occupation road, which is likely a private road, in the Andover, Radstock and Bristol 1866 railway plans. Earlier commercial maps again from the late 1700s and early 1800s show the route in the manner of a road.
13. Some of the evidence may be contradictory but the whole route is shown in the manner of a public road and at least partly named 'Wilsford Road' in the parish of Charlton St. Peter from the 1700s and into the early- mid 1800s (excluding the link of CSTP2 towards the village). Where a decision must be made on the balance of probabilities, officers believe the evidence shows the whole route has carried public vehicular rights (now restricted byway rights), which have not been extinguished. Evidence shows the whole route likely became known and used as a bridleway in the late 1800s and into the 20th century, as it is currently recorded.

14. The link of CSTP2 leading to the village and part of the application route is not proposed to be upgraded from its status of bridleway. The evidence for this section (described between 16.20 and 16.23 of **Appendix 2**) shows this section of the route was clearly historically considered in a different manner to other sections of the applications and was not a clear through road as per the other sections. It is not awarded or described at inclosure, it is not shown as a road in the parish plan of 1804, it is not shown in the manner of a road in the tithe map of 1841 and is recorded as a field, occupation road (private) and footpath in the 1866 railway plans. It is then later, from the late 19th century, shown as a bridle road or way, as it is currently recorded.
15. The far eastern end of CSTP2, linking from the junction of CSTP6 and U/C road 8044 is proposed to be upgraded to a restricted byway, creating a through restricted byway from the U/C 8044 leading west and then south along CSTP6. The evidence shows this section of the route was, on the balance of probabilities part of the road network, linking to White Lane (CSTP6), the public house (now the Charlton Cat) and the turnpike road (A.342). It is likely the current situation at this section was an error made in 1930 when the road was passed from the Rural District Council to Wiltshire County Council for maintenance. Historical evidence, dating from the late 18th century and early 19th century commercial maps, the 1804 parish plan, 1841 tithe map and the 1866 railways plans (which records the route as public highway in the ownership of the highways board) shows the road continued as per the recommendation for upgrade.
16. Widths were required to be recorded for the routes that are proposed to be upgraded by the made orders. Where it is clear a width has been set out by documentary evidence that width should be recorded, unless evidence shows that width has been extinguished. Part of CSTP2 from the A.342 leading north and northwest to the Wilsford parish boundary is proposed to be recorded at 12.2 metres (40 feet) where the width is set out in the 1780 inclosure award as “more than the breadth of forty feet”. The continuation of that route in the parish of Wilsford is to be recorded as 6.1 metres (20 feet) where the route is set out at that width in the 1808 Wilsford inclosure award. Where a route is not subject to inclosure awards and a set out width, the 25” OS map of 1900 has been used as an historic accurate topographical map. Measurements taken from this map have led to widths of between 7-14 metres for most eastern section of CSTP2 and a width of between 5 and 9 metres for CTSP6. In the case of CSTP6 which by 1900 was in part only used as a footpath a 5-metre width for that section has been recorded as a reasonable width for a restricted byway and meets Wiltshire Council’s policy for recording new or diverted restricted byways. This is explained at section 17 (from page 113) of **Appendix 2**.
17. The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023 was duly advertised and attracted four duly made objections.
18. Where objections are received to a Definitive Map Modification Order Wiltshire Council may not confirm or abandon the Order and must forward it to SoSEFRA for determination. However, it must first consider the representations and objections to the Order and make a recommendation to SoSEFRA regarding the determination of the Order.

Main Considerations for the Council

19. 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 under continuous review.

20. 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; or

(iii)that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

21. Evidence is the key and therefore objections to the making of the Order must, to be valid, challenge the evidence available to the Surveying Authority. The Authority is not able to consider other considerations, such as the suitability of the way for use by the public, the proximity of any other paths or facilities, environmental impacts and any need or desire for the route.

22. Objections and Representations:

Four objections were received to the Order during the statutory period. Those objections are shown below. Where responses were exchanged between officers and objectors these are included at **Appendix 3**.

(1) Georgina Boyle – (Owner of the Charlton Cat)

Dear Craig,

Thank you for your letters of the 16th February and 2nd March 2023.

On historical evidence there is no question that CSTP6 was more than a footpath, however historically the A342 was not a major A road with large lorries and very fast traffic, a junction with minimal visibility in either direction at the Charlton Cat which with the addition of equestrians and carriages is dangerous.

My objection to this upgrade of the footpath to a restricted byway is on the grounds of safety. Please see the attached map which shows some of the accidents along this stretch of road - the map only shows accidents with casualties, there have been many more that I have seen that are not recorded on this map. Is Wiltshire Council doing any due diligence or other consultations on the safety of this crossing? You state in your decision report on page 18 - 'The A342 is a very busy road and at this point the visibility looking west and east is very poor to cross what is a 50mph A road at this point due to bends in the road' Unfortunately looking at a map of the road it does not show the true danger

of the bends and so arriving at the proposed crossing you would not be aware and by allowing this byway you would be encouraging dangerous activity.

What plans would be put in place to make this safer? The only safe solution would be a horse crossing as recommended by the PROW working group.

Mary Gillmore in her letter claims that it would fulfil a 'missing link' however there are already 3 bridleway crossings of the A342 within 2 miles of CSTP6 which are all at safe points on the road with good visibility and provide 'convenient and enjoyable' circular route for riders (taken from Mary Gillmore attached Michael Aldous FPS/AO665/6/1) however in this instance the danger clearly outweighs any advantage of crossing at this point.

In his letter of November 2022 Alan Woodford of BHS Wiltshire states - He cannot see how a route for horses and carriages would be easily provided - He does not mention the issue of safety. Does the BHS not have any duty of care for the safety of riders, carriage drivers in encouraging them to cross a busy road with no visibility?

With regard to the practicalities - When I bought the Charlton Cat in 2014 it was with a footpath across the carpark with a width of 1.2m (as in your decision report page 55). The upgrading to a byway with a minimum width of 5m. means I lose valuable parking spaces which I need to keep my business viable. How is Wiltshire Council going to compensate my business for loss of asset?

The required works to create this byway with a suitable gradient for both horses and carriages will be extensive, and I presume expensive. Has Wiltshire Council Highways done any feasibility as to value for money for the community for works, signage or a horse crossing. I will also lose significant business whilst these works are being done.

I look forward to hearing from you as to what actions are being taken to ensure that this upgrade will be safe for purpose.

Yours sincerely

Georgina Boyle

(2) Gillian Gadd – (Timber Lodge, Charlton St. Peter)

Dear Mr Harlow,

I wish you to bring it to the attention of the relevant departments that I am wholeheartedly opposed to the modification of footpath Charlton St Peter 6 (CSTP6) to a restricted byway.

As set out in my previous email to you, I believe this will have severe implications regarding the safety of users attempting to cross or join the A342 adjacent to the Charlton Cat (marked F on your map).

Opening up the width of the byway to allow horses and carriage users to travel up to the A342 is an act of gross irresponsibility on the part of those officials charged with the health and safety of public highway users. It may have been a useful

access requirement 100 years ago when dwellings lined that particular route, but surely it is obvious that that time has passed and to introduce slow-moving or potentially fractious animals to an A road, on the section lying between blind bends, is pure insanity.

The A342 carries an increasing number of lorries and HGVs which will have a considerably longer stopping distance than a car. Even with reduced speed limits, painted crossings and warning signs (which you have given no indication will be put in place) the area of road you are proposing to allow members of the public to risk their lives on is too dangerous.

The second objection I have to the opening of CSTP6 as a 5 to 9 metre wide restricted byway is that I believe it will encourage anti-social and criminal behaviour in the village of Charlton St Peter.

At present we have a single highway entrance/exit in the village and CSTP6 could well become a route in or out for an undesirable element who wish to burgle properties or outbuildings here. It is a practice which is rife at the moment and I have no doubt that the opening of an easy route out of Charlton will make it more appealing to thieves.

I also think the opening up of CSTP6 may encourage motorised vehicles such as trials motorbikes already using the plain.

Finally, the question of cost to the taxpayer must also be considered. We hear that councils are stretched; potholes in the roads are an increasing hazard and I imagine that this endeavour may remain unsurfaced as well as poorly maintained because of other more pressing concerns.

Does Wiltshire Council really believe this use of resources to be value for money? Maybe we should take a vote from those of us who pay our taxes.

*Yours faithfully,
Gill Gadd
Timber Lodge*

(3) Tim Fowle- Charlton Manor, Charlton. St. Peter

Dear Craig

I thank you for the clarification of the DMMO Decisions that the council have reached that you sent to us on Friday, and the reasons the decisions have been made. However you seem to have misconstrued the point I was trying to make in my email of Thursday 20th April in that I object to the width of the byway as proposed and therefore I wish to clarify this as follows. The questions I raised , particularly to the 12.2 metres (40 feet) width specified, is the point I was trying to object to, as being excessive for the proposed future use and grossly intrusive into my fields, particularly as the section further east towards the village of Charlton is NOT being upgraded due to lack of evidence for this historically. I don't oppose the upgrading to a restricted byway but do most strongly object to the proposed width of the right of way.

The idea of upgrading only part of the byway to the proposed width is utterly ridiculous in terms of the adverse effects on my land, to no appreciable benefit, as it ceases to be a restricted byway as it nears the Charlton Cat. I do not believe that widening the byway to this width will be of any benefit to users of it.

Yours sincerely
Tim Fowle

(4) Kerry Robinson – Local resident

Dear Mr Harlow,

It is with jaw dropping incredulity that I see you have plans to resurrect an access, as a byway (cstp6) which was closed some 150 years ago.

Closed for a very good reason - even in those days of horse drawn vehicles!

As a driver, and horse rider, I am raising objections on the grounds of serious safety issues. Anyone using that byway on horseback or in a horse drawn vehicle would be doing so with no regard for their horses, themselves or other road users. Access into and across the privately owned car park, belonging to and for the use of patrons to The Charlton Cat, on the A342 is positioned at a lethal chicane. It's a double bend which regularly sees casualties in various degrees of seriousness. Cars frequently clip the opposite bank and flip on their roof landing on the opposite side of the road.

As a resident on this same highway I have in the last five years witnessed a massive increase in traffic, including huge HGV's and arctics all travelling too fast and unable to pass each other without decimating the banks on both sides of the road. Some are forced to stop while dangerously manoeuvring themselves onto the verges so they can pass each other.

I am all for you providing bridleways - but not at exit points that put both the lives of horses (yes they have brains and can be startled) their riders , pedestrians or drivers at lethal risk. A horse hit by a car will usually be killed and often go through the vehicles windscreen, posing a not inconsiderable risk to the driver and passengers. Byways ripped up by motorbikes, quads and cars are already near impassable for riders and walkers as it is. Common sense appears to have been abandoned in this specific planning application.

Permission for such a short sighted and unnecessary opening of cstp6 route would also enable and encourage the abuse of a private car park to a much loved local business. Perhaps you the powers that should be held financially liable for the unavoidable damage to the future business prospects of The Charlton Cat.

I can only add that I expect more from my local authority. If you want to improve bridleways and byways in this area it would be appreciated if you focussed on those currently being made inaccessible with wire and unmanageable gates, and surfaces that have been trenched by vehicles.

Kind regards

K. Robinson

Comments on the objections

23. All four objections made do not raise any material objection to the documentary evidence. Three of the objectors own land that is either directly affected or land adjacent to the order route. It does not appear any objectors are challenging the validity of the historical evidence but oppose the order based on safety matters and potential impact on their properties or businesses. Mr Fowle does not challenge the upgrade of the status to restricted byway but the proposed widths as he states they will not be useful and will impact on his land. It is understandable Mr Fowle objects to the 40 feet proposed width of the route over his land, however the route is clearly set out in the inclosure award for the parish at a "breadth of at least 40 feet". Officers understand the position of the

objectors but are unable to take into consideration any other matters than the historical evidence, which officers believes clearly demonstrates the higher status of the routes and the widths set out. This has been explained to all objectors. The management of any recorded higher rights will be a matter for the Countryside Access Officers at the time the Order may be confirmed, and the rights recorded.

Overview and Scrutiny Engagement

24. 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

25. Considerations relating to safeguarding anyone affected by the making of the 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 determined based on the relevant evidence alone.

Public Health Implications

26. Any public health implications arising from 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 determined based on the relevant evidence alone.

Corporate Procurement Implications

27. In the event this Order is forwarded to SoSEFRA there are several opportunities for expenditure that may occur, and these are covered in paragraphs 31 to 34 of this report.

Environmental and Climate Change Impact of the Proposal

28. Any environmental or climate change considerations arising from 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 determined based on the relevant evidence alone.

Equalities Impact of the Proposal

29. Matters relating to the equalities impact of the proposal are not relevant considerations in Section 53 of the Wildlife and Countryside Act 1981.

Risk Assessment

30. 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 pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Ombudsman. A request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

Financial Implications

31. The making and determination of Orders under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
32. Where there are outstanding objections to the making of the Order it must be determined by the Secretary of State. The outcome of the Order will then be determined by written representations, local hearing, or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500. A one-day public inquiry could cost between £1,500 and £3,000 if Wiltshire Council continues to support the making of the Order (i.e., where legal representation is required by the Council) and around £300 to £500 where Wiltshire 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).
33. Where the Council objects to the Order, the Order must still be forwarded to the SoSEFRA for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 32 above.
34. As the case is considering documentary evidence, with no witness evidence to cross examine and no material objection to the historic evidence has been presented, officers will request the Order to be resolved by written representations. However, this is subject to other parties' requests and SoSEFRAs decision on how to determine the Order.

Legal Implications

35. Where the Council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicants may seek judicial review of the Council's decision if they see it as incorrect or unjust by them. The cost for this may be up to £50,000.

Options Considered

36. Members should now consider the objections received and the evidence to determine whether Wiltshire Council continues to support the making and confirmation of the Order. The making of the Order has been objected to; therefore, the Order must now be submitted to the SoSEFRA for determination and members of the committee may determine the recommendation (which should be based upon the evidence) to be attached to the Order when it is forwarded to the SoSEFRA as follows:
 - (i) The Order be confirmed without modification.

- (ii) The Order be confirmed with modification.
- (iii) Take a neutral stance on the determination of the Order.
- (iv) The Order should not be confirmed.

Reason for Proposal

- 37. Unless the objections and representations are withdrawn the Order must be forwarded to the SoSEFRA for determination.
- 38. The documentary evidence the order relies upon has not been challenged by the objectors in any other manner than the unrecorded rights are unnecessary, safety matters or other matters which are not able to be considered by any decision-making authority, including the SoSEFRA.
- 39. The documentary evidence in officers' opinion meets the balance of probabilities test to upgrade the statuses of the routes subject to the order and the widths recorded within the order, as discussed in detail at 10-16 of this report and at **Appendix 2**.
- 40. The Council's duty remains with supporting the Order based on the evidence it has before it.

Proposal

- 41. The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023 is forwarded to the SoSEFRA with the recommendation that it is confirmed without modification.

Samantha Howell

Director – Highways and Transport

Report Author:

Craig Harlow

Definitive Map Officer

Appendices:

Appendix 1 - The Wiltshire Council Charlton St. Peter 2, 6 and Wilsford 5 Definitive Map and Statement Modification Order 2023

Appendix 2 - Decision Report and its appendices

Appendix 3 - Objections