

## **Countryside and Rights of Way Panel**

Friday, 9 August 2019

**10.00 am**

White Room, County Buildings, Martin Street, Stafford

**NB.** Members are requested to ensure that their Laptops/Tablets are fully charged before the meeting

John Tradewell  
Director of Corporate Services  
1 August 2019

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## **A G E N D A**

1. **Apologies**
2. **Declaration of Interest in accordance with Standing Order 16.2**
3. **Minutes of meeting held on 4 July 2019** (Pages 1 - 6)
4. **Wildlife and Countryside Act 1981 Section 53 - Application for a Definitive Map Modification Order to Add a Public Footpath from Beaconside to Marston Lane, near Marstongate Farm, Hopton and Marston Parish** (Pages 7 - 66)  
  
Report of the Director of Corporate Services
5. **Wildlife and Countryside Act 1981 Section 53 - Application for Definitive Map Modification Order to Add a Public Footpath between Marston Lane to Public Bridleway No.8, Hopton and Marston Parish** (Pages 67 - 122)  
  
Report of the Director of Corporate Services



6. **Wildlife and Countryside Act 1981 Section 53 - Application for Definitive Map Modification Order to Add a Public Footpath from A5013 Near Walton Grove to B5405, Leading to Public Footpath No. 0.1592, Eccleshall Parish** (Pages 123 - 166)

Report of Director of Corporate Services

7. **Date of Next Meeting - Friday 20 September 2019 at 10.00 am, County Buildings, Stafford**
8. **Exclusion of the Public**

The Chairman to move:-

“That the public be excluded from the meeting for the following items of business which involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A (as amended) of the local Government Act 1972, indicated below”.

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## **PART TWO**

Nil

<b>Membership</b>	
David Brookes	Paul Snape
Alan Dudson	Mike Worthington
Julia Jessel (Chairman)	

### **Note for Members of the Press and Public**

#### **Filming of Meetings**

The Open (public) section of this meeting may be filmed for live or later broadcasting or other use, and, if you are at the meeting, you may be filmed, and are deemed to have agreed to being filmed and to the use of the recording for broadcast and/or other purposes.

#### **Recording by Press and Public**

Recording (including by the use of social media) by the Press and Public is permitted from the public seating area provided it does not, in the opinion of the chairman, disrupt the meeting.

**Minutes of the Countryside and Rights of Way Panel Meeting held on 4 July 2019**

Present: Julia Jessel (Chairman)

<b>Attendance</b>	
David Brookes	Paul Snape
Alan Dudson	Mike Worthington
David Smith	

**PART ONE**

**95. Declarations of Interest in accordance with Standing Order 16.2**

The Chairman informed them that consideration of Item No. 7 on the Agenda - "Commons Act 2006 – Section 15 Application for the Registration of Land known as College Fields off Forest School Street, Rolleston-on-Dove as a Town or Village Green was to be deferred to a future meeting owing to sickness absence within the Corporate Services Directorate which prevented its presentation to the Panel. However, she informed them of her intension to declare an interest in the matters contained in the report as and when it was brought back to the Panel for consideration.

The Chairman undertook to convey their best wishes to Mick Murphy for a full and speedy recovery.

**96. Minutes of meeting held on 9 May 2019**

**RESOLVED** – That the minutes of the meeting held on 9 May 2019 be confirmed and signed by the Chairman.

**97. HS2 Rail Link**

The Director for Economy Infrastructure and Skills had been unable to attend the meeting. However, the Director of Corporate Services undertook to arrange for Members to be updated by email on matters relating to HS2 having regard to their Terms of Reference.

**RESOLVED** - That future reports to the Panel on the HS2 Rail Link be made on an exception basis and that "HS2 Rail Link" no longer be included as a standing item on future Agenda for meetings of the Panel.

## **98. Wildlife and Countryside Act 1981 Application for a Public Footpath between Forge Lane and Little Aston Lane Shenstone**

The Panel considered a report of the Director of Corporate Services regarding a request by Shenstone Parish Council for their application under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath between Forge Lane and Little Aston Lane, Shenstone to the County Council's Definitive Map and Statement of Public Rights of Way to be dealt with as a priority on the grounds that there was a risk the claimed route would be lost.

According to the County Council's policy, applications were to be dealt with as a priority where the person requesting such provided evidence that one or more of the following five criteria were met:-

- (a) Where delay would threaten the loss of a claimed right of way;
- (b) Where in the case of a claimed right of way, there is severe hardship, or a risk of confrontation between the claimants and the owner/occupier of the affected land or where there is evidence of a detrimental effect to the health of the owner/occupier of that land;
- (c) Where in the case of an application for the deletion or downgrading of a right of way, delaying its determination will result in severe hardship to the owner/occupier of that land;
- (d) Where having regard to the County Council's Sustainable transport policies, in the case of an application to add an additional public path to the definitive Map or to upgrade the existing status of the highway, the application relates to a path of actual, or potential, regional or national significance.
- (e) Where a route would be relevant to the achievement of another of the County Council's statutory policy objectives.

In support of their request, the Parish Council had (i) stated that Little Aston Primary School had obtained a Certificate of Lawfulness with the intension of building a tarmac sports pitch over the line of the path and enclosing it with a high fence; (ii) said that the route of the path was becoming impassable owing to the erection of Arras fencing and growth of trees and bushes and; (iii) cited the County Council's policy objectives in relation to the promotion of walking and sustainable transport which they said supported the early determination of the application having regard to (i) and (ii) above.

The school had previously confirmed their intension to seek planning consent to develop an area of land crossed by the track from Forge Lane to Little Aston Lane in order to provide additional safer parking and an extra outdoor space for children.

In accordance with paragraph 25 of Section 12 of the County Council's Constitution, the "Local" Member for Lichfield Rural County Electoral Division attended the meeting and addressed the Committee. He spoke in support of the request and expressed his concerns regarding the potential loss of the claimed Public Footpath arising from the above-mentioned development. He also referred to the overgrowth of vegetation which he said would shortly render the route impassable.

During the discussion which ensued, Members discussed the merits of the request having regard to the priority criteria. They noted that whilst development was proposed, this did not entail construction of a building(s) over the alleged Right of Way. Therefore, whilst not wishing to predetermine the application for a Modification Order, in the event the path was added to the County Council's Definitive Map and Statement, they considered that the route could be made available for use by the public relatively easily and without having to address the issue of a more permanent obstruction such as a building.

**RESOLVED** – (a) That the report be received and noted.

(b) That the request by Shenstone Parish Council for the County Council to consider their application under Section 53 of the Wildlife and Countryside Act 1981 to add an alleged Public Footpath between Forge Lane and Little Aston Lane, Shenstone to the Definitive Map and Statement of Public Rights of Way, as a priority, be refused.

(c) That the application by Shenstone Parish Council for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add an alleged Public Footpath between Forge Lane and Little Aston Lane, Shenstone to the Definitive Map and Statement of Public Rights of Way, be dealt with according to the County Council's adopted policy ie following those applications which had received Directions from the Secretary of State for the Environment Food and Rural Affairs and in order of receipt.

#### **99. Wildlife and Countryside Act 1981 Adoption of Priority Criteria for Applications Made under Section 53**

The Panel considered a report of the Director of Corporate Services regarding a review of the priority criteria for consideration of applications for modifications to the County Council's Definitive Map and Statement of Public Rights of Way under Section 53 of the Wildlife and Countryside Act 1981.

The Panel had adopted "Priority Criteria" in 1998 which set out a list of five exceptional circumstances under which they undertook to give priority status to applications for Modification Orders, following a formal request for such. Normally, applications were dealt with in order of receipt, where possible, subject to any Directions from the Secretary of State for Environment Food and Rural Affairs.

However, the County Council had recently received several requests for/ enquiries about priority status arising from misinterpretation and/or misapplication of the policy by Members of the Public. Therefore, in order to provide greater clarity both in their interpretation and application, a review of criteria had been undertaken and the list of 'Exceptional Circumstances' provisionally reduced to two, as follows:-

- “ Where the land over which the route runs has received permission for development and (a) the implementation of such would mean the claimed way would be lost as a consequence of being built over and (b) all attempts to divert or otherwise cater for the route within the development have been exhausted”;
- “Where there is evidence of severe financial hardship caused by the existence of an application for an addition of a route to the owner/occupier of the land”.

During the discussion which ensued, Members expressed their support for the proposed revised Priority Criteria as set out in Appendix B to the report.

**RESOLVED** – (a) That the report be received and noted.

(b) That the proposed revised Criteria for dealing with requests for determination of Modification Orders under Section 53 of the Wildlife and Countryside Act 1981, as a priority, be adopted.

(c) That requests for determination of Modification Orders as a priority continue to be dealt with by the Panel.

(d) That the power to reject requests for determination of Modification Orders as a priority, where no supporting evidence has been provided, be delegated to the Director of Corporate Services.

**100. Commons Act 2006 - Section 15 Application for the Registration of Land known as College Fields off Forest School Street, Rolleston-on-Dove, Staffordshire as a Town or Village Green**

**RESOLVED** – That, owing to sickness absence within the Corporate Services Directorate, consideration of the Director of Corporate Services' report regarding an application for the registration of land known as College Fields off Forrest School Street, Rolleston-on-Dove as a Town or Village Green be deferred to a future meeting.

**101. Date of Next Meeting - Friday 9 August 2019 at 10.00 am, County Buildings, Stafford**

**RESOLVED** – (a) That the date time and venue of the next scheduled meeting of the Countryside and Rights of Way Panel be noted.

(b) That an additional meeting of the Panel be held in September 2019 on a date, time and at a venue to be arranged in order to consider the report set out in Minute No. 100 above.

**Chairman**





<b>Local Members' Interest</b>	
Jeremy Pert	Eccleshall ED
John Francis	Stafford Trent Valley ED

**Countryside and Rights of Way Panel – 9 August 2019**

**Wildlife and Countryside act 1981**

**Application for a Public Right of Way from Beaconside to Marston Lane, near Marstongate Farm, Hopton and Marston Parish**

**Report of the Director of Corporate Services**

**Recommendation**

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to conclude that a public footpath which is not shown on the Definitive Map and Statement is reasonably alleged to subsist along the route shown marked A to B on the plan attached at Appendix B to this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order be made be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Footpath.

**PART A**

**Why is it coming here – what decision is required?**

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 (“the 1981 Act”). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council’s Regulatory Committee (“the Panel”). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.
2. To consider an application from Mr Martin Reay, for an order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from Beaconside to Marston Lane under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. A copy of Mr Reay’s application is attached at Appendix A. The line of the alleged Public Right of Way is shown on the plan attached at Appendix B and marked A – B.
3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

## **Background**

1. The applicant has submitted historical evidence only in support of his claim to add a public footpath to the definitive map.
2. The applicant has referred to the fact that the alleged public footpath is shown on historical documents and maps.
3. Whilst it is necessary to consider the different types of evidence separately, the determination of the application must be upon all the evidence collectively.

## **Evidence submitted by the applicant**

4. The applicant has submitted in support of his claim evidence from a traced version of the Marston Tithe Award of 1839. A tracing of the map is attached at Appendix C. The alleged footpath is shown as a dotted line and a short section of the northern most part of the alleged path is shown.
5. The applicant has also submitted deposited railway plan records of 1844. These indicate that a public footpath was recorded over plots 27a and 5. In plot 6, which the alleged route also runs through, no public rights of way are recorded.
6. The accompanying maps to the 1844 railway plans are attached at Appendix E and show the full footpath by way of a dotted line which matches the alleged route of the applicant.
7. The applicant has also submitted the deposited railway plan maps of 1845. These show a footpath by way of a dotted line which matches the railway plan map of 1844. There is also an annotation along the dotted line which describes it as a footpath. This dotted line shows the entire alleged route. A copy is attached at Appendix F.
8. The accompanying records to the 1845 railway plans show that the alleged footpath runs through plots 61, 63 and 30. The owner is described as being "the Surveyor of the Highways for the Township". These are attached at Appendix G.

## **Other evidence discovered by the County Council**

9. Officers have conducted research at the Councils records office and have obtained a copy of the Hopton and Coton Tithe Map however the alleged route does not appear.
10. Officers have obtained a copy of the planning application boundary in respect of land north of Marstongate Farm, Marston Lane, Stafford. The applicant had raised concerns that the proposed development would compromise the alleged route however from the map attached at Appendix I this is not the case.

## **Evidence submitted by the Landowners**

11. The landowners, Mrs Stubbs, Mr & Mrs Baker and Mrs Brandon have submitted landowner questionnaires, copies of which are attached at Appendix H.
12. In Mrs Stubbs questionnaire she comments that there is no knowledge of the alleged footpath from village residents. Mrs Stubbs also comments that her father-in-law moved into their farm in 1903 and claimed there were not any footpaths in the area at all.
13. In Mr & Mrs Bakers questionnaire they comment that the right of way does not exist.

14. In Mrs Brandon's questionnaire she comments that there are already three public footpaths on her farm which are portrayed on the definitive map and does not believe the alleged route to exist. Mrs Brandon also states that there is no path of any description on any documents in her possession such as old maps and sale particulars.

### **Comments received from statutory consultees**

15. Stafford Borough Council have replied stating that they have no comments on the application.
16. Marston Parish has also replied stating that they oppose the addition of the alleged footpath but has not submitted any evidence.

### **Comments on Evidence**

#### Tithe Maps:

17. The Tithe Map of Marston Parish 1839 shows only a short section of the alleged route.
18. On their own, tithe maps and awards are not evidence as to the public or private nature of a particular route but may add to the supporting evidence. Their purpose was to show what land was tithable as stated in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council [1937] 2 KB 77*
19. The courts have said that the evidence may be supportive of the existence of a public right of way but the weight to be given to such documents is a matter for the tribunal of fact, in this case the Panel. Such evidence is not on its own conclusive proof and therefore must be considered alongside all other evidence as stated in *Maltbridge Island Management Co. v Secretary of State for the Environment [1998] EGCS 134*.
20. The Tithe maps and awards were not intended to be records of highways and more often used the latter as a mechanism for orienteering the map to assist in locating the titheable land and allotments.
21. Minor ways such as footpaths might be shown as dotted lines crossing various plots.
22. The Tithe maps were intended to be a record of the productivity of the land and as a consequence the amount of tithe that would be payable. The impact of Footpaths on any cultivated land would be lessened and so there would be less reason to exempt the land from the tithe. It might give rise to a reduction in the tithe payable to allow for inference but such reductions are not always apparent.
23. The best that can be adduced from the Tithe maps is that there was a physical feature that they considered worth recording. As to whether that way had public or private rights is open to conjecture but could at the very least be construed as supporting evidence of physical existence.
24. The Tithe Maps may be a record of the physical existence of a route however they are not evidence of the legal boundaries of the highway as stated in *Webb v Eastleigh Borough Council 1957*.

## Deposited Railway Plans:

25. The deposited railway records of 1844 provide a description of the plots in which the claimed route passes through. The records also provide a description of who is the owner of each plot. In this instance plots 5 and 6 are owned by Earl Talbot and plot 27a is owned by Thomas William Giffard.
26. Statute required, from 1838, that the plans of these works and the accompanying book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
27. In compiling the plans for the route of the railway the surveyors drew up a map showing the intended line of the construction with the limits of deviation from that line. It was not the primary purpose of deposited plans to record highways of any description but came about as a consequence of the need to survey the land.
28. In the case of public highways the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The Surveyor of Highways may also be listed as jointly liable with a landowner. For the 1844 records the plots were under private ownership therefore it cannot be determined if the path was public or private.
29. The first set of railway plans are dated 1844. However, it was not until The Railways Clauses Consolidation Act 1845 was introduced that the requirements for railways were expanded, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Although it was not the primary purpose of the deposited plans they can show whether a route was public or not.
30. In respect of the 1844 plans it is difficult to determine whether or not the alleged route was public as the Railways Clauses Consolidation Act was not introduced until a year later and the section of the alleged route, which passes through plot 6, has no description of any public right of way.
31. The 1845 railway plans may have been published in 1845 but that does not necessarily mean that they were drawn up at the same time as the Railways Clauses Consolidation Act. The plans would have taken time to draw up and so it is unlikely that the act would have been taken into consideration at this point.
32. In the 1845 railway plan references who owns each plot which the alleged route passes through. The owner is described as being "the Surveyor of the Highways for the Townships". The paths are also described as being "public". There is also a further annotation on the accompanying maps which describe the route as a "public footpath".
33. The financial implication that a railway line would have had on a public highway must also be taken into consideration. There were potential penalties for not providing public crossing points where there was a public highway. The railways surveyor undertaking the plans would have needed to be accurate in his plans as there were great financial implications in place. Whoever funded the construction of a railway would have wanted to know the precise costs. A public footpath crossing the potential railway would mean that a manned crossing may have been required to allow the public to pass and re pass over it safely.
34. The Highways Act 1835 set out that all roads except for turnpike roads were maintainable at public expense and the parish was to maintain them. However footpaths were not automatically publicly maintainable after 1835 and it was rare for them to be maintained and mentioned in records.

35. The Highways Act 1835 also set up the new procedures for Railway planning and creation in that they could no longer set out new highways or that they were in fact publicly maintainable without the agreement of the surveyor of the highways.
36. However, from viewing OS maps from 1881, 1889, 1902, 1922 and 1925 Officers have found no record of any railway lines which run through the area in which the footpath is alleged. There is also no contemporary record of any disused railway lines on OS maps. This would indicate that the proposed railway lines plans were never brought to fruition. Conversely the absence of a feature on the map does not mean it did not exist.
37. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.

### **Burden and Standard of Proof**

38. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
  - (a) Evidence that a right of way which is not shown on the map subsists; or
  - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
39. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
40. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
41. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land must by definition be less than that which is necessary to establish the right of way “does subsist”.
42. If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

### **Summary**

43. Tithe Maps submitted on their own are not reliable as evidence for a modification order. They make no distinction as to whether or not a route is public or private as stated in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77. However they may be useful with other supporting evidence.
44. The Tithe Map of Marston Parish only shows a short section of the northern most part of the route however on the adjoining Tithe Map of the Parish of Hopton and Coton the alleged footpath is not shown. However just because the southerly most part of the alleged route does not appear on any maps this does not necessarily mean it did not exist. One could reasonably assume that the footpath does continue south towards Stafford, when viewed in conjunction with other evidence.

45. The Tithe Map was submitted alongside deposited railway plans and records. The alleged route is shown on the all of the deposited railway maps and is also noted in the accompanying books of reference. This would indicate that the route did exist in some capacity.
46. The deposited railway plans indicate that there was a public footpath which follows the same way as the claimed route. Even though the railway was never constructed it was important that the railway surveyors be as accurate as possible with their plans due to the financial implications they could have had.
47. As the footpath is shown on the railway plans as public this is strong evidence that it was indeed a public right of way as footpaths were not automatically maintainable at public expense and the surveyor of highways could have objected to its inclusion within the records.

### **Conclusion**

48. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
49. When the totality of the evidence is considered it is finely balanced as to whether it would satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public footpath subsists.
50. However when the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
51. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of footpath, which is not shown on the map and statement is reasonably alleged to subsist.
52. It is the opinion of your officers that the County Council should make a Modification Order to add the alleged public footpath marked A – B on appendix B to the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

53. To accept the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

54. To decide to reject the application to add a public footpath to the definitive map from Beaconside to Marston Lane

### **Legal Implications**

55. The legal implications are contained within the report.

### **Resource and Financial Implications**

56. The costs of determining applications are met from existing provisions.
57. There are, however, additional resource and financial implications if decisions of the Registration Authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

### **Risk Implications**

58. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment, Food and Rural Affairs under Section 14 of the Wildlife and Countryside Act 1981. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that the County Council should not have made the Order and decide not to confirm it.
59. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.
60. Should the Council decide not to make an Order the applicants may appeal that decision to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.
61. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened.
62. There are no additional risk implications.

### **Equal Opportunity Implications**

63. There are no direct equality implications arising from this report.

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J Tradewell

Director of Corporate Services

**Report Author: Dale Garside-Chell**

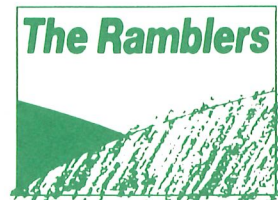
Ext. No:

**Background File: LG607G**

## INDEX TO APPENDICES

Appendix A	Copy of application from Mr Martin Reay
Appendix B	Copy of plan showing alleged route
Appendix C	Marston Tithe Award Map (tracing) – (1839)
Appendix D	Deposited Railway plan book of reference – (1844)
Appendix E	Deposited Railway plan accompanying maps (1844)
Appendix F	Deposited Railway plan accompanying maps (1845)
Appendix G	Deposited Railway plan book of reference (1845)
Appendix H	Landowner questionnaires from Mrs Stubbs, Mr & Mrs Baker and Mrs Brandon
Appendix I	Copy of planning application boundary





Staffordshire Area

Miss. Sofolame  
Mr. Sidhu  
County clerks.

Martin Reay  
53 Tithe Barn rd  
Stafford  
ST163PL  
7/4/99

Dear Miss Sofolame, Mr Sidhu,

APPLICATIONS TO ADD 2 FOOTPATHS TO THE  
DEFINITIVE MAP AT BEACONSIDE AND MARSTON

Please accept the 2 enclosed applications to add the above paths.

Both deposited railway plans show the entire lengths of both footpaths.

The photocopy of Q/Rum/48 plan does not show the paths very clearly.

Where the path runs through numbers 29+30 the photocopy has not clearly highlighted the course of the path.

However, this particular area is enlarged

on the deposited plan - The dash  
leads from 29+30 up to the enlarged  
area top left.

The Marston Tithe Map shows a  
dash along the route at the paths.  
This is the symbol for a footpath.

Yours sincerely

Martin Healy

(Local Footpath Secretary - Stafford +  
Horton)

FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of HORTON + MARSTON

To: Staffordshire County Council  
PO Box 11  
County Buildings  
Stafford  
ST16 2LH

I/We M. REAY  
of 53 WHITE BARN RD  
STAFFORD

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by

\* deleting the (footpath)(bridleway)(byway open to all traffic)  
from [scribble] to [scribble]

\* adding the (footpath)(bridleway)(byway open to all traffic)  
from MARSTON LN to BRIDLEWAY AT MARSTON

(upgrading)(downgrading) to a (footpath)(bridleway)(byway open to all traffic) the (footpath)(bridleway)(byway open to all traffic)  
from [scribble] to [scribble]

(varying)(adding to) the particulars relating to the (footpath)(bridleway)(byway open to all traffic) from [scribble] to [scribble]  
by providing that [scribble]

and shown on the map accompanying this application.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application

\*delete as appropriate.

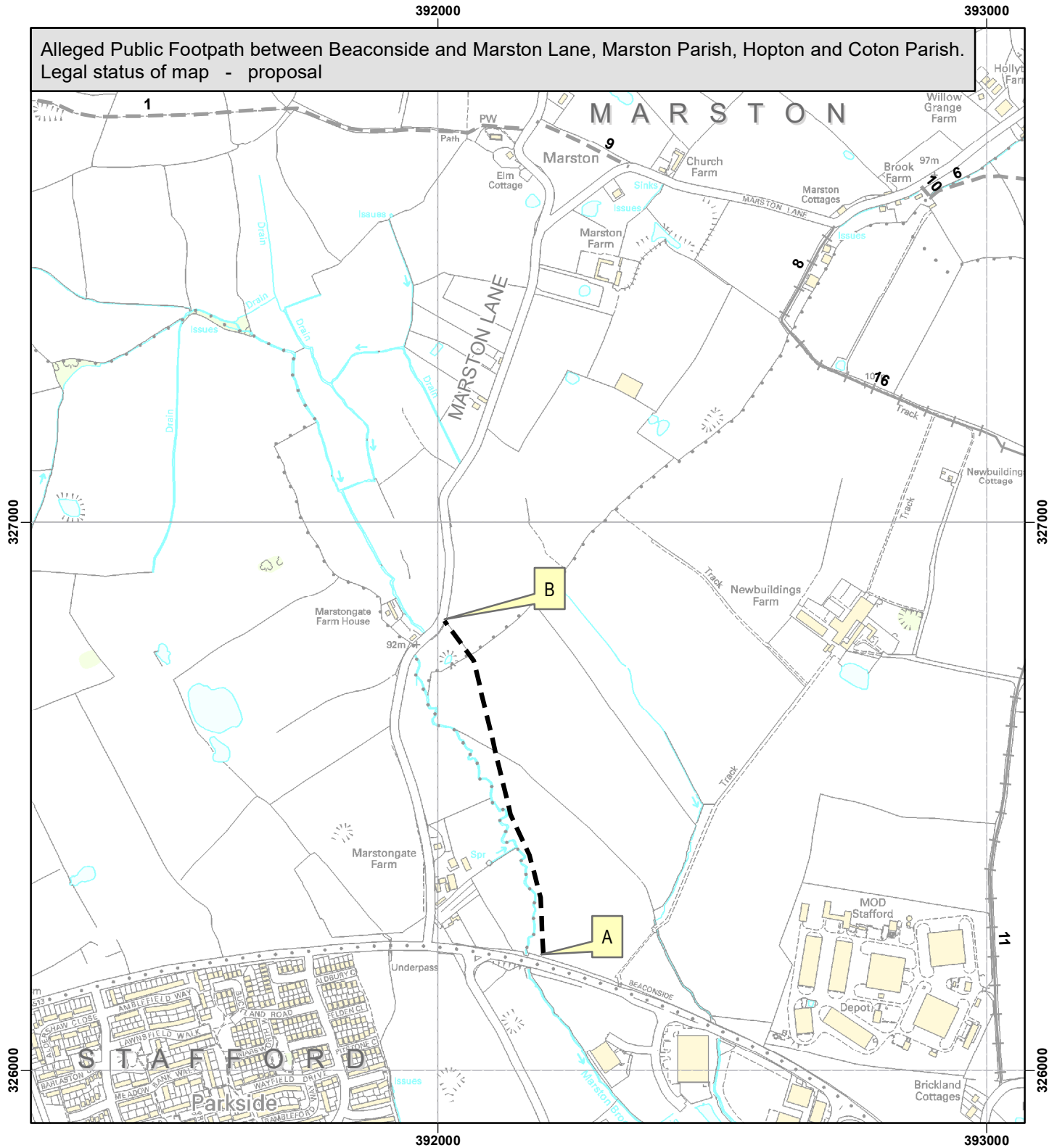


AFFORD





Wildlife and Countryside Act 1981, Section 53A(2)(b)  
 Marston Parish, Hopton and Coton Parish,  
 Staffordshire, Proposed Addition of Footpath to  
 Definitive Map and Statement.



Map created at the scale of 1:10,000  
 (facsimiles may vary)

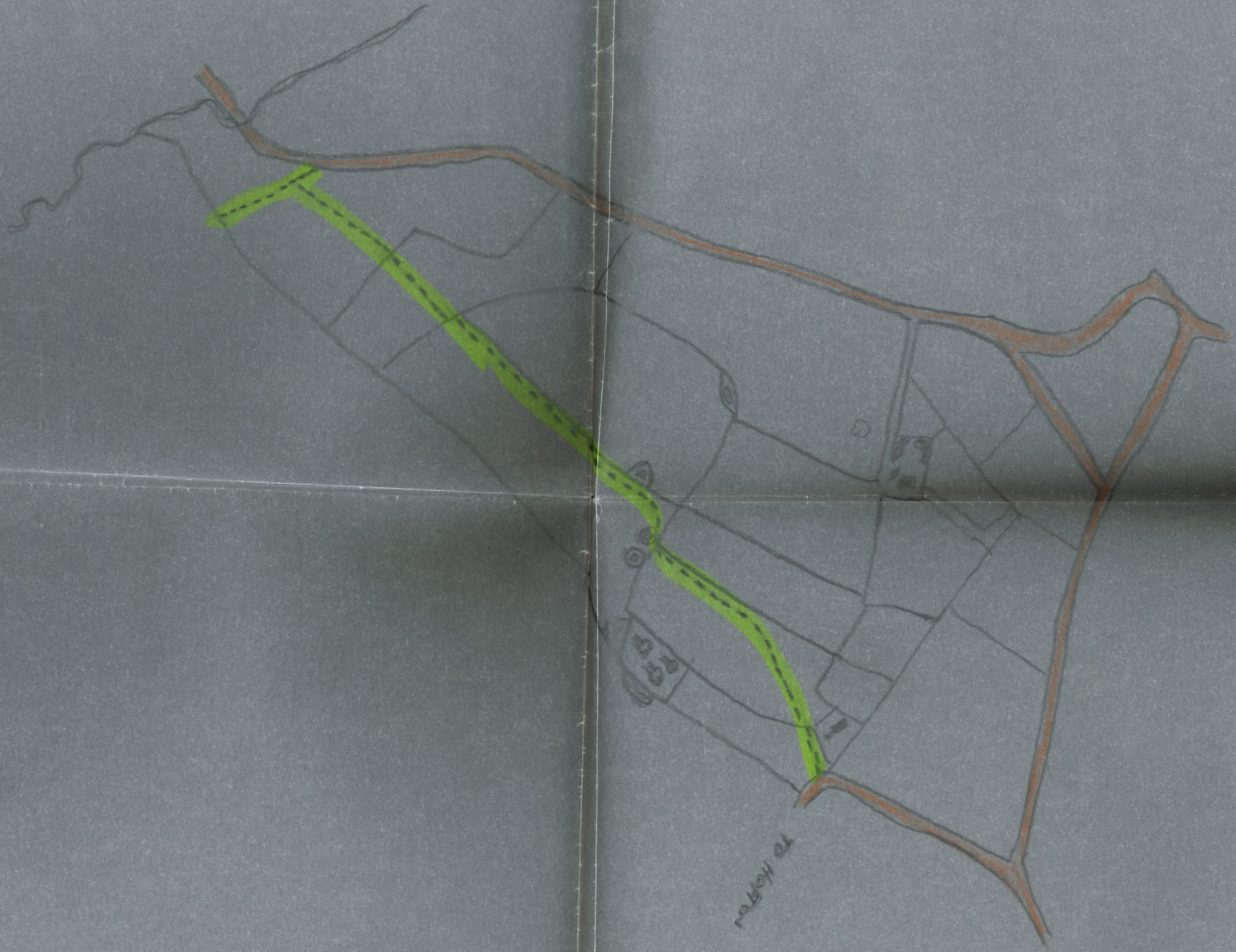
- Right of Way to be added ( A - B )
- Rights of Way Unaffected
- Footpath
- +--- Bridleway

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 Produced by Staffordshire County Council, 11/07/2019.





D 834 / 14/15/14 (1830)  
TITHE MAP - MARSTON





## EXTRA PAROCHIAL PLACE OF YARLET, COUNTY OF STAFFORD.

No Property is intended to be taken where not shown upon the Plan:  
 Or if shown upon the Plan, not numbered thereon:  
 Or if numbered thereon, not contained and described in the Book of Reference.  
 Where Property is situate in more than one Parish, the number and description are limited in each Parish to the particular portion of the Property comprised in such Parish:  
 And where lands are shown upon the Plan, either wholly or partially, and comprise buildings either shown or not shown thereupon, the number upon the Plan designates only such part of the Property as is described in the Book of Reference, and as is within the limits of deviation denoted upon the Plan.

No. on Plan.	Description of Property.	Owner or Reputed Owner.	Lessee or Reputed Lessee.	Occupier.
1	Brook	Honourable Edward Jervis.		
1A	Field	Thomas William Giffard.		
2	Field	Sarah Tunnicliff		Simon Myatt.
3	Field	Sarah Tunnicliff		Sarah Tunnicliff.
3A	Field	Sarah Tunnicliff		Sarah Tunnicliff.
4	Field	Sarah Tunnicliff		William Swift Woolfe.
5	Field	Sarah Tunnicliff		William Swift Woolfe.
6	Field	Sarah Tunnicliff		William Swift Woolfe.
7	Field	Sarah Tunnicliff		William Swift Woolfe.
8	Field	Sarah Tunnicliff		William Swift Woolfe.
9	Field	Sarah Tunnicliff		William Swift Woolfe.
10	Field	Sarah Tunnicliff		William Swift Woolfe.

## TOWNSHIP OF MARSTON, PARISH OF ST. MARY, STAFFORD, COUNTY OF STAFFORD

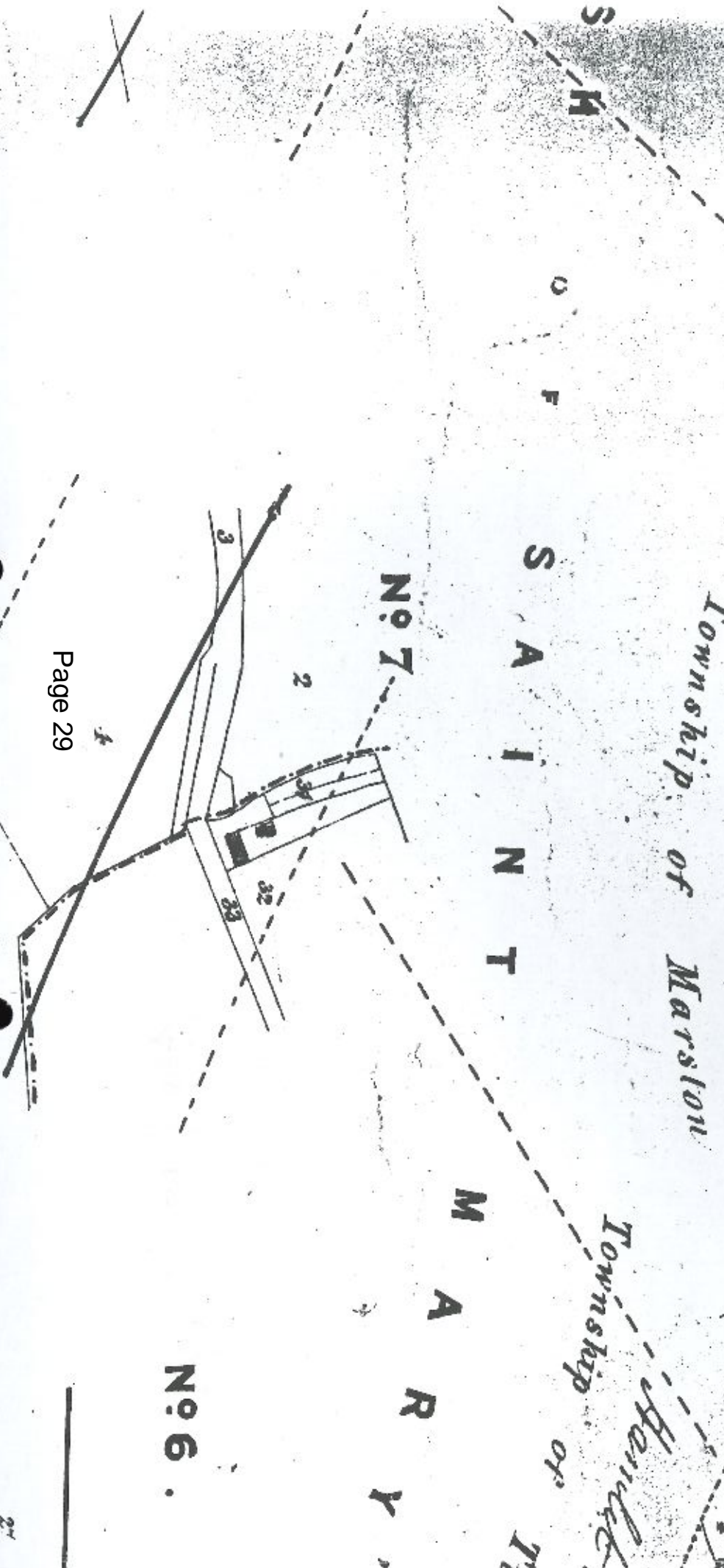
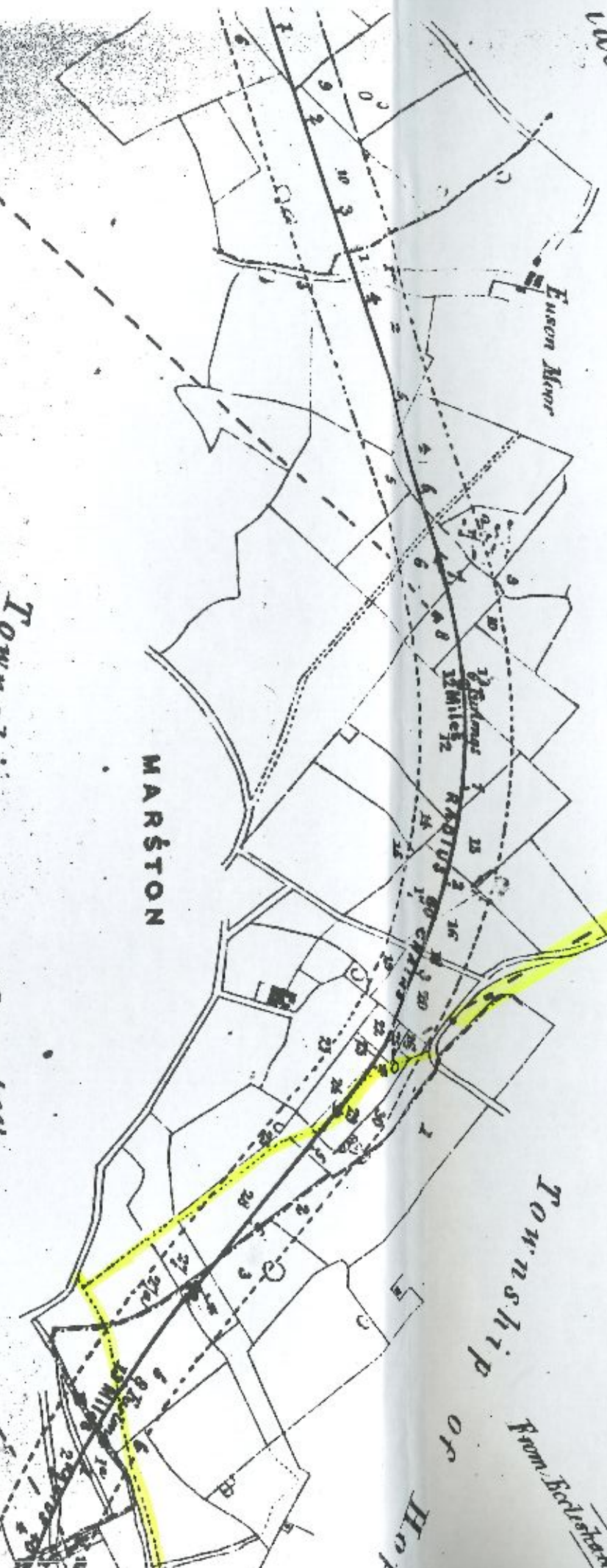
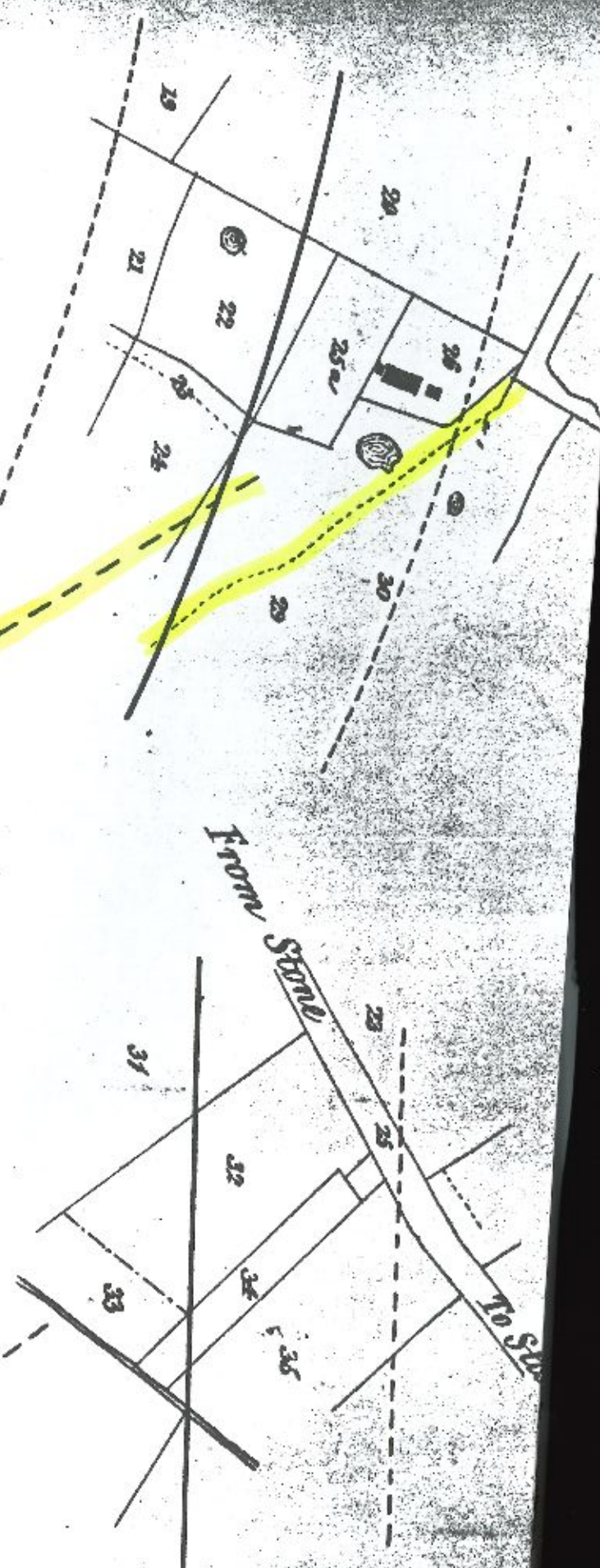
1	Field	Thomas William Giffard		
1A	Occupation Road	Thomas William Giffard.		Simon Myatt.
2	Field	Thomas William Giffard		
3	Field	Thomas William Giffard		Simon Myatt.
4	Field	Thomas William Giffard		Simon Myatt.
5	Field	Thomas William Giffard		Simon Myatt.
6	Field and Bridle Road	Thomas William Giffard		Simon Myatt.
7	Plantation	Thomas William Giffard		Simon Myatt.
8	Field and Shed	Thomas William Giffard		Simon Myatt, as to Field.
9	Field	Thomas William Giffard		Simon Myatt.
10	Field	Thomas William Giffard		Simon Myatt.
11	Field	Thomas William Giffard		Simon Myatt.
12	Field	Thomas William Giffard		Simon Myatt.
13	Field	Thomas William Giffard		Simon Myatt.
14	Field	Thomas William Giffard		Thomas Greensmith.
15	Field	Thomas William Giffard		Peter Lowe.
16	Field	Thomas William Giffard		Thomas Greensmith.
17	Field	Thomas William Giffard		Thomas Greensmith.
18	Public Highway	Thomas William Giffard		Peter Lowe.
19	Field	Surveyor of the Highways.		Peter Lowe.
20	Field	Thomas William Giffard		
21	Field	Thomas William Giffard		Peter Lowe.
22	Field	Thomas William Giffard		Peter Lowe.
23	Occupation Road	Thomas William Giffard		Peter Lowe.
24	Field	Thomas William Giffard		Peter Lowe.
25	Field	Thomas William Giffard		
25A	Garden	Thomas William Giffard		Peter Lowe.
26	Cottages Gardens and Appurtenances	Thomas William Giffard		Peter Lowe.
27	Field and Public Footpath	Thomas William Giffard		Peter Lowe.
27A	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
28	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
29	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
30	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.





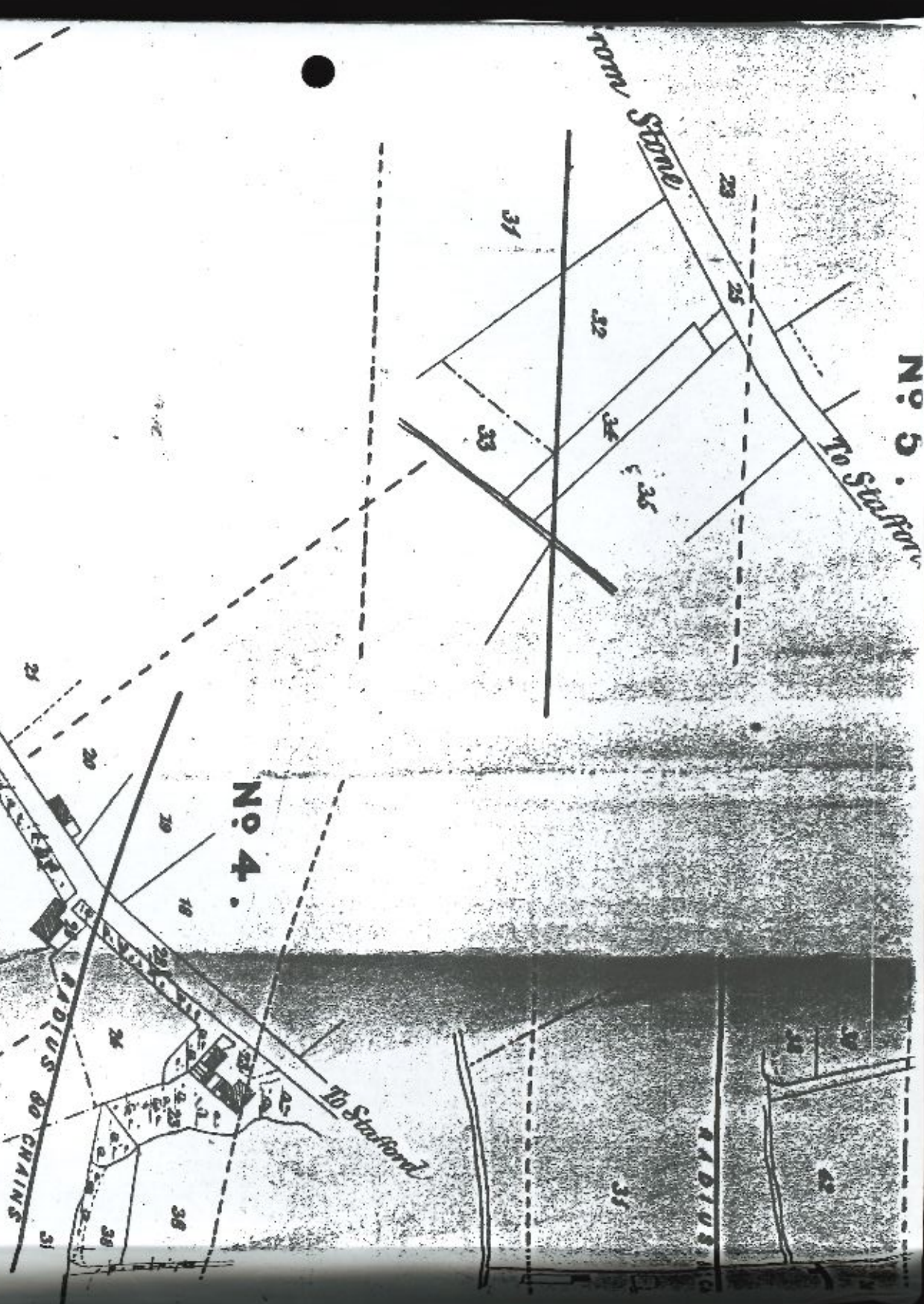
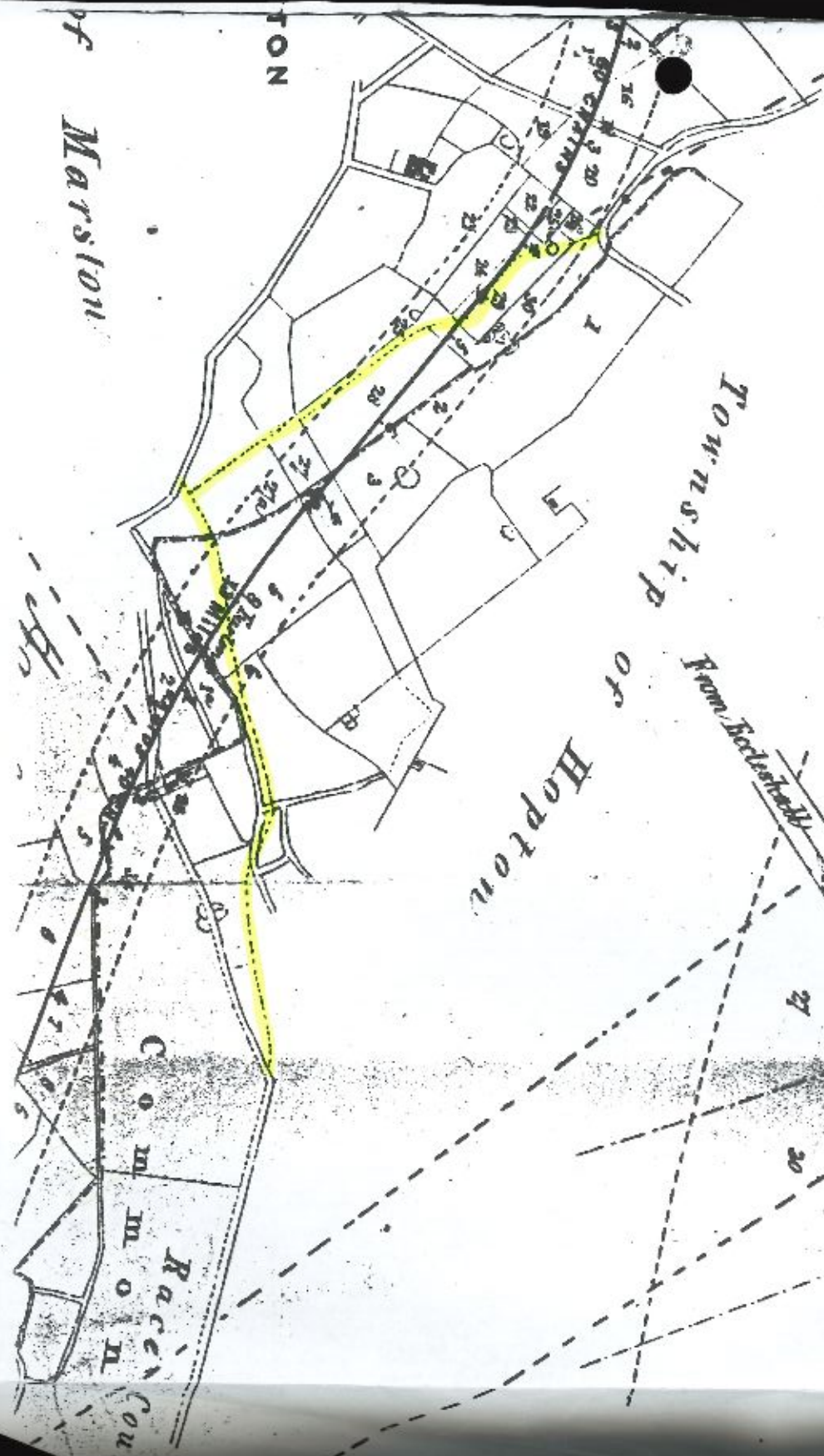


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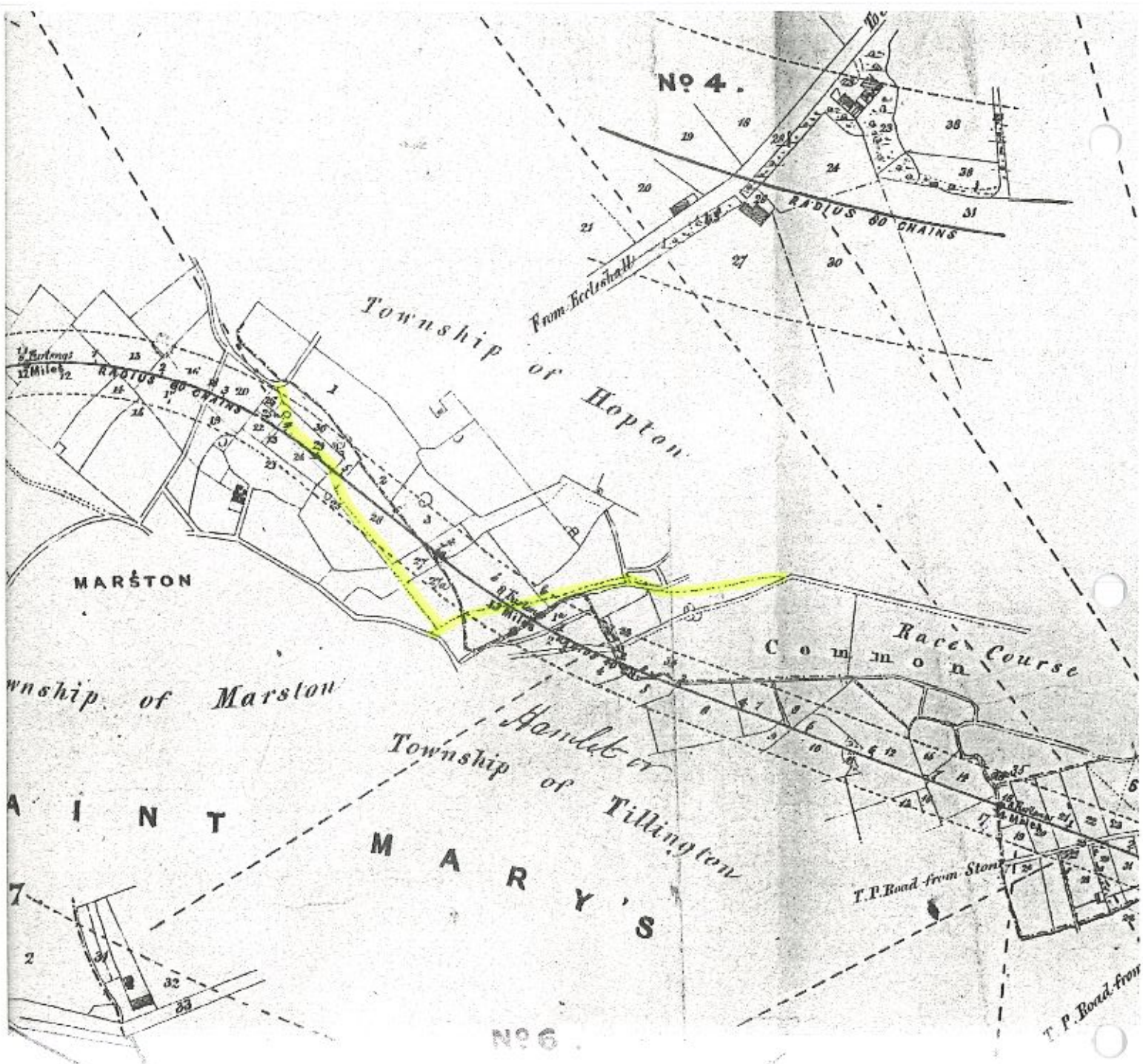


No 6 .

of  
Marston  
TON

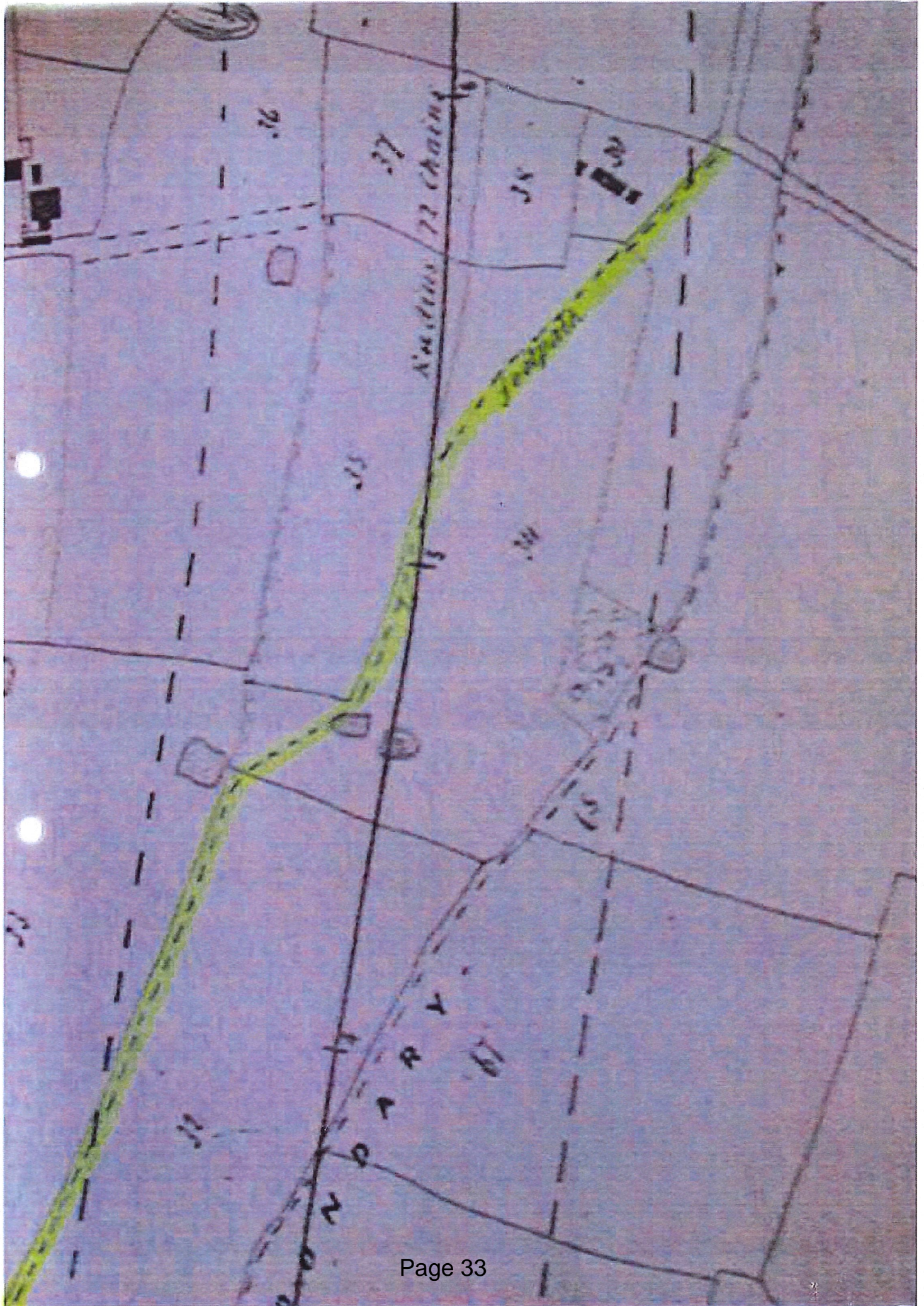




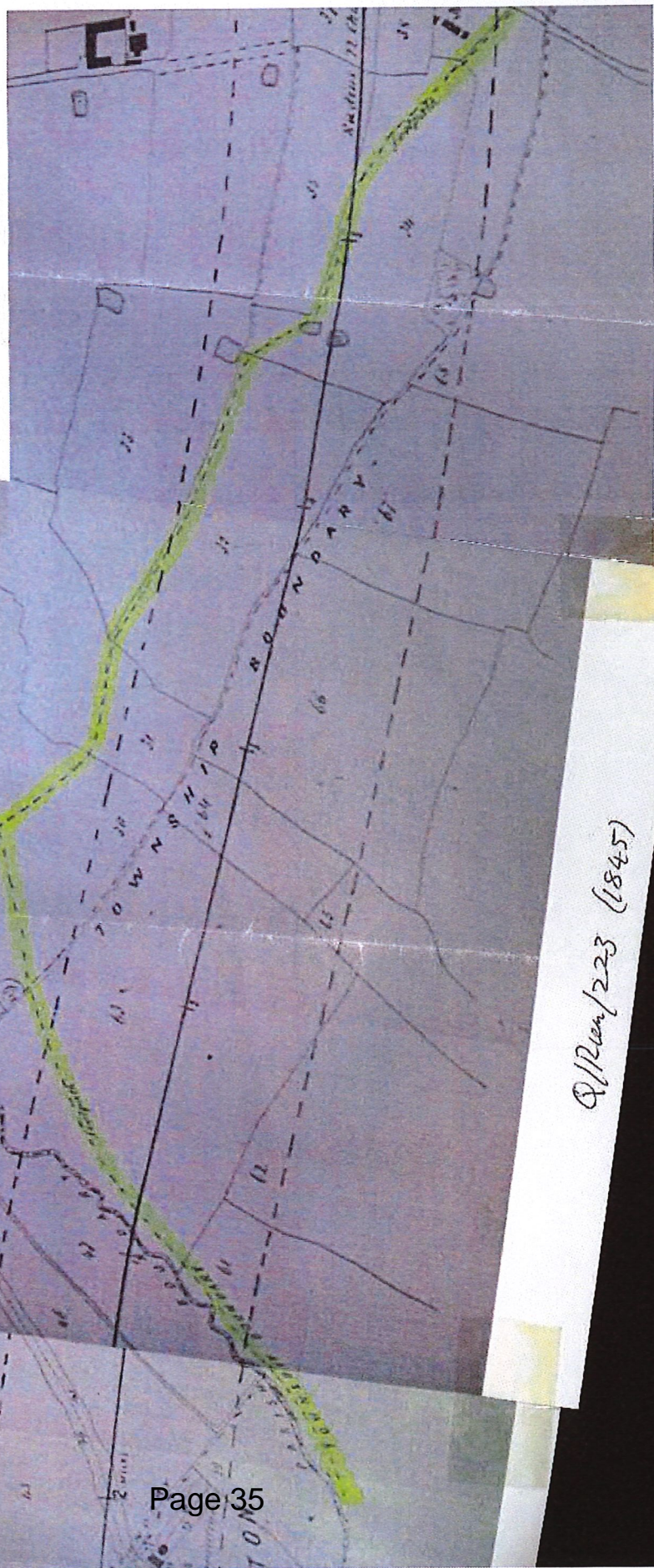


Q/Rum/148 (1844)









Q/Ren/223 (1845)

WAT PLACE

EXTRA CAROCHIA

INGTON



Description	Description	Caption
61	Wells and public foot paths	As to the field Charles Cheswood Carl J. Hobbs
62	Wells	As to the foot paths the surveyors of the Highways for the Township Charles Cheswood Carl J. Hobbs

Q/Ren/223 (1845)





Township of Hutton and Colton, Parish of Saint Mary's

Copy plan	Description	Owner
63	Field and public footpath	As to the Field Charles Cheekwood Earl Dalhousie
64	Field	As to the footpath the Surveyors of the High ways for the Township Charles Cheekwood Earl Dalhousie
65	Field	ditto
66	Field	ditto
67	Field	ditto
68	Field and pond	ditto

R/Ren/223 (1845)



Township of Madawaska, Parish of Saint Mary.

Number	Description	Owner
31	Field and public foot paths	ditto
32	Field and public foot paths.	ditto
33	Field and two feet	Thomas William Giffard
34	Field two feet plantation and two public foot paths	As to the fields feet and plantation Thomas William Giffard As to the public foot paths The Surveyor of the Highways for the Township
35	Field and public foot	

As to the public  
F. P. the Surveyor of  
the Highway for the  
Townships.

Q/Rum/223  
(1845)



28	and Garden Bake House	ditto
29	Field	ditto
30	Shield pit and two Public footpaths	As to the field and pit - Thomas William Poffard As to the Public Foot paths. the Surveyor of the Highways for the Parish

Q/Ramp223 (1845)



LJ6079 / 15608G

PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness ... LESLEY BARBARA GRANDON .....  
(Block Capitals please)

Address ... NEW BUILDINGS FARM, HOPTON, STAFFORD .....  
STIP 9TH .....

Telephone No: ... 01785 - 252585 .....

Date of Birth ... 01 / ... 06 / ... 1954 Occupation ... FARMER / BIOCHEMIST .....

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

YES /  NO

2. Have you received a Notice of application for a Modification Order?

YES /  NO

3. Would you be willing to allow my assistant to make a site inspection?

YES /  NO

4. Do you consider the route to be public?

YES /  NO

5. How long have you had an interest in the land affected by the application. .... 20 ..... years.

Personally 20 yrs - family interest since 1930's .....

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner? - WITH MY HUSBAND OF PART OF THE LAND. B → C.  
(b) A joint tenant, - WITH MY HUSBAND OF SECTION OF ALLEGED PATH  
if so, with whom? RUNNING FROM BEACONSIDE. A → B. SEE PLAN.  
(c) a tenant in common,  
if so, with whom?  
(d) A tenant for life under the Settled Land Act,  
if so, with whom?

Tenancies and Leases

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

Tenant of land parts A → B on Plan. Full agricultural tenancy. A path would limit the usefulness of this land & devalue it.

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO. WE BELIEVE THE LAND TO BE PRIVATE, AND HAVE NEVER HAD CAUSE TO ERECT SUCH SIGNS.

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO. THERE IS NO SUCH PATH, SO NO ONE HAS EVER MADE SUCH A REQUEST.

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO. HOWEVER, THERE IS NO ROUTE ACROSS THIS ALLEGED PATH AS IT HAS NEVER BEEN USED. THERE ARE THICK HEDGES, ETC.

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO.

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."

NO. THIS PATH IS A COMPLETE MYSTERY TO ANYONE WITH KNOWLEDGE OF THIS LAND WITHIN 3 GENERATIONS.



12. Do you have any documents which show this as a private right of way or giving details of its closure?

NO. THERE IS NO PATH OF ANY DESCRIPTION ON ANY DOCUMENTS WE HAVE, INCLUDING OLD MAPS AND SALE PARTICULARS.

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary?

YES !!!

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

Signature... L. B. Brandon

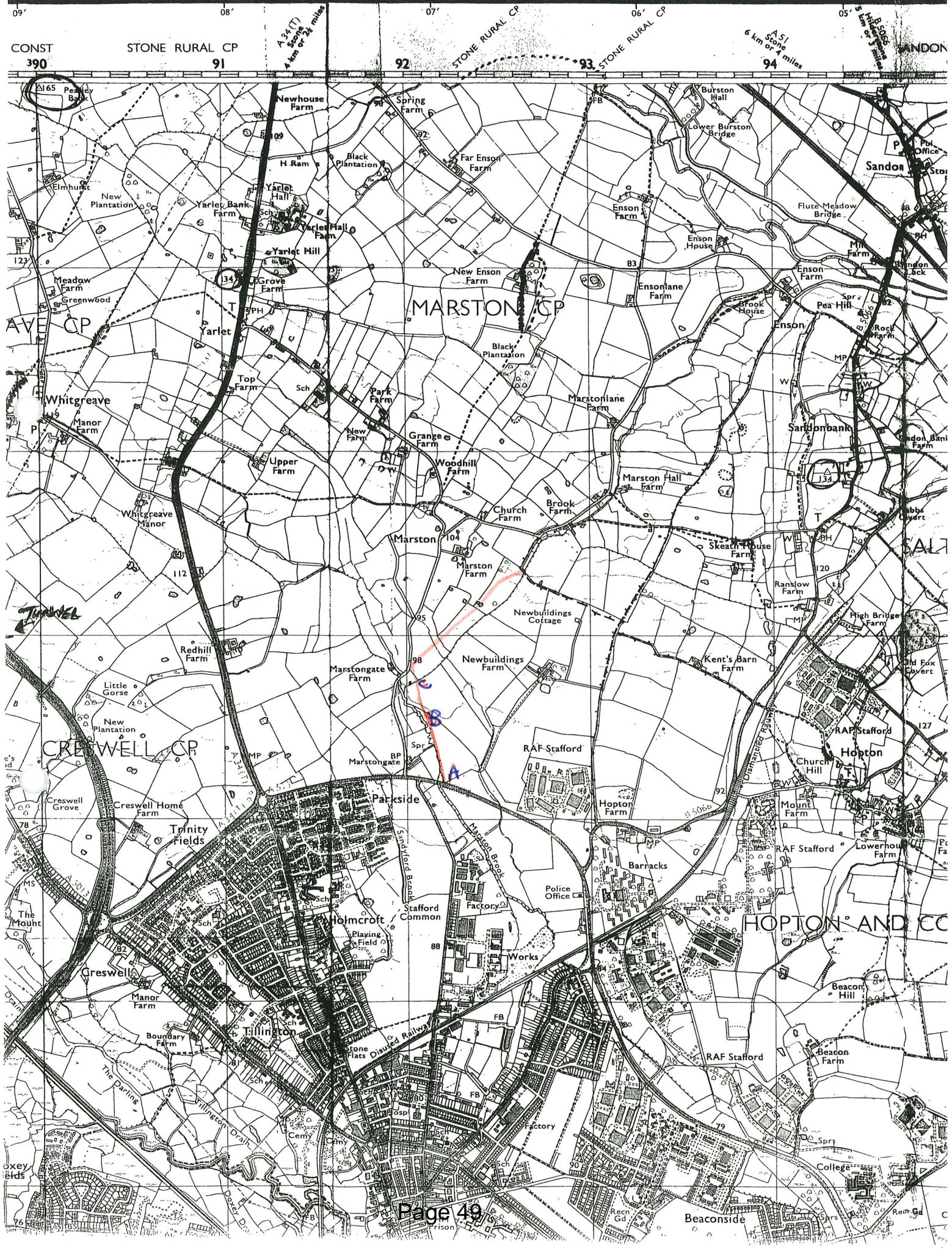
Person taking this statement ... L. B. BRANDON .....

Date ... 21.5.99 .....

We have three ~~old~~ paths on the farm, all of considerable length. They are on the definitive map & we have never questioned their existence or use by the public. We find the current situation extremely worrying and upsetting. We do not understand how it can be possible for anyone to conjure up paths from no-where in this way.



**AFFORD**





PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier  
of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness ....Mr. & Mrs. J. P. BAKER.....(TRUSTEES).....  
(Block Capitals please)

Address .....LUDSTONE HOUSE.....  
.....LUDSTONE CLAVERLEY.....  
.....WOLVERHAMPTON WV5 7DE.....

Telephone No: ....01746 710574.....

Date of Birth ....25./...05...../...1926.. Occupation ...RETIRED.....  
25      02      1925

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

EXTENT OF OWNERSHIP AS INDICATED ON PLAN  YES/ NO  
ATTACHED HERETO

2. Have you received a Notice of application for a Modification Order?  YES/ NO

3. Would you be willing to allow my assistant to make a site inspection?  YES/ NO  
SUBJECT TO TENANTS AGREEMENT

4. Do you consider the route to be public?  YES/ NO

5. How long have you had an interest in the land affected by the application. ....OVER 60...years.  
(Mrs BAKER)

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner? — YES
- (b) A joint tenant, if so, with whom?
- (c) a tenant in common, if so, with whom?
- (d) A tenant for life under the Settled Land Act, if so, with whom?

Tenancies and Leases

NO

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO

RIGHT OF WAY DOES NOT EXIST

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO

NOT APPLICABLE

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO

NOT APPLICABLE

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO

NOT APPLICABLE

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NO

RIGHT OF WAY DOES NOT EXIST

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."

12. Do you have any documents which show this as a private right of way or giving details of its closure?

No

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary?

NO

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

Signature..... J.P. Bale  
Dunbar

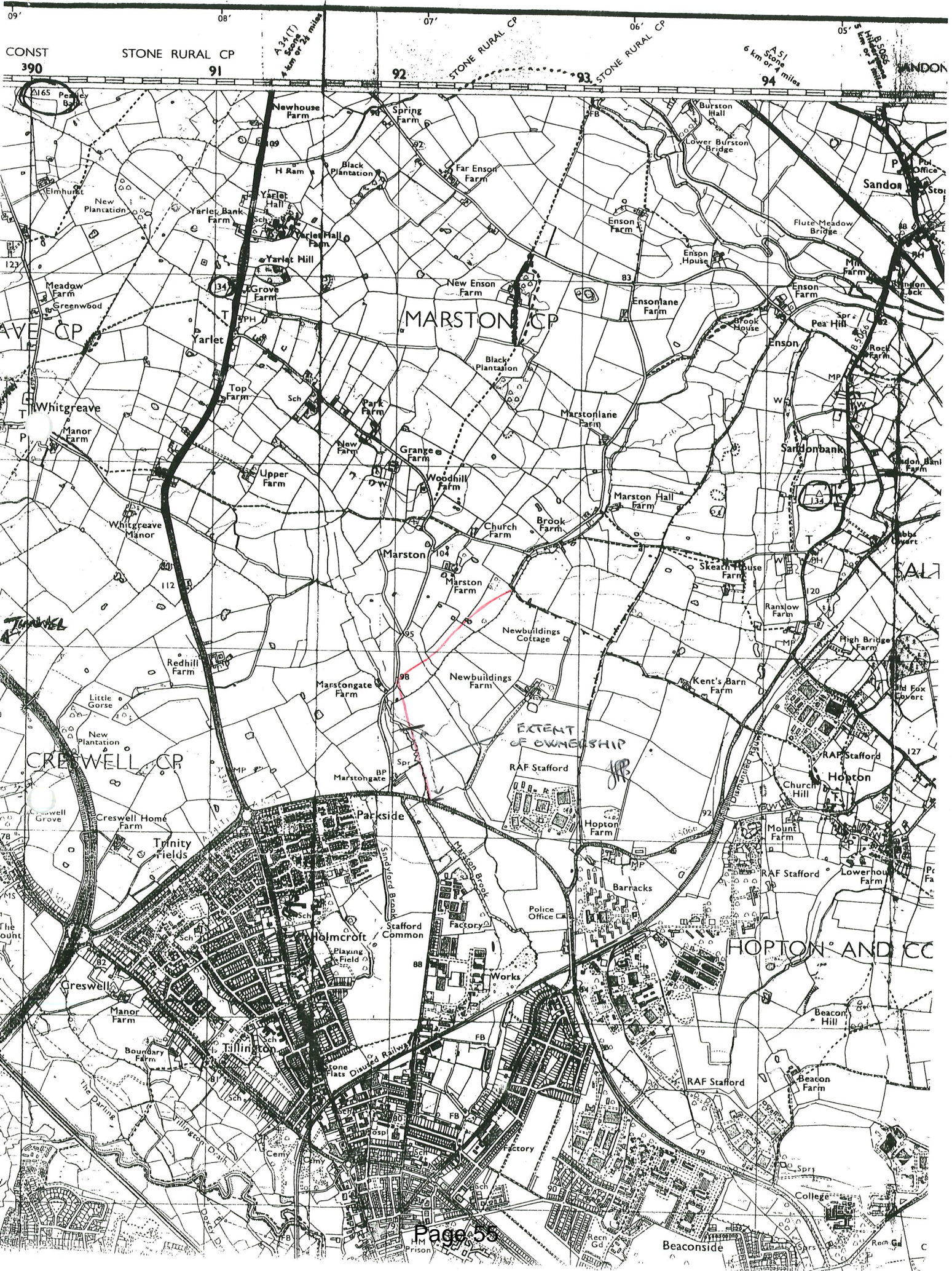
Person taking this statement .....

Date ...17...05...99.....





# AFFORD





LJ6070 / LJ6080

PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness MRS. FRANCES GAIL STUBBS  
(Block Capitals please)

Address MARSTON FARM  
MARSTON LANE  
STAPFORD

Telephone No: 01889 508 227

Date of Birth 18/6/44 Occupation TEACHER / FURTHER EDUCATION

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

YES/NO

2. Have you received a Notice of application for a Modification Order?

YES/NO

3. Would you be willing to allow my assistant to make a site inspection?

YES/NO

4. Do you consider the route to be public?

YES/NO

5. How long have you had an interest in the land affected by the application. ....39....years.

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner?
- (b) A joint tenant,  
if so, with whom?
- (c) a tenant in common,  
if so, with whom?
- (d) A tenant for life under the Settled Land Act,  
if so, with whom?

Tenancies and Leases

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

N/A

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NO

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."

12. Do you have any documents which show this as a private right of way or giving details of its closure? NO

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary? YES

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

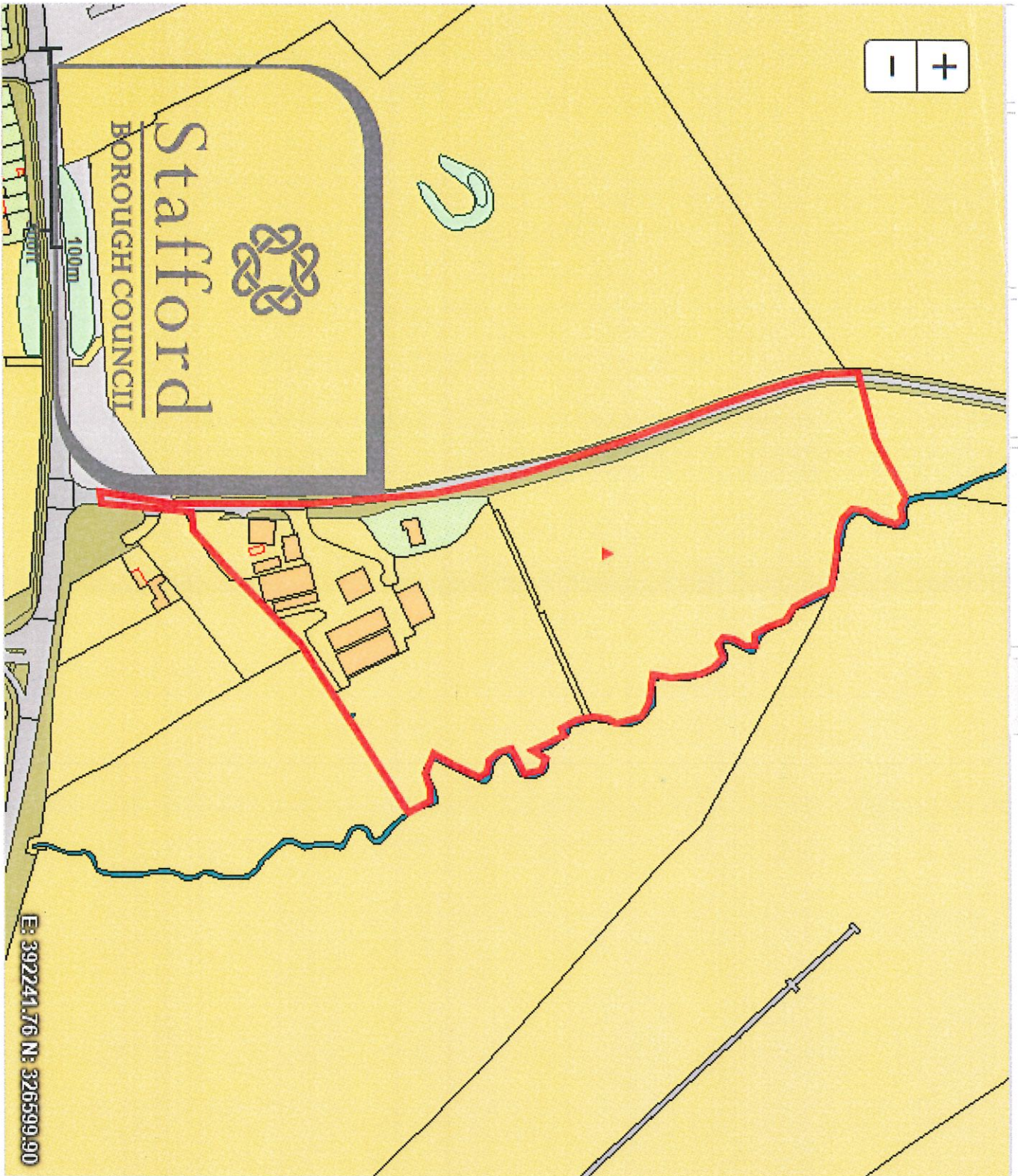
Signature... F. Q. Stubbs.....

Person taking this statement ..... F. Q. STUBBS.....

Date 28.5.99.....

There are people who were born & have lived in this village for over 50 years up to 76 yrs who can never remember a footpath in the area shown.  
My father-in-law who moved into this farm in 1903 always claimed that there were no footpaths in this area at all. It is a farm with a lot of road side fields with correct maintained roads, which were always used by the villagers.



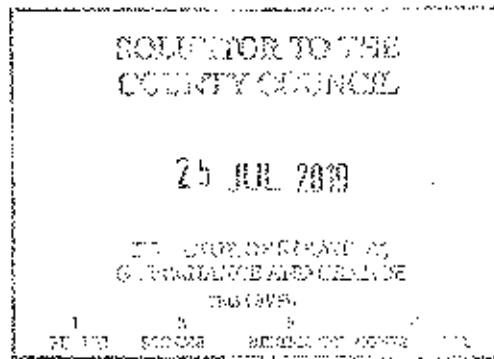






**H. Brandon & Sons**  
New Buildings Farm,  
Sandon Road,  
Hopton,  
Stafford.  
ST18 9TH

Tel. : 01785 252585



Dale Garside-Chell (ROW)  
Staffordshire Legal Services  
Staffordshire County Council  
2 Staffordshire Place  
Tipping Street  
Stafford  
ST16 2DH

23 July 2019

Dear Sir,

Your Ref. LJ607G and LJ608G

I, Stephen Henry Brandon, D.O.B. 9<sup>th</sup> June 1956, would like to submit the following comments/evidence regarding the Alleged Public Footpath from Beaconside to Marston Lane, near Marstongate Farm.

I was born and have lived for most of my life at New Buildings Farm, Sandon Road, Hopton, Stafford, apart from 11 years 1978-1989 when I lived a short distance away at Upper Enson Farm, Sandon, Stafford, ST18 9TA. My family have lived at New Buildings Farm since the early 1930's

All my working life I have farmed at New Buildings Farm and there has never been a public footpath along the suggested route.

I have in my possession a large scale Ordnance Survey Map of 1901, second edition, there is no footpath on that map.

My grandfather, Harry Brandon, moved to the farm in the early 1930's as a tenant and later purchased the farm at auction on Friday 10<sup>th</sup> June 1949. I have the sale particulars with the farm map which shows other existing footpaths but again there is no footpath along the alleged route.

Beaconside by-pass did not exist in any form until the early 1970's, therefore point A on the map would be a point in a field, a dead end with no connection to any public right of way and would serve no purpose. Beaconside was a new road constructed in the early 1970's across the southern end of New Buildings Farm sub dividing many fields on the farm.

It is highly unlikely that there was ever a footpath in this area, the soil type is deep wet peat and until the land was drained during the 1940's 50's and 60's it would have been very wet and difficult to walk across.

With regard to the alleged public footpath from Marston Lane to Public Bridleway No. 8 Hopton & Marston Parish, I have lived and worked along side Marston Farm all my life and there has never been a public footpath across the farm.

Again, I have in my possession the Ordnance Survey Map 1901, second edition, there is no public footpath on that map across Marston Farm.

I would be happy to give evidence in person to the County Council's Countryside and Rights of Way Panel at their meeting on 9<sup>th</sup> August 2019.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S Brandon', written in a cursive style.

Stephen Brandon

Dear Staffordshire County Council

**Re: Definitive Map Modification Application Numbers LJ607G and LJ608G**

Thank you for sending me copies of the draft reports for the above numbered claims, recommending to the Countryside and Rights of way Panel that Orders are published for both.

Concerning the landowner comments, that the route is not depicted on Ordnance Survey maps, please ensure that the Countryside and Rights of Way Panel Members are provided with my following input and that it is included within the papers to be considered by the Panel:

1) I accept and have always understood that the application routes in this case are not shown on Ordnance Survey maps. However, the law is clear that if a path was once a public highway it is always a public highway; unless stopped up by legal process. It can be reasonably presumed that, sometime after the 1844 and 1845 Railway Plans were produced, that the route either fell into disuse or was sparsely used and that no clear evidence of the track existed for Ordnance Survey cartographers to record. However, as the Panel will understand, lack of use or disuse of a public path cannot extinguish any public highway rights over it. Only a legal event or legal order can extinguish or remove public highway rights and there is no evidence of any such event or order relating to these paths.

2) The paths in contention are clearly depicted on the 1839 Tithe Award Map I submitted with application numbers LJ607G and LJ608G. Although any paths depicted on a Tithe Award Map do not confirm the existence of any public user rights over them, they do provide evidence of the location and existence of any paths on the ground. The Marston 1835 Tithe award map depicting the claim routes, together with the Railway Plans of 1844 and 1845, provide corroborating evidence for the location of routes to be entered on any legal Order Plan required to add the paths to the definitive map.

3) Because of the scrutiny that Railway Plans were subjected to they are regarded as strong evidence of public rights, over any paths or roads depicted on them to be public in nature:

- The statutory process required for any railway schemes was extremely exacting and the book of reference and plans needed to be of a high standard. They have been admitted by the Courts in evidence of public rights of way claims.
- Firstly, railway schemes were open to scrutiny by any affected or involved parties. So, the Surveyor of Highways would not have wanted to accept unwarranted maintenance responsibility for any routes incorrectly depicted on a plan to be in the ownership of the Surveyor of Highways or public in nature if they were not.
- Secondly, the Parish Councils would not have wished to see parishioners lose rights by an error on a railway plan that failed to depict routes as public highways if they were regarded as public at the time.
- Thirdly, landowners would not have wanted to unnecessarily cede control of their land to another party and would have insisted correction of any railway plans that wrongly depicted public rights over private land that had no such rights.

4) No evidence has been found or advanced to rebut the public highway rights depicted on the railway plans that, by way of statutory process, would have been heavily scrutinised by at least three separate interested and involved parties. Accordingly, there is strong evidence that public highway rights existed

over the claim routes, which survive to this day, with no conflicting evidence or incontrovertible evidence to the contrary.

Yours sincerely,

Martin Reay  
53 Tithe Barn Rd  
STAFFORD  
ST16 3PL

Local Members' Interest	
Jeremy Pert	Eccleshall ED

**Countryside and Rights of Way Panel – 9 August 2019**

**Wildlife and Countryside act 1981**

**Application for a Public Right of Way between Marston Lane to Public Bridleway No.8, Hopton and Marston Parish**

**Report of the Director Corporate Services**

**Recommendation**

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to conclude that a public footpath which is not shown on the Definitive Map and Statement is reasonably alleged to subsist along the route shown marked A to B on the plan attached at Appendix B to this report and should be added to the Definitive Map and Statement of Public Rights of Way as such.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Footpath.

**PART A**

**Why is it coming here – what decision is required?**

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 (“the 1981 Act”). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council’s Regulatory Committee (“the Panel”). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.
2. To consider an application from Mr Martin Reay, for an order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from Marston Lane to Public Bridleway No.8, Hopton and Marston Parish under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. A copy of Mr Reay’s application is attached at Appendix A. The line of the alleged Public Right of Way is shown on the plan attached at Appendix B and marked A – B.
3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

## **Background**

1. The applicant has submitted historical evidence only in support of his claim to add a public footpath to the definitive map.
2. The applicant has referred to the fact that the alleged public footpath is shown on historical documents and maps.
3. Whilst it is necessary to consider the different types of evidence separately, the determination of the application must be upon all the evidence collectively.

## **Evidence submitted by the applicant**

4. The applicant has submitted in support of his claim evidence from a traced version of the Marston Tithe Award of 1839. A tracing of the map is attached at Appendix C. The alleged footpath is shown as a dotted line which matches the route alleged by the applicant.
5. The applicant has also submitted deposited railway plan records of 1844. These indicate that a public footpath was recorded over plots 6, 27, 27a, 28, 29 and 30. The plots are described as having "Field and Public Footpath" and are attached at Appendix D.
6. The accompanying maps to the 1844 railway plans are attached at Appendix E and show the full footpath by way of a dotted line which matches the alleged route of the applicant.
7. The applicant has also submitted the deposited railway plan maps of 1845. These show a footpath by way of a dotted line which matches the railway plan map of 1844. There is also an annotation along the dotted line which describes it as a footpath. This dotted line shows the entire alleged route. A copy is attached at Appendix F.
8. The accompanying records to the 1845 railway plans show that the alleged footpath runs through plots 62, 63, 64, 30, 31, 32 and 34. The owner is described as being "the Surveyor of the Highways for the Township". These are attached at Appendix G.

## **Other evidence discovered by the County Council**

9. Officers have conducted research at the Councils records office but have not discovered any other evidence

## **Evidence submitted by the Landowners**

10. The landowners, Mrs Stubbs, Mr & Mrs Baker and Mrs Brandon have submitted landowner questionnaires, copies of which are attached at Appendix H.
11. In Mrs Stubbs questionnaire she comments that there is no knowledge of the alleged footpath from village residents. Mrs Stubbs also comments that her father-in-law moved into their farm in 1903 and claimed there were not any footpaths in the area at all.
12. In Mr & Mrs Bakers questionnaire they comment that the right of way does not exist.

13. In Mrs Brandon's questionnaire she comments that there are already three public footpaths on her farm which are portrayed on the definitive map and does not believe the alleged route to exist. Mrs Brandon also states that there is no path of any description on any documents in her possession such as old maps and sale particulars.

### **Comments received from statutory consultees**

14. Stafford Borough Council have replied stating that they have no comments on the application.
15. Marston Parish has also replied stating that they oppose the addition of the alleged footpath but has not submitted any evidence.

### **Comments on Evidence**

#### Tithe Maps:

16. The Tithe Map of Marston Parish 1839 does show the entirety of the alleged route running from Marston Lane to the Marston Bridleway No.8.
17. On their own, tithe maps and awards are not evidence as to the public or private nature of a particular route but may add to the supporting evidence. Their purpose was to show what land was tithable as stated in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77
18. The courts have said that the evidence may be supportive of the existence of a public right of way but the weight to be given to such documents is a matter for the tribunal of fact, in this case the Panel. Such evidence is not on its own conclusive proof and therefore must be considered alongside all other evidence as stated in *Maltbridge Island Management Co. v Secretary of State for the Environment* [1998] EGCS 134.
19. The tithe maps and awards were not intended to be records of highways and more often used the latter as a mechanism for orienteering the map to assist in locating the titheable land and allotments.
20. Minor ways such as footpaths might be shown as dotted lines crossing various plots.
21. The Tithe maps were intended to be a record of the productivity of the land and as a consequence the amount of tithe that would be payable. The impact of Footpaths on any cultivated land would be lessened and so there would be less reason to exempt the land from the tithe. It might give rise to a reduction in the tithe payable to allow for inference but such reductions are not always apparent.
22. The best that can be adduced from the Tithe maps is that there was a physical feature that they considered worth recording. As to whether that way had public or private rights is open to conjecture but could at the very least be construed as supporting evidence of physical existence.
23. The Tithe Maps may be a record of the physical existence of a route however they are not evidence of the legal boundaries of the highway as stated in *Webb v Eastleigh Borough Council* 1957.

## Deposited Railway Plans:

24. The deposited railway records of 1844 provide a description of the plots in which the claimed route passes through. The records also provide a description of who is the owner of each plot. In this instance plots 27 – 30 are owned by a Mr Thomas Giffard and plot 6 is owned by Earl Talbot.
25. Statute required, from 1838, that the plans of these works and the accompanying book of reference were deposited with the local public authorities. This was true for routes that never came to fruition as well as for those that were constructed.
26. In compiling the plans for the route of the railway the surveyors drew up a map showing the intended line of the construction with the limits of deviation from that line. It was not the primary purpose of deposited plans to record highways of any description but came about as a consequence of the need to survey the land.
27. In the case of public highways the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The Surveyor of Highways may also be listed as jointly liable with a landowner. For the 1844 records the plots were under private ownership therefore it cannot be determined if the path was public or private.
28. The first set of railway plans are dated 1844. However, it was not until The Railways Clauses Consolidation Act 1845 was introduced that the requirements for railways were expanded, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans they can show whether a route was public or not.
29. In respect of the 1844 plans it is difficult to determine whether or not the alleged route was public as the Railways Clauses Consolidation Act was not introduced until a year later. The 1845 railway plans may have been published in 1845 but that does not necessarily mean that they were drawn up at the same time as the Railways Clauses Consolidation Act. The plans would have taken time to draw up and so it is unlikely that the act would have been taken into consideration at this point.
30. In the 1845 railway plan records there is reference to who owns each plot which the alleged route passes through. The owner is described as being “the Surveyor of the Highways for the Townships”. The paths are also described as being “public”. There is also a further annotation on the accompanying maps which describe the route as a “public footpath”.
31. The financial implication that a railway line would have had on a public highway must also be taken into consideration. There were potential penalties for not providing public crossing points where there was a public highway. The railways surveyor undertaking the plans would have needed to be accurate in his plans as there were great financial implications in place. Whoever funded the construction of a railway would have wanted to know the precise costs. A public footpath crossing the potential railway would mean that a manned crossing may have been required to allow the public to pass and re pass over it safely.
32. The Highways Act 1835 set out that all roads except for turnpike roads were maintainable at public expense and the parish was to maintain them. However footpaths were not automatically publicly maintainable after 1835 and it was rare for them to be maintained and mentioned in records.



33. The Highways Act 1835 also set up the new procedures for Railway planning and creation in that they could no longer set out new highways or that they were in fact publicly maintainable without the agreement of the surveyor of the highways.
34. However, from viewing OS maps from 1881, 1889, 1902, 1922 and 1925 Officers have found no record of any railway lines which run through the area in which the footpath is alleged. There is also no contemporary record of any disused railway lines on OS maps. This would indicate that the proposed railway lines plans were never brought to fruition. Conversely the absence of a feature on the map does not mean it did not exist.
35. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.

### **Burden and Standard of Proof**

36. In this instance the applicable section of the Wildlife and Countryside Act 1981 is section 53(3)(c)(i). This section relates to the discovery of evidence of two separate events:
  - (a) Evidence that a right of way which is not shown on the map subsists; or
  - (b) Evidence that a right of way which is not shown on the map is reasonably alleged to subsist.
37. Thus, there are two separate tests, one of which must be satisfied before a Modification Order can be made. To answer either question must involve an evaluation of the evidence and a judgement on that evidence.
38. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
39. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land must by definition be less than that which is necessary to establish the right of way "does subsist".
40. If the conclusion is that either test is satisfied then the Definitive Map and Statement should be modified.

### **Summary**

41. Tithe Maps submitted on their own are not reliable as evidence for a modification order. They make no distinction as to whether or not a route is public or private as stated in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council [1937] 2 KB 77*. However they may be useful with other supporting evidence. The Tithe Map of Marston Parish 1839 does show the alleged route.
42. The Tithe Map was submitted alongside deposited railway plans and records. The alleged route is shown on the all of the deposited railway maps and is also noted in the accompanying books of reference. This would indicate that the route did exist in some capacity.

43. The deposited railway plans indicate that there was a public footpath which follows the same way as the claimed route. Even though the railway was never constructed it was important that the railway surveyors be as accurate as possible with their plans due to the financial implications they could have had.
44. As the footpath is shown on the railway plans as public this is strong evidence that it was indeed a public right of way as footpaths were not automatically maintainable at public expense and the surveyor of highways could have objected to its inclusion within the records.

### **Conclusion**

45. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
46. When the totality of the evidence is considered it is finely balanced as to whether it would satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public footpath subsists.
47. However when the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
48. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of footpath, which is not shown on the map and statement is reasonably alleged to subsist.
49. It is the opinion of your officers that the County Council should make a Modification Order to add the alleged public footpath marked A – B on appendix B to the Definitive Map and Statement of Public Rights of Way.

### **Recommended Option**

50. To accept the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

51. To decide to reject the application to add a public footpath to the definitive map from Marston Lane to Public Bridleway No.8, Hopton and Marston Parish

### **Legal Implications**

52. The legal implications are contained within the report.

### **Resource and Financial Implications**

53. The costs of determining applications are met from existing provisions.
54. There are, however, additional resource and financial implications if decisions of the Registration Authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

### **Risk Implications**

55. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment, Food and Rural Affairs under Section 14 of the Wildlife and Countryside Act 1981. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that the County Council should not have made the Order and decide not to confirm it.
56. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.
57. Should the Council decide not to make an Order the applicants may appeal that decision to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.
58. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened.
59. There are no additional risk implications.

### **Equal Opportunity Implications**

60. There are no direct equality implications arising from this report.

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J Tradewell

Director of Corporate Services

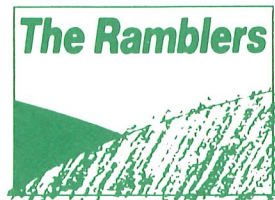
**Report Author: Dale Garside-Chell**

Ext. No:

**Background File: LG607G**

## INDEX TO APPENDICES

Appendix A	Copy of application from Mr Martin Reay
Appendix B	Copy of plan showing alleged route
Appendix C	Marston Tithe Award Map (tracing) – (1839)
Appendix D	Deposited Railway plan book of reference – (1844)
Appendix E	Deposited Railway plan accompanying maps (1844)
Appendix F	Deposited Railway plan accompanying maps (1845)
Appendix G	Deposited Railway plan book of reference (1845)
Appendix H	Landowner questionnaires from Mrs Stubbs, Mr & Mrs Baker and Mrs Brandon



Staffordshire Area

Miss Sofolame  
Mr. Sidhu  
County Clerks.

Martin Reay  
53 Tithe Barn rd  
Stafford  
ST163PL  
7/4/99

Dear Miss Sofolame, Mr Sidhu,

APPLICATIONS TO ADD 2 FOOTPATHS TO THE  
DEFINITIVE MAP AT BEACONSIDE AND MARSTON

Please accept the 2 enclosed applications to add the above paths.

Both deposited railway plans show the entire lengths of both footpaths.

The photocopy of Q/Rum/48 plan does not show the paths very clearly. Where the path runs through numbers

29+30 the photocopy has not clearly highlighted the course of the path.

However, this particular area is enlarged

on the deposited plan - The dash  
leads from 29+30 up to the enlarged  
area top left.

The Marston Tithe Map shows a  
dash along the route at the paths.  
This is the symbol for a footpath.

Yours sincerely

Martin Healy

(Local Footpath Secretary - Stafford +  
Horton)

FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of HORTON + MARSTON

To: Staffordshire County Council  
PO Box 11  
County Buildings  
Stafford  
ST16 2LH

I/We M. REAY  
of 53 WHITE BARN RD  
STAFFORD

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by

\* deleting the (footpath)(bridleway)(byway open to all traffic)  
from ~~.....~~ to ~~.....~~

\* adding the (footpath)(bridleway)(byway open to all traffic)  
from MARSTON LN to BRIDLEWAY AT MARSTON

(upgrading)(downgrading) to a (footpath)(bridleway)(byway open to all traffic) the (footpath)(bridleway)(byway open to all traffic)  
from ~~.....~~ to ~~.....~~

(varying)(adding to) the particulars relating to the (footpath)(bridleway)  
(byway open to all traffic) from ~~.....~~ to ~~.....~~  
by providing that ~~.....~~

and shown on the map accompanying this application.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application

\*delete as appropriate.

List of Documents

DEPOSITED RAILWAY PLANS

Q/Rum / 148 (1844)

Q/Rum / 223 (1845)

MARSTON TITHE D834/14/15/4 (1839)

Date 7/4 19 99 signed..... M. Neal.....

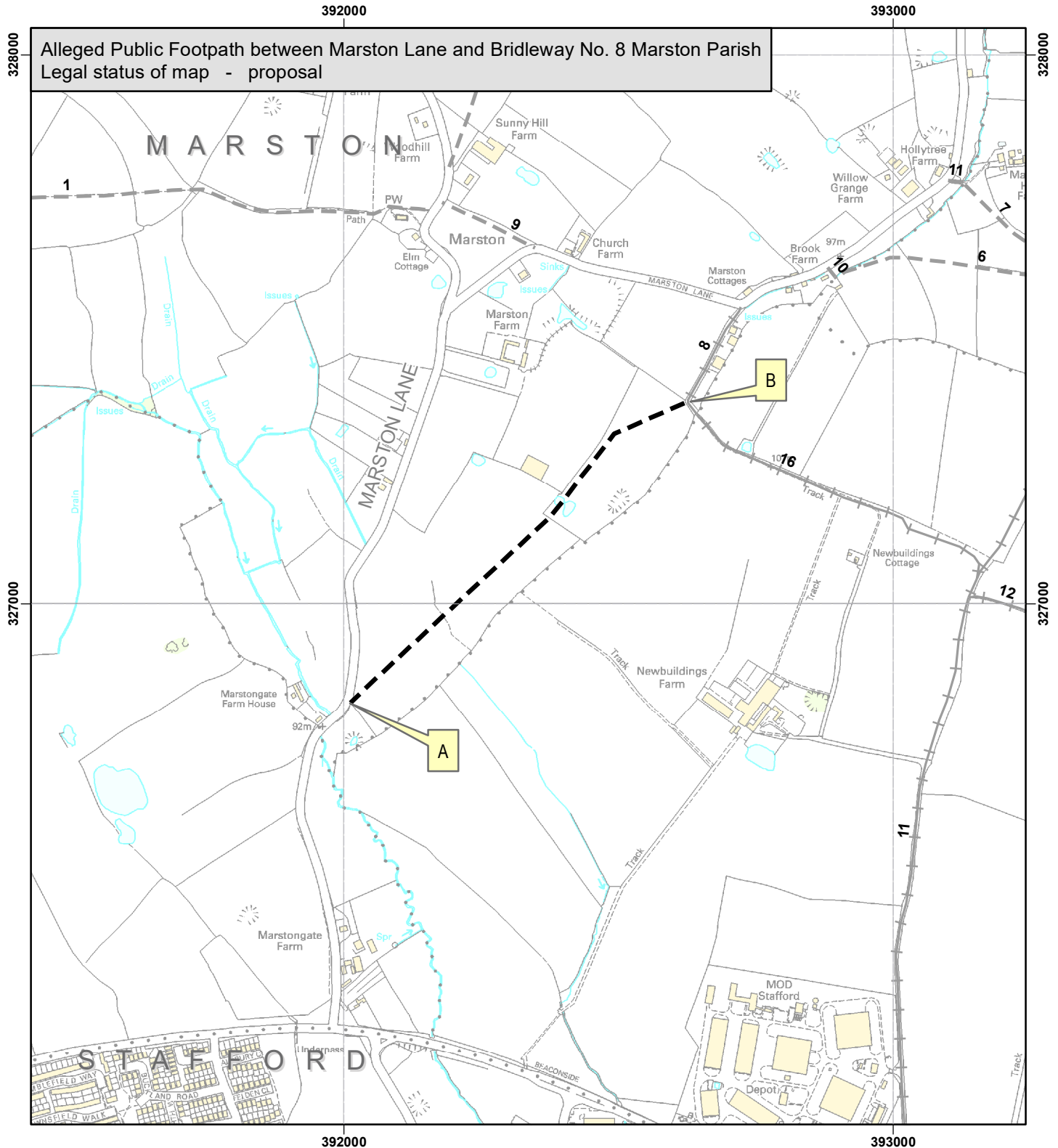


AFFORD





Wildlife and Countryside Act 1981, Section 53A(2)(b)  
 Marston Parish, Staffordshire,  
 Proposed Addition of Footpath to  
 Definitive Map and Statement.



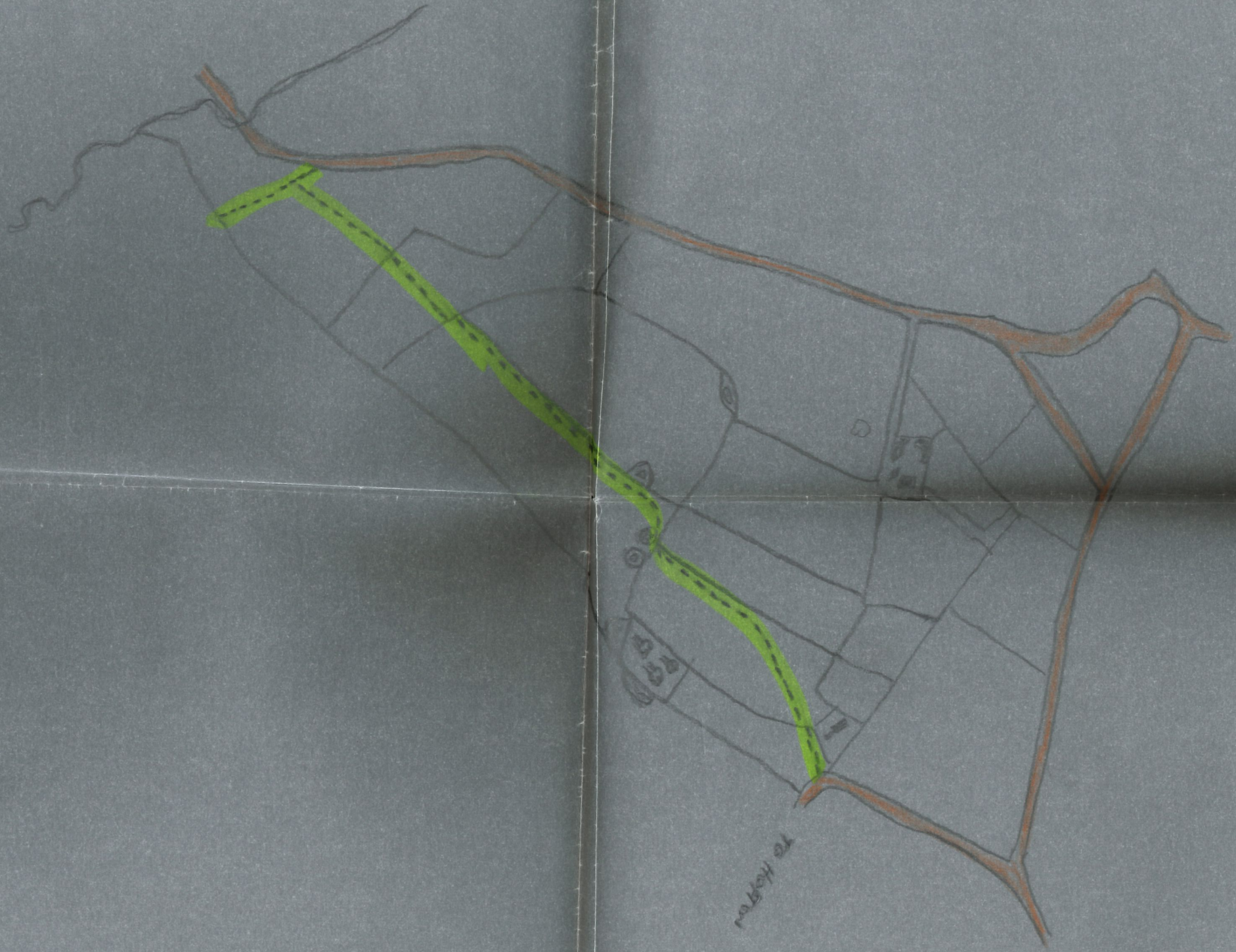
Map created at the scale of 1:10,000  
 (facsimiles may vary)

- Right of Way to be added ( A - B )
- Rights of Way Unaffected
- Footpath
- Bridleway

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 Produced by Staffordshire County Council, 11/07/2019.



D 834 / 14/15/14 (1830)  
TITHE MAP - MARSTON





## EXTRA PAROCHIAL PLACE OF YARLET, COUNTY OF STAFFORD.

No Property is intended to be taken where not shewn upon the Plan:  
 Or if shewn upon the Plan, not numbered thereon:  
 Or if numbered thereon, not contained and described in the Book of Reference.  
 Where Property is situate in more than one Parish, the number and description are limited in each Parish to the particular portion of the Property comprised in such Parish:  
 And where lands are shewn upon the Plan, either wholly or partially, and comprise buildings either shewn or not shewn thereupon, the number upon the Plan designates only such part of the Property as is described in the Book of Reference, and as is within the limits of deviation denoted upon the Plan.

No. on Plan.	Description of Property.	Owner or Reputed Owner.	Lessee or Reputed Lessee.	Occupier.
1	Brook	Honourable Edward Jervis.		
1A	Field	Thomas William Giffard.		
2	Field	Sarah Tunnicliff		Simon Myatt.
3	Field	Sarah Tunnicliff		Sarah Tunnicliff.
3A	Field	Sarah Tunnicliff		Sarah Tunnicliff.
4	Field	Sarah Tunnicliff		William Swift Woolfe.
5	Field	Sarah Tunnicliff		William Swift Woolfe.
6	Field	Sarah Tunnicliff		William Swift Woolfe.
7	Field	Sarah Tunnicliff		William Swift Woolfe.
8	Field	Sarah Tunnicliff		William Swift Woolfe.
9	Field	Sarah Tunnicliff		William Swift Woolfe.
10	Field	Sarah Tunnicliff		William Swift Woolfe.

## TOWNSHIP OF MARSTON, PARISH OF ST. MARY, STAFFORD, COUNTY OF STAFFORD

1	Field	Thomas William Giffard		
1A	Occupation Road	Thomas William Giffard.		Simon Myatt.
2	Field	Thomas William Giffard		
3	Field	Thomas William Giffard		Simon Myatt.
4	Field	Thomas William Giffard		Simon Myatt.
5	Field	Thomas William Giffard		Simon Myatt.
6	Field and Bridle Road	Thomas William Giffard		Simon Myatt.
7	Plantation	Thomas William Giffard		Simon Myatt.
8	Field and Shed	Thomas William Giffard		Simon Myatt, as to Field.
9	Field	Thomas William Giffard		Simon Myatt.
10	Field	Thomas William Giffard		Simon Myatt.
11	Field	Thomas William Giffard		Simon Myatt.
12	Field	Thomas William Giffard		Simon Myatt.
13	Field	Thomas William Giffard		Simon Myatt.
14	Field	Thomas William Giffard		Thomas Greensmith.
15	Field	Thomas William Giffard		Peter Lowe.
16	Field	Thomas William Giffard		Thomas Greensmith.
17	Field	Thomas William Giffard		Thomas Greensmith.
18	Public Highway	Thomas William Giffard		Peter Lowe.
19	Field	Surveyor of the Highways.		Peter Lowe.
20	Field	Thomas William Giffard		
21	Field	Thomas William Giffard		Peter Lowe.
22	Field	Thomas William Giffard		Peter Lowe.
23	Occupation Road	Thomas William Giffard		Peter Lowe.
24	Field	Thomas William Giffard		Peter Lowe.
25	Field	Thomas William Giffard		
25A	Garden	Thomas William Giffard		Peter Lowe.
26	Cottages Gardens and Appurtenances	Thomas William Giffard		Peter Lowe.
27	Field and Public Footpath	Thomas William Giffard		Peter Lowe.
27A	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
28	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
29	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.
30	Field and Public Footpath	Thomas William Giffard		Peter Lowe, as to Field.





Q/Rum/148 (1844)

TOWNSHIP OF MARSTON, PARISH OF ST. MARY, STAFFORD, COUNTY OF STAFFORD—  
continued.

No. on Plan.	Description of Property.	Owner or Reputed Owner.	Lessor or Reputed Lessee.	Occupier.
31	Cottages Gardens and Appurtenances	Thomas William Locker.		Edward James, Henry Tatton, and John Lowndes. Thomas William Locker.
32	Field	Thomas William Locker.		
33	Public Highway	Surveyor of the Highways.		
34	Field	The Householders being Parishioners within the Borough of Stafford		The Householders being Parishioners within the Borough of Stafford.
35	Field	The Householders being Parishioners within the Borough of Stafford		The Householders being Parishioners within the Borough of Stafford.

TOWNSHIP OF HOPTON AND COTON, PARISH OF ST. MARY, STAFFORD,  
COUNTY OF STAFFORD.

1	Field	Earl Talbot		William Perkin.
2	Field	Earl Talbot		William Perkin.
3	Field	Earl Talbot		William Perkin.
4	Field	Earl Talbot		William Perkin.
5	Field and Public Footpath	Earl Talbot		William Perkin, as to Field.
6	Field	Earl Talbot		William Perkin.
7	Brook	Earl Talbot.		

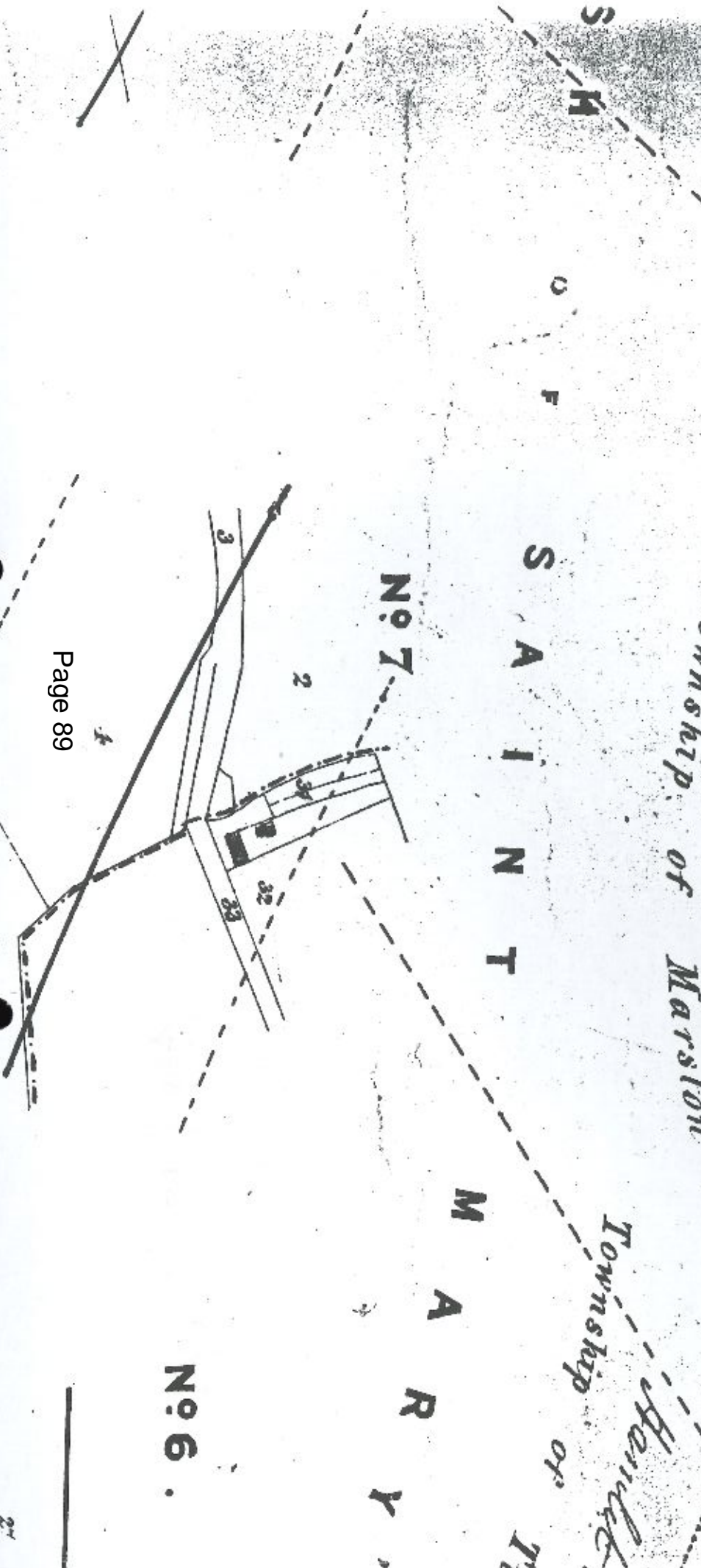
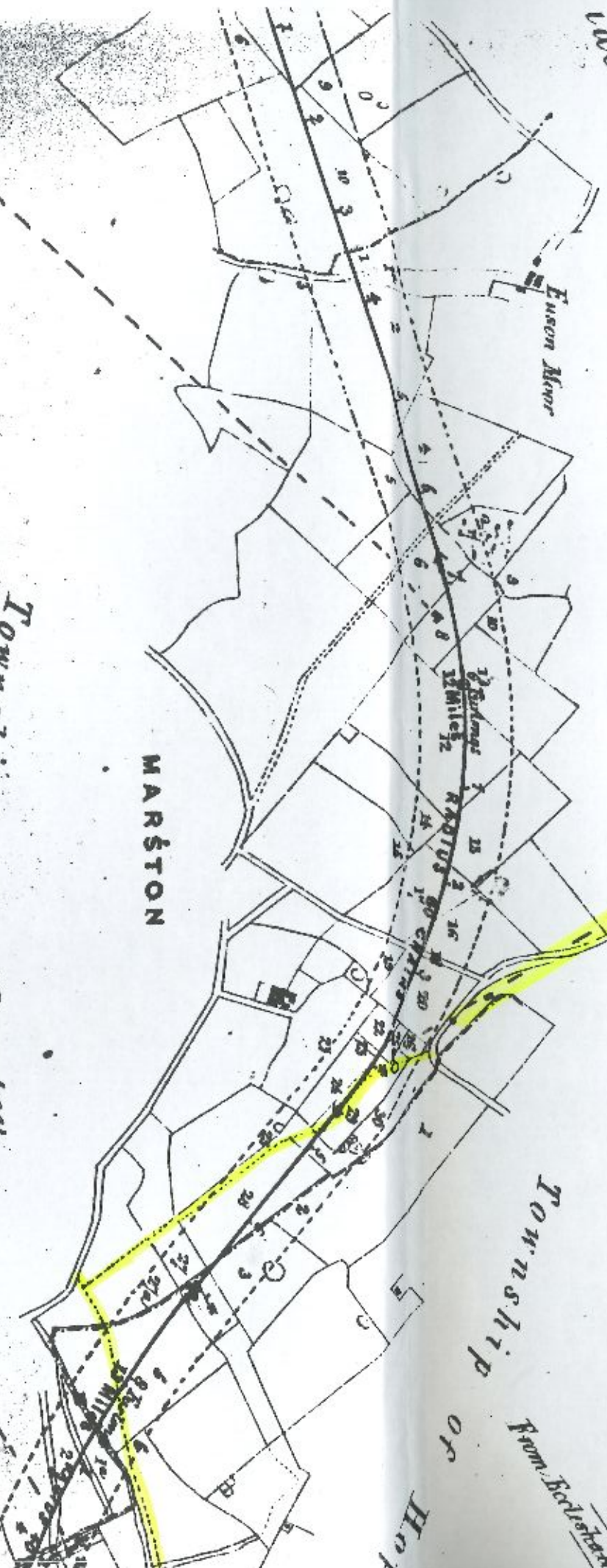
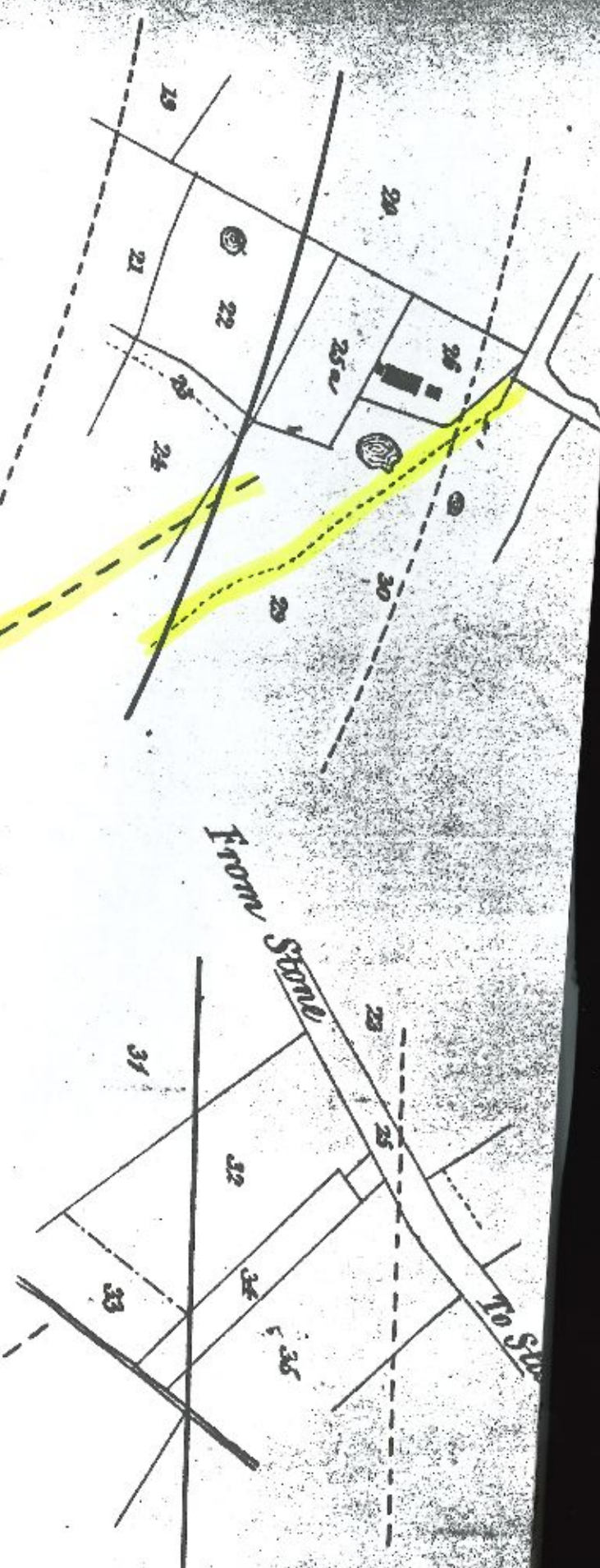
EXTRA PAROCHIAL PLACE OR TOWNSHIP OF TILLINGTON, PARISH OF ST. MARY,  
COUNTY OF STAFFORD

No. on Plan. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42

Field Gar. Gar. Field



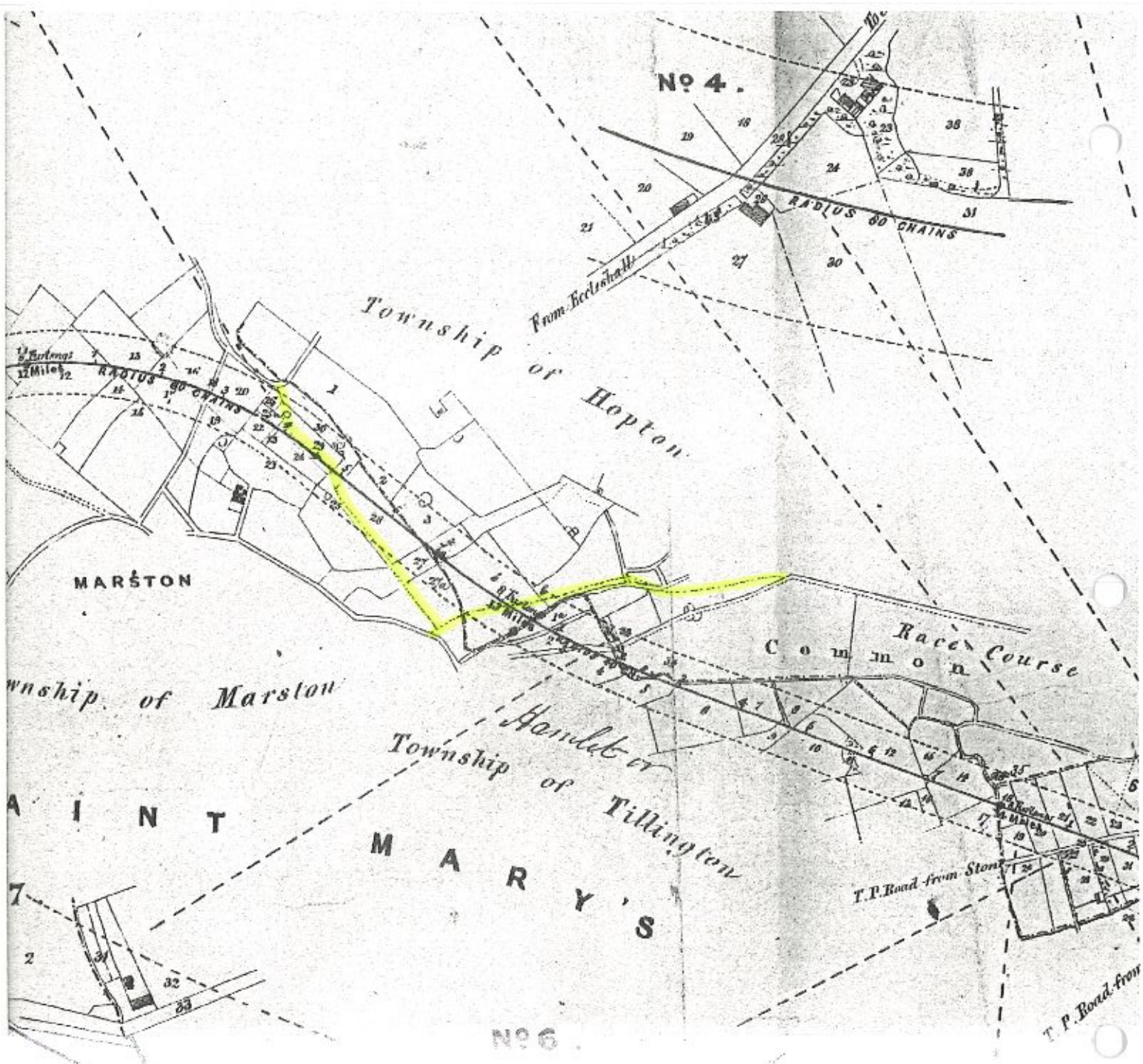
extra  
ial



No 7

No 6





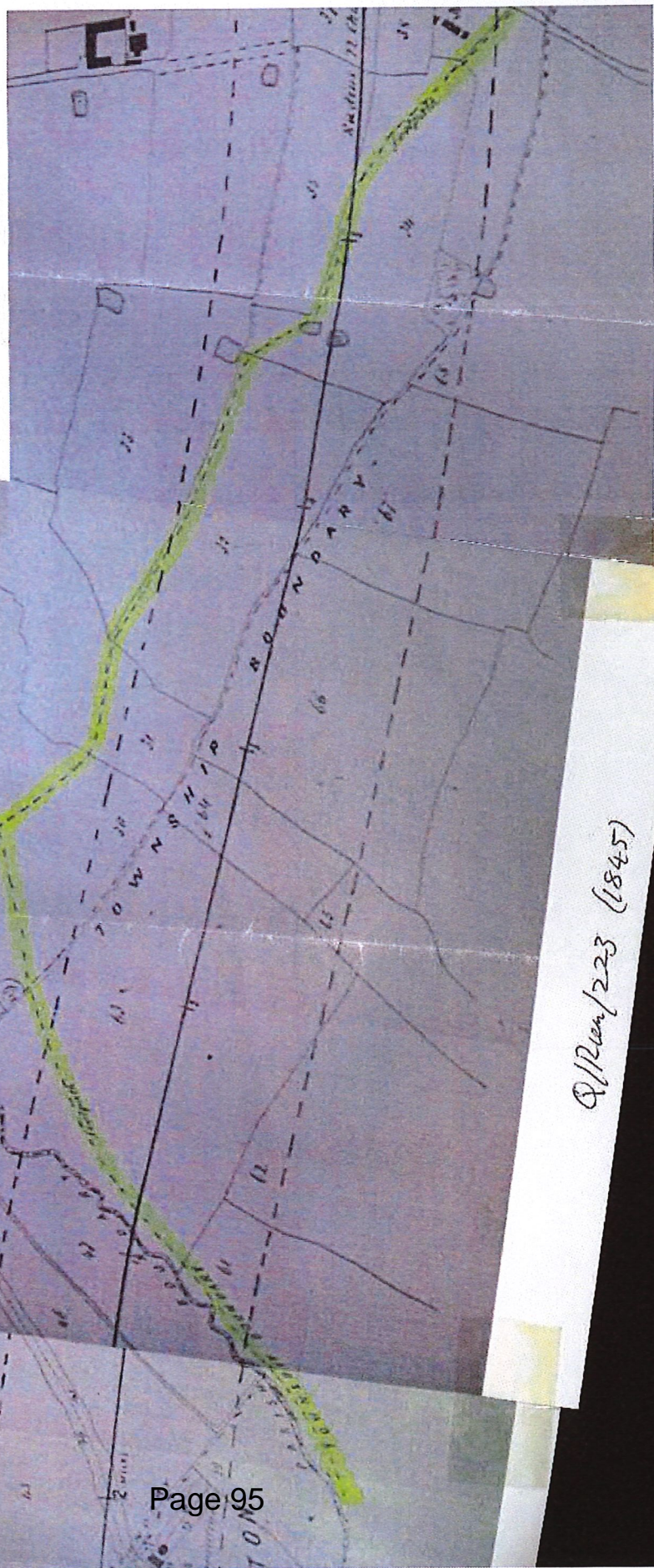
Q/Rum/148 (1844)











Q/Ren/223 (1845)



Number	Description	Owner
61	Wells and public foot path	As to the field Charles Chetwood Evel Talbot
62	Wells	As to the foot path the charge of the Highways for the Township Charles Chetwood Evel Talbot

Q/Ren/223 (1845)



Township of Hutton and Colton, Parish of Saint Mary's		
Copy No.	Description	Owner
63	Field and public footpath	As to the Field Charles Cheekwood Earl Dalbot
64	Field	As to the footpath the Surveyor of the High ways for the Township Charles Cheekwood Earl Dalbot
65	Field	ditto
66	Field	ditto
67	Field	ditto
68	Field and pond	ditto

R/Ren/223 (1845)



Township of Madison, Parish of Saint Mary.

Number	Description	Owner
31	Field and public foot paths	ditto
32	Field and public foot paths.	ditto
33	Field and two feet	Thomas William Giffard
34	Field two feet plantation and two public foot paths	As to the fields feet and plantation Thomas William Giffard As to the public foot paths The Surveyor of the Highways for the Township
35	Field and public foot	

As to the public  
F. P. the Surveyor of  
the Highway for the  
Townships.

Q/Rum/223  
(1845)





and Garden Bake House	ditto
28	ditto
29 Field	ditto
30 Field pit and two Public footpaths	As to the field and pit - Thomas William Poffard
	As to the Public Foot paths. the Surveyor of the Highways for the Parish

Q/Ramp223 (1845)



LJ6079 / LJ6080

PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness ... LESLEY BARBARA GRANDON .....  
(Block Capitals please)

Address ... NEW BUILDINGS FARM, HOPTON, STAFFORD .....  
STIR 9TH .....

Telephone No: ... 01785 - 252585 .....

Date of Birth ... 01 / ... 06 / ... 1954 Occupation ... FARMER / BIOCHEMIST .....

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

YES /  NO

2. Have you received a Notice of application for a Modification Order?

YES /  NO

3. Would you be willing to allow my assistant to make a site inspection?

YES /  NO

4. Do you consider the route to be public?

YES /  NO

5. How long have you had an interest in the land affected by the application. .... 20 ..... years.

Personally 20 yrs - family interest since 1930's .....

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner? - WITH MY HUSBAND OF PART OF THE LAND. B → C.  
(b) A joint tenant, - WITH MY HUSBAND OF SECTION OF ALLEGED PATH  
if so, with whom? RUNNING FROM BEACONSIDE. A → B. SEE PLAN.  
(c) a tenant in common,  
if so, with whom?  
(d) A tenant for life under the Settled Land Act,  
if so, with whom?

Tenancies and Leases

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

Tenant of land parts A → B on Plan. Full agricultural tenancy. A path would limit the usefulness of this land & devalue it.

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO. WE BELIEVE THE LAND TO BE PRIVATE, AND HAVE NEVER HAD CAUSE TO ERECT SUCH SIGNS.

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO. THERE IS NO SUCH PATH, SO NO ONE HAS EVER MADE SUCH A REQUEST.

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO. HOWEVER, THERE IS NO ROUTE ACROSS THIS ALLEGED PATH AS IT HAS NEVER BEEN USED. THERE ARE THICK HEDGES, ETC.

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO.

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."

NO. THIS PATH IS A COMPLETE MYSTERY TO ANYONE WITH KNOWLEDGE OF THIS LAND WITHIN 3 GENERATIONS.

12. Do you have any documents which show this as a private right of way or giving details of its closure?

NO. THERE IS NO PATH OF ANY DESCRIPTION ON ANY DOCUMENTS WE HAVE, INCLUDING OLD MAPS AND SALE PARTICULARS.

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary?

YES !!!

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

Signature... L. B. Brandon

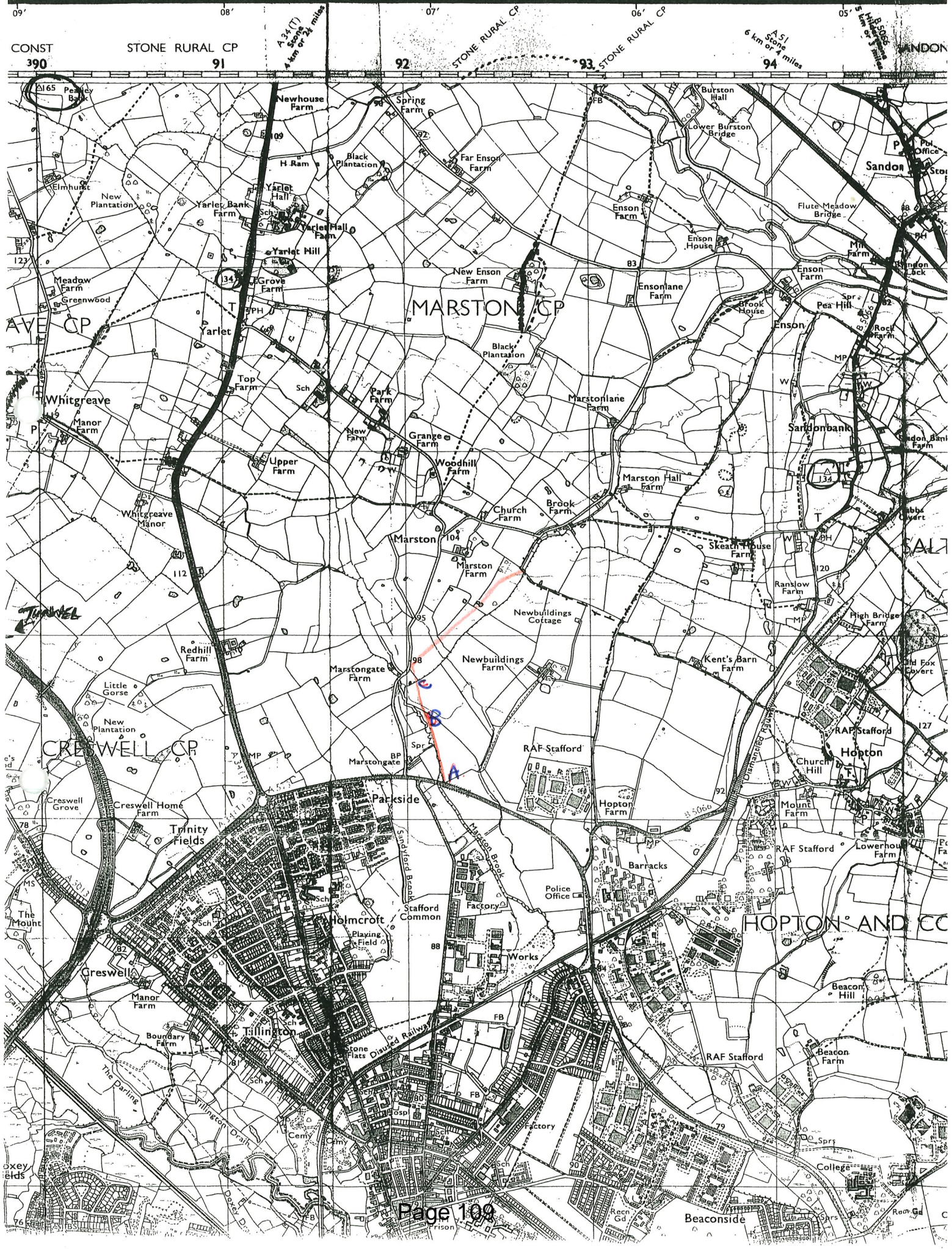
Person taking this statement ... L. B. BRANDON

Date ... 21.5.99

We have three ~~old~~ paths on the farm, all of considerable length. They are on the definitive map & we have never questioned their existence or use by the public. We find the current situation extremely worrying and upsetting. We do not understand how it can be possible for anyone to conjure up paths from no-where in this way.



STAFFORD







PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier  
of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness ....Mr. & Mrs. J. P. BAKER.....(TRUSTEES).....  
(Block Capitals please)

Address .....LUDSTONE HOUSE.....  
.....LUDSTONE CLAVERLEY.....  
.....WOLVERHAMPTON WV5 7DE.....

Telephone No: ....01746 710574.....

Date of Birth ....25./...05...../...1926.. Occupation ...RETIRED.....  
25      02      1925

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

EXTENT OF OWNERSHIP AS INDICATED ON PLAN  YES/ NO  
ATTACHED HERETO

2. Have you received a Notice of application for a Modification Order?  YES/ NO

3. Would you be willing to allow my assistant to make a site inspection?  YES/ NO  
SUBJECT TO TENANTS AGREEMENT

4. Do you consider the route to be public?  YES/ NO

5. How long have you had an interest in the land affected by the application. ....OVER 60...years.  
(Mrs BAKER)

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner? — YES
- (b) A joint tenant,  
if so, with whom?
- (c) a tenant in common,  
if so, with whom?
- (d) A tenant for life under the Settled Land Act,  
if so, with whom?

Tenancies and Leases

NO

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

---

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO

RIGHT OF WAY DOES NOT EXIST

---

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO

NOT APPLICABLE

---

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO

NOT APPLICABLE

---

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO

NOT APPLICABLE

---

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NO

RIGHT OF WAY DOES NOT EXIST

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."

12. Do you have any documents which show this as a private right of way or giving details of its closure?

No

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary?

No

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

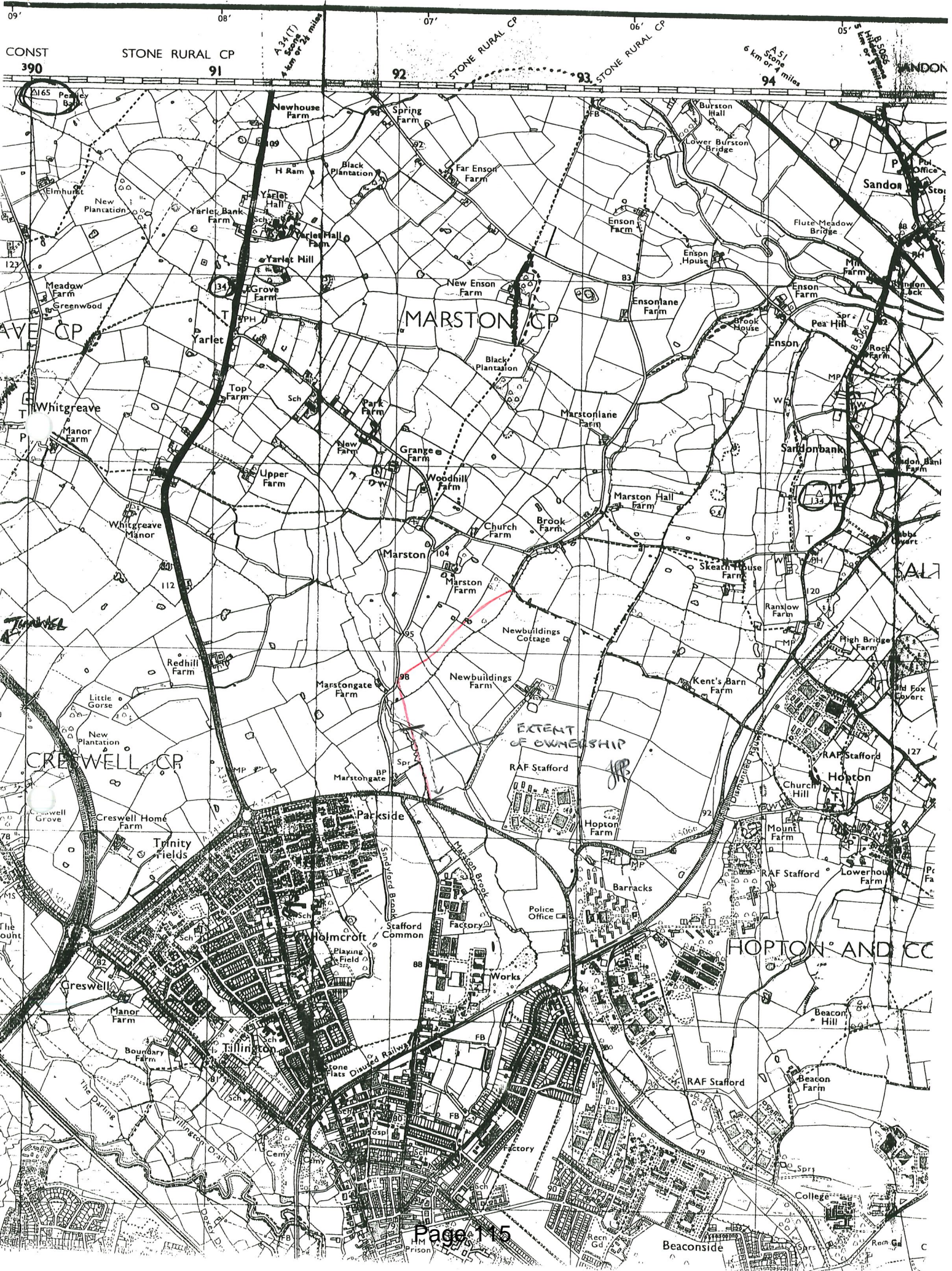
Signature..... *J.P. Bale*.....  
*D. Bale*

Person taking this statement .....

Date ...17...05...99.....



# AFFORD





LJ6070 / LJ6080

PUBLIC RIGHT OF WAY EVIDENCE FORM

Questionnaire to be completed by the owner/occupier of land over which there is an alleged public right of way

Important Note

The object of this enquiry is simply to reach the truth of the matter, whatever it may be. Witnesses are therefore asked to answer the questions as fully as possible and not to keep back any information, whether for or against the claimed public right of way. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness MRS. FRANCES GAIL STUBBS  
(Block Capitals please)

Address MARSTON FARM  
MARSTON LANE  
STAPFORD

Telephone No: 01889 508 227

Date of Birth 18/6/44 Occupation TEACHER / FURTHER EDUCATION

1. Do you own or occupy any of the land affected by the proposal or adjacent to it? If the answer is YES please answer questions 2 to 13 and indicate on one copy of the plan the extent of ownership. If the answer is NO please, if possible, advise the names and addresses of the landowners/occupiers.

YES/NO

2. Have you received a Notice of application for a Modification Order?

YES/NO

3. Would you be willing to allow my assistant to make a site inspection?

YES/NO

4. Do you consider the route to be public?

YES/NO

5. How long have you had an interest in the land affected by the application. 39.....years.

6. Please state the nature of your interest in the land over which the alleged public right of way is claimed:

Freehold Ownership Are you:-

- (a) Sole freehold owner?
- (b) A joint tenant,  
if so, with whom?
- (c) a tenant in common,  
if so, with whom?
- (d) A tenant for life under the Settled Land Act,  
if so, with whom?

Tenancies and Leases

are you a tenant or lessee of the land? If so, please state the nature of your interest as tenant or lessee.

N/A

7. Have you, or any previous owner/tenant of the land, erected any "private" or "trespassers will be prosecuted" or similar signs on or near the alleged public right of way? If so please state when and where these signs were erected, what they said, whether they are still in place and show their position on the attached plan.

NO

8. Have you ever given anybody permission to use the path? If so, when and to whom?

NO

9. Have you, or any previous owner of the land, taken steps to prevent the public's access by locking gates or erecting some other form of obstruction along the path? If so, when, where and for how long was the path obstructed?

NO

10. Have you ever stopped or "turned back" anybody found using the path? If so, please give full details.

NO

11. Have you taken any other steps to prevent the presumed dedication of the path as a public right of way?

NO

NOTE - Section 31(1) of the Highways Act 1980 states that:-

"Where a way over any land, other than a way of such a 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 and 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."



12. Do you have any documents which show this as a private right of way or giving details of its closure? NO

13. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law if necessary? YES

I certify that, to the best of my knowledge and belief, the facts I have stated are true.

Signature... F. Q. Stubbs

Person taking this statement ... F. Q. STUBBS

Date 28.5.99

There are people who were born & have lived in this village for over 50 years up to 76 yrs who can never remember a footpath in the area shown.  
My father-in-law who moved into this farm in 1903 always claimed that there were no footpaths in this area at all. It is a farm with a lot of road side fields with current maintained roads, which were always used by the villagers.



Dear Staffordshire County Council

**Re: Definitive Map Modification Application Numbers LJ607G and LJ608G**

Thank you for sending me copies of the draft reports for the above numbered claims, recommending to the Countryside and Rights of way Panel that Orders are published for both.

Concerning the landowner comments, that the route is not depicted on Ordnance Survey maps, please ensure that the Countryside and Rights of Way Panel Members are provided with my following input and that it is included within the papers to be considered by the Panel:

1) I accept and have always understood that the application routes in this case are not shown on Ordnance Survey maps. However, the law is clear that if a path was once a public highway it is always a public highway; unless stopped up by legal process. It can be reasonably presumed that, sometime after the 1844 and 1845 Railway Plans were produced, that the route either fell into disuse or was sparsely used and that no clear evidence of the track existed for Ordnance Survey cartographers to record. However, as the Panel will understand, lack of use or disuse of a public path cannot extinguish any public highway rights over it. Only a legal event or legal order can extinguish or remove public highway rights and there is no evidence of any such event or order relating to these paths.

2) The paths in contention are clearly depicted on the 1839 Tithe Award Map I submitted with application numbers LJ607G and LJ608G. Although any paths depicted on a Tithe Award Map do not confirm the existence of any public user rights over them, they do provide evidence of the location and existence of any paths on the ground. The Marston 1835 Tithe award map depicting the claim routes, together with the Railway Plans of 1844 and 1845, provide corroborating evidence for the location of routes to be entered on any legal Order Plan required to add the paths to the definitive map.

3) Because of the scrutiny that Railway Plans were subjected to they are regarded as strong evidence of public rights, over any paths or roads depicted on them to be public in nature:

- The statutory process required for any railway schemes was extremely exacting and the book of reference and plans needed to be of a high standard. They have been admitted by the Courts in evidence of public rights of way claims.
- Firstly, railway schemes were open to scrutiny by any affected or involved parties. So, the Surveyor of Highways would not have wanted to accept unwarranted maintenance responsibility for any routes incorrectly depicted on a plan to be in the ownership of the Surveyor of Highways or public in nature if they were not.
- Secondly, the Parish Councils would not have wished to see parishioners lose rights by an error on a railway plan that failed to depict routes as public highways if they were regarded as public at the time.
- Thirdly, landowners would not have wanted to unnecessarily cede control of their land to another party and would have insisted correction of any railway plans that wrongly depicted public rights over private land that had no such rights.

4) No evidence has been found or advanced to rebut the public highway rights depicted on the railway plans that, by way of statutory process, would have been heavily scrutinised by at least three separate interested and involved parties. Accordingly, there is strong evidence that public highway rights existed

over the claim routes, which survive to this day, with no conflicting evidence or incontrovertible evidence to the contrary.

Yours sincerely,

Martin Reay  
53 Tithe Barn Rd  
STAFFORD  
ST16 3PL

Local Members' Interest	
Jeremy Pert	Stafford - Eccleshall

**Countryside and Rights of Way Panel -**

**Wildlife and Countryside Act 1981**

**Application for a Public footpath from A5013 near Walton Grove to B5405 leading to footpath 0.1592 Seighford**

**Report of the Director of Corporate Services**

**Recommendation**

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to conclude that a Public Footpath which is not shown on the Definitive Map and Statement, on the balance of probabilities, does subsist along the route shown marked A to B and C to E on the plan attached at Appendix A to this report and should be added to the Definitive Map and Statement of Public Rights of Way for the District of Stafford Borough as such.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix A and marked A to B and C to E to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Footpath.

**PART A**

**Why is it coming here – what decision is required?**

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 (“the 1981 Act”). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council’s Regulatory Committee (“the Panel”). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.
2. To consider an application attached at Appendix B from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the area by adding an alleged Public Footpath from the A5013 near Walton Grove to B5405 leading to footpath 0.1592 under the provisions of Section 53(3) of the Wildlife and Countryside Act 1981. The lines of the alleged Public Footpath which are the subject of the application are shown highlighted and marked A – B and C-E on the plan attached as Appendix A.
3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

**Evidence submitted by the applicant**

1. The applicant has submitted in support of his claim the following documents:
  - a) evidence from the 1910 Finance Act which consists of a plan and an extract from the accompanying Book of Reference. A copy is attached at Appendix C.
  - b) a Deposited Railway Plan which is dated 1845 and accompanying Book of Reference. A copy is attached at Appendix D.
  - c) a copy of the Walton (Eccleshall) Tithe Award Map. A copy is attached at Appendix E.
  - d) a copy of a Seighford Tithe Award Map. A copy is attached at Appendix F.
  - e) a Deposited Railway Plan which is dated 1863 and accompanying Book of Reference. A copy is attached at Appendix G.
  - f) a 25in to 1 mile Ordnance Survey Map dated 1880's. A copy is attached at Appendix H.
  - g) a copy of the parish survey cards for Eccleshall. A copy is attached at Appendix I.
  - h) a extract of the Surveyors of Highways report book from 1902. A copy is attached at Appendix J.

#### **Evidence submitted by the Landowners**

2. The Council had written to the land owners who are affected by this application at the time the application was made, and responses were received. No evidence was provided in support or against the application other than to state that the landowner did not believe that the route was public at that time.
3. The landowners have since changed and the Council have written to them and to date, no response has been received.

#### **Evidence discovered by the Council**

4. It appears that part of the claimed route between points B and C on the attached map formed part of a previous application that has already been determined by the Countryside and Rights of Way Panel. The part of the claimed route between B and C on the Plan therefore does not need to be considered as part of this application.

#### **Comments received from statutory consultees**

5. The Council have written to the statutory consultees and to date no responses have been received either in support or against the application.

#### **Comments on Evidence**

6. The evidence provided by the Finance Act material shows that tax relief was granted for footpaths that crossed the plots referred to. An examination of the maps shows that there are a number of footpaths in Plots 804, 952 and 994 and the routes are annotated on the accompanying map. There is reference made in the book of reference to public footpaths through Plots 804, 952 and 994.
7. The 1910 Finance Act was enacted in order to allow for tax to be levied on land based upon the difference between its 1910 valuation and the amount that resulted from any eventual sale or transfer. It was therefore important to the landowner that any deductions for factors that could affect the value were properly recorded and accounted for. From the Inland Revenue perspective, it was important to ensure that any false claims were not made, and reductions granted which should not be. There were penalties for making false claims which might have led some owners to avoid making any claim in case these were not substantiated.
8. The field book entries were originally compiled by entering into them the information provided by the landowner and would include any claims for easements, rights of

way etc. For Plots 804, 952, 994 it would seem that the landowner did make a claim for footpaths.

9. For all three plots the valuers did note that there were public footpaths and made a note on the field book regarding such. They granted relief for the paths that crossed the land which they would not have done unless satisfied of their existence. The whole purpose of the legislation was to raise taxes and their role was to maximise the amount levied and only allow relief where such was proven. The claimed route is one of the footpaths shown on the plan and the field book entries to appear to detail the footpaths.
10. The fact that an allowance was made provides evidence that at that point in time the inspector was satisfied that the claimed routes were of the type to attract tax relief. It does say in the field book entry that there are public rights of way or user or refers to public footpaths and thus provides evidence that they were public highways with a recognised status of public footpath.
11. The applicant submitted a tracing of a deposited Railway Plan dated 1845. The plan shows a route running from Seighford Parish to Walton, the relevant part of which is numbered 1a. This part of the route falls between points B and C of the claimed route and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
12. The applicant has also submitted a further Railway Plan dated 1863. This plan shows the part of the claimed route which runs to the south of Onecote Covert. This part of the route is shown as a dotted line on the plan.
13. Deposited railway plans are good evidence of a public route, although not conclusive, as they were mainly concerned with the ownership of land. The deposited Railway Plan dated 1863 shows only part of the claimed route.
14. In the case of highways the Book of Reference often, but not always, lists who was responsible for the maintenance of a route, the status and the nature of the rights over it. In the case of public highways the landowner or person responsible for maintenance may be listed as the Surveyor of Highways which would indicate the way was public. The Surveyor of Highways may also be listed as jointly liable with a landowner. This may be where the liability for one party is higher than the others.
15. The railway plan can be said to show that the Surveyor of Highways did not object to the designation of the routes when they had the opportunity to do so. The Surveyor of Highways would appear to be of the opinion that the route was a footpath that was publicly maintainable.
16. The Walton Tithe Map submitted, appears to show the part of the claimed route which falls between points B and C and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
17. The Seighford Tithe Map submitted, appears to show the part of the claimed route which falls between points B and C and as previously mentioned, has been already been determined and therefore does not need to be revisited in this application.
18. The applicant has also submitted an Ordnance Survey Map. Ordnance Survey Maps date back to the late 1800's and their purpose is to show physical features on, and the contours of, the ground. In so doing they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway. They do not distinguish between public and private rights of way however. A copy of this map is attached at Appendix H.

19. The evidential value of Ordnance Survey Maps has been considered by the courts to be limited solely to being evidence of whether there was a visible feature on the ground at the time of the survey.
20. Also submitted with the application was reference to the parish survey. Attached at Appendix I are the survey cards. The evidential worth of the parish survey is limited given that the evidence that supported the claim was simply because the route was known. The parish survey does appear to correspond to part of the claimed route.
21. The claim made for this footpath in the parish survey was objected to and consequently the claim could not be substantiated and so the route was not added to the Definitive Map and Statement.
22. The material given in support of this application is considered to be fresh evidence which was not considered at the time of the parish survey and therefore adjudication is required by the Panel on this fresh evidence.
23. The applicant has also submitted copies of the Surveyor of Highways report book from 1902. This extract details the footbridge between Onecote and Seighford. There does only appear to be one footpath between Onecote and Seighford and this is the claimed route.
24. A summation of the evidence highlights the fact that the Finance Act evidence, the Railway Plan and the Parish Survey cards refer to the existence of any public rights. The evidence of the older OS map points to the physical existence of a route which would support its existence at the time the valuation took place and give credence to the deduction in the former documents.

#### **Burden and Standard of Proof**

25. There is a two stage test, one of which must be satisfied before a Modification Order can be made. All the evidence must be evaluated and weighed, and a conclusion reached whether on the balance of probabilities either:
  - (a) the alleged right subsists or;
  - (b) is reasonably alleged to subsist.
26. Thus there are two separate tests. For the first test to be satisfied, it will be necessary to show that on the balance of probabilities the right of way does exist.
27. For the second test to be satisfied, the question is whether a reasonable person could reasonably allege a right of way exists having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land must be less than that which is necessary to establish the right of way "does subsist".
28. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.
29. With regard to the status of the routes, the burden is on the applicants to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement is wrong. The existing classification of the routes, as footpaths, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced then the existing classification of the routes as footpath on the Definitive Map and Statement prevails.

#### **Summary**

30. The application is made under under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(i) of the Act.



31. If one considers the test in the first part of the section, i.e. whether the way subsists and the balance of probabilities, the courts have indicated that this can be satisfied by considering whether it is more probable, or more likely, than not. As Lord Denning in the case of *Miller* said "*If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*"
32. In this instance your officers consider that the evidence is sufficient to satisfy the test set out when considered on the balance of probabilities. The evidence does show that there is a footpath along the claimed route but this evidence is sparse.
33. With regard to the second part of the relevant section, whether the route can be said to be reasonably alleged to exist, your officers consider that the test would also be satisfied.
34. There is no contrary evidence to it. As the judge set out in *ex parte Bagshaw* if it is reasonable to accept one set of evidence and reasonable to reject the other and by doing so the right could be said to exist then the test of reasonable allegation would be satisfied. Here there is only one set of evidence to weigh in the balance and with nothing to offset it can be reasonably alleged that the route subsists.

### **Conclusion**

35. When the totality of the evidence is considered it is clear that it would satisfy the test set out in s53(3)(b) above, that is on the balance of probabilities.
36. Even when the lesser test is considered, that of reasonable allegation as under s53(3)(c)(i) that is also satisfied. As the courts have indicated, if it is reasonable to take conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is evidence to show that the claimed route is a footpath, so it does clearly satisfy the test.
37. Taking everything into consideration it is apparent that from the evidence that, on the balance of probabilities, a right of way, with the status of footpath, which is not shown on the map subsists.

### **Recommended Option**

38. To accept the application based upon the reasons contained in the report and outlined above.

### **Other options Available**

39. To decide to reject the application.
40. To make an Order to add the route as a public footpath.

### **Legal Implications**

41. The legal implications are contained within the report.

### **Resource and Financial Implications**

42. The costs of determining applications are met from existing provisions.
43. There are, however, additional resource and financial implications if decisions of the Registration Authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

### **Risk Implications**

44. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of

State for Environment under Schedule 14 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.

45. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that the County Council should not have made the Order and decide not to confirm it. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.
46. Should the Council decide not to make an Order the applicants may appeal that decision to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.
47. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

#### **Equal Opportunity Implications**

48. There are no direct equality implications arising from this report.

---

J Tradewell

Director of Corporate Services

**Report Author:** Clare Gledhill

Ext. No: 854935

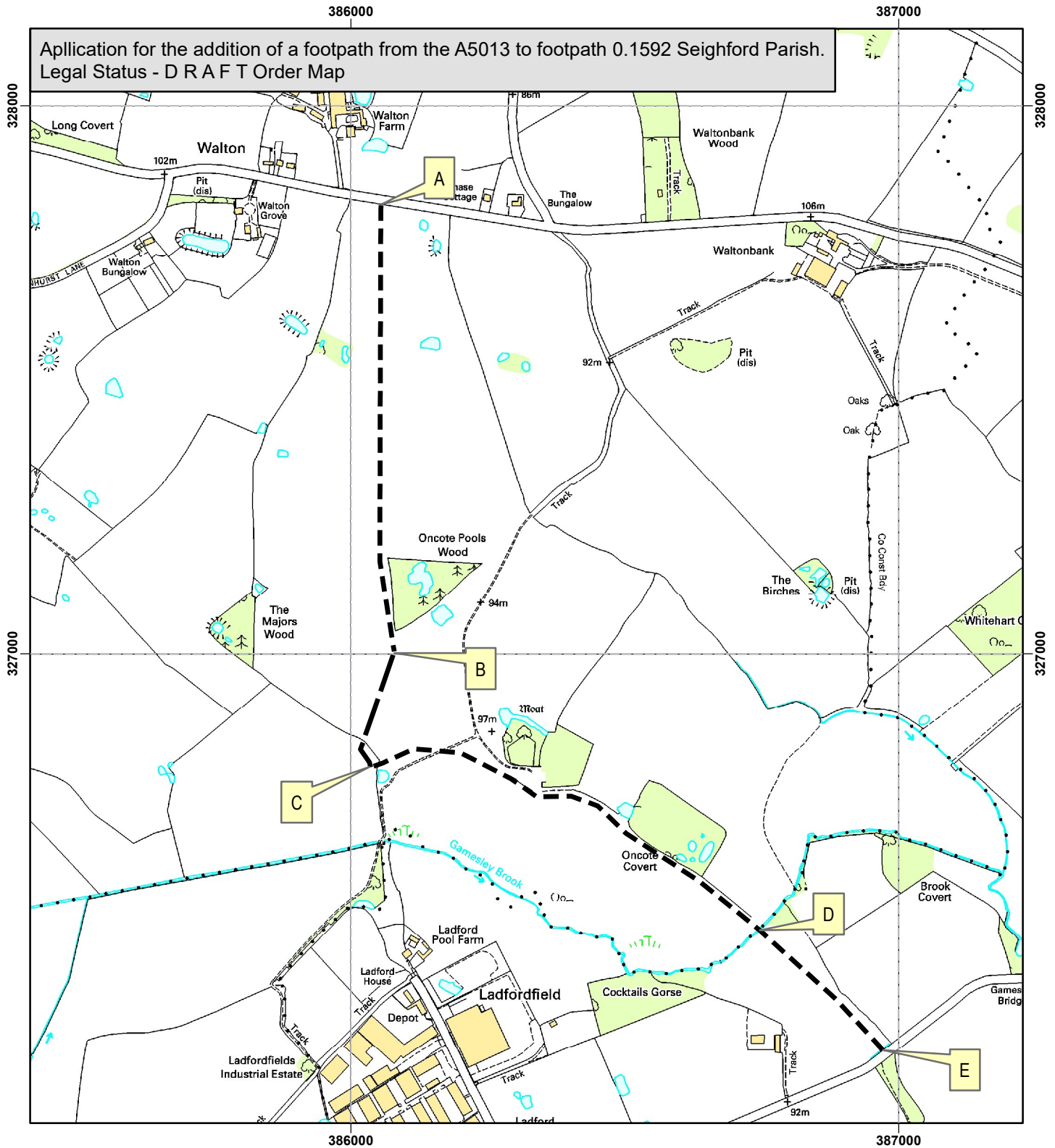
**Background File:** LJ603G

## INDEX TO APPENDICES

Appendix A	Plan of claimed route
Appendix B	Copy of application
Appendix C	Finance Act 1910 Plan and Book of Reference
Appendix D	Railway Plan 1845 and Book of Reference
Appendix E	Walton Tithe Map
Appendix F	Seighford Tithe Map
Appendix G	Railway Plan 1845
Appendix H	OS plan 1880's
Appendix I	Parish survey cards
Appendix J	Surveyor of Highways report book 1902



Wildlife and Countryside Act 1981, Section 53A(2)(b)  
 Eccleshall and Seighford Parishes, Staffordshire,  
 Addition of Footpaths to  
 Definitive Map and Statement.



Map created at the scale of 1:10,000  
 (facsimiles may vary)

----- Right of Way to be added ( A - B, C - D and D - E )

Section of route being processed in separate order

----- Footpath ( B - C )

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 Produced by Staffordshire County Council, 30/04/2019.



# APPENDIX B

Form 1

## FORM OF APPLICATION FOR MODIFICATION ORDER

### WILDLIFE AND COUNTRYSIDE ACT 1981

#### Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of SELGH FORD + ECCLESHALL

To: Staffordshire County Council  
PO Box 11  
County Buildings  
Stafford  
ST16 2LH

From A5013 N. Walton Grove  
to the B5405 leading to  
D.1572

I/We M. REAY  
of 53 TITHE BARN RD STAFFORD

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by

~~deleting the (footpath)(bridleway)(byway open to all traffic)~~  
from ~~.....~~ to ~~.....~~

\*adding the (footpath)(~~bridleway~~)(~~byway open to all traffic~~)  
from B5405 to A5013

~~(upgrading)(downgrading) to a (footpath)(bridleway)(byway open to all traffic) the (footpath)(bridleway)(byway open to all traffic)~~  
from ~~.....~~ to ~~.....~~

~~(varying)(adding to) the particulars relating to the (footpath)(bridleway)(byway open to all traffic) from (.....) to (.....)~~  
by providing that .....

and shown on the map accompanying this application.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application

\*delete as appropriate.

List of Documents

Q/Num 343 (1863) DEPOSITED RAILWAY PLAN.  
Q/Num 175 (1845) " " "  
1910 FINANCE ACT.

PARISH SURVEY FOR ECCLESHALL.

25 IN TO 1 MILE 0.5 (1879)

~~SEIGHFORD~~ ~~TITLE MAP~~ (1838)

WALTON (ECCLESHALL) TITLE MAP (1838)

SEIGHFORD TITLE MAP.

Date

1/13

1999

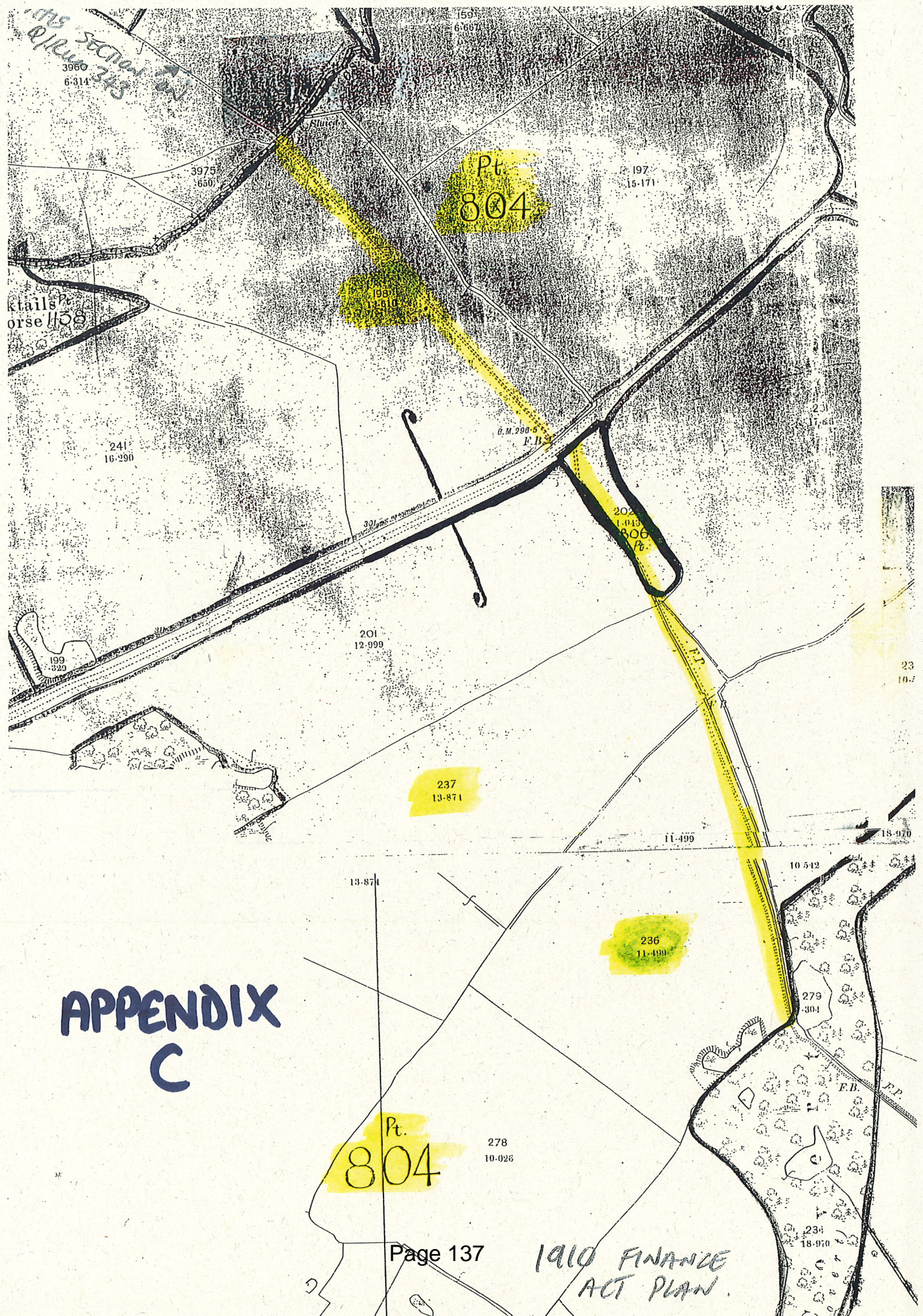
signed

M. P. Ray









# APPENDIX C

1910 FINANCE  
ACT PLAN

Walton

1066

3177  
1-250

3176  
2-903

3172  
12-035

3173  
7-661

3178  
1-162

Walton Grove

3207  
8-790

952

3209

3222  
30-116

FIELD NUMBER

HEREDITAMENT NUMBER

952

SEPERATE FROM TAXABLE LAND HOLDINGS

3221  
11-928

3223  
5-435

3940  
11-940

3942  
18-099

994

19-810 39

3941  
553

3944  
8-171

3964  
6-948

3950  
15-250

3949  
16-519

13-212

3945  
1-009

994



IAS8 79075

1	2
---	---

R.V.

Reference No. 952

Particulars, description, and notes made on inspection

Sullery, kitchen, pass house, lavvy, 2/3 main, large  
 stone front kitchen, 2 cellars, dining + drawing room,  
 bath room, 4 bedrooms + manservant room, 4 bedrooms +  
 large chess room. Water gravitates to top of house.  
 Shooting over whole farm.

Charges, Easements, and Restrictions affecting market value of Fee Simple  
 Public footpaths through enclosures no. 896, 3222

Valuation - Market Value of Fee Simple in possession of whole property  
 in its present condition Annual Value £ 488

Deduct 15% £ 72  
 Land Tax 18/14/5 £ 255/7  
 Tithe 4/1/5 6. £ 285/12

Deduct Market Value of Site under similar circumstances, but if divested of structures, timber, fruit trees, and other things growing on the land  
 Old Timber + Shooting £ 1012/5  
 500 £ 500  
 1062/5

Difference Balance, being portion of market value attributable to structures, timber, &c. £ 7450  
 Divided as follows: £ 3175

Buildings and Structures 1/5 £ 2500  
 Machinery £  
 Timber 5/4 ac. (not free fire) £ 215  
 Fruit Trees Spreading 1/9 £ 285  
 Other things growing on land 1/50 £ 175

Market Value of Fee Simple of Whole in its present condition (as before) £ 1012/5  
 Add for Additional Value represented by any of the following for which any deduction may have been made when arriving at Market Value: £ 1062/5

Charges (excluding Land Tax) 7/1/6 £ 1195  
 Restrictions 10/0/0 £ 10  
 GROSS VALUE £ 11830

now including 945, 954, 958 Eccleshall 992  
 952 Reference No.

Map No. XXX 4 13  
 Description Little Bridgford  
 Extent 84A 2 r. 375-6 acres

Gross Value Land £  
 Buildings £  
 Rateable Value { Buildings £ 22,500 }

Gross Annual Value, Schedule A, £  
 Occupier R. B. Wain

Owner Edwin Lewis, Esq. of the Rectory, Regent, Staff  
 Interest of Owner  
 Superior interests

Subordinate interests Included in Eccleshall 992

Occupier's tenancy, Term from  
 How determinable

Actual (estimated) Rent, £ 488 p.a. including 3 tithe  
 Any other Consideration paid  
 Outgoings - Land Tax, £ 16/3/2 paid by Landlord.  
 Tithe, £ 4/1/5 6. paid by

Other Outgoings  
 Who pays (a) Rates and Taxes (b) Insurance (c) Repairs (d) Common

Who is liable for repairs  
 Fixed Charges, Easements, Common Rights and Restrictions

Former Sales, Dates  
 Interest  
 Consideration

Subsequent Expenditure  
 Owner's Estimate - Gross Value  
 Full Site Value  
 Total Value  
 Assessable Site Value

Site Value Deductions claimed

Roads and Sewers, Dates of Expenditure  
 Amounts



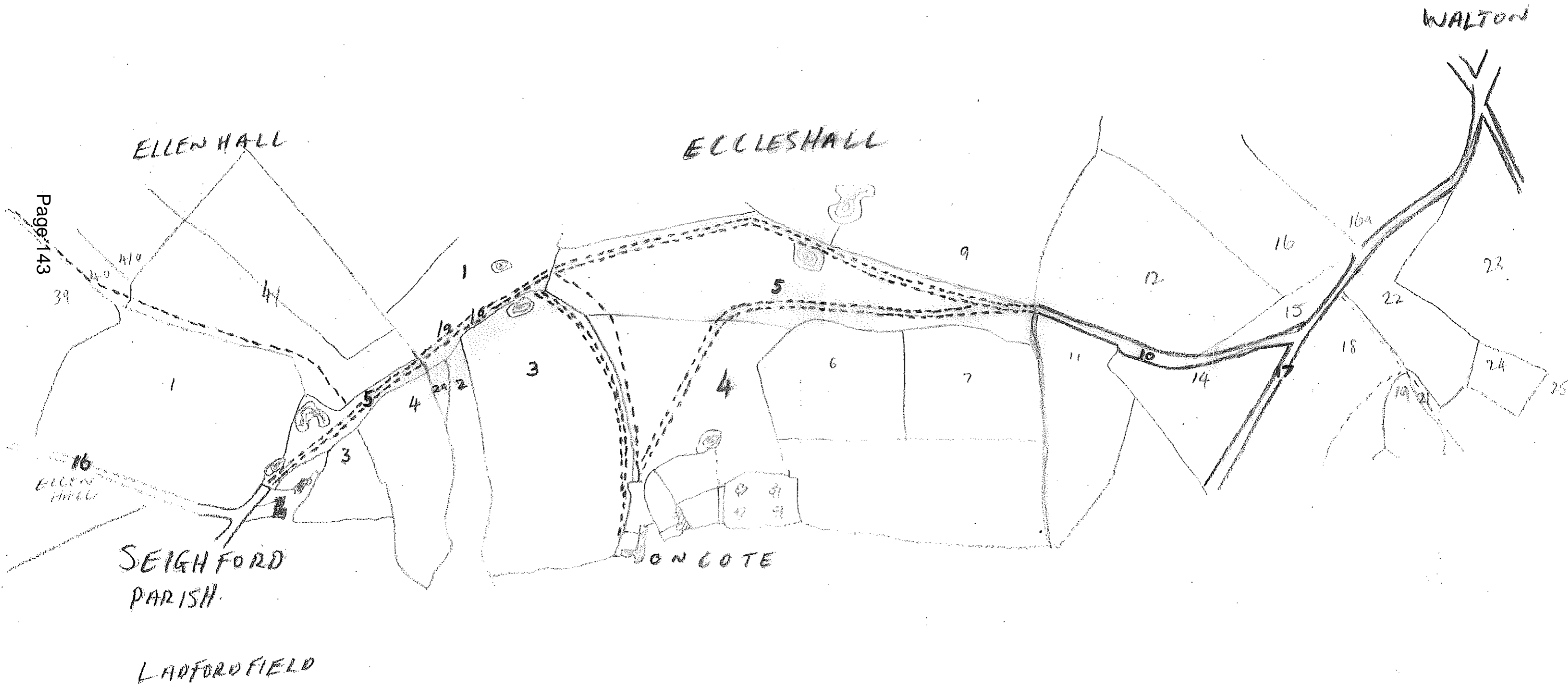






Q/Rum/175 (1845)

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Q/Ram/175

The Parish of Leighford  
County of Stafford

1 Francis Eld

John Brayford  
Field and Pit

2 Francis Eld

John Brayford  
Field. Pits and  
Brook course

3 Francis Eld

John Brayford  
Field and Watercourse

4 Francis Eld

John Brayford  
Field and Watercourse

5 Francis - Eld

John Brayford  
Occupation Road  
and public bridleway

The Lord of the Manor

Francis Eld Esquire

No. on Plan.	Owner or Reputed Owner.	Lessee or Reputed Lessee	Occupier.	Description of Property.
	<i>The Parish of Ecclespall, County of Stafford</i>			
1	Thomas Walter Giffard		William Mason	<i>at</i> Field and Drain
1 <sup>or</sup>	Thomas Walter Giffard or the Trustees of the Earl of Lichfield		William Mason	Occupation Road and public Bridleway
2	Trustees of the Earl of Lichfield		John Fagg Thomas Dawson and John Riley	Field
2 <sup>or</sup>	Thomas Walter Giffard		William Mason	Brookcourse
3	Trustees of the Earl of Lichfield		John Fagg Thomas Dawson and John Riley	Field Farm Road footpath and pit.
4	Trustees of the Earl of Lichfield		John Fagg Thomas Dawson and John Riley	Field occupation road Public foot paths and pit.
5	Trustees of the Earl of Lichfield		John Fagg Thomas Dawson and John Riley	Field pit Public foot paths and Watercourse

No. on Plan.	Owner or Reputed Owner.	Lessee or Reputed Lessee	Occupier.	Description of Property.
6	Trustees of the Earl of Lichfield		John Hagg Thomas Sawson and John Wiley	Field
7	Trustees of the Earl of Lichfield		John Hagg Thomas Sawson and John Wiley	Field and Watercourse
9	Thomas Walter Giffard		Edward Gallimore and Prudence Ward	Field and pit.
10	Surveyors of the Highway of Malton			Township road leading from Seyford to Malton
11	Thomas Walter Giffard		John Addison	Field and Water
12	Thomas Walter Giffard		John Addison	Field and pit
14	Thomas Walter Giffard		Thomas Addison	Field
15	Thomas Walter Giffard		Thomas Addison	Field
16	Thomas Walter Giffard		John Addison	Field
16a	Thomas Walter Giffard.		John Addison	Field
17	Thomas Walter Giffard		John Addison and George Hampton	Occupation Road and public bridle

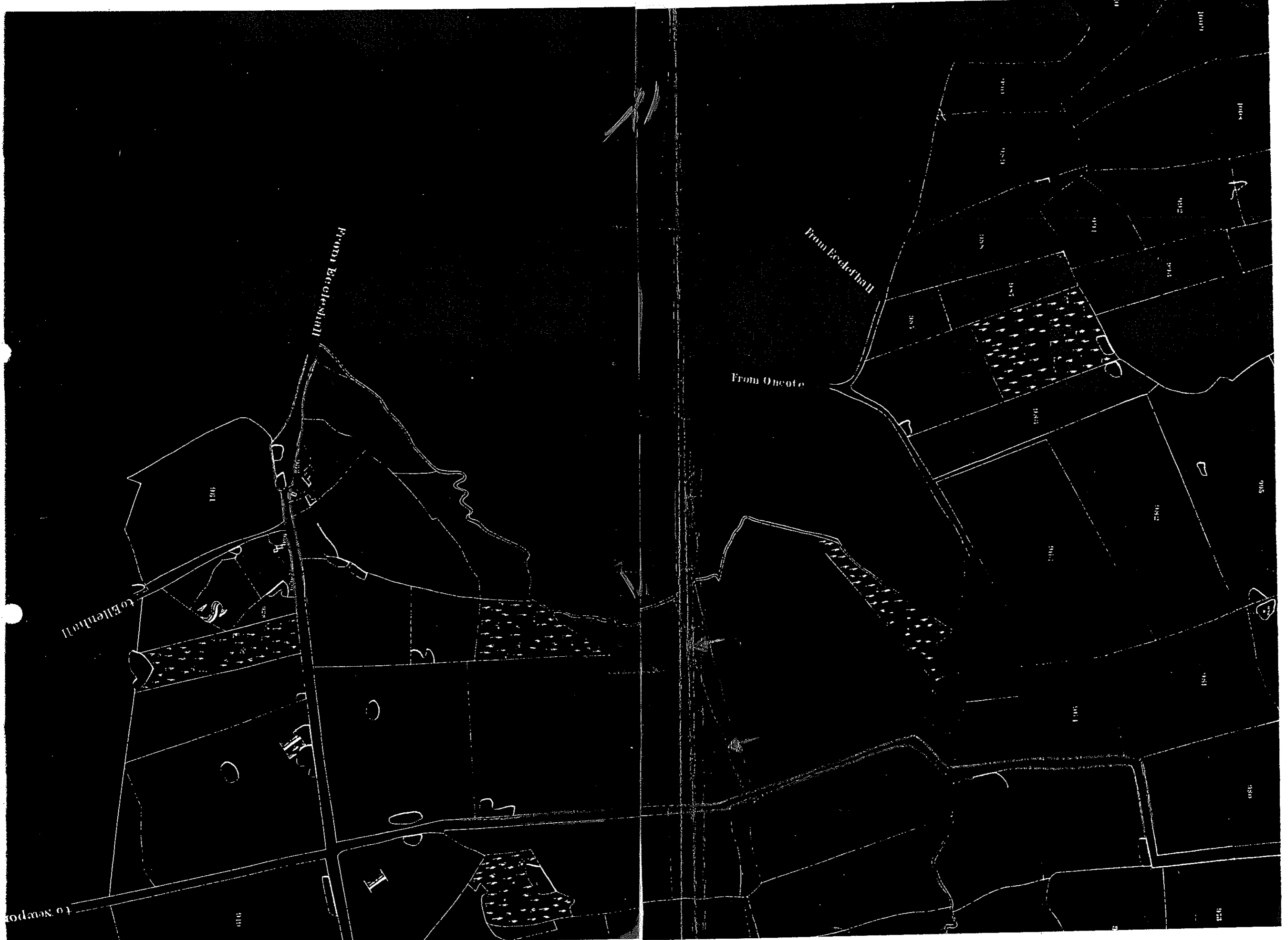
WALTON TITHE (1838)  
(ECCLES MILL)

20 COTON LANE  
PASTURE.

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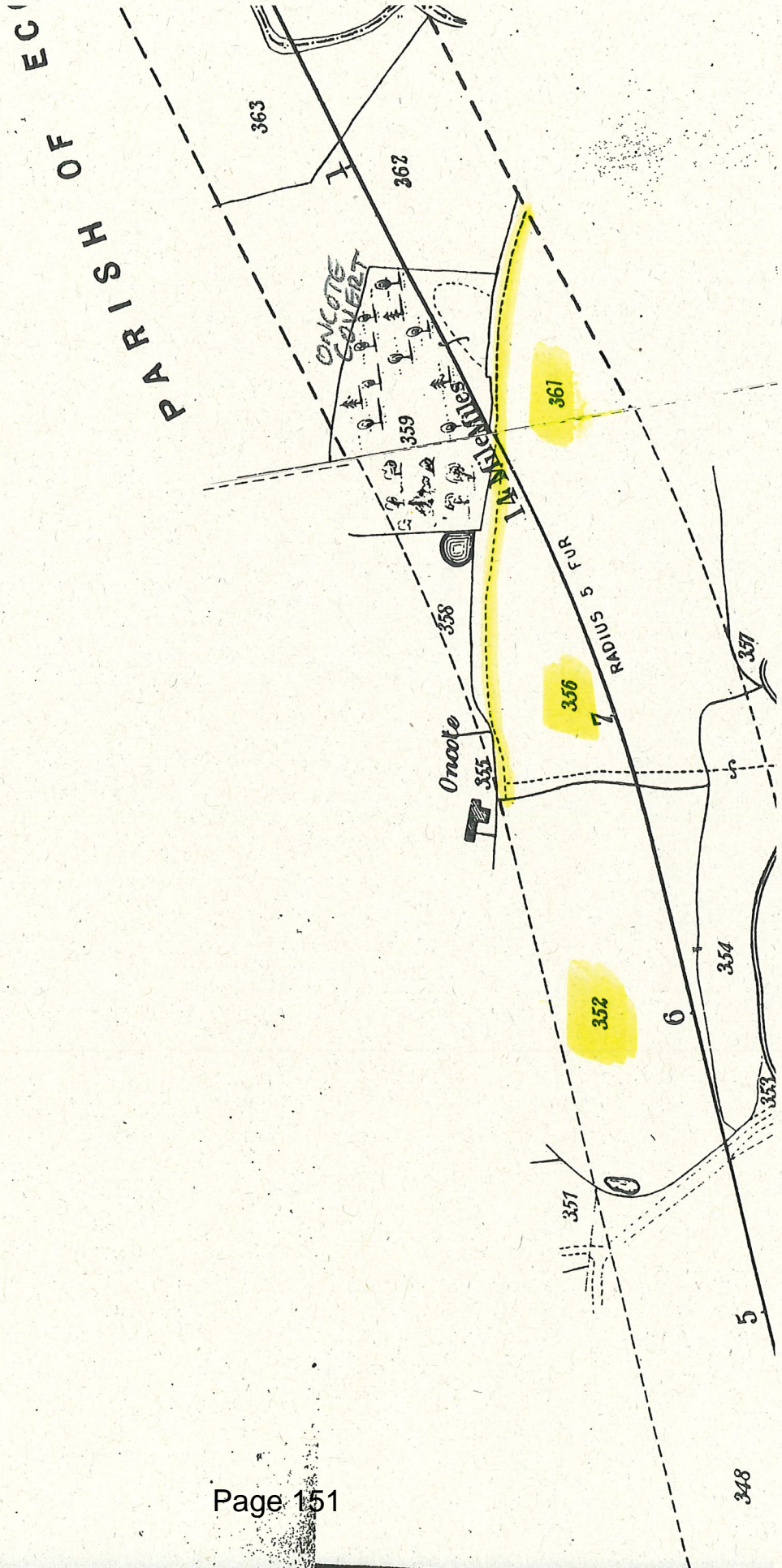








# APPENDIX 9



Q/Rum/343 (1863)

28 PARISH OF ECCLESHALL—COUNTY OF STAFFORD.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
334	Garden ... ..	Earl of Lichfield ... ..	...	Sarah Bradbury
335	Field, shed, and public footpath ... ..	Earl of Lichfield and surveyor of highways ... ..	...	Sarah Bradbury and Edward Gallimore
336	Field ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
337	Field and pond ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
339	Field and ponds ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
340	Field and pond ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
341	Field, ponds, and occupation road ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
341A	Field ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
342	Pond ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
343	Field ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
344	Field and roadway ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
345	Field ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
346	Field and ponds ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
348	Field ... ..	Earl of Lichfield ... ..	Joseph Wallworth...	Joseph Wallworth
349	Highway and occupation road ... ..	Earl of Lichfield and surveyor, Edward Gallimore	Joseph Wallworth...	Joseph Wallworth
350	Brook ... ..	Earl of Lichfield ... ..	Joseph Wallworth	Joseph Wallworth
351	Field ... ..	Earl of Lichfield ... ..	...	John Ryley
352	Field, pond, and foot path ... ..	Earl of Lichfield and surveyor, Edward Gallimore	...	John Ryley
353	Field ... ..	Earl of Lichfield ... ..	...	John Brayford
354	Field ... ..	Earl of Lichfield ... ..	...	John Ryley
354A	Field ... ..	Earl of Lichfield ... ..	...	John Brayford
355	Rickyard ... ..	Earl of Lichfield ... ..	...	John Ryley
356	Field and public foot path ... ..	Earl of Lichfield and surveyor, Edward Gallimore	...	John Ryley
357	Field ... ..	Earl of Lichfield ... ..	...	John Ryley
358	Field and pond ... ..	Earl of Lichfield ... ..	...	John Ryley
359	Plantation ... ..	Earl of Lichfield ... ..	...	John Ryley
361	Field and public foot path ... ..	Earl of Lichfield and surveyor, Edward Gallimore	...	John Ryley
362	Field ... ..	Earl of Lichfield ... ..	...	John Ryley
363	Field ... ..	Earl of Lichfield ... ..	...	Richard Brown
364	Brook and parish boundary	Earl of Lichfield and Francis Eld	...	

THE BISHOP OF LICHFIELD, LORD OF THE MANOR.

PARISH OF ADBASTON—COUNTY OF STAFFORD.

110	Osier bed and rough...	Mrs. Mary Palin ... ..	...	George Marsh
110A	Stream, parish boundary	Mrs. Mary Palin ... ..	...	
115	Field and occupation road ... ..	Mrs. Mary Palin ... ..	...	George Marsh
116	Field ... ..	Mrs. Mary Palin ... ..	...	George Marsh
117	Field and occupation road ... ..	Mrs. Mary Palin ... ..	...	George Marsh
118	Field ... ..	Mrs. Mary Palin ... ..	...	George Marsh
119	Field ... ..	John Espley ... ..	...	William Hill
120	Field ... ..	John Espley ... ..	...	William Hill
121	Field ... ..	John George Lander ... ..	...	Joseph Stokes
122	Field ... ..	John George Lander ... ..	...	Joseph Stokes
123	Field ... ..	John Sharrod ... ..	...	Charles Limer
124	Field ... ..	John Sharrod ... ..	...	Charles Limer
125	Garden ... ..	Thomas Light ... ..	...	In hand
126	House, outbuildings, and yard	Thomas Light ... ..	...	In hand



# APPENDIX H



Staffordshire County Council: Survey of Rights of Way

Note—The survey should be carried out as described in the pamphlet "Survey of Rights of Way."

LOCAL AUTHORITY :

Stone R. D. Council  
PARISH: Eccleshall  
(Horsley Ward)

PATH No., as on map :

128

PATH SYMBOL, as on map :

A.R.F.P.

Path starts at :

Oncote Farm

Path finishes at :

Ladfordpool in Seighford  
Parish.

6" quarter Ordnance Sheet  
No. :

36 N.E.

Names and addresses of persons making the survey :

A. J. H. Eccleshall.

Survey started on

87 87 195 1

Survey finished on

7 11 195 1

Grounds for believing path to be public (Please mention Enclosure Award Maps, Tithe Maps, and any other relevant documentary evidence)

Known since 20 years

CHV—51219

Description of route :

Starts from Oncote Farm S.E. then S.W. to wide Bridge  
over Gamsley Brook and on to Ladfordpool Farm in  
Seighford parish.

Date of last walking  
or riding the path :

B.R. well known



Staffordshire County Council: Survey of Rights of Way

Note—The survey should be carried out as described in the pamphlet "Survey of Rights of Way."

LOCAL AUTHORITY :

Stone R.D. Council  
PARISH: Eccleshall  
(Horsley Ward)

PATH No., as on map :

127 ✓

PATH SYMBOL, as on map :

~~3. P.~~ 3. P.

Path starts at :  
Main Eccleshall - Stafford Road  
Ham Cross Road East of Walton

Path finishes at :  
Oncote Farm

6" quarter Ordnance Sheet  
No. : 295.E  
7 36 N.E.

Names and addresses of persons making the survey :

A. J. Eccleshall

Survey started on 9/9 1951

Survey finished on 7.11. 1951

Grounds for believing path to be public : please mention Enclosure Award Maps, Tithe Maps, and any other relevant documentary evidence

known over long time

CHV-51219

Description of route :

Starts from Cross roads East of Walton in a S. direction up an occupation road into a field and 3. P. in a S. W. direction to Oncote Farm. Occupation road not repairable by Highway Authority.

Date of last walking or riding the path :

occupation road + 3. P. well known





Staffordshire County Council: Survey of Rights of Way

LOCAL AUTHORITY:

Stone R.D. Council

PATH No., as on map ✓

124

PARISH Eccleshall

PATH SYMBOL, as on map:

F.P.

(Horsley Ward.)

Note—The survey should be carried out as described in the pamphlet "Survey of Rights of Way."

Path starts at: Main Eccleshall - Stafford Road Walton

Path finishes at:

Onote Farm

6" quarter Ordnance Sheet

No. 29 S.E.

♀ 36 N.E.

Names and addresses of persons making the survey:

A. J. G. Eccleshall

Survey started on 8/8/1951

Survey finished on 7/11/1951

Grounds for believing path to be public: please mention Enclosure Award Maps, Tithe Maps, and any other relevant documentary evidence

known over 20 years.

CHV-31219

Description of route:

Starts from Eccleshall - Stafford main road as a continuation of F.P. No. 123 due S. to Onote Farm.

Date of last walking or riding the path:

Not walked



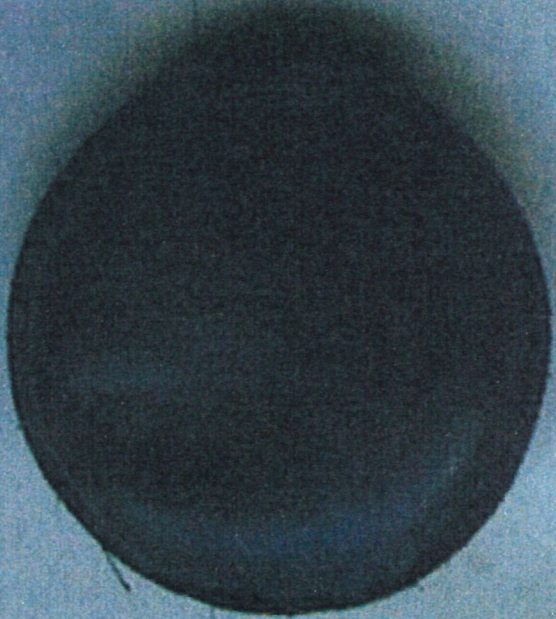
Name of Contractor	Road where Materials were used, or where Work was performed	Description of Materials or Work	Number of			Wagons				Amount paid for			Description	
			Yards	Cu Yds	Days	Wagon	Load	Days	Yds	£	s	d		
H. Clarke		Cart forward Killing bridge 5 run 100y 2 - 1 - 1 - 1 - so the paint 16 1/2 pints												

10/11  
1/2

Yards	Cu Yds	Days	Wagon	Load	Days	Yds	Amount paid for			Description	
							£	s	d		
							9	6	7	125 1/2	
							12				
							8				
							4				
							11	6		11 1/2	1/2
										1265 16 1	

Wagon

Arthur Roper  
June 24. 1903





Name of Contractor	Road where Materials were used, or where Work was performed	Description of Materials or Work	Number of			Cartage				Amount payable under Contract			Observations		
			Wheeled Loads	Days	Tons	Yard	Load	Day	Ton	£	s	d			
H. Clarke		Cart forwarded Lining bridge 3 on 100y 2 . 1 . 1 . 1 . In the paint 10 1/2 carts								9	6	7	1250	14	
										12					
										8					
										4					
										11	6		11	2	1
													1365	16	1

1903

Harbert  
June 24. 1903

W. H. D.

Name of Contractor	Road where Materials were used, or where Work was performed	Description of Materials or Work	Number of			Cartage				Amount payable under Contract			Observations		
			Wheeled Loads	Days	Tons	Yard	Load	Day	Ton	£	s	d			

Name of Contractor	Road where Materials were used, or where Work was performed	Description of Materials or Work
Lewton J	Kepton	60.6' Agri. paper
	Hyde Lea	25.6' S.S. do
	do	100.6' Agri. paper
	Wine Pit	50.6' S.S. do
Hall W	Stann. Collier	brack
Stark H	Creech Footbridge	<p>101. 2 pths 10' x 11 x 3</p> <p>102. 2. do do 10x3</p> <p>beam (1)</p> <p>3 sample beams</p> <p>103. 2 pths 11' x 11 x 3</p> <p>2 handrails 3' x 3'</p> <p>40 batt feet 5' x 4 x 3'</p> <p>3 batt beams 11' x 3'</p> <p>2 batt stays</p> <p>3 pins 6" lapping plate each</p> <p>104. 2 pths 9' x 13 each</p> <p>40 batt feet 4' x 4 x 3'</p> <p>1 pin 4" lapping plate</p> <p>105. 2 pths 16' x 12 each</p> <p>40 pths, 3 beams, 2 stays</p> <p>3 pins 6" plates 4 each</p> <p>106. 2 pths 12' x 12 each</p> <p>40 pths 3 beams 13 stays</p> <p>3 pins 6" plates 4 each</p> <p>Preparing bridge 2 men 2 days</p> <p>belonging to 2 men 2 days</p> <p>to carry forward</p>

Quantity of			Rate per				Amount paid in the			Observations
Yards	Cu Yds	Feet	Yard	Cu Yd	Feet	Yd	Cu Yd	Feet		
										12.47 2.11
										15.10
										1.10
										17.6
										1.13.6
										to do do paper do
										3.12.2
										14/ 2.12.5
										12.10
										12.10
										16.3
										10.
										6.
										8.
										2.9
										12.9
										10.
										1.5
										1.
										10.
										2.9
										18.5
										10.
										2.9
										16.
										7.
										9.6.7



let him have it after it has finished at  
Dayton & Amerton, before it goes to Weston

5

Foot bridges between Seighford  
and Onneole.

1

As instructed I have examined  
these foot bridges & have arranged for the  
necessary material, & am now in communication  
with Mr. Dobson about the labour.

S. Wickham Coles  
—

I am

Yours obediently  
Fred. G. Bebbert

2.