

WESTERN AREA PLANNING COMMITTEE

29 SEPTEMBER 2021

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

THE WILTSHIRE COUNCIL TROWBRIDGE PATH NO.8 DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2021

Purpose of Report

1. To:
 - (i) Consider objections and representations received following the making and advertisement of “The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021”.
 - (ii) Recommend that “The Wiltshire Council Trowbridge Path no.8.Definitive Map and Statement Modification Order 2021” be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council’s Business Plan

2. 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.

Background

3. Wiltshire Council received an application dated 29 August 2018, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade a section of Footpath no.8 Trowbridge (Church Lane), to a byway open to all traffic, as shown on the application plan at **Appendix A**. The application was made by a resident on the grounds 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, i.e. that Footpath no.8 Trowbridge (part) should be recorded as a byway open to all traffic and that other particulars contained in the map and statement required modification, i.e. the recorded width of the path. The application was supported by 62 completed user evidence forms and documentary evidence.

4. Church Lane is located on the south-western side of Trowbridge and leads between Frome Road and Acorn Meadow, Upper Studley, (please see location plan at **Appendix B**). At present the route is recorded as Footpath no.8 Trowbridge, having a recorded right for the public on foot only, save for a central section of Church Lane at Church Fields, which is recorded as publicly adopted highway and over which the public have a right with vehicles, (please see adopted highway plan at **Appendix C**). The adopted highway does not extend to Frome Road and Church Lane is presently used with vehicles to access properties, St Johns Church and the Church Hall.
5. Before determining the application Wiltshire Council undertook an initial consultation regarding the proposals to upgrade part of the footpath to a byway open to all traffic. The representations, objections and additional evidence received are included at Appendix 5 of the Decision Report attached at **Appendix D**). However, it should be noted any public vehicular use would be impacted by Natural Environment and Rural Communities Act 2006 (NERCA) Section 67(2). The two exemptions which may apply require evidence of public vehicular use during the five-year period before the commencement of NERCA (2 May 2006) and for the period prior to December 1930 when it became unlawful to drive on a footpath. However, no direct evidence of vehicular use during either of these periods was provided to officers during the initial consultation. Please also see paragraphs 10.53 to 10.63 of the decision report at **Appendix D**.
6. Following an investigation of the available evidence, including 62 completed witness evidence forms and documentary evidence submitted by the applicant, Officers of Wiltshire Council produced a decision report in which a recommendation was made to Senior Officers that the footpath, for the whole length of Church Lane between Frome Road and Acorn Meadow, be upgraded to a bridleway, having a width varying between 4 metres and 13 metres, please see decision report at **Appendix D**. Senior Officers approved the recommendation on 26 November 2021.
7. Wiltshire Council subsequently made a definitive map modification order to upgrade Footpath no.8 (Church Lane), to a Bridleway and amend the statement to record a width varying between 4 metres and 13 metres, please see definitive map modification order at **Appendix E**. Notice of the making of the order was duly advertised, served on interested parties, (including neighbouring landowners where Church Lane itself is unregistered) and posted on site.
8. Following the making of the Order, the following representations and objections were received:
 - 1) Anna Evans-Wylie – Correspondence dated 24 January 2021; 8 March 2021; 16 April 2021; 17 April 2021.

- 2) Rachel Hunt – Correspondence dated 13 February 2021; 12 April 2021; 22 April 2021 (with residents of Church Lane).
 - 3) Mr M Reed – Correspondence dated 9 February 2021.
 - 4) Roy Pegrum – Correspondence dated 17 April 2021.
 - 5) Shelley Mcgrath – Correspondence dated 25 March 2021.
 - 6) Trevor Mcgrath – Correspondence dated 26 March 2021.
 - 7) Shane Wheeler – Correspondence dated 25 February 2021.
 - 8) Steve Wylie – Correspondence dated 5 March 2021; 19 April 2021.
9. The representations and objections are included in full at **Appendix F** and the officer's comments on the objections are set out at paragraphs 16 - 40 of this report.
10. Due to the unresolved objections, the Order must now be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are requested to consider the objections and representations received against:
- (i) the evidence already before the Council in this case and
 - (ii) the legal tests for making a definitive map modification order under Section 53 of the Wildlife and Countryside Act 1981,

in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for decision.

Main Considerations for the Council

11. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way up to date and under continuous review.
12. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:
- “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description...*
 - (iii) ...any other particulars contained in the map and statement require modification.”*
13. Where witness evidence regarding the use of path no.8 Trowbridge, Church Lane, is submitted, Section 31(1) of the Highways Act 1980 states:

“Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

14. In this case where the application was made to upgrade only a short section of Footpath no.8 Trowbridge to a byway open to all traffic, upon examination of the available evidence, there was found to be insufficient evidence of public vehicular rights over the footpath; however, there was sufficient evidence to show, on the balance of probabilities, public bridleway rights over the footpath for the whole length of Church Lane, having a width varying between 4 metres and 13 metres (excluding the central section of adopted highway, please see adopted highway plan **Appendix C**). Therefore, the made Order to upgrade the whole of the footpath to a bridleway, was very different to the original application to upgrade only a short section of the path to a byway open to all traffic.
15. Evidence is key and therefore valid objections to the making of the Order must challenge the evidence available to the Surveying Authority. The Authority is not able to take into account other considerations, such as the suitability of the way for use by the public; environmental impacts of the proposal; the availability of suitable alternative paths; the “need” for the claimed route or private rights.

Comments on the Objections

16. A number of those making objections and representations do not object to the proposed status of bridleway over Church Lane and agree that this coincides with the historical use of the path on bicycles and some use on horseback, which they have observed / have knowledge of, as local residents, although some residents saw little point in upgrading the route where this use was already established.
17. Ms Rachel Hunt and Mr Shane Wheeler, writing separately, confirmed support for the Order to upgrade Path no.8 from public footpath to bridleway, allowing access to pedestrians, bicycles and single horses, but not to motorised vehicles, in keeping with the historical use of the route and its use as a quiet lane, well used by walkers, cyclists, the elderly, Brownies/Guides, children learning to ride their bikes for the first time and visitors to St Johns Church. Mr R Pegrum also confirmed that he had no objections to the reassignment of Church Lane from footpath to bridleway, for historic reasons and also bearing in mind its current usage.

18. Ms Evans-Wylie and Mr S Wylie, writing separately, commented that the difference between the footpath and bridleway lay solely in bridleways allowing for travel on horseback (in addition to foot traffic). Since horseback traffic was of only historical interest and currently there was no horseback traffic at all, (the only horse owners who leased the paddocks by Church Lane left a couple of years ago – although this could change if the paddock is used again by horse owners in future), with a distinct lack of horses on Church Lane and the Lambrok Estate with a need to ride along Church Lane to access the busy A361 road, there was little point in redefining the usage and upgrading the footpath to a bridleway. Mr Wylie confirmed that currently the footpath running from Frome Road A361 to Acorn Meadow, allowed passage for pedestrians and cyclists and that Church Lane had for a long time been a quiet lane well used by walkers, cyclists, the elderly, people with disabilities, people on mobility scooters, Brownies/Guides, children learning to ride their bikes and lots of dogs, as a safe recreational lane, not suitable for more motor vehicles. They confirmed their position as having no objections to bicycles or any other non-motorised road users travelling through Church Lane in addition to its residents, the churchgoers and the visitors to Church Hall and that cyclists were always welcome in Church Lane. Ms Evans-Wylie understood the objective of upgrading the footpath (pedestrian traffic) to a bridleway (pedestrian, bicycles and horseback), as that would reflect the current and historic usage of Church Lane and Mr Wylie clarified that he had no objection to Church Lane being classified as either a footpath or a bridleway, giving exclusive access to all forms of pedestrian traffic and cyclists; however, as Mrs Wylie confirmed, this usage was already in place and well established in Church Lane without the need of adapting or upgrading the path.
19. Mr Wylie and Ms Evans-Wylie accept public use of Church Lane with bicycles and have no objections to this use, their comments regarding use of the lane by walkers and cyclists supports the findings of the Surveying Authority in upgrading the path to bridleway. Where the route is currently recorded only as a footpath, cyclists are not formally able to use the route and are therefore committing a trespass. It is true, therefore, that all use begins with a period of trespass, but where there is now evidence of use of the path by the public with bicycles for a period of 20 years or more, it is more likely than not that a right for the public with bicycles has been acquired and Wiltshire Council, as the Surveying Authority, has a duty to correctly record that right. Upgrading the route to a bridleway records a legal right for cyclists to use Path no.8.

Change in status to bridleway

20. Mr M Reed objects to the bridleway status and questions “...*the advantage of a bridleway which does not allow motorised vehicles to use it. This seems a nonsense given the fact that most people in the area have cars which require parking space.*”
21. The Surveying Authority has carried out a detailed investigation of the historical and witness evidence in this case and considers there to be insufficient evidence of public vehicular rights over the way, but sufficient

evidence of public bridleway rights, (through use of the route by the public on horseback and with bicycles). In such a case, evidence is key and Mr Reed provides no evidence that the route of Church Lane has been used by the public at large with vehicles, (in addition to private vehicular use to access property), which would lead the Council to take a different view on the evidence already before it.

Recorded Width

22. Objectors dispute the width recorded in the Order, varying between 4 metres and 13 metres. Ms Evans-Wylie considers that nowhere does the lane seem to have 13 metres in width and their measurements show the width to be slightly under 4 metres in front of their driveway. This does not allow for two vehicles passing, or even one vehicle to safely go past a group of pedestrians. The soft verge of the lane dropping into a ditch on the other side does not provide any room for laybys or pavements. Ms Evans-Wylie, Mr Wylie and Mr Pegrum consider 4 metres excessive for bridleway traffic. Mr Pegrum considers that 2 horses do not need even 4 metres to pass each other. There is concern that opening the path at the width set out in the Order would be an invitation to motor vehicles to use Church Lane as a through route between Frome Road and Acorn Meadows, creating danger and hazards for the intended users of the bridleway, i.e. pedestrians and cyclists.
23. Mr Wylie confirms that he cannot support the Order if it does not physically prevent motor vehicles passing between Church Lane and Acorn Meadow and Ms Evans Wylie and Mr Pegrum confirm their formal objection on the specific issue of widening Church Lane at its junction with Acorn Meadow. These parties, and additionally Ms R Hunt, confirm that the width should be limited at the junction of Church Lane and Acorn Meadow to prevent vehicular use, Mr Wylie and Ms Evans-Wylie suggest that the Order is amended to record a maximum width of 1.5 metres (5 feet) at the junction of Church Lane with Acorn Meadow.
24. The width recorded in the definitive map modification order is measured from Ordnance Survey 25" County Series and later National Grid series mapping, which consistently records the width of Church Lane varying between 7 metres and 13 metres. The measurement includes not only the metalled carriageway, but also the verge area, as the full width of the path which would have been available to path users. The users in their evidence support the full width of the path being open and available before the width was reduced at the Acorn Meadow end, many witnesses refer to the path being "full width", "hedge to hedge" or "whole width". Additionally, in 1970 the County Secretary and Solicitors Office confirm: *"It will be observed that Church Lane, from its junction with White Row Hill (Frome Road) to its junction with Lambrok Road is shown by purple hatching which indicates that there is a public right of way on foot along the whole width of Church Lane..."* and Mr S Wheeler confirms

in representations regarding the Order: *“When we first moved to this lane there were concrete bollards and a wider pathway”*.

25. The path width measured from the OS mapping varies from 7-13 metres for the length of the path; however, when the central area of adopted highway at Church Fields, (which cannot be recorded as bridleway where it is already highway), is excluded from the width of the path, the minimum width is reduced to 4 metres, so a width of varying between 4 and 13 metres is recorded within the Order. When measured on the ground, a maximum width of approximately 13 metres can be measured opposite the Church Hall between boundaries. There is no evidence of a legal event formally stopping up part of the width of the highway, (please see Width section, paragraphs 10.64 – 10.70 of Decision Report at **Appendix D**).
26. Where the determination of such Orders is based upon evidence alone and in the absence of any evidence to the contrary, it is not possible to record an alternative width within the Order. Any modification to the Order, e.g. to record a reduced width of 1.5 metres at the junction of Church Lane with Acorn Meadow, whilst it may be desirable, must be based on evidence of a reduced highway width at this point, which has not been submitted in this case.

Opening up Church Lane at its junction with Acorn Meadow

27. Presently the staggered barrier at the northern end of Church Lane reduces the width of the path to approx. 1.2 metres usable width, (4.5 metres approximately including verge); however, if the actual width of the highway is greater, which the investigations of the Surveying Authority suggest is more likely than not, based on the available evidence, this barrier may in effect be an obstruction of the full width of the highway and should be removed. There is understandable concern that if the junction of Church Lane is opened up to full width it will invite vehicular traffic from the Lambrok Estate to use Church Lane as a through route between the Estate and the Frome Road (A361), with the following consequences according to the objections and representations:
 - The legal description of the road as “bridleway” and the associated restrictions of user on foot, horseback and with bicycles only, would be disregarded by many users.
 - Church Lane will be used as a “rat run” and the resultant misuse of Church Lane by vehicular traffic (cars, vans, motorcycles etc) would foreseeably generate significant dangers and hazards for the existing users of Church Lane, such as pedestrians, churchgoers, dog walkers, and the residents of Church Lane and neighbouring areas who commonly use this lane for recreational purposes.

- Speeding cars and especially motorbikes would be dangerous due to poor visibility on this narrow and hedged lane.
- Particular concern is that motorbikes, which use a circular route along the lower half of Frome Road and Bradley Road for night time races would use Church Lane as a cut through to Studley Green. Should motorbikes start using this route it would become extremely dangerous for cyclists and pedestrians. A detailed plan of action to ensure that Church Lane does not become a “rat run” for motorcycles/scooters is required and any alteration to the fixed barrier at the junction of Church Lane and Acorn Meadows should be viewed with extreme caution. Use of Church Lane by motorcycles has been a problem in the past; when the pathway was narrowed and a staggered gate installed, this greatly reduced issues and made the lane a much safer place.
- Congestion could be anticipated if traffic started pouring in from the large Lambrok Estate, (some 2,000 households), to access the A361. Difficulties are already noted on Sundays and religious holidays where the traffic to and from the church car park intensifies and leaves cars stuck in queues.
- Risks at narrow entrance into Church Lane from Frome Road (A361), obscured by hedges with inadequate vision for safe usage. If the volume of traffic increased at this junction, collisions and potentially deaths could occur.
- Church Lane is not fit to accommodate any traffic in addition to the residents it already serves. Road margins are kerbless and drainage, road markings and signage are non-existent. At its narrowest point (barely 4 metres) two vehicles are unable to pass and the lane is not wide enough for a pavement to protect pedestrians.
- Wiltshire Council in its deliberations of the potential housing site H2.4 alongside Church Lane, (Wiltshire Housing Sites Allocation Plan), has ruled that Church Lane would be unsuitable as an entrance to the development for up to 40 new houses, due to the dangerous and blind junction with Frome Road. It follows that Church Lane would be even more unsuitable for a flow of cars from the hundreds of dwellings on the Lambrok Estate.
- The residents of Acorn Meadow are not disadvantaged in any way as they enjoy access from Lambrok Road and there is already a network of wide, well-designed, well-lit and fit for purpose roads linking Lambrok Estate to the rest of Trowbridge and beyond.

- Request that all necessary steps are taken by the Local Authority to mitigate the foreseeable hazards that would be risked should the full width of Church Lane and Acorn Meadow be opened and the current barrier removed, i.e. replacement barriers, bollards, gateway, hump, road signs to prevent/prohibit the entry of motorbikes and cars into Church Lane from Acorn Meadow or an entrance only wide enough for a single horse or bike. If the route does become a bridleway it is imperative that physical measures are taken at the same time as the decision to ensure the route from Acorn Meadow remains inaccessible to motorised vehicles.
 - Adding street lamps and vehicle headlights would have an adverse effect upon the protected Bechstein bat population in the roadside hedgerows.
28. In the determination of definitive map modification order applications made under Section 53 of the Wildlife and Countryside Act 1981, the Council may only take into account the evidence, to correctly record public rights. Where there is historic and user evidence that the path should have a recorded width, wider than the present width available at the junction of Church Lane and Acorn Meadow, the “once a highway, always a highway” presumption remains if there has been no legal event to extinguish/stop up part of that width, the present barrier may be an obstruction of the highway.
29. In the first instance and in the determination of this application, it is the duty of Wiltshire Council, as the Surveying Authority, to investigate the available evidence to determine what public rights exist over path no.8 Trowbridge (Church Lane) and accurately record those rights and any width, based on the evidence.
30. As a second stage to this Order, if public bridleway rights are found to exist over the full width of the path and the Order confirmed, it will be necessary to make the full width available. However, there is evidence that use of Church Lane as a through route with vehicles has long been a concern, as can be viewed in the Trowbridge Urban District Council minutes dated 10 April 1962, which resolved that the Surveyor be authorised to erect posts across the width of the lane near the new bungalows (Kynance and Hillbrook, built 1961), to prevent through vehicular traffic; planning permission dated 12 May 1975 for detached bungalow on land to the rear of 20 Whiterow Park (22 Church Lane), which required a second set of bollards across the extremity of the turning head to *“prevent traffic going beyond the proper road access provided”* and more recently the planning granted for the two new bungalows 24 and 26 Church Lane in 2011, which required the relocation of the bollards on unknown third party land (Church Lane) and resulted in the current barrier: *“The vast majority of the local objections stem from a concern about the creation of a rat-run or through road from Frome Road to Acorn*

Meadow/Studley Green. The installation of the bollards along the north-western edge of the application site...would prevent this from happening...”,
With condition 2:

“2 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming the exact type and siting of the relocated bollards on the public right of way. The dwellinghouses shall only be occupied after the relocated bollards have been installed in a position agreed in writing by the local planning authority. The bollards shall thereafter be retained and maintained for the lifetime of the development hereby approved. REASON: In order to prevent the formation of an unauthorised through-road from Frome Road/Church Lane to Acorn Meadow and to limit the amount of traffic generated along Church Lane.”

31. Please note that planning does not supersede highway law and the current barrier may still be an obstruction of the highway. There are, however, powers available to Wiltshire Council as the Highway Authority under section 66(3) of the Highways Act 1980, to introduce a barrier where there are public safety concerns:

“(3) A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.”

The nature and location of such a barrier is not a matter for this Order, but can be fully investigated following the determination of this Order.

Improvements for disabled users/pushchairs is all that is required

32. Ms Evans-Wylie considers that *“There is of course nothing within the current footpath usage to prevent the Council from making adjustments for disabled access”* and Mrs S McGrath agrees that the definitive map modification order is not necessary where all that is required are alterations to Footpath no.8 to make it easier for disabled users and pushchairs, which would be a cheaper and far less disruptive course of action. Mr T McGrath comments that during the past seven years, as a resident of Church Lane, he has never heard a single person, resident or passer-by, suggest anything like the present bridleway proposal. What is frequently voiced is simply the removal of overgrowth from the obscured footpath with tarmac repairs where the path is eroded. It is they who use the pathway and will have to live with any detrimental outcome long after the Council has forgotten that Path no.8 exists and he suggests that the Council stops wasting money and concentrates on proper maintenance of that part of the path that has been neglected in the past.

33. Once Wiltshire Council, as the Surveying Authority, has received an application to amend the definitive map and statement of public rights of way, it has a duty to determine the application, and it cannot simply not deal with the application in favour of improvements/maintenance. Of course, Wiltshire Council, as the Highway Authority, has a duty of maintenance; however, we also have a duty to determine applications and correctly record public rights in full, based on the evidence and on the balance of probabilities. To simply not deal with the application is a risk to the Council, which could lead the applicant to appeal to the Secretary of State who may compel the Authority to determine the application within a set time limit. If the Authority then fails in its duty to determine the application it could lead to costly legal challenge for the Authority. In making a definitive map modification order, the Authority is not adding new rights, but recording only those public rights which have already been shown to exist, in this case through a user period of 20 years on horseback and with bicycles. There is evidence of use of the lane on bicycles and Officers have observed this use when visiting the site, at present cyclists have no recorded right over Footpath no.8 Trowbridge, the upgrading of the route to a bridleway formally records the rights of cyclists and horse riders, which on the balance of probabilities, already exist over Path no.8.

Private rights

34. There is concern that the upgrading of the footpath to a bridleway will affect the rights of property owners to access their properties with vehicles. Some residents are aware of their private rights to access their properties, as Mrs Evans-Wylie writes *“As residents of Church Lane we enjoy “the benefit of a right of way over the roadway known as Church Lane leading into Frome Road” (quote from our property Title Deed)”* and Rachel Hunt submits the following petition signed by 25 residents:

“As residents of Church Lane we wish to document the following information as part of the consultation process in the Application to upgrade Footpath Number 8 to a Bridleway.

Statement of Confirmation of Access to our Properties on Church Lane, whether it remains a Footpath or is designated a Bridleway.

All of the undersigned residents of Church Lane and Church Fields, and other interested parties (such as the users of St John’s Church and Hall carpark) can show if so required in terms of sec.34(1) of the Road Traffic Act 1988 that they have the private right in place to use Church Lane as an accessway by either having acquired the prescriptive right of way (see evidence below), or by virtue of having the right of way of necessity on the basis of there not being any alternative ways of accessing their properties, or because they have the private right of way created by Deed.

Evidence of Prescriptive Right of Way:

St John’s Church was built in 1852 and was accompanied by a rectory (built 1859) and School houses built 1856/1857 (converted into houses Number 2-8

Church Lane in the 1980's). Access to all of these has been established over 150+ years. In addition, Church Cottage (344 Frome Road) has had access for a similar amount of time and has used Church Lane to access its driveway by motor vehicle for at least 50 years. 'Framfield' in Church Lane was constructed in 1950's originally as a farm dwelling, later used by a practicing veterinary and is now a private dwelling. This property has had essential vehicle access for over seventy years. Church Fields and the remaining houses on the land also use Church Lane to access their properties. The majority of these houses were built in the 1970's and they have all enjoyed vehicular access since then without complaint.

Evidence of Right of Way by Necessity

All properties on Church Lane, Church Fields and users of the Church Hall can only access their property by using Church Lane.

These rights will continue if Footpath No.8 is upgraded to a bridleway and consequently there is no need to consider upgrading Church Lane to a byway."

35. There is understandably, however, some concern amongst residents regarding the impact of the proposed change in status upon their private rights to access properties. Mr S Wylie agrees that *"A volume of misinformation and anxiety has circulated in the neighbourhood about the modification order, in particular the rights of property owners and churchgoers to access properties here. This may have influenced the way some people have responded to the consultation."*
36. Mrs S McGrath is concerned that residents of Church Lane would still have complete freedom of vehicular access to their properties without restriction. Signage stating e.g. "Resident's Access Only" could be erected and Mr T McGrath is concerned that residents of Church Lane are not given specific guarantees that access to their properties will be unrestricted or that visitors and delivery vehicles will not suffer any hindrance or restrictions: *"We understand that we have legal rights to access our properties under common law but we need this to be clearly and unambiguously stated by the Council to avoid expense and uncertainty when selling our properties in the future."*
37. Wiltshire Council, as the Highway Authority, does not record private rights and cannot give advice or comment on private rights. Church Lane is an interesting case, as can be seen from the Urban District Council minutes 1960-1972 and other correspondence, it is clear that Trowbridge Urban District Council, as the then highway authority and later Wiltshire County Council, consistently refer to Church Lane as a "Private Street", i.e. a as prospective maintainable highways over which the Highway Authority could secure sums from frontagers in respect of street works. The Urban District Council had a private street works programme and budget and it is likely that the making up of the unadopted section of Church Lane was carried out under that programme when Church Fields estate was adopted, as shown in the minutes

dated 10 June 1971, (Highways and Planning Committee), when it was resolved that the Private Street Works Programme for the period 1972/73, allowing for the making up of Church Lane (amongst others), be approved in principle. It is interesting that Church Lane was never adopted as publicly maintainable highway in full, even though there are within the minutes, numerous instances of roads in Trowbridge being adopted and even following the Churchfields development when the central section of Church Lane was adopted along with Churchfields itself. The County Council writes in 1991 that it was, for economic reasons, eventually unable to proceed further with the private street works programme and on 12 April 1991 Wiltshire Council writes to confirm that: *"It is assumed that the whole of Church Lane is used by vehicles and it is therefore considered a private street over which the public at large enjoy the above described public footpath: excepting the part of Church Lane shown coloured orange...Any private vehicular rights that do exist over Church Lane would be considered to be of a private nature and, of course, have to be proven to exist if challenged."*, (please see Appendix 8 of Decision Report at **Appendix D**).

38. Property owners must satisfy themselves that they have a vehicular right of access to their properties and this is not a matter which is relevant to this Order. The Surveying Authority has a duty to correctly record public rights only. Previously to this Order, the full length of Church Lane was recorded as a Footpath and there is no material difference in the definitive map modification order upgrading the route to a bridleway. If, however, property owners are relying upon a public vehicular right of way to access property, they have not submitted additional evidence which would support public vehicular rights over Church Lane and lead the Council to take an alternative view of the evidence already before it.

Effect on property

39. A property owner directly affected by any increased width in the path at the northern end and who presently parks on what may in fact be part of the full width of the highway, is understandably very concerned regarding the effect on his property: *"When I purchased property it was on the understanding that everything was in order, now I am told of plans to modify the area to create a bridleway, this will have repercussions which make me think the house was mis-sold... Which part of the frontage of my property needs taking up for the bridleway and what are your legal rights to do so. This is dangerous and will reduce privacy. Another major area of concern is how far the house will be devalued if this proposal goes through. Many people are already very stressed at the prospect."*

40. Title documents show that there is no registered owner of the full length of Church Lane and over the full width proposed within the Order. Again, Wiltshire Council is concerned only to correctly record public rights and may only take into account the available evidence. The correspondent provides no additional evidence which would lead Officers to reach a different conclusion on the evidence before it.

Overview and Scrutiny Engagement

41. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

Safeguarding Considerations

42. Considerations relating to safeguarding anyone affected by the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Public Health Implications

43. Considerations relating to the public health implications and 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.

Corporate Procurement Implications

44. Where an Order is forwarded to the Secretary of State for determination, there are a number of opportunities for expenditure to Order and these are considered at paragraphs 48 – 51 of this report.

Environmental and Climate Change Impact of the Proposal

45. Considerations relating to the environmental or climate change 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 on the relevant evidence alone.

Equalities Impact of the Proposal

46. 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 on the relevant evidence alone.

Risk Assessment

47. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error in the definitive map and statement of public rights of way which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. If the Council fails to fulfil this duty, it is liable to complaints to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

Financial Implications

48. The determination of definitive map modification order applications and the modification of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore, 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.
49. Where objections are received to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
50. Where the case is determined by written representations, the cost to the Council is negligible. However, where a local hearing is held, the costs to the Council are estimated at £300 - £500. A public inquiry could cost between £1,500 and £3,000, if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 - £500 where the Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
51. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

Legal Implications

52. Where the Council no longer supports the making of the Order, clear evidential reasons for this must be given, as the applicant may seek judicial review of the Council if this decision is seen by them to be incorrect or unjust.
53. The determination of an Order which has received objections is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State, (although the Council as Highway Authority would be considered by the Court to be an “interested party” and named as such in any such proceedings). Any legal challenge would be heard in the High Court and would need to show that the Inspector (appointed by the Secretary of State to preside over the inquiry and take the decision) had misinterpreted the law or erred in the making of the decision. If the challenge is successful, the Court could quash the decision and in cases where an error has been found, return the case to the Secretary of State for re-determination. The losing party would be responsible for the costs of the successful party.

Options Considered

54. Members of the Committee should now consider the objections and representations received and the evidence as a whole, in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for decision and Members of the Committee are required to determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members, having considered the available evidence and the objections and representations, are as follows:
 - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed without modification;
 - (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification, based on consideration of the available evidence, in which case the Committee should recommend that the Order be confirmed with modification;
 - (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, based on consideration of the available evidence, in which case the Committee should recommend that the Order is not confirmed with clear evidential reasons given for this resolution;

- (iv) Members may resolve to take a neutral stance, if the Committee considers on consideration of the available evidence that a Wiltshire Council recommendation cannot be attached to the Order when it is forwarded to the Secretary of State for determination.

55. Please note that all references to the available evidence above, now include the submissions made at the formal objection period, (please see correspondence at **Appendix F**), as well as the evidence considered within the decision report dated 26 October 2020, (included at **Appendix D**). Members should note that the evidence in full is available to be viewed at Wiltshire Council's Offices, County Hall, Trowbridge.

Reason for Proposal

56. Where the Surveying Authority may take into account only the evidence regarding public rights and the width of the way, no additional evidence regarding the status and width of the path has been submitted during the formal consultation stage, which would lead Officers to amend the Order. The matter of the barrier and private rights are not a matter for this Order which is limited only to the correct recording of public rights based upon the available evidence.

Proposal

57. That "The Wiltshire Council Trowbridge Path no.8.Definitive Map and Statement Modification Order 2021" be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Jessica Gibbons

Director Communities and Neighbourhoods Services

Report Author:

Janice Green

Senior Definitive Map Officer

The following unpublished documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix A – Application Plan

Appendix B – Location Plan

Appendix C – Adopted Highway Plan

Appendix D – Decision Report

Appendix E – “The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021”

Appendix F – Objections and Representations

Completed witness evidence forms x 62 are available to be viewed at the Offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge