

# AGENDA

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**Meeting:** Western Area Planning Committee

**Place:** Council Chamber – County Hall, Bythesea Road, Trowbridge, BA14 8JN

**Date:** Wednesday 29 September 2021

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Ben Fielding, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718656 or email [Benjamin.fielding@wiltshire.gov.uk](mailto:Benjamin.fielding@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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## Membership:

Cllr Christopher Newbury (Chairman)	Cllr Stewart Palmen
Cllr Bill Parks (Vice-Chairman)	Cllr Antonio Piazza
Cllr Trevor Carbin	Cllr Pip Ridout
Cllr Ernie Clark	Cllr David Vigar
Cllr Andrew Davis	Cllr Suzanne Wickham
Cllr Edward Kirk	

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## Substitutes:

Cllr Matthew Dean	Cllr George Jeans
Cllr Jon Hubbard	Cllr Gordon King
Cllr Tony Jackson	Cllr Mike Sankey
Cllr Mel Jacob	Cllr Graham Wright

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### **Covid-19 safety precautions for public attendees**

To ensure COVID-19 public health guidance is adhered to, a capacity limit for public attendance at this meeting will be in place. **Please contact the officer named on this agenda no later than 5pm on Monday 27 September if you wish to attend this meeting.**

To ensure safety at the meeting, all present at the meeting are expected to adhere to the following public health arrangements to ensure the safety of themselves and others:

- Do not attend if presenting symptoms of, or have recently tested positive for, COVID-19
- Wear a facemask at all times (unless due to medical exemption)
- Maintain social distancing
- Follow one-way systems, signage and instruction

Where it is not possible for you to attend due to reaching the safe capacity limit at the venue, alternative arrangements will be made, which may include your question/statement being submitted in writing.

### **Recording and Broadcasting Information**

Wiltshire Council may record this meeting for live and/or subsequent broadcast. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By submitting a statement or question for an online meeting you are consenting that you will be recorded presenting this, or this may be presented by an officer during the meeting, and will be available on the public record. The meeting may also be recorded by the press or members of the public.

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### **Parking**

To find car parks by area follow [this link](#). The three Wiltshire Council Hubs where most meetings will be held are as follows:

**County Hall, Trowbridge**  
**Bourne Hill, Salisbury**  
**Monkton Park, Chippenham**

County Hall and Monkton Park have some limited visitor parking. Please note for meetings at County Hall you will need to log your car's registration details upon your arrival in reception using the tablet provided. If you may be attending a meeting for more than 2 hours, please provide your registration details to the Democratic Services Officer, who will arrange for your stay to be extended.

### **Public Participation**

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

# AGENDA

## Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 7 July 2021.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

**Statements**

Members of the public who wish to submit a statement in relation to an item on this agenda should submit this in writing to the officer named on this agenda no later than 5pm on Monday 27 September.

Submitted statements should:

State whom the statement is from (including if representing another person or organisation);

State clearly whether the statement is in objection to or support of the application;

Be readable aloud in approximately three minutes (for members of the public and statutory consultees) and in four minutes (for parish council representatives – 1 per parish council).

Up to three objectors and three supporters are normally allowed for each item on the agenda, plus statutory consultees and parish councils.

Those submitting statements would be expected to join the online meeting to read the statement themselves, or to provide a representative to read the statement on their behalf.

**Questions**

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions electronically to the officer named on the front of this agenda no later than 5pm on Wednesday 22 September in order to be guaranteed of a written response.

In order to receive a verbal response questions must be submitted no later than 5pm on Friday 24 September 2021.

Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent. Details of any questions received will be circulated to members prior to the meeting and made available at the meeting and on the Council's website. Questions and answers will normally be taken as read at the meeting.

6 **Planning Appeals and Updates** (*Pages 13 - 14*)

To receive details of completed and pending appeals and other updates as appropriate.

7 **Rights of Way Applications**

To consider and determine the following rights of way applications:

7a **Trowbridge Path No.8 Definitive Map and Statement Modification Order** (*Pages 15 - 294*)

To 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".

8 **Planning Applications**

To consider and determine the following planning applications:

8a **PL/2021/03460 - Yew Tree House, Brokerswood, BA13 4EG** (*Pages 295 - 314*)

Erection of two holiday eco lodges.

8b **20/10353/FUL - 37 A Monkton Farleigh, Bradford-on-Avon, Wiltshire, BA15 2QD** (*Pages 315 - 340*)

Erection of replacement dwelling.

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

**Part II**

***Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed***

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## Western Area Planning Committee

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### MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 7 JULY 2021 AT COUNCIL CHAMBER, COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Antonio Piazza, Cllr Pip Ridout, Cllr David Vigar and Cllr Suzanne Wickham

#### **Also Present:**

Cllr Mike Sankey

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#### 28 **Apologies**

There were no apologies for absence.

#### 29 **Minutes of the Previous Meeting**

The minutes of the meeting held on 9 June 2021 were presented for consideration, and it was,

#### **Resolved:**

**To approve and sign as a true and correct record of the minutes of the meeting held on 9 June 2021. With an agreed amendment to remove the sentence within Minute 24 regarding the intention to lock a gate.**

#### 30 **Declarations of Interest**

There were no declarations of interest.

#### 31 **Chairman's Announcements**

The Chairman made those in attendance aware of the Covid regulations that were in place for the meeting.

#### 32 **Public Participation**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

33 **Planning Appeals and Updates**

The update report on planning appeals was received with details provided that three appeals had been received with officers now tasked with completing the necessary statements to defend the refusal decisions.

**Resolved:**

**To note the Planning Appeals Update Report for 7 July 2021.**

34 **Rights of Way Applications**

The Committee considered the following Rights of Way application:

35 **Highways Act 1980 Section 119 The Wiltshire Council Bratton 42 Diversion and Definitive Map and Statement Modification Order 2021**

**Public Participation**

Alan Brook spoke in objection of the application.

Nick Jones spoke in support of the application.

Definitive Map Officer, Ali Roberts presented a report which had the purpose to consider the 20 objections and 66 representations relating to The Wiltshire Council Parish of Bratton Path No.42 Definitive Map and Statement Modification Order 2021. The report recommended that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on the maintenance of the two routes in question as well as the accessibility for both walkers and those with dogs.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Suzanne Wickham, then spoke in support to the application.

A debate then followed where the following issues were discussed, including the aesthetic of both the routes and the current level of privacy provided for the owner. It was also acknowledged that the applicant would be prepared to put a fence up, which would potentially be more detrimental to the original route. The accessibility of the proposed diversion was discussed as well as observations from those who had visited the site.



A motion to move and accept the proposal was moved by Councillor Suzanne Wickham and seconded by Councillor Pip Ridout.

At the conclusion, it was,

**Resolved:**

**That the Wiltshire Council Footpath Bratton 42 Diversion Order 2021 and Definitive Map Modification Order 2021 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.**

*Councillor Ernie Clark requested his vote against the motion be recorded.*

36 **Planning Applications**

To consider and determine the following planning applications:

37 **20/11601/REM - Land East of Spa Road, Melksham**

**Public Participation**

Mareile Feldman spoke in objection of the application.

Joe Ayoubkhani spoke in support of the application.

Senior Conservation and Planning Officer, Jemma Foster, presented the report and recommended that the Committee approves the application for Reserved Matters for 25 homes forming Phase 1A associated to outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. Reserved Matters approval was sought for all outstanding matters relating to this phase, comprising the Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.

Details were provided of the site, the principle of development, the impacts upon the area and wider landscape; drainage impacts including the remedial land drainage works to resolve recent off site surface water flooding issues, setting impacts to nearby heritage assets as well as highway and neighbouring impacts.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on the number of conditions being recommended by officers noting a typographical error within the agenda. Additional clarity was sought on the number of the two bed homes within the application and the allocation/implications for affordable housing. The allocation of parking and inclusion of garages was also queried.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Mike Sankey, then spoke regarding the application, which had been called in by the previous ward member (Cllr Holder) prior to the May 2021 election and noted the off-site surface water flooding reasoning for the call-in. Councillor Sankey informed the Committee that he and Councillor Holder had attended a recent virtual and on-site meeting with the developers and had been reassured that the flooding issues had been addressed.

A debate then followed with the following issue being a central point of discussion, the deletion of (2) 2bed and (5) 3bed dwellings from this phase was of some concern as it would reduce the number of the entry level of smaller house types within this part of the scheme (and be replaced by (5) 4bed dwellings, which would not likely be within the budget range for many households. The concern was noted by officers and the remaining spread of 2bed and 3bed homes was explained which officers considered was within acceptable parameters.

A motion to move and accept the officer recommendation was moved by Councillor Ernie Clark and seconded by Councillor Andrew Davis.

At the conclusion of the debate, it was,

**Resolved:**

**Recommendation – Approve subject to the following conditions:**

**Conditions: (6)**

**1- The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing RP1-PL: 01A (site location plan); Drawing 02-A (context plan); Drawing 03-A (coloured site plan layout); Drawing 03-E (planning layout replan 1); Drawing 04-B (materials plan); Drawing RP1-SS-01A (street scene plan); Drawing 4769-L: 209R (strategic landscape drawing 1 of 5); Drawing 218-O (landscape hedgerow corridor drawing 1 of 1); Drawing 219-K (landscape boundary 1 of 1); Drawing 22-P (landscape proposal 1 of 4); Drawing RP1-HT: GAR 01 (garage) and GAR-02 (garage); Drawing AVO-18023-CIV-5000 A; Drawing of House Types: RP1-HT: HADLEY-01, ARCHFORD-01A, INGLEBY-01, KIRKDALE-01, AVONDALE-01, AVONDALE-02, HOLDEN-01, CORNELL-01**

**REASON: For the avoidance of doubt and in the interests of proper planning**

**2- The development hereby approved shall be carried out in strict accordance with the Construction Environmental Management Plan (CEMP) approved by the Local Planning Authority under application reference number 19/01795/DOC.**

**REASON: To ensure the development is undertaken in an acceptable manner, in the interests of preventing pollution of the water environment**

**3- The materials to be used for the external walls and roofs shall be carried out in accordance with the details approved by the Local Planning Authority under application reference number 19/05715/DOC.**

**REASON: In the interests of visual amenity and the character and appearance of the area**

**4- The area of hardstanding adjacent to the Grade II Listed Building that is to be removed shall be carried out in accordance with the method statement that was approved by the Local Planning Authority under application reference 19/01795/DOC.**

**REASON: In the interest of preserving the Grade II Listed Wall.**

**5- Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.**

**REASON: To secure the retention of adequate parking provision, in the interests of highway safety.**

**6- The development hereby permitted shall be carried out in accordance with the drainage scheme for the southern area of the site including the associated attenuation pond, landscaping and infrastructure works that was approved by the Local Planning Authority under application reference 19/04603/DOC**

**REASON: To ensure suitable drainage for the site.**

**38 21/01111/REM - Land East of Spa Road, Melksham**

Public Participation

Joe Ayoubkhani spoke in support of the application.

Senior Conservation and Planning Officer, Jemma Foster, presented a report, and recommended that the Committee approves the application for Reserved Matters for 50 homes forming part of Phases 4A and 5A of outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. Reserved Matters approval was sought for all outstanding matters relating to this phase, comprising the Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.

Details were provided of the site, the principle of development, the impacts upon the area and wider landscape; drainage impacts, heritage asset setting impacts as well as highways impacts and neighbouring impacts.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on the phasing of the scheme and the trigger provision for affordable housing.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Mike Sankey, then spoke regarding the application and reiterated his previous statement relating to Item 8a.

A debate then followed which centred on the policy position pursuant to securing and retaining a good mix and range of housing within new developments.

A motion to move and accept the proposal was moved by Councillor Bill Parks and seconded by Councillor Pip Ridout.

At the conclusion of the debate, it was,

**Resolved:**

**Recommendation – Approve subject to the following conditions:**

**1- The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing PL-01 (site location plan); Drawing PL-02 (context plan); Drawing PL-03C (coloured layout), Drawing PL-03C (planning layout); Drawing PL-04A (materials layout), Drawing SA-01 (sales area); Drawing 4769-L: 211-R (soft works drawing 3 of 5); Drawing 214-M (structural landscape road drawing 1 of 4); Drawing 215-N (structural landscape proposal road drawing 2 of 4); Drawing 218-O (structural landscape drawing 1 of 1); Drawing 219-K (structural landscape north west boundary 1 of 1); Drawing 222-P (hard landscape proposal 2 of 4); Drawing RP2: SS- 01 (street scene); Drawing HT-GAR-01 (garage); Drawing HT-GAR-02 (garage); Drawing AVO- 18023-CIV-5000 Rev A (engineering levels); Drawing House Types RP2-HT: AL-01, ALD-02, ALD-03, ALV-01A, ELLERTON-01, KINGSLEY-01, KINGLSEY-02, KINGSVILLE-01, KINGSVILLE-03A, MORESBY-01, MORSEBY-02, MORSEBY-03, RADLEIGH-01, RADLEIGH- 02, WOOD-01, WOOD-02.**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

**2- The development hereby approved shall be carried out in strict accordance with the Construction Environmental Management Plan (CEMP) approved by the Local Planning Authority under application reference number 19/01795/DOC.**

**REASON: To ensure the development is undertaken in an acceptable manner, in the interests of preventing pollution of the water environment**

**3- The materials to be used for the external walls and roofs shall be carried out in accordance with the details approved by the Local Planning Authority under application reference number 19/05715/DOC.**

**REASON: In the interests of visual amenity and the character and appearance of the area**

**4- Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.**

**REASON: To secure the retention of adequate parking provision, in the interests of highway safety.**

**5- The development hereby permitted shall be carried out in accordance with the drainage scheme for the southern area of the site including the associated attenuation pond, landscaping and infrastructure works that was approved by the Local Planning Authority under application reference 19/04603/DOC.**

**REASON: To ensure suitable drainage for the site**

**39 Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3:00pm – 4:36pm)

The Officer who has produced these minutes is Ben Fielding of Democratic Services, direct line 01225 718656, e-mail [Benjamin.fielding@wiltshire.gov.uk](mailto:Benjamin.fielding@wiltshire.gov.uk)  
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**Wiltshire Council**  
**Western Area Planning Committee**  
**29<sup>th</sup> September 2021**

Planning Appeals Received between 25/06/2021 and 17/09/2021

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
19/00176/ENF	Maxcroft Farm 5 Maxcroft Lane Hilperton Marsh Trowbridge, Wiltshire BA14 7PY	Hilperton	Residential caravan on farmland	DEL	Written Reps	-	23/08/2021	No
19/08146/VAR	Land At Trowbridge Lodge Park Trowbridge, BA14 6DP	Trowbridge	Section 73 application seeking permission for the further development of the land without complying with the condition imposed by permission 05/00042/FUL (granted by appeal decision APP/F3925/A/05/1177084 dated 5 July 2006) that no more than 133 caravans may be sited, such that 6 additional caravans may be sited and occupied for residential human habitation (i.e. effectively seeking variation of the conditioned numbers limit to 139)	DEL	Hearing	Refuse	25/08/2021	No
19/08938/FUL	Land Adjacent 12 Farleigh Rise Monkton Farleigh BA15 2QP	Monkton Farleigh	Proposed demolition of former aviary buildings and to erect two dwellings and associated works	DEL	Written Reps	Refuse	03/08/2021	No
20/02756/FUL	Land at Stokes Marsh Lane, Coulston Wiltshire, BA13 4NZ	Coulston	Retrospective application for the siting of a temporary rural workers dwelling and associated works including erection of kennels and haystore and formation of hardsurface for access and parking.	DEL	Hearing	Refuse	29/06/2021	No
20/05761/FUL	54 Blackmore Road Melksham, SN12 7HU	Melksham	Change of use of land into domestic garden, relocation of boundary fence closest to Gloucester Square access path and erect a new 2m high close boarded timber fence	DEL	Written Reps	Refuse	04/08/2021	No
20/07490/FUL	Lavender Cottage 149 Winsley Bradford on Avon Wiltshire, BA15 2LJ	Winsley	Erection of a pergola and 3 panel willow fence (retrospective)	DEL	Written Reps	Refuse	06/08/2021	No
20/07932/OUT	Land at Sandlease Farm, Worton Wiltshire	Worton	Outline planning application for up to 26 dwellings and associated infrastructure with all matters reserved for future consideration except for access	DEL	Written Reps	Refuse	14/07/2021	No
PL/2021/03220	Whitepits Lodge, Kingston Deverill, BA12 7HD	Kingston Deverill	Use of annexe as a stand alone dwelling for a period in excess of ten years	DEL	Written Reps	Appeal against non-determination	27/07/2021	No
PL/2021/04022	Agricultural Building Land at Westwood Elms Cross Near Bradford on Avon BA15 2AL	Westwood	Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Building to One Dwellinghouse (Use Class C3) and for Associated Building Operations	DEL	Written Reps	Refuse	30/06/2021	No

Planning Appeals Decided between 25/06/2021 and 17/09/2021

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
19/00176/ENF	Maxcroft Farm 5 Maxcroft Lane Hilperton Marsh Trowbridge, Wiltshire BA14 7PY	Hilperton	Residential caravan on farm land	DEL	Written Reps	-	Withdrawn	07/09/2021	None
19/01142/FUL	The Old Mill Ashton Street Trowbridge, BA14 7ER	Trowbridge	Extension to contain 3 no.one bedroom dwellings	DEL	Written Reps	Refuse	Dismissed	16/07/2021	None
19/02147/OUT	Land North of St George's Road Semington, Trowbridge Wiltshire, BA14 6JN	Semington	Residential development of up to 26 dwellings (of which 50% would be affordable) with associated car parking, access, internal roads, public open space (including retention of the existing WWII Pill Box), landscaping, drainage and other associated infrastructure (Outline application with all matters reserved)	DEL	Hearing	Refuse	Allowed with Conditions	10/09/2021	None
20/06879/CLP	114 Downs View Bradford On Avon BA15 1PW	Bradford on Avon	Installation of a 20ft long x 8ft wide x 8ft 6in high shipping container for domestic storage purposes in the garden of the property	DEL	Written Reps	Refuse	Allowed with Conditions	23/07/2021	None
20/08688/VAR	Tenacity Hoggington Lane Southwick, Wiltshire BA14 9NR	Southwick	Removal of condition 4 of planning permission 19/06506/FUL (Erection of two dwellings (Revised version of application 18/05825/FUL))	DEL	Written Reps	Refuse	Allowed with Conditions	25/06/2021	None
21/00023/ENF	12 Mustang Close Westbury, Wiltshire BA13 3FH	Westbury	Alleged unauthorised siting of shipping container in rear garden	DEL	Written Reps	-	Withdrawn	02/09/2021	None
21/01747/OUT	Land to the rear of 32 Woodmarsh North Bradley Trowbridge, BA14 0SB	North Bradley	Outline permission with some matters reserved for the construction of two detached dwellings and alterations to existing vehicular access (access only).	DEL	Written Reps	Refuse	Dismissed	25/08/2021	None



WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

29 SEPTEMBER 2021

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**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

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

None

### **Appendices:**

**Appendix A – Application Plan**

CM10039/F

17

**Appendix B** – Location Plan

**Appendix C** – Adopted Highway Plan

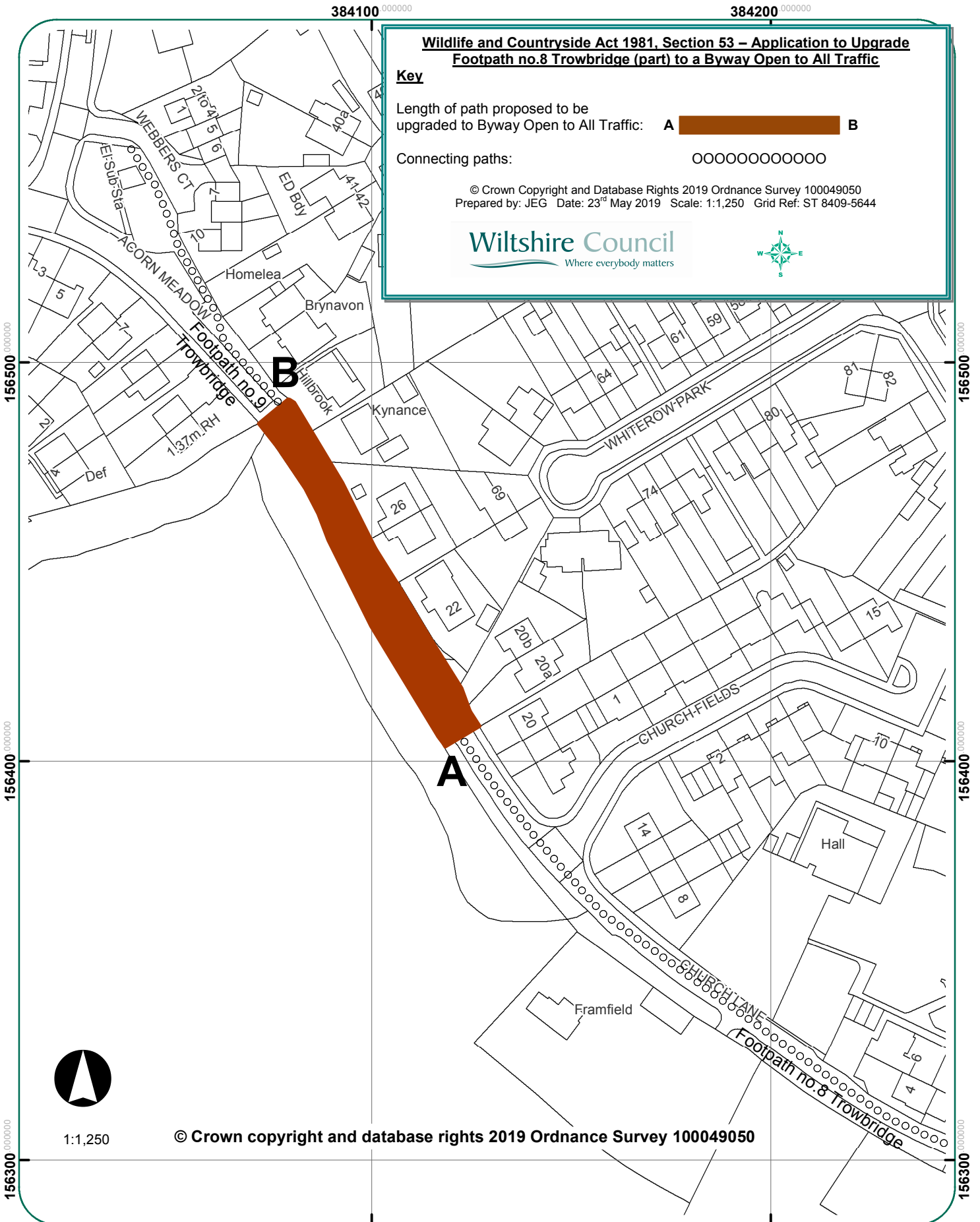
**Appendix D** – Decision Report

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

**Appendix F** – Objections and Representations

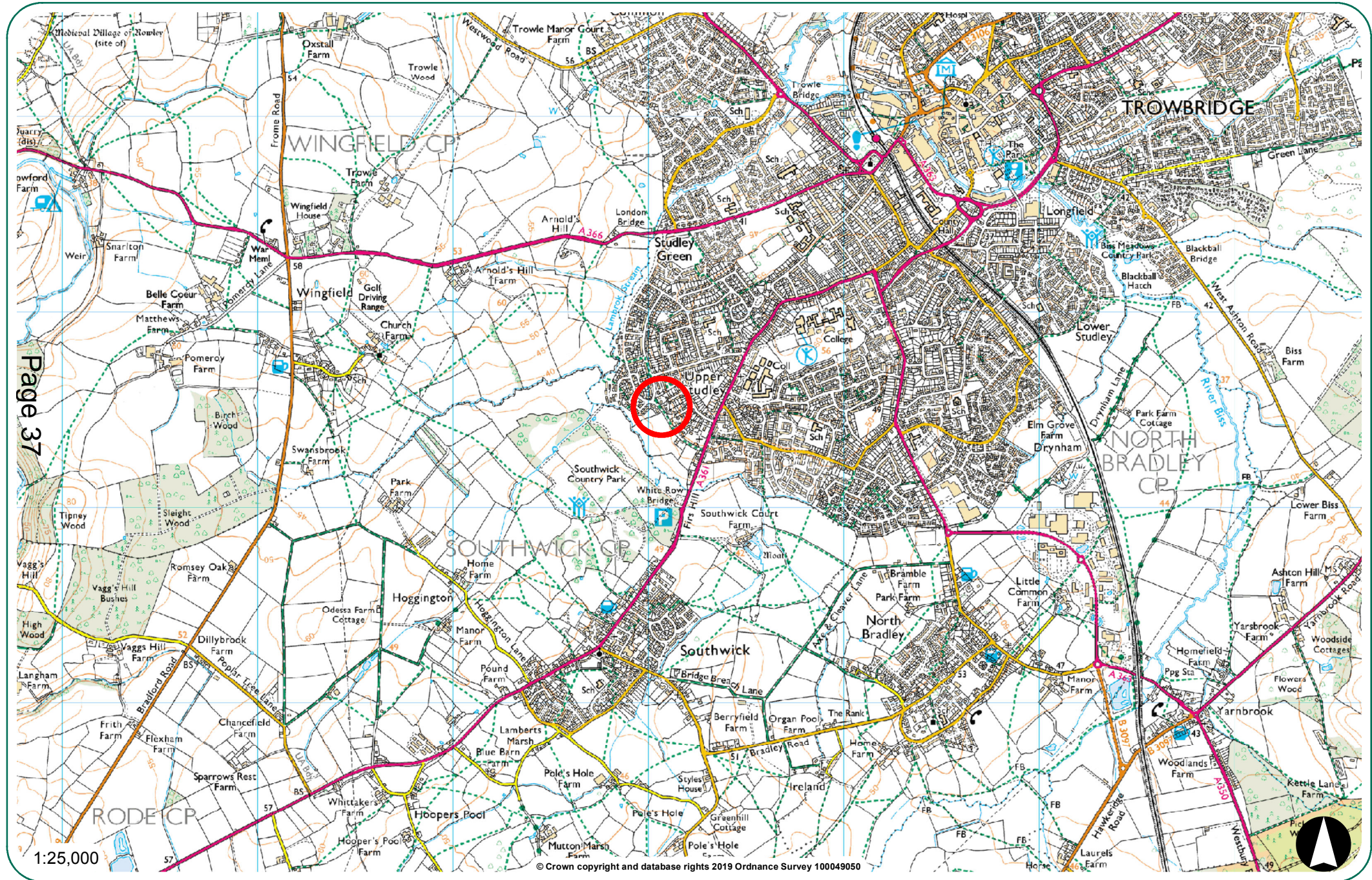
Completed witness evidence forms x 62 are available to be viewed at the Offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge

### Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to All Traffic



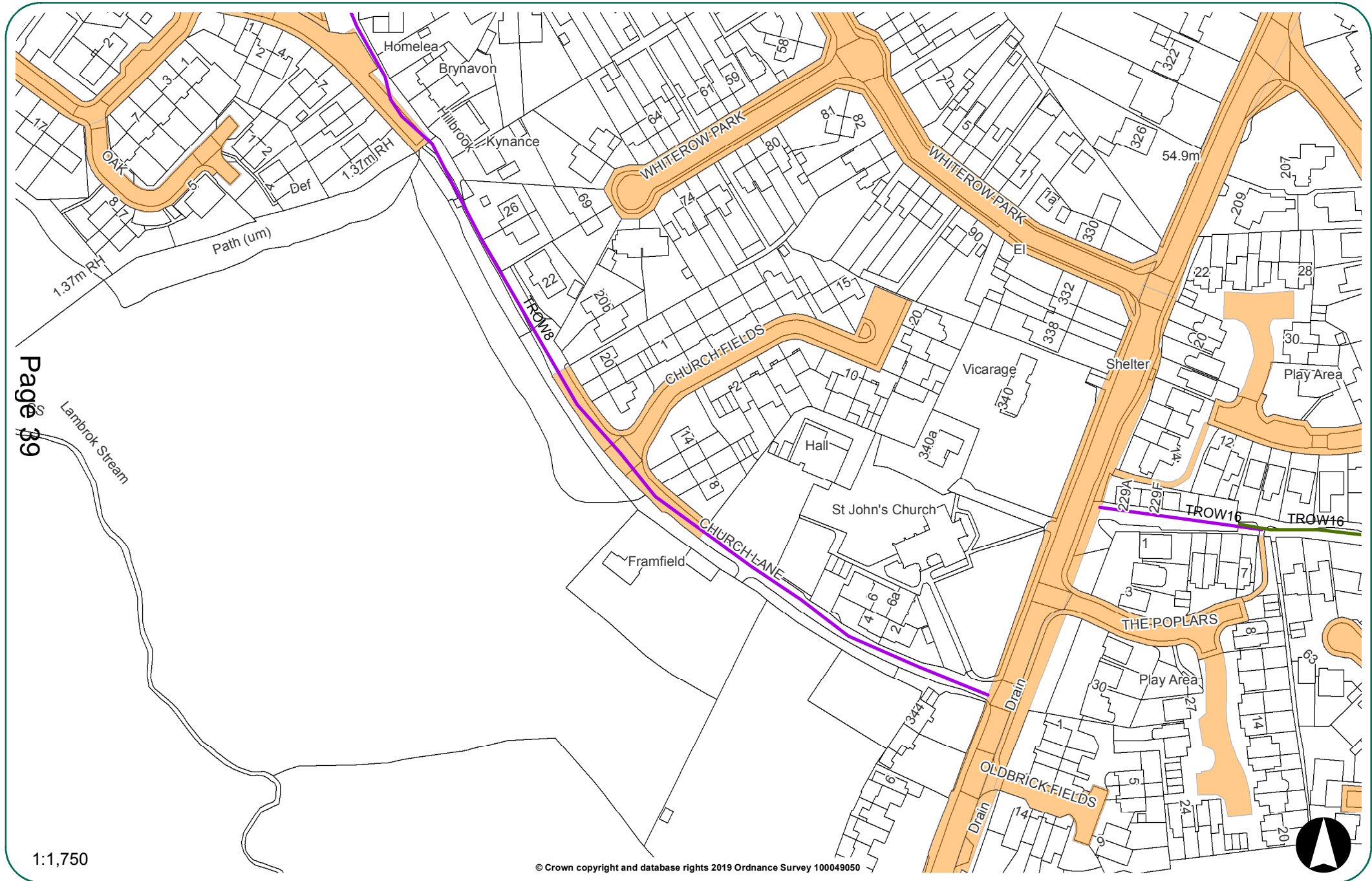
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Footpath no.8 Trowbridge  
Location Plan



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# Footpath no.8 Trowbridge - Working Copy of Definitive Map of Public Rights of Way and Highway Records

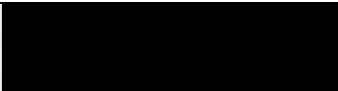



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**EXECUTIVE SUMMARY OF DECISION REPORT****WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53****APPLICATION TO UPGRADE FOOTPATH NO.8 TROWBRIDGE (PART), CHURCH LANE, TO  
A BYWAY OPEN TO ALL TRAFFIC**

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
<b>To:</b>	Sally Madgwick (Definitive Map and Highway Records Manager)		18 Nov 2020
	Richard Broadhead (Head of Service, Rights of Way and Countryside)		26 November 2020
	Jessica Gibbons (Director Communities & Neighbourhood Services)	n/a – copy of for information only	
<b>From:</b>	Janice Green (Senior Definitive Map Officer)		
<b>Date of report:</b>	26 <sup>th</sup> October 2020		
<b>Return to:</b>	Janice Green (Ext. 13345)		

**Nature of Report:**

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers), regarding an application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic. The application is extensive, involving both historical and user evidence and the main report contains a full and detailed consideration of the evidence. However, the main facts of the case are contained in the following executive summary.

**Executive Summary:**

Wiltshire Council are in receipt of an application dated 29<sup>th</sup> August 2018, made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8 Trowbridge (part), Church

Lane to a byway open to all traffic, based on evidence that the Trowbridge Urban District definitive map and statement dated 1953 incorrectly records the claimed route as a footpath. The application was accompanied by 62 completed user evidence forms and documentary evidence.

Section 53(2)(b) of the Wildlife and Countryside Act 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. Section 53(3)(c)(ii) applies, i.e. *“(c) 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...”*

Section 31 (as amended) of the Highways Act 1980, deals with the dedication of way as a highway, presumed after public use for 20 years, as of right and without interruption. The relevant legal test to be applied is the “balance of probabilities”. (See Legislation in full at **Appendix 6**).

Upon examining the evidence received with the application; at the initial consultation regarding the application and from the Officer’s research, the following conclusions are made, (please see parts 9 and 10 of the main report for full consideration of the available evidence):

- There is insufficient evidence of use of the path by the public with vehicles in the period of 20 years before the public right to use the path with vehicles was brought into question by the erection of posts across the full width of the way in 1962. Vehicular use after that date was found to be in connection with access to property and not use with vehicles by the public at large, perhaps utilising a removable post. In addition, the Natural Environment and Rural Communities Act 2006 extinguished unrecorded public vehicular rights, save for certain exemptions, one of those exemptions being that the main use of the way in the 5 years prior to commencement of the Act, was by the public with vehicles. There is insufficient evidence that the main public user in the years 2001-2006 was by the public, with vehicles, the user evidence suggests that the main public use during this period was on foot, on bicycle and some use on horseback. Additionally, the documentary evidence does not support a public vehicular route. Church Lane appears to have started life as an accommodation route to access land / property. The Highway Authority have consistently treated Church Lane as a “private street” with development consistent with that of a private street. It is noted that Church Lane was never adopted as a highway maintainable at the public expense in full, even when the Church Fields development off Church Lane was completed.

- There is sufficient evidence of public use of the route on bicycle and on horseback during the user periods 1991-2011, (in 2011 part of the width of the way was obstructed by the fence erected during the building of the properties 24 and 26 Church Lane) and 1998-2018, (the remainder of the width). Caselaw suggests that where there is evidence of use by the public with bicycles, whilst this could be evidence of the route as a restricted byway, the least burdensome classification for the landowner, i.e. as a bridleway, should be inferred.
- On the balance of probabilities and based on the evidence, it is proposed to record Church Lane in full as a bridleway, where users on bicycle and on horseback have used, and cyclists continue to use, Church Lane as a through route to Frome Road, excluding from the order that central section of the adopted highway (Church Fields development).
- The evidence supports, on the balance of probabilities, that before the obstruction of the width in 2011, the full width of Church Lane was available to walkers, horse riders and cyclists. There has been no legal order to stop up part of the width of the highway and therefore the width should be recorded as per the Ordnance Survey mapping (1890-1974), which consistently records the full width of the way varying between 7m and 13 m for the full length of Church Lane, excluding from the order that central section of adopted highway (Church Fields development).

**Officer's Recommendation:**

That further to the application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic, a definitive map modification order be made to upgrade Footpath no.8 Trowbridge to a bridleway over its full length (Church Lane), having a recorded width between 7m and 13m, as per the Ordnance Survey mapping, excluding from the order that central section of adopted highway (Church Fields development), where there is insufficient evidence, both documentary and user, to support public vehicular rights over the path, but sufficient evidence of public rights on horseback and with bicycles, on the balance of probabilities.

**DECISION REPORT**  
**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**  
**APPLICATION TO UPGRADE FOOTPATH NO.8 TROWBRIDGE (PART),**  
**CHURCH LANE, TO A BYWAY OPEN TO ALL TRAFFIC**

**1. Purpose of Report**

- 1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8 Trowbridge (part), Church Lane, to a byway open to all traffic, having a recorded width of 5 metres.

**2. Relevance to the Council's Business Plan**

- 2.1. 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.

**3. Location Plan**

- 3.1. Please see location plan at **Appendix 1**. Church Lane is located on the south-western side of Trowbridge and leads between Frome Road and Acorn Meadow, which then links into Lambrok Road and the Upper Studley / Studley Green housing estate.

**4. Application Plan**

- 4.1. Church Lane is presently recorded as Public Footpath no.8 Trowbridge within the definitive map and statement of public rights of way, having a central section of adopted highway for the Church Fields development which lies off Church Lane to the east.
- 4.2. Please see application plan at **Appendix 2**. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8

Trowbridge (part), Church Lane, to a byway open to all traffic, having a recorded width of 5m, (as shown coloured green on the application plan), between a point just north of Church Fields, adjacent to the property 20A Church Lane, leading north-west to its junction with Acorn Meadow, linking the two adopted highways.

- 4.3. Please also see extract from the working copy of the definitive map of public rights of way at **Appendix 2**. The map also shows the central section of Church Lane which is recorded as highway maintainable at the public expense, (coloured orange), having a right for the public with vehicles. That section of Path no.8 which is subject to the definitive map modification order (DMMO) application, does not currently have any recorded public vehicular rights. Note, there is also a section of Church Lane at its southern end (its junction with Frome Road), which does not have recorded public vehicular rights, but which does not form part of the DMMO application. As a result, unusually, the development Church Fields has no recorded public vehicular access to / from Frome Road.
- 4.4. The applicant seeks to record a public vehicular right over the application route to secure access to the property [REDACTED], (which is located alongside Church Lane on its eastern side at its northern end), from Church Lane, by upgrading that section of the footpath to a byway open to all traffic (BOAT). If this part of the route is successfully upgraded to BOAT, as per the application, there would remain a gap between the presently adopted highway (Church Fields) and Frome road, which has no recorded public vehicular rights.
- 4.5. However, Wiltshire Council has a duty to accurately record the public rights which exist over so much of the route for which there is evidence of such rights, therefore if public vehicular rights are found to exist over the whole of Church Lane, they will be recorded as such, even though the application is confined to only a short section of Church Lane.

**5. Photographs**

- 5.1. Please see aerial photographs at **Appendix 3** and photographs of the route attached at **Appendix 4**.

**6. Registered Landowners**

- 6.1. The land over which the claimed route passes and indeed the whole of Church Lane, Trowbridge, has no registered title. As part of the application process the applicant has posted notice of the application on the land addressed to all owners and occupiers and served notice on all adjoining property owners where the common law presumption of ownership to the centre of the highway by adjoining landowners may apply. If an order is made, it will be necessary to seek dispensation from the Secretary of State, under Section 3(4) of Schedule 15 to the Wildlife and Countryside Act 1981, who may direct that it shall not be necessary for notice of the making of the order to be served on every owner or occupier of the land, as described in Section 3(2)(b)(i) of Schedule 15 and the Order Making Authority may affix notices addressed to the 'Owners and Occupiers' to some conspicuous object on the land.

- 6.2. The application is made by:

Mr Andrew May and Miss Michelle Dunne

██████████

Church Lane

Trowbridge

Wiltshire, BA14 0██████████

## 7. Background

- 7.1. The urban district of Trowbridge is the administrative centre of Wiltshire and lies in the west of the County between Warminster to the south and Chippenham to the north. Frome Road, Trowbridge forms part of the A361 leading between Devizes and Frome. The Victoria County History – “A History of the County of Wiltshire” Volume 7 (1953), states that the westward flow of traffic through Trowbridge, has changed its course: *“In 1675 the only important thoroughfare was the road from Devizes to Wells. When, however, the north-east limb of this road came to be repaired and turnpiked in 1752, it was extended in a south-westerly direction over White Row Bridge at Beckington (Som.) and not westward towards Wells.”* The claimed route forms part of Church Lane which leads from the above-mentioned A361, Frome Road, in a north-westerly direction to its junction with Acorn Meadow, part of the Studley Green Estate. St Johns Church is located at the south end of Church Lane. According to Wiltshire Council – Wiltshire Community History, a chapel is mentioned on this site in the early 12<sup>th</sup> century, the present church was built in the 15<sup>th</sup> century and much re-built in 1862.
- 7.2. The length of Church Lane is recorded as Footpath no.8 Trowbridge, (at the junction of Church Lane with Acorn Meadow the footpath continues north-westwards as Footpath no.9 Trowbridge), as recorded in the Trowbridge Urban District Council Definitive Map dated 1953. A central section of the lane is recorded as adopted public highway, i.e. the development Churchfields to the east of the lane. (Please see extracts from working copy of definitive map and Trowbridge Urban District Council Definitive Map at **Appendix 2**).
- 7.3. The lane has a bound tarmac surface for most of its length (leading from Frome Road), with a verge to the western side. The adopted highway area at Church Fields has a surfaced footway on the eastern side of the lane. Leading north past the adopted highway, the surface changes to a looser stone surface and appears less well maintained. Leading further north the surface

changes again to a more gravel surface with a narrow hard surfaced footpath area on the western side. At the very northern section the width is greatly reduced by a wooden fence erected when the houses 24 and 26 Church Lane were erected in 2011, the surfaced footpath area here measures 1m approx in width, (2.3m approx including the verge which is very overgrown and clearly not used by the public). Two staggered metal cycle barriers were also erected at this location at that time, the widest point of the footpath here being 3.2m approx. (Please see photographs at **Appendix 4**, in sequence leading from Frome Road to Acorn Meadow).

- 7.4. The application is dated 29<sup>th</sup> August 2018 and is made by two residents of Church Lane, on the grounds that a highway shown in the map and statement as a highway of a particular description, (i.e. a footpath), ought to be there shown as a highway of a different description, i.e. a BOAT, based on user and documentary evidence and should be recorded within the definitive map and statement of public rights of way, as such. The application form, (which consists of Forms 1 and 3), is accompanied by a plan drawn at a scale of 1:1250, highlighting the claimed route; 59 completed witness evidence statements (3 additional witness evidence forms received at a later date) and documentary evidence.
- 7.5. Wiltshire Council undertook an initial consultation regarding the proposals on 23<sup>rd</sup> May 2019. Consultees included user groups, neighbouring properties and other interested parties such as the Town Council and the Wiltshire Council Member for Trowbridge, Grove. The representations received are attached at **Appendix 5**. Due to the implications of Section 67(1) of the Natural Environment and Rural Communities Act 2006 (NERCA), which had the effect of extinguishing all unrecorded public vehicular rights, save for certain exemptions, the Surveying Authority requested further information regarding any use of Church Lane with vehicles prior to 1930 and during the 5 years prior to the commencement of Section 67(1) of NERCA, i.e. 2001-2006, (the



implications of NERCA are fully considered at paragraphs 10.53. – 10.63. of this report).

## **8. Main Considerations for the Council**

- 8.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but 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), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.
- 8.2. Section 53(2)(b) of the Wildlife and Countryside Act 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. Section 53(3)(c)(ii) applies in this case: *“(c) 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...”*
- 8.3. Section 53(5) of the Act allows any person to apply for a definitive map modification order (DMMO) under subsection 2, based on evidence that the definitive map and statement is incorrect, in this case in its omission of public vehicular rights over path no.8 Trowbridge (part), (please see relevant legislation at **Appendix 6**). The application to upgrade Footpath no.8 Trowbridge (part) to a BOAT, has been correctly made in the prescribed form, as per Schedule 14 of the 1981 Act. The relevant legal test in this instance is the “balance of probabilities”, i.e. is it more likely than not that public vehicular rights exist over Footpath no.8 Trowbridge (part)?

8.4. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years, as of right and without interruption, (as set out at **Appendix 6**).

## 9. Documentary Evidence

9.1. Section 32 of the Highways Act 1980, states that the Authority should consider a range of historical documents and their provenance in relation to the claim:

*“32. 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 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.”*

9.2. In evaluating historical evidence, it is necessary to recognise that differing weight must be given to different historical documents. The following categorisation has been used, (Category A documents carry the highest evidential weight and Category F documents the lowest):

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of way as a highway Physical existence of highway Conclusive evidence of public rights	Inclosure Acts, Awards, Plans Orders creating, diverting or extinguishing highways – i.e. Railway and Canal Acts, Plans Definitive Map and Statement
B	Reputation of 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 way as a highway Physical existence of a way	Includes Local Government records - i.e. Highway Board, County Council, Parish Council
D	Reputation of way as a highway Physical existence of a way	Other maps and documents showing highways additional to or as part of their purpose - i.e. Parish Maps, Estate Plans, Conveyances
E	Reputation of way as a highway Physical existence of a way	Commercial Maps, some Ordnance Survey Records
F	Reputation of way as a highway Physical existence of a way	Local repute, consultation responses

*This system of categorisation has been devised by Officers with regard to the Planning Inspectorate Consistency Guidelines and “Rights of Way A Guide to Law and Practice” – Fourth Edition by John Riddall and John Trevelyan (Chapter 6).*

- 9.3. As part of Wiltshire Council’s investigations, Officers have examined documentary evidence, including the provenance and purpose of the documents to draw conclusions regarding the claimed route. Please see list of historical evidence and conclusions attached at **Appendix 7** to this report. Additional documentary evidence adduced by the Applicant is considered at **Appendix 8**.
- 9.4. The Inclosure Award for Trowbridge would normally provide category A evidence where the award itself arises from Acts of Parliament, i.e. the local act dated 1815: *“An Act for Inclosing Lands in the Parishes of Hilperton and Trowbridge, in the County of Wilts”* and the 1801 Inclosure Consolidation Act: *“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”*. Commissioners had powers to stop up

and amend existing roads and set out and appoint new roads within the parishes. The route of Church Lane can be seen on the map included with the Trowbridge Inclosure Award dated 1816, recorded by double broken lines (suggesting a route open to the surrounding land). However, this route was not awarded and appears to be part of an old inclosure and a pre-existing way, the description of awarded plot no.197 refers to being bounded to the south by “*other Roads as have been herebefore used and existed through and over the same*”, perhaps a reference to Church Lane. The connecting route leading north of Church Lane is awarded as a “*Private Carriage Road*”, for the use of the owners and occupiers of the inclosures and allotments adjoining that road. The implication of this being that Church Lane itself was not a through route for the travelling public, perhaps also being a route to serve land and the church, which we know to be present on the site at that time. However, where the claimed route is not awarded, no additional conclusions regarding the status of the route may be drawn from the inclosure award.

- 9.5. The production of the definitive map and statement of public rights of way arises from the National Parks and Access to the Countryside Act 1949, (category A evidence). This was a public process with draft and provisional definitive maps being published with opportunity for objection by any persons to the inclusion / non-inclusion of a path; its provisionally recorded status and route. The claim form for path no.8 Trowbridge provides evidence, within the observations section, that the way was a hard cinder cart road 10ft wide for 150 yards from its junction with Frome Road, perhaps for a sufficient length to access the church, which then became a “*deeply rutted cart track in bad condition*” for the remainder of its length and ending at a “*dilapidated field gate*”, this section beyond the church perhaps receiving less use. Despite this observation of the way as a “cart road / track”, this does not necessarily refer to public vehicular rights over the way, it may be a reference to its character and appearance as such, which would also accord with use only as a private access road serving property / land as per its continuation northwards within

the inclosure award. It is noted that path no.8 Trowbridge was recorded within the definitive map and statement as a Footpath and there is no evidence of any objection to the recording of the route at that status. The condition of the surface of the way is comparable today, with that part of the route to Church Fields being well maintained with a bound tarmac surface, beyond the adopted highway leading north, the surface becomes looser and less well maintained, reflecting less use of that part of the way.

- 9.6. The Trowbridge Tithe Award map 1838 (Category B evidence), which arises from an Act of Parliament, the Tithe Commutation Act 1836, records the route of Church Lane uncoloured without a plot number, excluded from the adjacent plots in the same manner as the parish road network. However, its continuation northwards, i.e. the awarded private carriage road within the inclosure award, is not recorded and Church Lane does not appear as a through route, which is further supportive of the route as a private access to land / property. The key appears to show the route as a “cross roads” or byway. It was not the main purpose of this document to record highways, however, the recording of highways was useful in the provision of plot boundary and map orientation information. Additionally, the existence of a highway could affect the productivity of the land and the Tithe Commissioners therefore had some interest in recording them. Perhaps Church Lane was recorded where it affected the productivity of the land, even as a private route and it cannot be concluded from this document that public vehicular rights existed over Church Lane. For this reason, the Tithe Award documents should be considered alongside other evidence.
- 9.7. Also Category B evidence arising from an Act of Parliament, the Finance Act 1910 plan records the route as uncoloured and excluded from the adjacent hereditaments, which may be indicative of the route being regarded as a public vehicular highway, where footpaths and bridleways were usually included within the hereditament and dealt with as a deduction for rights of way within the valuation book. It was not the main purpose of these

documents to record highways and there are known cases of private roads set out at Inclosure, being excluded from the hereditaments, where the instructions to the field valuers dealt with the exclusion of “roadways”, but did not expressly set out all the circumstances in which such exclusion would apply. Again, these documents should be considered alongside other evidence.

- 9.8. The highway takeover map c.1974 (Category B evidence), arises from the Local Government Act 1972, which reformed local government on 1<sup>st</sup> April 1974. Wiltshire County Council took responsibility for roads in urban districts, (other than main roads for which responsibility already lay with the County Council). The maps consistently record the route of Church Lane as a footpath, with a central section of adopted highway maintainable at the public expense, being the development Church Fields, (Acorn Meadow to the north of Church Lane is also recorded as adopted highway). This central section of adopted highway is unusual and the Church Fields development has no connection to another public vehicular highway, i.e. Frome Road. The evidence suggests that Church Lane had no record of public maintenance, (other than the central adopted section).
- 9.9. This lack of public maintenance of Church Lane is supported by the documents adduced by the Applicant, including Trowbridge Urban District Council minutes (1960 – 1972) and other correspondence, as well as a Private Street Works Notice for Church Lane, Trowbridge, dated 1<sup>st</sup> July 1961 under Section 193 of the Highways Act 1959, (please see **Appendix 8**). Trowbridge Urban District Council as the then highway authority and later Wiltshire County Council, consistently refer to Church Lane as a “Private Street” and the development permitted alongside Church Lane outlined in the minutes is consistent with a private street. It is interesting that Church Lane was never adopted as publicly maintainable highway in full, even though there are many instances in the minutes of roads in Trowbridge being adopted and even following the Churchfields development when the central section of

Church Lane was adopted. The treatment of Church Lane as a private street, does not, in the opinion of Officers, support public vehicular rights over the way.

- 9.10. Ordnance Survey (OS) maps, (category D evidence), (maps examined 1890 - 1974), record Church Lane being a consistent width of 13m - 7m, narrowing towards its junction with Acorn Meadow. They record that the route stops at a solid field boundary at its northern end, (the definitive map parish claim form description suggests a field gate at this end), with footpaths continuing north-westwards and north-eastwards beyond this point, until the 25" County Series map dated 1950 and 1955 Wiltshire County Council revision, which shows no solid boundary at this end, but a narrower footpath continuation north-westwards, (now Acorn Meadow). By the time of the later National Grid Series maps this gap is enclosed with what appears to be a central metalled area. The links leading from the north end of Church Lane north-eastwards towards Manor Road and north-westwards towards Wingfield, as shown on the OS one inch Old Series map 1805-1869, are shown on the 25 inch maps as lesser routes, marked "*FP*" (Footpath), open to the fields and braced with the surrounding land. The path leading north-eastwards is for the majority of its route disappeared by the 1950 and 1955 Wiltshire County Council revision. This suggests that if vehicular rights were applicable over Church Lane, these rights did not continue north-west towards Wingfield and north-east towards Manor Road, as a through route for vehicles. Perhaps further evidence of the route as an accommodation route.
- 9.11. The National Grid series maps are interesting where, from the 1968 plan onwards, they record "*Posts*" across the full width of the lane, just south of the property Kynance, but provide no additional evidence regarding the nature of these posts. We see from the Trowbridge Urban District Council minutes dated 10<sup>th</sup> April 1962, that these posts were erected consistent with the building of the properties Kynance and Hillbrook, to prevent use of Church

Lane as a through route to vehicles, (please see **Appendix 8**). Photographs of the posts are included at paragraphs 10.6. and 10.10. of the report.

- 9.12. Although the route is shown on the maps, OS plans are topographical in nature, i.e. they accurately record what was visible to the surveyor at the time of survey / revision, so they can be extremely helpful in providing evidence of the width of a way, but cannot alone provide conclusive evidence of the status of a highway and the existence of public / private rights. They should therefore be considered alongside other evidence.
- 9.13. The majority of small scale commercial maps, (Category E evidence), do not record Church Lane, perhaps due to the constraints of scale or perhaps as additional evidence that the way did not carry public vehicular rights or as a through route for the public, where its inclusion could cause difficulties for both for the travelling public who purchased the maps and trespass against the landowners, from whom many of the mapmakers sought subscriptions. Andrews' and Dury's maps of Wiltshire dated 1773 and 1810 appear to show a route, (opposite Silver Street Lane, which given the constraints of scale would accord with Church Lane), by double solid lines as part of a longer route towards Trowle, but which does not connect with another highway, stopping as a cul-de-sac route before it reaches Little Trowle. This supports other evidence of Church Lane not being a through route for the public with vehicles.
- 9.14. The recording of the route in this manner is supported by the Ordnance Survey one inch Old Series map of England and Wales 1805-1869, which records the route of Church Lane by double solid lines, opposite Silver Street Lane leading to what appears to be a larger enclosed area, however, on this map the enclosed area then has a connection to Upper Studley and Frome Road, perhaps via what is now Manor Road, (there is no continuation of the route in a north-westerly direction). This route is shown on the larger scale and more detailed 25 inch County Series OS maps dated 1887 – 1938, by



double broken lines, braced within the surrounding land and marked “FP”, which is suggestive of a footpath at a different status to Church Lane itself.

### **Documentary Evidence**

There is no category A evidence to support public vehicular rights over Path no.8 Trowbridge, Church Lane. Although the definitive map claim form for path no.8 describes the character of the route as a “cart road / track”, this is not necessarily indicative of the public rights claimed and subsequently recorded in the definitive map of public rights of way, i.e. as a footpath. There is no evidence that there was objection to the recording of the route at this status. Additionally, there is only limited evidence of Church Lane as a through route, i.e. the OS one inch Old Series mapping dated 1805 – 1986 and this continuation of Church Lane in a north-easterly direction towards Manor Road is shown as a footpath on the later OS 25 inch mapping.

Officers must therefore conclude that there is insufficient historical evidence of public vehicular rights over Church Lane, it is more likely that the route carried private vehicular rights for access by owners and occupiers of the land and property adjoining Church Lane, as per the awarded private carriage road continuing northwards. Although some documents may be supportive of public vehicular rights, there is no category A evidence and the remaining documents alone are insufficient to satisfy the evidential test “on the balance of probabilities”, i.e. it cannot be shown that it is more likely than not that vehicular rights exist over path no.8 Trowbridge.

However, this does not mean that additional public rights over Footpath no.8 Trowbridge (part) do not exist and the available user evidence in this case should now be considered. In the case of *Whitworth & Ors and Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 1468, Lord Carnwath quotes the Inspector, Mr Alan Beckett, who states: *“In my view, where both documentary and user evidence are presented, the requirements of Section 31 of the 1980 Act are such that user evidence is to be considered separately and independently from any historic evidence adduced in relation to the same route. Whilst as [sic] of the documentary and user evidence are linked by Section 53 of*

*the 1981 Act, the assessments of the documentary and the user evidence are separate and discrete matters and the conclusions reached upon the documentary evidence are not relevant to any subsequent consideration of the user evidence.”*

## **10. User Evidence**

- 10.1. The application is accompanied by 62 completed user evidence forms, 7 of these forms are completed jointly by two persons. A summary of the user evidence is included at **Appendix 9** (user evidence summary) and **Appendix 10** (user evidence chart).
- 10.2. Section 31 of the Highways Act 1980 deals with the dedication of a highway where a way over land has been actually enjoyed by the public as of right and without interruption for a period of 20 years, (see legislation at **Appendix 6**). The way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

### **Bringing into question**

- 10.3. In order to establish a 20 year public user period with vehicles, there must be a date upon which use of the path by the public was brought into question. In the case of R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007], Lord Hoffman endorses Denning L J's interpretation of bringing into question as contained in Fairey v Southampton County Council [1956] and quotes him as follows:

*“I think that in order for the right of the public to have been “brought into question”, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that it may be appraised of the challenge and have reasonable opportunity of meeting it. The landowner can challenge their right, for instance by putting up*

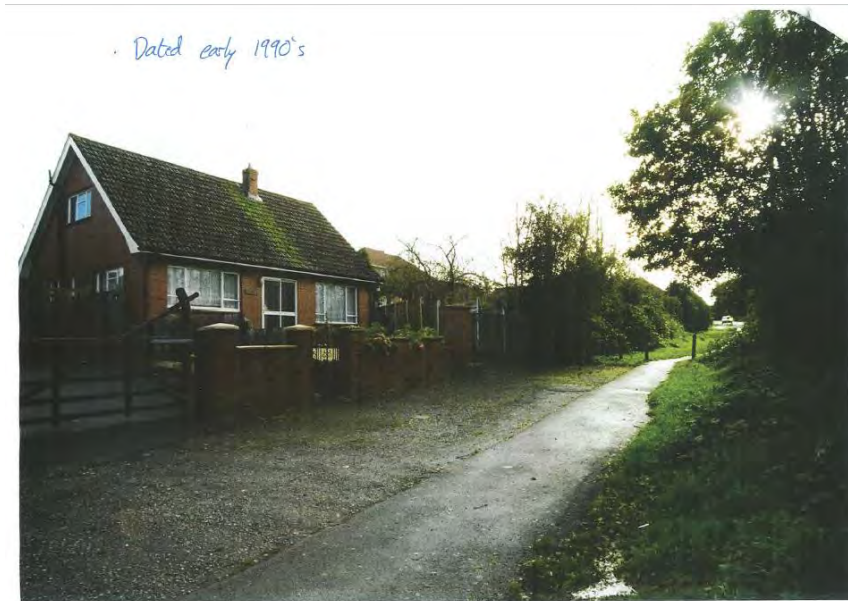
*a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice; the local council may bring an action in the name of the Attorney General against the landowner in the courts claiming that there is a public right of way; or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner puts up a notice or in some way makes it clear to the public that he is challenging their right to use the way."*

10.4. In Godmanchester, Lord Hoffman says of Denning L J's interpretation:

*"As a statement of what amounts to bringing the right into question, it has always been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases."*

10.5. Path no.8 Trowbridge is already recorded as a public footpath, the definitive map being conclusive evidence of the rights shown and any action to wilfully obstruct the free passage along a highway is an offence under Section 137 of the Highways Act 1980. The user evidence and representations in objection to the application to add vehicular rights, suggest that there has also been use of the lane by the public with bicycles and limited use on horseback and with vehicles.

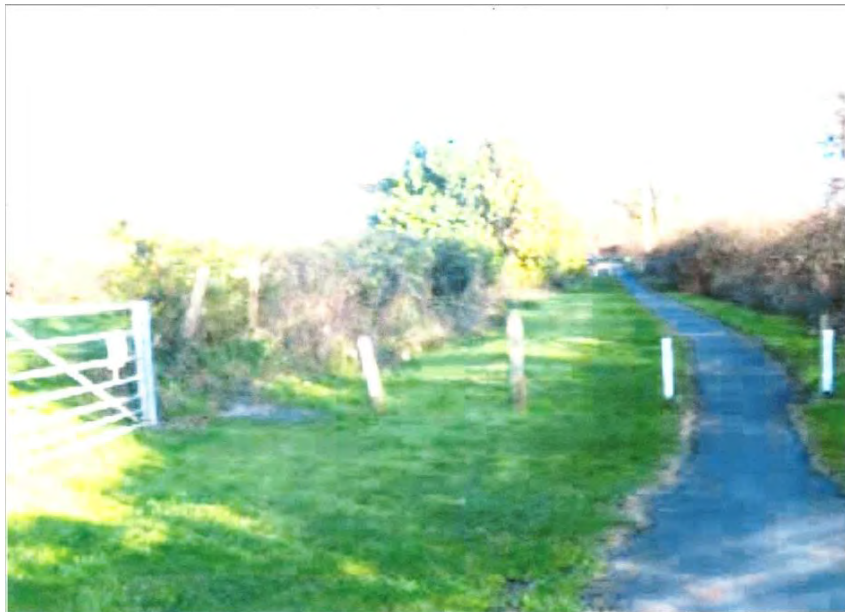
10.6. Witnesses have provided evidence regarding obstructions / signage on the route which may have brought their use into question, (please see **Appendix 11**). 27 of the users observed posts (bollards in one case), erected on the way. Mr Hillier believes that these posts were erected by the Council and provides a photograph from the early 1990's in which the posts are clearly visible.



10.7. These posts do not appear to have obstructed pedestrian use of the way as stated by witnesses 20, 44 and 46, but do appear to have obstructed use of the way with vehicles as suggested by witnesses 28 and 48. The path users give little evidence about when these were erected, but witness 38 states that they were present until the house was built at point A (application plan at **Appendix 2**), after which the fence was erected. Witness 43 states that they appeared in around 2003, Witness 55 states that the posts were not present during their childhood and Witness no.52 states that there were no posts in the late 1960's and early 1970's.

10.8. However, the origin and purpose of the posts is set out in the minutes of Trowbridge Urban District Council meeting dated 10<sup>th</sup> April 1962, min no.4161 Church Lane, Upper Studley (**Appendix 8**), which resolved that the Surveyor be authorised to erect posts across the width of the lane near the new bungalows, (Kynance and Hillbrook built c.1961), to prevent through vehicular traffic. The continued existence of posts historically on the way, is supported by the OS National Grid Series maps dated 1968 and 1974, which show "Posts" across the width of the path located just to the south of the property Kynance.

- 10.9. Although these documents do not give any detail of the nature of the posts, e.g. height and dimensions, their position suggests that they would obstruct the width of the path to the public with vehicles. The 1990's photograph above suggests that use on foot, with bicycles and on horseback would still be possible between the posts. It seems logical that the posts were intended to prevent vehicular use only and that a gate or more substantial structure / barrier would have been placed across the lane if it was intended to obstruct all public use.
- 10.10. The applicant provides photographs of posts on site (below), taken in 2006 when they moved into their property, (the 'For Sale' sign is clearly visible in the first photograph as an indication of date). The applicant claims that there was a post of a different nature, (visible in two of the photographs), which was removable and allowed vehicular access to their property through the gap, over the grass. Mr and Mrs McGrath comment that *"The photo submitted by the applicant (referred to now as A) purports to show a bollard which could be removed to allow vehicular access to Church Lane. This appears to be a unique memory. If this was the case, A would presumably have had permission from local authority to vary the use of the bollards as a barrier against vehicles and been granted exceptional leave to do so. Where is the documentation giving A or anyone else permission to remove a barrier specifically placed to prevent vehicles using the Lane, then using it for that purpose, when was the permission sought, who gave consent and on what grounds of exceptionality."* F Gilmour however, does refer to the lockable post in evidence: *"Up until that time [2011], there were posts in place just beyond the entrance to no.22 which as far as I can remember were lockable and only removed to allow the council to cut the hedge / verge back to maintain the footpath."* Mrs C May who is related to the current resident of [REDACTED] and visited the property, also refers: *"Occasionally there were wooden stakes across the path, but these were removable and often not there."* Mr McClurg whose father previously lived at the same property also refers to the *"removable post"*.





10.11. Officers agree that two of the photographs do record a post of a different nature, however, this may support a private right of access with vehicles for the residents of the property [REDACTED], given their knowledge of the removable post and therefore cannot be applicable to a public right of way with vehicles. It is not clear how the “removable” post would have been communicated to members of the public wishing to use the way, Mr and Mrs McGrath appear not to have been aware of the removable posts even though they lived close by and would have observed use of the way. The photographs provided in evidence appear to show little evidence of vehicles having been driven on the lane / verge at this point, certainly not on a daily basis. Of the 5 witnesses who claim to have used the way with vehicles, Mrs C May and Mr L McClurg were aware of removable “wooden stakes”; Miss M Dunne appears to have been aware of the removable post by reason of her joint application to upgrade the path to a BOAT, which contains reference to the removable post and as a resident of the property [REDACTED] and Mr T Bishop may have been aware of the removable post due to his connections with the property [REDACTED] as legal advisor to the residents. Mrs J McClurg as a former owner of [REDACTED] does not mention the removable post in her declaration at **Appendix 8** and states that she, her family, visitors and those calling at the property at all times and for all purposes, with or without vehicles, did so without let or hindrance. All had links to the property [REDACTED].

10.12. The photographs do appear to show a second set of bollards present further south on the path. There is no comment regarding a removable post on the second set of bollards. It seems that these posts were also erected to prevent use of Church Lane as a through route by the public with vehicles, as supported in the West Wiltshire District Planning Permission granted 12<sup>th</sup> May 1975 for the erection of a detached bungalow on land at the rear of rear of 70 Whiterow Park, (22 Church Lane), as submitted by the residents of this property:

*"...further approval of the local planning authority shall be obtained with respect to the undermentioned matters hereby reserved before any development is commenced..."*

*2. The extension to Church Lane together with the turning head shown cross hatched on the plan deposited with the West Wiltshire District Council on 15<sup>th</sup> April, 1975 shall be constructed to the same standard as Church Lane to the satisfaction of the local planning authority before the dwelling is occupied.*

*3. Bollards shall be placed across the extremity of the turning head.*

*Reasons:...*

*2. To ensure a proper road access is constructed to the site.*

*3. To prevent traffic going beyond the proper road access provided."*

10.13. It is a reasonable assumption that members of the public encountering one or two sets of posts, would assume that public use of the route with vehicles was prohibited.

10.14. Mr and Mrs McGrath, in evidence, have included photographs of the same location dated 10<sup>th</sup> September 2009, which show the posts still in place. The part which was claimed previously to be accessible with vehicles, having the removable post, i.e. the grass area to the east of the lane, is overgrown and appears to not have been used by vehicles for some time. A second set of bollards further south on the route are clearly visible:







10.15. Mr Pegrum makes reference to 2 sets of timber bollards: “...placed south of ‘Kynance’ and another set north of 22 Church Lane. These allowed the passage of pedestrian’s, cyclists and horse riders but were too narrow for any four wheeled vehicles.” Mr C Knight reports that: “There were always white posts installed Acorn Meadows end and by No.22 Church Lane across the land from the footpath, as developments occurred the white posts at the Acorn Meadow end were pushed further up the lane but remained to stop any vehicles using the land.”

10.16. The posts appear to have been present on site from at least 1962 until planning permission for the properties 24 and 26 Church Lane was granted in 2011. 5 users refer to metal barriers erected, Witness no.29 states that these were erected to force cyclists off the route and horses could no longer get through. Witness no.19 suggests that metal gates were erected when the houses were built. This is believed to be reference the metal chicane style barriers presently on site and which appear to have been installed as a result of the planning permission and the building of the properties 24 and 26 Church Lane. Mr Pegrum confirms that *“More recently; since the construction of 24/26 Church Lane; a staggered (chicane) barrier was erected north of 26 Church Lane, this has permitted vehicular access northward up Church Lane as far as no 26.”* The relocation of the posts previously present on the path, i.e. the white posts present between at least 1962 and 2011 was a requirement of the planning permission, as the planning notice states:

*“This application has been delayed due to detailed and complex consultations with the Council’s Highways Authority and the PROW officer as well as the applicant’s agent.*

*The relocation of the bollards on “unknown” third party land (the land which is designated PROW) has required careful consideration in terms of assessing the reasonableness of imposing a Grampian style condition. This matter has been discussed at length, and it has been concluded through dialogue with the Council’s PROW and Countryside Manager, that in the event the applicant reneges on any condition requirement to reinstall bollards on land not under his own control, the Council has the authority to ensure that such work is completed. Such a planning breach would out of highway safety necessity, be actively pursued and the costs of completing such works falling to the applicant.*

*It is acknowledged that several, if not all of the frontagers on the section of the PROW have taken out insurance should the owner emerge to deny them access. This application has been subject to the proper advertisement procedures in terms of Article 12 of the Town and Country Planning*

*(Development Management Procedure) (England) Order 2010, and despite such advertisements in local press, the owner of part of the PROW has not come forward or made representation.*

*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 bollards along the north western edge of the application site (shown on drawing no.LDC.1514.002A) would prevent this from happening...*

*The Highways Officer has confirmed that he does not wish to pursue an objection of the lack of footway and width of a section of Church Lane, on the grounds that Church Lane is well used by the wider public and that refusing a 2-house development making further use of the lane, would be difficult to defend on appeal.*

***Recommendation: Permission***

***For the following reasons(s):***

***The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.***

***Subject to the following condition(s):...***

*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.*

*3 The dwellinghouses hereby approved shall not be occupied until further details have been provided confirming how the “continued private drive” (as*

*shown on plan drawing LDC.1514.002A) shall be consolidated. Once the finished material has been agreed in writing, the access drive shall be maintained for the lifetime of the development.”*



*The present metal bollards, which serve to prevent public vehicular access, have been in place since the houses 24/26 Church Lane were built in 2011 as per the planning conditions within the permission granted. (Photographs show barriers viewed from the north and the south respectively).*



10.17.6 users make reference to a fence on the route, which is believed to be a reference to the present fence, as seen above. Witness 42 suggests that the builder, (24 Church Lane), encroached further and further with a metal fence which then became a proper fence and witness 38 concurs with this, i.e. the fence was erected after the house was built, just leaving the footpath open. This fence does not form part of the planning permission, but is believed to be contemporary with the building of the properties and its installation narrows the available path width from the full width of Church Lane available for the remainder of Path no.8. The action of erecting these barriers clearly had the effect of preventing use of the route on horseback, as suggested by Witness no.3 who used the route on horseback and comments *“Now I cannot ride my horse there due to the chicane.”* Witness no.5 who also used the route on horseback concurs: *“Can’t ride horse due to barriers!!...Had to stop riding horse and child in wheelchair have to go all around the long way.”*

10.18. With regard to the use of bicycles and vehicles on the route, Witness no.8 makes reference to a “No Cycling” signpost which was present during their years of use 1983-1988 approximately, which then disappeared and Witness no.57 makes reference to a “No Through Road” sign on Frome Road. Mr and Mrs McGrath in evidence include a photograph of *“...the sign at the entrance to Church Fields, directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road, off Acorn Meadow, one of which is*

*Kynance.*” The signage presently erected on Church Lane, below, is not consistent with a through route for the public with vehicles:

*Photograph supplied by Mr and Mrs McGrath. Sign at Church Fields indicating no access to properties via Church Lane. This sign was found lying on the ground on a site visit October 2020.*



*Sign from Frome Road, opposite Church Lane indicating access to St Johns Church Hall.*



*No through road sign at junction of Church Lane with Frome Road.*



*Sign at junction of Church Lane with Frome Road – “Church Lane leading to Church Fields” only.*



10.19. The cycle barriers erected in 2011, do not prevent the public from using the footpath with bicycles, although the planning permission requires the barriers to prevent vehicular access, they can also be erected on a right of way as a health and safety measure intended to slow down cyclists before junctioning

with a vehicular highway. The Highway Authority may erect such barriers on a highway in the interests of health and safety, under Section 66 of the Highways Act 1980. Officer's consider that their presence is an acceptance by the owner, or in this case where there is no registered landowner, the Highway Authority, that cyclists were using the footpath and that their safety needed to be taken into account at the junction of Footpath no.8, with the vehicular highway Acorn Meadow, as well as to prevent public use of Church Lane as a through route with vehicles. These efforts to prevent vehicular use of Church Lane as a public through route with vehicles are continuous, (since barriers were erected in 1962) and consistent with a way having no reputation as a public vehicular route and as a "private street".

10.20. Sub-section 31(7A) of the Highways Act 1980 applies subsection 31(7B) where there is no such matter bringing the right of the public to use the way into question and the DMMO application made under section 53(5) of the Wildlife and Countryside Act 1981, forms the date of bringing into question, the relevant 20 year user period is calculated retrospectively from that date, (see legislation set out in full at **Appendix 5**). This would apply in this case to use of the path by the public with bicycles over the reduced width of the path still available to cyclists following the erection of fencing when the houses 24 and 26 Church Lane were built in 2011.

#### **Bringing into question**

The evidence suggests that:

- 1) Use of Church Lane by the public with **vehicles** is brought into question in **1962** by posts erected over the full width of the way. Clearly an action to prevent public vehicular use of the way as a through route. A second set of posts being erected for the same reason in 1975, both sets of posts co-existed until 2011, then being replaced by the present barriers and fencing.
- 2) Use by the public on **horseback** is brought into question by the erection of the fence and cycle barriers contemporary with the building of the houses 24 and



26 Church Lane in **2011**, following which horse riders were unable to continue using the way.

- 3) Use by the public with **bicycles** is, on part of the route, brought into question by the erection of the fence contemporary with the building of the properties 24 and 26 Church Lane in **2011**, i.e. that part of the width of the lane which has been fenced off and incorporated within the driveway of the adjoining property.
- 4) On the remaining section of the route, use by the public with **bicycles** is brought into question by the application to upgrade Footpath no.8 Trowbridge to a BOAT, dated 29<sup>th</sup> August **2018**, where there is no other act bringing use with bicycles over that part of the route into question, as per subsections 31(7A) and (7B) of the Highways Act 1980. The erection of the cycle barriers on this part of the width of the lane, does not bring this use into question.
- 5) Use of the path **on foot is not brought into question** where Path no.8 is recorded as a public footpath within the definitive map and statement of public rights of way, however, the erection of the fence contemporary with the building of 24 and 26 Church Lane in 2011, may be an obstruction of the historic width of the footpath.

### **20 Years Public User**

10.21. Given the above evidence regarding the erection of posts on the full width of the way, in order for a claim to add public vehicular rights over the way to be successful, it would be necessary to demonstrate a user period by the public with vehicles between 1942 and 1962.

10.22. In this case only four of the 62 witnesses claim to have used the way with vehicles, Miss M Dunne thought to have used vehicles between 2006 and the change of layout of the lane (2011); Mrs C May between 2006 and 2010, Mr T Bishop between 1970 and 2018 and Mr L McClurg between 1995 and 2005. Mrs J McClurg also signs a declaration, (see **Appendix 8**), attesting to her use of the way with vehicles between July 1999 and August 2005. Miss

Dunne is owner and resident of the property [REDACTED], although she does not give dates of her use with vehicles it is understood that this property was purchased by the present owners in 2006. Miss Dunne: *“Drove to property unless wet and muddy. Since lane had been changed [2011] unable to access my property have to take a long route to work...”*. Mrs C May lives in Melksham and claims to have used the way with vehicles for the purpose of: *“Driving off Frome road, down Church Lane to visit.”*, *“2-3 x per year with car until 2010. 20 x per year – walking.”* *“With car occasionally. Walking with children & dog & bikes.”* Mrs May, whose main use of the way was on foot, is related to the applicant Mr A May who resides at the property [REDACTED] adjacent to the way subject to the application. Mr T Bishop is a Solicitor and does not give a residential address in his evidence form, he used Church Lane with a vehicle for the purpose of *“Visiting clients”* about once a year, he does not appear to have walked the route but saw others using the route, *“driving and walking”*. Mr L McClurg’s father previously lived at the property [REDACTED] and his use of the path spans from 1995 – 2005, walking, cycling and driving. He used the route as an access to his home, *“Driving to and from home”*, he only saw others walking and cycling. Mrs J McClurg claims to have used Church Lane with and without vehicles from 1999 – 2005 in her declaration at **Appendix 8**.

10.23. These five users have not used the route with vehicles during the relevant user period 1942 – 1962. Mr Bishop claims to have used the route with vehicles until 2018, which was not possible after 2011 when the present metal barriers and fence were erected, (i.e. at the building of the properties 24 and 26 Church Lane). Additionally, during their own relevant user period, they are very likely to have been aware of the arrangement for the property [REDACTED] where the removable post was in place allowing vehicular access, this appears to relate to a private right with vehicles for the property. Certainly Mrs C May claims to have been aware of *“removable”* wooden stakes, Mr L McClurg refers to the removable post and Miss M Dunne as resident of [REDACTED], by reason of her application to upgrade Footpath no.8 Trowbridge

(part) to a BOAT, which contains information regarding the removable post. Mrs McClurg in her declaration does not mention the posts / removable post and claims that she and her family and all visitors to the property have used the way with and without vehicles “without let or hindrance”.

10.24. S Wylie, in evidence, considers that the track came into being for visitors on foot and with carts to access St John’s Church, which was built (1854) for the workers (labourers) in the brick fields, starting as a modest track south of the church which was never meant to be a public highway. Certainly the OS maps examined show the presence of a brickworks east of Church Lane and the St John’s Church, on the other side of Frome Road, (there is now a new small estate at this location called “Oldbrick Fields”), until the 1950 and 1955 planning revision OS sheet. In evidence Mr R Hillier also supports the use of the lane with vehicles for access “...*Before the estate was built the lane was used by the farm to access the fields which are now Lambrok Road.*” The evidence of these witnesses supports the documentary evidence that Church Lane was not a through route for the public with vehicles, but its purpose was to access property and land, which cannot lead to qualifying user by the public at large.

10.25. Mr D Murrell states in evidence that he has seen the route used by motorcycles and tractors, as well as walkers and cyclists. He has used the route since 1996, his own use of the way being limited to walking and cycling. Certainly, the use of tractors on the lane would be consistent with landowners / farmers using the route to access land, but no further details are given by Mr Murrell. Use of the way with motorcycles has also been observed by Mr R Westwood, although no further details are given, his own use being confined to walking from 2000 onwards. Mr T Bishop has also seen others driving the route and he considers the lane to be a “Private Street” as per the Private Street Works Notice from Trowbridge Urban District Council, dated 3<sup>rd</sup> July 1961, (please see **Appendix 8**). His own use was about once per year, so the occasions on which he saw others driving would have been infrequent. It is

noted that Mr McClurg saw others only walking and cycling, Ms Dunne saw only families, children, bikes and walkers and Mrs May saw only walkers and cyclists, perhaps a further indication that use with vehicles was confined to only those parties, as residents or with links to the property [REDACTED], particularly Mr McClurg and Ms Dunne who live / lived at the property and would have observed the everyday use of the lane by the public. Mrs J McClurg in her declaration states that all persons visiting or calling at the property at all times and for all purposes did so with and without vehicles, but there is no other indication of the frequency of use with vehicles, (see **Appendix 8**).

10.26. Therefore, public use of the route with vehicles during the relevant user period 1942-1962 has not been sufficiently demonstrated on the balance of probabilities. Officers have continued to consider the witness evidence in relation to any additional public rights which may exist over Path no.8 Trowbridge. There is no requirement to investigate the route as a footpath, i.e. where the path is presently recorded as Footpath no.8 Trowbridge, the definitive map is conclusive evidence that, at the relevant date, there was a right of way on foot, but this is without prejudice to the existence of other rights. It is possible to consider higher rights, i.e. as a bridleway or restricted byway, where there is insufficient evidence of public vehicular rights. 2 witnesses consider the true status of the path to be footpath, 5 consider the true status to be Bridleway, 32 consider that the route should be recorded as a Restricted Byway and 10 as a Byway Open to All Traffic, however, actual use of the path should now be considered.

10.27. 41 users have used the route on foot only, (including 2 wheelchair users); 14 users have also used the way with bicycles and 2 users on horseback, (users on bicycle and on horseback are also very likely to have used to route on foot in addition). 4 users claim to have used the route with vehicles, (3 of these users have also used the route on foot and with bicycles). One user who claims to have used the route since the 1940's, R Hillier, does not specify how

the route was used and simply states “*Several means*”. Mrs J McClurg has not completed a user evidence form, but submitted a declaration of her use with and without vehicles on the sale of the property [REDACTED] in 2005, (see **Appendix 8**).

10.28. As well as their own use of the path, all but one of the witnesses who completed a user evidence form, has seen others using the way, as follows:

Use	No. of witnesses who observed others using the way in this manner		Frequency others seen (where specified)
Walking	45		Occasionally All the time Lots 2 Everyday A lot Loads - 2
Cycling	28		All the time Everyday A lot Loads
Horse riding	8		Previously seen horse riders - 3
Motorbike	2		In the past
Tractor	1		
Driving	1		
Pushchairs	1		
Wheelchairs	1		
Running	1		
Access	1		
Unspecified use	13		Sometimes Lots of people Loads - 4 Several people Always Not now mainly late evening – used to see loads.

		It's a busy path
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10.29. This pattern of use is supported by those who have made representations against the application, many of whom live alongside or in the vicinity of the path and will have observed the use on a daily basis as that by walkers, cyclists and horse riders, without vehicular use:

R Pegrum	<p>Since 1994 no vehicular traffic.</p> <p>2 sets of timber bollards prevented vehicular use but allowed the passage of pedestrians, cyclists and horse riders.</p> <p>No through access to motor vehicles.</p> <p>Part access for vehicular traffic for newly constructed 24 and 26 Church Lane, no through access.</p>
Trowbridge Town Council	Not aware of any evidence of vehicular traffic except access to properties.
C Knight	<p>Grew up on Studley Green estate – in 59 years never saw area used as byway for vehicles, it has always been footpath access only.</p> <p>The land only became open to traffic when a developer built no.24 and 26 Church Lane, initially planning permission granted access form Studley Green estate only. This was overturned and open to all traffic never existed until the Council gave permission for this access.</p> <p>Brother who has known the area for over 60 years agreed with this recollection.</p>
F Gilmour	Since February 1988 never vehicular access beyond the entrance to drive of 22 Church Lane, until construction of 24 and 26 Church Lane 2011.
T & S McGrath	<p>Path used daily by children and adults going to and from school or work and weekend walkers.</p> <p>Bollards unambiguously prevented the lane being used by vehicular traffic other than pedestrians or horses.</p> <p>Overgrown for a long period in the 1980's – difficult to get anything down it.</p> <p>Peaceful, safe environment now enjoyed by residents of Church Lane, pedestrians, cyclists, school children and runners.</p>
N Cathrew	<p>Since 1965 never any vehicle access through Church Lane to Lambrok Road.</p> <p>Access only ever used by pedestrians and cyclists.</p>
S J Wylie	Purpose of lane was to serve the church and was never intended to be a public highway.

	<p>Used mostly by pedestrians, runners, dog walkers, child and adult cyclists, parents with prams and pushchairs as well as a significant number of wheelchair users as there are nearby homes for people with disabilities.</p> <p>In last 3 years horses from paddocks on Church Lane ridden along the lane as a quiet route that links to nearby areas of countryside.</p> <p>Use by visitors to St Johns Church and hall – little clusters of motorised vehicle use at times of events interspersed with long periods of quiet when lane inhabited by pedestrians and local wildlife.</p> <p>Churchfields 1980 – increased volume of motor vehicles into Church Lane.</p>
S A Coleman	<p>Absence of vehicular rights existing during the 5 years beginning with the enactment of NERCA.</p> <p>Only ever been a footpath used by pedestrians, cyclists and horse riders.</p> <p>Enclosed signed letters from residents of Church Lane and Churchfields who all confirm that the byway has only been used by pedestrians, cyclists and horse riders and that the byway has never been used by vehicles.</p>

10.30. Use of the route by the public with bicycles is likely to have been brought into question over part of the width historically used by the erection of the present metal barriers and fence in 2011. Where the route is recorded as a footpath, use on foot of the available part of the way is not in dispute. However, for additional rights on bicycle (part width) and horseback, the relevant period is 1991-2011 and on bicycle (part width) 1998 – 2018, (see witness evidence summary at **Appendix 9** and witness evidence chart at **Appendix 10**):

Type of use	Relevant user period	No. of users	Users of full relevant period
Horse riding	1991 - 2011	2	0
Cycling (part width)	1991 - 2011	17	7
Cycling (part width)	1998 - 2018	18	11

10.31. The Court of Appeal case between Whitworth & Ors and the Secretary of State for Environment, Food & Rural Affairs, [2010] EWCA Civ 1468, considers the question of use with bicycles following the making of a definitive map modification order by Cumbria County Council, to add a restricted byway through the appellants farm yard and close to the house. The 2005 order

included proposals to add a new section of byway open to all traffic (BOAT) (B-C) and upgrade part of the footpath to a BOAT (C-D), which, after public inquiries in 2007 and 2008 was confirmed with modification to record the route ABCD as a restricted byway. This decision was appealed and the appeal case considers the use of bicycles during the relevant user period and the effect on the recording the path as a restricted byway or bridleway, grounds (i) and (ii) of the appeal being:

- “i) The Inspector erred in law in finding that use of a bicycle would be consistent with a finding that the route BCD was anything more than a bridleway, since members of the public have had a right to use bridleways for cycling since the coming into force of section 30(1) of the 1968 Act\*.*
  
- ii) In any event, the evidence of use of route BCD found by the Inspector over the period 1973 – 1993, by one man with a pony-trap, and two cyclists, was insufficient to justify a finding of rights to vehicular use.”*

\*Section 30 of the Countryside Act 1968 which gave cyclists the right to use a bridleway, giving way to users on foot and on horseback.

10.32. Lord Justice Carnwath, giving leading judgment concluded:

*“41. In the present case, the Inspector had found that by 1968, and before the relevant 20-year period the way had the status of a bridleway. After that time, use of the bridleway by cyclists would have been permitted by the 1968 Act. The owner would have had no power to stop it. There would be no justification therefore for inferring acquiescence by him in anything other than bridleway use. It matters not whether the cyclists were aware of the legal position. What matters is the effect of the use as seen by the landowner. It follows that in considering the extent of the deemed dedication, the use by cyclists should be disregarded. Since the only other evidence of use by vehicles is that of Mr*



*Clegg's pony-trap, which admittedly did not extend for the full 20 years, there is no basis for the order to confer anything more than bridleway rights.*

*42. In my view, the same conclusion would follow even if there had been no finding of pre-existing bridleway rights, so that the claim had rested solely on use after 1973. One would then be considering the inference to be drawn from the actual use between 1973 and 1993. It is true that regular use by both horse-riders and cyclists over that period would be consistent with an assumed dedication as a restricted byway at the beginning of the period (had that concept then existed). But it is no less consistent with an assumed dedication as a bridleway, of which cyclists have been able to take advantage under the 1968 Act. Since Section 30 involves a statutory inference with private property rights, it is appropriate in my view, other things being equal, to infer the form of dedication by the owner which is least burdensome to him.”*

*“45. The conclusion on ground (i) makes it unnecessary to consider in any detail ground (ii)...*

*47. In any event, on the basis of ground (i), I would allow the appeal. It follows that the 2005 order designating this route as a restricted byway cannot stand...*

*53. For these reasons, I feel constrained simply to allow the appeal on ground (i), and quash the order so far as affects route BCD.”*

10.33. In applying this caselaw to the Trowbridge case, it is not necessary to demonstrate that the way was a bridleway before commencement of Section 30 of the Countryside Act 1968 which allowed cyclists to use bridleways, where there is little evidence available to suggest that the way was a bridleway before that date, other than its width and character. It is possible to consider the use by cyclists during the relevant user period only, in this case 1991-2011 (part width) and 1998-2018 (part width) and how this may have

appeared to the relevant landowner, to provide them with opportunity to challenge such user. However, in this case there is no identified landowner of Church Lane, but it would appear that, to the relevant highway authority, the use by cyclists was sufficient for them to install cycles barriers in 2011 between the public vehicular highway Acorn Meadow and Church Lane, under Section 66 of the Highways Act 1980. Even where the majority of witnesses consider that the path should be correctly recorded as a restricted byway, the Whitworth case concludes that use by cyclists may support the status of bridleway which is the least burdensome form of dedication for the landowner and Officers suggest that this would follow in the Trowbridge case.

10.34. There is no statutory minimum level of user required to raise the presumption of dedication. The quality of the evidence, i.e. its honesty, accuracy, credibility and consistency is of much greater importance than the number of witnesses. In *R (Lewis) v Redcar and Cleveland Borough Council* UKSC 11 (03 March 2010), a Town/Village Green case, Lord Walker refers to Mr Laurence QC, who:

*“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”*

*Lord Walker goes on to quote Lindley L J in the case of Hollins v Verney [1884] giving the judgment of the Court of Appeal:*

*“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance to it is intended.”*

10.35. The frequency of user is also an important factor. Frequency varies from daily / twice daily to once per year and would certainly be sufficient to come to the

attention of any landowners. The greatest concentration of user is twice daily, daily and weekly by walkers and cyclists:

Use	Frequency	No. of users
Walking / running	Twice daily	3 1
Cycling	Daily	22 6 1 1 1
Horse riding	Weekly	8 2 2
	5 times a week	1 1
Car / driving	3-4 times a week	3
Wheelchair	2-3 times per week	1 1
Unspecified	A few times per week	1 2
	Twice a week	5
	Once a week	1
	Once per fortnight	1
	Every few weeks	1
	30 times per yr	1 1
	2-3 times per month	1 1
	20 times per yr	2 1
	Once a month/monthly	3 1
	10 times per yr	1 1
	6 times per yr	1
	Twice per yr	1
	5 times per yr	1
	2-3 times per yr	1
	Once per yr	1 1
	5-10?	1

### 20 years user

**Vehicular** - 20 years use of the way with vehicles during the relevant user period of 1942-1962 has not been demonstrated in this case. The five vehicular users appear to be exercising a private right to access property in Church Lane, after 1962 when it is known that the posts were in place on the full width of the lane.

**Cycling and horse riding** - There is sufficient evidence of use by the public with bicycles and on horseback to support public bridleway rights over the full width of the Church Lane between 1991 and 2011 when the present barriers were erected

and sufficient evidence of use by cyclists on the remaining section of the lane between 1998 and 2018 to support bridleway rights, (caselaw supports that bridleway rights can be inferred from public use with bicycles).  
The route of Footpath no.8 Trowbridge (Church Lane) should be upgraded to the status of bridleway.

### **As of Right**

10.36. In order to establish a public right of way, public use must be “as of right”, i.e. without force, without secrecy and without permission.

### **Without force**

10.37. Use by force could include the breaking of locks, cutting of wire or passing over, through and around an intentional blockage such as a fence / locked gate. In the Trowbridge case there is no evidence before the Surveying Authority to suggest that public use of the claimed route was by force. Although posts were erected on the path between 1962 and 2011, they do not appear to have prevented public use on foot, horseback or with bicycles sufficiently to cause use by force. The barrier and fence erected in 2011, whilst reducing the width and preventing use on horseback, have not led to use by force, (use on horseback appears to have ceased following this action and walkers and cyclists have adapted their use to the available width and conditions). In any case 2011 marks the close of the relevant period for use on horseback and of the full width of the path by all users.

10.38. Use by force does not include only physical force, but may also apply where use is deemed contentious, for example by the erection of prohibitory signs or notices in relation to the use in question. In the Supreme Court Judgement *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another (Respondents)* (2010), Lord Rodger commented that:

*“The opposite of “peaceable” user is user which is, to use the Latin expression, vi.*

*But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”*

10.39. In the Trowbridge case, Mr and Mrs McGrath produce evidence of a road sign at the entrance to Church Fields “...directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road off Acorn Meadow.” Additionally witness no.57 makes reference to a “No Through Road” sign located on the lane at the Frome Road end. This would suggest that the Highway Authority erecting these notices, did not consider Church Lane to be a through road for the public or suitable for such use, however, there is no additional evidence regarding how long these signs have been in place.

10.40. Additionally, in evidence witness no.8 makes reference to a “No Cycling” signpost which was present during their years of use between 1983-1988, after which the sign disappeared. The evidence of this sign is prior to the user period in question for use by the public with bicycles, which begins in 1991 / 1998 and there are no additional references to this sign in the evidence adduced by others.

### **Without Secrecy**

10.41. Although the landowner in this case is unknown, it would appear that witnesses used the route in an open manner, without secrecy and in a manner in which a person rightfully entitled to do so would. On site visits Officer’s of the Council have observed use of the path both on foot and with

bicycles continuing, in an open manner. 50 witnesses consider that a landowner would be aware of the use of the lane by the public, 5 of those mention that a landowner would have been aware of the use of the way on horseback or with bicycles, (i.e. as a bridleway).

10.42. Whilst Witness no.8 states that: *“No I have never been stopped or turned back and I do not know of anyone else to whom this has happened to”* and Witness no 34 states: *“I have never been stopped all people I have talked to have never been stopped.”*, 5 other witnesses do make reports of challenge, i.e. Witness no.18: *“Whilst houses were being built we were asked not to use the walkway – (my only way to school). And to not park near the walkway...In 2016 I was asked by the house owner not to keep using the path as it was disrupting them with all the public walking past their house.”*; Witness no.19: *“The road was blocked when houses were being built. I could not access the road for a few weeks...when riding through with a bike with my 3 children I was told it shouldn’t be “used for riding I shouldn’t be using this path”. 2015”*; Witness no.29: *“Vaguely recall someone commenting I shouldn’t be there. All they got were a few choice words.”*, this witness also comments that they were told by the owner or tenant of the land that the way was not public in the last 8-12 months; Witness no.42: *“Once a grumpy old man came out and said “this is private property”, I ignored him and carried on walking with my child...2011/12”* and witness no.43: *“An angry man yelled at me twice as I walked/cycled on the road/wasteland on about 2003/4. Say this is my land. This was outside Kynance, he did not own it.”* Out of 62 completed witness evidence forms, only 5 witnesses report any challenge to their use of the way when cycling or walking the route and this is more recent in date, i.e. 2016; 2015; last 8-12 months; 2011/12 and 2003/04, which is likely to relate to the building of the new properties alongside Church Lane, (with the exception of the 2003/04 incident). Land registry title documents record the full width and length of Church Lane being unregistered, i.e. it is not in the ownership of the properties adjoining Church Lane and therefore any challenge to public use is not made by the landowners or tenants to demonstrate their non-intention to

dedicate additional rights over the footpath. Additionally, legitimate use of the recorded public footpath should not be challenged.

### **Without Permission**

10.43. Use “as of right” was discussed in the Town / Village Green Registration case of R (on the application of Barkas) v North Yorkshire County Council and Another, Supreme Court, 21<sup>st</sup> May 2014. The leading judgement was given by Lord Neuberger, who sets out the legal meaning of the expression “as of right”:

*“...the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”.”*

10.44. Therefore, where use is “as of right” and the public do not have permission to use the land, it follows that all rights of way claims will begin with a period of trespass against the landowner. As Lord Neuberger states in the Barkas case, the mere inaction of the landowner with knowledge of the use of the land does not amount to permission and the use is still trespass:

*“...the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive tolerance as is explained in Gale, (or, in the language of land covenants, suffering), does not stop it being trespass. This point was well made by Dillon LJ in Mills v Silver [1991] Ch 271, 279-280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be*

*acquired if the user...has been tolerated without objection by the servient owner” as it would be “fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p 281, “mere acquiescence in or tolerance of the user...cannot prevent the user being user as of right for the purposes of prescription.”*

10.45. Only one witness, Mr R Hillier, claims to have requested permission to use the way from the Town Council in 1961, no further details of the nature of this permission are provided, i.e. for how long and for what activities, as at that time the path was already recorded as a footpath and Mr Hiller states that he used the way by “several means”. None of the witnesses claim to be employees or tenants of the landowner. There is no additional evidence that users of the route on horseback or with bicycles did so with permission.

10.46. The historical documents examined appear to support the way as a private road to access property and this is supported by the five individuals who claim to have used the way with vehicles to access / visit private property. The applicants, (also the property owners), refer to a removable post to allow vehicular access which appears to be related to a private use (Miss M Dunne) and of the additional four vehicular users, Mrs C May and Mr L McClurg appear to also have been aware of removable wooden stakes. Mr T Bishop is also likely to have been aware of this arrangement. Mrs J McClurg does not mention the removable post in her declaration, but states that she, her family and visitors to the property [REDACTED], did so with and without vehicles, without let or hindrance and without the consent of and without payment to any person, persons or corporate body. The dedication of a way as a public highway can be inferred from use by the public and there will be no presumption of dedication, (in this case as a byway open to all traffic), unless the way has been *“actually enjoyed by the public as of right”*, (Section 31(1) Highways Act 1980), however, “The Public” is not defined in the legislation. In *R v City of Sunderland ex parte Beresford* [2003] UKHL 60, [2004] 1 AC 889, Lord Scott states, *“There are important differences between private*



*easements over land and public rights over land...*” and Alex Lewis writing for the Rights of Way Law Review – “*Section 6: Creation of Highways*” – “*‘Public’ and ‘Private’ use of a way (p.13-19)*”, states that use should be disregarded for the purposes of Section 31 of the Highways Act 1980, if it is the exercise of a private right of passage. It is not relevant whether this is because it is not use “as of right” for the purposes of Section 31(1) or because it is not used “by the public”, or both of these grounds.

10.47. Alex Lewis quotes the definition of “The Public” from Lord Justice-General Clyde in *Harrison v Hill* 1932 JC 13, 16 *“I think that, when the statute speaks of ‘the public’ in this connection, what is meant is the public generally, and not the special class of members of the public who have occasion for business or social purposes to go to the farmhouse or to any part of the farm itself; were it otherwise, the definition might just as well have included all private roads as well as public highway”*.

10.48. Officers accept that there is some evidence that the claimed route has been used with vehicles, most likely to access land / property, as Mr Hillier refers: *“Before the estate was built the lane was used by the farm to access the fields which are now Lambrok Road”*, until the closure of the path to vehicles in 1962. After that date there is evidence that Miss M Dunne, Mrs C May, Mr L McClurg, Mr T Bishop and Mrs J McClurg used the route with vehicles, however, this is only 4 witnesses out of 62 completed evidence forms, plus the declaration of Mrs J McClurg and their use with vehicles relates to private use of the route for the specific purpose of accessing / visiting property. This does not relate to use by the public sufficient to represent the people as a whole, or the community in general. There is not sufficient evidence with the application that the wider public used the route with vehicles. As stated in *Halsbury’s Laws of England: Highways, Streets and Bridges, Volume 55, 2012, paragraph 1*, in considering the definition of highway *“...it need not be a way for vehicles, as, if they are open to the public generally, footpaths, bridleways and driftways are highways. It is, however, an essential*

*characteristic of a highway that every member of the public should have a right to use it for the appropriate class of traffic; there can be no dedication to a limited section of the public, such as the inhabitants of a parish.”*

10.49. Alex Lewis continues to explain that where a property owner has no right whatsoever to use a path, *“If the alleged public highway was in use as access to a property before the earliest incident of truly “public” user, it may be that the property will have acquired an earlier, private right of way along it and that such a right will extend to all visitors to a property, and it should be disregarded [in evidence under statute – Section 31(1) of the Highways Act 1980]. Different inferences might, however, be drawn if there is early evidence of public use of the way which was subsequently used to access private property”*. In the Trowbridge case there is no early evidence of public use of the way with vehicles other than for a specific purpose, i.e. to access property and land, which is not qualifying “public” user and therefore must be disregarded for the purposes of Section 31(1) of the Highways Act 1980.

10.50. This matter was also considered very recently by an Inspector appointed on behalf of the Secretary of State in the Appeal Decision (FPS/Y3940/14A/14) regarding Wiltshire Council’s refusal of an application to upgrade Bridleway no.7 Chippenham (part) to a BOAT, based on evidence of use with vehicles to access property and a commercial business. The appeal was refused:

*“17. Although it would appear that significant use of the appeal route by vehicular traffic has taken place, the evidence suggests that this use cannot be regarded as use by the public in general but only by specific categories of users, namely residents of a few properties on Rowden Hill and their visitors and customers and employees of the builders’ merchant.*

*18. Also, it is arguable that such use took place not ‘as of right’ as required under the 1980 Act but in the exercise of private rights to access property.*

*20. Although the appeal route has been used by vehicular traffic over a lengthy period, this use was not, in my view, use by the public as of right as required under the provisions of the 1980 Act and accordingly does not raise the presumption that the route has been dedicated as a public vehicular route.”*

10.51. Following the implementation of Section 67 of the Natural Environment and Rural Communities Act 2006 (NERCA), which had the effect of extinguishing unrecorded public vehicular rights, subject to exclusions, (the effect of this legislation in the Trowbridge case is considered in full in paragraphs 10.53. – 10.63. of the report), there are perhaps two views on this matter, i) that frontagers are entitled to access properties from the adjoining highway and that use by the frontagers is not as “the public” where Section 67 of NERCA 2006, provides separately for private use, or ii) when the route becomes public this entitlement ceases to be relevant and frontagers use the route as if they were the public. In the Trowbridge case there is no evidence that Church Lane is an old **public** vehicular highway and we refer back to the point made by Alex Lewis that user by those accessing property should be disregarded if the access to property was in use “*before the earliest incident of truly “public” user*”.

10.52. In a joint legal opinion produced for the Green Lanes Protection Group, “In the Matter of Section 67 of the Natural Environment and Rural Communities Act 2006”, dated 26<sup>th</sup> January 2007, George Laurence and Ros Crail address the question of “Is use for access regarded as use by the public?”

*36. We think the phrase “main lawful use by the public” [as contained in the exemption at section 67(2)(a) of NERCA 2006] was intended to exclude use by those who used the way for access. This would therefore include frontagers and those who, but for the public right of way, would have had a right to use the way in any event by virtue (i) of their ownership; or (ii) of having been granted an easement or licence; or (iii) of being invitees*

*(express or implied) of such owners or grantees of an easement or licence, (so the postman, fire service and milkman would be amongst those excluded.) The idea underlying the section, in our view, was to save from extinguishment those ways (vehicular use of which (other than for access) outweighed use on foot or horseback (other than for access). Those who used ways for access without having an independent right to do so were separately protected by sub-section 67(3)(c) and (5), so they would not be prejudiced by not being counted among “the public” for the purposes of section 67(2)(a).”*

#### **As of Right**

There is no evidence that the public used Footpath no.8 Trowbridge on horseback and with bicycles by force and they did so in a manner in which a person rightfully entitled to do so would do and without permission during the relevant user periods 1991-2011 and 1998-2018. This user is therefore qualifying user “as of right”.

However, the evidence suggests that any vehicular use of the claimed route, limited to only five users as it was, was not use by the general public, but use by a limited group of individuals to access property, which is not qualifying use with vehicles by “The Public” under Section 31(1) of the Highways Act 1980. This is not qualifying user “as of right”.

### **Natural Environment and Rural Communities Act 2006**

10.53. Overall, Officers consider that there is insufficient evidence of public vehicular use of the way / historical evidence, to upgrade that part of Footpath no.8 subject to the application, to a byway open to all traffic, on the balance of probabilities.

10.54. In any case, public vehicular user element would be impacted by Section 67(1) of NERCA 2006, which had the effect of ending certain existing unrecorded public vehicular rights of way, as follows:

*“(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-*  
*(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...”*

10.55. There are however certain exemptions to this. Those which may have applied in relation to the Trowbridge case are those based on public use of the path with vehicles prior to the commencement of NERCA 2006, (2<sup>nd</sup> May 2006) and prior to December 1930, when it became illegal to drive a vehicle on a footpath. At Section 67(2), it is stated that:

*“Subsection (1) does not apply to an existing public right of way if-*  
*(a) it is over a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles...*  
*(e) it was created by virtue of use by such vehicles during a period ending before December 1930.”*

10.56. At (e) above, it is now difficult to demonstrate evidence of actual use of a path by the public with vehicles prior to December 1930. At the initial consultation on the application, Officers requested further evidence regarding public use with vehicles before 1930, only anecdotal evidence of use of the way with vehicles to access property / land was submitted, which cannot give rise to a public right.

10.57. Additionally, exemption (a) leads to further questions regarding the quality of the evidence of public use with vehicles in the 5 years 2001-2006 (commencement of NERCA). No additional direct evidence of public vehicular use during this period was forthcoming at the initial consultation and the way is known to have been closed to the public with vehicles from 1962 – present day, firstly by the timber posts and then from 2011 onwards by the present

cycle barrier and fence arrangement. Of the evidence submitted with the application, only 4 of the 62 completed witness evidence forms refer to use with vehicles, plus the declaration of Mrs J McClurg, (see **Appendix 8**). From this it cannot be argued that the main public use of the way by the public between 2001 and 2006 was vehicular.

10.58. Miss M Dunne is believed to have used the route with vehicles between 2006 and 2011, use just outside the relevant exemption period and for the purposes of accessing private property. Mrs C May used the route only between 2006-2010 with vehicles, i.e. outside the exemption period and additionally, use with vehicles was not her main use of the way, she gives evidence that she used the route with vehicles 2-3 times per year and walking 20 times per year, her main use of the route was on foot. Mr T Bishop claims to have used the route with vehicles from 1970–2018, within the relevant 5 year period, he appears only to have used it with vehicles, but his frequency of user is only once per year, it cannot be argued from this that the main public use was vehicular where the other evidence shows that the main use of the route was on foot and with bicycles, most frequent use twice daily, daily and weekly. He does claim to have seen others driving the route, but given his own frequency of use once a year, his limited opportunity to view others doing so does not support vehicular use being the main use of the way. Mr L McClurg does also use the way with vehicles in the relevant period, his use spans 1995 – 2005, daily for accessing his home, but this is again only one vehicular user and he does not claim to have seen any other members of the public driving the route, he saw them walking and cycling. Mrs J McClurg used the route between 1999 and 2005, during the relevant exemption period and claims that her family and visitors to the property used the route with and without vehicles, however, no further details of the frequency of vehicular use are provided to argue that the main use of the way was with vehicles in the light of the other witness evidence.

10.59. Of the vehicular users Miss M Dunne was aware of the removable posts by reason of her joint application to upgrade the path to a BOAT; Mr L McClurg and Mrs C May were also aware of the removable wooden stakes / posts and Mr T Bishop, having links to the occupiers of the property [REDACTED] as legal advisor, is likely to have been aware of the “removable” post, which appears to be a private arrangement, use thereby confined to a small cross-section of individuals to access property and land, not representing the public at large. As seen at paragraphs 10.46. – 10.52. of the report, use to access property cannot support the main use the path by **the public** with vehicles prior to the commencement of NERCA.

10.60. Section 67(3) of NERCA includes an exemption to the extinguishment of public vehicular rights under Sub-section 67(1) of the Act, as follows:

*“Subsection 1 does not apply to an existing public right of 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,*
- (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 and immediately before commencement, use of the way for mechanically propelled vehicles-*
  - (i) was reasonably necessary to enable that person to obtain access to land, or*
  - (ii) would have been reasonably necessary to enable that person to obtain access to a part of the land if he had had an interest in that part only.”*

(The relevant date in this section being 20<sup>th</sup> January 2005 and commencement being 2<sup>nd</sup> May 2006).

10.61. In order for the exemption (c) above to be relevant, it is necessary for a person with an interest in the land to have made an application to add vehicular rights to the definitive map and statement of public rights of way, prior to commencement. In this particular case the application is dated 29<sup>th</sup> August 2018 and does not meet this requirement, therefore public vehicular rights, (if they exist), are not saved under this exemption.

10.62. Section 67(5) of NERCA states that:

*“Where immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies-*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.”*

10.63. Any owner of property accessed by the way, would need to seek independent legal advice regarding whether or not the way reverts to a private right of way for mechanically propelled vehicles for the benefit of the person with an interest in the land, or part of the land, however, in order to comply with the requirements of Section 67(5), those wishing to access property would need to demonstrate that prior to the commencement of NERCA, (2<sup>nd</sup> May 2006), they were relying upon a public vehicular right to access the land, which has now been extinguished by Section 67(1) of NERCA. In this particular case, in its investigations, Wiltshire Council have discovered insufficient evidence to show that “public” vehicular rights subsist over path no.8 Trowbridge (part) on the balance of probabilities.



## Width

10.64. There is presently no width recorded within the definitive statement over Footpath no.8 Trowbridge and the application includes a proposed width of 5m. The witnesses refer to a reduction in the width of the path contemporary with the building of the properties 24 and 26 Church Lane in around 2011, therefore it is possible that there is a greater, historic width of the path. Evidence of this width can be taken from the OS 25 inch County Series and National Grid Reference maps, which consistently record the width of the path varying between 13m and 7m between Frome Road and Acorn Meadow, narrowing to 7m over the section subject to this application. It is likely that the whole of this width would have been available to path users. In the absence of any evidence to the contrary it is proposed make a definitive map modification order to record a width of the path at varying between 13m and 7m as per the OS mapping, excluding that section of adopted highway at Churchfields, as recorded within the highway records, please see proposed order plan at **Appendix 12.**

10.65. The full width of the path being available as a footpath is supported by a letter from the County Secretary and Solicitors Office dated 1970, (**Appendix 8**) which states:

*“3. 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. Church Lane is however a private street (except, of course, for the half width which has been adopted).”*

10.66. The user evidence refers to the reduction of the width of the path. Users report the former width of the path to be 5m (mean of responses given), as O Smart suggests 5m from the 1950's, and the present width of the path to be narrowed to 1m (mean), Officers believe at the time the houses 24 and 26 Church Lane were built in 2011. This does not quite accord with the OS

mapping at a width between 7m and 13m, however, M Dunne refers to fruit hedges on either side of the lane, which may have grown into the lane and given the impression of a narrower width, particularly at the northern section subject to the application which has a historic width of 7m. This overgrowth is supported by other path users, including Witness no.9 who describes the grass area on the former route as *“overgrown to brambles until the new house was built...”* and Witness no.48 who confirms *“...the grass was usually short but overgrown with brambles later, for about 1 to 2 years.”* The photographs of the route at **Appendix 4**, reveal mature trees and an old fence line and ditch along the western edge of the route which accords with the trees at this boundary of the route shown on the 1887 County Series OS mapping and is likely to indicate the original western extent of Church Lane, (trees formerly present on the eastern boundary of the route, now developed).

10.67. Additionally, M Dunne’s observations regarding fruit hedges on either side of the lane, suggest that the whole of the lane was available to walkers. R Hillier supports this with reference to the “full width” being available and many of the witnesses refer to the path being “hedge to hedge” or “whole width”. Witness no.46 includes a width of 5m in evidence, but in the description the route provides further information: *“1m wide tarmac footpath, 4m of grass that was mown to the left up to a hedge, 1m of grass to the right up to a ditch and hedge to a field.”* which equates to 6m and certainly reflects the photographic evidence of the route between the 1990’s and 2011 and the OS mapping evidence. A number of witnesses support this width being available, i.e. a tarmac strip of around 1m – 1.5m and a strip of mown grass of about 4m-5m alongside the tarmac path and some witnesses recalling an additional 1m grassed area to the other side of the tarmac path between a hedge on one side and a hedge/hedge and ditch on the other. The consensus is that all of this area, including the grassed areas were available to both walkers and horse riders, with room for walkers and horses to pass each other, as Witness no.3 states: *“I used to be able to ride my horse across the whole width from hedge to hedge. There was 1 metre width of a tarmac strip footpath but also 4*

*metres of grass to a hedge. There was plenty of room for me to pass pedestrians walking on the path. Now I cannot ride my horse there due to chicane.”* Witness no 9 states: *“Used to be 1m tarmac strip with about 1m of grass to the right then a ditch then a hedge. There was 4m of grass to the left of the tarmac strip to another hedge. You could walk anywhere across this whole width from hedge to hedge, plenty of room for groups of people and dog walkers to pass each other from opposite directions. The grass was usually short, but overgrown to brambles until the new house was built...”* Witness no.58 states: *“5m wide grassy area that groups of people could walk on from hedge to hedge with plenty of room to pass, even with a horse or two. 1 – 1½ m of tarmac strip too.”* and witness 59 states: *“5 metre wide footpath with 1m tarmac strip that groups of people and horses could pass easily on. Hedges lined either side and ditch too.”* Witness 21 mentions the posts as an obstruction: *“A tidy tarmac path about 1 meter wide, grassy for 1 meter to the right and 4-5 metres on the left. You could walk across the whole width without obstruction, except the posts.”*

10.68. Where the evidence suggests that historically the full width of the lane was available to path users and there is no evidence of a legal event formally extinguishing part of the width of the way for public use, part of the highway appears to have been incorporated into the driveway for the property 26 Church Lane and narrowed by the present fencing and barrier arrangement which forms an obstruction of the historic width of the highway. Although the planning for these properties required the bollards to be moved and retained on Church Lane to prevent it becoming a through route for traffic, there was no requirement within the planning permission for fencing on the highway. Planning law does not override highway law and any barriers placed on the highway for health and safety reasons are required to be authorised.

10.69. Officers consider that a width, as per the OS mapping should be applied to the whole of Church Lane for its full length between Frome Road and Acorn Meadow, not just confined to the claimed section of the way, where the OS

mapping provides consistent width evidence for the full length of Church Lane, Footpath no.8 Trowbridge. This is supported by the user evidence, witnesses used the full length of Path no.8 as a link between the Studley Green Estate and Frome Road to access the church, shops, post office, garden centre, bus stops, pub, school, college, Southwick Country Park and Hope Nature Centre, doctors surgery/clinic etc, (mainly located off Frome Road), the majority of users being residents of Studley Green and Church Lane itself. Witness no.2 considers that the path includes the length of Church Lane from an oak tree just below Framfield (located on Church Lane just south of Churchfields), to Manor Road estate just outside Hillbrook, whilst Witnesses 11 and 23 consider that the path includes the full length of Church Lane between Acorn Meadows to Churchfields and out onto Frome Road. Witnesses 14 and 31 consider the route to give access from Frome Road to Lambrok Road.

10.70. Mr Murrell gives a detailed description of the path in evidence: *“Starts outside Hillbrook at end of tarmac ‘Acorn Meadow’ & runs up towards ‘Frome Road’, gravel up to posts marked on map, originally from posts to end of tarmaced ‘Church Lane’ was an earth/grass track until taken over when houses at @ built, just leaving footpath which is tarmaced...”* This description of the original track accords with the evidence in the urban district council claim observations regarding the condition of the track in 1953 when it was claimed and added to the definitive map of public rights of way as a footpath, as a *“deeply rutted cart track in bad condition”*.

#### **Width**

Church Lane has an historic width, presently unrecorded within the definitive statement for Footpath no.8 Trowbridge, varying between 13m and 7m for its full length between Frome Road and Acorn Meadow, (as per OS 25” mapping). There is no evidence that part of the width of this highway has been legally stopped up and it is proposed to record this varying width in a definitive map modification order by reference to the order plan.

## Landowners Intention

10.71. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after public user of a route for a period of 20 years or more “as of right”, unless during that period there was in fact no intention on the part of the landowner to dedicate the land as a highway. Intention to dedicate was discussed in the Godmanchester case, which is considered to be the authoritative case on this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956:

*“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburn’s words, take steps to disabuse these persons of any belief that there was a public right...”*

10.72. In the same case, Lord Neuberger of Abbotsbury went further on this point:

*“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1 (1) of the 1923 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”*

10.73. Lord Hoffman went on to say:

*“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”*

10.74. As stated by Lord Justice Carnwath in the Whitworth case, *“By section 31(1A)(b) use by non-mechanically propelled vehicles is to be taken into account, but that says nothing about the characterisation of the resulting right of way. For that purpose, it is necessary to consider what is implied by the owner’s acquiescence.”*

10.75. There is no registered landowner/s of Church Lane and no evidence of any actions by the landowner/s to negate their intention to dedication the lane as a bridleway. There is no deposit with Wiltshire Council under Section 31(6) of the Highways Act 1980 and no evidence of prohibitory signs in the relevant user period, (one witness refers to a “No Cycling” sign between 1983 and 1988, however, there is no photographic evidence of this sign, only one witness refers to it and it is outside the relevant user period for cyclists of 1991-2011 and 1998-2018).

10.76. Out of 62 completed witness evidence forms, only 5 witnesses refer to challenge of their use of the way when both walking and cycling. There is no reason to challenge the public who were legitimately using the recorded Footpath no.8 Trowbridge and any challenge to the minority of users is recent in date, perhaps corresponding with the new build properties 24 and 26 Church Lane, however, the lane is not in the ownership of these properties and any challenge is not made by the landowners to suggest non-intention to dedicate additional rights over the footpath.

## **Common Law dedication**

- 10.77. Section 5 of the Planning Inspectorate Definitive Map Orders: Consistency Guidelines suggests that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.
- 10.78. Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends upon the inference that the way was in fact dedicated at some point in the past.
- 10.79. A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to public use of the way. It also relies upon the public showing their acceptance of the route by using the way.
- 10.80. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that evidence of such dedication is difficult to obtain and it is then appropriate to apply Section 31 of the Highways Act 1980.
- 10.81. Relatively few highways can be shown to have been expressly dedicated and in the Trowbridge case, there is no evidence before the Surveying Authority that the landowners have carried out any express act of dedication over the claimed route. However, there is evidence that the landowners have acquiesced in the use of the footpath on horseback and with bicycles and evidence of public acceptance of this route through user evidence. If the claim

at statute were to fail, it is possible to apply the principles of common law dedication in this case.

## **Conclusion**

10.82. Officer's have considered the evidence submitted both supporting and opposing the application and concluded that there is sufficient evidence that a right of way for the public on horseback/bicycle exists over Footpath no.8 Trowbridge and therefore the only option available to Wiltshire Council, as the Surveying Authority, is to make a DMMO to amend the definitive map and statement of public rights of way accordingly, upgrading Footpath no.8 Trowbridge to a bridleway for the full length of Church Lane and adding a width varying between 7 and 13m, to be shown in the order plan.

10.83. There is insufficient evidence of public vehicular rights over Path no.8 Trowbridge, on the balance of probabilities.

## **11. Overview and Scrutiny Engagement**

11.1. Overview and Scrutiny engagement is not required where the procedures to be followed regarding orders made under Section 53 of the Wildlife and Countryside Act 1981 are set out at Schedules 14 and 15 of the 1981 Act and within "The Wildlife and Countryside (Definitive Maps and Statement Regulations) 1993 – Statutory Instruments 1993 No.12".

## **12. Safeguarding Considerations**

12.1. 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 available evidence alone.



### **13. Public Health Implications**

- 13.1. 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 on the available evidence alone.

### **14. Procurement Implications**

- 14.1. The determination of a definitive map and statement modification order application and modifying the definitive map and statement of public rights of way accordingly are statutory duties for the Council. The financial implications are discussed at 18.

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

- 15.1. 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 on the available evidence alone.

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

- 16.1. 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 available evidence alone.

### **17. Risk Assessment**

- 17.1. Considerations relating to the health and safety 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 on the relevant evidence alone.

- 17.2. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and 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 within the definitive map and statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. Where the Council fails to pursue its duty to determine the application, (within 12 months of the date of application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

## **18. Financial Implications**

- 18.1. The determination of DMMO applications and modifying 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.
- 18.2. Where no DMMO is made, the costs to the Council in processing the DMMO application are minimal.
- 18.3. Where a DMMO is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An Independent Inspector appointed on behalf of the Secretary of State 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 additional costs to the Council are estimated at £200-£500, (i.e. room hire where legal representation is not

required). If a local public inquiry is held, costs are estimated at £1,500 - £3,000 for a 1-2 day inquiry, rising to an estimated £4,500 for a 3 day inquiry, if Wiltshire Council continues to support the order, (i.e. where legal representation is required by the Council), and £200 - £600 where the Council no longer supports the making of the order, (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

## **19. Legal Considerations**

- 19.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

## **20. Options Considered**

20.1. To:

- (i) Refuse to make a DMMO under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that, on the balance of probabilities, 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
- (ii) Where there is sufficient evidence that, on the balance of probabilities, 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 only option available to the authority is to make a DMMO to upgrade that part Footpath no.8 Trowbridge subject to the application,

or the whole of Footpath no.8 (Church Lane), (depending upon the evidence), to a bridleway, restricted byway, or a byway open to all traffic, (if public vehicular rights are not extinguished under Section 67(1) of NERCA), amending the definitive map and statement of public rights of way accordingly, under Section 53 of the Wildlife and Countryside Act 1981.

## **21. Reasons for Proposal**

21.1. It is proposed to make an order upgrading Footpath no.8 Trowbridge (Church Lane), to a bridleway for its full length between Frome Road and Acorn Meadow, having a recorded width varying between 7m and 13m, but not to upgrade the footpath to a BOAT as claimed, for the following reasons:

- (i) There is insufficient documentary evidence of a public right of way with vehicles over Path no.8 Trowbridge. The available evidence suggests a private route for accessing property with vehicles, which does not give rise to a public right.
- (ii) There is insufficient evidence that the way has been used as of right for a period of 20 years or more, without interruption, by “The Public” with vehicles.
- (iii) A number of witnesses have used the route with bicycles and on horseback, which during the relevant user periods 1991-2011 and 1998-2018, is sufficient to show on the balance of probabilities that a path no.8 Trowbridge ought to be shown as a bridleway.
- (iv) The Ordnance Survey mapping provides an accurate and consistent record of the width of Path no.8 Trowbridge (Church Lane), varying between 7m and 13m, for its full length between Frome Road and Acorn

Meadow, which is likely to have been used by the public and supported by witness evidence, in the absence of any evidence to the contrary.

## **22. Proposal**

23. That further to the application to upgrade Footpath no.8 Trowbridge (part) to a byway open to all traffic, a definitive map modification order be made to upgrade Footpath no.8 Trowbridge to a bridleway over its full length (Church Lane), having a recorded width between 7m and 13m, as per the Ordnance Survey mapping, excluding from the order that central section of adopted highway (Church Fields development), where there is insufficient evidence, both documentary and user, to support public vehicular rights over the path, but sufficient evidence of public rights on horseback and with bicycles, on the balance of probabilities.

Janice Green, Senior Definitive Map Officer, Wiltshire Council

Date of Report: 26<sup>th</sup> October 2020

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### **Appendices:**

**Appendix 1** – Location Plan

**Appendix 2** – Application Plan; Working copy of definitive map and extract from  
Trowbridge Urban District Definitive Map 1953

**Appendix 3** – Aerial photographs

**Appendix 4** – Photographs

**Appendix 5** – Representations and objections

**Appendix 6** – Legislation

**Appendix 7** – Documentary Evidence

**Appendix 8** – Documentary Evidence Adduced by Applicant

**Appendix 9** – User Evidence Summary

**Appendix 10** – User Evidence Chart

**Appendix 11** – Bringing into Question

**Appendix 12** – Proposed Order Map

Decision Report – Wildlife and Countryside Act 1981, Section 53

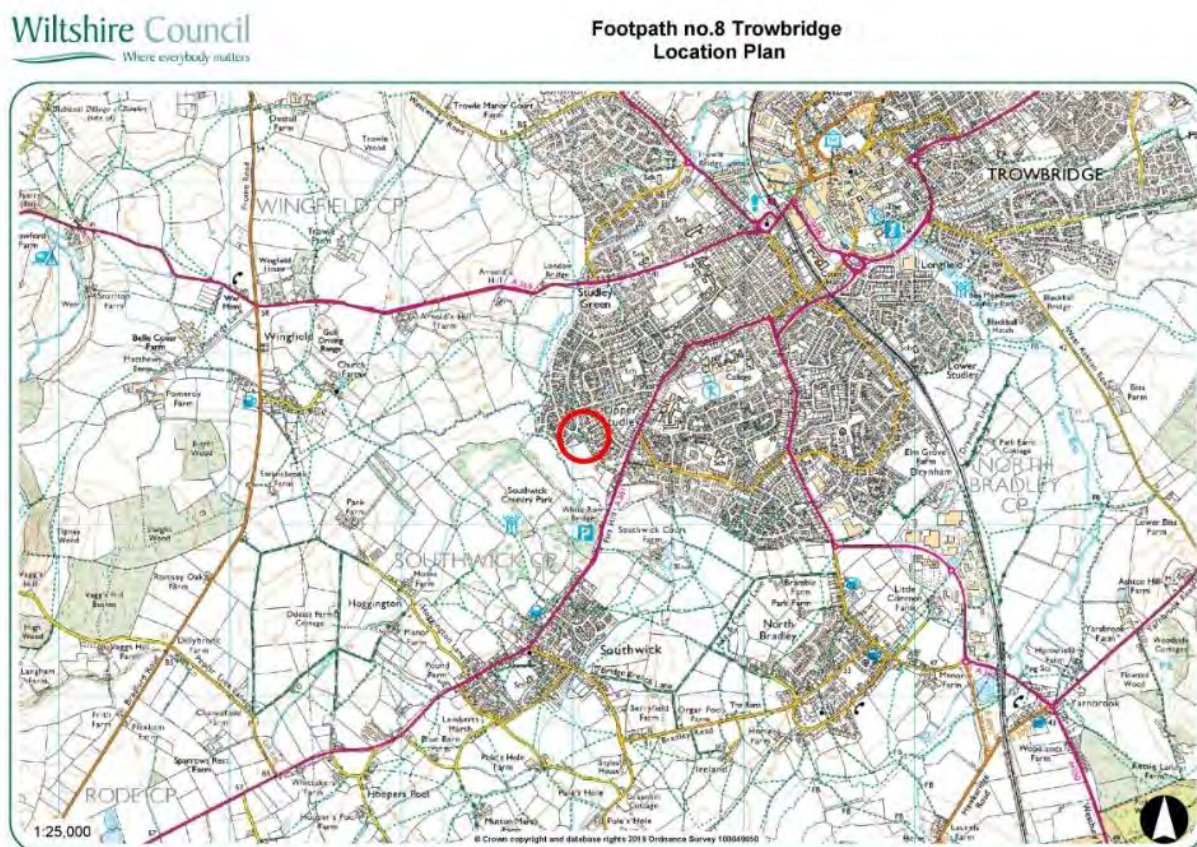
Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic

**Decision Report Wildlife and Countryside Act 1981 – Section 53**

**Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic**

**Appendix 1 – Location Plan**

*Plan not to scale*

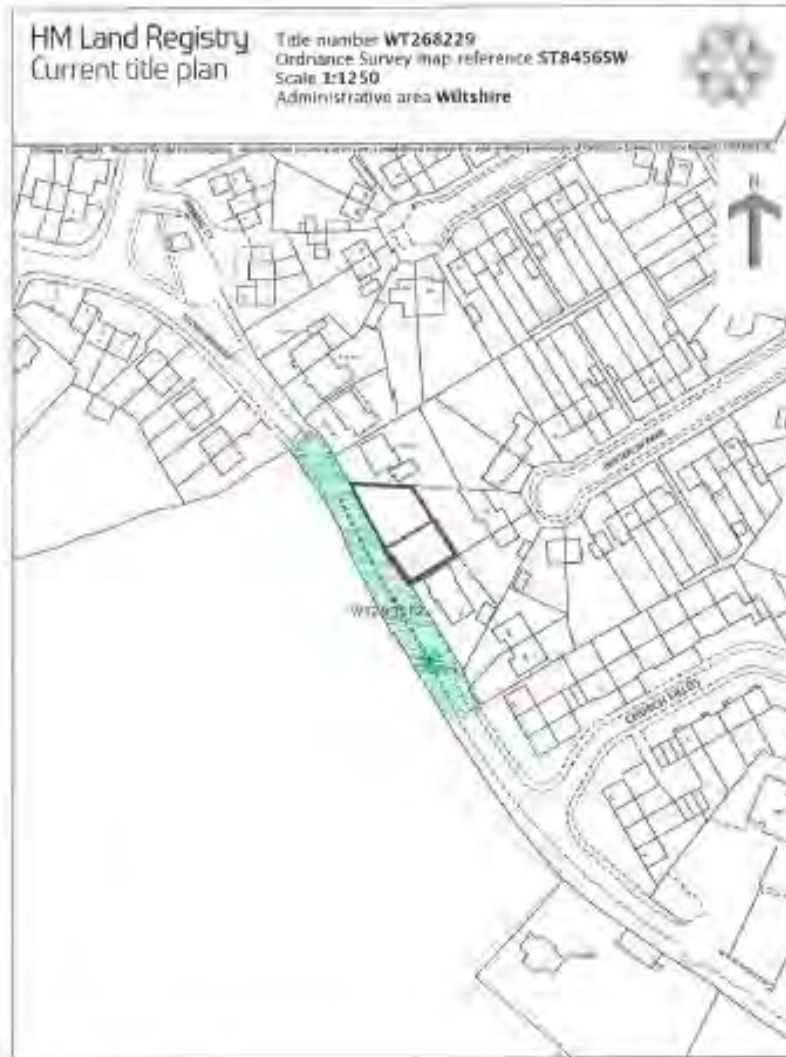


**Decision Report Wildlife and Countryside Act 1981 – Section 53**

**Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic**

**Appendix 2 – Application Plan**

*Plan not to scale*



\*This is a copy of the title plan as of 01 MAR 2015 at 10:00:00. This copy does not take account of any application made after that time which is still pending in HM Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the Registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the HM Land Registry web site explains how to do this.

HM Land Registry endeavours to maintain high quality and wide access to title plan images. The clarity and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements taken from this plan may not match measurements between the actual points on the ground.

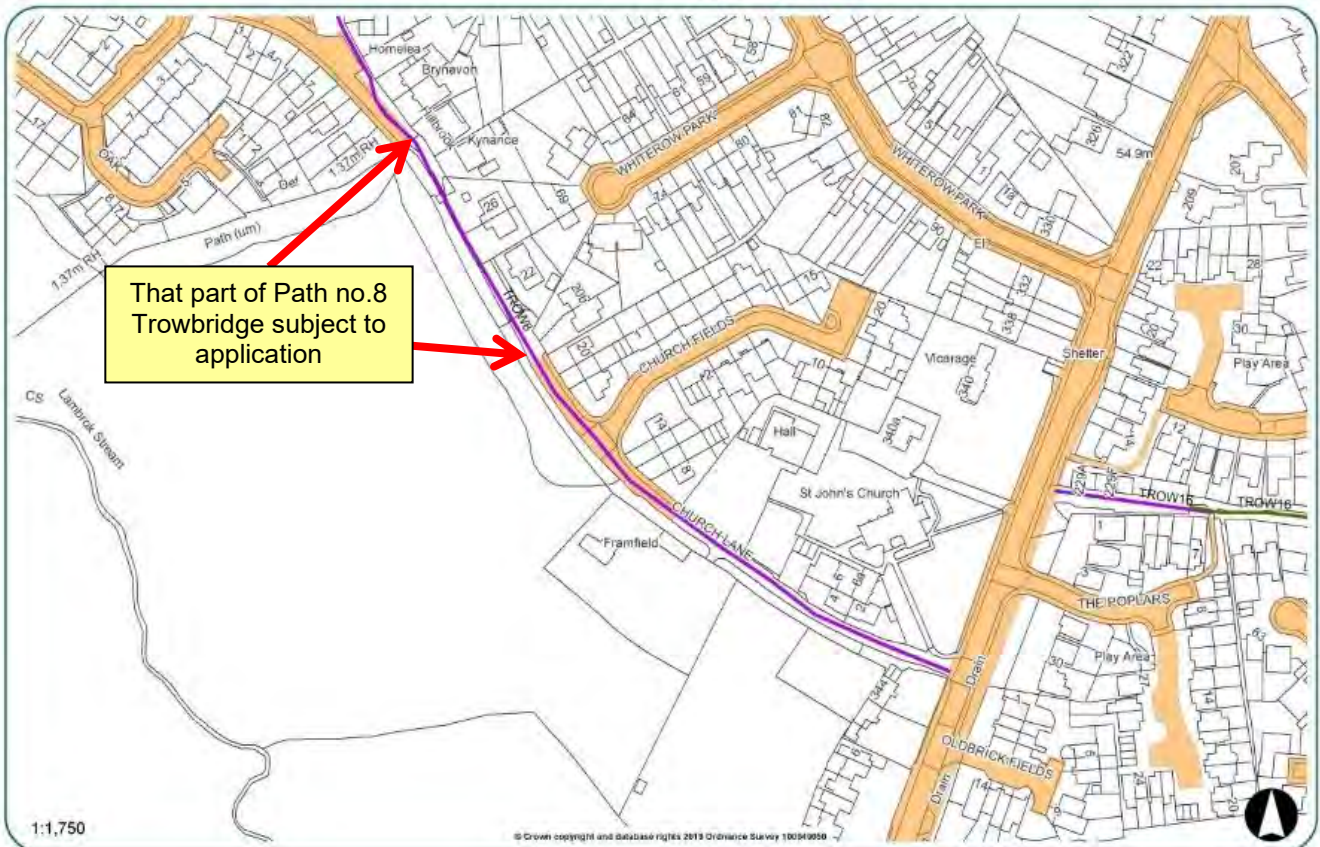
This title is dealt with by HM Land Registry, Wiltshire Office.

**Extract from working copy of definitive map and statement of public rights of way including highway maintainable at the public expense (coloured orange)**

*Plan not to scale*



**Footpath no.8 Trowbridge - Working Copy of Definitive Map of Public Rights of Way and Highway Records**



*Please note – The roads, footways and verges, shown coloured orange are recorded as highways maintainable at the public expense. The extent of publicly maintainable highway shown on the plan is intended to be indicative only. If a road, footpath or footway is not highway, there may be no right to use it.*

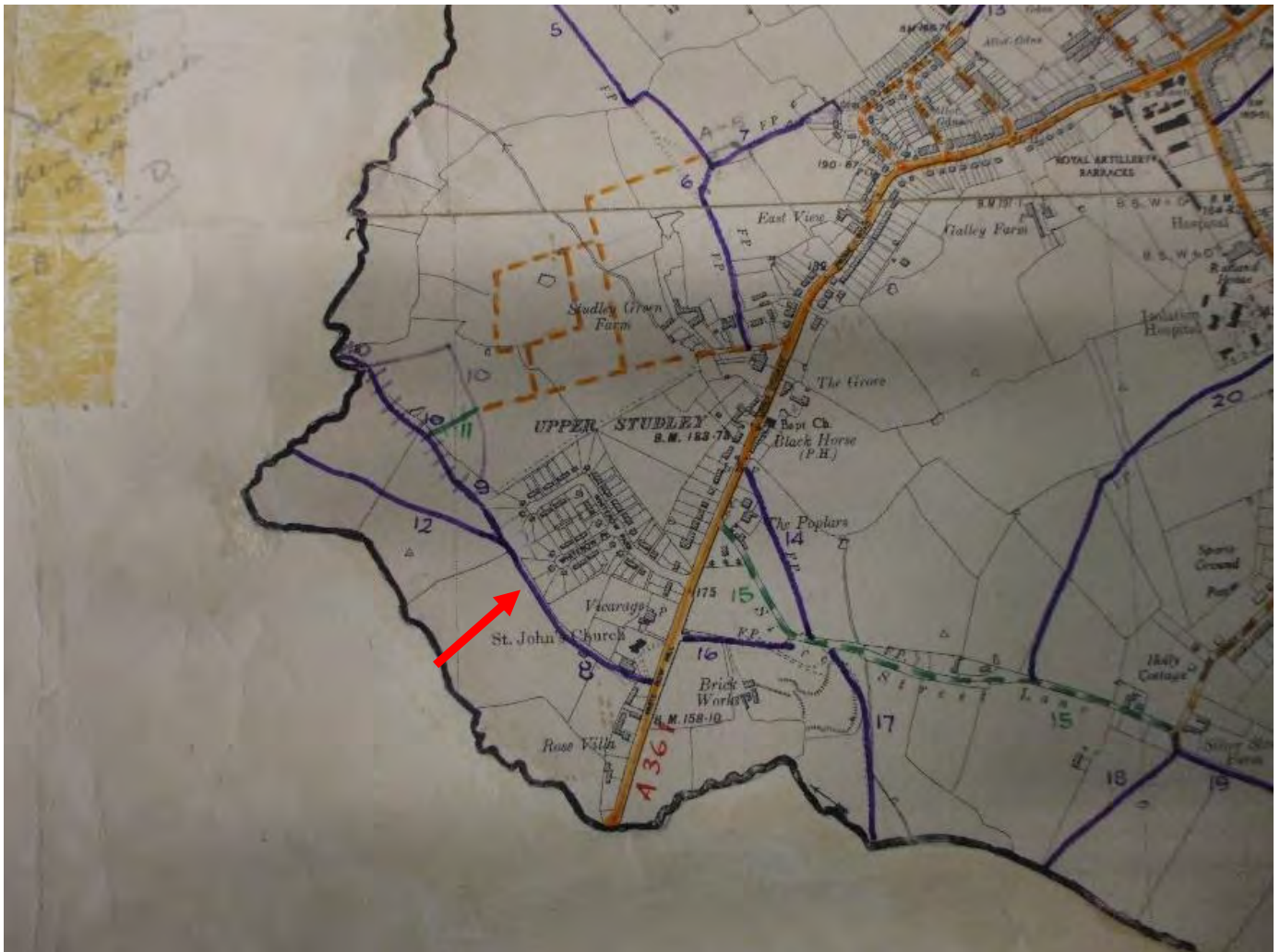
Trowbridge	8	FOOTPATH. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west across a length of Church Lane to its junction with path No.9. Approximate length 218 m.	relevant date 23rd December 1991
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*Trowbridge 8 Definitive Statement – note that there is no recorded width for Footpath no.8 (Church Lane)*



**Extract from Trowbridge Urban District Council Definitive Map 1953**

*Plan not to scale*



*Trowbridge Urban District Definitive Map 1953*

**Decision Report Wildlife and Countryside Act 1981 – Section 53**

**Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic**

**Appendix 3 – Aerial Photographs**

*Not to scale*



*2001 aerial photograph (properties at Acorn Meadow appear to be under construction)*



*2005/06 aerial photograph (note the driveway of the property Kynance which is orientated north-westwards towards Acorn Meadow, not southward on Church Lane towards Frome Road)*



*2014 aerial photograph (note the properties 24 and 26 Church Lane, built in 2011)*

**Decision Report Wildlife and Countryside Act 1981 – Section 53**

**Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic**

**Appendix 4 - Photographs**



Junction of Church Lane with Frome Road. Note the sign “Church Lane leading to Church Fields”, there is no mention of Church Lane as a through route to Acorn Meadow and Studley Green. There is also a “No Through Road” traffic sign located at this junction. Opposite Church Lane on Frome Road there is a road sign pointing to “St Johns Church Hall”. The treatment of Church Lane as a no through road for the public, access only to the Church Hall and Church Fields, not including [REDACTED], consistent with the Highway Authority’s consideration of Church Lane as a “Private Street”. This section of Church Lane is unadopted.

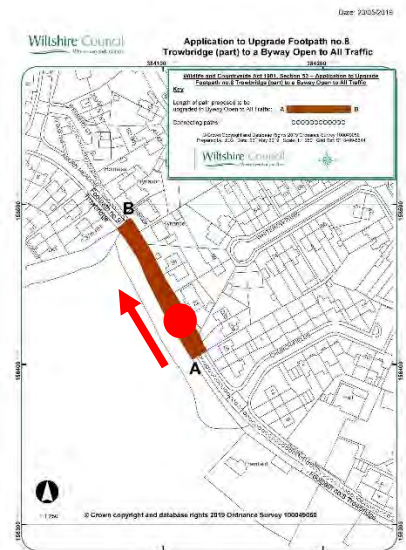
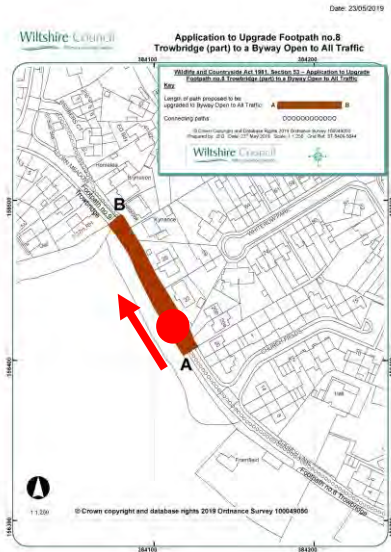




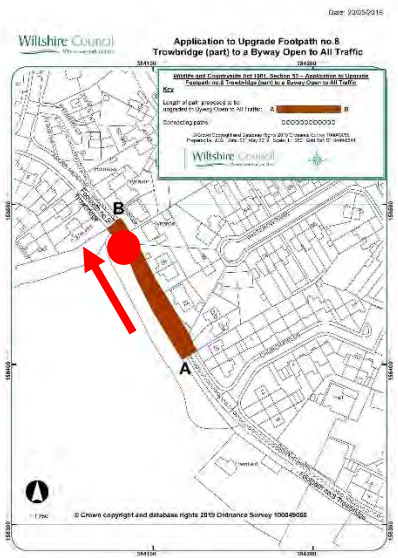
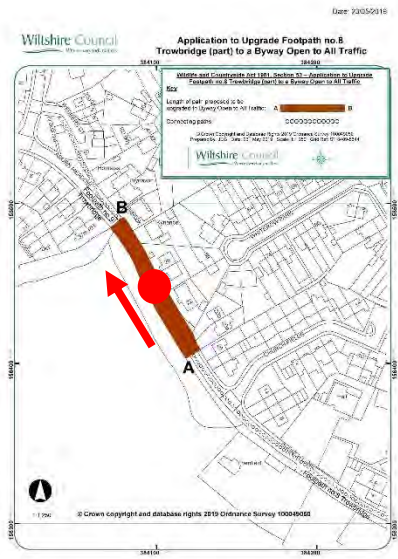






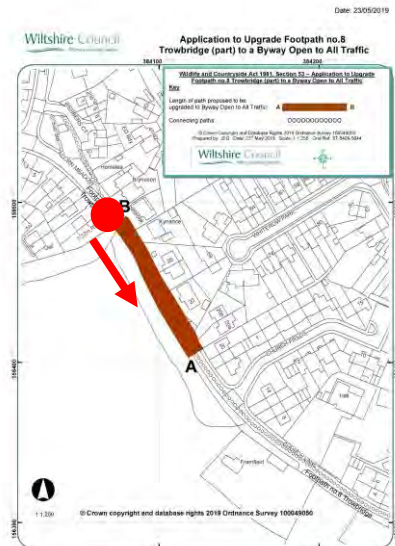








2013



Note from the photographs:

- Mature trees in the western boundary of Church Lane suggesting that this is the original boundary of the lane, as per OS mapping.
- A change in surface of the lane where the adopted section ends.
- Another change in surface of the lane at 22 and 24 Church Lane.
- Services provided in the highway, i.e. water/sewer; telegraph poles; lighting (adopted section).
- Footway provided on eastern side of Church Lane on adopted section only.
- Sign located opposite Church Fields entrance advising vehicular users that access to properties at the north end of Church Lane is via Lambrok Road and Acorn Meadow (not via Church Lane), has been pushed over and is lying in the verge (October 2020).

## Decision Report

### Wildlife and Countryside Act 1981 – Section 53

#### Application to Upgrade Footpath no.8 Trowbridge, Church Lane, to a Byway Open to All Traffic (Part)

### Appendix 5 – Objections and Representations at Initial Consultation

#### 1) Mr Roy Pegrum – correspondence dated 5<sup>th</sup> September 2018 (pre-initial consultation):

*“I wish to comment on the application made by the residents of Kynance to modify the access from Church Lane to Acorn Meadow.*

- If a 5m wide extension of the BOAT of Church Lane were granted with associated constriction moved from their current position northwest towards the end of Acorn Meadows this would increase traffic in Church Lane by adding the residents and associated deliveries of two additional dwellings to the existing exit on to the Frome road with its restricted sight lines.*
- With the best will in the world the likely hood of coordinating the remove of the existing arrangement with the erection of any new bollards etc. required by a ‘restricted byway’ (or extended BOAT) is low. This could leave Church Lane open to use as temporary through road until any new measures are installed.*
- I have resided in Church Lane for 24 years and the measures installed to prevent through traffic have always been exactly where they currently exist and not at the end of Acorn Meadows. As far as I am aware Kynance and the adjacent residence to the northwest have never had vehicle access to Church Lane in that time and I see no reason; historically or otherwise; for this to chance.*

*I would be grateful if you would keep me informed regarding how this Application for Modification progresses.”*

**2) Rachel Hunt – correspondence dated 27<sup>th</sup> September 2018 (pre-initial consultation):**

*“Objection to an application by Andrew May and Michelle Dunnes of Kynance, dated 30<sup>th</sup> August in respect of the proposed modification of Church Lane by way of adding byway open to all traffic leading from Church Lane to Acorn Meadow outside the driveway of 20a Church Lane, grid reference ST 8411556422.*”

*I object to the proposed opening of Church Lane to vehicular and other traffic on the following grounds:*

**1. Contradiction to Wiltshire Council’s existing strategy regarding Church Lane in the SHLAA**

*In Wiltshire Councils’ Housing Strategy it clearly stated that access for any new housing on the fields behind Church Lane would not be granted through Church Lane as it would cause [sic] excessive traffic on what is effectively a one way lane. If this is the council’s strategy for a potential 45 new houses, then it must also be the strategy for the whole of Studley Green (hundreds of houses).*

**2. Congestion**

*If the application was allowed, this would open up a rat run between Broadmead (and therefore Bradford on Avon) and the A361. Church Lane is a very narrow unadopted road which at best allows for single lane traffic. It could never be suitable for large volumes of traffic.*

**3. The Environment**

*Church Lane and the adjacent fields has been recognised as being a corridor for the European protected species of Bechstein Bats. The lane offer [sic] only minimal lighting and noise pollution which allows safe passage for these creatures. Opening up the lane to Studley Green would cause irrevocable damage to the environment.*

#### **4. Safety**

*As mentioned above the land is a single track, unmaintained leading to a small gate which is solely used by local residents and access to the church car park. The sides of the road are soft and bordered by a ditch and residential walls. It is also used by dog walkers and pedestrians wishing to access the A361 from Studley Green. Increased traffic would inevitably lead to accidents involving both pedestrians and vehicles. Church Lane is under no circumstances suitable to take any additional volume of traffic from the large housing estates on the other side of Acorn Meadow.*

*I would be most grateful if you could take these objections into account when making any decisions. Please do keep me informed of any further information relating to this application.”*

#### **3) Anna Evans-Wylie – correspondence dated 21<sup>st</sup> September 2018 (pre initial-consultation):**

*“Objection to an application by Andrew May and Michelle Dunne of Kynance, dated 30<sup>th</sup> August 2018 in respect of the proposed modification of Church Lane by way of adding byway open to all traffic leading from Church Lane to Acorn Meadow outside the driveway of 20a Church Lane, grid reference: ST8411556422*

*I object to the proposed opening of Church to vehicular and other traffic on the following grounds:*

##### **1. Congestion**

*Church Lane is a very narrow unadopted road which at best allows for single-line traffic. It is not well maintained and poorly lit. Even the current level of traffic is problematic when for example there is a church service at St John’s and cars have to queue up in order to pass one way or the other. I can’t possibly imagine what the congestion would be like if vehicles were able to travel between the very large estate on the side of Acorn Meadow and*

beyond, and Frome Road. The volume of traffic would be well beyond the capacity of a little country lane that Church Lane is.

## 2. Safety

*I've mentioned the narrowness and lack of adequate lighting along Church Lane. The sides of the road are soft and unenforced on the one side and on the other side there are residential walls and the border of the cemetery, with absolutely no room for widening of the road. In peak hour traffic early in the morning or in the evening, especially in winter, the accidents would be numerous. There is also the question of poor visibility ion the junction between Church Lane and Frome Road. This was the reason why even the developers proposing housing development on the south side of Church Lane decided against using Church Lane as an access road and elected to build another road for the new estate further down Frome Road. Without some serious widening and upgrading of Church Lane which would involve adopting the road by the Council and investing in adjacent land, Church Lane is under no circumstances suitable to take on any additional volume of traffic from the large housing estates around Acorn Meadow.*

## 3. Protected Wildlife

*I have already pointed out that Church Lane is poorly lit. This is conducive to a large population of Bechstein's Bats who are proven to forage in the fields adjacent to the road. Bringing traffic lights and street lamps to the road would put the future of these protected animals in jeopardy.*

*I look forward to hearing from you regarding your decision on the outcome of the application my objection related to."*

## 4) Steve Wylie – Correspondence dated 23<sup>rd</sup> September 2018 (pre-initial consultation):

**"Objection to Application dated 30<sup>th</sup> August 2018 by Andrew May and Michelle Dunne of [REDACTED] Church Lane, Trowbridge BA140 [REDACTED] to alter**



**the right of way on Church Lane between Grid references ST 84084 56477 to ST 84115 56422 to that of a byway open to all traffic BOAT**

*I wish to object to this proposal in the strongest terms for a number of reasons:*

- 1) ***Church Lane is unsuitable to be opened up to additional motorised traffic.*** Church Lane is a narrow country lane established in the middle of the nineteenth century to serve St Johns Church. The main motorised traffic on Church Lane is church users and residents of Church Fields – the small dead-end close just past the church housing just 20 dwellings. Church Lane is an unadopted land, quite rural in nature and overlooking Southwick Country Park. Being unadopted the highway is not maintained, has cracks and potholes, has a considerable camber in places, there are pipes and drains near the surface of the highway, and there is minimal street lighting. Given the era when the lane was constructed (before motor vehicles) the lane is narrow, only single lane width, and owing to the presence of a number of Listed Buildings on both sides of the lane it is not possible to widen the road to the width necessary to meet modern day planning standards for access roads.

*If the application was approved Church Lane would become a access route for the hundreds of dwellings in the Lambrok Road to Westfield Road area, particularly for anyone wanting to join Frome Road A361 to head south. As well as all the residential traffic the road would be available to all the business traffic serving those addresses including home deliveries like supermarket vans, construction/DIY chain lorries, refuse vehicles, home removal lorries, plumbers, electricians, builders vehicles, Post Office vans and emergency vehicles. Church Lane could not cope with such large/heavy vehicles not the additional volumes of motorised traffic.*

- 2) ***The junction of Church Lane into Frome Road A361 is unsuitable for more traffic.*** Church lane joins the A361 Frome Road at the top of the notorious Firs Hill. The junction is narrow and as stated above the width here is restricted by Listed Properties on either side of the junction so there is no scope for widening the junction. Visibility is poor and it is difficult to drive out of

*Church Lane onto Frome Road which is not helped by the volume and speed of traffic travelling on the A361, and is further complicated by traffic entering and leaving the two opposite junctions of The Poplars and Oldbrick Fields.*

*There have been a number of road accidents on Firs Hill in the past including the fatal accident on 18<sup>th</sup> January 2015. Bringing more traffic to this junction is only likely to lead to more accidents and casualties.*

*The Wiltshire Housing Site Allocation Plan WHSAP includes a proposal to develop a site immediately south of Church lane – site number 1021. The site proposals are restricted to a maximum of 45 homes due to a variety of factors, one of them being motorised traffic. Wiltshire Council have deemed Church Lane to be too narrow and the exit onto the A361 as too dangerous. Given the narrow width and poor visibility Church Lane will not be considered as an access route for potentially 45 houses and a new site entrance will be considered further down the A361 if the development is to proceed. Having made the decision under the WHSAP that Church Lane is unsuitable as a route for up to 45 houses it would be contradictory and highly irregular for Wiltshire Council to now decide to open up Church Lane for potentially hundreds of existing local residential and business vehicles.*

- 3) Opening Church Lane as a BOAT would put at risk the safety of the many pedestrians and cyclists who currently use the lane.** *Given Church lane is currently a quiet and safe land many people walk and cycle along it, to and from the church and also just because it is a pleasant and quiet lane. The many pedestrians as well as the cyclists include elderly people enjoying the view to Southwick Country Park, families with pushchairs, wheelchair users, Guides and Brownies, dog walkers, the occasional horse and rides from the adjacent paddocks and others. These people are able to use the land in relative safety despite the lane being narrow, having no pavement, and with limited street lighting because there is a limited volume of mainly light residential traffic and because Church lane is a no-through road. This means that traffic speeds are kept low and local drivers know to watch out for pedestrians on the road. If Church Lane was opened up to all and sundry*

*unfamiliar drivers and inevitably higher traffic speeds would mean the risk of accidents and injuries to pedestrians and cyclists would increase, and/or pedestrians and cyclists would simply no longer be able to enjoy this route – as people have done before them for generations.”*

**5) Mr Roy Pegrum – correspondence dated 6<sup>th</sup> June 2019:**

*“I have resided at the above address [Church Lane] since August 1994 at no time since then have four wheeled vehicles been able to pass between Acorn Meadows to the north and Church Lane to the south. This was prevented initially by timber bollards placed south of ‘Kynance’ and another set north of 22 Church Lane. These allowed the passage of pedestrian’s, cyclists and horse riders but were too narrow for any four wheeled vehicles. More recently; since the construction of the 24/26 Church Lane; a staggered (chicane) barrier was erected north of 26 Church Lane this has prevented vehicular access between Acorn Meadows and Church Lane but has permitted vehicular access northward up Church Lane as far as no 26.*

*I therefore comment as follows on the Exceptions to subsection 67(2) for the last 25 years.*

- a) Through access has been by walkers cyclists and horse-riders only, no motor vehicles at all.*
- b) No maintenance has ever been carried out at public expense to keep any access free.*
- c) Part access was created to permit vehicular access to the newly constructed 24 and 26 Church Lane by no through access.*
- d) No road construction has ever taken place.*

*Regrettably I have no documentation of photographs to support any of the aforementioned but I trust that the information provided is useful.”*

**6) Trowbridge Town Council – E-mail correspondence dated 14<sup>th</sup> June 2019:**

*“The town council considered this application at a meeting of the Town Development committee and resolved to object to the proposal.*

*None of the councillors is aware of any evidence of vehicular traffic using the entirety of this section of footpath nor of public vehicles having access along parts of the footpath, except those in recent years who have gained access from one end to properties situated alongside the footpath.”*

**7) M T Reed – Correspondence dated 9<sup>th</sup> May 2019:**

*“I am about to go away for the next week and this reply is very much my initial thoughts and findings. On my return I will provide you with a more detailed and considered response. With this in mind a more precise description of the byway’s location would be helpful.*

*At the time of purchasing the property it was not made apparent by either the owner/estate agent or Solicitor that the upgrading of the footpath would become an issue in the future. If it had been I would not have gone ahead with the house purchase.*

*The pros and cons of the application that immediately come to mind are:-*

*a) Pros – nil*

*b) Cons –*

*(1) detrimental impact on the selling prices of houses in Church Lane, and in particular Nos. 24 & 26.*

*(2) passing of traffic that did not exist before*

*(3) traffic noise*

*(4) loss of privacy*

*(5) increase in traffic queuing on the Frome Rd caused by volume of cars/lorries slowing down to enter Church Lane.*

*(6) parking, turning and delivery problems caused by reduced driveway at Nos.24 & 26.*

*(7) safety issues*

*(8) drainage problems*

*(9) costs involved to satisfy the selfish requirements of one household.*

*Nobody in Church Lane supports the application because of the many downsides listed above. Apparently its original aim was to enable the proposer's wife to reach their property without having to drive through the council estate, an experience she found unbecoming, despite a driving time from Frome Rd of only 5 minutes.*

*Given this overwhelming rejection the proposer is now attempting to gain the backing of Council tenants by advocating for Church Lane to become accessible to all of them. To this end he has been putting posters on fences and gates etc, an action that is surely illegal given some of the literature is of Council business. It is important that nobody is fooled into thinking this action is altruistically motivated. On the contrary, it is solely for selfish reasons, and if implemented will significantly downgrade the quality of life currently experience by Church Lane residents.*

*The recovery of expenses incurred by some fighting the application has yet to be considered. As has the involvement by the local MP and press, in the event of an unfavourable outcome.”*

**8) Mr C Knight – correspondence dated 14<sup>th</sup> June 2019:**

*“I was brought up on Studley Green Estate in 1953 my earliest recollections would be from around seven years of age so from 1960 on, I have lived in Trowbridge all my life moving to Church Lane around 1979.*

*During these times to present day stretching approx. 59 years I have never seen the area in question used as a byway for vehicles it has always been footpath access only.*

*There were always white posts installed Acorn Meadows end and by No 22 Church Lane across the land from the footpath, as developments occurred the white posts at the Acorn Meadow end were pushed further up the lane but remained to stop any vehicles using the land.*

*The land in question remained heavily overgrown for many of these years.*

*The land only became open to traffic when a developer built nos 24 + 26 at the bottom Acorn Meadows end, initially planning permission gave access from Studley Green estate only.*

*The developer managed to have this overturned and access was via Church Lane.*

*This open to all traffic never existed until the Council gave this permission for access.*

*I have spoken to my brother Vaughan Knight who like me has lived on Studley Green estate for most of his life he lives at ■ Lambrock Road and he agrees with my recollections that this has never been open to traffic as he is some nine years older this extends to over 60 years our memories of Church Lane.”*

**9) Felicity Gilmour – Correspondence dated 8<sup>th</sup> July 2019:**

*“I am writing to express concern at the above application to upgrade Path no.8 (part) to a BOAT.*

*I have lived at the above address [Church Lane] for over 31 years (since February 1988) and there was never any vehicular access beyond the entrance to the drive of no.22 until the construction of numbers 24 and 26 Church Lane in 2011.*

*Up until that time, there were posts in place just beyond the entrance to no.22 which as far as I can remember were lockable and only removed to allow the council to cut the hedge/verge back to maintain the footpath. These posts can clearly be seen if you do a search on Google Street View for Church Lane. The image is dated May 2009. This was the state of the footpath up until 2011, therefore covering your key dates of 2000 – 2006.”*

**10) Trevor and Shelley McGrath – correspondence dated 11<sup>th</sup> July 2019:**

*“We would like to object in the strongest terms to the application to change Path No.8 at Church Lane, Trowbridge into an Open Byway for all traffic. Clearly such a move will have a detrimental impact on everyone living in*

*Church Lane, become a real and present danger to all who walk or cycle this quite, safe lane. The path is used daily by children and adults going to and from school or work and weekend walkers particularly enjoy this route. Enclosed with this letter are some photographs of this lane and an aerial photo taken before the development of the housing estate at Studley Green. The former show the bollards that unambiguously prevented the lane from being used by any traffic other than pedestrians or horses. These same bollards, we believe, are marked on OS maps. The photos show no sign of any wheeled vehicle having disturbed the grass verge or the snowfall. The aerial photo indicates that the lane simply connected to another footpath that presumably led to Frome Road.*

*For your information we enclose an email sent by a lifetime resident of this area who used the land more or less his whole life and confirms that is [it] has never been open to traffic of any kind. This is repeated by any number of local people who emphatically state the lane passed where the bollards were fixed was never open to either carts or cars. For a long period in the 1980s it was so overgrown that it would have been difficult to get anything down it. This situation would never have been allowed to arise if it was an open byway for traffic. The remnants of dozens of trees can still be found in the front garden of No22 indicating that the lane was only ever a footpath. Many others no doubt will reinforce these facts in other submissions.*

*The negative social consequences of opening Church Lane as a new byway cannot be overstated. Traffic movement after 5pm is virtually non-existent and the lane is little used during the day by other than local residents and that is minimal. The peaceful, and above all safe, environment now enjoyed by residents of Church Lane and the pedestrians, cyclists, school children and runners is under threat for reason that most will consider to be blatant self-interest. This is just the first move in the eventual aim of opening Church Lane to through traffic from the adjacent estate, creating a "rat-run" for the convenience of car drivers who want a faster route to Frome Road."*

- 11) E-mail referred to above, enclosed with correspondence from Mr and Mrs McGrath, e-mail correspondence dated 28<sup>th</sup> June 2019 from Mr Nigel Cathrew:**

*“To whom it may concern,*

*I have until recently lived in St Johns Crescent all my life (from 1965) during this period of time there has never been any vehicle access through Church Lane to Lambrok road. The access has only ever been for pedestrians and bicycles. There has always been posts or barrier of some description in place to prevent any other vehicle access.*

*I think it is obvious to see that if this was opened to have vehicle right of way, the route would immediately become a “Rat Run” from Frome Road along Lambrok Road and on to Wingfield Road (and vice versa). This would have a serious detrimental impact on the safety of residents in this area. The entrance to and from Church Lane on to Frome Road is only suitable for light residential traffic.”*

- 12) S J Wylie – Correspondence dated 8<sup>th</sup> July 2019:**

*“Further evidence regarding public use of the route in question.*

*St John’s Church was dedicated in 1854. It was built for the workers (labourers) in the brick fields. A narrow track was provided to the south of the church providing access to visitors on foot or cart to the grounds and graveyards surrounding the church. This modest access-way in time became known as Church Lane, as its purpose was evidently to serve the church.*

*Church Lane was never intended to be a public highway. This rural lane overlooking Southwick Country Park remains to this day an unadopted route, its upkeep remaining the responsibility of St John’s Church.*

*In my time here, Church Lane (footpath No 8) has been used mostly by pedestrians, runners, dog walkers, child and adult cyclists, parents with prams and pushchairs, as well as a significant number of wheelchair users as there are nearby homes for people with disabilities. Disabled groups also regularly*



*use the church hall on Church Lane. During the last 3 years horses from the paddocks on Church Lane have also been ridden along the lane as it is a quiet route that links to other nearby areas of countryside.*

*The other main users of Church Lane are visitors to St John's Church for the Sunday services, weddings and funerals as well as groups using the church hall during weekdays and evenings. Individuals and groups of children such as The Brownies, and those with disabilities and their helpers frequently walk from the church hall along the quiet lane and into the countryside or elsewhere on various activities. There are little clusters of motorised vehicle use on Church Lane at the times of events interspersed by long periods of quiet when the lane is inhabited by pedestrians and the local wildlife.*

*Churchfields was built around 1980 – a close of some 20 dwellings off Church Lane just west of St John's Church. This brought an increased volume of motor vehicles into Church Lane, and with the subsequent incidence of one or two-car families becoming the norm the level of conflict between vehicles and pedestrians has increased.*

*I strongly object to Church Lane being opened up to Acorn Meadow as a through road as this would seriously increase the danger to all existing users of the lane. The accident risk at the hazardous blind junction of Church Lane with the A361 Frome Road would also sky-rocket if Church Lane became a through road."*

**13) Wiltshire Bridleways Association – Correspondence dated 10<sup>th</sup> July 2019:**

*"Thank you for allowing Wiltshire Bridleways Association to have sight of this application for consideration.*

*The committee of Wiltshire Bridleways Association have no objection to raise in respect of this application."*

**14) Trevor and Shelley McGrath – Correspondence dated 31<sup>st</sup> July 2019:**

*“Enclosed are two documents (marked A&B) from our deeds to [REDACTED] Church Lane that we believe will be useful.*

*The photo is of a sign at the entrance to Church Fields directing traffic away from Church Lane, specifically for access to 4 houses via Lambrok Road, off Acorn Meadow, one of which is [REDACTED].*

*We would appreciate your consideration of the following questions:*

- (1) The photo submitted by the applicant (referred to now as A) purports to show a bollard which could be removed to allow vehicular access to Church Lane. This appears to be a unique memory. If this was the case, A would presumably have had permission from local authority to vary the use of the bollards as a barrier against vehicles and been granted exceptional leave to do so. Where is the documentation giving A or anyone else permission to remove a barrier specifically placed to prevent vehicles using the Lane, then using it for that purpose, when was the permission sought, who gave consent and on what grounds of exceptionality.*
- (2) There are comments on the survey forms concerning the dilapidated state of footpath 8, etc. While a matter of concern what relevance are they to the issue of vehicular access?*
- (3) It appears that out of 59 pieces if [sic] “evidence” submitted only 4 support the claim that Church Lane was ever open to vehicles. These are A, A’s live-in partner, mother and solicitor. What purpose do the other submissions serve other than to disprove the assertion that Church Lane was open to vehicles?”*

**15) Goughs Solicitors – Correspondence dated 31<sup>st</sup> July 2019:**

*“Thank you for providing the bundle of evidence submitted by Mr May and Miss Dunne in their application to upgrade path no.8 Trowbridge to a Byway Open to All Traffic, and for allowing an extension to the consultation period.*

*I have considered that evidence and now enclose the following documents in support of my client, Stephen Coleman’s, objection to the above application:*

1. *Witness Statement of Stephen Coleman dated 30<sup>th</sup> July 2019.*
2. *Photographs referred to in the above statement.*
3. *Statements from the following residents:*
  - 1) *S.Eddleston of [REDACTED] Church Lane.*
  - 2) *S.J.Wylie of [REDACTED] Church Lane.*
  - 3) *Anna Evans-Wylie of [REDACTED] Church Lane.*
  - 4) *Ingrid Figueirado of [REDACTED] Church Lane.*
  - 5) *Edward Figueirado of [REDACTED] Church Lane.*
  - 6) *S.Brewer of [REDACTED] Church Lane.*
  - 7) *Clive Knight of [REDACTED] Church Lane.*
  - 8) *Felicity Gilmour of [REDACTED] Church Lane.*
  - 9) *P.Marchant of [REDACTED] Church Lane.*
  - 10) *C Harrington of [REDACTED] Church Lane.*
  - 11) *Steven Tripp of [REDACTED] Church Lane.*
  - 12) *Susan Tripp of [REDACTED] Church Lane.*
  - 13) *T. and S. McGrath of [REDACTED] Church Lane.*
  - 14) *Michael Thomas Reed of [REDACTED] Church Lane.*
  - 15) *Roy Pegrum of [REDACTED] Church Lane.*
  - 16) *RM Hunt of [REDACTED] Frome Road.*
  - 17) *Daniel Brown of [REDACTED] Churchfields.*
  - 18) *J.J. Brown of [REDACTED] Churchfields.*
  - 19) *S.Foley of [REDACTED] Churchfields.*
  - 20) *M. Hillier of [REDACTED] Churchfields.*
  - 21) *Steven Ball of [REDACTED] Churchfields.*
  - 22) *Derek Major of [REDACTED] Churchfields.*

23)G Robinson of ■ Churchfields.

24)D.M. Perkins of ■ Churchfields.

*I should be grateful if you would let me know when an investigating officer is appointed, when a decision is made and the reasoning for that decision.”*

*“Witness Statement of Stephen Alfred Coleman – ■ Church Lane,  
Trowbridge*

1. *My name is Stephen Alfred Coleman and I live at ■ Church Lane, Trowbridge, Wiltshire, BA14 0■. I purchased the above property with my late wife in February 2013 not long after it was constructed.*
  
2. *Andrew May and Michelle Dunne, the legal proprietors of ■, Church Lane, Trowbridge, BA14 0■, have made an application to modify footpath no.8 Trowbridge (“the Byway”) to a Byway Open to All Traffic. I object to that modification of the Byway because (a); the practical problems it would cause to me and to other residents of Church Lane, and (b) the absence of vehicular rights existing during the five years prior to the enactment of the Natural Environment and Rural Communities Act 2006.*

*Statutory Declaration of Jacqueline McClurg*

3. *In the evidence enclosed in his witness statement, Mr May refers to Jaqueline McClurg’s Statutory Declaration dated 1<sup>st</sup> August 2005 which states that*  
*“the [Byway] has been used by myself my family and persons visiting or calling at the Property at all times for all purposes with or without vehicles as of right without let or hindrance” since 23<sup>rd</sup> July 1999.*

*Mrs McClurg’s alleged use of the Byway only dates back six years and Mr May has not produced any other evidence that the Byway was used by vehicles between 1985 and 2005. Therefore the requirement for acquiring a right of way by prescription through uninterrupted and continuous use for 20 years has not been fulfilled and such vehicular access during the period of five years prior to May 2006 would have been unlawful.*

4. *If the public ever had vehicular access rights over the Byway before May 2006, these were unrecorded and so the enactment of the Natural Environment and Rural Communities Act 2006 has extinguished those rights.*
5. *The Council cannot create vehicular rights which have not existed so it follows that it has no authority to upgrade path no.8 Trowbridge (part) the Byway to a Byway Open to All Traffic.*

*Documentary/Historical Evidence*

6. *The additional documentary evidence submitted by Mr May only relate to the situation after 1930 and before 2006. The evidence does not add any weight to Mr May's application to upgrade the classification of the Byway because unrecorded public vehicular rights between these two dates have now been extinguished.*
7. *It is irrelevant that the Byway was once, many years ago, the only way the access Mr May's property. For the avoidance of any doubt, these documents do not provide proof that the Byway was ever used by vehicular traffic.*
8. *Mr May has also produced an undated letter written by the County Secretary & Solicitor's Officer in Trowbridge. Mr May highlighted an extract in the document which says:  
"It will be observed that Church Lane, from its junction with Whiterow Hill (Frome Road) to its junction with Lambrok Road is shown by purple hatching which indicated that there is a public right of way on foot along the whole width of Church Lane."  
There is no mention of vehicular access in this letter so it has no relevance to the modification of the Byway being considered.*
9. *Furthermore, the developer naturally sought planning permission from Wiltshire Council prior to the erection of 26 Church Lane, copies of which*

*Mr May has provided in his evidence at item 9. The permission provides that it is a condition of the development that*

*“bollards are retained and maintained for the lifetime of the development [...] 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.”*

*If the planning officer at Wiltshire Council believed the footpath was being used by vehicles then they would not have imposed that condition.*

10. *Mr May also adduced documents to try to assert that the Byway is a private street by producing a vague Private Street Works notice and a few extracts from Trowbridge Urban District Council meeting minutes. These documents are not accompanied by any plans so it is impossible to determine which section of Church Lane these relate to. In any event, the owner of the Byway is still unknown and it is now considered to be a public road over which the public has a right of way on foot.*

#### *Photographic evidence*

11. *The photographs that were provided by Mr May support the position that the Byway has not been used by vehicles. Two of these photographs show the bollards that were previously positioned to prevent vehicular traffic up the narrow footpath; it is evident that vehicular access was not permitted, or in fact possible, before or during the development of ■ and ■ Church Lane.*

12. *I enclose a photograph confirming that one of these bollards is still in place and another illustrating that the path itself has not been altered. The only significant difference is that the grass was removed and was replaced with what is now my driveway.*

#### *Witness Statements*

13. *Only four out of the 59 statements, submitted in support of the application to upgrade application to upgrade [sic] the status of the Byway to a Byway Open to All Traffic, refer to vehicular use: Andrew May, Michelle Dunne,*

*Carol May and Terence Bishop, all of whom are related parties to this application. Mr May and Miss Dunne made the application, Carol May is Mr May's mother and Mr Bishop is a solicitor who is or has been instructed by Mr May and Miss Dunne in this matter.*

14. *All four witness statements lack credibility because they are understandably partial, and in the case of Mr Bishop it is not clear how he comes to his stated knowledge as he only uses it once a year. I trust that these statements would not heavily influence the Council's decision; the rest and majority of the statements confirm, among other things, that the Byway has only ever been a footpath used by pedestrians, cyclists and horse riders.*
15. *As an example of what has been said in the witness statements:*
- (a) Robert Brice says that the Byway has been an established footpath for at least 50 years.*
  - (b) Mrs A Whelan, who has been using the Byway for at least 15 years, believes that there used to be a footpath sign at the entrance to the footpath.*
  - (c) Ella Whelan confirms that there used to be a footpath sign in this area.*
  - (d) Christopher Howell, also a resident on the estate since 1978, maintains that to his knowledge the Byway has always been a footpath.*
16. *I have also enclosed signed letters from the residents of Church Lane, and Churchfields, who all confirm that the Byway has only been used by pedestrians, cyclists and horse-riders. The residents also maintain that the Byway has never been used by vehicles.*
17. *The primary concern of the other witnesses relates to the condition of the Byway, namely the overgrowth of the foliage and the lack of lighting in the area, not to its current status. They should not be considered by the Council when considering this application.*

18. One of the main features that attracted my wife and I to ■ Church Lane was the large driveway. At present, the driveway is separated from the frequently used footpath by a 1 metre fence which has, on a number of occasions, been damaged by pedestrians using the path.

19. I enclose photographs showing the different colour panelling on the fence caused as a result of intermitted essential repairs. If the fence was removed, my driveway would be extinguished and there would be an increased risk to the security of my property and the vehicles on it.”

Statements of Residents:

*“To Wiltshire Council (Rights of Way & Countryside Team)*

*Re: Application to upgrade path no.8 Trowbridge (part) to a Byway Open to All Traffic*

*I have been living in my property below since .....and, to the best of my knowledge, the footpath shown on the attached plan, between points A and B, has only ever been used by pedestrians, cyclists and horse-riders. The footpath has never been used by motor vehicles and I would not wish it to be.*

*Signed ..... Dated.....*

*Print name .....*

*Address .....*”

Completed and signed by 24 local residents.



**Decision Report Wildlife and Countryside Act 1981 – Section 53**

**Application to Upgrade Footpath no.8 Trowbridge (part), Church Lane, to a Byway Open to all Traffic**

**Appendix 6 - Legislation**

- 1.1. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies in the determination of this application:

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

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

- 1.2. The event referred to in subsection 2, (as above), relevant to this case, is:

*“(3)(c) 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...”*

- 1.3. 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.”*

1.4. Schedule 14 of the Wildlife and Countryside Act 1981, 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 Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12, which state that “A definitive map shall be on a scale of not less than 1/25,000.”

1.5. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

*“(1) 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 been actually 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.*

*(1A) Subsection (1) –*

- (a) Is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but*
- (b) Applies in relation to the dedication of a restricted byway by virtue of use for mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.*

- (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) *Where the owner of the land over which any way as aforesaid passes-*  
(a) *has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*  
(b) *has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected,*  
*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*  
(a) *a map of the land and*  
(b) *a statement indicating what ways (if any) over the land he admits to having been dedicated as highways:*

*and, in any case in which such deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –*

- (i) within the relevant number of years from the date of the deposit, or*
- (ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section,*

*to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

*(6A) Where the land is in England-*

- (a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,*
- (b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and*
- (c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years...*

*(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).*

*(7) For the purpose of the foregoing provisions of this section, 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5), (6), (6C) and (13) above 'the appropriate council' means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsections (6),*

*(6C) and (13)) is situated or, where the land is situated in the City, the Common Council.*

*(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.*

*(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act...”*

**Decision Report**  
**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway**  
**Open to All Traffic**

**Appendix 7 – Historical Evidence Summary**

Each document is listed according to the evidential weighting awarded to that document (please see paragraph 9.2 of main report):

<b>Document</b>	<b>Trowbridge Inclosure Award (E/A 101)</b>
<b>Date</b>	1816
<b>Relevant Documents</b>	Inclosure Award Inclosure Award Map – <i>“Hilperton and Trowbridge Inclosure. The Map or Plan referred to by my Award. Y Sturge”</i>
<b>Size / Scale</b>	Map: Scale of Chains 22 Yards each = 4 Chains to 1 Inch
<b>Evidential weighting</b>	A
<b>Significance</b>	<p>Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the Manor, were redistributed amongst people having rights of common. By the 18<sup>th</sup> Century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties. Therefore, the larger landowners who wished to increase the productivity of their land, set about obtaining parliamentary authority to redistribute property rights.</p> <p>Inclosure Awards provide sound and reliable evidence where they arise from Acts of Parliament. Prior to 1801 Inclosure was dealt with by local acts for specific areas, each with its own terms and conditions. After 1801 the Inclosure Consolidation Act, <i>“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”</i> provided standard conditions for the Inclosure process, although each inclosure still required a local authorising Act alongside it which could vary the rules. The Acts gave the Inclosure Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out highways, public and private, within the parish.</p> <p>Weight can be given to routes included within Inclosure Awards as landowners had a strong influence over the inclosure process and wanted to minimise public highways over their land. Parishes also had motives to reduce the number of public highways in order to reduce repair costs as it was the duty of the parish to maintain such highways. To balance this, the public nature of the inclosure</p>

	<p>process was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.</p> <p>One of the main purposes of the Inclosure Award was to record highways.</p>
<p><b>Conclusion</b></p>	<p>That part of Path no.8 Trowbridge (Church Lane), subject to the application, is recorded on the Award Map by double broken lines, however, it is not awarded and appears to be part of an old inclosure. It is therefore not possible to determine the status of this route where it is not awarded. The adjoining route which commences at what is now the junction with Acorn Meadow, (at the northern end of that section of Path no.8 subject to the application), leading north-west, is awarded as "Private Carriage Road" No.39. The description of this way within the award is as follows:</p> <p>No.39 <i>"One other private Carriage Road twenty feet wide Numbered 39 on the said Map leading along Quar Lane to a Gate at the Northward end thereof for the use of the owners and occupiers for the time being of the old Inclosures and allotments adjoining the said Road or to which the same leads."</i></p> <p>The adjoining route leading north-east from no.39 is numbered 36 and is described as:</p> <p>No.36 <i>"One other private Carriage Road twenty feet wide numbered 36 on the said Map leading from the said Trowbridge and Frome Turnpike Road through Studley Green and the allotment No.197 to Quar Lane For the use of the owners and occupiers for the time being of the homesteads old inclosures and allotments adjoining the said Road or to which the same leads."</i></p> <p>The map shows that 36 leads through allotment 197, with the inscription "197" over the top of the lane, i.e. as part of that land.</p> <p>With regard to the maintenance of route 39 adjoining Church Lane, the Award sets out the following:</p> <p><i>"And the said Commissioners taking into consideration the charges and Expenses which may be incurred by the necessary repairs of the several private Carriage Roads, footways and Bridleways hereinbefore set out and appointed Doth hereby order and direct that ... The Road No.39 by Edward Horlock Mortimer in respect of the allotment No.198..."</i></p> <p>Allotments 196 and 198 to Edward Horlock and 197 and 199 to Elizabeth Mortimer, which adjoin route no's 36 and 39, refer to the road in the description of the allotments:</p>

	<p><i>“Unto Edward Horlock Mortimer of Trowbridge aforesaid Esquire the Six Several pieces of Land next hereinafter mentioned all situate within the Tything of Studley (that is to say)... One other piece of Land situate near Studley Green Containing thirty three perches Numbered 196 on the said Map bounded southward by the Road no.36 and on other parts by Old Inclosures of the said Edward Horlock Mortimer.”</i></p> <p><i>“No.198 All the herbage arising and growing and the sole right of Stopping and feeding in Quar Lane containing one acre one Rood and 34 Perches Numbered 198 on the said Map Subject to the Road No.39 and to such other Roads as have been heretofore used or exercised through and over the Land.”</i></p> <p><i>“Unto Elizabeth Mortimer of Trowbridge aforesaid widow the three several pieces of Land next hereinafter mentioned all situate within the said Tything of Studley (that is to say)...”</i></p> <p><i>“And all the herbage arising and growing and the sole right of Stopping and feeding in the Lane leading from Studley Green to Quar Lane containing three Roods and eleven perches Numbered 197 of the said Map subject to the Road no.36 and to the south other Roads as have been herebefore used and existed through and over the same.”</i></p> <p><i>“No.199 One other Piece of Land situate in Quar Lane containing One Rood and three perches Numbered 199 on the said Map bounded Eastward by the Road No.39 and on the other parts by Old Inclosures.”</i></p> <p>This Inclosure Award dated 1816, stems from a local Act of Parliament: <i>“An Act for inclosing Lands in the Parishes of Hilperton and Trowbridge, in the County of Wilts”</i> 12<sup>th</sup> May 1815 (local act) and the 1801 Inclosure Consolidation Act <i>“An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts”</i>.</p> <p>The local Act contains the following instructions to the Commissioners regarding the stopping up and alterations of roads:  <i>“XIII. And be it further enacted, That it shall be lawful for the said Commissioner, with the Concurrence and Order of Two Justices of the Peace for the County of Wilts, (in Manner, and subject to Appeal, as in the said recited Act is mentioned), such Justices being respectively uninterested in the said Open Common, and Parcels and Strips of Commonable and Waste Lands, to stop up and discontinue any of the Public Roads, Ways or Footpaths,</i></p>
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*within the said Parishes, or either of them, which shall be deemed unnecessary, except Turnpike Roads, and to widen, turn, or alter any of such Roads, Ways or Footpaths, as shall be deemed proper to be widened, turned or altered; and all such Public Roads as shall be stopped up or discontinued shall be deemed Part of the Lands hereby intended to be divided, allotted and inclosed, and shall be allotted to such of the Proprietors of the adjoining Lands as the said Commissioner shall think fit; and that no Person shall after the Execution of the Award turn or put, or caused to be turned or put, any Horses, Sheep, Swine, Lambs, or any other Cattle whatsoever, into any of the Roads or Ways within the said Parishes of Hilperton and Trowbridge, or either of them.”*

The Consolidation Act of 1801 contains powers for the Commissioners to set out and appoint public highways:

*“Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the inspection of all Persons concerned; as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any person who may be injured or aggrieved by the setting out of such roads to attend; and if any*

*such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgment upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the Case may require: Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice aforesaid.*

*And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road...and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Parts of the same as shall be been previously made...”*

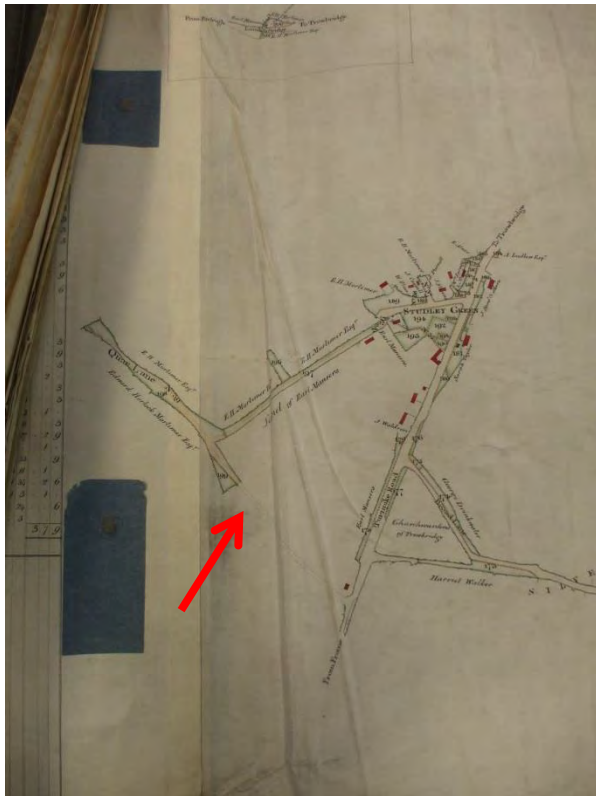
*“And be it further enacted, That after such publick and private Roads and Ways have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which not be set out as aforesaid, shall for ever be stopped up and extinguished, and shall be deemed as taken as Part of the Lands and Grounds to be*

*divided, allotted and inclosed, and shall be divided, allotted an enclosed accordingly; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that purpose on ten Day Notice, be first has and obtained...*

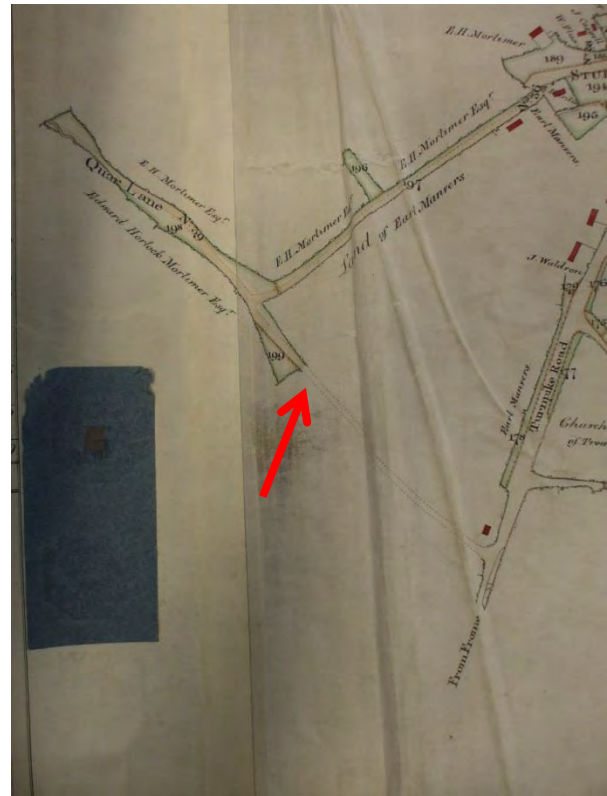
*And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of Roads, Ways and Footpaths...set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions and Determinations, as the said Commissioners shall think necessary, proper, or beneficial to the Parties; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End of that Recourse may be has thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid; and a Copy of the said Award, or any part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be*

*paid than Two-pence for every Sheet of seventy-two Words; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods and Perches, together with the names of the respective Proprietors at the Time of such Division and Allotments; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.”*

In conclusion, although the Inclosure Award does not provide direct evidence of the status of the route, the adjoining route leading north-westwards is a private carriage road, for use of the owners and occupiers of the land, which does not support “public” vehicular rights over that section of the route. If the application route does carry public vehicular rights, the Inclosure Award suggests that that right would cease at what is now the junction with Acorn Meadows and become a private vehicular right. It is more likely that Church Lane does not carry public vehicular rights, where users would need to return along the same route which they had used where they could not continue north along the private carriage road. This also supports the user evidence of vehicular use of Church Lane being for access to property only, which does not qualify as “public” vehicular use.



Trowbridge Inclosure Award (1816)



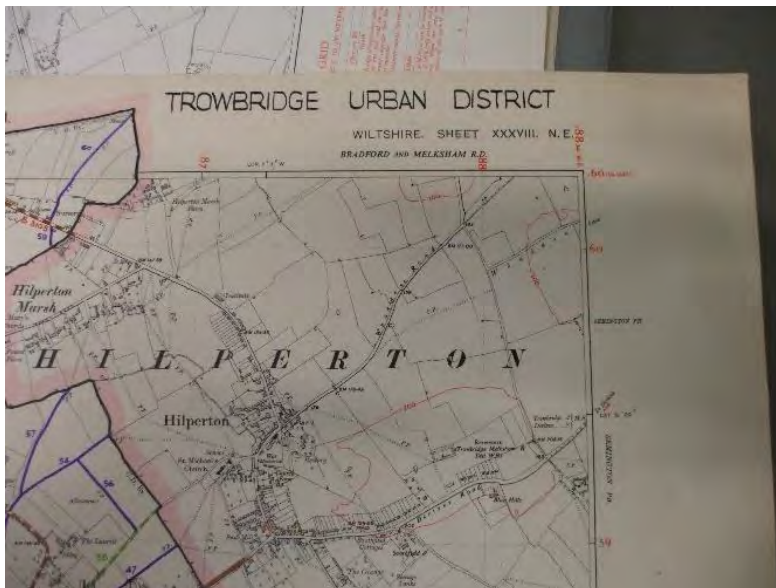
Trowbridge Inclosure Award (1816)

<b>Document</b>	<b>Definitive Map</b>
<b>Date</b>	1949
<b>Relevant Documents</b>	Claim map Claim record card Provisional Map Definitive Map
<b>Size / Scale</b>	6 inches to 1 mile
<b>Evidential weighting</b>	A
<b>Significance</b>	<p>The 1949 National Parks and Access to the Countryside Act required all Surveying Authorities to produce a definitive map and statement of public rights of way and to undertake a quinquennial review of this map.</p> <p>Following this instruction to authorities, Wiltshire County Council sent Ordnance Survey Maps to all Parish, Borough, Town and City Councils, who surveyed and recorded what they considered to be public rights of way within their areas, with an accompanying description of each path.</p> <p>The local Councils were required to convene a meeting at which the public rights of way information to be provided to Wiltshire County Council, was agreed locally. This information was to form the basis of the definitive map and</p>

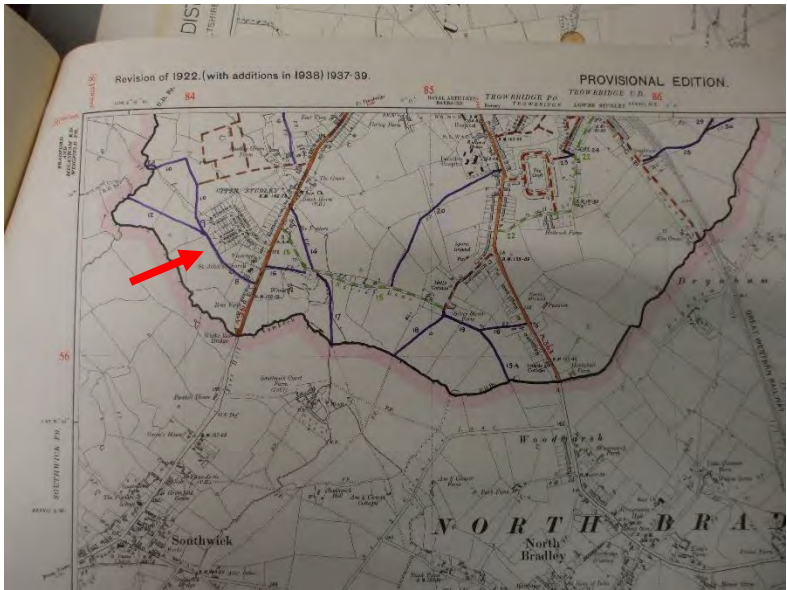
	<p>statement of public rights of way which was published and advertised between 1952 and 1953, depending upon the Rural District or Urban District area.</p> <p>Detailed guidance regarding the local Council's input into the definitive map process was issued with Circular no.81/1950 from the Ministry of Town and Country Planning – <i>“Surveys and Maps of Public Rights of Way for the purposes of PART IV of the National Parks and Access to the Countryside Act , 1949 Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Council Association and approved by the MINISTRY OF TOWN AND COUNTRY PLANNING”</i>. The Planning Inspectorates “Definitive Map Orders: Consistency Guidelines” state that the legal “presumption of regularity” applies, i.e. unless otherwise demonstrated, it should be assumed that local Council's received this guidance and complied with it in undertaking their survey and claim.</p> <p>Each stage of the process, i.e. the publication of the draft map and the provisional map was advertised and there was opportunity for comment and objection to the inclusion or non-inclusion of a path; its provisionally recorded status and route.</p>
<p><b>Conclusion</b></p>	<p>Church Lane is claimed as a footpath leading <i>“From Whiterow Hill, Frome Road, north-westerly”</i>. In the definitive statement this is changed to <i>“F.P. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west to the junction of paths Nos. 9 and 12.”</i> Approximate Length <i>“330 yards”</i>. The observations on the claim record card include <i>“Lane from Frome Road just beyond Church &amp; School – running north-westerly – hard cinder cart road 10ft.+ wide for 150 yards then deteriorated into rough deeply rutted cart track in bad condition – ends (320 yards approx..) in dilapidated field gate.”</i> It is also worth considering the comments for Footpath no's 9 and 12 which junction with Path no.8. Footpath no.9 is described as <i>“Continuation of No.8 from junction of No.8 &amp; No,12”</i>, Observations: <i>“Continuing No.8 along edge of field – ground so badly cut up by cattle and farm vehicles that footpath indistinguishable – ends in dilapidated field gate at junction with No.10”</i>. Footpath no.12 is described as <i>“Branch at junction of No.8 and No.9 north westerly into Warminster and Westbury Rural District.”</i> Observations: <i>“Footpath only slightly discernible from junction of No.8 &amp; No.9 – westerly to stream forming Urban District Boundary – across two fields through gap in dividing hedge – no means of crossing stream.”</i></p> <p>Note that use of Path no.9 by <i>“cattle and farm vehicles”</i>, has badly damaged the surface of the route and this identified</p>

use is consistent with the continuation of Church Lane as a private carriage road as set out in the Inclosure Award, for the purposes of access only to land and property, rather than use by the public with vehicles as a through route.

The provisional definitive map records the route as a Footpath, there are no objections to this and the definitive map subsequently records the route as a Footpath, (please note that the routes of paths 9, 10 and 11 are amended on the definitive map to take into account an order made by the Minister of Housing and Local Government under Section 3 of the Acquisition of Land Act 1946, dated 27<sup>th</sup> July 1953, making provision for the extinguishment of paths at Studley Green Housing Estate, Trowbridge and making provision for alternative routes).



*Trowbridge Urban District Definitive Map (Claim)*



Trowbridge Urban District Definitive Map (Claim)

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.		PATH No. 8 <small>(to correspond with No. on map)</small>	
PUBLIC RIGHT OF WAY.		PARISH OF TROWBRIDGE URBAN DISTRICT	
NAME OR SITUATION AND DESCRIPTION <small>(FOOTWAY, STEELWAY, ETC.)</small>	LENGTH	320 yds	WIDTH
From Whitecro Hill, Frome Road, north-westerly.	WHETHER FENCED OR OPEN		
	APPROXIMATE PERIOD OF UNINTERRUPTED USER —		
	YEARS FROM		
	WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL —		
NATURE OF SURFACE	DATE OF REPAIR		
STILES, GATES, FOOTBRIDGES, STEPPING STONES	WHETHER SUBJECT TO PLOUGHING		
	DATE OF SURVEY		
WHETHER DIRECTION POSTS ON WAY <small>(GIVE PARTICULARS)</small>	WHETHER SHOWN ON UNDERMENTIONED MAPS —		
No.	ORDNANCE 6" SHEET, REF.		
	INCLOSURE AWARD		
OBSERVATIONS: Lane from Frome Road just beyond Church & school - running north-westerly - hard cinder cart road 10ft. wide for 150 yards then deteriorates into rough deeply rutted cart track in bad condition - ends (320 yds approx.) in dilapidated field gate.	LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932)		
	OTHER MAPS —		

Trowbridge Urban District claim record card – Footpath no.8



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.  
**PUBLIC RIGHT OF WAY.** PATH No. 9.  
(to correspond with No. 10 map)

NAME OR SITUATION AND DESCRIPTION  
(FOOTWAY, BRIDGEWAY, ETC.)  
 Continuation of No. 8 from junction of No. 8 & No. 12.  
 ending at the junction of path No. 10.

LENGTH 2.0 m WIDTH \_\_\_\_\_

WHETHER FENCED OR OPEN \_\_\_\_\_

APPROXIMATE PERIOD OF UNINTERRUPTED USER \_\_\_\_\_  
 YEARS FROM \_\_\_\_\_

WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH  
 OR COUNTY COUNCIL \_\_\_\_\_

NATURE OF SURFACE \_\_\_\_\_

DATE OF REPAIR \_\_\_\_\_

STILES, GATES, FOOTBRIDGES, STEPPING STONES \_\_\_\_\_

WHETHER SUBJECT TO FLOUCHING \_\_\_\_\_

DATE OF SURVEY \_\_\_\_\_

WHETHER DIRECTION POSTS ON WAY  
(SEE PARTICULARS) \_\_\_\_\_

WHETHER SHOWN ON UNMENTIONED MAPS \_\_\_\_\_  
 ORDNANCE 6" SHEET, REF. \_\_\_\_\_

INCLOSURE AWARD \_\_\_\_\_

OBSERVATIONS: continuing No. 8 along edge of field - ground so badly cut up by  
 cattle and farm vehicles that footpath indistinguishable - ends in dilapidated  
 field gate at junction with No. 10.

LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF  
 THE RIGHTS OF WAY ACT, 1932) \_\_\_\_\_

OTHER MAPS \_\_\_\_\_

Trowbridge Urban District claim record card – Footpath no.9

WILTSHIRE COUNTY COUNCIL  
 TROWBRIDGE URBAN DISTRICT  
 NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV.  
 SURVEY OF RIGHTS OF WAY  
 STATEMENT REQUIRED BY SECTION 32 TO BE ANNEXED TO A DEFINITIVE MAP

The Wiltshire County Council as Surveying Authority have carried out a survey of land in their area in respect of the above mentioned district ~~area~~ to ascertain what public rights of way have been allowed to subsist, and after complying with the procedure laid down in sections 29, 30 and 31 of the act relating to the preparation and deposit of Draft and Provisional Maps and the dealing with representations, objections, appeals and disputes, have prepared a Definitive Map and statement for the above mentioned district ~~parish~~ in their area.

The relevant date for the purposes of sections 27(4) and 30(2) is the 1st day of May, 1953, and in the opinion of the Surveying Authority there subsisted on such date the public rights of way described below which are shown in the following manner on the Definitive Rights of Way Map annexed hereto :-

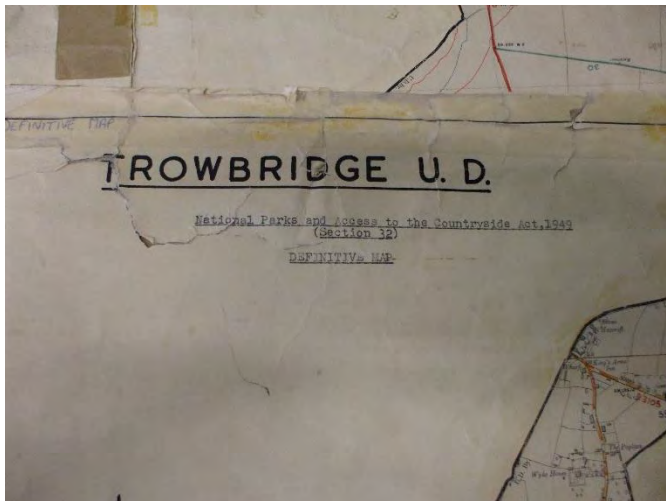
footpaths	by a purple line
bridle roads	by a green line
roads used as public paths	by a broken green line

1

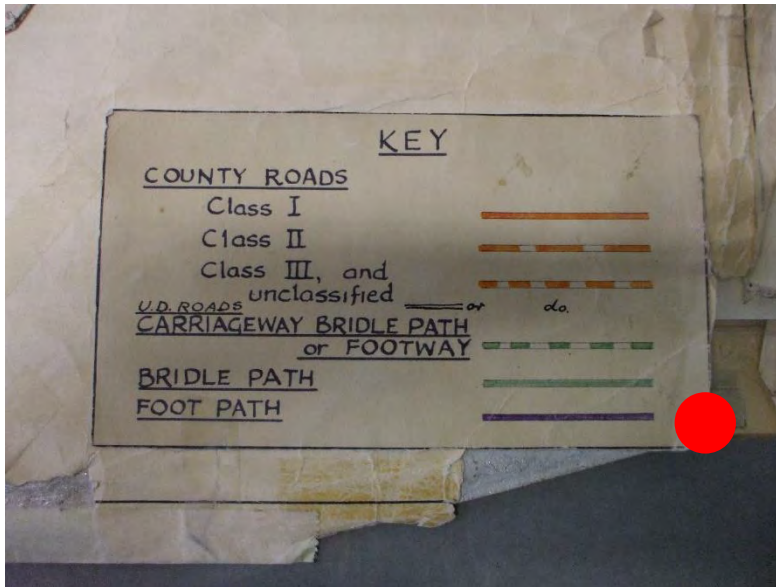
Definitive Statement Trowbridge Urban District 1953

Path No.	Description of Path	Approximate Length	Width	Limitation or conditions affecting public rights
7.	F.P. From the junction of paths Nos. 5 and 6 leading north-east to the path between the Council Houses and thence to Pitsea Avenue.	230 yards		
8.	F.P. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west to the junction of paths Nos. 9 and 12.	330 yards		
9.	F.P. From the junction of paths Nos. 8 and 12 leading north-east to its junction with path No. 10.	70 yards		
10.	F.P. From its junction with path No. 9 leading north for 285 yards then west for 180 yards to the Wingfield Parish boundary.	465 yards		
12.	F.P. From the junction of paths Nos. 8 and 9 leading north-west to the Southwick Parish boundary.	400 yards		
13.	F.P. From Pitsea Avenue leading north-east past the School to Gloucester Road.	150 yards		
14.	F.P. From Frome Road, south of the Black Horse Public House, Upper Studley, leading south-east to Silver Street Lane, path No. 15.	300 yards		

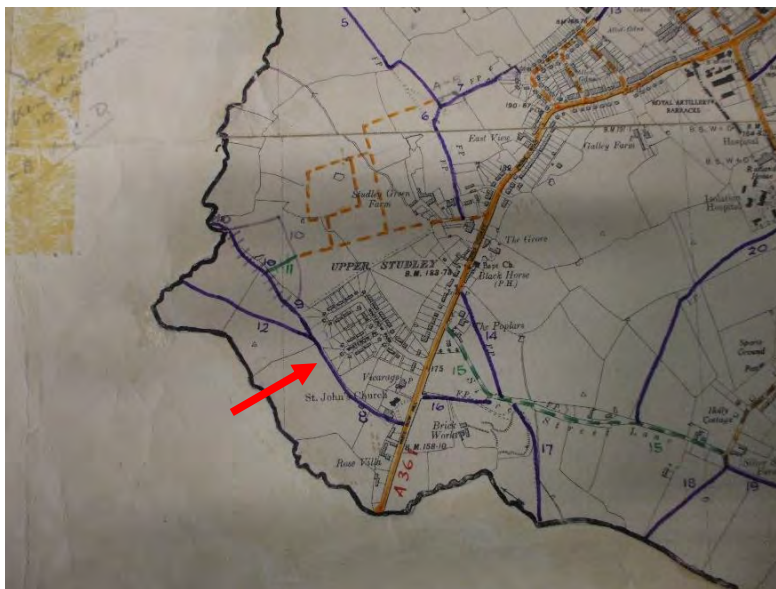
*Definitive Statement Trowbridge Urban District 1953*



*Trowbridge Urban District Definitive Map 1953*



Trowbridge Urban District Definitive Map 1953



Trowbridge Urban District Definitive Map 1953

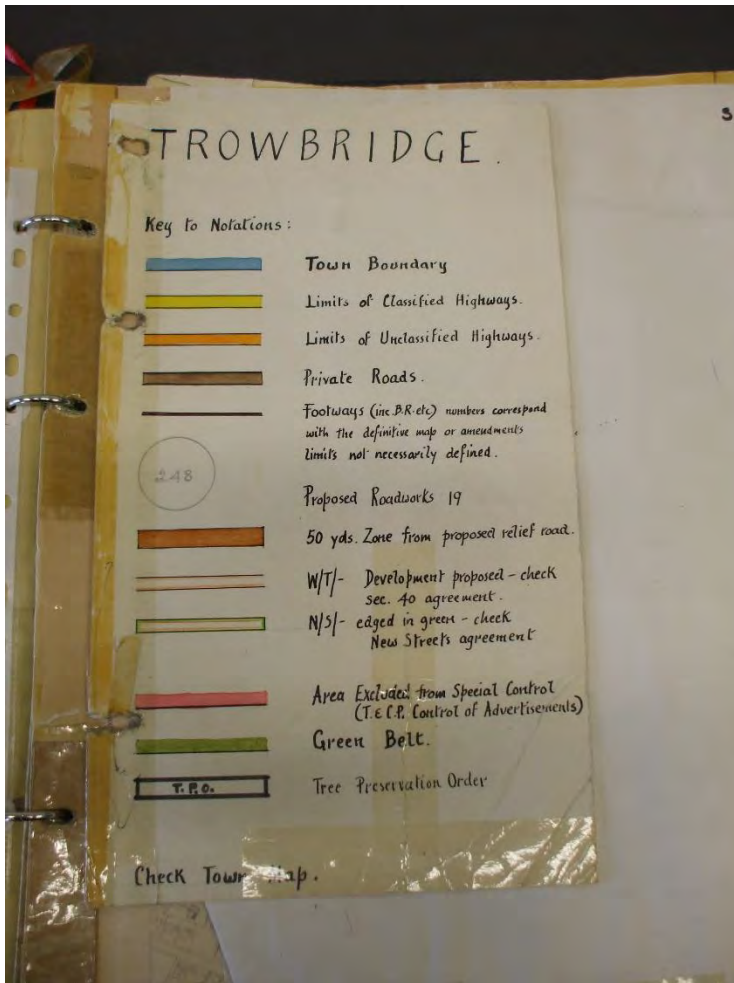
<b>Document</b>	<b>Trowbridge Highways Takeover Map</b>
<b>Date</b>	c.1974
<b>Relevant Documents</b>	Takeover Map New Map (on which changes have been recorded)
<b>Size / Scale</b>	Takeover Map - OS National Grid Series map extract drawn at 1:2,500 on which highway information is recorded.
<b>Evidential weighting</b>	B
<b>Significance</b>	Following the Local Government Act 1972, reforming local government in England and Wales on 1 <sup>st</sup> April 1974, Wiltshire County Council took on responsibility for roads

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	<p>(other than main roads), in urban districts, including Trowbridge Borough as part of the reorganisation, (responsibility for main roads already lay with the County Council and responsibility for rural roads was transferred from the Rural District Councils to the County Council under Section 29 of the Local Government Act 1929). There was no legal requirement for authorities to produce a takeover map, however, takeover maps were produced in Wiltshire and comprised of routes for which the urban district Surveyors had either a record or memory of public maintenance.</p>
<p><b>Conclusion</b></p>	<p>The route of Church Lane is consistently shown on these plans (3 versions) as a footpath, with sections of adopted highway at the central section for the development of Churchfields and at its northern end, Acorn Meadows. Church Lane in full has never become adopted highway and this suggests that there was no record of public maintenance of Church Lane as a public vehicular highway for the County Council to take on responsibility, for most of the route, as anything other than a footpath.</p>



*Highways Takeover Map c.1974*



Key to highway record map



*Highways Record c.1974*



*Current Highway record plan (Trowbridge)*

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<b>Document</b>	<b>Trowbridge Tithe Award (T/A Trowbridge)</b>
<b>Date</b>	1838
<b>Relevant Documents</b>	Tithe Apportionment Tithe Award Map - <i>“Plan of the Parish of Trowbridge in the County of Wilts”</i>
<b>Size / Scale</b>	Scale – 6 chains to 1 inch Size – 122cm x 92cm approx
<b>Evidential weighting</b>	B
<b>Significance</b>	<p>Parishioners once paid tithes to the church and its clergy in the form of payment in kind, for example grain, comprising an agreed proportion of the annual profits from cultivation and farming. This gradually began to be replaced by monetary payments and this was formally recognised by the Tithe Commutation Act of 1836, which regularised this system.</p> <p>Tithe Awards are not a primary source of evidence as the apportionments and plans were produced as an official record of all titheable areas and it was not their main purpose to record highways. However, they can provide useful supporting evidence as the existence of a highway could affect the productivity of the land and give important map orientation and plot boundary information, therefore the Commissioners had some interest in recording them.</p> <p>Additionally, the public provenance of the documents adds weight to the information recorded within them.</p> <p>The Trowbridge Tithe Award map is certified by the Tithe Commissioners and stamped as received by the Clerk of the Peace.</p>
<b>Conclusion</b>	<p>Church Lane is recorded on the map, uncoloured as the remainder of the highway network, including the claimed section. However, the continuation of the route north-westward, which was recorded as a private carriage road in the inclosure award and now forms part of Acorn Meadows, is not recorded on this plan. This suggests that there is no public through route at the north of Church Lane. The surrounding plots are as follows:</p> <p>7 – “Newland” pasture owned by Mortimer Edward Horlock  12 – “Houses and Gardens” owned by Frederick Webber  16 – “Hewitts” pasture owned by Edward Luxford and Charles Spragg  8 – “Newlands” pasture owned by Ludlow Henry Gaisford Gibbs  10 – “Paddock” arable to John Taylor</p> <p>The nature of the land to the north of what is now Church Lane and the land surrounding it as mainly pasture and arable, suggest that the route from Frome Road, to the field 7 “Newland” “pasture”, further supports Church Lane as an agricultural access to reach these fields.</p>

	<p>There is no key to this map, however, The British Parliamentary Paper XLI 405, 1837, gives guidance on how landscape features were to be indicated on Tithe maps produced under the Commutation of Tithes Act 1836. This describes a route shown by double solid lines as a “Bye or Cross Roads”, (it should be noted that Bridle Roads” and “Foot Paths” are shown by different conventions). There was no statutory requirement to follow these instructions and it is noted that Bridleways and Footpaths do not appear to be shown on the Trowbridge plan, (or at least not in the manner provided for in the Parliamentary Paper), however, the recording of the route as a “Bye or Cross Roads” would support public vehicular rights over what is now Church Lane, including the claimed route.</p> <p>In this context “cross road” is not necessarily the same as our modern understanding of this term. It would appear that the term “cross road” was first mentioned in Ogilby’s Britannia of 1675, which used the classification to distinguish secondary roads from direct/primary roads, (i.e. those originating in London). In the preface of the Brittanica, Ogilby states “...<i>having illustrated the principal roads in England and Wales by 85 several itineraries we have distinguished the same into direct and cross roads...and calling such cross as lead from some of the said lesser centres to another like capital town or place of eminency...</i>” It would appear that subsequent map makers consistently used this term with the same meaning until about 1912 and dictionaries still contain a reference to “by-way” within the definition of “cross roads”.</p> <p>It was not the main purpose of Tithe Awards to include public highways and they are not category A evidence, it is possible that Church Lane was recorded where the presence of a private route to access surrounding land could affect the productivity of the land, or to add plot boundary/map orientation information. Church Lane is not shown as a through route linking to another public highway. Perhaps the condition of the private carriage road leading north-westwards (as shown on the Inclosure Award map), was such that it did not affect the productivity of the surrounding land and so is not recorded. The north-west and north-east continuations of the route are shown as cross-field footpaths, (braced with the surrounding land), on the later Ordnance Survey mapping.</p> <p>The Tithe Award documents should therefore be considered alongside other documentary evidence.</p>
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Trowbridge Tithe Award Map - 1838



British Parliamentary Paper XLI 405 – 1837

<b>Document</b>	<b>Finance Act</b>
<b>Date</b>	1910
<b>Relevant Documents</b>	Finance Act Plan (Working Copy) (L8/10/38 – Maps) Finance Act Plan (Working Copy) Finance Act Valuation Book (L8/1/103 & L8/1/104/2)
<b>Size / Scale</b>	Plan – 1:2,500
<b>Evidential weighting</b>	B

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<p><b>Significance</b></p>	<p>In the early 20<sup>th</sup> Century, the ownership of the majority of the land in Britain by a privileged few was seen as a major cause of social injustice and poverty. By the Finance Act of 1910, the Government's main concern was that private landowners should pay part of the increase in land values which was attributable, not to their own efforts to improve the land, but to expenditure by the state, e.g. the provision of improved roads, drainage and other public services.</p> <p>The 1910 Finance Act required the Valuation Department of the Inland Revenue to carry out a survey of all hereditaments (land holdings) for the purposes of levying a tax upon the incremental value of a site. This included all property and land in the United Kingdom (whether or not it was considered to be exempt). It has been referred to as the "Second Domesday" as it was such a comprehensive record of land and there were criminal sanctions for the falsification of evidence.</p> <p>Public rights of way across land could be excluded from the land as a tax benefit. Hereditaments are illustrated on OS base maps (1:2,500), coloured and numbered, being referred to in the books of reference which accompany the maps. As rights of way could decrease the value of the land, we would expect them to be shown excluded from the hereditaments in the case of public roads, or as a deduction made for rights of way within the book of reference in the case of a lesser right of way, e.g. footpath. The Planning Inspectorate Consistency Guidelines suggest that the exclusion of public roads, may relate to section 35(1) of the Finance Act 1910, which stated that "<i>No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.</i>" and also s.25(3) which stated "<i>The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to...any public rights of way.</i>" The hereditament information is recorded on the Ordnance Survey 2<sup>nd</sup> County Series map dated 1901 and drawn at a scale of 25 inches to 1 mile.</p>
<p><b>Conclusion</b></p>	<p>The route of Path no.8 Trowbridge, Church Lane, is recorded as uncoloured on both plans (working copies) between Frome Road and its junction with the "F.P" which continues north-westwards in plot no.102. Exclusion from the numbered hereditaments is a strong indication that a route is considered to be public highway, however, as the Planning Inspectorate Consistency Guidelines point out, there are some cases of private roads set out at inclosure, being shown excluded from the hereditaments. The Instructions to the valuers in the field issued by the Inland Revenue refer to the exclusion of 'roadways' from plans, (this could include private roadways) and did not expressly set out all the circumstances in which such an exclusion would apply. The Finance Act documents should therefore be considered alongside other documents.</p>



<b>Significance</b>	Trowbridge Urban District Council Minutes. The applicant in this case has carried out a very detailed and thorough inspection of the Urban District Council Minutes and discovered the entries included at Appendix 8, with some additions.
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<b>Document</b>	<b>Andrews' and Dury's Map of Wiltshire (1810 – A1/524/2MS)</b>
<b>Date</b>	1773 1810
<b>Relevant Documents</b>	1773 Index Map 1773 Map Plate no.7 & 10 of 16 plates 1810 Index Map 1810 Map Plate no.7 & 10 of 18 plates
<b>Size / Scale</b>	1773 – 2 inches to 1 mile 1810 – 2 inches to 1 mile
<b>Evidential weighting</b>	E
<b>Significance</b>	<p>Commercial maps were produced for profit and intended for sale to the whole of the travelling public. From the 17<sup>th</sup> century Turnpike Trusts were set up by individual acts of Parliament, having powers to collect road tolls for maintaining the principal roads and as travel became more popular and traffic on the main roads increased, as a result of agricultural and industrial progress, there was a demand for itineraries, road books and road maps. There are four map makers whose maps are based on original survey: Andrews' and Dury's; Greenwoods; Cary (to a certain extent) and the Ordnance Survey. Other small scale commercial maps are derivatives of these original surveys.</p> <p>Andrews' and Dury's Map of Wiltshire dated 1773 is a commercial map of the county based on original survey, drawn at a scale of 2 inches to 1 mile. The map is dedicated <i>"To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY"</i>.</p> <p>The 1810 second edition map is a corrected and updated edition of the 1773 map, entitled, <i>"A Topographical Map of the County of Wilts Describing the Seats of the Nobility and Gentry Turnpike &amp; Cross Roads, Canals &amp; c. Surveyed originally in 1773 by John Andrews and Andrew Dury Drawn from a Scale of two Inches to one Statute Mile. Second Edition, Revised and corrected from the extensive information liberally communicated by The Right Honourable The Earl of Radnor and Sir Richard Hoare Bart to Whom this Improved Edition is most respectfully inscribed By William Eaden Charing Cross Jan.y 1<sup>st</sup> 1810"</i>.</p> <p>The Wiltshire map has no key, however a key is attached to Andrews' and Dury's Hertfordshire map. The Wiltshire Archaeological and Natural History Society have produced a reduced facsimile of the 1773 map, dated 1952, in which Elizabeth</p>

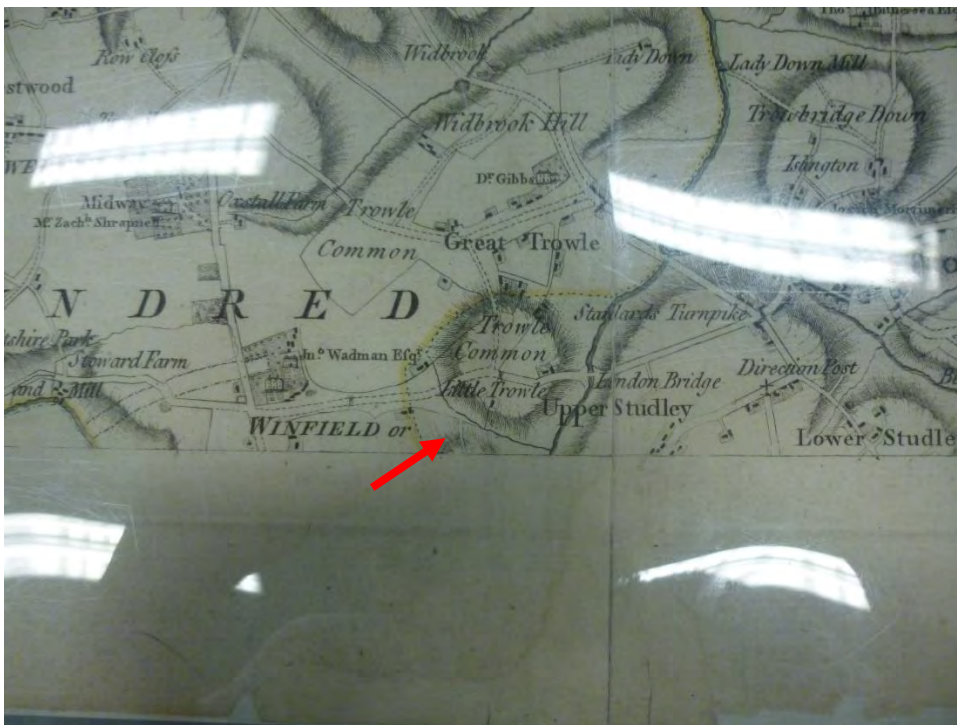
	<p>Crittall writes in the introduction: “<i>The conventions used on the map to indicate natural and artificial features are those generally employed at the time...The map has no key, but it appears that, as in the case of Andrews’ and Dury’s map of Hertfordshire for which there is a key, a broken line indicates an unhedged roadside...</i>” There is no reason to consider that the conventions accepted in the Hertfordshire map could not be applied to the Wiltshire map.</p>
<p><b>Conclusion</b></p>	<p>The claimed route appears to be shown as part of a longer distance route between Frome Road, (opposite Silver Street Lane, which given the constraints of scale would accord with Church Lane) and Trowle, but which does not connect with another highway, stopping as a cul-de-sac route before it reaches Little Trowle. There is no connection to what is now Manor Road and supports other evidence of Church Lane not being a through route for the public with vehicles.</p> <p>The route is shown by double solid lines which suggests a route enclosed on both sides, (please see Hertfordshire map key). Being commercial maps, it is unlikely that they would have recorded routes which were not open to the public, i.e. accommodation routes, or routes which were not open to all the traffic of the day, i.e. footpaths and bridleways, which would cause trespass against the landowners from whom the map makers sought subscriptions and difficulty for the travelling public who purchased the maps, neither or which was in the interests of the map makers. If the route was not open to the public, i.e. it is for private access only, serving the land around it, or that it was not open to all public traffic, we would not expect it to be shown on this map. However, the recording of the route in this manner is not consistent with other small scale commercial mapping.</p>



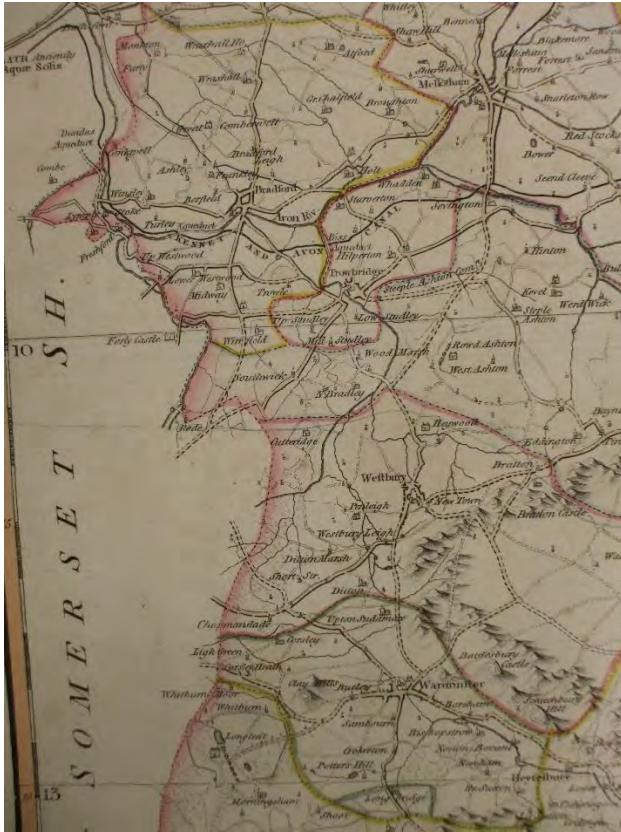
Andrews’ and Dury’s Map of Wiltshire – 1773 (Index map)



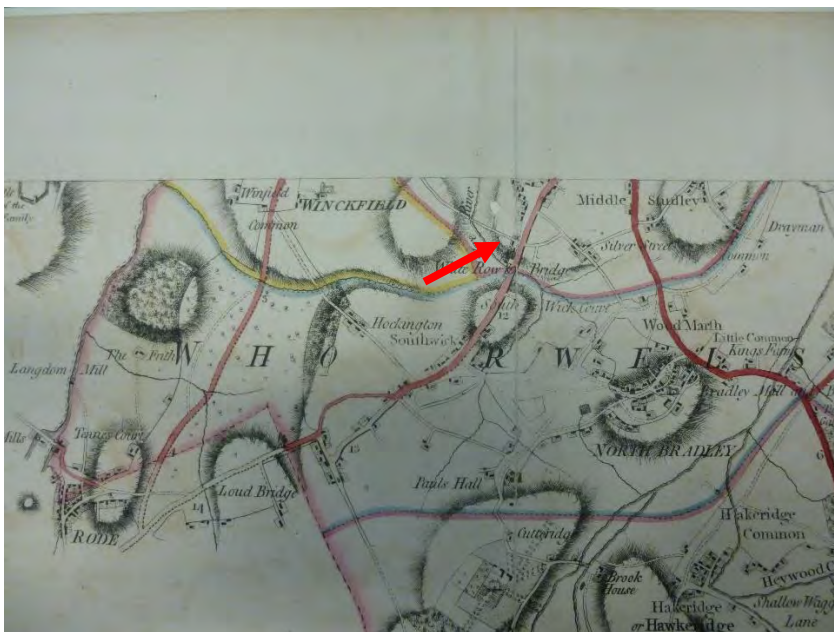
Andrews' and Dury's Map of Wiltshire – 1773 (Sheet no.7)



Andrews' and Dury's Map of Wiltshire – 1773 (Sheet no.10)

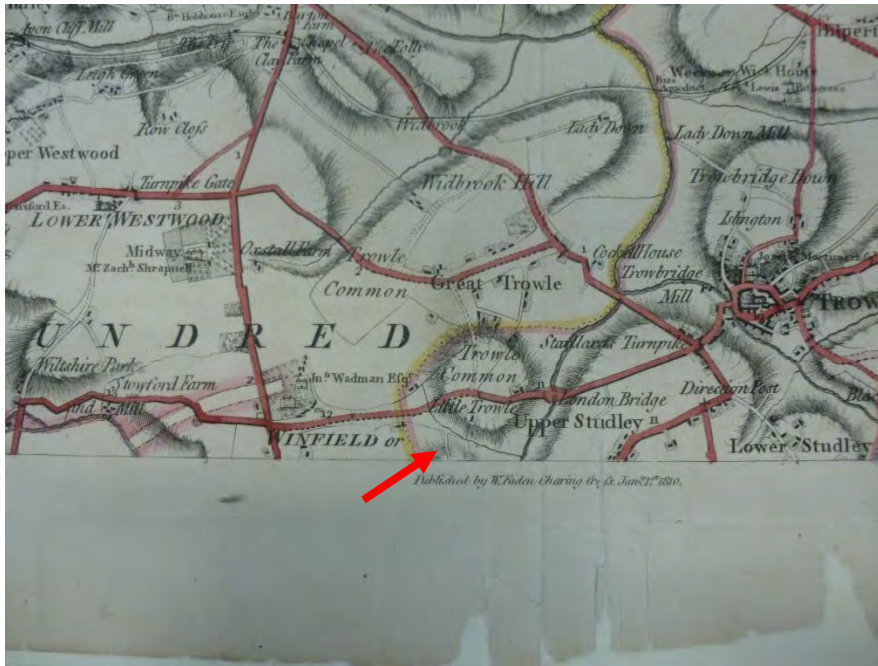


Andrews' and Dury's Map of Wiltshire – 1810 (Index Map)

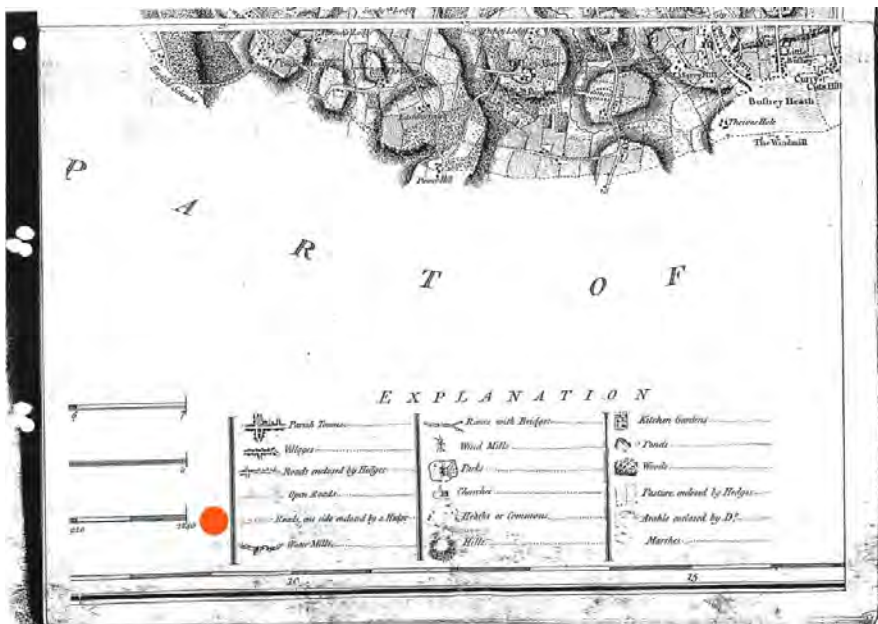


Andrews' and Dury's Map of Wiltshire 1810 – (Sheet no.7)

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Andrews' and Dury's Map of Wiltshire 1810 – (Sheet no.10)



Andrews' and Dury's – Hertfordshire Map Key

<b>Document</b>	<b>Greenwoods Map of Wiltshire (1820 – 1390/142, 1829 Map Folder 3.3)</b>
<b>Date</b>	1820 1829
<b>Relevant Documents</b>	1820 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood 1829 – Map of the County of Wilts from an Actual Survey made in the Years 1819 & 1820 by C and I Greenwood Corrected to the present period and Published 4 July 1829

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<b>Size / Scale</b>	1820 – 1 inch to 1 mile 1829 – 1 inch to 3 miles
<b>Evidential weighting</b>	E
<b>Significance</b>	Greenwood re-surveyed and produced a set of updated County Maps between 1817 and 1839. Greenwood appears to have carried out actual survey supported by existing secondary sources such as inclosure and estate maps; printed guide books; official sources and local knowledge collected by Surveyors. Greenwoods first edition “Map of the County of Wilts from Actual Survey”, dated 1820 is a commercial map produced for the travelling nobility who contributed to its production. The inscription reads: <i>“To the Nobility, Clergy and Gentry of Wiltshire This Map of the County is most respectfully Dedicated by the proprietors”</i> . Greenwood produced a revised and corrected map of Wiltshire in 1829.
<b>Conclusion</b>	On both maps there is a route shown from Frome Road leading in a north-westerly direction from a location south of the Silver Street Lane junction, however, unlike the Andrews’ and Dury’s small scale map which records this route almost directly opposite Silver Street Lane, which would correspond with the Church Lane, the route leading north-west on Greenwoods maps appears to be too far south to correspond with Church Lane and is more likely to correspond with a route further south at White Row Bridge. If this is the case, the claimed route is not shown on Greenwoods maps, on which routes not open to the public or not open to all traffic are unlikely to be shown, given the purpose of the map for sale to the travelling public and given its small scale. Recording routes not open to the public or not open to all traffic would cause difficulties for the travelling public who purchased the maps and the landowners from whom subscriptions in the production of the maps were sought, which was not in the interests of the map makers.

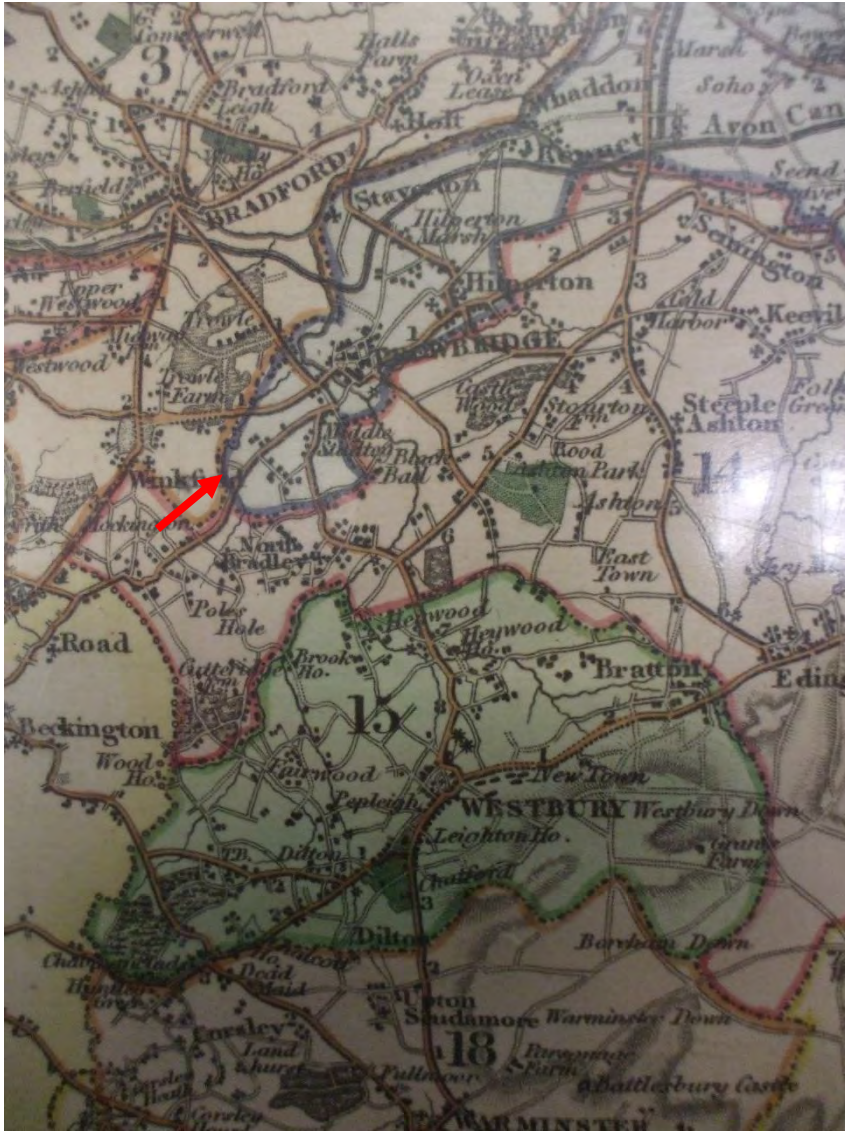


Greenwoods Map of Wiltshire - 1820

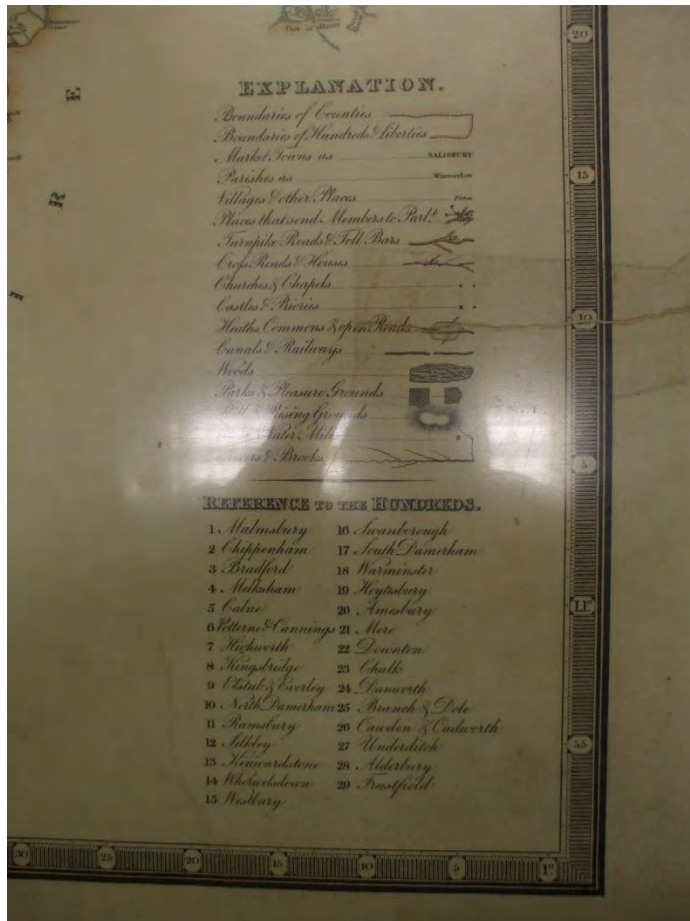


Greenwoods Map of Wiltshire - 1820

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Greenwoods Map of Wiltshire - 1829



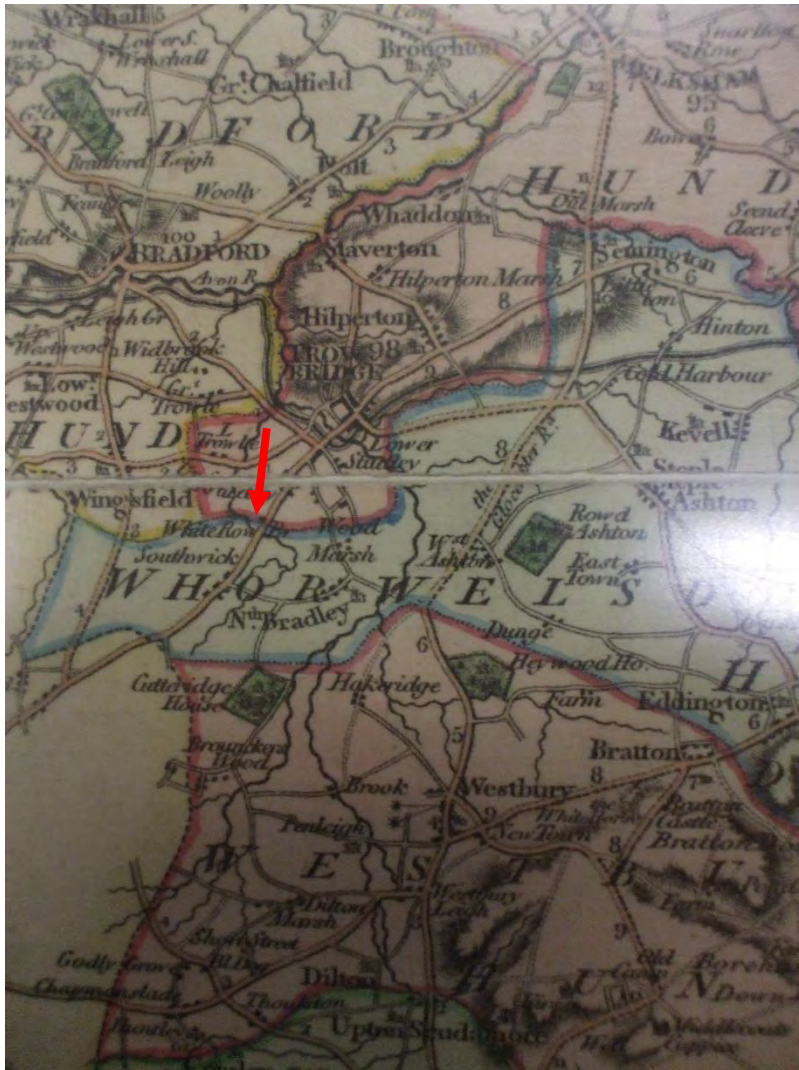
Greenwoods Map of Wiltshire - 1829

<b>Document</b>	Cary's Map of Wiltshire 1787 (Map Folder 1.12) Cary's Map of Wiltshire 1801 (Map Folder 3.2) Cary's Map 1823 (Map Folder 3.2A) Cary's Map 1832 (Map Folder 3.4)
<b>Date</b>	1787 1801 1823 1832
<b>Relevant Documents</b>	1787 – Wiltshire by John Cary Engraver 1801 – A New Map of Wiltshire Divided into Hundreds Exhibiting its Roads, Rivers, Parks & c. 1823 – Map Sheet 18 (with key) 1832 – Map Sheet 18
<b>Size / Scale</b>	1787 – 10 miles = 1 ¾ inches 1801 – 8 miles = 2 7/8 inches 1823 – 2 miles = 1 inch 1832 – 2 miles = 1 inch
<b>Evidential weighting</b>	E
<b>Significance</b>	John Cary was a cartographer, born in Warminster, Wiltshire in 1755, well known for his series of county maps. In 1794 he

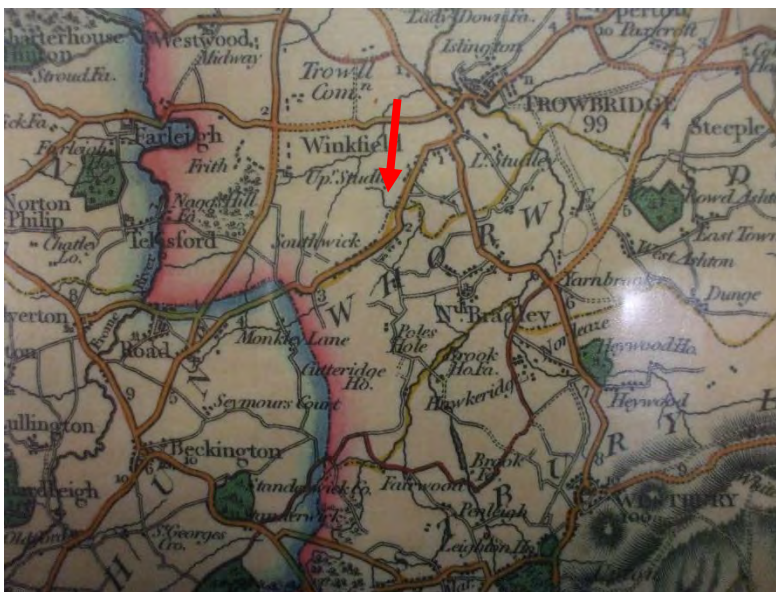
	became Surveyor of Roads for the Postmaster General, charged with undertaking a survey of all main roads in England. Cary appears to have used actual survey, as well as the work of others, e.g. the Ordnance Survey in the production of his maps.
<b>Conclusion</b>	The claimed route is not recorded on Cary's maps. The maps are small scale commercial maps produced for the travelling public and therefore it would not have been helpful to record private routes, or those which were not open to all traffic, which could cause difficulties for those purchasing the maps and landowners.



Cary's Map of Wiltshire - 1787

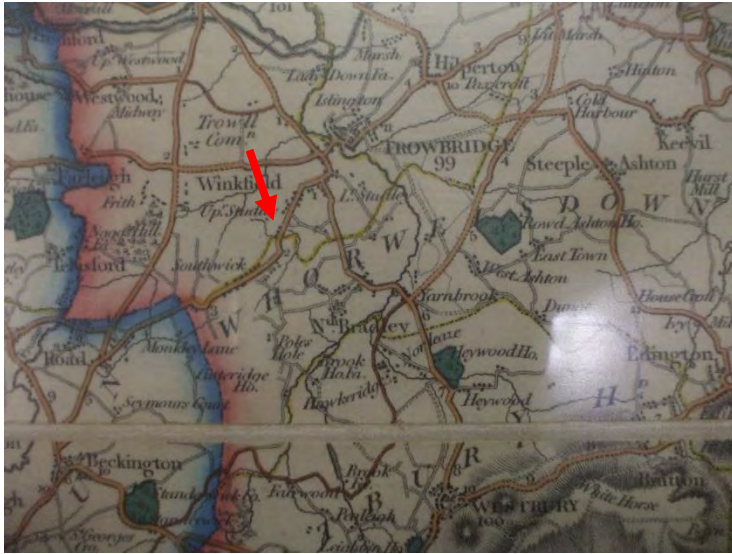


Cary's Map of Wiltshire - 1801

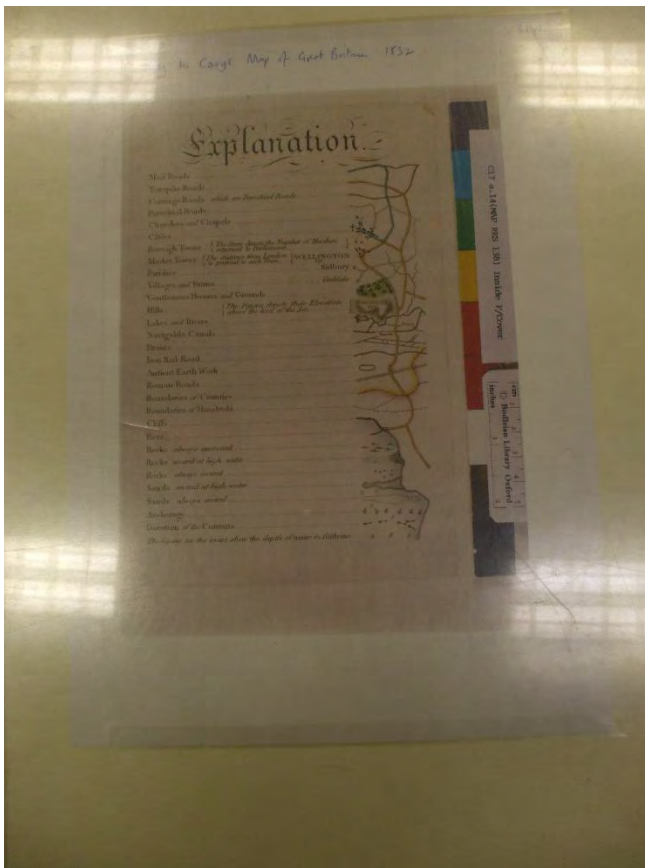


Cary's Map – 1823 (Sheet 18)

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Cary's Map 1832 – (Sheet 18)



Cary's Map 1832 – (Map key)

<b>Document</b>	<b>Ordnance Survey First Edition Map</b>
<b>Date</b>	Engraved and Published 1890
<b>Relevant Documents</b>	Map Sheet 38/11
<b>Size / Scale</b>	Scale: 6 inches to 1 mile

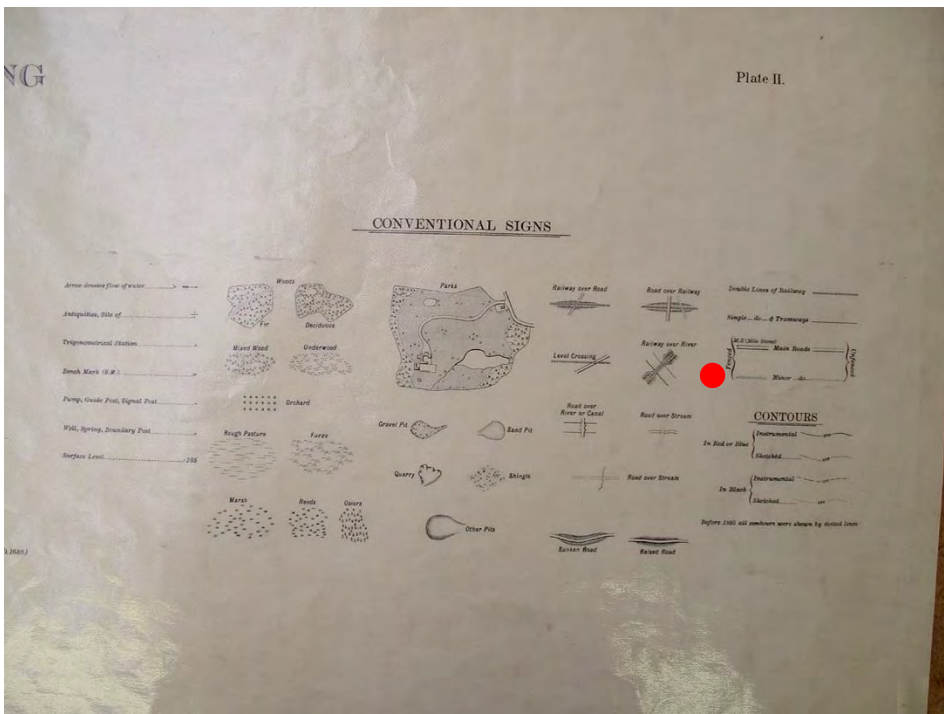
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<b>Evidential weighting</b>	E
<b>Significance</b>	<p>The Ordnance Survey was founded in 1791, due to demand from the military for accurate maps of southern England, in preparation for the Napoleonic Wars. In time the Ordnance Survey developed a range of maps, varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country. The maps are based on original survey, with revisions, and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added.</p>
<b>Conclusion</b>	<p>Church Lane is shown by double solid lines, suggesting that there is a solid boundary on either side of the lane, as a fenced minor road according to the key. The claimed part of the route is incorporated in that, narrowing as it leads north with a solid boundary across the northern end consistent with the field boundary of the field located to the west of the lane. The northern continuation of the path is, (from the northern extent of the claimed section), shown by double broken lines, suggesting a cross field path without physical boundaries.</p> <p>Where OS maps are topographical in nature, i.e. they record physical features visible at the time of survey, it is not possible to infer the existence of public rights over a way, from the plan. There is a key to the 6" OS map, which suggests that the claimed part of the route is a fenced minor road, however, the map includes the following disclaimer "<i>N.B. The representation on this map of a Road, Track or Footpath, is no evidence of the existence of a right of way.</i>" OS maps should therefore be considered alongside other evidence.</p> <p>The OS mapping, showing a solid boundary at the northern end of the route and its continuation as a footpath past that point, is not consistent with a through route for the public with vehicles. It is more likely that this route was for the accessing the land with vehicles which would be consistent with the Inclosure Award evidence of the continuation of Church Lane as a private carriage road. There do not appear to be residential properties alongside Church Lane, requiring access.</p>

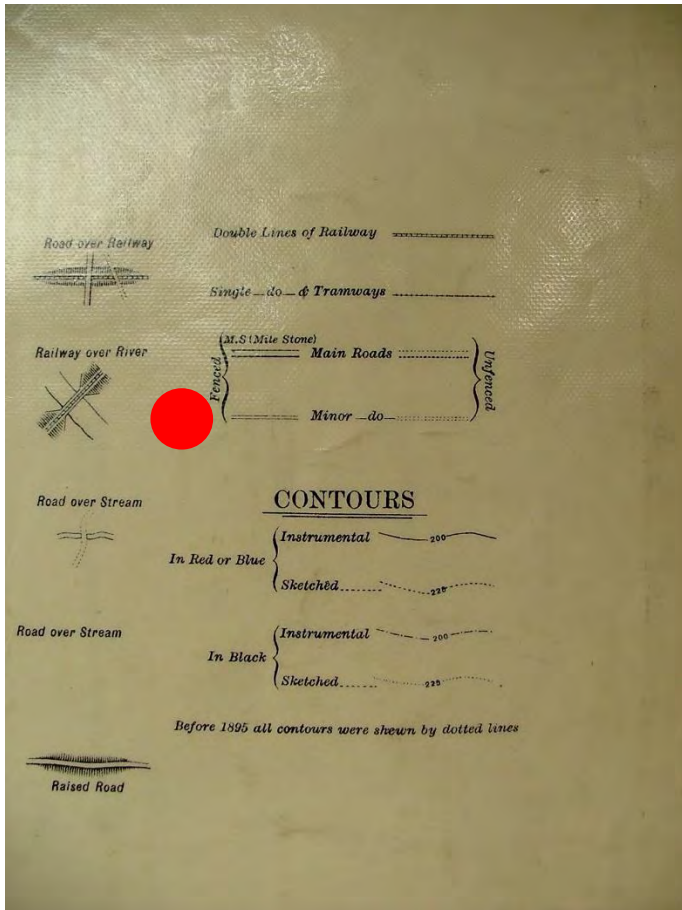




OS 6" Map - 1890



OS 6" Map 1890 – Conventional Signs



OS 6" Map 1890 – Conventional Signs

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1886, Zincographed and Published 1887
<b>Relevant Documents</b>	Map Sheet 38/11
<b>Size / Scale</b>	25 inches to 1 mile
<b>Evidential weighting</b>	E
<b>Significance</b>	As above. The 25 inch County Series maps were completed to 1890, with a first revision between 1891 – 1914, second revision commenced 1904 and third revisions were never completed nationally due to wartime conditions and a period of austerity and retrenchment which followed in the 1920's. The Ordnance Survey was unable to maintain its planned revision programme.
<b>Conclusion</b>	Church Lane is shown by double solid lines, having a solid boundary and perhaps a surfaced central section shown by double pecked lines within the double solid lines. The claimed section of the path is shown in this manner, narrowing as it leads north and a metalled path within the full extent of the highway accords with the witness evidence of a wide way laid to grass with a metalled section within the extent of highway. At its northern end the lane has a solid hedge boundary,

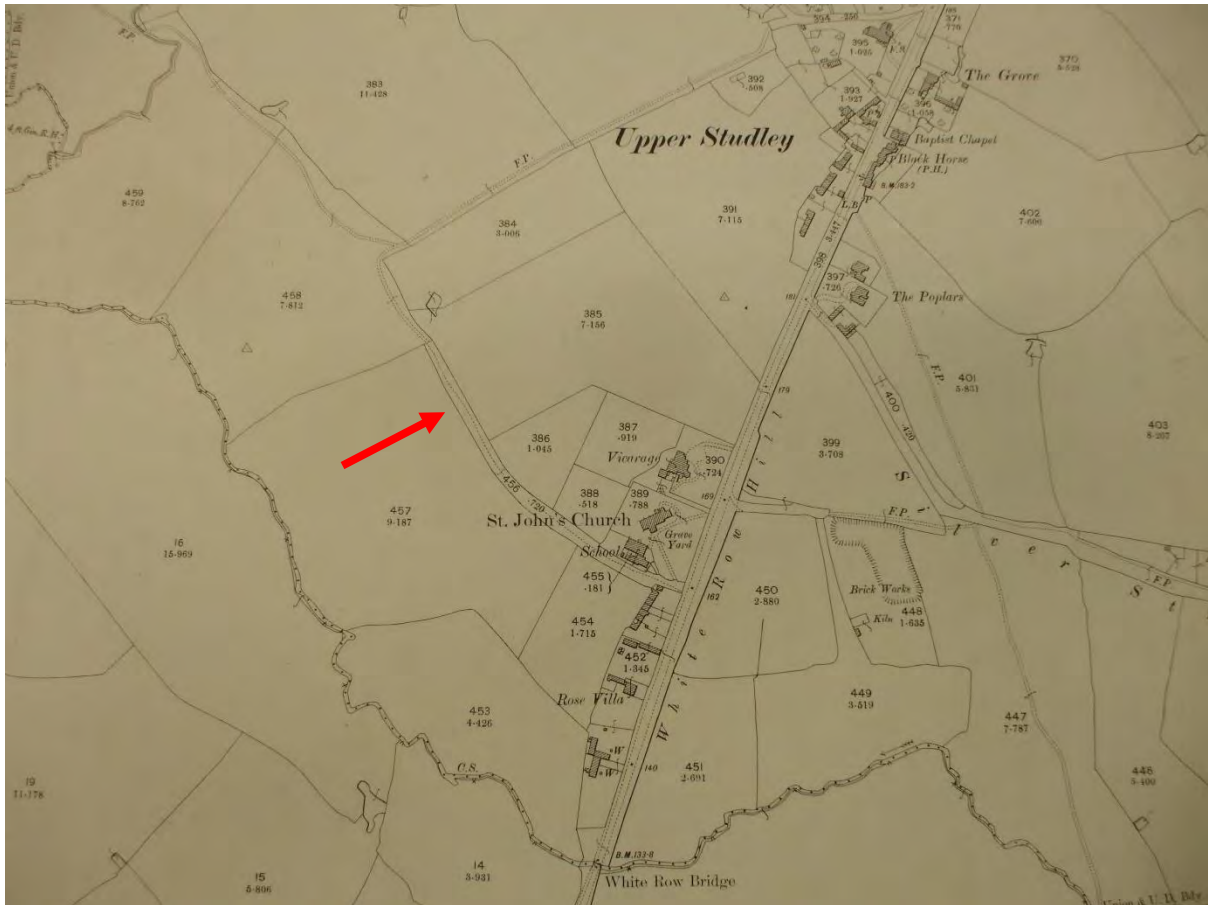
consistent with the boundary of the field to the west. The route is numbered as 471, however OS object name books (1873-1879), for North Bradley and Trowbridge, do not exist. Leading north from the claimed route, the route is shown by double broken lines, suggesting that the path is a cross field path without boundaries, braced within the field. The part of this continuation leading east to Upper Studley is inscribed "FP" (Footpath), it does not have a separate plot number as the claimed route does. Being topographical in nature, public rights cannot be inferred from the map and OS maps must be considered alongside other documentary evidence. The OS mapping, showing a solid boundary at the northern end of the route and its continuation as a footpath past that point, is not consistent with a through route for the public with vehicles. It is more likely that this route was for accessing the land which would be consistent with the Inclosure Award evidence of the continuation as a private carriage road. There do not appear to be residential properties alongside Church Lane, requiring access. The width of Church Lane varies from 8m, at its junction with the Frome Road, widening to 11m and 12m, before narrowing to 10m and then 7m where it meets the footpath in the field continuing northwards.



Ordnance Survey 25" County Series Map 1887

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<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1884-5, Revised 1899, Printed & Published 1901
<b>Relevant Documents</b>	Map Sheet 38/11
<b>Size / Scale</b>	25 inches to 1 mile
<b>Evidential weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	<p>Church Lane is shown by double solid lines suggesting that the lane is enclosed between solid boundaries. There is a broken line along two parts of the centre of the lane, one part shown bracing the two parts of the lane either side of the dotted line together. The dotted line suggests a change in character of the lane either side of the dotted line, perhaps a change in the nature of the surface. The claimed section of the path is shown in this manner, narrowing towards its northern end. At the northern end there is a solid boundary to the lane consistent with the field boundary of the field to the west. The lane is numbered 456.</p> <p>The continuation of the path leading north from the claimed route is shown by double broken lines, as an unbounded cross-field path, braced as part of the field and inscribed "FP" against the eastern fork, suggesting footpath. This does not have a separate parcel number as Church Lane does.</p> <p>Where the map is topographical in nature, public rights cannot be adduced from the map, which carries the disclaimer "<i>N.B. – The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.</i>"</p> <p>The OS mapping, showing a solid boundary at the northern end of the route and its continuation as a footpath past that point, is not consistent with a through route for the public with vehicles. It is more likely that this route was for accessing the land would be consistent with the Inclosure Award evidence of the continuation as a private carriage road. There do not appear to be residential properties alongside Church Lane, requiring access.</p> <p>The width of the path varies from 9m, at its junction with Frome Road, then widening to 11m and 12m, before narrowing to 10m and then 8m at its junction with the footpath in the field leading north.</p>



Ordnance Survey 25" County Series Map 1901

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1884-85, Revised 1922, Levelling Revised 1899, Printed and Published 1924
<b>Relevant Documents</b>	Map Sheet 38/11
<b>Size / Scale</b>	25" to 1 mile
<b>Evidential weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	<p>Church Lane is shown by double solid lines suggesting that the lane is enclosed between solid boundaries. There now no broken line along two parts of the centre of the lane to suggest a change in character/surface of the lane.</p> <p>The claimed section of the path is shown in this manner, narrowing towards its northern end. At the northern end there is a solid boundary to the lane, now just south of the field boundary of the field to the west. The lane is numbered 456.</p> <p>The continuation of the path leading north from the claimed route is shown by double broken lines, as an unbounded cross-field path, braced as part of the field and inscribed "FP" against the</p>

eastern fork, suggesting footpath. This does not have a separate parcel number as Church Lane does.

Where the map is topographical in nature, public rights cannot be adduced from the map, which carries the disclaimer “*N.B. – The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.*”

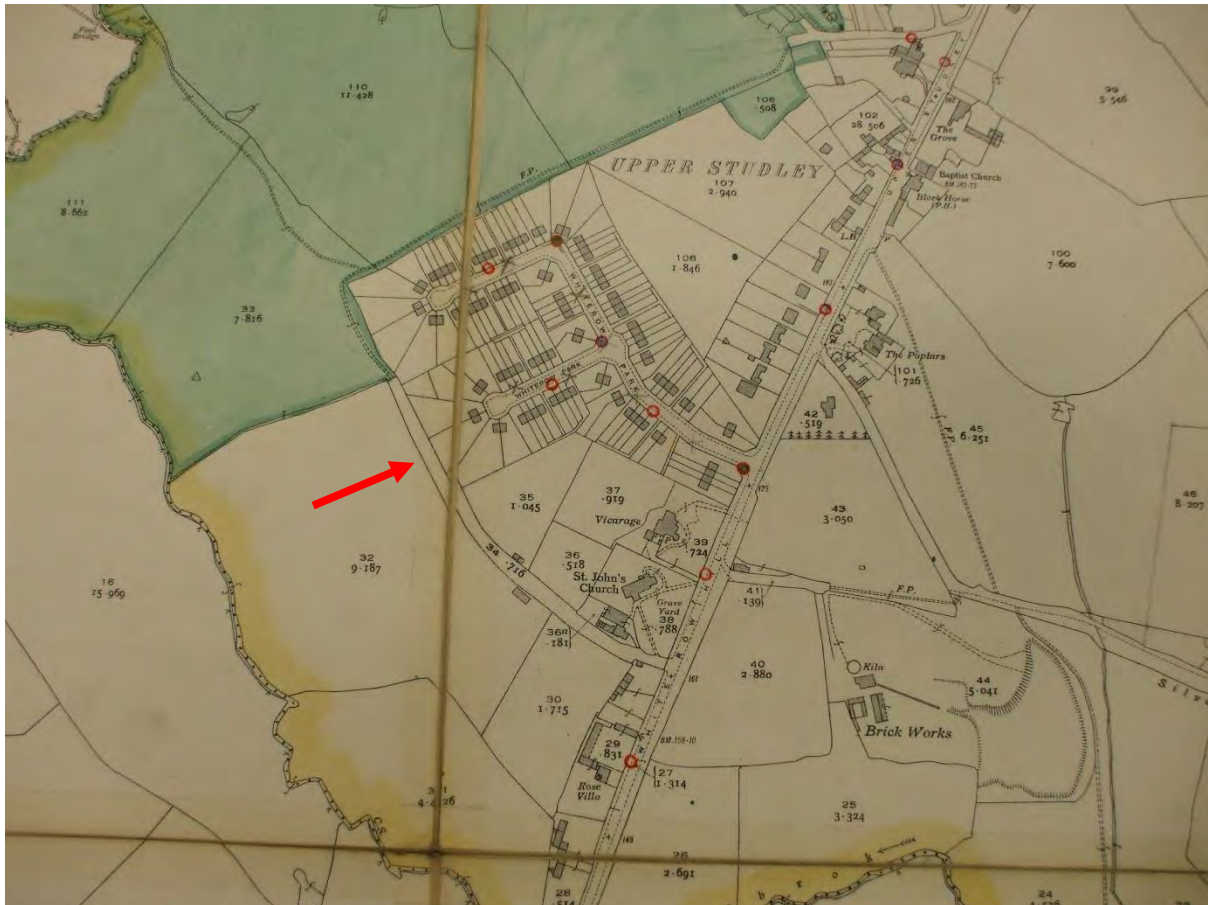
The properties in Whiterow Park are now shown on this map, although they appear to be hand drawn onto the OS base map. The OS mapping, showing a solid boundary at the northern end of the route and its continuation as a footpath past that point, is not consistent with a through route for the public with vehicles. It is more likely that this route was for accessing the land which would be consistent with the Inclosure Award evidence of the continuation as a private carriage road. There is very little residential development alongside Church Lane, the newly developed Whiterow Park has a new access road north of Church Lane.

The width of the path in this map varies from 8m at its junction with Frome Road, before widening to 12m and then narrowing to 10m and then 8m at its junction with the footpath leading northwards.



Ordnance Survey 25" County Series Map 1924

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1884-84, Revised 1937, Re-levelled 1937, Printed and Published 1938
<b>Relevant Documents</b>	OS Map Sheet 38/11
<b>Size / Scale</b>	25" to 1 mile
<b>Evidential weighting</b>	E
<b>Significance</b>	As above.
<b>Conclusion</b>	<p>Church Lane is shown by double solid lines suggesting that the lane is enclosed between solid boundaries and the claimed section of the path is shown in this manner, narrowing towards its northern end. At the northern end there is a solid boundary to the lane, now just south of the field boundary of the field to the west. The lane is numbered 456.</p> <p>The continuation of the path leading north from the claimed route is shown by double broken lines, as an unbounded cross-field path, braced as part of the field and inscribed "FP" against the eastern fork, suggesting footpath. This does not have a separate parcel number as Church Lane does.</p> <p>Where the map is topographical in nature, public rights cannot be adduced from the map, which carries the disclaimer "<i>N.B. – The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.</i>"</p> <p>The properties in Whiterow Park are now shown on this map. The OS mapping, showing a solid boundary at the northern end of the route and its continuation as a footpath past that point, is not consistent with a through route for the public with vehicles. It is more likely that this route was for accessing the land which would be consistent with the Inclosure Award evidence of the continuation as a private carriage road. There is very little residential development alongside Church Lane requiring access from Church Lane, the newly developed Whiterow Park has a new access road north of Church Lane.</p> <p>The width of the path varies between 8m at its junction with Frome Road, widening to 12m and then narrowing to 10m and 9m, being 7m at its junction with the footpath leading north in the field.</p>



Ordnance Survey 25" County Series Map 1938

<b>Document</b>	<b>Ordnance Survey County Series Map</b>
<b>Date</b>	Surveyed 1884-85, Revised 1937, Re-levelled 1937, Printed and Published 1938 – Planning Information revised 1950 and 1955 (part)
<b>Relevant Documents</b>	Sheet 38/11
<b>Size / Scale</b>	1:2,500
<b>Evidential weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	As above. This revision of the map shows the properties Hillbrook and Kynance, which were built 1961, hand drawn onto the map along with the new development at Studley Green. There are no changes to the recording and width of Church Lane itself from the 1938 edition map, however, its continuation northwards is relocated southwards as a footpath before being incorporated with Lambrok Road. The “gap” is reconfigured and there is no longer a solid boundary between Church Lane, Acorn Meadow and Lambrok Road. Again, the OS disclaimer regarding the inference of public and private rights of way remains, as per the 1938 edition OS map.





Ordnance Survey 25" County Series Map 1938 – (Revisions 1950 & 1955)

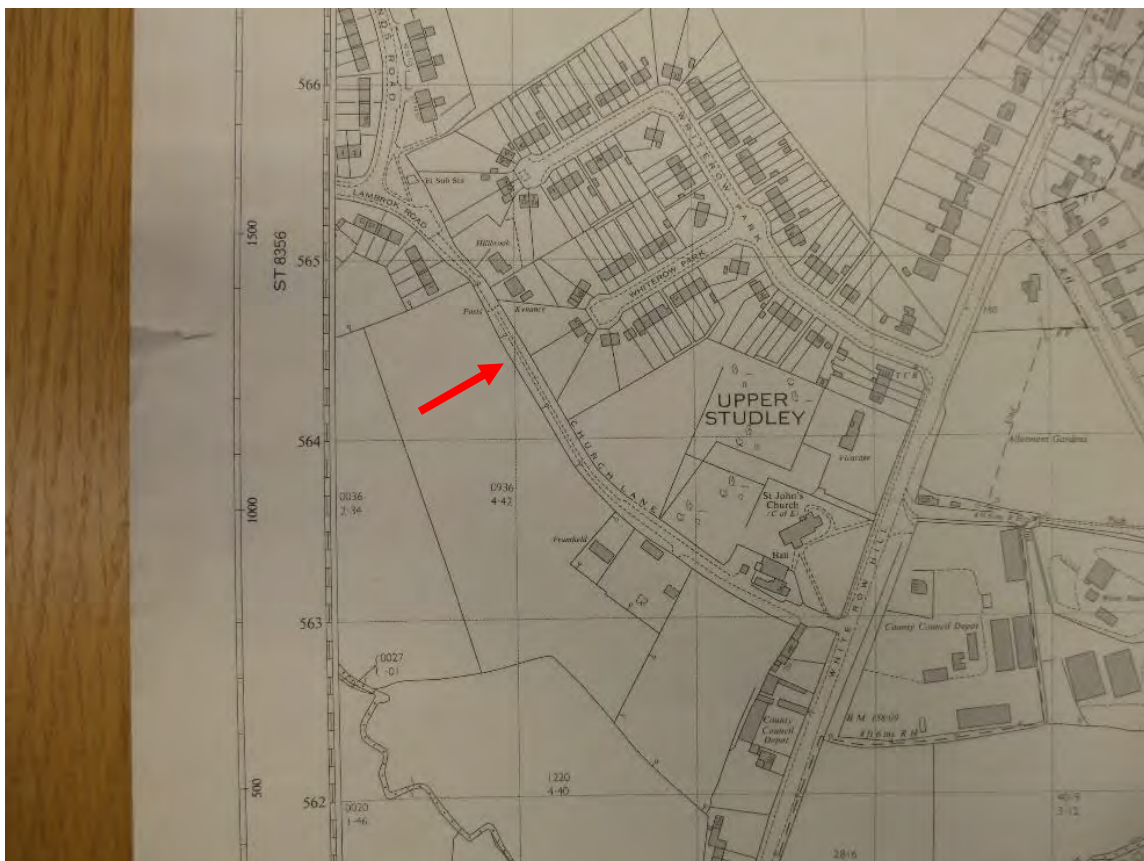
<b>Document</b>	<b>OS National Grid Series Map</b>
<b>Date</b>	1968
<b>Relevant Documents</b>	Plan ST 8456 and Plan ST 8556
<b>Size / Scale</b>	1:2,500
<b>Evidential weighting</b>	E
<b>Significance</b>	The Davidson Committee of 1935-1938 was set up partly because of concerns regarding the OS mapping being out of date, and recommended that the large scale mapping "...as soon as it can be conveniently arranged the 1:2500 survey should be re-cast on National instead of county sheet lines on a National projection." and whilst this work was in progress, a general overhaul of the plans would be undertaken "...to remove the discrepancies along county boundaries and to eliminate the errors which have crept in to the original survey in the course of its revision". The first National Grid series OS maps were published in 1948 (J B Harley 1975 – Ordnance Survey Maps a descriptive manual).
<b>Conclusion</b>	The map records the properties Kynance and Hillbrook alongside

the claimed path, being built c.1961. The map shows the path by double solid lines suggesting an enclosed path, with a central area shown by double broken lines, suggesting a change in the character of the surface of that part of the way, perhaps having a metallised surface. "Posts" are recorded on the lane just south of the property Kynance and span the full width of the path between the boundaries.

There is now no solid boundary between Church Lane, Acorn Meadow and Lambrok Road and the "gap" has been reconfigured. The OS mapping shows that once the solid field boundary / gate has been removed at the north of Church Lane, the posts appear south of Kynance, shortly afterwards, so that any public through traffic with vehicles, would only have occurred for a short window of time, if at all.

The map carries the disclaimer: *"The representation on this plan of a road, track or path is no evidence of the existence of a right of way."*

The width of the path varies between 9m at its junction with Frome Road, widening to 13m and then 12m, before narrowing to 10m and then 8m, to 7m at its junction with the footpath leading north in the field.



OS National Grid Series Map 1968, 1:2,500 - Plan ST 8456 and Plan ST 8556

<b>Document</b>	<b>OS National Grid Series Map</b>
<b>Date</b>	1974
<b>Relevant Documents</b>	Plan ST 8456-8556
<b>Size / Scale</b>	1:2,500
<b>Evidential weighting</b>	E
<b>Significance</b>	As above
<b>Conclusion</b>	<p>The map records the properties Kynance and Hillbrook alongside the claimed path, being built c.1961 and a new property south of Kynance, 22 Church Lane. The map shows the path by double solid lines suggesting an enclosed way, with a central area shown by double broken lines which suggests a change in the character of the surface of that part of the way, perhaps a metalled surface. "Posts" are recorded on the lane just south of the property Kynance and span the full width of the path between the boundaries.</p> <p>The map carries the disclaimer: <i>"The representation on this plan of a road, track or path is no evidence of the existence of a right of way."</i></p> <p>The width of the path varies between 10m at its junction with Frome Road, before widening to 13m and narrowing to 10m and 9m and then 10m, then 8m to 7m at its junction with Acorn Meadow.</p>

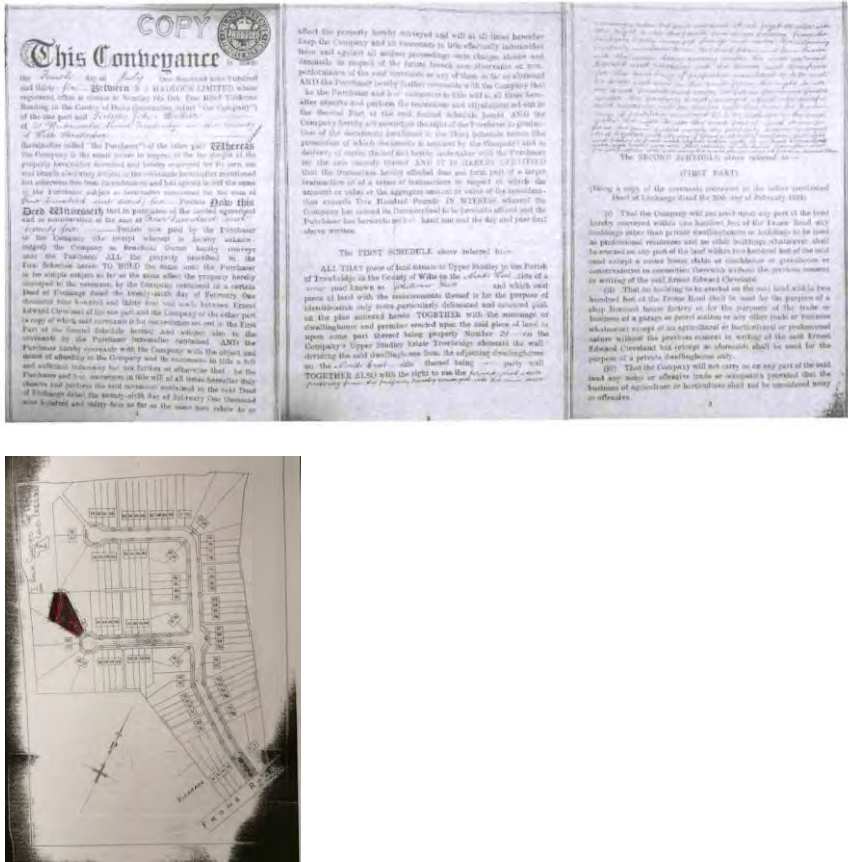



OS National Grid Series Map 1974, 1:2,500 - Plan ST 8456-8556



**APPENDIX 8**

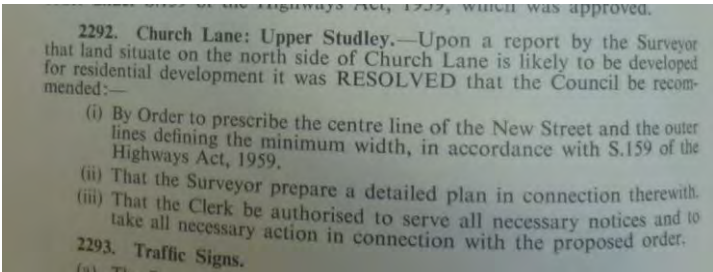
The applicant has adduced a number of documents in support of the application, which are listed here with some additions, the following comments are made:

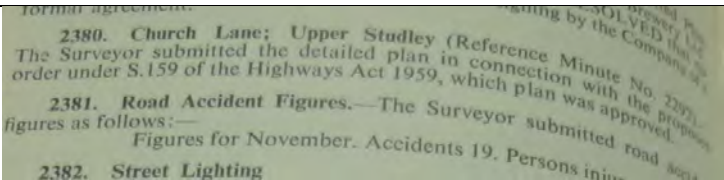
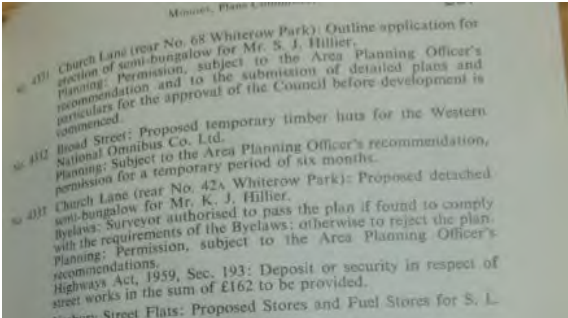
Page 196

Document	Date	Document and Significance by Applicant	Surveying Authority Conclusions
Land deeds	July 1935	 <p><i>Images supplied by applicant</i></p>	<p>The conveyance relates to private rights in relation to the land and dwelling house at 31 Whiterow Park, rather than public rights.</p> <p>It is not clear from the plans which roads are coloured brown and over which the purchaser has a right to pass and repass with vehicles, but it is likely to relate to the Whiterow Park estate roads as this would be the main access for this property and access is being given by a grant, it would not have been possible for “the Company” to grant private rights over Church Lane if they were not the landowners.</p> <p>Additionally, even if Church Lane were included in the grant, the conveyance does not grant the general public a right to pass and repass with vehicles, but only to the purchaser of the property and therefore is not evidence of public use of Church Lane. Neither could the grant allow the user with vehicles by the purchaser to qualify as user “as of right” where it is use with permission and use by the owner/occupier to access property is not use by the general public.</p> <p>This evidence cannot support the existence of a public right of way with vehicles over the claimed route.</p>

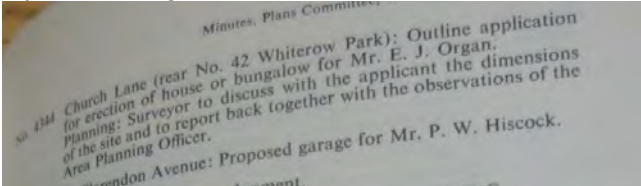
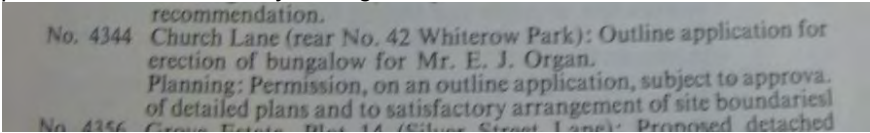
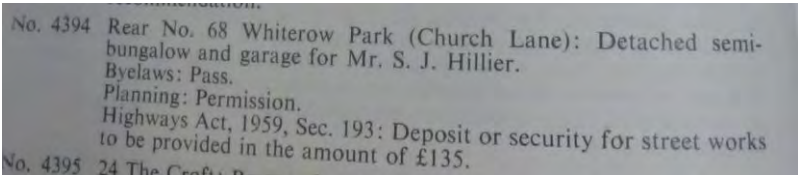
		<p>Land deeds are bought for £425</p> <p><i>This Conveyance is made the Fourth day of July One thousand nine hundred and thirty five Between R J HADDOCK LIMITED whose registered office is situate at Number 105 Oak Tree Road Tilehurst Reading in the County of Berks (hereinafter called "the Company") of the one part and Sidney John Hillier of 21 Waterworks Road Trowbridge in the County of Wilts Storekeeper (hereinafter called "the Purchaser") of the other part Whereas the Company is the estate owner in respect of the property hereinafter described and hereby conveyed for its own use and benefit absolutely subject to the covenants hereinafter mentioned but otherwise free from incumbants and has agreed to sell the same to the Purchaser subject as hereinafter mentioned for the sum of four hundred and twenty five Pounds... The FIRST SCHEULDE and above referred to:- ALL THAT piece of land situate at Upper Studley in the Parish of Trowbridge in the County of Wilts on the North West side of a new road known as Whiterow Park and which said piece of land with the measurements thereof is for the purpose of identification only more particularly delineated and coloured pink on the plan annexed hereto TOGETHER with the messuage or dwellinghouse and premises erected upon the said piece of land or upon some part thereof being property Number 31 on the Company's Upper Studley Estate Trowbridge aforesaid... And together with (by way of Grant and not of exception) full right and liberty to pass and repass either with or without horses carts carriages motor cars and other hereafter and for all purposes over and along the roads shown coloured brown on the said plan...</i></p>	
<p>English Heritage aerial photograph</p>	<p>Nov 1946</p>		<p>This aerial photograph records that Church Lane exists as a cul-de-sac route which terminates at the field entrance, however, the aerial photograph can provide no additional evidence regarding the status of the track. The property Kynance was not built in 1946 and access to this plot for the residential property from Church Lane cannot be implied from the photograph.</p> <p>The Highway Authority in researching this claim are not concerned with the private rights to property but are concerned only to</p>

		 <p><i>Images supplied by applicant</i></p> <p>English Heritage Aerial photo Nov 1946 clearly shows that Church Lane is the only possible access road to the plot. If you zoom in you can clearly see that a track leads all the way to the Kynance plot.</p>	<p>correctly record public rights over Church Lane. This area of land is included as plot 16 “Hewitts” pasture owned by Edward Luxford and Charles Spragg in the Tithe Award and the aerial photograph is consistent with OS mapping at this time, i.e. the track terminating at the field boundary and Officers accept that prior to the residential development alongside Church Lane, that the route is likely to have been used by agricultural traffic to access the fields.</p> <p>It is noted that the aerial photographs dated 2005/06 and 2014, show the driveway of the property Kynance orientated towards Lambrok Road, rather than Church Lane.</p>
<p>Drawing no.T1A/15b</p>	<p>Jan 1954</p>	 <p><i>Image supplied by applicant</i></p> <p>Showing a clear gap between Lambrok Road and Church Lane. Access to Lambrok Road not possible. Only possible access is via Church Lane.</p>	<p>The context of this plan is not given, but it appears to be a planning map in relation to the development at Lambrok Road, based on OS mapping. There is a gap between Church Lane, which is shown as per the OS mapping terminating at the boundary of the field to the west. Access to the plot of the later property Kynance is not possible from the Lambrok side, but where the property is not built, access to it cannot be inferred from this map. Again, the authority is not concerned with private access rights to the property.</p> <p>This plan provides no additional evidence of the status of Church Lane, the OS maps from which it derived are topographical in nature,</p>

			i.e. recording only physical features visible to the surveyor at the time of survey. OS maps alone cannot provide evidence of public vehicular rights and must be viewed alongside the other evidence. The termination of the route at the field, perhaps supports earlier evidence of the route as an accommodation road.
Trowbridge Urban District Council minutes (Highways Committee) G15/100/49	13 <sup>th</sup> December 1960	<p><b>“2292. Church Lane: Upper Studley.</b> – Upon a report by the Surveyor that land situate on the north side of Church Lane is likely to be developed for residential development it was <b>RESOLVED</b> that the Council be recommended:-</p> <p>(i) By Order to prescribe the centre line of the New Street and the outer lines defining the minimum width, in accordance with S.159 of the Highways Act, 1959.</p> <p>(ii) That the Surveyor prepare a detailed plan in connection therewith.</p> <p>(iii) That the Clerk be authorised to serve all necessary notices and to take all necessary action in connection with the proposed order.”</p>  <p>Planning to adopt Church Lane.</p>	This appears to be a reference to further development on the Lambrok Road side of Church Lane, where a significant amount of development had already taken place as can be seen from the OS 25” County Series map 1938 revised by Wiltshire County Council 1950 and 1955.
Trowbridge Urban District Council Minutes G15/100/49 (Highways Committee)	10 <sup>th</sup> January 1961	<p><b>“2380. Church Lane: Upper Studley</b> (Reference Minute No.2292). The Surveyor submitted the detailed plan in connection with the proposed order under S.159 of the Highways Act 1959, which plan was approved.”</p>	

			
Trowbridge Urban District Council minutes G15/100/49 (Plans Committee)	13 <sup>th</sup> April 1961	<p><i>“No.4331 Church Lane (rear No.68 Whiterow Park): Outline application for erection of semi-bungalow for Mr. S. J. Hillier. Planning: Permission, subject to the Area Planning Officer’s recommendation and to the submission of detailed plans and particulars for the approval of the Council before development is commenced.” (Kynance)</i></p> <p><i>“No.4333 Church Lane (rear No.42A Whiterow Park): Proposed detached semi-bungalow for Mr K J Hillier. Byelaws: Surveyor authorised to pass the plan if found to comply with the requirements of the Byelaws: otherwise to reject the plan. Planning: Permission, subject to the Area Planning Officer’s recommendations. Highways Act, 1959, Sec, 193: Deposit or security in respect of street works in the sum of £162 to be provided.” (Hillbrook)</i></p>  <p>Kynance Planning Permission. Hillbrook Planning Permission.</p>	Access to private property with vehicles is not qualifying user “as of right” by the public at large.
Trowbridge Urban District Council	4 <sup>th</sup> May 1961	<p><i>“No.4344 Church Lane (rear No.42 Whiterow Park): Outline application for erection of house or bungalow or Mr. E. J. Organ. Planning: Surveyor to discuss with the applicant the dimensions of the site and to</i></p>	



minutes G15/100/49 (Plans Committee)		<p><i>report back together with the observations of the Area Planning Officer.”</i></p>  <p>Planning for land fronting between Church Lane and Lambrok Road. See map OS ST8456.</p>	
Trowbridge Urban District Council minutes G15/100/49 (Plans Committee)	18 <sup>th</sup> May 1961	<p><i>“No.4344 Church Lane (rear No.42 Whiterow Park): Outline application for erection of bungalow for Mr. E. J. Organ. Planning: Permission, on an outline application, subject to approval of detailed plans and to satisfactory arrangement of site boundaries.”</i></p> 	
Trowbridge Urban District Council minutes G15/100/50 (Plans Committee)	29 <sup>th</sup> June 1961	<p><i>“No.4394 Rear No.68 Whiterow Park (Church Lane): Detached semi-bungalow and garage for Mr. S. J. Hillier. Byelaws: Pass. Planning: Permission. Highways Act, 1959, Sec. 193: Deposit or security for street works to be provided in the amount of £135.”</i></p>  <p>Kynance planning permission.</p>	<p>Planning permission granted for the property Kynance requiring a deposit for £135 under the section 193 of the Highways Act 1959.</p> <p>The Urban District Council and later Wiltshire Council, as the Highway Authority, consistently refer to Church Lane as a “Private Street” and development consistent with a private street. This accords with other documentary evidence of the route as an accommodation route, not supportive of public vehicular rights over Church Lane.</p>
Highways Act, 1959. s.193 Notice by Street Works	1 <sup>st</sup> July 1961	<p><i>“HIGHWAYS ACT, 1959. s.193 Notice of Street Works Authority requiring payment or security in advance of apportionment of Private Street Works Expenses To Mr. S.J. Hillier</i></p>	<p>The Private Street Works Code empowers a Highway Authority to make-up a private street for adoption as a maintainable highway, at a time when the Authority</p>

<p>Authority requiring payment or security in advance of apportionment of Private Street Works Expenses</p>		<p><i>68 Whiterow Park Trowbridge, Wilts</i>  <i>WHEREAS on the First day of July 1961 the* Trowbridge Urban District Council (hereinafter called "the Council") passed the building byelaws of the Council plan No. 4394 deposited by you for the erection of a building at The rear of 68 Whiterow Park, Trowbridge which building will have a frontage on to the private street known as CHURCH LANE, Upper Studley, within the Council's district AND WHEREAS section 192 of the Highways Act, 1959, applies in this case NOW THEREFORE TAKE NOTICE that in the opinion of the Council the sum of £135 (one hundred and thirty five pounds) would be recoverable under the appropriate private street works code (namely, the code of [1892] in respect of the frontage of the said proposed building on to the said private street if the Council were now to carry out such street works in the street as they would require under that code before declaring the street to be a highway maintainable at the public expense AND FURTHER the Council, in pursuance of the provisions of the advance payments code contained in Part IX of the Highways Act, 1959, and acting as street works authority under and for the purposes thereof HEREBY REQUIRE you or other the owner of the land on which the proposed building is to be erected to pay to the Council, or to secure to their satisfaction the payment of, the said sum of £135 (One hundred and thirty five Pounds)."</i></p>	<p>chooses and at the expense of the owners of property fronting the street. The code has its origins in the Public Health Act of 1875 and the Private Street Works Act of 1892. The Advance Payments Code was first introduced in the New Streets Act 1951, amended 1957, aiming to relieve house buyers of road charges under the Private Street Works Code by requiring developers to pay or secure a sum covering the making up of the private street to adoption standard. The provisions were codified in the Highways Act of 1959 (from section 192 onwards), (Sections 219 - 255 of the Highways Act 1980 contain similar and current provision for the Advance Payments Code).</p> <p>Under the Section 219 of the Highways Act 1980, (the 1959 Act relevant to the Church Lane Private Street Works Notice contained similar provision), where it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations and the building will have a frontage onto a private street in which the street works authority has power under the Private Street Works Code to require works to be executed or to execute works, no building works shall be commenced unless security has been provided for the sum required under Section 220 in respect of street works. Once notification of the passing of plans has been received by the Street Works Authority, a charge requiring a cash deposit or bonded security can be applied where the building fronts a private street and no exemptions</p>
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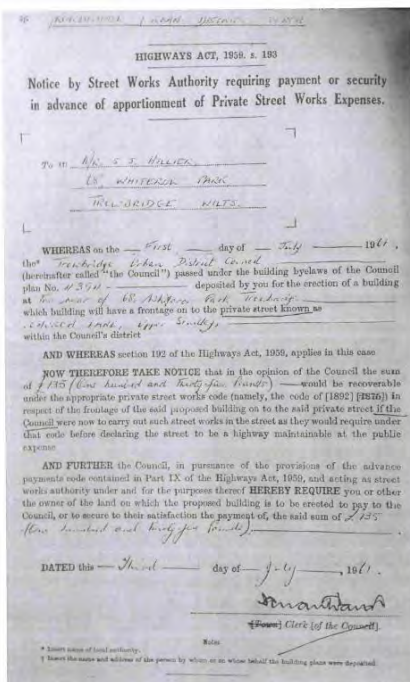


Image supplied by applicant.

Street works paid by Kynance developers. This document proves that Kynance fronts Church Lane and it is a private street.

apply, for which notice is served, as in the Trowbridge case.

There are two types of private streets, i) those on a new development and ii) those that have existed for many years such as Church Lane, Trowbridge. It is not unusual for the owners of a private street to be unknown and even if the frontagers do not own the street, the highway authority is only required to deal with the frontagers.

The Public Utilities Street Works Act 1950 "Second Schedule Declarations Designating Streets as Prospectively Maintainable Highways" sets out that routes will meet this criteria:


*"1. Where the appropriate local authority are satisfied as to any street in their area, whether a highway or not, which is not a maintainable highway that is likely to become a maintainable highway, they may declare that it is likely to become such:*

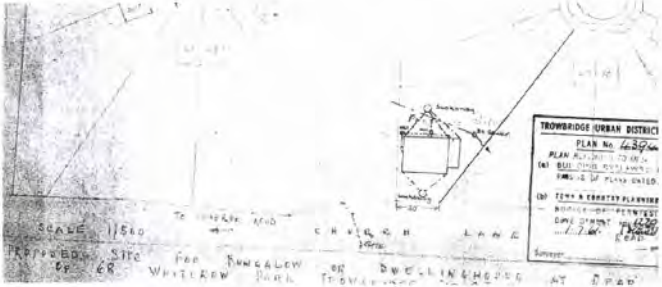
*Provided that such a declaration shall not be made as to a street which is under the management of control of a transport authority.*

*1. A declaration made under this Schedule shall be registered in the prescribed manner in the register of local land charges by the proper officer of the council of each county borough or county district in which the street or any part thereof is situated..."*

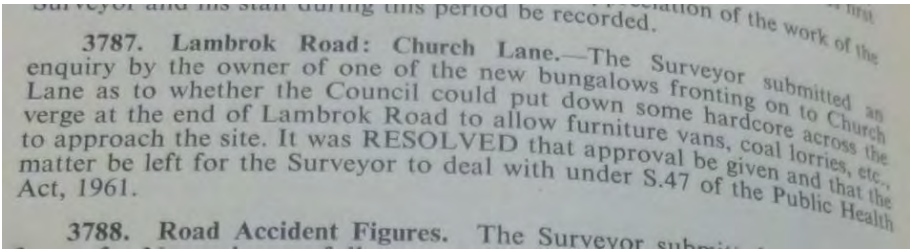
A highway maintainable at the public expense is described under Section 36 of the

			<p>Highways Act 1980:  <i>“A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either-</i></p> <p>(a) <i>it was a highway before 31<sup>st</sup> August 1835; or</i></p> <p>(b) <i>it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense...”</i></p> <p>Any carriageway that existed on or before 1835 automatically becomes a highway maintainable at the public expense, which suggests that Church Lane was not considered to be a highway before 1835 and there is no evidence that it became a vehicular highway after that date, other than a footpath, where there is no record of public maintenance as a vehicular route and the minutes and letters adduced in evidence by the applicant support the continuous treatment of Church Lane as a “Private Street”, not relating to public vehicular rights.</p> <p>Wiltshire County Council kept a list of private streets until 1980 which it considered for making up to adoptable standard, although very few were undertaken due to both the cost of construction and administrative procedures for recovering these costs from frontagers, as in the Trowbridge case explained in the letter from Wiltshire County Council to BLB Solicitors dated 12<sup>th</sup> April</p>
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			<p>1991. Church Lane was never adopted in full and monies secured through the Private Street Works, were refunded.</p> <p>The Trowbridge Urban District Council minutes and Wiltshire County Council correspondence, consistently refer to and treat Church Lane as a "Private Street", i.e. a private or unadopted street which is not maintained at the public expense and over which there is no obligation on the Council to carry out repairs, even if the public has a right of access. For most private streets the duty to maintain them falls to the owners of the properties fronting the street.</p> <p>Church Lane is not included in the current list of streets with the exception of the adopted part which is included as non-principal unclassified 7m in length, (Church Fields is also included in this list as non-principal unclassified 134m in length).</p>
<p>Receipt for Streetworks Payment</p>	<p>1961</p>	 <p><i>Image supplied by applicant</i></p>	<p>This document does not support public vehicular rights over Church Lane as a "Private Street", (as above).</p>

<p>Kynance Planning Drawing no.4394 Trowbridge Urban District Council</p>	<p>1<sup>st</sup> July 1961</p>	 <p><i>Image supplied by applicant</i></p> <p>Kynance plans showing Church Lane and Lambrok Road are separated. Also records a gate that separates the two roads. This gate was previously a cattle gate and marked the end of Church Lane. Now it could be used to stop Church Lane and Lambrok Road becoming a through road.</p>	<p>The evidence of the gate between Church Lane and Lambrok Road, support the existence of a gate as recorded in the Trowbridge Urban District claim map (following the National Parks and Access to the Countryside Act 1949, in preparation for the definitive map) and OS maps before the 1950/1955 revised planning OS sheet, which show a solid boundary at this junction.</p> <p>A gate may have prevented or at least hindered any public use of Church Lane with vehicles and the evidence of the condition of the route suggests that the surface was poor as it continued northwards. The OS mapping records that beyond Church Lane the northward continuation was as a cross-field path. It is unlikely that Church Lane would have been used by the public with vehicles where the gate/boundary and the condition of the path leading northwards may have prevented/hindered vehicular users continuing through to Lambrok Road.</p> <p>It is noted that the gate was present in 1961, even if it was removed at that time for the new properties, it was only another year before the posts were erected over the full width of Church Lane. Therefore, there was only a limited window for unhindered and unobstructed public vehicular use of Church Lane as a through route.</p>
<p>Trowbridge Urban District Council minutes</p>	<p>20<sup>th</sup> July 1961</p>	<p><b>“3154. Upper Studley Vicarage and adjacent land</b> (Reference Plan No.4213).–  <i>The Surveyor submitted a letter and revised draft layout plan showing proposals for the redevelopment of the site and was instructed to inform the applicants’ agents that in the opinion of the Committee the proposals are generally</i></p>	

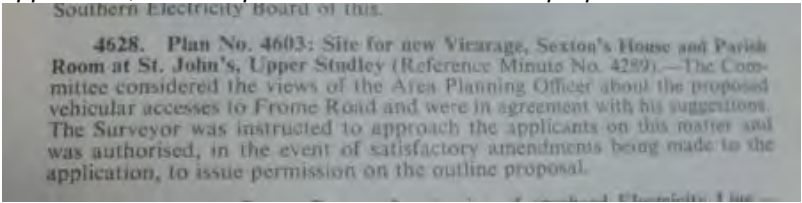
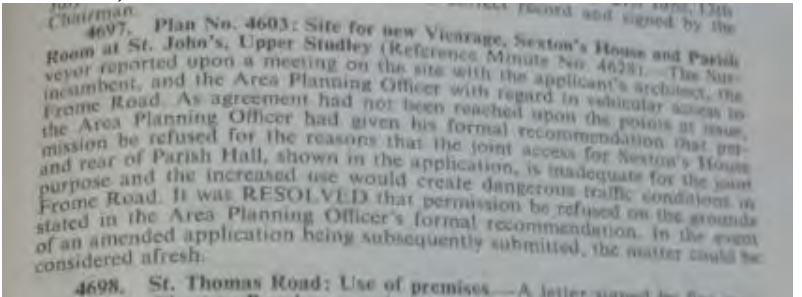
G15/100/50 (Plans Committee)		<p><i>satisfactory in principle subject to adequate provision for car parking at the proposed new church hall being incorporated in the scheme.</i>"</p> <p>instructed as to the reply to be made.</p> <p>3154. Upper Studley Vicarage and adjacent land (Reference Plan No. 4213).—The Surveyor submitted a letter and revised draft layout plan showing proposals for the redevelopment of the site and was instructed to inform the applicants' agents that in the opinion of the Committee the proposals are generally satisfactory in principle subject to adequate provision for car parking at the proposed new church hall being incorporated in the scheme.</p> <p>3155. Clarendon Road; Site for Bungalow. An enquiry was made to whether the Council could put down some hardcore across the verge at the end of Lambrok Road to allow furniture vans, coal lorries, etc., to approach the site. It was RESOLVED that</p> <p>More adequate car parking is necessary for the new church hall. No concern for cars exiting on Frome Road from Church Lane. This is only included as this has been a reason for the council PROW team to refuse access in 2011.</p> <p><i>"No.4425 Rear No.42A Whiterow Park (Church Lane): Proposed garage for Mr. K. J. Hillier.</i> <i>Byelaws: Defer consideration pending receipt of further particulars."</i></p> <p>No. 4425 Rear No. 42A Whiterow Park (Church Lane): Proposed garage for Mr. K. J. Hillier. Byelaws: Defer consideration pending receipt of further particulars.</p>	
Trowbridge Urban District Council minutes G15/100/50 (Plans Committee)	10 <sup>th</sup> August 1961	<p><i>"No.4425 Rear No. 42A Whiterow Park (Church Lane): Proposed garage amended for Mr. K. J. Hillier.</i> <i>Byelaws: Pass.</i> <i>Planning: Permitted development."</i></p> <p>No. 4425 Rear No. 42A Whiterow Park (Church Lane): Proposed garage amended for Mr. K. J. Hillier. Byelaws: Pass. Planning: Permitted development.</p> <p>Hillbrook garage amendment given planning permission. Council clearly have no objection to another car exiting out of Church Lane on to Frome Road. Access is currently only from Church Lane (see Drawing Number T1A/15b 11<sup>th</sup> Jan 1954 and OS 38/11 1937 edition).</p>	
Trowbridge Urban District Council minutes	9 <sup>th</sup> January 1962	<p><i>"3787. Lambrok Road: Church Lane.- The Surveyor submitted an enquiry by the owner of the new bungalows fronting on to Church Lane as to whether the Council could put down some hardcore across the verge at the end of Lambrok Road to allow furniture vans, coal lorries, etc., to approach the site. It was RESOLVED that</i></p>	The OS County Series map dated 1938, with revisions dated 1950 and 1955 to record development to the north of Church Lane, still show a gap between the end of Church

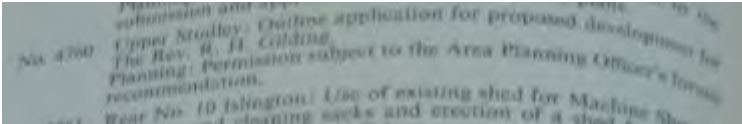
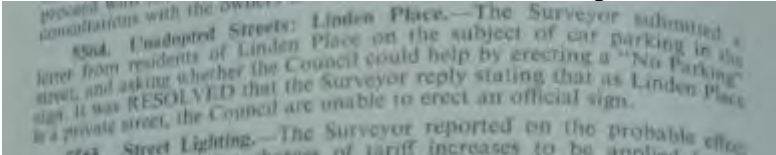
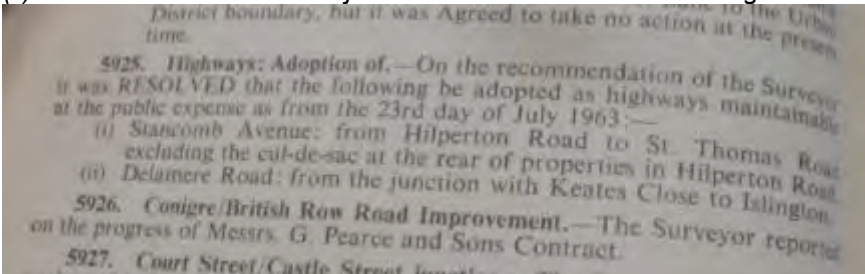
G15/100/50 Highways Committee		<p><i>approval be given and that the matter be left for the Surveyor to deal with under S.47 of the Public Health Act 1961."</i></p>  <p>A verge separated the end of Lambrok Road and end of Church Lane (as seen in map OS 38/11 1937 edition with revisions circa 1950/55). Now Kynance and Hillbrook were given permission to access from both directions, if only for heavy loads from the North end. This also turned Church Land into an unofficial through road.</p>	<p>Lane and Acorn Meadow which appears only a footpath. This minute does not make clear if the furniture vans and coal lorries were approaching from Church Lane or Lambrok Road, the reference to the end of "Lambrok Road" may suggest that vehicles were approaching that way and required a surface to continue their journey and access the bungalows. From aerial photographs it can be seen that the access to the property Kynance is angled towards Lambrok Road, for heavy vehicles approaching from the Church Lane end it may have been difficult to turn almost 145 degrees to pull into Kynance from Church Lane, or they may have reversed in when coming from this direction.</p> <p>In any case use with vehicles to access private property does not give rise to public vehicular rights and public vehicular access from Church Lane leading north past the bungalows after April 1962, was not possible where the posts were erected south of Kynance across the full width of the way.</p>
Trowbridge Urban District Council minutes G/100/50 (Plans Committee)	8 <sup>th</sup> March 1962	<p><b>4019. Church Lane: Site for Dwelling at rear of No. 42 Whiterow Park</b> (Reference Plan No. 4344). - <i>An inquiry was received from a prospective purchaser of this site as to whether permission would be forthcoming for the erection of a "Woolaway" type bungalow upon it. The observations of the Area Planning Officer had been obtained and were submitted. The Surveyor was instructed to reply to the enquiry to say that the Committee are not prepared to agree to the erection on this site of a bungalow of the type suggested.</i></p>	<p>Wiltshire Council in this application are not concerned with private vehicular rights or the correct addresses of the properties. This minute does not assist in establishing public vehicular rights over the claimed section of Church Lane.</p>

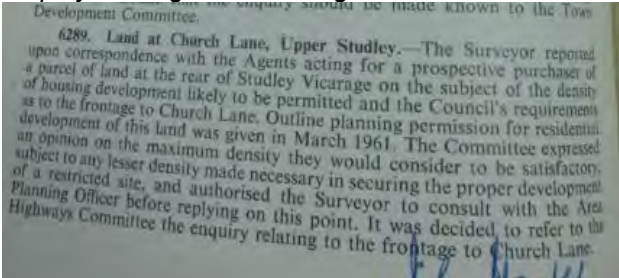


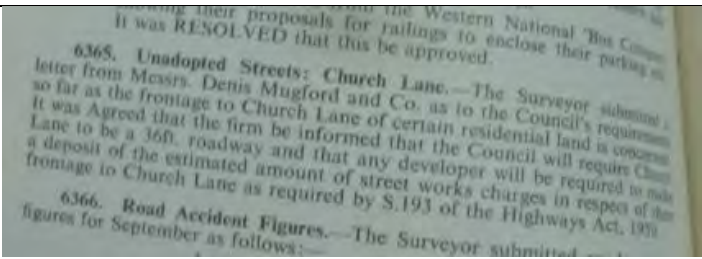
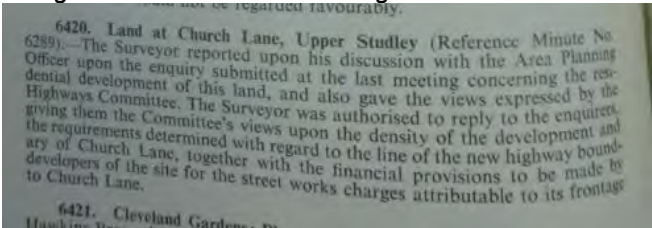
		<p>December, 1961, and which had been referred to the Council.</p> <p><b>4019. Church Lane: Site for Dwelling at rear of No. 42 Whiterow Park (Reference Plan No. 4344).</b>—An inquiry was received from a prospective purchaser of this site as to whether permission would be forthcoming for the erection of a "Woolaway" type bungalow upon it. The observations of the Area Planning Officer had been obtained and were submitted. The Surveyor was instructed to reply to the enquirer to say that the Committee are not prepared to agree to the erection on this site of a bungalow of the type suggested.</p>	
		<p>Rear of 42 Whiterow Park is now being referred to as Church Lane when actually it is past the end of Church Lane as shown on all previous maps. This is an argument against a precedent being set for other Church Lane addresses should Kynance and Hillbrook regain Church Lane access.</p>	
Trowbridge Urban District Council minutes G15/100/50 (Highways Committee)	10 <sup>th</sup> April 1962	<p><b>4161. Church Lane, Upper Studley.</b> - <i>It was RESOLVED that the Surveyor be authorised to erect posts across the width of the lane near the new bungalows to prevent through vehicular traffic using the lane.</i></p> <p>Accidents 14, Persons Injured 2</p> <p><b>4161. Church Lane, Upper Studley.</b>—It was RESOLVED that the Surveyor be authorised to erect posts across the width of this lane near the new bungalows to prevent through vehicular traffic using the lane.</p>	<p>If the Urban District Council considered Church Lane to be a full public vehicular highway, the posts would form an obstruction of the highway unless authorised. The erection of the posts has the effect of bringing into question any previous public vehicular use of Church Lane.</p> <p>The posts were erected to prevent Church Lane becoming a through route with vehicles, therefore for qualifying evidence of use by the public with vehicles, a period of user of 20 years prior to that date (1942-1962) is required. Any use with vehicles after that date as far as the property Kynance and beyond is likely to be by utilising the removable post, which appears to be a private arrangement and does not equate to a public vehicular right.</p>
Trowbridge Urban District	19 <sup>th</sup> April 1962	<p><i>No.4603 Studley Vicarage, Upper Studley: Outline application, demolition of existing Viacarage, Parish Room and cottage and erection of new Vicarage;</i></p>	

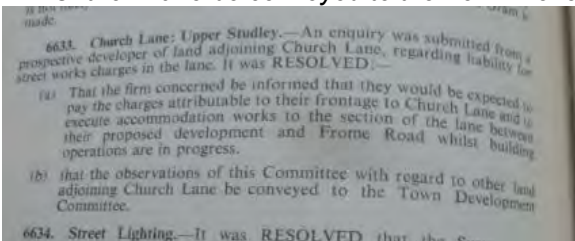
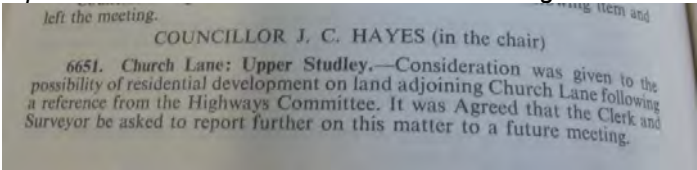
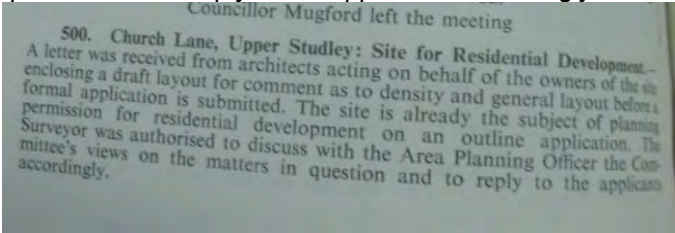
Council Minutes G15/100/50 (Plans Committee)		<p><i>Sexton's house and a Parish Hall for the Rev. R. H. Gilding.</i>  <i>Planning: Defer, pending receipt of the Area Planning Officer's formal recommendation.</i></p> <p>applicant the siting of the proposed building.</p> <p>No. 4603 Studley Vicarage, Upper Studley: Outline application, demolition of existing Vicarage, Parish Room and cottage and erection of new Vicarage; Sexton's house and a Parish Hall for the Rev. R. H. Gilding.      Planning: Defer, pending receipt of the Area Planning Officer's formal recommendation.</p>	
Trowbridge Urban District Council Minutes G15/100/50 (Plans Committee)	10 <sup>th</sup> May 1962	<p><i>No.4603 St John's, Upper Studley: Demolition of existing Vicarage, Parish Room and cottage, and erection of new Vicarage, Sexton's House and Parish Hall for Rev. R. H. Gilding.</i>  <i>Planning: Defer, pending receipt of Area Planning Officer's recommendation.</i></p> <p>menadation.</p> <p>No. 4603 St. John's, Upper Studley: Demolition of existing Vicarage, Parish Room and cottage, and erection of new Vicarage, Sexton's House and Parish Hall for Rev. R. H. Gilding.      Planning: Defer, pending receipt of Area Planning Officer's recommendation.</p>	
Trowbridge Urban District Council Minutes G15/100/51 (Plans Committee)	21 <sup>st</sup> June 1962	<p><b>4437. Plan No.4603: Vicarage, Sexton's House and Parish Hall at Upper Studley (Reference Minute No.4289).</b>-The Surveyor reported that he had had further correspondence with the Area Planning Officer upon the matters rasied by him and that a formal recommendation upon the proposal had not yet been receievd. A letter was submitted from the applicant's architects asking for the inclusion in their application of the proposed use of the site of the existing parish room and sexton's house as an exclusion to the graveyard. It was agreed that the Committee see no objection to this on planning grounds.</p> <p>recommendation, and were approved.</p> <p>4437. Plan No. 4603: Vicarage, Sexton's House and Parish Hall at Upper Studley (Reference Minute No. 4289). - The Surveyor reported that he had had further correspondence with the Area Planning Officer upon the matters raised by him and that a formal recommendation upon the proposal had not yet been received. A letter was submitted from the applicants' architects asking for the inclusion in their application of the proposed use of the site of the existing parish room and sexton's house as an exclusion of the graveyard. It was agreed that the Committee see no objection to this on planning grounds, and the Surveyor was instructed to inform the Area Planning Officer accordingly.</p>	

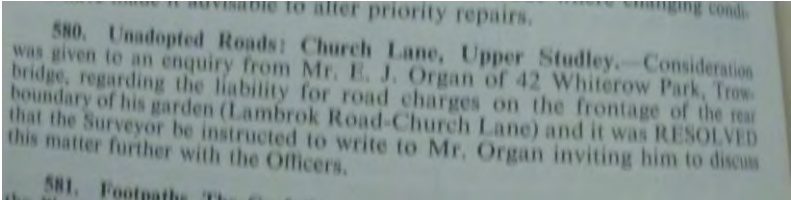
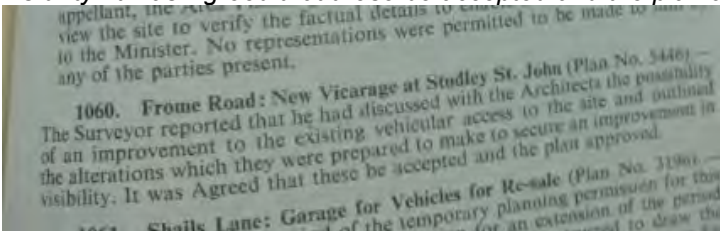
<p>Trowbridge Urban District Council Minutes G15/100/51 (Plans Committee)</p>	<p>23<sup>rd</sup> August 1962</p>	<p><b>4628. Plan No. 4603: Site for new Vicarage, Sexton's House and Parish Room at St John's, Upper Studley</b> (Reference Minute No. 4289).-The Committee considered the views of the Area Planning Officer about the proposed vehicular accesses to Frome Road and were in agreement with his suggestions. The Surveyor was instructed to approach the applicants on this matter and was authorised, in the event of satisfactory amendments being made to the application, to issue permission on the outline proposal.</p> 	
<p>Trowbridge Urban District Council Minutes G15/100/51 (Plans Committee)</p>	<p>13<sup>th</sup> September 1962</p>	<p><b>4697. Plan No. 4603: Site for new Vicarage, Sexton's House and Parish Room at St John's, Upper Studley</b> (Reference Minute No. 4628).-The Surveyor reported upon a meeting on the site with the applicant's architect, the incumbent and the Area Planning Officer with regard to vehicular access to Frome Road. As agreement had not been reached upon the points at issue, the Area Planning Officer had given his formal recommendation that permission be refused for the reasons that the joint access for Sexton's House and rear of Parish Hall, shown in the application, is inadequate for the joint purpose and the increased use would create dangerous traffic conditions in Frome Road. It was <b>RESOLVED</b> that permission be refused on the grounds stated in the Area Planning Officer's formal recommendation. In the event of an amended application being subsequently submitted, the matter could be considered afresh.</p> 	

Trowbridge Urban District Council Minutes G15/100/51 (Plans Committee)	15 <sup>th</sup> November 1962	<p>No. 4760 Upper Studley: Outline application for proposed development for the Rev. R. H. Gilding.          Planning: Permission subject to the Area Planning Officer's formal recommendation.</p> 	
Trowbridge Urban District Council minutes G15/100/51 (Highways Committee)	9 <sup>th</sup> April 1963	<p><b>“5564. Unadopted Streets: Linden Place.</b>-The Surveyor submitted a letter from residents of Linden Place on the subject of car parking in the street, and asking whether the Council could help by erecting a “No Parking” sign. It was <b>RESOLVED</b> that the Surveyor reply stating that as Linden Place is a private street, the Council are unable to erect an official sign.”</p>  <p>Council unable to act on unadopted private streets.</p>	<p>The applicant has included this extract to demonstrate that the Council is unable to act on unadopted private streets. It was not possible for them to authorise an official sign, which could be misleading to the public.</p> <p>Minutes dated 10<sup>th</sup> June 1971 show that the Urban District Council had a private street works programme and a budget for contract works and administration costs.</p>
Trowbridge Urban District Council minutes G15/100/52 (Highways Committee)	9 <sup>th</sup> July 1963	<p><b>5925. Highways: Adoption of.</b>-On the recommendation of the Surveyor it was <b>RESOLVED</b> that the following be adopted as highways maintainable at the public expense as from the 23<sup>rd</sup> day of July 1963:-          (i) Stancomb Avenue: from Hilperton Road to St. Thomas Road excluding the cul-de-sac at the rear of properties in Hilperton Road.          (ii) Delamere Road: from the junction with Keates Close to Islington.</p> 	<p>Road adoptions by the Urban District Council, but not Church Lane. Officers found many examples of adoptions within the UDC minutes, but no evidence that Church Lane was ever fully adopted as a publicly maintainable highway, despite the adoption of the central section for the Church Fields development.</p>

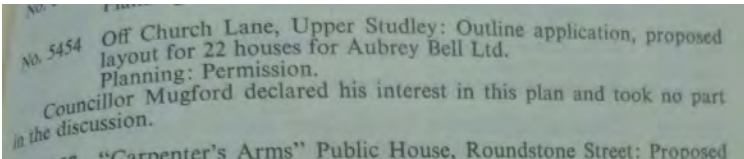
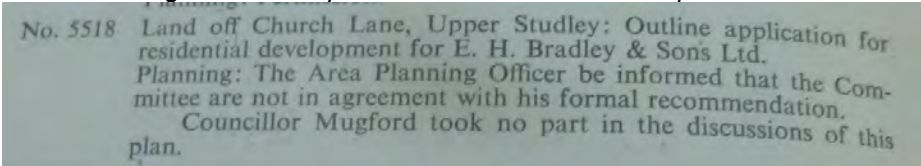
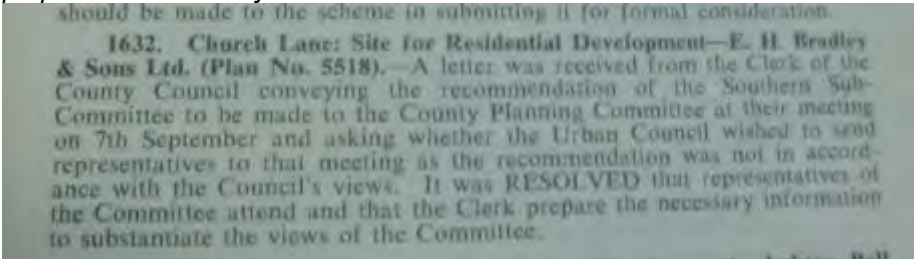
<p>Trowbridge Urban District Council minutes G15/100/52 (Plans Committee)</p>	<p>31<sup>st</sup> October 1963</p>	<p><i>“6289. Land at Church Lane, Upper Studley.-The Surveyor reported upon correspondence with the Agents acting for a prospective purchaser of a parcel of land at the rear of Studley Vicarage on the subject of the density of housing development likely to be permitted and the Council’s requirements as to the frontage to Church Lane. Outline planning permission for residential development of this land was given in March 1961. The Committee expressed an opinion of the maximum density they would consider to be satisfactory, subject to any lesser density made necessary in securing the proper development of a restricted site, and authorised the Surveyor to consult with the Area Planning Officer before replying on this point. It was decided to refer to the Highways Committee the enquiry relating to the frontage of Church Lane.</i></p>  <p>Council were aware of Church Fields Estate and the fact that cars would exit out on to Frome Road. Kynance and Hillbrook had already been given planning permission and were built and accessing via Church Lane. Kynance was later refused access due to too many cars exiting on to the Frome Road.</p>	
<p>Trowbridge Urban District Council Minutes G15/100/52 (Highways Committee)</p>	<p>12<sup>th</sup> November 1963</p>	<p><b>6365. Unadopted Streets: Church Lane.</b>-<i>The Surveyor submitted a letter from Messrs. Denis Mugford and Co. as the the Council’s requirements so far at the frontage to Church Lane of certain residential land is concerned. It was Agreed that the firm be informed that the Council will require Church Lane to be a 36ft. roadway and that any developer will be required to make a deposit of the estimated amount of street works charges in respect of their frontage to Church Lane as required by S.193 of the Highways Act, 1959.</i></p>	<p>The Urban District Council could secure monies from the developers to under section 193 of the Highways Act 1959 to undertake works to bring the private street to the appropriate standard for the development. Although only part of Church Lane is adopted, that section between Frome Road and the adopted highway (Church Fields) is made up, which is likely to be as a result of private street works on that section.</p>

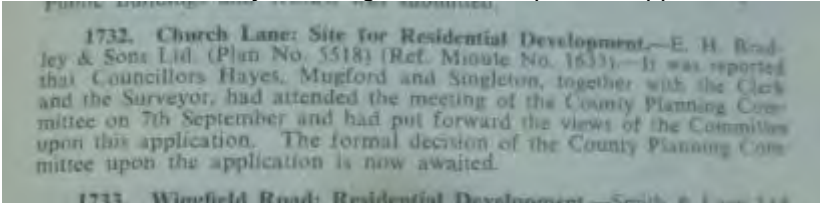
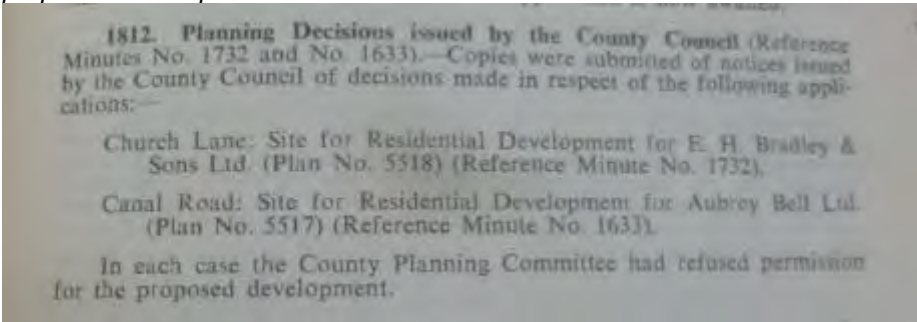
			
<p>Trowbridge Urban District Council Minutes G15/100/52 (Plans Committee)</p>	<p>21<sup>st</sup> November 1963</p>	<p><b>“6420. Land at Church Lane, Upper Studley (Reference Minute No.6289). The Surveyor reported upon his discussion with the Area Planning Officer upon the enquiry submitted at the last meeting concerning the residential development of this land, and also gave the views expressed by the Highways Committee. The Surveyor was authorised to reply to the enquirers, giving them the Committee’s views upon the density of the development and the requirements determined with regard to the line of the new highway boundary of Church Lane, together with the financial provisions to be made by developers of the site for the street works charges attributable to its frontage to Church Lane.”</b></p>  <p>Street works charges for Church Fields. Church Lane was adopted just past the entrance to Church Fields only. See map below from Trowbridge Police Station.</p>	
<p>Trowbridge Urban District Council Minutes G15/100/52 (Highways Committee)</p>	<p>14<sup>th</sup> January 1964</p>	<p><b>“6633. Church Lane: Upper Studley. – An enquiry was submitted from a prospective developer of land adjoining Church Lane, regarding liability for street works charges in the lane. It was RESOLVED:-</b></p> <p>(a) That the firm concerned be informed that they would be expected to pay the charges attributable to their frontage to Church Lane and to execute accommodation works to the section of the land between their proposed development and Frome Road whilst building operations are in progress.</p> <p>(b) that the observations of this Committee with regard to other land adjoining</p>	

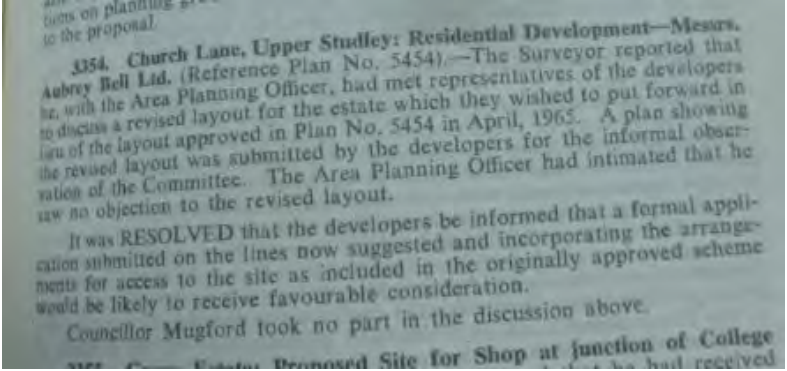
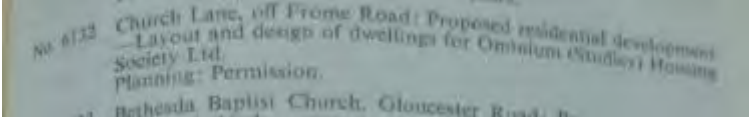
		<p><i>Church Lane be conveyed to the Town Development Committee."</i></p> 	
<p>Trowbridge Urban District Council Minutes G15/100/52 Town Development Committee</p>	<p>16<sup>th</sup> January 1964</p>	<p><b>6651. Church Lane: Upper Studley.</b>-Consideration was given to the possibility of residential development on land adjoining Church Lane following a reference from the Highways Committee. It was Agreed that the Clerk and Surveyor be asked to report further on this matter to a future meeting.</p> 	
<p>Trowbridge Urban District Council Minutes G15/100/53 (Plans Committee)</p>	<p>17<sup>th</sup> September 1964</p>	<p><b>500. Church Lane, Upper Studley: Site for Residential Development.</b>-A letter was received from architects acting on behalf of the owners of the site enclosing a draft layout for comment as to density and general layout before a formal application is submitted. The site is already the subject of planning permission for residential development on an outline application. The Surveyor was authorised to discuss with the Area Planning Officer to Committees views on the matters in question and to reply to the applicants accordingly.</p> 	

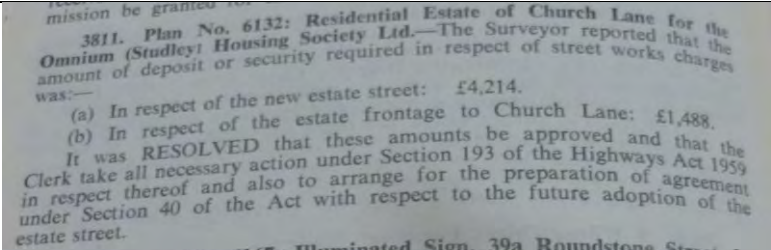
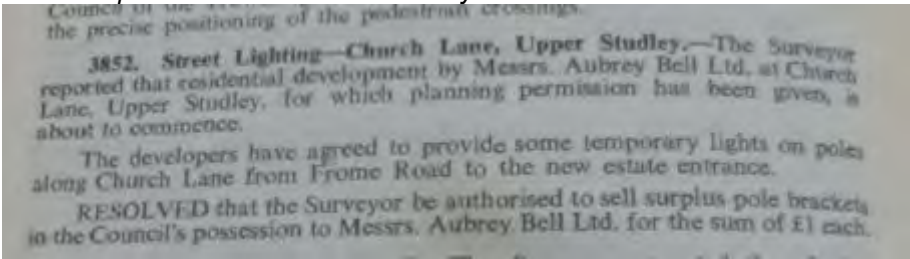
Trowbridge Urban District Council Minutes G15/100/53 (Highways Committee)	13 <sup>th</sup> October 1964	<p><b>“580. Unadopted Roads: Church Lane, Upper Studley.</b>—Consideration was given to an enquiry from Mr. E. J. Organ of 42 Whiterow Park, Trowbridge, regarding the liability for road charges on the frontage of the rear boundary of his garden (Lambrok Road-Church Lane) and it was RESOLVED that the Surveyor be instructed to write to Mr. Organ inviting him to discuss this matter further with the Officers.”</p>  <p>See OS ST8456 below. End of Church Lane is now considered to have moved further North. Kynance is no longer at the end of Church Lane and it now meets Lambrok Road.</p>	<p>When overlaying a current OS map with historic OS mapping, the field boundary where Church Lane ends remains consistent, but there was a gap between the end of Church Lane and the start of Lambrok Road which coincides with the rear boundary of 42 Whiterow Park, now part of the adopted highway Acorn Meadow.</p> <p>The posts were in place from April 1962, as shown in the Trowbridge Urban District Council minutes dated 10<sup>th</sup> April 1962 and the OS National Grid Series map ST8456 and ST 8556 dated 1968. Public vehicular access from Frome Road as far as Kynance and beyond, was not possible. If the residents were utilising the removable post to access property, this related to a private right rather than public vehicular rights.</p>
Trowbridge Urban District Council Minutes G15/100/53 (Plans Committee)	4 <sup>th</sup> March 1965	<p><b>1060. Frome Road: New Vicarage as Studley St. John (Plan No. 5446).</b>—The Surveyor reported that he had discussed with the Architects the possibility of an improvement to the existing vehicular access to the site and outlined the alterations which they were prepared to make to secure an improvement in visibility. It was Agreed that these be accepted and the plan approved.</p> 	
Trowbridge Urban District Council	25 <sup>th</sup> March 1965	<p><b>“No.5454 Off Church Lane, Upper Studley: Outline application, proposed layout for 22 houses for Aubrey Bell Ltd. Planning: Permission.</b></p>	



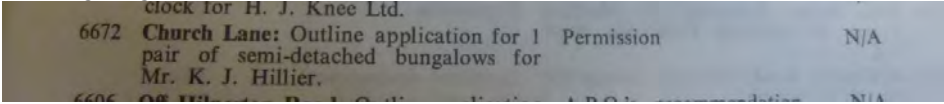
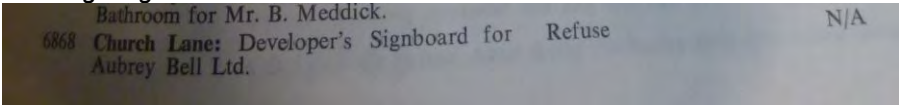
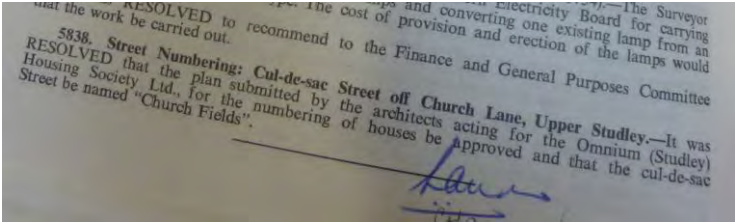
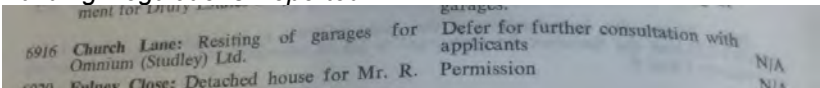
Minutes G15/100/53 (Plans Committee)		<p><i>Councillor Mugford declared his interest in this plan and took no part in the discussion."</i></p>  <p>Lots more cars to be exiting out of Church Lane on to Frome Road.</p>	
Trowbridge Urban District Council Minutes G15/100/53 (Plans Committee)	29 <sup>th</sup> April 1965	<p><i>No. 5518 Land off Church Lane, Upper Studley: Outline application for residential development for E. H. Bradley &amp; Sons Ltd. Planning: The Area Planning Officer be informed that the Committee are not in agreement with his formal recommendation. Councillor Mugford took no part in the discussions of this plan.</i></p> 	
Trowbridge Urban District Council Minutes G15/100/54 (Plans Committee)	19 <sup>th</sup> August 1965	<p><b>1632. Church Lane: Site for Residential Development-E. H. Bradley &amp; Sons Ltd. (Plan No. 5518).</b> A letter was received from the Clerk of the County Council conveying the recommendation of the Southern Sub Committee to be made to the County Planning Committee at their meeting on 7<sup>th</sup> September and asking whether the Urban Council wished to send representatives to that meeting as the recommendation was not in accordance with the Council's views. It was <b>RESOLVED</b> that representatives of the Committee attend and that the Clerk prepare the necessary information to substantiate the views of the Committee.</p> 	

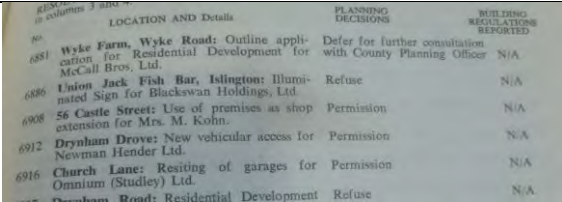
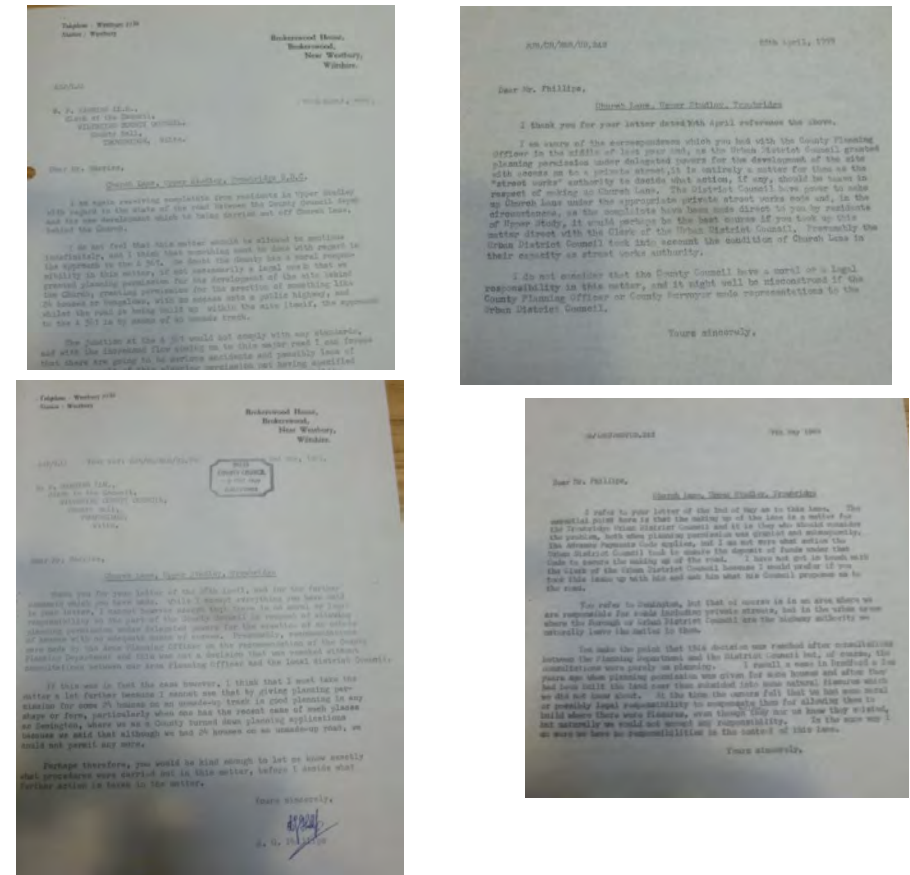
Trowbridge Urban District Council Minutes G15/100/54 (Plans Committee)	9 <sup>th</sup> September 1965	<p><b>1732. Church Lane: Site for Residential Development.-E. H. Bradley &amp; Sons Ltd. (Plan No.5518) (Ref. Minute No.1633).</b>-It was reported that Councillors Hayes, Mugford and Singleton, together with the Clerk and the Surveyor, had attended the meeting of the County Planning Committee on 7<sup>th</sup> September and had put forward the views of the Committee upon this application. The formal decision of the County Planning Committee upon the application is now awaited.</p> 	
Trowbridge Urban District Council Minutes G15/100/54 (Plans Committee)	30 <sup>th</sup> September 1965	<p><b>1812. Planning Decisions issued by the County Council (Reference Minutes No. 1732 and No. 1633).</b>-Copies were submitted of notices issued by the County Council of decisions made in respect of the following applications:-  <b>Church Lane: Site for Residential Development for E. H. Bradley &amp; Sons Ltd. (Plan No.5518) (Reference Minute No. 1732)...</b>  <i>In each case the County Planning Committee had refused permission for the proposed development.</i></p> 	
Trowbridge Urban District Council Minutes G15/100/55	8 <sup>th</sup> December 1966	<p><b>3354. Church Lane, Upper Studley: Residential Development-Messrs Aubrey Bell Ltd. (Reference Plan No.5454.-The Surveyor reported that he, with the Area Planning Officer, had met representatives of the developers to discuss a revised layout for the estate which they wished to put forward in lieu of the layout approved in Plan no. 5454 in April, 1965. A plan showing the revised layout was</b></p>	

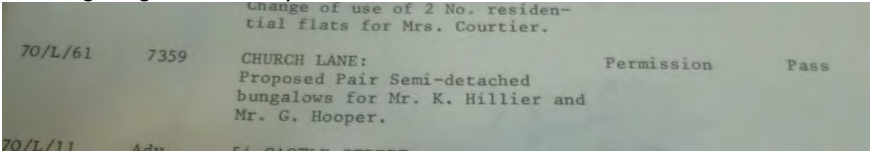
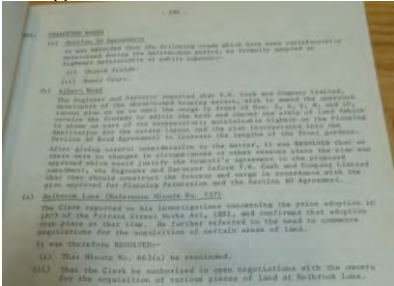
(Plans Committee)		<p>submitted by the developers for the informal observation of the Committee. The Area Planning Officer has intimated that he saw no objection to the revised layout. It was RESOLVED that the developers be informed that a formal application submitted on the lines now suggested and incorporating the arrangements for access to the site as included in the originally approved scheme would be likely to receive favourable consideration.</p> <p>Councillor Mugford took no part in the discussion above.</p> 	
Trowbridge Urban District Council Minutes G15/100/55 (Plans Committee)	9 <sup>th</sup> February 1967	<p>No. 6132 Church Lane, off Frome Road: Proposed residential development- Layout and design of dwelling for Ominium (Studley) Housing Society Ltd. Planning: Permission.</p> 	
Trowbridge Urban District Council Minutes G15/100/55	4 <sup>th</sup> April 1967	<p><b>“3811. Plan No.6132: Residential Estate of Church Lane for the Omnium (Studley) Housing Society Ltd.-The Surveyor reported that the amount of deposit or security required in respect of street works charges was:-</b></p> <p>(a) In respect of the new estate street: £4,214.</p> <p>(b) In respect of the estate frontage to Church Lane: £1,488.</p> <p><b>It was RESOLVED that these amounts be approved and that the Clerk take all necessary action under Section 193 of the Highways Act 1959 in respect thereof and also to arrange for the preparation of agreement under Section 40 of the Act with respect to the future adoption of the estate street.”</b></p>	This relates to the Church Fields estate located to the north-east of Church Lane. Church Lane is still treated as a “private street”, the Urban District Council as the Street Works Authority looking to secure a private street works payment for the frontage onto Church Lane, only the estate street is mentioned for future adoption and it was later adopted. Church Lane is never fully adopted

		 <p>mission be granted to  <b>3811. Plan No. 6132: Residential Estate of Church Lane for the Omnium (Studley) Housing Society Ltd.</b>—The Surveyor reported that the amount of deposit or security required in respect of street works charges was:—  (a) In respect of the new estate street: £4,214.  (b) In respect of the estate frontage to Church Lane: £1,488.  It was <b>RESOLVED</b> that these amounts be approved and that the Clerk take all necessary action under Section 193 of the Highways Act 1959 in respect thereof and also to arrange for the preparation of agreement under Section 40 of the Act with respect to the future adoption of the estate street.</p>	as a highway maintainable at the public expense.
Trowbridge Urban District Council Minutes G15/100/55 (Highways Committee)	11 <sup>th</sup> April 1967	<p><b>3852. Street Lighting—Church Lane, Upper Studley.</b>—The Surveyor reported that residential development by Messrs. Aubrey Bell Lts, at Church Lane, Upper Studley, for which planning permission has been given, is about to commence. The developers have agreed to provide some temporary lights on poles along Church Lane from Frome Road to the new estate entrance. <b>RESOLVED</b> that the Surveyor be authorised to sell surplus pole brackets in the Council's possession to Messrs. Aubrey Bell Ltd. for the sum of £1 each.</p> 	
Trowbridge Urban District Council Minutes G15/100/56 (Plans Committee)	8 <sup>th</sup> June 1967	<p><b>No.6270 Church Lane: 25 No Three Bedroom Houses and Garages for Omnium (Studley) Housing Society.</b>  <b>Building Regulations: Pass, subject to siting of dwellings being satisfactory.</b>  <b>Planning: Permission previously granted.</b></p>	

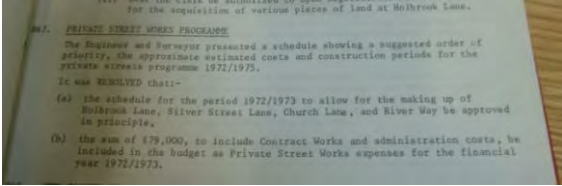
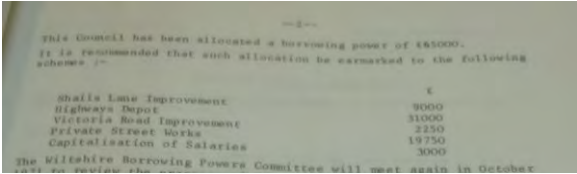
Trowbridge Urban District Council Minutes G15/100/56 (Plans Committee)	21 <sup>st</sup> September 1967	<p><i>Detailed Plans No. 6270 amended</i>  <i>Church Lane: Proposed 25 No. three bedroom houses for Ominum (Studley) Housing Society Ltd.</i>  <i>Building Regulations: Pass.</i>  <i>Planning: Detailed plans approved.</i></p>	
Trowbridge Urban District Council Minutes G15/100/58 (Highways Committee)	6 <sup>th</sup> June 1968	<p><b>5233. Statutory Undertakers' Works Reported:-</b>  <b>(a) Post Office Telephones :-</b>  <b>(i) Residential Estate off Church Lane : Underground telephone cables...</b>  <b>(b) Southern Electricity Board:-</b>  <b>(i) Residential Estate off Church Lane: Underground electricity supply cables.</b></p>	The provision of services to the Church Fields estate in Church Lane as the highway (footpath). Additionally, supports the full width of Church Lane as a highway, where services are located at the boundaries.
Trowbridge Urban District Council	22 <sup>nd</sup> August 1968	<p><b>6672 Church Lane: Outline application for 1 pair of semi-detached bungalows for Mr. K. J. Hillier.</b>  <b>Planning: Permission</b></p>	20 and 22 Church Lane. Again development consistent with the private street and not additional evidence of public vehicular rights.

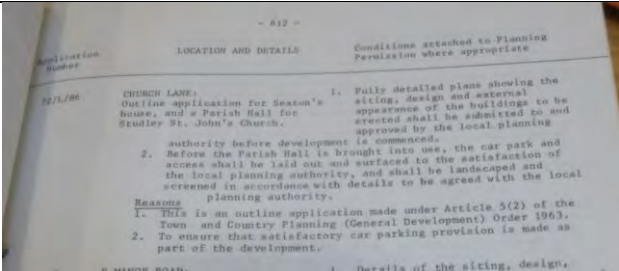
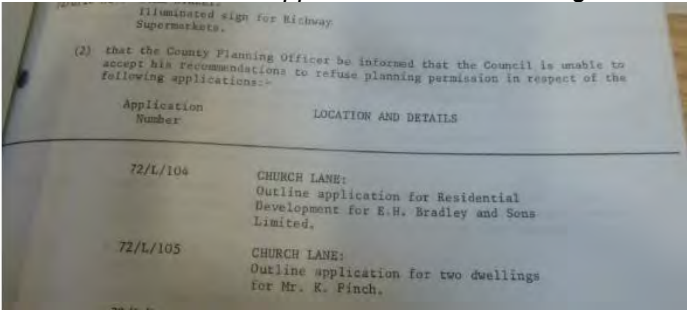
Minutes G15/100/58 (Plans Committee)		<i>Building Regulations: N/A</i> 	
Trowbridge Urban District Council Minutes G15/100/58 (Plans Committee)	2 <sup>nd</sup> January 1969	<b>6868 Church Lane: Developer's Signboard for Aubrey Bell Ltd.</b> <i>Planning: Refuse</i> <i>Building Regulations: N/A</i> 	
Trowbridge Urban District Council Minutes G15/100/58 (Highways Committee)	9 <sup>th</sup> January 1969	<b>5838. Street Numbering: Cul-de-sac Street off Church Lane , Upper Studley.-</b> <i>It was RESOLVED that the plan submitted by the architects acting for the Omnium (Studley) Housing Society Ltd., for the numbering of houses be approved and that the cul-de-sac Street be named "Church Fields".</i> 	
Trowbridge Urban District Council Minutes G15/100/58 (Plans Committee)	30 <sup>th</sup> January 1969	<b>6916 Church Lane: Resiting of garages for Omnium (Studley) Ltd.</b> <i>Planning Decisions: Defer for further consultation with applicants</i> <i>Building Regulations Reported: N/A</i> 	
Trowbridge Urban District Council	27 <sup>th</sup> February 1969	<b>6916 Church Lane: Resiting of garages for Omnium (Studley) Ltd.</b> <i>Planning Decisions: Permission</i> <i>Building Regulations Reported: N/A</i>	

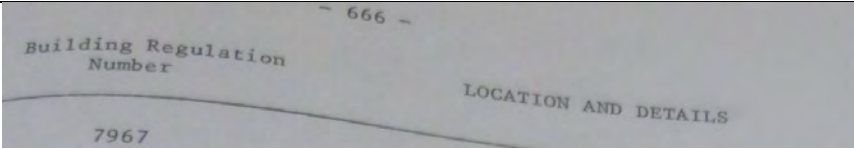
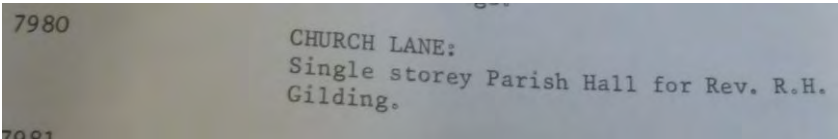
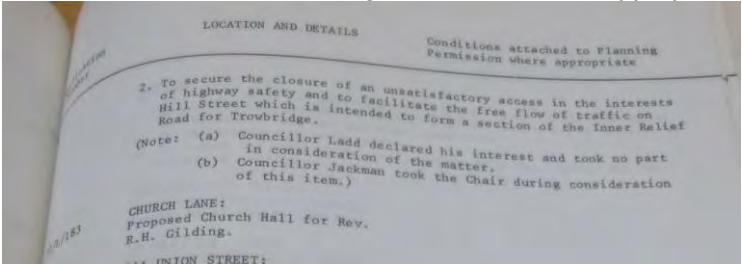
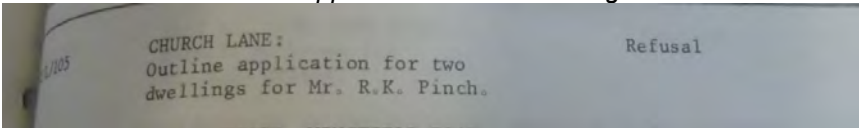
<p>Minutes G15/100/58 (Plans Committee)</p>		 <table border="1"> <thead> <tr> <th>LOCATION AND Details</th> <th>PLANNING DECISIONS</th> <th>BUILDING REGULATIONS REPORTED</th> </tr> </thead> <tbody> <tr> <td>6851 Wyke Farm, Wyke Road: Outline application for Residential Development for McCall Bros. Ltd.</td> <td>Defer for further consultation with County Planning Officer</td> <td>N/A</td> </tr> <tr> <td>6886 Union Jack Fish Bar, Islington: Illuminated Sign for Blackswan Holdings, Ltd.</td> <td>Refuse</td> <td>N/A</td> </tr> <tr> <td>6908 56 Castle Street: Use of premises as shop extension for Mrs. M. Kohn.</td> <td>Permission</td> <td>N/A</td> </tr> <tr> <td>6912 Drynam Drive: New vehicular access for Newman Hender Ltd.</td> <td>Permission</td> <td>N/A</td> </tr> <tr> <td>6916 Church Lane: Resiting of garages for Omnium (Studley) Ltd.</td> <td>Permission</td> <td>N/A</td> </tr> <tr> <td>6917 Church Lane: Residential Development</td> <td>Refuse</td> <td>N/A</td> </tr> </tbody> </table>	LOCATION AND Details	PLANNING DECISIONS	BUILDING REGULATIONS REPORTED	6851 Wyke Farm, Wyke Road: Outline application for Residential Development for McCall Bros. Ltd.	Defer for further consultation with County Planning Officer	N/A	6886 Union Jack Fish Bar, Islington: Illuminated Sign for Blackswan Holdings, Ltd.	Refuse	N/A	6908 56 Castle Street: Use of premises as shop extension for Mrs. M. Kohn.	Permission	N/A	6912 Drynam Drive: New vehicular access for Newman Hender Ltd.	Permission	N/A	6916 Church Lane: Resiting of garages for Omnium (Studley) Ltd.	Permission	N/A	6917 Church Lane: Residential Development	Refuse	N/A	
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<p>Trowbridge – Roads and Bridges 1935 – 1968 F2/256/10/1</p>	<p>April-May 1969</p>	 <p>The letters are dated 28th April 1969, 28th April 1969, and 28th May 1969. They discuss the planning permission for Church Lane, the Urban District Council's stance, and the County Council's role in providing access to a public highway.</p>	<p>Mr A G Phillips writes to Wiltshire County Council to complain that planning permission has been granted by the Urban District Council for the houses at Church Fields, without access onto a public highway “no adequate means of access” and onto the unmade track (Church Lane), which was not good planning practice. The County Council agree that the Urban District Council has granted planning permission, with access onto a “private street” and the making up of Church Lane is a matter for the Urban District Council as the street works authority.</p> <p>This correspondence is further evidence that there were no public vehicular rights over Church Lane and the reputation of Church Lane as a private street.</p>																					

<p>Trowbridge Urban District Council Minutes G15/100/59 (Plans Committee)</p>	<p>28<sup>th</sup> May 1970</p>	<p>70/L/61 7359 CHURCH LANE: Proposed Pair Semi-detached bungalows for Mr. K. Hillier and Mr. G. Hooper.  <i>Planning Decisions: Permission</i>  <i>Building Regulations Reported: Pass</i></p> 	
<p>Trowbridge Urban District Council Minutes G15/100/60 (Highways &amp; Planning Committee)</p>	<p>10<sup>th</sup> June 1971</p>	<p><b>866. UNADOPTED ROADS</b>  <b><i>(a) Section 40 Agreements</i></b>  <i>It was RESOLVED that the following roads which have been satisfactorily maintained during the maintenance period, be formally adopted as highways maintainable at the public expense:-</i>  <i>(i) Church Fields.</i></p>  <p><b>867. PRIVATE STREET WORKS PROGRAMME</b>  <i>The Engineer and Surveyor presented a schedule showing a suggested order of priority, the approximate estimated costs and construction periods for the private streets programme 1972/1975.</i>  <i>It was RESOLVED that:-</i>  <i>(a) The schedule for the period 1972/73 to allow for the making up of Holbrook Lane, Silver Street Lane, Church Lane, and River Way be approved in principle,</i>  <i>(b) the sum of £79,000, to include Contract Works and administration costs, be included in the budget as Private Street Works expenses for the</i></p>	<p>866 refers to the formal adoption of Church Fields as a highway maintainable at the public expense. The remainder of Church Lane, however, is treated differently under the private street works programme. Church Lane being a priority for 1972/73 phase of the 1972-1975 programme, where the Church Fields development is completed. The making up of the unadopted section of Church Lane from Church Fields to Frome Road, that we see today is likely to have been carried out as part of this programme. That section north of the adopted section has not been made up to the same standard where there is less use with vehicles to access residential properties.</p>



		<p><b>financial year 1972/1973.</b></p> 	
<p>Trowbridge Urban District Council Minutes G15/100/60 (Financial Report)</p>	<p>June 1971</p>	<p><i>This Council has been allocated a borrowing power of £65000. It is recommended that such allocation be earmarked to the following schemes :-</i></p> <p>...</p> <p><i>Private Street Works £19750</i></p> 	<p>The Urban District Council has a budget to undertake private street works.</p>
<p>Trowbridge Urban District Council Minutes G15/100/61 (Highways &amp; Planning Committee)</p>	<p>6<sup>th</sup> July 1972</p>	<p><b>Application Number 72/L/86</b>  <b>LOCATION AND DETAILS CHURCH LANE:</b> <i>Outline application for Sexton's house and a Parish Hall for Studley St. John's Church.</i>  <b>Conditions attached to Planning Permission where appropriate</b></p> <ol style="list-style-type: none"> <li>1. <i>Fully detailed plans showing the siting, design and external appearance of the buildings to be erected shall be submitted to and approved by the local planning authority before development is commenced.</i></li> <li>2. <i>Before the Parish Hall is brought into use, the car park and access shall be laid out and surfaced to the satisfaction of the local planning authority, and shall be landscaped and screened in accordance with details to be agreed with the local planning authority.</i></li> </ol> <p><u>Reasons</u></p> <ol style="list-style-type: none"> <li>1. <i>This is an outline application made under Article 5(2) of the Town and Country Planning (General Development) Order 1963.</i></li> <li>2. <i>To ensure that satisfactory car parking provision is made as part of the development.</i></li> </ol>	

			
<p>Trowbridge Urban District Council Minutes G15/100/61 (Highways &amp; Planning Committee)</p>	<p>3<sup>rd</sup> August 1972</p>	<p><i>(2) that the County Planning Officer be informed that the Council is unable to accept his recommendations to refuse planning permission in respect to the following applications:-</i>  <i>Application Number 72/L/104</i>  <i>72/L/105</i>  <b>LOCATION AND DETAILS:</b>  <i>CHURCH LANE: Outline application for Residential Development for E.H. Bradley and Sons Limited.</i>  <i>CHURCH LANE: Outline application for two dwellings for Mr. K. Pinch.</i></p> 	
<p>Trowbridge Urban District Council Minutes G15/100/61 (Highways &amp; Planning)</p>	<p>7<sup>th</sup> September 1972</p>	<p><i>Building Regulation Number 7980</i>  <b>LOCATION AND DETAILS CHURCH LANE:</b> <i>Single storey Parish Hall for Rev. R. H. Gilding.</i></p>	

Committee)		 	
Trowbridge Urban District Council Minutes G15/100/61 (Highways & Planning Committee)	5 <sup>th</sup> October 1972	<p><i>Application Number 72/L/183</i>  <i>LOCATION AND DETAILS CHURCH LANE: Proposed Church Hall for Rev. R. H. Gilding.</i>  <i>Conditions attached to Planning Permission where appropriate</i></p> 	
Trowbridge Urban District Council Minutes G15/100/61 (Highways & Planning Committee)	7 <sup>th</sup> December 1972	<p><i>CHURCH LANE: Outline application for two dwellings for Mr R. K. Pinch. Refusal</i></p> 	
County Secretary and Solicitor's Office letter	Undated	<p><i>"Church Fields and Church Lane, Upper Studley, Trowbridge.</i>  <i>1. An extract from the highway records is attached which shows coloured orange the extent of the road at Church Fields which has been adopted as highway</i></p>	The applicant dates this letter as 1970, however, it refers to the adopted section of Church Lane for the Church Fields development. The adoption of this highway

<p>and map</p>	<p><i>maintainable at the public expense and also the half width of a length of Church Lane which has also been adopted. Also coloured orange is the length of White Row Hill (Frome Road) and Lambrok Road at either end of Church Lane which are adopted as highways.</i></p> <ol style="list-style-type: none"> <li>2. <i>Church Fields and the half width of Church Lane was adopted by the former Trowbridge Urban District Council and was passed over on local government reorganisation in 1974 to the County Council as a highway maintainable at the public expense.</i></li> <li>3. <i>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. Church Lane is however a private street (except, of course, for the half width which has been adopted).</i></li> <li>4. <i>Church Lane has not been included either in whole or in part in the Private Street Works Programme for making up by the County Council under the Private Street Works Code at the expense of the frontagers. At the present time the County Council are not undertaking any private street works and the current programme will take many years to complete. If the County Council should decide to make up Church Lane under the code it will be appreciated that it may be open to them to decide that the owners of property on the Church Fields estate should bear a proportion of the cost bearing in mind the benefit they would receive.</i></li> <li>5. <i>It will be appreciated, that when an estate road is taken over by the highway authority by agreement with the estate developer, which presumably happened in the case of Church Fields, the ownership of the land comprising the estate road would not be transferred to the highway authority."</i></li> </ol>	<p>was not agreed by the UDC until the minutes dated 10<sup>th</sup> June 1971 and the letter also makes reference to responsibility for Church Fields as an adopted highway being passed from the UDC to the County Council, following local government reorganisation in 1974.</p> <p>Again, it is recognised that Church Lane is for the most part not adopted highway, but a "private street" which does not equate to a public vehicular right. Wiltshire Council as the Surveying Authority is concerned only to record public rights correctly and not private access rights to property.</p> <p>It is noted that the full width of the lane is recorded as highway (footpath), which is supportive of the historic width of the lane being available for public use.</p>
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H. 238

Church Fields and Church Lane,  
Upper Studley, Trowbridge.

1. An extract from the highway records is attached which shows coloured orange the extent of the road at Church Fields which has been adopted as highway maintainable at the public expense and also the half width of a length of Church Lane which has also been adopted. Also coloured orange is the length of White Row Hill (Frome Road) and Lambrok Road at either end of Church Lane which are adopted highways.
2. Church Fields and the half width of Church Lane was adopted by the former Trowbridge Urban District Council and was passed over on local government reorganisation in 1974 to the County Council as a highway maintainable at the public expense.
3. 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. Church Lane is however a private street (except, of course, for the half width which has been adopted).
4. Church Lane has not been included either in whole or in part in the Private Street Works Programme for making up by the County Council under the Private Street Works Code at the expense of the frontagers. At the present time the County Council are not undertaking any private street works and the current programme will take many years to complete. If the County Council should decide to make up Church Lane under the code it will be appreciated that it may be open to them to decide that the owners of property on the Church Fields estate should bear a proportion of the cost bearing in mind the benefit they would receive.
5. It will be appreciated, that when an estate road is taken over by the highway authority by agreement with the estate developer, which presumably happened in the case of Church Fields, the ownership of the land comprising the estate road would not be transferred to the highway authority.

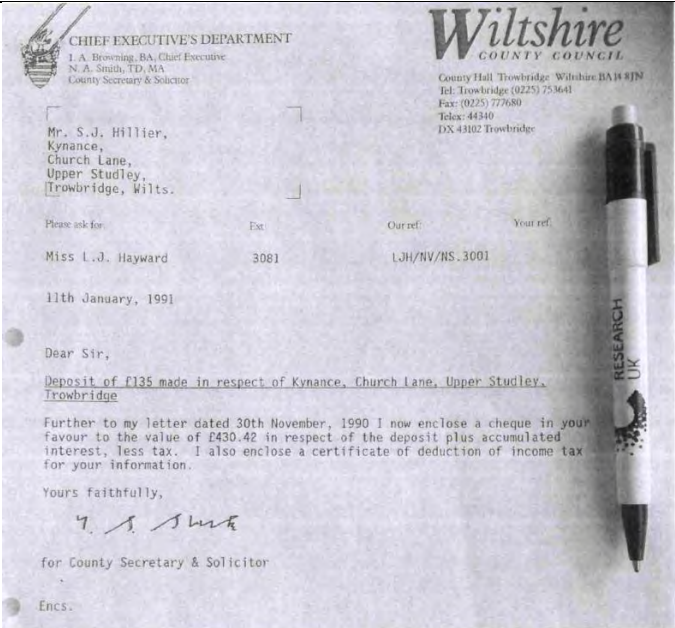
DIE/ENV/EC.242  
County Secretary & Solicitor's Office,  
County Hall,  
Trowbridge.



*Images supplied by applicant*

There is a public right of way on foot along the whole width of Church Lane.

		<p>Church Lane is however a private street (except, of course, for the half width which has been adopted). So footpath 8 is adopted and the whole width of the lane is a PROW.</p> <p>Also refer to <a href="https://www.wigan.gov.uk/Resident/Parking-Roads-Travel/Public-rights-of-way/Guidance-for-landowners-and-occupiers.aspx#Widthofpublicrightsofway">https://www.wigan.gov.uk/Resident/Parking-Roads-Travel/Public-rights-of-way/Guidance-for-landowners-and-occupiers.aspx#Widthofpublicrightsofway</a></p> <p>Where it states:</p> <p>Sometimes a width may be recorded on the Definitive Map and Statement (see definitive map and statement) but this is not always the case or the width may be that which has historically been available. In the absence of evidence to the contrary where there is a presumption that the width will be from boundary to boundary.</p> <p>As a guide a PROW needs to be wide enough to allow two legal users to comfortably pass each other. This can be regarded as 2 metres for a footpath and 3 metres for a bridleway, although it should be remembered that this is a guide only and not a legal definition.</p>	
Letter from Wiltshire County Council	11 <sup>th</sup> January 1991	<p><b><u>“Deposit of £135 made in respect of Kynance, Church Lane, Upper Studley, Trowbridge</u></b></p> <p><i>Further to my letter dated 30<sup>th</sup> November, 1990, I now enclose a cheque in your favour to the value of £430.42 in respect of the deposit plus accumulated interest, less tax. I also enclose a certificate of deduction of income tax for your information.”</i></p>	<p>The letter from Wiltshire Council to BLB Solicitors below perhaps gives further details of why the sum was refunded by Wiltshire County Council, i.e. “...for several years now the County Council, for economic reasons, have not proceeded further with a private street works programme.”</p> <p>A “Private Street” does not give rise to a public vehicular right. Wiltshire Council as the Surveying Authority seeks to correctly record public rights within the definitive map and statement of public rights of way.</p>

		 <p><i>Image supplied by applicant</i></p> <p>Refund of street works charge from 1961. Church Lane to Kynance will no longer be adopted. Posts remained even though Roger Hillier (heir to Sidney Hillier) also requested Church Lane access in the mid nineties. The letter dated 30<sup>th</sup> November 1990 cannot be located by the archive team at Wiltshire Council, nor by the Wiltshire and Swindon History Centre.</p>	
<p>Letter from Wiltshire County Council to BLB Solicitors</p>	<p>12<sup>th</sup> April 1991</p>	<p><b><u>“14 Church Lane, Upper Studley, Trowbridge</u></b>  <i>Thank you for your letters dated 14<sup>th</sup> March and 9<sup>th</sup> April, 1991. I enclose an extract from the highway records for the area and have shown coloured in orange the extent of Church Fields and the part of Church Lane recorded as highway maintainable at the public expense. The adopted part of Church Lane connects with Whiterow Hill and Lambrok Road as a public footpath, F.P.8. Trowbridge. It is assumed that the whole of Church Lane is used by vehicles and it is therefore</i></p>	<p>The letter clearly states that the route is enjoyed by the public as a footpath, although the whole of Church Lane is considered a private street for access to property over which there is a public right on foot, i.e. the recorded footpath. The “private street” does not support public vehicular rights.</p>

*considered a private street over which the public at large enjoy the above described public footpath: excepting that part of Church Lane shown coloured orange.*

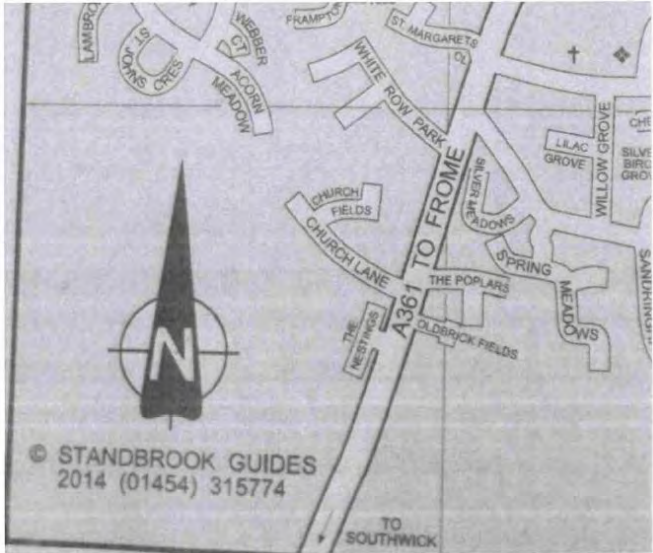
*The remaining lengths of Church Lane are not included in the County Council's rolling programme of private streets to be considered for making up under the Private Street Works Code. In any case, for several years now the County Council, for economic reasons, have not proceeded further with a private street works programme. Except in one case where the street was made up under the Code, no formal resolutions have been passed. No indication can be given at the present if or when further consideration will be given to private streets being made up under the Code. It has been the County Council's policy to consult frontagers before passing any formal resolution to make up a private street and their views are taken into account before any decision is taken whether or not to proceed. If, however, in the unlikely event that it is decided at some time in the distant future to make up Church Lane, it may be the case that No.14 may be liable for private street works charges. This scenario is considered highly unlikely, at the present time.*


*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."*

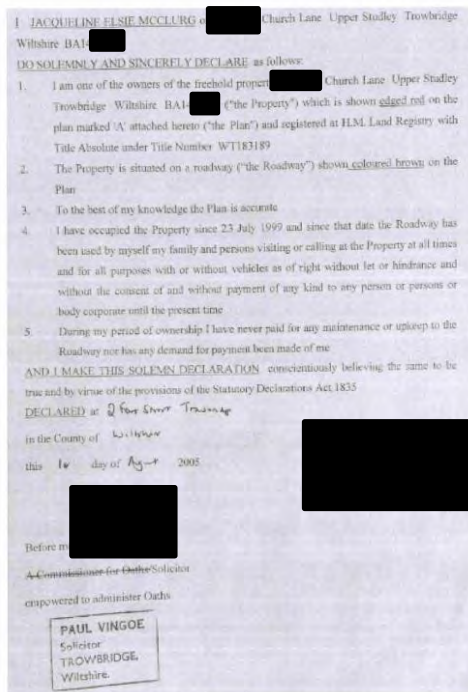


Wiltshire Council as the Surveying Authority, in this DMMO application, seeks to correctly record public rights within the definitive map and statement of public rights of way and is concerned with private rights of access to property.



		<p>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.</p> <p>Yours faithfully,</p> <p>for County Secretary &amp; Solicitor</p> <p>Enc.</p> <p><i>Images supplied by applicant</i></p> <p>The whole of Church Lane is considered a private street and used by vehicles.</p>	
<p>Stanbrook Guides map, held at Trowbridge Police Station</p>	<p>2014</p>	 <p><i>Image supplied by applicant</i></p> <p>Photo of map in Trowbridge Police Station showing where Church Lane has been adopted, and where it hasn't.</p>	<p>The map includes the section of Church Lane at its junction with Frome Road, which is not adopted highway.</p> <p>The map gives no indication of the nature of the public rights recorded the routes shown, but given the gap between Church Lane and Acorn Meadow, it is unlikely that footpaths are recorded where Path no.8 is not shown linking Church Lane and Acorn Meadow. This map is based on OS mapping which is topographical in nature, i.e. recording physical features visible at the time of survey/revision, therefore they must be viewed alongside other evidence.</p>

<p>Statutory Declaration of J McClurg</p>	<p>1<sup>st</sup> August 2005</p>	<p>"I JAQUELINE ELSIE MCCLURG of [REDACTED] Church Lane Upper Studley Trowbridge Wiltshire BA14 0 [REDACTED] DO SOLEMNLY AND SINCERELY DECLARE as follows:</p> <ol style="list-style-type: none"> <li>1. I am one of the owners of the freehold property [REDACTED] Church Lane Upper Studley Trowbridge Wiltshire BA14 0 [REDACTED] ("the Property") which is shown <u>edged red</u> on the plan marked 'A' attached hereto ("the Plan") and registered to H.M. Land Registry with Title Absolute under Title Number WT183189</li> <li>2. The Property is situated on a roadway ("the Roadway") shown <u>coloured brown</u> on the Plan</li> <li>3. To the best of my knowledge the Plan is accurate.</li> <li>4. I have occupied the Property since 23 July 1999 and since that date the Roadway has been used by myself my family and persons visiting of calling at the Property at all times and for all purposes with or without vehicles as of right without let or hindrance and without the consent of and without payment of any kind to any person or persons of body corporate until the present time</li> <li>5. During my period of ownership I have never paid for any maintenance or upkeep to the Roadway nor has any demand for payment been made of me</li> </ol> <p>AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835"</p> 	<p>The brown shaded area is part of Church Lane, (not extending to Frome Road). Ms McClurg claims to have used Church Lane to access the property [REDACTED] between 1999 and 2005 without let or hindrance or consent, however, the evidence suggests that during this time there were posts in place on Church Lane, preventing public vehicular access. It may be that Ms McClurg and her visitors were aware of the removable post, which would allow them vehicular access, however, this is not made clear in the declaration. If this was the case, this would not relate to a public right with vehicles where there is no evidence that the removable post was communicated to the public and the Trowbridge Urban District Council minutes dated 10<sup>th</sup> April 1962, support that the reason for the posts was to prevent Church Lane becoming a through route for the public with vehicles.</p> <p>This document is not supportive of public vehicular rights.</p>
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*Images supplied by applicant*

Jackie McClurg, previous owner of [redacted], declares that her, her family and visitors have used the brown area to access the property since July 1999.

**The applicant concludes:**

Kynance and Hillbrook were the first developments on Church Lane and only had Church Lane access at first. All of Church Lane was originally planned to be adopted. The end of Church Lane extended to the end of Lambrok Road without apparent deliberate decision by the council. As a result land rear of 42 was given the address of Church Lane when it was built. When the council gave permission to put down hardcore on the verge between Lambrok Road and Church Lane the area became a through road. Next they installed posts despite the fact that the positioning was on unadopted land, and never would be adopted. Kynance and Hillbrook were then denied their original Church Lane access. According to Roger Hiller (Sidney Hillier's nephew who lived there) did not object to the posts.

Decision Report – Wildlife and Countryside Act 1981 Section 53  
 Application to Upgrade Footpath no.8 Trowbridge (part) to a Byway Open to all Traffic

**Wiltshire Council concludes:**

Access to properties with vehicles is not qualifying public user where it does not include the public at large. Whilst it is accepted that there was and is some vehicular use of the lane to access land, the church and later the church hall and residential properties, this is not qualifying use by the public at large. In this application, the Highway Authority are not concerned with the private vehicular rights of the property owners over Church Lane, the Authority is concerned only to correctly record public rights. The applicants are concerned to establish a vehicular right to the property in their ownership, however, reference to private vehicular rights must be unpicked from the evidence presented.

It is clear from the Trowbridge Urban District Council minutes and other documents above, that the District Council and then Wiltshire County Council as the relevant highway authority's, considered Church Lane, Trowbridge to be a "private street" and the development permitted alongside Church Lane is consistent with a private street. The only part of Church Lane which was adopted, was that section adjacent to the new development "Churchfields". Whilst the minutes give a useful planning history of Church Lane, they do not assist in supporting public vehicular rights over Church Lane and it can be seen throughout the minutes that whilst other roads in Trowbridge were being adopted, Church Lane was at no time adopted in full, even when the Church Fields estate was built and even though concern was expressed regarding the standard of the surface of Church Lane and its junction with Frome Road for additional vehicular traffic as a result of the Church Fields development.

Overall, the evidence is not supportive of public vehicular rights over Church Lane, or the reputation of Church Lane as a vehicular highway which has been maintained at the public expense.

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

	Name	Address	Years used	How used	Frequency	Others seen	Width	Signs/ gates/ obstructions	Permission	Owner aware
1	A May	Church Lane	06-present	Walking Running	Daily	Walking	5m until 2011, less than 1m afterwards	No	No	Yes, his land registry does not include the area within his boundary. I told him that the public used to be able to walk on his fenced off area.
2	R Hillier	Holbrook Lane	40's-present	Several means	Daily at one time	Yes	Full width (land at rear of 69 Whiterow Park encroached on lane)	Farm gate & stile (pre-development). 5 or 6 wooden posts erected by Council to stop cars using as a rat run.	Town Council 1961	
3	G Gray R ****	Manor Road	01-18	Riding horse Walking	Weekly	Walking Cycling	5m	Posts	No	Yes because it was clearly a footpath/bridleway
4	R Weedon	Regents Place	07-present	Walking	Daily, sometimes twice daily	Walking Bikes Horses	5m	Posts	No	Yes - Obvious
5	Z ****	Oak Park	10-present	Walking (Can't ride horse due to barriers)	Weekly	Walking	5m	Posts	No	Yes – Made complaints no one listened
6	L Hunt	Oak Park	92-present	Walking Cycling	About 30 times per year	Walking Cycling Pushchairs	About 5m	No	No	Yes – cause when they moved there it was a

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**Appendix 9 – User Evidence Summary**

										public bridleway
7	D Gumm	Acorn Meadow	17-18	Walking Cycling	5 x a week	Yes sometimes	About 5m, has become narrower	Overgrown hedges. Vision at night and early mornings when its dark	No	As its always been used
8	K Hunt	Acorn Meadow	83-18	Walking	3-4 times per week	Walking Cycling		When I used the path way back in 1983- 1988 approx signpost saying no cyclists. The signpost disappeared and I have continued to use the path way and ongoing 3-4 times a week	No	Yes because of the signpost saying no cyclists
9	S Hussey J Kennett	Regents Place	00-present	Walking	Daily	Walking Cycling	5m	Posts	No	Yes – because its obvious
10	M Edwards	Acorn Meadow	91-present	Walking	Once a week	Lots of people	5m	No	No	Don't know
11	C Speakman	Lambrok Road	15-18	Wheelchair	Daily – but not at moment due to overgrown hedges and path so narrow	Cyclists Walkers	Under 1m should be 5m	Metal barriers. Undergrowth shrubby 20m long fence leaving no access to travel through	No	Yes – it's a public right of way

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

12	T Cutts	Lambrok Road	06-present	Wheelchair	Monthly	Walkers Cyclists	About 1.3m now between brambles and fence impassable. Used to be 5m from tarmac path across the gravel.	Signposts – just road names. Fence, foliage, nettles and bad, very bad condition of path	No	Yes – public bridleway
13	T Lewis	Acorn Meadow	94-present	Walking	A couple of times a week	Occasionally Walkers	About 5m, now seems narrower.	When its dark its very dangerous going through the path as there always appears to be lots of rubbish etc	No	Not applicable
14	M Dunne	Church Lane	80-92, 95-06-18	Walking Cycling	Daily	Families Children Wheelchairs Bikes Walkers	Grass area 4m+. Fruit hedgerow on each side of lane. 1m wide FP before builder bought it, then became mess and restricted. Changes to gravel area restricted.	No	No owner	No owner

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**Appendix 9 – User Evidence Summary**

15	P Moore	Acorn Meadow	73-18	Walking	Twice a week	Walking Riding horse	Since house built path has got smaller	Was a gate at some point	No	Yes – path been there for years
16	D Moore	Acorn Meadow	73-18	Walking	Twice a week	Walking Riding horse	Since house was built path smaller	Was a gate at some point	No	Yes – path been there for years
17	A Whelan	St Johns Crescent	03-18	Walking	Daily	Walking Cycling	Changed from 15/20ft to about 1m – too small	I believe there used to be a footpath sign at the entrance to the path, there was no gates or styles. Only a footpath sign. No obstructions – a open area/road and I believe the Council maintained the area.	No – I've always known it to be a public footpath	Yes, it was always used by the public and I believe they did know this.
18	E Whelan	St Johns Crescent	12-18	Walking	Twice a day	Walkers Students going to school	Used to be 18ft, now reduced to 1m due to houses built and overgrown bushes	Public footpath signs. No gates/stiles until houses were built. The bushes are	Never, it's a public footpath	Yes, as they have commented on the public using "there" garden. They wouldn't have needed to put up barriers if they weren't aware.



**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

								overgrown and the stinging nettles overbearing. The fence is blocking up the footpath.		
19	C Whelan	St Johns Crescent	03-18	Walking Cycling	Daily/twice a day for 15 yrs	All the time Walking Cycling (previously seen horses)	Used to be about 15-18ft, now no longer than 1m wide and unkept. Fences put up path shortened.	Always a post saying public footpath, no gates or styles ever until houses were built, the stinging nettles and fences put up blocking the foot path and iron gates that were never there before	No – I've always known it to be a public footpath and footpath signs used to be in place at entrance to road.	Yes – as the area is used daily by many people going to shops and cutting through from one estate to another, also it has access to our community church and as a Christian I want/need to access this to gain entry to my church.
20	C Gulliver	Aldeburgh Place	03-18	Walking	Weekly	Loads	5m	No – except posts that do not obstruct	No	Yes – people use it <u>all</u> the time and did so before his house was built.
21	F Green	Acorn Meadow	06-18	Walking	1 per fortnight	Walking Cycling	5m	No	No	I don't know
22	B Hodge	St Johns Crescent	06-18	Walking	About twice a yr. It's a bit hard to walk on now	Several people	Was 4-5m, now 1m – fence moved	Just posts	No	Yes – its obvious
23	D Morris	Lambrok Road	12-18	Walking	Weekly	Walkers	Probably	Metal barriers	No	It's a public

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

						Cyclists	less than 2m			footpath
24	S Dunk	Aldeburgh Place	94-18	Walking Pushchair Bike	Every day	Loads Now have to wait for others to finish using it before I can	5m	Little posts	No	You can just see it is – main footpath to church
25	C May	Semington Road, Melksham	06-18	Walking Car occasionally Cycling	2-3 times per yr with car until 2010 20 x per yr walking	Walkers Cyclists	Was 5m available until new houses built at Acorn Meadow end when FP was fenced and reduced to 1m. Vegetation occasionally reduces this further to about ½m – chicane built at time of fence, also restricts use, especially with bikes.	No	No	Yes – because of the number of people using the path
26	C Price	St Johns Crescent	14-18	Walking	Daily	Walking Cycling	5m	Posts	No	No – because it was very much used as one before
27	J Joseph	Manor Road	01-16	Walking	Every day	Lots Walking	5m	No	No	Because we used it way before he built his house

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

28	S Wheeler D Wheeler	Church Lane	06-18	Walking Cycling	Daily	Cycling	It was 5m now reduced to less than 1m at times	There were posts restricting vehicular access	N/A	Yes – Prior to building work and fencing of area adjacent land owner allowed hedges to overgrow to be able to claim the land
29	A Franklin	Aldeburgh Place	10-18	Walking	5-10	Walkers Cyclists (previously horse riders)		Metal barriers installed to force cyclists off. Horses could no longer get through. Always assumed it was always open to the public and I still do.	Yeah by myself	Yes- because they always have. If someone bought a pub they wouldn't be surprised by passing trade or people passing surely. This still counts.
30	N Gillman	Lambrok Road	01-18	Walking	Weekly	Cyclists Walkers	5m	Posts	No	Its obvious
31	T Bishop	Roundstone Street	70-18	Driving	About once a year	Driving Walking	Whole width about 4.5m	No – apart from present obstruction before “Kynance”	No	
32	Cllr R Brice	Church Fields	68-18	Walking Cycling	About 10 times a year	Everyday Walking Cycling	Was 5m wide. Reduced by 4m by fences	Cycle barrier	There has been an established public footpath there for at	Yes because he left room for a narrow path which was tarmaced

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

									least 50 years	
33	S Farrow	Acorn Meadow	76-18	Walking	Daily	Mainly access	5m	No	No	Don't know
34	V Knight	Lambrok Road	56-18	Walking Cycling	Weekly	A lot Walking Cycling	Approx 4m, several houses and car parking on north side	None	No	Because of the amount of use
35	H Gates M Gates	Acorn Meadow	98-18	Walking	Once a month	Walking	5m			
36	L Bradshaw	St Johns Crescent	74-18	Walking Cycling	At least a few times per week	Walking	5m	Just posts – not always	No	When he bought the land he'd have seen people using it
37	D Turner	Aldeburgh Place	00-16	Walking	Every day	Loads Walking Cycling	5m	Just posts	No	Had plans when built
38	D Murrell	Church Lane	96-18	Walking Cycling	Daily	Walking Cycling Motorbike Tractor	3m until houses built then restricted by fence to 1m fp	Posts as shown on plan until house built at A then land blocked with fence just leaving footpath open	No	Yes – it has always been a lane
39	O Smart	The Nestings	49-18	Walking	Weekly from 1949, now daily	Loads Walking	5m from 1950's	No		
40	A Gunning	St Johns Crescent	1970 sporadically, 85-18	Walking	Once per year	Not that I remember	5m	No, except posts	No	Its just frickin' obvious
41	S O'Neill	Aldeburgh Place	Throughout	Walking	Every few	Horse riding	Was about	Nothing	I've always	Because without

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

			my life (d.o.b. 99)- 18		weeks	Cycling Walking	5m, now about 1m	locked	been under the impression it was a public walkway too	bringing common sense into it, its obviously not his land or property and it was more separate
42	F O'Neill	Aldeburgh Place	80-18	Walking Cycling	Daily	Walking	Its been getting smaller 5.5m	No – the builder encroached further and further with metal fencing which turned into proper fence	No	He must have seen the horses and people
43	S Passmore	Lambrok Road	02-	Walking Cycling	Weekly	Horse riding Cycling Walking		Small white plastic post appeared around 2003	There was no fencing the path/road was clear	Yes
44	J Studden	Aldeburgh Place	88-present	Walking	Used to be a couple of times a week	Walking	5m	Only posts – not obstructing pedestrians	No	People use it all the time, you couldn't not notice that
45	S Siminsky	Aldeburgh Place	03-18	Walking	Daily	Walking	5m	No – some posts	No	Obvious
46	A Cane	Manor Road	02-18	Walking	Was everyday	Lots Walking	5m	Only posts – not an obstruction to me	No	Obvious! Path was there before the house
47	J Webb	St Johns Crescent	06-18	Walking	5 times a year	Walking	5m	No	No	Its always been a public byway heading to Frome Road

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

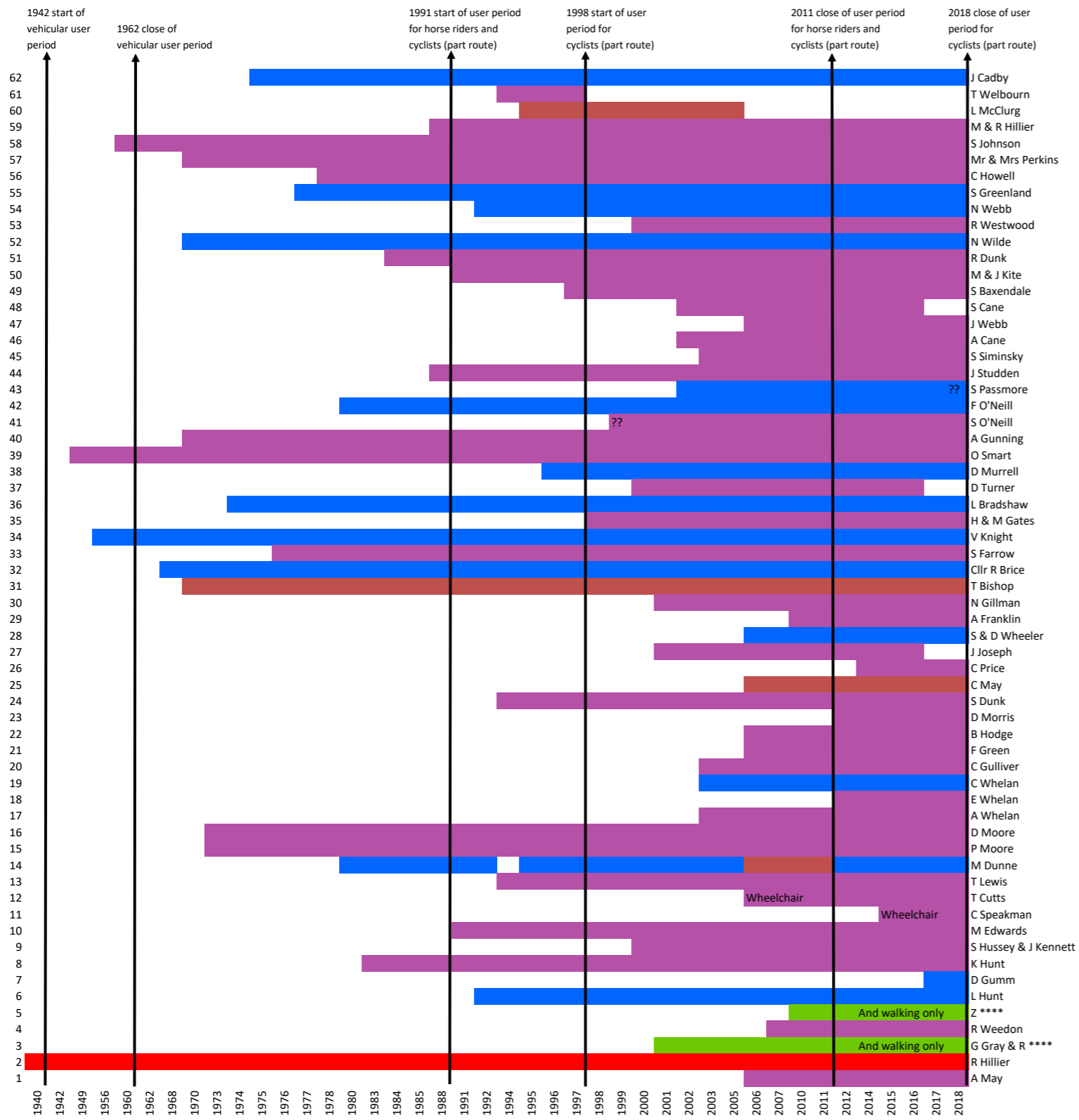
48	S Cane	Manor Road	02-16	Walking	Daily	Walking Cycling	5m	Only posts, obstructs only vehicles	No	Yes – its obvious
49	S Baxendale	Aldeburgh Place	97-18	Walking	Daily	Loads Route to church & hall	5m	Just posts	No	Yes - He'd have seen people
50	M Kite J Kite	Regents Place	91-18	Walking	Daily, bit less now	Always	5m	Posts	No	Yes - Everybody used it everyday
51	R Dunk	Aldeburgh Place	84-18	Walking	3-4 times a week	Walking	5m	No, except posts	No	Yes – You can see it is PROW
52	N Wilde	Aldeburgh Place	70-18	Walking Cycling	2-3 times per week	Loads	5m	No	No	Yes – of course
53	R Westwood	St Johns Crescent	00-18	Walking	At least twice a week	In the past horses, motorbikes	About 5m	Just bollards	No	Yes – he would have seen them
54	N Webb	St Johns Crescent	92-18	Walking Cycling Running	Always people using it as I live round the corner	Walking Cycling Running	Approx 5m	None	No, as I've always known it as a public walkway as I've lived on Studley Green since I was a child	Yes – because it was maintained by Council, also it has hedges on the left hand side which isn't there now, which was about 5/6 feet beyond where the fence has been put up.
55	S Greenland	Aldeburgh Place	77-18	Walking Cycling	Varies – was daily, now 2-3 times per month	Not now – mainly late evening. Used to see loads	5m	No – the posts weren't there in my childhood	No	Yes – obvious! Its been there since I was 6
56	C Howell	Church Fields	78-18	Walking	6 times a year	Cyclists Walkers	5m		Always been a right of way as	Unknown

**Decision Report - Wildlife and Countryside Act 1981 – Section 53 Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic**

**Appendix 9 – User Evidence Summary**

									far as I know	
57	Mr Perkins Mrs Perkins	Church Fields	70-18	Walking	As required	Yes	5m	On Frome Road entrance it says no through road. Posts	No	Yes – he should have been
58	S Johnson	St Johns Crescent	60-18	Walking	Monthly	Walking Cycling	5m	Posts	No	Yes – They're not stupid
59	M Hillier R Hillier	Church Fields	88-18	Walking	About once a month	Walking	Originally about 4m now fenced and restricted	No	No	Yes - obviously
60	L McClurg	Concord Close	95 - 05	Walking Cycling Driving	Daily	Walking Cycling	5m	Removable post	No	No - as there was no owner
61	T Welbourn	The Rank	94 - 97	Walking	3-4 times a week	Other	Footpath & lane approx. 4m	Gates but I can't remember exact positions	No	Yes - it's a public footpath
62	J Cadby	The Rank	75 - present	Walking Cycling Running	Varied over the years – maybe 20 times per year	Yes, it's a busy path	5-6m ish	A builder fenced off an area in 2010. Then could only walk on the tarmac only leaving a chicane on completion.	No	Yes - it's a public footpath, used all the time

Application to Upgrade Path no.8 Trowbridge to a Byway Open to All Traffic  
 Appendix 10 - User Evidence Chart



■ On foot  
■ On horseback  
■ With Vehicles  
■ Cycling  
■ Unspecified

Please note this refers to the maximum use by an individual, e.g. a user on bicycle or on horseback is also very likely to have referred to their use of the way on foot in addition.



## Decision Report

### Wildlife and Countryside Act 1981 – Section 53

#### Application to Upgrade Footpath no.8 Trowbridge (Part), Church Lane, to a Byway Open to All Traffic

### Appendix 11 – Bringing Into Question

In the Trowbridge case, those who have used the route on foot have not been prevented from doing so, but witnesses do refer to the reduction of the width of the path, (which did not prevent use on foot and with bicycles), but which did prevent user on horseback:

<b>User</b>	<b>Nature and Date of Obstruction</b>
1	<p>In 2006 when I moved to my house I could walk across the whole width of footpath 8 from hedge to hedge. There was lots of room and I could walk with a group of friends easily. There was 5 metres of room. There was a metal gate entrance to a field which is still there. Now there is only room for single person at a time because the grass you could walk on has been fenced off. You have to wait for other pedestrians to exit it before you can use it. Brambles scratch at you from the field side, and weeds grow a lot from the fence side. It is dangerous with many pot holes and one could easily fall or twist ankles.</p> <p>Width – 5m until 2011, less than 1m afterwards</p> <p>Ever stopped or turned back – No except by the present barrier and 1m high fencing</p>
2	<p>Full width lane from the oak tree just below Framfield to the Manor Road estate outside Hillbrook. The land was bordered on both sides by a ditch and a hedge which marked the boundary of 42A, 68, 69 and 70 Whiterow Park (surface water from Whiterow Park entering the ditch through a large pipe by Brynaron and the garden of 69 Whiterow Park). The council erected the posts across the lane to stop vehicles using the lane as a rat run between Frome Road and Manor Road. Before the estate was built the lane was used by the farm to access the fields which are now Lambrok Road.</p> <p>Width – Full width (Land at rear of 69 Whiterow Park encroached the lane).</p> <p>Gates/stiles - Farm gate and stile. (pre development)</p> <p>Obstructions - Five or Six wooden posts erected by Council to stop cars using as rat run</p> <p>Photograph dated early 1990's showing posts in place</p>
3	<p>I used to be able to ride my horse across the whole width from hedge to hedge. There was 1 metre width of a tarmac strip footpath but also 4 metres of grass to a hedge. There was plenty of room for me to pass pedestrians walking on the path. Now I cannot ride my horse there due to the chicane.</p>

	<p>Width – 5 metres</p> <p>Obstructions - Posts</p>
4	<p>5m wide grassy area that groups of people could walk on from edge to edge with plenty of room to pass, even with a horse or two. 1 – 1.5m wide tarmac strip with more room to the right.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
5	<p>5m wide grassy area that groups of people could walk on from edge to edge with plenty of room to pass, even with a horse or two. 1-1.5m wide tarmac strip with more room to the right as you walk up Church Lane.</p> <p>Can't ride horse due to barriers.</p> <p>Width – 5 metres</p> <p>Always used same route – Yes. Had to stop riding horse and child in wheel chair have to go all around the long way</p> <p>Obstructions - Posts</p>
6	<p>Path leads from Acorn Meadow up to Church Walk, was once open with grass on the left coming from Acorn Meadow and wide, and is now fenced off where grass was, path is narrow and restricted, and hard to walk along especially when overgrown.</p> <p>Width – About 5 metres</p>
7	<p>A very narrow path. Only big enough for one person to walk along. Difficult to cut through when the hedges alongside it are overgrown. Litter is left alongside. Very dark at night time. Difficult.</p> <p>Width - The path is about 5 metres. The path has become narrower.</p> <p>Obstructions – Overgrown hedges. Vision at night and early mornings when its dark.</p>
8	<p>5 metres wide grassy edge single people and groups of people can walk freely on, plenty of room for double buggies, stopped at a trimmed looked after hedge.</p> <p>Signposts/waymarkers - When I used the pathway back in 1983 – 1988 approx signpost saying no cyclists. The signpost disappeared and I have continued to use the pathway and ongoing 3-4 times a week</p>
9	<p>Used to be 1m tarmac strip with about 1m of grass to the right then a ditch then a hedge. There was 4m of grass to the left of the tarmac strip to another hedge. You could walk anywhere across this whole width from hedge to hedge, plenty of room for groups of people and dog walkers to pass each other from opposite directions. The grass was usually short, but overgrew to brambles until the new house was built. Now my severely disabled daughter cannot walk there. [REDACTED] cannot use the path now with her mobility scooter.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
10	<p>The path is not as wide as it was before the buildings. Not wide enough for a wheelchair and has never been maintained and the grass by the fence is growing over the path.</p> <p>Width – 5m wide</p>

11	<p>Public footpath (right of way) that leads from Acorn Meadows to Churchfields and out on to Frome Road. It has metal railings and a fence which restricts pathway for access to footpath. This route is nearly impossible for myself to navigate due to being wheelchair dependant.</p> <p>Use – Daily but unable to at moment due to overgrown hedges and path being so narrow</p> <p>Width – Under 1m should be 5 metres</p> <p>Changed route – Yes due to over grown hedge and wooden fence I now have to travel and push myself an extra ¾ of a mile the long way round. Which is very strenuous due to my condition.</p> <p>Obstructions - Metal barriers. Undergrowth shrubbery 20metre long fence leaving no access to travel through.</p>
12	<p>Dilapidated state with overgrown nettles/foilage one side and fence on other makes it awkward to get through. I remember gravel across 5m width because I can't use it with wheelchair. Other people could walk across that.</p> <p>Width – About 1m 30cm now, between brambles and fence. Impassable. Used to be 5m from tarmac path across the gravel.</p> <p>Signposts/waymarkers – Just road names</p> <p>Obstructions - Fence, foliage, nettles and bad, very bad condition of path.</p>
13	<p>A narrow path that leads from Acorn Meadow into Church Lane. There are narrow railings to get between, which leads to the narrow path. On one side is hedges/bushes and the other side is where builders of the new houses have left it in an awful sight. Before the builders were there the path was wider, clearer and a lot safer.</p> <p>Width – The path is about 5 metres. I am sure over the years the path seems narrower.</p> <p>Obstructions – When its dark its very dangerous going through the path. As there always appears to be lots of rubbish etc.</p>
14	<p>Then – Open grass area 4 metres wide, 1 metre wide footpath, hedgerow fruit either side...</p> <p>Now – Overgrown footpath. ½ metre wide brambles and stingers. Enclosed gravel area, very little space to walk with family, single file allowing others to pass as there is no room for buggy's and horse and dog.</p> <p>Width – Grass area 4 metres or more wide. Fruit hedge row on each side of the lane. 1 metre wide footpath clear and open space before builder bought it then it became a mess and restricted. Changed to gravel area restricted.</p> <p>Always used same route – Yes until land was changed. Drove to my property unless wet and muddy. Since lane had been changed unable to access my property have to take a long route to work. Rode my bike to work.</p>
15	<p>Tarmac path with grass either side.</p> <p>Width – Since house was built the path has got smaller.</p> <p>Gates/stiles - Was gate at some point.</p>
16	<p>Tarmac path with grass either side.</p> <p>Since house was built the path smaller.</p>

	Gates/stiles - Was a gate at some point.
17	<p>The path used to be a very wide path with a grass verge to the right house to the left.</p> <p>Width – It has changed from 15/20 foot to about a meter – to small.</p> <p>Signposts/waymarkers – I believe there used to be a footpath sign at entrance to path.</p> <p>Notices/signs – No only a footpath sign.</p> <p>Obstructions – No a open area/road and believe the Council maintained the area.</p> <p>Stopped/turned back – No but it so unkept its very hard to use this area. Used to be clean and tidy and bushes and trees were kept tidy. A small space is hard to access.</p> <p>Ever told not public - One day it was a large well kept space then the houses were built and the path was made very small, too small.</p>
18	<p>Fencing is on the left side of the path, with over-grown greenery on the right, i.e. thorns/nettles the ground is unsteady and uneven making it easy to trip, the floor is always damp making the area unpleasant, the path itself is rather narrow because of the overbearing greenery and unnecessary fencing.</p> <p>Width – Used to be 18ft now reduced to 1mtr due to houses being built and overgrown bushes.</p> <p>Signposts/waymarkers - Public footpath signs</p> <p>Gates/stiles - No gates/stiles until houses were built</p> <p>Obstructions – The bushes are overgrown and the stinging nettles overbearing. The fence is blocking up the footpath</p> <p>Stopped/turned back - Whilst houses were being built we were asked not to use the walkway (my only way to school) and not to park near the walkway.</p>
19	<p>A large open road/pathway width shrubs and trees to the right hand side. New built houses to the left going up the hill.</p> <p>Width – It used to be about 15/18 foot wide its now no longer than a meter wide and unkept. Fences put up path shortened.</p> <p>Changed route - No reason to change my route although when changes were made my double buggy no longer fitted through so I couldn't take my children that way which was very upsetting.</p> <p>Signposts/waymarkers - Always a post saying public footpath.</p> <p>Gates/stiles - No gate or styles ever until houses were built.</p> <p>Obstructions - The stinging nettles and fences put up blocking the footpath and iron gates that were never there before.</p> <p>Stopped/turned back - The road was blocked when houses were being built. I could not access the road for a few weeks.</p> <p>Permission – No I've always known it to be a public footpath and footpath signs used to be in place at entrance to road.</p>
20	<p>5m wide grassy area with lots of room for groups of people to pass each other. A metal gate on the left is still there. Now posts have been replaced by an ugly metal chicane and</p>

	<p>fencing that goes all the way up past the two new buildings, severely limiting pedestrian movement and access.</p> <p>Width – 5m</p> <p>Obstructions – No, except posts that do not obstruct.</p>
21	<p>A tidy tarmac path about 1 metre wide, grassy for 1 metre to the right and 4-5 metres on the left. You could walk across the whole width without obstruction, except the posts.</p> <p>Width – 5 metres</p>
22	<p>5 metre wide with a tarmac footpath. Lined with hedges. A metal gate on the left on entrance to a field. Big trees encroaching on to the grass a bit at the top.</p> <p>Width – It was about 4-5 metres, now it 1 metre – fence moved.</p> <p>Obstructions – Just posts</p>
23	<p>A path that leads from Acorn Meadows to Churchfields and out onto Frome Rd. Very narrow with overgrown vegetation on one side and a wooden fence on the other which extends for about 20 metres making the first 20 metres very difficult to navigate when overgrown.</p> <p>Width – probably less than 2 metres.</p> <p>Obstructions – Metal barriers</p>
24	<p>You used to be able to walk across the whole width from hedge to hedge. It was 1m of tarmac path and about 4 metres of grass. Lots of room for people in groups to pass. Now I struggle to get my push chair through the chicane, and down the path. Only single file is possible now.</p> <p>Others seen – Yes – loads, but now I've got to wait for others to finish using it before I can.</p> <p>Width – 5 metres</p> <p>Gates/stiles – No, little posts</p>
25	<p>In 2006 the footpath was to the right, a grassed area, approx. 4 mtrs wide, with bushes and shrubs against the 2 x boundaries and a ditch alongside the path. Occasionally there were wooden stakes across the path but these were removable and often not there. In 2011ish builders separated the footpath from the remaining area with a fence, drastically reducing the area available. A 6' wooden fence was erected across the grass part, and a metal fence and chicane installed.</p> <p>Width – Was 5 mtrs width available until new house built at Acorn Meadows end, when footpath was fenced and reduced to 1mtr wide. Vegetation occasionally reduces this further to about ½ mtr – Chicane built at time of fence also restricts use, esp with bikes.</p>
26	<p>Pleasant grassy path 5m wide with tarmac strip and edged with hedges, ditch on right. You could walk across the whole width.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
27	<p>5m wide, grassy, plenty of room, prettier, felt safer with more room, no pot holes, not muddy.</p> <p>Width – 5 metres</p>

	Same route – No, now feel vulnerable – too narrow, no lighting now or then, pot holes now unsafe. Scratched up by brambles.
28	<p>Approx 5m grassed area at the end of Church Lane with access to Studley Green for walking, cycling and often horses. Maintained pathway with hedges and wildlife posts stopped any motor vehicles from entering Upper Studley from Studley Green.</p> <p>Width – It was 5m and has been reduced to less than 1m at times.</p> <p>Changed route – Yes, flooding occurs where a new fence has been put.</p> <p>Obstructions – There were posts restricting vehicular access.</p> <p>Owner aware – Prior to building work and fencing of area adjacent landowner allowed hedges to overgrow to be able to claim the land.</p>
29	<p>Used to be open ended and was a lovely walk with fields and the great outdoors on 1 side, gave nice scenic route to church and pub. There was an important access point to the country park and it was lovely to be in a town with such easy access to country park, we need these green areas and free access to these areas.</p> <p>Gates or stiles – Metal barriers installed to force cyclists off. Horses could no longer get through.</p>
30	<p>Used to be easy to walk on with the people I support because it was level, space to pass people and not overgrown. It was 5m wide, lined with hedges and has a 1m tarmac strip.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
31	<p>The whole width of Church Lane Upper Studley from its junction with Frome Road to where it connects to Lambrok Road.</p> <p>Width – Whole width about 4.5m</p> <p>Gates/stiles/obstructions – No apart from present obstruction before “Kynance”</p>
32	<p>From Church Lane to Acorn Meadow whole width. 5 mtrs.</p> <p>Width – Was 5m wide, reduced by 4 mtrs by fences.</p> <p>Gates or stiles – Cycle barrier</p> <p>Landowner aware – Yes because he left room for a narrow path which was tarmaced.</p>
33	<p>No obstructions except posts. Where there is now gravel there was grass and we could walk on it all the way up to the hedge boundary of the field.</p> <p>Width – 5m</p>
34	<p>Enter from north end hedges on both sides several large trees, on the left hand side there was a wooden fence with a gate, used as a back entrance to a house in Whiterow Park</p> <p>Width – Approx 4 metres, several houses and car parking on north side.</p>
35	<p>1 metre wide path (tarmac) 4 metre of Grassy walk way lined with hedgerow this allowed plenty of room when walking in groups and passing other people. We also stopped to pick fruit and socialise.</p> <p>Width – 5m</p>
36	<p>Tarmac path with 5m grass on left, and 1 metre on right, enclosed by hedges both sides.</p> <p>Width – 5 metres</p>

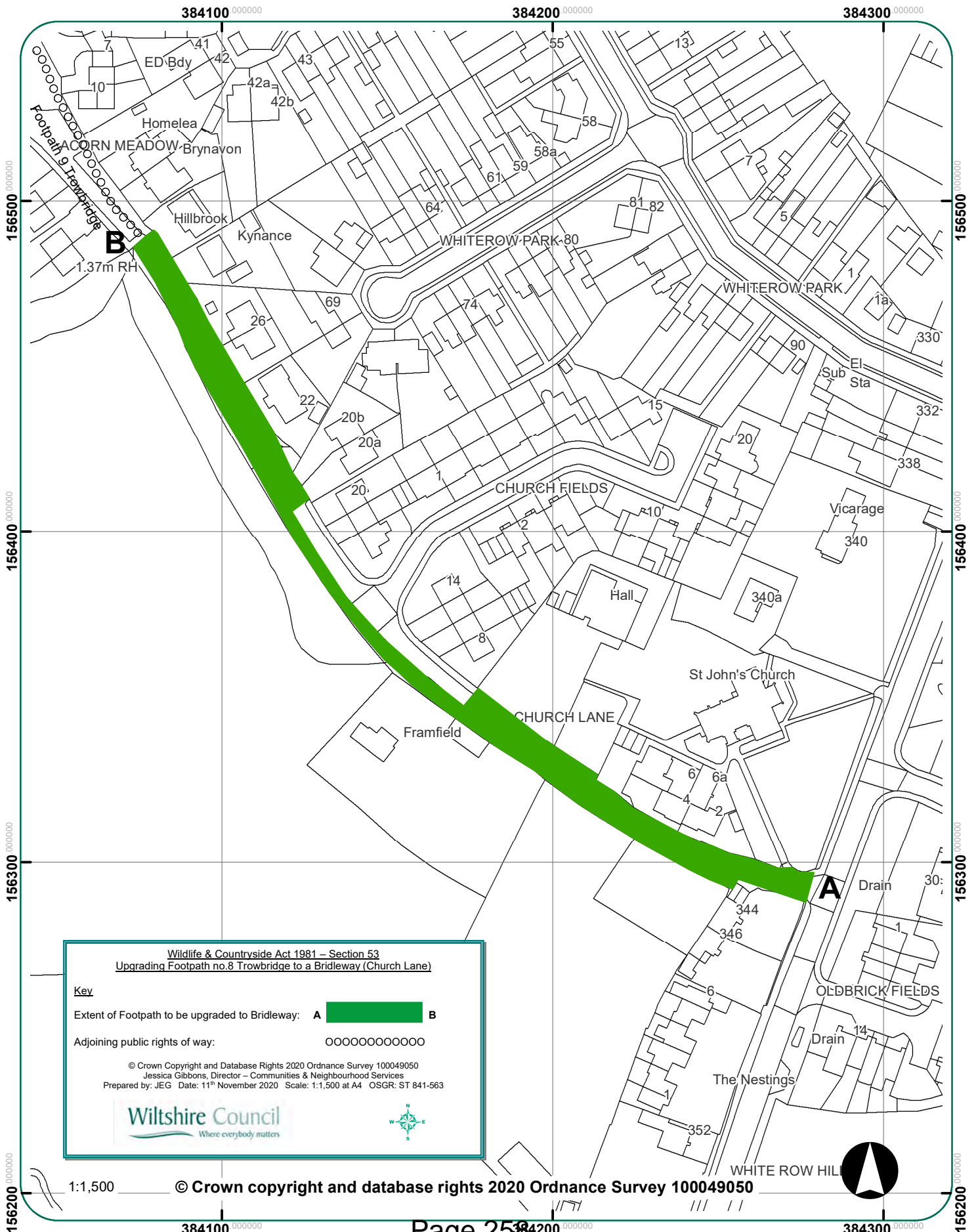
	Gates or stiles – just posts – not always
37	Normal path with accessible grass on left side. Width – 5 metres Obstructions – Just posts
38	Starts outside Hillbrook at end of tarmac 'Acorn Meadow' and runs up towards 'Frome Road', gravel up to posts marked on map, originally from posts to end of tarmaced 'Church Lane' was an earth/grass track until taken over when houses at A built, just leaving footpath which is tarmaced. Marked green on plan. Width – 3m wide until houses built in area A then restricted by fence to 1m footpath. Changed route – Unable to use full width of lane after houses built in area A. Gates or stiles – Posts as shown on plan until house built at A then land blocked with fence just leaving footpath open.
39	It used to be a nice 5m wide grassy lane that you could walk anywhere on from width to width, there were horse riders too. Only the tarmac strip is available to walk on by the fence now and is too narrow sometimes due to overgrowth from both sides and brambles. That strip and gravel and pot holes are dangerous due to degradation and I recently fell over on it. Width – 5m – from 1950's
40	Grassy, walk off the path (tarmac bit) if someone was coming. Bordered on right with ditch and hedge, hedge on left pass grass. Width – 5 metres Obstructions – No, except posts
41	Used to be a wide public path that I could easily walk down with my dogs, it also used to be clear, now its over grown and there is lots less space. Width – Was about 5 metres – now is about 1
42	Housing on right. Field on left green sides on path RH LH Width – its been getting smaller 5½ metres Changed route – When the building and work Obstructions – No – The builder encroached further and further with metal fencing which turned into proper fence.
43	The path was a ruff piece of land. Used same route – Yes, until the path was blocked. When walking my dog to Southwick Park, because of the restricted route, I found an alternative route. Signposts/waymarks – Small white plastic post appeared around 2003. Obstructions – white post Permission – There was no fencing, the path/road was clear
44	Used to be wide, pretty, grassy area edged with hedging on both sides. A ditch on right being grass up to it from the 1m tarmac path, a metal gate on the left leading to the hedge boundary. About 4 metres to the left hedge to the tarmac. Now it is only wide enough for 1 person. You get a muddy puddle in the chicane, and scratched by the brambles.

	<p>Width – 5 metres</p> <p>Obstructions – Only posts – not obstructing pedestrians</p>
45	<p>5m wide grassy area, plenty of room hedges trimmed both sides.</p> <p>Width – 5m</p> <p>Obstructions – No – some posts</p>
46	<p>1m wide tarmac footpath, 4m of grass that was mown to the left up to a hedge, 1m of grass to right up to a ditch and hedge to the field.</p> <p>Width – 5m</p> <p>Obstructions – Only posts – not an obstruction to me</p>
47	<p>It was 1m wide tarmac strip, 4m of grass you could walk on and was mown on the right was a hedge with a big ditch, and on the left past the grass was another hedge.</p> <p>Width – 5 metres</p> <p>Changed route – Few time Building Materials all over Footpath.</p>
48	<p>Used to be 1m wide tarmac strip with about 1m of grass to right, then a ditch then hedge. 4m of grass to the left of tarmac strip to another hedge. You could walk across the whole width and the grass was usually short but overgrown with brambles later, for about 1 to 2 years.</p> <p>Width – 5m</p> <p>Obstructions – Only posts, obstructs only vehicles.</p>
49	<p>1m tarmac strip, 4m of grass to the left that you could walk on, leading to hedge. 1m of grass to right leading to a ditch and hedge. Grass was mown.</p> <p>Width – 5m</p> <p>Obstructions – Just posts</p>
50	<p>Used to be 1m tarmac strip with about 1m of grass to the right, then a ditch then a hedge. There was 4m of grass to the left of the tarmac strip to another hedge. You could walk anywhere across this whole width from hedge to hedge. Plenty of room for groups of people and dog walkers to pass each other from opposite directions. The grass was usually short, but overgrew with brambles from 2010ish until the new house was built.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
51	<p>You used to be able to walk across the whole width from hedge to hedge. It was 1m of tarmac path and about 4 metres of grass. Lots of room for groups of people to pass each other.</p> <p>Width – 5 metres</p> <p>Obstructions – No, except posts</p>
52	<p>A gravelled (loose, bit bigger than pea gravel) track at least 5m wide. No posts in 70's (early) and late 60's.</p> <p>Width – 5m</p>
53	<p>Looking up to church 1m tarmac stripped with grass then about 4m of grass to left. There was 5/6 bollards where the present gate is.</p>




	<p>Width – 5m</p> <p>Gates/stiles – Just bollards</p>
54	<p>The path was 1 metre with Grass on the left hand side which people could walk on if people was coming the other way, hedges on the right with a ditch.</p> <p>Width – Approx 5 metres</p> <p>Owner aware – Yes, because it was maintained by Council, also it had hedges on the left hand side which isn't there now, which was about 5/6 feet beyond where the fence had been put up.</p>
55	<p>1m wide tarmac strip, 4m of grass that anybody could walk on, and was mown, on the left to a hedge, 1m of grass to hedge on the right.</p> <p>Width – 5 metres</p> <p>Always used same route – No – I go all over the place. Varying the route, now its unsightly.</p> <p>Obstructions – No – the post weren't there in my childhood.</p>
56	<p>Wide grassy lane that could be walked across whole width, two groups of people could easily pass between two hedges.</p> <p>Width – 5m</p>
57	<p>5m wide grassy path/lane with 1m – 1½ m tarmac strip. Groups of people could easily pass each other.</p> <p>Width – 5m</p> <p>Notices/signs – On Frome Road entrance it says no through road.</p> <p>Obstructions - Posts</p>
58	<p>5m wide grassy area that groups of people could walk on from hedge to hedge with plenty of room to pass, even with a horse or two. 1 – 1½ m of tarmac strip too.</p> <p>Width – 5m</p> <p>Obstructions - Posts</p>
59	<p>5 metre wide footpath with 1m tarmac strip that groups of people and horses could pass easily on. Hedges lined either side and a ditch too.</p> <p>Width – Originally about 4m wide now fenced and restricted.</p>
60	<p>Width – 5m</p> <p>Obstructions – Removable post</p>
61	<p>Old footpaths and lane used for years to access country park via different routes and to get to houses in Studley Green.</p> <p>Width - Footpath and lane approx 4m</p> <p>Gates but I can't remember exact positions</p>
62	<p>The path was a tarmac 1m ish path with grass each side. The whole width about 5-6m wide. Each side was lined with wild hedgerows.</p> <p>A builder fenced off an area in 2010. Then you could only walk on the tarmac only, leaving a chicane on completion.</p> <p>A very narrow path (tarmac) left only.</p>

## Wildlife & Countryside Act 1981 - Section 53 Upgrading Footpath no.8 Trowbridge to Bridleway



**Wildlife & Countryside Act 1981 – Section 53**  
**Upgrading Footpath no.8 Trowbridge to a Bridleway (Church Lane)**


**Key**

Extent of Footpath to be upgraded to Bridleway: **A**  **B**

Adjoining public rights of way: 000000000000

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 Jessica Gibbons, Director – Communities & Neighbourhood Services  
 Prepared by: JEG Date: 11<sup>th</sup> November 2020 Scale: 1:1,500 at A4 OSGR: ST 841-563

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1:1,500

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**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT FOR THE TROWBRIDGE URBAN DISTRICT COUNCIL AREA DATED 1953**

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

This Order is made by Wiltshire Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to that authority that the Trowbridge Urban District Council Area Definitive Map and Statement dated 1953 require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(ii) and 53(3)(c)(iii) of the Act, namely 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) 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.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

1. For the purposes of this Order the relevant date is 19<sup>th</sup> January 2021.
2. The Trowbridge Urban District Council Area Definitive Map and Statement dated 1953 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. The Order shall take effect on the date it is confirmed and may be cited as The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.

THE COMMON SEAL OF            }  
THE WILTSHIRE COUNCIL        }  
was hereunto affixed this       }  
19<sup>th</sup> day of January 2021        }  
in the presence of:

## SCHEDULE

### PART I

#### Modification of Definitive Map

##### Description of public right of way to be upgraded

The extent of path as shown in green on the attached plan leading from point A at OS Grid Reference ST 8427-5629, at its junction with Frome Road, in a generally north-westerly direction for approximately 294 metres to point B at OS Grid Reference ST 8407-5648, at its junction with Path no.9 Trowbridge, having a width varying between 7 metres and 13 metres, as shown in green on the order plan, excluding the central part (Church Fields) which is recorded as adopted highway, at which point the path narrows to between 4 metres and 6 metres.

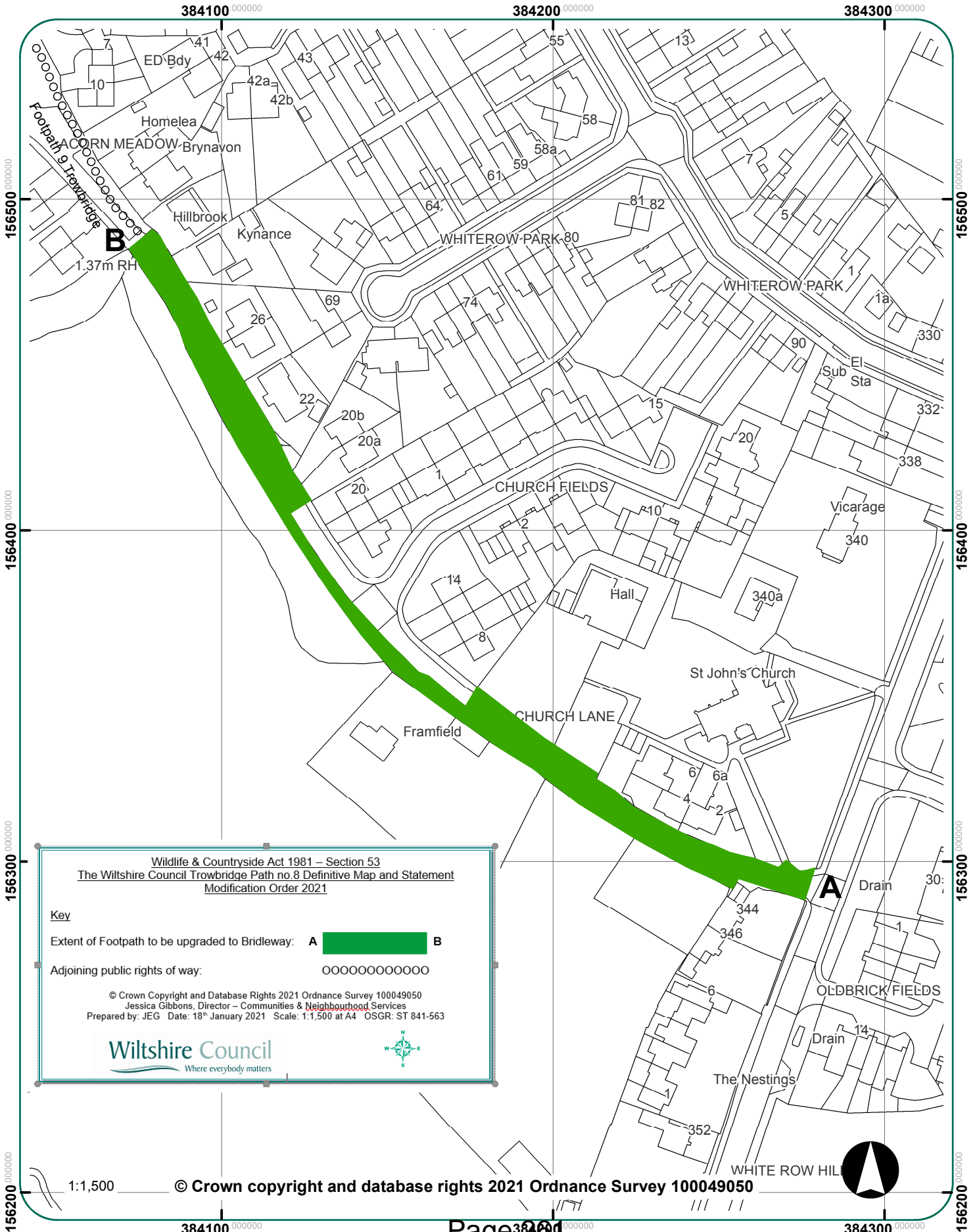
### PART II

#### Modification of Definitive Statement

##### Variation of particulars of path or way


Parish	Path No.	Modified Statement to read:-	Modified under Section 53(3) as specified
Trowbridge	8	<p><u>BRIDLEWAY</u>. From Frome Road at Whiterow Hill, south of the Church and School, leading north-west for the length of Church Lane to its junction with path No.9.</p> <p>Approximate length 294m. Width varying between 4m and 13m (see order plan – The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021).</p>	53(3)(c)(ii) 53(3)(c)(iii)

## The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021



Wildlife & Countryside Act 1981 – Section 53  
 The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement  
 Modification Order 2021


**Key**

Extent of Footpath to be upgraded to Bridleway: **A**  **B**

Adjoining public rights of way: 000000000000

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 Jessica Gibbons, Director – Communities & Neighbourhood Services  
 Prepared by: JEG Date: 18<sup>th</sup> January 2021 Scale: 1:1,500 at A4 OSGR: ST 841-563

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## APPENDIX F - Objections and Representations

**From:** [REDACTED]  
**Sent:** 08 March 2021 12:51  
**To:** [Green, Janice](#)  
**Subject:** Objection to Modification Order - YOUR REF:  
JG/Dist.10 2018/05  
**Attachments:** Objection to bridleway.docx

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

Dear Ms Green,

Please find attached to this email my objection to the Modification Order 2021 in respect of Trowbridge Footpath No. 8.

I previously wrote regarding my objections to the opening of Footpath No.8 to all traffic and I reference that objection in my letter. You probably have that objection on record, but if not, please let me know and I will be happy to send it to you.

Kind regards,  
Anna Evans-Wylie

Ms Janice Green  
Senior Definitive Map Officer  
County Hall  
Bythesea Road  
Trowbridge  
BA14 8JN  
By email: [Janice.green@wiltshire.gov.uk](mailto:Janice.green@wiltshire.gov.uk)

Anna Evans-Wylie  
■ Church Lane  
Trowbridge  
BA14 0■■■

24<sup>th</sup> January 2021

Dear Ms Green,

**Wildlife and Countryside Act 1981 – Section 53 YOUR REF: JG/Dist.10 2018/05**  
**The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.**

I am writing to log my objection to upgrading Footpath no.8 (Church Lane) to a bridleway with adjoining public rights of way from Acorn Meadow (and further from Lambrok Road) on two grounds:

1. The foreseeable hazards to public safety such extension/access would result in; and
2. That there are already in existence adequate rights of way over Church Lane in common law in favour of local residents and churchgoers, and it is not necessary to implicitly extend those rights to the residents of Lambrok Estate who have satisfactory and safe access to their properties via Lambrok Road.

Opening the whole width of the road at the end of Church Lane where it borders Acorn Meadow would inevitably invite all manner of vehicular traffic from the entire Lambrok Estate as users would consider it a handy shortcut to Frome Road (A361). The legal description of the road as a “bridleway” and the associated restrictions of accepted use to “only on foot or on horseback” would be disregarded by many users (or they simply could be ignorant of the implications).

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.

Please note that in the Schedule Part 1 *Modification of Definitive Map* there is a reference to the path *having a width varying between 7 and 13 metres* (although other sections of the Schedule refer to 4-13m). Nowhere does the lane seem to have 13 metres in width and our measurements show the width to be slightly under 4m in front of our driveway and along the whole length of our boundary wall. This does not allow for two vehicles passing, or even for one vehicle to safely go past a group of pedestrians. The soft verge of the lane dropping into a ditch on the other side doesn't provide any room for laybys or pavements. Huge congestion could be anticipated if Church Road was opened at the border with Acorn Meadow and traffic started pouring in from the large Lambrok Estate to access the A361. Speeding cars and especially motorbikes would be particularly dangerous due to poor visibility on this narrow and hedge-framed lane. 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.



Further risks would ensue from the narrow entrance into Church Lane from Frome Road obscured by hedges. If the volume of traffic increased at this junction, collisions and potentially deaths could occur.

Looking at the difference between the footpath and bridleway usage, it is clear that it lies solely in bridleways allowing for travel on horseback (in addition to foot traffic). Since horseback traffic is only of historical interest and currently we have no horseback traffic at all (the only horse owner who leased the paddocks by Church Lane left a couple of years ago), there is little point in redefining the usage and upgrading a footpath to a bridleway, especially because the consequent opening of the full width of the road would foreseeably lead to the risks and hazards I mentioned above.

Finally, 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). The right of way over this private lane should not be now implicitly extended to people residing in Acorn Meadow and the whole of Lambrok Estate by virtue of opening Church Lane into that estate. Church Lane is not fit to accommodate any traffic in addition to the residents of the immediate area that it already serves as per our property rights in common law. In any event, the residents of Acorn Meadow are not disadvantaged in any way as they enjoy access to their properties from Lambrok Road.

I would therefore request that all necessary steps are taken by the Local Authority to carefully mitigate the foreseeable hazards that would be risked should the full width of the road between Church Lane and Acorn Meadow be opened. There is of course nothing within the current footpath usage to prevent the Council from making adjustments for disabled access. If the upgrade to bridleway should proceed our objections notwithstanding, I request that reasonable preventative measures are taken in advance to block vehicular traffic from Lambrok Estate through Church Lane and to Frome Road, such as barriers or bollards, as well as erecting road signs prohibiting the entry of motorbikes and cars into Church Lane from Path no.9 (Acorn Meadow).

For completeness and ease of reference, I also attach a copy of my prior objection to converting Church Lane to a byway open to all traffic.

I look forward to your response.

Kind regards,  
Anna Evans-Wylie

**From:** [REDACTED]  
**Sent:** 16 April 2021 11:53  
**To:** [Green, Janice](#)  
**Subject:** Re: Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05

---

Dear Janice,

Thank you very much for your email and clarifying the process and a few pertinent issues. It is very helpful.

It'd be great to see the report, thank you. I would also be obliged if you could send me a link to a place where the originating application and all the representations and objections relevant to this Order are kept.

I haven't got any objections to bicycles or any other non-motorised road users travelling through Church Lane in addition to its residents, the churchgoers and the Church Hall users. I was looking at the narrow definition of bridleway when referring to just horses, but cyclists are always welcome in Church Lane. However, this usage is already in place and well established in Church Lane as a private road without the need of adopting or upgrading it.

My objection, and my primary concerns, revolve around opening Church Lane to all traffic from and to the huge Lambrok Estate, which I fear would be the outcome if Church Lane became a thoroughfare between Lambrok and Frome Road on removing of barriers between Acorn Meadow Rd and Church Lane. This would not only be unnecessary, but would also generate public safety hazards as described in my letter. Adding street lamps and allowing for multiple vehicle headlights in the night would have an adverse effect on the protected Bechstein bat population in the roadside hedgerows.

Again, many thanks for your reply. I would indeed like to participate in this process so that the best outcome is secured for our little road and the safety of our community.

Best wishes,  
Anna

---

**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 16 April 2021 09:55  
**To:** Anna Evans [REDACTED]  
**Subject:** RE: Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05

Dear Ms Evans-Wylie,

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Modification Order 2021**

Thank you for your e-mail dated 8<sup>th</sup> March with letter attached, I acknowledge safe receipt. I note your objections to the making of the Order upgrading the route of Path no.8 Trowbridge, Church Lane, from a footpath to a bridleway in status, in particular we have received a number of similar representations regarding the potential opening up of Church Lane at its northern end. Your comments are very helpful and just to update you regarding the process, where we have received objections to the making of the Order, the Order now falls to be determined by the Secretary of State, through the process of written representations, local hearing or public inquiry. One party has requested that the consultation period is extended to 23<sup>rd</sup> April for their response and after that date, all representations and objections will be considered in a report to the Western Area Planning Committee, whose Members will consider the representations and objections against the available evidence and the legal tests for making the Order, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination, i.e. that the Order be confirmed without modification; confirmed with modification or not confirmed, based on the available evidence. The Committee report will of course be made publicly available and public participation at the Committee meeting is possible, joining instructions and details of how to participate will be forwarded in due course. I must make you aware that your representations will be made public as part of this process and cannot be treated as confidential.

I note your comments regarding evidence of use of the lane on horseback, but of course a bridleway may also be used by the public with bicycles, in addition to user on foot. Within the user evidence submitted with the application there was a significant level of evidence of use of Church Lane with bicycles, which was considered within the decision report and as a result it was determined to upgrade the footpath to a bridleway. I am not sure if you have seen a copy of the report, it is rather lengthy, but please do let me know if you would like to receive a copy by e-mail. Yes thank you, I have retained a copy of your previous correspondence in this matter.

I hope this is helpful and thank you for your help.

Kind regards,

Janice

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** Anna Evans [REDACTED]  
**Sent:** 08 March 2021 12:51  
**To:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Subject:** Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05

Dear Ms Green,

Please find attached to this email my objection to the Modification Order 2021 in respect of Trowbridge Footpath No. 8.

I previously wrote regarding my objections to the opening of Footpath No.8 to all traffic and I reference that objection in my letter. You probably have that objection on record, but if not, please let me know and I will be happy to send it to you.

Kind regards,  
Anna Evans-Wylie

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**From:** [REDACTED]  
**Sent:** 17 April 2021 20:55  
**To:** [Green, Janice](#)  
**Subject:** Re: Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05  
**Attachments:** Objection to bridleway - supplementary representation.docx

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**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Ms Green,

Further to my yesterday's email, I would like to, if I may, add this supplementary letter to my objection of 8th March.

I have given your email below more consideration and feel that it is important to emphasise exactly what I object to, which isn't the idea of a bridleway but the widening of the current footpath between Church Lane and Acorn Meadow as shown in green in the Order.

I am glad that we have this extension until 23rd April to expand on the precise nature of our concerns.

Many thanks for clarifying everything for us. It really helped with focussing on what's important.

My best wishes,  
Anna Evans-Wylie

---

**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 16 April 2021 09:55  
**To:** Anna Evans [REDACTED]  
**Subject:** RE: Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05

Dear Ms Evans-Wylie,

**Wildlife and Countryside Act 1981 – Section 53**  
**The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Modification Order 2021**

Thank you for your e-mail dated 8<sup>th</sup> March with letter attached, I acknowledge safe receipt. I note your objections to the making of the Order upgrading the route of Path no.8 Trowbridge, Church Lane, from a footpath to a bridleway in status, in particular we have received a number of similar representations regarding the potential opening up of Church Lane at its northern end. Your comments are very helpful and just to update you regarding the process, where we have received objections to the making of the Order, the Order now falls to be determined by the Secretary of State, through the process of written representations, local hearing or public inquiry. One party has requested that the consultation period is extended to 23<sup>rd</sup> April for their response and after that date, all representations and objections will be considered in a report to the Western Area Planning Committee, whose Members will consider the representations and objections against the available evidence and the legal tests for making the Order, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of

State for determination, i.e. that the Order be confirmed without modification; confirmed with modification or not confirmed, based on the available evidence. The Committee report will of course be made publicly available and public participation at the Committee meeting is possible, joining instructions and details of how to participate will be forwarded in due course. I must make you aware that your representations will be made public as part of this process and cannot be treated as confidential.

I note your comments regarding evidence of use of the lane on horseback, but of course a bridleway may also be used by the public with bicycles, in addition to user on foot. Within the user evidence submitted with the application there was a significant level of evidence of use of Church Lane with bicycles, which was considered within the decision report and as a result it was determined to upgrade the footpath to a bridleway. I am not sure if you have seen a copy of the report, it is rather lengthy, but please do let me know if you would like to receive a copy by e-mail. Yes thank you, I have retained a copy of your previous correspondence in this matter.

I hope this is helpful and thank you for your help.

Kind regards,

Janice

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** Anna Evans [REDACTED]  
**Sent:** 08 March 2021 12:51  
**To:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Subject:** Objection to Modification Order - YOUR REF: JG/Dist.10 2018/05

Dear Ms Green,

Please find attached to this email my objection to the Modification Order 2021 in respect of Trowbridge Footpath No. 8.

I previously wrote regarding my objections to the opening of Footpath No.8 to all traffic and I reference that objection in my letter. You probably have that objection on record, but if not, please let me know and I will be happy to send it to you.

Kind regards,  
Anna Evans-Wylie

-----  
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Ms Janice Green  
Senior Definitive Map Officer  
County Hall  
Bythesea Road  
Trowbridge  
BA14 8JN  
By email: [Janice.green@wiltshire.gov.uk](mailto:Janice.green@wiltshire.gov.uk)

Anna Evans-Wylie  
■ Church Lane  
Trowbridge  
BA14 0■■■

17<sup>th</sup> April 2021

Dear Ms Green,

**Wildlife and Countryside Act 1981 – Section 53 YOUR REF: JG/Dist.10 2018/05  
The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.**

Thank you for your email dated 16<sup>th</sup> April 2021 where you advise of the extension of the consultation period to 23<sup>rd</sup> April 2021 for further representations, and of the process of referring this matter for determination by the Secretary of State.

This letter is to supplement and to further clarify the scope of my letter of 8<sup>th</sup> March submitted in objection to the Wiltshire Council Trowbridge Path No.8 (“Church Lane”) Definitive Map and Statement Modification Order 2021 (“the Order”).

**The particular stipulation of the Order I object to is the opening of Church Lane at its junction with Path no.9 (“Acorn Meadow”) to the width varying between 7 metres and 13 metres, as shown in green on the Order plan.**

I understand your objective of upgrading the footpath (pedestrian traffic) to a bridleway (pedestrian, bicycles and horseback) as that reflects the current and historic usage of Church Lane. However, pedestrians, bicycles and horses do not justify 7 – 13 metres of road width. Not even 4 meters is required to accommodate bridleway type of traffic. Opening Church Lane this wide would in practice inadvertently invite all traffic, including cars, lorries and motorcycles to commute between Lambrok Estate and Frome Road, whatever the legal description of Church Lane may be. This would create hazards and endanger the intended users of the bridleway (pedestrians and cyclists). In addition, Church Lane is not equipped to carry the volume of traffic from some two-thousand households of Lambrok Estate. The congestion would be unmanageable and could not be mitigated by the Council due to the geographic and natural limitations of this small lane. Finally, motorised traffic, particularly at night, would adversely affect the population of the nocturnal Bechstein bats foraging in Church Lane hedgerows.

I therefore request that the particulars of the path/bridleway in the proposed Modification Order describing **the width of Church Lane at its junction with Acorn Meadow is expressly limited to a maximum of 1.5metre (5ft).**

This would be a reasonable preventative measure to secure the peaceful enjoyment of Church Lane by its intended users and eliminating encroachment of the path/bridleway by heavy motorised traffic from



Lambrok Estate and endangering lives. The residents of Lambrok Estate would in no way be prejudiced by maintaining the status quo of only pedestrian/non-motorised access to Church Lane which is narrow, hedge-overgrown and devoid of any road markings, since 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. The residents of Church Lane and Church Fields, as well as churchgoers using St John's church hall carpark, would be able to continue accessing their properties by virtue of their established rights of way over Church Lane, be it by prescription, right of necessity or private right of way created by Deed.

I would be obliged if you could annex this letter to my original objection of 8<sup>th</sup> March as part of my formal objection on the specific issue of widening the width of Church lane at its north-western junction with Acorn Meadow.

Kind regards,  
Anna Evans-Wylie

Church Lane,  
Trowbridge, Wiltshire  
BA14 0

9.2.2021

Ms. Janice Green  
Senior Definitive Map Officer  
Wiltshire County Council  
Rights of Way & Countryside Team  
County Hall, By the Sea Rd.  
Trowbridge BA14 8JN

Dear Ms. Green

Your Ref. JG/Dist. 10 2018/05

1) When I bought Church Lane it was on the understanding that everything was in order. Now I am being told of plans to modify the area to create a bridleway. This will have repercussions which are making me think the house was "mis-sold".

2) Given my concerns would you please clarify for me:-

(a) Why 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.

(b) 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.

(c) who will be the main beneficiary of the proposal?

3) 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.

Yours sincerely,

**From:** [REDACTED]  
**Sent:** 13 February 2021 15:24  
**To:** [Green, Janice](#)  
**Subject:** Comment on The Wiltshire Council Trowbridge Path  
No 8 Definitive Map and Statement Modification  
Order 2021  
**Attachments:** Letter sent to WCC Representation regarding  
Modifictaion to Path No 8 Trowbridge.docx

---

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

Dear Janice ,

Please find attached my comments on the above order as part of your consultation process.

Kind Regards,

Rachel Hunt

Mrs Rachel Hunt

[REDACTED]

[REDACTED] Frome Road,

Trowbridge

13/2/21

**Comment on The Wiltshire Council Trowbridge Path No 8 Definitive Map and Statement Modification Order 2021**

I am writing in support of the above order to change footpath No 8 from a public footpath to a bridleway allowing access to pedestrians, bicycles and single horses but not to motorised vehicle. I believe that this is in keeping with the historical use of the route and it's use as a quiet lane, well used by walkers, cyclists, the elderly, Brownies/Guides and children learning to ride their bikes for the first time.

I would however like to express my concern that, should the gate at the bottom of the lane be removed or the pathway widened, it would likely become a cut through for some vehicles. My particular concern is that motorbikes, who use a circular routes along the lower half of the Frome Road and Bradley Road for night time races/routes would start to use Church Lane as a cut through to Studley Green.

As we already know, from Wiltshire Council's assessment of Church Lane as part of the WHSAP (site 2.4), the lane has been deemed unsuitable as an entrance to a development due to the dangerous and blind junction with the Frome Road. Should motorbikes start using this route, the lane would become extremely dangerous for cyclists and pedestrians. I would therefore suggest that, if the gate is to be removed, it be replaced by an entrance that is ONLY wide enough for a single horse or bike AND that some kind of bollard or hump is put there to prevent any vehicles attempting to use the route as a cut through.

Kind Regards

Rachel Hunt

**From:** [REDACTED]  
**Sent:** 12 April 2021 14:58  
**To:** [Green, Janice](#)  
**Subject:** Re: Request for information The Wiltshire Council  
Trowbridge Path No 8 Definitive Map and  
Statement Modification Order 2021

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

Dear Janice,

Having commented on the above order, I have been advised that it would be a good idea for residents of existing properties on Church Lane to obtain written confirmation by Wiltshire Planning Department that current residents have a right of access to their property on what is currently designated as a footpath but is likely to be designated as a Bridleway. Please could you advise me as to whom to send this request to.

Many Thanks  
Rachel

---

**From:** rachel hunt [REDACTED]  
**Sent:** 13 February 2021 15:24  
**To:** janice.green@wiltshire.gov.uk <janice.green@wiltshire.gov.uk>  
**Subject:** Comment on The Wiltshire Council Trowbridge Path No 8 Definitive Map and Statement Modification Order 2021

Dear Janice ,

Please find attached my comments on the above order as part of your consultation process.

Kind Regards,

Rachel Hunt

**From:** [REDACTED]  
**Sent:** 22 April 2021 16:03  
**To:** [Green, Janice](#)  
**Subject:** Wiltshire Council Trowbridge Path No.8 ("Church Lane") Definitive Map and Statement Modification Order 2021  
**Attachments:** Statement of Confirmation of Access to our Properties on Church Lane.docx

---

Dear Janice,

Thank you for your email dated 16th April 2021 where you advise of the extension of the consultation period to 23rd April 2021 for further representations, and of the process of referring this matter for determination by the Secretary of State.

I have attached a statement which, we as residents of Church Lane, would like added to the consultation response regarding the Modification of Footpath No 8 to a Bridleway.

We have given our email addresses so that we might be kept informed of any further meetings or consultation extensions. I trust that you will blank out any personal details when it is uploaded to the consultation portal.

Kind Regards,

Rachel Hunt

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 [REDACTED] Church Lane in the 1980's). Access to all of these has been established over 150 + years. In addition, [REDACTED] Frome Road) has had access for a similar amount of time and has used Church Lane to access it's driveway by motor vehicle for at least 50 years. [REDACTED] in Church Lane was constructed in 1950's originally as a farm dwelling, later used by a practising 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 lane 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.

Name:	Rachel and Simon Hunt
Address:	[REDACTED] Frome Road, [REDACTED], Trowbridge
Email:	[REDACTED]
Date:	18/4/21

Name:	Jo Hodge & Pete Mills
Address:	[REDACTED] Church Lane, Upper Studley, Trowbridge, BA14 0 [REDACTED]
Email:	[REDACTED]
Date:	17/4/21

Name:	Roy and Pat Pegrum
Address:	[REDACTED] Church Lane, Trowbridge, Wilts BA14 0 [REDACTED]
Email:	[REDACTED]
Date:	17/4/21

Name:	Ms S. COLEMAN
Address:	CHURCH LANE TROWBRIDGE BA14 0
Email:	
Date:	18/04/2021

Name:	Sara Dade
Address:	Church Fields
Email:	
Date:	18 th April 2021

Name: CLIVE KNIGHT  
Address: CHURCH LANE, TROWBRIDGE BA14 0  
Email:  
Date: 18/04/21

Name:	Mrs Sue Marshall
Address:	Church Lane, Upper Studley, Trowbridge. BA14 0
Email:	
Date:	18 <sup>th</sup> April 2021

Name: MR + MRS P MARCHANT  
Address: CHURCH LANE TROWBRIDGE BA14 0  
Email:  
Date: 18/04/21

Name:	Mr & Mrs Edward /Ingrid Figueirado
Address:	Church Lane, Trowbridge, BA14 0
Email:	
Date:	19 <sup>th</sup> April 2021

Name:	S.K. McGrath and T.P McGrath
Address:	Church Lane, Trowbridge. Wiltshire BA14 0
Email:	
Date:	17-04-2021



Name: ①	MR STEPHEN J WYLIE
Address:	CHURCH LANE TROWBRIDGE BA14 0
Email:	
Date:	17/4/2021

Name: ②	Anna Evans - Wylie
Address:	Church Lane, Trowbridge BA14 0
Email:	
Date:	18/04/21

Name: Haley Evans

Address:

Email:

Date: 18/04/21

Church Lane, Trowbridge BA14 0

Name:	Andrew Hunt
Address:	Frome Road
Email:	
Date:	19-04-2021

Name:
Address:
Email:
Date:

CHURCH FIELDS, TROWBRIDGE

19-4-2021

Name:	MICHAEL THOMAS
Address:	CHURCH LANE TROWBRIDGE 0
Email:	
Date:	19/4/21

Name:	Mike Grant and Ruth McMillan
Address:	Church Lane, Trowbridge, Wilts BA14 0
Email:	
Date:	20/4/21

Name: Diane Wheeler

Address:

Church Lane, Trowbridge, Wiltshire BA14 0

Email:

Date:

21/04/21



**From:** [REDACTED]  
**Sent:** 17 April 2021 17:24  
**To:** [Green, Janice](#)  
**Subject:** The Wiltshire Council Trowbridge Path no.8  
Definitive Map and Statement Modification Order  
2021.  
**Attachments:** Letter to Ms Janice Green.docx

---

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

Ms Green  
Please find attached my letter of objection to the above.  
Regards  
Roy Pegrum  
Home [REDACTED]  
Mobile [REDACTED]

Ms Janice Green  
Senior Definitive Map Officer  
County Hall  
Bythesea Road  
Trowbridge  
BA14 8JN  
By email: [Janice.green@wiltshire.gov.uk](mailto:Janice.green@wiltshire.gov.uk)

Roy Pegrum  
[REDACTED]  
Church Lane  
Trowbridge  
BA14 0 [REDACTED]

17<sup>th</sup> April 2021

Dear Ms Green,

**Wildlife and Countryside Act 1981 – Section 53 YOUR REF: JG/Dist.10 2018/05  
The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order  
2021.**

Whilst I have no objections to the reassignment of Church Lane from a 'footpath' to a bridleway for historic reasons and also bearing in mind its current usage I do however consider the opening up to 7-13 metres to be unwarranted. Even in the depths of Wiltshire a bridleway over 4 metres wide must be a rarity after all it has only to cater for pedestrians, cyclist and horses. Even two horses would not need even 4 metres to pass each other.

To open a route of the width proposed would encourage its use by other vehicles and turn Church Lane into a 'through road' from the Lambrok Estate to Frome Road, a function for which it is ill equipped i.e. Road margins are kerbless, drainage, road markings and signage are non-existent and the exit on to Frome road has inadequate vision for safe usage. Please also note that at its narrowest point two vehicles are unable to pass.

I feel that it is not unreasonable that the proposed Modification Order should limit the width of the bridleway to that which makes its use by vehicles impossible at the point where Church Lane meets Acorn Meadow.

Please accept this letter as my formal objection on the matter of widening Church Lane at its junction with Acorn Meadow.

Yours Sincerely  
Roy Pegrum

**From:** [REDACTED]  
**Sent:** 19 April 2021 18:11  
**To:** [Green, Janice](#)  
**Subject:** RE: The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.

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

Dear Ms Green

Thank you for your reply, yes I would like sight of the WC Decision Report ( a link would be fine) and obviously the Committee recommendation. When would the latter be available?

Kind Regards

Roy Pegrum

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**From:** Green, Janice [mailto:janice.green@wiltshire.gov.uk]  
**Sent:** 19 April 2021 17:00  
**To:** Roy Pegrum [REDACTED]  
**Subject:** RE: The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.

Dear Mr Pegrum,

-

**Wildlife and Countryside Act 1981 – Section 53**

**The Wiltshire Council Trowbridge Path No.8 Definitive Map and Statement Modification Order 2021**

Thank you for your e-mail and letter dated 17<sup>th</sup> April regarding the above mentioned Order, upgrading Footpath no.8 Trowbridge, (Church Lane), to a bridleway. I note your objections and we have now received a number of similar representations and concerns. Where we have received objections to the making of the Order, the Order now falls to be determined by the Secretary of State, through the process of written representations, local hearing or public inquiry. As a result, all representations and objections received will be considered in a report to the Western Area Planning Committee, whose Members will consider the representations and objections against the available evidence and the legal tests for making the Order, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination, i.e. that the Order be confirmed without modification; confirmed with modification or not confirmed, based on the available evidence. The Committee report will of course be made publicly available and public participation at the Committee meeting is possible, joining instructions and details of how to participate will be forwarded in due course. I must make you aware that your representations will be made public as part of this process and cannot be treated as confidential.

Please do let me know if you would like me to forward you a copy of the Wiltshire Council decision report, it is rather lengthy, but it sets out in full the evidence examined in this case and the reasons for the decision to make the Order to upgrade Footpath no.8 Trowbridge to a bridleway.

Thank you for your help in this matter.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

## Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** Roy Pegru [REDACTED]  
**Sent:** 17 April 2021 17:24  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** The Wiltshire Council Trowbridge Path no.8 Definitive Map and Statement Modification Order 2021.

Ms Green  
Please find attached my letter of objection to the above.  
Regards  
Roy Pegrum  
Home [REDACTED]  
Mobile [REDACTED]

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**From:** [REDACTED]  
**Sent:** 25 March 2021 15:29  
**To:** [Green, Janice](#)  
**Subject:** Your ref JG/Dist.10 2018/05

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Shelley Mcgrath  
[REDACTED] Church Lane  
Trowbridge  
BA14 0[REDACTED]

Re: The Wiltshire Council Trowbridge Path No 8 Definitive Map and Statement Order 2021

Regarding the plan to upgrade Footpath 8 Church Lane to a bridleway. My concerns are as follows:

1] The opening/removing of the barriers at the Acorn Meadows end of Church Lane would result in the Lane being used as a "rat run" especially by motorbikes. It is likely that any restrictions would be ignored by people wanting to access Frome Road from and to Studley Green making the Lane and the junction on to Frome Road dangerous.

2] That the residents of Church Lane would still have complete freedom of vehicular access to their properties without restriction. A suitable sign could be erected stating "Resident's Access Only" for example .

[REDACTED] so this is of particular importance to us.

Surely all that is possibly needed is to alter Footpath 8 to make it easier for disabled users and pushchairs.

This would be cheaper and far less disruptive.

Regards

Shelley Mcgrath



**From:** [REDACTED]  
**Sent:** 26 March 2021 14:43  
**To:** [Green, Janice](#)  
**Subject:** Church Lane Bridleway proposal

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

With reference to  
The Wiltshire Council Trowbridge Path No 8 Definitive Map and Statement Modification Order 2021.

This issue, as presented by WCC, is ill thought out. The 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 when using Church Lane. We understand that we all 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. We are all aware of the many instances of hugely expensive legal actions caused by vague rulings. Any such commitment by WCC on access must include the full participation of all residents of Church Lane, as presently constituted and full disclosure of any Council plan or agenda that may impact on our rights of access in the future. We also need a detailed plan of action to ensure that Church Lane does not become a "Rat run" for motorcycles or scooters if these proposals are enacted. This has been a nuisance in the past and any alteration to the fixed barrier at the junction of Church Lane and Acorn Meadows should be viewed with extreme caution. The risk to walkers will inevitably be greatly increased by the proposal.

During the past seven years as a resident at Church Lane I have never heard a single person, whether resident or passers-by, ever suggest anything remotely like the Council's present proposals for a "Bridal way". What has been frequently voiced is simply to remove the overgrown grass that has obscured the footpath, a job that any competent landscaping team could accomplish in a matter of days, with tarmac repairs where eroded. After all, it is us that use the pathway, not the Council but we who will have to live with any detrimental outcomes long after the Council has forgotten that Path No 8 exists.

I suggest the Council stops wasting money that is going to be sorely needed in the immediate future and concentrate on proper maintenance of that part of the path that has been neglected in the past.

Thanks for your time,

Trevor McGrath  
[REDACTED] Church Lane, BA14 [REDACTED]

**From:** [REDACTED]  
**Sent:** 25 February 2021 12:57  
**To:** [Green, Janice](#)  
**Subject:** Comment on The Wiltshire Council Trowbridge Path  
No 8 Definitive Map and Statement Modification  
Order 2021

**Attachments:** No8\_proposal\_WCC.docx

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

Dear Janice,

Please find attached my comments on the above order as part of your consultation process.

Yours sincerely

Shane Wheeler

[REDACTED] Church Lane

Trowbridge.

Mr Shane Wheeler  
Church Lane  
Upper Studley  
Trowbridge  
BA14 0

25<sup>th</sup> February 2021

**Comment on The Wiltshire Council Trowbridge Path No 8 Definitive Map and Statement Modification Order 2021**

I am writing with regards the above proposal to change No8 from a public footpath to a public bridleway allowing access to pedestrians, bicycles and a single horse, but not motorized vehicles.

I believe this will be in keeping with its historical use, a quiet lane, well used by walkers, cyclists and visitors to St Johns Church. I support this change to a bridleway.

I would however like to just raise a potential concern for your awareness, if the pathway was to be widened and the current gateway removed it would allow access for motorized vehicles to use the route as a cut through to and from Studley Green to Frome Road. Motorbikes are of particular concern increasing traffic to an already dangerous blind junction to exit to Frome Road.

It is imperative that should the current gateway be removed a suitable replacement gateway be placed to prevent motor vehicles from using it as a cut through, reducing the risk to other users of the lane, and also the riders when exiting the lane.

When we first moved to this lane there were concrete bollards and a wider pathway, we had multiple issues with motorbikes coming from Studley Green, cutting through to use the field, and also as a escape from Police who were unable to follow. When the pathway was narrowed and a staggered gate installed this greatly reduced the issues and made the lane a much safer place.

Yours sincerely

Shane Wheeler

**From:** [REDACTED]  
**Sent:** 05 March 2021 12:58  
**To:** [Green, Janice](#)  
**Subject:** Wiltshire and Countryside Act 1981 - Section 53. The Wiltshire Council Trowbridge Path no. 8 Definitive Map and Statement Modification Order 2021

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

Dear Ms Green

I am writing to object to the proposal made to upgrade public footpath no. 8 (Church Lane, Trowbridge) to a bridleway. The MO identifies no clear reasons or compelling benefits that would derive from this change, nor does it identify any current issues that might be rectified by this alteration.

Currently this footpath running from Frome Road A361 to Acorn Meadow allows passage for pedestrians and cyclists. The implication is that by 'upgrading' the route to a bridleway would make it accessible to horse-riders. There are, however, no longer any horses on Church Lane and last time I looked there was also a distinct lack of horses on the Lambrok Estate with an imperative need to ride up Church Lane to access the busy A361. I can therefore see no need for a bridleway here.

I believe the review of this route began in August 2018 when the occupiers of the property [REDACTED] applied for Church Lane to be redesignated as a byway open to all traffic. I also understand that following an extensive local consultation and consideration Wiltshire Council determined that there was no justification to create a public right of way for motorised vehicles between Church Lane and the Lambrok Estate.

There are many practical reasons why opening Church Lane to the Lambrok Estate involving potentially hundreds of additional daily motor vehicle movements along Church Lane would be wrong, including:

> Church

Lane is not wide enough for any more traffic, and is not wide enough for a pavement to protect pedestrians. Two vehicles cannot pass outside our house due to the narrow road - it is barely 4 metres wide;

> Church

Lane has for a long time been a quiet lane well used by walkers, cyclists, elderly, people with disabilities, people on mobility scooters,

Brownies/Guides, children learning to ride their bikes and lots of dogs . It is a safe recreational lane not suitable for more motor vehicles;

> The blind

and dangerous junction at the intersection of Church Lane with the A361 is unsuitable for more vehicles which would lead to more RTAs. Indeed, Wiltshire Council in its deliberations on the potential housing site H2.4 has already ruled that Church Lane would be unsuitable as an entrance to the development for up to 40 new houses, so it logically follows that Church Lane would be even more unsuitable for a flow of cars from the hundreds of dwellings from the streets to the north of Acorn Meadow (Lambrok Estate).

If Wiltshire

Council does choose, nonetheless to alter this route from a footpath to become a bridleway I believe it to be 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 (including motor bikes) using appropriate bollards/barriers. If this is not done vehicles from the Lambrok Estate will use the route as a rat-run to the A361 and road accidents and possibly deaths will surely follow on Church Lane itself, or at the narrow blind junction at Church Lane with the A361.

I therefore

vote to reject the bridleway and to instead preserve the status quo. Keep this route as a public footpath for all, and with the existing private rights of access from Frome Road for the residents of Church Lane, Churchfields and users of St John's Church.

In conclusion,  
and as the saying goes, "if it ain't broke don't fix it".

Yours  
sincerely,

Steve Wylie

■ Church Lane

Trowbridge

BA14 ■



**From:** [REDACTED]  
**Sent:** 19 April 2021 20:24  
**To:** [Green, Janice](#)  
**Subject:** Wiltshire and Countryside Act 1981 - Section 53. The  
Wiltshire Council Trowbridge Path no. 8 Definitive  
Map and Statement Modification Order 2021

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

Dear Ms Green

I wrote to you on 5th March objecting to the proposed Church Lane footpath modification order. My objection focused on the detriment and dangers that would occur if the current pathway between Church Lane and Acorn Meadow was opened up to motor vehicles. Because the modification order to upgrade the existing footpath to a bridleway contained no physical restriction to its width that would prevent its use by motor vehicles I could not support the order in that form. The modification order states that the planned bridleway would be between 4 and 13 metres wide, far in excess of that required by any pedestrian traffic and an open invitation to small and large motor vehicles.

Whilst I have no objection to Church Lane being classified as either a footpath or a bridleway and giving exclusive access to all forms of pedestrian traffic and cyclists, I cannot support it if it does not physically prevent motor vehicles passing between Church Lane and Acorn Meadow. If a physical width restriction of up to 1.5 metres was incorporated at the point where Church Lane meets Acorn Meadow as is the case now and has been ever since I've lived here, I would be able to support the modification order making the change to a bridleway.

I am aware that a volume of misinformation and anxiety has circulated in the neighbourhood in recent weeks about this modification order, in particular about the rights of property owners and churchgoers to access properties here. This may have influenced the way some people have responded to the consultation. So I am grateful that this consultation was extended until 23rd April so that I can now further clarify my position on the matter.

I hope this helps.

Yours sincerely,

Steve Wylie

[REDACTED] Church Lane  
Trowbridge  
BA14 0 [REDACTED]

[REDACTED]



## REPORT FOR WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	29 September 2021
<b>Application Number</b>	PL/2021/03460
<b>Site Address</b>	Yew Tree House, Brokerswood, BA13 4EG
<b>Proposal</b>	Erection of two holiday eco lodges
<b>Applicant</b>	Mr and Mrs Clow
<b>Town/Parish Council</b>	North Bradley Parish Council
<b>Electoral Division</b>	Southwick Division – Cllr Horace Prickett
<b>Grid Ref</b>	383298-151937
<b>Type of application</b>	Full planning permission
<b>Case Officer</b>	Verity Giles-Franklin

### Reason for the application being considered by Committee

This application has been called in for committee consideration by Cllr Horace Prickett should officers be minded to refuse the application for the proposed development, to allow the elected members of the committee to consider:

- the visual impacts on the surrounding area;
- the relationship with adjoining properties;
- the design of the development;
- the environmental and highway impacts and car parking.

### 1. Purpose of Report:

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be refused.

### 2. Report Summary:

The key issues for consideration are:

- the principle of development and change of use of the land for tourism;
- visual impacts;
- ecology impacts;
- impacts to neighbouring amenity; and
- highway matters.

North Bradley Parish Council raise no objections to this application, but two third party representations have been received which are summarised within section 9 of this report.

### 3. Site Description:

The application site comprises land at a property known as Yew Tree House which was formerly the car park associated with the “The Kicking Donkey” public house before it was converted to residential use under consented application reference 15/10329/FUL.

The extract provided on the following page is taken from Google Street View ([Google Maps](#)) and illustrates how the site looked back in October 2011, when it was still in use as a car park serving the public house.



The surrounding area is predominantly characterised by a loose knit ribbon development with the two storey Yew Tree House to the south-west and a chalet style dwelling to the north-east of the site. The site has an existing access via Brokerswood Road and the proposed ecolodges would utilise this existing access.

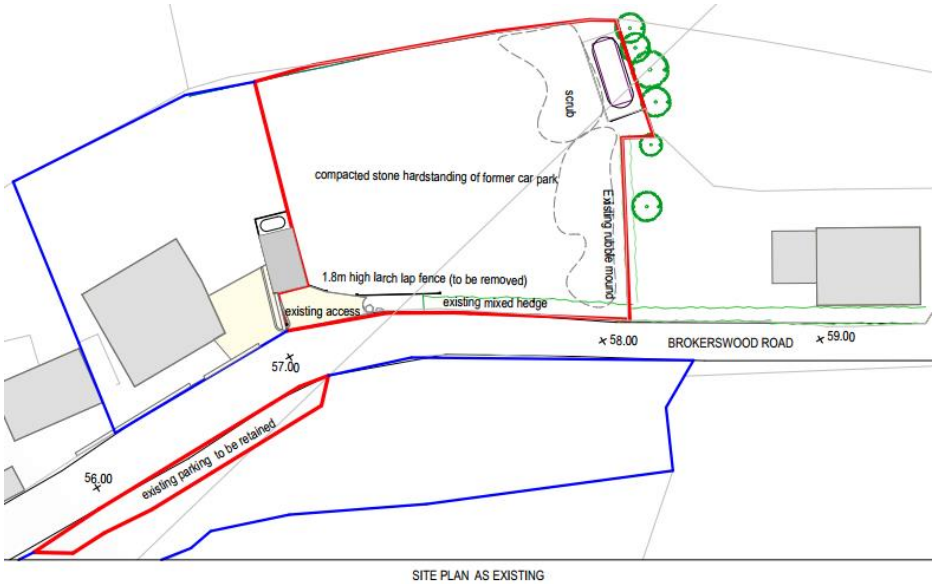
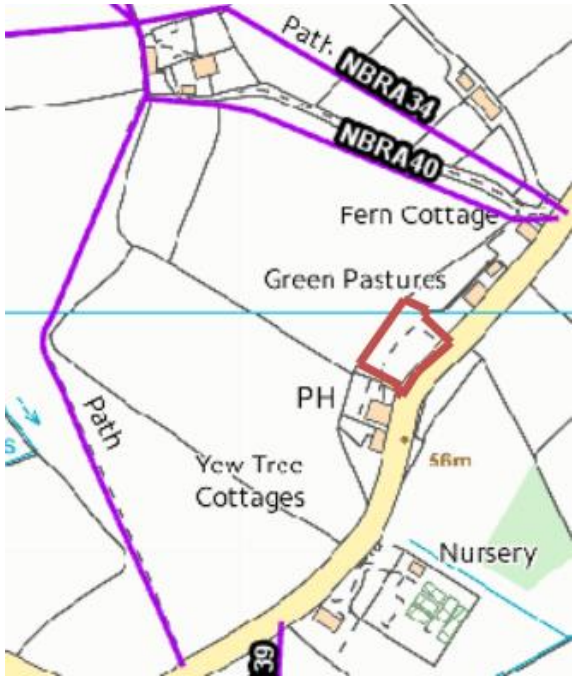
The photograph provided below, as taken from page 5 of the submitted Planning Statement produced by RCC Town Planning Consultancy dated March 2021, illustrates the current condition of the site, with Yew Tree House and its associated garage in the middle ground with Yew Tree House beyond. The site has the appearance of a disused car park, although the noted timber fencing along with a maturing hedgerow along part of the roadside boundary, does provide a degree of screening from the public domain.



The site is located in the open countryside outside any defined settlement boundary, but not within any special landscape protection area. The site is however located within the 'Yellow Zone' of the Council's adopted Trowbridge Bat Mitigation Strategy (TBMS) SPD, which identifies impacts could arise on individual sites and in-combination with other development, through the loss and/or degradation of

habitat for important bat species including Bechstein's, greater horseshoe and lesser horseshoe bats for foraging, commuting, and roosting. In such locations, and as set out within the TBMS, planning permission is only likely to be granted where development proposals within such locations are accompanied with appropriate bats surveys and suitable mitigation.

There are no Public Rights of Way (PRoW) directly crossing the application site, however to the south and north there are a number of footpaths nearby, as illustrated in the below extract (with the application site outlined in red). The following insert reveals the existing site layout and existing parking along the highway which would be retained.



**4. Planning History**

The following planning history is of relevance to this application.

74/00814/HIS - Sitting of residential caravan as temporary accommodation for staff - Approved.

15/10329/FUL - Change of Use of Public House to residential dwellinghouse; first floor extensions at rear and side - Approved with conditions

18/06574/VAR - Variation of condition 2 of planning permission 15/10329/FUL to allow for a change to the external materials - Approved with conditions

18/01371/FUL - Erection of a detached Dwelling - Refused at WAPC in May 2018 citing the following reasons:

- 1 The proposed site is located in the open countryside outside any identified limits of development which has not been allocated for residential development within the Wiltshire Core Strategy (January 2015), a Housing Site Allocations DPD or Neighbourhood Plan. The development fails to satisfy the policy based criteria which support the delivery of additional residential units in the open countryside, and in the absence of a robust planning justification, the proposal is not considered to be a sustainable form of development and is contrary to Core Policies 1, 2, 29, 60 & 61 of the Wiltshire Core Strategy.
- 2 The proposed development would constitute as unwarranted encroachment of the open countryside, without any justification. The proposal would lead to the loss of a spatial gap between existing buildings that would introduce an urbanising effect that would harm the rural character and appearance of the area, contrary to Core Policies 1 and 51 of the Wiltshire Core Strategy and Paragraph 17 of the National Planning Policy Framework which seek to preserve the intrinsic character of the countryside.

20/10346/FUL - Erection of two holiday ecolodges – Application Withdrawn

## 5. The Proposal

This application is a resubmission of the 20/10346/FUL withdrawn application which also sought planning permission for the construction of two holiday eco lodges on the same parcel of land.

The previous application was withdrawn by the applicant, when advised by officers that the development was not considered policy compliant with Core Policy 39 (CP39) of the adopted Wiltshire Core Strategy and through the lack of supporting ecology information to satisfy the requirements of the Trowbridge Bat Mitigation Strategy (TBMS) SPD and Habitats Regulations Appropriate Assessment (HRA AA) process. As such, there were substantive grounds on which to refuse the 2020 application and the applicant was duly advised and decided to withdraw that application to avoid such a refusal.

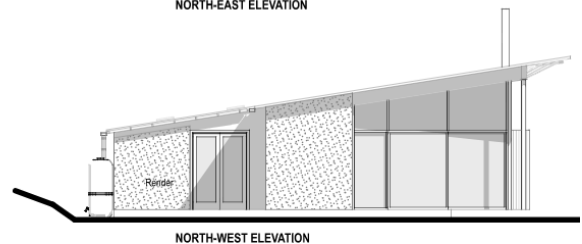
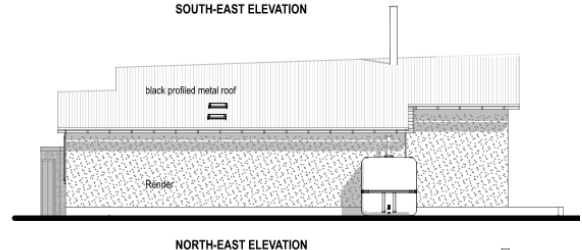
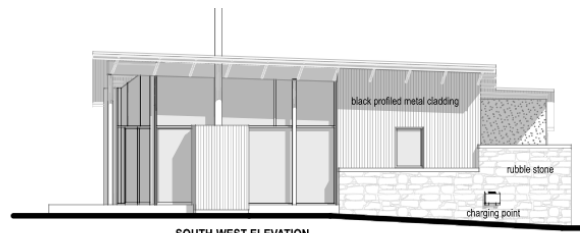
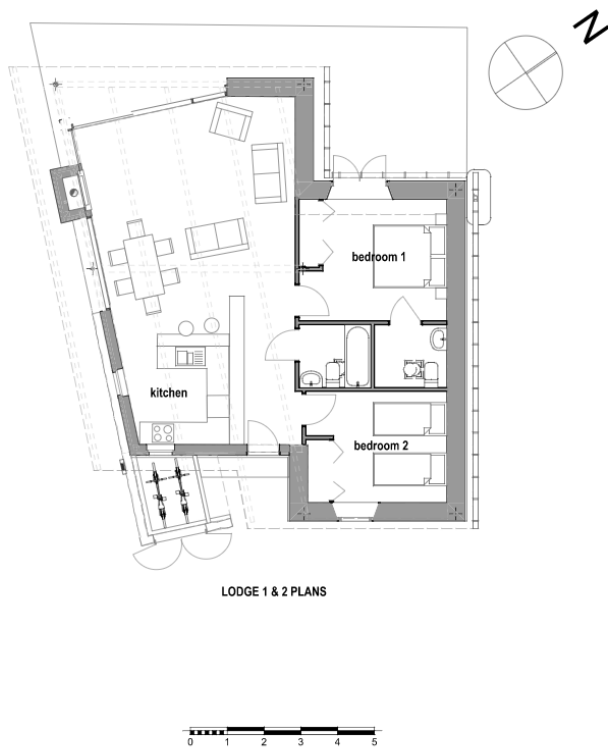


This application is seeking planning permission for the erection of two ecolodges and to change the use of land shown outlined in red above from its lawful use as residential curtilage associated with Yew Tree Cottage, to tourism use. The proposal also includes additional landscape planting as shown in the following insert, the provision of electric vehicles charging points, and secure cycle parking.



With reference to the submitted Planning Statement, this is an identical proposal to the withdrawn application (under reference 20/10346/FUL), but it does include the previously omitted ecological information (including an ecological appraisal and lighting assessment) and the application also seeks to bolster the application’s compliance with CP39, which deals with Tourist Development.

The proposed two ecolodges would have a contemporary design and would be completed in a combination of black profiled metal cladding, rubble stone and render for the walls, under black profiled metal cladding for the roof, as illustrated by the extracts provided on the following page taken from the submitted elevation drawings.



## 6. Planning Policy

The adopted Wiltshire Core Strategy (WCS) 2015, namely core policies (CP): CP1 - Settlement Strategy, CP2 - Delivery Strategy, CP3 - Infrastructure Requirements, CP29 - Trowbridge Community Area Strategy, CP39 - Tourist Development, CP48 - Supporting Rural Life, CP50 - Biodiversity and Geodiversity, CP51 - Landscape, CP57 - Ensuring High Quality Design and Place Shaping, CP60 - Sustainable Transport, CP61 - Transport and New Development, CP62 - Development Impacts on the Transport Network, CP64 - Demand Management, CP67 - Flood Risk

Saved policy U1a (Foul Water Disposal) of the West Wiltshire District Plan 1st Alteration, Adopted June 2004

Saved policy CR1 (Footpaths and rights of way) of the West Wiltshire Leisure and Recreation DPD

Trowbridge Bat Mitigation Strategy (TBMS) Supplementary Planning Document (SPD) adopted February 2020

Wiltshire Local Transport Plan 2011-2026, Car Parking Strategy

The 'made' North Bradley Neighbourhood Plan 2018-2026, with the following policies being particularly material to this application: Policy 2 - Housing; Policy 5 - Bat Conservation; and Policy 6 - Local Infrastructure Priorities

National Planning Policy Framework (NPPF) 2021 and Planning Practice Guidance

## 7. Summary of consultation responses

North Bradley Parish Council: Supportive and advised that it is believed "that the applicant has addressed the reasons for the previous refusal".

Wiltshire Council Highways: No objection subject to conditions

Wiltshire Council Public Protection Team: No objections

Wiltshire Council's Ecologist: No objection subject to conditions. An Appropriate Assessment (AA), which has assessed the effects of the proposed development on nationally protected site(s) has now been undertaken by Wiltshire Council as a 'competent authority' under the habitats regulations – which was subject to a consultation with Natural England, and it has been concluded that the proposed development would have *"no adverse effects on site integrity so the application can be positively determined subject to suitable mitigation measures being secured by condition and implemented"*.

## **8. Publicity**

The application was publicised by individually posted notification letters sent to six neighbouring/properties within close proximity of the site. In response, two third party representations were received and are summarised as follows:

- The site is located in the open countryside
- There is existing holiday accommodation close to application site at Brokerswood
- There is no need for further tourism accommodation at this location
- There are no facilities in Brokerswood or any attractions
- The application does not comply with CP39 of the adopted Wiltshire Core Strategy
- Tourism development does not benefit the immediate local area or local residents
- Dilton Marsh – which is the nearest village has very limited amenities. Westbury is 5 miles away
- Failure to comply with CP60 and CP61 as there would be a reliance on private motor vehicles and the development would create additional traffic generation along narrow lanes and bends which are extremely dangerous
- The National cycle route through Brokerswood is mostly used by cycle clubs.
- The public rights of way in the area become very muddy and wet and are not very accessible
- The application proposal would create noise disturbance to local residents
- The sewerage plant is close to the site boundary
- The development would constitute an unwarranted encroachment of the open countryside infilling a spatial gap
- The eco lodge design would harm the rural character of the area and the surrounding properties
- Impact of lighting on local environment
- Precedent concerns if this application is approved

## **9. Planning Considerations:**

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

### **9.1 Principle of the Development**

Paragraph 84 of the NPPF in the Government's drive to support a prosperous rural economy sets out that planning policies and decisions should *inter alia* enable:

*"the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings"* in criterion a) and *"sustainable rural tourism and leisure developments which respect the character of the countryside"* in criterion c).

9.1.1 The NPPF recognises within paragraph 85 that for sites to meet local businesses and community needs in rural areas, these are not always located in defined and established settlements, and that:

*“Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist”.*

9.1.2 Policy CP1 of the adopted WCS identifies the settlements where sustainable development should take place in Wiltshire and sets out a general presumption against development outside the defined limits of the Principal Settlements, Market Towns, Local Service Centres and Large Villages.

9.1.3 Consistent with the NPPF, paragraph 4.17 within the supporting text to CP1 explains that the adopted Strategy does allow for *“carefully managed development outside of settlement boundaries in specific cases, such as new employment investment where there is an overriding strategic interest, or for other local circumstances such as providing affordable housing, allowing new tourist accommodation or supporting diversification of the rural economy”* (emphasis added by officers).

9.1.4 CP2 of the adopted WCS states that other than in circumstances as permitted by other policies within the Plan, as identified in paragraph 4.25 of the supporting text for CP2, development should not be permitted outside the limits of development. Paragraph 4.25 provides a list of the Council’s adopted ‘exception policies’ which includes development related to tourism and specifically identifies CP39 and CP40.

9.1.5 In appraising this particular case, CP39 is the leading policy as it relates to new tourist accommodation, whereas CP40 relates to proposals for the construction of new hotels, bed and breakfasts, guesthouses or conference facilities or upgrading and the intensification of existing tourism accommodation facilities. As such CP40 is not relevant to this proposal and the application must be assessed essentially against CP39 (along with CP2 and CP50, CP51 and CP57).

9.1.6 CP39 states that within Principal Settlements and Market Towns, proposals for tourist development *“of an appropriate scale”* may be supported subject to a sequential assessment and assessment against the policies of the adopted WCS. Outside of these settlements, to which this application applies, CP39 leads on to stress that:

*Outside the Principal Settlements and Market Towns, **tourist and visitor facilities should be located in or close to Local Service Centres or Large and Small Villages and, where practicable, be located in existing or replacement buildings.***

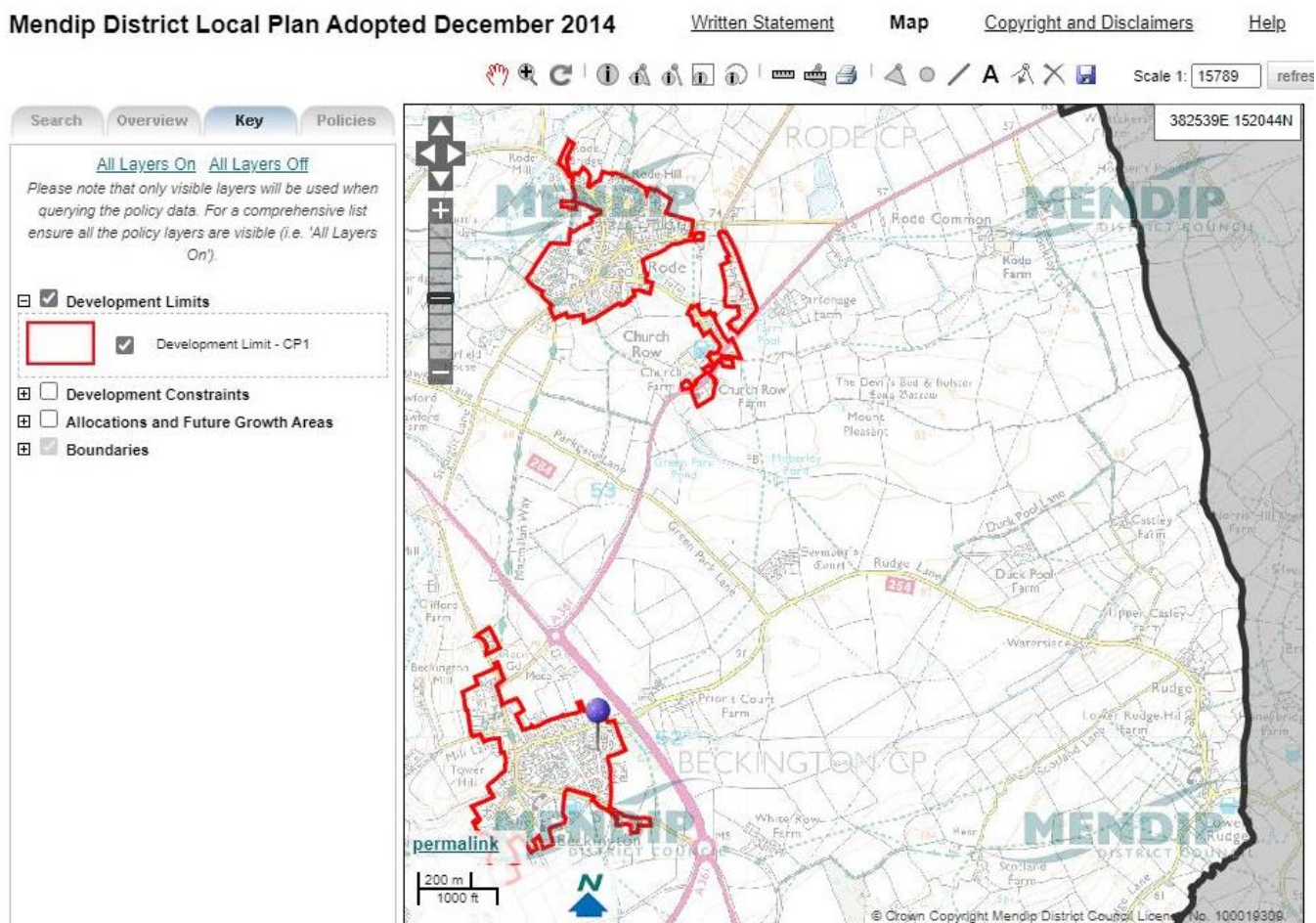
*Any proposal needs to carefully consider the need to protect landscapes and environmentally sensitive sites **with the objective of providing adequate facilities, enhancing enjoyment, and improving the financial viability of the attraction.***

***If new buildings are required in the countryside for tourist development, these should be directed towards the Local Service Centres and Large and Small Villages*** (emphasis added by officers)

9.1.7 Brokerswood is not identified in the adopted WCS as being a settlement. The application site does not form part of a settlement and is not considered “close to” a recognised ‘settlement’ as required by CP39. The nearest Wiltshire settlements to this application site are Westbury at some 2.2km to the east and Dilton Marsh 2km to the south-east (and it should be noted that the distances quoted reflect the measurement to the outer reaches of the referenced settlement boundaries – the distance to services,



shops and amenities would be far greater). Rudge and Lower Rudge (located to the west and within Mendip) is a loose knit group of properties about 0.5km distant but this is not listed by Mendip as either a 'Primary Village' or a 'Secondary Village' as shown by the below extract taken from [Mendip District Council - Local Plan Map](#) which identifies Mendip District Council's settlement limits:



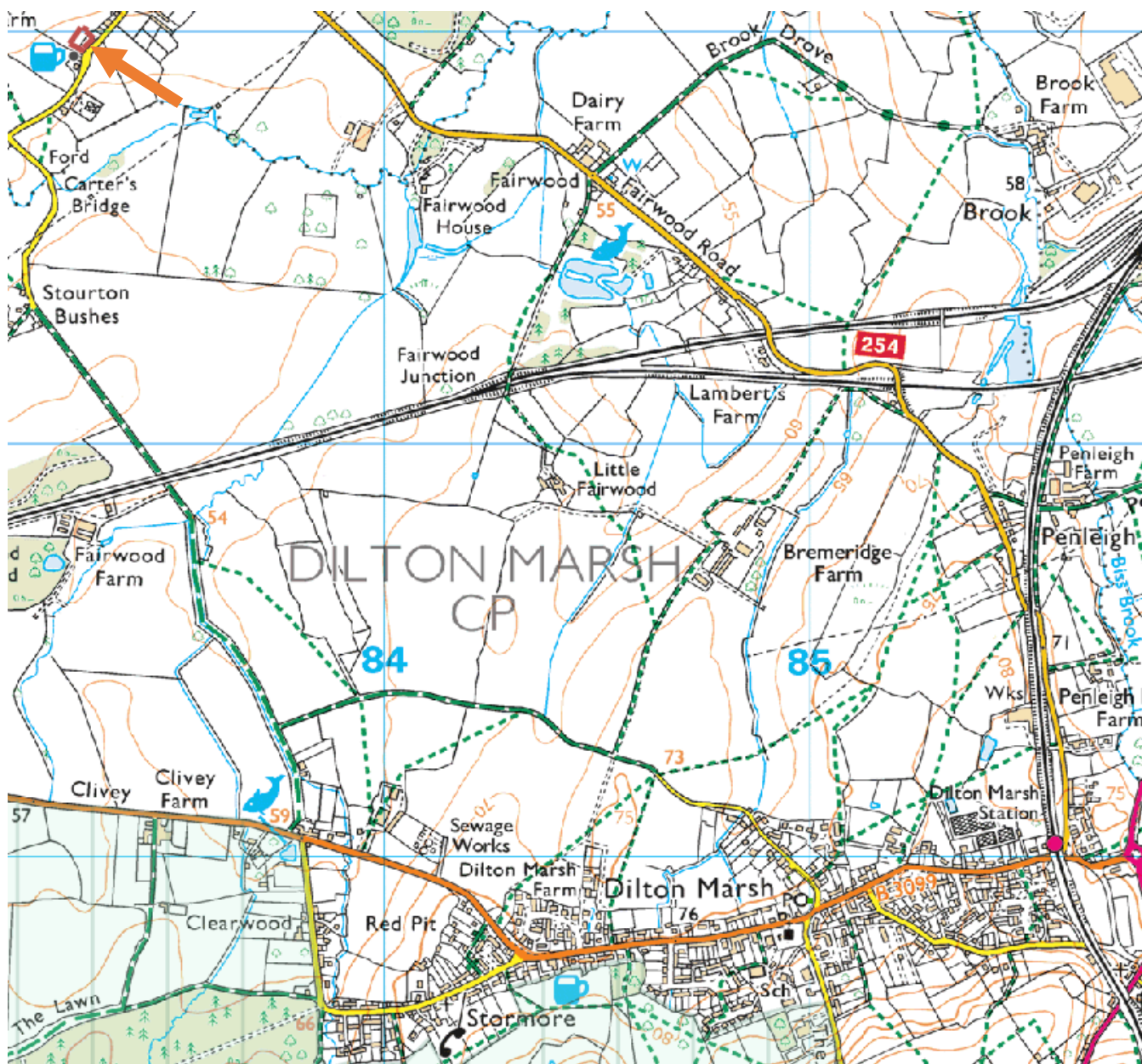
9.1.8 As stated above, CP39 requires proposals for tourism developments outside Principal Settlements and Market Towns to be located “in or close to” either local service centres or large or small villages. The applicant’s submitted Planning Statement argues within paragraphs 5.13-5.14 that the site subject to this application is “close to’ the large village of Dilton Marsh” and argues that the site is “*within an easy reach of this Large village and its facilities either by cycle (4-7 mins) or by walking*”.

9.1.9 The extract provided on the following page is taken from the Council’s mapping system and clearly illustrates the physical separation between the application site in Brokerswood and Dilton Marsh to the south and the western outskirts of Westbury in the far right of the map insert. The application site is depicted by the red outline and orange arrow. Officers do not agree with the applicant’s assertion that the Brokerswood site is a sustainable site for tourist development nor does the council agree that the site is close to Dilton Marsh.

9.1.10 Users of the two ecolodges would most likely use private motor vehicles for most trips for shopping, entertainment and visiting holiday attractions in Wiltshire and beyond, rather than walk or cycle.

9.1.11 Some tourists may well come for cycling and walking breaks, but officers submit that most of the tourists accessing these holiday lodges would likely travel by private motorised vehicles, and the quoted 2km distance from the site to Dilton Marsh via the DMAR42 Bridleway (shown on the following insert by

way of a green dashed line) would not be suitable for some tourists and would unlikely be used in the most part for most journeys made by tourists. The quoted timeframes for walkers and cyclists accessing Dilton Marsh from the Yew Tree house site are disputed by officers.

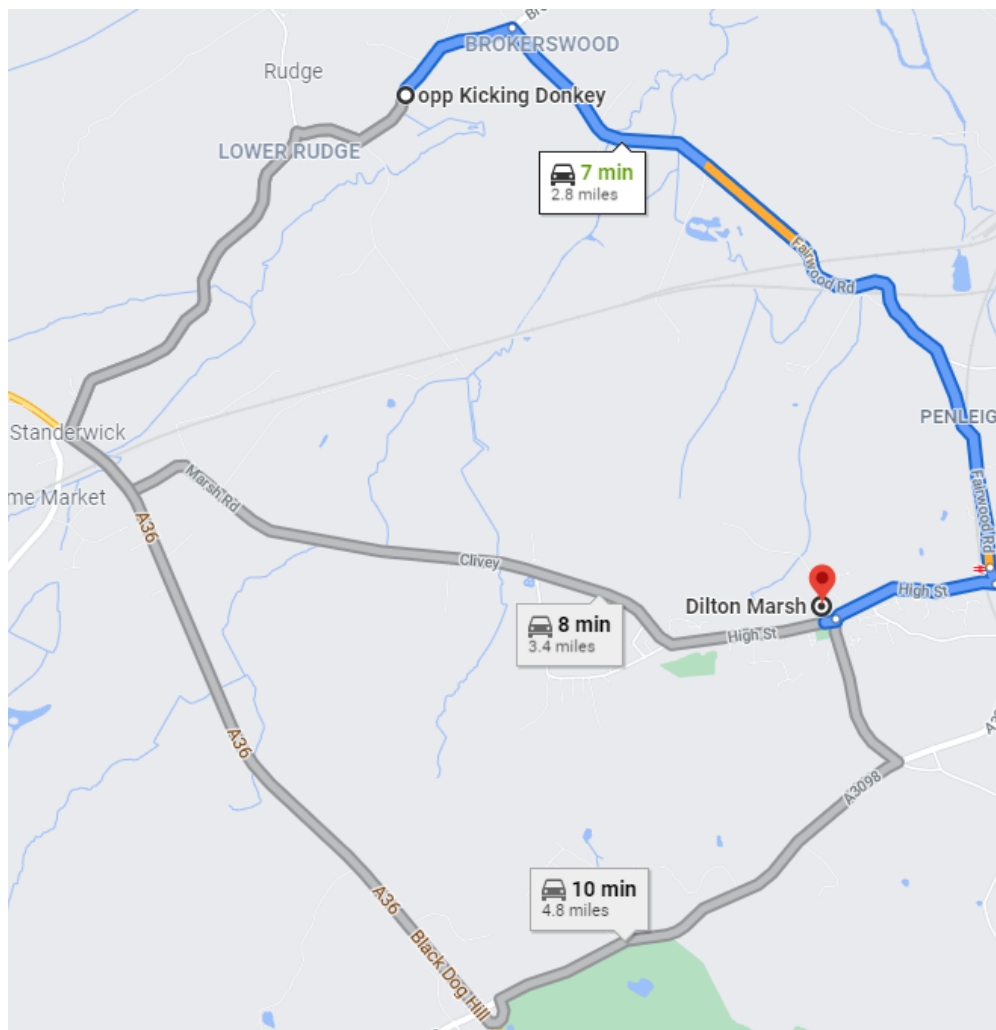


9.1.12 Officers dispute the applicant's claim that the site is 'close' to Dilton Marsh. Even with visitors utilising the private rights of ways to walk to Dilton Marsh, this would still involve people having to walk along sections of the unlit road (and PRow) with limited pavement/refuge and such a route would not provide a safe access especially in adverse weather conditions or during hours of darkness.

9.1.13 Whilst it is appreciated that the term 'close to' has not been defined by the Wiltshire Core Strategy, officers strongly refute the assertions made within the applicant's planning statement and conclude that this development does not comply with the very first requirement set by CP39 in that the site is not located within or close to a settlement.

9.1.14 The applicant's planning statement asserts that the site is 1.5 miles from Dilton Marsh when using the DMAR42 Bridleway (paragraph 3.6 refers). This statement is anomalous. Dilton Marsh is at least

2km from the site and for motorised trips, would be about 7-10 minute drive by car from the site as illustrated by the below extract from Google Maps (as taken from [Google Maps route by car](#)) and would be a good 55 minute walk away (with reference to [Google Maps](#)).



9.1.15 Officers also find policy conflict with CP39 in terms of acknowledging that the policy states that for ‘new buildings’ that are **required**, these should be directed towards the Local Services Centres and Large and Small Villages.

9.1.16 Officers accept that when the above tests are not satisfied, CP39 states that in:

“...exceptional cases development may be supported away from the Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages” where all the following criteria can be fully met.

- i. *There is evidence that the facilities are in conjunction with a particular countryside attraction.*
- ii. *No suitable alternative existing buildings or sites exist which are available for reuse.*
- iii. *The scale, design and use of the proposal is compatible with its wider landscape setting and would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas.*
- iv. *The building is served by adequate access and infrastructure.*
- v. *The site has reasonable access to local services and a local employment base.*

9.1.17 The wording of CP39 is very clear that outside of the settlements and for sites that are not considered close to a settlement, only in “*exceptional cases*” where all the listed criteria are fully satisfied, should tourist development be supported.

9.1.18 Officers have assessed each of the above listed criteria set out within CP39 and have been mindful of the assertions made by the applicants within the planning statement, but officers have concluded the following:

9.1.19 With regards to **CP39 criterion I**, officers are not satisfied that the proposed ecolodges and holiday let facilities would be provided *in conjunction with a particular countryside attraction*. Whilst the applicant’s Planning Statement argues that there are “nearby attractions” and identifies Longleat Safari and Adventure Park, Cley Hill, Cheddar Gorge, Stourhead, Stonehenge, Shearwater, Westbury White Horse, and Bath as being key draws for tourists to this part of Wiltshire, these locations are all quite distant from the application site and there is no evidence to support the policy requirement that these proposed ecolodges would be provided in conjunction with the named attractions.

9.1.20 Section 3 of the applicant’s Planning Statement sets out the proximity of the application site to various public rights of way and argues that the site would be a good base for walking and cycling breaks, and argues that Dilton Marsh offers a wide range of facilities and services, including a railway station. The Planning Statement also highlights the “*popular Wiltshire Cycleway Route 254 (South Wiltshire Downs)*” being located close to the site and offers cycle routes to places such as Bradford on Avon, Westwood Manor, with this cycleway linking to the National Cycle Route 24 that leads to the Wylde Valley. In recognition of these linkages, the applicant proposes to include secure cycle storage for both proposed lodges. The Planning Statement also notes there is a fishing lake which has other on-site facilities at Fairwood Lakes Holiday Park which is located about a mile to the south-east of the application site. A few nearby public houses have also been identified in the submitted Planning Statement including The Full Moon in Rudge and The Bell at Standerwick. Officers acknowledge there are such attractions, but the proposed holiday accommodation would not be provided in conjunction with these attractions.

9.1.21 The submitted Planning Statement acknowledges the nearby Brokerswood Holiday Park and Fairwood Lakes Holiday Park, which both offer existing holiday accommodation. However, no compelling evidence has been submitted as part of this application to demonstrate that there is a demand for ecolodges at this particular location. Consistent with the Council’s strategic approach to encouraging and supporting sustainable forms of development, CP39 seeks to avoid new tourist related development in the open countryside, and in this case within a residential curtilage. The policy requires an exceptional case to be made supported by evidence, which has not been demonstrated for this case.

9.1.22 The application site is accessed via a public highway which is subject to a 60mph speed limit and is not served by a dedicated cycle path, pavement, or street lighting. Whilst the application site is located within close proximity to a number of PRow and the noted cycleway linkages, it is not considered that this alone represents a sustainable location for additional holiday lets to be built at this site.

**9.1.23 The application therefore fails to satisfy CP39 criterion i).**

9.1.24 Turning to **CP39 criterion ii**, there are no suitable alternative existing buildings at the site for reuse as the site comprises an area of hardstanding that was a former car park associated with the former public house. The applicant however has not demonstrated whether the existing garage outbuilding associated with Yew Tree House, which is shown on the submitted drawings to be within the applicants’ ownership, would be suitable for conversion as a holiday let. Within paragraph 5.64 (quoted below) of the applicant’s statement, the following is argued which is considered inadequate when tested against the clear policy requirement set by CP39:

*“It is noted that the garage building does not form part of the application site and no works whatsoever are proposed to this building as part of this application”.*

**9.1.25 The applicant’s failure to fully appraise the conversion potential of the garage outbuilding is another conflict with CP39.**

9.1.26 Furthermore, criterion ii) of CP39 also refers to “*or sites*” which requires an applicant to evidence that there are no other sites that could be developed for re-use and it has not been demonstrated within the submitted Planning Statement whether there are any other sites that would be more suitable for tourism accommodation, other than this particular site. The lack of supporting research and evaluation to demonstrate whether any other buildings or sites would be more suitable for holiday let use means that this criterion has not been satisfied.

9.1.27 **CP39 criterion iii** requires the scale, design and use of the proposal to be compatible with its wider landscape setting and not detract from the character or appearance of the landscape (or settlement) and create detriment to residential amenities. The proposed holiday lets would be of a contemporary design and would be single storey, with substantive landscaping both within the site and along the boundaries, as illustrated by the below extracts taken from the proposed site elevation drawings, which would provide significant degrees of screening.



NORTH-WEST ELEVATION FROM FIELD



SOUTH-EAST ELEVATION FROM ROAD

9.1.28 The proposed landscaping would comprise a mixture of native hedging to the north-west boundary, shrubby wildlife areas to the north-east, a flower bed to the south-west and an extension to the existing hedge on the roadside boundary which would limit the development’s visual impact on the wider rural landscape.

9.1.29 However, the proposed development would urbanise what is at present, an open area of hardstanding situated between two properties. The proposed buildings would be located within an existing gap in the street-scene and would result in the loss of a spatial gap between the existing dwellings which offers views to the open countryside. The proposal by virtue of it being unjustified, would harm the rural character of the open countryside.

9.1.30 Whilst officers appreciate that the proposed landscaping would result in some biodiversity net gain from the range of new landscaping proposals, the **development would constitute an unwarranted and unjustified encroachment of the open countryside, resulting in the loss of a spatial gap between existing buildings and introduce an urbanising effect that would harm the rural character and appearance of the area, and consequently, would conflict with CP39 criterion iii).**

9.1.31 With regard to **CP39 criterion iv**, the council's highway's engineer has raised no technical objections to the proposal and the existing vehicular access would be used. Development management officers however have identified concern about the lack of pavement and street lighting along Brokerswood Road and that the DMAR42 bridleway should not be recognised as a viable route for all holiday makers to walk or cycle to Dilton Marsh. **Officers therefore cite a conflict with CP39 criterion iv).**

9.1.32 Paragraphs 5.19 and 5.35 of the applicant's Planning Statement asserts that the site has potential mains water and electricity connections, with rainwater from the roofs to be collected and recycled for use within the proposed setting of the ecolodges. It is proposed that any excess surface water would run to soakaways within the proposed drainage mounds. The location of the proposed soakaways on the site have not been illustrated on the submitted site plan and as such, if members are minded to approve this application, against officer recommendation, a planning condition would need to be imposed relating to the method of surface water drainage.

9.1.33 Lastly, **CP39 criterion v** requires sites to have reasonable access to local services and an employment base. The submitted Planning Statement heavily focuses on the accessibility of the site from the PRow for walking and cycling. However, the application site does not offer an attractive prospect for utilising sustainable transport alternatives. The proposed ecolodges would be located in open countryside, adjacent to a public highway that is subject to a 60mph speed limit which lacks a dedicated cycle path, pavement, or street lighting. There was no bus stop close to the application site and the submitted Planning Statement fails to provide any evidence of available public transport options from the application site, which do not involve walking or cycling along the nearby PRows to neighbouring towns and villages. It is noted that paragraph 3.7 of the Planning Statement states that there is 'regular bus services' to Dilton Marsh, but no evidence of how regular this bus service is.

9.1.34 As discussed above, the use of these PRows during hours of darkness or in adverse weather conditions, would render such routes unviable for most users of the proposed holiday lodges. Officers are of the view that most holiday makers would most likely use private motor vehicles for most trips to access local services and amenities within the distant settlements.

9.1.35 As such, the proposal is not considered to represent a sustainable form of development, which is clearly sought by CP39 and the Wiltshire Core Strategy as a whole.

9.1.36 CP60 and CP61 of the adopted WCS requires development to be located in accessible locations to reduce the need to travel particularly by private motor car. Officers submit that these policies should be read in conjunction with CP1, CP2 and specific policies like CP39, which seek to direct new development to the most suitable locations, through a plan led approach.

9.1.37 This application site is located within the open countryside and distant from any defined settlement boundary, and it is not a proposal that officers can support when tested against CP1, CP2, CP29, CP39, CP57, CP60 and CP61. Similarly, the application proposal is considered to conflict with the sustainable development aspirations set out within the NPPF.

9.1.38 The applicant's assertion that the site is 'previously developed land' given its former car park use associated with the former public house does not provide substantive justification for this form of development. The identified land parcel does not contain any buildings and from officers' review of the

aerial photographs the council has access to, there is no documented evidence of there ever being any permanent buildings or structures on this site. Certainly not in the case of recent years.

9.1.39 Notwithstanding the above, the NPPF defines what is meant by 'previously developed land' as:

*“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. **This excludes:** land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as **residential gardens**, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape”.*

## **9.2 Ecology Impacts**

CP50 of the adopted WCS states that “proposals must demonstrate how they protect features of nature conservation and geological value as part of the design rationale” and should incorporate “appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development”. CP50 also requires developments to “seek opportunities to enhance biodiversity”.

9.2.1 The application was supported by Ecological Appraisal produced by JH Ecology Ltd, dated November 2020, a Lighting Assessment, produced by Southwest Environmental Limited reference S21-636/LA Rev 2, dated March 2021 and a Landscape Plan drawing no. 960.P.2 Rev C, which were reviewed by the Council’s Ecologist and found to be acceptable.

9.2.2 The Council’s ecologist confirmed that the application site is located within the Council’s ‘consultation zone’ for greater horseshoe (GHS) bats, associated with the Bath and Bradford-on-Avon Bat SAC, and that the site is located within the ‘yellow’ medium risk zone of the Trowbridge Bat Mitigation Strategy (TBMS) SPD; and as such, the application was screened into an appropriate assessment (AA). In addition, the site lies within the 6.4km buffer zone of the Salisbury Plain SPA and the application was screened for the habitat regulation appropriate assessment due to the potential impact of recreational pressure on stone curlew in-combination with other plans and projects.

9.2.3 The Council’s Ecologist has confirmed that, as the competent authority under the habitat regulations, an AA was completed in consultation with Natural England which acknowledged that the lighting assessment and mitigation would result in there being zero light spill to all the site boundaries and as such, ‘no adverse ecological effects’ were identified, subject to mitigation measures being secured by planning condition, should it be approved.

9.2.4 With regard to the impact on bat species, the main habitats of value would be the landscaped site boundaries. The council’s ecologist concluded that due to “the location of this application within the GHS consultation zone and within the TBMS ‘yellow’ medium risk zone, and in the absence of bat activity surveys, it is assumed that bats associated with the SAC are using the boundary features and all boundary features must be retained/created and enhanced and these must be maintained as dark (0 lux) areas”. The ecologist recommends if planning permission is granted, three planning conditions should be imposed relating to the compliance with the light assessment and landscape plans, and to restrict any additional lighting unless agreed in writing by the local planning authority to protect bats and other nocturnal animals.

9.2.5 On the basis of the above, officers are satisfied that if members wish to approve this application, planning conditions could be imposed to address ecological/biodiversity safeguarding and mitigation measures to comply with CP50 of the adopted WCS and the NPPF.

### **9.3 Impact on Neighbouring Amenity**

CP57 of the adopted WCS requires proposals to have regard “to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g., light intrusion, noise, smoke, fumes, effluent, waste or litter)”.

9.3.1 In terms of residential amenity, the proposed ecolodges would be located a sufficient distant from the existing neighbouring properties, with a distance exceeding 21 metres from the north-easterly ecolodge to Green Pastures to the north-east. Whilst offices acknowledged that the proposed ecolodge would be located close to the boundary with Green Pastures, it is considered that the ecolodge would be located a sufficient distance away from this neighbouring property and would be of a design that would prevent any adverse impacts on the amenity of the neighbouring occupiers. The comments received in the submitted representations are duly noted and officers acknowledged that there may be increased levels of noise generated from the proposed holiday lets compared to the existing site circumstances. However, no objection has been raised by the council’s public protection team and officers are satisfied that in planning terms, the application would comply with CP57 in terms of the holiday lets being compatible with the immediate residential properties. Furthermore, the site boundary comprises mature vegetation and additional landscaping is proposed along this north-easterly boundary, which would mitigate some noise impacts. As such it is considered the proposed development would not result in harm to the amenity of neighbouring occupiers in accordance with CP57.

### **9.4 Highway Safety Impacts**

The proposed development would utilise an existing established vehicular access and would provide on-site car parking provision. As the site was previously used as car parking associated with a former public house, it is considered that the two holiday lets would be appropriately accessed via the existing highway access.

### **9.5 Drainage Matters**

CP67 of the adopted WCS includes a requirement for SuDS, with saved policy U1a stating that development would only be permitted where “adequate foul drainage, sewerage and sewage treatment facilities are available or where suitable arrangements are made for their provision”. The completed application form states that foul sewerage would be managed via mains sewers which would require the prior consent of the water undertaker. With regard to surface water the drainage strategy for excess roof water, if not re-used by the proposed eco lodges as grey recycling, the water would be diverted to the drainage mounds as shown below.





## **9.6 Other Matters**

The applicant's Planning Statement makes accusations that the council has been inconsistent in its decision making when assessing applications for tourist accommodation and identified one particular case 18/01502/FUL for criticism. Officers' have reviewed the cited case which related to the conversion of a stable building. As such, CP48 was the most relevant policy for that case, as this supports the conversion and re-use of rural buildings for employment, **tourism**, cultural and community uses, where it can be demonstrated that the criteria listed in CP48 can be satisfied.

9.6.1 In this instance, the applicant seeks planning permission to construct new buildings for tourism accommodation in the open countryside, distant from any settlement and as argued above, officers are not satisfied the proposal accords with the exceptional policy requirements set within CP39.

9.6.2 It is also important to stress that every planning application must be assessed and judged on its own individual planning merits, and the case identified in the submitted Planning Statement offers little material comparison with the proposal subject to this current application.

## **10. Conclusion (The Planning Balance)**

The proposal for the construction of two ecolodges for tourist accommodation on this site, which is located in the open countryside and outside and away from any defined settlement boundaries, would represent an unsustainable form of development, which fails to comply with CP39. CP39 encourages tourist accommodation outside of Principal Settlements and Market Towns, to be *"located in or close to Local Service Centres or Large and Small Villages and, where practicable, be located in existing or replacement buildings"* and the site subject to this application is not considered to fall 'in or close to' any settlement.

In such circumstances, CP39 is clear that only in "exceptional cases" should development be considered *"away from the Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages where it can be demonstrated that"* all of the criteria listed within criterion i-v can be met.

In this instance, the proposal does not represent a 'exceptional case' and the proposal fails to satisfy all the necessary criteria listed within CP39. The proposal therefore conflicts with CP1, CP2, CP39, CP51, CP57, CP60 and CP61 of the Wiltshire Core Strategy and the NPPF.

### **RECOMMENDATION:** Refuse

- 1. The subject site is located in open countryside and is not located in or close to a Local Service Centre or Large and Small Village and does not seek to re-use or replace an existing building and on this basis, only in 'exceptional cases' would such tourism accommodation be considered, which this proposal fails to adequately demonstrate, as the proposal fails to satisfy all the necessary criteria contained in CP39; and in particular, the Council is not convinced by the applicants' submissions that the proposal is justified or is supported by substantive evidence for this proposal to be considered 'exceptional'. As such, the proposal is not considered to be a sustainable form of development and is considered contrary to Core Policies 1, 2, 39, 60 and 61 of the adopted Wiltshire Core Strategy.**
- 2. The proposed site is located in the open countryside and outside any identified limits of development whereby the proposed siting of two ecolodges to be used for holiday accommodation would constitute an unwarranted and unjustified encroachment of the open countryside, resulting in the loss of a spatial gap between existing buildings and introduce an urbanising effect that would harm the rural character and appearance of the**

**area. As such, the proposal is considered to be contrary to Core Policies 51 and 57 of the adopted Wiltshire Core Strategy.**



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## REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	29 September 2021
<b>Application Number</b>	20/10353/FUL
<b>Site Address</b>	37 A Monkton Farleigh Bradford-on-Avon Wiltshire BA15 2QD
<b>Proposal</b>	Erection of replacement dwelling
<b>Applicant</b>	Mr J Stone
<b>Town / Parish Council</b>	Monkton Farleigh
<b>Electoral Division</b>	Winsley and Westwood – Cllr Johnny Kidney
<b>Grid Ref</b>	380414-165283
<b>Type of Application</b>	Full Planning Application
<b>Case Officer</b>	Steven Sims

### Reason for the application being considered by Committee

This application was initially called in for committee consideration by Cllr Trevor Carbin (prior to the May 2021 election) should officers be minded to support the application for the proposed development citing the following concerns:

- The scale of development
- The visual impact upon the surrounding area
- The relationship to adjacent properties
- The design, bulk, height and general appearance

As noted within the table above, this application site falls within the Winsley and Westwood electoral division and following the May election, Cllr Johnny Kidney re-affirmed the committee call-in request.

### 1. Purpose of Report

This is a report that considers the relevant planning considerations of this development proposal, including the consultation responses all within the context of local and national planning policy and guidance. The report identifies the various planning constraints and opportunities and considers whether this represents a sustainable form of development having regard to the social, environmental and economic dimensions of this construct.

Furthermore, the report considers the level and nature of the public objection to the application as well as the objection from Monkton Farleigh Parish Council. Ultimately the report identifies, having regard to the constraints and opportunities and balancing all the planning considerations that, this is a form of development that should be supported and officers recommend that planning permission should be granted.

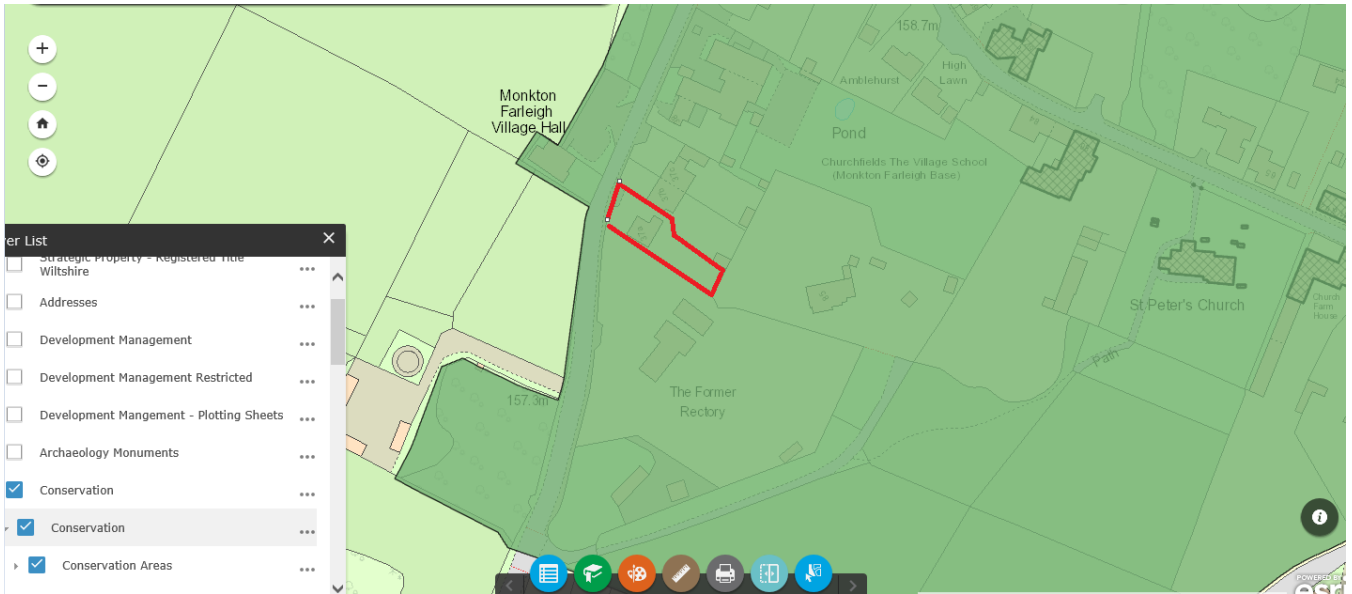
### 2. Report Summary

The key issues for consideration are:

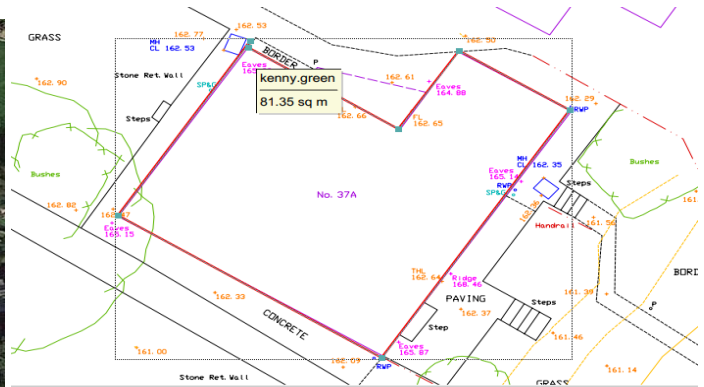
- The principle of development
- Impact on the openness of the Green Belt
- Impact on the character and appearance of the Conservation Area/AONB
- Impact on the amenity of neighbouring residents
- Other issues

### 3. Site Description

No.37a Monkton Farleigh is a detached bungalow that lies within what is considered part of the small village of Monkton Farleigh and within its Conservation Area. It should be noted that as a small village, there are no defined settlement limits, but as the following inserts reveal, the host property forms part of the existing village and abuts existing built forms of development. The site is located within the West Wiltshire Green Belt as well as the Cotswolds Area of Outstanding Natural Beauty (AONB). The rear garden of the property slopes down to the southeast - away from the dwelling. The existing property has mains sewer connections.



The application site shown above along with Conservation Area (green shading) and listed buildings (hatched)



Aerial photograph, site location – with existing floor plan calculated) and streetscene view of the existing dwelling and the immediate environs



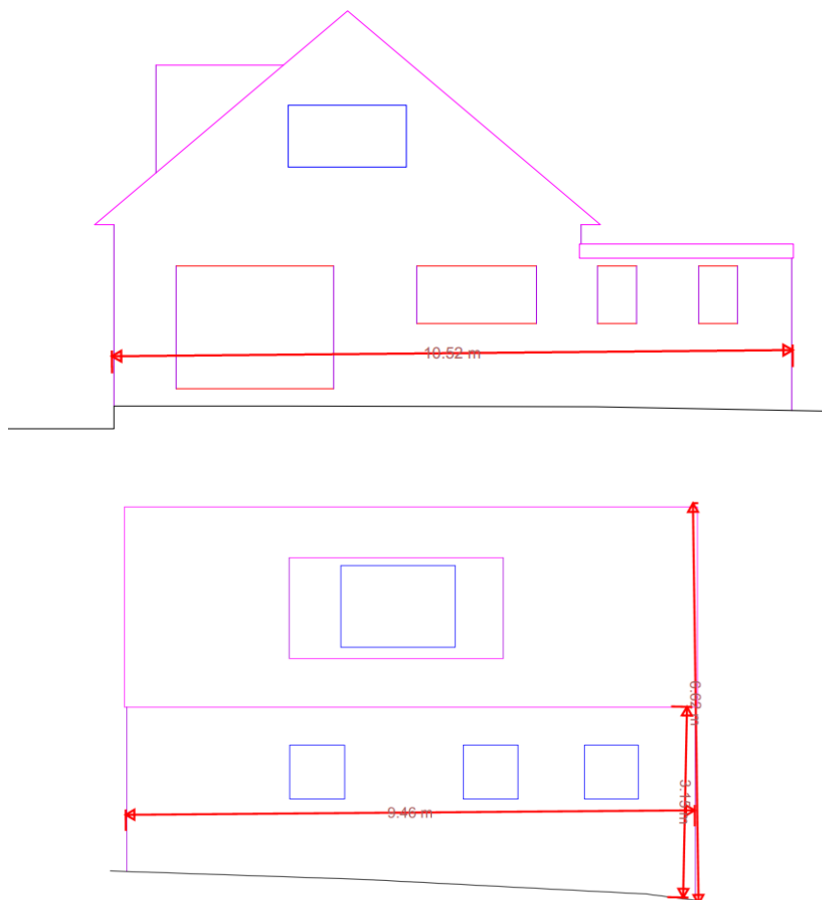
photograph of existing dwelling as seen from highway

#### 4. Relevant Planning History

None.

#### 5. The Proposal

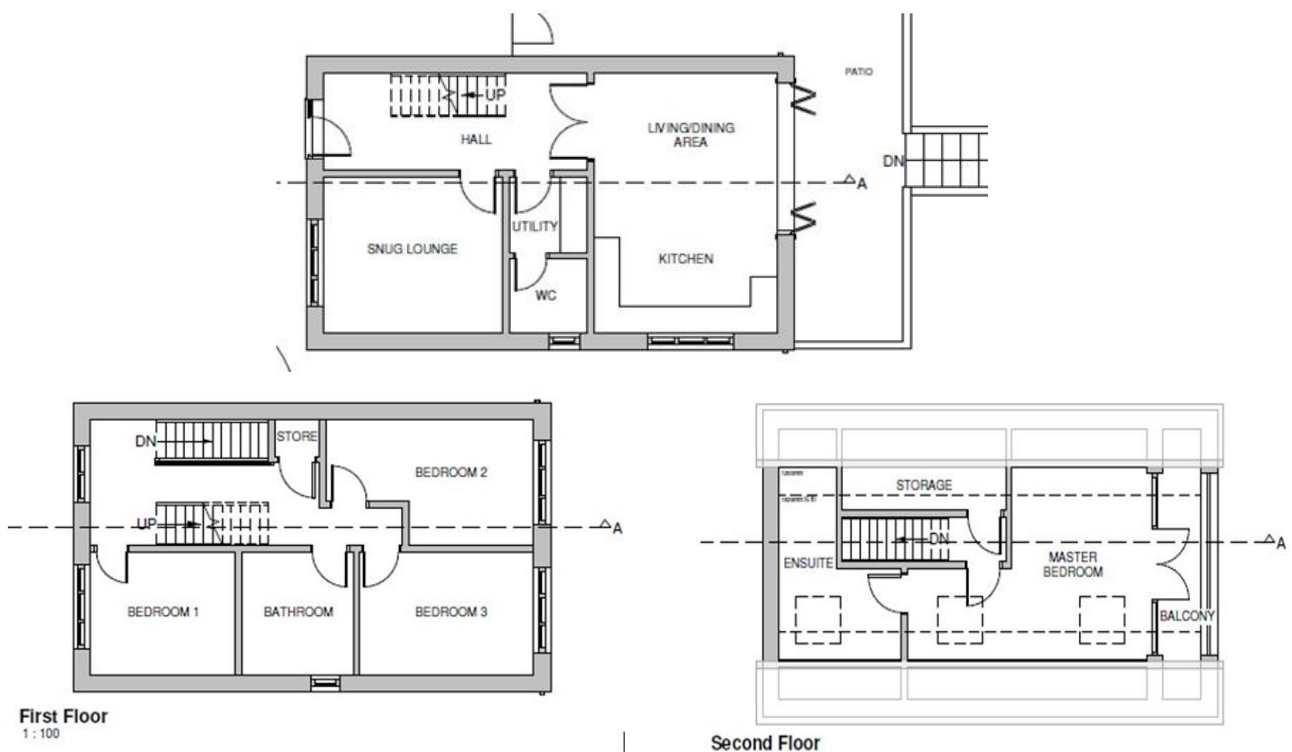
This is a full application seeking LPA approval for the erection of a 76sq.m replacement two storey 4-bedroom dwelling following the proposed demolition of the existing 81sq.m one-half storey dwelling (as shown above and below in plan form). The existing house as shown below measures some 6.6m in height (3.1m to eaves), 9.4m long x 10.5m wide.



Following officer negotiations, a revised scheme was submitted to reduce the overall bulk of the new dwelling and to relocate the replacement property further away from the neighbouring property at No. 37b Monkton Farleigh – with the following insert reflecting the revised site plan proposal.

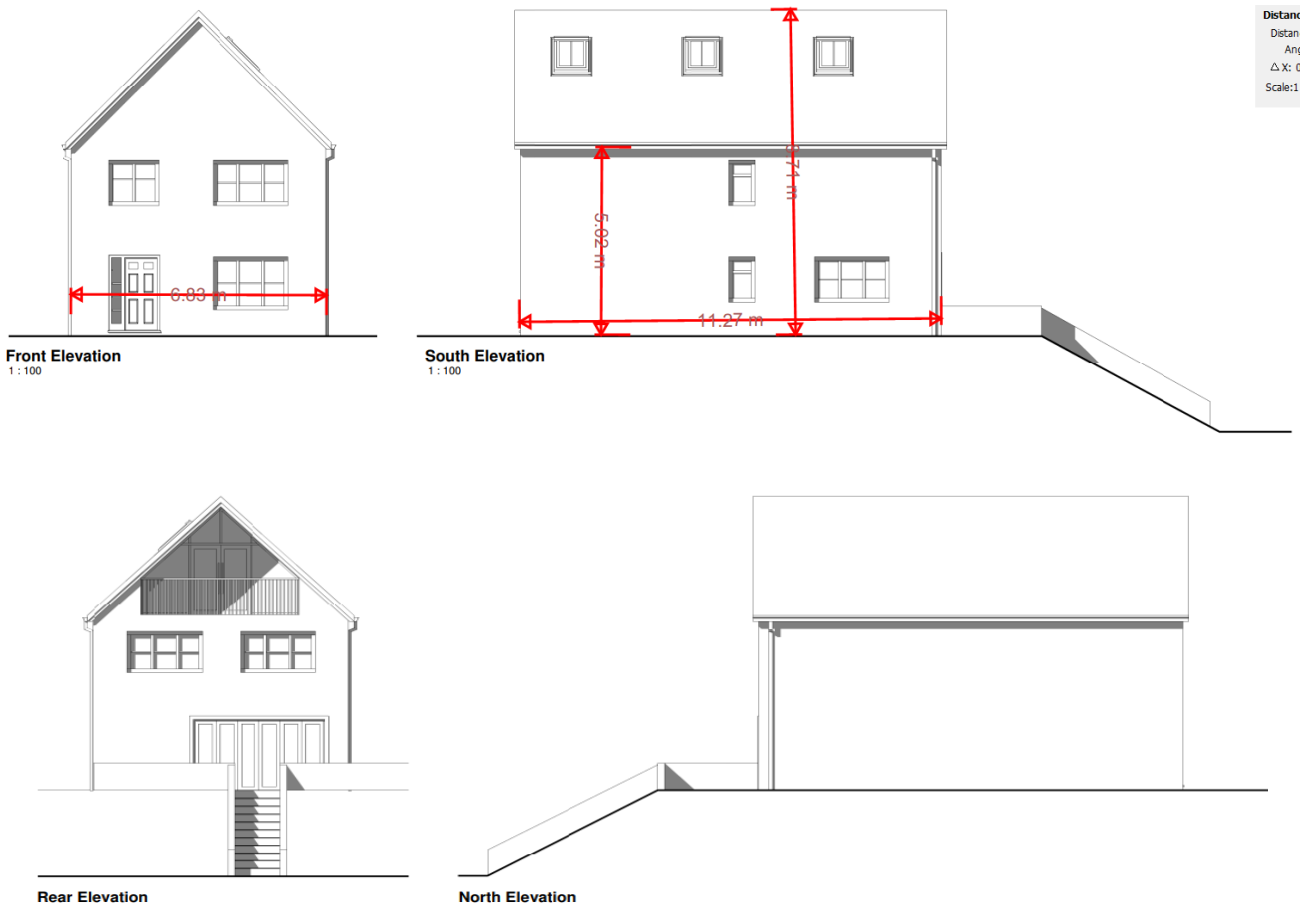


Solely for property footing comparison purposes, No.37b has a plan area of 93.5sq.m and No.37c measures some 63sq.m – with both properties full 2-storey dwellings. The following inserts reveal the proposed floor plans for the proposed replacement dwelling.

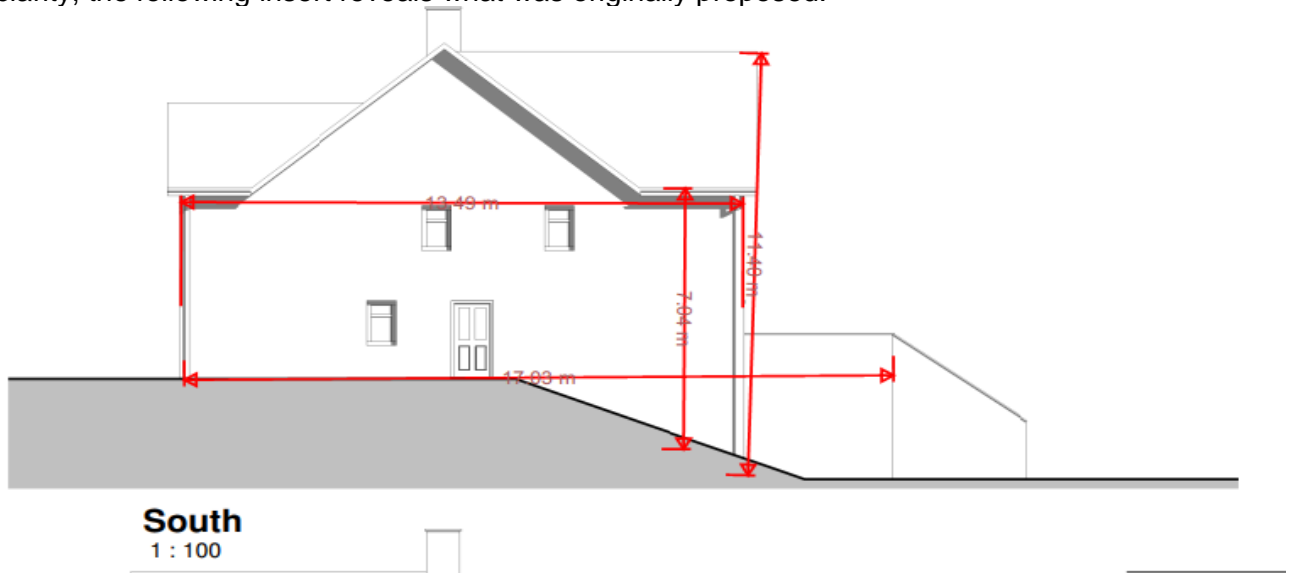


Following the demolition of the existing property, the proposed dwelling (which would have a commensurate floor area as confirmed and illustrated above), would consist of a lounge and kitchen/dining area at ground floor level, three bedrooms at first floor level and one bedroom within the roof space. The new house would be finished using natural stone with a slated roof. The vehicular access off the C class (30mph) highway would be retained along with three parking spaces being provided on site at the front of the property. The proposed (revised) dwelling would measure approximately 11.2 metres long, 6.8 metres wide, and would be 5 metres high to the eaves and 8.7 metres to the roof ridge.





For clarity, the following insert reveals what was originally proposed.



## 6. Local Planning Policy

Wiltshire Core Strategy (WCS) - Relevant policies include: Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 7: Spatial Strategy – Bradford on Avon Community Area; Core Policy 41: Sustainable construction and low-carbon energy; Core Policy 50: Biodiversity and Geodiversity; Core Policy 51: Landscape; Core Policy 57: Ensuring high quality design and place shaping; Core Policy 60: Sustainable Transport; Core Policy 61: Transport and Development

West Wiltshire District Local Plan (1st Alteration) Saved Policies H20 – Replacement Dwellings and U1a Foul Water Disposal

National Planning Policy Framework 2021 (The Framework) and Planning Practice Guidance (PPG)

Wiltshire's Local Transport Plan 2011- 2026 and The Cotswolds AONB Management Plan (2018-2023)

Wiltshire Council's CIL Charging Schedule and s211 of the Planning Act 2008.

## **7. Summary of Consultation Responses**

Monkton Farleigh Parish Council: Objects. The following comments were received with regards the final iteration of plans submitted –

The Parish Council acknowledged and welcomed the removal of a basement and that the new plans were slightly smaller. However, the Parish Council maintained that the plans lack clear dimensions and the following objections still stand.

The proposed new build is still too large.  
It will have a big impact on the neighbouring properties in terms of light and privacy  
There are no dimensions on the plans which makes it very difficult to assess.  
The raised patio would impact on the privacy for the neighbours.  
There is a general lack of information and clarity with the proposed plans

The following comments were received with regard the original plan submission -

- *'The new build is set back a lot further than the old build which impacts the privacy and light on the neighbours.*
- *The footprint, volume and mass of the new build is considerably larger than the old build*
- *The proposed build is in an Area of Outstanding Natural Beauty and a Conservation Area and there should be a good reason to change existing builds*
- *The new build is set back a lot further than the old build which impacts the privacy and light on the neighbours. The patio and kitchen will be in the shade for most of the day.*
- *The new build is out of proportion with surrounding houses*
- *The new build would be very expensive to buy and would not be affordable to people with lower incomes*
- *The proposed cellar has caused concerns that it might affect the foundations of neighbouring houses.*
- *The proposed balcony will affect the neighbour's privacy*
- *The position of the new build would mean no garden which is not in keeping with surrounding houses'*

Wiltshire Council Highways Officer: No objection.

Wiltshire Council Ecology Officer: No objection subject to a planning condition being imposed.

## **8. Publicity**

The application was publicised by individually posted notification letters sent to neighbouring/properties within close proximity of the site. Following the submission of amended plans, additional public notifications were carried out. As a result of this publicity, 4 property owners submitted seventeen representations dating back to early January – with 12 representations made pursuant to the original planning submission through to the end of August (with 5) passing comment to the revised submission and fresh public engagement.

The representations have been summarised as follows: -

- The development would be inappropriate and overdevelopment within the Green Belt – which would harm its openness and would harm the character of the AONB
- The proposed set back position of the replacement dwelling would harm the character of the area and would be too large for the plot.
- The proposed new dwelling would not have a proportionate amount of outdoor space that is required for new buildings
- The development would have an adverse impact on the amenity of adjacent residents
- Objections raised over the proposed building elevation, its height and projection beyond the rear existing build line – would lead to an overly dominant and visually overbearing impact to all the neighbouring properties
- Additional concerns raised about loss of privacy/light/overshadowing impacts to neighbours
- There are concerns about subsidence and ground instability
- The arguments submitted by the applicant's agent with respect to the application 19/03030/FUL – which granted planning permission for the *demolition of existing side extension & garage & erection of two storey side & single storey rear extension & replacement garage at No.37c Monkton Farleigh* should be disregarded
- If this application is allowed, the hours of operation should be controlled.
- Comments received advising that there would be no local objection to a dwelling of a similar size and mass to the existing property.

## 9. Planning Considerations

### 9.1 The Principle of Development

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

For this particular case, officers fully accept that the application site has an extant dwelling that the owners wish to demolish and replace. In policy terms, with the site being considered part of the established small village of Monkton Farleigh, there is in principle support for replacement dwellings (subject to set criterion which this report will appraise on the following pages).

The 2015 adopted Wiltshire Core Strategy makes provision for new and replacement dwellings within Core Policy 2 (CP2) which states that:-

*“At the Small Villages development will be limited to infill within the existing built area. Proposals for development at the Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:*

*i)Respects the existing character and form of the settlement*

*ii)Does not elongate the village or impose development in sensitive landscape areas*

*iii)Does not consolidate an existing sporadic loose knit areas of development related to the settlement”.*

In addition, under ‘saved’ policy H20 of the former West Wiltshire District Plan – 1<sup>st</sup> Alteration replacement dwellings were supported in policy terms “*provided the new dwelling is not materially larger than the dwelling to be replaced*”, does not “*perpetuate a serious traffic hazard*”, “*form an isolated development*” or “*adversely affect the rural scene*”. Policy H20 goes on to detail that “*replacement proposals that involve substantial alteration will be treated as new dwellings under Policy H19*”. However, it is essential to note that Policy H19, which formed part of the West Wiltshire District Plan – 1<sup>st</sup> Alteration, is no longer a saved policy and was replaced by policies CP1 and CP2 of the Wiltshire Core Strategy (WCS).

Core Policy 2 is, in this particular case, recognised as a lead policy, as it sets out the delivery strategy and advises that within the ‘limits of development’, there is a presumption in favour of sustainable development and to steer new dwellings to existing Principal Settlements, Market Towns, Local Service Centres and Large Villages, with infill (including replacement dwellings) being supported in principle within the existing Small Villages.

Appendix F of the WCS sets out that Monkton Farleigh is a Small Village with no settlement boundary.

This negotiated revised application would not provide any additional housing, but it would have a comparable footing to the existing house and officers find no in principle objection to the proposed increased height (from 6.6m to 8.7m) and the proposed increased length (from 9.4m to 11.2m). To counter some of this added bulk the reduced width of the proposed dwelling from 10.5m to 6.8m must be taken into account. The replacement dwelling would be higher and longer, but as a redevelopment of an existing residential plot within the small village, it is considered accepted in principle.

Notwithstanding the more restrictive Permitted Development allowances that apply to existing dwellings within protected areas and landscapes such as Conservation Areas and the AONB (known as Article 2(3) land), the existing dwelling could be extended without requiring planning permission on the south-east side façade and the south west rear elevation – which could extend the footprint of the property by 3m to the side and rear. This legitimate fall back must be taken into account as part of any balanced determination of the replacement dwelling proposal.

In addition to the above, it is also necessary to be mindful that the Council, cannot at present, demonstrate a 5-year housing land supply, and until this predicament is resolved, full weight cannot be afforded to the WCS (or the WWDP) policies that seek to restrict residential development.

However, the full weight of the extant policies that exist to protect the AONB and Green Belt remain in force, in full recognition that in such locations, paragraph 11 of the NPPF is not automatically engaged. Decision makers are nevertheless tasked with appraising this development and its impacts on protected areas such as the AONB and Green Belt – which the following chapters duly appraise.

## **9.2 Impact on the Openness of the Green Belt**

There are no relevant WCS development plan policies relating to the Green Belt, therefore the NPPF provides the policy direction. The recently revised NPPF (July 2021) sets out within paragraph 137 that “*The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*”; and in paragraph 138 the NPPF sets out five key purposes of the Green Belt with one being to safeguard the open countryside from encroachment

NPPF paragraph 149 sets out the categories of development which may be regarded as being ‘appropriate’ in the Green Belt, with criterion d) allowing: -

***“the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces”*** (emphasis added); criterion e) allowing: -

***“limited infilling in villages”***; and criterion g) allowing: -

***“limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: –***

- ***not have a greater impact on the openness of the Green Belt than the existing development; or***
- ***not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority”***.

The proposed development complies with the first test in that the development is for a replacement dwelling. As far as the second test is concerned, planning judgement is required on a case-by-case basis, since the NPPF does not quantify what 'materially larger' means and the Council does not prescribe a volume/percentage maximum. Each case must therefore be assessed on its own merits. Mindful of this information, the following volume calculations help with the assessment on whether the proposed replacement dwelling constitutes and appropriate form of development. But great care must be taken, and a decision should not be made on the volume calculations in isolation and instead, due regard must be afforded to the PD fallback as mentioned earlier and the impacts on the Green Belt.

The approximate volume of the existing dwelling equates to about 343 cubic metres, and the proposed replacement dwelling would have a volume of 513 cubic metres – which would have 170m<sup>3</sup> added volume constituting as a 50% increase. The proposed replacement dwelling would be 2m higher than the existing dwelling and would therefore have more physically bulk and massing, although its width would be nearly 4m narrower in part, when compared to the existing dwelling. Overall, officers accept that the replacement dwelling would be larger than the existing dwelling, but it would be within the parameters of what officers consider to be appropriate and proportionate (recognising here that the existing property benefits from PD rights); and in line with NPPF paragraph 149 criterion d), e) and g); when one considers what could be done under the 'PD' allowances (without requiring Council approval for various extensions/additions) as a legitimate fallback, the difference between the fallback provisions and the proposal as submitted would fall somewhere between 18-25%, depending on whether the property owner utilised every aspect of the PD allowances available.

Officers would not in this instance, given the PD fallback, feel confident about arguing that this proposed development would be disproportionate, materially larger and harmful to the Green Belt on appeal. If the replacement dwelling is to be approved, it would be appropriate to remove PD rights to protect the Green Belt and its openness and the AONB and Conservation Area.

The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, given that officers have concluded that the development is not 'inappropriate', there is no policy requirement for there to be very special circumstances.

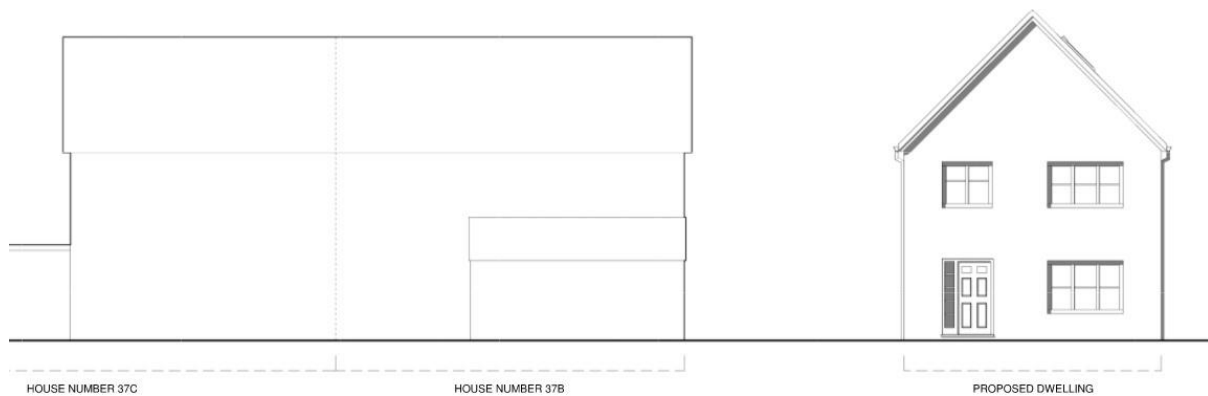
The proposed replacement dwelling would be constructed on an existing residential plot within the established small village envelope of Monkton Farleigh with residential properties to the north, east and south, and the village hall set on elevated ground to the west. The plot is not open countryside and there is no architectural or historic value in the existing dwelling (photos shown below) and the proposed demolition works raise no officer objection.



As set out in paragraph 137 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm and has both spatial and visual aspects.

The application site and its immediate environs area is characterised by existing residential development with medium to large sized gardens. When viewed from the road, the existing property is seen alongside two-storey dwellings at No.37b to No.37c. The proposal would not result in visually obtrusive or out of keeping development and nor would it materially diminish the openness of the Green Belt to such an extent as to warrant a refusal of planning permission.

The following insert is included to illustrate how the proposed replacement dwelling would sit alongside the nearest residential properties.



Notwithstanding the public representation that asserts that no consideration should be afforded to the two-storey extension approved at No. 37b Monkton Farleigh, the cumulative development at the neighbouring property (shown below), constituted a 53% increase or thereabouts over and above the original dwelling – which was considered proportionate and appropriate development in the context of the Conservation Area, the Green Belt, the AONB and neighbouring impacts.



Photograph of the neighbouring property at No.37b Monkton Farleigh with the approved side extension

On the basis of the above, officers are fully satisfied that the proposed (and negotiated) application would not materially harm the Green Belt and nor would it materially diminish its openness. When considered against the PD fallback, there is no substantive reason to refuse this application in terms of green belt policy.

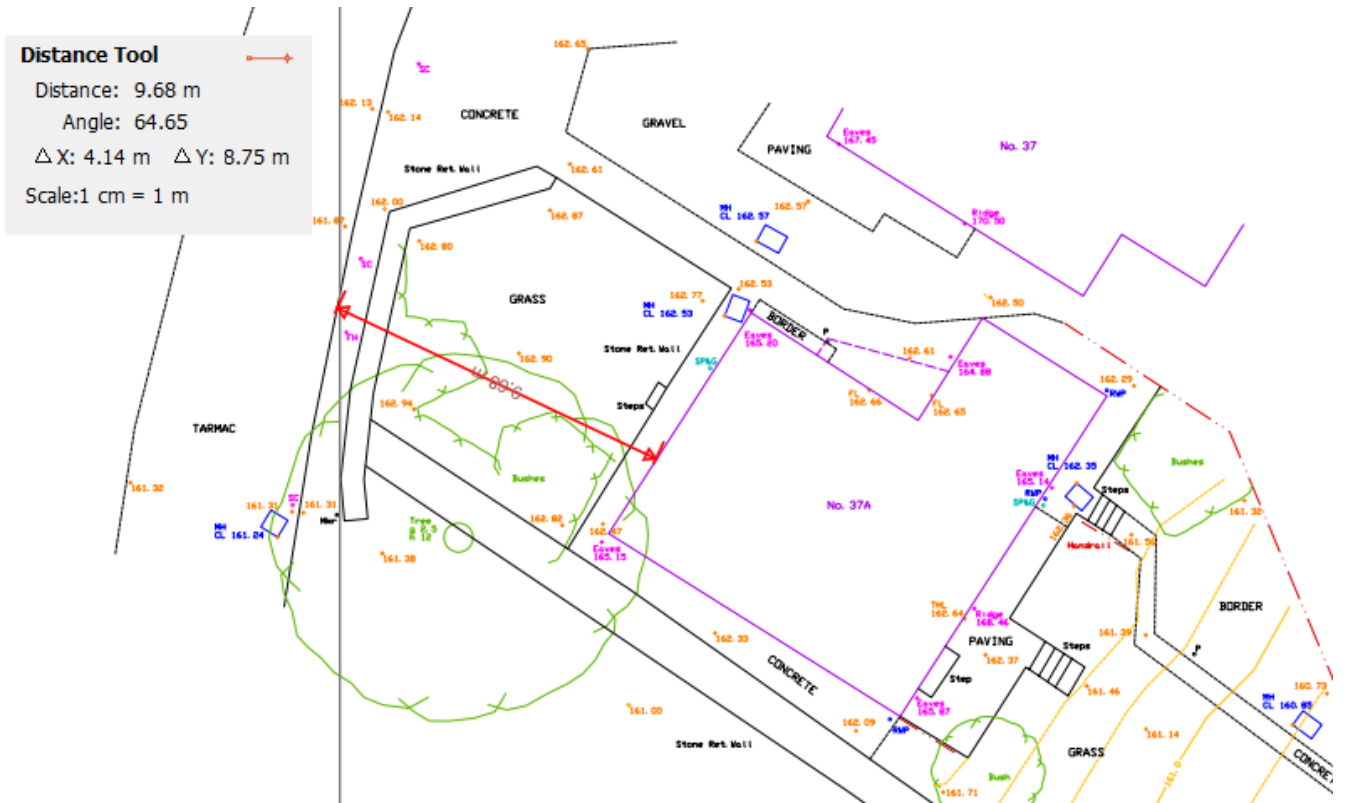
### **9.3 Impact on the character and appearance of the AONB**

Whilst the Green Belt and AONB considerations are separate designations, there are some shared characteristics and well purposed planning protections. Where a landscape has been designated as AONB, it is considered to be of such quality and value as to be a nationally important landscape and should be afforded the highest level of protection and great weight should be afforded to it in the balance of planning considerations. Where any harm is identified, it should be treated as being a significant impact.

The application site forms part of the existing small village of Monkton Farleigh and is located near to several two-storey detached and semi-detached properties (as shown below) set within large plots/gardens. The proposed replacement dwelling would also be 2 storey and finished using natural stone for the walls and a slated roof which would be sympathetic to the immediate village character.



The proposed replacement dwelling would be set back from the highway to a similar extent to what already exists – with sufficient on-site parking space being provided for private motor vehicles at the front of the dwelling.





There is no consistent building line for the six residential properties accessed off the eastern side of the highway (including the application site) as shown below. The old schoolhouse sits forward of its immediate neighbours at the front and to the rear elevations, several properties project by several metres beyond the neighbouring property (including No.37b when compared to No.37c – refer to the below right insert).



The negotiated revised proposal is considered acceptable in terms of the AONB designation. The replacement dwelling would not be incongruous in the streetscene, and would be well contained within the existing defined residential curtilage, thereby ensuring there would be no demonstrable encroachment to undermine the wider area's openness and special protection status. Officers are consequently fully satisfied that the proposal would accord with the NPPF, the WCS and AONB Management Plan.

#### **9.4 Impact on the Conservation Area**

NPPF paragraph 199 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 also requires the Council to pay **special attention** to the desirability of preserving or enhancing the character or appearance of designated Conservation Areas.

The Council's Core Strategy Policy CP58 'Ensuring the conservation of the historic environment' requires that "*designated heritage assets and their settings will be conserved, and where appropriate enhanced, in a manner appropriate to their significance*".

The Council's Core Strategy CP 57: Ensuring high quality design requires a high quality of design in all new developments, noting that this should respond to the value of the historic environment by relating positively to the "*existing pattern of development*".

The Monkton Farleigh Conservation Area encompasses the majority of the village and is characterised predominantly by two-storey, stone buildings under slate or tiled roofs, and arranged in a linear built pattern. Officers concur with the applicant's agent's conclusion that the existing property does not make a positive contribution to the heritage asset, and its proposed demolition would not result in harm to the conservation area.

There is sufficient space on site to provide 3 off road parking spaces and sufficient amenity space would remain for a family dwelling as such the scheme would not result in harm or constitute as overdevelopment of the site.

The proposed dwelling would be clad in natural stone and would have a slate tiled roof which would be sensitive to the prevailing built form and predominant character. The height of the replacement building would be similar to that of No.37b, and the new house would still benefit from a large plot – see previous inserts. The design of the proposed dwelling is considered acceptable, and natural materials to be used in its construction would ensure the new house would be sympathetic to the heritage interests and special character, and would consequently satisfy the aforementioned Act, NPPF and WCS policy.

## **9.5 Environmental Biodiversity Impacts**

The existing house is completely surrounded by hard standing comprising a concrete footpath, paved patio and tarmac drive. The front garden comprises a formal lawn with the occasional ornamental shrub or tree. The rear garden until very recently, comprised formal close-mown lawn, with formal ornamental shrub/flower beds with scattered native shrubs on the border. Boundaries are delineated by close-boarded timber garden fencing and a low stone wall. The front and rear garden supports a variety of native and garden young/semi-mature trees and shrubs, mainly around the perimeter, including ash, holly, hazel, elm and walnut.

The application is supported by an ecology survey which identified no protected species habitat and argued:

*“Given the construction/condition of the building, combined with the complete absence of any signs of bat presence/activity, it is concluded that the house is not used as a roost or place of rest for bats (Category 1), and has negligible potential to support roosting bats in the future.*

*The existing dwelling is not used by bats and is therefore not a resource for greater or lesser horseshoe bats, and therefore does not contribute to the conservation status of the Bath & Bradford on Avon Special Area of Conservation. The proposed residential development will have no effect on the qualifying species of the SAC either alone or in combination with any other plan or project, and no mitigation or compensation is required.*

*The proposed development plot does not require the removal of any trees, and there are no mature trees with the potential to support roosting bats in the garden. No other buildings, structures or trees located outside the development site will be adversely affected by the development proposals.*

*There is no evidence of presence or activity of other legally protected mammal species. There is no badger sett within the garden or that could be seen in adjacent gardens, and there was no evidence of badger foraging activity.*

*There is no suitable habitat within or adjacent to the development plot that could support dormice, water vole or otter. Legally protected mammals are not a constraint for the development, and no further survey is required.*

*There are no records of reptiles within 1km of the proposed development plot. The garden currently provides some terrestrial (foraging and refugia) habitat for reptiles, however, until very recently the garden was kept in a very manicured condition and is subject to shading from trees along the southern boundary, which significantly reduces the suitability of the garden for reptiles. Furthermore, the garden is very small and isolated being completely surrounded by residential development and hardstanding.*

*Reptiles are therefore considered likely to be absent and are not a significant constraint for the proposed development, and no further reptile survey is required.*

*The demolition of the existing house and construction of a new house has the potential to damage, destroy or disturb nesting birds if undertaken at the wrong time of year or without appropriate safeguards. If this were to happen this would be a negative impact. This adverse impact will be removed through implementing appropriate mitigation”.*

Officers are satisfied with the above survey and conclude that the proposed development would not result in harm to biodiversity/ecological interests. Precautionary mitigation measures are however recommended which form part of the suggested conditions.

In particular, to ensure protection of nesting birds in accordance with the Wildlife and Countryside Act, 1981 (as amended) the following action is required:

1. Undertake building demolition and, if required, any shrub/tree removal outside the bird breeding season, which is generally considered to be from 1 March to 31 August (to cover all bird species, particularly multiple brood species). This option will avoid the need for a pre-works inspection to determine the presence of nesting/breeding birds.

If this option is not feasible and some or all of the site clearance has to go ahead within the bird breeding season, as defined above, then the following action shall be taken:

2. A nesting bird inspection immediately prior to (maximum of 2 weeks in advance of) the commencement of vegetation clearance will be undertaken. If nesting birds or birds constructing a nest are subsequently identified to be present work in that area must cease until the nest is clear.

Regardless of timing of work or results of previous surveys, if nesting birds are found within the site during any part of the demolition/construction phase then work shall stop and a qualified ecologist consulted.

3. One new bird nesting feature shall be incorporated into the new building design. An integrated nest box shall be built into the fabric of an external wall to target house sparrows. The box shall be placed on a wall that provides shelter from direct sunlight (i.e. not south-facing) and preferably on a north or east facing wall.
4. One bat roosting brick (which is integrated into the fabric of an external wall) shall be installed on the new dwelling to provide roosting habitat for crevice-dwelling bat species such as pipistrelle bats. The bat brick shall be completely contained and isolated within the cavity of the wall and shall be installed as high above the ground as possible and as close to the roof apex.

### **9.6 Impact on the Amenity of Neighbouring Residents**

Core Policy 57 of the Wiltshire Core Strategy requires development proposals to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensure that appropriate levels of amenity are achievable within the development itself.

The aerial photograph extracts shown below illustrate the large rear garden associated with the existing property and the densely planted nature of the southern boundary which abuts a public footpath between No 37a and its neighbour to the south east. Ignoring the dense planting, the neighbour's front elevation is approximately 30m from the existing dwelling. Its private rear garden is further screened and subsequently further away. Directly to the rear (to the east) the separation distance between properties is closer to 60m, and that house is also orientated away from the host property rear garden.

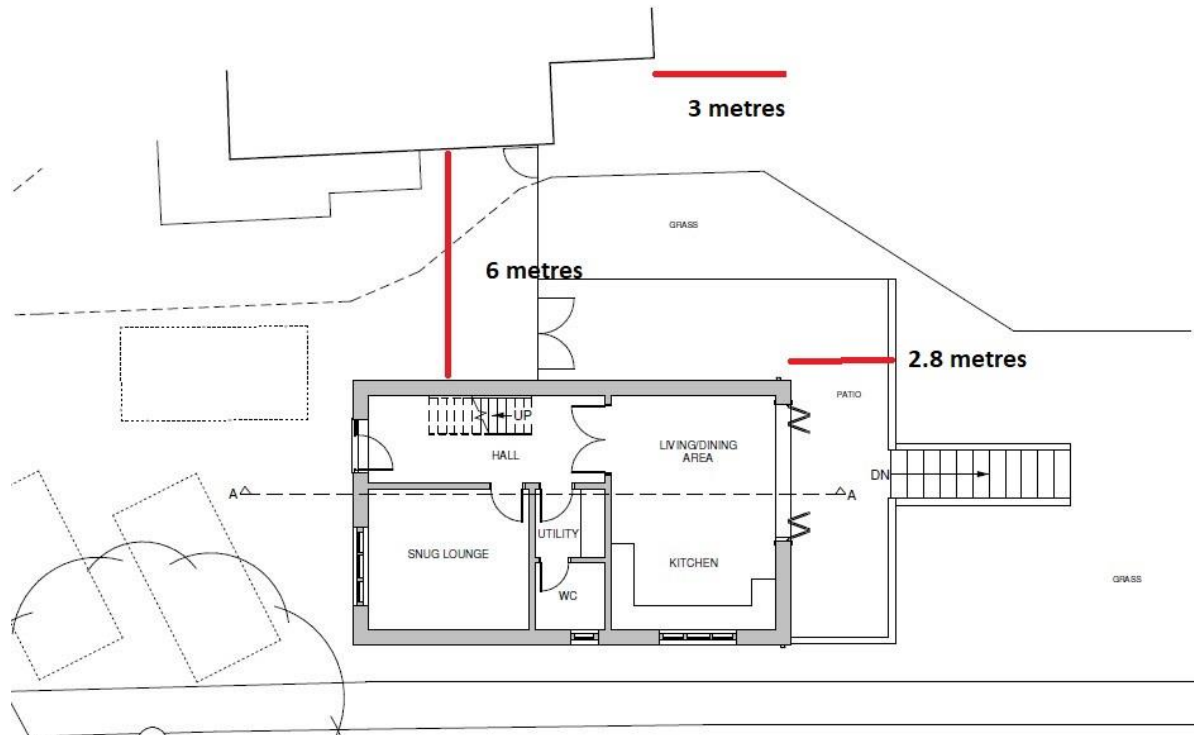


The site is bordered to the south by a tree lined hedgerow, and directly to the north, there are a pair of 2 storey semi-detached dwellings. To the south, the Former Rectory, now a residential dwelling is set within large grounds, while to the east is No. 58, which is also set within a large garden.



The applicant proposes to position the new dwelling that would project some 3.3m beyond the rear elevation of the neighbouring property at No.37b (as shown above), and it should be noted that there already exists some precedent in terms of No.37b having a 3m projection beyond the rear elevation of No.37c (again as shown in the previous insert).

The northeast elevation of the proposed development would be about 6m from the side (southern) elevation of No. 37b (see block plan below) and with there being no windows proposed in the north elevation of the new house, there would be no overlooking or loss of privacy to No.37b.



Block Plan - detailing location of new dwelling in relation to No. 37b Monkton Farleigh

The proposed replacement dwelling would be about 2m higher than the existing property, but officers are satisfied that this would not result in substantive overbearing impacts or loss of light to warrant a refusal of planning permission.

Officers have undertaken a series of online sun cast shadow assessments which the following inserts refer – with the first revealing the extent of the existing shadow cast by the existing property (June and December) as well as similar calculations for the proposed new dwelling (illustrating mid-summer and mid-winter) when the sun is at its highest and lowest.



Above: Sun shadow calculation for the existing property as of 1 June (2pm)



Above: Sun shadow calculation for existing property as of 1 December (2pm)



Above: Sun calculation for the proposed replacement property as of 1 June (2pm)

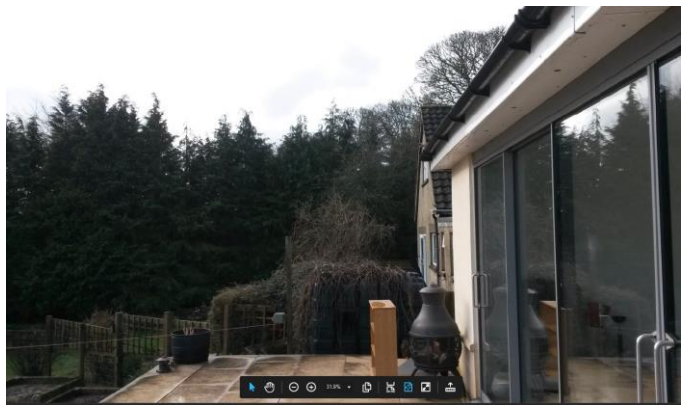


Above: Sun cast shadow calculation for proposed replacement property 1 December (2pm)

The above assessment reveals that there would be little to no material impact to neighbouring properties including No.37b in terms of loss of light/overshadowing when the proposed development is compared against the existing development. The existing property casts a shadow at certain times of the day and year to varying degrees, and the replacement dwelling would not create a significant loss of light or shadowing over the immediate neighbouring properties. There would be some additional shadowing to the neighbouring garden, but the extent is within acceptable parameters.

The revised development would extend past the rear conservatory of No.37b by about 3m (refer to block plan included on an earlier page). Due to the sloping nature of the rear garden, it is acknowledged that the proposal would also include the creation of a new extended raised patio and extension of the embankment at the rear of the proposed dwelling by 2.8m. This is detailed in the block plan as previously listed, which officers are satisfied would result in no substantive neighbouring harm.

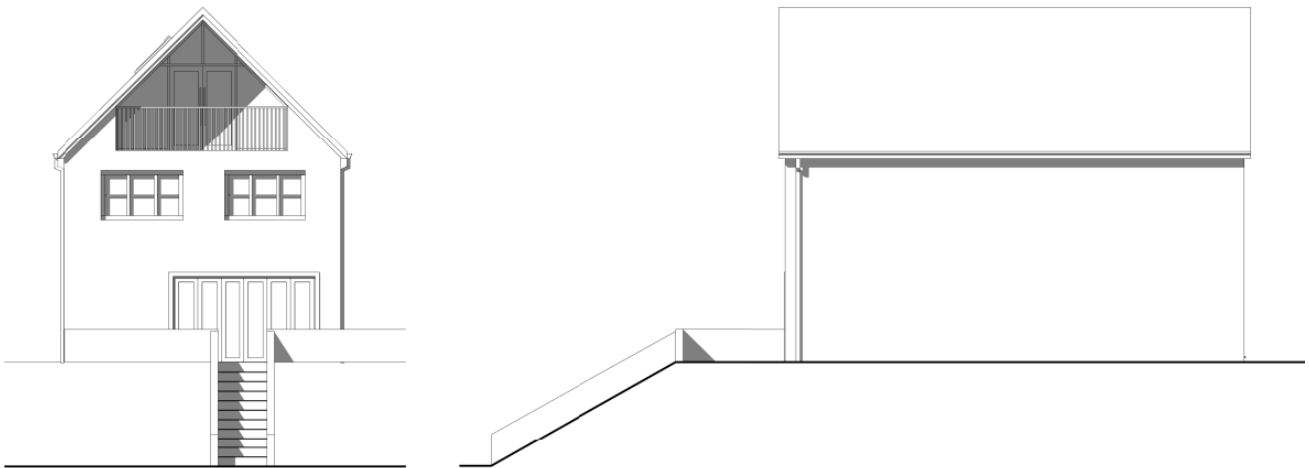
The photographs below show the slope of the existing rear garden from the application site (left photo) and the rear patio of the neighbour at No.37b (right photo).



It is also acknowledged that the proposed replacement dwelling would project beyond the existing rear elevation of No.37b (as detailed in the block plan), however officers are satisfied that this extent of projection would not result in significant overbearing impacts to the neighbouring residents, and in particular to those at No. 37b.

As can be seen from the photographs above, there exists at present, degrees of mutual overlooking between the host property and No.37b, and officers are satisfied that the replacement dwelling would not lead to significant neighbouring overlooking impacts. To reduce the potential impact of the proposed patio, a condition is recommended to secure 2m high screening along the patio's north boundary.

The proposed balcony to be created in the eastern gable would be inset into the roof as shown below, which would limit the extent of overlooking across the garden of No.37b. There would no overlooking to neighbouring habitable room windows.



Given the separation distance of some 26m to the former Rectory property, and the well-established boundary landscaping, the replacement dwelling would not create substantive harm to the neighbouring residential interests to the south.

On the basis of the above, officers are satisfied that this proposed development would not lead to significant harm to neighbouring amenities through overshadowing, overbearing or loss of privacy. The proposed development is considered to be fully compliant with Core Policy 57 of the WCS and the NPPF.

### **9.7 Other Issues**

Other issues have been raised by third parties as part of their representations relative to the potential impacts this development may have upon local house prices however this is not a material planning consideration, and the previously raised concerns made about the construction of a basement requires no officer appraisal since the application has been revised which proposes no basement.

### **10. RECOMMENDATION: APPROVE subject to conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.



2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan scale 1:1250

Amended Proposed Block Plan scale 1:500 dwg no. LPC 4788 SD6 001A

Amended Proposed Ground Floor Plan scale 1:100 dwg no. LPC 4788 SD6 002A

Amended Proposed First and Second Floor Plans scale 1:100 dwg no. LPC 4788 SD6 003A

Amended Proposed Elevations scale 1:100 dwg no. LPC 4788 SD6 004A

Amended Proposed Cross Sections dwg no. LPC 4788 SD6 005A

Site Survey scale 1:100 dwg no. 14090/20

Existing Elevations scale 1:50 dwg no. 14091/20

REASON: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the north elevation above ground floor ceiling level of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020) (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A, B and E shall take place on the dwellinghouse hereby permitted or within its curtilage.

REASON: In the interests of the amenity of the area and character of the Conservation Area and AONB and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

5. No development shall commence above ground floor slab level until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of any to be retained, together with measures for their protection in the course of development;
- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- all hard and soft surfacing materials;

REASON: In order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features and in order to protect the setting of the conservation area and AONB.

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner, or to a timescale to be agreed in writing with the Local Planning Authority; All shrubs, trees and hedge planting shall be maintained free from weeds and shall

be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features and setting of the conservation area and AONB.

7. No development hereby approved shall commence beyond ground floor slab level until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: In order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

8. The development hereby approved shall be carried out in strict accordance with the ecological mitigation measures as set out within section 4 of the Final Report by AD Ecology dated August 2020.

REASON: To define the terms of this permission and to safeguard ecological interests and provide biodiversity net gain.

9. Notwithstanding the submitted plans there shall be no tree felling along the southern site boundary and suitable tree protection measures shall be implemented prior to and for the complete duration of the demolition and construction phases.

REASON: To safeguard the treed boundary and ecological interests and to ensure there is no biodiversity net loss and in the interests of protecting the AONB and Conservation Area.

10. No development hereby approved shall commence beyond ground floor slab level until the exact stone and slate materials to be used for the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be completed in accordance with the approved details.

REASON: To define the terms of this permission and in the interests of protecting the AONB and Conservation Area.

11. Prior to the occupation of the new dwelling, full details of the screen fencing to be provided along the patio's northern boundary, to a height of not less than 2m, shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the screen fence shall be erected in accordance with the approved details and shall be maintained in perpetuity.

REASON: In the interests of residential amenity and privacy.

12. No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the final scheme of hard and soft landscaping. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

13. The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the public right of way, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

### **INFORMATIVES**

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website [www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy)

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

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