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**DECISION REPORT**  
**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**  
**APPLICATIONS TO UPGRADE FOOTPATH CHARLTON ST. PETER 6 AND BRIDLEWAYS**  
**CHARLTON ST. PETER 2 AND WILSFORD 5 TO RESTRICTED BYWAYS**

**1. The Applications**

1.1. Application number: 2011/03

Date of application: 22<sup>nd</sup> January 2011

Applicant: Mr Bill Riley  
[REDACTED]  
Bradford on Avon  
Wiltshire  
BA15 [REDACTED]

Application for: “An Order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by upgrading to a restricted byway the Footpath No.6 “White Lane” in the parish of Charlton (St. Peter) and varying the particulars relating to the restricted byway by providing that the width be modified to between 5.5 metres and 9 metres where fenced ( as shown on the 2<sup>nd</sup> Edition 25” O.S. Map) and 5 meters where unfenced , and shown on the map accompanying this application”.

Application comprises: Schedule 7 application for a modification order for path no.6

Schedule 8 Notice of application served on the landowners at the time.

Schedule 9 certificate of service of notice

Map showing the claimed route highlighted in orange

A summary of documentary evidence.

## 1.2 Application map for 2011/03.



## 1.3 Application number: D/2021/105

Date of application: 29<sup>th</sup> November 2021

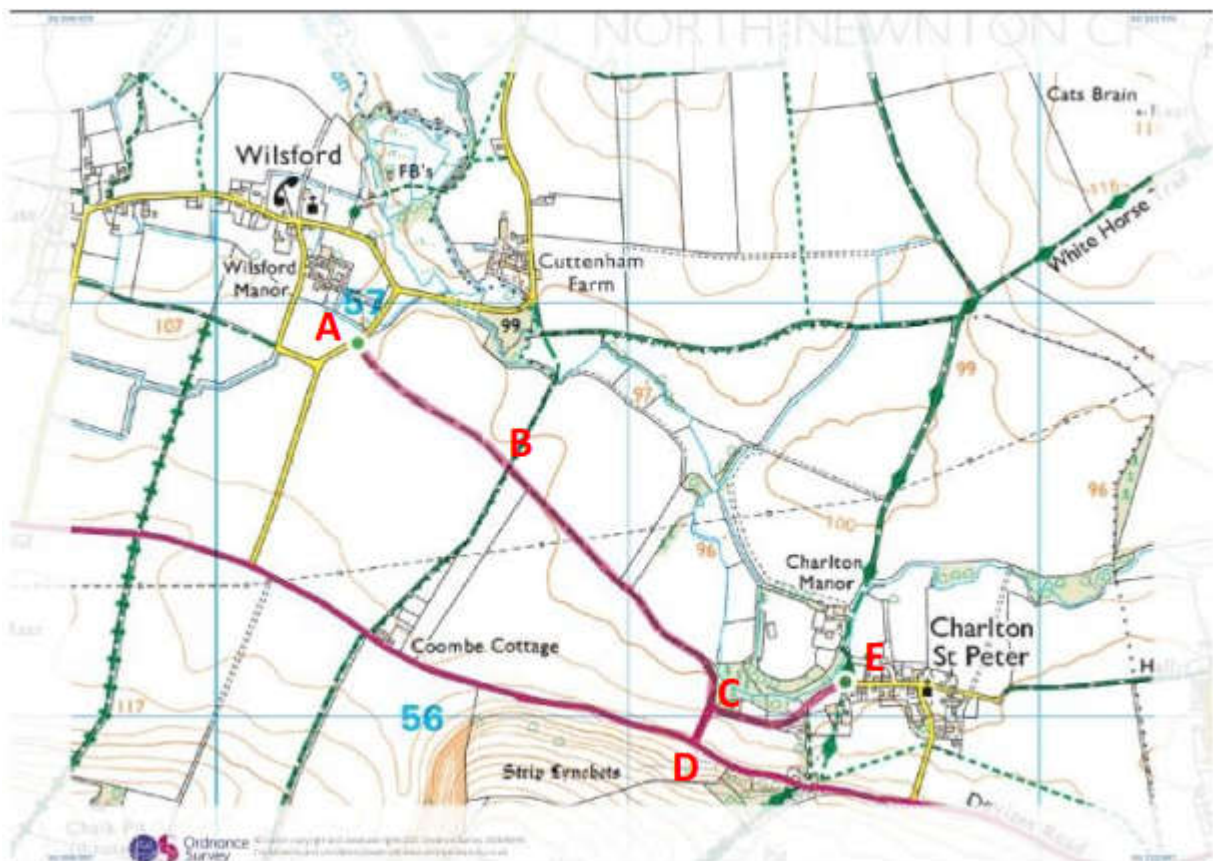
Applicant: Natalie White, on behalf of the British Horse Society  
[REDACTED]  
Stareton  
Kenilworth  
Warwickshire  
CV8 [REDACTED]

Application for: “An order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by upgrading to restricted byway, the bridlevays (WILS5 & CSTP2) which runs from Point A on the application map (OSGR SU 10338 56904), the junction between the bridlevay WILS5 and the road leading to the Village of Wilsford and follows the Bridlevays WILS5 & CSTP2 along the Lane in an easterly direction to Point C (OSGR SU 11195 56025) before branching south to Point D (OSGR SU 11163 55947) and east to Point E (OSGR SU 11525 56082).”

With an approximate width of 6 metres.

Application Comprises: Form 1 application for order  
Map showing claimed route  
A summary of evidence.

#### 1.4. Application map for D/2021/105



## 2. Purpose of Report

2.1. To determine two applications, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade footpath Charlton St. Peter 6(CSTP6) and bridleways Charlton St. Peter 2 (CSTP2) and Wilsford 5 (WILS5) to restricted byways and amend the definitive map and statement of public rights of way for the area to show these upgrades. This report will consider both applications as application 2011/03 has reached the top of the council's priority list for DMMO applications and

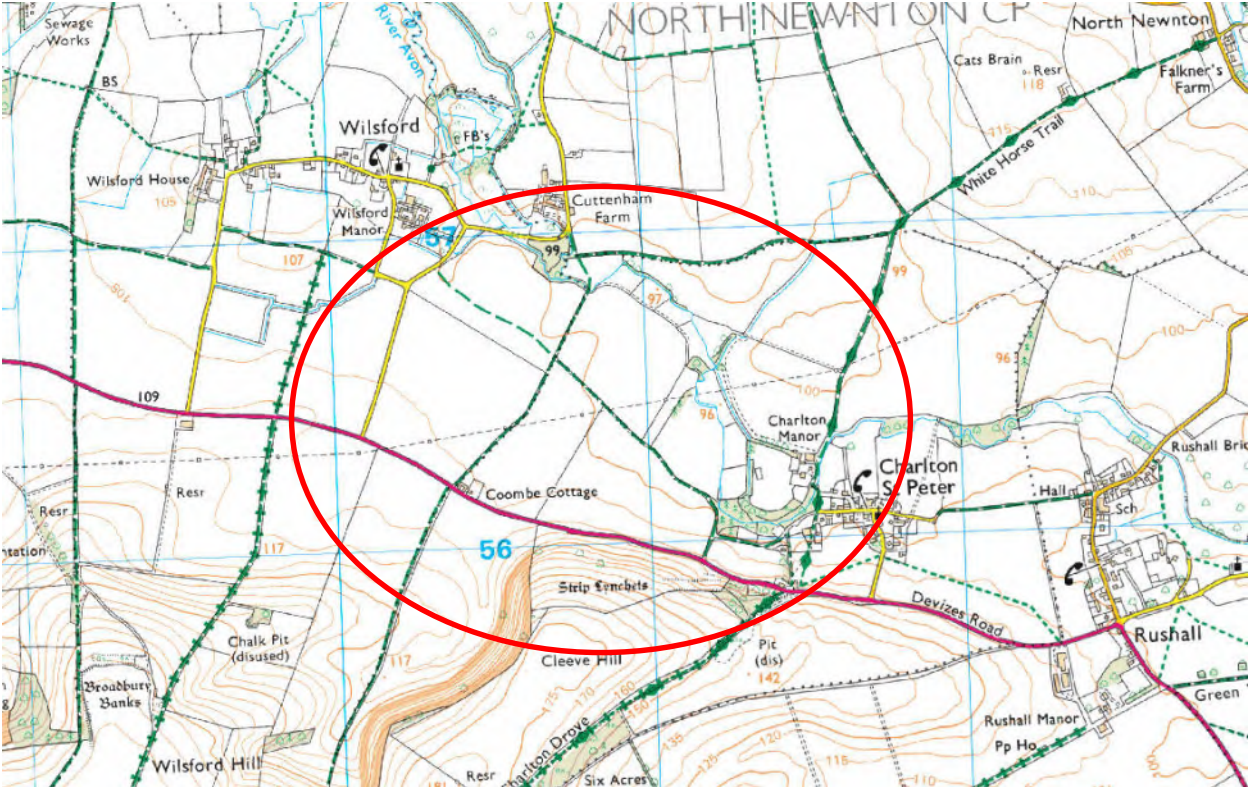


the later application D/2021/105 physically links to the older application. Due to this physical link, it is likely several historical documents that officers will need to investigate will apply to both applications. A decision will be made on both applications as distinct, separate applications and will be determined by the evidence adduced and any other evidence found and investigated by officers.

**3. Relevance to Council’s Business Plan**

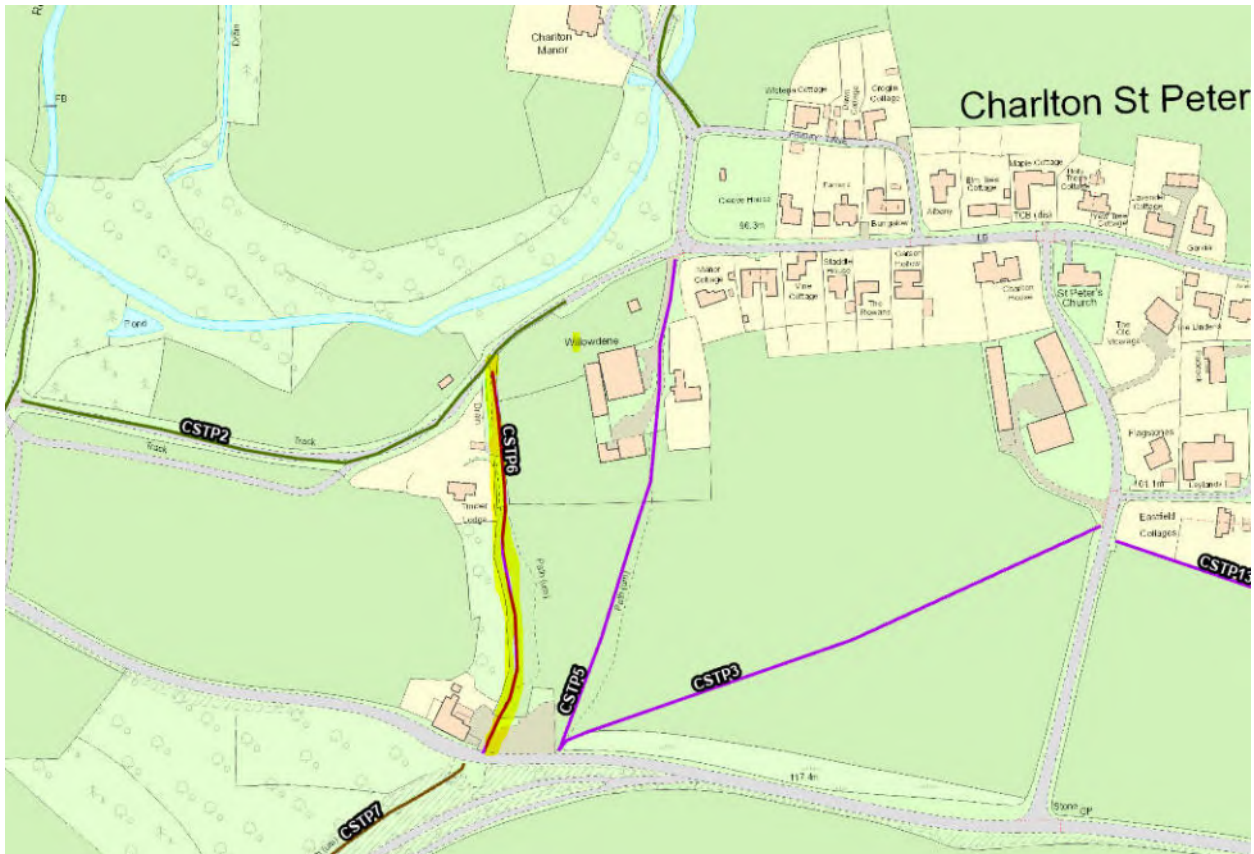
3.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

**4. Location**



4.1 The route for application ref: 2011/03 affecting footpath CSTP6 leads from its southern junction with the A.342 at the Charlton Cat, in a northerly direction to its junction with bridleway CSTP2.

4.2 The route of CSTP6 is highlighted below.



4.3 The application route of D/2021/105 affecting CSTP2 and WILS5 leads from its easterly junction with road U/C 8044 from the village of Charlton St. Peter in a westerly and then north westerly direction to the Wilsford parish boundary and continues to its junction with the U/C 8043 east of Wilsford Manor. There is also a spur of CSTP2 leading south to the A.342 west of the Charlton Cat.



4.4 The route of application D/2021/105 is highlighted below.



4.5 An aerial photo of the area from 2021 can be seen below. Bridleways in green and footpaths denoted by purple lines.

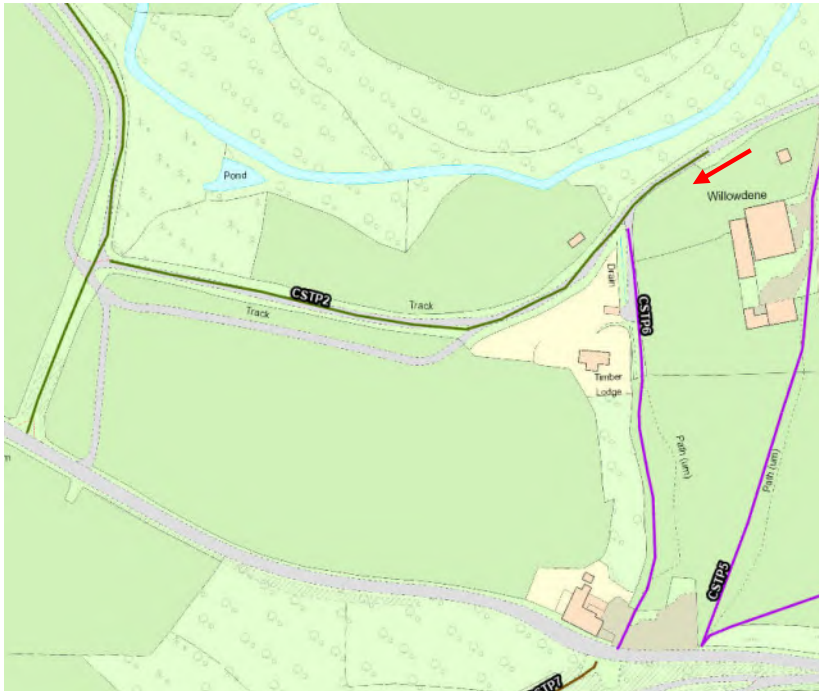


## 5. Photographs

Photos taken of the application routes on 23<sup>rd</sup> August 2022.

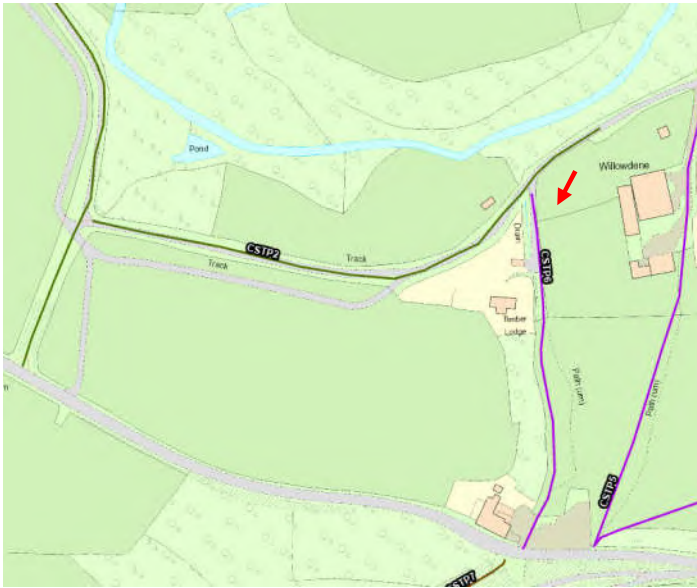
5.1 The red arrow on the map extract shows where and which direction the photos next to the map extract were approximately taken.

5.2

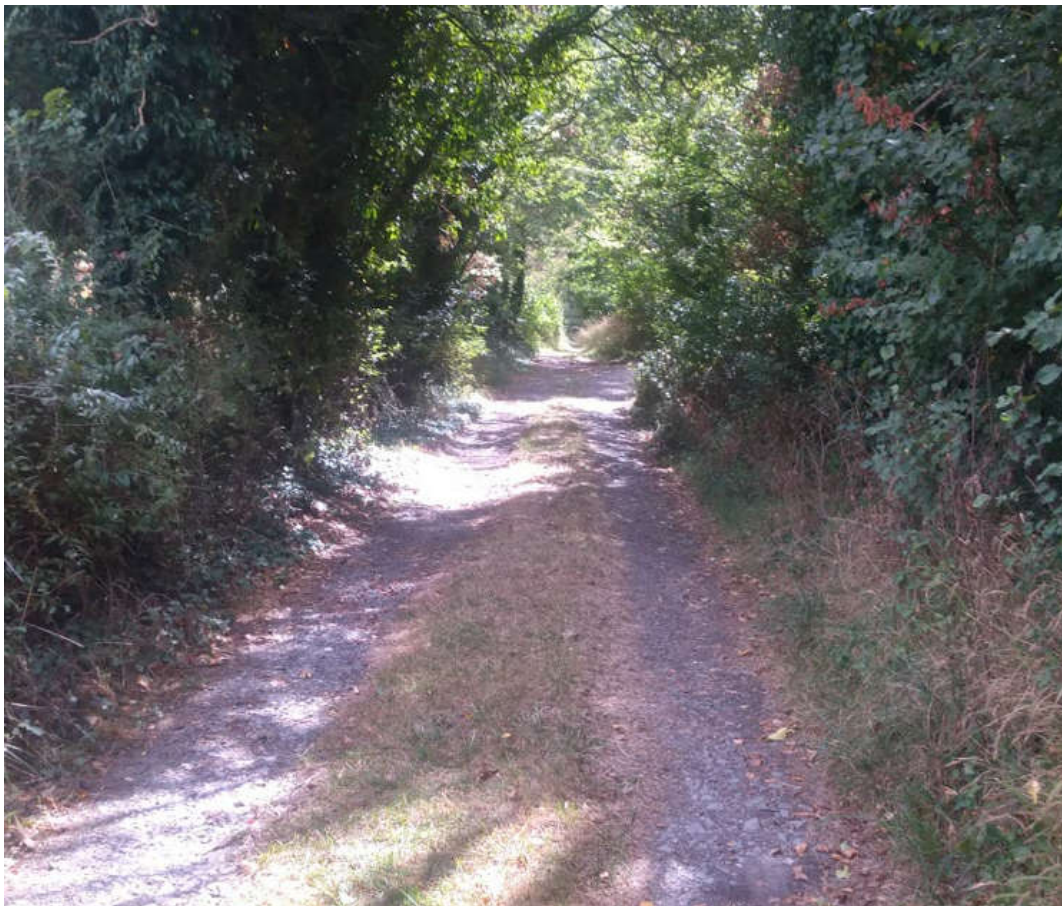
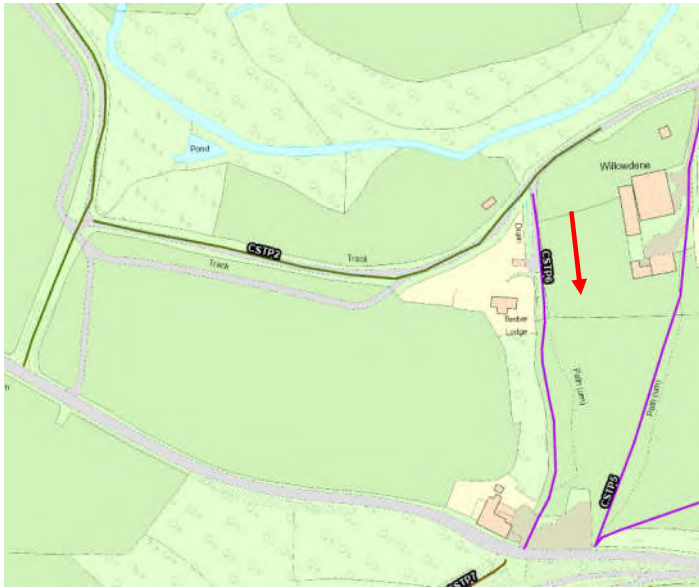




5.3

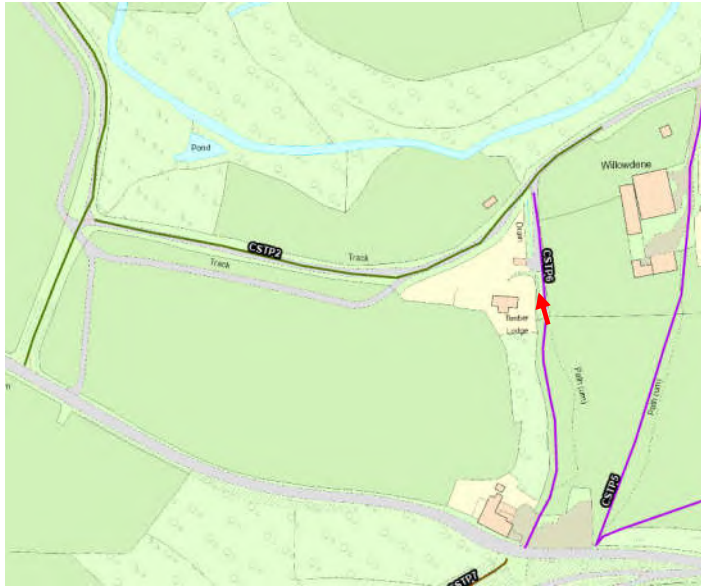


5.4





5.5





5.6



After the route of footpath CSTP2 crosses a stile and enters an open field, the used route leads slightly east onto the higher ground, whereas it is likely the recorded route and old lane is overgrown and impassable on lower ground.

5.7



This photo is taken from on the higher ground, where it is apparent most if not all users walk when using the path. It is likely the actual route of the path is on the lower ground and can be seen is impassable with vegetation.



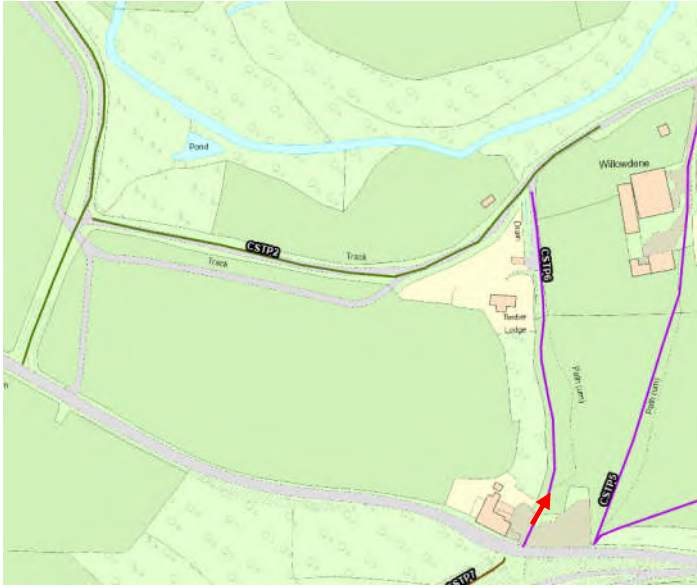
5.8



A gate and steps can be seen in centre distance of this photo where the path leads up to the Charlton Cat. The recorded route of the path is in the overgrowth on the lower land.



5.9



A metal gate is at the entrance to a flight of steps which lead into the Charlton Cat car park.



5.10



5.11



The top of the steps can be seen to the left, to the right of the steps the land falls away steeply to the gate obscured by the tree vegetation.



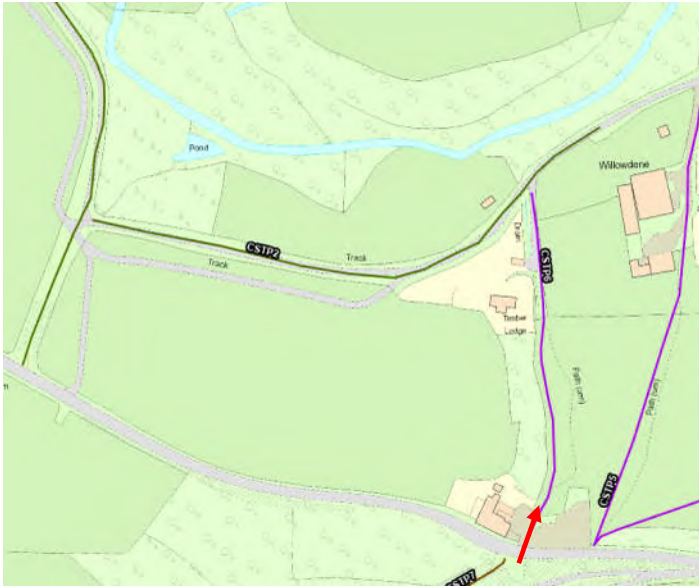
5.12



The land to the right of the steps is partially fenced off where the land goes down a steep gradient to the gate and path to the south of the car park.

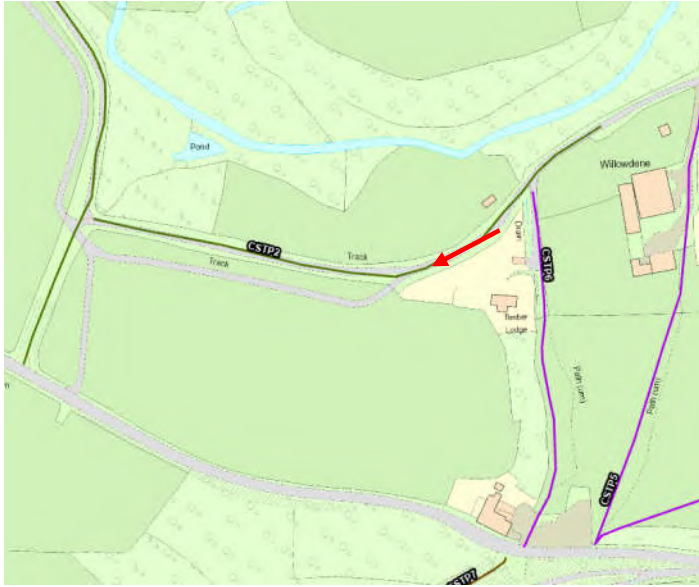


5.13



This photo is taken from the south side of the A.342, from the entrance to byway open to all traffic CTSP7, looking north towards the Charlton Cat car park and the path which can be seen in the centre of the photo, leading down the steps. The A.342 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.

5.14

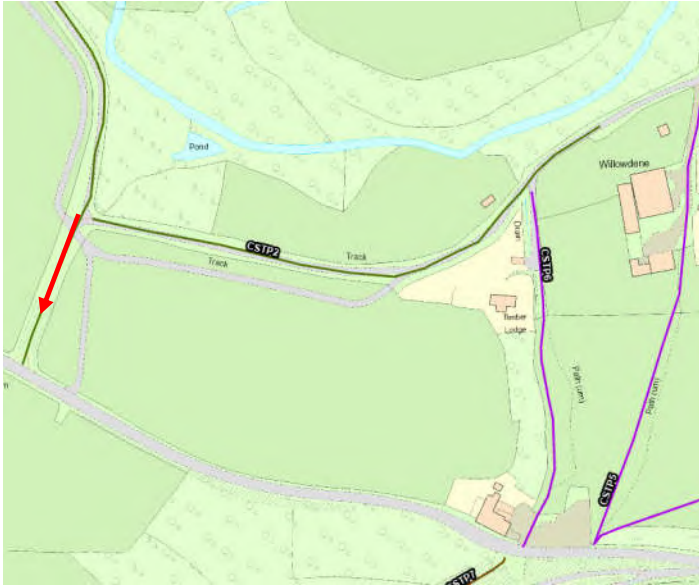




5.15



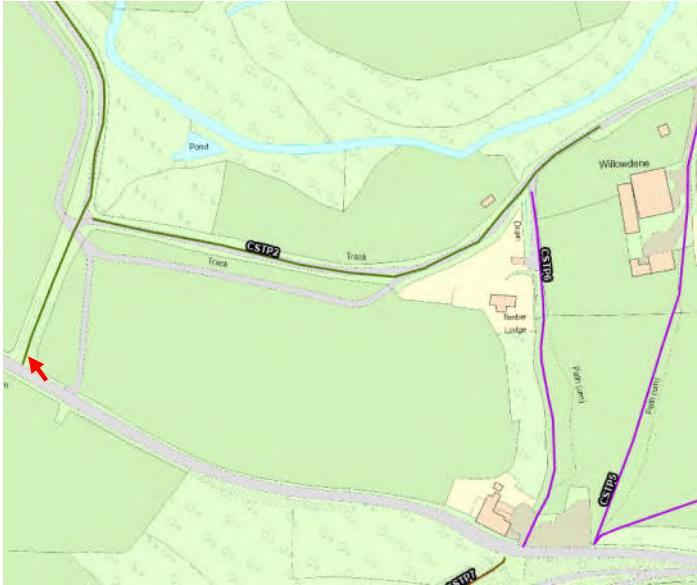
5.16



The spur of bridleway CSTP2 which leads to the A.342 is overgrown and impassable where it leads south in an old sunken lane which is clearly not in use.

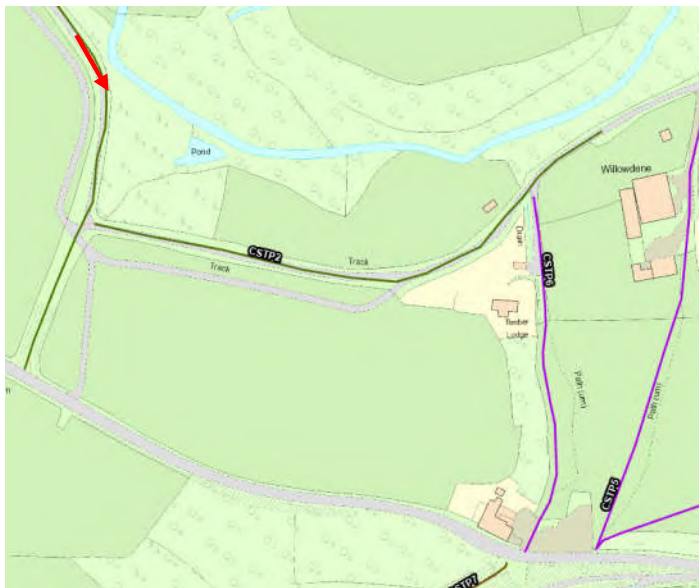


5.17



The entrance to the bridleway from the A.342 is very steep, uneven, and overgrown. It is very dangerous for any user of the bridleway as there is no useable verge on the A.342 to emerge onto if they ascend from the bridleway. The road is busy and fast with poor visibility where any user would emerge due to the bend in the road, which can be seen.

5.18





5.19





5.20



5.21





5.22



The bridleway leads between two fence lines where a paddock has been created to the south.

5.23





5.24



5.25



The bridleway exits onto the C.80 through an open field gate and is signed from the road by a plastic post and bridleway finger.

## 6. Registered Landowners

6.1. The route of footpath CSTP6 is shown as unregistered land on land registry. There are several surrounding properties and all of those immediate adjacent owners have been identified and contacted. Those adjacent owners of CTSP6 being:

Lady Georgina Boyle, ██████████ Charlton, Pewsey, SN9 ████████

Mr Timothy Fowle, ██████████ Charlton, Pewsey, SN9 ████████

Ms Claire Perry, ██████████ Charlton, Pewsey, SN9 ████████

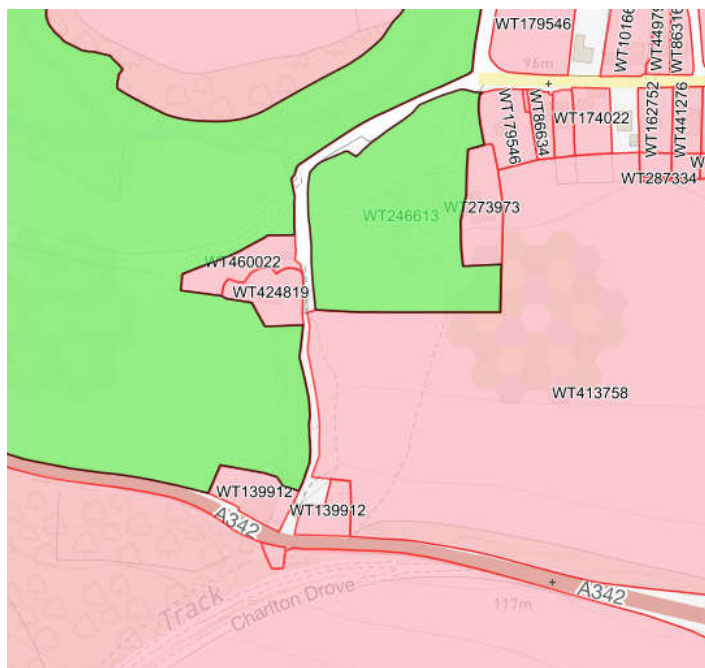
Mr Neil Mylum and Gillian Gadd, ██████████ Charlton, Pewsey, SN9 ████████

6.2 The land over which bridleway CTSP2 leads is owned, west of its junction with CSTP6 by two landowners according to Land Registry records who have been consulted. Those owners being:

Mr Timothy Fowle, ██████████ Charlton, Pewsey, SN9 ████████

Ms Vivienne Guinness, ██████████ London, W11 ████████

6.3



The above plan taken from the land registry website shows the route of CSTP6 and the route leading east to the village as having no registered owner.

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## 7. Initial Consultation

7.1 Wiltshire Council undertook an initial consultation regarding the applications on 6<sup>th</sup> September 2022 with responses requested by 11<sup>th</sup> November 2022. User groups, Wilsford and Charlton St. Peter Parish Council directly affected landowners, adjoining landowners, the council member for area, and all interested parties were consulted as part of this process. A copy of that consultation letter and responses can be seen at **appendix 2- consultation**.

## 8. Main Considerations for the Council

8.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however 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. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

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

*(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

*(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 these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

8.2. The event referred to in subsection 2 (as above) is:

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

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.*
- (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.*

8.3. 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.”*

8.4. Schedule 14 of the Wildlife and Countryside Act, 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 “*Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993*”, which states that “*A definitive map shall be on a scale of not less than 1/25,000.*”

*2. (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

*(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*

*(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*

*(4) Every notice or certificate under this paragraph shall be in the prescribed form.*

8.5 Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

*“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 such 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. Historic Records**

9.1 Maps and documents dating back to the 18<sup>th</sup> century have been viewed depicting the area concerned. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. 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.

9.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used.

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate’s Consistency Guidelines (as revised to date of report) and Chapter 6 of the book ‘Rights of Way A Guide to Law and Practice – Fourth Edition’ by John Riddall and John Trevelyan.



Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public rights	Inclosure Acts, awards, and plans Orders creating, diverting, or extinguishing highways Railway and canal acts and plans Definitive map and statement
B	Reputation of a 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 a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

## 10. Category A

10.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e., the definitive map and statement), inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e., arising from an act of parliament which specifically required the identification and verification of public rights of way).

### 10.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had considerable influence on the outcome. By the early eighteenth

36

century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general Acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

### 10.3 Charlton St. Peter Inclosure Award 1780 Award-WSHC (Wiltshire and Swindon History Centre) Ref- EA/16

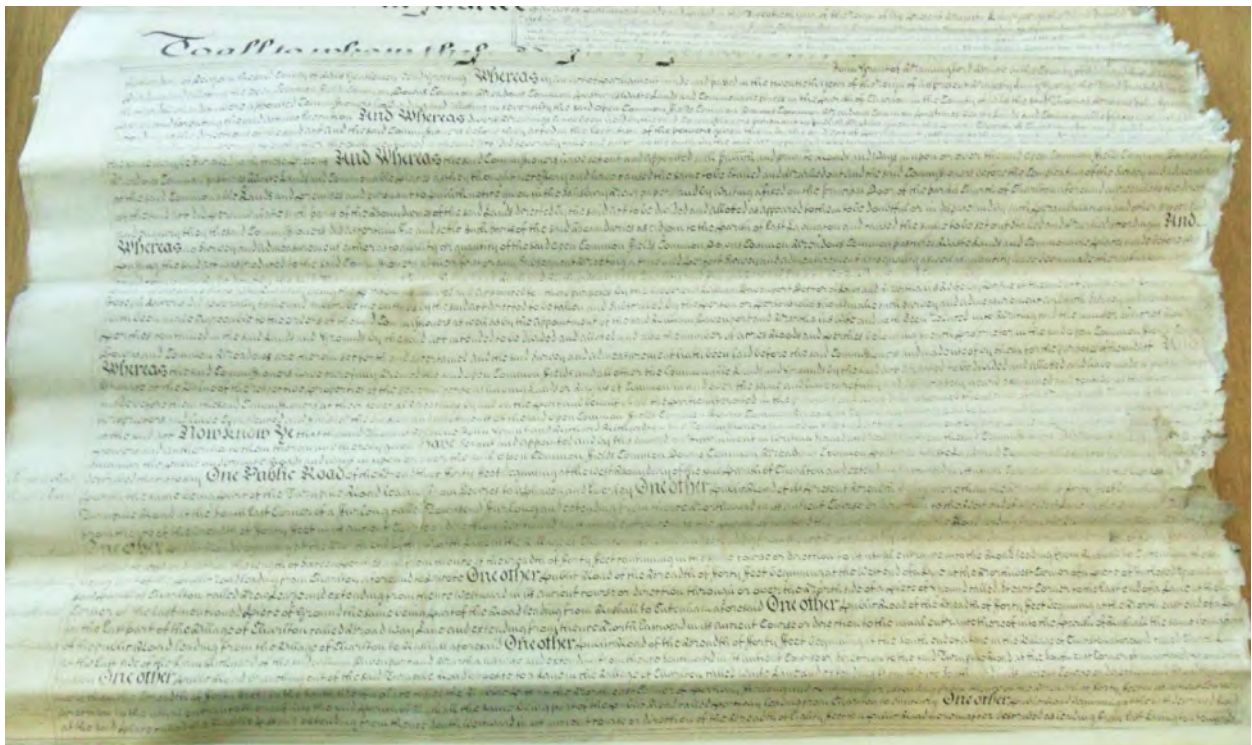
The Charlton St. Peter inclosure award of 1780 likely refers to the route of CSTP6 within the award, although the route itself is not set out within the award as it likely pre dates the inclosure award. Setting out a public road within the award it is stated “*one other public road branching out of the said Turnpike road opposite to a lane in the village of Charlton called White Lane..*” The turnpike road now being the A.342. As will be referenced several times in this report the route of CSTP6 is clearly referred to in historic documents as White Lane. The route being set out is almost certainly what is now byway open to all traffic CSTP7, the route immediately south of CSTP6, on the south side of the A.342. The applicant for 2011/03 states in their summary of evidence that the 1780 inclosure award refers to White Lane as part of the public road called Portway from Charlton to Salisbury. The applicant includes the extract from the inclosure award “*one other public road branching out of the said Turnpike road opposite to a lane in the village of Charlton called White Lane.....the same being part of the Public Road called Portway leading from Charlton to Salisbury*”. The missing text is key for context of the quote as it goes on to describe in detail the public road that is being set out leading south from the *Turnpike road opposite to a lane in the village of Charlton called White Lane*. The public road called Portway from Charlton to Salisbury does not necessarily include White Lane as is inferred and it is agreed it is not set out by the inclosure award. It could be seen that a traveller was at or had reached Charlton at the south end of the public road (Portway) set out in the award, as White Lane is described as *in* the village of Charlton. Officers conclude the 1780 inclosure award refers to the physical existence of a lane called White Lane (CSTP6) in the village of Charlton and was opposite the



public road set out in the award called Portway which led from Charlton to Salisbury, but its status is not directly referred to or set out within said award. It is possible to conclude White Lane was a public road and the continuation of the awarded public road but the 1780 award does not make this clear.

10.4 The 1780 Charlton award also sets out and describes a road named "*Wilsford Road*" as "*One other public road of its present breadth being more than the breadth of forty feet branching out ( document damaged) turnpike road at the south east of a furlong called townsend furlong and extending from hence northward in its ancient course or direction to the west end of the west lane in the village of Charlton from hence of the breadth of forty feet in its ancient course or direction westward to its usual entrance into the parish of Wilsford the same being part of the road leading from the village of Charlton to Wilsford*". It is more likely than not that this describes the route of CSTP2 from the A.342(turnpike road) north and turning west towards the Wilsford parish boundary. Other maps from the early 19<sup>th</sup> century onwards show no other route or road this description would accurately describe other than the route of CSTP2 from the A.342 to the Wilsford parish boundary. Other evidence documented in this report also label this route "the Wilsford Road" It is noted that the route west towards the village (now part of CSTP2) may be described here as "*the west lane*" but is not part of the route set out in the award.

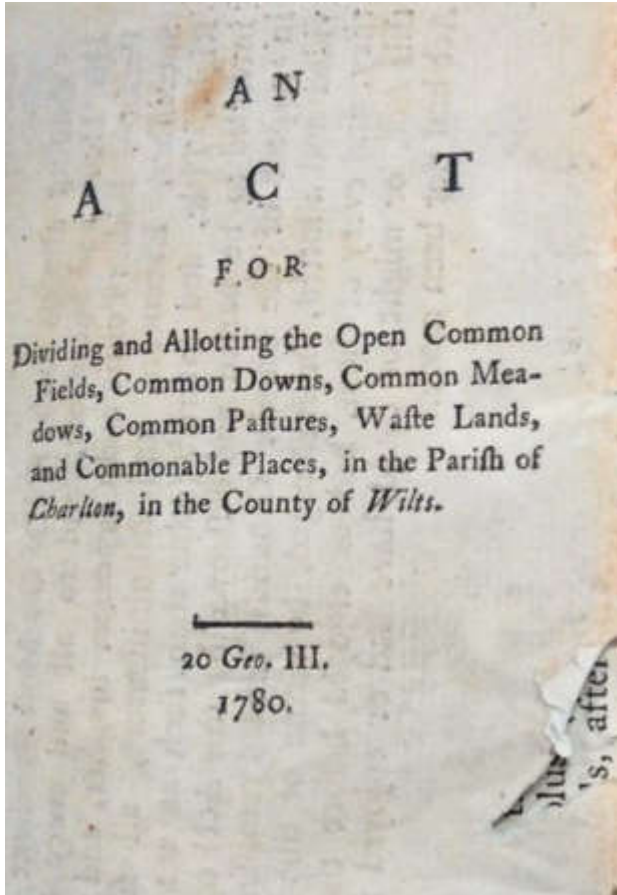
10.5 A photo of the award.



10.6 When investigating any inclosure award, it is important that all aspects of the inclosure are examined to understand that individual inclosure. This usually involves looking at three aspects: The Act, the award and the map or plan. These three documents will explain what land had been enclosed and what highways including footpaths or bridleways may have been set out as part of the inclosure. In the case of the 1780 Charlton Inclosure there is no plan or map.



10.7 The Charlton St Peter inclosure award was subject to an Act made in 1780 named an *Act for Dividing and Allotting the Open Common Fields, Common Downs, Common Meadows, Common Pastures, Waste Lands, and Commonable Places, in the Parish of Charlton, in the County of Wilts* (WSHC ref: A1/215/11).



The Act sets out the commissioners who will execute the act and the powers those commissioners had. On page 6 of the Act, it is enacted that the *“said commissioners or any two of them, shall, in the first place, set out and appoint such public and private roads and ways...so as all such public roads be made of the breadth of forty feet at the least”*.

#### 10.8 Wilsford Inclosure Award and Plan 1808 (WSHC ref EA/78)

The Wilsford Inclosure award of 1808 includes a map dated 1808 and is subject to an Act of 1801 entitled *“An Act for dividing and allotting in severalty the open and common fields and downs, common meadows, common pastures, and commonable*

and waste lands, in or belonging to the parish, manors or tithings of Wilsford, otherwise Willsford Dauntsey, otherwise Willesford Dauntsey , in the County of Wilts”. The award describes the various highways set out by the commissioners appointed, these ways are numbered within the award and relate to the number depicted on the appended plan.

10.9 The plan, entitled “A map of the Manor or Tithing of Wilsford otherwise Willsford Dauntsey in the County of Wilts As Divided and Allotted under an Act of Parliament 1808”, at a scale of 6 chains to an inch, depicts the route of WILS5 and it is numbered 15 on the plan.



Route of WILS5

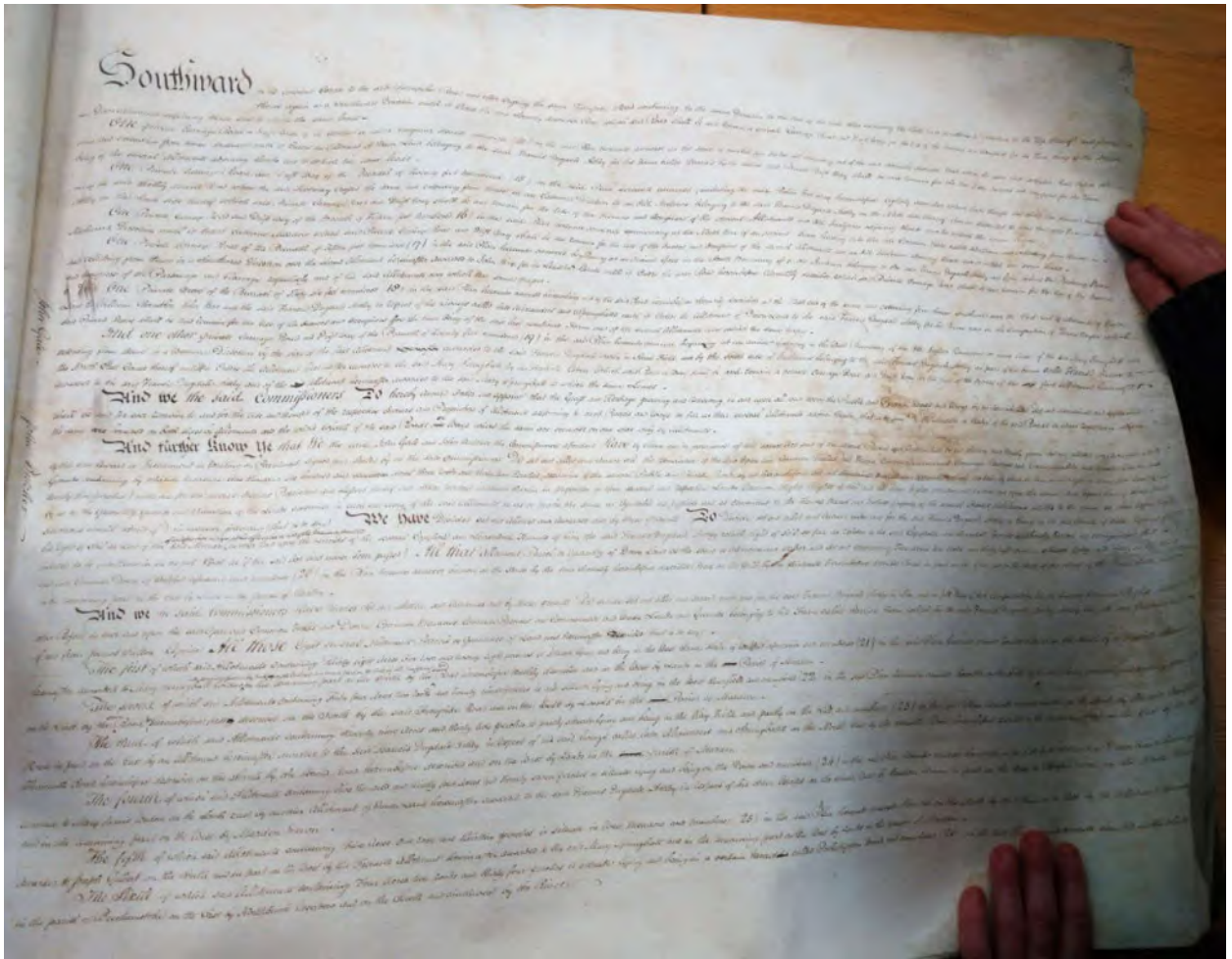




Close up extract, showing the route numbered 15.

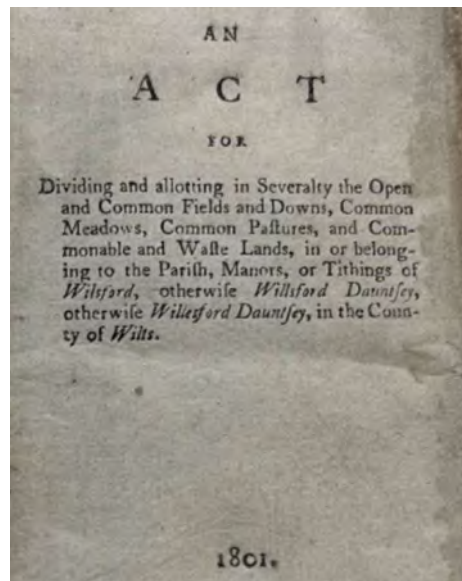
10.10 The award describes number 15 as *“One private carriage road and drift way of the breadth of twenty feet numbered (15) in the said plan hereunto annexed (including the said public foot way hereinbefore eighthly described which leads through and along the same) branching out of the said sixthly described road where the said footway crosses the same and extending from thence in an eastward direction to an old inclosure belonging to the said Francis Dugdale Astley on the north side thereof and an allotment to him the said Francis Dugdale Astley on the south side thereof which said Private Carriage Road and Driftway shall be and remain for the use of the owners and occupiers of the several allotments and old inclosures adjoining thereto and to which the same leads”*

A photo of the award and page that the route is described on.



10.11 The award relies on a local Act of 1801 and the general enclosure Act of 1801. The general enclosure Act of 1801 provided a common framework to be used to standardise enclosures across the country.

A photo of the front of the local 1801 act.





10.12 Commissioners and a surveyor were appointed and undertook an oath to exercise the powers of the local Act of 1801 in an honest and impartial manner. Their oaths and signatures are recorded on the front page of the award. The two commissioners named are John Gale of Stert, Wiltshire and John Butcher of Easton, Wiltshire. The surveyor, William Tubb of Fisherton Anger, Wiltshire, also signs an oath on the same document. They all sign their oaths at The Bell Inn in Lydeaway, Urchfont, Wiltshire on the 2<sup>nd</sup> of June 1802.

10.13 The private Act of 1801 sets out the commissioner and surveyor who have been appointed and the powers they have. On page 9 of the act, it sets out the commissioners' powers to appoint and set out public and private highways. It states “*the said commissioners shall , and they are hereby authorised and required to set out, ascertain , order, and appoint both public and private roads, highways, bridleways, and footways, ditches, drains, hatches, watercourses, bridges, gates, stiles, fences, mounds, banks, bounds and landmarks, in , over, upon, and through, or by the sides of the lands and grounds hereby intended to be divided and allotted, with the dimensions and breadths thereof , so as all public roads and highways ( except bridleways and footpaths) shall be and remain thirty feet broad at the least ...*”

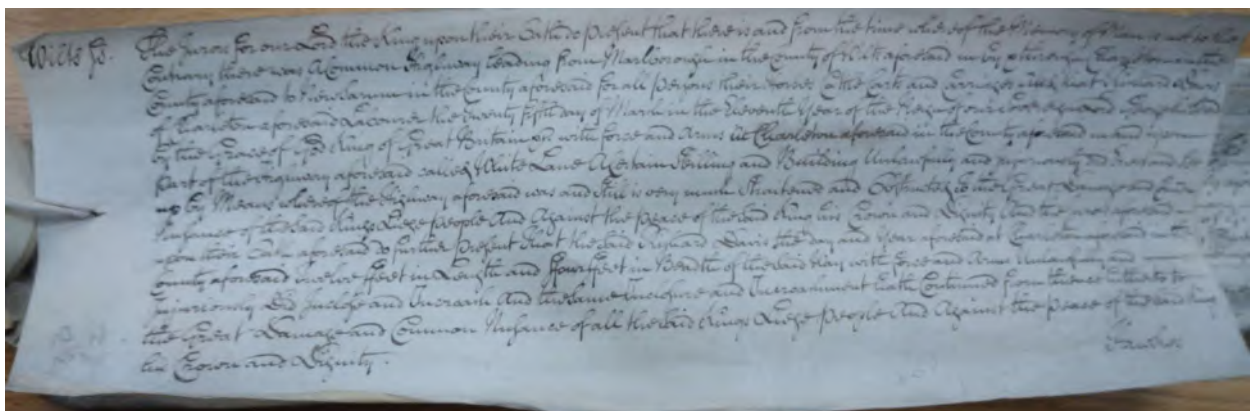
10.14 It is clear public roads, private carriageways and public footways were set out as part of the 1808 Wilsford Inclosure award which was enrolled with Clerk of the Peace for Wiltshire in 1809. The width and routes of those routes are clearly described and depicted in the award and map and unless an act of law has extinguished or amended these rights since this inclosure documents then these rights still exist. The route subject to application D/2021/105 is set out as a private carriage road, driftway and a public footway.

#### 10.15 **Quarter Sessions Great Rolls, Hilary 1739 (WSHC Ref: A1/110/1739H)**

Quarter sessions were court sessions held four times a year overseen by the justice of the peace for the county to hear all number of issues ranging from criminal to civil matters, including the repair and maintenance of highways. They have been in

existence since the 14<sup>th</sup> century and were only fully abolished in 1972, although from 1888 following the establishment of county councils they had limited functionality.

10.16 The transcript referring to White Lane (part of CSTP6) recorded at quarter session in 1739 that the highway was obstructed by Richard Davis on 25<sup>th</sup> March 1739. The highway is described as a “common highway leading from Marlborough in the county of wilts aforesaid in by and through Charleton in the County aforesaid to New Sarum in the county aforesaid for all persons their horses’ cattle carts and carriages”. The obstruction is recorded as being “upon part of the highway aforesaid called White Lane”. The document is inscribed on the reverse “a bill” and signed by five witnesses including the Clerk of the Peace, William Hawkes who also signs the transcript. William Hawkes being the Clerk of the Peace for Wiltshire from 1736-1743. An image of the document can be seen below, and the full transcript provided by the applicant.



**Quarter Sessions Great Rolls, Hilary 1739 (A1/110/1739H):** Indictment of the Grand Jury. White Lane is described as part of a common highway for carriages etc. leading from Marlborough to New Sarum. On the reverse is inscribed the verdict “A Bill” signed by five witnesses including the Clerk of the Peace. Transcript: “Wilts Ss” “The Jurors for our Lord the King upon their Oath do Present that there is and from the time whereof the Memory of Man is not to the Contrary there was a Common Highway leading from Marlborough in the County of Wilts aforesaid in by & through Charleton in the County aforesaid to New Sarum in the County aforesaid for all Persons their Horses Cattle Carts and Carriages And that Richard Davis of Charleton aforesaid Labourer the Twenty fifth day of March In the Eleventh Year of the Reign of our Sovereign Lord George the Second by the Grace of God King of Great Britain etc. with force and Arms At Charleton aforesaid In the County aforesaid In and upon Part of the Highway aforesaid called White Lane A Certain Skillling and Building Unlawfull and Injuriouly did Erect and Set up by Means whereof the Highway aforesaid was and Still is very much Straitened and Obstructed To the Great Damage and Comon Nuisance of the Sald Kings Liege people And Against the Peace of the Sald King his Crown and Dignity And the Jurors aforesaid upon their Oath aforesaid do further Present That the Sald Richard Davis the day and Year aforesaid at Charleton aforesaid In the County aforesaid did further Erect and Set up by Means whereof the Highway aforesaid was and Still is very much Straitened and Obstructed To the Great Damage and Comon Nuisance of the Sald Kings Liege people And Against the Peace of the Sald King his Crown and Dignity.”

[signed] “Hawkes”

[William Hawkes, Clerk of the Peace, 1736-1743]



10.17 This document clearly describes the section of a highway known as White Lane in Charlton as being a common highway for people, horses, cattle, carts, and carriages in 1739.

**10.18 The Deposited Plans of the Andover, Radstock and Bristol Railway 1866 (WSHC Ref: A1/371/112)**

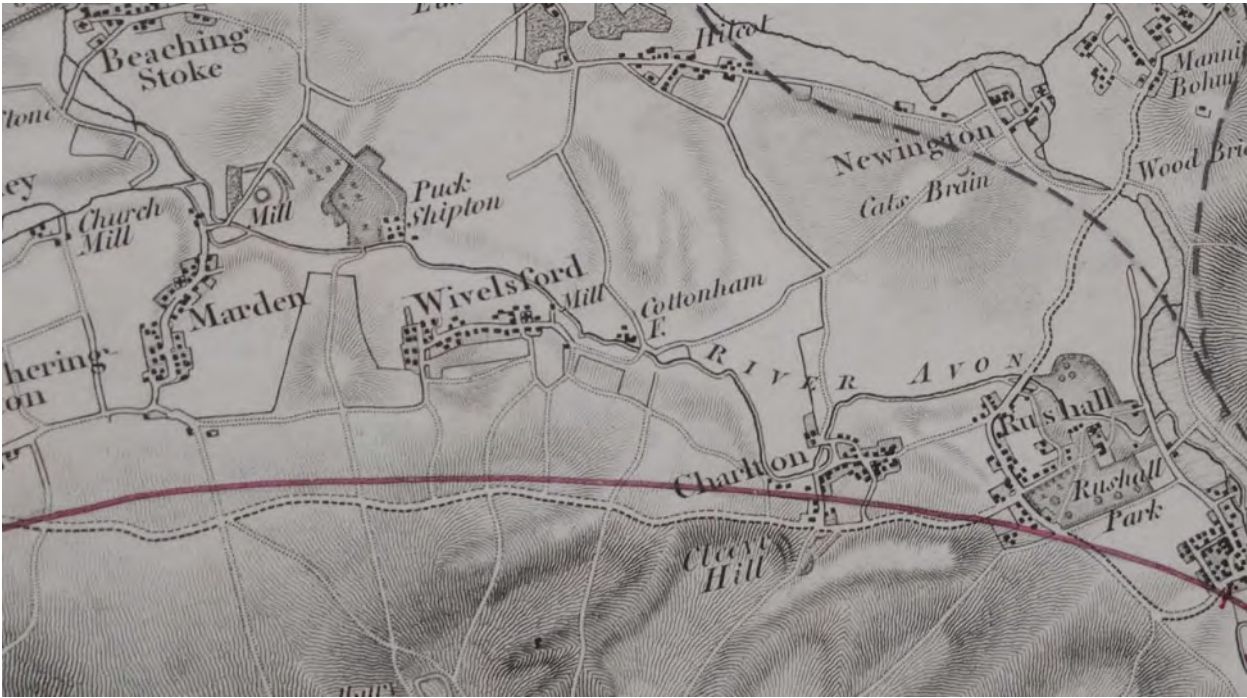
Individual railway and canal schemes were promoted by Special Acts. The process for Canal Schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover Railway Schemes in 1810. The requirements for railways were expanded in the 1845 Act, which requires public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. It was a requirement that all highways which were subject to proposed railway were identified and the owners / occupiers were consulted. It was against the interest of the company to show a nonexistent highway or to show a status higher than was actually the case because if a bridge was required to pass that highway the span would need to be wider for a public carriage road. The plans and reference book were subject to public consultation and any errors should have been highlighted and or objected to. The omission of a route or under recording of rights did not have the power to extinguish those rights. It is stated in the 1845 Act “True copies of the said plans and book of reference...shall be received in all courts of Justice or elsewhere as evidence of the Contents thereof”. For the reasons stated railway plans are considered strong evidence of public rights at the time of the scheme.

10.19 The sections and reference book have been viewed at the WSHC. The section plans depict the area the planned railway was to be built within an area of deviation and the public highways it was to cross. Those identified highways are then listed in the book of reference.

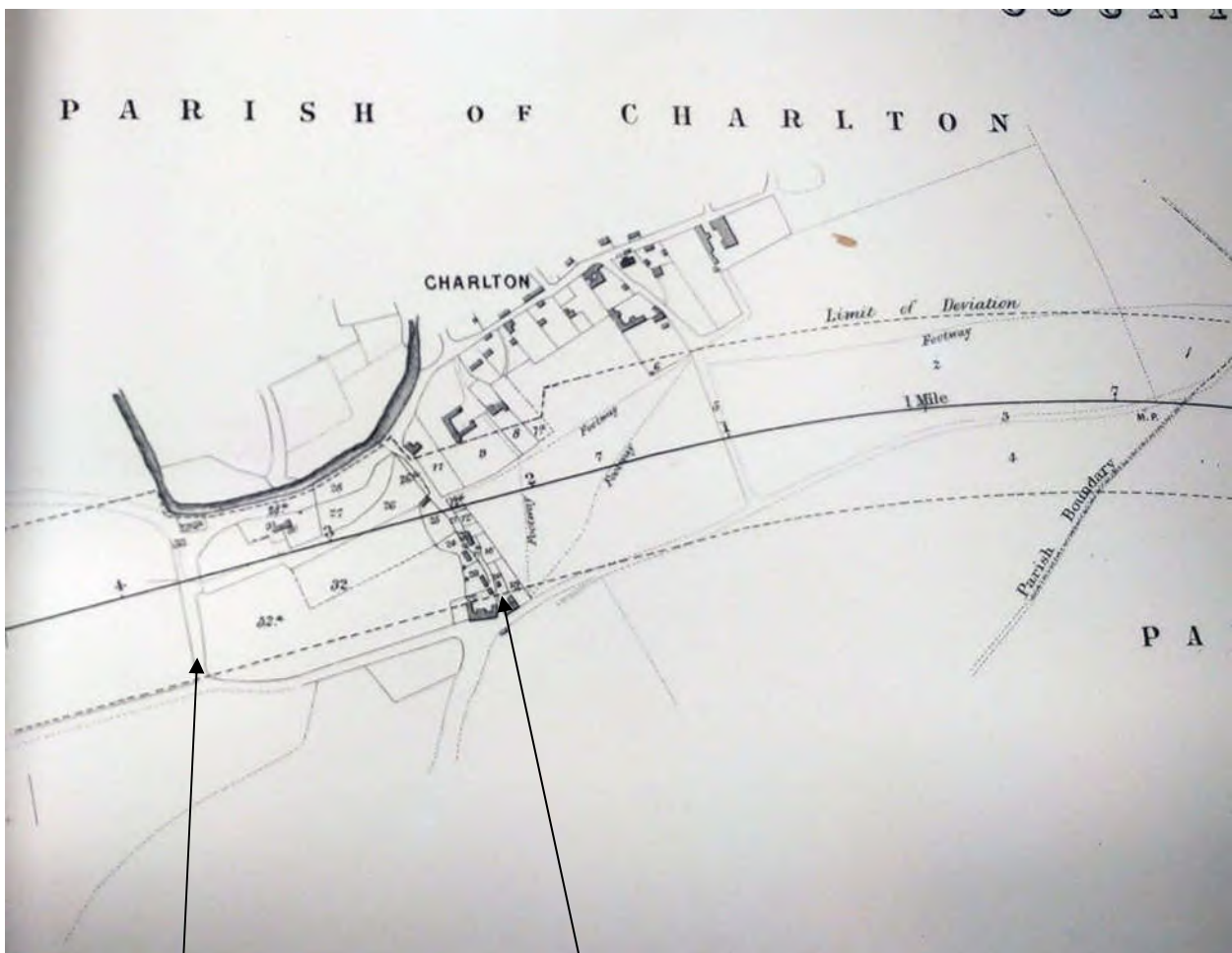
10.20 In this case the railway was not built. The Definitive Map Orders Consistency Guidelines produced by The Planning Inspectorate (last reviewed April 2016) state at paragraph 10.2.4 “*Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are*

*likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process.”*

10.21 The plans include an overview map which depicts the route of the planned railway on an OS base map. An extract of that map is shown below, with the planned route marked by a red line, it passes south of Wilsford (Wivelsford on the map) and Charlton, passing through what is now CSTP2 and CSTP6.



10.22 The sections book depicts the planned route in detail, within a line of deviation. The whole railway route was split into several different numbered lines, the section going through Wilsford and Charlton was named Railway No.2 and the relevant section is shown on sheet 14 of the sections book. The line of deviation is marked by the two dashed lines. The route of CSTP6 is shown at 1 mile 2 ½ furlongs along the line and the route of CSTP2 is shown between 1 mile and 3-4 furlongs along the line. The route of CSTP2 is numbered 33 and CSTP6 is numbered 21, these numbers are then referred to in the book of reference.



Route of CSTP2

Route of CSTP6



10.23



A closer view of the route of CSTP6 as shown in the section book, it can be seen there are a number of buildings lining the lane which is fenced. The sections book states that to accommodate the line a bridge was to be built “road level unaltered, Arch 25ft span 15ft high”.

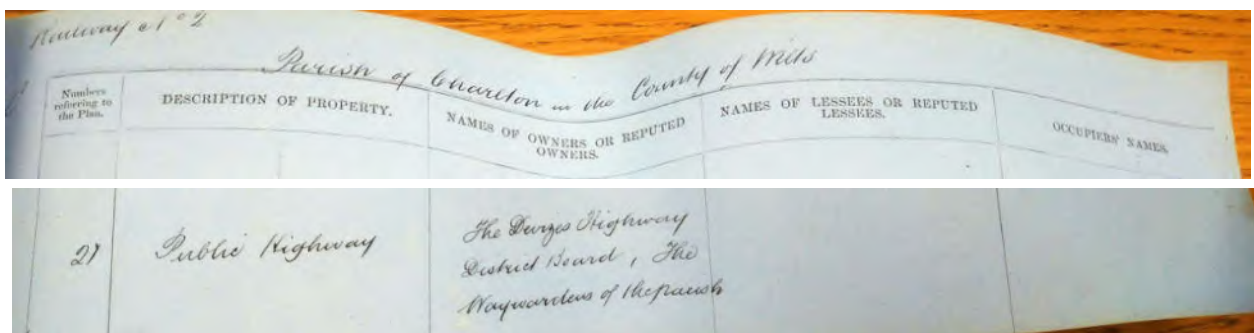
10.24



A closer view of the route of CSTP2 as shown in the section book, it can be seen the first section from the road to the south is fenced and where it turns west it becomes

unfenced. A number of land parcels make up the land between the track of CSTP6 and 2, which are referenced in the book of reference. The land parcel numbered 26 may be a route linking the CSTP2 and 6.

10.25 The reference book gives a description of the property by number in reference to the section plans and states who the owners or reputed owners and occupiers of that land are. Under Railway No.2, reference no.21 (the lane of CSTP6) is recorded as a “Public Highway” in the ownership of “The Devizes Highway District Board, The Waywardens of the parish”



10.26 The reference book for reference no.33 (the route of CSTP2 leading north from the turnpike road and then west towards Wilsford) is described as an “occupation road” in the ownership of “The Earl of Normanton and The Representatives of the late lieutenant Colonel Burton” and occupied by “Henry Wansbrough the younger , James Davis, William Wicks and George Witchell”

10.27 The field to the west of parcel no.33 in the sections book and to the south of the unfenced lane is numbered 34. In the reference book this parcel is described as “field and occupation road” in the ownership of “the late lieutenant Colonel Burton” and occupied by “Henry Wansbrough the younger”.

10.28 The route between CSTEP2 and 6 is divided between several parcels of land.



The parcels are described as the following in the book of reference, with ownership and occupiers named.

26	Field occupation road and Footpath	The Representatives of the late Lieutenant Colonel Burton	Henry Mansbrough the Younger
26 <sup>a</sup>	Garden	The Earl of Stormont and The Representatives of the late Lieutenant Colonel Burton	Henry Mansbrough the Younger and John Selwood
27	Allotment garden	The Representatives of the late Lieutenant Colonel Burton	Henry Mansbrough the Younger John Burton



Numbers referring to the Plan.	DESCRIPTION OF PROPERTY.	NAMES OF OWNERS OR REPUTED OWNERS.	NAMES OF LESSEES OR REPUTED LESSEES.	OCCUPIERS' NAMES.
27	<i>Continued</i>			<i>Fredrick Perry Powell scaly and Fredrick Laws</i>
28	<i>Field</i>	<i>The Earl of Stormanton</i>		<i>George Mitchell</i>
28 <sup>a</sup>	<i>Windy Bed</i>	<i>The Earl of Stormanton</i>		<i>Henry Manstrough the Younger and James Laws</i>
29	<i>Cottage garden and outbuilding.</i>	<i>The Earl of Stormanton</i>		<i>Henry Manstrough the Younger and William Wicks</i>
30	<i>Cottage garden and outbuildings</i>	<i>The Earl of Stormanton</i>		<i>Henry Manstrough the Younger and James Buckley</i>
31	<i>Cottage garden and outbuildings</i>	<i>The Earl of Stormanton</i>		<i>Henry Manstrough the Younger and George Perry</i>
32	<i>Field</i>	<i>The Earl of Stormanton</i>		<i>George Mitchell</i>

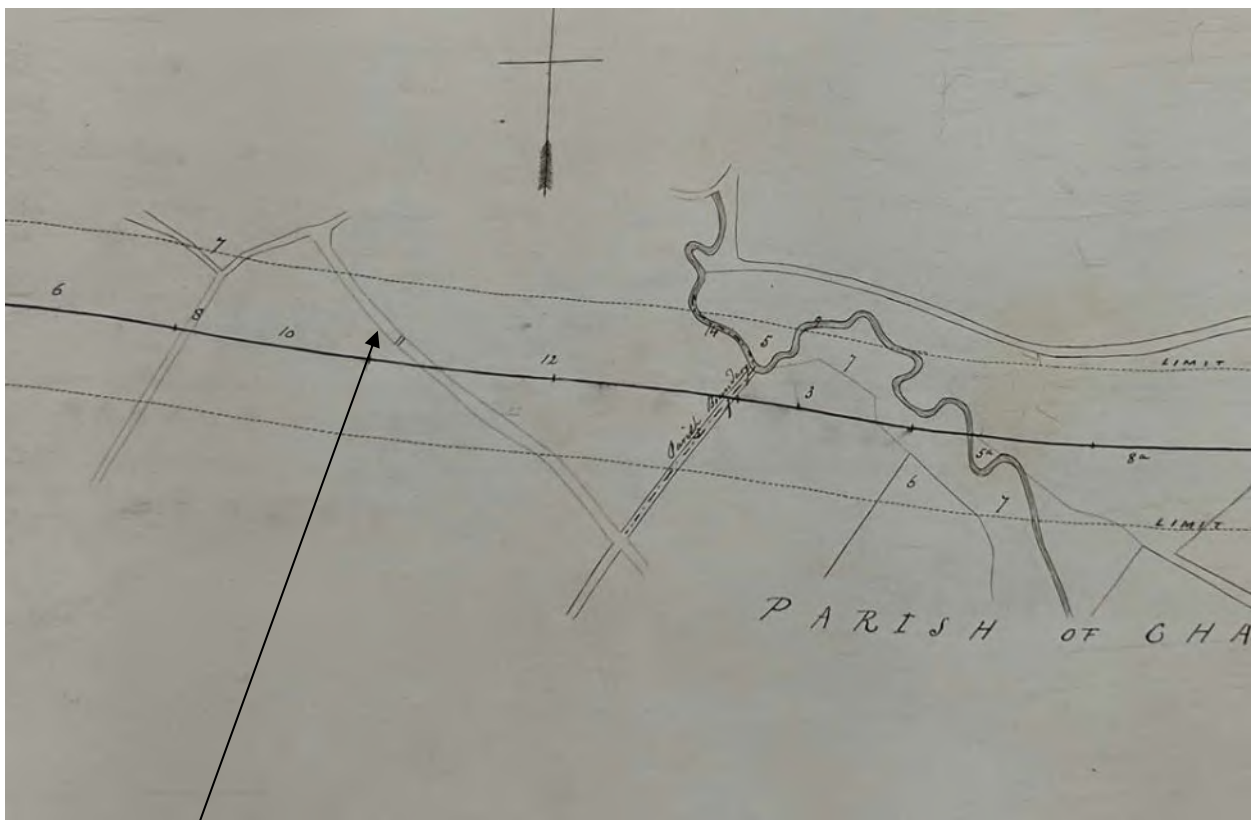
10.29 Parcel 26 is described as an occupation road, as well as a footpath and field, hence likely a spur of parcel 33 which is also described as an occupation road. Occupation roads were recorded differently to public roads and are usually understood to be roads laid out for the benefit of adjoining properties. In the reference book it can be seen unlike parcel 21 (CSTP6) these routes (26 and 33) were in private ownership, parcel 21 being described as a public highway and in the ownership of the highways board and waywardens of the parish. Parcel 26a described as a garden would appear to stop the occupation road (26) from linking to parcel 21.

10.30 The 1866 railway evidence appears to suggest the route of CSTP6 was considered to be a public highway and the route of CSTP2 was not.

**10.31 The deposited Plans of The Direct Western Railway 1845 (WSHC ref: A1/371/41)**

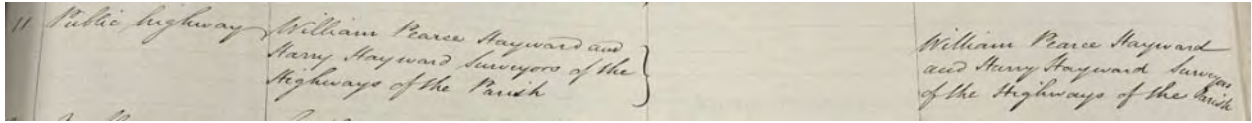
The plans for this (never built) railway were deposited with the clerk of the peace for Wiltshire on 30<sup>th</sup> Nov. 1845. The planned railway passed through the parishes of Wilsford and Charlton. The area of interest for this case is the section which was planned to cross the route of CSTP2/WILS5.

10.32 On sheet 28 within the sections book the route can be seen crossing, within the line of deviation for the railway, the route of WILS5. The track of WILS5 is numbered 11 on the plan and is between 55 miles and 1-4 furlongs along the line of the railway. The route passes into the parish of Charlton St. Peter but by that point the route is outside of the line of deviation for the railway and is not shown in its entirety or numbered.



Route of WILS5

10.33 The reference book shows that no.11 is described as a “public highway” in the ownership and occupied by “*William Pearce Hayward and Harry Hayward Surveyors of the Highways of the Parish*”.



10.34 The 1845 railway evidence suggests that the route of WILS5 was considered a public highway in that year.

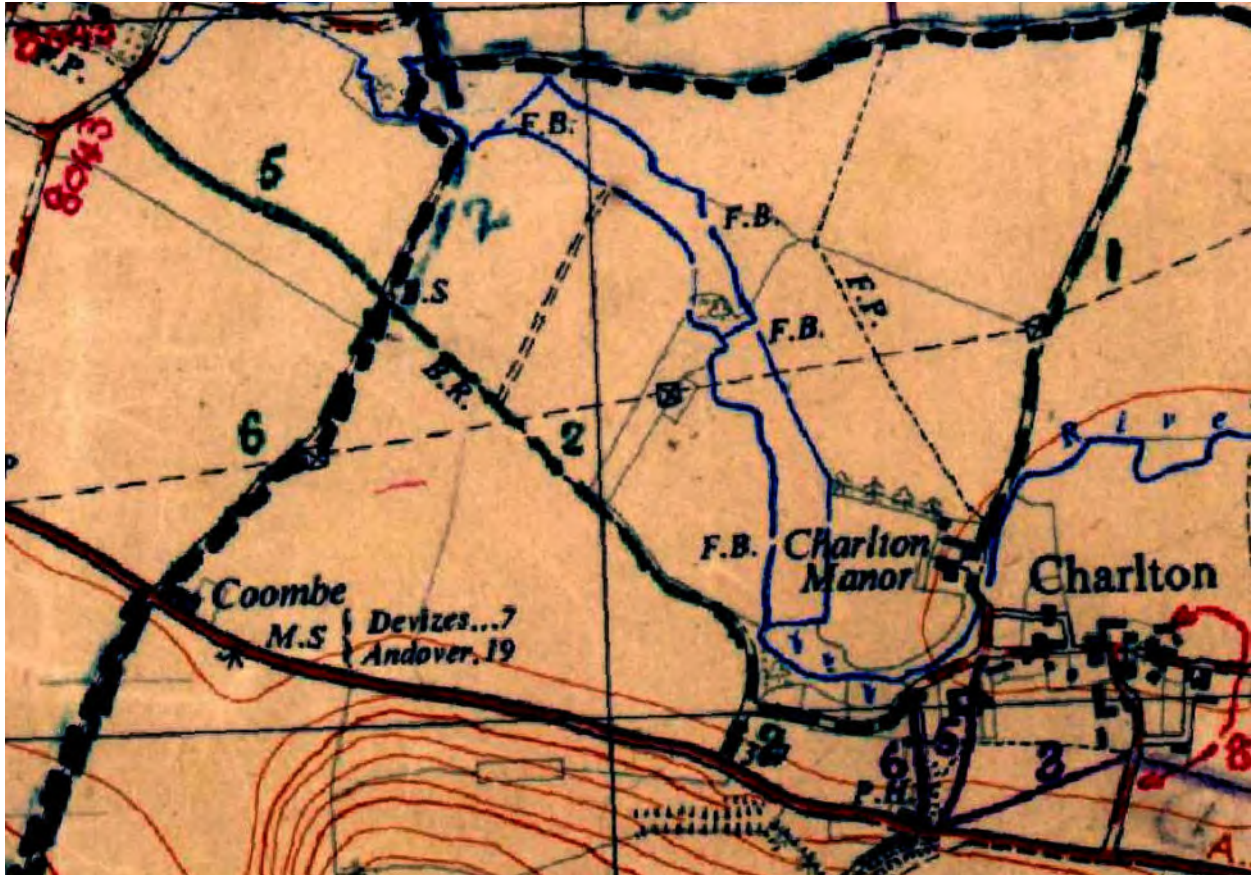
### 10.35 Definitive Map and Statement

As a result of the National Parks and access to the Countryside Act 1949 every surveying authority (in this case Wiltshire Council) holds and maintains a definitive map and statement which is a legal record of the public rights of way in its area. If a way is shown on the map then it is legal conclusive evidence that those rights existed at the relevant date of the map. However, the absence of a route is not conclusive that there may be unrecorded rights or the showing of, for example, a footpath, does not preclude that a higher right on horseback may be unrecorded.



10.36 The Pewsey Rural District Council Area Definitive Map and Statement dated 1952 depict the routes subject to the application.

See below image of the definitive map (original scale 1:25,000)



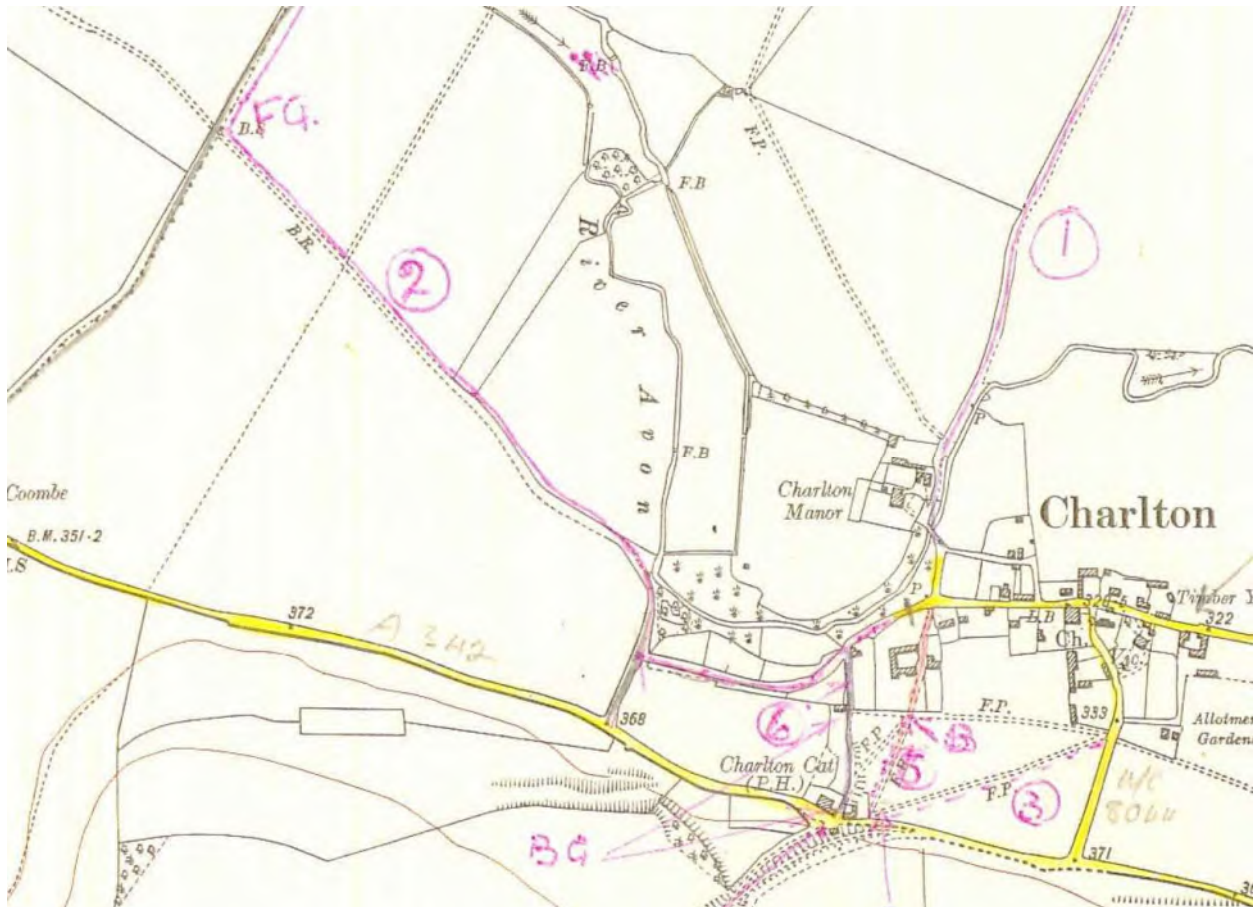
10.37 The definitive statements for the affected paths are currently recorded as the below.

Charlton	6	<p><u>FOOTPATH</u>. From the spur of path No.2 leading south to the Devizes - Andover road, A.342, by the Charlton Cat.</p> <p>Approximate length 274 m.</p> <p>Width 1.2 m.</p>	<p>relevant date</p> <p>24th March 1992</p> <p>Part subject</p> <p>to ploughing</p>
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Charlton	2	<p><u>BRIDLEWAY</u>. From the Devizes - Andover road, A.342, 274 m west of the Charlton Cat, leading north, north-west, north-east, and north to the North Newnton Parish boundary, south of Cuttenham Farm; with a spur, 91 m from its southern end, leading east to the western end of road U/C 8044.</p> <p>Approximate length 1.6 km.</p> <p>Width 4.5 m.</p>	<p>relevant date</p> <p>24th March 1992</p>
Wilsford	5	<p><u>BRIDLEWAY</u>. From road U/C 8043, south of Wilsford House, leading south-east to the Charlton Parish boundary.</p> <p>Approximate length 480 m</p>	<p>Relevant date</p> <p>24<sup>th</sup> March 1992</p>

10.38 The preliminary step to creating the definitive map of public rights of way, as a result of the National Parks and Countryside Access (NPACA) act 1949, was for each parish to submit a map to the county council marking the public rights of way which they believed existed in their parish. The parish claim maps for Charlton St. Peter and Wilsford can be seen below. These documents are seen as category C evidence but due to their relevance to the definitive map process are presented here.

### 10.39 Charlton St. Peter Parish Claim Map.



10.40 The surveyor also filled in a survey card for each path. The cards for CSTP2 and 6 record the routes were surveyed in November 1950. The route of CSTP2 is recorded as having a grass surface, 1 field gate, 1 cart bridge which is repaired by the county council, no direction posts and a fence which obstructs the branch to Wilsford. The route is claimed as C.R.B (Carriage Road Bridleway).

10.41 When claiming routes for the draft definitive map all parish councils in Wiltshire were issued, by Wiltshire County Council, the memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association: recommend by the County Councils Association. This document guided Parish Councils on how to identify paths for the draft definitive map. This guidance included advice that paths could be labelled C.R.F or C.R.B (carriage road footpaths or bridleways), these are described as public carriage or Cart Roads, or Green (unmetalled) Lanes mainly used as a footpaths or bridleways. As such some



parishes did claim path as C.R.Fs or C.R.Bs but the correct permitted status was to record these paths as RUPPs (Roads Used as Public Paths), the advice appears to have been unclear to some parishes. As a result, a number of routes are claimed in Wiltshire as C.R.Fs and C.R.Bs when the correct status to record should have been as a RUPP, as indicated by the symbology used on the definitive map. Routes recorded as RUPPs (including routes incorrectly recorded as C.R.F.s and C.R.Bs ) were to be reclassified as result of the Countryside Act of 1968. This act required all routes recorded as RUPPs to be reclassified, this involved determining what rights should be recorded on those routes recorded as RUPPs, whether they were footpaths, bridleways or had vehicular rights. This second and special review of the definitive map was unable to resolve all the routes recorded as RUPPs in the county before the 1981 Wildlife and Countryside Act came into force, which permitted authorities to continuously review their definitive map. Under this duty Wiltshire County Council sought to determine outstanding issues from the second and special review.

10.42 The route of CTSP2 was part of this process and it was determined during the second and special review of the definitive map that the route of CSTP2 was to be recorded, by agreement, as a bridleway. An order was made to record this reclassification in 1992.

10.43 The survey card for CSTP6 records the route as a footway and was surveyed in November 1950. The surface is recorded as “none”, 2 bridle gates are recorded, the location of which are denoted on the claim map, and no direction posts are recorded. It is noted that it is “*fenced to field (could read as first) gate, lane?? open*” The map implies the route would be unfenced between the end of the lane from the north to the Charlton Cat, simialr to the on the ground situation today.



## 10.44 Wilsford Parish Claim Map.



10.45 The survey card for WILS5 records the route as a bridle path or *B.P.*, the surface is recorded as grass, and it has *gates* and it is recorded as being unfenced. No date of survey or other information is recorded. The map and survey card do not record where the *gates* are located.

## 11. Category B

Category B evidence may be documents or plans drawn up as a result of legislation and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.

### 11.1 The Tithe Commutation Act of 1836

A system of taxation existed in Britain whereby farmers and people who worked the land were bound to pay tithes to the church. These payments were in kind and

generally represented one tenth of production. The system was both unpopular, cumbersome, and increasingly unjust as the industrial revolution gathered pace. The Tithe Commutation Act of 1836 sought to commute these tithe payments in kind to annual rent-charges. Parliament appointed a three-man commission to direct a staff of assistant commissioners, valuers and surveyors who mapped, valued, and apportioned rent charges among thousands of separate parcels of the tithable land in different states of cultivation.

- 11.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 11.3 The Tithe Commissioners seconded Robert K Dawson from the Royal Engineers to organise and superintend the land surveys. Dawson had a background in surveying and produced a paper, the details of which it was considered all tithe maps should be drawn to. This paper (British Parliamentary Paper XLIV 405 1837) only ever served in an advisory capacity as the Tithe Act itself contained contradictory clauses on the nature of maps (*Tithe Surveys for Historians by Roger J P Kain and Hugh C. Prince*) and was amended in 1837 allowing commissioners to accept maps of a variety of scales and dates.
- 11.4 Roger J P Kain and Richard Oliver in *The Tithe Maps of England and Wales* at page 23 note that the portrayal of features on tithe maps is very variable across parishes and that advice to the privately commissioned surveyors was itself imprecise and that although the official instructions required that surveyors should include such detail on their maps as it is usual to find on estate maps, there was no statutory requirement to do this.
- 11.5 There are however general conventions that are observed and at page 24 Kain and Oliver observe that:  
*“Roads are usually shown on tithe maps as they normally bounded individual tithe areas. Only very rarely is their status as public or private indicated with any certainty, though the general convention of colour filling public roads in sienna is often followed.”*



“Foot and Bridleways ...are sometimes explicitly annotated as such, but more usually they are indicated by single or double pecked lines.”

### 11.6. 1841 Tithe Map and Apportionment for Charlton St. Peter -WHSCH Ref- TA/ Charlton St. Peter

The 1841 tithe map for Charlton St Peter has been viewed at the WSHC. The map is at a scale of 6 chains to an inch. The relevant section can be seen below. The route of CSTP2, north from the A.342 and leading west is shown in the manner of the local road network, excluded from tithable land, the same applies to the route of CTSP6. The roads are uncoloured on the map. There is no clear, land or route excluded from tithe linking the two north/south routes as the route of CSTP2 is now recorded.



Route of CSTP2

Route of CSTP6

11.7 The apportionment records two parcels as sharing a boundary with “White Lane” (the route of CSTP6). Those being parcel 36, which is named as “allotment *at the bottom of white lane*” and under the heading “*state of cultivation*” it is recorded as “*pasture*”, and parcel 35 which is recorded as “*Coopers close adjoining white lane*” and as a

“meadow”. The other parcels between the two north/ south tracks making up CSTP6 and CSTP2 are referenced in the apportionment as follows.

26 - Cottage and garden

27 - Simpers homestead and close- - meadow

28 - Close adjoining west Garston- pasture

29 - West Garston- arable

33 - Cottage and garden

34 - Close late Daniels- arable

None of these parcels appear to show a clear through route in the manner of a public or even private road.

11.8 The apportionment also records “Lanes waste and River” as 7 acres 0 roods 0 perches. This shows the surveyor was recording highways/ lanes.

11.9 The map shows the route of CSTP6 with a dashed line where the track turns east into the village, indicating a change of boundary or vegetation. A pencil line appears to have been drawn on at a later date just south of Timber Lodge , where there is a stile today.

11.10 The applicant for application D/2021/105 suggests the Charlton tithe map is considered a 1<sup>st</sup> class map. Usually, a 1<sup>st</sup> class tithe map would be at a scale of 3 chains to an inch, the Charlton map is 6 chains to an inch. Officers have also consulted Roger J P Kain and Richard Oliver’s book *The Tithe Maps of England and Wales*, the Charlton map is not referenced as a 1<sup>st</sup> class map in that book. Other maps which are considered 1<sup>st</sup> class are labelled as such in the book.

### 11.11 Wilsford Tithe Map and Apportionment 1844 – WSHC Ref -T/A Wilsford

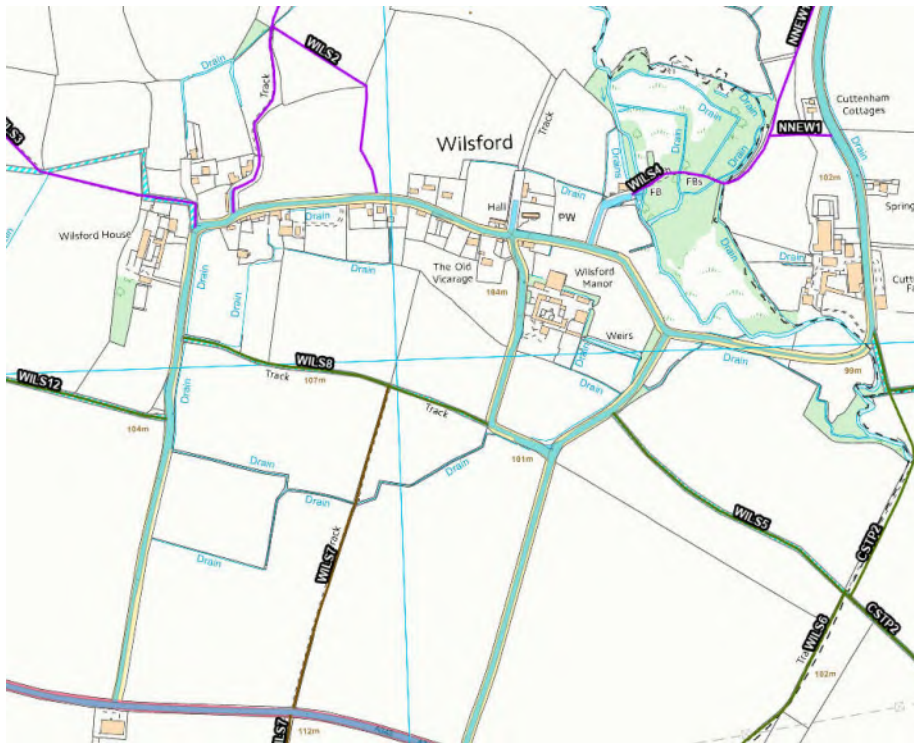
The Wilsford tithe map and apportionment of 1844 has been viewed at the WSHC. The map is drawn at a scale of 6 chains to an inch. It depicts the route of WILS5 coloured sienna in the manner of the rest of the highway network and is annotated “To Charlton”. It is noted that a number of other routes shown coloured sienna on the map are either not public highway or of a lower status than a vehicular highway in 2023, although these routes have not been investigated.



Route of WILS5



11.12



The above modern map extract is provided as a comparison to the tithe map, showing the different statuses of the routes coloured sienna within the tithe map. Routes shaded blue are public roads, public footpaths are shown by a purple line, public bridleways by green lines and public byways by brown lines. Routes subject to DMMO applications to upgrade the routes or record routes are annotated by a dashed blue lines. A number of routes on the tithe map are not recorded as public in any manner and not subject to DMMO applications as of January 2023.

11.13 The tithe apportionment has been viewed and the parcels either side of the track on the route of WILS5 are either labelled as arable or meadow, no mention of the track or road is made.

11.14 The applicant for D/2021/105 again claims the Wilsford map to be a 1<sup>st</sup> class tithe map, as for the case of the Charlton tithe map, the Wilsford map is not of the normal scale for a 1<sup>st</sup> class map and is not referenced as such in Roger J P Kain and Richard Oliver's book *The Tithe Maps of England and Wales*.

11.15 The routes on both tithe maps can be seen as being not titheable land, as they are separate from any parcel of land and not numbered which may be indicative of a public highway. Defining the status of highways was not the purpose of the tithe act

or maps and any route not subject to tithe may be private or public. Where it is written “*To Charlton*” on the Wilsford tithe map it may be indicative of a public highway. The Planning Inspectorate, Definitive Map Orders: Consistency Guidelines state under the heading of tithe commutation documentation, at 8.2.13 “*the annotation of a road ‘to’ or ‘from’ a named settlement is suggestive of public rights.*” There is no annotation at the western end of the same route on the Charlton tithe map.

11.16 Inland **Revenue Finance Act 1909/1910** In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were carefully identified and included in the documentation.

11.17 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 “An Edwardian Land Survey: The Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

*“The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses”.*

*“A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament.”*

11.18 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where

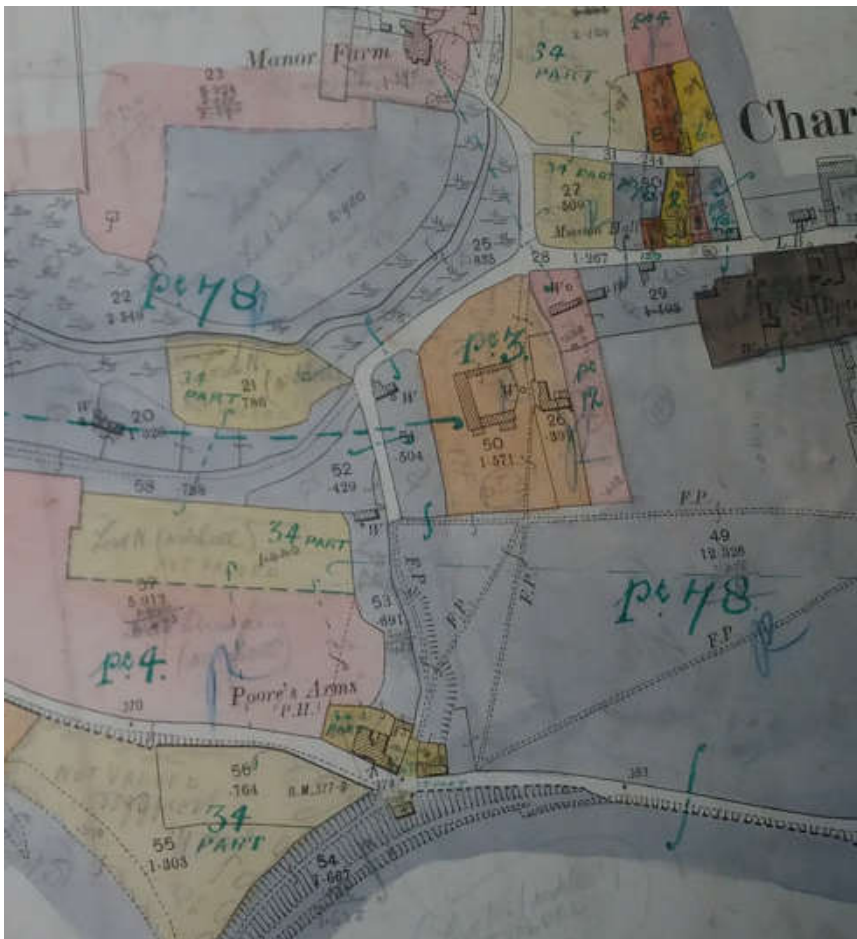
deductions are listed. Deductions were permitted where the value of a property were diminished, for example if a public right of way, an easement, or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on 'broken braces'. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.

11.19 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that "No duty under this part of the Act shall be charged in respect of any land or interest held by or on behalf of a rating authority".

11.20 The working copy of the Finance Act plans held at WSHC have been viewed. **WHSC Ref – L8/10/41 and L8/1/125.** The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. The application routes are on one map sheet, 41/10. Sheet 41/10 has been viewed along with Valuation Book at WSHC.



11.21 Seen below are images of the finance act map for the area. In the first image, the northern half of the route of CSTP6 is shown uncoloured and separate to the taxable land. The southern half of the route is part of the land numbered 78 and where it enters the land around the Poores Arms it is part of parcel no.34. It is apparent from the base map used, dated 1900, that the central section of the route is no longer part of the same continuous track as per older maps.



11.22 The route of CSTEP2 and WILS5 in its entirety is not excluded and are coloured within land parcels 78 and 3 in Charlton and 82 in the parish of Wilsford.



11.23 The valuation book has been viewed for parcels 3,34,78 and 82, no rights of way deductions have been recorded within the book for any of the parcels. Only the northern half of CSTEP6 and the section of CSTEP2 east of its junction with CSTEP6 is shown uncoloured within the Finance Act records, which is possibly indicative of public highway status.

## 12. Category C

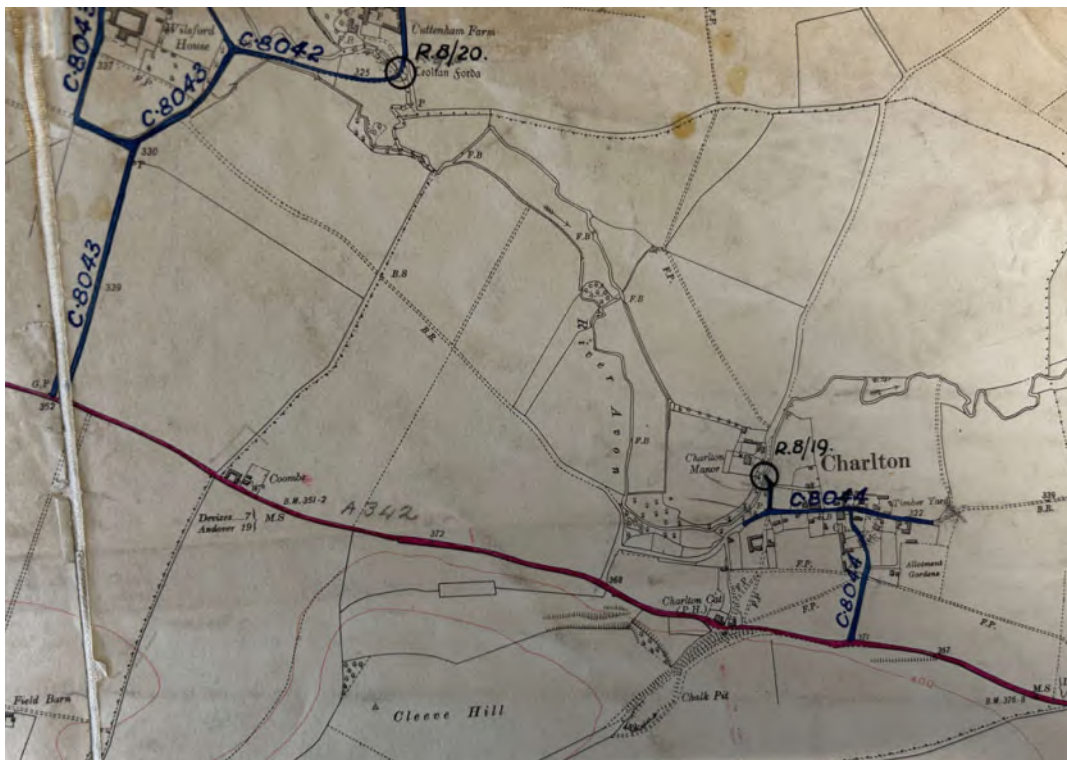
12.1 Evidence in this category includes local government records (i.e., parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. These include records of bodies whose function is the highway authority.

12.2 These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

### 12.3 Rural District Council Takeover Map c.1930

12.4 The Local Government Act 1929 required that the maintenance responsibility for rural roads passed to the County Council. As a result of this records known as the Takeover Maps were produced by the RDCs and passed to Wiltshire County Council.

12.5 Below is an image of the Takeover map for the area held by Wiltshire Council. No section of the application routes are marked on this map.

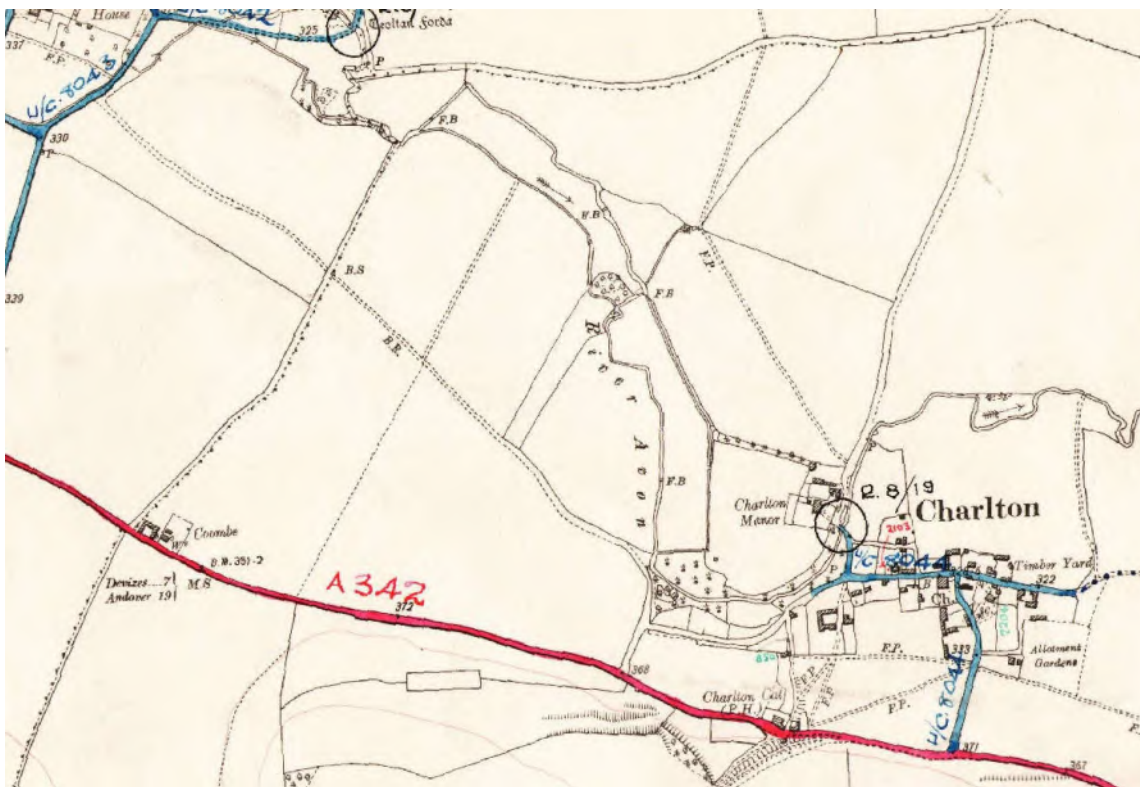




12.6 Enquiries have been made by officers to view the Wilsford and Charlton St. Peter Parish council minutes at the WSHC. Archivists confirmed to officers that the WSHC does not hold any records for Wilsford and Charlton St. Peter. Officers have made enquiries with the parish clerk for Wilsford and Charlton St. Peter to view the parish council minutes , the clerk has informed officers that no records pre 2008 can be found following enquiries in the parish.

### 12.7 Wiltshire County Council Highway Record

Sometime after the taking over of the responsibility for rural roads Wiltshire County Council amalgamated the information and produced a highway record. This record has been maintained and amended since that time and forms part of the Council's records of highways maintainable at public expense. No part of the application routes are recorded on these records.



## 13. Category D

Evidence in this category includes documents showing highways as additional to their main purpose and can be evidence of repute or physical existence of a route.

### 13.1 A Plan of the Parish of Charlton 1804 – WSHC Ref- 1225/237

This detailed plan of the parish dated 1804 at a scale of 5 chains to an inch was produced with a reference book which records the name of the parcels of land, which are numbered with reference to the plan, acreage of the land, exclusive of roads and the area of the roads if any, and the annual value of that land. It is clearly an in-depth survey of all land within the parish of Charlton St. Peter concerned with tithes, unfortunately the surveyor or authors name for the plan and book, or where it was deposited are not apparent.

13.2 The plan is not orientated to north, as such the images of the map are inverted as to make them easier to understand from a topographical point of view, however this results in the text appearing upside down.

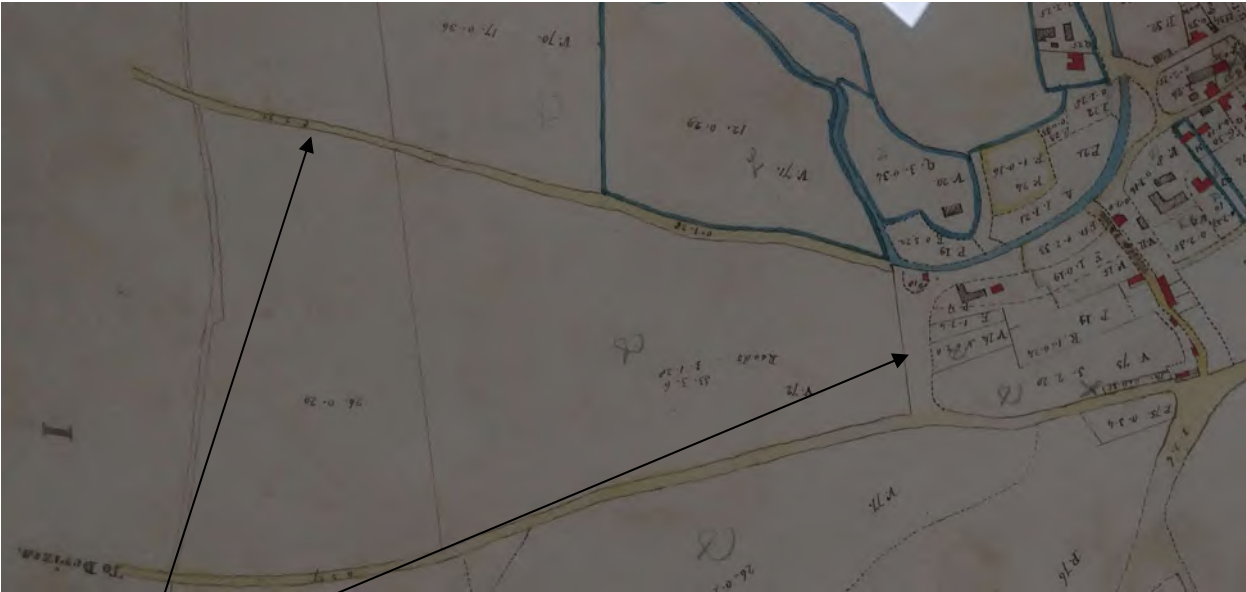


Route of CSTP6 , labelled “White Lane”

13.3 The above extract shows the route of CSTP6 coloured yellow/sienna in the same manner as other roads. It is written on the route “White Lane”, which is the only

named road on the plan in the whole parish. The lane is not measured and valued with any other property.

13.4

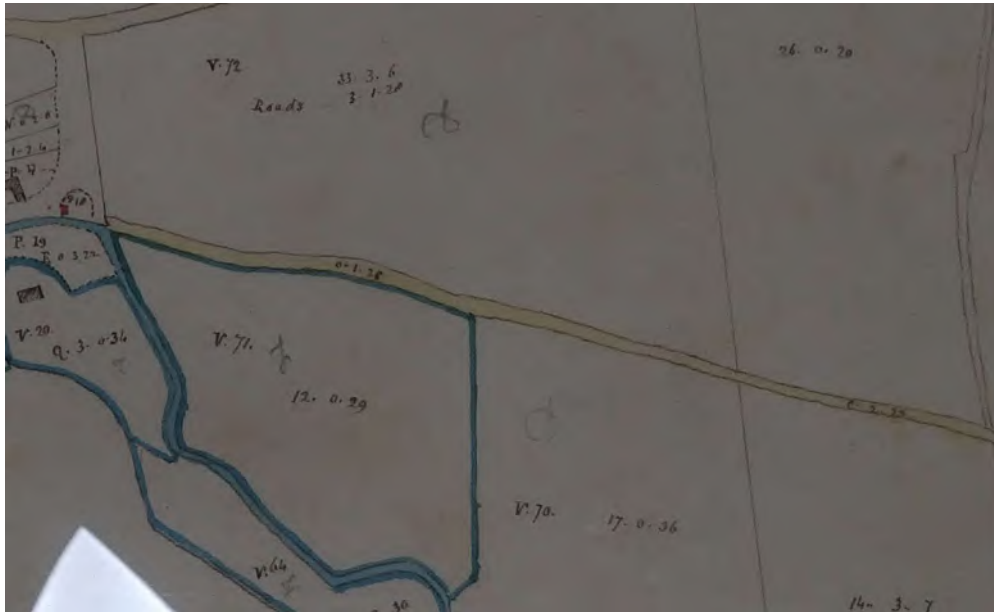


Route of CSTP2

13.5 The route of CSTP2 is shown coloured yellow/sienna from the Wilsford parish boundary leading east towards Charlton. It appears to be fenced or gated where it meets the water course at the western boundary of the village. This section of the track is measured. The route continues south to the turnpike road (A.342) uncoloured. There is no clear route leading east to link to White Lane (CSTP6) as per the recorded route of bridleway CSTP2 and the application route.



13.6 The sienna coloured section of the route of CSTP2 is referred to in the reference book where the adjoining land parcels are recorded.



This image has been orientated with south at the top of the image so that the text is the correct way up. The parcel of land numbered V.70 to the south of the route of CSTP2 is named “North of Wilsford Road” in the reference book. The parcel of land south of the the route numbered V.72 is named “Between D and Turnpike road part of Wilsford and Turnpike Road”. An area of road is recoded as part of that land at 3 acres 1 rood and 26 perches. Those parcels of land are recorded as part of the The Earl Drax Esquires freehold lands.

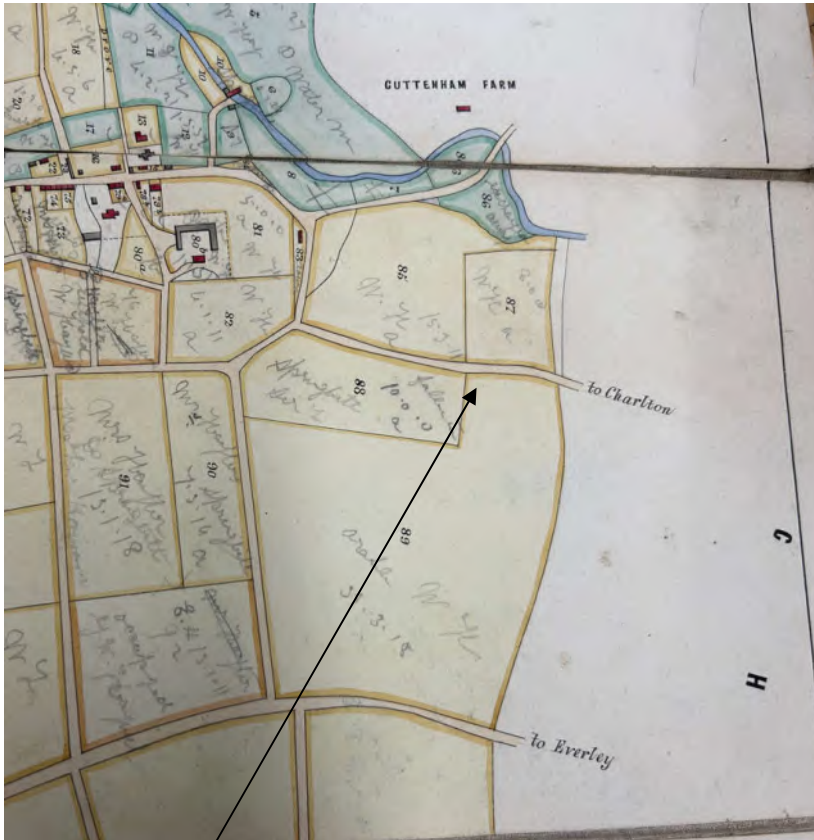
13.7



The above image, again orientated with south to the top of the image so that the text can easily be read, shows the area between White Lane and the section of CSTP2 which leads from the A.342 or turnpike road. Part of the application route and CSTP2 leads in this area from east to west, no route is apparent on the 1804 plan. The approximate route of the recorded route of CTSP2 would lead through the parcel of land labelled F 1.0.19 or V. 15 and continue west to the uncoloured lane. The land labelled V.15 and F 1.0.19 appear to be recorded as the same land in the reference book and named "Cooper Close adjoining White Lane", no area of road is recorded as part of this land. The land labelled F.51 0.2.33 is named in the reference book as "Allotment at the Bottom of White Lane", no area of road is recorded as part of this land. The parcel of land labelled V.73 3.2.20 is named "West Garston" which is recorded as having an area of road of 0.1.27. The land labelled P.14 and R.1.0.24 is recorded as "Close adjoining garden" with no area of road recorded. The land labelled P.17 is recorded as "Simpers Homestead and close" and "Simpers Mead". No area of road is recorded. The three parcels of land at the northern end of White Lane on the west side are shaded yellow, the map indicates that land coloured yellow is in the leasehold of G.F.Fowle Esq. It seems unlikely this shading is in reference to any road and rather the land parcels outlined with yellow. There does not appear to be any obvious public access linking White Lane and the Wilsford Road to the west. It is possible the land named Cooper Close and leading into Simpers Homestead and close, could be a through route as possibly shown by the dashed line on the map but no area of road is recorded in either parcel. If the 'close' or 'Cooper Close' was a through route its status is unclear and it was not considered a public road. Only White Lane (CSTP6) and the length of track leading west to the Wilsford parish boundary are coloured yellow, the spur of CSTP2 to the A.342 is uncoloured. It is not clear what the difference in colour indicates, perhaps a change in surface but it is not indicated in any key.

### 13.8 Survey of Property Of Sir Francis Dugdale Astley 1846 (WSHC Ref: 574/311)

This map and reference book records the land owned by Sir Francis Dugdale Astley in the parish of Wilsford in 1846. The route of WILS5 can be seen excluded from land parcels and shown in the manner of other roads. It is also annotated "To Charlton".

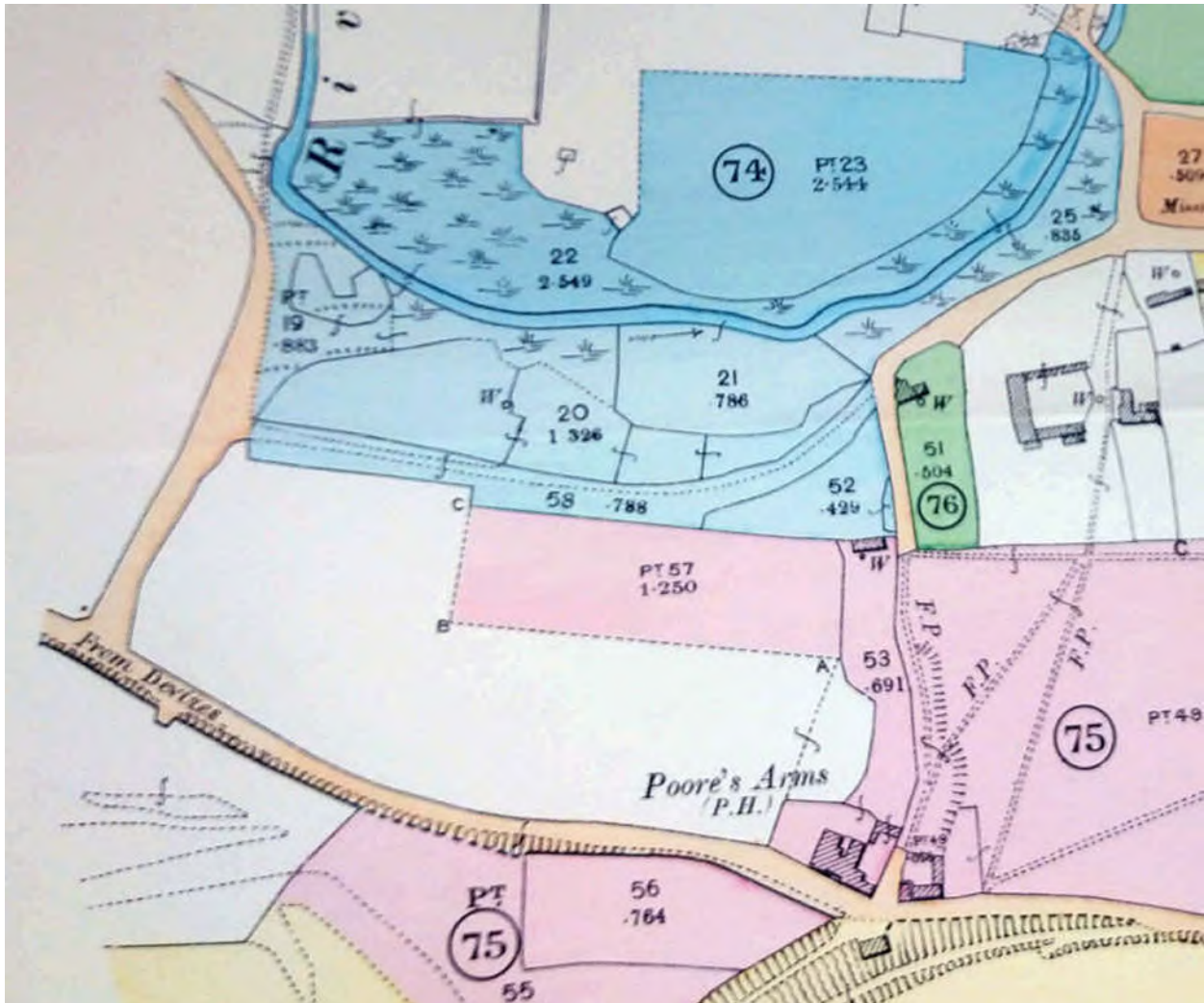


Route of WILS5



### 13.9 Sale of the Rushall Estate 1917 (WSHC Ref: 1010/18)

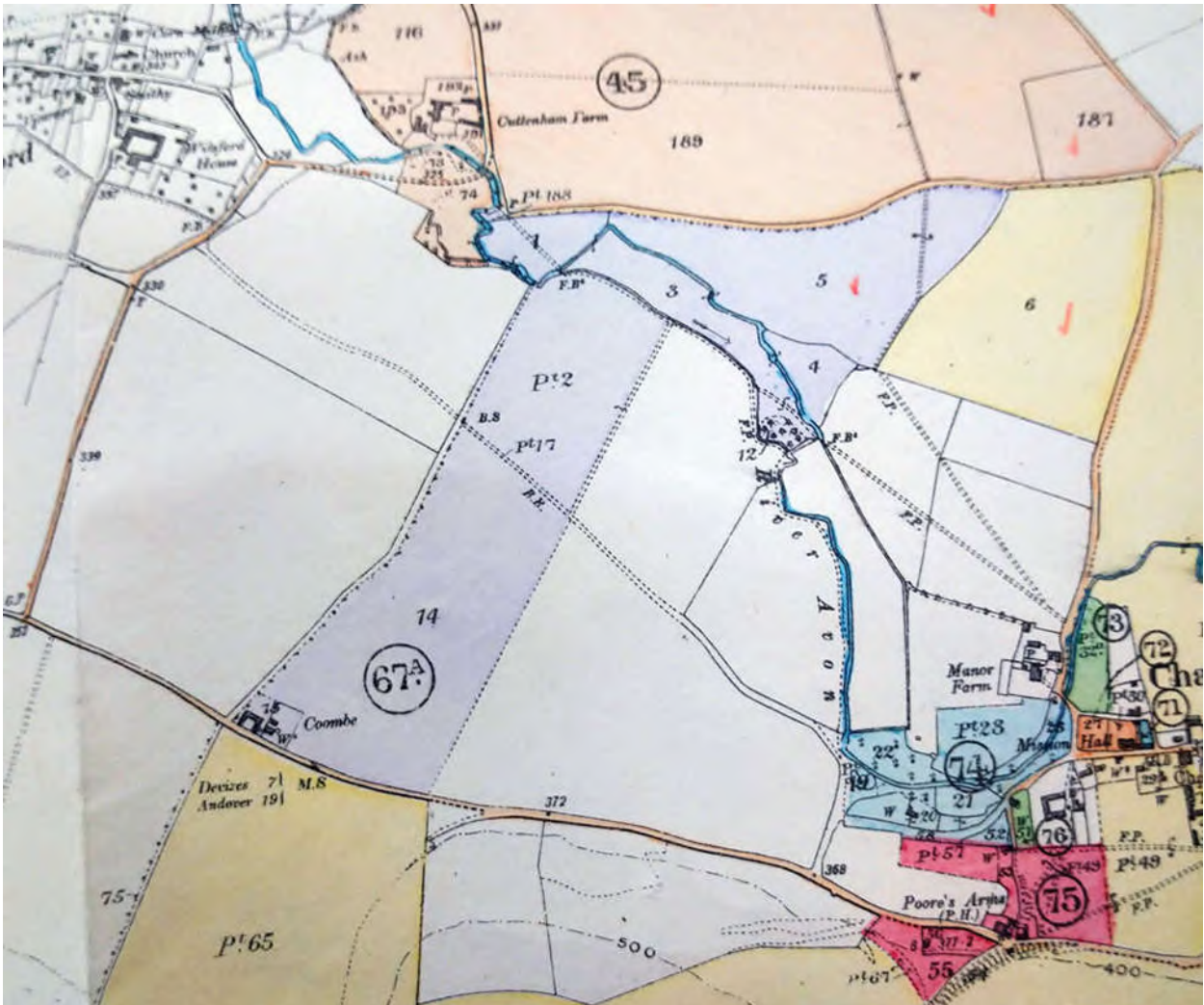
These sales particulars depict and describe a number of parcels of land for sale in 1917 which includes land that the application routes cross. A map is provided with the particulars.



The route of CSTP6 is shown in the manner of the road network at the northern end to Timber Lodge and thereafter part of the land shaded pink as part of allotment 75 which is for sale, until the route reaches the Poore's Arms ( now The Charlton Cat). No public right of way or highway is mentioned in the schedule of the lot 75.

13.10 The route of CSTP2 leading west from the CSTP6 is shown as part of lot 74 shaded blue which is for sale. The route of the CSTP2 is numbered 58 on the plan within lot 74, the schedule describes no.58 as a bridle path. The route of CSTP2 is then excluded from plot 74 and shown in the manner of the road network, shaded sienna.

13.11 The continuation of the route of CSTP2 into the parish of Wilsford is shown on a smaller scale map, as seen below.



This map shows a section of the route to the east of the parish boundary coloured purple and as part of plot 67A. The path is shown on the plan as no. Pt.17. The schedule for plot 67A describes no. Pt.17 as a bridle road. Note the route of CSTP2 from the A.342 is not coloured in the manner of a road as the other larger scale map shows, there is an inconsistency within the plans.

13.12 The maps contain a disclaimer which states “ *This plan is published for convenience only, and although believed to be correct its accuracy is not guaranteed*”.

#### 14. Category E

14.1 **Evidence** in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in

this category, and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.

- 14.2 Not all commercial maps are derived from the same surveys and although there is some duplication of Ordnance Survey derived material, a number of surveyors of early maps produced independent surveys. Hence it is useful to compare the county maps produced by Andrews and Dury, C & I Greenwood, and the Ordnance Survey.
- 14.3 It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, maps produced by Bartholomew's were continually revised and early versions were verified by the Cyclists Touring Club and Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- 14.4 The applicants supplied a summary list of the evidence to assist with the making of these applications. Those summaries include a list of category E evidence maps depicting some or all of the application routes. These are shown in chronological order. This list also includes other evidence the applicants researched. See **appendix 1** for the applications and a historical summary for each route submitted by the applicants.
- 14.5 A selection of those commercial maps from different surveyors are included in this report below.



14.6 Andrews and Dury's 2" map of Wiltshire 1773. (status shown - open road)

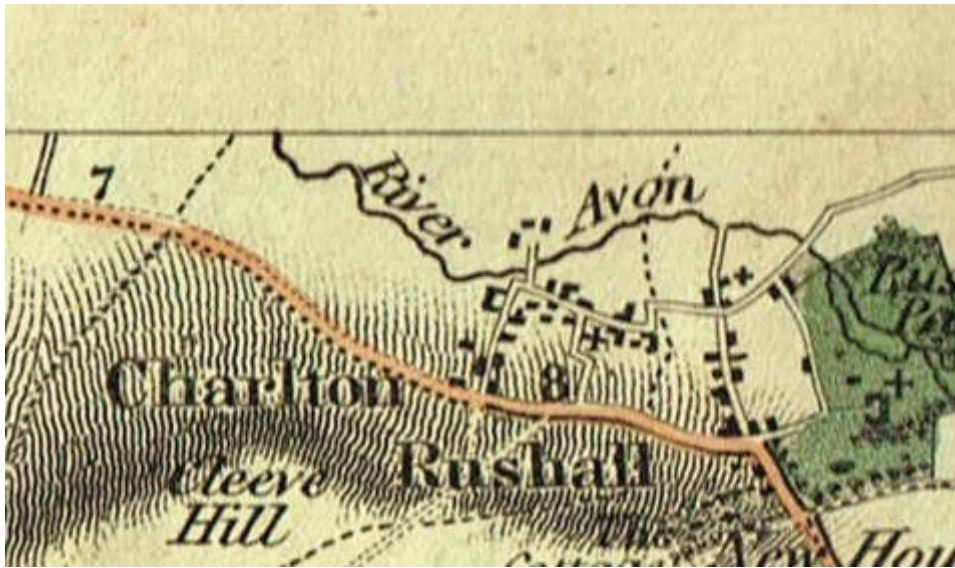


14.7 Cary's 1/2 " map of 1823. (status shown - parochial road)





14.8 Greenwood's 1" Map of Wiltshire 1820 (status shown - cross road- meaning not a primary or turnpike road)



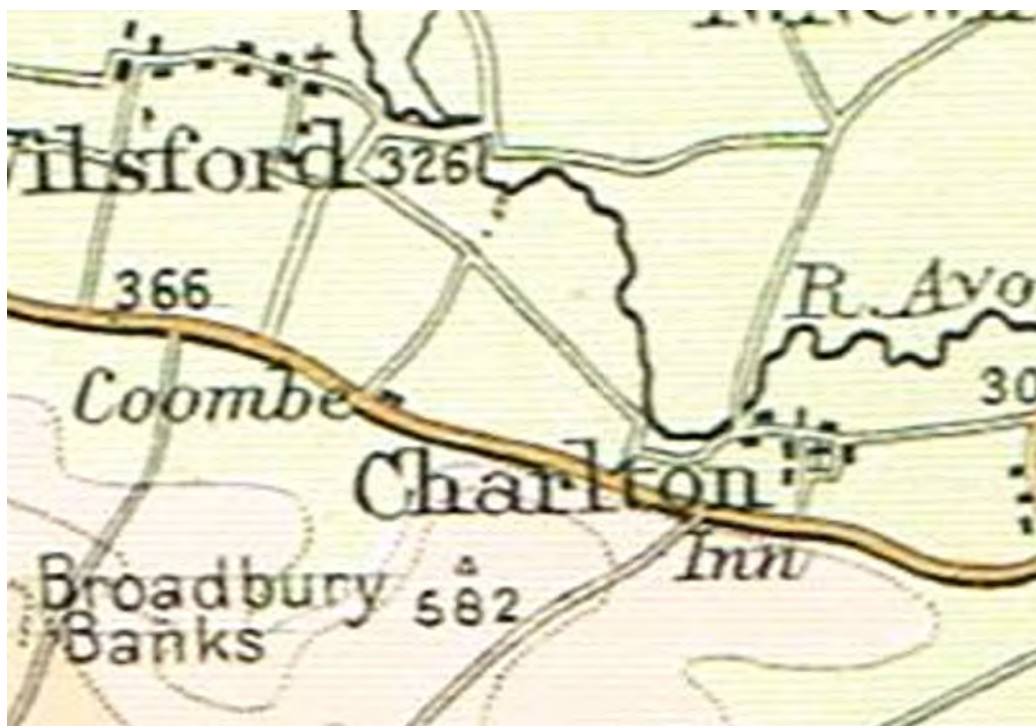
14.9 OS 2 inch drawing- sheet 62- Devizes circa 1808- (status shown – wide unfenced track or road)



14.10 OS 1 inch drawing sheet 14- Devizes –circa 1817- ( status shown- unfenced track or road, no route shown linking to CSTP6)



14.11 Bartholomews 1/2 inch Survey Atlas 1904 (Status shown- other driving road)





#### 14.12 Ordnance Survey 1:2500 County Series mapping 1878 to 1923

The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. J B Harley, historian of the Ordnance Survey, records that “the maps delineate the landscape with great detail and accuracy. In fact, practically all the significant man-made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road....., field....., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel, and clay pits are depicted separately; all administrative boundaries are shown;.... hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”.

14.13 Richard Oliver in his book “Ordnance Survey Maps a complete guide for historians” recognises that surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”

14.14 Ordnance Survey maps from 1888, although presenting an accurate representation of the landscape and its features do carry a disclaimer to the effect that the representation of any road or track is no evidence of a public right of way.

14.15 It was the practice of the OS to allocate parcel numbers to distinct pieces of land and measure them. These are numbered and recorded on the map as acreages. Where applicable parcels were ‘braced’ with adjoining parcels – for example a pond in a field may be braced with the adjoining land or a track across a field may be braced in with the surrounding land and measured with that. However, some features “*are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of ‘Town area’), all public roads, whether fenced or unfenced and foreshore and tidal water....*” (From Ordnance Survey Maps a descriptive manual by J B Harley published by the Ordnance Survey 1975). For the earlier (to 1879) First Edition maps the OS produced a Book of Reference (or Acreage Book) in which parcel numbers were

listed against acreages and land use. The book was not produced for the Second Edition maps (1900/1901) and for these (and subsequent editions) the parcel number and acreages were printed on the sheet and land use information was dropped.

14.16 The application routes are depicted on one sheet, Wiltshire sheet 41/10. The below table summarises what status the routes are shown as on the 1900,1924 and 1939 editions which officers have viewed at the WSHC. Also, the 1886 edition which has been viewed online at maps.nls.uk.

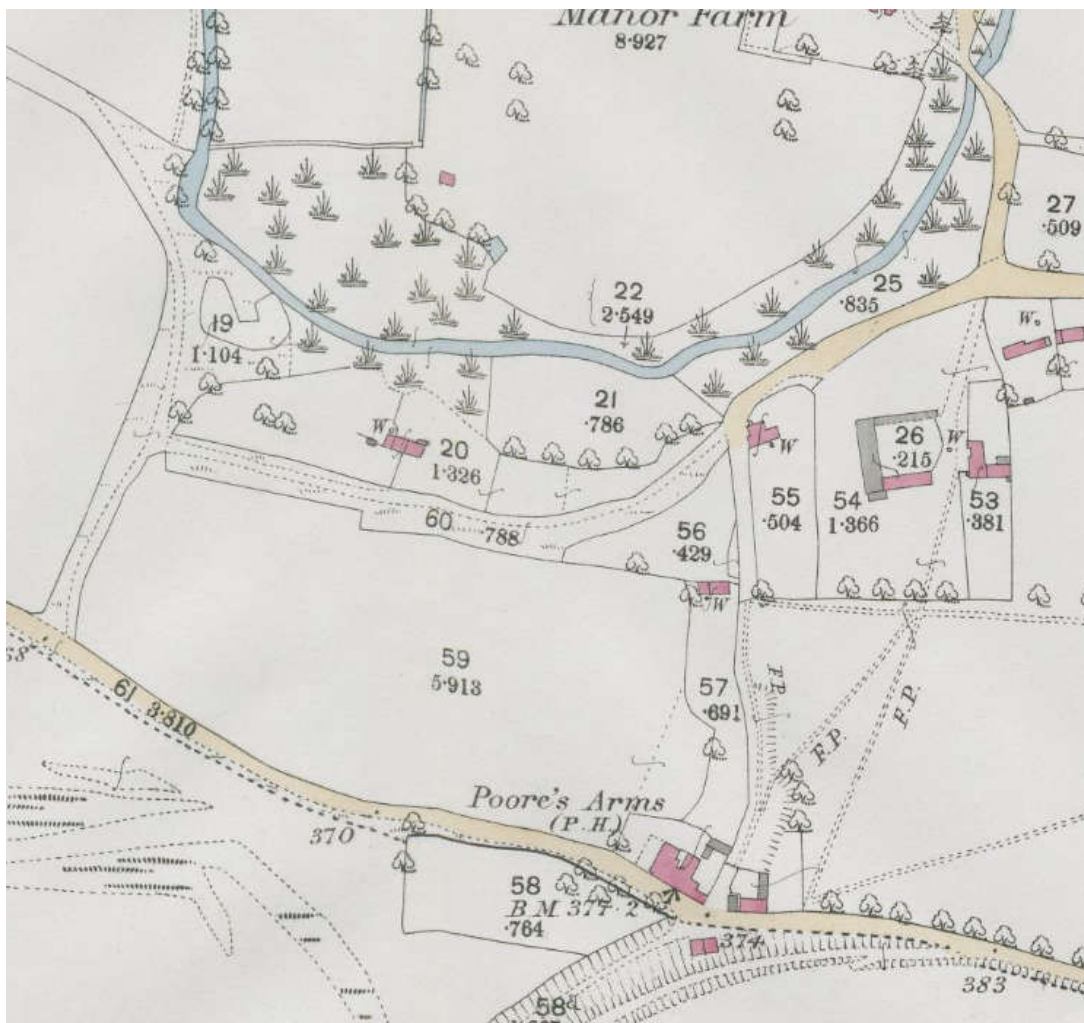
<b>OS Edition</b>	<b>Route</b>	<b>Observations</b>
1886 sheet 41/10	CSTP6	Northern section to Timber Lodge shown as a fenced lane and numbered as part of the road leading into the village. The colouring of the road from the village does stop at the northern end of CSTP6. Section through the car park of Poores Arms shown as part of the main road, although not coloured in the same manner. Section between roads is shown as an unfenced footpath.
1886 sheet 41/10	CSTP2	Section leading west from CSTP6 not coloured and shown as a fenced track, separately numbered from other parcels. Section leading to parish

		boundary partly fenced and then unfenced.
1886 sheet 41/10	WILS5	Shown as an unfenced track, fenced, or gated at parish boundary, ungated/fenced at junction with road at western end. Route widens as it leads west. Not separately numbered.
1900 sheet 41/10	CSTP2	Shown in same manner as 1886 sheet.
1900 sheet 41/10	CSTP2	Route shown in same manner as 1886, other than route marked B.R (Bridle Road) leading to parish boundary.
1900 sheet 41/10	WILS5	Route shown in same manner as 1886, other than route marked B.R and now gated or fenced at junction with road at western end.
1924 sheet 41/10	CSTP6	Shown in same manner as 1886.
1924 sheet 41/10	CSTP2	Route shown in same manner as 1900, other than southern fence leading to parish boundary partly removed.

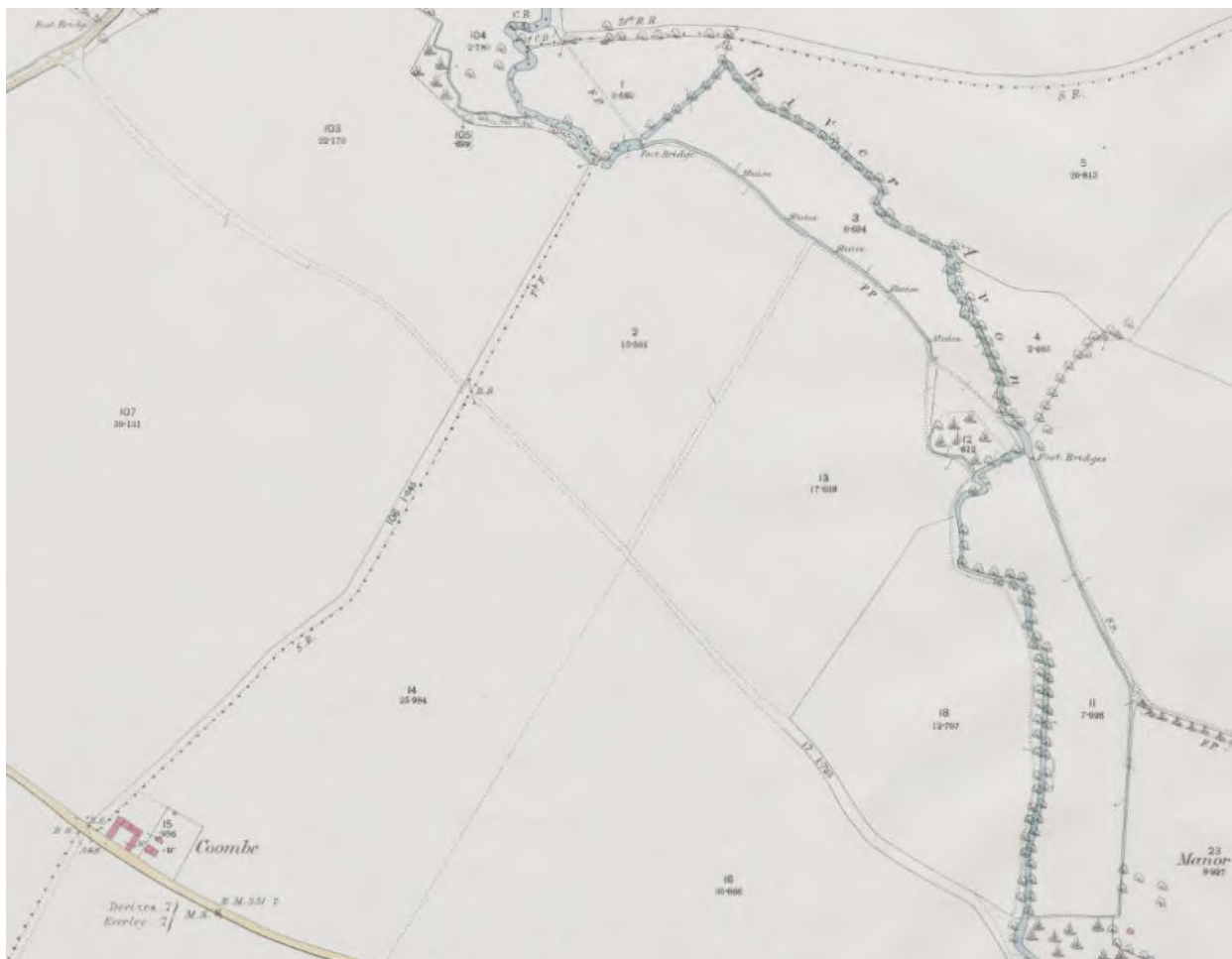


1924 sheet 41/10	WILS5	Route shown in same manner as 1900.
1939 sheet 41/10	CSTP6	Route largely shown in same manner as 1924.
1939 sheet 41/10	CSTP2	Route as of 1924, other than southern fence towards parish boundary extended.
1939 sheet 41/10	WILS5	Route shown in same manner as 1900 and 1924.

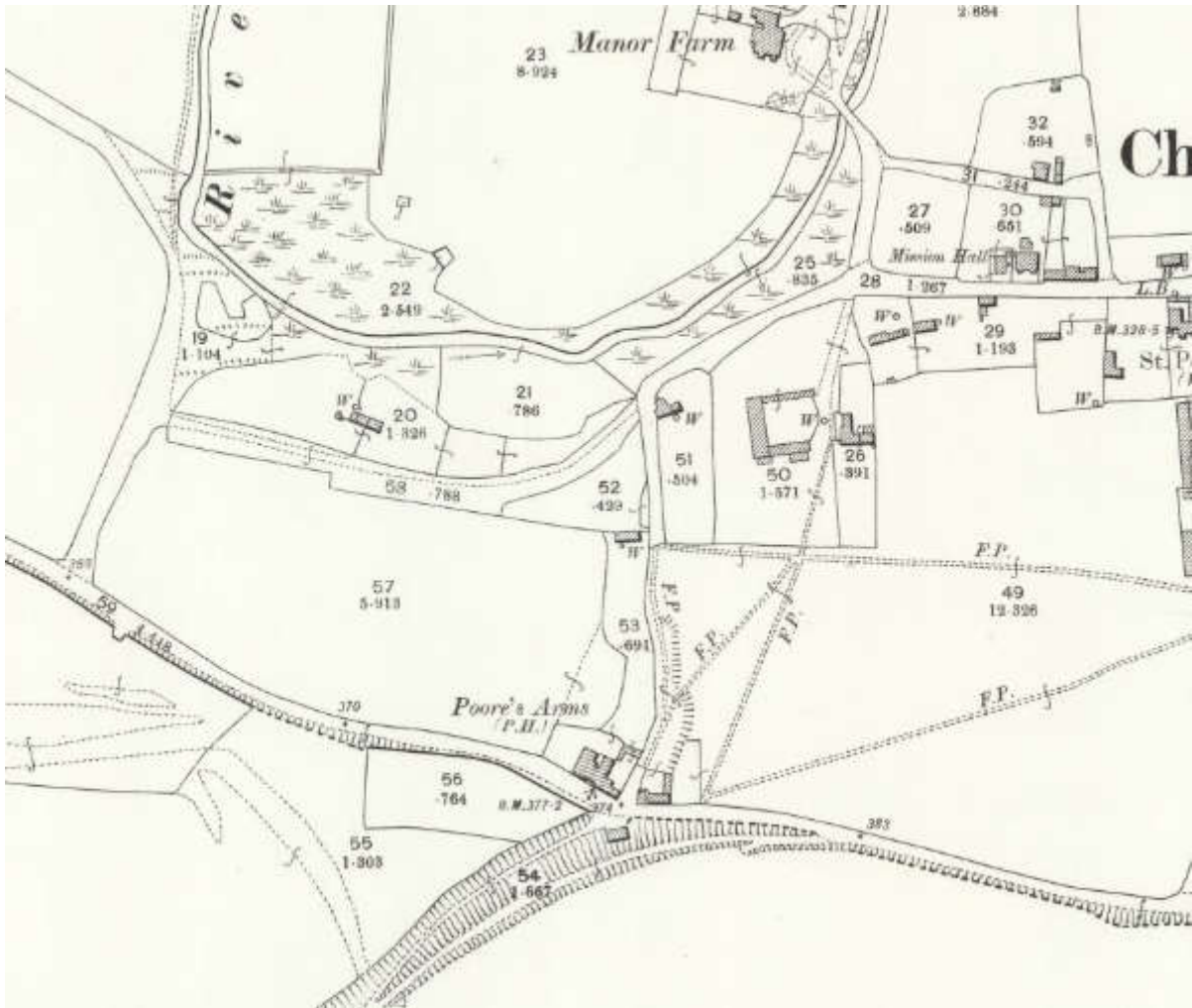
**14.17 Wiltshire sheet 41/10 surveyed 1885, published 1886, scale 1:2500- CSTP6/2**



14.18 Wiltshire sheet 41/10 surveyed 1885, published 1886, scale 1:2500-  
CSTP2/WILS5



14.19 Wiltshire sheet 41/10 revised 1899, published 1900, scale 1:2500- CSTP6/2





14.20 Wiltshire sheet 41/10 revised 1899, published 1900, scale 1:2500-  
CSTP2/WILS5



14.21 Wiltshire sheet 41/10 Revised 1922, published 1924, scale 1:2500- CSTP6/2

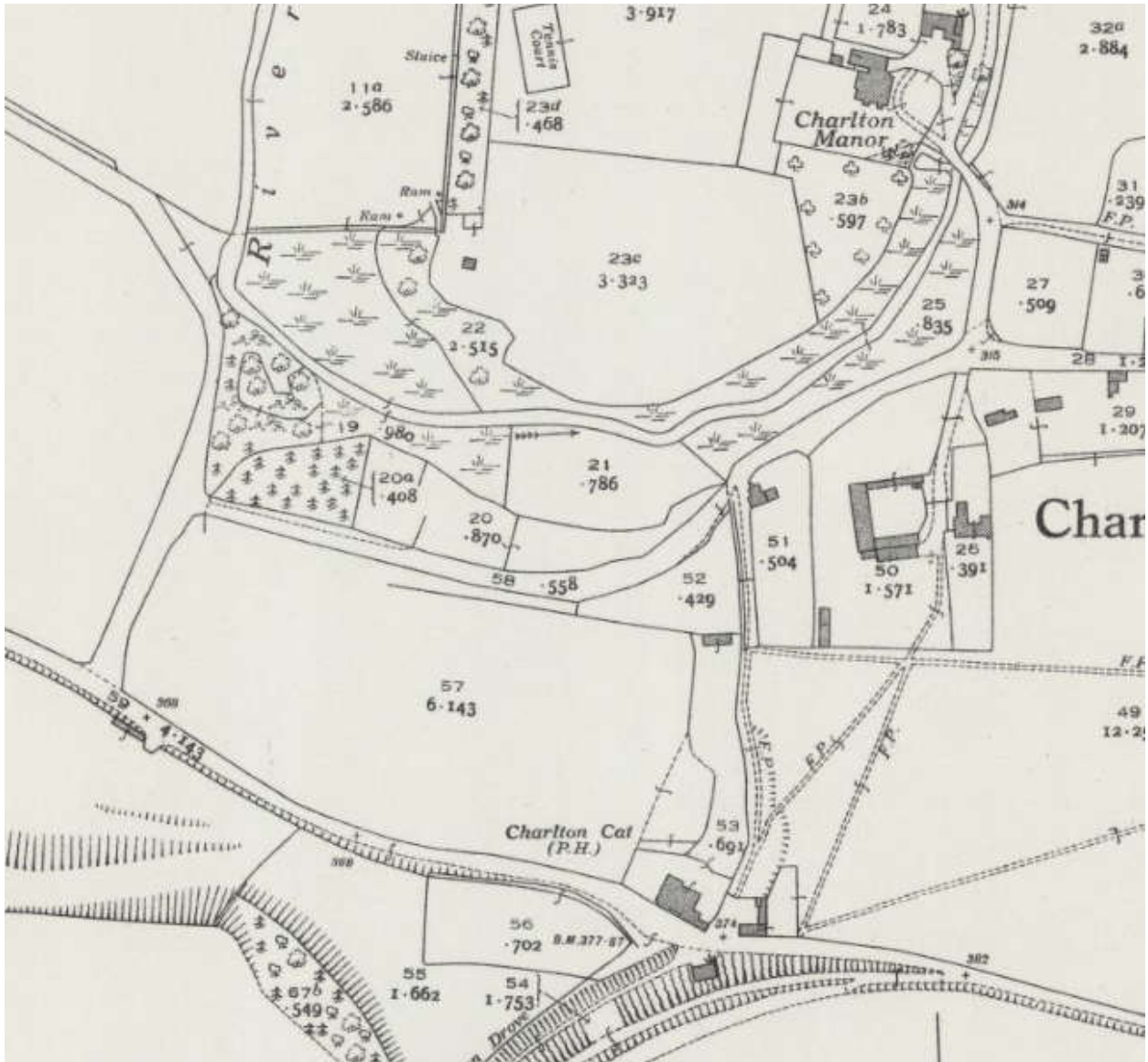


14.22 Wiltshire sheet 49.10 Revised 1922, published 1924, scale 1:2500





14.23 Wiltshire sheet 49.10 Revised 1939, published 1942, scale 1:2500- CSTP6/2



14.24 Wiltshire sheet 49/10 , Revised 1939, published 1942, scale 1:2500-  
CSTP2/WILS5



**15. Category F - Local repute, consultation responses**

15.1 The initial consultation carried out regarding this application attracted ten responses. Those responses can be seen in full at **appendix 2**. They come from user groups and directly affected or adjoining landowners, the parish council, and the applicants.

- 15.2 The responses to the consultation raise concerns as to the upgrade of the application routes both in status and recorded widths. The routes which have junctions with the A.342, both CSTP2 and CSTP6, would, if upgraded, allow access to horse riders , cyclists and horse and carriage drivers use of these potentially dangerous junctions. The responses raise safety concerns of crossing or accessing these routes on horseback or using a horse and carriage as the A.342 is an A road with a speed limit of 50 mph at these points. The road is very busy and used by fast cars and HGVs, with poor visibility due to bends in the road at the crossing points of the rights of way.
- 15.3 Concerns are also raised regarding obstructions which would need to be overcome if the routes were to be available to horse / horse and carriage traffic, in particular the route of CSTP6 which has a flight of steps leading north from the car park of the Charlton Cat, a narrow gateway, a stile, and the track itself is not as wide as the proposed width in the application. The entrance to CSTP2 from the A.342 has also been raised as a safety/ accessibility concern as it is accessed via a steep slope down into an overgrown disused sunken lane, the slope is not in its current state a safe access onto the A.342 for any user, where there is no highway verge and is on a bend restricting the visibility between road users and users of the right of way. It is noted these routes are already recorded public rights of way with junctions with the A.342, albeit with lower status in comparison to the proposed upgrades in status.
- 15.4 The reputation and local repute in living memory of the ways are clearly, in the case of CSTP6, that of a footpath linking the Charlton Cat and the village. Historic evidence shows the route has likely not had an obvious physical appearance of a lane, beyond the northern section to Timber Lodge and a small section at the Charlton Cat, for over 100 years, beyond living memory. It is possible to see the appearance of sunken lane (see photos), now heavily overgrown on the route, which is not used as walkers walk on the higher land to the east. As Mr. Fowle asserts in his consultation response the route was likely last used as vehicular highway in a time when motor vehicles were rare and the traffic of the A.342 would have been horse and carts, making crossing the road at the junction of CSTP6/7 far less dangerous than it now is. It may be the lane ceased being used and having a reputation of a vehicular highway as the cottages on the lane disappeared likely in the late 1800s. The route of CSTP2 from the A.342 appears to have maintained a



reputation of that of a lane, but as Mr. Fowle records, it is in modern times a route not deemed safe to use for farming operations due to its unsafe junction with the A.342. Its spur and junction with the A.342 appear to be little used, if at all, by any user today likely due to its lack of connectivity to other rights of way and the dangerous nature of the junction.

15.5 The parish council have supplied a detailed response raising points regarding safety and comments on the evidence presented by the applicants. The safety concerns have been discussed above in paras 15.3-15.5. The comments regarding maps with no keys and the meaning of track or road within the evidence are likely in reference to large number of commercial maps, which have been covered in detail in this point and are category E evidence. Whilst there is a large amount of category E evidence which helps to form part of the evidence in this case, it is considered in the context and in addition to the higher-grade evidence and the settled meaning and interpretation of those documents.

15.6 Officers fully acknowledge and understand these concerns regarding accessibility of the routes. However, it is not possible to take these matters into consideration when reaching a decision on these applications. Officers are bound by the legislation and to investigate the historic documentary evidence to determine if the routes are recorded with the correct status and if appropriate amend the definitive map and statement as per the evidence adduced. Any obstructions on public rights of way which may impede public access are managed appropriately by Wiltshire Council's Countryside Access Officers (CAOs), who are responsible for the maintenance and enforcement of public rights of way. If orders are made and confirmed to upgrade the application routes the CAOs will manage the routes appropriately at that time.

15.7 No new documentary evidence has been adduced by the consultation process. The maps provided by Georgina Boyle, which are OS maps, have been considered as part of the investigation.

## **16. Conclusions of Historic Documentary Evidence**

16.1 These applications seek to change the status of a number of routes recorded in the definitive map and statement and to use section 53(3) (c) (ii) of the Wildlife and

Countryside Act 1981 which states “*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*”. The law requires that any evidence of there being rights not currently recorded on the definitive map and statement must be shown on the balance of probabilities. This means that it is more likely than not that something is shown.

16.2 These applications adduced a number of historic documents which officers have viewed either in person at WSHC or via online sources and have subsequently been documented in this report. Potentially the most valuable of these to officers are documents classified as ‘category A’ , such as the inclosure awards. In this case the Charlton Inclosure Award of 1780 , which has no map, references the route of CSTP6 as White Lane and is likely the continuation of the the public road set out named Portway, which leads south from the Charlton Cat ( then the Poores Arms), although it is not subject to inclosure itself , it is likely a pre inclosure road. The route of CSTP2 from its junction with the turnpike road ( now the A.342) is described as “ Wilsford Road” and leading along the current recorded route of CSTP2 north and then west to the Wilsford parish boundary. The route having a width of at least 40 feet.

16.3 The Wilsford Inclosure Award of 1808 awards the current route of bridleway WILS5 , as a private carriage road , driftway and public footpath of the breadth of 20 feet. The award is accompanied by a plan and it is clear the route referenced is number 15 on the plan and described as above. The award clearly describes the route as a private route for carriages rather than public, and a driftway, as well as a footpath. A driftway is understood historically to be a right to drive cattle ( which includes cows and sheep). A public carriageway would usually include a public right to drive cattle unless specifically designated otherwise, a public bridleway may or may not include a public right to drive animals. Other routes within the award are awarded as public carriage roads or bridleways, so this route was not considered in the same manner as a public bridleway or road at the time of the award. It is unclear from the award if the driftway was a public or private right to drive animals. It is also unclear if the powers of the 1801 private or general act, which the 1808 award relies upon, gave

the commissioners powers to set out driftways in the same way as public roads, private roads, bridleways and footways.

16.4 In the case of the 1780 Charlton Inclosure award the act of 1780 gave the commissioners powers to set out those public roads described therein , this was a public process and the award is marked as examined by the Clerk of the Peace for Wiltshire ,Michael Ewen. This Act and award set out the route of CSTP2 from its junction with the A.342 leading north and then west to the Wilsford parish boundary as a public road in 1780 and unless those rights have been legally stopped up they still exist. The Wilsford inclosure award of 1808, 28 years after the Charlton award , sets out the continuation of that route as a private carriage road, public footway and driftway, as enacted by powers the commissioners had as per the 1801 private and general acts . There is clearly a conflict of evidence within the inclosure awards, where the rights the public are awarded within the said inclosures differ where the continuous route crosses the parish boundary. The spur of CSTP2 leading east to the village of Charlton St. Peter is likely described in the inclosure award as the west lane but is not awarded. The route of CSTP6 is not awarded but is referred to as White Lane and likely the continuation of the public road awarded and named as Portway.

16.5 The deposited plans of the Andover, Radstock and Bristol Railway 1866 show that the route of CSTP6 was considered a public highway in the ownership of the Highways Board and waywardens of the parish at that time. The same plans and reference book show the route of CSTP2 as an occupation road, i.e., not a public road and in private ownership.

16.6 The deposited plans of The Direct Western Railway 1845 show the route of WILS5 as a public highway in the ownership of the surveyors of the highways in the parish.

16.7 The railway plans are drawn up and deposited 21 years apart. In 1845 the route of WILS5 is shown as a public highway, (likely not a footpath , as a separate parcel is described as a “footpath” and not a public highway) the continuation of that same route in 1866 is described in Charlton St. Peter as an occupation road, i.e., not public. It is unlikely a continuous route linking two villages/ parishes would change status at the parish boundary for no obvious reason, but that is the evidence



presented by the railway plans. This is the opposite of the inclosure evidence which described the route in Wilsford as a private carriage road and the route in Charlton as a public carriage road.

16.8 The tithe evidence, which is considered category B evidence and can be seen from 11.1, is possibly indicative of the routes subject to this application being public roads, other than the link between CSTEP6 and CSTEP2, which is not shown as a through route on the Charlton tithe map of 1841. The route of CSTEP6 and the route of CSTEP2 from the A342 north and west are shown in the manner of the public road network, separate from tithable land. The Wilsford tithe map of 1844 colours the route of WILS5 sienna in the manner of the public road network and separate from tithable land, it is also labelled "To Charlton" which can be indicative of a public road. The apportionment with the Charlton tithe includes "Lanes waste and River", this demonstrates the map is depicting roads and highway wastes.

16.9 The 1910 Finance Act evidence only shows the northern half of CSTEP6 not coloured and therefore separate from taxable land and in the same manner as a public road. All other sections of the application routes are shown coloured with the land parcels and no deduction for public rights are recorded in the register for these parcels. It is not uncommon for rights of way deductions to not be recorded, clearly the route of CSTEP2/WILS5 and the southern half of CSTEP6 were likely to hold public rights at the time in 1910, yet no rights are recorded and rights were claimed by the parish council in the early 1950s.

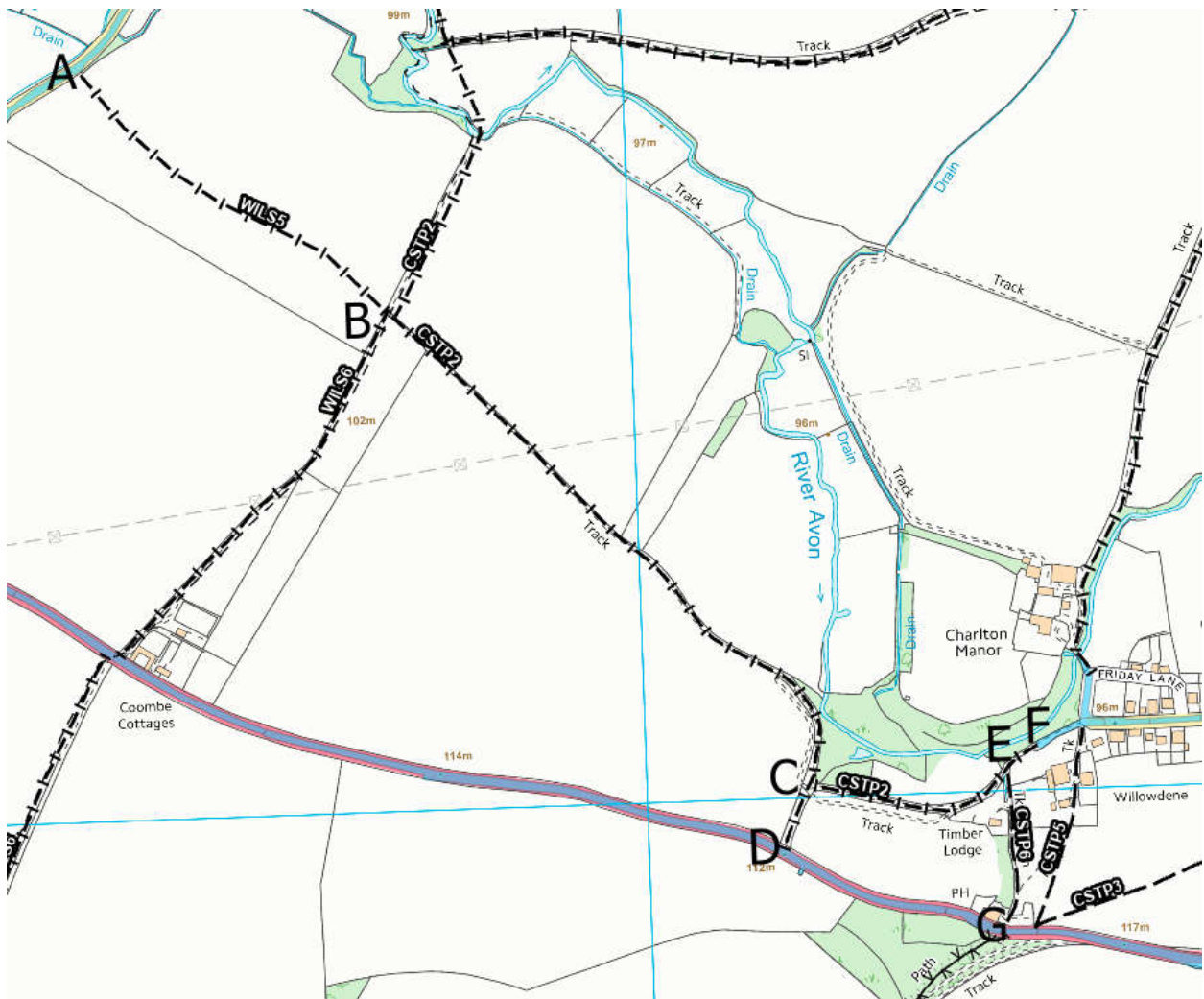
16.10 The category C evidence shows that in 1929 when the RDC passed over maintenance of rural roads to the County Council the application routes were not considered to be roads maintainable at the public expense.

16.11 There is a greater amount of category D, E and F evidence which is to be expected as it includes many commercial maps, which add to the reputation of the routes but are in many cases not primary evidence of public rights. The 1804 parish plan of Charlton depicts the parish in some detail and records roads, although it does not differentiate between private and public roads. The route of CSTEP6 is shown in the manner of other known public roads, it is also labelled White Lane. The route of CSTEP2 from its junction with the A.342 leading north and then west to Wilsford is

described as the Wilsford Road. The route of CSTP2 east to the village is not shown as a road and appears to be split between parcels of land and not be a clear through route at that time. It is possible the route passed over wet land , where it is in close proximity to the watercourse, and changed according to the season and flooding. The route of WILS5 is shown in 1846 in the manner of a road to Charlton in the survey of land owned by Sir Francis Dugdale Astley. The sales documents from 1910 are inconsistent and as such add minimal evidential weight to any argument.

16.12 There are a large number of commercial maps presented as evidence by the applicants and investigated by officers. The evidence including the commercial maps must be evaluated as per its evidential weight and value, however due to the difference in evidence between sections of the application routes it is useful to present the evidence in chronological order and separated into those different sections.

16.13



16.14. The above map at 16.13 will be used to document evidence chronologically over different sections of the application routes in tables below.

16.15. The first section to examine will be the route of WILS5 / CSTP2 from point A through B, C and south to D.

Date	Document	Grade of Evidence	What is shown
1773	Andrews and Dury Map of Wiltshire	E	Route from A to D shown in the manner of a road, partly fenced.
1780	Charlton Inclosure	A	Route from B-D awarded as a public road and named Wilsford Road



1804	Parish Plan of Charlton	D	Route from B - D (in Charlton ) shown in manner of road network and referenced as Wilsford Road.
1805/1807	OS 1 <sup>st</sup> edition	E	Route from A-D shown in manner of other roads.
1808	Wilsford Inclosure	A	Route from A-B awarded as a private carriage road and driftway and a public footway.
1820	Greenwoods 1" map	E	Route not shown at all
1823	Cary's	E	A-C shown as parochial road – C-D not shown at all
1841	Charlton Tithe map	B	Route from B-D shown in manner of other roads
1844	Wilsford Tithe map	B	Route A-B coloured sienna as other roads and annotated
1845	Direct Western Railway Plans	A	A-B recorded as public highway, in manner of other roads.
1846	Survey of land owned by Sir Francis Dugdale Astley	D	A-B coloured in same manner as other roads and annotated
1866	Andover, Radstock, Bristol Railway Plans	A	D-C and towards B recorded as occupation road in private ownership

1886-1942	OS 1:2,500	E	See 14.14- partly fenced track, marked as B.R from 1900
1902/4	Bartholomew's atlas/map	E	Shown as a secondary road
1909/10	Finance Act plans	B	Whole route not excluded from taxable land- i.e., not a road and no right of way deduction
1917	Sales documents	D	C-D show in manner of road on one map and not on other, part B-C described as bridle road
1930	RDC Takeover map	C	Not part of road network
1949-52	Definitive Map Process	A	Recorded as C.R.B- carriage road bridleway
1968 onwards	Second and special review of definitive map	A	Reclassified as a bridleway

16.16. The category A evidence for the route A-D is contradictory. The inclosure evidence shows that in 1780 the route beginning in Charlton at point D through to the parish boundary at point B was awarded as a public road and called the Wilsford Road, indicating the route led to Wilsford across the parish boundary. The Wilsford Inclosure evidence of 1808, some 28 years later, records the route in Wilsford as a private carriage road and driftway as well as a public footway. This indicates it was not at that time considered a public road in the same manner as the Charlton 1780 award considers its continuation in Charlton. Whether the driftway rights were public or otherwise is not clear, or if the commissioner had the power to award a driftway, but this does not require further consideration where it is considered public carriage rights subsist. The railway evidence of 1845 and 1866 records the opposite. In 1845

the section within Wilsford is recorded as a public highway (likely a road given the context of other routes), this is in contrast to the inclosure evidence in 1808, 37 years previous, which recorded it as a private carriage road. The 1866 railway evidence records the section of the route in Charlton as an occupation road, i.e., not a public vehicular road, in contrast to the 1780 inclosure evidence, which is 86 years previous by that time. The grade A evidence from 1780 through to the 1860s records the section in Wilsford as a private carriage road and latterly a public highway, and the section in Charlton is recorded as a public road and latterly an occupation (private) road. To assist with this confusion of evidence lower grade evidence must be taken into consideration. The tithe maps of the 1840s show the whole route in the manner of a road. The parish plan of Charlton from 1804, although only grade D evidence gives a very detailed plan of the parish and the route is shown in the manner of a road and described as the Wilsford Road, as it was awarded in 1780. The commercial mapping is inconsistent, it is clearly shown in the 1773 Andrews and Dury's map but the maps of the early 1800s are inconsistent. The later 25-inch OS series maps show the route on the same course through the 1880s- early 1900s and from 1900 labelled as a B.R or bridle road. The later evidence in the 1900s shows its reputation as a road decreased as its use likely diminished and became accepted as a bridle road and latterly a bridleway.

16.17. There is evidence describing the whole route as a public highway or road, in particular the oldest evidence in Charlton from the inclosure in 1780, awarding the route as a public road and naming it the Wilsford Road. In 1804 it is again referenced as the Wilsford Road, indicating it was a through route. It is not likely the road or rights ceased or changed at the parish boundary as it is not a point of destination or interest. By 1866 this section (in Charlton) is described as an occupation road. It is possible the route was not as well used by 1866 and use was waning in favour of the turnpike road/ A.342 as it was likely in a better state of repair. The opposite occurs in Wilsford with the route awarded as a private carriage road (as well as a driftway and public footway) in 1808 and latterly described as a public highway (likely a road) in 1845 in the railway evidence. The discrepancy and conflicting evidence between statuses is difficult to explain 170+ years after the events, officers can only make a judgement on the balance of probabilities.



16.18. The grade A evidence describes the whole continuous route variously as a public highway, public road, or the Wilsford Road. Category B evidence supports the whole route being depicted in the manner of a public road. Lower grade evidence is inconsistent but pre 1880s is on the whole supportive of a through public road between the villages. It is considered on the balance of probabilities the route is unlikely to have historically changed status at the parish boundary where there is no clear reason as to why this would occur and is described or shown as a public road in its entirety at various times The route is in officers' opinion on the balance of probabilities likely to have been a public road with vehicular rights between Charlton and Wilsford from points A through D on the map at 16.13, the use of which waned in the late 1800s and into the 1900s, but the rights still exist as no evidence has been produced or found that those rights have been extinguished.

16.19. The second section to examine is the route of CSTP2 between points C and E on the map at 16.13 and below.



16.20. The evidence is depicted chronologically below.

<b>Date</b>	<b>Document</b>	<b>Grade of Evidence</b>	<b>What is shown</b>
1773	Andrews and Dury	E	In the manner of a road
1780	Charlton Inclosure	A	Possibly referred to as West Lane, but not awarded
1804	Parish Plan of Charlton	D	No clear route shown, possible route labelled as cooper close but not a road.
1804-1808	OS 1 <sup>st</sup> edition	E	No route shown
1820	Greenwoods 1" map	E	No route shown
1823	Cary's	E	No route shown
1841	Charlton Tithe	B	No clear through route, allotment/ pasture and meadow recorded on route.
1866	Andover, Radstock, Bristol Railway Plans	A	Recorded as field, occupation road and footpath.
1886-1942	OS 1:2,500	E	See 14.14-shown as fenced track.
1902/04	Bartholomew's atlas/map	E	Shown as secondary road
1909/10	Finance Act	B	Route not excluded from taxable land. I.e.,

			not shown as a public road.
1917	Sales documents	D	Shown as bridle path
1930	RDC Takeover map	C	Not part of road network
1949-52	Definitive Map Process	A	Recorded as C.R.B- carriage road bridleway
1968 onwards	Second and special review of definitive map	A	Reclassified as a bridleway

16.21. The evidence for the route from C-E varies. There is little to no evidence within higher category evidence to show it as a higher status than its already recorded status of a bridleway. The 1780 inclosure may refer to the route as “west lane”, but it is not certain, and it is not awarded or described. The early 19<sup>th</sup> century evidence shows there was no clear through public route, as depicted on the Charlton Parish Plan of 1804, Greenwoods 1820 map, Cary’s 1823 map, and the Charlton tithe map of 1841. It is possible a route named cooper close or simpers close is the application route but there is no evidence to show this close as a public road or any public status. The 1866 railway plans refer to the route as a field, occupation road and footpath, indicating it was not considered a public road at that time but may have been a private road with a public right for pedestrians. These documents from 1804-1866 either show no through route or record allotments, meadows, a field, footpath, or private road on this route, it is not shown in the manner of other public roads in the parish. The early 20<sup>th</sup> century evidence shows the route in the main as a fenced track in the manner of bridleway. There is no strong evidence this route was a road in the manner of other roads in the parish. This route, although the shortest route from Wilsford to Charlton may have been a lesser used route due to the proximity of the watercourse which may have affected use of the route and its inconsistent ground conditions depending on the season. The higher route of the turnpike road, latterly

the A.342, likely offered a better surface and drier all year route to use to link the villages.

16.22. The applicant has stated within their summary of evidence (see appendix 1) that this section of the route is, on the parish plan of 1804, “depicted as a white road or common lane”. This appears to be incorrect as part of the route is recorded as an “*allotment at the bottom of White Lane*” or if the route is further south as a “close “but with no area of road recorded. It is not clearly shown as a white road or common lane as claimed. The applicant also states the 1<sup>st</sup> edition OS map shows this section of the route as “an open road”. The map referred to does not show the route or any track, the applicant has labelled C- E as part of the road network but appears to be part of the watercourse on the map extract provided. The tithe map of 1841 is shown within the applicant’s summary where it is stated the route is “*an open and fenced road...except for allotment 36 which names the road “white lane”*”. Parcel 36 is referenced as “allotment at the bottom of White Lane”, we know from other sources this section of the route is likely not White Lane, which is the route leading south to the Charlton Cat. It is likely this parcel is not the current route of CSTP2, which is further south from the watercourse.

16.23. The evidence for this section of the route between points C – E, as shown at 16.19, is not sufficient on the balance of probabilities to upgrade its status from its current recorded status of bridleway.

16.24. The evidence for the route of CSTP6 and application 2011/03, E- G on the map at 16.13 will now be presented chronologically.

<b>Date</b>	<b>Document</b>	<b>Grade of Evidence</b>	<b>What is shown?</b>
1739	Quarter session Great rolls	A	White Lane described as a common Highway for all persons, horses, cattle



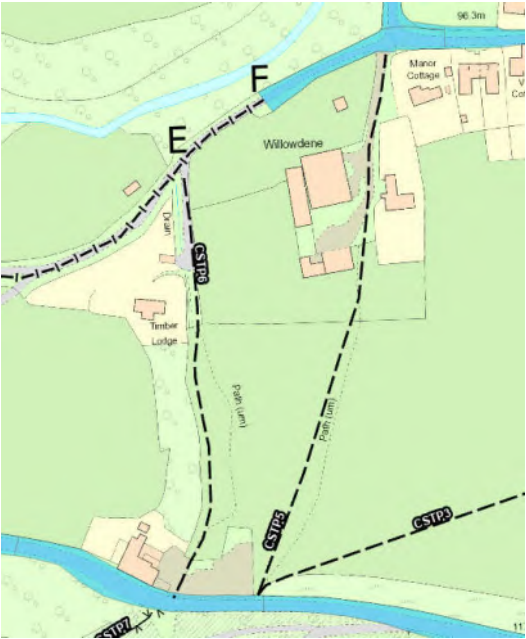
			carts, and carriages
1773	Andrews and Dury's	E	Shown as a minor road
1780	Charlton Inclosure	A	Referred to as White Lane, opposite an awarded public road.
1804	Parish Plan of Charlton	D	Labelled as White Lane and shown in the manner of a road.
1808	OS 1 <sup>st</sup> edition	E	Minor road
1820	Greenwoods	E	Cross road
1823	Cary's	E	Parochial Road
1841	Charlton Tithe	B	Shown in the manner of a road
1866	Andover, Radstock, Bristol Railway Plans	A	Recorded as a public highway in ownership of Devizes Highway Board and the way wardens of the parish
1886-1942	OS 1:2500 series	E	See 14.14. North end to Timber Lodge part of road or track, as with southern section at Charlton Cat.

			Middle section shown as footpath.
1910	Finance Act Plans	B	Northern section to Timber Lodge uncoloured in the manner of a road. Rest of route coloured with hereditament 34 and 78, no right of way deduction recorded.
1917	Sales Document	D	North section to Timber lodge and section at Charlton Cat shown as part of road network and not part of sale. Central section is for sale, base map shows footpaths, none recorded in particulars.
1930	RDC Takeover map	C	Whole route not shown as part of road network
1949-52	Definitive Map Process	A	Recorded as a footpath

16.25. The evidence shows the route of CTSP6 was known as a highway called White Lane from the earliest records dating back to 1739. The records show the lane was

depicted in the manner of a road through to at least the mid-1800s. The lane likely became less well used and ceased to be used as a through route as the cottages on the lane ceased to be lived in and fell into disrepair and disappeared. The middle section between Timber Lodge to the north and the Charlton Cat to the south became part of the field and only accessible by foot. What is likely to be the sunken lane can still be seen today, albeit overgrown and walkers take the higher route to the east on top of what was the lane. The grade A quarter session evidence in conjunction with the tithe evidence, railway evidence and other lower grade evidence throughout the 1800s show the route was considered part of the road network and fell out of use in the late 1800s as a through route. As no act of law has been found to extinguish the rights on its full length, officers consider the evidence demonstrates on the balance of probabilities the route should be upgraded to that of a restricted byway.

16.26. The section of the applications labelled E -F on the map at 16.13 will now be considered.



16.27. The above map extract shows, shaded in blue, the highway maintainable at public expense, the U/C 8044 ending at point F. The bridleway CSTP2 continues from point F through E and continues west. The application to upgrade footpath CSTP6 only applied to upgrade the route of CSTP6 and not the spur of CSTP2 from E-F. The application to upgrade CSTP2 does apply to the section E-F and beyond to the

junction of footpath CSTP5 and the U/C 8044. As east of point F is already recorded as a road maintained at public expense that section does not need to be considered. The evidence for section E-F differs from the section C-E considered from 16.19 onwards, which was considered to lack enough evidence to upgrade it from the status of bridleway.

16.28. The table below depicts the evidence chronologically for E-F.

<b>Date</b>	<b>Document</b>	<b>Grade of Evidence</b>	<b>What is Shown</b>
1773	Andrews and Dury's	E	Minor road
1804	Parish Plan of Charlton	D	Shown and coloured in the manner of the road network
1808	OS 1 <sup>st</sup> edition	E	Shown as part of road network
1820	Greenwoods	E	Shown as part of road network
1823	Cary's	E	Shown as part of road network
1841	Charlton Tithe	B	Shown as part of the road network
1866	Andover, Radstock, Bristol Railway Plans	A	Shown on base plans in manner of road network but is outside line of deviation so not referenced in reference book.
1886-1942	OS 1:2500 series	E	Shown consistently in the



			manner of part of road network and coloured sienna in 1886, a surfaced route.
1910	Finance Act Plans	B	Uncoloured and not part of taxable land. In the manner of a road.
1917	Sales Documents	D	Coloured as part of the road network.
1930	RDC Takeover map	C	Not shown as part of road.
1949-52	Definitive Map Process	A	Recorded as part of CSTP2 Recorded as C.R.B- carriage road road bridleway
1968 onwards	Second and special review of definitive map	A	Reclassified as bridleway

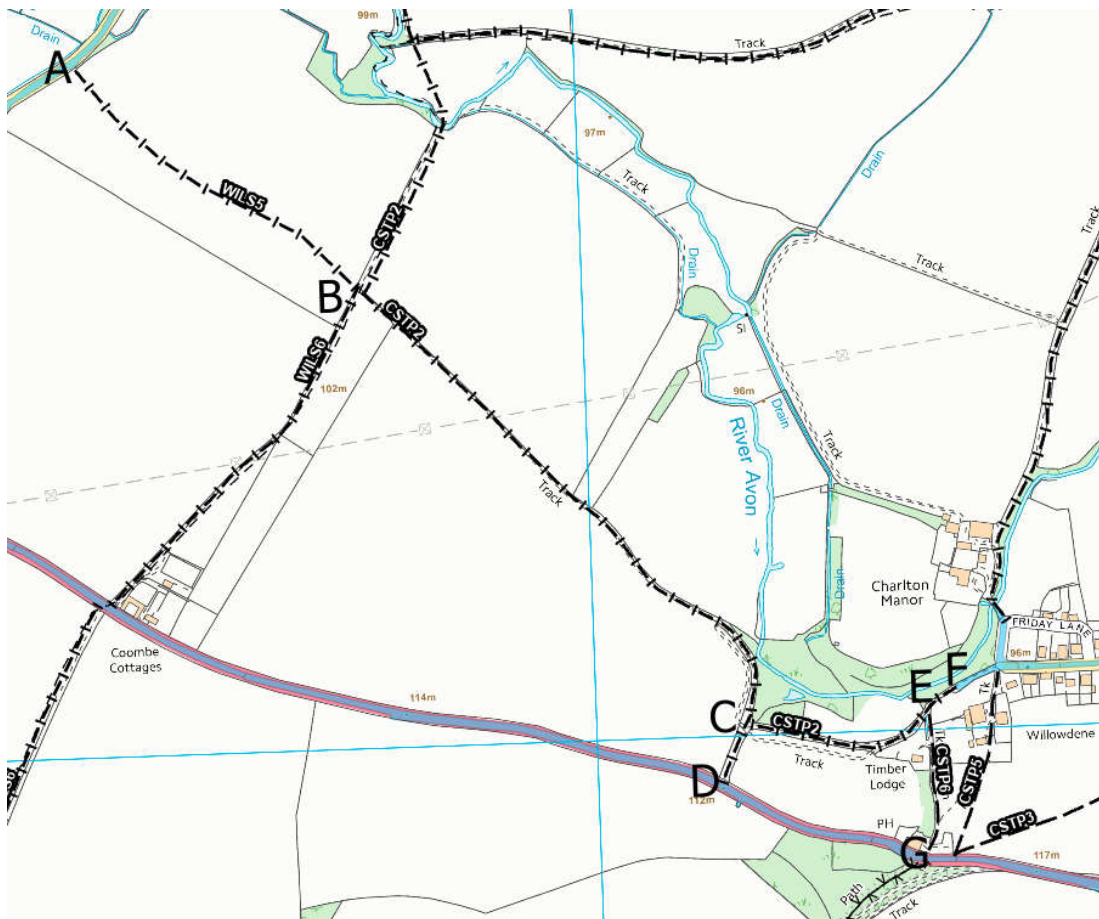
16.29. The evidence shows the route has likely been considered part of the road network since the late 18<sup>th</sup> century at least. It was likely a pre inclosure road and as such not subject to inclosure in 1780. The road is clearly shown in the detailed plan of 1804 of the parish and continues to be shown in lower grade evidence as a road in the early part of the 19<sup>th</sup> century. The Charlton Tithe map shows the route as part of the road network in 1841 and the Finance Act plans of 1910 still show the route in the manner of a road, both considered grade B evidence. OS mapping shows the route consistently as part of the road network. From 1930 it appears the end of the road U/C 8044 was recorded at point F rather than point E, it is unclear why, although it may have been where there was a field entrance on the south side of the lane at this

point. The more likely end point for the public road would be at point E and this is supported by the documented evidence. As a result of the above evidence officers consider on the balance of probabilities this section of the application and CSTP2 is capable of being upgraded to a restricted byway. This will also link the proposed upgraded route of CSTP6 as a continuous restricted byway linking to the U/C 8044, which also supports the likelihood of this section being a higher status, forming one continuous route from the village, leading to what was White Lane , the public house and the turnpike road to the south

16.30. Officers conclude that application 2011/03 to upgrade footpath CSTP6 to a restricted byway, after consideration of all available evidence presented and discovered, demonstrates on the balance of probabilities that s.53(3)(c) (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* is met and the route should be upgraded to a restricted byway.

16.31. Officers conclude that application D/2021/105 to upgrade bridleway CSTP2 and bridleway WILS5 to the status of restricted byway, after consideration of all available evidence presented and discovered, demonstrates on the balance of probabilities the application route is partially capable of being upgraded to the status of restricted byway. With part of the route, as evidenced 16.20-16.23 at not capable of being upgraded as per the documentary evidence and should remain a bridleway.

16.32. The section officers do not consider capable of upgrade is from point C at OS grid reference SU 11200 56015 – point E at OS grid reference SU 11433 56027 on the below map. All other sections of the application are proposed to be upgraded to the status of restricted byway. Those being A- B-C-D and E-F.



## 17 Widths

17.1 The routes that are recommended to be upgraded will have orders made to that affect, those orders must also record a width for those routes as per the historical documentary evidence. The route of CSTP2 subject to application D/2021/105 applies for a width of approximately 6 metres for the whole of CSTP2 and WILS5. The current recorded width of CSTP2 is 4.5 metres and WILS5 has no recorded width. The Charlton Inclosure sets out the width of the “Wilsford Road” which incorporates the route of CSTP2 from point B at the parish boundary leading south east and south to point D at its junction with the A.342. The award sets the road out

as not less than 40 feet for its length (the section from C-D is stated as more than 40 ft but not specified), no evidence has been found extinguishing this width, even if it is not physically available today those rights over that width still exist. As such the width for CSTP2 from B -C -D should be recorded as 40ft or 12.2 metres.



17.2 The width of the continuation of CSTP2 across the parish boundary into Wilsford where the path is recorded as WILS5 has no recorded width currently. The 1808 Wilsford inclosure award is the earliest evidence we have of the width of this route where it is recorded as 20ft wide, although the award sets it out as a private carriage road, as discussed this route likely gained public rights and on the balance of probabilities it is considered public rights would have been gained over the set-out width of this road. As such it is proposed to record a width of 20ft for WILS5 or 6.1 metres.

17.3 The route of CSTP2 from point E – F, from its junction with CSTP6 east to its junction with the U/C 8044 has a current recorded width of 4.5 metres. Measuring the width of this route from the 1900 25” OS map the route begins at its junction with the U/C 8044 with a width of 10 metres and widens to 14 metres before narrowing to 7 metres and widening again to 10 metres at point E. Therefore, the width for this section will be recorded as between 7 and 14 metres with reference to the 1900 OS



map. The 1900 2<sup>nd</sup> edition 25" map is the most accurate topographical map officers had physical access to, to measure from where the width of the route is not set out clearly in older documents. This width is also approximate to the unregistered land/ lane shown at 6.3.

17.4 The width of CSTP6 is currently recorded as 1.2 metres. The applicant has applied for a width of between *5.5 metres and 9 metres where fenced ( as shown on the 2<sup>nd</sup> edition 25" O.S Map) and 5 metres where unfenced*. The 2<sup>nd</sup> edition 25" (1900) map has been viewed by officers and the route measured, as this map is the most accurate topographical map officers had physical access to. The route begins at its southern junction with the A.342 with a width of 9 metres and narrows to 5.5 metres where it exits the parcel of land adjacent to the Charlton Cat. The route then enters a field on the 1900 map and is not shown as a road but a footpath. The width for this section will be recorded as 5 metres which is consistent with Wiltshire Council's policy for recording new or diverted restricted byways. Where the route enters the track adjacent to Timber lodge, the width is 7.5 metres and narrows to 6 metres before widening again to 7.5 metres where it meets its junction with CSTP2. As such the width for CSTP6 will be recorded as between 5 and 9 metres with reference to the 1900 2<sup>nd</sup> edition 25" map.

17.5. The section of CSTP2 which has not been found to have sufficient evidence to upgrade will remain with its current recorded width of 4.5 metres as it will not be affected by a legal order.

## **18 Natural Environment and Rural Communities Act 2006 (NERCA 2006)**

18.1 The NERC Act 2006 came into force on 2<sup>nd</sup> May 2006 and section 67(1) of this Act had the effect of extinguishing the right to drive any mechanically propelled vehicle on any route that, immediately before commencement:

*S.67 (1) (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.*

*Subject to subsections (2) to (8)*

S.67 (2) to (8) are parts of the Act that detail exemptions to the extinguishment of vehicular rights.

*s.67 (2) states that subsection (1) does not apply to an existing public right of way if*

–

*(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles*

*(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) list of highways maintainable at public expense),*

*(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*

*(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*

*(e) it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.*

*S.67 (3) states that subsection (1) does not apply to an existing public right of way if -*

*(a) 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 immediately before commencement, use of the way for mechanically propelled vehicles –*

*(l) was reasonably necessary to enable that person to obtain access to the land or*

*(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only.*

*S.67 (4) states that the relevant date in England means January 2005*

*S.67 (5) deals with private rights*

*S.67 (6) states that for the purposes of subsection (3) an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act*

18.2 Although these applications only apply for the status of restricted byway as it is likely the applicants accept no exemptions apply it is appropriate to consider each exemption in turn:

**S.67 (2)(a)** *‘it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles’.*

No evidence has been brought forward to suggest the main use of any of the application routes was by MPVs in the 5-year period before commencement.

18.3 **S.67 (2)(b)** *‘immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense, also known as the List of Streets).*

This exemption has not been met.

18.4 **S.67 (2)(c)** *‘it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles’.*

The routes subject to this application were in physical existence at least from the 18<sup>th</sup> or early 19<sup>th</sup> century, this is a time before mechanically propelled vehicles were widely in use on public roads.

18.5 **S.67 (2)(d)** *‘it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles’*

No evidence has been found that public MPV rights have been preserved by this section.

18.6 **S.67 (2)(e)** *'it was created by virtue of use by such vehicles during a period ending before 1930'.*

The mechanically propelled vehicle did not exist as a distinct class of highway user before the 2<sup>nd</sup> of May 2006; hence it is difficult to consider this section. It is likely that as mechanically propelled vehicles became more common (in the mid-1800s) people started using them on roads that would support their use.

Since the distinct category did not exist and since prior to 2006 the right to drive a horse drawn carriage was the same as the right to drive a motorised one it is not considered that the right was created by any actual MPV use, any such use was merely use continuing.

Public MPV rights are not preserved by this section.

18.7 **S.67 (3)(a)** (3) *Subsection (1) does not apply to an existing public right of way over a 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'.*

These applications are dated 2011 and 2021, after the relevant date of January 2005. As such this exemption does not apply for these applications.

18.8 As no exemptions apply the highest category these routes can be recorded is that of a restricted byway.

## 19. Conclusion

19.1 The law requires that any evidence of there being rights not currently recorded on the definitive map and statement must be shown on the balance of probabilities. This means that to confirm an order made under s.53 of WCA81 the evidence must show it is more likely than not that something is shown.



19.2 Application 2011/03 seeks to upgrade footpath CSTP6 to a restricted byway and application D/2021/105 seeks to upgrade bridleways CSTP2 and WILS5 to restricted byways. These applications are based on historic documentary evidence.

19.3 The applications were submitted with a summary of extensive historic documentary evidence and officers have viewed a number of those documents and the wider list provided is taken into consideration as well as conducting their own investigation of any documents the council may hold of relevance to the applications. In considering application 2011/03 to upgrade footpath CSTP6 to restricted byway status, the evidence shows from at least 1739 (quarter session rolls) the way has been considered a highway for carriages. The reputation of the way continues through to the mid- late 1800s of that of a public road, as evidenced by the detailed parish plan of 1804, the tithe map of 1841 and the railway plans of 1866. The road appears to have ceased to be a through route for carriages by the late 1800s, with the middle section of the route reverting to being part of a field and for use only on foot. No evidence has been discovered that extinguished the public carriage rights on this route and as such they still subsist. Officers appreciate the practical concerns regarding the road crossing and steps now on the route, however those considerations cannot form part of this decision on what public rights should be recorded.

19.4 The evidence affecting application D/2021/105 is inconsistent for different sections of the route as discussed in detail of this report. On the balance of probabilities this application will be partly refused as the section of CSTP2 between SU 11432 56025 leading west to SU 11201 56014 has been found to have insufficient evidence to upgrade it from its status of bridleway. The remainder of CSTP2 and WILS5 will be upgraded to the status of restricted byway as per the available evidence, as discussed in detail in this report, which demonstrates on the balance of probabilities its status should be higher than recorded.

19.5 The applicants have applied for the status of restricted byway rather than a byway open to all traffic. Officers have considered NERCA and its exemptions and have

found that none of the exemptions apply and the highest status that can be recorded for these routes is that of a restricted byway.

19.6 The routes that will be subject to orders to change their status under S.53(3)(c)(ii), will also have their appropriate widths recorded as per the historical evidence, where those rights extend to those widths and no evidence has been found to extinguish those rights by a legal instrument.

## **20. Overview and Scrutiny Engagement**

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.

## **21. Safeguarding Considerations**

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 relevant evidence alone.

## **22. Public Health Implications**

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 only on the balance of probabilities determined by the relevant evidence.

## **23. Environmental Impact of the Proposal**

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 only on the balance of probabilities determined by the relevant evidence.

## **24. Equalities Impact of the Proposal**

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 only on the balance of probabilities determined by the relevant evidence.

## **25. Risk Assessment**

25.1 Section 53 of the Wildlife and Countryside Act 1981 (WCA 81) does not provide for consideration of issues relating to health and safety.

25.2 The Council is the surveying authority for the County of Wiltshire (excluding the Borough of Swindon) and has a duty to keep the definitive map and statement under continual review (s.53(2)(b) WCA 81). There is therefore no risk associated with the Council pursuing this duty correctly.

25.3 If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's internal procedure leading to the Ombudsman. Ultimately a request for judicial review could be made.

## **26. Financial Implications**

26.1 The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly is a statutory duty for the Council. 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.

26.2 Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are those required by the statutory administrative procedures.

26.3 Where a definitive map modification order is made, and objections received which are not withdrawn, the order falls to be determined by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA). An Independent Inspector appointed on behalf of the SoSEFRA 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 costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant). Any decision taken by SoSEFRA is liable to challenge in the High Court, the council would bear no financial burden at this stage as the decision has been made by the SoSEFRA.

## **27. Legal Considerations**

27.1 Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the SoSEFRA, who will consider the evidence and may direct the Council to make an order. As the recommendation is to make an order for application D/2021/105 but not that of what was applied for the applicant is not entitled to the appeal process under schedule 14 but may object to any made order on the basis they feel it is incorrect. If an order is made and objections are received, the procedure is as detailed above in paragraph 26.3.

## **28. Options Considered**

To:

- (i) Refuse to make definitive map modification orders under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence any additional rights exist that are not currently recorded on the definitive map and statement or is reasonably alleged to subsist, or
- (ii) Where there is sufficient evidence that a right for the public on foot, bicycle, equestrians, and carriage drivers (i.e., restricted byway rights) subsist, the authority is required to make a definitive map modification order to upgrade lower status routes to restricted byways on the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981. In addition, where

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historical widths have been discovered to amend the statements of those routes to record those widths also under Section 53 of the WCA81.

## 29. Reasons for Proposal

29.1. Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows 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.

29.2 The evidence demonstrates on the balance of probabilities, the appropriate test, that orders should be made to upgrade certain routes and record the appropriate widths for those routes. Separate orders will be made as per the separate applications and to allow objections to be made to specific parts of the decision if any are forthcoming.

29.3 As there are several aspects to the decision, two plans have been produced to physically depict the decision and its implications. See **appendix 3-** decision plans. The decision plans set out changes to the network as required by these applications and subsequent investigation and will be put into effect by legal orders.

## 30. Recommendation

30.1 **Application 2011/03-** Make a Definitive Map Modification Order to upgrade footpath CSTP6 to a restricted byway with a width of between 5 and 9 metres.

30.2 **Application D/2021/105-** Make a Definitive Map Modification Order to upgrade part of bridleway CSTP2 and WILS5 to a restricted byway, with a width of 12.2 metres for CSTP2 from SU 11162 55941 to SU 10709 56598 at its junction with WILS5 and a width of between 7 – 14 metres from its junction with the U/C8044 at SU 11470 56053 to SU 11432 56025. A width of 6.1 metres to be recorded for WILS5. The length of CSTP2 from its junction with CSTP6 at SU 11432 56025 leading west to SU

11201 56014 to not be upgraded or amended from its current recorded status and width.

Craig Harlow

Definitive Map Officer

1st February 2023

**Appendices to report.**

Appendix 1- Applications

Appendix 2- Consultation and responses

Appendix 3- Decision Plans

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Application D.2021.105	10

**SCHEDULE 7**

Regulation 8(1)

**FORM OF APPLICATION FOR MODIFICATION ORDER**

Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

To: Wiltshire Council

of: Rights of Way Section, County Hall, Trowbridge, Wiltshire, BA14 8JN

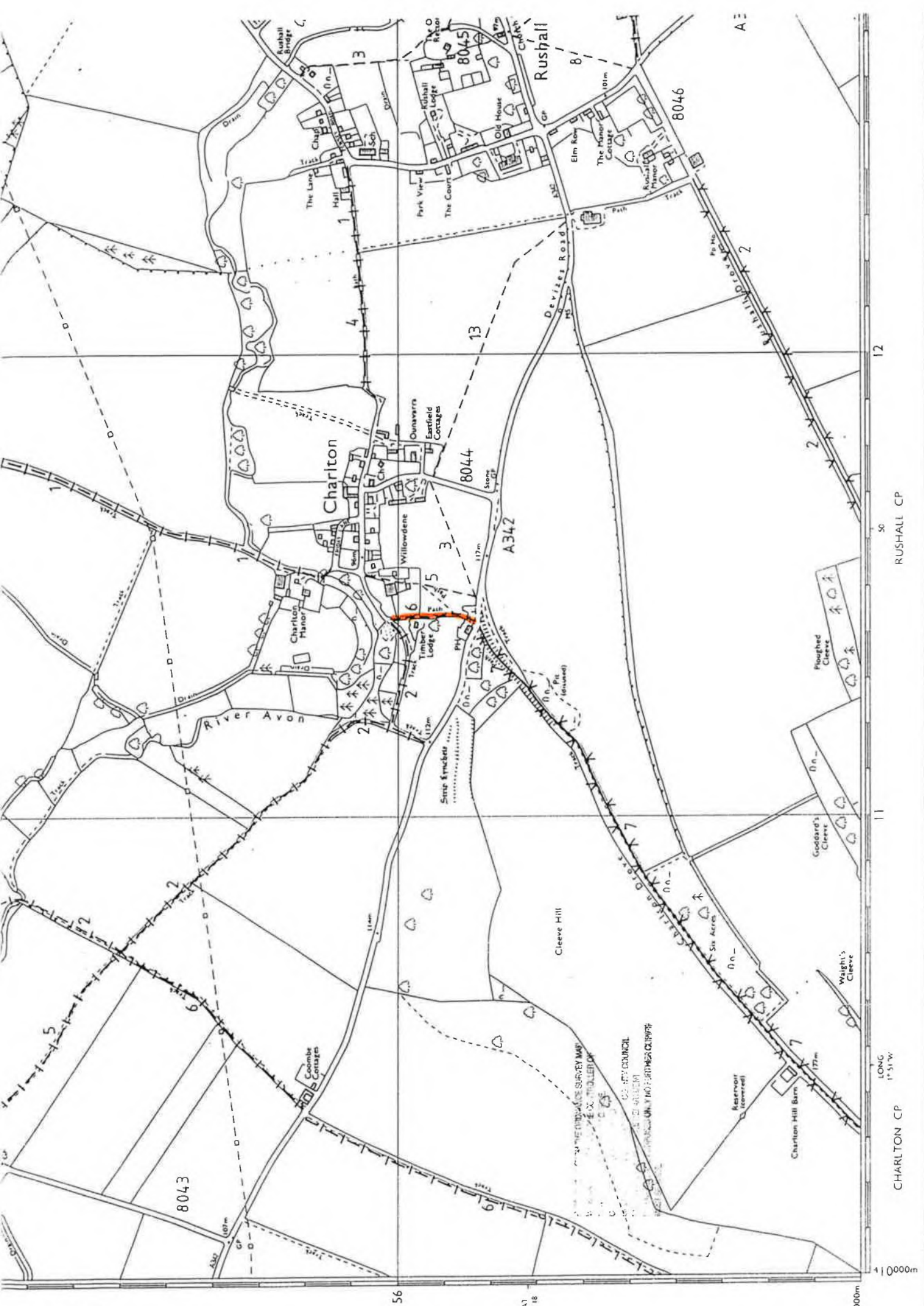
I, Bill Riley of [REDACTED] Bradford on Avon, Wiltshire, BA15 [REDACTED] hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by upgrading to a restricted byway the Footpath No.6 "White Lane" in the parish of Charlton (St. Peter), and varying the particulars relating to the restricted byway by providing that the width be modified to between 5.5 metres and 9 metres where fenced (as shown on the 2<sup>nd</sup> Edition 25" O.S. Map) and 5 metres where unfenced, and shown on the map accompanying this application.

I attach copies and a summary of documentary evidence in support of this application.

Dated: 22 January 2011

Signed: [REDACTED]





**SCHEDULE 9**

Regulation 8(4)

**FORM OF CERTIFICATE OF SERVICE OF NOTICE OF  
APPLICATION FOR MODIFICATION ORDER**

Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

Certificate of Service of Notice of Application for Modification Order

To: Wiltshire Council

of: Rights of Way Section, County Hall, Trowbridge, Wiltshire, BA14 8JN

I, Bill Riley of [REDACTED], Bradford on Avon, Wiltshire, BA15 [REDACTED] hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with.

Dated: 22 January 2011

Signed: [REDACTED]

**COPY FOR INFORMATION**

**SCHEDULE 8**

Regulation 8(3)

**FORM OF NOTICE OF APPLICATION FOR MODIFICATION ORDER**

Section 53(5) of, and Schedule 14 to, the Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

To: Mr. T. Fowle

of: [REDACTED] Charlton, Pewsey, Wiltshire, SN9 [REDACTED]

I, Bill Riley of [REDACTED] Bradford on Avon, Wiltshire, BA15 1SS, hereby give notice that on 22 January 2011 I made application to Wiltshire Council, County Hall, Trowbridge, Wiltshire, BA14 8JN, that the definitive map and statement for the area be modified by upgrading to a restricted byway the Footpath No.6 "White Lane" in the parish of Charlton (St. Peter), and varying the particulars relating to the restricted byway by providing that the width be modified to between 5.5 metres and 9 metres where fenced (as shown on the 2nd Edition 25" O.S. Map) and 5 metres where unfenced, and shown on the map accompanying this notice.

Dated: 22 January 2011

Signed: [REDACTED]

**RECORDED DELIVERY**



**COPY FOR INFORMATION**

**SCHEDULE 8**

Regulation 8(3)

**FORM OF NOTICE OF APPLICATION FOR MODIFICATION ORDER**

Section 53(5) of, and Schedule 14 to, the Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

To: Mr. N. Wookey

of: [REDACTED] Rushall, Pewsey, Wiltshire, SN9 [REDACTED]

I, Bill Riley of [REDACTED] Bradford on Avon, Wiltshire, BA15 1SS, hereby give notice that on 22 January 2011 I made application to Wiltshire Council, County Hall, Trowbridge, Wiltshire, BA14 8JN, that the definitive map and statement for the area be modified by upgrading to a restricted byway the Footpath No.6 "White Lane" in the parish of Charlton (St. Peter), and varying the particulars relating to the restricted byway by providing that the width be modified to between 5.5 metres and 9 metres where fenced (as shown on the 2<sup>nd</sup> Edition 25" O.S. Map) and 5 metres where unfenced, and shown on the map accompanying this notice.

Dated: 22 January 2011

Signed: [REDACTED]

**RECORDED DELIVERY**



**COPY FOR INFORMATION.**

**SCHEDULE 8**

Regulation 8(3)

**FORM OF NOTICE OF APPLICATION FOR MODIFICATION ORDER**

Section 53(5) of, and Schedule 14 to, the Wildlife and Countryside Act 1981

Definitive Map and Statement of Rights of Way for the County of Wiltshire

To: Mr. N. Parkes

of: [REDACTED] Charlton, Pewsey, Wiltshire, SN9 [REDACTED]

I, Bill Riley of [REDACTED] Bradford on Avon, Wiltshire, BA15 1SS, hereby give notice that on 22 January 2011 I made application to Wiltshire Council, County Hall, Trowbridge, Wiltshire, BA14 8JN, that the definitive map and statement for the area be modified by upgrading to a restricted byway the Footpath No.6 "White Lane" in the parish of Charlton (St. Peter), and varying the particulars relating to the restricted byway by providing that the width be modified to between 5.5 metres and 9 metres where fenced (as shown on the 2nd Edition 25" O.S. Map) and 5 metres where unfenced, and shown on the map accompanying this notice.

Dated: 22 January 2011

Signed: [REDACTED]

**RECORDED DELIVERY**

**CHARLTON (St. Peter) 6, "White Lane"**

**Summary of Evidence**

**Quarter Sessions Great Rolls, Hilary 1739 (A1/110/1739H):** Indictment of the Grand Jury. White Lane is described as part of a common highway for carriages etc. leading from Marlborough to New Sarum. On the reverse is inscribed the verdict "A Bill" signed by five witnesses including the Clerk of the Peace. Transcript: "Wilts Ss" *"The Jurors for our Lord the King upon their Oath do Present that there is and from the time whereof the Memory of Man is not to the Contrary there was a Common Highway leading from Marlborough in the County of Wilts aforesaid in by & through Charlton in the County aforesaid to New Sarum in the County aforesaid for all Persons their Horses Cattle Carts and Carriages And that Richard Davis of Charlton aforesaid Labourer the Twenty fifth day of March in the Eleventh Year of the Reign of our Sovereign Lord George the Second by the Grace of God King of Great Britain etc. with force and Arms At Charlton aforesaid in the County aforesaid in and upon Part of the Highway aforesaid called White Lane A Certain Skilling and Building Unlawful and Injuriously did Erect and Set up by Means whereof the Highway aforesaid was and Still is very much Straitened and Obstructed To the Great Damage and Common Nuisance of the Said Kings Liege people And Against the Peace of the Said King his Crown and Dignity And the Jurors aforesaid upon their Oath aforesaid do further Present That the Said Richard Davis the day and Year aforesaid at Charlton aforesaid in the County aforesaid Twelve ffeet in Length and ffour ffeet in Breadth of the Said Way with force and Arms Unlawfully and Injuriously Did Inclose and Incroach And the Same Inclosure and Incroachment hath Continued from thence hitherto to the Great Damage and Common Nuisance of all the Said Kings Liege People And Against the Peace of the said King his Crown and Dignity."*

[signed] "Hawkes"

[William Hawkes, Clerk of the Peace, 1736-1743]

**Andrews & Dury's 2" Map of Wiltshire 1773:**

minor road

**Charlton St. Peter Inclosure Award 1780 (EA 16):** (No Map) The lane was not awarded because it passed through old inclosures. However, it is referred to in the Award as part of the road from Charlton to Salisbury. **Award:** "Portway" "One other Public Road branching out of the said Turnpike Road opposite to a Lane in the Village of Charlton called White Lane.....the same being part of the Public Road called Portway leading from Charlton to Salisbury". (The awarded road is now part of Byway 7)

**A Plan of the Parish of Charlton in the County of Wilts 1804 (1225/237H):** Shown as an unfenced road named "White Lane" coloured sienna and lined with cottages. Not numbered or measured with any adjoining property. Width varying between approximately 30 feet and 50 feet. No gates. Part of the local road network.

**Ordnance Survey 2" Drawing No.62, Surveyed 1808:**

minor road

**Andrews & Dury's 2" Map of Wiltshire, 2<sup>nd</sup> Edn, Revised & Corrected 1810:**

"Cross Road"

**Ordnance Survey 1" Map, Old Series, Sheet 14, 1817:**

"Minor Road"

**Colt Hoare's Ancient History of Wilts Map of Marlborough Station 1819:** spur of minor road

**Greenwood's Map of Wiltshire 1820:**

"Cross Road"

**Cary's ½" Map, Sheet 18, 1823 (3.2A):**

"Parochial Road"

**Greenwood's Map of Wiltshire, Reduced & Corrected 1829 (3.3):**

"Cross Road"



Cary's ½" Map, Sheet 18, 1832 (3.4)

"Parochial Road"

Charlton St. Peter Tithe Award 1841: Map: (No roads coloured) The whole length is shown as a tithe-free lane lined with cottages. Not numbered or braced with any adjoining apportionment. No gates. Width varying between approximately 25 feet and 50 feet. Apportionment Roll: Two Apportionments, Nos.35 and 36, refer to "White Lane" as a boundary. Summary: "Lanes Waste and River 7a Or Op" (tithe-free). Part of the local road network.

Archer's Map of Wiltshire 1858 (1.26):

"Cross Road"

Crutchley's ½" Reduced Ordnance Map c.1865:

minor road

Deposited Plans of the Andover, Radstock, and Bristol Railway 1866 (A1/371/112): Plans: Sheet No.15. Railway No.2. Parish of Charlton. The whole length is shown as a fenced road lined with cottages. No gates. All except a few yards is within the limit of deviation. The railway crosses at 1 mile 2½ furlongs and the road is numbered '21'. Sections: At 1 mile 2½ furlongs "Road level unaltered, Arch 25ft span 15ft high". Book of Reference: Railway No.2. Parish of Charlton.

Numbers referring  
to the Plan  
21

Description  
of Property  
Public Highway

Names of Owners or  
Reputed Owners  
The Devizes Highway  
District Board The  
Waywardens of the Parish

Ordnance Survey 6" Map, 1st Edn, Sheet 41, 1889 (Surveyed 1886): "Minor Road" & track

Dotesio's New ½" Touring Cycling & Rambling Road Map 1890:

minor road

Gall & Inglis' ½" Map for Cyclists Tourists etc. 1898:

minor road

Ordnance Survey 25" Scale, Sheet 41/10, 1900 (Revised 1899): The north and south ends are shown as fenced lanes varying in width from approximately 18 feet to 30 feet. A length of 83 yards at the north end is measured as part of O.S. Parcel No.28, which includes the District Road (now U/C 8044). A length of 20 yards at the south end is measured as part of O.S. Parcel No.59, which includes the A.342. Hence both lengths were regarded as public roads in 1899. The lanes are connected by an unfenced track marked 'F.P.'. Two gates shown.

Inland Revenue: Finance Act 1910 Working Plan (L8/10/41): A length of 83 yards at the north end is shown uncoloured and untaxed, with a broken brace, as part of the District Road (now U/C 8044). A length of 20 yards at the south end is coloured as part of Hereditament No.34, and the remainder is coloured as part of Hereditament No.78. Register (L8/1/125): The pages which should show deductions for rights of way have not been completed.

Sale Particulars of the Rushall Estate, for Auction 25 July 1917 (1010/18): Plan No.5: A length of 83 yards at the north end is unnumbered, coloured sienna and excluded from the sale as part of the District Road (now U/C 8044). A length of 20 yards at the south end is also unnumbered, coloured sienna and excluded from the sale as part of the highway. Neither length is braced with any adjoining Lot. The remainder is part of Lot 75, but the rights of way running through it are not mentioned in the Particulars.

FORM 1



**APPLICATION FORM  
FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT  
WILDLIFE AND COUNTRYSIDE ACT 1981**

**To: Rights of Way Section, Wiltshire Council, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN**

**I, Natalie White, for and on behalf of the British Horse Society, of [REDACTED] Stareton, Kenilworth, Warwickshire. CV8 [REDACTED] Hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by:**

- a) Upgrading to Restricted Byway, the Bridleways (WILS5 & CSTP2) which run from Point A on the application map (OSGR SU 10338 56904), the junction between the Bridleway WILS5 and the road leading to the Village of Wilsford and follows the Bridleways WILS5 & CSTP2 along the Lane in an easterly direction to Point C (OSGR SU 11195 56025) before branching south to Point D (OSGR SU 11163 55947) and east to point E (OSGR SU 11525 56082).

**With a width of:** approximately 6m

and shown on the map accompanying this application.

I attach copies of the following documentary evidence in support of this application, namely extracts of:

- i. Andrews and Dury's Map of Wiltshire. (1773)
- ii. Estate map of the Parish of Charlton, Wiltshire (1804)
- iii. Ordnance Survey 1st Edition Map (1805)
- iv. Inclosure Plan for Wilsford (1808)
- v. Tithe maps of Charlton, Wiltshire (1841)
- vi. Tithe maps of Wilsford, Wiltshire (1844)
- vii. Ordnance Survey 25" County Series Map Sheet Wiltshire XLI.10 (1886)
- viii. Ordnance Survey 6" County Series Map Sheet Wiltshire XLI (1889)
- ix. Bartholomew's Half-Inch Maps of England and Wales (1902 & 1942)

The copies of the above items of documentary evidence are contained in a Summary of Evidence document also attached.

**I understand that the information I have provided may be imparted to third parties.**

Signed: Natalie White



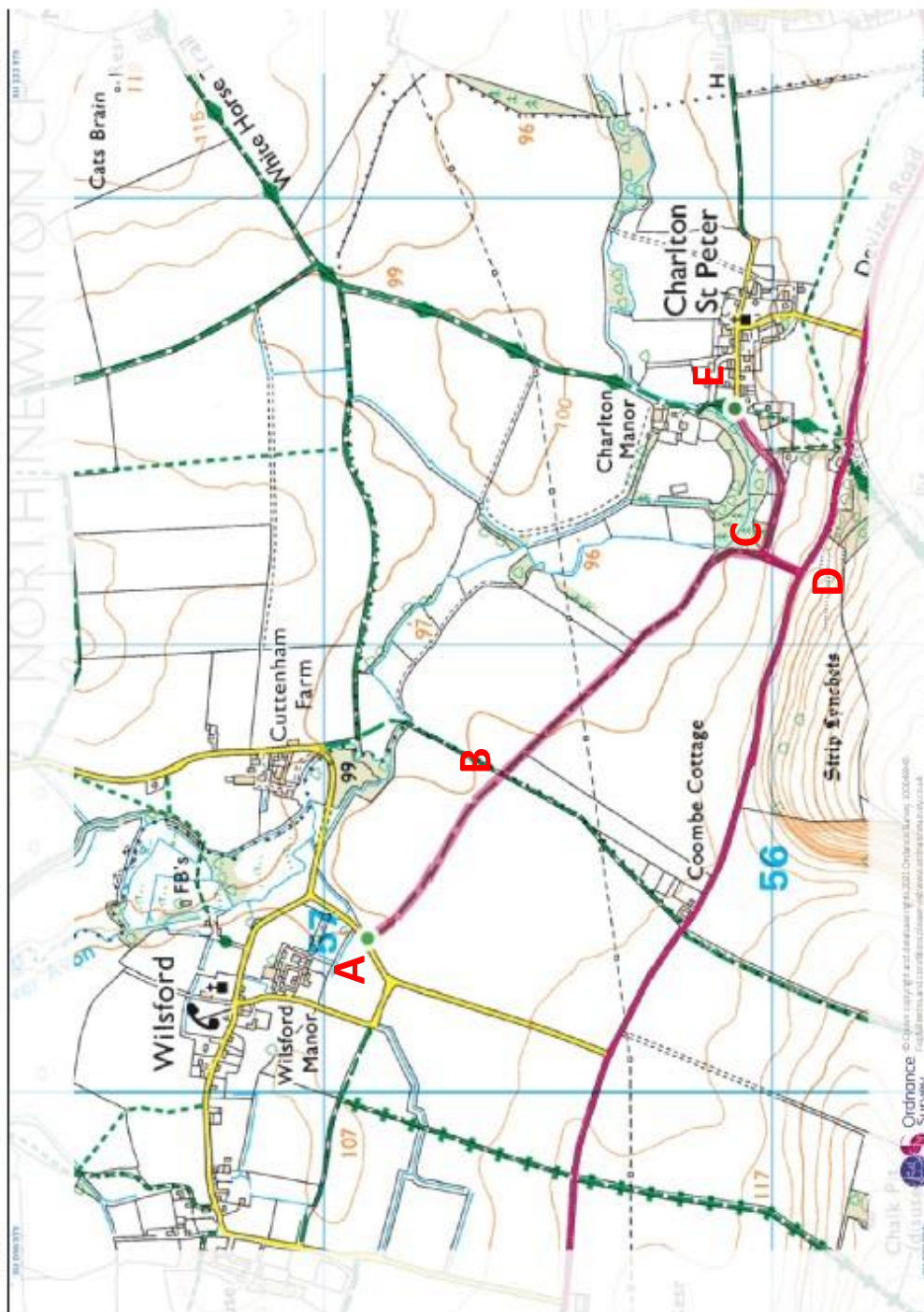
Date: 29<sup>th</sup> November 2021



## Wildlife and Countryside Act 1981

### Map to Accompany Definitive Map Modification Order Application

For a route in the Parish of Wilsford & Charlton St Peter to be shown as a Restricted Byway A to B to C to D to E marked on the map below by the pink line, 29<sup>th</sup> November 2021

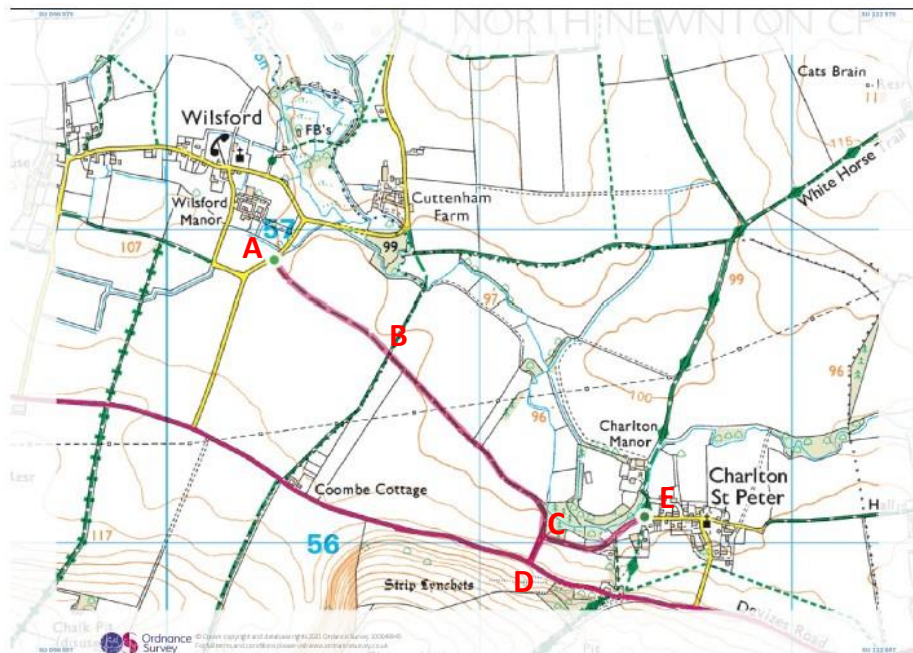


Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

## Summary of Evidence

### Definitive Map Modification Order Application

For a route in the Parish of Wilsford & Charlton St Peter to be shown as a Restricted Byway A to B to C to D to E marked on the map below by the pink line.



Applicant's Reference:  
WIL-0592  
29<sup>th</sup> November 2021

Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map	Wiltshire XLI.10
Grid references of ends of route (approximate)	SU 10338 56904 to SU 11163 55947 & SU 11525 56082

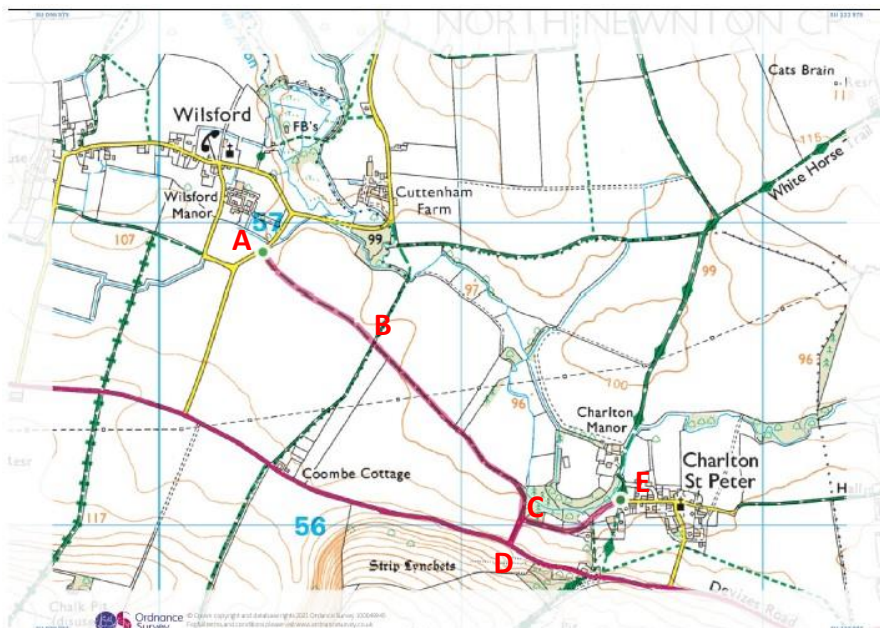
1. My name is Natalie White. I am the applicant for the order, for and on behalf of the British Horse Society (BHS).
2. This application is made because, on the cut off day, 1<sup>st</sup> January 2026, the effect of
  - a. The effect of s.53(3) and (4)(c) Countryside and Rights of Way Act 2000 on a public highway that existed prior to 1949 is to extinguish the vehicular rights on a route shown in the definitive map and statement as a bridleway.
3. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, because:
  - a. This application statement includes explanations as to how the evidence applies to the application route, and
  - b. The application contains one or more of the following forms of supporting evidence:
    - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
    - (2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
    - (3) Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
    - (4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
    - (5) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

## **THE APPLICATION ROUTE**

4. The application route is shown approximately on the plan below:
  - a. Point A, the western end of the route (at OSGR SU 10338 56904), at the Junction between the Bridleway WILS5 and the public road leading to the Village of Wilsford and proceeds southeast along the Bridleway WILS5 to Point B.
  - b. Point B (at OSGR SU 10708 56604), where the Bridleway WILS5 meets the Bridleways WILS6 and CSTP2 and continues southeast along CSTP2 to Point C.
  - c. Point C (at OSGR SU 11195 56025), where the bridleway branches south to Point D and east to point E along the bridleway CSTP2.
  - d. Point D (at OSGR SU 11163 55947) where the bridleway joins the A342.
  - e. Point E (at OSGR SU 11525 56082) where the bridleway joins the lane in the village of Charlton.

5. The application route is currently partly recorded on the Council’s definitive map as the Bridleways WILS5 & CSTP2.

(<https://wiltscouncil.maps.arcgis.com/apps/webappviewer/index.html?id=43d5a86a545046b2b59fd7dd49d89d22>)



*Extract of Ordnance Survey 1:25000 scale map showing application route A to B to C to D to E as pink line (not to scale)*

6. Photographs 1 to 3 are from OS Aerial Viewer and Google Street View



*Photograph 1 is a OS Map Aerial View with the route from A to B to C to D to E indicated with a pink line*





Photograph 2 - A Google Streetview photo from 2021 of Point A looking east along the route. The route is of significant width and has an grass surface.



Photograph 3 - A Google Streetview photo from 2011 of Point E looking west along the route. The route is of significant width, bound by hedges and has an made surface.

## **DOCUMENTARY EVIDENCE OF HIGHWAY STATUS**

7. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

8. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

*'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F & F 922:*

*"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."*

9. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

## 10. Andrews and Dury's Map of Wiltshire.

- a. Date. This map is a copy of Andrews and Drury's map produced in 1773.
- b. Relevance. The map, based on an original survey, was made for sale to the public, and so is unlikely to show routes that the public could not use. The map has no key, but it appears that as in the case of Andrews and Drury's map of Hertfordshire for which there is a key, a broken line indicated an unhedged roadside.
- c. Archives. An original map is held by the Wiltshire and Swindon History Centre, (HARC). The extracts shown are taken from an online copy of a Reduced Facsimile at <http://www.wiltshirerecordsociety.org.uk/publications/1773-map-of-wiltshire/>
- d. Meaning. The application route, A to B to C to D to E, indicated with an arrow on the extract, is shown as an "Open and fenced Road" in the same way as the current public vehicular roads to which it connects.
- e. Assessment. The depiction of the route between these points in this manner is consistent with the proposition that the application route carried equestrian and probably vehicular rights in 1773. It is quite likely that these routes connected with at least public bridleway rights of way.



Extract from Andrews' and Dury's Map of Wiltshire Map (1773) showing the application route.

## 11. Estate Map of the Parish of Charlton near Pewsey, Wiltshire

- a. Date. The estate map was made in 1804
- b. Relevance. Estate maps were prepared to show the lands owned by the landowner who commissioned the map. It is of use because it shows the land and the routes to get to the various parcels. These maps would be unlikely to show the status of a route that the landowner did not agree with, so there is evidence of highway status where routes within the estate are shown in the same way as public roads outside of the estate.
- c. Archive and Reference. A map of the parish of Charlton near Pewsey with book of reference stating owners, occupiers, field names, acreages and values. Estates owing

tithes to the rector and vicar distinguished. This document can be found in the Wiltshire Archives under the reference **1225/237H**.

Meaning. The map shows the application route as a road at point B to C, looks to be drawn the same as are other roads and tracks, and appears to be named or numbered, from points C to D to E the route looks to be depicted as a white road or common lane.

- d. Assessment. The application route from points B to C is depicted as a sienna coloured road. The depiction of route, in the same manner as the surrounding ordinary road network provides a strong inference that it was also considered to be part of that road network.

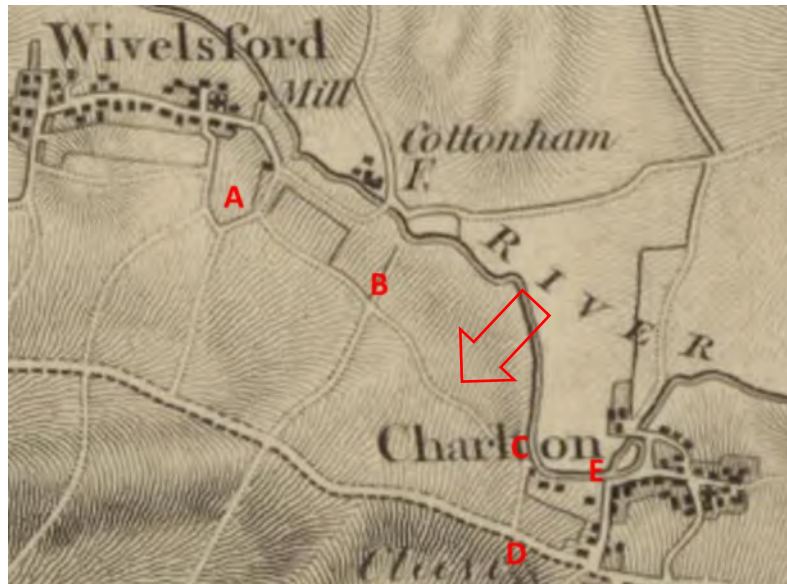


*Extract from the Estate Map for the Parish of Charlton (1804)*

## 12. Ordnance Survey 1<sup>st</sup> Edition Map

- a. Date. The OS sheets for **Wiltshire No XIV** were surveyed & published between 1805 to 1880
- b. Relevance. The 1<sup>st</sup> edition 6" maps were based on and derived from an original survey. This map was based on the preliminary field sketch map and was made for sale to the public, and so is unlikely to show routes that the public could not use. Useful information can sometimes be derived from the particular conventions
- c. Archive. The extracts from this sheet below were obtained from the National Library of Australia at <https://nla.gov.au/nla.obj-231918578/view>
- i. [Old series Ordnance Survey maps of England and Wales] / engraved at the Drawing Room in the Tower ... by Benjn. Baker & Assistants; printed by Ramshaw
  - ii. London: Published by Lt. Col. Mudge, Tower [and later] by Lieu M. Colonel Colby of the Royal Engineers; Sold by Jas. Gardner, Agent for the sale of the Ordnance maps, 163 Regent St., April 18th 1805-[1880?]
  - iii. 91 maps: mounted on linen; sheets 69 x 98 cm., or smaller + index.

- d. Meaning. The map shows the application route from points A to B to C to D to E as an open road in the same way as others depicted on the same map that are now public highways.
- e. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network between points A to B to C to D to E which provides a strong inference that it was also considered to be part of that road network.



*Extract from the 1<sup>st</sup> Edition OS Sheet XIV (1805)*

### 13. Inclosure Plan for Wilsford.

- a. Date. This plan of the parish of Wilsford was made in 1808.
- a. Relevance.
- (1) The Inclosure Act of Parliament passed in 1808 provided authority for the inclosure of the land in these parishes subject to the terms of the Act. This Act gave the Inclosure Commissioner the powers to set out in the Act.
  - (2) This Act gave the Inclosure Commissioner the powers to set out in the Act of 41 Geo III c.109 (i.e., the Inclosure (Consolidation) Act 1801). Section 8 of the 1801 Act provides that Public Carriage Roads shall be set out at 30 feet width and section 9 provides for money to be raised to pay for the setting out and maintenance of these public carriage roads. In section 10 the Commissioner is given the power to set out (with no particular width) private roads, bridleways, footways, watering places, bridges, and other things that are public in nature, and then provides for the maintenance of them to be the responsibility for ever of the owners and proprietors for the time being.
- b. Archives. The following documents are held by the Wiltshire and Swindon Archives under the following references.
- (1) A copy of the inclosure plan and award of Wilsford, (near Pewsey) is held under the reference **A1/EA 78** (1808).



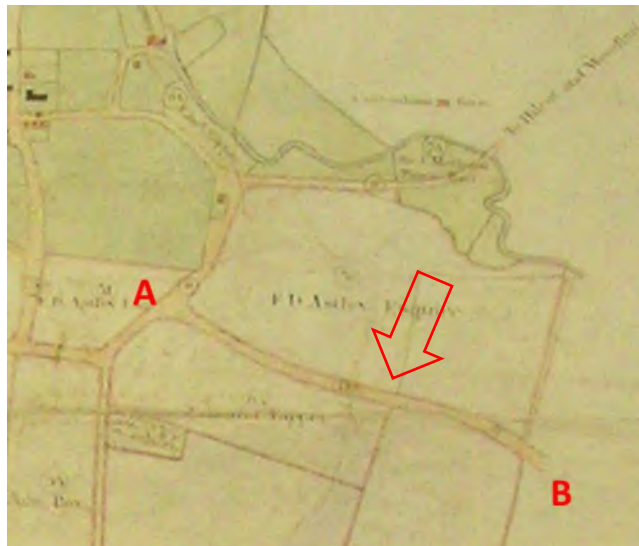
(2) A copy of the Act is held under the reference **A1/215/40** (1801).

c. Meaning.

(1) The act was passed in 1808, and so contained the contents of the Inclosure Act 1801 except as varied by the local Act

(2) The application route from points A to B, indicated with an arrow on the extract, is shown as an sienna coloured "Road", it appears to be numbered which presumably refers to an entry in the Inclosure Award. The road is shown in the same way as the current public vehicular road to which it connects on the inclosure plan, which according to the act was a true and perfect survey of the parish. The applicant was not able to view the award to ascertain what rights were given if any to the application route.

d. Assessment. The depiction of the application route on the inclosure plan in this manner is consistent with the proposition that the application route was a public carriage road in 1808.



*Extract from the Inclosure Plan for Wilsford (1808)*

#### 14. Tithe maps of Charlton, Wiltshire

a. Date. The tithe map was published in 1841.

b. Relevance.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the tithable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains

to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases, highways are coloured yellow or sienna to indicate public status.

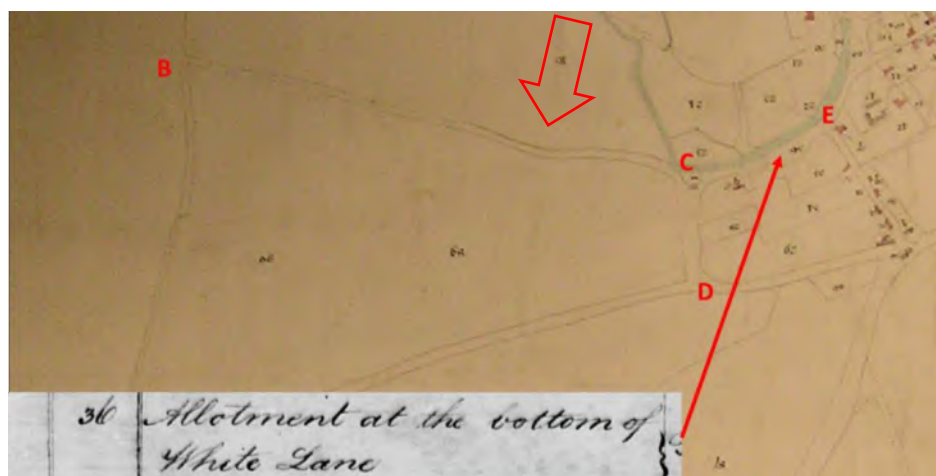
c. Archive and Reference. The tithe map for "*Tithe map of Charlton, Wiltshire*" is available to examine online at the Genealogist website. The original can be viewed at the National Archives. It is believed to be a first-class map and so is legal evidence signed and sealed by the commissioners.

**IR 30/38/59** – Tithe map of Charlton (parish), Wiltshire. Shows buildings. Colouring used. Scale: 1 inch to 6 chains (1841)

**IR 29/38/59** – Tithe apportionment of Charlton (parish), Wiltshire. Valuation: Richard Stratton, Upavon, Wiltshire

d. Meaning. The 1841 tithe map shows the application route as an open and fenced road from points B to C to D to E, separate from the numbered parcels of land, except for allotment 36 which names the road "*White Lane*" and appears to be shaded as the other roads and tracks are.

e. Assessment. The 1841 map is a first-class map being signed and sealed by the commissioners, it clearly depicts the application route as a road, in the same way as other public roads in the area. Which is consistent with the application route being a public vehicular highway at the time of the assessment in 1844 and again in 1900.



*Extract from the Tithe Map for the Parish of Charlton (1841)*

## 15. Tithe maps of Wilsford (parish), Wiltshire

f. Date. The tithe map was published in 1844 and used in the Tithe in 1900.

g. Relevance.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the tithable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases, highways are coloured yellow or sienna to indicate public status.

h. Archive and Reference. The tithe map for "*Tithe map of Wilsford, Wiltshire*" is available to examine online at the Genealogist website. The original can be viewed at the National Archives. It is believed to be a first-class map and so is legal evidence signed and sealed by the commissioners.

**IR 30/38/281** – Tithe map of Wilsford (parish), Wiltshire. Shows buildings, quarries (chalk), woods, footpath and/or bridleway, drove, osiers (withies). Colouring used. Decorative cartouche. Scale: 1 inch to 6 chains (1844)

**IR 29/38/281** – Tithe apportionment of Wilsford (parish), Wiltshire. Valuation: Thomas Davis, Warminster, Wiltshire

i. Meaning. The 1844 tithe map shows the application route as a road from points A to B to C to D, separate from the numbered parcels of land and appears to be shaded as the other roads and tracks are, however as this is a black and white copy it is difficult to determine if it was coloured sienna. The route is also labelled at the end "*to Charlton*" suggesting that it was a through route and could be used to reach the village of Charlton St Peter.

j. Assessment. The 1844 map is a first-class map being signed and sealed by the commissioners, it clearly depicts the application route as a road, in the same way as other public roads in the area. Which is consistent with the application route being a public vehicular highway at the time of the assessment in 1844 and again in 1900.

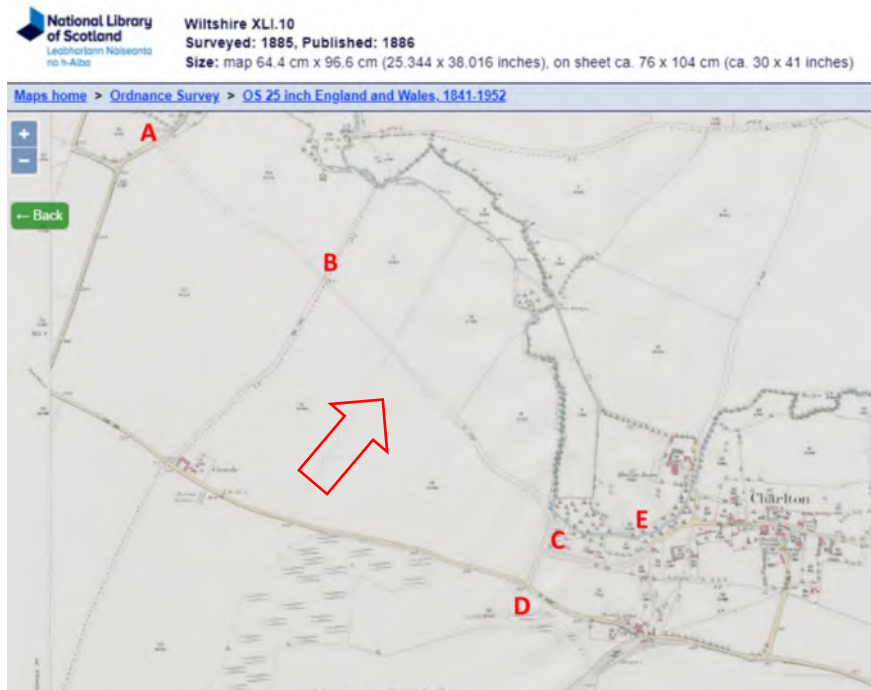


Extract from the Tithe Map for the Parish of Wilsford (1844)

## 16. Ordnance Survey County Series 25 inch Maps.

- f. Date. The OS sheets **Wiltshire XLI.10** was surveyed in 1886 and 1885 respectively and published in 1886.
- g. Relevance. The OS County Series 25 Inch mapping was predominantly used for professional purposes rather than for navigation. They are detailed enough to show gates / barriers on roads, tracks and paths. Parcels of land are numbered, and areas shown either under the parcel number or in separate "Area Books" (on some First Edition sheets). Second edition and later maps generally carry the disclaimer "The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way". However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn. Additionally, on the first edition only, colour was used on some sheets to give significance to certain features (roads, buildings, water features, etc.)
- h. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/120378009>
- i. Meaning. The route from point A to B is shown as an open road from B to D as a white road numbered 17 and between C to D to E as an open road crossing rough pasture, numbered 60.
- j. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network between points A to B to C to D to E which provides a strong inference that it was also considered to be part of that road network.

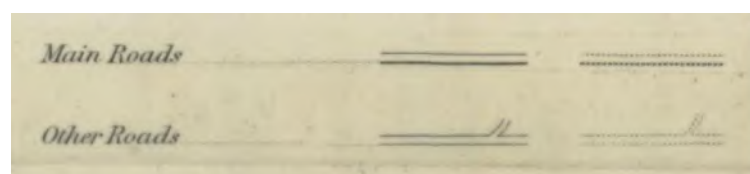




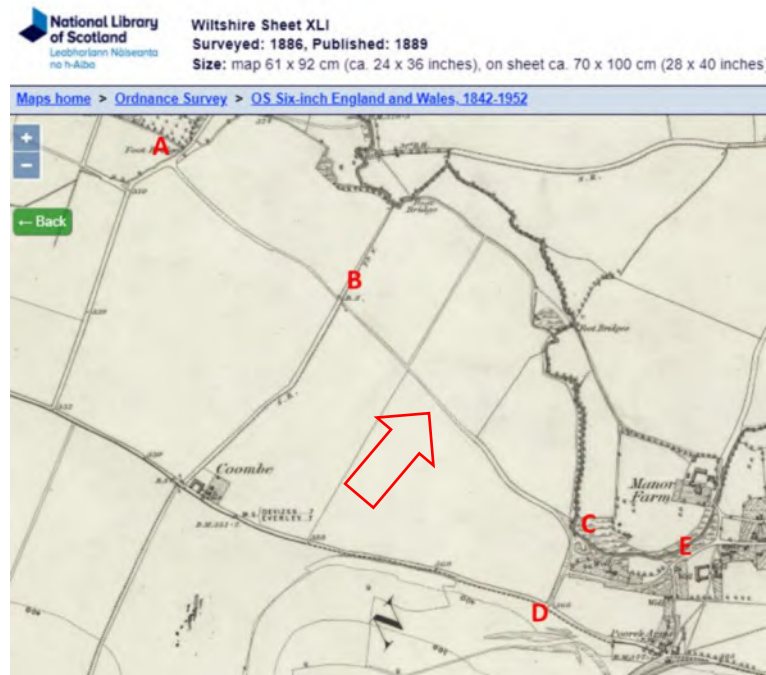
Extract from OS Sheet Wiltshire XLI.10 (1886)

## 17. Ordnance Survey 6 inch Maps.

- a. Date. The first OS sheet **Wiltshire XLI** was surveyed in 1886 and published in 1889.
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently, they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.
- c. Archive. The extracts from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/102348025>
- d. Meaning. The Characteristics Sheet for the 6" Maps differentiate between main and other roads through the use of a bold boundary on one side of a road. The claimed route is shown as "*Open and fenced Other Roads*" between points A to B to C to D to E.
- e. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.



Extract from Key to OS 6" Map



Extract from OS Sheet Wiltshire XLI (1889)

## 18. Bartholomew's Half-Inch Maps of England and Wales

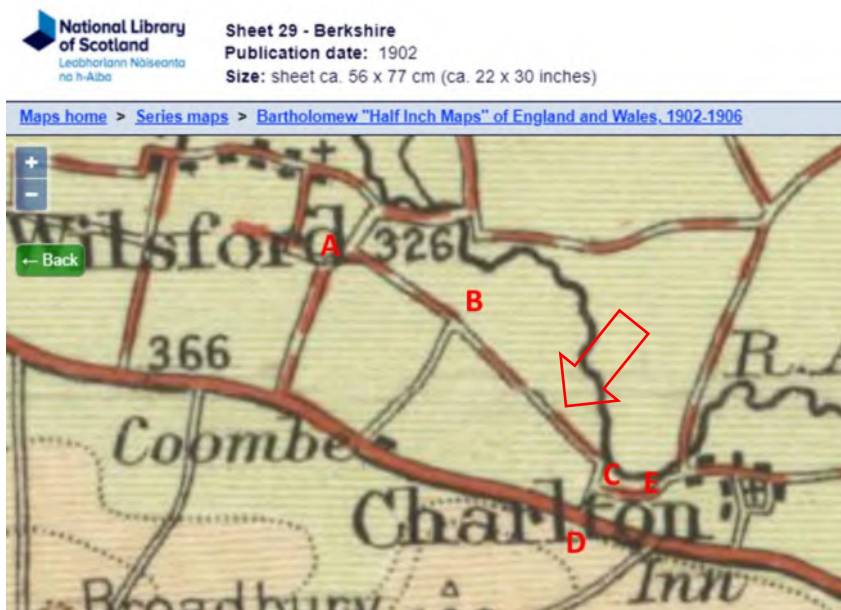
- a. Date. This series was produced during the first half of the twentieth century. The particular maps identified below were published in 1902 and 1942.
- b. Relevance. The map was not based on an original survey. Nonetheless it was intended for sale to the public, particularly for tourists and cyclists, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- c. Archive. An original of **Sheet 29 – Berkshire & Sheet 8 (England & Wales No. 29)**. - **Salisbury Plain** is held by the National Library of Scotland (NLS) and can be viewed via <https://maps.nls.uk/view/97131098> (1902) & <https://maps.nls.uk/view/128076435> (1942)
- d. Meaning. The application route is shown as an (*good*) *secondary road* in the 1902 version and as an *other good road and serviceable motoring road* in the 1942 version between points A to B to C to D to E. It is strongly marked on both maps using a solid line rather than the dashes of “*Footpaths and Bridlepaths*” indicating it was of higher status.
- e. Assessment.
  - (1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or ‘inferior’.
  - (2) Although the maps are not based on an original survey, the fact that the larger part of the application route was originally shown as though it could lawfully be used by cyclists indicates that some positive assessment of the route led to its depiction, albeit it was classed as “inferior and not to be recommended to cyclists”. At the time

of publication (1902) cyclists had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

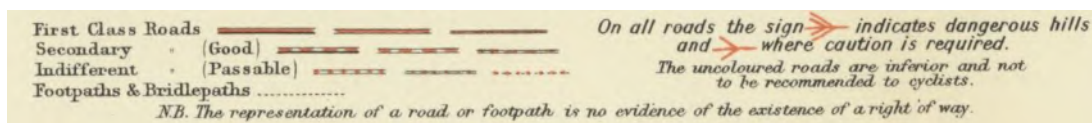
(3) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

“Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". **I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance**, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways.”

(4) The conclusion is that at least some weight must be given to this source of evidence indicating that the application route was considered a vehicular highway at the time.



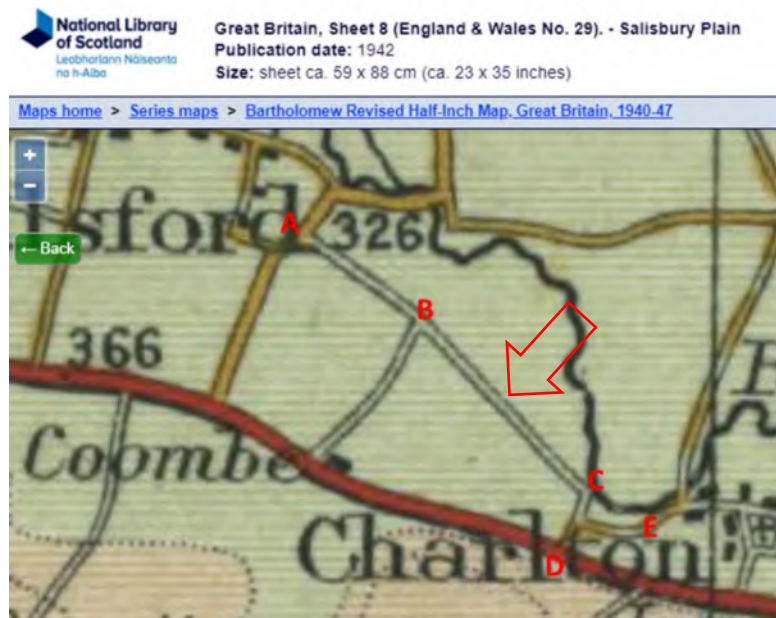
Extract from Bartholomew's Map Sheet 29 (1902) showing the application route as an secondary road



Extract from Bartholomew's Map Sheet 29 (1902) showing the Key



*Extract from Bartholomew's Map Sheet 8 (1942) showing the Key*



*Extract from Bartholomew's Map Sheet 8 (1942) showing the application route as an other good road and serviceable motoring road*

## CONCLUSIONS

19. This document presents evidence from the last 248 years that consistently indicates that the application route was part of the wider roads network. Whilst no single piece of evidence is conclusive in its own right, taken as whole it paints a compelling picture of the existence of public vehicular rights along the application route.

20. Employing the well-established legal maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

21. The applicant requests the surveying authority to add the route to the definitive map as a restricted byway.

**Natalie White**  
**For the British Horse Society**



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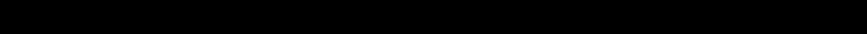
**From:** [Bill Riley](#)  
**Sent:** 21 September 2022 12:00  
**To:** [Harlow, Craig](#)  
**Subject:** 2011/03 and D/2021/105  
**Attachments:** [Charlton 6 Summary of Evidence.pdf](#)

---

**Follow Up Flag:** Follow up  
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Hi Craig,

Thanks for your recent letter.

When I submitted my 2011/03 application, I don't think I attached the images to go with the summary of evidence; so, just in case, here's a link: 

The images are not captioned but when viewed in conjunction with the summary, they are fairly easy to identify.

All the best,

Bill

**From:** [Catriona Cook](#)  
**Sent:** 16 October 2022 15:14  
**To:** [Harlow, Craig](#)  
**Subject:** 2011/03 & D/2021/105

---

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Dear Craig,

I write on behalf of the Byways and Bridleways Trust (BBT) to support the above two DMMO applications. I note the applicants are Bill Riley and Natalie White, both excellent researchers and therefore have nothing further to contribute.

Yours sincerely,

Catriona Cook MBE (Mrs)  
BBT trustee

**From:** [Alan Woodford](#)  
**Sent:** 10 November 2022 20:46  
**To:** [Harlow, Craig](#)  
**Cc:** [Myra Bennett](#)  
**Subject:** DMMO applications 2011/03 and D/2021/105 - comments by BHS Wiltshire

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Craig,

Thank you for inviting the BHS to comment on DMMO applications 2011/03 and D/2021/105. These comments are on behalf of BHS Wiltshire.

My understanding is that application 2011/03 has worked itself to the top of the priority list and that D/2021/105 in the normal way of things would not be dealt with for some time. Presumably they are being determined simultaneously for reasons of efficiency.

Based on my visit to the site on Nov. 8<sup>th</sup> 2022 I am concerned that determination of application 2011/03 at this time will involve a considerable amount of effort, especially in the event of an opposed order, for no real benefit at all.

South of the stile at SU11435595 the line of the 2011/03 application route is extremely overgrown and would require major work to reinstate it. Even if that work was somehow funded and completed there then appears no way that anyone other than a pedestrian could exit at the southern end of CSTP6 onto the A342. The exit at the moment (from the used route) is up a flight of stone steps. I could not see how a route for horses or carriages could easily be provided.

If such an exit could be provided then the route would be useful, as it would provide a crossing straight over the A342 to BOAT CSTP7.

The southern spur of CSTP2 is badly overgrown, similarly to CSTP6. If it could be cleared or if the route were diverted around it that would mean exiting on to the A342 with nowhere to go other than a hair-raising ride eastwards to CSTP6 or CSTP7.

Upgrading CSTP6 would not create any useable route other than in the very best case a dead end at the steps and upgrading the southern spur of CSTP2 would at best create a route that most people would not wish to use. For those reasons, and as proceeding would tie up WCC ROW resources for a significant period of time (in the event of an opposed order a long period of time) and as the length of CSTP2 that might be usefully upgraded (westwards to Wilsford) is of such low priority compared to many other outstanding DMMO applications BHS Wiltshire would support any decision made to shelve these two applications for the foreseeable future. This would enable other applications of similar priority to 2011/03 to be determined and which would deliver real enhancements to the network.

Yours sincerely

Alan Woodford



BHS Wiltshire Access and Bridleways Officer (volunteer)

GEOFFREY PARSONS  
FOOTPATH SECRETARY  
MID MILLS DAMBLES

TRUBRIDGE  
MILLS BAILEY  
17/9/2022

Dear Lady,  
with regard to the application to upgrade Footpath Charlton St Peter  
NO 6 to a restricted byway (REF: 2011/03) and an application to  
upgrade Bridleway Wilsford NO 5 and Charlton St Peter NO 2 to restricted  
byways (REF: 2021/105).

I have taken a look at these paths and have no objection to the  
upgrading, however I noted there is no waymark where Bridleway  
CSTP2 leaves the road at G.R. SU 415554 and no waymarks at the horse  
tracks G.R. SU 407566 where CSTP2 junctions with W1456 and W1455.

Yours Faithfully

P.S. The enclosed form referring to paths in the Romsbury and Little Beddington  
are not in the Mid Mills Dred, I believe this is in the Swindon and  
North East Mills Dred, I believe Peter Gallagher is their footpath Secretary.

**From:** [Georgina Boyle](#)  
**Sent:** 07 November 2022 15:59  
**To:** [Harlow, Craig](#)  
**Subject:** Re: ref; 2011/03 and D/2021/105

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Dear Craig,

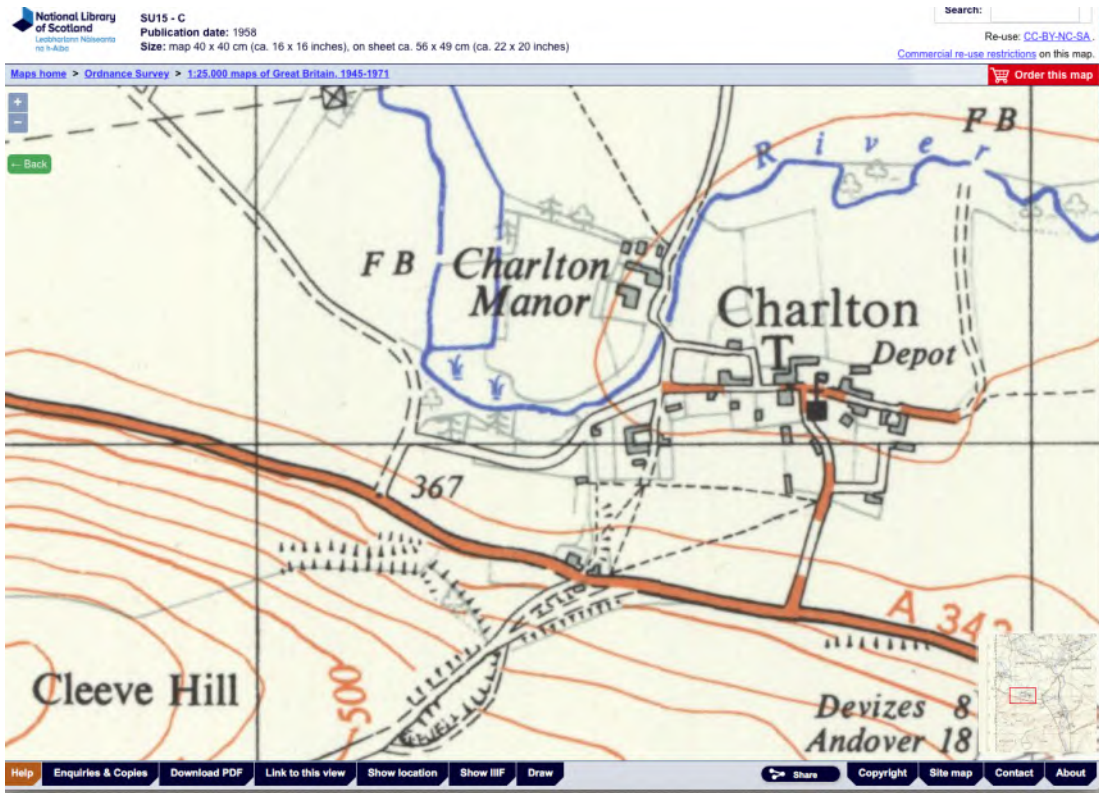
Further to my email last week it has been pointed out to me that in the application referring to the byways towards Wilsford the applicant has used a map dated 1885/9 as historical evidence.

This map also shows clearly the path from the Village of Charlton St Peter to the Charlton Cat (then the Poore's Arms) was a footpath.  
The map of 1958 also shows it as a footpath.

On 1 Nov 2022,







yours sincerely,  
Georgina Boyle.

Dear Georgina,

Thank you for your email.

I will consider it as part of my decision process on the application and inform you of any decision.

Kind Regards

Craig

Craig Harlow MIPROW  
Definitive Map Officer  
Definitive Map and Highway Records  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

Direct Line: 01249 468568  
Email: [craig.harlow@wiltshire.gov.uk](mailto:craig.harlow@wiltshire.gov.uk)  
Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)



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-----Original Message-----

From: [REDACTED]

To: Harlow, Craig <[Craig.Harlow@wiltshire.gov.uk](mailto:Craig.Harlow@wiltshire.gov.uk)>

Subject: ref; 2011/03 and D/2021/105

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

Application to upgrade footpath Charlton St Peter no.6 to a restricted byway (ref:2011/03)

Dear Craig,

In reply to your letter of the 6th September, there may be historical evidence of a byway running north from the A342 from the Charlton Cat to Charlton St Peter village (CSTP 6) however historically the A342 was not such a major road with fast traffic and large lorries. It has become a footpath (over 50 years) from disuse as a bridleway/byway as it is such a dangerous point to cross the road, bad enough on foot but both dangerous and foolhardy to try on a horse, not only to horse and rider but to all other road users/ drivers. Having lived on this road for the past 9 years I have seen a lot of near misses and although the number of accidents are few the amount of lorries using the road is increasing and the speed of drivers is very fast even with the speed limit and reduce speed signs.

Yours sincerely,  
Georgina Boyle,  
[REDACTED]

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**From:** [Gill Gadd](#)  
**Sent:** 10 November 2022 10:59  
**To:** [Harlow, Craig](#)  
**Subject:** Applic ref: 2011/03 CSTP6 upgrade to RB

---

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**Flag Status:** Flagged

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Dear Sir,

I wish to record that I am wholly opposed to the application to upgrade Charlton St Peter footpath No.6 to a restricted byway. Firstly I note that the application was made some 11 years ago and believe the applicant, who wished the lane to be used for his horse-drawn vehicles, has left the parish. I also note that the traffic on the A342 has increased in that intervening period. The main point of concern here is the junction with the A342 next to the Charlton Cat. Having good knowledge of this junction I wish to point out that it is already a hazardous point at which to cross on foot to access the plain, given the corners on that section of the road and the speed at which traffic passes through. The limit of 50mph is often exceeded by motorists but even at 50mph on the 2-lane carriageway two cars passing would have insufficient stopping time and no-where to go on meeting a horse or bicycle emerging from CSTP6. Any person would be reckless to introduce a horse onto the A road at this point. In short the junction would be too dangerous.

The junction would also interfere with the area used for parking at the Charlton Cat and the pedestrian movement from cars to cafe entrance. This also creates a further potential hazard.

In short, I see nothing to be gained by upgrading this route which is already enjoyed by walkers from the locality and further afield. There are many tracks for equestrians in the area, also enjoyed by cyclists. I hereby record my opposition to the upgrade of CSTP6.

Regards,  
Gillian Gadd

[REDACTED]  
Charlton St Peter SN9 [REDACTED]

Added to this, the path of the existing footway follows a run-off channel where rainwater passes by gravity to the area marked "Drain" at the junction with CSTP2. Opening up this track will surely destabilise the ground for no good reason?

**From:** [Mary Gillmore](#)  
**Sent:** 08 November 2022 13:13  
**To:** [Harlow, Craig](#)  
**Subject:** DMO Application references 2011/03 – CSP 6 and D/2021/105 – WILS 5  
**Attachments:** [Short stretch of bridleway.pdf](#)

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**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Mr Harlow

**RE DMO Application references 2011/03 – CSP 6 and D/2021/105 – WILS 5**

I have reviewed the evidence submitted for both the above applications and, believe that on the balance of probabilities that restricted byway rights subsist over the routes and complies with the statutory tests specified in S.119 of Highways Act 1980 and I would support the Order being confirmed.

In addition to that evidence, I would submit that reference be drawn from the decision of Michael Aldous FPS/A0665/6/1 3<sup>rd</sup> December 2012, an extract of which is attached, which I would respectfully suggest, is analogous with this stretch of bridleway in that it would create a missing link in the network, ie between CSP 6 and CSP 7 (Byway north of A342).

Yours sincerely

Mary Gillmore

[REDACTED]

Wilsford

Pewsey SN9 [REDACTED]

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If applicable, please reply using a new email rather than forwarding the existing message. This will avoid duplicating the previous message history. Your assistance in this respect is appreciated.

[REDACTED]

[REDACTED]

R [REDACTED]

[REDACTED]

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scale, which has then been enlarged. This is different to the position where a map of a smaller scale is enlarged or altered in order to fit the prescribed scale. On the basis of the information supplied to me, I consider that the application map corresponds to the prescribed scale specified in the regulations." The application thus satisfies the requirements of the 2006 Act.

The order is confirmed, subject to the correction of errors in its preamble and schedules.

### **Back in the Loop**

*The creation of a short stretch of bridleway restores a 'convenient and enjoyable' circular route for riders in Cheshire.*

Michael Aldous  
FPS/A0665/6/1  
3 December 2012

In 2010 the landowner concerned terminated an arrangement whereby a 124m.-long stretch of footpath in the parish of Cuddington enjoyed the status of permissive bridleway. This created a gap in the 'Delamere Loop', a circular route of around 22 miles in length. In 2011 an order from Cheshire West and Chester Borough Council sought to rectify this state of affairs by making a creation order giving bridleway rights to this 'missing link'. The order route runs mostly in a north-westerly direction, and passes through a tunnel underneath a railway line. Following an objection from the landowner, the order was the subject of a one-day public inquiry, conducted by Mr Aldous.

In his decision letter, the Inspector first considers questions of convenience and enjoyment. He notes, of the 'Loop' as a whole, that it "was devised over many years, utilising rights of way and quiet lanes. It responds to local demand ... is actively promoted and is well used by local equestrians, cyclists and walkers. There is every indication that this bridleway network is popular and well used. The loss of the section ... creates a gap in the network which necessitates users having to negotiate part of Stoneyford Lane... Stoneyford Lane is a busy traffic route, which because of its use and nature, is not well suited to safe and pleasant horse riding use." The restoration of the order route would provide a link to Cuddington Lane, "which is quieter and more conducive to safe passage on horseback."

The landowner argued that the Stoneyford Lane alternative, linking to a permissive Forestry Commission path, maintained the continuity of the circuit. The Inspector comments that "whilst that might be true it provides an inferior route in my view which requires riders to use a busier and more dangerous section of road, and does not have the advantage of linking with bridleway connectiv-

ity in the Cuddington area." Objectors pointed to "potential danger arising from conflict between legitimate motorised traffic, cyclists and riders at the point south of the railway where the route turns through ninety degrees." However, while Mr Aldous fully accepts "that this point on the route needs to be approached in an appropriately cautious manner by all forms of users", he does not "consider that it is manifestly unsafe, it just requires appropriate diligence... I therefore conclude ... that there are very clear advantages in terms of convenience and general enjoyment to the broader walking, cycling and horse riding public and to more immediate local residents in having this section of bridleway confirmed."

The Inspector also finds that "given the scope for any compensation which might arise from the proposal and on which the council has already taken advice, the creation of the way would not have an adverse effect on the privacy or security of those persons with an interest in the land over which it would pass." He also considers the landowner's concern that "the council had reneged on previous assurances that the bridleway would not be made a permanent public route", and her allegation that "it was always the council's intention to have a permanent bridleway in this area and as such it misled the landowner." Mr Aldous comments that "given the circumstances of this case the council had no realistic alternative but to make the order in order to attempt to complete the appropriate bridleway linkages in the area. That is what it did, and there has been the appropriate allowance for public involvement and objection."

The order is confirmed, subject to a modification correcting an error in the order schedule.

### **A BOAT by mistake**

*A BOAT which has been on the definitive map for nearly forty years is downgraded to the status of footpath.*

Alan Beckett  
FPS/M6825/W/2012/515584  
4 December 2012

An order made by Carmarthenshire County Council proposed to change the status of BOAT 39/5 in the community of Llanwrda to that of footpath. An objection from the Trail Riders Fellowship led to the determination of the order by Mr Beckett, on the basis of written representations.

Rather unusually, Mr Beckett's decision letter begins not with a consideration of the case for the order, but rather of modifications to it that may be needed. He identifies three of these. The first is the specification of width. The order contained no such specification, but, in response to objections from the TRF, the council requested a modification including

██████████  
Charlton St Peter  
Pewsey  
Wilts  
SN9 ██████████

06/11/2022

Reference 2011/03 and D/2021/105

Dear Sir

I write to record some observations regarding these two applications.

CSTP6. Going South from the bridleway leading towards Wilsford. From the junction leading south, and passing Timber Lodge, the lane is currently about 2.4 metres wide, with mature trees on both sides. If the upgrade is allowed, who sacrifices trees and land to enable the upgrade to take place? On one side there is a 1.5-2.0 metre high bank opposite the bungalow, which would also need reduction to enable the required width to be achieved. At whose expense?

As the path approaches the Charlton Cat, it passes through a 1m wide gateway, and then up 12 steps, to the back of the Charlton Cat car park. This then crosses the busy A342, at one of the most dangerous places on this stretch of road. Increasing the width to the required 6m is almost impossible without massive expense to make the road crossing safe. When this path was a highway, the heaviest traffic using it was a horse and cart, with NO A342 traffic to contend with. My wife has been riding horses in this area for years, and refuses point blank to use this crossing point, as she considers it to be too dangerous.

CSTP 2

The Spur south (Marked B C on the map) suffers much the same problems joining a dangerous road, on a bend with limited visibility in both directions. It also has a steep slope to join the highway. When my father used to use this track to move sheep across the main road in the 1970's, we used to need an extra two people just to control the traffic. After a close encounter with an impatient driver, we then used to call the police to assist. Even then, we were advised by the police to no longer use this route to move the sheep across the road, and introduce a new gateway where the crossing would be safer.

I feel that both of these so-called upgrades are potentially introducing extra hazards onto an already dangerous section of the A342, and I hope that if the upgrades are made, and a serious accident occurs, Wiltshire Council are prepared to put their hands up and take at least some responsibility, both legal and financial. I am almost certain that this will happen.

As a landowner affected by both these applications, I am extremely concerned about the potential consequences of these applications.

Yours

T C Fowle



Ref: DMMO Applications – Wilsford & Charlton St. Peter - upgrading footpath CSTP2 and bridleways WILS5 and CSTP2 to restricted byways

Dear Craig,

Thank you for engaging with the parish council on these DMMO applications and for your email dated 5<sup>th</sup> October 2022 confirming this stage is an informal consultation to gather as much evidence as possible to help inform any decision Wiltshire Council may make on these applications.

Some general comments on the application evidence and inferences by the applicant are shared below.

The Parish Council is supportive of extending the use of our PROW network, where approved, for more leisure users to enjoy our parish, but we wish them to be able to do that safely. Both applications - D/2011/003 in particular - have raised safety concerns that we are sharing, recognising these do not relate to the historical evidence.

#### **Comments in relation to the evidence and inferences in the application**

A) In general,

1. Much of the evidence presented is based on earlier maps with no key. These would be subject to local convention and stylised inference from the cartographer, so status of routes cannot be clearly ascertained
2. Where keys to symbols and notes are provided on maps, the terminology used is also subjective e.g the applicants interpretation of 'track' to mean 'road'; 'road' to mean 'full vehicular road'
3. The area covered under these proposals formed part of estates with a number of grass drovers routes connecting parcels of land. Estate maps would have been produced for the benefit of the estate owner. It is unclear if the routes covered by the DMMO were part of a public road network or if they were permissive for workers and inhabitants of the estate (the applicant includes a note on drovers paths in section 14.b.3)

B) Relating to D/2021/105: WILS5 & CSTP2, in addition to the general points in section A,

1. Page 1, section a, the applicant describes the route following 'the bridleways WILS5 & CSTP2 along the Lane in an easterly direction to Point C'. For clarity the route is a grass path with an unmade surface. The present route is ~2-3m in width
2. Currently, there are two parallel and intersecting routes running from north of section C along to section E. The application does not differentiate between these routes.

C) Relating to D/2011/003: CSTP6, using evidence presented for D/2021/105 and in addition to the general points in section A,

1. Local maps published in 1886, 1889 and 1900 all denote the path as a footpath (marked as F.P.)

## Safety Considerations

Both applications request routes leading onto the A342 to be reclassified to restricted byways from an existing bridleway (D/2021/105) and footpath (D/2011/003). If approved, both proposals would lead horse riders and carriage drivers directly onto the A342. The A342 is a narrow road, bounded by grass banks on both sides. It has a 50mph speed limit in the area covered by the applications, is one of the main routes out of Devizes and a number of large lorries use this route.

Relating to D/2021/105: WILS5 & CSTP2,

1. Visibility east along the road is limited where the road bends heading towards the Charlton Cat. The landowner covering the bridleway route up to the A324 used to use this route to move sheep across the road and was advised by the police not to use this route, leading to the landowner creating a new gateway where the crossing would be clearer.
2. Horse riders typically use routes WILS6 and WILS7 instead of this to avoid using the A342

Relating to D/2011/003: CSTP6,

1. The current footpath comes out into the car park of the Charlton Cat tearoom and runs up adjacent to steps forming the entrance to the Charlton Cat. Charlton Drove is opposite. Visibility is restricted in both directions by bends in the road and from Charlton Cat being positioned on the edge of the road to the west. A convex mirror is provided for car users to safely exit the car park from further up the carpark. The location of the existing path makes it a hazardous crossing point on foot, in both directions. Attempting to cross in either direction on horseback or in a carriage would be highly risky. There is a further hazard to horse riders / carriage drivers from cars entering the carpark of the road where the byway is proposed.  
The ability to cross to Charlton Drove on horseback from Charlton St Peter would be very much welcomed by the horse-riding / driving community if safe crossing could be provided e.g. by provision of a horse crossing.
2. The safety of patrons of the Charlton Cat Tearoom is another consideration. This includes those driving vehicles into the car park and those entering / leaving the building on foot.

Kind regards

PROW Working Group

Charlton St. Peter & Wilsford Parish Council





# Wiltshire Bridleways Association

*Campaigning for riders rights since 1970*

Please reply to:

**Mrs R. Cunningham**

Charlton St Peter, Pewsey, Wilts. SN9 [REDACTED]  
[REDACTED]

7th October 2022

Reference: 2011/03 & D/2021/105

Mr Craig Harlow  
Definitive Map Officer  
Definitive Map and Highway Records  
Wiltshire Council  
County Hall, Bythesea Road,  
Trowbridge,  
Wiltshire  
BA14 8JN

Dear Mr Harlow,

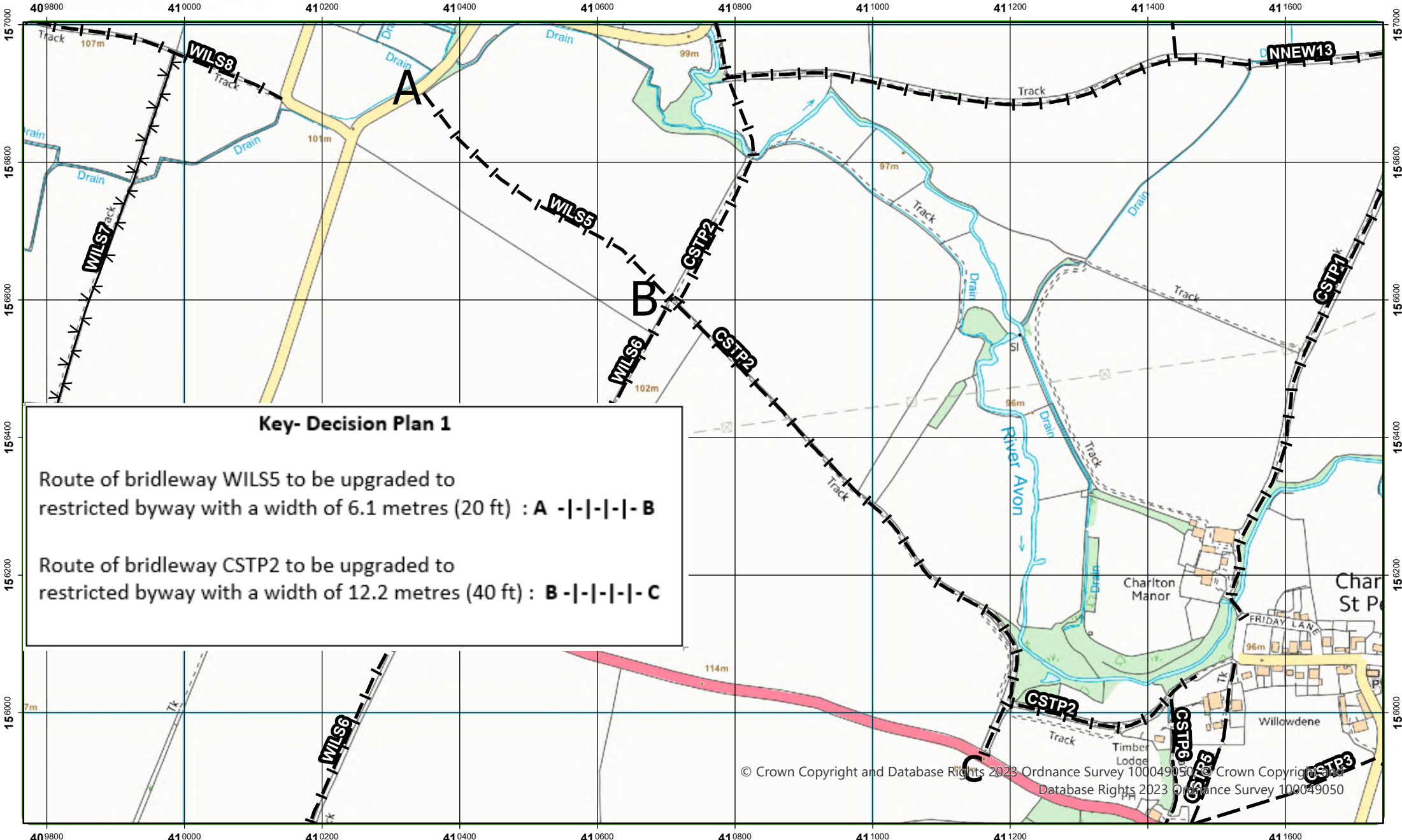
**Re – Application to Upgrade FP Charlton St Peter 6 to a Restricted Byway (ref:2011/03)**  
**And an application to upgrade bridleways Wilsford 5 and Charlton St Peter 2 to**  
**Restricted Byways (ref:2021/105)**

With reference to your letter of 6<sup>th</sup> September regarding the above upgrades of Footpath Charlton St Peter no.6 and Bridleways Wilsford no.5 and Charlton St Peter no 2 to Restricted Byways.

I write to state that the Wiltshire Bridleways Association supports the proposed applications and has therefore no objections.

Yours sincerely

[REDACTED]  
**Rosie Cunningham**  
WBA Administration Secretary



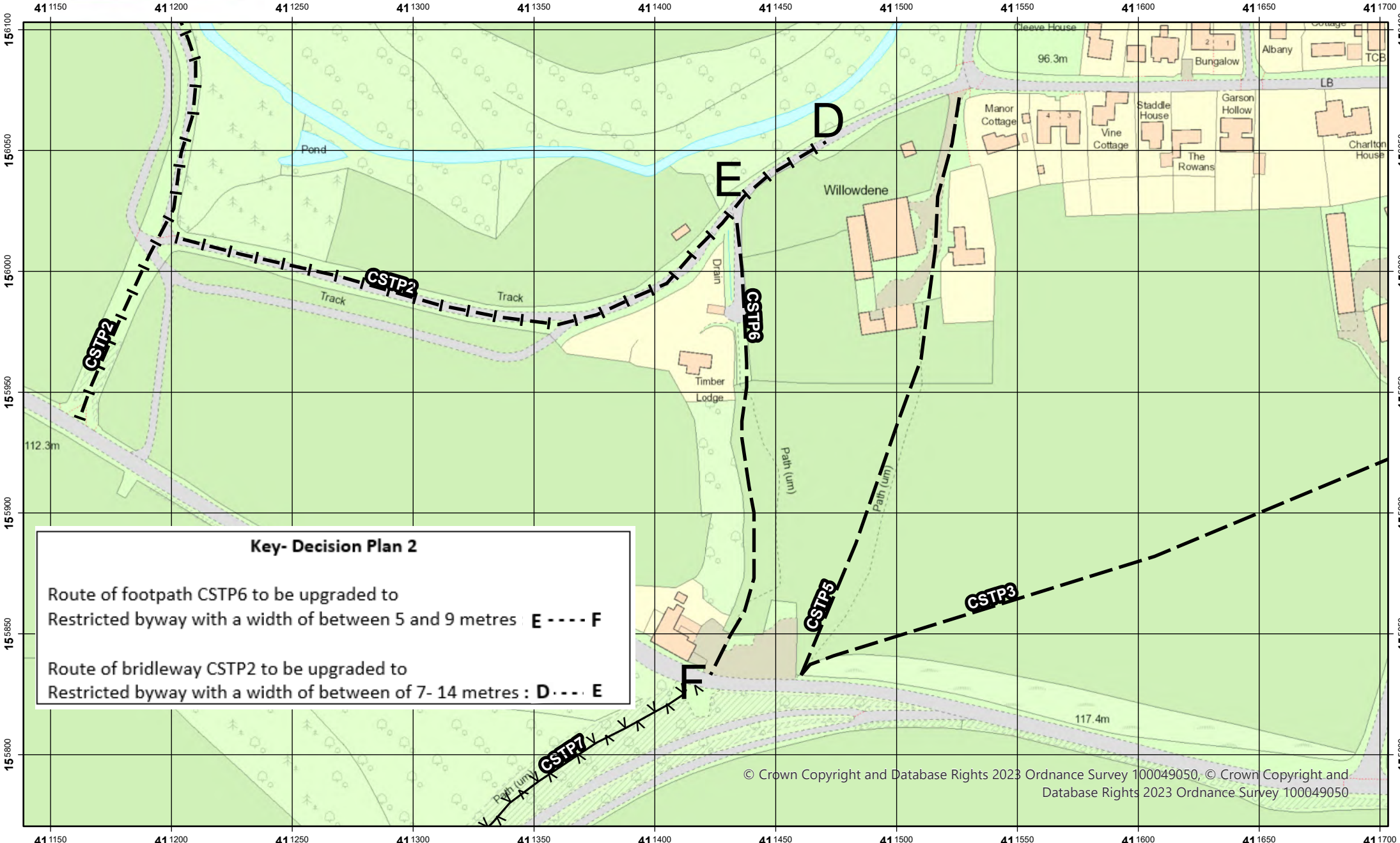
**Key- Decision Plan 1**

Route of bridleway WILS5 to be upgraded to restricted byway with a width of 6.1 metres (20 ft) : **A -|-|-|- B**

Route of bridleway CSTEP2 to be upgraded to restricted byway with a width of 12.2 metres (40 ft) : **B -|-|-|- C**

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**Key- Decision Plan 2**

Route of footpath CSTP6 to be upgraded to Restricted byway with a width of between 5 and 9 metres : E - - - - F

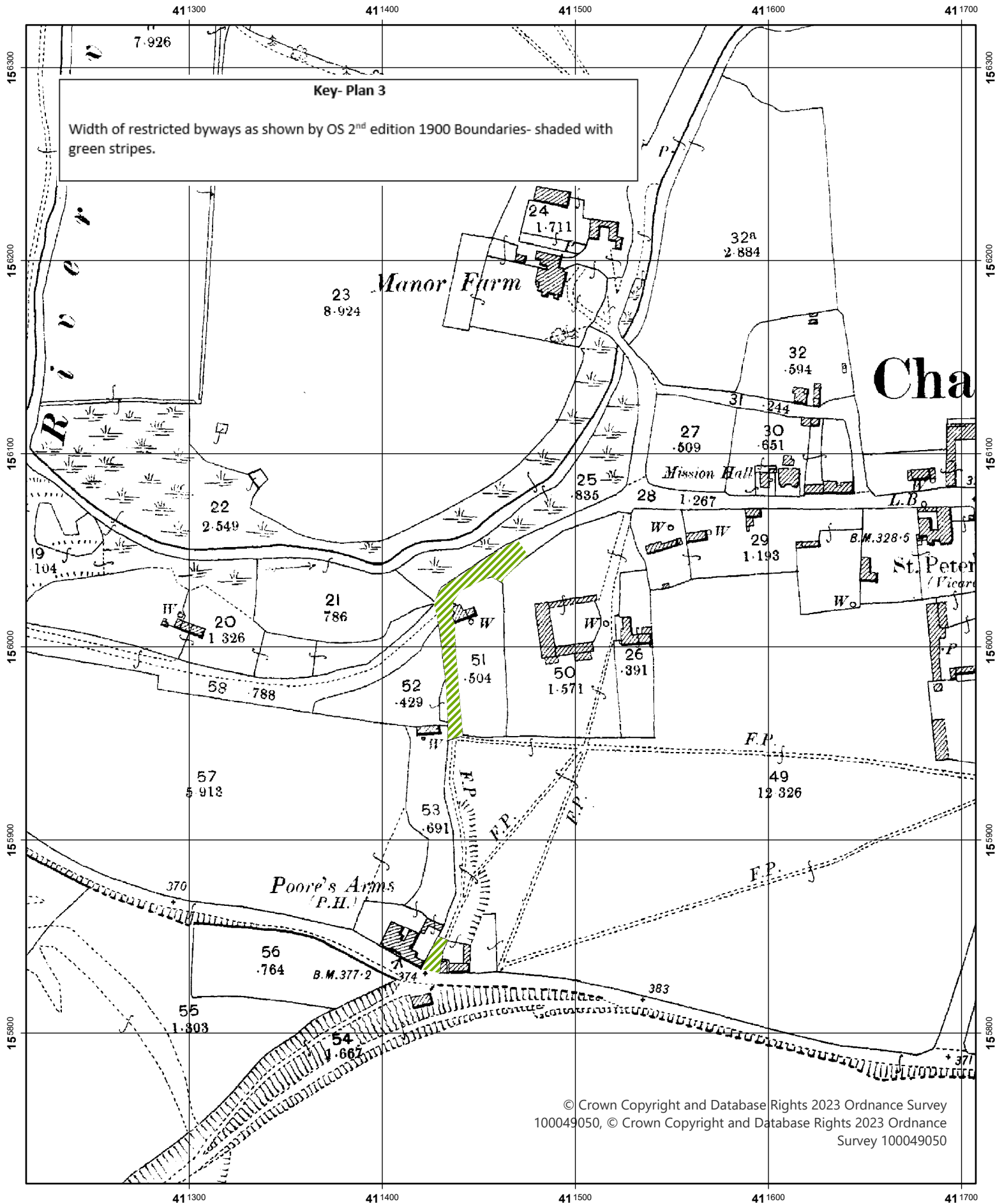
Route of bridleway CSTP2 to be upgraded to Restricted byway with a width of between 7- 14 metres : D - - - - E

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Plan 3- OS 2nd edition 1900



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