

Countryside and Rights of Way Panel

Friday, 6 March 2020

11.00 am

New Bremen 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
27 February 2020

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 3 December 2019** (Pages 1 - 4)
4. **Wildlife and Countryside Act 1981, Section 53 - Application to Add a Byway Open to All Traffic from Harley Thorn Lane to Public Road Leading Underneath A519** (Pages 5 - 76)
Report of the Director of Corporate Services
5. **Wildlife and Countryside Act 1981, Section 53 - Application to Upgrade Public Footpath No. 11 Heaton Parish to Restricted Byway Status** (Pages 77 - 118)
Report of the Director of Corporate Services



6. **Wildlife and Countryside Act 1981, Section 53 - Application to Add a Public Footpath from the Junction of Footpaths Nos. 2, 3 & 4, Fradswell Parish to Fradswell Church** (Pages 119 - 174)

Report of the Director of Corporate Services

7. **Date of Next Meeting - 3 April 2020 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 of the Local Government Act 1972 (as amended) indicated below”.

PART TWO

(All reports in the section are exempt)

9. **Options for Resolution of Issues on Bridleway No. 2 Salt and Enson Parishes** (Pages 175 - 184)

(exemption paragraph 2, 6a and 6b)

Exempt joint report of the Director of Corporate Services and Deputy Chief Executive and Director of Families and Communities

10. **Wildlife and Countryside Act 1981, Section 53 Modification Orders - Update**

(exemption paragraph 2, 6a and 6b)

Exempt oral report of the Director of Corporate Services

Membership

David Brookes

Alan Dudson

Julia Jessel (Chairman)

Paul Snape

Mike Worthington

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 3 December 2019

Present: Julia Jessel (Chairman)

Attendance

David Brookes
Alan Dudson

Paul Snape
Mike Worthington

PART ONE

124. Declarations of Interest in Accordance with Standing Order 16.2

There were no Declarations of Interest made.

125. Minutes of meeting held on 8 November 2019

RESOLVED – That the minutes of the meeting held on 8 November 2019 be confirmed and signed by the Chairman.

126. Wildlife and Countryside Act 1981, Section 53 - Application for a Definitive Map Modification Order to Add a Public Right of Way from Beaconside to Marston Lane, near Marstongate Farm, Hopton and Marston Parishes

Prior to the Panel's consideration of the report, the Director of Corporate Services informed them of a letter dated 2 December 2019 from Messrs Hill Dixon, Solicitors on behalf of their client Bolling Investments Limited setting out their objections to the application. Copies of the letter were handed around the table at the meeting for Members to read.

The Director stated his view that the various points of objection raised in the above-mentioned letter were already dealt with in his report. However, the Chairman sought the Panel's views as to whether consideration of the application should be deferred pending further investigation/clarification and in response they expressed their wish for the application to be determined without further delay.

The Panel then considered the report by the Director of Corporate Services regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Right of Way from Beaconside to Marston Lane, near Marstongate Farm, Hopton and Marston Parishes, Stafford to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. The Director also made reference to case law which dealt with the weight to be given to the evidence and gave guidance on the legal tests which they should apply. In applying these tests, Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of the application by Mr. M. Reay; (ii) a copy of a plan showing the alleged route; (iii) a traced copy of Marston Tithe Award Map dated 1839; (iv) a copy of Deposited Railway Plan Book of Reference dated 1844; (v) copies of Deposited Railway Plan Accompanying Maps dated 1844; (vi) copies of Deposited Railway Plan Accompanying Maps dated 1845; (vii) copies of Deposited Railway Plan Book of Reference dated 1845; (viii) copies of Landowner Questionnaires received from Mrs. Stubbs, Mr and Mrs. Baker and Mrs. Brandon; (ix) a copy of Planning Application Boundary; (x) a copy of a plan showing the new alleged route of the path; (xi) a copy of a letter from Mr. and Mrs. Brandon's Solicitor dated 20 October 2019 and; (xii) a copy of a letter of response by the County Council to Mr. and Mrs. Brandon's Solicitor's dated 18 November 2019.

During his presentation, the Director addressed the points raised by Messrs Hill Dixon in turn paying particular attention to the (i) route of the alleged path; (ii) absence of evidence from either Stafford Borough Council, Marston Parish Council or users and; (ii) quality of the evidence provided by the Railway and Tithe documents.

Following their detailed consideration of the application, the Panel decided that from the totality of the available evidence and the absence of conflicting evidence to refute the claim, the lesser test of 'Reasonable Allegation' as set out in paragraph 53(3)(c)(i) of the Act was met in that the alleged Right of Way was reasonably alleged to subsist.

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

(b) That the evidence submitted by the applicant 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 to C to D on the plan attached at Appendix J to the report and should be added to the Definitive Map and Statement of Public Rights of Way as such.

(c) That an Order be made to add the Right of Way shown on the plan attached at Appendix J to the report and marked A to B to C to D to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Footpath.

127. Wildlife and Countryside Act 1981, Section 53 - Application for a Definitive Map Modification Order to Add a Public Bridleway from Syerscote Lane to Public Bridleway No. 33, Clifton Campville Parish, Lichfield

The Panel considered a report of the Director of Corporate Services regarding an application by Mr. M. Reay for a Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Bridleway from Syerscote Lane to Public Bridleway No. 33 Clifton Campville Parish, Lichfield to the County Council's Definitive Map and Statement of Public Rights of Way.

The report was presented verbally to take Members through the various legal, documentary and historical evidence relevant to the application. In applying these tests, Members were made aware that they should examine the evidence in its totality.

During their consideration of the application, Members had regard to the appendices attached to the report including:- (i) a copy of the application; (ii) a copy of a plan showing the alleged route; (iii) a copy of Finance Act 1910 Field Book entry; (iv) a copy of 1902 Ordnance Survey Map; (v) a copy of 1838 Clifton Campville Tithe Map; (vi) a copy of a letter from Mr. Bainbridge dated 16 November 2013 and his User Evidence Forms; (vii) a copy of Mr. Bostock's Landowner Evidence Form; (viii) copies of responses from consultees; (ix) copies of Ordnance Survey Maps; (x) copies of Parish Survey Cards and associated maps; (xi) a copy of a letter from Mr. Bostock's solicitor dated 3 October 2014 and a copy of a letter from Mr. J. Cliffe dated 3 October 2014; (xii) a copy of the County Council's letter to Mr. Bostock's Solicitor dated 17 November 2014; (xiii) a copy of a letter from Mr. Bostock dated 25 November 2018; (xiv) a copy of a response received from Mr. Bainbridge dated 14 November 2019.

In response to a request from the Chairman, the Director of Corporate Services clarified the location of points A to B on the plan attached at Appendix B to the report.

Following their detailed consideration of the application, the Panel decided that from the totality of the available evidence and the absence of conflicting evidence to refute the claim, the lesser test of 'Reasonable Allegation' as set out in paragraph 53(3)(c)(i) of the Act was met in that the alleged Right of Way was reasonably alleged to subsist.

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

(b) That the evidence submitted by the applicant and that discovered by the County Council is sufficient to conclude that a Public Bridleway which is not shown on the Definitive Map and Statement of Public Rights of Way is reasonably alleged to subsist along the route shown on the plan attached at Appendix B to the report and should be added to the Definitive Map and Statement as such.

(c) That an Order be made to add the Public Right of Way shown marked A to B on the Plan attached at Appendix B to the report to the Definitive Map and Statement of Public Rights of Way for the District of Lichfield as a Public Bridleway.

Chairman

| Local Members' Interest | |
|-------------------------|------------|
| Jeremy Pert | Eccleshall |

Countryside and Rights of Way Panel – 6 March 2020

Wildlife and Countryside Act 1981

Application for Definitive Map Modification Order to add a Byway Open to All Traffic from Harley Thorn Lane to Public Road leading underneath A519

Report of the Director of Corporate Services

Recommendation

- 1 That the evidence submitted by the applicant is sufficient to conclude, that a Restricted Byway which is not shown on the Definitive Map and Statement, shown marked A to B on the plan attached at Appendix A to this report is reasonably alleged to subsist.
- 2 That an order be made to add the alleged public right of way, shown A to B on the plan attached at Appendix A, to the Definitive Map and Statement of Public Rights of Way as a Restricted Byway.

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 a Definitive Map Modification Order to modify the Definitive Map for the area by adding the Byway Open to All Traffic shown A-B on the Plan at Appendix A (the Application Route) to the Definitive Map.
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 a copy of the 1910 Finance Act map which shows the entirety of the alleged route and can be found at appendix C
2. The applicant submitted further evidence on 12 December 2000. A tracing of the Map of the Newcastle and Eccleshall Road line of improvement 1822 has been provided. Officer’s have obtained a clearer version of the map from the Councils records office, which can be found at appendix D.

Other evidence discovered by the County Council

3. Officers have conducted research into historical documentation at the County Council's Record Office and obtained the following.
4. Tithe Award Map of the Parish of Swynnerton 1849 which shows the entirety of the alleged route and is attached at appendix E.
5. Tithe Award Map of the Township of Beech 1850. This shows near the entirety of the route and is attached at appendix F.
6. Officers have also obtained several OS maps dating between 1878 And 1924 which also show the entirety of the alleged route and are attached at appendix G.

Evidence submitted by the Landowners

7. On 19 March 1999 a letter was received from John German Chartered Surveyors who represented Lord Stafford's Estates. The letter states that they are presently researching the position. They state that the lane referred to had been blocked for many years until Lord Stafford's Estates cleared the road in October 1998. They also dispute that the road should be classed as a BOAT.

Comments received from statutory consultees

8. The North Staffordshire Bridleways Association have responded and enclosed several evidence forms in support of the application. These are attached at Appendix H. They do not form part of the original application from Mr Reay however they have been considered as part of the report.

Comments on evidence

Finance Act 1910

9. The 1910 Act provided for the levying of tax ('Increment Value Duty') on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land (Section 25(3)).
10. Harley Lane is shown as being separate from the surrounding land holdings and is not included in any plot.
11. Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways; reference to it in one or more of the various documents forming part of the valuation process, or exclusion of a route from the assessable parcels of land shown on the map record.
12. As the parcel of land is shown on the map as being separate from the surrounding land there is a possibility that the landowners may not have declared the land as they may have assumed the land was not under their ownership or it was a private way.
13. Furthermore, there were penalties for making false representations or statements. If found liable for the above the person(s) could have received a summary conviction to imprisonment for a term not exceeding six months.

14. The Finance Act 1910 used contemporary OS maps from that period. The supporting maps may show the existence of a route at the time however they show nothing more. Public rights of way cannot be inferred from the accompanying maps alone. The purpose of the map was not to record rights of way, but to allot the land.

Ordinance Survey Maps

15. Ordinance Survey Maps provide excellent evidence of the physical existence of the features they show at the time of their survey, but they are generally silent on matters of status. From the 1880's onwards the maps included a disclaimer to the effect that the depiction of any path, track or way is not evidence of the existence of any public rights of way. In *Moser v Ambleside Urban District Council* (1925) 89 JP 118 at 119, Pollock MR stated: "If the proper rule applicable to ordinance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....".
16. The alleged route is consistently depicted and named on a range of Ordnance Survey County plans from the 1880's to 1924. This is not surprising given that it is shown on earlier documents and still exists in physical form today.
17. Although the route is named on various maps as Harley Lane, this does not infer any public status only its reputation as a local route in the area.
18. The OS maps obtained by Officers do show evidence that a route existed. However, as set out above the maps do not distinguish between public and private rights of way. All of the OS maps should therefore be viewed in conjunction with all other supporting evidence.

Map of the Newcastle under Lyme and Eccleshall Road

19. The applicant has also provided a tracing of the Newcastle under Lyme and Eccleshall Road.
20. The map displays the 'present' line of the route which is how the route lay in 1822. The proposed line of improvement coloured red and this is how the road lies today, which is the A519. There is no evidence to suggest that the route was ever stopped up or diverted, conversely there is no evidence to suggest that it wasn't.
21. Although the map shows no indication of the status of the route it does show that Harley Lane once formed part of the highway. The plan was brought to fruition as evidenced by the existence of the road today. It is not known whether the route was originally public or private before the construction of the new road.
22. Although the 'yellow line' on the map shows where the original route lay it does not infer any public rights of way. Only assumptions can be made as to whether the route was public or private.
23. The document is dated 1822 which pre-dates the 1835 Highways Act. Before 1835 a landowner could dedicate a road as a public right of way, and it would automatically become the liability of the public to repair it. Under the 1835 Highways Act, if a landowner proposed to dedicate a road as a public highway then notice would have to be given to the Surveyor of the Highways.
24. The route was a connection between Newcastle and Eccleshall. It was a link between two market towns and would fit the kind of route set out in the 1773 Highways Act. It is therefore more likely to have been public in nature although

who was liable to maintain it in 1822 is not certain. After 1835 it would have become maintainable at public expense by virtue of pre-existing the statute.

Tithe Maps

25. Tithe maps and their accompanying apportionments (books of reference) were produced for the purposes of commuting tithes from a payment in goods to a monetary value. They were not concerned with matters such as the status of roads etc, only whether or not the land was productive and therefore subject to tithe payments. They do however provide some of the earliest accurate large-scale mapping and can provide very good evidence of the physical existence of a route.
26. The route in question is coloured sienna on the Tithe maps. The colouring of a road (usually sienna) on a tithe map is not, in itself good evidence of public rights. It is therefore important to establish whether there is a key or other information in the tithe documents which provides an explanation. However, in this instance the absence of such an explanation and any other corroborative evidence, the colouring is arguably of little evidential value in itself.
27. The Tithe Maps themselves would not support a modification to the Definitive Map and Statement and must be looked at in conjunction with other available evidence.

User evidence

28. User evidence can form the basis of an application to register a public right of way without the need for any reference to historical documentary evidence. Such user evidence would however need to be of sufficient quality and quantity to give rise to a presumption of dedication. However, when modern-day user evidence is considered alongside historical evidence it may be considered to constitute evidence of the reputation of existing (albeit unrecorded) public rights.
29. The relevant legislation states that where there is no identifiable event which has brought into question the use of way, Section 31(7B) of the Highways Act 1980 (as amended by Section 69 of the Natural Environment and Rural Communities Act 2006) provides that the date of an application for a modification order under Section 53 can be used as the date at which the public use was brought into question.
30. In this instance the application was made in 1999 and that action brought the status of the claimed route into question. There is no evidence of any earlier challenge and so in evaluating the evidence of use any that took place must be confined to before 1999.
31. The optimum period of usage for the purposes of the 20-year period as provided for under s31 of the Highways Act 1980 is from 1979 – 1999.
32. The evidence must be consistent and not contradictory. There may be minor inconsistencies which do not have a detrimental effect on the overall evidence.
33. From the eight user evidence forms only four indicate that they have used the route by horse and carriage. All of the eight user evidence forms claim usage on horseback. One user claims to have used the way on foot and none of the users indicate use by a mechanically propelled vehicle.
34. No user states that they have ever been given permission to use the route and there have never been any stiles or gates blocking the way and there is no indication of any signs or notices prohibiting usage of the route.

35. Out of the eight user evidence forms, two have the requisite 20 years usage. Firstly, Mrs Eld has used the route for 39 years on horseback and Mrs Knowe has used the route for 25 years on horseback and on foot.
36. When individually assessed, the remaining six user evidence forms do not indicate use of the alleged route for over 20 years. However, two or more users' evidence which overlaps may also be combined to produce a cumulative effect of usage over a 20-year period.
37. In effect, another user can be created when combining more than one of the user evidence forms. Mrs Williams claims 3 years usage on horseback, Mrs Wilson claims 10 years usage on horseback and Mrs Farrington claims 7 years of use on horseback and horse and carriage. When combined the period of use totals 20 years.
38. Mr Seabridge claims 10 years of use on horseback and horse and carriage, Mrs Seabridge claims 6 years of use on horseback and horse and carriage and Mr Farrington claims 7 years of use also on horse and horse and carriage. When combined, the period of use totals 23 years.
39. Therefore, there are four periods of qualifying usage which meet the requisite 20-year period of use. There is no statutory minimum number of users required to show sufficient use to raise a presumption of dedication. Instead use should have been by a sufficient number of people to show that it was used by 'the public' and this may vary from case to case. There have been instances where the Secretary of State has accepted evidence of use from as few as six persons to substantiate the existence of a way.
40. The forms appear to be consistent with one another. All users indicate travelling along the same route and many considered the route to be a continuation of Harley Thorn Lane running all the way to the A519. However, there are discrepancies in respect of how the route has been used.
41. There does not appear to be any evidence to support the status of a BOAT; no user has claimed use by mechanically propelled vehicle. There are also only four of the eight user evidence forms which state that they have used the route by horse and carriage.
42. There is however, evidence to suggest that the route would support the existence of a restricted byway or bridleway as all of the users indicate usage on horseback and several on horse and carriage. There are two individual 20-year periods of use, and a further two periods of over 20 years usage (when the remaining user evidence is combined)
43. Although there are a small number of user evidence forms, they must be considered as part of the decision-making process.

Burden and Standard of Proof

44. 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.
45. 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".
46. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

47. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(i) of the Act.
48. The application is for the status of a Byway Open to All Traffic which is defined in Section 66(1) of the Wildlife and Countryside Act 1981 as highway “over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are so used”.
49. Under the Natural Environment and Rural Communities Act 2006 (NERC) subsection (1), restrictions have been placed on the recording of public rights of way for mechanically propelled vehicles on the Definitive Map and Statement. However, this is applicable to those applications for a BOAT after 2006.
50. Section 67 of the NERC Act subsections (2) to (8) provides exceptions to the extinguishment of certain unrecorded rights of way for mechanically propelled vehicles. One exception is if, before the ‘relevant date’ (subsection (4), 20th January 2005), an application had been made for the Definitive Map Modification Order to show a Byway Open to All Traffic, subsection (3)(a). This application was made before the ‘relevant date’ and consequently this exception could apply.
51. The Planning Inspectorate’s Consistency Guidelines quote Christine Willmore when dealing with old maps: "*What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error ... consistent depiction over a number of years is a positive indication.*"
52. In *Fortune v Wiltshire* the Courts approved this approach, and what is looked for is just that, the various pieces of evidence are analogous to parts of a jigsaw and all the material needs to be considered together to come to a clear picture/conclusion.
53. The Finance Act 1910 Map shows that the lane was part of a separate parcel of land however without any other supporting evidence one can only make assumptions as to whether or not the way is public or private. The map therefore only shows the physical existence of a route at the time.
54. The alleged route is shown on several OS maps from the late 19th Century and early 20th Century. The maps show only that there was a physical feature which existed at the time, but they do not provide evidence of public rights of way. They simply show that a route existed at this location however one cannot ascertain if the route was public or private in nature.
55. The Map of the Newcastle and Eccleshall Road proposed line of improvement from 1822 shows the present line of the road at the time and the new proposed route. The map infers no public rights of way over the alleged route. It only shows that it existed as a physical feature on the land in 1822.
56. This route would have been a main highway and, if public, would have carried higher rights than that of a footpath or bridleway. The reason for the line of improvement is hard to establish from the passage of time but clearly it was intended to remove the bend and straighten the road out.
57. The alleged route is also shown on Tithe maps for the area however, they do not provide any commentary of the status of the route, and any brown colouring is not

indicative of highway status, it simply indicates that it was not subject to tithe (i.e. it was non-productive land).

58. The user evidence forms indicate that the route is in use by the public. The user evidence shows that the route has been used by foot, horseback and horse and carriage. While there is not a high volume of evidence forms the quality of them is sufficient to advocate that the route has the status of a public nature, particularly that of a bridleway. As in the case of *Bagshaw v Norton*, once all of the available evidence has been considered, and if there is no evidence to put in the balance against the case to add a route, then a reasonable allegation is made out.
59. When the totality of the evidence is considered it does not suggest a picture of a route that has the status of a BOAT. There is no evidence to suggest use by mechanically propelled vehicles and there is nothing other than physical features which predominate the evidence or inference to suggest status of the way. However, when the evidence is considered in its totality, including the user evidence forms, then it is reasonable to allege that a route with the status of a Restricted Byway subsists. Historically, the route was used more in line with that of a Restricted Byway rather than a BOAT.
60. The category of Restricted Byway was introduced under the Countryside and Rights of Way Act 2000. The application pre-dates this legislation and it could be a reason why a route with the status of a BOAT was applied for.

Conclusion

61. In determining the Application, the Panel must be satisfied that, on balance of probability, the alleged public rights subsist, or if this test is not met, that there is a reasonable allegation in favour of the existence of the public right of way.
62. When all available evidence is considered it is finely balanced as to whether it would satisfy the first part of the test as set out in s53(3)(c)(i), that is whether on the balance of probabilities a BOAT subsists.
63. Upon deliberation of the available evidence Officers consider that there is not a sufficient weighting of evidence to satisfy either of the above tests in respect of the status of a BOAT.
64. However, after consideration of all the available evidence, it is your Officers opinion that a route which is not shown on the map and statement, with the status of a Restricted Byway, is reasonably alleged to subsist.
65. It is the Panel's decision as to whether a modification to the Definitive Map and Statement should be made based upon the totality of the evidence. However, the Panel can determine a route which differs from the original application i.e. to add a right of way of a different status than that applies for such as a Restricted Byway instead of a BOAT.

Recommended Option

66. To make an order to add the claimed route as a Restricted Byway to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

Other options Available

67. To decide to accept the application to add the application route as a BOAT.
68. To decide to reject the application

Legal Implications

69. The legal implications are contained within the report.

Resource and Financial Implications

70. The costs of determining applications are met from existing provisions.
71. 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

1. 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.
2. 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.
3. 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.
4. 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.
5. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director of Corporate Services




Report Author: Dale Garside-Chell

Ext. No: 276747

Background File: LH639G

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-  Section 53
-  Parishes
-  County Electoral Divisions



FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of SWYNNERTON

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

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 [scribble] to

* adding the (footpath)(bridleway)(byway open to all traffic) from HARLEY THORN LN to PUBLIC ROAD LEADING UNDERNEATH AS19

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

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

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.

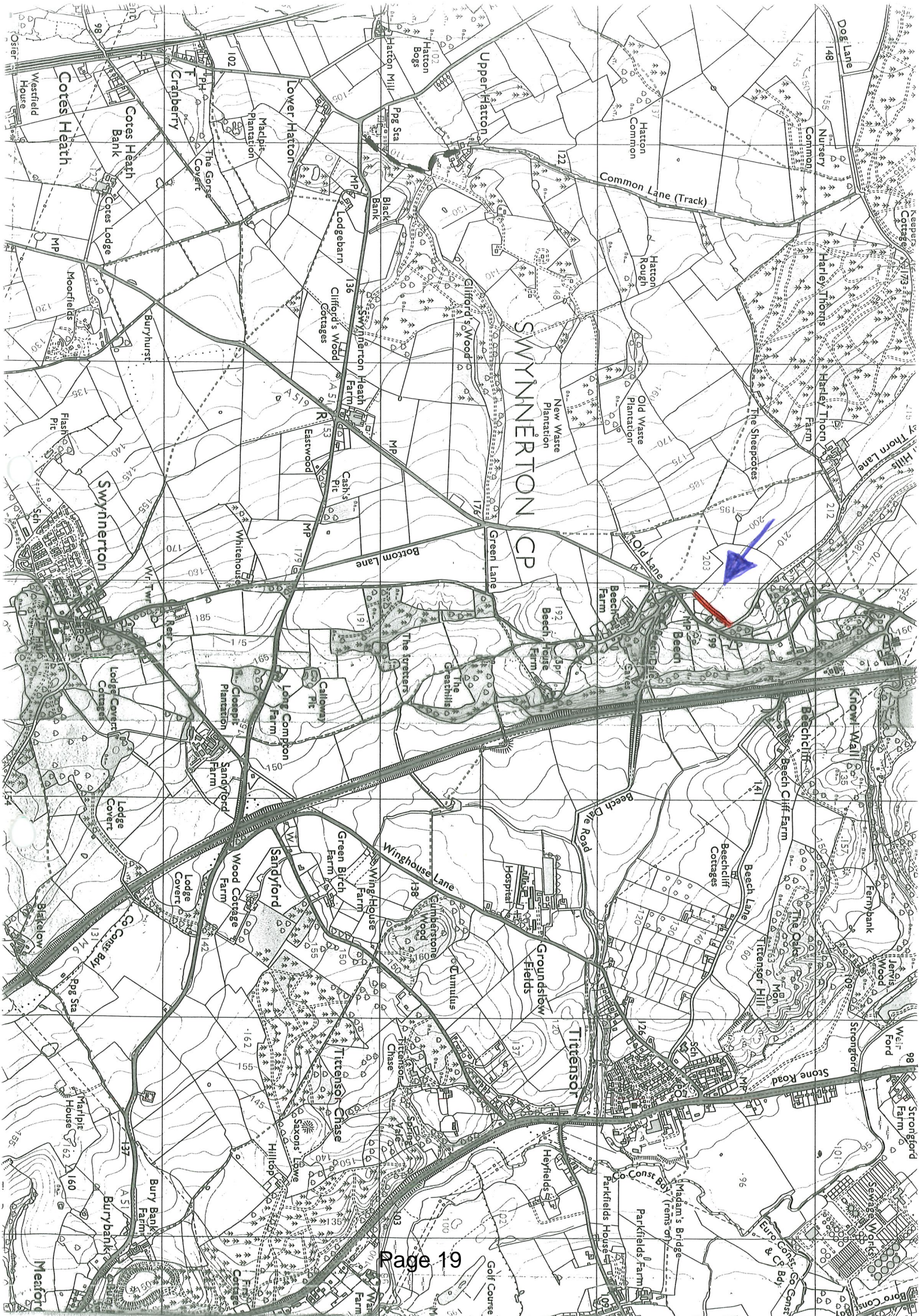
List of Documents

1910 FINANCE ACT PLANS - (COPY OF WHAT IS SHOWN ON THE PLAN IS ENCLOSED) IRB2/5/178 - AT PUBLIC RECORD OFFICE. SHOWS LANE SEPERATE FROM TAXABLE LAND HOLDINGS.

THE ROAD IS IN GENERAL USE BY WALKERS, CYCLISTS AND HORSE RIDERS.

(CLAIMED SECTION SHOWN IN RED ON ENCLOSED MAP.)

Date 18 / 1 19 99 signed..... M. Reay



LH6399

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT - STAFFORDSHIRE COUNTY COUNCIL

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION
FOR MODIFICATION ORDER

To: Staffordshire County Council
of: PO Box 11,
County Buildings,
Martin Street,
Stafford, ST16 2LH

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

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with.

Dated *18/1/99* Signed *M. Reay*

Names and addresses of owners and occupiers of land on whom notice has been served that an application for a Modification Order has been made:

LORD STAFFORD ESTATE AGENTS, SWYNNERTON HALL, SWYNNERTON, NEWCASTLE, STAFFS.

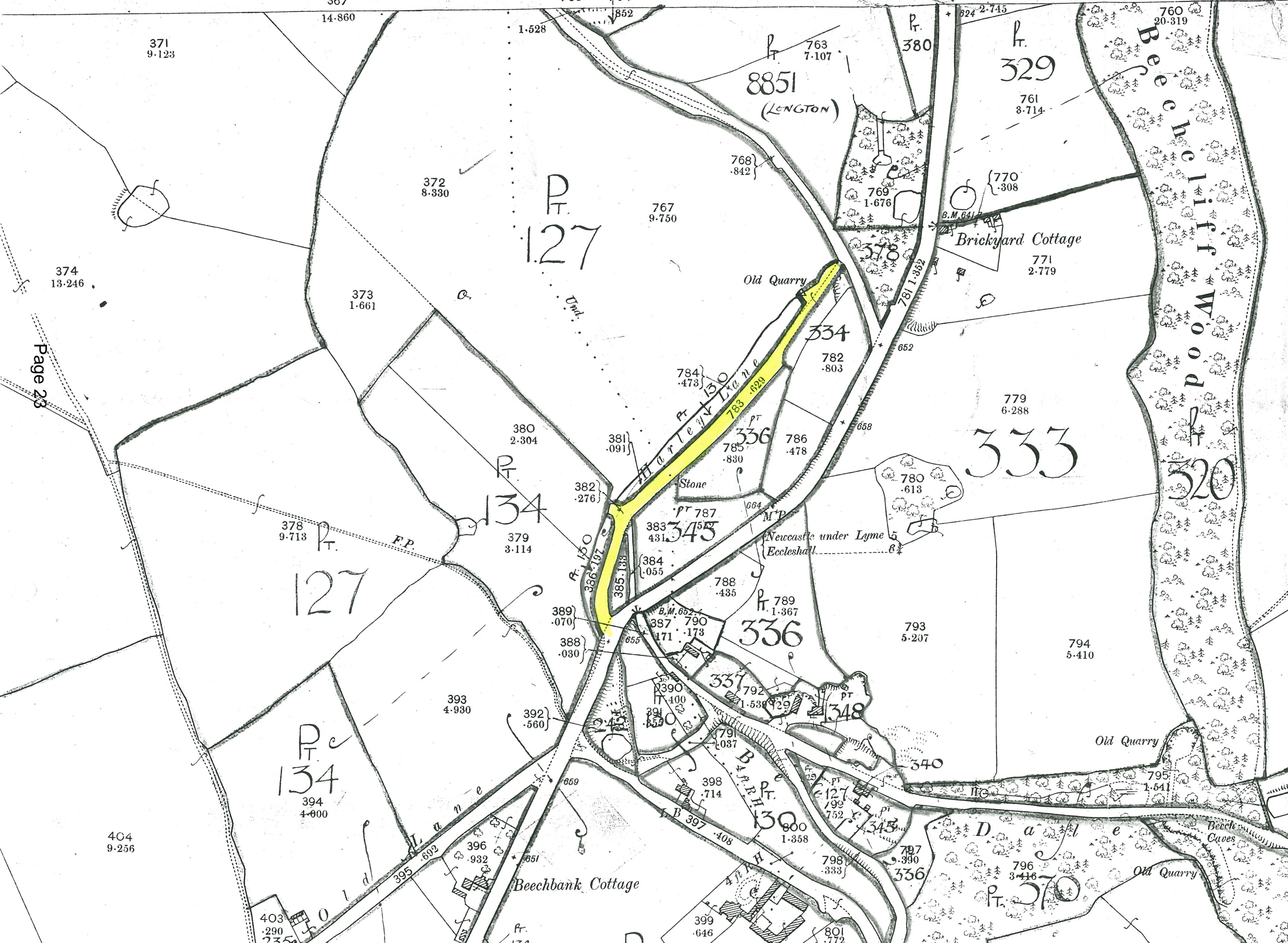
SECOND EDITION 1901

STONE UNION

STONE R.D. 531

XXIII.4.

To Newcastle under Lyme

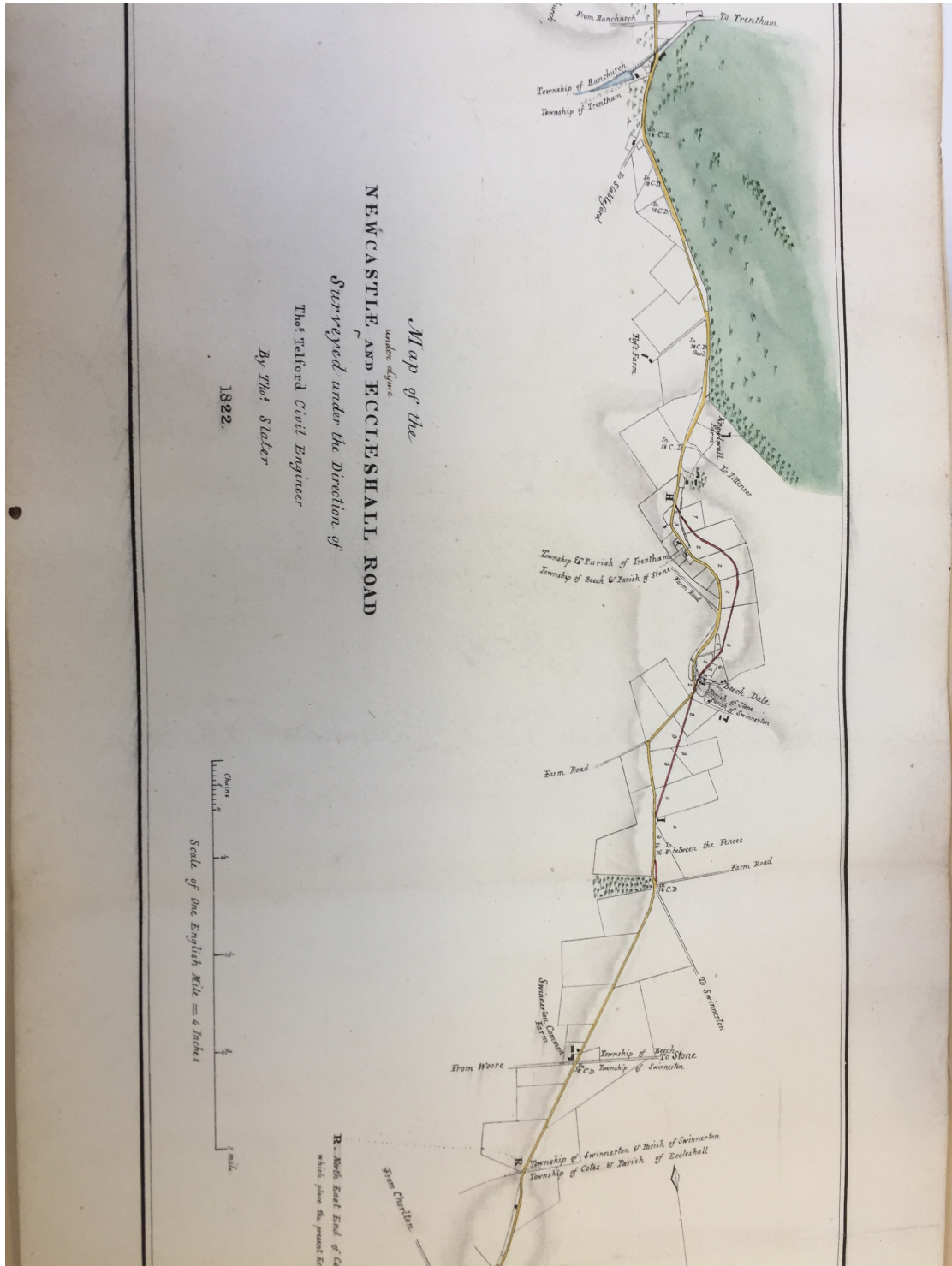


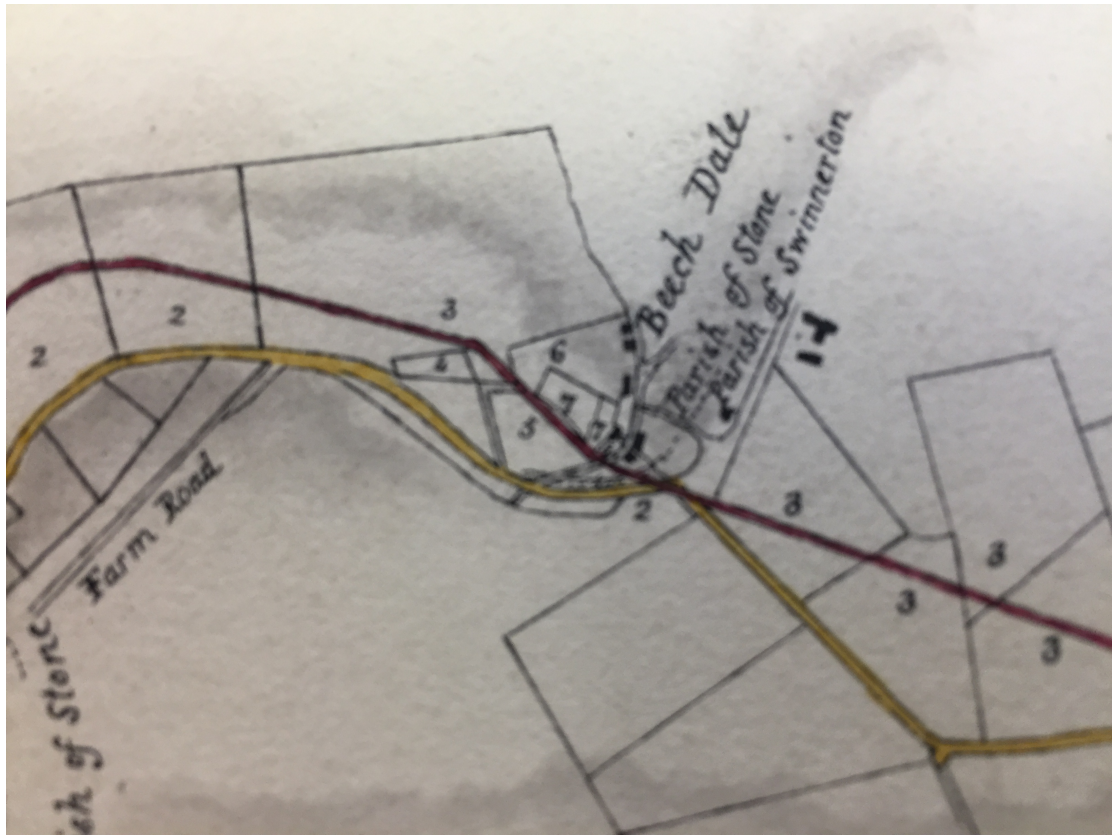
Page 23

Reference: **TA 132/5/178**

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PUBLIC RECORD OFFICE





Map of the
under Lyme
NEWCASTLE AND ECCLESHALL ROAD

Surveyed under the Direction of

Tho^s Telford Civil Engineer


By Tho^s Slater


1822.

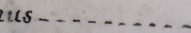
From Seabridge

North

Note

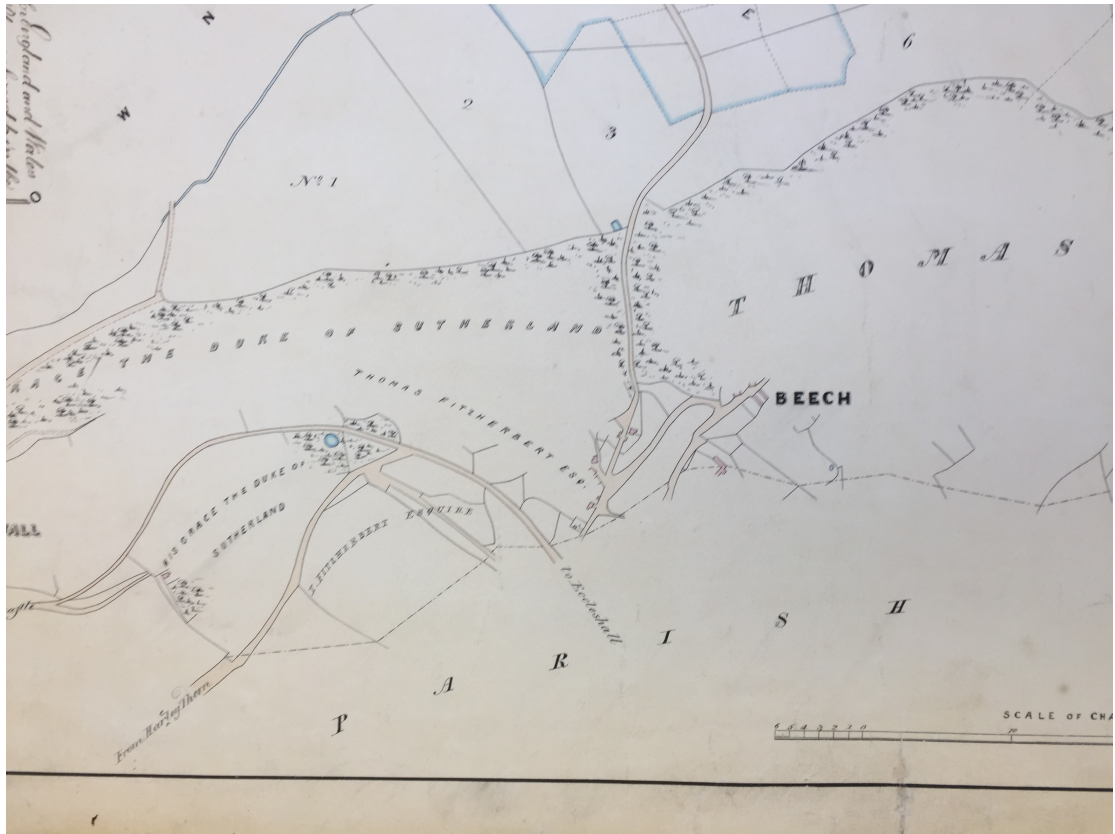
The present line of Road is coloured Yellow 

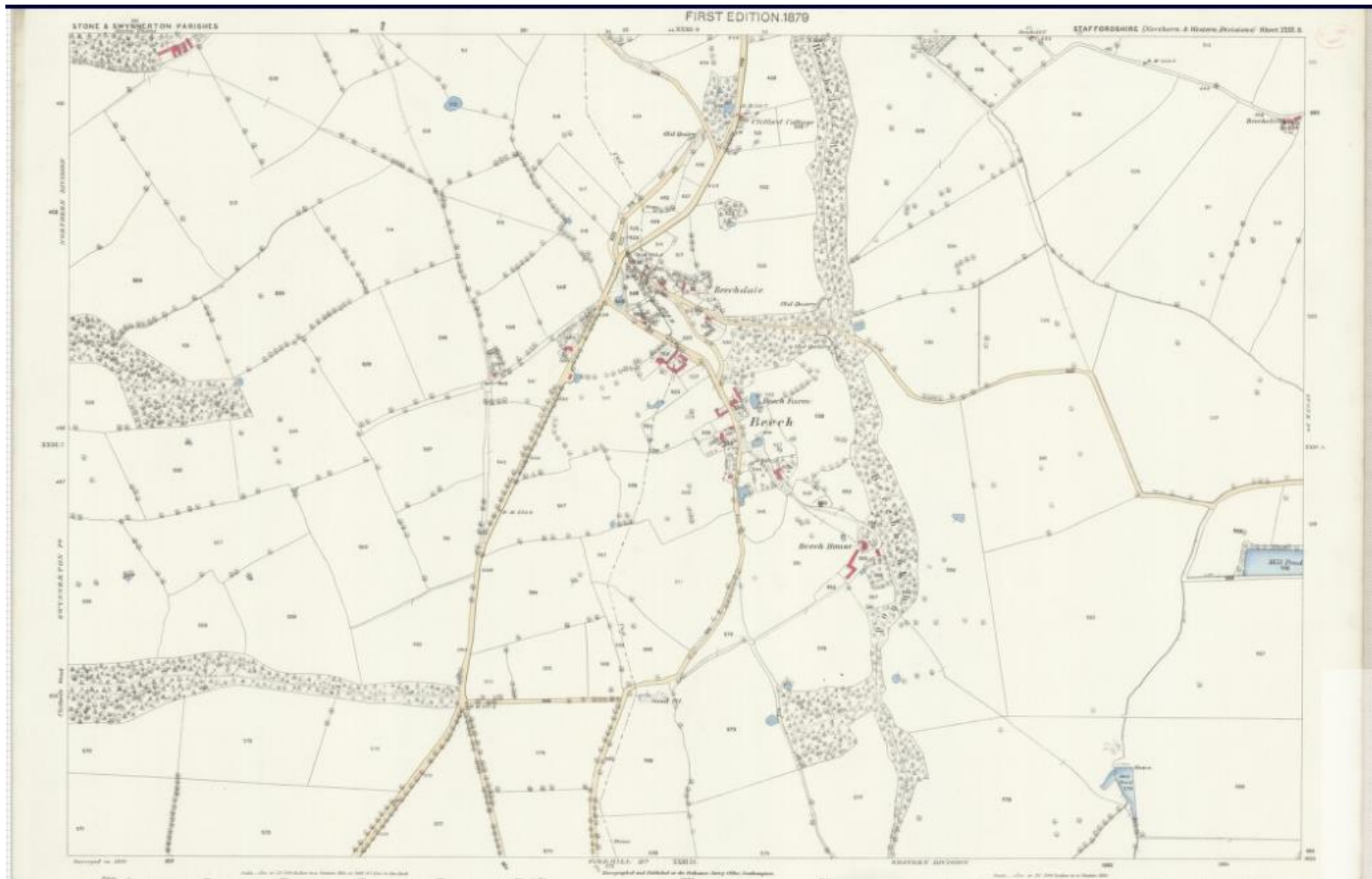
The proposed lines of Improvement are coloured Red 

The Boundaries of Parishes & Townships are marked thus 

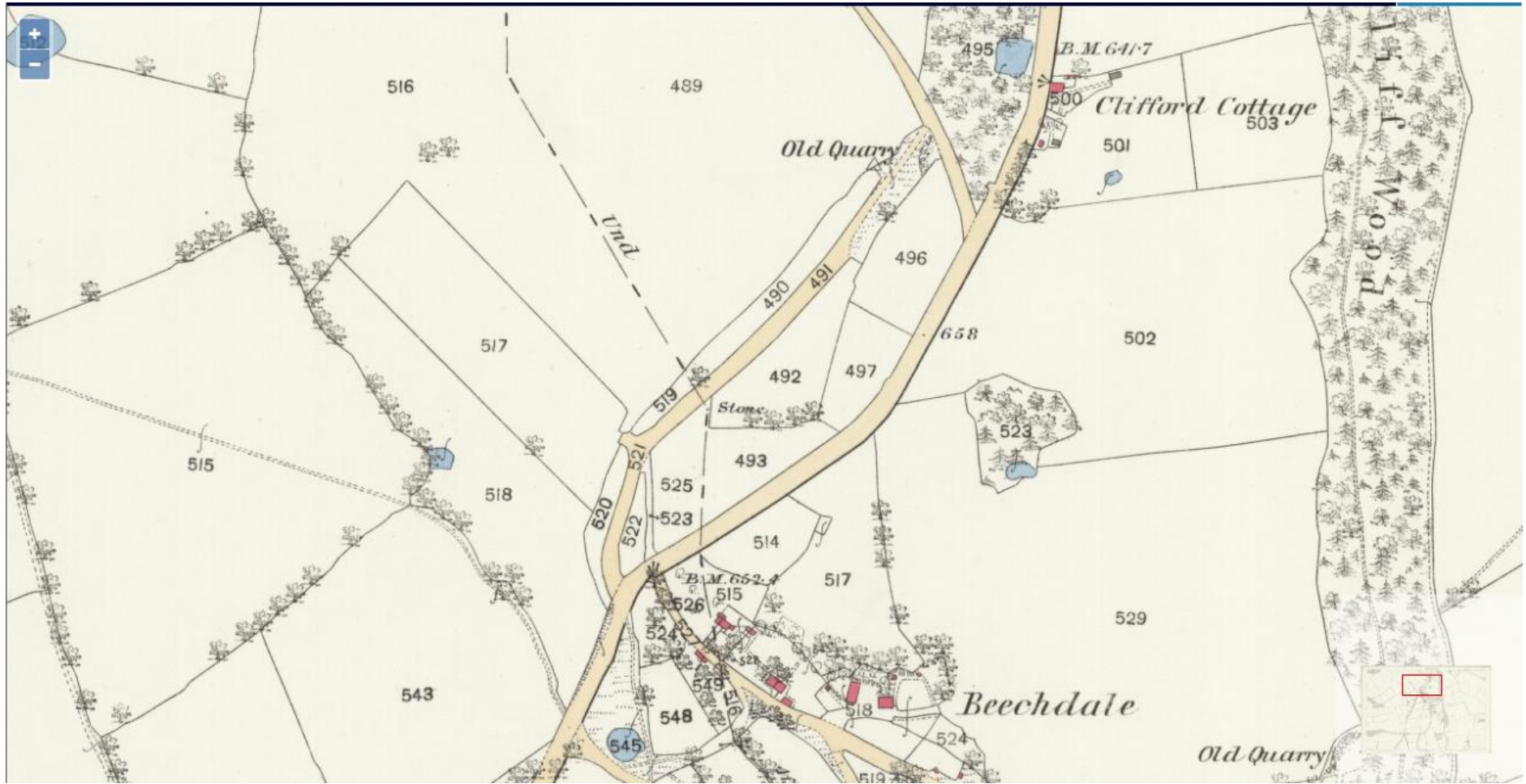




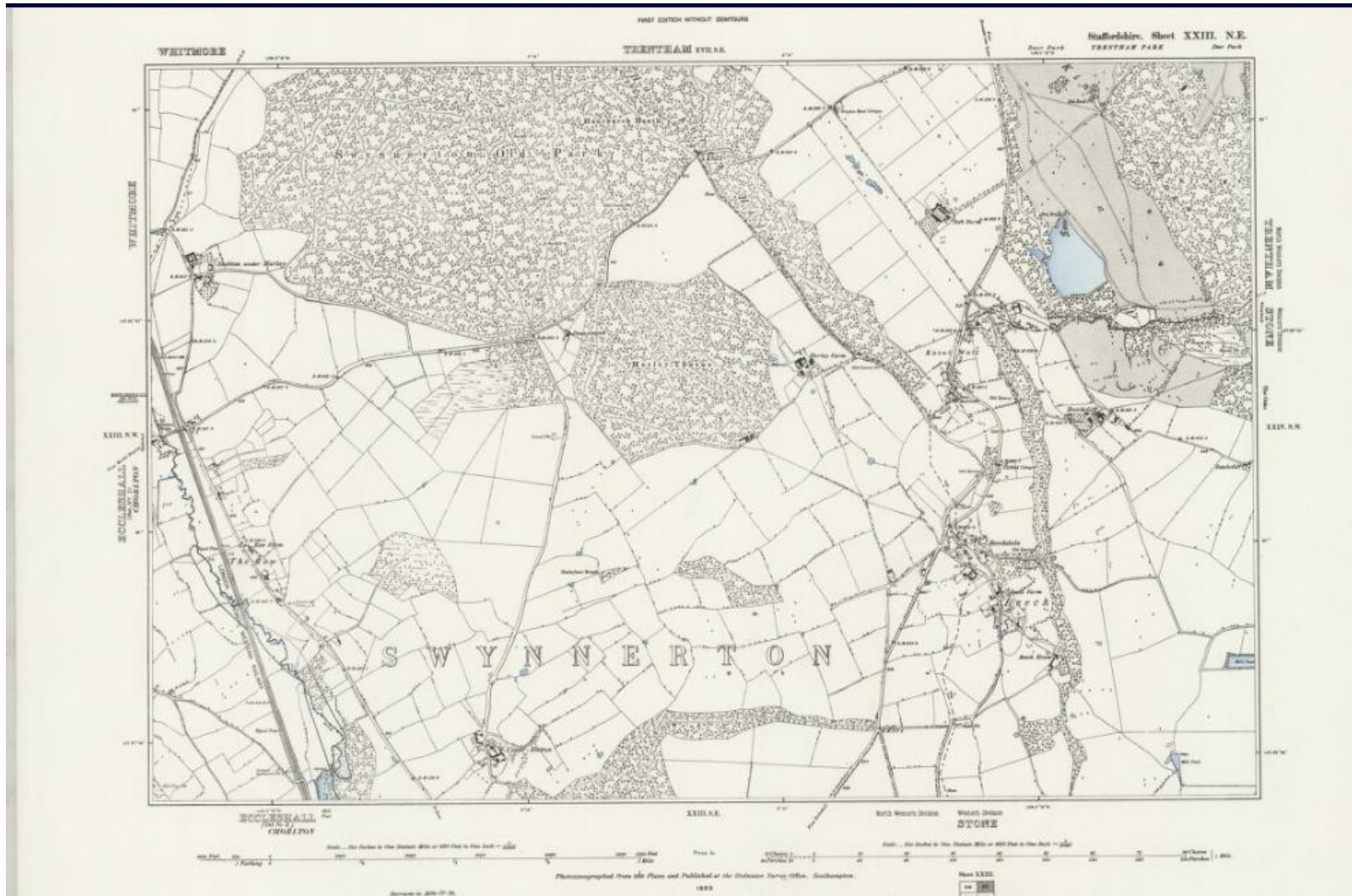




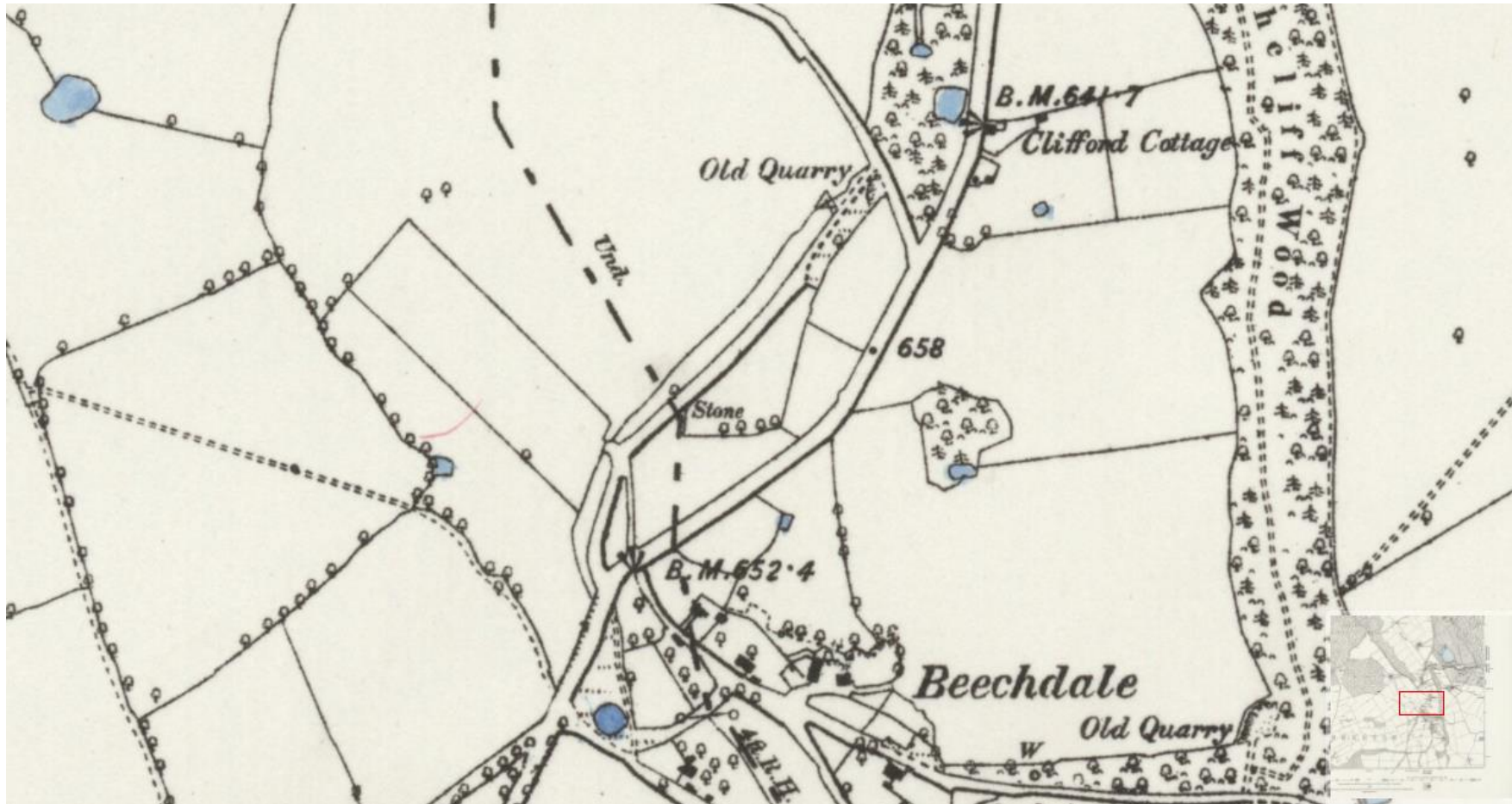
OS Map 1879 – 25 inch to 1 mile



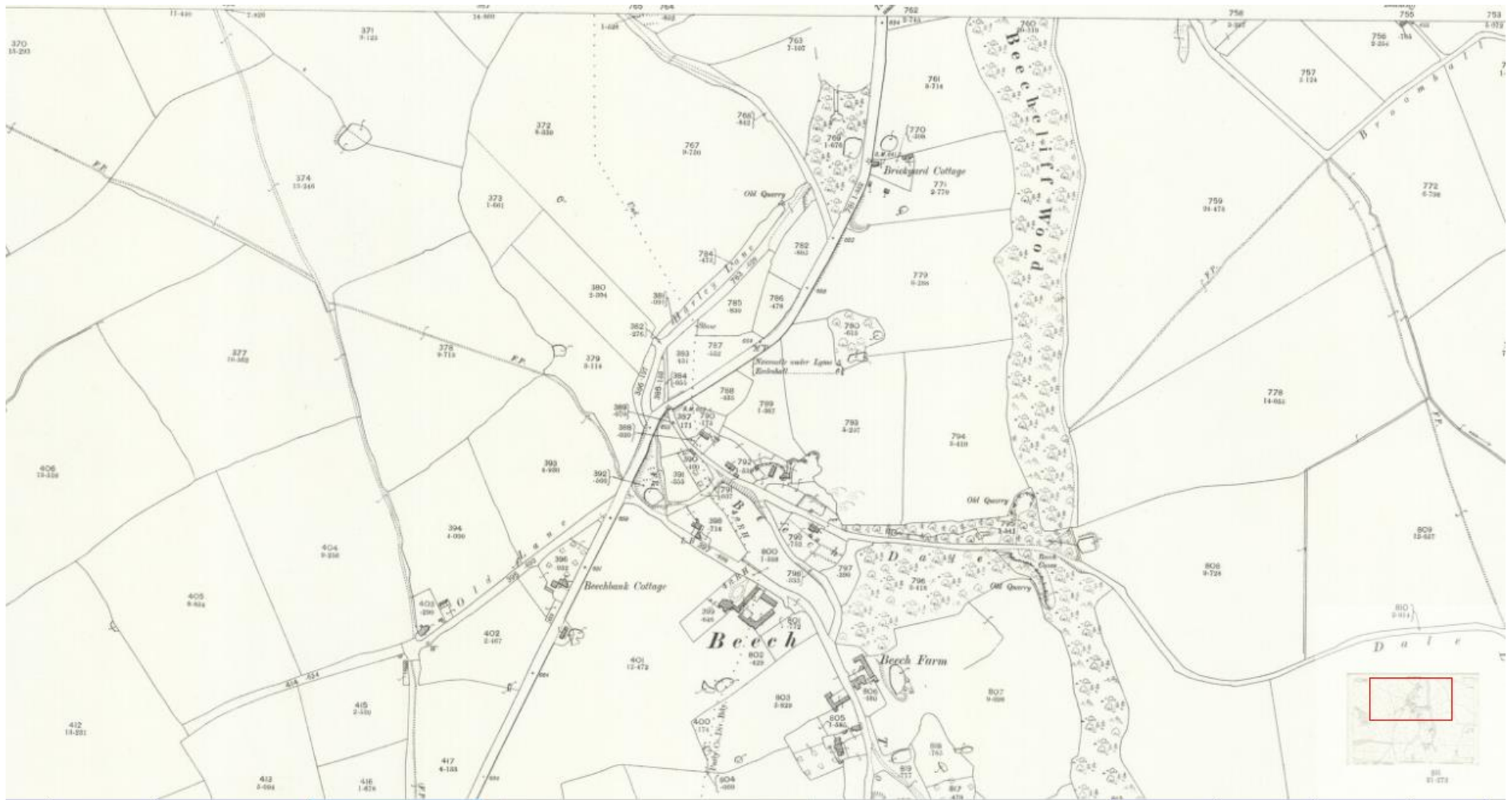
OS Map 1879 – 25 inch to 1 mile



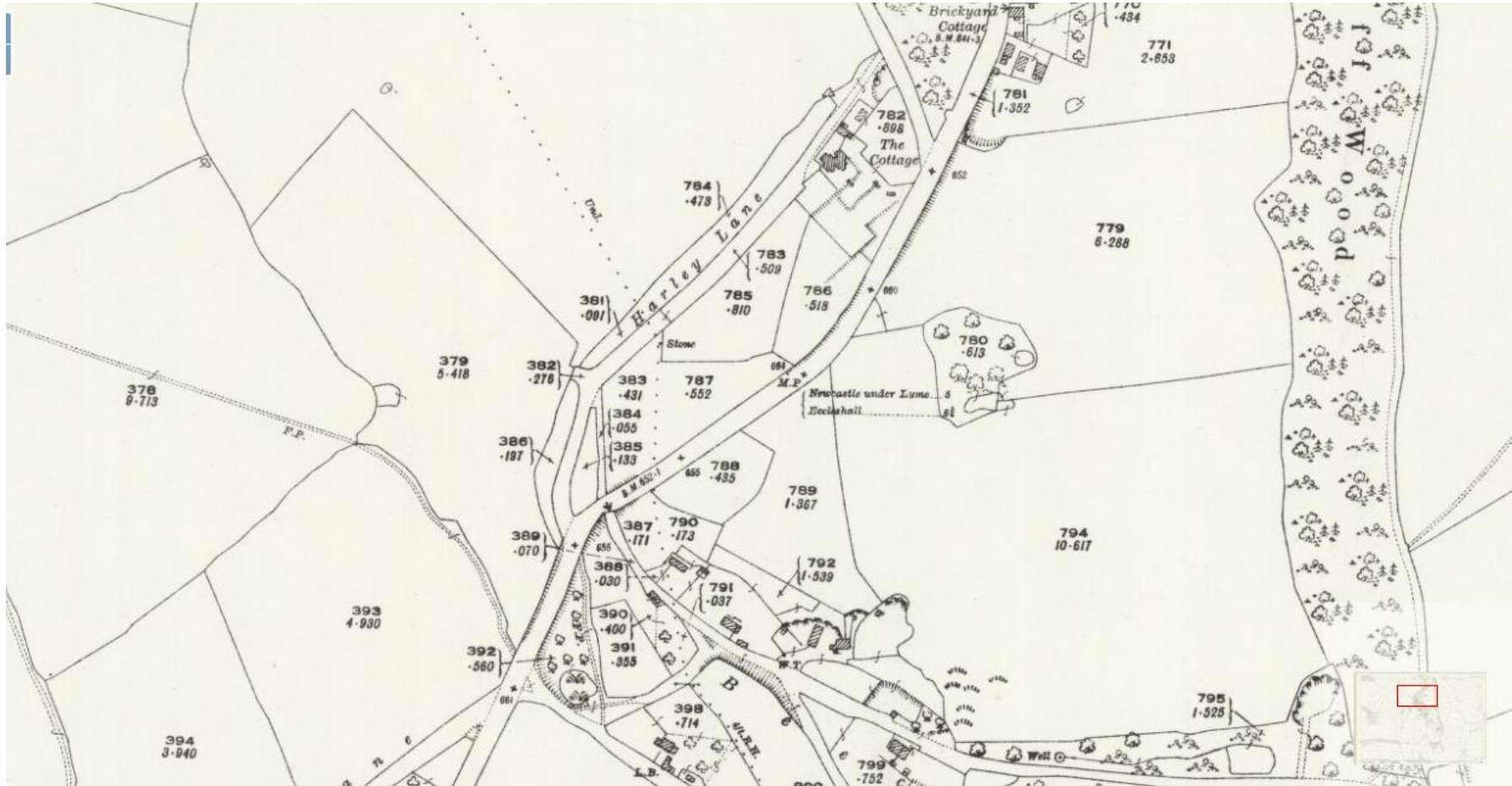
OS Map 1879 – 6 inch to 1 mile



OS Map 1879 – 6 inch to 1 mile



OS Map 1901 (revised version) – 25 inch to 1 mile



OS Map 1922 (revised) – 25 inch to 1 mile

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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 Susan Williams
(Block Capitals please)

Address Penn Cottage Back Lane Cranberry
(Block Capitals please) Cotes Heath Staffs ST21 6SQ

Telephone No. 01782 791613

Date of Birth 29/1/49 Occupation Farm Sec.

Description of way (include grid references if known):-
From Hazel Thorn Lane
To To join minor road to Eccleshall to Newcastle Rd

* Please delete as appropriate

1. How many years have you known the way? 4

2.(a) Do you believe the way to be a public right of way? *YES/NO

- (b) If so, is the way
(i) a footpath? (pedestrians only) *YES/NO
(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO
(iii) a by-way open to all traffic? (all uses including vehicles) *YES/NO

3. How wide is the way? At least a cars width.

4. Have you used the above way?

*YES/~~NO~~

If so: (a) During which years?

From '96

(b) Where were you going from/to?

SWYNNERTON TO STABLEFORD

(c) For what purpose? (eg work, pleasure)

PLEASURE

(d) How many times a year? (eg daily)

SEVERAL - AT LEAST 1 A MONTH

(e) By what means? (eg on foot, horseback, motor vehicle etc)

HORSEBACK

(f) Please show the route of the way used on the attached plan.

5.(a) Has the way always been on the same route?

*YES/~~NO~~

(b) If not, please give details of original route, date of diversion and show details on a plan.

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*YES/~~NO~~

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*YES/~~NO~~

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*YES/~~NO~~

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? ~~*YES~~/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? ~~*YES~~/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? ~~*YES~~/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? ~~*YES~~/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary). I HAVE ALWAYS THOUGHT OF IT AS BEING PART OF HARLEBY THORN PUBLIC ROAD

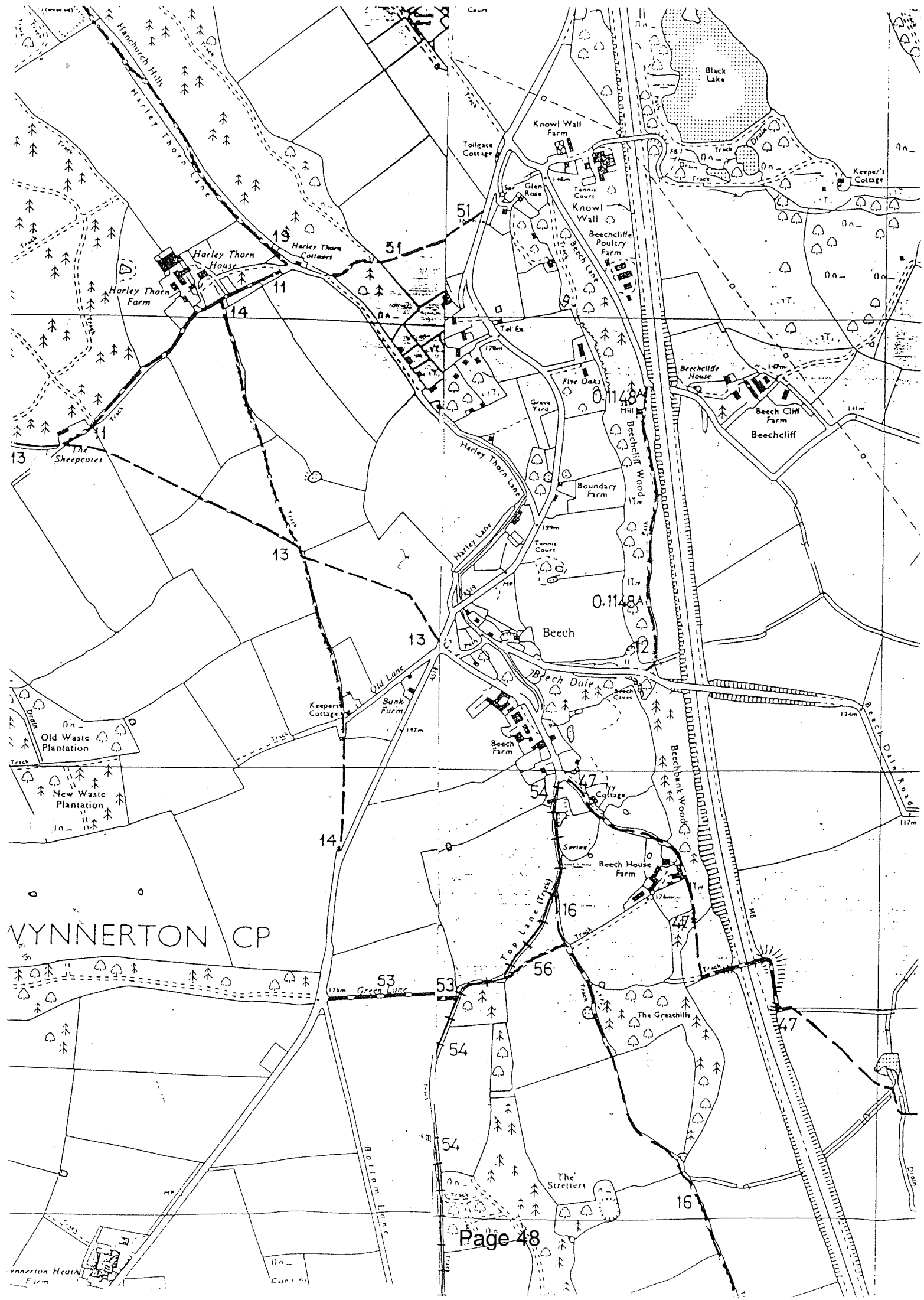
14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary? ~~*YES/NO~~

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

Signature S.M. Williams

Person taking this statement.....

Date 8.3.99



Harley Thorn House
Harley Thorn Farm

Knowl Wall Farm
Tollgate Cottage
Glen Rose

Black Lake

Sheepcotes

Beech House
Beech Cliff Farm
Beech Cliff

Old Waste Plantation
New Waste Plantation

VYNNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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 B. WILSON.....
(Block Capitals please)

Address CHERRYBERRY FARM, COTES HEATH,.....
(Block Capitals please)
NR ECCLESHALL..... STAM. GSR.....

Telephone No. : 01782 - 791241.....

Date of Birth : 3.11.56... Occupation... REGIONAL MANAGER.....

Description of way (include grid references if known):-

From SWYNDERTON
To DRAYTON ROAD

* Please delete as appropriate

1. How many years have you known the way? 10 YRS +

2.(a) Do you believe the way to be a public right of way? *YES/NO

(b) If so, is the way

(i) a footpath? (pedestrians only) *YES/NO

(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO

(iii) a by-way open to all traffic? (all uses including vehicles) *YES/NO

3. How wide is the way? AT LEAST CAR'S WIDTH

4. Have you used the above way?

*YES/~~NO~~

If so: (a) During which years?

LAST 10 YRS

(b) Where were you going from/to?

SWYNNERTON TO HANDBURCH

(c) For what purpose? (eg work, pleasure)

PLEASURE

(d) How many times a year? (eg daily)

ONCE A MONTH

(e) By what means? (eg on

foot, horseback,
motor vehicle etc)

HORSEBACK

(f) Please show the route of
the way used on the
attached plan.

5.(a) Has the way always been on
the same route?

*YES/~~NO~~

(b) If not, please give details
of original route, date of diversion and
show details on a plan.

6. Have there, to your knowledge,
ever been on the way
any stiles or gates?

*~~YES~~/NO

If so, state (with details
of location) where the stiles
or gates stood.

7.(a) Were you working for any
owner or tenant of land
crossed by the way at the time
when you used it.

*~~YES~~/NO

(b) If so, give particulars and say whether you received
any instructions from the owner/tenant as to the
use of the way by the public? If
so, what were they?

8.(a) Have you ever been stopped or
turned back when using the way
or do you know, or have you heard,
of anyone else having been prevented
from using the route?

*~~YES~~/NO

(b) If so, please
give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? *YES/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? *YES/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? *YES/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? *YES/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

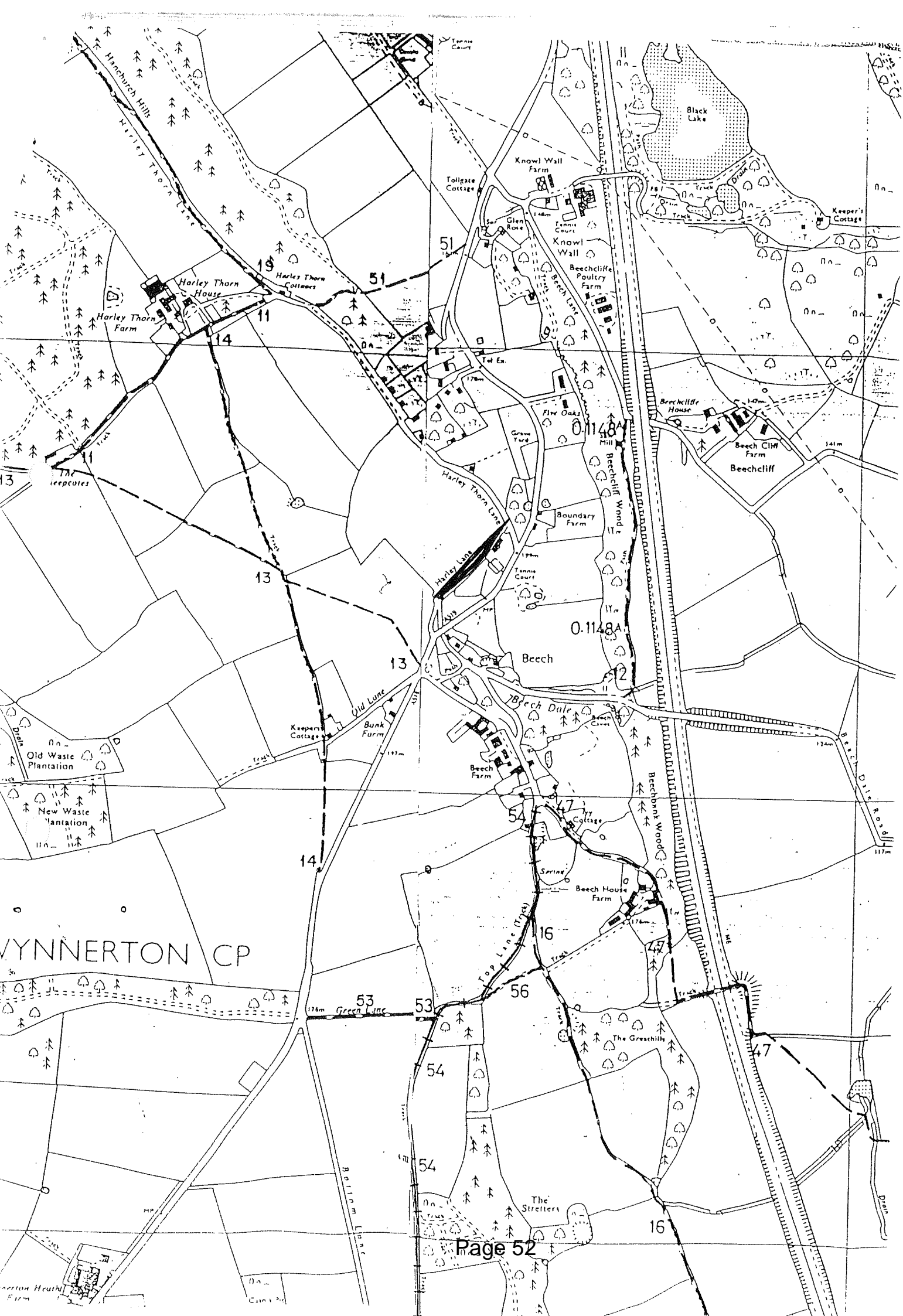
14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary? *YES/NO

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

Signature *B.W. Jones*

Person taking this statement.....

Date... 6.3.99



WYNNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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 J LOWE
(Block Capitals please)

Address WATFORD GARDEN COYSE WATFORD
(Block Capitals please) STANDED KEEESHALL STILES ST21 6QS

Telephone No. 01782 791532

Date of Birth 7.11.50 Occupation ~~#~~

Description of way (include grid references if known):-
From
To

* Please delete as appropriate

1. How many years have you known the way? 30 years

2.(a) Do you believe the way to be a public right of way? *YES/~~NO~~

- (b) If so, is the way
 - (i) a footpath? (pedestrians only) *YES/NO
 - (ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO
 - (iii) a by-way open to all traffic? (all uses including vehicles) *YES/~~NO~~

3. How wide is the way? a car width

4. Have you used the above way?

*YES/~~NO~~

If so: (a) During which years?

25 years

- (b) Where were you going from/to?
- (c) For what purpose? (eg work, pleasure)
- (d) How many times a year? (eg daily)
- (e) By what means? (eg on foot, horseback, motor vehicle etc)

to DRAYTON LANE
PLEASURE
THREE TIMES A MONTH
HORSEBACK - AND FOOT

(f) Please show the route of the way used on the attached plan.

5.(a) Has the way always been on the same route?

*YES/~~NO~~

(b) If not, please give details of original route, date of diversion and show details on a plan.

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*~~YES~~/NO

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*~~YES~~/NO

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*~~YES~~/NO

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? ~~YES~~/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? ~~YES~~/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? ~~YES~~/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? ~~YES~~/NO

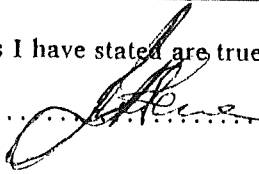
(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary?

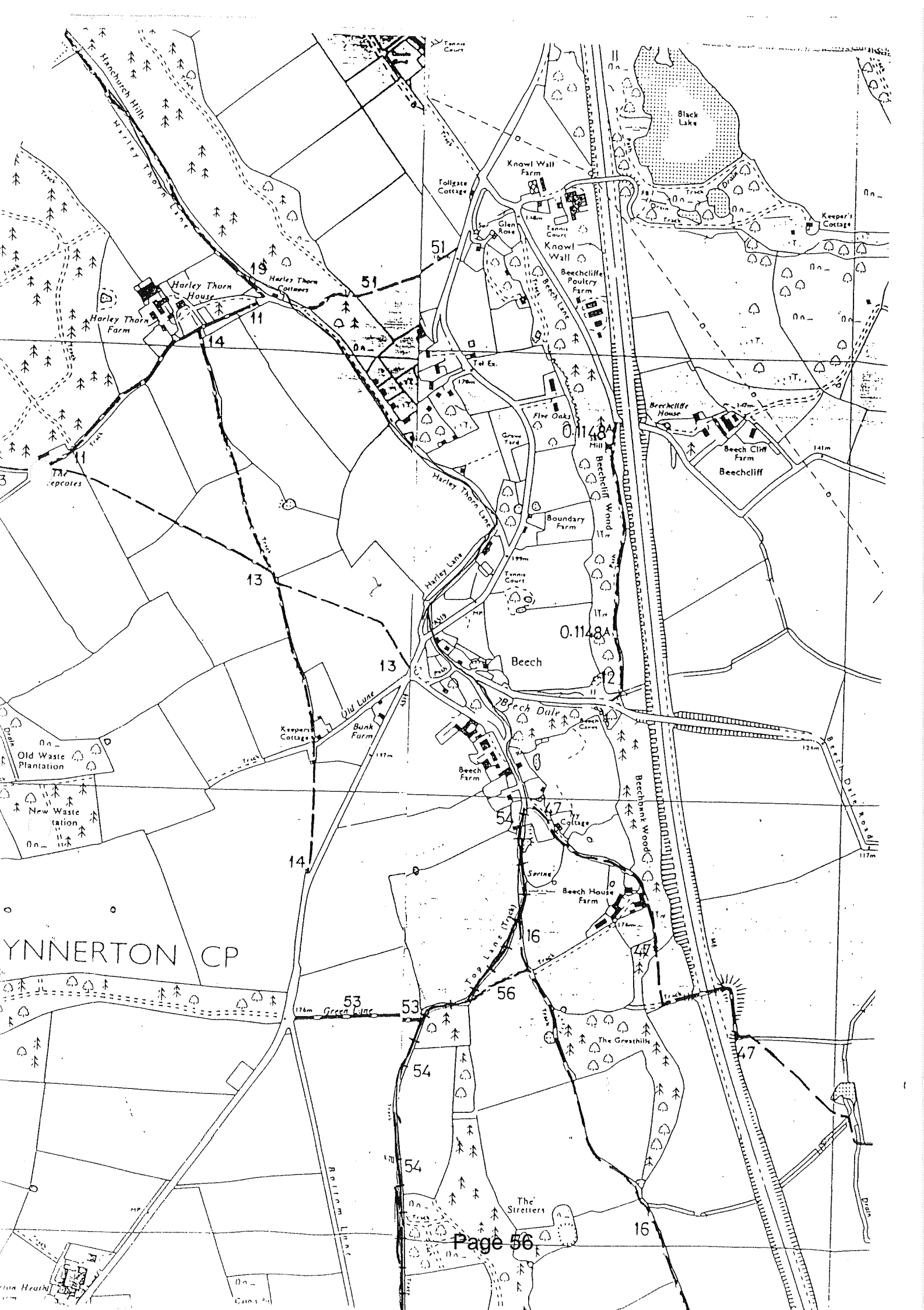
*YES/~~NO~~

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

Signature 

Person taking this statement.....

Date... 28-2-99



YNNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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. S. J. SEABRIDGE.....
(Block Capitals please)

AddressTHREE WELLS FARM BUERTON.....
(Block Capitals please)HIDDLEM CREWE CHESHIRE CW3 0DH.....

Telephone No. 01270811483.....

Date of Birth 1.1.3.142 Occupation FARMER.....

Description of way (include grid references if known):-

From

To HARLEY THORN LANE (TARMAC ROAD)

TO MINOR ROAD ADJACENT TO MAIN NECCASTLE / ACEFISHALL ROAD

* Please delete as appropriate

1. How many years have you known the way? 10 YEARS

2.(a) Do you believe the way to be a public right of way? *YES/NO

(b) If so, is the way

(i) a footpath? (pedestrians only) *YES/NO NO

(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO

(iii) a by-way open to all traffic? (all uses including vehicles) *YES/NO

3. How wide is the way?

APPROXIMATELY 10'-12' WIDE

4. Have you used the above way?

*YES/NO

If so: (a) During which years?

1989-1999

- (b) Where were you going from/to? STABLEFORD TO SWYNNERTON
(c) For what purpose? (eg work, pleasure) PLEASURE
(d) How many times a year? (eg daily) SEVERAL TIMES A YEAR
(e) By what means? (eg on foot, horseback, motor vehicle etc) ON HORSE BACK & HORSE & CARRIAGE.
(f) Please show the route of the way used on the attached plan.

5.(a) Has the way always been on the same route?

*YES/NO

(b) If not, please give details of original route, date of diversion and show details on a plan.

~~XXXXXXXXXX~~

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*YES/NO/10

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*YES/NO

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*YES/NO

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? *~~YES~~/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? *~~YES~~/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? *~~YES~~/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? *~~YES~~/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

I HAVE ALWAYS THOUGHT OF IT BEEN PART OF HARLEY THORNTON PUBLIC ROAD.

14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary?

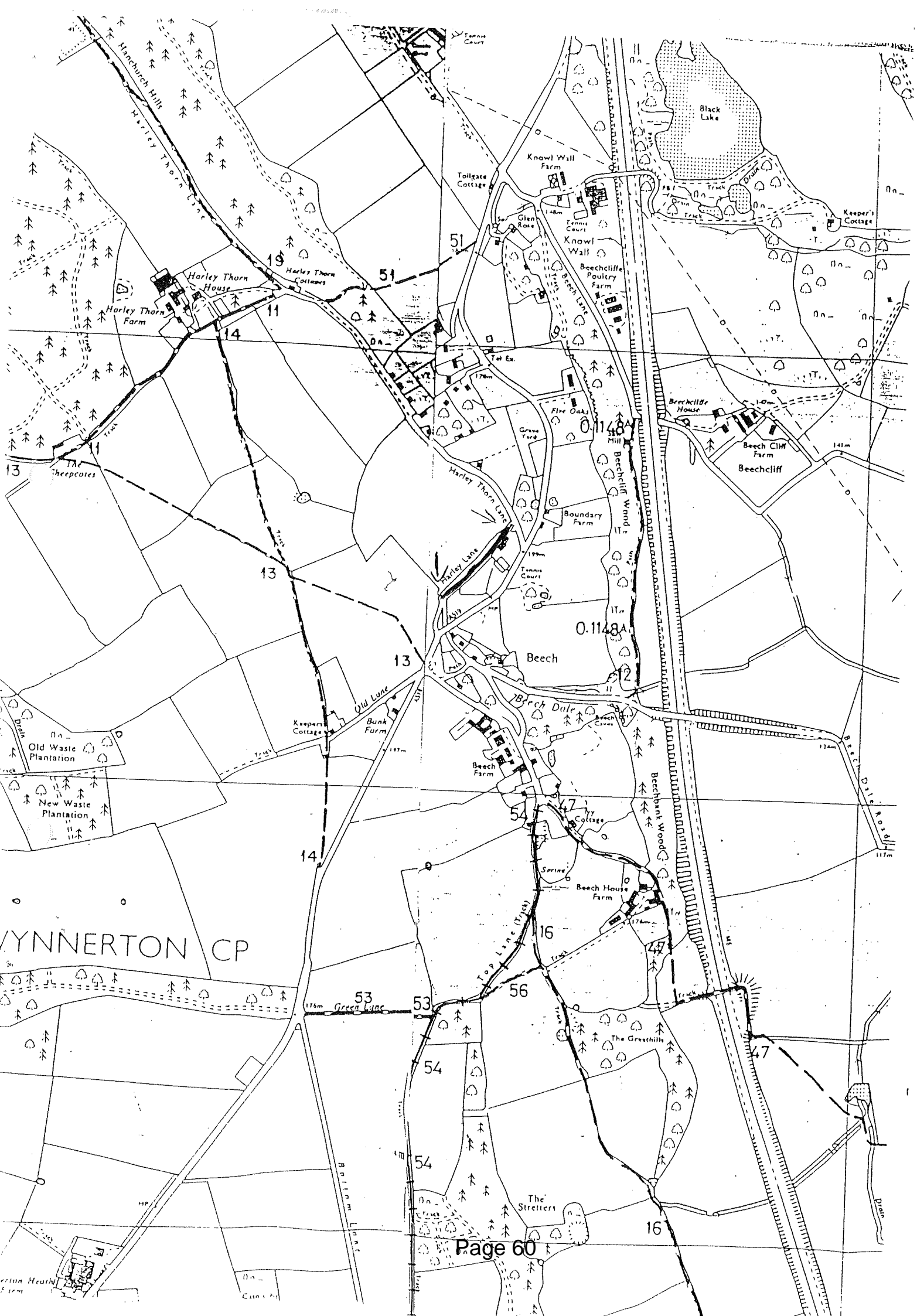
*YES/~~NO~~

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

Signature *S.J. Sealbridge*

Person taking this statement.....

Date..... 20-2-99



Harlechurch Hills
Harley Thorn Farm
Harley Thorn House
Harley Thorn Cottages
11
14
19
51

Tennis Court
Tollgate Cottage
Knowl Wall Farm
Glen Rose
Tennis Court
Knowl Wall
Beechcliffe Poultry Farm
Beech Cliff Farm
Keeper's Cottage
Black Lake

13
Sheepcotes
Old Waste Plantation
New Waste Plantation
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14
Keeper's Cottage
Bunk Farm
Harley Lane
Harley Lane
Beech

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WYNNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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. S.D. FARRINGTON.....
(Block Capitals please)

Address WOODHOUSE FARM, WOODHOUSE LANE.....
(Block Capitals please)

..... ALDREM, NR CREWE, CHESHIRE CW3 0DT.....

Telephone No. 01270 812201.....

Date of Birth ... 17 / 1 / 59. Occupation FARMERS WIFE.....

Description of way (include grid references if known):-

From Harley Thorn Lane (tarmac road)

To Minor road adjacent to main Newcastle / Eccleshall Road

* Please delete as appropriate

1. How many years have you known the way? 7 years

2.(a) Do you believe the way to be a public right of way? *YES/~~NO~~

(b) If so, is the way

(i) a footpath? (pedestrians only) *~~YES~~/NO

(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO

(iii) a by-way open to all traffic? (all uses including vehicles) *YES/~~NO~~

3. How wide is the way?

Approximately 10-15ft wide.

4. Have you used the above way?

*YES/~~NO~~

If so: (a) During which years?

1992 - 1999

(b) Where were you going from/to?

From Stableford to Swynnerton.

(c) For what purpose? (eg work, pleasure)

Pleasure.

(d) How many times a year? (eg daily)

Approx twice.

(e) By what means? (eg on foot, horseback, motor vehicle etc)

on horseback and also carriage driving.

(f) Please show the route of the way used on the attached plan.

5.(a) Has the way always been on the same route?

*YES/~~NO~~

(b) If not, please give details of original route, date of diversion and show details on a plan.

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*~~YES~~/NO

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*~~YES~~/NO

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*~~YES~~/NO

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? *~~YES~~/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? *~~YES~~/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? *~~YES~~/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? *~~YES~~/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

I just considered it to be a continuation of the public road which is Hawley Thorn Road.

14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary?

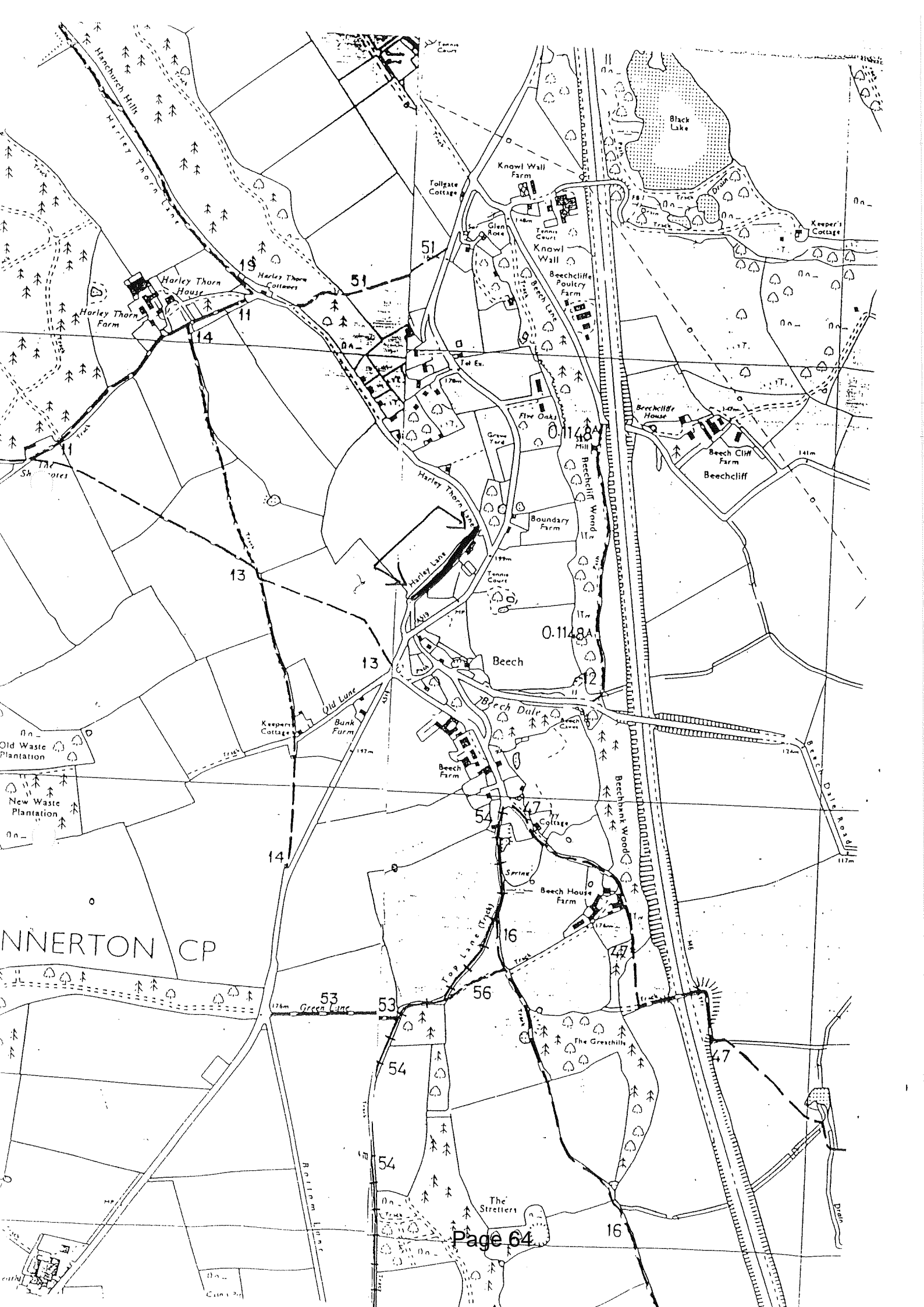
*YES/~~NO~~

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

Signature *S.D. Jarrin*

Person taking this statement.....

Date..... *21/2/99*



ANNERTON CP

16

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness..... MARGARET ELID
(Block Capitals please)

Address COOKSLAND HOUSE
(Block Capitals please) SEVENFORD STAFFORD ST18 9PP

Telephone No. 01785 282 348

Date of Birth 13/8/21 Occupation Retired

Description of way (include grid references if known):-

From BEECH
to HANCRUDA HILLS G.R 85 38-6

* Please delete as appropriate

1. How many years have you known the way? 30 yrs +

2.(a) Do you believe the way to be a public right of way? *YES/NO

(b) If so, is the way

(i) a footpath? (pedestrians only) *YES/NO

(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO

(iii) a by-way open to all traffic? (all uses including vehicles) *YES/NO

3. How wide is the way?
One car wide hard surfap.

4. Have you used the above way?

*YES/NO

If so: (a) During which years?

1960 - to present day 1999

(b) Where were you going from/to?

Back to Handcomb Hills

(c) For what purpose? (eg work, pleasure)

is review for night, James

(d) How many times a year? (eg daily)

once

(e) By what means? (eg on foot, horseback, motor vehicle etc)

to May on horseback

(f) Please show the route of the way used on the attached plan.

in course of training for endurance riding

5.(a) Has the way always been on the same route?

*YES/NO

(b) If not, please give details of original route, date of diversion and show details on a plan.

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*YES/NO

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*YES/NO

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*YES/NO

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? *YES/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? ~~YES~~/NO *Harley I have same*

(b) If so, state when and where and show its approximate position on the attached plan. *Used side thru woods to N.E. kept to hard track when fenced off*

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? *YES/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? ~~YES~~/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

Vital to avoid crossing over A519

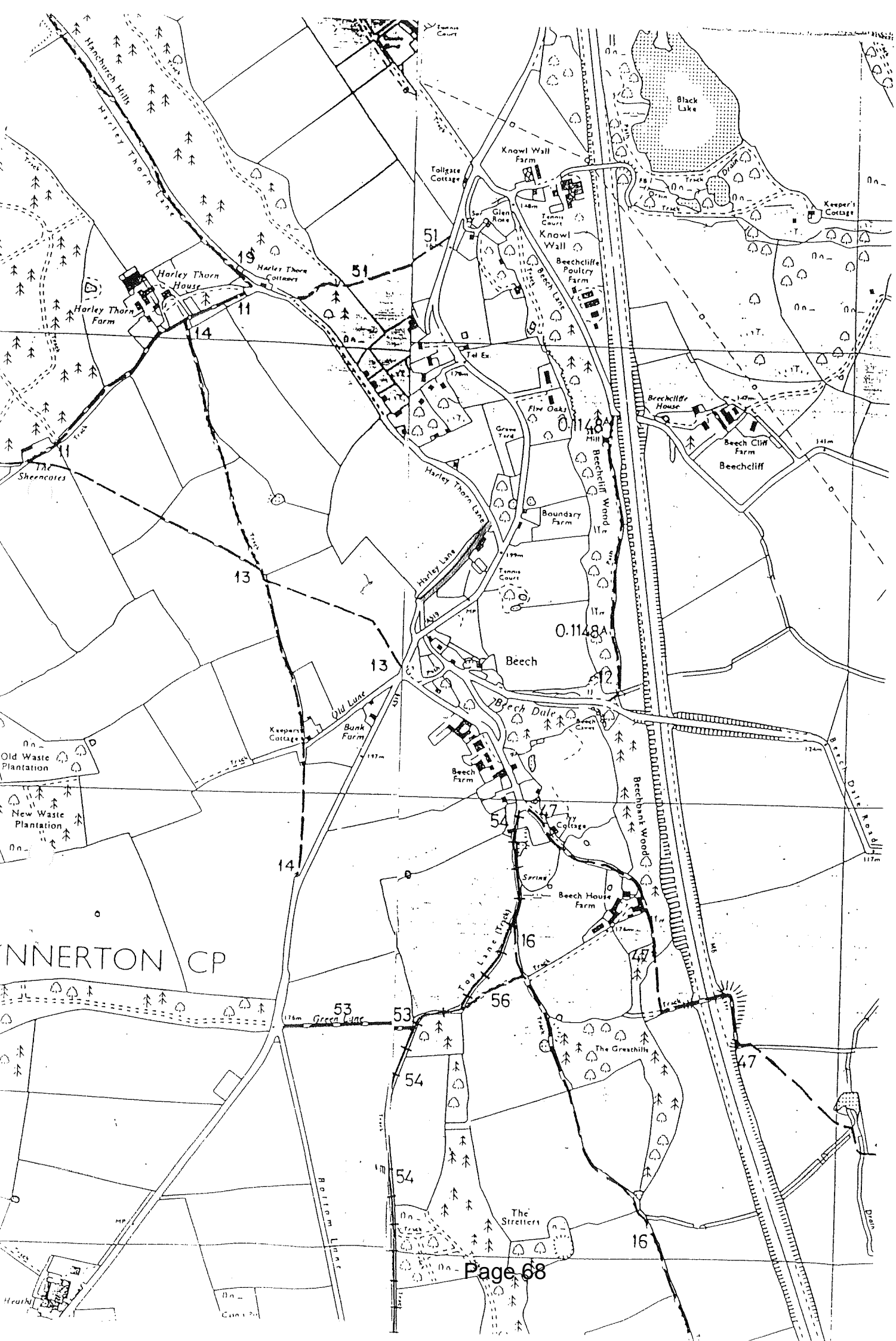
14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary? *YES/NO

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

Signature *Margie [Signature]*

Person taking this statement.....

Date... *23/2/99*



INNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. This is of particular importance if the information is to be of real value in establishing the status of the way.

Name of witness... NEWELLER... SEABRIDGE.....
(Block Capitals please)

Address ... THREE WELLS FARM, BUERTON, A.U.D.LEM.....
(Block Capitals please) CREWE, CHESHIRE, CW3 0DH.....

Telephone No. ... 01270 811483.....

Date of Birth .. 21 / 07 / 44 . Occupation .. DOMESTIC OPERATIVE.....

Description of way (include grid references if known):-
From CONTINUATION OF HARLEY THORN LANE TO JOIN THE
To ECCLESHALL TO NEWCASTLE ROAD

* Please delete as appropriate

1. How many years have you known the way? 6 YEARS

2.(a) Do you believe the way to be a public right of way? *YES/~~NO~~

(b) If so, is the way

(i) a footpath? (pedestrians only) *~~YES~~/NO

(ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *~~YES~~/NO

(iii) a by-way open to all traffic? (all uses including vehicles) *YES/~~NO~~

3. How wide is the way? 10 - 12 FEET

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? *YES/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way? *YES/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way? *YES/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way? *YES/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary). *I HAVE ALWAYS THOUGHT IT TO BE A RIGHT OF WAY, BEING PART OF HARLEY THORN LANE*

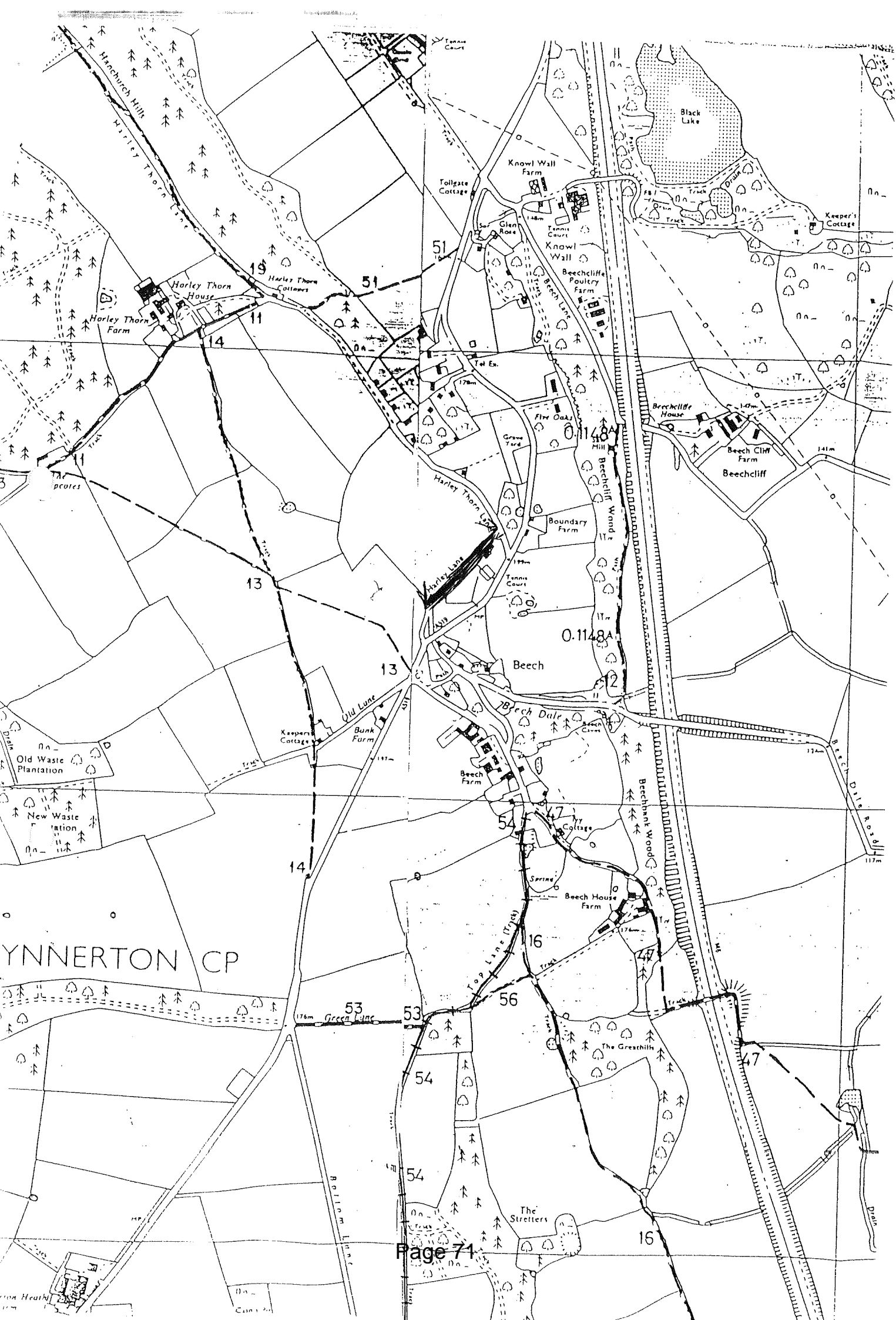
14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary? *YES/NO

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

Signature *Jennifer D. ...*

Person taking this statement.....

Date.....



YNNERTON CP

PUBLIC RIGHT OF WAY EVIDENCE FORM

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 public status claim. 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. D.T. FAIRINGTON
(Block Capitals please)

Address ... WOODHOUSE FARM, WOODHOUSE LANE, AUDLEY
(Block Capitals please) ... CREWE, CHESHIRE

Telephone No. ... 01270 812201

Date of Birth ... 3.1.21.53. Occupation ... FARMERS

Description of way (include grid references if known):-
From CONTINUATION OF HANLEY THORN LANE TO JOIN THE
To ECCLESHALL TO NEWCASTLE ROAD.

* Please delete as appropriate

1. How many years have you known the way? - 7 YEARS

2.(a) Do you believe the way to be a public right of way? *YES/NO-

- (b) If so, is the way
 - (i) a footpath? (pedestrians only) *YES/NO
 - (ii) a bridleway? (pedestrians, horse riders and pedal cyclists) *YES/NO
 - (iii) a by-way open to all traffic? (all uses including vehicles) *YES/NO-

3. How wide is the way? 10-12 FEET

4. Have you used the above way?

*YES/NO

If so: (a) During which years?

FROM 1992 ONWARDS

- (b) Where were you going from/to?
(c) For what purpose? (eg work, pleasure)
(d) How many times a year? (eg daily)
(e) By what means? (eg on foot, horseback, motor vehicle etc)
(f) Please show the route of the way used on the attached plan.

STABLEFORD TO SWYNNERTON
PLEASURE
SEVERAL
HORSES AND CARRIAGE
AND ON HORSEBACK.

5.(a) Has the way always been on the same route?

*YES/NO

(b) If not, please give details of original route, date of diversion and show details on a plan.

6. Have there, to your knowledge, ever been on the way any stiles or gates?

*YES/NO

If so, state (with details of location) where the stiles or gates stood.

7.(a) Were you working for any owner or tenant of land crossed by the way at the time when you used it.

*YES/NO

(b) If so, give particulars and say whether you received any instructions from the owner/tenant as to the use of the way by the public? If so, what were they?

8.(a) Have you ever been stopped or turned back when using the way or do you know, or have you heard, of anyone else having been prevented from using the route?

*YES/NO

(b) If so, please give particulars.

9.(a) Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public?

*YES/NO

(b) If so, give particulars and dates.

10.(a) Have you ever known of any locked gate or obstruction to the way?

*YES/NO

(b) If so, state when and where and show its approximate position on the attached plan.

11.(a) Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted', on or near the way?

*YES/NO

(b) If so, state what the notices said and show their approximate position on a plan.

12.(a) Have you ever been given permission to use the way?

*YES/NO

(b) If so, by whom?

13. Can you give any further particulars about the way (continue on a separate sheet of paper if necessary).

I HAVE ALWAYS ASSUMED IT TO BE A RIGHT OF WAY BEING A CONTINUATION OF HASKLEY TOWN LANE

14. Would you be prepared to give evidence of your use of the way at a public inquiry or in a court of law, if necessary?

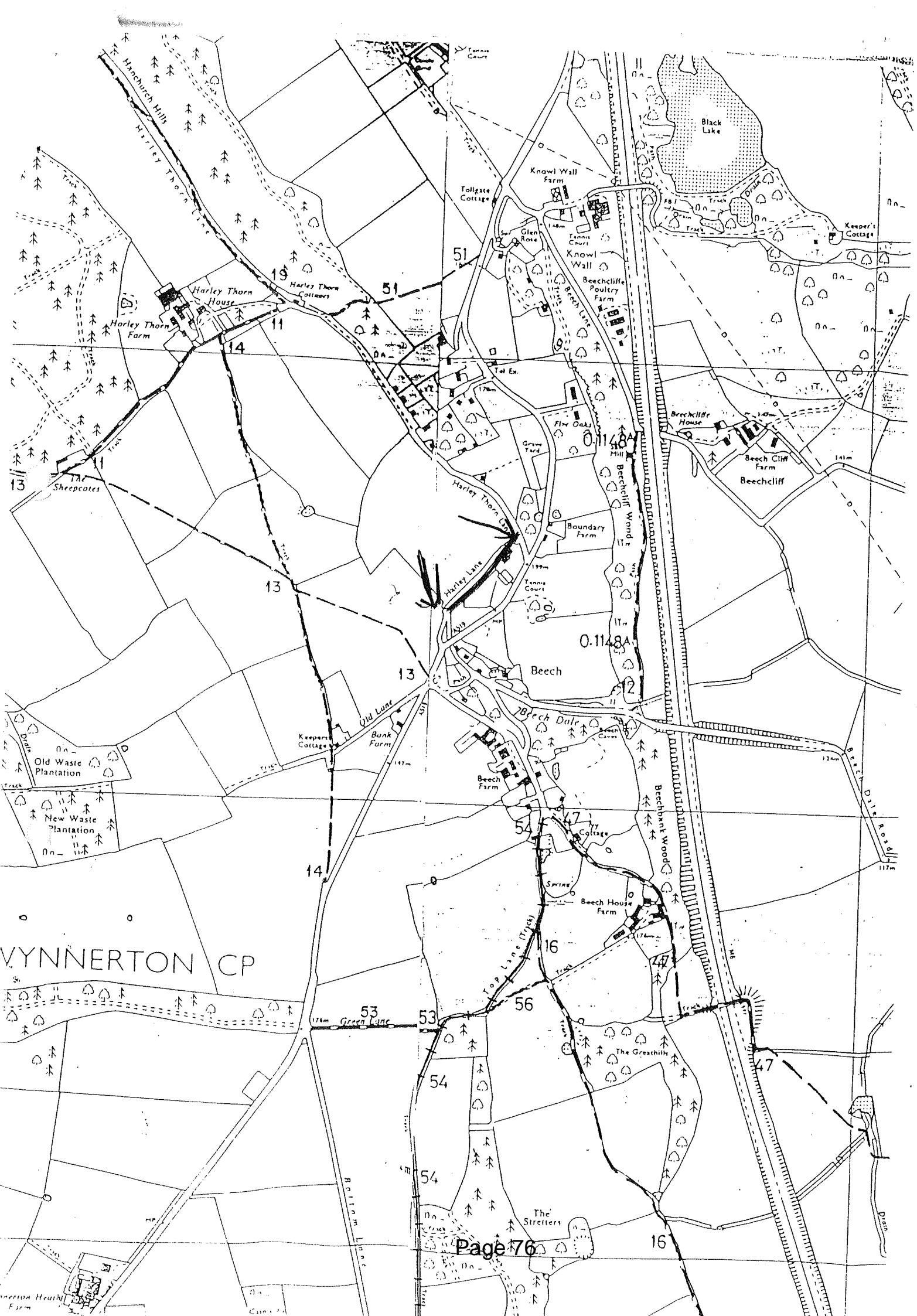
*YES/NO

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

Signature .. *D. Farley* ..

Person taking this statement ..

Date .. 22 / 2 / 98 ..



Hanchurch Hills
Harley Thorn Lane

Harley Thorn House
Harley Thorn Farm
Harley Thorn Cottages

Sheepcotes

Old Waste Plantation
New Waste Plantation

WYNNERTON CP

Wynnerton Health Farm

Fence Court

Follgate Cottage

Glen Rose

Tal Ex.

Harley Lane

Old Lane

Bunk Farm

Spring

Top Lane (Tray)

Green Lane

Bottom Lane

The Stretters

Knowl Wall Farm

Knowl Wall

Beechcliff Poultry Farm

Fin Oaks

Boundary Farm

Tennis Court

Beech

Beech Farm

Beech Dale

Beech House Farm

The Greshills

Black Lake

Keeper's Cottage

Beechcliff House

Beech Cliff Farm

Beechcliff

Beechcliff Wood

Beechcliff Wood

Beechcliff Wood

Beechcliff Wood

Beechcliff Wood

Beechcliff Wood

| Local Members' Interest | |
|-------------------------|--------------------------------------|
| Gill Heath | Staffordshire Moorlands – Leek Rural |

Countryside and Rights of Way Panel – 6 March 2020

Wildlife and Countryside Act 1981

Application to upgrade Footpath 11 in Heaton Parish to a Restricted Byway

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 show that, on a balance of probabilities, FP 11 should be added as a highway of a different description, namely a restricted byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.
2. That an Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading public Footpath 11 Heaton Parish to a restricted byway along the route shown between points A to B on the plan attached at Appendix B.

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 A from Julie Turner of the Staffordshire Moorlands Bridleways for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:
 - (i) upgrade footpath 11 Heaton Parish to a restricted byway on the Definitive Maps of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
 - (ii) The lines of the alleged restricted byway which are the subject of the application are shown highlighted and marked A – B on the plan attached as Appendix 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.

Evidence submitted by the applicant

1. In support of the application the applicant submitted a copy of Heaton Inclosure Award for Beard Mill Road, Inclosure Award Map (Plan 1) and a copy of the Definitive Map.

Documentary Evidence

Heaton Inclosure Award Map and Statement

2. Inclosure Awards are legal documents that usually consist of a written description of the awards and other content with a map of an area attached.
3. Awards resulted from a desire by the landowners to gather together their lands and fence in the common land. A Local Act of Parliament was needed to authorise the procedure and an Inclosure Commissioner was appointed as a result to oversee the compilation of the award and map.
4. Land was divided into individual plots and fields and redistributed amongst the owners listed in the award.
5. Inclosure Awards provide statutory evidence of the existence of certain types of highway. They enabled public rights of way to be created as necessary, confirmed and endorsed and occasionally stopped up provided they had the power to do so.
6. Inclosure Commissioners surveyed land that was to be enclosed and had the power to 'set out and appoint public and private roads and paths that were often situated over existing ancient ways. A copy of the Heaton Inclosure Award and Statement can be found at Appendix C.

Other evidence discovered by the County Council

7. Officers have conducted research into historical documentation at the County Council's Record Office.
8. The Parish Survey Cards were discovered and after officers examined the cards it was found that the alleged route was formerly a RUPP (Road Used as a Public Path). Copies can be found at Appendix D.
9. A RUPP was one of the three types of public right of way (along with footpaths and bridleways) introduced by the National Parks and Access to the Countryside Act 1949.
10. The Countryside Act 1968 required all highway authorities to reclassify RUPP's in their area, initially as public footpaths unless public vehicular rights were demonstrated to exist in which case it would become a Byway Open to All Traffic (BOAT).
11. In Staffordshire the County Council had already undertaken a review into the reclassification of RUPPs and as this was advanced the Council applied to the Secretary of State for permission to conclude the exercise. After a number of public inquiries which continued into the 1980's the review was concluded and a new Definitive Map and Statement for the various districts issued which included all the changes to the routes that had previously been classified as RUPPs.

12. As the council cannot undertake another RUPP reclassification the correct approach to determining whether a route has bridleway or higher rights is to consider the matter under the provisions of s53 of the 1981 Act and evaluate all the available evidence. Reliance cannot be placed solely upon the fact a route once had the status of a RUPP to prove higher rights exist.

Evidence submitted by the Landowners

13. Miss Kathleen Bellfield of Whiteshaw Farm considers the route to be public. She describes the route as either a footpath, bridleway or restricted byway. She claims to have seen people using the way on foot, horse and bike on a daily basis. She also states there are two stiles and two gates on the claimed route, however also states there are no other obstructions. She has given permission to running clubs and charity rides. She finally concludes with the route was formerly a RUPP and was downgraded to a footpath. A copy can be found at Appendix E.
14. Mr Keith Tideswell of Hawksley Farm also considers the route to be public as a bridleway. He has seen people on foot and horseback on a weekly basis. He states he has not given anyone permission to use the claimed route. He further states there are no stiles on the route however there are gates. He concludes with there are no obstructions on the route. A copy can be found at Appendix F.
15. No other landowner who was consulted have responded to the application.

Comments received from statutory consultees

16. Heaton Parish Council and Staffordshire Moorlands District Council were consulted regarding the application; however, we have not received any response to support or refute the application to date.

Comments on Evidence - Documentary Evidence

Heaton Inclosure Award and Statement 1820

17. The Heaton Inclosure award again shows the claimed route in its entirety. A copy of the Inclosure Award and Statement can be found at Appendix C.
18. When considering an award, the wording, powers and context all must be taken into consideration to determine its evidential value.
19. The terms of the relevant act were considered to establish the extent of the Commissioner's powers in relation to highways and other roads. If the awarded highway in question does not fall within the scope of those powers, it should be regarded as ultra vires.
20. In this case the Inclosure Award makes reference to the 1801 General Inclosure Act which sets out the powers of stopping up, diverting and the setting out of highways by the Commissioners.
21. The Award lists Bearda Mill Road as a '*Public Carriage Road, 30 Feet Wide*'. The applicant transcribes the Award as '*From the north easterly and of the lane leading from the Macclesfield Old Road on Rudyard Moor in its present or north easterly and northerly direction over Heaton Common into the southern end of Jaggars Lane, and from there continuing in its present or northerly and north westerly direction down the said Jaggars Lane to Beard Mill Road and leading towards Dane Bridge and Winkle*'.

22. The Highway Act 1773 was in force at the time the Inclosure Award was drafted, accordingly section XV states ‘ *And be it further enacted, that the said Surveyors of the Highways shall, and they are hereby required to make, support and maintain, or cause to be made, supported and maintained, every public Cartway leading to any Market Town, twenty feet wide at the least and every public Horseway or Driftway, eight feet wide at the least, if the ground between the fences inclosing the same will admit thereof.* This was further endorsed in the Highway Act 1835 in section LXXX.
23. In the Inclosure Award, the Commissioners appointed stated that the ‘Public Carriage Road’ to be 30 feet wide. While the 1773 Act stipulated 20 feet wide it also said no vegetation etc. to be present within 15 feet of the centre line, add the two together and you have 30 feet.
24. It can be assumed they intended for the claimed route to be used as a main public carriageway leading to and from various Market Towns.
25. In current terms a ‘Public Carriage Road’ would indicate a road used by motor vehicles. And so, the claimed route could have higher rights than a restricted byway; it may perhaps be a byway open to all traffic (BOAT).
26. In December 2003 the Government carried out a review of its policy on the use of motor vehicles on rights of way and published a consultation paper titled “Use of mechanically propelled vehicles on rights of way”.
27. The main proposal in the consultation was to limit the basis on which rights of way for mechanically propelled vehicles may be acquired and end the situation whereby historic use by non-mechanically propelled vehicles, such as horse-drawn vehicles, can give rise to a right of use by modern mechanically propelled vehicles. The consultation document sets out the rationale for this.
28. In January 2005 the Government published a document titled “The Government’s framework for action”. In this document it sets out the intention to legislate to limit claims for vehicular rights, where those claims derive from historic use and dedication for use by non-mechanically propelled vehicles. These proposals now form the basis of Part 6 of the Natural Environment and Rural Communities Act 2006 (NERC).
29. The effect of NERC is to extinguish vehicular rights of way on commencement of 2 May 2006, subject to certain exceptions, including the date of the application and date of the determination.
30. It is appropriate firstly to determine whether vehicular rights subsist and secondly, whether any exceptions apply. If vehicular rights subsist but the exceptions do not apply, then the appropriate status is a restricted byway.
31. The exceptions are contained in section 67, subsections (2) to (8) of the NERC Act. Any route that qualifies under any one, or more, of these exceptions would not have its public rights of way for mechanically propelled vehicles extinguished. In this case none of the exceptions do apply. And so, accordingly the alleged route cannot be a BOAT.

Burden and Standard of Proof

32. Regarding 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 are 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 a footpath on the Definitive Map and Statement prevails.

Summary

33. The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act. Therefore, the Panel need to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
34. The Heaton Inclosure Award shows the alleged route in its entirety. It confirms the Commissioners had the powers to set out highways, referring to the 1801 General Inclosure Act.
35. Bearda Mill Road is listed as a 'Public Road, 30 feet wide'.
36. The Highway Act 1773 was in force at the time the Inclosure Award was drafted. It stated *that 'the said Surveyors of the Highways shall, and they are hereby required to make, support and maintain, or cause to be made, supported and maintained, every public Cartway leading to any Market Town, twenty feet wide at the least and every public Horseway or Driftway, eight feet wide at the least, if the ground between the fences inclosing the same will admit thereof'*.
37. It can be presumed they intended for the claimed route to be used as a main public carriageway leading to and from various Market Towns.
38. In present terms a 'Public Carriage Road' would show a road used by motor vehicles. And so, the claimed route could have higher rights than a restricted byway; it may possibly be a byway open to all traffic (BOAT).
39. In deciding whether the alleged route is a BOAT the exceptions in the NERC Act must be given consideration. In this instance none of the exceptions do apply and so the route evidently is a restricted byway.

Conclusion

40. Considering the evidence as a whole, it is your officer's opinion that the evidence shows that a public right of way, with the status of a restricted byway, which is not shown on the map and statement subsists.
41. It is the opinion of your officers that the County Council ought to make a Modification Order to add the restricted byway which is the subject of this application to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands Council.

Recommended Option

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

Other options Available

43. To decide to reject the application to upgrade the footpath to a restricted byway.

Legal Implications

44. The legal implications are contained within the report.

Resource and Financial Implications

45. The costs of determining applications are met from existing provisions.

46. 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

47. 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.

48. 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.

49. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 of the 1981 Act 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.

50. 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

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

J Tradewell

Director of Corporate Services

Report Author: Samantha Finney

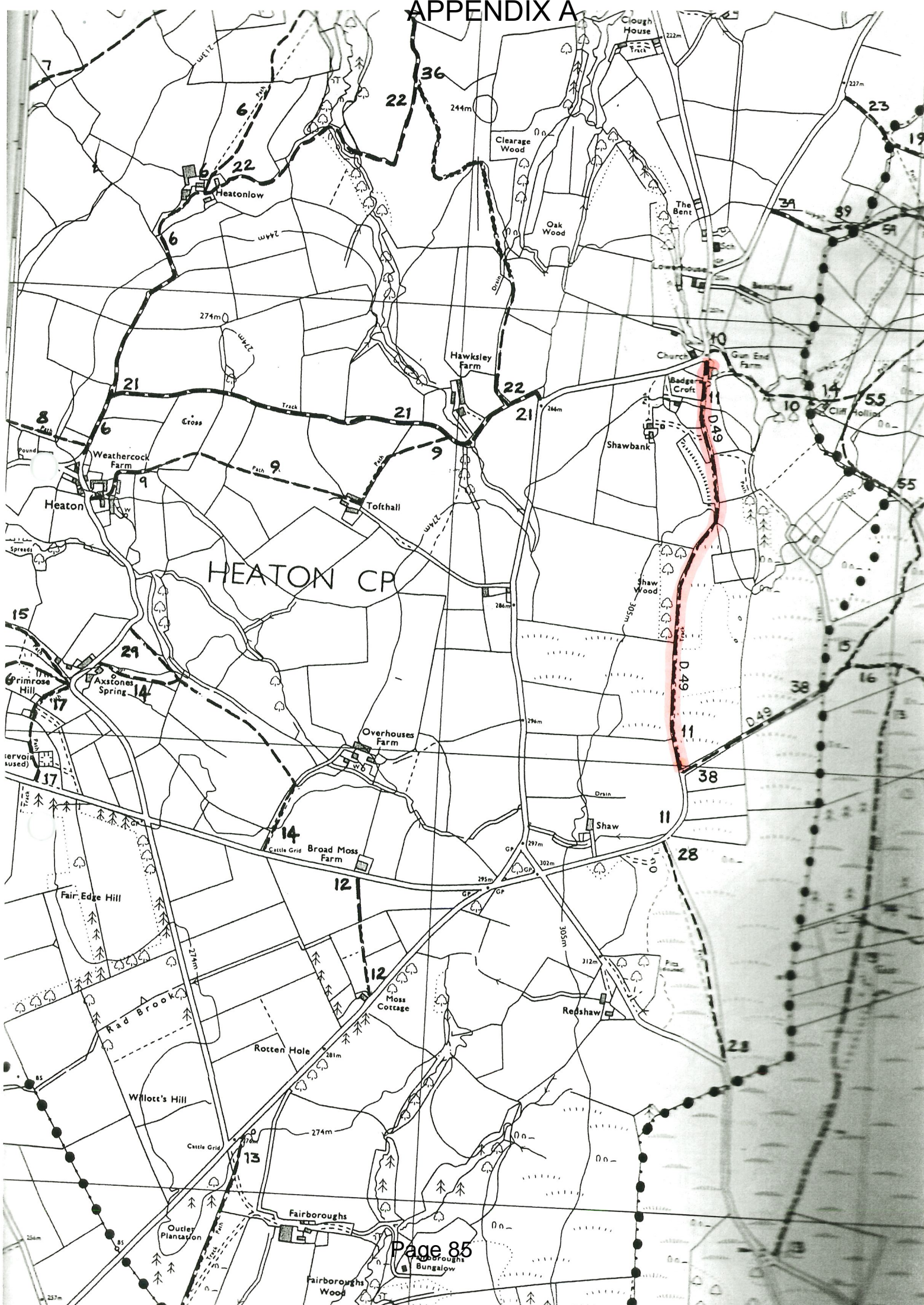
Ext. No:

Background File: LV602G

INDEX TO APPENDICES

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| Appendix B | Plan of claimed route |
| Appendix C | Heaton Enclosure Award Map and Statement |
| Appendix D | Parish Survey Cards |
| Appendix E | Landowner Evidence Form of Miss Kathleen Bellfield |
| Appendix F | Landowner Evidence Form of Mr Keith Tideswell |

APPENDIX A



HEATON CP

APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement – Staffordshire County Council

District of STAFFORDSHIRE MOORLANDS

Parish of HEATON

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

I JULIE TURNER

of BENTLEYS BARN, BACKHASE, CALTON, STONE ON TRENT ST 10 3 JX

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement of Public Rights of Way for the area by:

* deleting the (footpath) (bridleway) (byway open to all traffic) (restricted byway) from to

* adding the (footpath) (bridleway) (byway open to all traffic) (restricted byway) from to

* (upgrading) (downgrading) to a (footpath) (bridleway) (byway open to all traffic) (restricted byway) the (footpath) (bridleway) (byway open to all traffic) (restricted byway) from MAP REF SJ 9653 6198 to CON END 9653 6290

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

and shown on the map accompanying this application.

Signed: J.H. Turner Date: 6th May 2010 On Behalf of Staffordshire Moorlands Bridleways

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT – STAFFORDSHIRE COUNTY COUNCIL

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER

To: Staffordshire County Council
of: PO Box 11, County Buildings, Martin Street, Stafford, ST16 2LH

I Juhi Turner
of Bentleys Barn, Back Lane, Calton
Stoke In Trent ST10 3JX

hereby certify that the requirements of paragraph 2 and Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with.

Dated: 6th May 2010

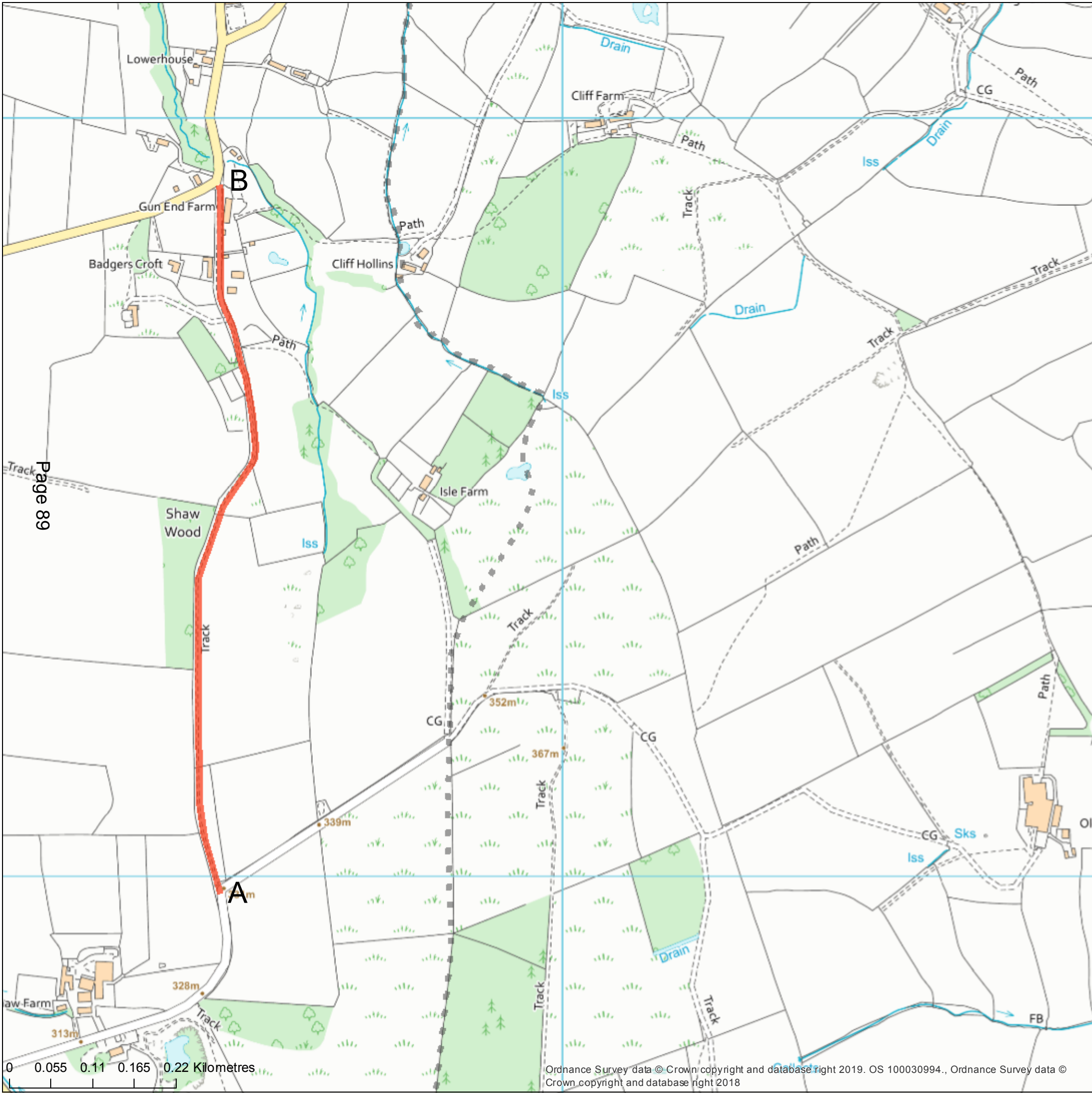
Signed: J.H. Turner
On Behalf of Staffordshire Moorlands
Bridleways

Names and addresses of owners and occupiers of land on whom notice has been served that an application for a Modification Order has been made:

- Mr. Evans, Gun End Barn, Heaton
- Mrs. Haig, Gun End Farm, Heaton
- Mr. Thompson, Shaw Bank, Heaton
- Mr. Tidswell, Hawkley farm, Heaton
- M/S. Kath, Belfield, Gunmoor Kennels, Heaton
- Mr. M. Keeling, Top Craft Bungalows, Gun End, Heaton

-  Section 53
-  Parishes

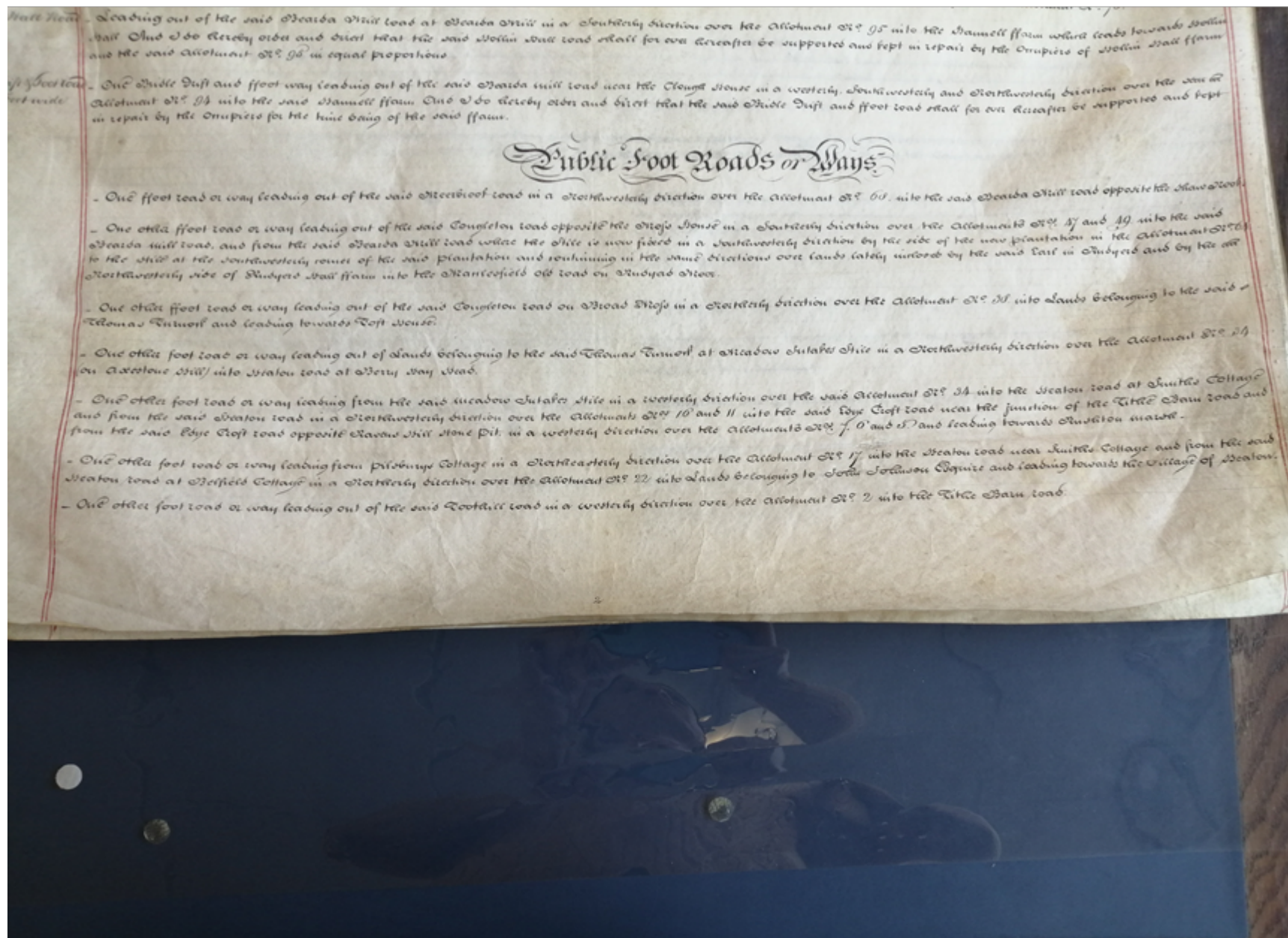
APPENDIX B



© Crown Copyright and database rights 2019.
 Ordnance Survey 100031282.
 2000 Aerial Photography by UKPerspectives.com.
 License Number UKP/048/SCC.
 2010 Aerial photography copyright Getmapping (2006-10).
 You are not permitted to copy, sub-license, distribute
 or sell any form of this data to third parties in any form.
 Produced by Staffordshire County Council 31/10/2019.

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APPENDIX C



APPENDIX C

I Charles Skelton, Bailiff in the County of Stafford Gentleman
do swear that I will faithfully, impartially and honestly according to
the best of my skill and ability execute and perform the several duties
of my office and authorities vested and imposed in me as Bailiff by
virtue of several Acts for Inclosing Lands in the Manor and Township of Heathen
in the Parish of Sock in the County of Stafford according to Equity and good
Conscience and without Favor or affection prejudice or partiality to any Person
or persons whomsoever
So help me God
C Skelton

Sworn at Sock in the County of
Stafford this seventeenth day of April
in the year of our Lord one thousand
eight hundred and sixteen
Before me
A Justice of the Peace acting in and for
the said County of Stafford.

certain before the execution of this my award separate and apart from the property in right of which the same or they should be entitled to the same in the
 manner as the one or they might have done at any time after the execution of this my award And I the said Commissioner was thereby required to award such
 allotment or allotments accordingly; And the allotment or allotments to be made in lieu of the right of Common so sold and disposed of should be such and enjoyed
 by the person or persons so purchasing the right of Common in lieu whereof the same should be made in the same manner to all intents and purposes as the
 person or persons so selling and disposing of such right of Common might or could or ought to have sold or enjoyed the same respectively in case such sale had
 not been made And it was further enacted that it should be lawful for me the said Commissioner and I am hereby authorized and required to set out or
 allot and award any Lands Tenements and Hereditaments whatsoever within the said Manor or Township in lieu of or in Exchange for any other Lands Tenements or
 Hereditaments within the same Manor or Parishes or within any adjoining parishes Township or place And it is hereby provided that all such Exchanges should be
 ascertained specified and declared in this my award and be made with the consent of the Owners or Proprietors of any Lands Tenements or Hereditaments which
 should be so exchanged, whether such Owners or Proprietors should be a Body or Bodies Politic Corporate or Collegiate or a Tenant or Tenant in Fee Simple
 or for life or in Fee Tail General or Special or by the Countess of England or for years determinable on any life or lives by and with the consent of the Lessor or Lessors
 and not otherwise or with the consent of the said Quaintance Trustees for Charitable or other uses and purposes and with the consent of the Lessor or Lessors or under any
 such Proprietors or Owners as aforesaid who at the time of making such Exchange or Exchanges should be respectively Infants Females Covert Lunatics or under any
 legal disability or who should be beyond the Seas or otherwise Incapable to act for themselves and all and every such Exchange and Exchanges so to be made or
 should be valid and effectual in the law to all intents and purposes **Now Know Ye** that I the said Commissioner took and subscribed the Oath contained in the
 said Act of the thirty first year of the reign of His said Majesty and hereby directed to be taken by me previously to my acting as Commissioner for surveying and
 dividing setting out and allotting the said Commons and waste Grounds and having completed the Division and allotments of the said Commons and waste Grounds
 and executed the several matters and things authorized and required to be done and performed by me in and by the said Act therefore in part recited And I have in
 pursuance thereof caused to be drawn up this my award in writing and do hereby make public and declare the same as follows.

First I find from the survey and advancement I have made that the Lands and Grounds by the said recited Act of the fifty sixth year of the reign of His
 said Majesty directed to be inclosed contain in statute measure **Four hundred and seventy six acres two roods and four perches** (including a
 Curtilage and toads) And I have annexed thereto two several plans of the said Lands and Grounds so surveyed and advanced as aforesaid and severally
 marked with the numbers **I and II** and which have also been made by me the said Charles Deaton in pursuance of the said Act and which plans I hereto are to be
 taken as part of this my award on which are delineated the situation of the several allotments with their respective Boundaries and such other particulars as I
 think necessary and on which are also delineated the directions of the public and private roads and ways which I have set out appointed and adjudged necessary over
 the said Lands and Grounds and I have inserted in the margin of this my award opposite to the description of each road the name by which I have called the same
 (namely)

Public Carriage Roads
30 Feet wide

Page 95

Carda Mill Road - from the Northwesterly end of the Lane leading from the Mansfield Old Road on Dundas Street in its present or Northwesterly and Northwesterly direction over Deaton

APPENDIX C

APPENDIX C



APPENDIX D

National Parks and Access to the Countryside Act, 1949
STAFFORDSHIRE COUNTY COUNCIL SURVEY OF RIGHTS OF WAY

Lake Forks FP.15
FP.16

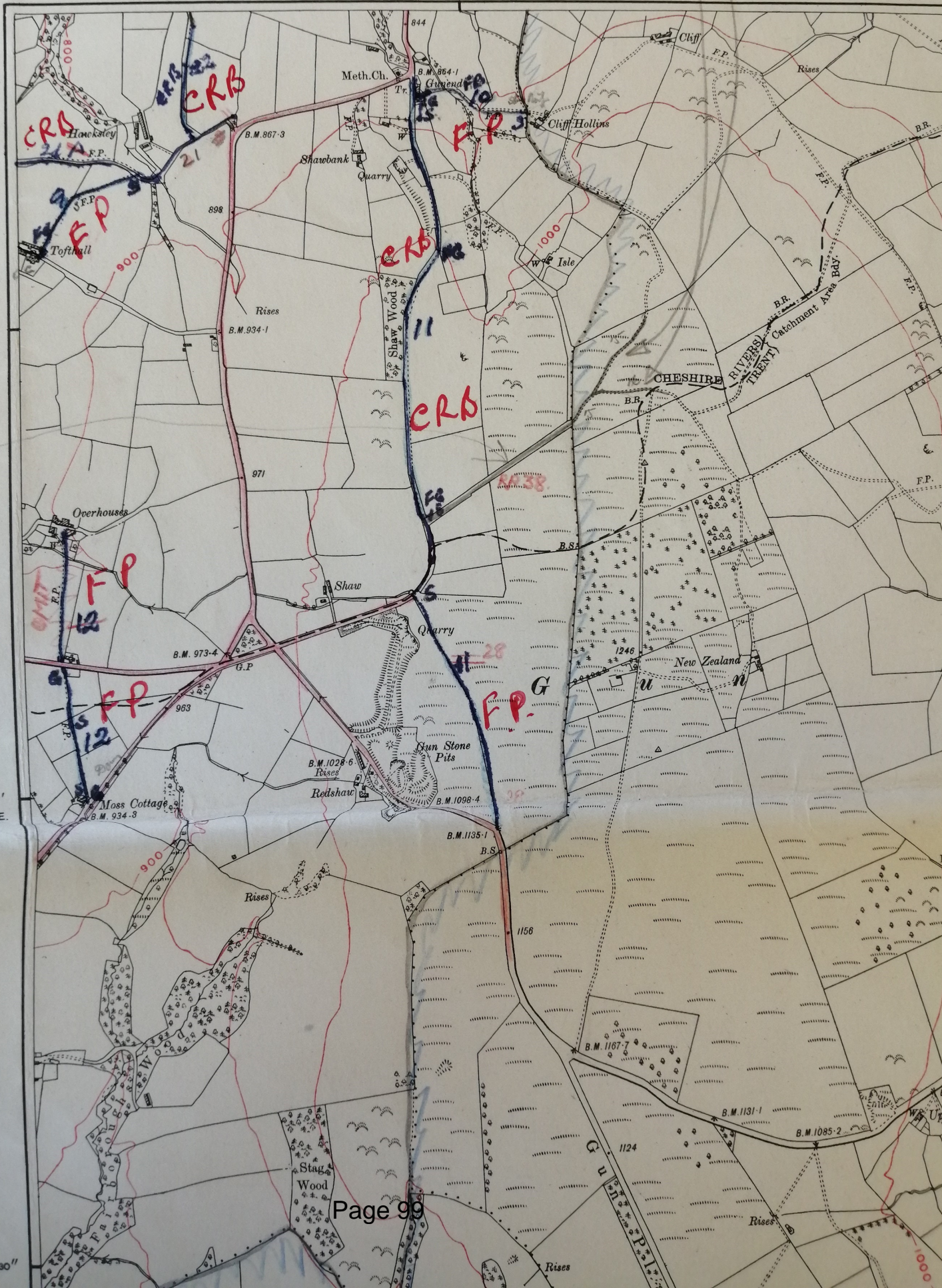
LEEK DIVISION

LON 2° 3' W.

30"

HEATON PH.

LAT. 53° 9' III. S.E.



APPENDIX D

STAFFORDSHIRE COUNTY COUNCIL.
National Parks and Access to the Countryside Act, 1949 (Part IV).

SURVEY OF RIGHTS OF WAY.

STATEMENT ACCOMPANYING DRAFT MAP.

Routes over which a public right of way is alleged to subsist on the 27th day of November, 1954.

F.P. = Footpath.
 B.P. = Bridleway.
 R.P. = Road used as
 a public path.

County District : LEEK R.D.
Parish : HEATON.

Statement No. 185.
 1/25000 Map No. 33/96.

| Path No. | Type of Path | Path commences at | Path finishes at | Documents creating or modifying the right of way and other relevant information |
|----------|--------------|---|--|---|
| 1 | F.P. | County road by parish boundary, N. of Methodist Chapel at Rushton Marsh | Parish boundary, about 200 yds. N. of Methodist Chapel | ... |
| 2 | F.P. | Parish boundary, S.W. of Haddon | Parish boundary at Wormhough | ... |
| 3 | F.P. | Parish boundary, S.W. of Haddon | Junction of F.P. 4 and R.P. 20 by canal feeder, S.E. of Barleyford | ... |
| 4 | F.P. | County boundary by River Dane, about 150 yds. S.W. of Feeder Cottage | Parish boundary by canal feeder, N.W. of Wormhill | ... |
| 5 | F.P. | County boundary at footbridge over River Dane at Gighall | County road at Bearda Mill | ... |
| 6 | F.P. | F.P. 5, about 150 yds. S.E. of bridge at Gighall | End of county road, N. of Heaton Village | ... |
| 7 | F.P. | End of county road, N.W. of Heaton Lodge | F.P. 6, by Meal-ark Clough | ... |
| 8 | F.P. | End of county road, N. of Heaton Village | County road, at bend N.W. of Heaton Lodge | ... |
| 9 | F.P. | County road at S. end of Heaton Village | R.P. 21, S. of Hawksley | ... |
| 10 | F.P. | R.P. 11, about 75 yds. from county road at Gunend | Parish boundary near Cliff Hollins | ... |
| 11 | R.P. | County road at Gunend | End of county road, E. of Shaw | ... |
| 12 | F.P. | County road by Moss Cottage | County road, S. of Overhouses | ... |
| 13 | F.P. | County road, about 500 yds. S.W. of Moss Cottage | Parish boundary, S.W. of Fair-boroughs | ... |
| 14 | F.P. | County road at Axstones Spring | County road, S.W. of Overhouses | ... |
| 15 | F.P. | County road at bend S.W. of Axstones Spring | County road, about 350 yds. E. of Coppice Side | ... |
| 16 | F.P. | County road at bend S.W. of Axstones Spring | County road at Heaton House | ... |

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

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."

Path starts at :

GUN END.

Names and addresses of persons making the survey :

T. BROOKE

Path finishes at :

PARISH BOUNDARY WITH LEEKRITH ON ROAD TO MERRBROOK

Survey started on **15 Oct** 1951

Survey finished on **15 Oct** 1951

LOCAL AUTHORITY :

LEEK RURAL

PARISH :

HEATON

PATH No., as on map :

11

PATH SYMBOL, as on map :

FP RP

6" quarter Ordnance Sheet No. :

STAFFS. 14 SW

LOWER HOUSE, GUN END, HEATON

S. put shown on FP 28

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

O.S. MAP 20 years etc

Staffordshire

County Council

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 public status claim. 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/Miss/Ms)..... KATHLEEN BELFIELD
(Block Capitals please)

Address Whakeshaw Farm Heaton Rushlon Spencer
(Block Capitals please)

Post Code: SK11 0SR Telephone No. [REDACTED]

Date of Birth [REDACTED] Occupation [REDACTED]

Guidance Notes on the completion of Public Rights of Way Evidence Forms

1. As far as possible the owner/occupier should complete the form, preferably in black ink. If another individual completes the form on their behalf they should indicate this at the end of the form.
2. Please answer all questions fully with as much detail as possible.
3. Please indicate on attached map the extent of your ownership/tenancy or other interest in the land affected by the alleged public right of way.
4. Please indicate whether you are prepared to give evidence either in a court or at a public inquiry. (The evidential value of a statement is reduced if it cannot be subject to cross-examination).
5. If a person would be unable to give evidence at a hearing because of ill health, age, etc the person obtaining the statement should endorse the form accordingly, and be able to give evidence of the circumstances.
6. **Please note** The Freedom of Information Act 2000 provides a general right of access to all information held by Staffordshire County Council. The Environmental Information Regulations 2004 provide a similar right of access to environmental information held by the Council. This means that the information that you supply may be disclosed to any individual making the appropriate request
7. The information given on this form may become available for public inspection.

PLEASE TAKE TIME TO ANSWER THE QUESTIONS CAREFULLY AND IN FULL

1. Do you own or occupy or have any interest in any of the land affected by the proposal or adjacent to it?

*YES/NO

If the answer is YES please answer questions 2 to 14 and indicate on the attached map the extent of your ownership or tenancy, or interest in the land.

If the answer is NO, please, if possible, advise the names and addresses of the landowners/occupiers.

.....
.....
.....
.....
.....

2. Do you know of any previous landowners?

*YES/NO.

If YES please can you provide names and contact details. Mr Smith Deceased

.....
.....
.....

3. Have you received a Notice of Application for a Modification Order?

*YES/NO

4. Would you be willing to allow County Council officers to make a site inspection?

*YES/NO

5. (a) Do you consider the route to be public?

*YES/NO

(b) If YES what description best describes the route? (please delete those inappropriate)

- (i) *Footpath (i.e. for pedestrians only).
- (ii) *Bridleway (i.e. for horse riders, cyclists and pedestrians)
- (iii) ~~*Byway open to all traffic (open to all traffic)~~
- (iv) *Restricted Byway (i.e. for horse riders, cyclists pedestrians and vehicles which are not mechanically propelled)

6. How long have you had an interest in the land affected by the application?

From 1986 ... to present day

* Please delete as appropriate

7. 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

Are you a tenant or lessee of the land?.....

If so please state the nature of your interest as tenant or lessee of the land.....

Any Other Interest in or over the affected land (e.g. a private right of way, shooting rights etc)

8. Have you, or any previous owner/tenant of the land, ever erected any signs such as "Private", "Keep Out" or "Trespassers will be prosecuted" or similar signs on or near the alleged public right of way?

*YES/NO

If YES please state:-

(a) When were these signs erected?.....

(b) What did these signs say?.....

(c) Are these signs still in place?.....

(d) Where are these signs located?.....

Please indicate location on attached map.

9. (a) Have you seen people using the way?

*YES/NO

(b) How were they using the way (ie foot, horse)? foot, x Horse x bike

(c) Were they alone or accompanied Please give details. (ie companions, rambling club, family, etc)? alone, groups, clubs x charity rides x races

(d) Were these people known to you? SOME

(e) How frequently did you see other people using the way? (ie daily, weekly, seasonal etc).

..... daily

(f) How many other people, approximately, did you see on these occasions? 2-10 per day

(g) Please give any further details of other people's use of the way which you feel may be important.

10. Have you ever given anybody permission to use the route?

*YES/NO

If YES please state:-

(a) When was this?..... Annually

(b) To whom was it given? Running clubs, charity rides

(c) Why was it given? Purely to move stock & keep all gates open for 24hrs to allow smooth running of the events

11. (a) Have there, to your knowledge, ever been any stiles on the way?

*YES/NO

(b) Have there, to your knowledge, ever been any gates on the way

*YES/NO

(c) If YES, please mark on the attached plan the location of the stiles or gates and state, if known, when they were erected or removed.

(d) If any gates on the way were ever locked please state, how often, and if known, by whom?

Please mark on the attached plan the locations of the locked gates.

12. (a) Excluding locked gates, have you (or any previous owner or occupier) ever known of any other obstructions to the way?

*YES/NO

(b) If YES, state :

(i) what type of obstruction was this?

.....

(ii) When they were erected or removed?

.....

(c) Please state, if known, who erected the obstructions and show the approximate position of the obstructions on the attached plan.

(d) If you have a private right of way how has this been exercised while the alleged public route has been obstructed.

.....

13. (a) Have you ever stopped or "turned back" anyone found using the route?

*YES/NO

If YES please give details

.....

14. Have you ever taken some form of action to communicate to the public that the claimed route is not public?

*YES/NO

If YES (i) what action was this?

.....

(ii) When was this action taken?

.....

15. Have you ever told persons attempting to use the route that the way was not public? *YES/NO.

16. Have you ever taken any other steps to prevent the presumed dedication of this route as a public right of way? *YES/NO.

If YES please give full details.....

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

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

If YES: --

(a) In what form is this? *Heaton parish council should have documents from S.M.D.C. or S.C.C. that they had downgraded the path*
(i.e. maps, photos, deeds, etc. please attach a copy if possible)

(b) Would you be willing to make the original document available if necessary? *YES/NO

18. Have you as the owner/occupier of the land ever made a statutory declaration concerning public rights of way? *YES/NO.

(a) If YES when was this declaration made?.....

(b) If YES who did you lodge the declaration with?.....

(c) If YES does this declaration state that there are no public rights of way over the land? *YES/NO.

(d) If YES does this declaration state that there are public rights of way over the land? *YES/NO.

(e) If public rights of way do exist was the claimed route one of those admitted to exist? *YES/NO.

If the declaration stated there are public rights of way in existence please mark on a plan the location of these.

19. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law, if necessary? *YES/NO

20. Can you give any further information about the alleged route?
(continue on a separate sheet of paper if necessary).

*YES/NO

To the best of my knowledge footpath no 11 is/was a R.U.P. Road used as a path.

There have always been 2 gates & 2 stiles on the route. approx 5 years ago 2 more gates were added by are selves to stop the stock from straying on to neighbours (accidentally?) but also to let the smaller number of stock we have to graze smaller fields.

To the present day the route is used daily by walkers & riders & in the most part responsibly i.e. closing gates & sticking to the path.

I feel Julie Turner & Border Bridleways or any other such group should be made aware that any downgrading has been done solely by the local authority & not by myself as I have no problem with the route being used responsibly.

Should you approve Border Bridleways Right of Way then things will carry on as they are.

If you decide against their application then perhaps you will be kind enough to let me know so that I may inform other users.

I certify that, to the best of my knowledge and belief, the information I have given in this statement is true.

Signed: Ka. Bolleed Date: 14/07 2010

On Behalf of.....

Staffordshire

County Council

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 public status claim. 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/Miss/Ms)..... MR KEITH T. DESJUREL.....
(Block Capitals please)

Address HAWKSLEY FARM RUSHTON N^r MACCLESFIELD.....
(Block Capitals please)

Post Code: SK11 0SJ Telephone No. [REDACTED]

Date of Birth [REDACTED] Occupation [REDACTED]

Guidance Notes on the completion of Public Rights of Way Evidence Forms

1. As far as possible the owner/occupier should complete the form, preferably in black ink. If another individual completes the form on their behalf they should indicate this at the end of the form.
2. Please answer all questions fully with as much detail as possible.
3. Please indicate on attached map the extent of your ownership/tenancy or other interest in the land affected by the alleged public right of way.
4. Please indicate whether you are prepared to give evidence either in a court or at a public inquiry. (The evidential value of a statement is reduced if it cannot be subject to cross-examination).
5. If a person would be unable to give evidence at a hearing because of ill health, age, etc the person obtaining the statement should endorse the form accordingly, and be able to give evidence of the circumstances.
6. **Please note** The Freedom of Information Act 2000 provides a general right of access to all information held by Staffordshire County Council. The Environmental Information Regulations 2004 provide a similar right of access to environmental information held by the Council. This means that the information that you supply may be disclosed to any individual making the appropriate request
7. The information given on this form may become available for public inspection.

PLEASE TAKE TIME TO ANSWER THE QUESTIONS CAREFULLY AND IN FULL

1. Do you own or occupy or have any interest in any of the land affected by the proposal or adjacent to it?

*YES/NO

If the answer is YES please answer questions 2 to 14 and indicate on the attached map the extent of your ownership or tenancy, or interest in the land.

If the answer is NO, please, if possible, advise the names and addresses of the landowners/occupiers.

.....
.....
.....
.....
.....

2. Do you know of any previous landowners?

*YES/NO.

If YES please can you provide names and contact details.....

.....
.....
.....

3. Have you received a Notice of Application for a Modification Order?

*YES/NO

4. Would you be willing to allow County Council officers to make a site inspection?

*YES/NO

5. (a) Do you consider the route to be public?

*YES/NO

(b) If YES what description best describes the route? (please delete those inappropriate)

- ~~(i) *Footpath (i.e. for pedestrians only).~~
- (ii) *Bridleway (i.e. for horse riders, cyclists and pedestrians)
- ~~(iii) *Byway open to all traffic (open to all traffic)~~
- ~~(iv) *Restricted Byway (i.e. for horse riders, cyclists pedestrians and vehicles which are not mechanically propelled)~~

6. How long have you had an interest in the land affected by the application?

From 1961 to PRESENT DAY

* Please delete as appropriate

7. 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 of the land.....

Any Other Interest in or over the affected land (e.g. a private right of way, shooting rights etc)

..... OWNE LAND ADJACENT

8. Have you, or any previous owner/tenant of the land, ever erected any signs such as "Private", "Keep Out" or "Trespassers will be prosecuted" or similar signs on or near the alleged public right of way? *YES/NO

If YES please state:-

(a) When were these signs erected?.....

(b) What did these signs say?.....

(c) Are these signs still in place?.....

(d) Where are these signs located?.....

Please indicate location on attached map.

9. (a) Have you seen people using the way? *YES/NO

(b) How were they using the way (ie foot, horse)? FOOT & HORSE

(c) Were they alone or accompanied Please give details. (ie companions, rambling club, family, etc)? ALL OF THE ABOVE

(d) Were these people known to you? YES

(e) How frequently did you see other people using the way? (ie daily, weekly, seasonal etc).

..... WEEKLY

(f) How many other people, approximately, did you see on these occasions?

(g) Please give any further details of other people's use of the way which you feel may be important.

10. Have you ever given anybody permission to use the route? *YES/NO

If YES please state:-

(a) When was this?.....

(b) To whom was it given?.....

(c) Why was it given?.....

11. (a) Have there, to your knowledge, ever been any stiles on the way? *YES/NO

(b) Have there, to your knowledge, ever been any gates on the way *YES/NO

(c) If YES, please mark on the attached plan the location of the stiles or gates and state, if known, when they were erected or removed.

(d) If any gates on the way were ever locked please state, how often, and if known, by whom?

Please mark on the attached plan the locations of the locked gates.

12. (a) Excluding locked gates, have you (or any previous owner or occupier) ever known of any other obstructions to the way? *YES/NO

(b) If YES, state :

(i) what type of obstruction was this?

.....

(ii) When they were erected or removed?

.....

(c) Please state, if known, who erected the obstructions and show the approximate position of the obstructions on the attached plan.

(d) If you have a private right of way how has this been exercised while the alleged public route has been obstructed.

.....

13. (a) Have you ever stopped or "turned back" anyone found using the route? *YES/NO

If YES please give details

.....

14. Have you ever taken some form of action to communicate to the public that the claimed route is not public? *YES/NO.

If YES (i) what action was this?.....

.....

(ii) When was this action taken?.....

.....

15. Have you ever told persons attempting to use the route that the way was not public? ~~*YES/NO.~~

16. Have you ever taken any other steps to prevent the presumed dedication of this route as a public right of way? ~~*YES/NO.~~

If YES please give full details.....

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

17. Do you have any documents which show this as a private right of way or giving details of its closure? ~~*YES/NO~~

If YES: --

(a) In what form is this?..... MAPS.....

(i.e. maps, photos, deeds, etc. please attach a copy if possible)

(b) Would you be willing to make the original document available if necessary? ~~*YES/NO~~

18. Have you as the owner/occupier of the land ever made a statutory declaration concerning public rights of way? ~~*YES/NO.~~

(a) If YES when was this declaration made?.....

(b) If YES who did you lodge the declaration with?.....

(c) If YES does this declaration state that there are no public rights of way over the land? ~~*YES/NO.~~

(d) If YES does this declaration state that there are public rights of way over the land? ~~*YES/NO.~~

(e) If public rights of way do exist was the claimed route one of those admitted to exist? ~~*YES/NO.~~

If the declaration stated there are public rights of way in existence please mark on a plan the location of these.

19. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law, if necessary? ~~*YES/NO~~

20. Can you give any further information about the alleged route?
(continue on a separate sheet of paper if necessary).

*YES/NO

I certify that, to the best of my knowledge and belief, the information I have given in this statement is true.

Signed: *K. Tidwell* Date: *20 06 2010*

On Behalf of.....

Bentleys Barn
Back Lane
Calton
Stoke on Trent
ST10 3JX

18 February 2020

Ms S Finney
Staffordshire Legal Services
Staffordshire County Council
2 Staffordshire Place
Tipping Street
Stafford
ST16 2DH

Your Ref: LV602G

Dear Ms Finney

Upgrading of Public Footpath No. 11 Heaton Parish

Thank you for your letter of 30 January 2020 enclosing a copy of the report for the above application which is to be considered by the County Council's Countryside and Rights of Way Panel at their meeting on 6 March 2020.

My comments are as follows:

1. Staffordshire Moorlands Bridleways Group are pleased that the report recommends that Heaton Parish Public Footpath No. 11 should be added as a restricted byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands. The irrefutable evidence contained in the Heaton Inclosure Map and Statement that this route is a "Public Carriage Road, 30 Feet Wide" accords with the recommendation.
2. I am concerned that the statement in Paragraph 10 of the report is incorrect. The report states "*The Countryside Act 1968 required all highway authorities to reclassify RUPP's in their area, initially as public footpaths unless public vehicular rights were demonstrated to exist in which case it would become a Byway Open to All Traffic (BOAT).*"

Section 9(1) of the Countryside Act 1968 states

"In the special review the draft revision, and the definitive map and statement shall show every road used as a public path by one of the three following descriptions

- a) a "byway open to all traffic"
- b) a "bridleway"
- c) a "footpath"

and shall not employ the expression 'road used as a public path' to describe any way"

Can you please correct the report accordingly.

Can you please confirm that this letter will be placed in front of the CROW Panel for their information.

Yours sincerely

Julie Turner

Julie Turner
Rights of Way Officer
Staffordshire Moorlands Bridleways Group

| Local Members' Interest | |
|--------------------------------|------------------------|
| Councillor Ian Parry | Stafford – Stone Rural |

Countryside and Rights of Way Panel – 6 March 2020

Wildlife and Countryside Act 1981

Application for alleged footpath from the junction of FP2, FP3 & FP4, Fradswell to Fradswell Church

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 A-B-C 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 A and marked A-B-C to the Definitive Map and Statement of Public Rights of Way for the District of Stafford.

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 A from Mr Martin Reay for an Order to modify the Definitive Map and Statement for the District of Stafford. The effect of such an Order, should the application be successful, would:
 - (i) Add an alleged public footpath from the junction of FP2, FP3 and FP4, Fradswell to Fradswell Church to the Definitive Map of Public Rights of Way under the provisions of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
 - (ii) The lines of the alleged public footpath which are the subject of the application are shown highlighted and marked A-B-C on the plan attached as Appendix 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.

Evidence submitted by the applicant

1. The applicant has submitted in support of his application;
 - Fradswell Tithe Map
 - Stafford District Surveyors of Highways Report Book dated 1899
 - Stafford District Surveyors of Highways Letter Book dated 1900
 - Ordnance Survey map dated 1887 & 1901
 - Ordnance Survey map dated 1836
 - Estate Sale Plan dated 1920
 - Photographs of the path taken January 2015

Documentary Evidence Submitted

Fradswell Tithe Map

2. Tithe maps and apportionments were drawn up following the Tithe Commutation Act 1836. Tithes were a local payment in kind of one tenth of the produce of land and levied for the upkeep of the local church and clergy.
3. Tithe apportionments are documents recording the land subject to the tithe, the names of all tithe owners and their tenants and the rent-charge due on each plot or parcel of land. Each plot is given a number relating to its position on an accompanying map. Within a township a number of plots would be recorded for which no rent-charge was due. These include such features as roads, rivers and canals.
4. The Tithe Map shows where each plot numbered on the apportionment is located.
5. Tithe maps can be considered persuasive evidence of a route being a highway however it cannot be regarded as conclusive evidence. This is because the tithes were never intended to be used to determine highway rights, the representation of the route on the tithe is evidence that the route was a physical feature on the ground when the tithe was drafted. Copy of the Tithe Map can be found at Appendix C.

Stafford District Surveyors of Highways Report Book & Letter Book

6. The Highway Act 1835 placed highways under the direction of parish surveyors. The surveyor's duty was to keep the highways in repair and record the maintenance as such.
7. The records were kept in a report book and was occasionally accompanied by a letter book. It recorded the work undertaken and from time to time detailed the status of the route.
8. To accept liability for maintenance is not a burden that local authorities would take on lightly and so the appearance on either document is a good indication that the route is at least a public highway. A copy can be found at Appendix D.

Ordnance Maps

9. Ordnance Survey Maps date back to the early 1800's and their purpose is to show physical features on, and the contours of the ground. In doing so they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highway.
10. They do not distinguish between public and private rights of way. From 1888 the maps carried a disclaimer that the depiction of a way on map did not mean it was

public. They are evidence only of the physical existence of a way on the ground at the date of the survey.

11. There may be annotations next to some minor routes such as FP or BP however they do not indicate whether the way was public or private. Such annotations might indicate that the route was only capable of having that type of traffic use but would only be supporting evidence and not conclusive.
12. They do not have any evidential weight but may be supportive of an application by showing that there was a physical feature on the ground. On the contrary the absence of a feature on the map does not mean it does not exist. Copies can be found at Appendix E.

Estate Sale Plan

13. These were maps drawn up for the owners of private estates for their own use for example in the sale of the land. Some maps are very detailed whilst others are limited to broad outlines.
14. They may provide a physical evidence of a route in a similar manner to OS maps but need to be approached with some caution as they were drawn up with a specific purpose.
15. Some estate plans may distinguish between public and private ways.
16. The evidential value is limited to supporting evidence of the physical existence of a way. Where the estate owner has listed a way as public it would add to the supporting evidence however it could not be relied upon to prove dedication. A copy of the Estate Sale Plan can be found at Appendix F.

Other evidence discovered by the County Council

17. Officers have conducted research into historical documentation at the County Council's Record Office. No further evidence was discovered to support or refute the alleged route.

Evidence submitted by the Landowners

18. At the time of the application, Mr and Mrs Dash purchased Fradswell Hall and the adjacent field marked A-B on the plan attached at Appendix A approximately 10 years ago. They completed an owner/occupier evidence form which is attached at Appendix G.
19. They state they were not aware of any route through their property or adjacent fields. There is nothing stated on their deeds to the land.
20. They claim not to have seen anyone using the route and have never given anyone permission to use the route.
21. They state the field has regularly been used for the keeping of livestock and is fully fenced and has thick hedgerow surrounding it for this purpose.
22. They further state that anyone wishing to access the church and churchyard uses the entrance gate and drive which is clearly visible and accessible from the road.
23. They object to the application, they claim the field is steep and muddy and it would appear to make sense to use this route to the church when the church has its own well-maintained driveway and car park which is clearly marked, fenced and gated.
24. Milwich with Fradswell Parish Council own the land affected by the claimed route marked B-C on the plan attached at Appendix A. The land was transferred from Weston with Gayton Parish Council in 2003 as an asset. They completed an owner/occupier evidence form which is attached at Appendix H.

25. They state the route has always been recognised as a public right of way and they have seen members of the public use the route on foot.
26. They submitted as evidence a letter from Weston with Gayton parish Council listing 3 parcels of land which were transferred as an asset to Milwich with Fradswell Parish Council. Number 3 in the list details the land as 'Access footway from Church Lane to junction of Footpath No. 2, 3 and 4, Fradswell, acquired pre-1980 and given no value'.

Comments received from statutory consultees

27. Milwich with Fradswell Parish Council were consulted at the time of the application and state they would support the application/they have no objections or comments. No evidence was provided to support the claim.

Comments on Evidence

Fradswell Tithe Map

28. The Fradswell Tithe map shows the section from B-C on the plan. The purpose of the mapping was not to record public highways, but since the process was part of a statutory process under the Tithe Commutation Act 1836, the evidence of public rights they contain must be given the appropriate weight.
29. On their own tithe maps and awards are not evidence as to the public nature of a particular route but may add to the supporting evidence. They would not of themselves support a modification to the Definitive Map and Statement.

Stafford District Surveyors of Highways Report Book & Letter Book

30. The information is only concerned with the maintenance of a route and not its status, however in this case the report book *states* "The road is not more than 70-80 yards long and leads to the school and also to a public footpath which runs across the fields to the church. The Roadman says that it used to be the public highway many years ago but was closed just beyond the school when a new road was cut. The late Parish Surveyor says he always considered it as one of his roads although he never did anything to it".
31. The road 70- 80 yards mentioned by the Surveyor supports part B-C on the map. Additionally, the public footpath which runs across the fields to the church also mentioned by the Surveyor supports A-B.

Ordnance Survey Maps

32. The Ordnance Survey Maps all show the route from A-B-C and the old road leading up to the school. However, they do not indicate whether the route is public or private.

Estate Sale Plan

33. The Estate Sale Plan also shows the route from A-B-C and the old road leading to the school. Also, this evidence only shows the physical feature of the route and does not determine whether the route is public or private.
34. Since the claimed route ends at the Church yard this could be classed as a cul de sac. It is unusual that a public highway simply terminates at a point which leads to no particular destination. The usual rule is that it has some purpose even if it is a cul-de-sac. It is often to points of interest or even particular properties. In this instance there are no properties and the only place of interest in the vicinity is the Church.
35. The courts in *Eyre v New Forest Wills J* considered the situation in which two apparent cul-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short

section of uncertain status exists it can be presumed that its status is that of the two highways linked by it. If one follows the line of reasoning in that argument it would support the existence of a public right and that it was at least that of footpath.

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 the 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 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".
40. If a conclusion is reached that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

41. The title award on itself is not sufficient to support the application, however with additional evidence it can be supportive of the route.
42. The information provided by the letter book is concerned with the maintenance of the route. The local authority does not take the liability for the maintenance lightly and so to undertake the work and it is documented is a good indication that the route is at least public.
43. The Roadman mentions in the letter book that it used to be a public highway until a new road was cut. The road 70-80 yards mentioned by the surveyor supports part B-C on the map. Also, the public footpath which runs across the fields to the church also mentioned by the surveyor supports A-B.
44. The Ordnance Survey Maps show the route in its entirety however they only show a physical feature on the ground. It does not determine whether the route is public or private nor the status of the route.
45. The Estate Sale Plan may provide physical evidence of a route in a similar way to the Ordnance Survey Maps, nonetheless they need to be approached with caution as they are drawn up for a specific purpose for the owners of private estates.
46. There is no mention of the status of the route in the sale plan and so it is limited to supporting evidence of the physical existence of the way.
47. Since the claimed route ends at the Church this could be classed as a cul-de-sac. The usual rule is that it has some purpose even if it is a cul-de-sac. It often leads to a point of interest, in this instance the only point of interest is the Church.

Conclusion

48. In light of the evidence, as set out above, it is your officers' opinion that the evidence shows that a public right of way, with the status of a public 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 upgrade the routes to bridleway status on 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.

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 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.
56. 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.
57. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule ?? of the 1981 Act 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. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director of Corporate Services

Report Author: Samantha Finney

Ext. No:

Background File: 009107

INDEX TO APPENDICES

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| Appendix A | Copy of application and associated submitted letters and documents |
| Appendix B | Plan of claimed route |
| Appendix C | Fradswell tithe map |
| Appendix D | Stafford District Surveyors of Highways Letter & Report Book |
| Appendix E | Ordnance Survey Maps |
| Appendix F | Estate Sale Plan |
| Appendix G | Owner/occupier evidence form Mr & Mrs Dash |
| Appendix H | Owner/occupier evidence form Milwich with Fradswell Parish Council |

APPENDIX A

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 *Fradswell*

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

I/We *Martin Reay*

of *53 Tithe Barn Rd Stafford ST163PL*

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

*adding the (footpath)(~~bridleway~~)(~~byway open to all traffic~~) from *Junction Fradswell 2,3,4* to *Fradswell Church*

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

*(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.

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

List of Documents

- 1/ Photos of the path taken January 2015.
- 2/ Stafford District Surveyors of Highways Report Book-D059/5/32.
- 3/ " " " " " " out letter book-1899-D059/5/30
- 4/ Fradswell Title map. 1900.
- 5/ O.S maps 1887 + 1901.
- 6/ O.S map 1836.
- 7/ Estate Sale plan 1920.
- 8/ Definitive map.
- 9/ notes on evidence.

Date: 28/1 20.15

Signed: M. Peay.....

Please note that this form will be open to members of the public including affected owners or occupiers of the land crossed by the way.

APPENDIX A

Form 3

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT – STAFFORDSHIRE COUNTY COUNCIL

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER

To: Staffordshire County Council
of: PO Box 11
County Buildings,
Martin Street,
Stafford, ST16 2LH

Name MARTIN REAY
Business/House Number 53 Street TITHE BARN RD
Town STAFFORD Postcode ST16 3PL
Phone Number 211653

hereby certify that the requirements of paragraph 2 and Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with.

Dated: 2/2/15 Signed: M. Reay

Names and addresses of owners and occupiers of land on whom notice has been served that an application for a Modification Order has been made:

Name Anthony ~~Reay~~ Dash, Fradswell Hall
Business/House Number Street
Town Fradswell Postcode ST18 0EX
Phone Number

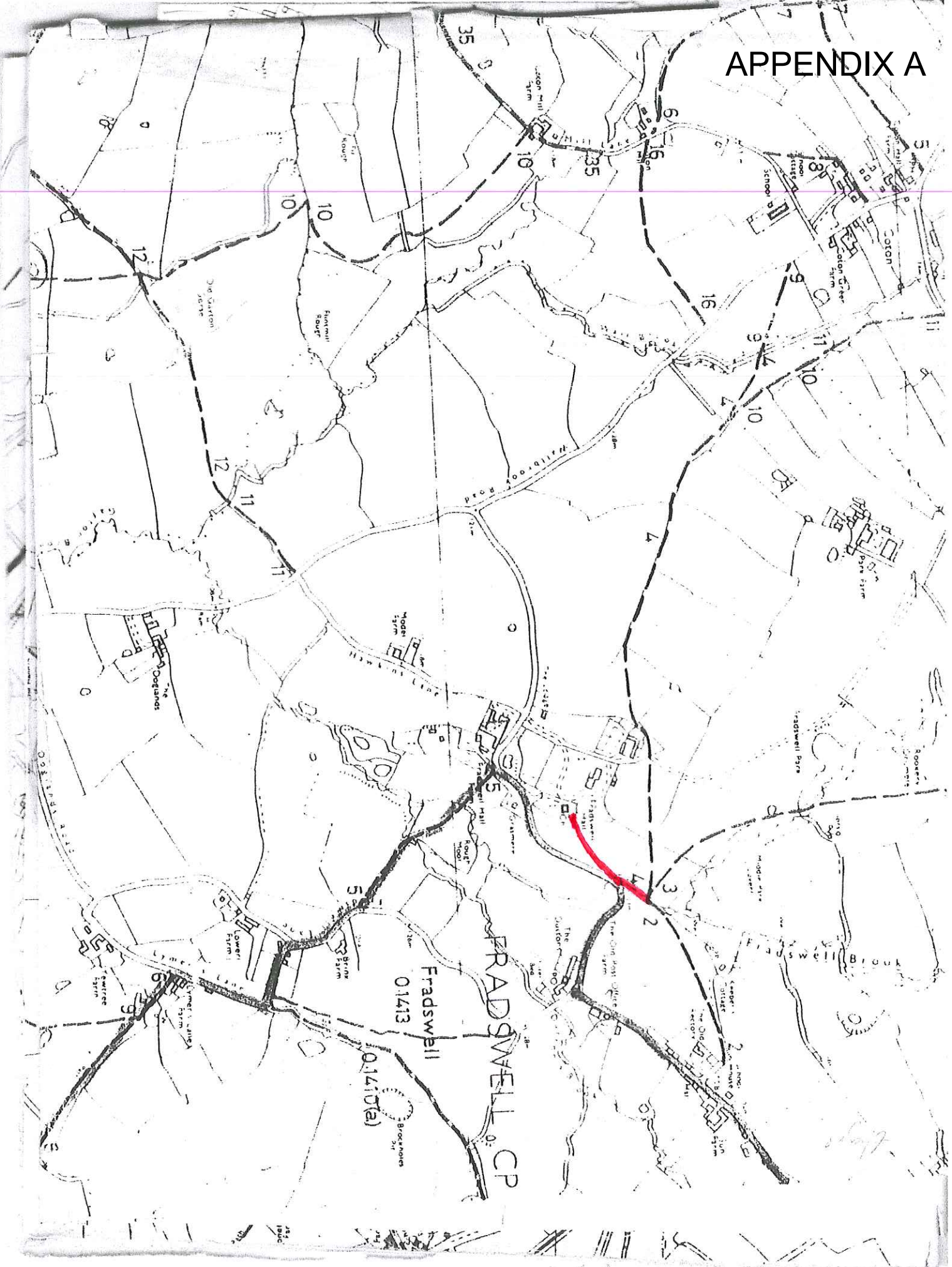
Continue overleaf if necessary

The Reverend
Name Steven Abram, St. Peters House
Business/House Number 2 Street Vicarage Way
Town Hixon Postcode ST18 0FT
Phone Number

Name Brian Bough-ey Clerk to Fradswell Parish Council
Business/House Number Bents Cottage Street The Bents
Town Leigh Postcode ST10 4RD
Phone Number

Name
Business/House Number Street
Town Postcode
Phone Number

APPENDIX A



Finney, Samantha (Corporate)

From: Steven <sj@abram.org.uk>
Sent: 12 May 2015 14:58
To: Murphy, Michael (D,L&T)
Subject: MMU/009701DW

Your ref: MMU/009701DW

Dear Michael,

I have tried to phone you a few time and twice the line was out of action, another time I left a message and never received a reply.

Before attempting to complete the form you have sent with regards to the matter in your reference I want to share the following and hear your response.

I am Team Vicar of Mid Trent churches and Fradswell church is my responsibility.

There is a gate leading to the alleged footpath and this gate is locked and has no apparent path beyond it. I would suggest this was for the benefit of the Rector in the days when he lived at what is now the Old Rectory (residential care home) and a short cut for him to go home. Was it a public or private path – I don't know? The land the other side of the fence is not church owned.

Church land is private land but which we allow people to access for such things as church and tending graves. Also, if walkers wish to walk in and round, nor problems for us at all. However, there is no right of way and as far as I can see this is not claimed in the documentation.

I live in Hixon and am only at the church for specific reasons and not very often and therefore cannot pass any sensible comments about people in the vicinity.

In the light of this I am not sure I can give much 'useful' information. However, if necessary I will attempt to fill the form in as I can. What I write here might suffice and if you want I can transfer this to formal headed paper.

Kind regards

Steven

Steven Abram,
Team Vicar, Mid Trent Churches



Got to Team site below for details

Visit our Team site at: www.midtrentchurches.org.uk

Visit my site at: www.abram.org.uk

Public Rights of Way

-  Footpath
-  Section 53
-  Parishes

APPENDIX B



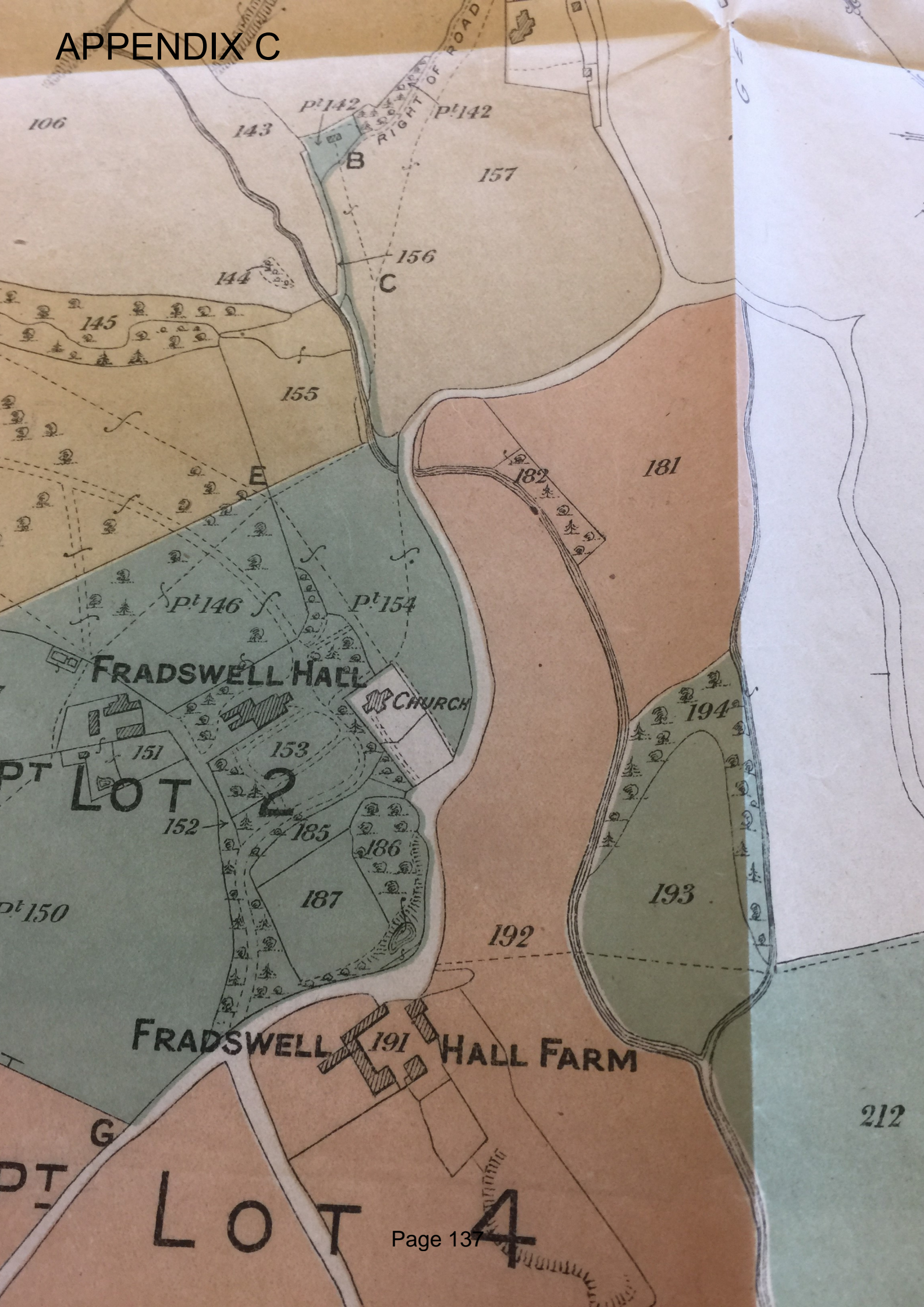
Page 135

0 0.01 0.02 0.03 0.04 Kilometres

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APPENDIX C



FRADSWELL HALL FARM

FRADSWELL HALL

CHURCH

LOT 2

LOT 4

of ... of ... from his ... to
appear to have been ... only 3 days during
the week.

Charles Butler

As instructed I gave this man a week's
notice but he refused to take it and said he
should finish on Thursday which I presume he
has done. I have arranged with the roadman
Bancroft to take charge of his tools until they
are required for another man.

Road at Stradwell.

As instructed I have inspected the bit of
road at Stradwell upon which clay has been spread
but which it is alleged is not repairable by us.
The road is not more than 70 to 80 yards long and
leads to the school and also to a public footpath
which runs across the fields to the church. The
quantity of clay applied is not more than 20 tons.

The roadman says that it used to be the
public highway many years ago, but it was closed
just beyond the school when a new road was
cut, and the late Parish Surveyor, Mr Readbeater,
says he always considered it as one of his roads
although he never did anything to it.

Now that the clay has been spread and
the quantity being so very small I think in
any case it would hardly be worth while lifting
it again.

I am sorry I have not had time to
make a plan of the place but I submit a rough
sketch which may help you to see how the matter
stands.

Payments

APPENDIX D

APPENDIX D

Guide Posts
I think it is advisable to have guide posts erected at some of the junctions on the roads, as at present there is nothing to guide one in many places, and I would like to know if it is agreeable to you that I should have a few erected in the worst places each year, until the whole are over-taken.

Footbridges at Gradswell
There are two small footbridges at Gradswell on a public path leading to the church, which are in a very delapidated condition, and I would like to know if I must have them repaired.

Accounts

At present all accounts except roadmen's wages are paid by Mr Morgan, but it would save a lot of trouble if I were empowered to pay all stones or blacksmith's accounts etc. which amount to less than £2, and I would like to know if this would meet with your approval. All contract work would still be paid for by Mr Morgan, however some

During the month the men have been employed in siding, draining and spreading bedding on the newly rolled coatings.

The roller finished in the District at Whitgreave on the 7th instant, and consolidated since my last report, 1015 tons, making a total of 4175 tons since it came to the district.

Ford between Enson & Aston

I have met Mr Benbow, the Stone Rural District Surveyor, at this ford, with view of having it piped, and he says he thinks that his Council would be prepared to bear half the expense, if you are willing to bear the other half.

Footbridges at Gradswell.

As instructed, I have put this work in hand

I have the honour to be
Gentlemen,

Your obedient servant
Fred. G. Hebbert

1899

APPENDIX D

"A Road at Fradswell

As instructed I have inspected the bit of road at Fradswell upon which clay has been spread but which it is alleged that it is not repairable by us. The road is not more than 70-80 yards long and leads to the school and also to a public footpath which runs across the fields to the church. The roadsman says that it used to be the public highway many years ago but was closed just beyond the school when a new road was cut. The late parish surveyor says he always considered it as one of his roads although he never did anything to it."

April 1900

"Footbridges at Fradswell

There are 2 small footbridges at Fradswell on a public path leading to the church which are in a dilapidated condition and I would like to know if I must have them repaired."

May 1900

"Footbridges at Fradswell

As instructed I have put the work in hand."

June 1900

"Footbridges at Fradswell Page 145

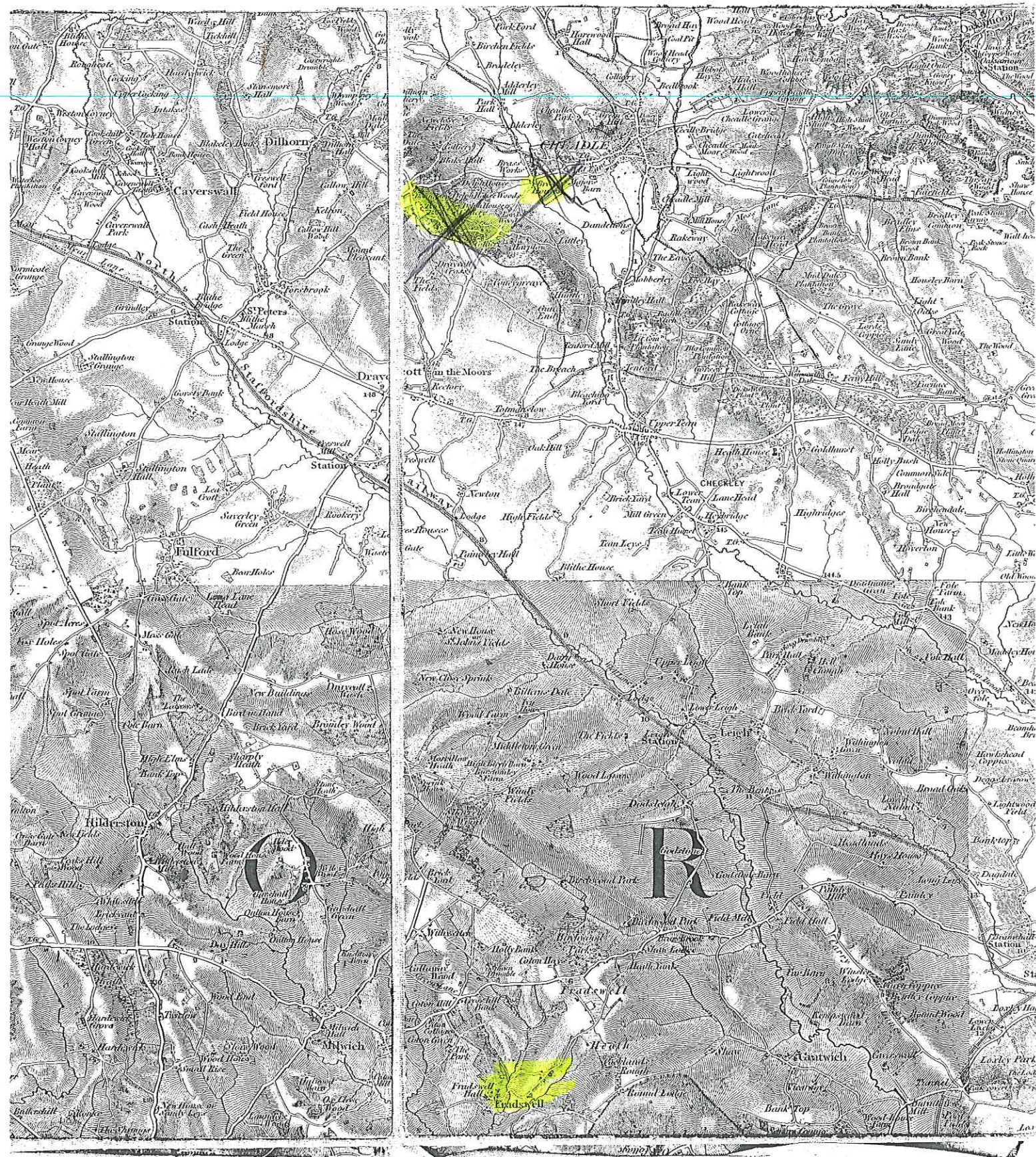
These footbridges have been rebuilt."

D659/5/30 - Highway Surveyors out Letter Book.

(p9437) "10th June 1900"

Dear Sir, I have lately had the 2 footbridges on the path between the vicarage and the church at Fradswell rebuilt. I wish to know if you will kindly have the small tree fallen which stands in the brook course just by the bottom bridge as it turns the water against the bank and is gradually washing it away. There is also an awkward bend in the water course just the other side of the footbridge which could be eased if a yard or two of the bank was taken away. I should be greatly obliged if you would have this done because as it is at present, the water washes with great force against the abutments of the brick bridge and if allowed to continue will gradually undermine the brickwork. The brick bridge I refer to is the one which I believe you and my predecessor had some correspondence over."

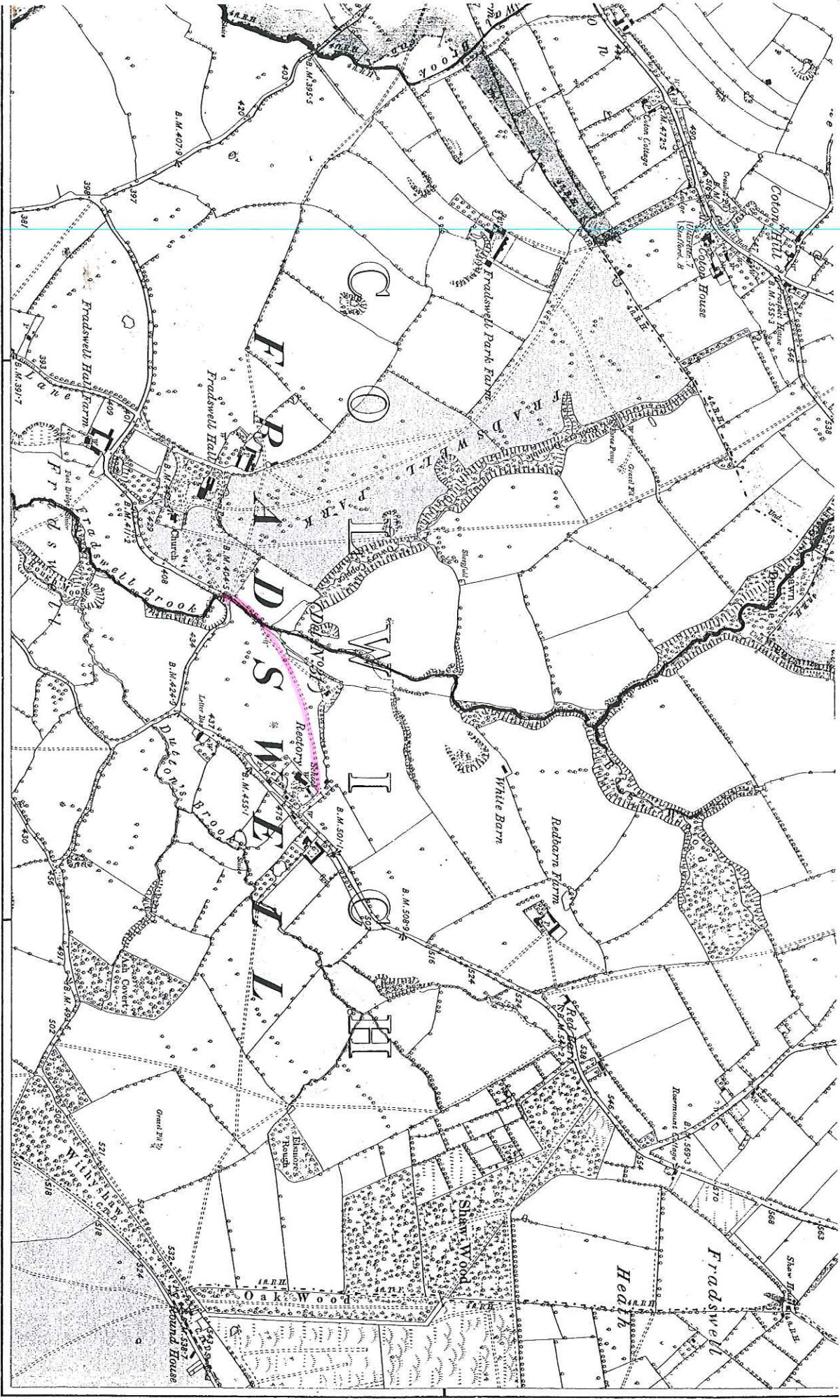
APPENDIX E



This indicates the "old road"
from the school/Rectory as shown
in more detail on the title map.

11N O.S REPRINT
1836

APPENDIX



XXXI S.W.

CHARLEY PARK

5280 Feet Price 1s.
 1 Mile

10 Chains 5
 40 Perches 20

Scale — Six inches to One Statute Mile or 880 Feet to One Inch — 10560

80 Chains }
 320 Perches } 1 Mile

| | |
|--|----|
| | NE |
| | SW |
| | SE |

Sheet XXXI.

1887

Plans and Published at the Ordnance Survey Office, Southampton.

State Mean Water at Liverpool, those indicated thus (B.M. 547) refer to Marks made on Buildings, Walls, &c.

RED BARN FARM

63

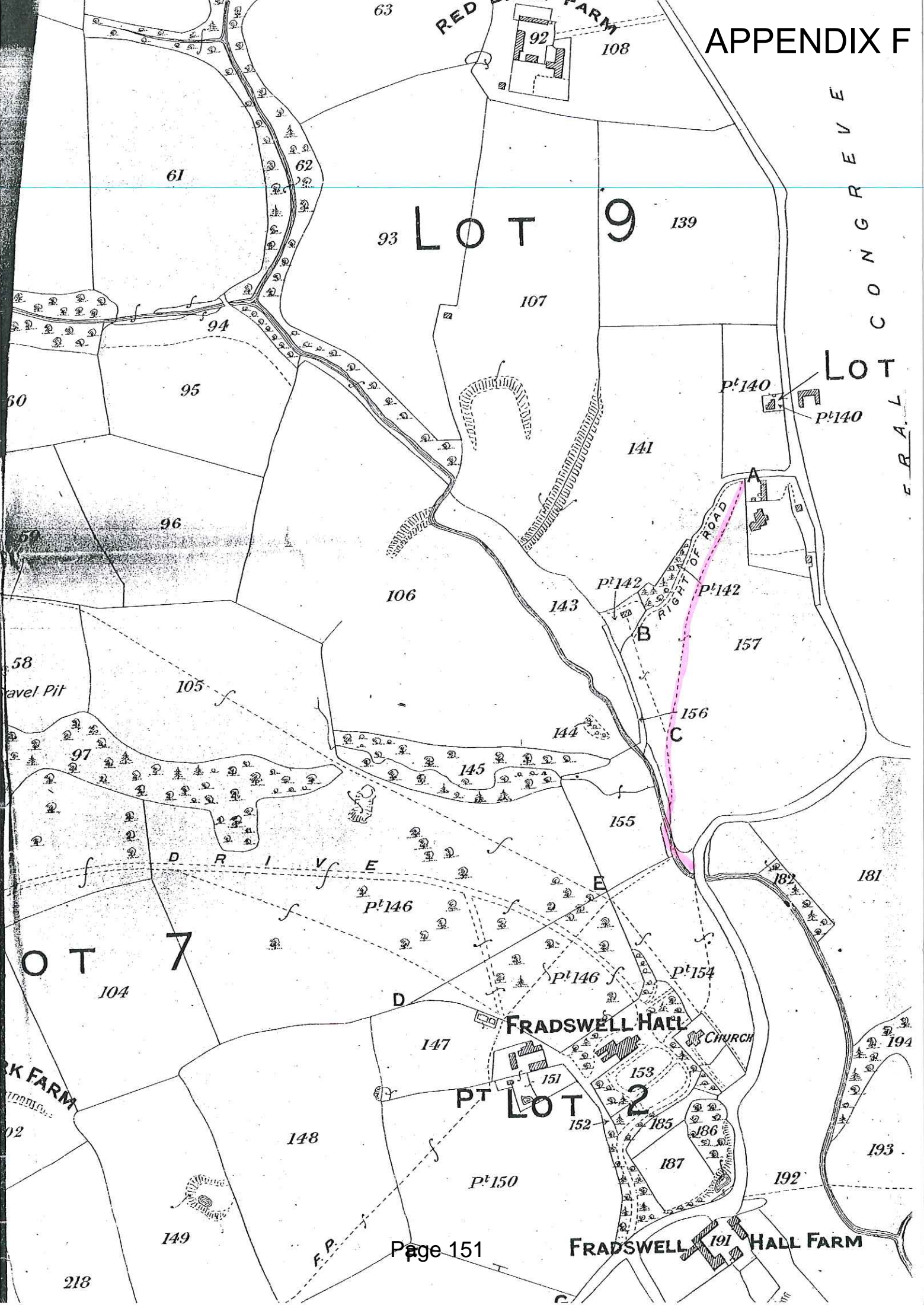
92 108

93 LOT 9 139

CONGREGATIONAL F.R.A.L.

LOT

P¹⁴⁰ P¹⁴⁰



60

61

62

58

Level Pit

95

96

105

106

107

143

144

145

LOT 7

104

ARK FARM

102

148

149

Page 151

FRADSWELL HALL

PT LOT 2

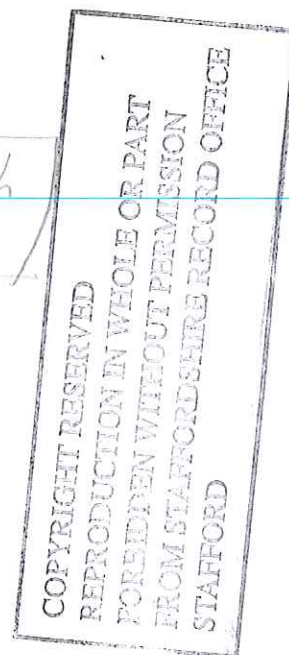
CHURCH

FRADSWELL HALL FARM

Fradswell Estate Sale plan

July 24th 1920

REF NO. ? - Look in place + parish
Catalogues



APPENDIX G

PLEASE TAKE TIME TO ANSWER THE QUESTIONS CAREFULLY AND IN FULL

1. Do you own or occupy or have any interest in any of the land affected by the proposal or adjacent to it? *YES/NO

If the answer is YES please answer questions 2 to 14 and indicate on the attached map the extent of your ownership or tenancy, or interest in the land.

If the answer is NO, please, if possible, advise the names and addresses of the landowners/occupiers.

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

3. Would you be willing to allow County Council officers to make a site inspection? *YES/NO

4. (a) Do you consider the route to be public? *YES/NO

(b) If YES what description best describes the route? (please delete those inappropriate)

- (i) *Footpath (i.e. for pedestrians only).
- (ii) *Bridleway (i.e. for horse riders, cyclists and pedestrians)
- (iii) *Byway open to all traffic (open to all traffic)

5. How long have you had an interest in the land affected by the application? Years

we have owned the field for 10 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?..... *Anthony & Francesca DASH*

(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 of the land.....

Any Other Interest in or over the affected land (e.g. a private right of way)

7. Have you, or any previous owner/tenant of the land, ever erected any signs such as "Private", "Keep Out" or "Trespassers will be prosecuted" or similar signs on or near the alleged public right of way?

*YES/NO

If YES please state:-

We were not aware of any route through our property or adjacent field.

(a) When were these signs erected?.....

(b) What did these signs say?.....

(c) Are these signs still in place?.....

(d) Where are these signs located?.....

Please indicate location on attached map.

8. (a) Have you seen people using the way?

*YES/NO

(b) How were they using the way (ie foot, horse)?

(c) Were they alone or accompanied Please give details. (ie companions, rambling club, family, etc)?

(d) Were these people known to you?

(e) How frequently did you see other people using the way? (ie daily, weekly, seasonal etc).

(f) How many other people, approximately, did you see on these occasions?

(g) Please give any further details of other people's use of the way which you feel may be important.

9. Have you ever given anybody permission to use the route?

*YES/NO

If YES please state:-

(a) When was this?.....

(b) To whom was it given?.....

(c) Why was it given?.....

10. (a) Have there, to your knowledge, ever been any stiles on the way?

*YES/NO

(b) Have there, to your knowledge, ever been any gates on the way

*YES/NO

(c) If YES, please mark on the attached plan the location of the stiles or gates and state, if known, when they were erected or removed.

(d) If any gates on the way were ever locked please state, how often, and if known, by whom?

Please mark on the attached plan the locations of the locked gates.

11. (a) Excluding locked gates, have you (or any previous owner or occupier) ever known of any other obstructions to the way?

*YES/NO

(b) If YES, state :

(i) what type of obstruction was this?

(ii) When they were erected or removed?

The field is fully surrounded by fences & hedge rows for the keeping of livestock.

(c) Please state, if known, who erected the obstructions and show the approximate position of the obstructions on the attached plan.

(d) If you have a private right of way how has this been exercised while the alleged public route has been obstructed.

12. (a) Have you ever stopped or "turned back" anyone found using the route?

*YES/NO

If YES please give details

ourselves and

The field is only used by the neighbouring farmer.

13. Have you ever taken any other steps to prevent the presumed dedication of this route as a public right of way?

*YES/NO.

If YES please give full details

any route across the field.

We were not aware of

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

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

*YES/NO

If YES: --

We are not aware of one or any of our deeds, and our solicitor was

(a) In what form is this?.....

clearly unaware also.

(i.e. maps, photos, deeds, etc. please attach a copy if possible)

(b) Would you be willing to make the original document available if necessary? *YES/NO

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

*YES/NO

16. Can you give any further information about the alleged route? (continue on a separate sheet of paper if necessary).

*YES/NO

Anthony and Francesca Dash purchased Fradswell Hall and the adjacent field approximately 10 years ago.

The field has regularly been used for the keeping of livestock and is fully fenced and has thick hedge rows for their purpose.

We have never been aware of a footpath across the field, and anybody wishing to access the church and churchyard uses the entrance gate and drive clearly visible and accessible from the road →

PTO.

I certify that, to the best of my knowledge and belief, the information I have given in this statement is true.

Signature

Mrs F. DASH.

Person taking this statement (if applicable).....

Date

1/3/2015.

* Please delete as appropriate

We would not be in favour of a
footpath across the field.

The field is very steep and muddy
and it would appear to make no sense
to use this route to the church when
the church has its own well maintained
access, driveway, and car park,
clearly marked, fenced gated and surfaced
tarmac, illuminated at night
— a far safer entry and access to the
church for all.

M.D.

Mrs F. DASH.

please see enclosed ^{Page 157} sheets
this in evidence.

① ② ③ to support

I find no reason for this footpath to be reinstated:

1. It is assuming that there is a public right of way through the Church grounds.
2. The church is closed at all times unless there is a service
3. There are only two services per month (see separate sheets)
4. After talking to a member of The Mid Trent Team Council of which this Church is a member, it would appear that the Church is at risk! The attendance is between 2- 6 and the congregation is having trouble paying their parish share, if this continues the Church could be closed and possible sold for conversion to a home.

As there is no public right of way through the Church grounds there would be no starting point from Fradswell Church. The proposed footpath would therefore have to end at the boundary of the Church and any walkers would just have to turn round and go back to footpath 3 or 4.

JANUARY Services in the Mid

Trent Churches Team

JANUARY

Sheet 2

| | Burston | Fradswell | Gayton | Hixon |
|---|--|---|---|--|
| JANUARY 4th 2nd SUNDAY OF CHRISTMAS Jeremiah 31.7-14 Ephesians 1.3-14 John 1.1-18 CWL 409 White | | 11.15am FAMILY COMMUNION Nicola Baskerville | | 8.00am HOLY COMMUNION Philip Daniel |
| JANUARY 11th 1st Sunday after Epiphany Genesis 1.1-5 Acts 19.1-7 Mark 1.4-11 CWL 418 White | | | 8.00am HOLY COMMUNION Steven Abram | 11.15am FAMILY COMMUNION Steven Abram |
| JANUARY 18th 2nd Sunday after Epiphany 1 Samuel 3.1-10 Revelation 5.1-10 John 1.43-51 CWL 421 White | 9.30am HOLY COMMUNION Philip Daniel | 9.30am HOLY COMMUNION Steven Abram | | 9.30am HOLY COMMUNION Nicola Baskerville |
| JANUARY 25th 3rd Sunday after Epiphany Genesis 14.17-20 Revelation 19.6-10 John 2.1-11 CWL 425 White | | | 11.15am HOLY COMMUNION Philip Daniel | 9.30am FAMILY COMMUNION Steven Abram |
| February 1st Fourth Sunday after Epiphany Deuteronomy 18.15 Revelation 12.1-5a Mark 1.21-28 CWL 428 White | | 11.15am FAMILY COMMUNION Steven Abram | | 8.00am HOLY COMMUNION Philip Daniel |

| Hopton | Milwich | Salt | Sandon | Stowe | Weston |
|--|---|--|--|--|--|
| | 9.30am MORNING SERVICE Nicola Baskerville | 9.30am HOLY COMMUNION Steven Abram | 11.15am HOLY COMMUNION Philip Daniel | 11.15am HOLY COMMUNION Steven Abram | 9.30am HOLY COMMUNION Incl Sunday School Philip Daniel |
| 9.30am HOLY COMMUNION Philip Daniel | 11.15am FAMILY COMMUNION Philip Daniel Derek Parment | | 11.15am HOLY COMMUNION Lesley Bentley | 9.30am HOLY COMMUNION Steven Abram | 9.30am Breakfast in Church followed by Family Worship Lay Led |
| | 11.15am Holy Communion Geoff Smith | 9.30am HOLY COMMUNION Geoff Smith | 11.15am MORNING WORSHIP Lay Led | 11.15am HOLY COMMUNION Philip Daniel | 11.15am FAMILY COMMUNION Incl Sunday Club Steven Abram |
| 9.30am HOLY COMMUNION Lesley Bentley | 11.15am FAMILY COMMUNION Peter Powers | | 11.15am HOLY COMMUNION Steven Abram | 8.00pm COMMUNION Steven Abram 11.00am Morning Prayer Lay Led | 9.30am FAMILY COMMUNION Incl Sunday Club Viv Starkie Philip Daniel |

**In everything give thanks
1 Thessalonians 5.18**

FEBRUARY Services in the Mid

Trent Churches Team

FEBRUARY

Sheet (3)

| | | | | |
|---|--|---|--|--|
| | Burston | Fradswell | Gayton | Hixon |
| FEBRUARY 1st Presentation of Christ in the Temple Green or White Malachi 3: 1-5 Hebrews 2:14-end Luke 2:22-40 | | 11.15am Family Communion Steven Abram | | 8.00am Holy Communion Philip Daniel |
| FEBRUARY 8th 2nd Sunday before Lent Green Proverbs 8:1,22-31 Colossians 1:15-20 John 1:1-14 | | | 8.00am Holy Communion Steven Abram | 11.15am Family Communion Steven Abram |
| FEBRUARY 15th Sunday next before Lent Green 2 Kings 2:1-12 2 Corinthians 4:3-6 Mark 9:2-9 | 9.30am Holy Communion Steven Abram | 9.30am Morning Service Viv Starkie | | 9.30am Family Communion Geoff Smith |
| FEBRUARY 22nd 1st Sunday of Lent Purple Genesis 9:8-17 1 Peter 3:18-end Mark 1:9-15 | | | 11.15am Holy Communion Philip Daniel | 9.30am Family Communion Lesley Bentley |
| | Be still, and know that I am God | | | |
| MARCH 1st 2nd Sunday of Lent Purple Genesis 17:1-7,15-16 Romans 4:13-end Mark 8:31-end | | 11.15am Family Communion Steven Abram | | 8.00am Holy Communion Steven Abram |

| | | | | | |
|---|--|--|--|---|---|
| Hopton | Milwich | Salt | Sandon | Stowe | Weston |
| | 9.30am Family Communion Nicola Baskerville | 9.30am Holy Communion Philip Daniel | 11.15am Holy Communion Philip Daniel | 11.15am Holy Communion Lesley Bentley | 9.30am Holy Communion Incl Sunday Club Steven Abram |
| 9.30am Holy Communion Philip Daniel | 11.15am Family Communion Philip Daniel | | 11.15am Holy Communion Geoff Smith | 9.30am Holy Communion Steven Abram | 9.30am Breakfast in Church followed by Family Worship Lay led |
| | 11.15am Morning Service Viv Starkie | 9.30am Holy Communion Lesley Bentley | 11.15am Morning Worship Lesley Bentley | 11.15am Holy Communion Geoff Smith | 11.15am Family Communion Incl Sunday Club Steven Abram |
| 9.30am Holy Communion Steven Abram | 11.15am Family Communion Peter Powers | | 11.15am Holy Communion Steven Abram | 8.00am Holy Communion Philip Daniel 11.15am Morning Prayer Lay led | 9.30am Family Communion Philip Daniel |
| | 9.30am Morning Service Steven Abram | 9.30am Holy Communion Philip Daniel | 11.15am Holy Communion Philip Daniel | 11.15am Holy Communion Lesley Bentley | 9.30am Holy Communion Incl Sunday Club Lesley Bentley |
| Psalms 46:10 | | | | | |

Staffordshire
County Council

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 public status claim. 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/Miss/MS) *B. A. BOURGHEY (CLERK TO MANCHESTER WITH FARRS WELLS P.C.)*
(Block Capitals please)

Address *BENTS COTTAGE, THE BENTS, LEIGH, STONE ON TRENT*
(Block Capitals please)

Post Code: *ST10 4RD* Telephone No. 

Date of Birth/...../..... Occupation

Guidance Notes on the completion of Public Rights of Way Evidence Forms

1. As far as possible the owner/occupier should complete the form, preferably in black ink. If another individual completes the form on their behalf they should indicate this at the end of the form.
2. Please answer all questions fully with as much detail as possible.
3. Please indicate on attached map the extent of your ownership/tenancy or other interest in the land affected by the alleged public right of way.
4. Please indicate whether you are prepared to give evidence either in a court or at a public inquiry. (The evidential value of a statement is reduced if it cannot be subject to cross-examination).
5. If a person would be unable to give evidence at a hearing because of ill health, age, etc the person obtaining the statement should endorse the form accordingly, and be able to give evidence of the circumstances.
6. The information given on this form may become available for public inspection.

* Please delete as appropriate

PLEASE TAKE TIME TO ANSWER THE QUESTIONS CAREFULLY AND IN FULL

1. Do you own or occupy or have any interest in any of the land affected by the proposal or adjacent to it?

*YES/NO

If the answer is YES please answer questions 2 to 14 and indicate on the attached map the extent of your ownership or tenancy, or interest in the land.

If the answer is NO, please, if possible, advise the names and addresses of the landowners/occupiers.

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

*YES/NO

3. Would you be willing to allow County Council officers to make a site inspection?

*YES/NO

4. (a) Do you consider the route to be public?

*YES/NO

(b) If YES what description best describes the route? (please delete those inappropriate)

- (i) *Footpath (i.e. for pedestrians only).
- (ii) *Bridleway (i.e. for horse riders, cyclists and pedestrians)
- (iii) *Byway open to all traffic (open to all traffic)

5. How long have you had an interest in the land affected by the application? 12 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? No DEEDS (TRANSFERRED AS AN ASSET

(b) A joint tenant? FROM WESTON WITH BAYTON WITH FADSWELL

If so with whom? PARISH COUNCIL IN 2003

(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 of the land

Any Other Interest in or over the affected land (e.g. a private right of way)

* Please delete as appropriate

7. Have you, or any previous owner/tenant of the land, ever erected any signs such as "Private", "Keep Out" or "Trespassers will be prosecuted" or similar signs on or near the alleged public right of way?
*YES/NO

If YES please state:-

- (a) When were these signs erected?.....
- (b) What did these signs say?.....
- (c) Are these signs still in place?.....
- (d) Where are these signs located?.....

Please indicate location on attached map.

8. (a) Have you seen people using the way? *YES/NO*

(b) How were they using the way (ie foot, horse)? *Foot*.....

(c) Were they alone or accompanied Please give details. (ie companions, rambling club, family, etc)?

(d) Were these people known to you?

(e) How frequently did you see other people using the way? (ie daily, weekly, seasonal etc).

(f) How many other people, approximately, did you see on these occasions?

(g) Please give any further details of other people's use of the way which you feel may be important.

9. Have you ever given anybody permission to use the route? *YES/NO*

If YES please state:-

*TO MY KNOWLEDGE IT HAS ALWAYS BEEN
RECOGNISED AS A PUBLIC RIGHT OF WAY.*

(a) When was this?.....

(b) To whom was it given?.....

(c) Why was it given?.....

10. (a) Have there, to your knowledge, ever been any stiles on the way? *YES/NO

(b) Have there, to your knowledge, ever been any gates on the way *YES/NO

(c) If YES, please mark on the attached plan the location of the stiles or gates and state, if known, when they were erected or removed.

(d) If any gates on the way were ever locked please state, how often, and if known, by whom?

Please mark on the attached plan the locations of the locked gates.

11. (a) Excluding locked gates, have you (or any previous owner or occupier) ever known of any other obstructions to the way? *YES/NO

(b) If YES, state :

(i) what type of obstruction was this?

(ii) When they were erected or removed?

(c) Please state, if known, who erected the obstructions and show the approximate position of the obstructions on the attached plan.

(d) If you have a private right of way how has this been exercised while the alleged public route has been obstructed.

12. (a) Have you ever stopped or "turned back" anyone found using the route? *YES/NO

If YES please give details
.....

13. Have you ever taken any other steps to prevent the presumed dedication of this route as a public right of way? *YES/NO.

If YES please give full details.....
.....

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

* Please delete as appropriate

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

If YES: --

(a) In what form is this?.....

(i.e. maps, photos, deeds, etc. please attach a copy if possible)

(b) Would you be willing to make the original document available if necessary? *YES/NO

15. Would you be prepared to give evidence on this matter at a public inquiry or in a court of law, if necessary? *YES/NO

16. Can you give any further information about the alleged route? *YES/NO
(continue on a separate sheet of paper if necessary).

Land shown in red on the attached map.

Enclosed. Copy of letter from Weston with Gayton Parish Council dated 2 March 2011.

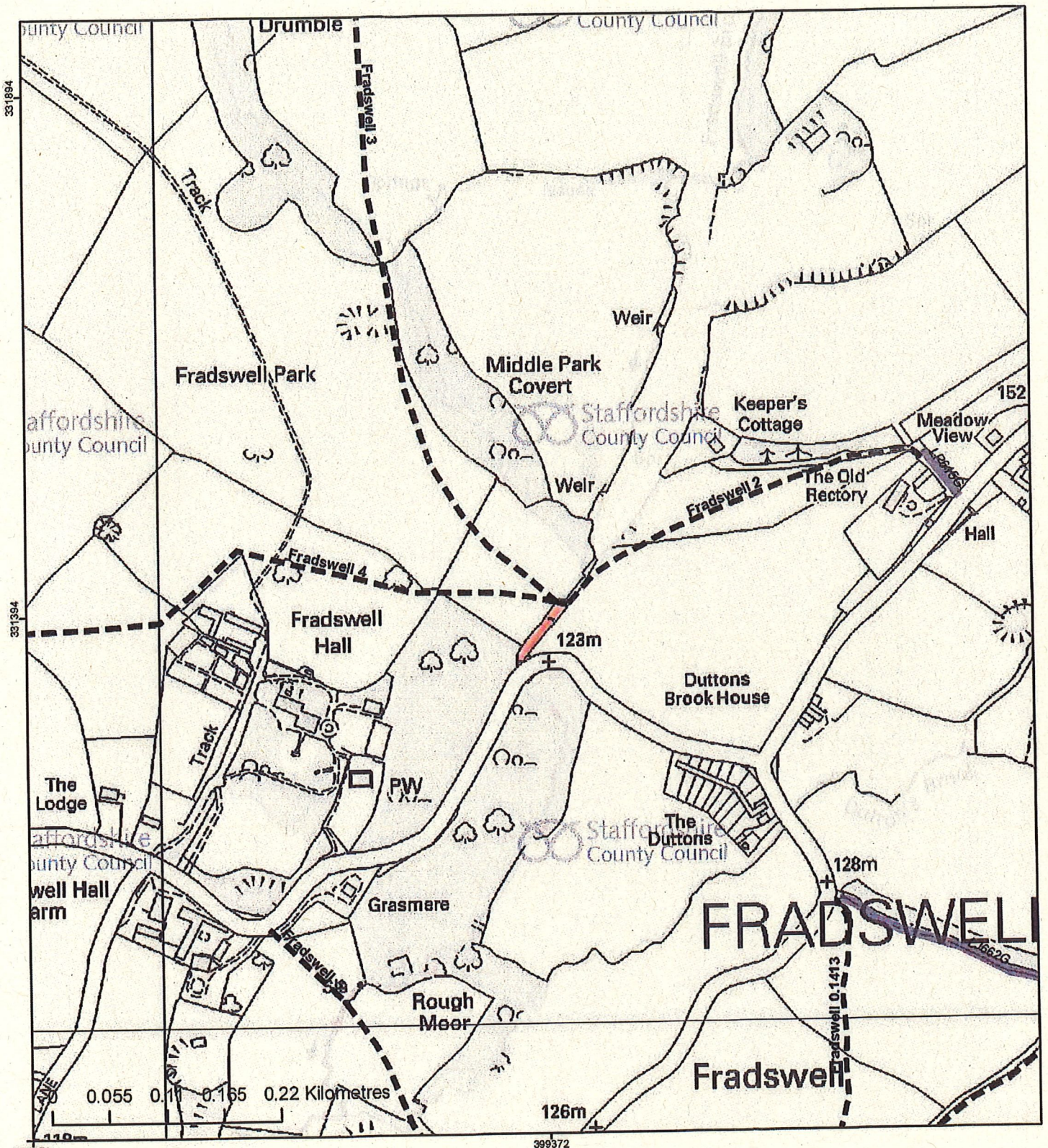
I certify that, to the best of my knowledge and belief, the information I have given in this statement is true.

Signature *[Handwritten Signature]*

Person taking this statement (if applicable).....

Date *16 April 2015*

* Please delete as appropriate



Legend

Public Rights of Way

STATUS

- Footpath
- + Bridlepath
- ↘ BOAT
- ↘ Restricted byway or RUPP
- Section 53
- ◆ All other promoted routes



Rights of Way Section
No.1 Staffordshire Place

Wedgewood Building
Block A, Tipping Street
Stafford. ST16 2DH

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Weston with Gayton Parish Council

Mrs F J Gilbert,

Parish

Clerk,

Leyfields
Gayton
Stafford
Staffordshire
ST18 0HQ
Tel: 01889 271304

Email: parishclerk@westonstaffs.org.uk

2 March 2011

Mr Brian Boughey
Clerk to Milwich with Fradswell Parish Council
Bents Cottage,
The Bents,
Leigh,
Stoke on Trent,
ST10 4QD

Dear Mr Boughey

Weston with Gayton with Fradswell Parish Council Assets Register 2003 – 2004

I was appointed to the position of Parish Clerk for Weston with Gayton Parish Council on 1 March 2010 and one of my tasks is to update the Parish Council's Asset Register, which still reflects the assets of the former Parish Council (above).

I am sure that you have a current Asset Register for Milwich with Fradswell Parish Council, but I thought I ought to list, for your information, those assets that were deemed to belong to Fradswell in 2003 – 2004 that we now intend to remove from Weston with Gayton's Register.

These are:

- 1 Fradswell Parish Field, .774 ha (1.91 acres) located at Field No 5635 (O/S SJ9626/7), acquired pre 1980 and given no value
- 2 Car Park opposite Fradswell Village Hall, acquired pre 1980 and given no value
- 3 Access footway from Church Lane to junction of Footpath No. 2,3 and 4, Fradswell, acquired pre 1980 and given no value

There are also, on the list, 4 filing cabinets acquired in 1996 and valued at £357 and a laptop computer acquired in 2002, valued at £1440 that were once joint property from when the Councils shared a Clerk. However as there are now only 2 cabinets in our possession, and the laptop is considered to be obsolete, I am proposing that 2 of the cabinets and the laptop, are 'written off' Weston with Gayton's Asset Register. If, however you have the other two filing cabinets, please let me know!

If you require any further information, or wish to discuss this matter further, please do not hesitate to get in touch.

Yours sincerely

Judith Gilbert
Parish Clerk

Lindop, Jonathan (Corporate)

From: Steven <sj@abram.org.uk>
Sent: 12 May 2015 14:58
To: Murphy, Michael (D,L&T)
Subject: MMU/009701DW

Your ref: MMU/009701DW

Dear Michael,

I have tried to phone you a few time and twice the line was out of action, another time I left a message and never received a reply.

Before attempting to complete the form you have sent with regards to the matter in your reference I want to share the following and hear your response.

I am Team Vicar of Mid Trent churches and Fradswell church is my responsibility.

There is a gate leading to the alleged footpath and this gate is locked and has no apparent path beyond it. I would suggest this was for the benefit of the Rector in the days when he lived at what is now the Old Rectory (residential care home) and a short cut for him to go home. Was it a public or private path – I don't know? The land the other side of the fence is not church owned.

Church land is private land but which we allow people to access for such things as church and tending graves. Also, if walkers wish to walk in and round, nor problems for us at all. However, there is no right of way and as far as I can see this is not claimed in the documentation.

I live in Hixon and am only at the church for specific reasons and not very often and therefore cannot pass any sensible comments about people in the vicinity.

In the light of this I am not sure I can give much 'useful' information. However, if necessary I will attempt to fill the form in as I can. What I write here might suffice and if you want I can transfer this to formal headed paper.

Kind regards

Steven

Steven Abram,
Team Vicar, Mid Trent Churches



Got to Team site below for details

Visit our Team site at: www.midtrentchurches.org.uk

Visit my site at: www.abram.org.uk

Lindop, Jonathan (Corporate)

From: lesley_bentley@btopenworld.com
Sent: 19 February 2020 15:43
To: Finney, Samantha (Corporate)
Subject: Your ref 009701DW

Dear Samantha,

I write in response to your letter of 30.01.2020 to the Rev'd Steve Abram, now retired from his post as Team Vicar in the MidTrent Team. I am replying as Interim Team Rector, having responsibility for St James Fradswell.

I concur with Steve's comments of 12.05.2015. There is a gate in the churchyard fence that would appear to open onto the alleged footpath under discussion and a churchyard footpath leading up to it, as marked on Appendix B.

The gate has a new looking chain placed on it. As Steve said, the church yard is private land to which people are allowed access for such matters as visiting the graves and tending them.

Thank you for consulting us.

Best wishes, Lesley

Lesley Bentley
Interim Team Rector, MidTrent Team, Diocese of Lichfield
Hands at Work, West Midlands Co-ordinator
Tel 01889 508066

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