

Date: 13 July 2022

Countryside and Rights of Way Panel - Friday 15th July 2022

Dear Sir/Madam,

I have recently forwarded to you a copy of the agenda for the next meeting of the Countryside and Rights of Way Panel.

I am now able to enclose, for consideration at next Friday 15th July 2022 meeting of the Countryside and Rights of Way Panel, the following reports that were unavailable when the agenda was printed.

John Tradewell
Director of Corporate Services

Enc



From: [REDACTED]
To: [Titchener, Hannah \(Corporate\)](#)
Cc: [Winnington, Mark \(County Cllr\)](#); [Morgan, Heather \(Corporate\)](#); [REDACTED]
Subject: Application To Modify Swynnerton FP 52 To Bridleway Status
Date: 10 July 2022 21:29:13
Attachments: [Wildlife and Countryside Act 1981 - Application for upgrading Public Footpath 52 Swynnerton to a Bridleway.pdf](#)

CAUTION: This email originated from outside of Staffordshire County Council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms Titchener

Reference Definitive Map Modification Application LK621G – To Modify Swynnerton FP 52 To Bridleway Status

I have just read your attached report for definitive map modification LK621G, to be determined on July 15th, recommending that no Order be made. I am afraid that your recommendation report is fundamentally and fatally flawed for several reasons:

1. You assert that there is no evidence of higher user rights than a public footpath subsisting over the application route. That is entirely incorrect. Your report refers to this former “Road Used As A Public Path” (RUPP) having been reclassified to a footpath under the Special Review of RUPP’s. However, your comments on the Special Review fail to contain the following crucially important information:
 - The Councils proposal to reclassify Swynnerton RUPP 52 to a footpath, under the Special Review of RUPP’s, was objected to. A Public Inquiry was held to determine the objection which was attended by Mr Michael Rowley who presented evidence of public carriageway rights on behalf of the Byways and Bridleways Trust.
 - My Rowley produced evidence (including a substantial volume of user evidence) showing that Swynnerton 52 had public user rights over it with mechanically propelled vehicles.
 - At the Inquiry, that was held on 09/12/1980, the Inspector who dealt with the objection concluded that **rights with mechanically propelled vehicles had been shown to exist over Swynnerton RUPP 52**. However, he decided (within the terms of the Special Review) that there would be no significant hardship to extinguishing the public vehicular rights that had been shown to exist over the route.

It is a fundamental omission that your report fails to include this vitally important information. As a consequence of this omission you have wrongly concluded and asserted that there is no evidence of higher rights than a public footpath over the application route. Although rights of use with mechanically propelled vehicles may have been extinguished by the Inspectors decision (and the NERC Act 2006) the lower bridleway rights that automatically coexist over public carriageways have clearly not been extinguished by the Inspectors decision and remain extant but unrecorded.

2. The subsequent Hood Judgement clarified that, unless bridleway rights were shown not to exist, then it was unlawful for former RUPP’s to be reclassified as

anything less than a public bridleway. By virtue of rights with mechanically propelled vehicles having been accepted to exist over the application route, by an Inspector acting on behalf of the Secretary of State, that proves that bridleway rights also existed which remain extant but unrecorded. So, unless Staffordshire County Council is in possession of new evidence, to prove that bridleway rights do not exist over Swynnerton 52, it is legally obliged to publish an Order to modify the route status to public bridleway.

3. Mr Michael Rowley, who was and is Staffordshire County Councils point of contact for consultation with the Byways and Bridleways Trust, was consulted about this application after its submission on 17th July 2000 - now 22 years ago. My Rowley responded to the consultation but you have failed to include his response within your report. Again, this is a fatal and negligent omission.

Mr Rowley is happy for you to contact him concerning this matter if you wish to and is in copy of this email. His contact details are:

[REDACTED]

There are many other issues I could comment on which I also regard also fundamentally flawed within your report. However, given the above information, which Staffordshire County Council clearly has in its possession but failed to reference within the recommendations report, it is legally obliged to publish an Order for bridleway as applied for. If the Council determines not to publish an Oder for a bridleway the matter will be referred to the Secretary of State on appeal.

Please kindly circulate this communication to the Panel Members who will be determining this application on Friday 15th July, thereby ensuring they are informed of the above facts before determining this claim. Please also kindly confirm safe receipt of this email by return.

Yours sincerely,

David Rice

Tel: [REDACTED]

From: [REDACTED]
To: [Titchener, Hannah \(Corporate\)](#)
Cc: [Winnington, Mark \(County Cllr\)](#); [Morgan, Heather \(Corporate\)](#)
Subject: Swynnerton FP52 -Application To Record Route As A Public Bridleway
Date: 11 July 2022 10:50:02
Attachments: [1880 Ordnance Survey \(North End\).pdf](#)
[1880 Ordnance Survey \(South End\).pdf](#)
[Common Lane 2008 - Looking Towards Hatton.pdf](#)
[North End Of Swynnerton 52 - Wide Passage For Horses.pdf](#)
[BBT Consultation Response - Page 1.pdf](#)
[BBT Consultation Response - Page 2.pdf](#)
[BBT Consultation Response - Page 3.pdf](#)
[BBT Consultation Response - Page 4.pdf](#)

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Dear Ms Titchener

Mr Rowley has now kindly sent me photographs of the consultation response he provided to Staffordshire County Council, on 8th September 2000, for application LK621G. For your ease of reference this is contained in the last four attachments to this email. For further understanding of the character and nature of this route by the Panel I have also attached:

- A photograph of the route in question that was taken in 2008. It illustrates the nature and character of this surfaced and enclosed old public road.
- An image of the northern end of the route showing the wide passing point beside the gate that was installed (enabling easy passage for equestrian and other users).
- Two 1880 Ordnance Survey map extracts that show the application route tinted in sienna, in the same manner as all other surfaced public roads that are now shown on the list of roads and streets maintainable at public expense.

Please ensure that this communication and attachments are also circulated to Members of the Countryside and Rights of Way Panel and placed within the appendices of the public report pack to be considered at this Fridays Panel meeting.

Kind regards,

David Rice

Tel: [REDACTED]

NATIONAL PARKS AND ACCESS TO THE
COUNTRYSIDE ACT 1949

COUNTRYSIDE ACT 1968

FIRST AND SPECIAL REVIEW OF PUBLIC RIGHTS
OF WAY STAFFORDSHIRE COUNTY COUNCIL,
FORMER STAFFORD AND STONE RURAL DISTRICT

Inspector: Brigadier J A NOTLEY, MBE

Date of Inquiry: 9/10/11 December 1980

References: PC2/2394/171/1
PC2/2385/171/1

CONCLUSIONS

208. The tests in Paragraph 10 of Part III of Schedule 3 of the Countryside Act 1968 do not satisfy byway status as the paths are not passable to vehicles and no hardship has been shown.
209. There is a lot of evidence that they have been used by horses for over 20 years before they were obstructed in 1962. Although farmers object to bridleway status because of the possibility of straying cattle, I consider that they should be reclassified as bridleways.

FOOTPATH 52 SWYNNERTON

THE FOOTPATH AND SURROUNDINGS

210. The path starts at its South end in Upper Hatton Farm (Maps A, LL and MM). The farmyard is muddy with a hard bottom. At the end of the farmyard there is a gate leading to a 3-4 metre track. There is a 'Private Road' sign at the gate.
211. The track is rutted in places but passable to vehicles. It has hedges in places and poor drainage. There are several gates into adjacent fields. At the Northern end there is a closed gate and a one metre gap for pedestrians.

THE CASE FOR THE PROPOSERS

Mr T Gray representing Staffordshire County Council
(Document 55)

212. The path is shown as an RP on the Definitive Map and was reclassified as a footpath on the Draft Revised Map. The Ramblers Association (Documents 6 and 7) and the Motorcyclists Federation claim it as a byway. There is no evidence that any public vehicular rights of way have ever existed. There has been no claim for bridleway status.

1st Witness

Mr G W Moore Area Surveyor Staffordshire County Council
(Document 56)

213. There are no known public vehicular rights over this path. The farmyard at Upper Hatton Farm is impassable to vehicles in wet weather and is littered with farm equipment. There would be no hardship if any public vehicular rights were extinguished.

Answers to Questions

214. The County Council took over the road to Upper Hatton Farm in 1929 because houses needed access to the main road.
215. The path is suitable for vehicles in good weather. The recreational use of the road was not taken into consideration when it was reclassified.

Mr C J Leather Managing Agent Swynnerton Estate
(Map NN)

216. Footpath 52 Swynnerton is acknowledged as a right of way for pedestrians. It is an accommodation lane for the Swynnerton Estate especially for Hatton Top, Upper Hatton and Hatton Hall farms, now all amalgamated into one farm. It is also used by a smallholding at the North East end.
217. The lane is in the ownership of the Swynnerton Estate as shown in the deeds (Map NN). It has never been open to public vehicles. It has been shut off by locked gates at both ends since 1974. No objections to these locked gates has ever been made to him.
218. The 1820 Map shows no turnpike into the lane and therefore no rights of way. There is no record of any change of status since 1820.
219. Usage by horses is confined to the owners family.

THE CASE FOR THE OBJECTORS

Mr M Rowley representing the Motorcyclists Federation
(Documents 3 and 57-61 and Maps OO 1-6)

220. The 1838 Tithe Map and other old maps show the whole route. Evidence of use by car and motorcycle are produced (Documents 58 and 59-61) and also correspondence between the Federation and the Clerk of Stone Rural District Council (Document 60).
221. The route is suitable for light public vehicles, and hardship through loss of recreational facilities would be caused through any loss of rights of way.

1st Witness
Mr I G Gaskin
(Document 61)

222. He has used the route in a private car between 1936-1975 in connection with his duties as Clerk of the Council, and for pleasure.

Mrs M B Stokes Eccleshall Stafford
(Document 62)

223. This route is used by many horseriders.

FINDINGS OF FACT

224. The path is shown as an RP on the Definitive Map and reclassified as a footpath on the Draft Revised Map. Claims have been made for it to be a byway. No claim for bridleway status was made during the review period.
225. The path is suitable for light traffic but has gates at both ends. The Southern entrance passes through a muddy farmyard.
226. Old maps show a route along 52 Swynnerton and it is marked on the Tithe Map.

227. The path is owned by the Swynnerton Estate and is shown on the deeds. A notice to this effect is at the Southern end of the path. The Motorcyclists Federation claim it for recreational purposes and have produced evidence of usage by vehicles.

CONCLUSIONS

228. This path is owned by the Swynnerton Estate and probably has been since at least 1820. It is shown on many old maps but I do not consider that they show any public vehicular rights. There has been some usage for over 20 years by cars and motorcycles, but mostly for recreational purposes. No undue hardship would be caused by the extinguishment of vehicular rights of way. The owners have erected notices and put in locked gates to show that the path was private thus negating the intention to dedicate the paths as highways under Section 34 (3) of the Highways Act 1959.
229. I do not consider that the claim for byway status satisfies the tests in Paragraph 10 of Part III to Schedule 3 of the Countryside Act 1968 or Paragraph 34 (1) of the Highways Act 1959 and consider that 52 Swynnerton should remain as a footpath.

PATH IR/2651 COLWICH

THE PATH AND SURROUNDINGS

230. The path joins the track between Trentians Bridge and Essex Bridge at Colwich and the tow path of the Trent and Mercury Canal (Maps A, PP and QQ). It is about 20 metres long, across park land.

THE CASE FOR THE PROPOSERS

Mr T Gray representing the Staffordshire County Council
(Document 63)

231. The path was originally included on the Draft Revised Map but an objection on ownership was received. It has now been found that the land belongs to the National Trust who have no objection to its inclusion (Document 64).

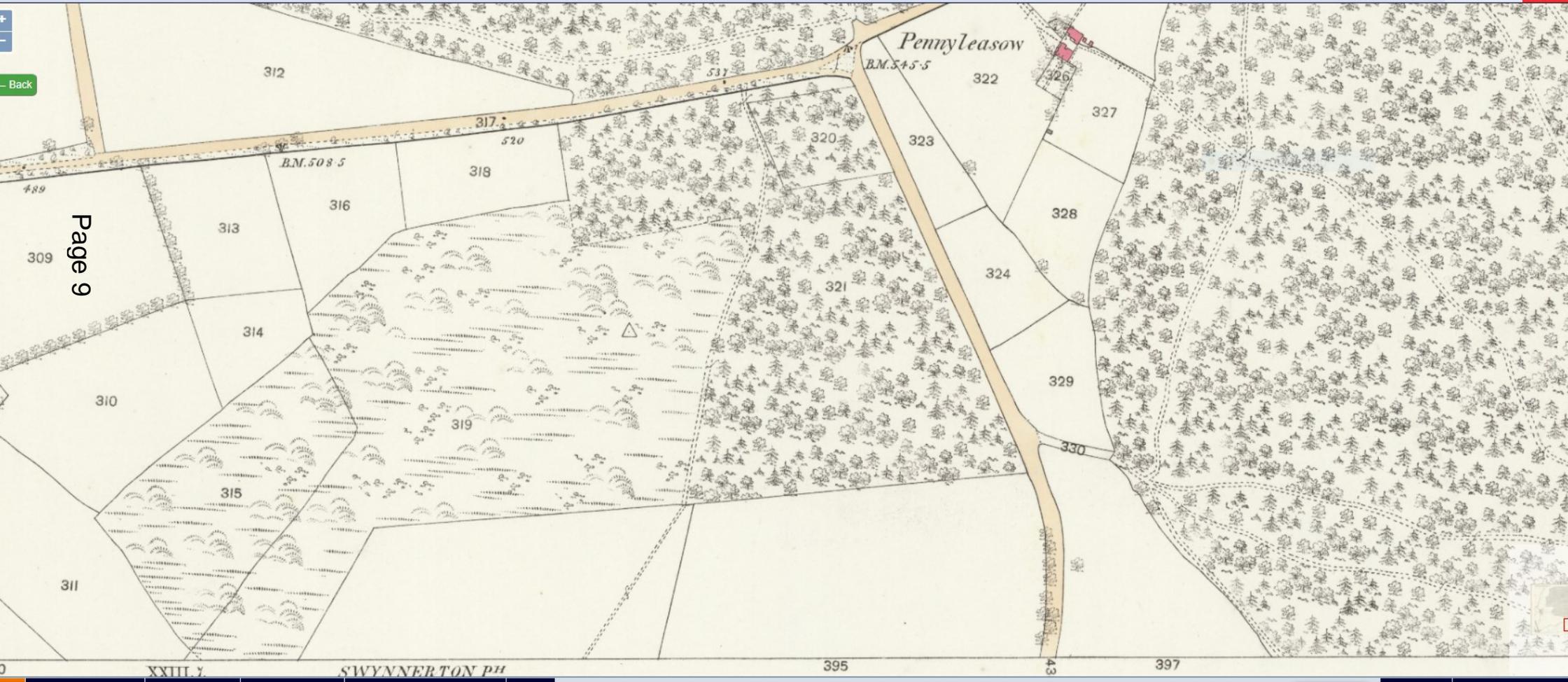
CONCLUSION

232. I consider that this path should be included on the Draft Revised Map as a footpath.

OMISSION OF FOOTPATHS IN TRENTHAM PARK

THE PATHS AND SURROUNDINGS

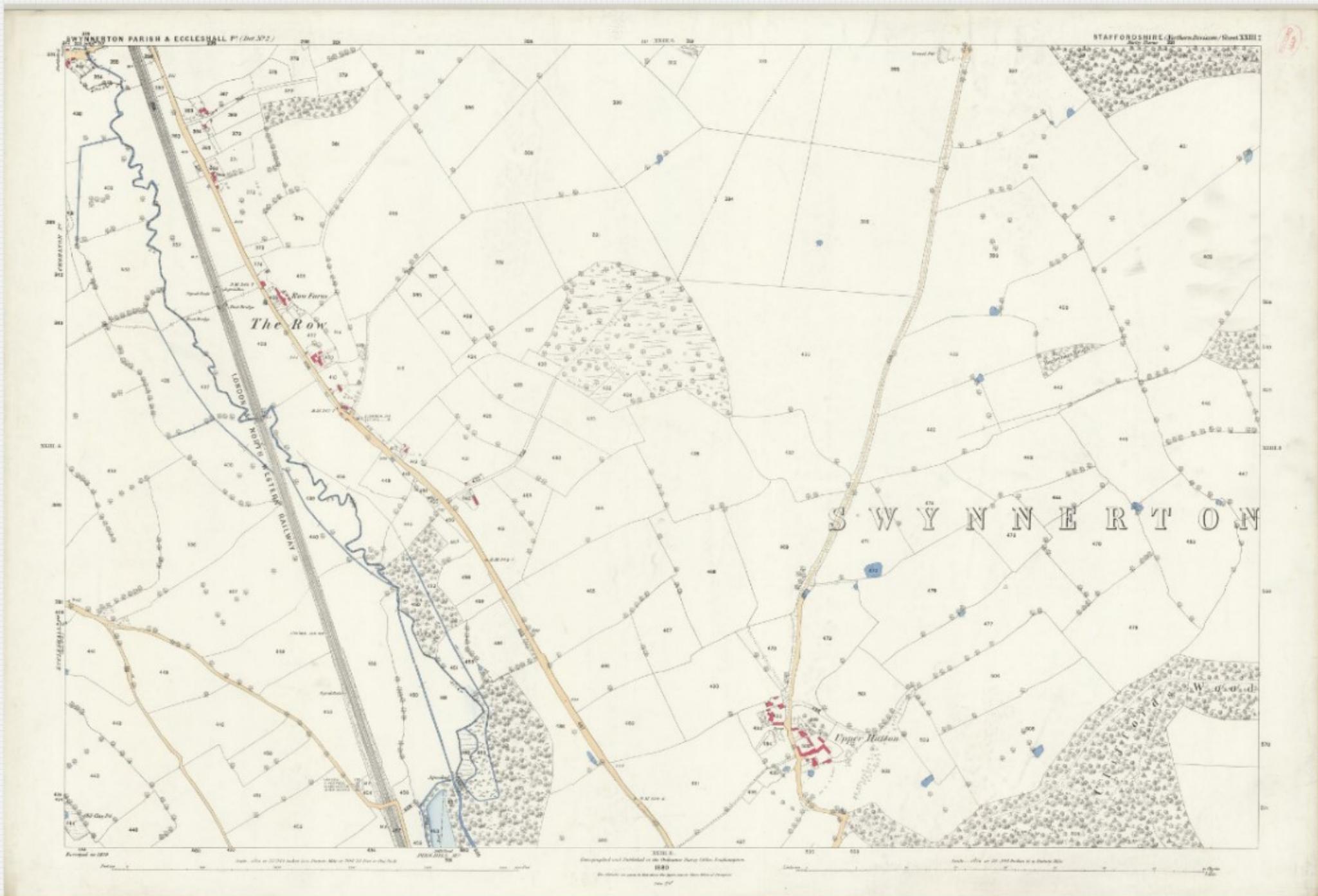
233. Path A branches off Footpath 2 at its Eastern end and goes West over the M6 motorway to Gravel Pit Lodge, where it comes out on the A519 (Maps A, RR and SS). It is a 3-4 metre path with a hard base passable to light vehicles.
234. Path B starts at a large locked gate on Footpath 2 at its Northern end and runs South West and then South East to a swimming pool. It is inside Trentham Gardens Pleasure Ground and is only available to the public who have paid an entrance fee or hold annual season tickets. It passes initially through a caravan site and then through a wooded area. It is a tarmac road 3-4 metres wide passable to light vehicles.



Back

Page 9

XXIII.3 SWYNNERTON PH 395 43 397







Buddleways Trust

Box Services
Buddleway County Council
2320 Stafford S

Ref: 4/MTM/LK 6219

9 Queen Anne's Gate
Westminster
London S.W.1.

1 Hungerford Lane, Hadeley
Nr. Crewe CW3 9PD

8th September 2000

Wildlife and Countryside Act 1981
RPS2 Surynnerston (O.K.A. Common Lane)

Thank you for your letter of the 1st August. I am surprised that, in this instance, Mr. Reay claims only Buddleway status, when his researches - as did my own, completed many years ago - conclusively show it to be an old public road.

This way, formerly shown as RPS2, was included in the First and Special Review, and the Council's proposal to reclassify as a mere footpath - denying not only all the evidence in its possession but also all logic - was the subject of an objection by the late Norman Smith, the then representative of the ACU/BMF Countryside Committee, which I represented at the Public Inquiry held on the 9th December 1980, and presented evidence, a copy of which I enclose, - in case your Inquiry Records are not immediately available, in view of the passage of so many years.

You will, perhaps, not readily appreciate

Para (c)

It is submitted on behalf of users of this old road for recreation purposes that it would be a very serious hardship to lose vehicular rights

The significance of the plan from the Vesting Deed dated in March 1964 (a copy of that document came into my possession in the 1970s, when I was then a Solicitor in private practice, as part of an abstract of Title) but it shows that Common Lane was not included in the land which was vested in the Trustees, ergo, it was not an estate road, but publicly owned, and recognised as such by the Estate.

The result of the Inquiry was:-

- (a) Vehicular rights had been shown to exist;
- (b) The Way was suitable;
- (c) No hardship would be caused by down-grading: this was, of course, in the days when certain unenlightened Inspectors had no regard to recreational value.

Having received advice from Counsel (Leonard Hoffman Q.C., now Lord Justice Hoffman) that reclassification did not destroy vehicular rights, I, and a number of my friends, continued to use the road, by motorcycle, and on foot, which has continued to the present day.

On the basis of the evidence, which I submitted to your Council almost 20 years ago, the correct application is for this road to be removed from the Definitive

(or which is
Road on the Highway
As recently (1) on 27 January
report was taken into
Committee was to be made
claim for U.C.
agree that
decision
I did not
see

2

(on which it does not belong) and to be put
back on the Highways map, as an Unclassified
Road.

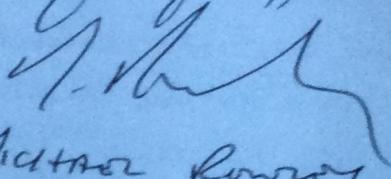
As recently (!) as 29th February 1988, I was
informed, by the County Surveyor, that a
report was to be made "to a forthcoming
Committee meeting for a decision" on my
claim for UCR status. I think you will
agree that it is now high time that such
decision was made, and communicated to me.
I did not press for a response before now, for various
reasons, mostly personal, but I have also been
aware of the shortage of resources in various
Council Departments, making a speedy
response difficult - save in case of emergency -
and this claim fell into the Third Group on
the attached list, supplied to me in September
1987 by the County Surveyor, shown twice, as
Nos. 24 and 38!

I intend copying this correspondence to the
County Surveyor, but, in conclusion, I do not
support Mr. Kay's application for BR status,
for the above reasons. Common sense is not
a mere middle way and it would be wrong
to show it in that manner, just as it
has been indefensible to retain it

Para (c)

It is submitted on behalf of users of this old road for recreational
purposes that it would be a very serious hardship to lose vehicular rights of way,

as a footpath, in the face of overwhelming
evidence to the contrary.

Yours faithfully,

Michael Rowser

cc. County Surveyor
Ref: ACS 2/PJL/COM/GPS/Gen.

Protective Marking Scheme Level 3
RESTRICTED

Mr D Rice
Via e-mail
d.rice@ipm-international.com

Kate Loader
County Solicitor
Staffordshire Legal Services
Staffordshire County Council
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DX 712320 Stafford 5
Service: legal.services@staffordshire.gov.uk
Please ask for: Hannah Titchener
Telephone: 01785 854190
e-mail:
hannah.titchener1@staffordshire.gov.uk

My Ref: LK621G

Your Ref:

Date: 13 July 2022

Dear Mr Rice,

Re: Application for upgrading FP52 Swynnerton to Bridleway

We are writing in response to your e-mails dated 10th and 11th July in relation to the above application.

In relation to the Public Inquiry that was carried out as a result of the Special Review of Public Rights of Way we have reviewed the report completed as part of the Inquiry and under the section "Conclusions", it states "It is shown on many old maps but I do not consider that they show any public vehicular rights". It was determined that the claim for byway status did not satisfy the necessary tests and that "52 Swynnerton should remain as a footpath". We note that the report does acknowledge that evidence had been submitted showing that there had "been some usage for over 20 years by cars and motorcycles". It does not state specifically in the report that "rights with mechanically propelled vehicles had been shown to exist over Swynnerton RUPP 52".

It is officers' opinion that the Inspector did not find within the report that the historical evidence showed that there were public vehicular rights over the alleged route and ultimately the route should remain as a footpath. It was not determined that public vehicular rights existed over the route, therefore bridleway rights have not been shown to exist over the route.

In relation to Mr Rowley responding to the consultation of the above application we can advise that unfortunately the letter you attached to your e-mail of 11th July from Mr Rowley was not with our file and therefore it was not included within the report. We will ensure that the Countryside and Rights of Way Panel are made aware of this correspondence.

We note your comments that the photographs show that equestrians could access the route through a gap where the gate is situated at the northern end of the route. The user evidence submitted in support of the claim is not sufficient to satisfy the relevant legal tests.

We further note your comments regarding the 1800 Ordnance Survey map. The purpose of Ordnance Survey maps is to show physical features on the ground. They do not distinguish between public and private rights of way. They are evidence only of the physical existence of a way on the ground at the date of the survey.

On review of the further evidence and comments submitted officers' opinion remains unchanged. The further information and evidence submitted will be put before the Countryside and Rights of Way Panel.

Yours sincerely

H.J.Titchener

Hannah Titchener
on behalf of Kate Loader, County Solicitor.

HT2 / LK621G